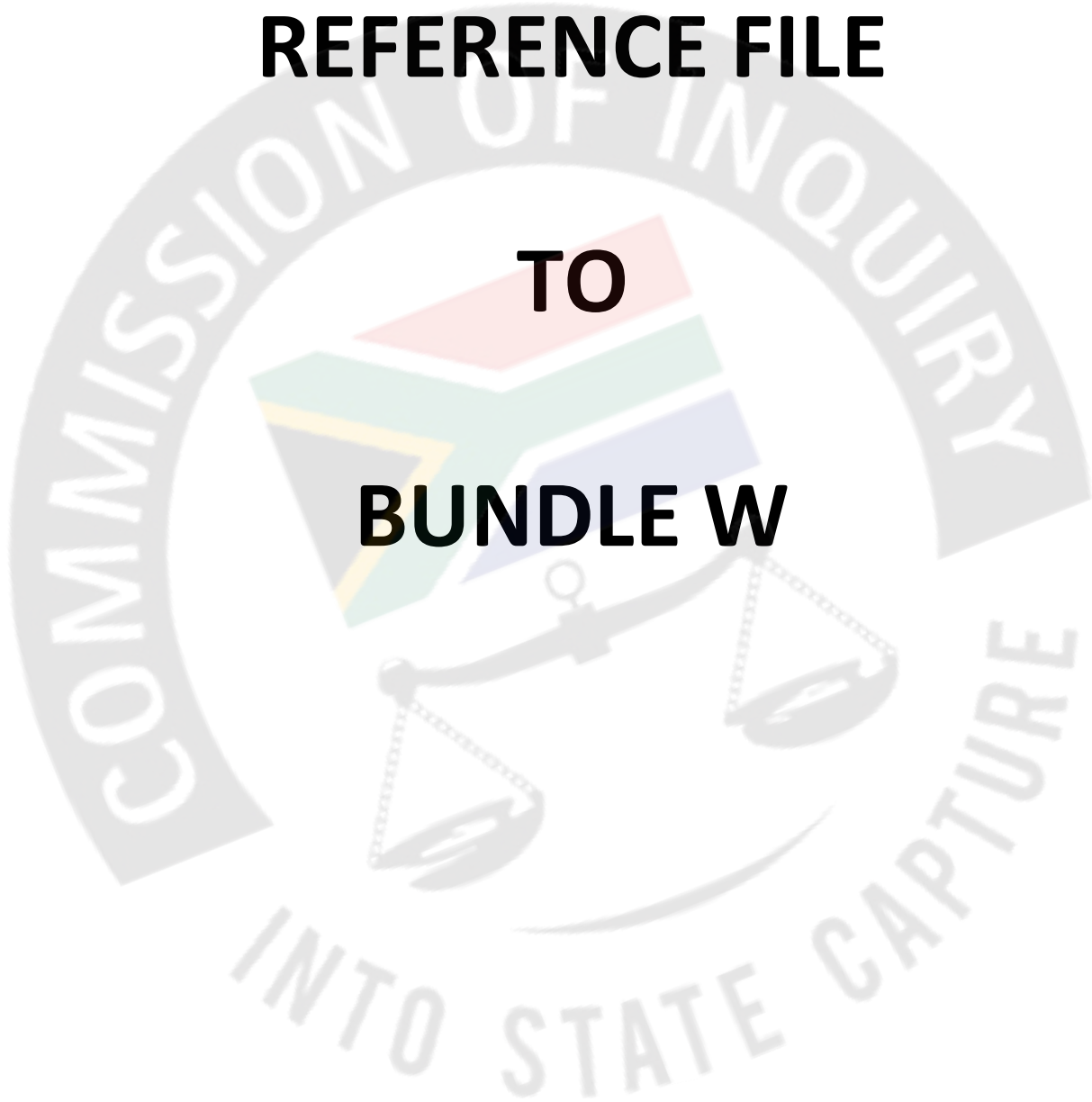


W5

REFERENCE FILE

TO

BUNDLE W





**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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SECTION 1



This Memorandum of Incorporation was submitted to and adopted by Special Resolution passed by the Shareholder of the Company at Irene on 22 July 2013.

REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 2008
MEMORANDUM OF INCORPORATION OF
DENELSOC LTD
REGISTRATION NO.1992/01337/30

which is referred to in the rest of this Memorandum of Incorporation as the "Company"

The Schedules and Annexures attached to this Memorandum of Incorporation are incorporated into, and form an integral part of, this Memorandum of Incorporation.

This Memorandum of Incorporation was adopted by Special Resolution passed on 22 July 2013 in substitution for the existing memorandum of incorporation of the Company.

Preamble

- The Company is a pre-existing company as contemplated in Item 2 of Schedule 5 of the Companies Act, and was incorporated to carry on the business of supplying the RSA defence & security environment, with strategic technology capability, products, services, and support, including exporting to key international markets. It being recorded that the Company is also subject to the provisions of the PFMA. The Government is the sole Shareholder of the Shares in the Company and the rights attached to those Shares are exercised by the Minister. The Company now wishes to adopt this Memorandum of Incorporation in order to bring its constitution in line with the Companies Act.

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1. INTERPRETATION

In this Memorandum of Incorporation:-

- 1.1. Words used in this MOI but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act and/or the PFMA. The definitions from the Companies Act are contained in (**Annexure A**). For ease of reading, such terms have been capitalised in this MOI.
- 1.2. Unless the context provides or requires otherwise:-
 - 1.2.1. **"Auditing Profession Act"** means the Auditing Profession Act, No. 26 of 2005;
 - 1.2.2. **"Board"** means the "board" of the Company from time to time, as defined in the Companies Act, which is also the accounting authority for purposes of the PFMA;
 - 1.2.3. **"CEO"** means the Chief Executive Officer of the Company;
 - 1.2.4. **"CFO"** means the Chief Financial Officer of the Company;
 - 1.2.5. **"Companies Act"** means the Companies Act, No. 71 of 2008 as amended, consolidated or re-enacted from time to time and includes all schedules thereto and the Regulations;
 - 1.2.6. **"Company"** means Denel SOC Ltd, Registration no. 1992/01337/30 or whatever other name it may be known by from time to time;
 - 1.2.7. **"Company in general meeting"** means a formal meeting of, or a resolution passed by, the Shareholder;
 - 1.2.8. **"Corporate Plan"** means the 3 (three) year plan of the Company as contemplated in the PFMA read with the Treasury Regulations, which plan must include (but is not limited to):-
 - 1.2.8.1. strategic objectives and outcomes identified and agreed on by the Shareholder in the Shareholder's Compact;
 - 1.2.8.2. strategic and business initiatives as embodied in business function strategies;
 - 1.2.8.3. key performance measures and indicators for assessing the Company's performance in delivering the desired outcomes and objectives;

- 1.2.8.4. a risk management plan;
- 1.2.8.5. a fraud prevention plan;
- 1.2.8.6. the SMF;
- 1.2.8.7. a financial plan addressing:—
 - 1.2.8.7.1. quarterly projections for the first year of revenue, expenditure and borrowings against annual targets;
 - 1.2.8.7.2. asset and liability management;
 - 1.2.8.7.3. cash flow projections;
 - 1.2.8.7.4. capital expenditure programmes;
 - 1.2.8.7.5. dividend policies; and
- 1.2.8.8. such other issues as may be required in terms of the PFMA from time to time;
- 1.2.9. **"Deliver"** means in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 25 and the Companies Act, including Table CR3 of the Regulations of the Companies Act, (which is attached hereto as **Annexure C**), and **"Delivered"** and **"Delivering"** shall have the corresponding meaning as the context may indicate;
- 1.2.10. **"Directors"** means the "directors" of the Company from time to time, as defined in the Companies Act;
- 1.2.11. **"Distribution"** means a "distribution" as defined in the Companies Act and **"Distribute"** and **"Distributed"** shall have the corresponding meaning as the context may indicate;
- 1.2.12. **"DoA"** means the Delegation of Authority Policy approved by the Board from time to time;
- 1.2.13. **"Effective Date"** with reference to any particular provision of the Companies Act, means the date on which that provision came into operation in terms of section 225 of the Companies Act;
- 1.2.14. **"Electronic Address"** means in regard to Electronic Communication, any email address furnished to the Company by the Shareholder;

- 1.2.15. **"Electronic Communication"** has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;
- 1.2.16. **"Financial Assistance"** has the meaning set out in section 45(1) of the Companies Act;
- 1.2.17. **"Financial Year"** has the meaning set out in clause 27;
- 1.2.18. **"Gazette"** means the Government Gazette of the Republic;
- 1.2.19. **"Government"** means the Government of the Republic;
- 1.2.20. **"Guidelines"** means the 'guidelines for the appointment of a Chief Executive Officer for a State Owned Enterprise' as issued by the Minister, from time to time;
- 1.2.21. **"Ineligible or Disqualified"** means ineligible or disqualified as contemplated in the Companies Act (a list of which is in **Annexure B** for ease of reference) or as contemplated in clause 13.11 which shall apply not only to Directors but also to members of Board committees and Prescribed Officers;
- 1.2.22. **"Memorandum of Incorporation or "MOI"** means this Memorandum of Incorporation, as amended from time to time;
- 1.2.23. **"Minister"** means the Minister of Public Enterprises in his or her capacity as the representative of the Government and the executive authority (as defined in the PFMA) of the Company, or if any other Minister is designated as being the representative of the Government or the executive authority, then that Minister acting in such capacity;
- 1.2.24. **"Month"** means a calendar month;
- 1.2.25. **"Ordinary Resolution"** means a resolution adopted with the support of more than 50% (fifty percent) of the Voting Rights Exercised on the resolution at a Shareholder's Meeting, or by the Shareholder acting other than at a meeting, as contemplated in section 60 of the Companies Act;
- 1.2.26. **"Person"** includes a Juristic Person;
- 1.2.27. **"PFMA"** means the Public Finance Management Act, No.1 of 1999;
- 1.2.28. **"Prescribed Officer"** means a person who, within a company, performs any function that has been designated by the Minister of Trade and Industry in terms of section 66(10);

- 1.2.39. **"Shares"** means any shares issued, or authorised to be issued by the Company;
- 1.2.40. **"Sign"** and **"Signature"** include, respectively, lithography, printing, electronic signature or signing by a mechanical or electronic process or means;
- 1.2.41. **"SMF"** means the Significance and Materiality Framework applicable to the Company, developed under the Treasury Regulations;
- 1.2.42. **"Special Resolution"** means a resolution adopted with the support of at least 75% (seventy five percent) of the Voting Rights Exercised on the resolution at a Shareholder's Meeting or by the Shareholder acting other than at a meeting, as contemplated in section 60 of the Companies Act;
- 1.2.43. **"Statutes"** means any and every other statute, regulation, directive, guideline, framework, policy or ordinance not specifically mentioned from time to time in force concerning companies and necessarily affecting the Company or its Subsidiaries and **"Statute"** shall mean any one of them as the context may indicate;
- 1.2.44. **"Subsidiary"** means a "subsidiary" of the Company, as such term is defined in the Companies Act and **"Subsidiaries"** shall have a corresponding meaning;
- 1.2.45. **"Treasury Regulations"** means the regulations made by the National Treasury of the Republic in terms of section 76 of the PFMA and any amendment thereof or substitution there for from time to time;
- 1.2.46. **"Voting Rights"**, with respect to any matter to be decided by the Company, means the rights of the Shareholder to vote in connection with that matter; and
- 1.2.47. **"Writing"** includes Electronic Communication.
- 1.3. Words importing the singular number shall include the plural number and vice versa.
- 1.4. Words importing any one gender shall include the other two genders.
- 1.5. Words importing natural persons shall include Juristic Persons (whether corporate or not and including partnerships and trusts) and vice versa.
- 1.6. Reference to a section by number in this MOI shall be a reference to the corresponding section in the Companies Act, unless otherwise stated.
- 1.7. Reference to any provision of any Statute shall include such provision as amended or re-enacted from time to time and includes any subordinate legislation made from time to time

under such Statute. Any reference to a particular section in a Statute is to that section as at the date of adoption of this MOI, and as amended or re-enacted from time to time and/or an equivalent measure in a Statute, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this MOI are changed, the relevant provision of this MOI shall be read also as if it had been amended as necessary, without the necessity for an actual amendment.

- 1.8. Reference to a Shareholder represented by a proxy shall include a Shareholder represented by (i) an agent appointed under a general or special power of attorney or (ii) the Minister.
- 1.9. Subject to the preceding clause, any words or expressions defined in any Statute shall, unless the context otherwise requires, bear the same meaning in this MOI as in the Statute in which they are defined. If any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision.
- 1.10. The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.
- 1.11. Headings to this MOI are intended for reference purposes only and shall not be taken into account in the interpretation thereof.
- 1.12. The words "**include**", "**including**" and "**in particular**" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s.
- 1.13. Any reference in this MOI to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented.
- 1.14. The words "**other**" and "**otherwise**" shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

2. **INCORPORATION AND NATURE OF THE COMPANY AND GOVERNING PROVISIONS**

- 2.1. The Company is a pre-existing Profit Company incorporated as from 13 March 1992. As such, the Company continues to exist as a State-Owned Company as defined in the Companies Act as if it had been incorporated and registered in terms of the Companies Act, as contemplated in Item 2 of the Fifth Schedule to the Companies Act, and the Companies Act has modified application, as set out in Section 9 of the Companies Act.

2.2. The Company is governed by:-

- 2.2.1. the PFMA;
- 2.2.2. relevant Unalterable Provisions of the Companies Act;
- 2.2.3. relevant Alterable Provisions of the Companies Act, subject to the limitations, extensions and variations set out in this MOI;
- 2.2.4. the provisions of this MOI; and
- 2.2.5. applicable provisions of the Statutes.

2.3. Subject to section 5(4) of the Companies Act:-

- 2.3.1. if any provision of this MOI is in any way inconsistent with any provisions of the Companies Act and/or the PFMA, as the case may be, the said provision of the Companies Act and/or the PFMA shall prevail and this MOI shall be read in all respects subject to the Companies Act and/or the PFMA, as the case may be; and
- 2.3.2. if there is any inconsistency between any provision of the PFMA (including the Treasury Regulations), and any provision of the Companies Act, then to the extent that it is impossible to apply or comply with one of the inconsistent provisions without contravening the other, the PFMA provision will prevail.

3. POWERS AND CAPACITY OF THE COMPANY

- 3.1. The Company is not subject to any provisions contemplated in section 15(2)(b) or (c).
- 3.2. The purposes and powers of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii).
- 3.3. Notwithstanding anything to the contrary contained herein or any omissions from this MOI of any provisions to that effect, the Company may do anything that the Companies Act and/or the PFMA empower it to do if not so prohibited by this MOI and/or by any provision of the Companies Act and/or the PFMA as the case may be.
- 3.4. The Company shall not, without the prior Written approval of the Shareholder:-
 - 3.4.1. enter into any transaction which exceeds or falls outside of the limits prescribed by the Shareholder's Compact or the SMF;
 - 3.4.2. establish or participate in:-

- 3.4.2.1. the establishment of a company; or
- 3.4.2.2. a significant partnership, trust, unincorporated joint venture or similar arrangement;
- 3.4.3. acquire or dispose of a significant shareholding in a company or a significant asset;
- 3.4.4. commence or cease a significant business activity;
- 3.4.5. commit the Company or its Subsidiaries to borrowings which confer rights to a lender to convert debt into shares of any kind;
- 3.4.6. undertake or agree to a significant change in the nature or extent of the Company's interest in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- 3.4.7. appoint the CEO and approve the appointment of the CFO (in terms of clause 13.3);
- 3.4.8. issue, or approve the transfer of, any Shares in the Company; or
- 3.4.9. subject to clause 4 below, amend the provisions of this MOI.
- 3.5. In addition to the limitations and restrictions set out in clause 3.4 above, the Board shall ensure that:-
 - 3.5.1. the proposed Shareholder's Compact for the following Financial Year be submitted to the Shareholder at least 1 (one) month prior to the Annual General Meeting;
 - 3.5.2. the annual budget and Corporate Plan of the Company shall be submitted to the Shareholder by no later than 28 February each year; and
 - 3.5.3. the Company discloses to the Shareholder all changes to terms and conditions of trade which have a Material impact on the Company.
- 3.6. Subject, at all times, to the PFMA, the Shareholder may, from time to time:-
 - 3.6.1. grant to the Board a general authority to raise or borrow from time to time for the purposes of the Company, or secure the payment of, such sums not exceeding a financial limit as determined by the Shareholder; and/or

- 3.6.2. prescribe a financial limit for the issue of guarantees, indemnities, securities or the entering into of other transactions, in terms of which specific Shareholder approval is currently not required.

The Shareholder may, after consultation and in conjunction with the Board, issue guidelines to the Board regarding the mandate and objectives of the Company if it is reasonably necessary to do so.

4. **AMENDMENTS TO MEMORANDUM OF INCORPORATION**

- 4.1. Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with section 16(1) of the Companies Act and the provisions of this MOI.
- 4.2. The Board shall publish a notice of any alteration of the MOI correcting a patent error in spelling, punctuation, reference, grammar, or similar defect on the face of the MOI, by furnishing a copy thereof to the Shareholder and file a notice of alteration in terms of section 17(1) of the Companies Act.

5. **THE MAKING OF RULES**

The Board shall not have the power to make Rules in terms of the Companies Act.

6. **AUTHORISED SHARES ALLOTMENT AND ISSUE**

6.1. Authorised Classes of Shares

6.1.1. The Company is authorised to:-

6.1.1.1. issue ordinary Shares of the same class, and each such ordinary Share entitles the Shareholder to:-

6.1.1.1.1. attend, participate in, speak at and vote on any matter to be considered at any meeting of the Shareholder;

6.1.1.1.2. vote on any matter to be decided by the Shareholder of the Company;

6.1.1.1.3. vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share;---

in trust by the Company indefinitely until lawfully claimed by the Shareholder.

6.1.5. To the extent that the Company immediately before the Effective Date has authorised but unissued par value Shares in its capital of a class of which there are issued Shares, issue the unissued Shares of that class at par or at a premium or at a discount.

6.1.6. The Board shall not have the power to issue:-

6.1.6.1. authorised shares and options relating to Shares and secured and unsecured debt instruments as contemplated in sections 42 and 43 of the Companies Act; or

6.1.6.2. capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share in accordance with section 47 of the Companies Act,

without an Ordinary Resolution of the Shareholder.

6.2. Certificates of Securities

The Securities issued by the Company shall be evidenced by certificates, which shall contain the information specified in section 51(1) of the Companies Act, and be issued in the manner prescribed in section 51 of the Companies Act.

6.3. Register of Securities

The Company shall establish and keep a register of its issued Securities at its Office in the manner specified in section 50 of the Companies Act and the Regulations.

7. **PRE-EMPTION ON ISSUE OF ORDINARY SHARES**

7.1. Save if:-

7.1.1. ordinary Shares are to be issued for the acquisition of any asset or for an Amalgamation or Merger;

7.1.2. the Shareholder by Ordinary Resolution approves the issue of ordinary Shares for any other purpose without this clause applying;

7.1.3. a capitalisation issue of ordinary Shares is to be undertaken;

7.1.4. ordinary Shares are to be issued in terms of option or conversion rights;

7.1.5. ordinary Shares are to be issued for a subscription price which is not a cash amount payable in full on subscription,

the Shareholder has a right, before any other Person to be offered and, within a reasonable time, to subscribe for all the ordinary Shares to be issued. The offer to the Shareholder shall be Delivered in Writing specifying the number of ordinary Shares offered, and specifying a time (which shall not be less than 90 (ninety) days by which the offer must be accepted and the requisite portion of the subscription price paid, failing which it shall be deemed to be rejected. After the expiration of the time within which an offer may be accepted, or on the receipt of a response from the Shareholder that it declines to accept the ordinary Shares offered, the Board may, subject to the afore going provisions and clause 3.4.8 of this MOI, issue such Shares to any other Person.

8. **PROHIBITION REGARDING BENEFICIAL INTERESTS**

The Company shall not permit its Shares to be held by, and registered in the name of, one Person for the Beneficial Interest of another Person, as set out in section 56(1) of the Companies Act.

9. **RESTRICTION ON THE TRANSFER OF SHARES**

In addition to any other prescribed obligations which the Shareholder may agree to, no Shares shall be transferred without the prior Written consent of the Shareholder.

10. **SHAREHOLDERS' AND DIRECTORS' RIGHT TO INFORMATION**

10.1. The Shareholder shall have the rights to all such information relating to the Company as contemplated in this MOI, the Companies Act, the PFMA, and the Statutes.

10.2. The Board shall procure that detailed management accounts of the Company and its Subsidiaries shall be prepared on a quarterly basis and submitted to the Shareholder within the Month after the end of the quarter in respect of which such accounts are being prepared. Such management accounts shall be circulated to each Director and the Shareholder as soon as possible after completion.

10.3. Any Director or the Shareholder shall be entitled to request in Writing from time to time such accounting and other information as may be reasonably required by such Director or the Shareholder.

11. **RECORD DATE**

If, at any time, the Board fails to determine a Record Date as contemplated in section 59 (1) of the Companies Act, the Record Date for the relevant action or event is as determined in accordance with section 59(3).

12. SHAREHOLDER'S MEETINGS AND ROUND-ROBIN RESOLUTIONS

12.1. Convening of Shareholder's Meetings and Annual General Meetings

12.1.1. The Board shall convene an Annual General Meeting at least once a year but no later than 15 (fifteen) Months after the date of the previous Annual General Meeting or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted:-

12.1.1.1. presentation of the integrated annual report, comprising of-

12.1.1.1.1. the Directors' report;

12.1.1.1.2. report of the external auditors;

12.1.1.1.3. audited Financial Statements for the immediately preceding Financial Year, subject to provisions of section 84(3) of the Companies Act;

12.1.1.1.4. an audit and risk committee report;

12.1.1.1.5. the social and ethics committee report;

12.1.1.2. appointment of Directors, to the extent required by the Companies Act or the MOI;

12.1.1.3. consideration of the Remuneration Policy of the Company and confirmation that such Remuneration Policy is in line with the standards and/or guidelines issued by the Minister; and

12.1.1.4. approval of the remuneration payable to Non-Executive Directors, by Special Resolution (except where such remuneration has been approved by the Shareholder by Special Resolution within the previous 2 (two) years although this may be reviewed on an annual basis);

12.1.1.5. approving the Auditor for the current Financial Year (subject to the provisions of section 84(3) of the Companies Act;

12.1.1.6. noting the audit fees for the previous Financial Year under review;

12.1.1.7. authorising the audit and risk committee to determine the audit fees for the current Financial Year;

- 12.1.1.8. appointing the audit and risk committee subject to clause 18 of the MOI;
- 12.1.1.9. approval of the Distribution to the Shareholder, (if applicable), which shall have been approved by the Board prior to the Annual General Meeting in accordance with any Distribution policies applicable to the Company, from time to time and the provisions of clause 23;
- 12.1.1.10. noting of the Shareholder's Compact for the current Financial Year;
- 12.1.1.11. the consideration and/or approval of the Shareholder's Compact for the following Financial Year;
- 12.1.1.12. the consideration and/or approval of the SMF;
- 12.1.1.13. the consideration of the performance of the Board (through the Board performance appraisal report);and
- 12.1.1.14. considering any matters raised by the Shareholder, with or without advance notice to the Company.
- 12.1.2. The Shareholder or Directors may, subject to the provisions of section 61 of the Companies Act, convene a Shareholder's Meeting at any time.
- 12.1.3. The Company authorises the Minister to call a Shareholder's Meeting for the purposes of section 61(11) of the Companies Act.
- 12.1.4. The Shareholder's Meetings referred to in clauses 12.1.1 and 12.1.2 above shall be held at the Registered Office, provided however, that in exceptional circumstances, such meeting/s shall be held at any other place as the Shareholder deems fit.
- 12.1.5. The Company shall, as determined by the Board, either:-
 - 12.1.5.1. hold a Shareholder's Meeting in order to consider one or more resolutions; or
 - 12.1.5.2. as regards such resolution/s that could be voted on at a Shareholder's Meeting, other than an Annual General Meeting, instead require such resolutions to be dealt with by a Round Robin Resolution of the Shareholder.

12.1.6. Within 10 (ten) Business Days after the Shareholder adopts a Round Robin Resolution, the Company must Deliver a statement describing the results of the vote, consent process, or election to the Shareholder.

12.1.7. A Company must hold a Shareholder's Meeting or put the proposed resolution to the Shareholder, by way of a Round Robin Resolution:-

12.1.7.1. at any time that the Board is required by the Companies Act or the MOI to refer a matter to the Shareholder for decision; or

12.1.7.2. whenever required to fill a vacancy on the Board; and

12.1.7.3. whenever otherwise required in terms of section 61(3) of the Companies Act or by this MOI.

12.2. Notice of meetings of the Shareholders

12.2.1. Subject to compliance with section 62 of the Companies Act, an Annual General Meeting and a general meeting of the Shareholders, shall be convened by giving notice of at least 15 (fifteen) Business Days to the Shareholder.

12.2.2. A notice of a Shareholder's Meeting must be in Writing, in plain language and must include:-

12.2.2.1. the date, time and place for the meeting, and the Record Date for the meeting;

12.2.2.2. the general purpose of the meeting, and any specific purpose contemplated in section 61(3)(a) of the Companies Act if applicable;

12.2.2.3. in the case of the Annual General Meeting, the complete Annual Financial Statements to be presented and directions for obtaining a copy of the complete annual Financial Statements for the preceding Financial Year;

12.2.2.4. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Shareholder's Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;

12.2.2.5. a reasonably prominent statement that:-

12.2.2.5.1. a Person entitled to attend and vote at the Shareholder's Meeting shall be entitled to appoint a

proxy to attend, participate in, speak and vote at the Shareholder's Meeting in the place of the Person entitled to vote or give or withhold Written consent on behalf of the Person entitled to vote to a decision by Round Robin Resolution of the relevant Person entitled to vote;

12.2.2.5.2. a proxy need not be a Person entitled to vote;

12.2.2.5.3. a Person entitled to vote may appoint more than 1 (one) proxy to Exercise Voting Rights attached to different Shares held by that Person entitled to vote in respect of any Shareholder's Meeting;

12.2.2.5.4. the proxy may delegate the authority granted to her/him/it as proxy, subject to any restriction in the instrument appointing the proxy itself;

12.2.2.5.5. participants in a Shareholder's Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the Person presiding at the Shareholder's Meeting that the right of that Person to participate and vote, either as the Shareholder or as the proxy for the Shareholder has been reasonably verified;

12.2.2.5.6. participation in the Shareholder's Meeting by Electronic Communication is available, and provide any necessary information to enable Persons entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Person entitled to vote or proxy, except to the extent that the Company determines otherwise.

12.2.3. A Shareholder's Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 12.2.4, only if every Person who is entitled to Exercise Voting Rights in respect of each item on the agenda of the

Shareholder's Meeting is Present at the Shareholder's Meeting and votes to approve the ratification of the defective notice.

12.2.4. If a Material defect in the form or manner of giving notice of a Shareholder's Meeting relates only to one or more particular matters on the agenda for the Shareholder's Meeting:-

12.2.4.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and

12.2.4.2. the Shareholder's Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of clause 12.2.3.

12.2.5. A non-Material defect in the form or manner of Delivering notice of a Shareholder's Meeting, or an accidental or inadvertent failure in the Delivery of the notice to the Shareholder to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Shareholder's Meeting.

12.2.6. A Person entitled to vote, who is Present at a Shareholder's Meeting:-

12.2.6.1. is regarded as having received or waived notice of the Shareholder's Meeting if at least the required minimum notice was given;

12.2.6.2. has a right to —

12.2.6.2.1. allege a Material defect in the form of notice for a particular item on the agenda for the Shareholder's Meeting;

12.2.6.2.2. participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice; and

12.2.6.3. except to the extent set out in clause 12.2.6.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholder's Meeting.

12.3. Proceedings at meetings of the Shareholder

- 12.3.1. The Annual General Meeting shall deal with and dispose of all matters prescribed by the Companies Act and the provisions of this MOI and may deal with any other business raised by the Shareholder or any other business presented to it.
- 12.3.2. The quorum necessary for the commencement of a Shareholder's Meeting or for a matter to be considered at a Shareholders' Meeting shall be the Minister Present in person or represented by proxy. Business at any Shareholder's Meeting may only be conducted while a quorum is Present.
- 12.3.3. The appointment of the proxy to represent the Shareholder in any Shareholder's Meeting or Annual General Meeting of the Company shall be in accordance with the provisions of the Companies Act and this MOI.
- 12.3.4. A Shareholder's Meeting may be conducted by way of Electronic Communication or by any one or more persons participating in the Shareholder's Meeting by Electronic Communication.
- 12.3.5. Subject to clause 12.3.6, any Shareholder's Meeting may be postponed or adjourned as provided for in the Companies Act.
- 12.3.6. No further notice is required to be Delivered by the Company of a Shareholder's Meeting that is postponed or adjourned as contemplated in clause 12.3.6, unless the location or time for the Shareholder's Meeting is different from a location or time announced at the time of postponement or adjournment, in the case of a postponed or adjourned Shareholder's Meeting.
- 12.3.7. If within 1 (one) hour from the time appointed for the Shareholder's Meeting to begin a quorum is not Present, the Shareholder's Meeting shall be postponed, without motion, vote or further notice to the same day in the next week, at the same time and place, or, if that day is a public holiday, to the next succeeding day other than a public holiday.
- 12.3.8. The chairperson of the Board shall preside as chairperson at every Shareholder's Meeting of the Company. If the chairperson is not Present at the Shareholder's Meeting, or if s/he is not Present within 30 (thirty) minutes after the time appointed for holding the Shareholder's Meeting, the Shareholder shall choose any non-executive Director Present to be chairperson of the Shareholder's Meeting. In the exceptional circumstance that no other non-executive Director be available to chair the Shareholder's Meeting, the

Shareholder(or a duly authorised representative thereof)may be entitled to chair the Shareholder's Meeting.

12.3.9. The chairperson may, in accordance with section 64(10) of the Companies Act, with the consent of any Shareholder's Meeting at which a quorum is Present (and shall if so directed by the Shareholder's Meeting), adjourn or postpone the Shareholder's Meeting from time to time and from place to place, but no business shall be transacted at any adjourned or postponed Shareholder's Meeting other than the business left unfinished at the Shareholder's Meeting from which the adjournment or postponement took place.

12.3.10. When a Shareholder's Meeting is adjourned or postponed as a result of a direction given in terms of any applicable provision in the Companies Act, notice of the adjourned Shareholder's Meeting shall be given in the manner prescribed by such provision but, save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned Shareholder's Meeting. No Shareholder's Meeting may be adjourned beyond a period of 60 (sixty) Business Days from the date on which the adjournment occurred.

12.3.11. Every resolution of the Shareholder is either an Ordinary Resolution or a Special Resolution.

12.3.12. A Round Robin Resolution Signed by the Shareholder or by a duly authorised representative on behalf of the Shareholder, within 20 (twenty) Business Days after it has been submitted to the Shareholder in terms of section 60 of the Companies Act, shall be as valid and effective as if it had been passed at a Shareholder's Meeting of the Company duly convened and held.

13. **DIRECTORS**

13.1. General

13.1.1. The Board shall consist of a minimum of 3 (three) Directors and a maximum of 16 (sixteen) Directors, with no less than 2 (two) executive Directors, being the CEO and CFO.

13.1.2. The non-executive Directors shall be appointed for a period of 3 (three) years at a time which appointment is reviewable annually, provided that no person is appointed as a Director for longer than 3 (three) consecutive terms.

13.1.3. No Director shall be entitled to appoint an Alternate Director.

13.2. Process of Appointment of Directors

- 13.2.1. The Shareholder shall appoint the Directors of the Company from time to time and in doing so shall endeavour to ensure that the Board shall:-
- 13.2.1.1. be appropriately balanced in terms of executive and non-executive Directors with a majority being non-executive Directors;
 - 13.2.1.2. be representative of the gender and race demographics of the Republic;
 - 13.2.1.3. be appointed on the grounds of their knowledge and experience which, when considered collectively, should enable the Board to attain the objects of the Company;
 - 13.2.1.4. when viewed collectively, possess appropriate skills and experience relevant to the business of the Company; and
 - 13.2.1.5. not include persons who are Ineligible or Disqualified, as set out in section 69 of the Companies Act or in terms of this MOI.

13.3. Process of appointment of the CEO and CFO

- 13.3.1. The Board shall identify, nominate and evaluate potential candidates for appointment as the CEO in accordance with the Guidelines.
- 13.3.2. The Shareholder shall appoint the CEO from the shortlist of candidates provided by the Board, in accordance with the Guidelines.
- 13.3.3. The Board shall identify, nominate, evaluate and appoint a candidate for appointment as the CFO, provided that the Shareholder shall approve such appointment in Writing.
- 13.3.4. If the Shareholder does not approve the appointment of the CFO identified by the Board in Writing, the Shareholder shall be required to provide a Written substantive motivation to the Board as to why the Shareholder does not approve the candidate nominated by the Board. Provided the Shareholder provides such Written substantive motivation to the Board, such candidate shall not be appointed as the CFO and the Board shall identify and nominate an alternative candidate for appointment as the CFO and the process contemplated in clause 13.3.3 and 13.3.4 shall apply.

13.4. Chairperson of the Board

- 13.4.1. The chairperson of the Board shall be appointed by the Shareholder.
- 13.4.2. The Company in general meeting shall be entitled to designate an acting chairperson (from any of the non-executive Directors) and determine the period for which such acting chairperson is to hold office and any other terms and conditions applicable to such appointment.
- 13.4.3. The chairperson of the Board shall chair all the meetings of the Shareholder and the Board.
- 13.4.4. If the chairperson is not Present at any such meeting or if s/he is not Present within 30 (thirty) minutes after the time appointed for holding the meeting, the Directors Present shall choose any non-executive Director to be chairperson of the meeting.
- 13.4.5. The non-executive Director appointed as chairperson of the meeting in terms of clause 13.4.1 shall act as chairperson:-
 - 13.4.5.1. for the duration of the meeting until the meeting is adjourned or postponed; or
 - 13.4.5.2. for such a period of time after the adjournment or postponement of the meeting at which such Director was appointed as chairperson until the chairperson of the Board becomes available.
- 13.4.6. The chairperson of the Board shall not be appointed or serve as the chairperson of a Board committee (save for the human resources and remuneration committee) or as the chairperson of a Subsidiary's board.

13.5. Appointment of Directors to the boards of the wholly-owned Subsidiaries of the Company

- 13.5.1. For so long as the State is the sole Shareholder, it is recorded that the boards of the wholly-owned Subsidiaries of the Company should, subject to clause 13.5.2, comprise of employees of such Subsidiaries or the Company.
- 13.5.2. It is recorded that, should any wholly-owned Subsidiary of the Company wish to appoint Directors who are not employees of the Subsidiary or the Company, such appointments shall be approved by the Shareholder in Writing.

13.6. Remuneration of Directors and members of the executive management committee

13.6.1. The Board or the committee of the Board responsible for remuneration matters of the Company shall determine the remuneration of the individual Directors and members of the executive management committee within the framework of the Remuneration Policy of the Company. The remuneration of the Non-executive Directors shall be approved by Special Resolution as contemplated in clause 12.1.1.4.

13.6.2. All Directors may be paid all travelling, hotel and other expenses properly incurred by them in or about the performance of their duties as Directors, including, those expenses incurred in attending and travelling to and from meetings of the Directors or any committee of the Directors or at any Shareholder's Meeting.

13.6.3. The Company may pay or grant any type of remuneration contemplated in sections 30(6) (b) to (g) of the Companies Act to any executive Directors in accordance with the Remuneration Policy.

13.7. Powers of Directors

13.7.1. The management and control of the Company shall be vested in the Board who, in addition to the powers and authorities expressly conferred upon them by this MOI, may exercise all such powers, and do all such acts and things, as may be exercised or done by the Company and are not, in terms of this MOI, expressly directed or required to be exercised or done by the Company in general meeting or with the prior Written consent of the Shareholder.

13.7.2. The Board may delegate any of the powers or functions to any Director, employee(s) and/or to a committee of the Board of the Company. The delegation shall be exercised lawfully, within prescribed powers and authorisation levels and in terms of the Company's policies, directives and procedures.

13.7.3. The delegation:-

13.7.3.1. may be made on, and subject to, any conditions determined by the Directors;

13.7.3.2. may be given together with the power to sub-delegate subject to the provisions of the PFMA, the Companies Act and further subject to any conditions so determined (if any); and

13.7.3.3. shall be communicated to the delegate in Writing and such Written communication must contain full particulars of the matters being delegated and of the conditions determined under clause 13.7.3.1 and 13.7.3.2 above, if any, and where the power of sub-delegation is also conferred, must state that fact, as well as any conditions determined under this clause 13.7.3.3 if any; and

13.7.3.4. shall be reviewed on a regular basis.

13.7.4. The Board may, without requiring the consent of the Shareholder, and in accordance with clause 13.7.2 from time to time revoke, withdraw or vary such powers contemplated clause 13.7.3.

13.8. Recognition of the DoA

It is recorded that the DoA records (but does not create) certain limitations on the powers of the Directors, which limitations arise as a result of this MOI and the PFMA and in accordance with the principles set out in clause 13.7.

13.9. Proceedings at Meetings of the Board

13.9.1. The Board may meet for the dispatch of business, adjourn, postpone, and otherwise regulate their meetings as it thinks fit. The company secretary or a Director may:-

13.9.1.1. when authorised by the Board; or

13.9.1.2. if requested by at least 1 (one) Director which request shall also be approved by the chairperson of the Board;

13.9.1.3. if requested by at least 2 (two) Directors of the Company; or

13.9.1.4. at any time,

convene a meeting of the Board.

13.9.2. The Board shall determine the period of notice which shall be given for meetings of the Board and may determine the form or medium of giving such notice, which may include Electronic Communication facility. It shall be necessary to give notice of a meeting of the Board to all Directors even those for the time being absent from South Africa.

- 13.9.3. A meeting of the Board shall proceed even if the Company has not given the required notice of such meeting in accordance with clause 13.9.2 or if there was a defect in the giving of the notice, provided that all Directors:-
- 13.9.3.1. acknowledge actual receipt of the notice of the meeting concerned;
 - 13.9.3.2. are Present at the meeting; or
 - 13.9.3.3. waive notice of the meeting.
- 13.9.4. A meeting of the Board may be conducted by Electronic Communication facility or by one or more Directors participating in the meeting by Electronic Communication.
- 13.9.5. The quorum for a Board meeting shall be not less than a majority of all Directors, Present in person or via Electronic Communication facility.
- 13.9.6. Each Director shall have 1 (one) vote on a matter before the Board and save for as otherwise provided in this MOI a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 13.9.7. In case of an equality of votes, the chairperson shall not have a second or casting vote (in addition to his/her vote as a Director of the Board) and the matter being voted on shall fail.
- 13.9.8. Subject to the Companies Act and the MOI, a Round Robin Resolution Signed and approved by not less than 75% (seventy five percent) of the Directors or Board committee members, as the case may be, shall be as valid and effective as if it had been passed at a Board or Board committee meeting respectively, duly called and constituted;
- 13.9.9. Resolutions adopted by the Board:-
- 13.9.9.1. must be dated and sequentially numbered; and
 - 13.9.9.2. are effective as of the date of the resolution, unless the resolution states otherwise.
- 13.9.10. The company secretary shall attend meetings and record the minutes of the meetings. Where it is not at all possible for the company secretary to attend any such meeting, the Board shall ensure that minutes are recorded, kept and prepared for any such meeting. The Director elected by the Board to record and keep minutes of a meeting held by making use of Electronic Communication

13.10.4.2. afford the Director concerned reasonable opportunity to make presentations, in person or through a representative, at the meeting prior to the resolution being put to the vote.

13.11. Rotation of Directors and filling of vacancies

13.11.1. If a Director ceases to hold office or a term of office of any Director is due to expire, the Shareholder shall, in compliance with the provisions of section 70 of the Companies Act, ensure that necessary steps are taken to appoint the requisite number of eligible persons as Directors in the place of the retiring Director/s as soon as possible. In this regard the Board shall advise the Shareholder within a reasonable time of such impending vacancy.

13.11.2. The Shareholder shall fill in any vacancy that arose on the Board at its next Annual General Meeting or within a period of 6 (six) months after the vacancy arose.

13.11.3. A person shall cease to be a Director and a vacancy on the Board shall arise:-

13.11.3.1. when the Director's term of office expires;

13.11.3.2. if any of the circumstances referred to in section 70(1)(b) of the Companies Act occur, which include the following, if the Director:-

13.11.3.2.1. resigns by Written notice to the Shareholder and the Company;

13.11.3.2.2. dies;

13.11.3.2.3. ceases to hold the office, title, designation or similar status that entitled such a person to be a Director of the Company;

13.11.3.2.4. becomes incapacitated to the extent that the person is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable period subject to section 71(3);

13.11.3.2.5. is declared delinquent by the court or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company, in terms of section 162 of the Companies Act;

13.11.3.2.6. becomes Ineligible or Disqualified to be a Director in terms of section 69, subject to section 71(3) of the Companies Act, or the Statutes and this MOI

13.11.3.2.7. is removed as a Director by:-

13.11.3.2.7.1. a resolution of the Shareholders in terms of section 71(1) of the Companies Act (and in accordance with clause 13.10); or

13.11.3.2.7.2. resolution of the Board in terms of section 71(3) of the Companies Act (subject always to the consent of the Shareholder); or

13.11.3.2.7.3. an order of the court in terms of section 71(5) or (6) of the Companies Act; or

13.11.3.3. if he/she is absent from meetings of the Directors for 3 (three) consecutive meetings without leave of the Directors (via the chairperson or the company secretary) and the Shareholder resolves that the office be vacated.

13.11.4. In the case of non-executive Directors, a person shall cease to be a Director and a vacancy on the Board shall arise if:-

13.11.4.1. a Director's appointment is reviewed and his term is terminated prematurely to the 3 (three) year term;

13.11.4.2. a Director has served for a 3 (three) year term as a Director, and fails to be re-appointed as Director for a 2nd (second) term; or

13.11.4.3. a Director has served for 2 (two) consecutive 3 (three) year terms, and fails to be re-appointed as a Director for a 3rd (third) term;

13.11.4.4. a Director has been appointed as a Director for 3 (three) consecutive 3 (three) year terms, which 3rd third term has now expired.

13.11.5. Unless the Shareholder resolves otherwise, a Director shall also cease to hold office if:-

- 13.11.5.1. he is Knowingly interested in any contract or proposed contract with the Company and fails to declare his interest and its nature in the manner required by the Companies Act and the PFMA; or
- 13.11.5.2. assigns his estate for the benefit of his creditors, or suspends payment or files a petition for the liquidation of his affairs, or compounds generally with his creditors; or
- 13.11.5.3. ceases to be an employee and/or is suspended as an employee of the Company.

13.11.6. In addition if the CEO and/or CFO ceases to hold office as a Director for any reason whatsoever, his appointment as the CEO and/or CFO (as the case may be) shall *ipso facto* terminate, without prejudice to any claims for damages which may accrue to him as a result of such termination in accordance with applicable employment laws, provided however, that he shall not be precluded from being employed in any other position of the Company by virtue of the fact that he is no longer a Director.

14. **FINANCIAL ASSISTANCE AND BORROWING POWERS OF THE COMPANY AND COMPANY'S SUBSIDIARIES**

14.1. Financial Assistance

14.1.1. The Company is prohibited from and shall not have the power to:—

- 14.1.1.1. authorise the provision by the Company of Financial Assistance to any person for the purpose of, or in connection with, the subscription of any option, or any Shares, issued or to be issued by the Company or a Related Person or Inter-Related company, or for the purchase of any Shares of the Company or a Related or Inter-Related company;
- 14.1.1.2. provide any direct or indirect Financial Assistance to a Related or Inter-Related company or corporation, or to a member of a Related or Inter-Related corporation or to a person Related to any such company, corporation or member,

except, in each case, where:—

- 14.1.1.3. the Shareholder has approved such Financial Assistance, either for the specific recipient or generally for a category of potential recipients (and the specific recipient falls within that category), by

Special Resolution adopted within the previous 2(two) years; provided that where the Shareholder is requested to approve the provision of specific Financial Assistance, the Board shall, at the request of the Shareholder, provide such information to the Shareholder as the Shareholder may require, to satisfy the Shareholder that the conditions set out in clauses 14.1.1.4, 14.1.1.5 and 14.1.1.6 of this MOI have been met, or will be met; and

14.1.1.4. the provisions of the PFMA have been met;

14.1.1.5. the provisions of section 44 and/or 45 (as the case may be) of the Companies Act have been met; and

14.1.1.6. the Board is satisfied that:-

14.1.1.6.1. immediately after providing the Financial Assistance, the Company would satisfy the solvency and liquidity test prescribed in section 4 of the Companies Act; and

14.1.1.6.2. the terms under which the Financial Assistance is proposed to be given are fair and reasonable to the Company.

14.1.2. The Company shall be prohibited from providing any direct or indirect Financial Assistance to any Director or Prescribed Officer of the Company or to a person Related or Inter-Related to any such Director or Prescribed Officer under any circumstances whatsoever.

14.2. Directors' power to effect borrowing

14.2.1. Subject to the provisions of the PFMA (and, in particular, section 66 of the PFMA) and the provisions of and/or restrictions contained in this MOI, the Board may raise or borrow from time to time for the purposes of the Company, or secure the payment, of such sums as is in accordance with the financial limits determined by the Shareholder under clause 3.6.

14.3. Company's power to issue guarantees, indemnities, securities or to enter into other transactions that bind the Company to any future financial commitment

14.3.1. The Company may not:-

14.3.1.1. issue a guarantee, indemnity or security; or

14.3.1.2. enter into any other transactions that binds, or may bind, the Company or the Revenue Fund to any future financial committee,

unless:-

14.3.1.3. the provisions of the PFMA, in particular, section 66, are complied with; and

14.3.1.4. if the guarantee, indemnity, security or transaction exceeds the financial limits as prescribed by the Shareholder under clause 3.6, the prior written consent of the Shareholder is obtained.

14.4. Financing and funding structures

14.4.1. The Board shall, in accordance with the PFMA, consider and determine the funding structures of the Company having regard to the funding requirements of the Company from time to time.

15. **PERSONAL FINANCIAL INTEREST AND DECLARATION BY DIRECTORS**

15.1. For purposes of this clause 15, "Director" includes a Prescribed Officer and a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.

15.2. The Company shall establish a policy that will deal with Personal Financial Interests and conflicts of interest of Directors and employees of the Company, which shall be consistent with the provisions of the Companies Act and the PFMA.

15.3. If a Director has a Personal Financial Interest or Knows that a Person Related to the Director, as described in section 2 of the Companies Act, has a Personal Financial Interest in respect of any matter to be considered by the Board, the Director:-

15.3.1. must disclose the interest and its general nature in Writing before the matter is considered at the meeting;

15.3.2. must disclose to the meeting any Material information relating to the matter, and that is Known to the Director;

15.3.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

15.3.4. if Present at the meeting of the Board, must leave the meeting immediately after making any disclosure contemplated in clause 15.3.2 or 15.3.3;

- 15.3.5. must not take part in the consideration of the matter, except to the extent of the disclosures contemplated in clauses 15.3.2 or 15.3.3;
- 15.3.6. while absent from the meeting as provided in clause 15.3.4:-
- 15.3.6.1. shall be regarded as being Present at the meeting for the purpose of determining whether sufficient Directors are Present to constitute a quorum of the meeting;
- 15.3.6.2. shall not be regarded as being Present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
- 15.3.7. must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.
- 15.4. If a Director of the Company acquires, or Knows that a Related Person has acquired, a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, after the agreement or other matter has been approved by the Company, the Director shall promptly disclose to the Board, the nature and extent of that interest, and the Material circumstances relating to the Director or Related Person's acquisition of that interest, as the case may be.
- 15.5. If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.
- 15.6. A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Person Related to the Director, if:-
- 15.6.1. it was approved in the manner contemplated in section 75 of the Companies Act; or
- 15.6.2. despite having been approved without disclosure of that Personal Financial Interest, it:-
- 15.6.2.1. has subsequently been ratified by an Ordinary Resolution of the Shareholder following disclosure of that Personal Financial Interest; or

15.6.2.2. has been declared to be valid by the court in terms of section 75(8) of the Companies Act.

15.7. A Director may at any time disclose any general Personal Financial Interest in advance by delivering a Written notice to the Board setting out the nature and extent of that interest for the purposes of this clause¹⁵ until changed or withdrawn by such Director in Writing.

15.8. A court, on application by any interested Person, may declare valid a transaction or agreement that had been approved by the Board, or Shareholder as the case may be, despite the failure of the Director to satisfy the requirements of this clause¹⁵ and Section 75 of the Companies Act.

15.9. The provisions of this clause 15 do not derogate from those Directors duties prescribed by the PFMA and the Directors shall be required to comply both with the provisions of this clause 15 and the provisions of the PFMA.

16. INDEMNIFICATION AND DIRECTORS' INSURANCE

16.1. For the purposes of this clause 16 "Director" includes a former Director, a Prescribed Officer, a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.

16.2. Subject to the provisions of the PFMA, the Company may:—

16.2.1. not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation unless the conviction is based on strict liability;

16.2.2. advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company. For purposes of this clause¹⁶, "service to the Company" includes services which are directly linked to the activities of the Company, and services which the Company consents to or acknowledges; and

16.2.3. directly or indirectly indemnify a Director for:—

16.2.3.1. any liability, other than in respect of:—

16.2.3.1.1. any liability arising in terms of section 77(3)(a), (b) or (c) of the Companies Act or sections 86(2) or (3) of the PFMA, or from wilful misconduct or wilful breach of trust on the part of the Director; or

16.2.3.1.2. any fine contemplated in clause 16.2.1;

16.2.3.2. any expenses contemplated in clause 16.2.2, irrespective of whether it has advanced those expenses, if the proceedings:—

16.2.3.2.1. are abandoned or exculpate the Director; or

16.2.3.2.2. arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 16.2.3.1.

16.3. Subject to the provisions of the PFMA, the Company may purchase insurance to protect:—

16.3.1. a Director against any liability or expenses contemplated in clause 16.2.2 or 16.2.3; or

16.3.2. the Company against any contingency including but not limited to:—

16.3.2.1. any expenses:—

16.3.2.1.1. that the Company is permitted to advance in accordance with clause 16.2.2; or

16.3.2.1.2. for which the Company is permitted to indemnify a Director in accordance with clause 16.2.3.2; or

16.3.2.1.3. any liability for which the Company is permitted to indemnify a Director in accordance with clause 16.2.3.1.

16.4. The Company is entitled to claim restitution from a Director or of a Related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78 of the Companies Act.

17. AUDITORS

17.1. Auditors shall be appointed, and their duties regulated in accordance with the provisions of sections 90, 91, 92 and 93 of the Companies Act, the Auditing Profession Act and applicable provisions of the Public Audit Act.

17.2. The Company shall not be required to appoint an Auditor for any Financial Year in respect of which the Auditor-General has elected, in terms of the Public Audit Act, to conduct an Audit of the Company.

- 17.3. Subject to the provisions of the Companies Act, the Auditing Profession Act and the Public Audit Act, all acts done by any Person acting as Auditor, shall, as regard to all Persons dealing in good faith with the Company, be valid notwithstanding that there was some defect in that appointment.
- 17.4. All annual Financial Statements when Audited and presented at an Annual General Meeting shall be deemed conclusively correct, and shall not be re-opened.
- 17.5. Nothing precludes the election by the Company at its Annual General Meeting of an Auditor other than 1 (one) nominated by the audit and risk committee, but if such an Auditor is elected, the appointment is valid only if the audit and risk committee is satisfied that the proposed Auditor is independent of the Company.
- 17.6. In considering whether, for the purposes of this clause 17, a Registered Auditor is independent of the Company, the audit and risk committee must:–
- 17.6.1. ascertain that the Auditor does not receive any direct or indirect remuneration or other benefit from the Company, except:–
 - 17.6.1.1. as Auditor; or
 - 17.6.1.2. for rendering other services to the company, to the extent permitted in terms of the Companies Act;
 - 17.6.2. consider whether the Auditor's independence may have been prejudiced –
 - 17.6.2.1. as a result of any previous appointment as Auditor; or
 - 17.6.2.2. having regard to the extent of any consultancy, advisory or other work undertaken by the Auditor for the Company; and
 - 17.6.3. consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act,
- in relation to the Company, and if the Company is a member of a Group of Companies, any other company within that Group of Companies.

18. **AUDIT AND RISK COMMITTEE**

- 18.1. The Board shall propose, and the Shareholder shall appoint, an audit and risk committee. In the event that the Shareholder elects not to appoint any person proposed by the Board to the audit and risk committee, the Board shall propose an alternate person for appointment by the Shareholder.

- 18.2. The audit and risk committee shall comprise at least 3 (three) members, all of whom shall be non-executive Directors of the Company and whose appointment shall comply with (i) section 77 of the PFMA read with the Treasury Regulations; and (ii) to the extent that the provisions of section 95 of the Companies Act and Regulation 42 do not conflict with section 77 of the PFMA read with the Treasury Regulations, section 95 of the Companies Act and Regulation 42.
- 18.3. The audit and risk committee shall meet at least 4 (four) times a year to execute its duties.
- 18.4. The audit and risk committee members shall appoint a chairperson from amongst themselves who shall not be the chairperson of the Board (if the chairperson is a member of the audit and risk committee).
- 18.5. In accordance with the Treasury Regulations the chairperson of the audit and risk committee shall be independent, be knowledgeable of the status of the position, have the requisite business, financial and leadership skills and may not be the chairperson of the Board or a person who fulfils an executive function in the Company.
- 18.6. Each member of the audit and risk committee must:—
- 18.6.1. satisfy any applicable requirements prescribed by the Minister of Trade and Industry from time to time in terms of section 95(5) of the Companies Act;
 - 18.6.2. not be:—
 - 18.6.2.1. involved in the day-to-day management of the Company's business or have been so involved at any time during the previous Financial Year;
 - 18.6.2.2. a Prescribed Officer, or full-time employee, of the Company or another Related or Inter-Related Person company, or have been such an Officer or employee at any time during the previous 3 (three) Financial Years; or
 - 18.6.2.3. a Material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that Director is compromised by that relationship; and
 - 18.6.2.4. nor be a Related Person to any Person who falls within the criteria in clauses 18.6.2.1 to 18.6.2.3. In addition at least 1/3 (one-third) of the members of the audit and risk committee at any particular time must have academic qualifications, or experience, in economics,

law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.

- 18.7. The Board must appoint a person to fill any vacancy on the audit and risk committee within 40 (forty) Business Days after the vacancy arises.
- 18.8. The audit and risk committee shall execute all the functions as may be prescribed from time to time by the Companies Act (as read with the Regulations) and the PFMA as read with the Treasury Regulations, as well as in its own terms of reference as determined from time to time.
- 18.9. The Company may require that its audit and risk committee will perform the functions required by section 94 of the Companies Act on behalf of its Subsidiaries.
- 18.10. The Company must pay all expenses reasonably incurred by its audit and risk committee, including, if the audit and risk committee considers it appropriate, the fees of any consultant or specialist engaged by the audit and risk committee to assist it in the performance of its functions.
- 18.11. No person shall be elected as a member of the audit and risk committee, if she/he is ineligible or Disqualified and any such election shall be a nullity. A person who is ineligible or disqualified must not consent to be elected as a member of the audit and risk committee nor act as a member of the audit and risk committee. A person placed under probation by a court must not serve as a member of the audit and risk committee unless the order of court so permits.
- 18.12. A member of the audit and risk committee shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.
- 18.13. There are no general qualifications prescribed by the Company for a person to serve as a member of the audit and risk committee in addition to the requirements of the Companies Act.

19. SOCIAL AND ETHICS COMMITTEE

- 19.1. The Board must appoint a social and ethics committee.
- 19.2. The social and ethics committee shall comprise at least 3 (three) members, all of whom shall be Directors or Prescribed Officers of the Company, at least 1 (one) of whom must be a Director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous 3 (three) Financial Years and whose appointment shall be in compliance with the Companies Act and the Regulations.

19.3. The social and ethics committee shall meet at least once a year to deal with and attend to all functions and matters that are required to be dealt with by the committee in terms of the Companies Act and the Regulations.

19.4. The social and ethics committee of the Company is entitled to:-

19.4.1. require from any Director or Prescribed Officer any information or explanation necessary for the performance of the committee's functions;

19.4.2. request from any employee of the Company any information or explanation necessary for the performance of the committee's functions;

19.4.3. attend any Shareholder's Meeting;

19.4.4. receive all notices of and other communications relating to any Shareholder's Meeting; and

19.4.5. be heard at any Shareholder's Meeting on any part of the business of the meeting that concerns the committee's functions.

19.5. The Company may require that its social and ethics committee will perform the functions required in terms of regulation 43(2) of the Companies Act on behalf of its Subsidiaries.

19.6. The Company must pay all the expenses reasonably incurred by its social and ethics committee, including, if the social and ethics committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.

20. **BOARD COMMITTEES**

20.1. The Shareholder takes cognisance of the main committees appointed by the Board as set out in clause 20.3, however should the Board wish to appoint new committees; such establishment shall only be made with the prior Written consent of the Minister.

20.2. Furthermore, in application by the Board for a new committee to the Minister, the Board must submit Written "terms of reference" including, *inter alia*, the need for such a committee, the functioning of such a committee, the functions of the committee, and any other information required by the Minister. The number of the Board members appointed to sit on the committee will be at the discretion of the Minister.

20.3. Recognised committees at date of this MOI (in addition to those required by the Companies Act) include:-

20.3.1. Social and Ethics Committee;

20.3.2. Personnel, Remuneration and Transformation Committee; and

20.3.3. Audit and Risk Committee.

20.4. No person shall be appointed as a member of a Board committee, if she/he is ineligible or Disqualified and any such appointment shall be a nullity. A person who is ineligible or disqualified must not consent to be appointed, as a member of a Board committee nor act as such a member. A person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.

20.5. Committees of the Board may consult with or receive advice from any person.

20.6. Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

21. **PRESCRIBED OFFICERS**

21.1. No person shall hold office as a Prescribed Officer, if she/he is Ineligible or Disqualified. A person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions. A person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

21.2. A Prescribed Officer shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.

22. **COMPANY SECRETARY**

22.1. The Directors must appoint the company secretary from time to time, who:–

22.1.1. shall be a permanent resident of the Republic and remain so while serving as secretary; and

22.1.2. shall have the requisite knowledge of, or experience in, relevant laws; and

22.1.3. may be a Juristic Person subject to the following:–

22.1.3.1. every employee of that Juristic Person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;

- 22.1.3.2. at least 1 (one) employee of that Juristic Person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 22.1.1 and 22.1.2.
- 22.2. The company secretary shall not be a Director.
- 22.3. Within 60 (sixty) Business Days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a Person whom the Directors consider to have the requisite knowledge and experience. A change in the membership of a Juristic Person or partnership that holds office as company secretary does not constitute a vacancy in the office of company secretary, if the Juristic Person or partnership continues to satisfy the requirements of clause 22.1.3.
- 22.4. If at any time a Juristic Person or partnership holds office as company secretary of the Company:—
- 22.4.1. the Juristic Person or partnership must immediately notify the Directors if the Juristic Person or partnership no longer satisfies the requirements of clause 22.1.3, and is regarded to have resigned as company secretary upon giving that notice to the Company;
- 22.4.2. the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 22.1.3, until the Company has received a notice contemplated in clause 22.4.1; and
- 22.4.3. any action taken by the Juristic Person or partnership in performance of its functions as company secretary is not invalidated merely because the Juristic Person or partnership had ceased to satisfy the requirements of clause 22.1.3 at the time of that action.
- 22.5. The company secretary may resign from office by giving the Company 1 (one) month's written notice or less than that with the prior written approval of the Board.
- 22.6. If the company secretary is removed from office by the Board, the company secretary may, by giving written notice to that effect to the Company by not later than the end of the Financial Year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that Financial Year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

23. DISTRIBUTIONS TO THE SHAREHOLDER

- 23.1. The Board may make Distributions to the Shareholder from time to time in accordance with the Distributions or similar policy of the Company from time to time, subject to the provisions of clause 12.1.1.9 above, this clause 23 and the provisions of section 46 of the Companies Act.
- 23.2. The Board, after consultation with the Shareholder, shall develop an appropriate Distribution or similar policy and framework for the Company taking into account, *inter alia*, the Corporate Plan and strategic objectives of the Company which shall be reviewed on a regular basis. In addition, the Company shall be entitled to invest sufficient funds of the Company for the adequate capitalisation and ongoing investment in Subsidiaries deemed appropriate. Such capitalisation or investment, and expenditure incurred in respect of industry restructuring, delivery of universal services or any other socio-economic activities carried out by the Company upon the request of the Shareholder shall be taken into account in calculating any Distribution and other payments payable to the Shareholder.
- 23.3. Without derogating from the provisions of clause 23.1 and subject to the requirements of the Companies Act and clause 12.1.1.9 of this MOI, the Board may, resolve to Distribute or deal with, in any way authorised by the Companies Act, all or any part of the amount for the time being standing to the credit of any of the Company's reserves or any share capital of the Company.

24. ACCOUNTS

- 24.1. The Company's Board of Directors shall cause to be kept such Accounting Records and books of account as are prescribed by the Companies Act and the PFMA.
- 24.2. The Financial Statements, books of account and other books and documents of the Company shall be kept at the Office of the Company or (subject to the provisions of section 25 of the Companies Act, and the PFMA) at such other place as the Board thinks fit, and shall at all times be open to inspection by the Shareholder and the Board during normal business hours.
- 24.3. The Board shall, in accordance with sections 30 and 31 of the Companies Act and section 55 of the PFMA, cause to be prepared and presented at the Annual General Meeting such reports (if any) as are referred to in those sections and required in terms of this MOI.
- 24.4. Subject to the provisions of the Companies Act, a copy of the documents referred to in clause 24.3 shall be Delivered or sent by post to the registered address of the Shareholder at least 15 (fifteen) Business Days before the Annual General Meeting, so that such period shall not include the day on which such documents are Delivered or sent, or deemed to be Delivered or sent, or the day on which the meeting is to be held. Alternatively, the

Shareholder may give the Company an Electronic Address; in which case a copy of the said documents may be Delivered to the Shareholder at that address.

25. NOTICES

25.1. Notices shall be served by the Company upon the Shareholder by hand delivery to the office of the Minister or by transmission through the post in a prepaid letter, by telefax or any Electronic Communication addressed to the Shareholder at its registered address or Electronic Address (as the case may be).

25.2. The Shareholder chooses the address of the permanent office of the Minister in Pretoria as its address or such other address (including an Electronic Address) as the Shareholder shall upon Written notice be entitled to change.

25.3. By furnishing the Company with an Electronic Address, the Shareholder:-

25.3.1. authorises the Company to use Electronic Communication to give notices, documents, Records or statements or notices of availability of the afore going to it; and

25.3.2. confirms that same can conveniently be printed by it within a reasonable time and at a reasonable cost.

25.4. Any notices, documents, records, or statements sent by any other means shall be deemed to have been Delivered on the date and time determined in accordance with **Annexure C**.

25.5. Every notice calling any general meeting shall comply with the provisions of the Companies Act unless otherwise determined by the Board.

26. FINANCIAL YEAR

The Financial Year of the Company is the 12 (twelve) month period ending on 31 March of each year. The Financial Year may not be changed by the Board without the prior Written consent or approval of the Shareholder and subject to the PFMA and the requirements of section 27(4) of the Companies Act.

27. WINDING UP

Subject to the provisions of the Companies Act, the Company shall not be wound up or be placed into "business rescue" without the prior Written consent of the Shareholder.

28. SUBSIDIARIES

The Company may, from time to time, form or acquire further Subsidiaries, subject to the PFMA and the provisions of this MOI....

29. **PROTECTION OF WHISTLE-BLOWERS**

The Company shall establish and maintain a system to receive disclosures contemplated in section 159 of the Companies Act.



Annexure A – Definitions

In this Act, unless the context indicates otherwise—

“accounting records” means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act, including but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements;

“acquiring party”, when used in respect of a transaction or proposed transaction, means a person who, as a result of the transaction, would directly or indirectly acquire or establish direct or indirect control or increased control over all or the greater part of a company, or all or the greater part of the assets or undertaking of a company;

“advertisement” means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person seeks to bring any information to the attention of all or part of the public;

“agreement” includes a contract, or an arrangement or understanding between or among two or more parties that purports to create rights and obligations between or among those parties;

“all or the greater part of the assets or undertaking”, when used in respect of a company, means—

- (a) in the case of the company's assets, more than 50% of its gross assets fairly valued, irrespective of its liabilities; or
- (b) in the case of the company's undertaking, more than 50% of the value of its entire undertaking, fairly valued;";

“alterable provision” means a provision of this Act in which it is expressly contemplated that its effect on a particular company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by that company's Memorandum of Incorporation;

“alternate director” means a person elected or appointed to serve, as the occasion requires, as a member of the board of a company in substitution for a particular elected or appointed director of that company;

“amalgamation or merger” means a transaction, or series of transactions, pursuant to an agreement between two or more companies, resulting in—

- (a) the formation of one or more new companies, which together hold all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement, and the dissolution of each of the amalgamating or merging companies; or
- (b) the survival of at least one of the amalgamating or merging companies, with or without the formation of one or more new companies, and the vesting in the surviving company or companies, together with any such new company or companies, of all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement;

“amalgamated or merged company” means a company that either—

- (a) was incorporated pursuant to an amalgamation or merger agreement; or
- (b) was an amalgamating or merging company and continued in existence after the implementation of the amalgamation or merger agreement,

and holds any part of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement;

“amalgamating or merging company” means a company that is a party to an amalgamation or merger agreement;

“annual general meeting” means the meeting of a public company required by section 61(7);

“audit” has the meaning set out in the Auditing Profession Act, but does not include an

‘independent review’ of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);

“Auditing Profession Act” means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

“auditor” has the meaning set out in the Auditing Profession Act;

“Banks Act” means the Banks Act, 1990 (Act No. 94 of 1990);

“beneficial interest”, when used in relation to a company's securities, means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to—

- (a) receive or participate in any distribution in respect of the company's securities;
- (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or
- (c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities,

but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002);

“board” means the board of directors of a company;

“business days” has the meaning determined in accordance with section 5(3);

“Cabinet” means the body of the national executive described in section 91 of the Constitution;

“central securities depository” has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

“close corporation” means a juristic person incorporated under the Close Corporations Act, 1984 (Act No. 69 of 1984);

“Commission” means the Companies and Intellectual Property Commission established by section 185;

“Commissioner” means the person appointed to or acting in the office of that name, as contemplated in section 189;

“Companies Tribunal” means the Companies Tribunal established in terms of section 193;

“companies register” means the register required to be established by the Commission in terms of section 187(4);

“company” means a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the effective date—

- (a) was registered in terms of the—

- (iv) otherwise in respect of any of the shares of that company or of another company within the same group of companies, subject to section 164(19);
- (b) incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company or of another company within the same group of companies; or
- (c) forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company or of another company within the same group of companies,

but does not include any such action taken upon the final liquidation of the company;

“domesticated company” means a foreign company whose registration has been transferred to the Republic in terms of section 13(5) to (11);

“effective date”, with reference to any particular provision of this Act, means the date on which that provision came into operation in terms of section 225;

“electronic communication” has the meaning set out in section 1 of the Electronic Communications and Transactions Act;

“Electronic Communications and Transactions Act” means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

“employee share scheme” has the meaning set out in section 95(1)(c);

“exchange” when used as a noun, has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

“exercise”, when used in relation to voting rights, includes voting by proxy, nominee, trustee or other person in a similar capacity;

“ex officio director” means a person who holds office as a director of a particular company solely as a consequence of that person holding some other office, title, designation or similar status specified in the company's Memorandum of Incorporation;

“external company” means a foreign company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23(2);

“file”, when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;

“financial reporting standards”, with respect to any particular company's financial statements, means the standards applicable to that company, as prescribed in terms of section 29(4) and (5);

“financial statement” includes—

- (a) annual financial statements and provisional annual financial statements;
- (b) interim or preliminary reports;
- (c) group and consolidated financial statements in the case of a group of companies; and
- (d) financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the company's securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on;

“foreign company” means an entity incorporated outside the Republic, irrespective of whether it is—

- (a) a profit, or non-profit, entity; or
- (b) carrying on business or non-profit activities, as the case may be, within the Republic;

(ii) by holders of the company's securities acting other than at a meeting, as contemplated in section 60; or

(b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated;

"state-owned company" means an enterprise that is registered in terms of this Act as a company, and either—

(a) is listed as a public entity in Schedule 2 or 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or

(b) is owned by a municipality, as contemplated in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and is otherwise similar to an enterprise referred to in paragraph (a);

"subsidiary" has the meaning determined in accordance with section 3;

"Takeover Regulations" means the regulations made by the Minister in terms of sections 120 and 223;

"this Act" includes the Schedules and regulations;

"unalterable provision" means a provision of this Act that does not expressly contemplate that its effect on any particular company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by a company's Memorandum of Incorporation or rules;

"uncertificated securities" means any securities defined as such in section 29 of the Securities Services Act, 2004 (Act No. 36 of 2004);

"uncertificated securities register" means the record of uncertificated securities administered and maintained by a participant or central securities depository, as determined in accordance with the rules of a central securities depository, and which forms part of the relevant company's securities register established and maintained in terms of Part E of Chapter 2;

"voting power", with respect to any matter to be decided by a company, means the voting rights that may be exercised in connection with that matter by a particular person, as a percentage of all such voting rights;

"voting rights", with respect to any matter to be decided by a company, means—

(a) the rights of any holder of the company's securities to vote in connection with that matter, in the case of a profit company; or

(b) the rights of a member to vote in connection with the matter, in the case of a non-profit company;

"voting securities", with respect to any particular matter, means securities that—

(a) carry voting rights with respect to that matter; or

(b) are presently convertible to securities that carry voting rights with respect to that matter; and

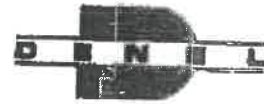
"wholly-owned subsidiary" has the meaning determined in accordance with section 3(1)(b).

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
	If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
The state or a province	By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.	On the date and at the time recorded on a receipt for the delivery.
A municipality	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any Person acting on behalf of that Person.	On the date and at the time recorded on a receipt for the delivery.
A trade union	By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union or for the purposes of section 13(2), if there is a union office within the magisterial district of the firm required to notify its employees, in terms of the Regulations at that office.	On the date and at the time recorded on a receipt for the delivery.
	If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
Employees of the Company	By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
A partnership, firm or association	By handing the notice or a certified copy of the document to a Person who is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of the partnership, firm or association;	On the date and at the time recorded on a receipt for the delivery.
	If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.	On the date and at the time recorded on a receipt for the delivery.

SECTION 2



2014/2015

**public enterprises**Department
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Global supplier of world-class products

**SHAREHOLDER COMPACT
("PERFORMANCE AGREEMENT")**

Entered into by and between
THE MINISTER OF PUBLIC ENTERPRISES
AND
DENEL HOLDINGS SOC LTD

2014/15

Denel shareholder compact 2014/15

Restricted
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Initial

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DEFINITIONS

"Accounting Authority" means the Board of Denel;

"Associate" means a company in which Denel holds less than 50% of the total issued share capital;

"Board" means the Board of Directors of Denel;

"Companies Act" means the Companies Act, 2008 (Act No. 71 of 2008) as amended from time to time, including any regulations issued thereunder;

"Denel" means Denel SOC Limited, a private company registered in accordance with the laws of the RSA under registration number 9201337/07, and having its registered office at Nelmaplus Drive, Irene, Pretoria;

"DoD" means the Department of Defence and Military Veterans Affairs;

"Director" means a member of the Board;

"Executive Authority" means the Minister of Public Enterprises

"Golden Share" means one special class share (being either a contractual right or a physical share in the issued share capital of a Golden Share Company), issued to and held by the Shareholder, issued for the sole and exclusive purpose of protecting the Shareholder's interest in and to the Golden Share Company, with the special rights attaching thereto as more fully described in the shareholders' agreement particular to the Golden Share Company and the Articles of Association of the Golden Share Company;

"King III Report" means the King Report on Governance for South Africa and the King code of Governance Principles

"KPA" means Key Performance Area;

"KPI" means Key Performance Indicator;

"Minister" means the Minister of Public Enterprises

Denel shareholder compact 2014/15

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"NGP" means the New Growth Path. The NGP is aimed at addressing inequality and poverty by creating more employment opportunities in South Africa. The target is to reduce unemployment rate from twenty five percent (25%) to fifteen percent (15%) over a ten year period.

"Parties" means the Shareholder Representative and the Board collectively;

"Persons" means natural person or incorporated body including government entities and private companies;

"PFMA" means the Public Finance Management Act, No. 1 of 1999 (Act No. 1 of 1999)

"Prescribed officer" means a person who within a company, performs any function that has been designated by the Minister of Trade and Industry in terms of section 68 (10);

"Protocol" means the Protocol on Corporate Governance in the Public Sector (1997) as amended. **"SANDF"** means the South African National Defence Force;

"Shareholder" means the Government of the RSA represented by the Shareholder Representative or his/her successor in law from time to time;

"Shareholder's Compact" means the agreement together with all its appendices, as amended from time to time;

"Shareholder Representative" means the Minister of Public Enterprises;

"Strategic Intent Statement" means the primary tool used by the Minister to communicate the State's expectations of the SOC.

"Subsidiary" means a subsidiary of Denel or any of its subsidiaries over which it exercises ownership control as defined in terms of the PFMA.



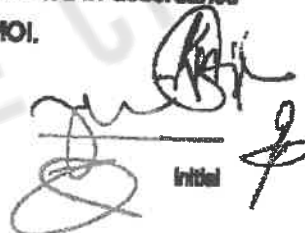
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1 INTRODUCTION

- 1.1 Government (and thus the Minister as Shareholder Representative) ensures proper shareholder management and monitors the planning, delivery and financing of State Owned Companies (SOC's), such as Denel based on its mandate and strategic objectives. Given the dual nature of SOC's; Denel will pursue commercial imperatives as well as socio-economic policy objectives. Parties, therefore recognise the role of the Minister is to define and set clear objectives and targets against which the Minister will measure, monitor and evaluate the SOC's financial and operational performance.
- 1.2 The Shareholder's Compact recognises and clarifies the roles and responsibilities of the Board and the shareholder in exercising effective leadership. It is one of the governance frameworks that clarify Denel's mandate, ensure strategic alignment and institutionalise performance monitoring and evaluation of Denel by the Minister.
- 1.3 The essence of the Shareholder's Compact is, among other things, to develop means by which to make trade-offs between Denel's financial and operational objectives while fulfilling the policy mandate. In addition, it is intended by both the Minister and Denel that the Shareholder's Compact should be used to clarify Denel's objectives in order to adhere to its mandate as contained in the Strategic Intent Statement and governance frameworks.

2 GOVERNANCE FRAMEWORK

- 2.1 The governance frameworks include the following:
 - 2.1.1 The Strategic Intent Statement (SIS) which is a tool used by the Shareholder to communicate the shareholder's expectations of the company to ensure shareholder value optimisation. This Shareholder's Compact which sets out annual key performance indicators and key performance measures in support of the Strategic Intent Statement, and to the extent necessary, seeks to clarify the objectives of Denel.
 - 2.1.2 The Corporate Plan which gives effect to the Strategic Intent Statement and Shareholder's Compact.
 - 2.1.3 The Memorandum of Incorporation (MOI) which sets out certain powers of the Shareholder, Board and Denel, as amended from time to time. Save for correcting errors in the Company's MOI, all other amendments to the MOI shall be effected in accordance with Section 16 (1) of the Companies Act and the provisions of the MOI.



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2.1.4 The legislative and policy framework, which includes, the Public Finance Management Act, the Companies Act 2005, the MOI, any other relevant legislation, regulations and guidelines issued by the National Treasury and/or the Shareholder Representative.

2.1.5 Therefore the board shall ensure that:

- Denel and its subsidiaries comply with the provisions of the PFMA, Companies Act, the Protocol, and any other relevant legislation, regulations and guidelines issued by the National Treasury and/or the Shareholder Representative.
- Denel reviews the mandate of all its subsidiaries, to amend, where required, the Founding Documents of such subsidiaries, to ensure that agreed principles and enduring rights and obligations regarding the relationship between Denel and the subsidiaries are incorporated and that the Founding Documents comply with the provisions of the Companies Act, PFMA, Treasury Regulations and the respective subsidiary's mandate.

2.2 Denel concludes performance agreements with all its subsidiaries that comply with the spirit, rights, obligations and undertakings stipulated in the Shareholder's Compact. If there is any conflict or inconsistency among the provisions of the above, the Parties shall take whatever steps necessary to amend the governance documents to remove the conflict or inconsistency. For so long as the conflict exists, the Public Finance Management Act shall take precedence and thereafter the Company's MOI followed by its Strategic Intent Statement.

3 FUNCTION OF THE SHAREHOLDER'S COMPACT

3.1 The parties subscribe to the principles of the Protocol, PFMA and the Treasury Regulations and the King Report for sound corporate governance. The Parties hereby agree on the purpose, terms and conditions set out below.

3.2 The function of this Shareholder Compact is –

- 3.2.1 to clarify and confirm the strategic objectives (refer paragraph 10) to be achieved by Denel during the Reporting Period; and
- 3.2.2 to confirm the Key Performance Areas ("KPA's") and Key Performance Indicators ("KPI's") which are set out in Appendix A that measure Denel's performance during the Period of the Shareholder's Compact.



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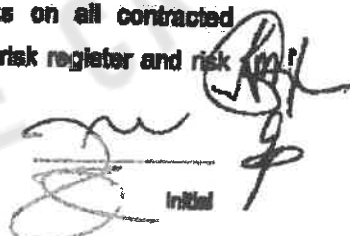
4 THE SCOPE OF PERFORMANCE MONITORING

The Shareholder's compact is to ensure the Minister and Denel are in a position to agree on policy, performance targets in line with the Strategic Intent Statement, supported by the Corporate Plan and to be reflected on the Shareholder's Compact.

- 4.1 **Policy Targets:** these give a more detailed specification to Government's national policy objectives for the sector as well as promotion of socio-economic development. These targets would be expressed as much as possible in guarantee-able and measurable terms, including the terms of developmental outcomes.
- 4.2 **Financial Targets:** these seek to ensure that the Denel Board and management assure long-term financial sustainability without potentially resorting to additional government support.
- 4.3 **Operational Targets:** these seek to ensure that Denel meets relevant targets taking into account interests of stakeholders and other measures which the Board considers appropriate to best protect and grow the value of the State's investment in Denel.
- 4.4 **Compliance Targets:** these include internal processes to promote greater transparency and accountability within Denel and include (but are not necessarily limited to) the following compliance areas:
 - 4.4.1 **Legal and regulatory compliance:** pursuing Denel's commitment to defence industry regulations and protocols; and the sustainable management and development of the natural, physical and human resources utilised in the business. These targets will be reflected in the Denel Business Plan and may be included in the Shareholder Compact;
 - 4.4.2 **Corporate governance:** attaining a high standard of good corporate governance which must ensure, among other things, establishing the procedures for dealing with any potential conflict of interest which may arise between the responsibilities of directors and prescribed officers and any other outside interest which he/she may have relating to the business of Denel.
- 4.5 **Stakeholder relations:** building and maintaining relationships through partnering with key Government departments/agencies, industry players and fostering relationships with organised labour and the communities in which Denel operates.
- 4.6 **Risk Management Targets:** systems in place to manage risks on all contracted programmes, internal and financial controls through an up to date risk register and risk mitigation plan, amongst others.

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5 DURATION AND ENFORCEABILITY

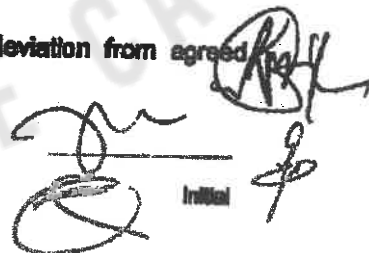
- 5.1 The Shareholder's Compact shall be effective from 1 April and remain in full force until renegotiated, subject to an annual review by the Parties before the beginning of the following financial year. In the event that the operating environment for both parties changes such that there is a need to review the compact, either party may initiate a review process by giving a written notice to the other party.

6 SUBSIDIARIES AND ASSOCIATES

- 6.1 The principles set out in this Shareholder's Compact shall also apply to Denel's subsidiaries. To this end, the Board shall ensure that Denel –
- 6.1.1 Reviews the mandate of all its subsidiaries, and
- 6.1.2 Concludes performance agreements with all its subsidiaries, which agreements are comprehensively and consistently compliant with the spirit, rights, obligations and undertakings stipulated in this Shareholder's Compact.
- 6.2 The majority of the directors of every subsidiary of Denel should be employees of Denel that have been approved by the Denel Board for appointment as directors of the subsidiary. Should Denel wish to appoint a non-executive director or an outside person to its subsidiary, the Minister should approve such an appointment.
- 6.3 Use its best efforts to protect the Shareholder's interests in all business matters including in the Golden Share Companies and report to the Shareholder any material risks related to the Shareholder's interest and/or the Golden Share Company's management not being in a position to achieve targets.
- 6.4 The Parties acknowledge that in the case of Denel's associates; compliance with the obligations set out in clauses 6.1 and 6.2 may not always be achievable as it will require the consent of the other shareholder(s).

7 ALIGNMENT TO PERFORMANCE

- 7.1 Parties acknowledge that there should be alignment between the achievements of strategic objectives, KPIs as specified in this document and the payment of incentives to executive directors and prescribed officers.
- 7.2 Parties further agree that where there is anticipated material deviation from agreed targets Denel will timeously advise the Minister.



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- 7.3 Performance incentives proposed by the Board to executive directors and prescribed officers will be discussed with the Minister prior to approval.

8 SHAREHOLDER INFORMATION

- 8.1 Denel will provide any information required by the Minister and/or the DPE to enable the Minister to assess the investment value in Denel.
- 8.2 In addition, the following information will be submitted to the Minister:
- 8.2.1 The financial statements in accordance with section 55 of the PFMA read with regulation 28.1 of the Treasury Regulations. This report will include a report by the Board on the disclosure of remuneration of all directors and prescribed officers Section 30 (4) of the Companies Act.
- 8.2.2 The annual report in accordance with section 55 of the PFMA read with regulation 28.2 of the Treasury Regulations.
- 8.2.3 Any material losses through conduct, omission and any irregular, fruitless and wasteful expenditure will be reported in line with Treasury Regulations 33.2.1.
- 8.2.4 Corporate plan, quarterly and other reporting as agreed upon between the Minister and the Board;
- 8.2.5 Any major transaction(s) requiring the Minister's approval in accordance with section 54 of the PFMA and the thresholds stated in the Significance and Materiality Framework.
- 8.2.6 A draft Shareholder's Compact together with a summary of Denel's business plan for discussion prior to the start of the financial year to which these documents relate.

9 ROLE OF THE EXECUTIVE AUTHORITY

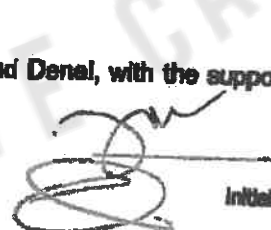
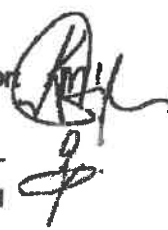
The Parties acknowledge that Denel will not be able to achieve its objective without the support of the Minister. In particular the Minister will need to assist in ensuring that the policy and regulatory framework enables Denel to pursue its strategic objectives as set out herein.

10 THE STRATEGIC INTENT STATEMENT

The strategic intent statement sets-out the agreed mandate and Denel, with the support of the Shareholder commits to: -

Denel shareholder compact 2014/15

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- 10.1 Provide the DoD&MV with key strategic defence equipment and services in an efficient and sustainable manner;
- 10.2 Contribute towards the building of a dynamic defence related industrial cluster;
- 10.3 Act as a catalyst for advanced manufacturing;
- 10.4 Pursue financial recovery and stability based on achieving profitability targets by increasing market share and achieving its revenue targets, as well as reducing costs;
- 10.5 Ensure on-time and on-cost deliveries on major programmes;
- 10.6 Leverage its capabilities by increasing sales including non-military sales;
- 10.7 Contribute to socio-economic objectives including skills development & transformation; and
- 10.8 Contribute to the broader economy by earning foreign revenue.

11 KEY PERFORMANCE MEASURES

In pursuing its mandate as set out in the Strategic Intent Statement and the governance framework referred to above, the Parties agree on the Key Performance Measures and Indicators set out in annexure A hereto for the period specified therein.

Dene's performance will be evaluated against these Key Performance Indicators and the Minister will be provided with regular reports on the progress with regard to achieving these targets. The KPI targets for the coming 12 months will constitute firm targets which performance will be measured against. These may change prior to the agreement of the following year's KPIs package, if appropriate, given actual results achieved and any changes in business circumstances or strategy over the coming financial year. The Key Performance Areas all carry the same weight of 25%.

In addition, the detailed implementation plan to achieve Dene's strategic objectives and the targets in annexure A will be set out in the Corporate Plan. The KPIs are further defined in Annexure B.




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SIGNED at _____ on this _____ DAY of _____ 2013

AS WITNESSES:

1. _____

2. _____


Mr Mafael Sigaba, MP
 Minister of Public Enterprises
 (Shareholder Representative) for and on
 behalf of the Government of the Republic of
 South Africa

SIGNED at _____ on this _____ DAY of _____ 2013

AS WITNESSES:

1. _____

2. _____


Mr Zoli NR Kuyene
 (Chairperson of Denel
 On Behalf of the Board of Denel)

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APPENDIX A

Element of Strategic Intent	Key Performance Area	Key Performance Indicator	Long Term Target	Annual Targets over the next 3 years		
				FY 14/15	FY 15/16	FY 16/17
Strategic role in the provision of defence capabilities	Security of supply and retention of capabilities in areas required by the DoD & MV	Retained strategic capabilities in support of the DoD & MV's requirements	100%	100%	100%	100%
	Programme delivery	Milestone achieved per DoD contract deliverables	>85%	85%	85%	85%
Strategic economic role	Investment in R&D	Self-funded R&D as a % of turnover	5%	3%	5%	5%
Business Sustainability	Sales	Increase in revenue year-on-year	16%	10%	10%	10%
	Profitability management	EBIT Margin	7%	4.5%	5%	5.5%
	Cash from operating activities	Cash-flow from operating activities before working capital changes as a % of turnover	7%	2%	3%	5%
	Order cover	% of orders concluded in respect of the coming year as a % of sales budget for that year	80%	60%	65%	70%
	Operating Expenditure	Operating costs as a % of revenue	20%	23%	21%	20%
Socio - Economic Objectives	Maximise the appointments from designated groups in order to address employment equity requirements	ACI as % of total appointments	75%	75%	75%	75%
		Women as % of total appointments	50%	20%	30%	40%
	Local content	Local procurement as % of total procurement	70%	70%	70%	70%
	Preferential procurement and enterprise development (current baseline for women owned=1.3%)	Procurement from Black owned suppliers as defined in the B-BBEE Codes, as % of local spend	40%	20%	25%	30%
		B-BBEE (recognised spend as % of local spend)	80%	70%	75%	80%

Denel shareholder compact 2014/15

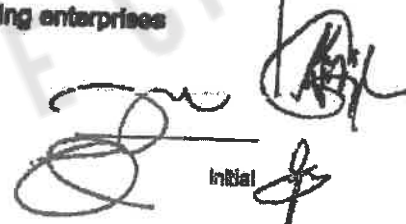
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Element of Strategic Intent	Key Performance Area	Key Performance Indicator	Long Term Target	Annual Targets over the next 3 years		
				FY 14/15	FY 15/16	FY 16/17
		Black women owned as defined in the B-BBEE Codes (% of local spend)	10%	3%	5%	8%
		Black youth owned as defined in Annexure B, (% of local spend)	20%	3%	6%	10%
		Small and emerging enterprise suppliers developed (number of beneficiaries)	≥30	20	20	20
	B-BBEE level	B-BBEE contributor level (old codes)	Level 1	Level 3	Level 2	Level 2
	Training Spend	% of Employee cost	3%	3%	3%	3%
Skills Development- Scarc and Critical Skills		Total number of engineering trainees (bursaries and internships)	>100	90	95	100
		Total number of artisan trainees	>120	100	105	110
		Total number of technician trainees	>10	0	5	10
		Total number of DTA artisan and technical skills trainees (enrolments during the year)	450	300	350	400
	Employment - Direct jobs created	Increase in number of jobs	>300	100	150	200
	Corporate Social Investment	Spend on CSI as specified in the B-BBEE Codes	1% of MPAT	1%	1%	1%

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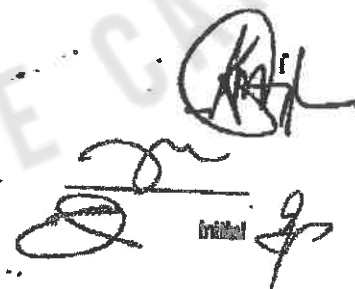
APPENDIX B: DEFINITIONS FOR PROPOSED KPIs

Proposed KPI	Definition and target
Strategic role in the provision of defence capabilities	
Retaining strategic capabilities	Retained strategic capabilities in support of the DoD and where such capabilities are discontinued approvals are obtained.
Programme delivery	Milestone achieved per DoD contract deliverables.
Strategic economic role	
Local content	Local procurement as a percentage of total procurement <ul style="list-style-type: none"> Local procurement: the purchase of goods and services from local businesses. Typically, this occurs in emerging markets and in developed markets where local communities have expectations about participating in new opportunities.
Investment in R&D	Self-funded R&D as a % of turnover.
Business Sustainability	
Sales growth rate	Increase in revenue (actual) year on year divided by previous year revenue.
Profitability management (EBIT Margin)	EBIT divided by Revenue multiply by 100 <ul style="list-style-type: none"> EBIT: earnings before interests and taxes excludes income and expenditure from unusual, non-recurring or discontinued activities Revenue
Cash from operating activities	Cash from operating activities before working capital changes as a % of turnover.
Order Cover	Orders concluded in respect of the coming year as a % of sales budget for that year.
OPEX Ratio	Operational costs (salaries, marketing expenses, rentals, maintenance etc.) divided by revenue multiply by 100.
Socio economic objectives	
Maximise the appointments from designated groups in order to address employment equity requirements	ACI as % of total appointments.
	Women as % of total appointments.
Local content	Local procurement as a % of total procurement.
Preferential procurement and enterprise development	Number of small and emerging enterprises suppliers developed.



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Proposed KPI	Definition and target
	<p>Procurement from Black owned suppliers as defined in the B-BBEE Codes (% of local spend).</p> <p>Black woman owned as defined in B-BBEE codes (% of local spend).</p> <p>Black youth-owned assumed to be 30% owned by Black individuals aged 35 and younger (% of local spend).</p>
B-BBEE level	Broad Based Black Economic Empowerment is a policy of the SA government which encourages companies to help transform the country. BEE is about broad-based activities that benefit black people.
Training Spend	Cost spent on training.
Skills Development Scores and Critical Skills	Total number of engineering trainees (bursaries and internships).
	Total number of technician and artisan trainees.
	Total number of DTA artisan and technical skills trainees (enrolments during the year).
Employment - Direct jobs created (Increase in number of jobs)	Direct jobs refer to jobs that are created to develop a project or facilitate a primary service.
Corporate Social Investment	Initiatives aimed at uplifting the communities as defined in the B-BBEE codes.



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**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag 2115, Harare, 8000 Tel: 012 421 2115 Fax: 012 438 8032
Private Bag 70076, Cape Town, 8000 Tel: 021 461 8578/7 Fax: 021 438 2281/461 8241

Mr Zoli Kunene
Chairperson
Denel SOC Ltd
P O Box 8322
Centurion
0048

Tel: (011) 442 0731
Fax: (011) 442 0748
Email: zoli@kunene.co.za

Dear Mr Kunene

Denel 2014/15 Shareholder's Compact

The above matter has reference.

As you are aware, the 2014/15 Shareholder's Compact was not signed at the 2013 Annual General Meeting. This was attributable to the fact that the Department and Denel had not reached agreement on some of the Key Performance Indicators.

The Department would like to acknowledge Denel's efforts in the finalisation of this Shareholder's Compact.

In this regard, I attach hereto Denel's original copy of the 2014/15 Shareholder's Compact for your records.

I trust that you will find the above in order.

Yours sincerely

MR MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2014/02/05



2015/2016



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA



Global supplier of world-class products

SHAREHOLDER'S COMPACT (“PERFORMANCE AGREEMENT”)

Entered into by and between

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, HEREIN REPRESENTED BY
THE MINISTER OF PUBLIC ENTERPRISES
("The Shareholder Representative")**

And

**DENEL SOC LTD, HEREIN REPRESENTED BY THE CHAIRPERSON OF THE BOARD OF
DIRECTORS**

2015/16

Signature *Initial*

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DEFINITIONS

"Accounting Authority"	means the Board of Denel;
"Associate"	means a company in which Denel holds less than 50% of the total issued share capital;
"Board"	means the Board of Directors of Denel;
"Companies Act"	means the Companies Act, No. 71 of 2008 as amended from time to time, including any regulations issued thereunder;
"Corporate Plan"	means the 3 (three) year plan of Denel as contemplated in the PFMA and the Treasury Regulations;
"Denel"	means Denel SOC Limited, a private company registered in accordance with the laws of the RSA under registration number 1992/01337/30, and having its registered office at Nellmapius Drive, Irene, Pretoria;
"DoD"	means the Department of Defence and Military Veterans Affairs;
"Director"	means a member of the Board;

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"Golden Share"

means one special class share (being either a contractual right or a physical share in the issued share capital of a Golden Share Company), issued to and held by the Shareholder, issued for the sole and exclusive purpose of protecting the Shareholder's interest in and to the Golden Share Company, with the special rights attaching thereto as more fully described in the shareholders' agreement particular to the Golden Share Company and the Memorandum of Incorporation of the Golden Share Company;

"King III Report"

means the King Report on Corporate Governance for South Africa and the King code of Governance Principles

"KPA"

means Key Performance Area;

"KPI"

means Key Performance Indicator;

"Memorandum of Cooperation"(MOC)


means the Agreement between Denel, DPE, DOD, the dti....

"Memorandum of Incorporation (MOI)"

means the document, as amended from time to time that sets out rights, duties and responsibilities of the Shareholder, directors and others within and in relation to Denel, as defined in the Companies Act;

"Minister"

means the Minister of Public Enterprises in his/her capacity as the representative of Government and the executive authority (as defined in the PFMA);

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"NGP"

means the New Growth Path. The NGP is aimed at addressing inequality and poverty by creating more employment opportunities in South Africa. The target is to reduce unemployment rate from twenty five percent (25%) to fifteen percent (15%) over a ten year period.

"Parties"

means the Shareholder Representative and the Board collectively;

"Persons"

means natural person or incorporated body including government entities and private companies;

"PFMA"

means the Public Finance Management Act, No. 1 of 1999, as amended

"Prescribed officer"

means a person who within a company, performs any function that has been designated by the Minister of Trade and Industry in terms of section 66 (10);

"Protocol"


means the Protocol on Corporate Governance in the Public Sector (2002) as amended;

"SANDF"

means the South African National Defence Force;

"Shareholder's Compact or the Compact"

means this agreement together with all its appendices, as amended from time to time;

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"Significance and Materiality Framework"

means the Significance and Materiality Framework applicable to Denel, as prescribed the PFMA and Treasury Regulations;

"Strategic Intent Statement"

means the primary tool used by the Minister to communicate the State's expectations of the SOC.

"Subsidiary"

means a subsidiary of Denel or any of its subsidiaries over which it exercises ownership control as defined in terms of the PFMA.



1 PURPOSE

- 1.1 Government (and thus the Minister as Shareholder Representative) ensures proper shareholder oversight and management of State Owned Companies (SOC's), such as Denel based on its mandate and strategic objectives. Given the dual nature of SOC's; Denel will pursue commercial imperatives as well as socio-economic policy objectives. Parties, therefore recognise the role of the Minister is to define and set clear objectives and targets against which the Minister will measure, monitor and evaluate the SOC's financial and operational performance.
- 1.2 The Shareholder's Compact "the Compact" recognises and clarifies the roles and responsibilities of the Board and the shareholder in exercising effective leadership. The Compact is one of the governance frameworks that clarify Denel's mandate, aligned to the Strategic Intent Statement (SIS) and institutionalises performance monitoring and evaluation of Denel by the Minister.
- 1.3 The essence of the Compact is, among other things, to develop means by which to make trade-offs between Denel's financial and operational objectives while fulfilling the policy mandate.

2 INTRODUCTION

- 2.1 Denel is in the last year of a three years turnaround plan agreed with Government. The next phase of the turnaround is to look at the sustainability of the business through development and implementation of a long term growth strategy.
- 2.2 The 2015/16 shareholder compact is the first opportunity that the SOC and the Minister can contract on the implementation of the growth strategy, as the 2014/15 shareholder compact had already been agreed. Therefore, KPAs in this shareholder compact are in line with the strategy.
- 2.3 The SOC shall continue to maintain capabilities critical to safety and security of the country with primary focus on SANDF strategic and sovereign capabilities. It is however critical that opportunities for leveraging of its defence advanced manufacturing capabilities in development and manufacturing of civilian and commercial product solutions be pursued. To this end the SOC has to deepen its collaboration efforts with other SOC's and State agencies to deliver on other Government objectives.

3 GOVERNANCE FRAMEWORK

3.1 The governance frameworks include the following:

- 3.1.1 The Strategic Intent Statement (SIS) which is a tool used by the Shareholder to communicate the shareholder's expectations of the company to ensure shareholder value optimisation. This Compact sets out annual key performance areas, indicators and measures in support of the Strategic Intent Statement, and to the extent necessary, seeks to clarify the objectives of Denel.
- 3.1.2 The Corporate Plan which inter alia, translates the Strategic Intent Statement and Shareholder's Compact into Denel's business plan.
- 3.1.3 The Memorandum of Incorporation (MOI) which sets out certain powers of the Shareholder, Board and Denel, as amended from time to time. Save for correcting errors in the Company's MOI, all other amendments to the MOI shall be effected in accordance with Section 16 (1) of the Companies Act and the provisions of the MOI.
- 3.1.4 The legislative and policy framework, which includes, the Public Finance Management Act, the Companies Act, the National Conventional Arms Control Act, the Non-Proliferation of Weapons of Mass Destruction Act, the MOI, any other relevant legislation, regulations and guidelines issued by the National Treasury and/or the Shareholder Representative.
- 3.1.5 Therefore the Board shall ensure that:
 - Denel and its subsidiaries comply with the provisions of the PFMA, the Companies Act, Denel's MOI and any other relevant legislation.
 - Denel reviews the mandate of all its subsidiaries, to amend, where required, the Founding Documents of such subsidiaries, to ensure that agreed principles and enduring rights and obligations regarding the relationship between Denel and the subsidiaries are incorporated and that the Founding Documents comply with the provisions of the Companies Act, PFMA, Treasury Regulations and the respective subsidiary's mandate.
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whatever steps necessary to amend the governance documents to remove the conflict or inconsistency. For so long as the conflict exists, the Public Finance Management Act shall take precedence and thereafter the Company's MOI followed by its Strategic Intent Statement.

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- 4.2 The function of this Shareholder's Compact is –
- 4.2.1 to clarify and confirm the strategic objectives (refer paragraph 10) to be achieved by Denel during the Reporting Period;
- 4.2.2 to confirm the Key Performance Areas ("KPA's") and Key Performance Indicators ("KPI's") which are set out in Appendix A that measure Denel's performance during the Period of the Shareholder's Compact; and
- 4.2.3 To provide an explanatory note on the definitions and considerations taken into account when setting the measures of KPIs (Appendix B).

5 THE SCOPE OF PERFORMANCE MONITORING

The Compact reflects the agreement by the Minister and Denel on the performance targets in line with the Strategic Intent Statement, supported by the Corporate Plan. To the extent possible the performance against these targets must be reported on a quarterly basis through the Denel Quarterly Reports in adherence with the DPE Quarterly Reporting Guidelines.

- 5.1 **Policy Targets:** these give a more detailed specification to Government's national policy objectives for SOCs, the sector as well as promotion of socio-economic development. These targets would be expressed as much as possible in guarantee-able and measurable terms, including the terms of developmental outcomes.
- 5.2 **Financial Targets:** these seek to ensure that the Denel Board and management assure long-term financial sustainability of the SOC.

- 5.3 **Operational Targets:** these seek to ensure that Denel meets relevant delivery targets taking into account interests of stakeholders and other measures which the Board considers appropriate to best protect and grow the value of the State's investment in Denel. Investment in R&D is critical in ensuring that the SOC retains its long term competitive edge.
- 5.4 **Transformation Targets:** Transformation including representation of women at all levels of the organisation remains a critical area for Denel to address. The following areas shall be prioritised in order to address transformation:
- 5.4.1 Attraction and retention of highly skilled people especially historically disadvantaged individuals with special emphasis on middle management and advanced technical personnel.
- 5.4.2 Skills development, including youth development in order to ensure a healthy pipeline of scarce and critical skills and to promote transformation.
- 5.4.3 Optimal utilisation of the Denel Technical Academy to support government programmes regarding skills development in line with national strategic objectives.
- 5.4.4 Attraction, development and retention of women to accelerate representation at all levels of the organisation in line with government targets.
- 5.4.5 Transformation of DENEL's core supplier base in line with the economic transformation agenda of the country
- 5.5 **Compliance Targets:** these include internal governance processes to promote greater transparency and accountability within Denel and include (but are not necessarily limited to) the following areas:
- 5.5.1 **Legal and regulatory compliance:** pursuing Denel's commitment to defence industry regulations and protocols; and the sustainable management and development of the natural, physical and human resources utilised in the business. These targets will be reflected in the Denel Corporate Plan and may be included in the Compact;
- 5.5.2 **Corporate governance:** attaining a high standard of good corporate governance which must ensure, among other things, establishing the governance systems and procedures for dealing with any potential conflicts of interest which may arise in the responsibilities of

directors and prescribed officers and any other outside interest which he/she may have relating to the business of Denel.

- 5.6 **Stakeholder relations:** building and maintaining relationships through partnering with key Government departments/agencies, industry players and fostering relationships with organised labour and the communities in which Denel operates.
- 5.7 **Risk Management Targets:** systems in place to manage risks on all contracted programmes, internal and financial controls through an up to date risk register and risk mitigation plan, amongst others.

6 DURATION AND ENFORCEABILITY

- 6.1 The Compact shall be effective from 1 April and remains in full force until renegotiated, subject to an annual review by the Parties before the beginning of the following financial year. In the event that the operating environment for both parties changes such that there is a need to review the compact, either party may initiate a review process by giving a written notice to the other party.

7 SUBSIDIARIES AND ASSOCIATES

- 7.1 The principles set out in this Shareholder's Compact shall also apply to Denel's subsidiaries. To this end, the Board shall ensure that Denel –
- 7.1.1 Reviews the mandate of all its subsidiaries, and
- 7.1.2 Concludes performance agreements with all its subsidiaries, which agreements are comprehensively and consistently compliant with the spirit, rights, obligations and undertakings stipulated in this Shareholder's Compact.
- 7.2 The majority of the directors of every subsidiary of Denel should be employees of Denel that have been approved by the Denel Board for appointment as directors of the subsidiary. Should Denel wish to appoint a non-executive director or an outside person to its subsidiary, the Minister should approve such an appointment.
- 7.3 Use its best efforts to protect the Shareholder's interests in all business matters including in the Golden Share Companies and report to the Shareholder any material risks related to the Shareholder's interest and/or the Golden Share Company's management not being in a position to achieve targets.

- 7.4 The Parties acknowledge that in the case of Denel's associates; compliance with the obligations set out in clause 7.1 and 7.2 may not always be achievable as it will require the consent of the other shareholder(s).

8 ALIGNMENT TO PERFORMANCE

- 8.1 Parties acknowledge that there should be alignment between the achievement of strategic objectives, KPIs as specified in this document and the payment of incentives to executive directors and prescribed officers.
- 8.2 Parties further agree that where there is anticipated material deviation from agreed targets Denel will timeously advise the Minister.
- 8.3 Performance incentives proposed by the Board to executive directors and prescribed officers will be discussed with the Minister prior to approval.

9 SHAREHOLDER INFORMATION

- 9.1 Denel will provide any information required by the Minister and/or the DPE to enable the Minister to assess the investment value in Denel.
- 9.2 In addition, the following information will be submitted to the Minister:
- 9.2.1 The financial statements in accordance with section 55 of the PFMA read with regulation 28.1 of the Treasury Regulations. This report will, *inter alia*, include a report by the Board on the disclosure of remuneration of all directors and prescribed officers Section 30 (4) of the Companies Act.
- 9.2.2 The Annual Report in accordance with section 55 of the PFMA read with regulation 28.2 of the Treasury Regulations.
- 9.2.3 On a quarterly and annual basis, any material losses through conduct, omission and any irregular, fruitless and wasteful expenditure will be reported in line with the PFMA and Treasury Regulations 33.2.1.
- 9.2.4 Denel shall report, in accordance with prescribed guidelines, on the Key Performance Indicators and results achieved by the Group and its subsidiaries on the Corporate Plan through Monthly Management Accounts, Quarterly and Annual Reports;
- 9.2.5 Any major transaction(s) requiring the Minister's approval in accordance with section 54 of the PFMA and the thresholds stated in the Significance and Materiality Framework.

- 9.2.6 A draft Shareholder's Compact together with a summary of Denel's business plan for discussion prior to the start of the financial year to which these documents relate.

10 ROLE OF THE EXECUTIVE AUTHORITY

The Parties acknowledge that Denel will not be able to achieve its objective without the support of the Minister. In particular the Minister will need to assist in ensuring that the policy and regulatory framework enables Denel to pursue its strategic objectives as set out herein.

11 THE STRATEGIC INTENT STATEMENT

The strategic intent statement sets out the mandate of Denel. In line with the agreed strategic intent Denel commits to the following: -

- 11.1 Support and maintain the DoD's sovereign and strategic industrial defence capabilities in an efficient and sustainable manner;
- 11.2 Contribute to industrial development towards the building of a dynamic defence related industrial cluster and to act as a catalyst for advanced manufacturing;
- 11.3 Long term growth strategy to grow and balance the current portfolio in order to increase sales, product and service offerings;
- 11.4 Pursue financial recovery and stability based on achieving profitability targets by increasing market share and achieving its revenue targets, as well as reducing costs;
- 11.5 Ensure on-time and on-cost deliveries on major programmes;
- 11.6 Contribute to socio-economic objectives including skills development and transformation;
- 11.7 Compliance with local and international policies, regulations and treaties as well as regulations and laws of the jurisdictions of where Denel conducts business.

12 STRATEGY IMPLEMENTATION

Denel has completed its turnaround phase and now is embarking on growth trajectory that will be characterised by a well-established, focussed and future orientated business culture and by 2018 will be renowned for:

- Revenue grown to more than R7bn, EBIT at group level at about 7% after investments in R&D and other related transformation spend
- Stronger financial position, long-term order book of more than 5x turnover incorporating business with other SOC's
- Modernised product offerings in most capability areas enabling competitive edge including diversification into the C4ISR, space and maritime domains
- Marked improvement in EE levels for Engineers and Senior Managers, and improvement in average age of workforce

It is further acknowledged that:



- Denel's good to great strategy hinges on a strong air, land and building naval and other capabilities such as in cyber security, secure communications, paramilitary and homeland security as well as intelligent buying by our customers
- Growth in the African market is critical taking into account environment and geopolitical issues that need to be managed to ensure access to markets

13 KEY PERFORMANCE MEASURES

In pursuing its mandate as set out in the Strategic Intent Statement and the governance framework referred to above, the Parties agree on the Key Performance Measures and Indicators set out in annexure A hereto for the period specified therein.

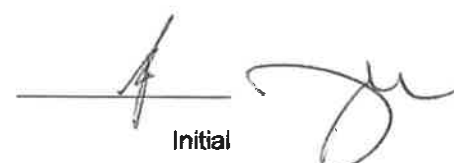
Denel's performance will be evaluated against these Key Performance Indicators and the Minister will be provided with regular reports on the progress with regard to achieving these targets. The KPI targets for the coming 12 months will constitute firm targets which performance will be measured against. These may change prior to the agreement of the following year's KPIs package, if appropriate, given actual results achieved and any changes in business circumstances or strategy over the coming financial year. The Key Performance Areas all carry the same weight of 25%.

In addition, the detailed implementation plan to achieve Denel's strategic objectives and the targets in annexure A will be set out in the Corporate Plan.

 
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14 APPENDIX A – Key Performance Indicators

Element of Strategic Intent	Key Performance Area	Key Performance Indicator	Long Term Target	Annual Targets over the next 3 years		
				FY 15/16	FY 16/17	FY 17/18
Strategic role in the provision of defence capabilities	Security of supply and retention of capabilities in areas required by the DoD & MV	Retained strategic capabilities in support of the DoD & MV's requirements as per register	100%	100%	100%	100%
	Programme delivery	Achieving contracted cash flow targets.	>85%	85%	85%	85%
Strategic economic role	Investment in R&D	Self-funded R&D as a % of turnover	5%	3%	4%	5%
Business Sustainability Business Sustainability Socio – Economic Objectives	Sales	Increase in revenue year-on-year	20%	20%	15%	15%
	Profitability management	EBIT Margin	7%	6.1%	6.3%	6.5%
	Cash from operating activities	Cash flow from operating activities as a % of turnover	7%	5%	6%	6.5%
	Order cover	Orders concluded in respect of the coming year as a % of sales budget for that year	80%	70%	75%	80%
	Operating Expenditure	Operating costs as a % of revenue	20%	21%	20%	20%
	Maximise the appointments from designated groups in order to address employment equity requirements	ACI as % of total appointments	80%	80%	80%	80%



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Element of Strategic Intent	Key Performance Area	Key Performance Indicator	Long Term Target	Annual Targets over the next 3 years		
				FY 15/16	FY 16/17	FY 17/18
Socio – Economic Objectives		Women as % of total appointments	50%	40%	45%	50%
	Preferential procurement and enterprise development (current baseline for women owned=1.3%)	Procurement from Black owned suppliers as % of local spend	40%	15%	18%	20%
		B-BBEE (% of recognised spend)	80%	80%	85%	90%
		Black woman owned as a % of total local spend	10%	3%	4%	5%
		Black youth owned as a % of total local spend	15%	1.5%	2%	3%
		Small and emerging enterprises suppliers developed	≥30	20	25	30
	B-BBEE level	B-BBEE contributor level (old code)	Level 1	Level 3	Level 2	Level 2
	Training Spend	% of Employee cost	3%	3%	3%	3%
	Skills Development- Scarce and Critical Skills	Total number of engineering trainees (bursaries and internships)	>120	100	110	120
		Total number of technician and artisan trainees	>160	110	120	140
	Skills Development- Scarce and Critical Skills	Total number of DTA artisan and technical skills trainees (enrolments during the year)	500	350	400	450
	Employment- Direct jobs created	Increase in number of jobs	>500	150	200	250

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APPENDIX B - Definitions for Proposed KPI's

Proposed KPI	Definition and target
Strategic role in the provision of defence capabilities	
Retaining strategic capabilities	Retained strategic capabilities in support of the DoD and where such capabilities are discontinued approvals are obtained as listed in APPENDIX C
Programme delivery	<p>Milestone achieved per major DoD and other contracts deliverables namely:</p> <ol style="list-style-type: none"> 1. Cash flows (financial progress measurement) 2. Balanced view of programme delivery satisfaction as quarterly self-assessed at Group level by a panel consisting of Denel Group COO, Supply Chain Executive, Risk Management Executive and FD <p>A list of major programmes anticipated to be executed during the contracting period to be submitted to DPE on 31 May of the contracted year. This list can be updated as the year unfolds.</p>
Strategic economic role	
Local content	<p>Local procurement as a percentage of total procurement</p> <ul style="list-style-type: none"> • Local procurement: the purchase of goods and services from local businesses. Typically, this occurs in emerging markets and in developed markets where local communities have expectations about participating in new opportunities.
Investment in R&D	Self-funded R&D as a % of turnover
Business Sustainability	
Sales Growth rate	Increase in revenue (actual) year-on-year divided by previous year revenue multiplied by 100.
Profitability management (EBIT Margin)	<p>EBIT divided by Revenue multiplied by 100</p> <ul style="list-style-type: none"> • EBIT: earnings before interest and taxes, excludes income and expenditure from unusual, non-recurring or discontinued activities. • Revenue
Cash flow from operating activities as a % of turnover	Cash flow from operating activities before working capital changes (from the cash flow statement) divided by Revenue multiplied by 100
Positive cash position	Cash position refers to a cash balance
Order Cover	Orders concluded in respect of the coming year as a % of sales budget for that year
OPEX Ratio	Operational costs (salaries, marketing expenses, rentals, maintenance etc.) divided by revenue multiplied by 100.
Socio economic objectives	
Maximise the appointments from designated groups in order to address employment equity requirements	ACI as % of total annual appointments
	All women as % of total annual appointments
Preferential procurement and enterprise development	Small and emerging enterprises suppliers developed during the year
	Procurement from Black owned suppliers as % of local spend



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Proposed KPI	Definition and target
B-BBEE level	Broad Based Black Economic Empowerment is a policy of the SA government which encourages companies to help transform the country. BEE is about broad-based activities that benefit black people.
Training Spend	Cost spent on training during the year
Skills Development-Scarce and Critical Skills	Total number of engineering trainees, bursaries and internships (enrolment during the year)
	Total number of technician and artisan trainees (enrolment during the year)
	Total number of DTA artisan and technical skills trainees (enrolments during the year)
Employment - New direct jobs created in the year	Includes temporary jobs of an average of 40 hours per month work over the last three months and permanent jobs created to meet Denel's objectives during the year



APPENDIX C:

DENEL'S CAPABILITIES CLASSIFIED BY SANDF AS SOVEREIGN	
<i>Capability</i>	<i>Situated</i>
Small & medium calibre ammunition (5.56 - 35mm)	Denel Pretoria Metal Pressings (PMP)
Guided Missiles	Denel Dynamics
Unmanned Aerial Vehicle System (UAVS) (armed drones)	Denel Dynamics
Integrated Ground-Based Air Defence Systems (GBADS)	Denel Dynamics
Aircraft Original Equipment Manufacturers (OEM) incl. Design & Upgrades: Rooivalk CSH [incl Maintenance Repair Overhaul (MRO) Rooivalk]	Denel Aviation
Scientific Instrumented Test Ranges	Denel Overberg Test Range Armcor

DENEL'S CAPABILITIES THAT STRENGTHEN SANDF'S STRATEGIC INDEPENDENCE	
<i>Capability</i>	<i>Situated</i>
Assault weapons, machine guns, mortars & rapid fire cannons	Denel Land Systems
Long-range artillery systems (105 – 155mm) incl Fire Direction	Denel Land Systems
Armoured Fighting Vehicles & Turrets incl Fire Direction	Denel Land Systems
Mine Protected Vehicles	Denel Land Systems LMT CSIR
UAVS (surveillance)	Denel Dynamics
Aircraft OEM incl Design & Upgrades: Oryx utility helicopter (incl MRO Oryx)	Denel Aviation
MRO: Transport a/c & helicopters (C130, Mi8/Mi17)	Denel Aviation

2016/2017

Annexure A



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA



Global supplier of world-class products

SHAREHOLDER'S COMPACT ("PERFORMANCE AGREEMENT")

Entered into by and between

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, HEREIN REPRESENTED BY
THE MINISTER OF PUBLIC ENTERPRISES
("The Shareholder Representative")

And

DENEL SOC LTD, HEREIN REPRESENTED BY THE CHAIRPERSON OF THE BOARD OF
DIRECTORS

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DEFINITIONS**"Accounting Authority"**

means the Board of Denel;

"Associate"

means a company in which Denel holds less than 50% of the total issued share capital;

"Board"

means the Board of Directors of Denel;

"Companies Act"

means the Companies Act, No. 71 of 2008 as amended from time to time, including any regulations issued thereunder;

"Corporate Plan"

means the 3 (three) year plan of Denel as contemplated in the PFMA and the Treasury Regulations;

"Denel"

means Denel SOC Limited, a private company registered in accordance with the laws of the RSA under registration number 1992/01337/30, and having its registered office at Nellmapius Drive, Irene, Pretoria;

"DoD"

means the Department of Defence and Military Veterans Affairs;

"Director"

means a member of the Board;

"Golden Share"

means one special class share (being either a contractual right or a physical share in the issued share capital of a Golden Share Company), issued to and held by the Shareholder, issued for the sole and exclusive purpose of protecting the Shareholder's interest in and to the Golden Share Company, with the special rights attaching thereto as more fully described in the shareholders' agreement particular to the Golden Share Company and the Memorandum of Incorporation of the Golden Share Company;

"King III Report"

means the King Report on Corporate Governance for South Africa and the King code of Governance Principles

"KPA"

means Key Performance Area;

"KPI"

means Key Performance Indicator;

"Memorandum of Cooperation"(MOC)

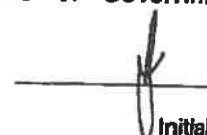
means the Agreement between Denel, DPE, DOD, the dti....

"Memorandum of Incorporation (MOI)"

means the document, as amended from time to time that sets out rights, duties and responsibilities of the Shareholder, directors and others within and in relation to Denel, as defined in the Companies Act;

"Minister"

means the Minister of Public Enterprises in his/her capacity as the representative of Government and



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the executive authority (as defined in the PFMA);

"NGP"

means the New Growth Path. The NGP is aimed at addressing inequality and poverty by creating more employment opportunities in South Africa. The target is to reduce unemployment rate from twenty five percent (25%) to fifteen percent (15%) over a ten year period.

"Parties"

means the Shareholder Representative and the Board collectively;

"Persons"

means natural person or incorporated body including government entities and private companies;

"PFMA"

means the Public Finance Management Act, No. 1 of 1999, as amended

"Prescribed officer"


means a person who within a company, performs any function that has been designated by the Minister of Trade and Industry in terms of section 66 (10);

"Protocol"

means the Protocol on Corporate Governance in the Public Sector (2002) as amended;

"SANDF"

means the South African National Defence Force;


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"Shareholder's Compact or the Compact"

means this agreement together with all its appendices, as amended from time to time;

"Significance and Materiality Framework"

means the Significance and Materiality Framework applicable to Denel, as prescribed the PFMA and Treasury Regulations;

"Strategic Intent Statement"

means the primary tool used by the Minister to communicate the State's expectations of the SOC.

"Subsidiary"

means a subsidiary of Denel or any of its subsidiaries over which it exercises ownership control as defined in terms of the PFMA.

"Cash"

means Denel's cash balance excluding the Hoefyster ring-fenced advance payment




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1 PURPOSE

- 1.1 Government (and thus the Minister as Shareholder Representative) ensures proper shareholder oversight and management of State Owned Companies (SOC's), such as Denel based on its mandate and strategic objectives. Given the dual nature of SOC's; Denel will pursue commercial imperatives as well as socio-economic policy objectives. Parties, therefore recognise the role of the Minister is to define and set clear objectives and targets against which the Minister will measure, monitor and evaluate the SOC's financial and operational performance.
- 1.2 The Shareholder's Compact "the Compact" recognises and clarifies the roles and responsibilities of the Board and the shareholder in exercising effective leadership. The Compact is one of the governance frameworks that clarify Denel's mandate, aligned to the Strategic Intent Statement (SIS) and institutionalises performance monitoring and evaluation of Denel by the Minister.
- 1.3 The essence of the Compact is, among other things, to develop means by which to make trade-offs between Denel's financial and operational objectives while fulfilling the policy mandate.

2 INTRODUCTION

- 2.1 The SOC shall continue to maintain capabilities critical to safety and security of the country with primary focus on SANDF strategic and sovereign capabilities. It is however critical that opportunities for leveraging of its defence advanced manufacturing capabilities in development and manufacturing of civilian and commercial product solutions be pursued. To this end the SOC has to deepen its collaboration efforts with other SOC's and State agencies to deliver on other Government objectives.

3 GOVERNANCE FRAMEWORK

- 3.1 The governance frameworks include the following:
 - 3.1.1 The Strategic Intent Statement (SIS) which is a tool used by the Shareholder to communicate the shareholder's expectations of the company to ensure shareholder value optimisation. This Compact sets out annual key performance areas, indicators and measures in support of the Strategic Intent Statement, and to the extent necessary, seeks to clarify the objectives of Denel.

3.1.2 The Corporate Plan which inter alia, translates the Strategic Intent Statement and Shareholder's Compact into Denel's business plan.

3.1.3 The Memorandum of Incorporation (MOI) which sets out certain powers of the Shareholder, Board and Denel, as amended from time to time. Save for correcting errors in the Company's MOI, all other amendments to the MOI shall be effected in accordance with Section 16 (1) of the Companies Act and the provisions of the MOI.

3.1.4 The legislative and policy framework, which includes, the Public Finance Management Act, the Companies Act, the National Conventional Arms Control Act, the Non-Proliferation of Weapons of Mass Destruction Act, the MOI, any other relevant legislation, regulations and guidelines issued by the National Treasury and/or the Shareholder Representative.

3.1.5 Therefore the Board shall ensure that:

- Denel and its subsidiaries comply with the provisions of the PFMA, the Companies Act, Denel's MOI and any other relevant legislation.
- Denel reviews the mandate of all its subsidiaries, to amend, where required, the Founding Documents of such subsidiaries, to ensure that agreed principles and enduring rights and obligations regarding the relationship between Denel and the subsidiaries are incorporated and that the Founding Documents comply with the provisions of the Companies Act, PFMA, Treasury Regulations and the respective subsidiary's mandate.

3.2 Denel concludes performance agreements with all its subsidiaries that comply with the spirit, rights, obligations and undertakings stipulated in the Compact. If there is any conflict or inconsistency among the provisions of the above, the Parties shall take whatever steps necessary to amend the governance documents to remove the conflict or inconsistency. For so long as the conflict exists, the Public Finance Management Act shall take precedence and thereafter the Company's MOI followed by its Strategic Intent Statement.


4 FUNCTION OF THE SHAREHOLDER'S COMPACT

4.1 The parties subscribe to the principles of the Protocol, PFMA and the Treasury Regulations and the King Report for sound corporate governance. The Parties hereby agree on the purpose, terms and conditions set out below.

4.2 The function of this Shareholder's Compact is --

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- 4.2.1 to clarify and confirm the strategic objectives (refer paragraph 10) to be achieved by Denel during the Reporting Period;
- 4.2.2 to confirm the Key Performance Areas ("KPA's") and Key Performance Indicators ("KPI's") which are set out in Appendix A that measure Denel's performance during the Period of the Shareholder's Compact; and
- 4.2.3 To provide an explanatory note on the definitions and considerations taken into account when setting the measures of KPIs (Appendix B).

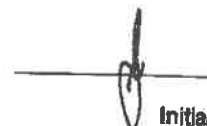
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- 5.4 **Transformation Targets:** Transformation including representation of women at all levels of the organisation remains a critical area for Denel to address. The following areas shall be prioritised in order to address transformation:
 - 5.4.1 Attraction and retention of highly skilled people especially historically disadvantaged individuals with special emphasis on middle management and advanced technical personnel.


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- 5.4.2 Skills development, including youth development in order to ensure a healthy pipeline of scarce and critical skills and to promote transformation.
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 - 5.5.2 **Corporate governance:** attaining a high standard of good corporate governance which must ensure, among other things, establishing the governance systems and procedures for dealing with any potential conflicts of interest which may arise in the responsibilities of directors and prescribed officers and any other outside interest which he/she may have relating to the business of Denel.
- 5.6 **Stakeholder relations:** building and maintaining relationships through partnering with key Government departments/agencies, industry players and fostering relationships with organised labour and the communities in which Denel operates.
- 5.7 **Risk Management :**
 - 5.7.1 The SOC must ensure that risk management processes and systems are in place and that a risk culture is embedded across all functions: corporate governance structures, internal management controls and strategic planning processes. Management should at all times implement business plans within the SOC's risk appetite and risk tolerance levels;


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- 5.7.2 Risk reporting should be consistent with the oversight guidelines as issued by the Department and National Treasury. This must include disclosure on matters related to fraud, corruption and conflict of interest.

6 DURATION AND ENFORCEABILITY

- 6.1 The Compact shall be effective from 1 April and remains in full force until renegotiated, subject to an annual review by the Parties before the beginning of the following financial year. In the event that the operating environment for both parties changes such that there is a need to review the compact, either party may initiate a review process by giving a written notice to the other party.

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- 7.1.1 Reviews the mandate of all its subsidiaries, and

- 7.1.2 Concludes performance agreements with all its subsidiaries, which agreements are comprehensively and consistently compliant with the spirit, rights, obligations and undertakings stipulated in this Shareholder's Compact.

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- 7.4 The Parties acknowledge that in the case of Denel's associates; compliance with the obligations set out in clause 7.1 and 7.2 may not always be achievable as it will require the consent of the other shareholder(s).

8 ALIGNMENT TO PERFORMANCE

- 8.1 Parties acknowledge that there should be alignment between the achievement of strategic objectives, KPIs as specified in this document and the payment of incentives to executive directors and prescribed officers.


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- 8.2 Parties further agree that where there is anticipated material deviation from agreed targets Denel will timeously advise the Minister.
- 8.3 Performance incentives proposed by the Board to executive directors and prescribed officers will be discussed with the Minister prior to approval.

9 SHAREHOLDER INFORMATION

- 9.1 Denel will provide any information required by the Minister and/or the DPE to enable the Minister to assess the investment value in Denel.
- 9.2 In addition, the following information will be submitted to the Minister:
 - 9.2.1 The financial statements in accordance with section 55 of the PFMA read with regulation 28.1 of the Treasury Regulations. This report will, *inter alia*, include a report by the Board on the disclosure of remuneration of all directors and prescribed officers Section 30 (4) of the Companies Act.
 - 9.2.2 The Annual Report in accordance with section 55 of the PFMA read with regulation 28.2 of the Treasury Regulations.
 - 9.2.3 On a quarterly and annual basis, any material losses through conduct, omission and any irregular, fruitless and wasteful expenditure will be reported in line with the PFMA and Treasury Regulations 33.2.1.
 - 9.2.4 Denel shall report, in accordance with prescribed guidelines, on the Key Performance Indicators and results achieved by the Group and its subsidiaries on the Corporate Plan through Monthly Management Accounts, Quarterly and Annual Reports;
 - 9.2.5 Any major transaction(s) requiring the Minister's approval in accordance with section 54 of the PFMA and the thresholds stated in the Significance and Materiality Framework.
 - 9.2.6 A draft Shareholder's Compact together with a summary of Denel's business plan for discussion prior to the start of the financial year to which these documents relate.

10 ROLE OF THE EXECUTIVE AUTHORITY

The Parties acknowledge that Denel will not be able to achieve its objective without the support of the Minister. In particular the Minister will need to assist in ensuring that the policy and regulatory framework enables Denel to pursue its strategic objectives as set out herein.


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11 THE STRATEGIC INTENT STATEMENT


The Strategic Intent Statement sets out the mandate of Denel. In line with the agreed Strategic Intent Statement, Denel commits to the following: -

- 11.1 Ensure commercially viable defence materiel design, development, manufacturing, test and evaluation and support capabilities aligned to national security requirements and key international markets;
- 11.2 Contribute towards building a dynamic defence related industrial cluster and to act as a catalyst for the proliferation of advanced manufacturing capabilities beyond the defence and aerospace sector;
- 11.3 Implement the approved long term growth strategy while ensuring realisation of synergies across the product portfolio;
- 11.4 Ensure compliance with PFMA approvals related to new business acquisitions, the conditions of the government guarantees, and loan covenants;
- 11.5 Prudent cash management and the creation of a cash buffer to cover minimum of six months of operational costs (excludes direct costs);
- 11.6 Contribute to socio-economic objectives including skills development, job creation, preferential procurement, CSI and environmental sustainability;
- 11.7 Compliance with local and international policies, regulations and treaties as well as regulations and laws of the jurisdictions of where Denel conducts business.

12 STRATEGY IMPLEMENTATION

As part of Denel's profitable growth strategy phase, the entity's key focus for the near term is on financial viability through optimal business funding. By 2016/17, the business will have achieved the following:

- Quality revenue growth to more than R8.5bn, EBIT Margin at group level at about 5% after investments in R&D, other related transformation spend and provisions for restructuring the cost base;
- Stronger financial position underpinned by optimal gearing necessitating reduction of debt to R1.2bn level by 2019/20. Cash balance of about R650m will be generated building up to the first capital repayment of debt in 2017/18. The SOC will also pursue opportunities with other SOC's in order to realise the department's objective of greater


Initial

SOC to SOC collaboration in pursuit of Government's MTSF goal of 25% GDP investment expectation;

- Modernised product offerings in most capability areas enabling competitive edge including diversification into the C4ISR, space and maritime domains built on strong indigenous technology development base;
- Marked improvement in EE levels for Engineers, Scientists, Programme Managers and Senior Managers, and a sustainable improvement in average age of workforce. In this regard the SOC shall develop and implement an intervention plan aligned to the DPE Transformation Framework.

It is further acknowledged that:

- Denel's "Good to Great" strategy hinges on a strong air and land capabilities and building of naval and other capabilities such as in cyber security, secure communications, paramilitary and homeland security as well as intelligent buying by our customers;
- The African Union Agenda 2063 calls for "*A peaceful and secure Africa*" where "*By 2020 all guns would be silent*". In its marketing activities on the African Continent, the SOC shall ensure that it promotes these ideals.

13 KEY PERFORMANCE MEASURES

In pursuing its mandate as set out in the Strategic Intent Statement and the governance framework referred to above, the Parties agree on the Key Performance Measures and Indicators set out in annexure A hereto for the period specified therein.

Denel's performance will be evaluated against these Key Performance Indicators and the Minister will be provided with regular reports on the progress with regard to achieving these targets. The KPI targets for the coming 12 months will constitute firm targets which performance will be measured against. These may change prior to the agreement of the following year's KPIs package, if appropriate, given actual results achieved and any changes in business circumstances or strategy over the coming financial year.

In addition, the detailed implementation plan to achieve Denel's strategic objectives and the targets in Annexure A will be set out in the Corporate Plan.


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14 SIGNATURES

Signed by the Minister at Cape Town on the 25 of July 2016.

Minister of Public Enterprises
Ms Lynne Brown, MP

Witness

Signed for and on behalf of the DENEL Board of Directors at on the of 2016.

Chairperson of DENEL Board
Mr Lugisani Mantsha

Witness

15 APPENDIX A – Key Performance Indicators

SIS Strategic Objectives	Weighting	KPAs	KPIs	Proposed
Ensure commercially viable defence materiel design, development, manufacturing, test and evaluation and support capabilities aligned to national security requirements and key international markets.	30% (Annexure D)	Security of supply and retention of capabilities in areas required by the DoD & MV	Retained strategic capabilities in support of the DoD&MVs requirements as per register	100%
		Research and Development	Research and development investment	8.5% of revenue limited to R740m
		Programme Delivery	Achieving contracted cash flow targets on major programmes. ANNEXURE D	>85%
			Achieving of cardinal milestones as contractually agreed by clients for selected major Programs (Annexure D)	> 85%
Transformation (Socio-economic objectives)	30%	Employment-	Maintain Employee numbers (Annexure F)	Retention of jobs
		Maximise the appointments from designated groups in order to address employment equity requirements	ACI as % of total appointments	80%
			Women as % of total appointments	40%
		B-BBEE level	B-BBEE contributor level (new codes)	Level 5

SIS Strategic Objectives	Weighting	KPAs	KPIs	Proposed
			(Annexure H)	
		Preferential procurement and enterprise development (current baseline for women owned=1.3%)	Local Content	70%
			B-BBEE (% of recognised spend):	75%
			Procurement from Black owned suppliers as % of local spend	20%
			Black woman owned as a % of total local spend	3.5%
			Black youth owned as a % of total local spend	1%
			Spend on companies with ownership by Persons with Disabilities	0.2%
			Small and emerging enterprises suppliers developed	20
		Corporate Social Investment	Total CSI Spend	R3.5 million
Skills Development (Socio-economic objectives)	10%	Training Spend	% of personnel cost	3%
		Skills Development- Scarce and Critical Skills	Total number of engineering trainees (bursaries and internships)	50
			Total number artisan trainees	100
			Total number of DTA artisan (enrolments during the year Denel sponsored only)	85

SIS Strategic Objectives	Weighting	KPAs	KPIs	Proposed
Prudent cash management and the creation of a cash buffer to cover minimum of six months of operational costs; and Sustainability	30%	Cash	Cash generated from operations, measured on a quarterly basis as budgeted	>R685m
		Order intake	Value of new orders to be concluded in 2016/17	≥ R2b
		Profitability management	EBIT Margin	5%
	100.00%			

APPENDIX B - Definitions for Proposed KPI's

Proposed KPI	Definition and target
Strategic role in the provision of defence capabilities	
Retaining strategic capabilities	Retained strategic capabilities in support of the DoD and where such capabilities are discontinued approvals are obtained as listed in APPENDIX C
Programme delivery	Milestone achieved per major DoD and other contracts deliverables namely: 1. Cash flows (financial progress measurement) 2. Balanced view of programme delivery satisfaction as quarterly self-assessed at Group level by a panel consisting of Denel Group COO, Supply Chain Executive, Risk Management Executive and FD as listed in APPENDIX D & ANNEXURE E
Strategic economic role	
Local content	Local procurement as a percentage of total procurement • Local procurement: the purchase of goods and services from local businesses. Typically, this occurs in emerging markets and in developed markets where local communities have expectations about participating in new opportunities.
Investment in R&D	A set amount of R&D investment limited to R740m (incorporating both self and client funded development)
Business Sustainability	
Profitability management (EBIT Margin)	EBIT divided by Revenue multiplied by 100

Proposed KPI	Definition and target
	<ul style="list-style-type: none"> EBIT: earnings before interest and taxes, excludes income and expenditure from unusual, non-recurring or discontinued activities.
Cash flow from operating activities	Cash flow from operating activities from the cash flow statement
Order intake	Expected new orders from key strategic marketing campaigns to be concluded within 2016/17 to build and sustain the order book.
Socio economic objectives	
Maximise the appointments from designated groups in order to address employment equity requirements	ACI as % of total annual appointments
	All women as % of total annual appointments
Preferential procurement and enterprise development	Small and emerging enterprises suppliers developed during the year
	Procurement from Black owned suppliers as % of local spend
B-BBEE level	Broad Based Black Economic Empowerment is a policy of the SA government which encourages companies to help transform the country. BEE is about broad-based activities that benefit black people.
Training Spend	Cost spent on training during the year
Skills Development-Scarce and Critical Skills	Total number of engineering trainees, bursaries and internships (enrolment during the year)
	Total number of technician and artisan trainees (enrolment during the year)
	Total number of DTA artisan and technical skills trainees (enrolments during the year)
Employment	Jobs retained: permanent and temporary jobs retained during the year

APPENDIX C:

DENEL'S CAPABILITIES CLASSIFIED BY SANDF AS SOVEREIGN	
<i>Capability</i>	<i>Situated</i>
Small & medium calibre ammunition (5.56 - 35mm)	Denel Pretoria Metal Pressings (PMP)
Guided Missiles	Denel Dynamics
Unmanned Aerial Vehicle System (UAVS) (armed drones)	Denel Dynamics
Integrated Ground-Based Air Defence Systems (GBADS)	Denel Dynamics
Aircraft Original Equipment Manufacturers (OEM) incl. Design & Upgrades: Rooivalk CSH [incl Maintenance Repair Overhaul (MRO) Rooivalk]	Denel Aviation
Scientific Instrumented Test Ranges	Denel Overberg Test Range Armcor

DENEL'S CAPABILITIES THAT STRENGTHEN SANDF'S STRATEGIC INDEPENDENCE	
<i>Capability</i>	<i>Situated</i>
Assault weapons, machine guns, mortars & rapid fire cannons	Denel Land Systems
Long-range artillery systems (105 – 155mm) incl Fire Direction	Denel Land Systems
Armoured Fighting Vehicles & Turrets incl Fire Direction	Denel Land Systems
Mine Protected Vehicles	Denel Land Systems LMT CSIR
UAVS (surveillance)	Denel Dynamics
Aircraft OEM incl Design & Upgrades: Oryx utility helicopter (incl MRO Oryx)	Denel Aviation
MRO: Transport a/c & helicopters (C130, Mi8/Mi17)	Denel Aviation

ANNEXURE D**1. Program Delivery****a. Selected major "Research & Development Programs"**

Due to the relatively high degree of technical uncertainty > 85% of cardinal milestones as agreed by clients must be achieved on each program. These cardinal milestones are to be defined in April 2016 and/or at time of new contract placement and/or at time of CVO approval:

- i. A-Darter (Assegai)
- ii. Hoefyster (as included in Phase 1 & 2)
- iii. P2 and P3 missile programs
- iv. N35
- v. Major new orders still to be awarded or concluded in 2016/17

b. Selected major "Production & MRO Programs"

Due to the relatively low degree of technical uncertainty > 95% of cardinal milestones as agreed by clients must be achieved on each program. These cardinal milestones are to be defined in April 2016 and/or at time of new contract placement and/or at time of CVO approval:

- i. A-Darter (Kamas)
- ii. Hoefyster (Phase 2)
- iii. AV8
- iv. MBARC (all phases)
- v. N35
- vi. SANDF MRO contracts for B-vehicles
- vii. SAAF MRO contracts for C130, Oryx & Rooivalk
- viii. Major new orders still to be awarded or concluded in 2016/17

ANNEXURE E**ALLOCATION OF WEIGHTING ON SIS OBJECTIVE NUMBER ONE**

"Ensure commercially viable defence materiel design, development, manufacturing, test and evaluation and support capabilities aligned to national security requirements and key international markets"

KPA	WEIGHTING
Security of supply and retention of capabilities in areas required by the DoD & MV Research and Development	6%
Programme Delivery	24%
TOTAL	30%



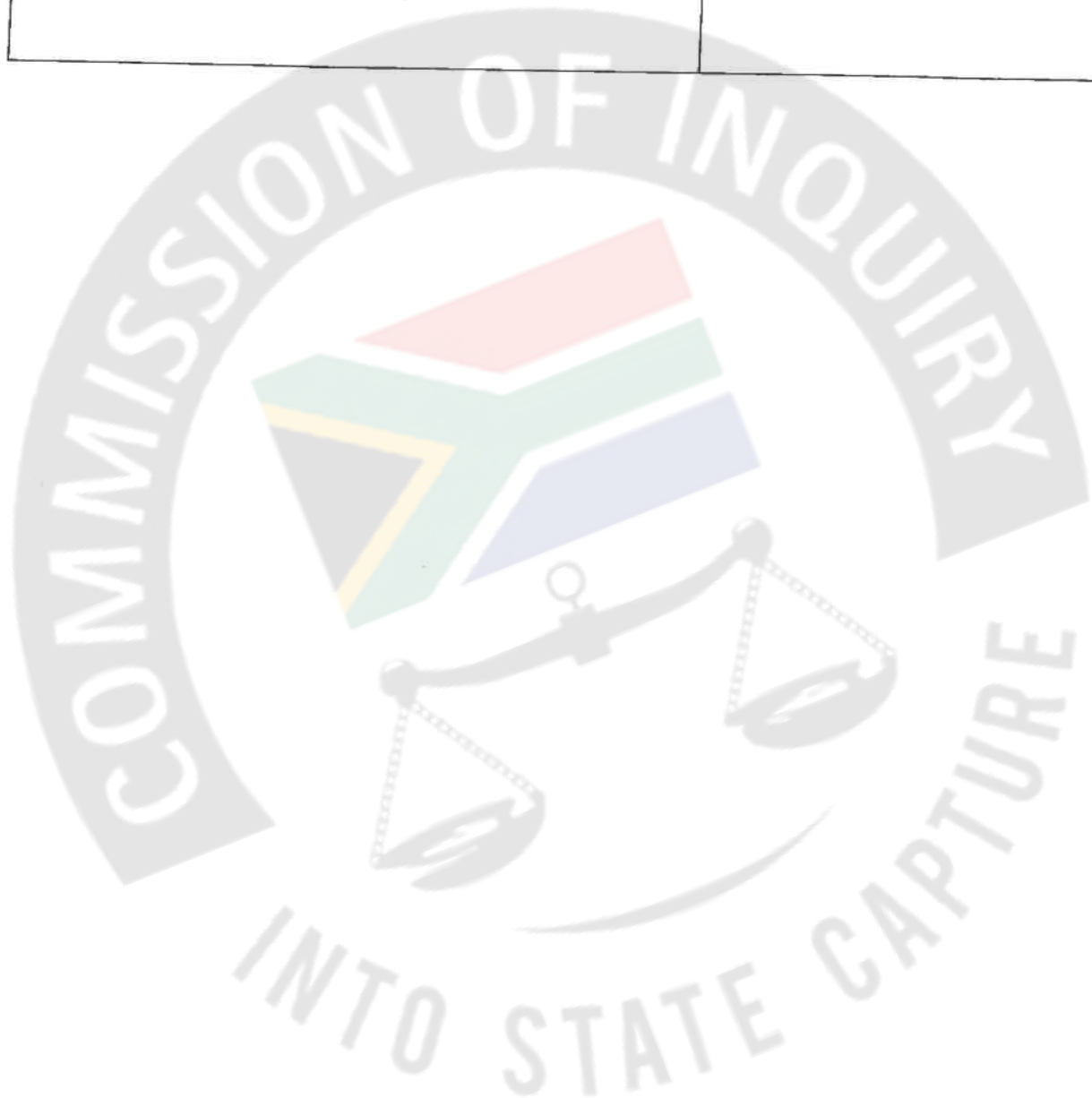


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ANNEXURE E**PROGRAM DELIVERY – KPI NUMBER TWO**

"Achieving of cardinal milestones as contractually agreed by clients for selected major Programs"

Achieving of cardinal milestones as agreed by clients for selected major "Research & Development" Programs	> 85%
Achieving cardinal milestones agreed with clients for Selected major "Production & MRO" Programmes	> 95%




ANNEXURE F**EMPLOYMENT – DIRECT JOBS CREATED***"Retention of jobs in aggregate"*

	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Revenue	R5.6bn	R7.9bn	R8.7bn	R9.7bn	R10.6bn	R11.7bn
Headcount	4559					



Denel shareholder's compact 2016/17

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ANNEXURE H**B-BBEE Contributor Level (new codes)**

	2016/17	2017/18	2018/19	2019/20
B-BBEE Level	Level 6			Level 1



Danel shareholder's compact 2016/17

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SECTION 3



2014/2015



public enterprises

Department
Public Enterprises
REPUBLIC OF SOUTH AFRICA



Global supplier of world-class products

SHAREHOLDER COMPACT **("PERFORMANCE AGREEMENT")**

Entered into by and between
THE MINISTER OF PUBLIC ENTERPRISES
AND
DENEL HOLDINGS SOC LTD

2014/15

Denel shareholder compact 2014/15

Restricted
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[Handwritten signatures and initials]

- 7.3 Performance incentives proposed by the Board to executive directors and prescribed officers will be discussed with the Minister prior to approval.

8 SHAREHOLDER INFORMATION

- 8.1 Denel will provide any information required by the Minister and/or the DPE to enable the Minister to assess the investment value in Denel.
- 8.2 In addition, the following information will be submitted to the Minister:
- 8.2.1 The financial statements in accordance with section 55 of the PFMA read with regulation 28.1 of the Treasury Regulations. This report will include a report by the Board on the disclosure of remuneration of all directors and prescribed officers Section 30 (4) of the Companies Act.
- 8.2.2 The annual report in accordance with section 55 of the PFMA read with regulation 28.2 of the Treasury Regulations.
- 8.2.3 Any material losses through conduct, omission and any irregular, fruitless and wasteful expenditure will be reported in line with Treasury Regulations 33.2.1.
- 8.2.4 Corporate plan, quarterly and other reporting as agreed upon between the Minister and the Board;
- 8.2.5 Any major transaction(s) requiring the Minister's approval in accordance with section 54 of the PFMA and the thresholds stated in the Significance and Materiality Framework.
- 8.2.6 A draft Shareholder's Compact together with a summary of Denel's business plan for discussion prior to the start of the financial year to which these documents relate.

9 ROLE OF THE EXECUTIVE AUTHORITY

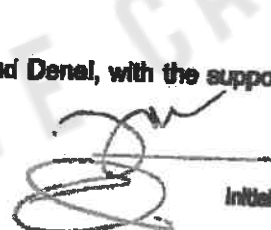
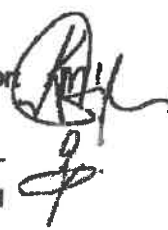
The Parties acknowledge that Denel will not be able to achieve its objective without the support of the Minister. In particular the Minister will need to assist in ensuring that the policy and regulatory framework enables Denel to pursue its strategic objectives as set out herein.

10 THE STRATEGIC INTENT STATEMENT

The strategic intent statement sets-out the agreed mandate and Denel, with the support of the Shareholder commits to: -

Denel shareholder compact 2014/15

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- 10.1 Provide the DoD&MV with key strategic defence equipment and services in an efficient and sustainable manner;
- 10.2 Contribute towards the building of a dynamic defence related industrial cluster;
- 10.3 Act as a catalyst for advanced manufacturing;
- 10.4 Pursue financial recovery and stability based on achieving profitability targets by increasing market share and achieving its revenue targets, as well as reducing costs;
- 10.5 Ensure on-time and on-cost deliveries on major programmes;
- 10.6 Leverage its capabilities by increasing sales including non-military sales;
- 10.7 Contribute to socio-economic objectives including skills development & transformation; and
- 10.8 Contribute to the broader economy by earning foreign revenue.

11 KEY PERFORMANCE MEASURES

In pursuing its mandate as set out in the Strategic Intent Statement and the governance framework referred to above, the Parties agree on the Key Performance Measures and Indicators set out in annexure A hereto for the period specified therein.

Dene's performance will be evaluated against these Key Performance Indicators and the Minister will be provided with regular reports on the progress with regard to achieving these targets. The KPI targets for the coming 12 months will constitute firm targets which performance will be measured against. These may change prior to the agreement of the following year's KPIs package, if appropriate, given actual results achieved and any changes in business circumstances or strategy over the coming financial year. The Key Performance Areas all carry the same weight of 25%.

In addition, the detailed implementation plan to achieve Dene's strategic objectives and the targets in annexure A will be set out in the Corporate Plan. The KPIs are further defined in Annexure B.



Initial

2015/2016



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA



Global supplier of world-class products

SHAREHOLDER'S COMPACT (“PERFORMANCE AGREEMENT”)

Entered into by and between

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, HEREIN REPRESENTED BY
THE MINISTER OF PUBLIC ENTERPRISES
("The Shareholder Representative")**

And

**DENEL SOC LTD, HEREIN REPRESENTED BY THE CHAIRPERSON OF THE BOARD OF
DIRECTORS**

2015/16

[Signature] *[Initial]*

- 9.2.6 A draft Shareholder's Compact together with a summary of Denel's business plan for discussion prior to the start of the financial year to which these documents relate.

10 ROLE OF THE EXECUTIVE AUTHORITY

The Parties acknowledge that Denel will not be able to achieve its objective without the support of the Minister. In particular the Minister will need to assist in ensuring that the policy and regulatory framework enables Denel to pursue its strategic objectives as set out herein.

11 THE STRATEGIC INTENT STATEMENT

The strategic intent statement sets out the mandate of Denel. In line with the agreed strategic intent Denel commits to the following: -

- 11.1 Support and maintain the DoD's sovereign and strategic industrial defence capabilities in an efficient and sustainable manner;
- 11.2 Contribute to industrial development towards the building of a dynamic defence related industrial cluster and to act as a catalyst for advanced manufacturing;
- 11.3 Long term growth strategy to grow and balance the current portfolio in order to increase sales, product and service offerings;
- 11.4 Pursue financial recovery and stability based on achieving profitability targets by increasing market share and achieving its revenue targets, as well as reducing costs;
- 11.5 Ensure on-time and on-cost deliveries on major programmes;
- 11.6 Contribute to socio-economic objectives including skills development and transformation;
- 11.7 Compliance with local and international policies, regulations and treaties as well as regulations and laws of the jurisdictions of where Denel conducts business.

12 STRATEGY IMPLEMENTATION

Denel has completed its turnaround phase and now is embarking on growth trajectory that will be characterised by a well-established, focussed and future orientated business culture and by 2018 will be renowned for:

2016/2017

Annexure A



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA



Global supplier of world-class products

SHAREHOLDER'S COMPACT ("PERFORMANCE AGREEMENT")

Entered into by and between

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, HEREIN REPRESENTED BY
THE MINISTER OF PUBLIC ENTERPRISES
("The Shareholder Representative")

And

DENEL SOC LTD, HEREIN REPRESENTED BY THE CHAIRPERSON OF THE BOARD OF
DIRECTORS

2016/17

Denel shareholder's compact 2016/17

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- 11.2 Contribute towards building a dynamic defence related industrial cluster and to act as a catalyst for the proliferation of advanced manufacturing capabilities beyond the defence and aerospace sector;
- 11.3 Implement the approved long term growth strategy while ensuring realisation of synergies across the product portfolio;
- 11.4 Ensure compliance with PFMA approvals related to new business acquisitions, the conditions of the government guarantees, and loan covenants;
- 11.5 Prudent cash management and the creation of a cash buffer to cover minimum of six months of operational costs (excludes direct costs);
- 11.6 Contribute to socio-economic objectives including skills development, job creation, preferential procurement, CSI and environmental sustainability;
- 11.7 Compliance with local and international policies, regulations and treaties as well as regulations and laws of the jurisdictions of where Denel conducts business.

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As part of Denel's profitable growth strategy phase, the entity's key focus for the near term is on financial viability through optimal business funding. By 2016/17, the business will have achieved the following:

- Quality revenue growth to more than R8.5bn, EBIT Margin at group level at about 5% after investments in R&D, other related transformation spend and provisions for restructuring the cost base;
- Stronger financial position underpinned by optimal gearing necessitating reduction of debt to R1.2bn level by 2019/20. Cash balance of about R650m will be generated building up to the first capital repayment of debt in 2017/18. The SOC will also pursue opportunities with other SOC's in order to realise the department's objective of greater


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SECTION 4



SEARCH INFORMATION

Summary

Search Type	CIPC COMPANY
Search Description	REGIMENTS CAPITAL (2004/023761/07)
Reference	20190314
Date	14/03/2019

COMPANY INFORMATION

Summary

Name	REGIMENTS CAPITAL
Registration Number	2004/023761/07
Type	PRIVATE COMPANY (PTY) LTD
Status	IN BUSINESS
Registration Date	23/08/2004
Average Age of Director	56

SARS VERIFICATION MATCHES

Trading Name	VAT Registration Number	Area
REGIMENTS CAPITAL	4620216665	JOHANNESBURG

ACTIVE DIRECTOR(S)

Director Name	ID Number	Status	Type	Appointed
LITHA MVELISO NYHONYHA	5903155902083	ACTIVE	DIRECTOR	23/08/2004
MAGANDHERAN PILLAY	6604025118087	ACTIVE	DIRECTOR	23/08/2004

RESIGNED DIRECTOR(S)

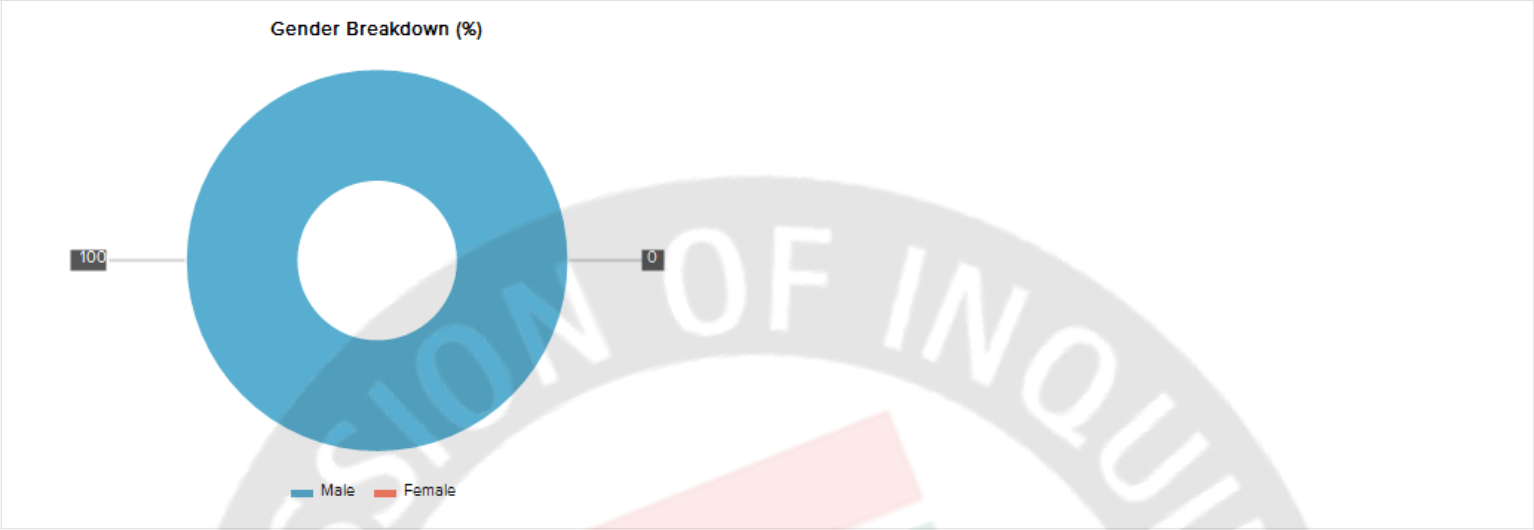
Director Name	ID Number	Status	Appointed	Resigned
JOHN CRAIG CHERTKOW	6706115138089	RESIGNED	23/08/2004	23/08/2004
CHRISTIAN GOUWS	5908285147004	RESIGNED	23/08/2004	23/08/2004
THULANI MOYO	7609ZF0000000	RESIGNED	23/08/2004	23/08/2004
ANDILE LINDA NYHONYHA	7205085874087	RESIGNED	23/08/2004	23/08/2004
WEST-EVANS AND ASSOCIATES	-	RESIGNED	30/10/2004	23/08/2004

DECEASED DIRECTOR(S)

Director Name	ID Number	Status	Appointed
No information available.			



DIRECTOR GENDER



AUDITOR(S)

Auditor Name	Profession Code	Status	Start Date
ALEX PHILIPPOU	SAICA	RESIGN	-
GRANT THORNTON	CA	RESIGN	15/06/2005
MALHERBE LOURENS	CA	RESIGN	-
SIZWENTSALUBAGOBODO INC	SAICA	RESIGN	-

Summary

Name	REGIMENTS CAPITAL
Short Name	-
Translated Name	REGIMENTS CAPITAL (2004/023761/07)
Registration Number	2004/023761/07
Old Registration Number	-
Type	PRIVATE COMPANY (PTY) LTD
Short Type	(PTY) LTD
CIPC Company Act Type	COMPANY (REGISTERED ACCORDING TO OLD CO ACT)
Status	IN BUSINESS
Tax Number	9106788152
Type Date	23/08/2004
Registration Date	23/08/2004
Start Date	23/08/2004
Status Date	-
Principal Description	FINANCE SERVICES AND RELATED ACTIVITIES.
Details Withdrawn From Public	NO
Standard Industrial Classification	FINANCIAL INTERMEDIATION, EXCEPT INSURANCE AND PENSION FUNDING
Financial Year End	FEBRUARY
Financial Effective Date	23/08/2004
Registered Address	35 FERGUSON ROAD, ILLOVO, JOHANNESBURG, GAUTENG, 2196
Postal Address	POSTNET SUITE 25, PRIVATE BAG X 11, BIRMAN PARK, GAUTENG, 2015
Region	GAUTENG
Country of Origin	-
Country	-
Authorised Capital	1000
Issued Capital	100
Authorised Shares	1000
Issued Shares	100
Form Received Date	-
Date on Form	-
Conversion Number	-



NO IMAGE
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DIRECTOR(S)	
Director 1 of 8	
First Name	JOHN CRAIG
Surname	CHERTKOW
ID Number	6706115138089
Date of Birth	11/06/1967
Gender	MALE
Age	51
Residential Address	22 WEST ROAD SOUTH, MORNINGSIDE, 2196
Postal Address	POSTNET SUITE 25, PRIVATE BAG X11, BIRNAM PARK, 2015
Type	DIRECTOR
Status	RESIGNED
Appointment Date	23/08/2004
Resignation Date	23/08/2004
Member Contribution	0%
Member Size	0%
Director 2 of 8	
First Name	CHRISTIAN
Surname	GOUWS
ID Number	5908285147004
Date of Birth	28/08/1959
Gender	MALE
Age	59
Residential Address	364 BROOKS STREET, MENLO PARK, 0081
Postal Address	P O BOX 35465, MENLO PARK, 0102
Type	DIRECTOR

Status	RESIGNED
Appointment Date	23/08/2004
Resignation Date	23/08/2004
Member Contribution	0%
Member Size	0%

Director 3 of 8

First Name	THULANI
Surname	MOYO
ID Number	7609ZF0000000
Date of Birth	-
Gender	-
Age	-
Residential Address	63 DOUGLAS DRIVE, DOUGLASDALE, 2021
Postal Address	POSTNET SUITE 25, PRIVATE BAG X11, BIRNAM PARK, 2015
Type	DIRECTOR
Status	RESIGNED
Appointment Date	23/08/2004
Resignation Date	23/08/2004
Member Contribution	0%
Member Size	0%

Director 4 of 8

First Name	ANDILE LINDA
Surname	NYHONYHA
ID Number	7205085874087
Date of Birth	08/05/1972
Gender	MALE
Age	46
Residential Address	64 15TH STREET, RIVERCLUB, SANDTON, 2196
Postal Address	POSTNET SUITE 25, PRIVATE BAG X11, BIRNAM PARK, 2196
Type	DIRECTOR
Status	RESIGNED
Appointment Date	23/08/2004
Resignation Date	23/08/2004
Member Contribution	0%
Member Size	0%

Director 5 of 8

First Name	LITHA MVELISO
Surname	NYHONYHA
ID Number	5903155902083

Date of Birth	15/03/1959
Gender	MALE
Age	59
Residential Address	18 CLONMORE ROAD, BRYANSTON, JOHANNESBURG, GAUTENG, 2191
Postal Address	POSTNET SUITE 25, PRIVATE BAG X11, BIRNAM PARK, GAUTENG, 2015
Type	DIRECTOR
Status	ACTIVE
Appointment Date	23/08/2004
Resignation Date	23/08/2004
Member Contribution	0%
Member Size	0%

Director 6 of 8

First Name	MAGANDHERAN
Surname	PILLAY
ID Number	6604025118087
Date of Birth	02/04/1966
Gender	MALE
Age	52
Residential Address	44 8TH AVENUE, HOUGHTON, JOHANNESBURG, GAUTENG, 2196
Postal Address	POSTNET SUITE 25, PRIVATE BAG X11, BIRNAM PARK, GAUTENG, 2015
Type	DIRECTOR
Status	ACTIVE
Appointment Date	23/08/2004
Resignation Date	23/08/2004
Member Contribution	0%
Member Size	0%

Director 7 of 8

First Name	ERIC ANTHONY
Surname	WOOD
ID Number	6305225020087
Date of Birth	22/05/1963
Gender	MALE
Age	55
Residential Address	213 JUTLAND PLACE, SANDHURST, JOHANNESBURG, GAUTENG, 2196
Postal Address	POSTNET SUITE 25, PRIVATE BAG X11, BIRNAM PARK, GAUTENG, 2015
Type	DIRECTOR
Status	REMOVE
Appointment Date	23/08/2004
Resignation Date	23/08/2004
Member Contribution	0%

Member Size	0%
-------------	----

Director 8 of 8

First Name	-
Surname	WEST-EVANS AND ASSOCIATES
ID Number	-
Date of Birth	-
Gender	-
Age	-
Residential Address	-
Postal Address	GROUND FLOOR, 14 BEDFORDVIEW OFFICE PARK, 1 RILEY ROAD, BEDFORDVIEW, 2007
Type	SECRETARY COMPANY/CLOSE CORPORATION
Status	RESIGNED
Appointment Date	30/10/2004
Resignation Date	23/08/2004
Member Contribution	0%
Member Size	0%

AUDITOR(S)**Auditor 1 of 4**

Auditor Name	ALEX PHILIPPOU
Profession Number	946016-00
Profession Code	SAICA
Business Address	BUILDING 4, SUMMIT PLACE OFFICE PARK, 221 GARSFONTEIN ROAD, MENLYN, 0063
Postal Address	PRIVATE BAG X2008, MENLYN, 0063
Type	DESIGNATED AUDITOR (NATURAL PERSON)
Status	RESIGN
Start Date	-
End Date	29/11/2017
Form Date (CM1 Date)	-
Expiry Date	-
Registration Entry Date	-
Form Received Date	-
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

Auditor 2 of 4

Auditor Name	GRANT THORNTON
Profession Number	903485E
Profession Code	CA
Business Address	137 DAISY STREET, CNR GRAYSTON DRIVE, SANDOWN, 2196

Postal Address	PRIVATE BAG X28, BENMORE, 2010
Type	AUDITOR
Status	RESIGN
Start Date	15/06/2005
End Date	-
Form Date (CM1 Date)	22/02/2006
Expiry Date	-
Registration Entry Date	22/02/2006
Form Received Date	22/02/2006
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

Auditor 3 of 4

Auditor Name	MALHERBE LOURENS
Profession Number	-
Profession Code	CA
Business Address	326 RIVONIA BOULEVARD, RIVONIA, 2128
Postal Address	P O BOX 4590, RANDBURG, 2125
Type	AUDITOR
Status	RESIGN
Start Date	-
End Date	15/06/2005
Form Date (CM1 Date)	-
Expiry Date	-
Registration Entry Date	-
Form Received Date	-
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

Auditor 4 of 4

Auditor Name	SIZWENTSALUBAGOBODO INC
Profession Number	946016
Profession Code	SAICA
Business Address	BUILDING 4, SUMMIT PLACE OFFICE PARK, 221 GARSFONTEIN ROAD, MENLYN, 0063
Postal Address	PRIVATE BAG X2008, MENLYN, 0063
Type	AUDITOR
Status	RESIGN
Start Date	-

End Date	29/11/2017
Form Date (CM1 Date)	-
Expiry Date	-
Registration Entry Date	-
Form Received Date	-
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

CAPITAL INFORMATION

Type	Capital Amount	Capital Premium	Number of Shares	Parri Value
AUTHORIZED ORDINARY	R 1,00	0	1000	0
ISSUED ORDINARY	R 1,00	0	1000	0

CHANGE HISTORY

History 1 of 48

Effective Date	05/04/2018
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	NOTICE OF CHANGE OF AUDITOR: ALEX PHILIPPOU RESIGNED

History 2 of 48

Effective Date	11/10/2017
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 587542722

History 3 of 48

Effective Date	08/12/2016
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME = PILLAYFIRST NAMES = MAGANDHERANSTATUS = ACTIVE

History 4 of 48

Effective Date	08/12/2016
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME = NYHONYHAFIRST NAMES = LITHA MVELISOSTATUS = ACTIVE

History 5 of 48

Effective Date	26/10/2016
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR LITHA MVELISO NYHONYHA DETAILS WAS CHANGED

History 6 of 48

Effective Date	26/10/2016
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Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR ERIC ANTHONY WOOD DETAILS WAS CHANGED
History 7 of 48	
Effective Date	26/10/2016
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR MAGANDHERAN PILLAY DETAILS WAS CHANGED
History 8 of 48	
Effective Date	12/10/2016
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 553839448
History 9 of 48	
Effective Date	09/03/2016
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR MAGANDHERAN PILLAY DETAILS WAS CHANGED
History 10 of 48	
Effective Date	09/03/2016
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR ERIC ANTHONY WOOD DETAILS WAS CHANGED
History 11 of 48	
Effective Date	09/03/2016
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR LITHA MVELISO NYHONYHA DETAILS WAS CHANGED
History 12 of 48	
Effective Date	06/02/2016
Change Type	REGISTERED ADDRESS CHANGE
Memo	35 FERGUSON ROAD ILLOVO JOHANNESBURG GAUTENG2196
History 13 of 48	
Effective Date	08/12/2015
Change Type	REGISTERED ADDRESS CHANGE
Memo	35 FERGUSON ROAD ILLOVO ILLOVO GAUTENG2196
History 14 of 48	
Effective Date	14/09/2015
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 529350551

History 15 of 48

Effective Date	24/08/2015
Change Type	72
Memo	NO VALID SMS OR EMAIL ADDRESS FOR ENTERPRISE M2004023761

History 16 of 48

Effective Date	07/05/2015
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	CHANGE RECORDNAME : = GRANT THORNTONSTATUS : = RESIGN

History 17 of 48

Effective Date	07/05/2015
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	ADD RECORDNAME : = SIZWENTSALUBAGOBODO INCSTATUS : = CURRENT

History 18 of 48

Effective Date	07/05/2015
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	ADD RECORDNAME : = ALEX PHILIPPOUSTATUS : = CURRENT

History 19 of 48

Effective Date	25/09/2014
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 51783240

History 20 of 48

Effective Date	01/08/2014
Change Type	LOCATION OF COMPANY RECORDS
Memo	-

History 21 of 48

Effective Date	25/09/2013
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 54308390

History 22 of 48

Effective Date	20/04/2010
Change Type	REGISTERED ADDRESS CHANGE
Memo	91 CENTRAL STREETHOUGHTON2198

History 23 of 48

Effective Date	20/04/2010
Change Type	POSTAL ADDRESS CHANGE
Memo	POSTNET SUITE 25PRIVATE BAG X 11BIRNAM PARK 2015
History 24 of 48	
Effective Date	18/03/2010
Change Type	AR RESTORE INTO BUSINESS (25-24)
Memo	ANNUAL RETURN NON COMPLIANCE - CANCELLATION OF DEREGISTRATION
History 25 of 48	
Effective Date	13/11/2009
Change Type	AR IN DEREGISTRATION
Memo	ANNUAL RETURN NON COMPLIANCE - DEREGISTRATIONREGISTRATION DATE: 23/08/2004AR DUE DATE: 01/08/2008AR LATE DATE: 01/10/2008DEREGISTRATION COMMENCE DATE: 01/04/2009DEREGISTRATION ACTION DATE: 13/11/2009
History 26 of 48	
Effective Date	16/11/2006
Change Type	REGISTERED ADDRESS CHANGE
Memo	PENTHOUSE UNIT 43/F, BUILDING H3024 THE HIGH STREETMELROSE ARCH2196
History 27 of 48	
Effective Date	16/11/2006
Change Type	POSTAL ADDRESS CHANGE
Memo	POSTNET SUITE 25PRIVATE BAG X 11BIRNAM PARK2015
History 28 of 48	
Effective Date	26/10/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=PILLAYFULL FORENAMES=MAGANDHERANID NO=6604025118087STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 29 of 48	
Effective Date	26/10/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=WOODFULL FORENAMES=ERIC ANTHONYID NO=6305225020087STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 30 of 48	
Effective Date	26/10/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=NYHONYHAFULL FORENAMES=LITHA MVELISAID NO=5903150000000STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 31 of 48	

Effective Date	23/08/2006
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	WEST-EVANS AND ASSOCIATESSTATUS : RESIGN
History 32 of 48	
Effective Date	10/08/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=CHERTKOWFULL FORENAMES=JOHN CRAIGID NO=6706115138089STATUS :RESIGNEDNATURE OF CHANGE=RESIGNATION
History 33 of 48	
Effective Date	26/07/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=MOYOFULL FORENAMES=THULANIID NO=7609ZF0000000STATUS :RESIGNEDNATURE OF CHANGE=RESIGNATION
History 34 of 48	
Effective Date	12/07/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=NYHONYHAFULL FORENAMES=ANDILE LINDAID NO=7205085874087STATUS :RESIGNEDNATURE OF CHANGE=RESIGNATION
History 35 of 48	
Effective Date	15/06/2005
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	PRIVATE BAG X28BENMORE2010STATUS : ADDRESS CHANGE
History 36 of 48	
Effective Date	15/06/2005
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	-
History 37 of 48	
Effective Date	10/11/2004
Change Type	POSTAL ADDRESS CHANGE
Memo	P OBOX 35465MENLO PARK0102
History 38 of 48	
Effective Date	10/11/2004
Change Type	REGISTERED ADDRESS CHANGE
Memo	287 LYNNWOOD ROADMENLO PARK0081
History 39 of 48	
Effective Date	10/11/2004

Change Type	NAME CHANGE
Memo	MIDNIGHT MASQUERADE PROPERTIES 165
History 40 of 48	
Effective Date	10/11/2004
Change Type	NATURE OF BUSINESS CHANGE
Memo	81
History 41 of 48	
Effective Date	12/10/2004
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME = GOUWSFIRST NAMES = CHRISTIANSTATUS = RESIGNED
History 42 of 48	
Effective Date	12/10/2004
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	ADD RECORDSURNAME = PILLAYFIRST NAMES = MAGANDHERANSTATUS = ACTIVE
History 43 of 48	
Effective Date	12/10/2004
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	ADD RECORDSURNAME = MOYOFIRST NAMES = THULANISTATUS = ACTIVE
History 44 of 48	
Effective Date	12/10/2004
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	ADD RECORDSURNAME = WOODFIRST NAMES = ERIC ANTHONYSTATUS = ACTIVE
History 45 of 48	
Effective Date	12/10/2004
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	ADD RECORDSURNAME = CHERTKOWFIRST NAMES = JOHN CRAIGSTATUS = ACTIVE
History 46 of 48	
Effective Date	12/10/2004
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	ADD RECORDSURNAME = NYHONYHAFIRST NAMES = LITHA MVELISASTATUS = ACTIVE
History 47 of 48	
Effective Date	12/10/2004
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	ADD RECORDSURNAME = NYHONYHAFIRST NAMES = ANDILE LINDASTATUS = ACTIVE

History 48 of 48

Effective Date	12/10/2004
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	ADD RECORDCOMPANY NAME = WEST-EVANS AND ASSOCIATESFIRST NAMES = STATUS = ACTIVE

REPORT INFORMATION

Date of Information	14/03/2019 10:50
Print Date	14-03-2019 10:50
Generated By	INVESTIGATOR 1
Reference	20190314
Report Type	CIPC COMPANY



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SEARCH INFORMATION

Summary

Search Type	CIPC COMPANY
Search Description	ELGASOLVE (2010/017836/07)
Reference	20190314
Date	14/03/2019

COMPANY INFORMATION

Summary

Name	ELGASOLVE
Registration Number	2010/017836/07
Type	PRIVATE COMPANY (PTY) LTD
Status	IN BUSINESS
Registration Date	31/08/2010
Average Age of Director	41

SARS VERIFICATION MATCHES

Trading Name	VAT Registration Number	Area
No information available.		

ACTIVE DIRECTOR(S)

Director Name	ID Number	Status	Type	Appointed
SALIM AZIZ ESSA	7801155017084	ACTIVE	DIRECTOR	02/12/2013

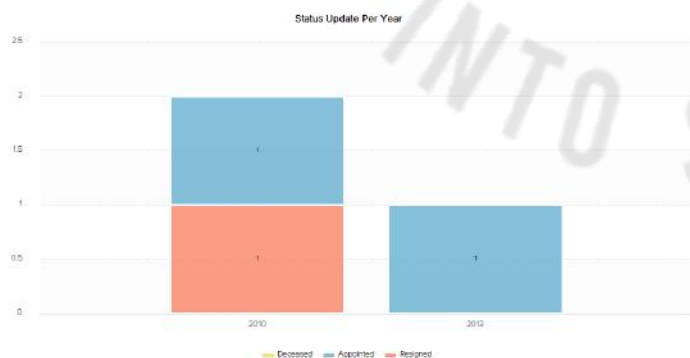
RESIGNED DIRECTOR(S)

Director Name	ID Number	Status	Appointed	Resigned
CHRISTIAN GOUWS	5908285147087	RESIGNED	31/08/2010	31/08/2010

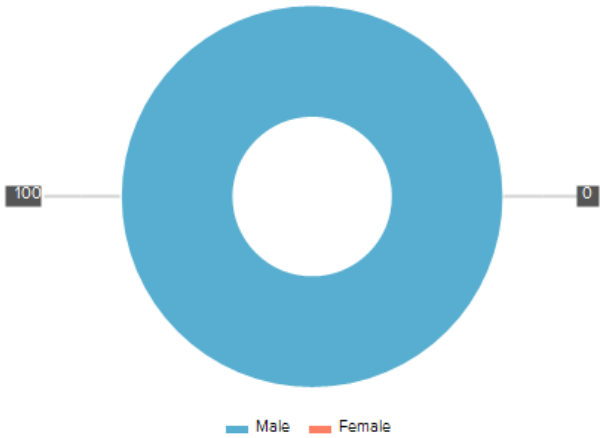
DECEASED DIRECTOR(S)

Director Name	ID Number	Status	Appointed
No information available.			

DIRECTOR TIMELINE



Gender Breakdown (%)



AUDITOR(S)

Auditor Name	Profession Code	Status	Start Date
LSG INTEGRATED	SAICA	CURRENT	-

COMPANY INFORMATION

Summary

Name	ELGASOLVE
Short Name	-
Translated Name	ELGASOLVE (2010/017836/07)
Registration Number	2010/017836/07
Old Registration Number	-
Type	PRIVATE COMPANY (PTY) LTD
Short Type	(PTY) LTD
CIPC Company Act Type	COMPANY (REGISTERED ACCORDING TO OLD CO ACT)
Status	IN BUSINESS
Tax Number	9077289180
Type Date	31/08/2010
Registration Date	31/08/2010
Start Date	31/08/2010
Status Date	-
Principal Description	GENERAL TRADING IN ALL ASPECTS
Details Withdrawn From Public	NO
Standard Industrial Classification	RETAIL TRADE, EXCEPT OF MOTOR
Financial Year End	FEBRUARY
Financial Effective Date	31/08/2010
Registered Address	UNIT 20, NO 1 MELROSE BOULEVARD, MELROSE ARCH, MELROSE, 2198
Postal Address	UNIT 20, NO 1 MELROSE BOULEVARD, MELROSE ARCH, MELROSE, 2198
Region	GAUTENG
Country of Origin	-
Country	-
Authorised Capital	-
Issued Capital	-

Authorised Shares	-
Issued Shares	-
Form Received Date	-
Date on Form	-
Conversion Number	-

PROVIDED BY GOOGLE

NO IMAGE
AVAILABLENO IMAGE
AVAILABLE

DIRECTOR(S)

Director 1 of 2

First Name	CHRISTIAN
Surname	GOUWS
ID Number	5908285147087
Date of Birth	28/08/1959
Gender	MALE
Age	59
Residential Address	329 ANCHELLA STREET, FAERIE GLEN, 0043
Postal Address	P O BOX 35465, MENLO PARK, 0102
Type	DIRECTOR
Status	RESIGNED
Appointment Date	31/08/2010
Resignation Date	31/08/2010
Member Contribution	0%
Member Size	0%

Director 2 of 2

First Name	SALIM AZIZ
Surname	ESSA

DIRECTOR(S)

REF_FILE-138

ID Number	7801155017084
Date of Birth	15/01/1978
Gender	MALE
Age	41
Residential Address	39 - 1ST STREET, HOUGHTON, JOHANNESBURG, 2196
Postal Address	39 - 1ST STREET, HOUGHTON, HOUGHTON, JOHANNESBURG, 2196
Type	DIRECTOR
Status	ACTIVE
Appointment Date	02/12/2013
Resignation Date	-
Member Contribution	0%
Member Size	0%

AUDITOR(S)

Auditor 1 of 1

Auditor Name	LSG INTEGRATED
Profession Number	955361
Profession Code	SAICA
Business Address	318 RIVONIA BOULEVARD, RIVONIA, 2128
Postal Address	P O BOX 457, RIVONIA, 2128
Type	AUDITOR
Status	CURRENT
Start Date	-
End Date	-
Form Date (CM1 Date)	-
Expiry Date	-
Registration Entry Date	-
Form Received Date	-
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

CAPITAL INFORMATION

Type	Capital Amount	Capital Premium	Number of Shares	Parri Value
AUTHORIZED ORDINARY	-	0	1000	0
ISSUED ORDINARY	-	0	100	0

CHANGE HISTORY

History 1 of 11

Effective Date	04/04/2017
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 567572475

History 2 of 11

Effective Date	01/09/2015
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 529038301

History 3 of 11

Effective Date	14/01/2015
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 523634210

History 4 of 11

Effective Date	11/12/2013
Change Type	POSTAL ADDRESS CHANGE
Memo	P O BOX 35465MENLO PARK0102

History 5 of 11

Effective Date	11/12/2013
Change Type	REGISTERED ADDRESS CHANGE
Memo	323 LYNNWOOD ROADMENLO PARK0102

History 6 of 11

Effective Date	04/12/2013
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 51800140

History 7 of 11

Effective Date	04/12/2013
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	AUTHORISING DIRECTOR DETAILSDIRECTOR FULL FORENAMES=CHRISTIANSURNAME=GOUWSID NUMBER=5908285147087CUSTOMER DETAILS DIRECTOR FULL FORENAMES=DENNISSURNAME=DE BOERID NUMBER=4408045062081

History 8 of 11

Effective Date	04/12/2013
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	Unlock PasswordUnlocked byTOMMY5Password successfully sent to DENNISDEBOER1@TELKOMSA.NET

History 9 of 11

Effective Date	02/12/2013
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	FULL FORENAMES=SALIM AZISURNAME=ESSAAPPOINTMENTDATE=02/12/2013STATUS=A

History 10 of 11

Effective Date	11/01/2013
Change Type	AR IN DEREGISTRATION
Memo	ANNUAL RETURN NON COMPLIANCE - IN PROCESS OF DEREGISTRATION NO PAYMENT HAVE BEEN MADE.

History 11 of 11

Effective Date	31/08/2010
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	FULL FORENAMES=CHRISTIANSURNAME=GOUWSAPPOINTMENTDATE=31/08/2010STATUS=C

REPORT INFORMATION

Date of Information	14/03/2019 10:41	
Print Date	14-03-2019 10:41	
Generated By	INVESTIGATOR 1	
Reference	20190314	
Report Type	CIPC COMPANY	

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SEARCH INFORMATION**Summary**

Search Type	CIPC COMPANY
Search Description	WESTDAWN INVESTMENTS (2006/020386/07)
Reference	20190314
Date	14/03/2019

COMPANY INFORMATION**Summary**

Name	WESTDAWN INVESTMENTS
Registration Number	2006/020386/07
Type	PRIVATE COMPANY (PTY) LTD
Status	DEREGISTRATION PROCESS
Registration Date	29/06/2006
Average Age of Director	41

SARS VERIFICATION MATCHES

Trading Name	VAT Registration Number	Area
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No information available.

ACTIVE DIRECTOR(S)

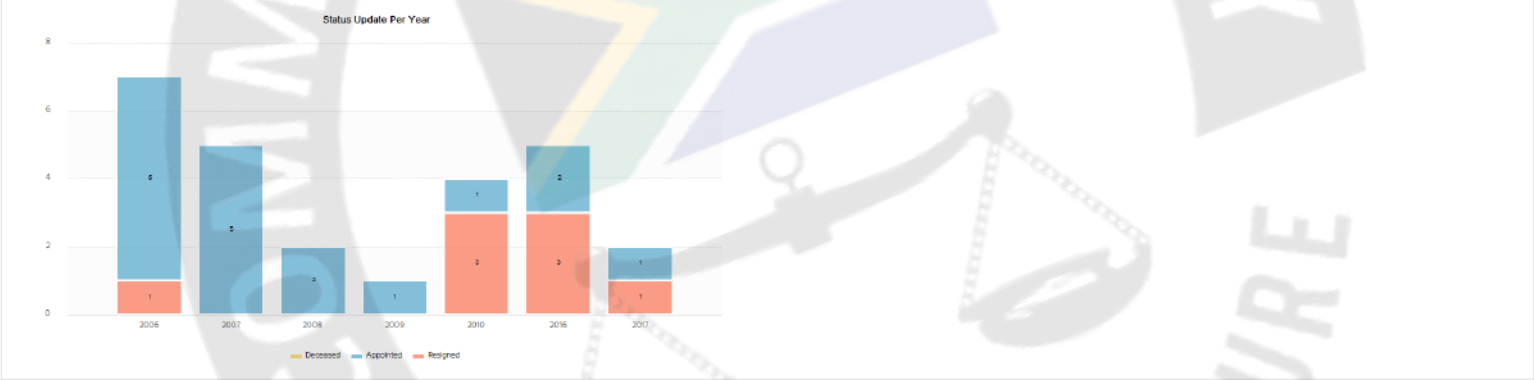
Director Name	ID Number	Status	Type	Appointed
RONICA RAGAVAN	7709170007081	ACTIVE	DIRECTOR	30/07/2006
JAGANNATH PRASAD ARORA	H0300778	ACTIVE	DIRECTOR	11/09/2017

Director Name	ID Number	Status	Appointed	Resigned
ABDUL WAHAB JAFFER	5311275098081	RESIGNED	29/06/2006	-
RAVINDRA NATH	5511180000000	RESIGNED	30/07/2006	30/07/2006
JAISHANKAR RAMCHANDRAN	650926	RESIGNED	30/07/2006	26/02/2010
VILASOOR VENKATESAN GIRIDHAR (ALTERNATE DIRECTOR)	6305205249185	RESIGNED	20/11/2006	-
JACOBUS GIDEON HOON	5702055077081	RESIGNED	20/11/2006	-
VILASOOR VENKATESAN GIRIDHAR	6305205249185	RESIGNED	27/07/2007	-
ANTON LUBBE (ALTERNATE TO RONICA GOVENDER)	5907155110084	RESIGNED	08/10/2007	-
MENZI GLEN MBATHA	7902115376089	RESIGNED	08/10/2007	-
PARAMASIVAN HURRINEETHIAN NAIDOO	6602185100085	RESIGNED	08/10/2007	-
WENDY YVONNE NOMATHEMBA LUHABE	5705290765089	RESIGNED	20/11/2007	-
JAGDISH RASSIKGHANDRA PAREKH	6106035685089	RESIGNED	26/05/2008	15/04/2010
DUDUZANE ZUMA	8205205254086	RESIGNED	30/09/2008	07/04/2016
RAJESH KUMAR GUPTA	7208056345087	RESIGNED	03/02/2009	01/03/2016
JACQUES ROUX	7401315087083	RESIGNED	15/04/2010	30/04/2010
SERUFE GRACE MOLATLHEGI	6302180832085	RESIGNED	09/05/2016	20/06/2016
LOUIS BOTHA LOURENS	6205315076082	RESIGNED	09/05/2016	11/09/2017

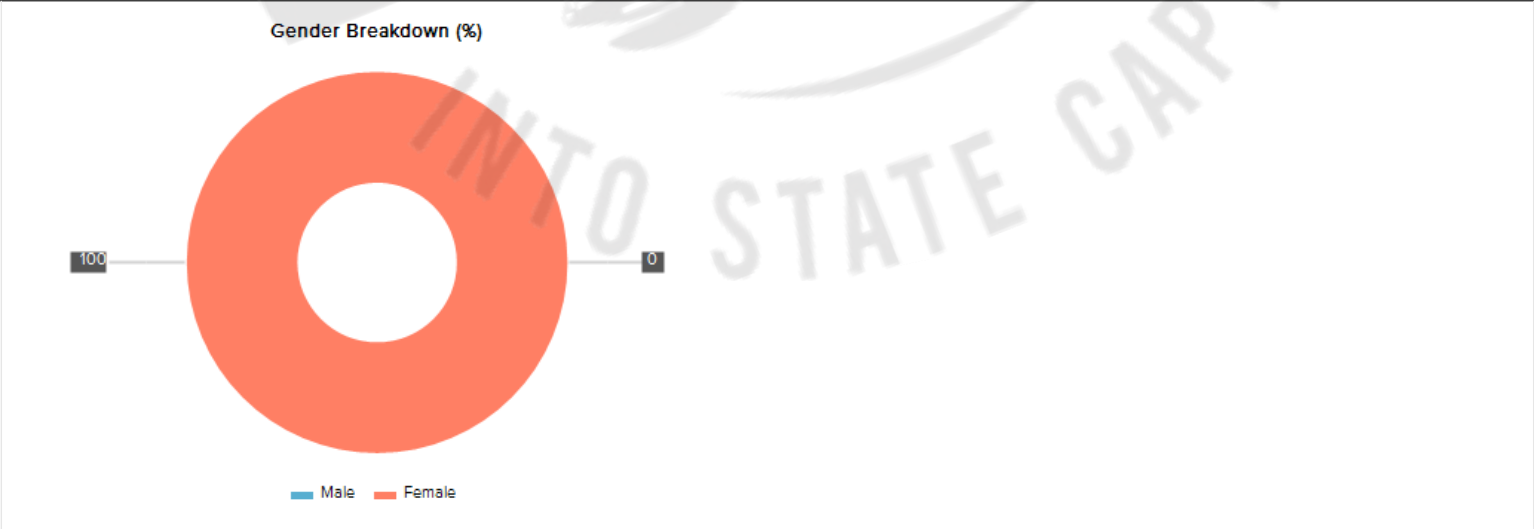
DECEASED DIRECTOR(S)

Director Name	ID Number	Status	Appointed
No information available.			

DIRECTOR TIMELINE



DIRECTOR GENDER



Auditor Name	Profession Code	Status	Start Date
CAJEE RAZAK & ASSOCIATES	CA	RESIGN	03/04/2007
GOBODO INCORPORATED	CA	RESIGN	07/11/2006
GOBODO INCORPORATED	CA	RESIGN	07/11/2006
GOBODO INCORPORATED	CA	RESIGN	06/11/2006
KPMG INCORPORATED	CA	RESIGN	26/02/2008
NERIDHA MOODLEY	IRBA	RESIGN	-
R A HELLMANN AND COMPANY	CA	RESIGN	-
SIZWENTSALUBAGOBODO INC	IRBA	RESIGN	-

COMPANY INFORMATION

Summary

Name	WESTDAWN INVESTMENTS
Short Name	-
Translated Name	WESTDAWN INVESTMENTS (2006/020386/07)
Registration Number	2006/020386/07
Old Registration Number	-
Type	PRIVATE COMPANY (PTY) LTD
Short Type	(PTY) LTD
CIPC Company Act Type	COMPANY (REGISTERED ACCORDING TO OLD CO ACT)
Status	DEREGISTRATION PROCESS
Tax Number	9282159160
Type Date	29/06/2006
Registration Date	29/06/2006
Start Date	29/06/2006
Status Date	-
Principal Description	MINING ,MINING SERVICES AND GENERAL INVESTMENTS
Details Withdrawn From Public	NO
Standard Industrial Classification	OTHER MINING AND QUARRYING
Financial Year End	FEBRUARY
Financial Effective Date	29/06/2006
Registered Address	144 KATHERINE STREET, BLOCK A LOWER GROUND FLOOR GRAYSTON, SANDTON, GAUTENG, 2196
Postal Address	P O BOX 1501, HALFWAY HOUSE, HALFWAY HOUSE, GAUTENG, 1685
Region	GAUTENG
Country of Origin	-
Country	-
Authorised Capital	1000
Issued Capital	100
Authorised Shares	1000
Issued Shares	100
Form Received Date	-
Date on Form	-
Conversion Number	-



NO IMAGE
AVAILABLE



NO IMAGE
AVAILABLE

DIRECTOR(S)

Director 1 of 18

First Name	ABDUL WAHAB
Surname	JAFFER
ID Number	5311275098081
Date of Birth	27/11/1953
Gender	MALE
Age	65
Residential Address	278 SASTRI AVENUE, CLAUDIUS, 0037
Postal Address	P O BOX 784, PRETORIA, 0001
Type	DIRECTOR
Status	RESIGNED
Appointment Date	29/06/2006
Resignation Date	-
Member Contribution	0%
Member Size	0%

Director 2 of 18

First Name	RONICA
Surname	RAGAVAN
ID Number	7709170007081
Date of Birth	17/09/1977
Gender	FEMALE
Age	41
Residential Address	129A BISHOP BIRD STREET, CENTURION, CENTURION, GAUTENG, 0157
Postal Address	PRIVATE BAG X180, HALFWAY HOUSE, HALFWAY HOUSE, GAUTENG, 1685
Type	DIRECTOR

Status	ACTIVE
Appointment Date	30/07/2006
Resignation Date	-
Member Contribution	0%
Member Size	0%

Director 3 of 18

First Name	RAVINDRA
Surname	NATH
ID Number	5511180000000
Date of Birth	18/11/1955
Gender	FEMALE
Age	63
Residential Address	89 GAZELLE AVENUE, CORPORATE PARK, OLD PRETORIA ROAD, MIDRAND, 1685
Postal Address	PRIVATE BAG X104, HALFWAY HOUSE, 1685
Type	DIRECTOR
Status	RESIGNED
Appointment Date	30/07/2006
Resignation Date	30/07/2006
Member Contribution	0%
Member Size	0%

Director 4 of 18

First Name	JAISHANKAR
Surname	RAMCHANDRAN
ID Number	650926
Date of Birth	26/09/1965
Gender	UNKNOWN
Age	53
Residential Address	14 RAINTREE CRESCENT, FOURWAYS GARDENS PHASE 2, FOURWAYS, 2055
Postal Address	PRIVATE BAG X104, HALFWAY HOUSE, 1685
Type	DIRECTOR
Status	RESIGNED
Appointment Date	30/07/2006
Resignation Date	26/02/2010
Member Contribution	0%
Member Size	0%

Director 5 of 18

First Name	VILASOOR VENKATESAN
Surname	GIRIDHAR (ALTERNATE DIRECTOR)
ID Number	6305205249185

Date of Birth	20/05/1963
Gender	MALE
Age	55
Residential Address	20/2, JAN HENNIQUE, ROSEWOOD AVENUE, 0046
Postal Address	P O BOX 10654, CENTURION, 0046
Type	DIRECTOR
Status	RESIGNED
Appointment Date	20/11/2006
Resignation Date	-
Member Contribution	0%
Member Size	0%

Director 6 of 18

First Name	JACOBUS GIDEON
Surname	HOON
ID Number	5702055077081
Date of Birth	05/02/1957
Gender	MALE
Age	62
Residential Address	33 BACH AVENUE, VANDER HOFFPARK, 2531
Postal Address	P O BOX 10654, CENTURION, 0046
Type	DIRECTOR
Status	RESIGNED
Appointment Date	20/11/2006
Resignation Date	-
Member Contribution	0%
Member Size	0%

Director 7 of 18

First Name	VILASOOR VENKATESAN
Surname	GIRIDHAR
ID Number	6305205249185
Date of Birth	20/05/1963
Gender	MALE
Age	55
Residential Address	20/2 JAN HENNIQUE, ROSEWOOD AVENUE, 0046
Postal Address	P O BOX 10654, CENTURION, 0046
Type	DIRECTOR
Status	RESIGNED
Appointment Date	27/07/2007
Resignation Date	-
Member Contribution	0%

Member Size	0%
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Director 8 of 18

First Name	ANTON
Surname	LUBBE (ALTERNATE TO RONICA GOVENDER)
ID Number	5907155110084
Date of Birth	15/07/1959
Gender	MALE
Age	59
Residential Address	1 WATSON CRESCENT, SILVER LAKES, 0054
Postal Address	SUITE 2, PRIVATE BAG X30, LYNWOOD RIDGE, 0040
Type	DIRECTOR
Status	RESIGNED
Appointment Date	08/10/2007
Resignation Date	-
Member Contribution	0%
Member Size	0%

Director 9 of 18

First Name	MENZI GLEN
Surname	MBATHA
ID Number	7902115376089
Date of Birth	11/02/1979
Gender	MALE
Age	40
Residential Address	3 CAMBRIDGE AVENUE, CRAIGHALL PARK, JOHANNESBURG, 2196
Postal Address	135 WEST STREET, SANDTON, 2196
Type	DIRECTOR
Status	RESIGNED
Appointment Date	08/10/2007
Resignation Date	-
Member Contribution	0%
Member Size	0%

Director 10 of 18

First Name	PARAMASIVAN HURRINEETHIAN
Surname	NAIDOO
ID Number	6602185100085
Date of Birth	18/02/1966
Gender	MALE
Age	53
Residential Address	17 MARION PLACE, DOWERGLEN, 1610

Postal Address	P O BOX 41277, CRAIGHALL, 2024
Type	DIRECTOR
Status	RESIGNED
Appointment Date	08/10/2007
Resignation Date	-
Member Contribution	0%
Member Size	0%

Director 11 of 18

First Name	WENDY YVONNE NOMATHEMBA
Surname	LUHABE
ID Number	5705290765089
Date of Birth	29/05/1957
Gender	FEMALE
Age	61
Residential Address	98 - 7TH AVENUE, MELVILLE, 2092
Postal Address	P O BOX 91413, AUCKLAND PARK, 2006
Type	DIRECTOR
Status	RESIGNED
Appointment Date	20/11/2007
Resignation Date	-
Member Contribution	0%
Member Size	0%

Director 12 of 18

First Name	JAGDISH RASSIKGHANDRA
Surname	PAREKH
ID Number	6106035685089
Date of Birth	03/06/1961
Gender	MALE
Age	57
Residential Address	89 GAZELLE AVENUE, OLD PRETORIA ROAD, JOHANNESBURG, 2001
Postal Address	PRIVATE BAG X180, HALFWAY HOUSE, MIDRAND, 1685
Type	DIRECTOR
Status	RESIGNED
Appointment Date	26/05/2008
Resignation Date	15/04/2010
Member Contribution	0%
Member Size	0%

Director 13 of 18

First Name	DUDUZANE
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Surname	ZUMA
ID Number	8205205254086
Date of Birth	20/05/1982
Gender	MALE
Age	36
Residential Address	NO 18 GRISWOLD, SAXONWOLD, 2196
Postal Address	POSTNET SUITE 458, PRIVATE BAG X 9, BENMORE, 2010
Type	DIRECTOR
Status	RESIGNED
Appointment Date	30/09/2008
Resignation Date	07/04/2016
Member Contribution	0%
Member Size	0%

Director 14 of 18

First Name	RAJESH KUMAR
Surname	GUPTA
ID Number	7208056345087
Date of Birth	05/08/1972
Gender	MALE
Age	46
Residential Address	NO 5 SAXONWOLD DRIVE, SAXONWOLD, 2196
Postal Address	PRIVATE BAG X 9, BENMORE, 2010
Type	DIRECTOR
Status	RESIGNED
Appointment Date	03/02/2009
Resignation Date	01/03/2016
Member Contribution	0%
Member Size	0%

Director 15 of 18

First Name	JACQUES
Surname	ROUX
ID Number	7401315087083
Date of Birth	31/01/1974
Gender	MALE
Age	45
Residential Address	68 HAMPTON ROAD, GLEN AUSTIN, 1685
Postal Address	P.O. BOX 1501, HALFWAY HOUSE, 1685
Type	DIRECTOR
Status	RESIGNED
Appointment Date	15/04/2010

Resignation Date	30/04/2010
Member Contribution	0%
Member Size	0%
Director 16 of 18	
First Name	SERUFE GRACE
Surname	MOLATLHEGI
ID Number	6302180832085
Date of Birth	18/02/1963
Gender	FEMALE
Age	56
Residential Address	4506 STRIGA RIVEA STREET, EXT40 DOORNPOORT, MONTANA PRETORIA, GAUTENG, 0182
Postal Address	PO BOX 9111168, ROSSLYN, ROSSLYN, GAUTENG, 0200
Type	DIRECTOR
Status	RESIGNED
Appointment Date	09/05/2016
Resignation Date	20/06/2016
Member Contribution	0%
Member Size	0%
Director 17 of 18	
First Name	LOUIS BOTHA
Surname	LOURENS
ID Number	6205315076082
Date of Birth	31/05/1962
Gender	MALE
Age	56
Residential Address	SANTOLINA AVENUE, 66A GEELHOUTPARK, RUSTENBURG, NORTH WEST, 0299
Postal Address	PO BOX 1501, HALFWAY HOUSE, HALFWAY HOUSE, GAUTENG, 1685
Type	DIRECTOR
Status	RESIGNED
Appointment Date	09/05/2016
Resignation Date	11/09/2017
Member Contribution	0%
Member Size	0%
Director 18 of 18	
First Name	JAGANNATH PRASAD
Surname	ARORA
ID Number	H0300778
Date of Birth	-
Gender	-

Age	-
Residential Address	295 WILLOW CREST, SAGEWOOD AVENUE, MIDRAND, GAUTENG, 1685
Postal Address	295 WILLOW CREST, SAGEWOOD AVENUE, MIDRAND, GAUTENG, 1685
Type	DIRECTOR
Status	ACTIVE
Appointment Date	11/09/2017
Resignation Date	-
Member Contribution	0%
Member Size	0%

AUDITOR(S)

Auditor 1 of 8

Auditor Name	CAJEE RAZAK & ASSOCIATES
Profession Number	00217453
Profession Code	CA
Business Address	1ST FLOOR SALEY HOUSE, 81 CROWN ROAD, FORDSBURG, 2092
Postal Address	P.O. BOX 101, CROWN MINES, 2025
Type	AUDITOR
Status	RESIGN
Start Date	03/04/2007
End Date	07/11/2006
Form Date (CM1 Date)	03/04/2007
Expiry Date	-
Registration Entry Date	03/04/2007
Form Received Date	03/04/2007
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

Auditor 2 of 8

Auditor Name	GOBODO INCORPORATED
Profession Number	958476
Profession Code	CA
Business Address	1ST FLOOR, BLOCK B, EMPIRE PARK, 55 EMPIRE ROAD, PARKTOWN, 2193
Postal Address	P O BOX 87452, HOUGHTON, 2041
Type	AUDITOR
Status	RESIGN
Start Date	07/11/2006
End Date	07/11/2006
Form Date (CM1 Date)	14/05/2008
Expiry Date	-
Registration Entry Date	14/05/2008

Form Received Date	14/05/2008
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

Auditor 3 of 8

Auditor Name	GOBODO INCORPORATED
Profession Number	958476
Profession Code	CA
Business Address	1ST FLOOR, BLOCK B, EMPIRE PARK, 55 EMPIRE ROAD, PARKTOWN, 2193
Postal Address	P O BOX 87452, HOUGHTON, 2041
Type	AUDITOR
Status	RESIGN
Start Date	07/11/2006
End Date	26/02/2008
Form Date (CM1 Date)	14/05/2008
Expiry Date	-
Registration Entry Date	14/05/2008
Form Received Date	14/05/2008
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

Auditor 4 of 8

Auditor Name	GOBODO INCORPORATED
Profession Number	958476
Profession Code	CA
Business Address	1ST FLOOR, BLOCK B, EMPIRE PARK, 55 EMPIRE ROAD, PARKTOWN, 2193
Postal Address	P O BOX 87452, HOUGHTON, 2041
Type	AUDITOR
Status	RESIGN
Start Date	06/11/2006
End Date	03/04/2007
Form Date (CM1 Date)	07/11/2006
Expiry Date	-
Registration Entry Date	07/11/2006
Form Received Date	07/11/2006
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-

Reference Number

-

Auditor 5 of 8

Auditor Name

KPMG INCORPORATED

Profession Number

0000

Profession Code

CA

Business Address

KPMG CRESCENT, 85 EMPIRE ROAD, PARKTOWN, 2103

Postal Address

PRIVATE BAG X9, PARKVIEW, 2122

Type

AUDITOR

Status

RESIGN

Start Date

26/02/2008

End Date

-

Form Date (CM1 Date)

28/08/2008

Expiry Date

-

Registration Entry Date

28/08/2008

Form Received Date

28/08/2008

Details Withdrawn From Public

-

ACT_IND_MPY_NO_SP

-

Fine Letter

-

Reference Number

-

Auditor 6 of 8

Auditor Name

NERIDHA MOODLEY

Profession Number

803979

Profession Code

IRBA

Business Address

-

Postal Address

P O BOX 2939, SAXONWOLD, 2132

Type

DESIGNATED AUDITOR (NATURAL PERSON)

Status

RESIGN

Start Date

-

End Date

15/12/2017

Form Date (CM1 Date)

-

Expiry Date

-

Registration Entry Date

-

Form Received Date

-

Details Withdrawn From Public

-

ACT_IND_MPY_NO_SP

-

Fine Letter

-

Reference Number

-

Auditor 7 of 8

Auditor Name

R A HELLMANN AND COMPANY

Profession Number	917576E
Profession Code	CA
Business Address	9 STURDEE AVENUE, ROSEBANK, 2193
Postal Address	P O BOX 47163, PARKLANDS, 2121
Type	AUDITOR
Status	RESIGN
Start Date	-
End Date	06/11/2006
Form Date (CM1 Date)	-
Expiry Date	-
Registration Entry Date	-
Form Received Date	-
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

Auditor 8 of 8

Auditor Name	SIZWENTSALUBAGOBODO INC
Profession Number	946016
Profession Code	IRBA
Business Address	20 MORRIS STREET EAST, WOODMEAD, 2191
Postal Address	P O BOX 2939, SAXONWOLD, 2132
Type	AUDITOR
Status	RESIGN
Start Date	-
End Date	15/12/2017
Form Date (CM1 Date)	-
Expiry Date	-
Registration Entry Date	-
Form Received Date	-
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

CAPITAL INFORMATION

Type	Capital Amount	Capital Premium	Number of Shares	Parri Value
AUTHORIZED ORDINARY	R 1,00	0	1000	0
ISSUED ORDINARY	R 1,00	0	1000	0

CHANGE HISTORY**History 1 of 90**

Effective Date	22/09/2018
Change Type	AR IN DEREGISTRATION
Memo	ANNUAL RETURN NON COMPLIANCE - IN PROCESS OF DEREGISTRATION LAST PAYMENT FOR AR YEAR/MONTH IS 2016/6.
History 2 of 90	
Effective Date	14/09/2018
Change Type	REGISTERED ADDRESS CHANGE
Memo	144 KATHERINE STREET BLOCK A LOWER GROUND FLOOR GRAYSTON RIDGE OFFICE PARK SANDTON GAUTENG2196
History 3 of 90	
Effective Date	15/12/2017
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	NOTICE OF CHANGE OF AUDITOR: NERIDHA MOODLEY RESIGNED
History 4 of 90	
Effective Date	11/10/2017
Change Type	REGISTERED ADDRESS CHANGE
Memo	JIC HOUSE 106A 16TH ROAD MIDRAND GAUTENG1685
History 5 of 90	
Effective Date	26/09/2017
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR JAGANNATH PRASAD ARORA WAS ADDED
History 6 of 90	
Effective Date	26/09/2017
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR RONICA RAGAVAN DETAILS WAS CHANGED
History 7 of 90	
Effective Date	26/09/2017
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR LOUIS BOTHA LOURENS DETAILS WAS CHANGED
History 8 of 90	
Effective Date	04/10/2016
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	CHANGE RECORDNAME : = KPMG INCORPORATEDSTATUS : = RESIGN
History 9 of 90	
Effective Date	04/10/2016

Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	ADD RECORDNAME : = SIZWENTSALUBAGOBODO INCSTATUS : = CURRENT
History 10 of 90	
Effective Date	04/10/2016
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	ADD RECORDNAME : = NERIDHA MOODLESTATUS : = CURRENT
History 11 of 90	
Effective Date	12/08/2016
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME = MOLATLHEGIFIRST NAMES = SERUFE GRACESTATUS = RESIGNED
History 12 of 90	
Effective Date	30/06/2016
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 536813514
History 13 of 90	
Effective Date	13/05/2016
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR LOUIS BOTHA LOURENS WAS ADDED
History 14 of 90	
Effective Date	13/05/2016
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR SERUFE GRACE MOLATLHEGI WAS ADDED
History 15 of 90	
Effective Date	13/05/2016
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR RONICA RAGAVAN DETAILS WAS CHANGED
History 16 of 90	
Effective Date	21/04/2016
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME = GUPTAFIRST NAMES = RAJESH KUMARSTATUS = RESIGNED
History 17 of 90	
Effective Date	20/04/2016
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME = ZUMAFIRST NAMES = DUDUZANESTATUS = RESIGNED

History 18 of 90

Effective Date	03/07/2015
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 527685275

History 19 of 90

Effective Date	30/06/2014
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 59031300

History 20 of 90

Effective Date	24/10/2013
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 53087290

History 21 of 90

Effective Date	25/07/2013
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	Unlock PasswordUnlocked byMRE39Password successfully sent to STAT3@THEMBAONLINE.CO.ZA

History 22 of 90

Effective Date	10/07/2013
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	AUTHORISING DIRECTOR DETAILSDIRECTOR FULL FORENAMES=DUDUZANESURNAME=ZUMAID NUMBER=8205205254086CUSTOMER DETAILS DIRECTOR FULL FORENAMES=MARISURNAME=ROUXID NUMBER=7704140014085

History 23 of 90

Effective Date	10/07/2013
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	AUTHORISING DIRECTOR DETAILSDIRECTOR FULL FORENAMES=DUDUZANESURNAME=ZUMAID NUMBER=8205205254086

History 24 of 90

Effective Date	25/10/2012
Change Type	POSTAL ADDRESS CHANGE
Memo	P.O BOX 25160MONUMENT PARK0105

History 25 of 90

Effective Date	25/10/2012
Change Type	REGISTERED ADDRESS CHANGE
Memo	MONUMENT OFFICE PARKBLOCK 5 SUITE 5-10279 STEENBOK AVENUEMONUMENT PARK0181

History 26 of 90

Effective Date	23/03/2012
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME = ZUMAFIRST NAMES = DUDUZANESTATUS = ACTIVE

History 27 of 90

Effective Date	23/03/2012
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME = GUPTAFIRST NAMES = RAJESH KUMARSTATUS = ACTIVE

History 28 of 90

Effective Date	23/03/2012
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME = NATHFIRST NAMES = RAVINDRASTATUS = ACTIVE

History 29 of 90

Effective Date	23/03/2012
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	CHANGE RECORDSURNAME = RAGAVANFIRST NAMES = RONICASTATUS = ACTIVE

History 30 of 90

Effective Date	23/03/2012
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DATA RESTORATION LOG 22012359 : AMEND DIRECTORS SURNAME

History 31 of 90

Effective Date	01/07/2010
Change Type	REGISTERED ADDRESS CHANGE
Memo	MONUMENT OFFICE PARKBLOCK 5 SUITE 5-10279 STEENBOK AVENUEMONUMENT PARK0181

History 32 of 90

Effective Date	01/07/2010
Change Type	POSTAL ADDRESS CHANGE
Memo	P.O BOX 25160MONUMENT PARK 0105

History 33 of 90

Effective Date	30/04/2010
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=ZUMAFULL FORENAMES=DUDUZANEID NO=8205205254086STATUS :ACTIVENATURE OF CHANGE=NO CHANGE

History 34 of 90

Effective Date	30/04/2010
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Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=GUPTAFULL FORENAMES=RAJESH KUMARID NO=7208056345186STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 35 of 90	
Effective Date	30/04/2010
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=ROUXFULL FORENAMES=JACQUESID NO=7401315087083STATUS :RESIGNEDNATURE OF CHANGE=RESIGNED: 15/04/2010
History 36 of 90	
Effective Date	30/04/2010
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=NATHFULL FORENAMES=RAVINDRAID NO=551118STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 37 of 90	
Effective Date	30/04/2010
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=GOVENDERFULL FORENAMES=RONICAID NO=7709170007089STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 38 of 90	
Effective Date	15/04/2010
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=NATHFULL FORENAMES=RAVINDRAID NO=551118STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 39 of 90	
Effective Date	15/04/2010
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=GOVENDERFULL FORENAMES=RONICAID NO=7709170007089STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 40 of 90	
Effective Date	15/04/2010
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=PAREKHFULL FORENAMES=JAGDISH RASSIKGHANDRAID NO=6106035685089STATUS :RESIGNEDNATURE OF CHANGE=RESIGNATION: 15/04/2010
History 41 of 90	
Effective Date	15/04/2010
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=ROUXFULL FORENAMES=JACQUESID NO=7401315087083STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT: 15/04/2010
History 42 of 90	

Effective Date	15/04/2010
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=ZUMAFULL FORENAMES=DUDUZANEID NO=8205205254086STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 43 of 90	
Effective Date	15/04/2010
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=GUPTAFULL FORENAMES=RAJESH KUMARID NO=7208056345186STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 44 of 90	
Effective Date	26/02/2010
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=RAMCHANDRANFULL FORENAMES=JAISHANKARID NO=650926STATUS :RESIGNEDNATURE OF CHANGE=RESIGNATION: 26/02/2010
History 45 of 90	
Effective Date	04/12/2009
Change Type	REGISTERED ADDRESS CHANGE
Memo	MONUMENT OFFICE PARK BLOCK 3 SUITE 20279 STEENBOK AVENUEMONUMENT PARK0181
History 46 of 90	
Effective Date	04/12/2009
Change Type	POSTAL ADDRESS CHANGE
Memo	P O BOX 87452HOUGHTON 2041
History 47 of 90	
Effective Date	04/12/2009
Change Type	REGISTERED ADDRESS CHANGE
Memo	MONUMENT OFFICE PARKBLOCK 3 SUITE 20279 STEENBOK AVENUEMONUMENT PARK0181
History 48 of 90	
Effective Date	04/12/2009
Change Type	POSTAL ADDRESS CHANGE
Memo	P.O BOX 4896RIETVALLEIRAND 0174
History 49 of 90	
Effective Date	03/02/2009
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=ZUMAFULL FORENAMES=DUDUZANEID NO=8205205254086STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 50 of 90	
Effective Date	03/02/2009

Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=RAMCHANDRANFULL FORENAMES=JAISHANKARID NO=650926STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 51 of 90	
Effective Date	03/02/2009
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=NATHFULL FORENAMES=RAVINDRAID NO=551118STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 52 of 90	
Effective Date	03/02/2009
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=GOVENDERFULL FORENAMES=RONICAID NO=7709170007089STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 53 of 90	
Effective Date	03/02/2009
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=MBATHAFULL FORENAMES=MENZI GLENID NO=7902115376089STATUS :RESIGNEDNATURE OF CHANGE=RESIGNATION
History 54 of 90	
Effective Date	03/02/2009
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=PAREKHFULL FORENAMES=JAGDISH RASSIKGHANDRAID NO=6106035685089STATUS :ACTIVENATURE OF CHANGE=NO CHANGE
History 55 of 90	
Effective Date	03/02/2009
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=GUPTAFULL FORENAMES=RAJESH KUMARID NO=7208056345186STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT
History 56 of 90	
Effective Date	31/12/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=LUHABEFULL FORENAMES=WENDY YVONNE NOMATHEMBAID NO=5705290765089STATUS :RESIGNEDNATURE OF CHANGE=RESIGNED: 31/12/2008
History 57 of 90	
Effective Date	06/10/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=GIRIDHARFULL FORENAMES=VILASOOR VENKATESANID NO=6305205249185STATUS :RESIGNEDNATURE OF CHANGE=RESIGNATION: 06/10/2008
History 58 of 90	

Effective Date	01/10/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=LUBBE (ALTERNATE TO RONICA GOVENDER)FULL FORENAMES=ANTONID NO=5907155110084STATUS :RESIGNEDNATURE OF CHANGE=RESIGNATION: 01/10/2008
History 59 of 90	
Effective Date	30/09/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=ZUMAFULL FORENAMES=DUDUZANEID NO=8205205254086STATUS :ACTIVENATURE OF CHANGE=APPOINTED: 30/09/2008
History 60 of 90	
Effective Date	20/06/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=PAREKHFULL FORENAMES=JAGDISH RASSIKGHANDRAID NO=6106035685089STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT
History 61 of 90	
Effective Date	26/05/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=HOONFULL FORENAMES=JACOBUS GIDEONID NO=5702055077081STATUS :RESIGNEDNATURE OF CHANGE=RESIGNATION
History 62 of 90	
Effective Date	26/05/2008
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=NAIDOOFULL FORENAMES=PARAMASIVAN HURRINEETHIANID NO=6602185100085STATUS :RESIGNEDNATURE OF CHANGE=RESIGNATION
History 63 of 90	
Effective Date	29/02/2008
Change Type	CHANGE OF BOOK YEAR
Memo	6
History 64 of 90	
Effective Date	26/02/2008
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	-
History 65 of 90	
Effective Date	26/02/2008
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	PRIVATE BAG X9PARKVIEW2122STATUS : ADDRESS CHANGE
History 66 of 90	

Effective Date	26/11/2007
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=LUHABEFULL FORENAMES=WENDY YVONNE NOMATHEMBAID NO=5705290765089STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT
History 67 of 90	
Effective Date	14/11/2007
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=MBATHAFULL FORENAMES=MENZI GLENID NO=7902115376089STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT
History 68 of 90	
Effective Date	14/11/2007
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=NAIDOOFULL FORENAMES=PARAMASIVAN HURRINEETHIANID NO=6602185100085STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT
History 69 of 90	
Effective Date	14/11/2007
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=LUBBE (ALTERNATE TO RONICA GOVENDER)FULL FORENAMES=ANTONID NO=5907155110084STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT
History 70 of 90	
Effective Date	27/07/2007
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=GIRIDHAR (ALTERNATE DIRECTOR)FULL FORENAMES=VILASOOR VENKATESANID NO=6305205249185STATUS :RESIGNEDNATURE OF CHANGE=RESIGNATION
History 71 of 90	
Effective Date	27/07/2007
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=GIRIDHARFULL FORENAMES=VILASOOR VENKATESANID NO=6305205249185STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT
History 72 of 90	
Effective Date	30/06/2007
Change Type	CHANGE OF BOOK YEAR
Memo	2
History 73 of 90	
Effective Date	03/04/2007
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	P.O. BOX 101CROWN MINES2025STATUS : ADDRESS CHANGE
History 74 of 90	

Effective Date	03/04/2007
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	GOBODO INCORPORATED REPORTED MATERIAL IRREGULARITY ON : 3 APRIL 2007 STATUS : RESIGN
History 75 of 90	
Effective Date	29/11/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=HOONFULL FORENAMES=JACOBUS GIDEONID NO=5702055077081STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT
History 76 of 90	
Effective Date	29/11/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=GIRIDHAR (ALTERNATE DIRECTOR)FULL FORENAMES=VILASOOR VENKATESANID NO=6305205249185STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT
History 77 of 90	
Effective Date	28/11/2006
Change Type	NATURE OF BUSINESS CHANGE
Memo	84
History 78 of 90	
Effective Date	27/11/2006
Change Type	REGISTERED ADDRESS CHANGE
Memo	1ST FLOOR, BLOCK BEMPIRE PARK55 EMPIRE ROADPARKTOWN2193
History 79 of 90	
Effective Date	27/11/2006
Change Type	POSTAL ADDRESS CHANGE
Memo	P O BOX 87452HOUGHTON2041
History 80 of 90	
Effective Date	07/11/2006
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	P O BOX 87452HOUGHTON2041STATUS : ADDRESS CHANGE
History 81 of 90	
Effective Date	07/11/2006
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	-
History 82 of 90	
Effective Date	06/11/2006

Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	P O BOX 87452HOUGHTON2041STATUS : ADDRESS CHANGE
History 83 of 90	
Effective Date	06/11/2006
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	-
History 84 of 90	
Effective Date	20/08/2006
Change Type	REGISTERED ADDRESS CHANGE
Memo	1ST FLOOR, SALEY HOUSE81 CROWN ROADFORDSBURG2092
History 85 of 90	
Effective Date	20/08/2006
Change Type	POSTAL ADDRESS CHANGE
Memo	P O BOX 101CROWN MINES2025
History 86 of 90	
Effective Date	30/07/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=JAFFERFULL FORENAMES=ABDUL WAHABID NO=5311275098081STATUS :RESIGNEDNATURE OF CHANGE=RESIGNATION
History 87 of 90	
Effective Date	30/07/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=RAMCHANDRANFULL FORENAMES=JAISHANKARID NO=650926STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT
History 88 of 90	
Effective Date	30/07/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=NATHFULL FORENAMES=RAVINDRAID NO=551118STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT
History 89 of 90	
Effective Date	30/07/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	SURNAME=GOVENDERFULL FORENAMES=RONICAID NO=7709170007089STATUS :ACTIVENATURE OF CHANGE=NEW APPOINTMENT
History 90 of 90	
Effective Date	30/07/2006
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE

Memo	FULL FORENAMES=RAVINDRASURNAME=NATHAPPOINTMENTDATE=30/07/2006STATUS=C
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REPORT INFORMATION

Date of Information	14/03/2019 10:48	
Print Date	14-03-2019 10:48	
Generated By	INVESTIGATOR 1	
Reference	20190314	
Report Type	CIPC COMPANY	

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SEARCH INFORMATION

Summary

Search Type	CIPC COMPANY
Search Description	ISSAR CAPITAL (2010/024731/07)
Reference	20190314
Date	14/03/2019

COMPANY INFORMATION

Summary

Name	ISSAR CAPITAL
Registration Number	2010/024731/07
Type	PRIVATE COMPANY (PTY) LTD
Status	IN BUSINESS
Registration Date	17/12/2010
Average Age of Director	-

SARS VERIFICATION MATCHES

Trading Name	VAT Registration Number	Area
No information available.		

ACTIVE DIRECTOR(S)

Director Name	ID Number	Status	Type	Appointed
JAGANNATH PRASAD ARORA	H0300778	ACTIVE	DIRECTOR	22/05/2014

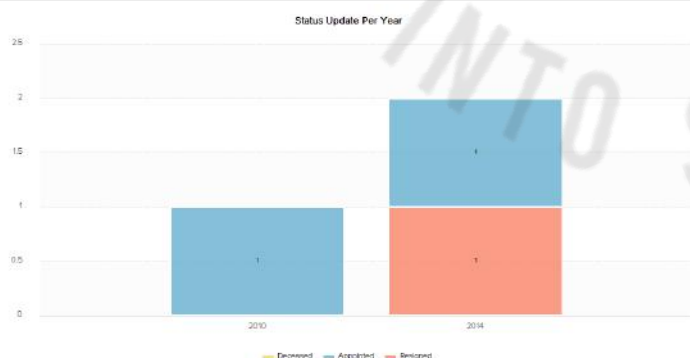
RESIGNED DIRECTOR(S)

Director Name	ID Number	Status	Appointed	Resigned
IQBAL MEER SHARMA	6703215788087	RESIGNED	17/12/2010	22/05/2014

DECEASED DIRECTOR(S)

Director Name	ID Number	Status	Appointed
No information available.			

DIRECTOR TIMELINE



Gender Breakdown (%)

Male Female

AUDITOR(S)

Auditor Name	Profession Code	Status	Start Date
FIN 5 INCORPORATED	SAICA	CURRENT	-

COMPANY INFORMATION

Summary

Name	ISSAR CAPITAL
Short Name	-
Translated Name	ISSAR CAPITAL (2010/024731/07)
Registration Number	2010/024731/07
Old Registration Number	-
Type	PRIVATE COMPANY (PTY) LTD
Short Type	(PTY) LTD
CIPC Company Act Type	COMPANY (REGISTERED ACCORDING TO OLD CO ACT)
Status	IN BUSINESS
Tax Number	9741467154
Type Date	17/12/2010
Registration Date	17/12/2010
Start Date	17/12/2010
Status Date	-
Principal Description	NO RISTRICITION ON BUSINESS ACTIVITIES
Details Withdrawn From Public	NO
Standard Industrial Classification	RETAIL TRADE, EXCEPT OF MOTOR
Financial Year End	FEBRUARY
Financial Effective Date	17/12/2010
Registered Address	1ST FLOOR EAST WING, 11 ALICE LANE, SANDTON, 2196
Postal Address	1ST FLOOR EAST WING, 11 ALICE LANE, SANDTON, 2196
Region	GAUTENG
Country of Origin	-
Country	-
Authorised Capital	-
Issued Capital	-

Authorised Shares	-
Issued Shares	-
Form Received Date	-
Date on Form	-
Conversion Number	-

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NO IMAGE
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DIRECTOR(S)

Director 1 of 2

First Name	IQBAL MEER
Surname	SHARMA
ID Number	6703215788087
Date of Birth	21/03/1967
Gender	MALE
Age	51
Residential Address	6 SHER WOOD GATE 110, RIVONIA ROAD, SANDTON, GAUTENG, 2196
Postal Address	6 SHER WOOD GATE 110, RIVONIA ROAD, SANDTON, GAUTENG, 2196
Type	DIRECTOR
Status	RESIGNED
Appointment Date	17/12/2010
Resignation Date	22/05/2014
Member Contribution	0%
Member Size	0%

Director 2 of 2

First Name	JAGANNATH PRASAD
Surname	ARORA

DIRECTOR(S)

REF_FILE-170

ID Number	H0300778
Date of Birth	-
Gender	-
Age	-
Residential Address	295 WILLOW CREST, SAGEWOOD AVENUE, MIDRAND, GAUTENG, 1685
Postal Address	295 WILLOW CREST, SAGEWOOD AVENUE, MIDRAND, GAUTENG, 1685
Type	DIRECTOR
Status	ACTIVE
Appointment Date	22/05/2014
Resignation Date	-
Member Contribution	0%
Member Size	0%

AUDITOR(S)

Auditor 1 of 1

Auditor Name	FIN 5 INCORPORATED
Profession Number	902271
Profession Code	SAICA
Business Address	NO 8 HARLEY PLACE, 271 HARLEY ROAD, BLACKHEATH, JOHANNESBURG, 0000
Postal Address	NO 8 HARLEY PLACE, 271 HARLEY ROAD, BLACKHEATH, 0000
Type	AUDITOR
Status	CURRENT
Start Date	-
End Date	-
Form Date (CM1 Date)	-
Expiry Date	-
Registration Entry Date	-
Form Received Date	-
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

CAPITAL INFORMATION

Type	Capital Amount	Capital Premium	Number of Shares	Parri Value
AUTHORIZED ORDINARY	-	0	1000	0
ISSUED ORDINARY	-	0	1000	0

CHANGE HISTORY

History 1 of 9

Effective Date	10/03/2017
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR JAGANNATH PRASAD ARORA WAS ADDED

History 2 of 9

Effective Date	10/03/2017
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR IQBAL MEER SHARMA DETAILS WAS CHANGED

History 3 of 9

Effective Date	17/01/2017
Change Type	AR RESTORE INTO BUSINESS (25-24)
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 561502993

History 4 of 9

Effective Date	16/03/2016
Change Type	AR IN DEREGISTRATION
Memo	ANNUAL RETURN NON COMPLIANCE - IN PROCESS OF DEREGISTRATION LAST PAYMENT FOR AR YEAR/MONTH IS 2013/12.

History 5 of 9

Effective Date	21/12/2014
Change Type	72
Memo	NO VALID SMS OR EMAIL ADDRESS FOR ENTERPRISE M2010024731

History 6 of 9

Effective Date	18/12/2013
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 54719460

History 7 of 9

Effective Date	26/11/2013
Change Type	AR IN DEREGISTRATION
Memo	ANNUAL RETURN NON COMPLIANCE - IN PROCESS OF DEREGISTRATION NO PAYMENT HAVE BEEN MADE.

History 8 of 9

Effective Date	19/03/2012
Change Type	NAME CHANGE
Memo	CHANGED RECORD NAME CHANGE = ISSAR CAPITAL OLD NAME = EMIVAX

History 9 of 9

Effective Date	19/03/2012
Change Type	NATURE OF BUSINESS CHANGE
Memo	CHANGED RECORD SIC CHANGE = 62

Date of Information	14/03/2019 10:45
Print Date	14-03-2019 10:45
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Reference	20190314
Report Type	CIPC COMPANY



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SEARCH INFORMATION

Summary

Search Type	CIPC COMPANY
Search Description	CRAYSURE INVESTMENTS (2013/173148/07)
Reference	20190314
Date	14/03/2019

COMPANY INFORMATION

Summary

Name	CRAYSURE INVESTMENTS
Registration Number	2013/173148/07
Type	PRIVATE COMPANY (PTY) LTD
Status	IN BUSINESS
Registration Date	19/09/2013
Average Age of Director	-

SARS VERIFICATION MATCHES

Trading Name	VAT Registration Number	Area
No information available.		

ACTIVE DIRECTOR(S)

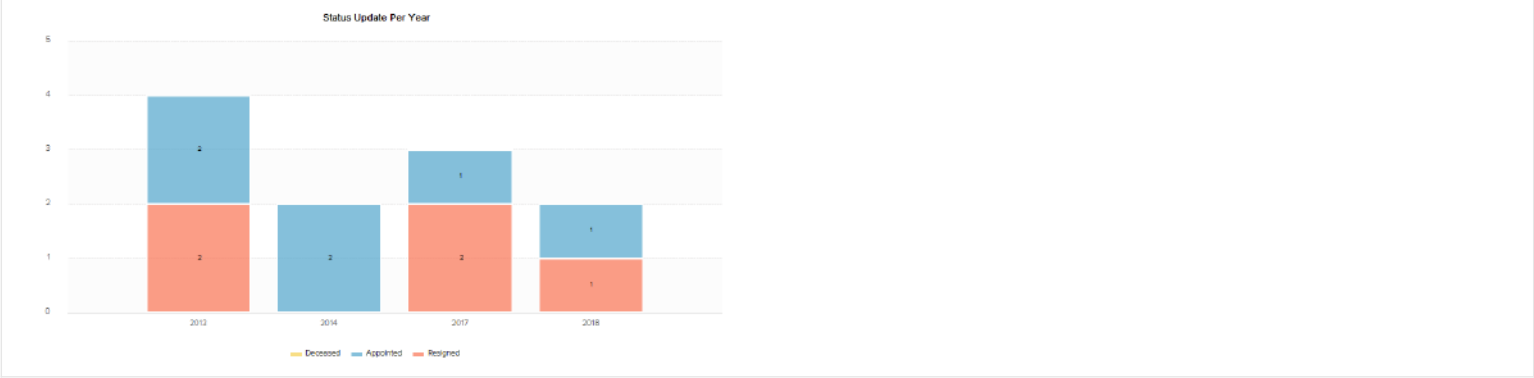
Director Name	ID Number	Status	Type	Appointed
JAGANNATH PRASAD ARORA	H0300778	ACTIVE	DIRECTOR	26/06/2018

RESIGNED DIRECTOR(S)

Director Name	ID Number	Status	Appointed	Resigned
HINABHEN NATWAR NAGIN	7002200149085	RESIGNED	19/09/2013	19/09/2013
HINABHEN NATWAR NAGIN	7002200149085	RESIGNED	19/09/2013	19/09/2013
GERT PETRUS JOHANNES VAN DEN BERG	5304265035080	RESIGNED	13/02/2014	27/02/2017
LOUIS BOTHA LOURENS	6205315076082	RESIGNED	13/02/2014	11/09/2017
LOUISE JACQUELINE BECKER	7012120272081	RESIGNED	11/09/2017	26/06/2018

DECEASED DIRECTOR(S)

Director Name	ID Number	Status	Appointed
No information available.			



DIRECTOR GENDER



AUDITOR(S)			
Auditor Name	Profession Code	Status	Start Date
JACQUES WESSELS	SAICA	RESIGN	-
KPMG INC	SAICA	RESIGN	-
MTHIMKHULU MXOLISI WISEMAN	IRBA	RESIGN	21/04/2016

Summary

Name	CRAYSURE INVESTMENTS
Short Name	-
Translated Name	CRAYSURE INVESTMENTS (2013/173148/07)
Registration Number	2013/173148/07
Old Registration Number	-
Type	PRIVATE COMPANY (PTY) LTD
Short Type	(PTY) LTD
CIPC Company Act Type	COMPANY (REGISTERED ACCORDING TO NEW 2008 CO ACT)
Status	IN BUSINESS
Tax Number	9022977228
Type Date	19/09/2013
Registration Date	19/09/2013
Start Date	19/09/2013
Status Date	-
Principal Description	-
Details Withdrawn From Public	NO
Standard Industrial Classification	-
Financial Year End	FEBRUARY
Financial Effective Date	19/09/2013
Registered Address	JIC HOUSE, 106A 16TH STREET, MIDRAND, 1685
Postal Address	P O BOX 1501, HALFWAY HOUSE, 1685
Region	GAUTENG
Country of Origin	-
Country	-
Authorised Capital	0
Issued Capital	0
Authorised Shares	0
Issued Shares	0
Form Received Date	-
Date on Form	-
Conversion Number	-



NO IMAGE
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NO IMAGE
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DIRECTOR(S)	
Director 1 of 6	
First Name	HINABHEN NATWAR
Surname	NAGIN
ID Number	7002200149085
Date of Birth	20/02/1970
Gender	FEMALE
Age	49
Residential Address	17 STINGRAY STREET, EXTENSION 8, LEMASIA, 1827
Postal Address	PRIVATE BAG X10046, SANDTON, 2146
Type	DIRECTOR
Status	RESIGNED
Appointment Date	19/09/2013
Resignation Date	19/09/2013
Member Contribution	0%
Member Size	0%
Director 2 of 6	
First Name	HINABHEN NATWAR
Surname	NAGIN
ID Number	7002200149085
Date of Birth	20/02/1970
Gender	FEMALE
Age	49
Residential Address	17 STINGRAY STREET, EXTENSION 8, LEMASIA, 1827
Postal Address	PRIVATE BAG X10046, SANDTON, 2146
Type	DIRECTOR

Status	RESIGNED
Appointment Date	19/09/2013
Resignation Date	19/09/2013
Member Contribution	0%
Member Size	0%

Director 3 of 6

First Name	GERT PETRUS JOHANNES
Surname	VAN DEN BERG
ID Number	5304265035080
Date of Birth	26/04/1953
Gender	MALE
Age	65
Residential Address	623 BOSSPERWER STREET, MONUMENTPARK, PRETORIA, GAUTENG, 0181
Postal Address	P O BOX 1501, HALFWAY HOUSE, HALFWAY HOUSE, GAUTENG, 1685
Type	DIRECTOR
Status	RESIGNED
Appointment Date	13/02/2014
Resignation Date	27/02/2017
Member Contribution	0%
Member Size	0%

Director 4 of 6

First Name	LOUIS BOTHA
Surname	LOURENS
ID Number	6205315076082
Date of Birth	31/05/1962
Gender	MALE
Age	56
Residential Address	SANTOLINA AVENUE 66A, RUSTENBURG, RUSTENBURG, NORTH WEST, 0299
Postal Address	SANTOLINA AVENUE 66A, RUSTENBURG, RUSTENBURG, NORTH WEST, 0299
Type	DIRECTOR
Status	RESIGNED
Appointment Date	13/02/2014
Resignation Date	11/09/2017
Member Contribution	0%
Member Size	0%

Director 5 of 6

First Name	LOUISE JACQUELINE
Surname	BECKER
ID Number	7012120272081

DIRECTOR(S)

REF_FILE-178

Date of Birth	12/12/1970
Gender	FEMALE
Age	48
Residential Address	14 AMBER RIDGE, AMBERFIELD MANOR, ROOIHUISKRAAL CENTURION, GAUTENG, 0157
Postal Address	14 AMBER RIDGE, AMBERFIELD MANOR, ROOIHUISKRAAL CENTURION, GAUTENG, 0157
Type	DIRECTOR
Status	RESIGNED
Appointment Date	11/09/2017
Resignation Date	26/06/2018
Member Contribution	0%
Member Size	0%

Director 6 of 6

First Name	JAGANNATH PRASAD
Surname	ARORA
ID Number	H0300778
Date of Birth	-
Gender	-
Age	-
Residential Address	295 WILLOW CREST, SAGEWOOD AVENUE, MIDRAND, GAUTENG, 1685
Postal Address	295 WILLOW CREST, SAGEWOOD AVENUE, MIDRAND, GAUTENG, 1685
Type	DIRECTOR
Status	ACTIVE
Appointment Date	26/06/2018
Resignation Date	-
Member Contribution	0%
Member Size	0%

AUDITOR(S)

Auditor 1 of 3

Auditor Name	JACQUES WESSELS
Profession Number	900133
Profession Code	SAICA
Business Address	137 DAISY STREET, SANDOWN, 2196
Postal Address	137 DAISY STREET, SANDOWN, 2196
Type	DESIGNATED AUDITOR (NATURAL PERSON)
Status	RESIGN
Start Date	-
End Date	29/03/2016
Form Date (CM1 Date)	-
Expiry Date	-
Registration Entry Date	-
Form Received Date	-

Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

Auditor 2 of 3

Auditor Name	KPMG INC
Profession Number	900133
Profession Code	SAICA
Business Address	137 DAISY STREET, SANDOWN, 2196
Postal Address	137 DAISY STREET, SANDOWN, 2196
Type	AUDITOR
Status	RESIGN
Start Date	-
End Date	29/03/2016
Form Date (CM1 Date)	-
Expiry Date	-
Registration Entry Date	-
Form Received Date	-
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

Auditor 3 of 3

Auditor Name	MTHIMKHULU MXOLISI WISEMAN
Profession Number	785326
Profession Code	IRBA
Business Address	P O BOX 4938, THE REEDS,
Postal Address	-
Type	AUDITOR
Status	RESIGN
Start Date	21/04/2016
End Date	15/12/2017
Form Date (CM1 Date)	-
Expiry Date	-
Registration Entry Date	15/05/2017
Form Received Date	15/05/2017
Details Withdrawn From Public	-
ACT_IND_MPY_NO_SP	-
Fine Letter	-
Reference Number	-

Type	Capital Amount	Capital Premium	Number of Shares	Parri Value
AUTHORIZED ORDINARY	R 1,00	0	1000	1

CHANGE HISTORY

History 1 of 23

Effective Date	02/07/2018
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR JAGANNATH PRASAD ARORA WAS ADDED

History 2 of 23

Effective Date	02/07/2018
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR LOUISE JACQUELINE BECKER DETAILS WAS CHANGED

History 3 of 23

Effective Date	15/12/2017
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	NOTICE OF CHANGE OF AUDITOR: AND MTHIMKHULU MXOLISI WISEMAN RESIGNED

History 4 of 23

Effective Date	02/10/2017
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 586147669

History 5 of 23

Effective Date	26/09/2017
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR LOUISE JACQUELINE BECKER WAS ADDED

History 6 of 23

Effective Date	26/09/2017
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR LOUIS BOTHA LOURENS DETAILS WAS CHANGED

History 7 of 23

Effective Date	15/05/2017
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	NOTICE OF CHANGE OF AUDITORS: MTHIMKHULU MXOLISI WISEMAN APPOINTED.

History 8 of 23

Effective Date	11/05/2017
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	NOTICE OF CHANGE OF AUDITOR: JACQUES WESSELS RESIGNED

History 9 of 23

Effective Date	07/03/2017
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR LOUIS BOTHA LOURENS DETAILS WAS CHANGED

History 10 of 23

Effective Date	07/03/2017
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	DIRECTOR GERT PETRUS JOHANNES VAN DEN BERG DETAILS WAS CHANGED

History 11 of 23

Effective Date	20/09/2016
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 551160683

History 12 of 23

Effective Date	12/11/2015
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 530649807

History 13 of 23

Effective Date	22/09/2014
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 54711400

History 14 of 23

Effective Date	17/06/2014
Change Type	LOCATION OF COMPANY RECORDS
Memo	-

History 15 of 23

Effective Date	07/03/2014
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	Unlock PasswordUnlocked byMRE39Password successfully sent to vania.pieters@za.gt.com

History 16 of 23

Effective Date	04/03/2014
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	AUTHORISING DIRECTOR DETAILSDIRECTOR FULL FORENAMES=HINABHEN NATWARSURNAME=NAGINID NUMBER=7002200149085CUSTOMER DETAILS DIRECTOR FULL FORENAMES=VANIASURNAME=PIETERSID NUMBER=7601190001089

History 17 of 23

Effective Date	13/02/2014
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	FULL FORENAMES=LOUIS BOTHASURNAME=LOURENSAPPOINTMENTDATE=13/02/2014STATUS=A

History 18 of 23

Effective Date	13/02/2014
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	FULL FORENAMES=GERT PETRUS JOHANNESURNAME=VAN DEN BERGAPPOINTMENTDATE=13/02/2014STATUS=A

History 19 of 23

Effective Date	13/02/2014
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	ADD RECORDNAME : = KPMG INCSTATUS : = CURRENT

History 20 of 23

Effective Date	13/02/2014
Change Type	AUDITOR/ACC OFFICER CHANGE
Memo	ADD RECORDNAME : = JACQUES WESSELSSTATUS : = CURRENT

History 21 of 23

Effective Date	13/02/2014
Change Type	POSTAL ADDRESS CHANGE
Memo	PRIVATE BAG X28BENMORE2010


History 22 of 23

Effective Date	13/02/2014
Change Type	REGISTERED ADDRESS CHANGE
Memo	137 DAISY STREETSANDOWNSANDTON2196

History 23 of 23

Effective Date	19/09/2013
Change Type	DIRECTORS/MEMBER CHANGE/SECRETARY/TRUST/BOTH DIR AND OFFICE
Memo	FULL FORENAMES=HINABHEN NATWARSURNAME=NAGINAPPOINTMENTDATE=19/09/2013STATUS=C

REPORT INFORMATION

Date of Information	14/03/2019 10:46	
Print Date	14-03-2019 10:46	
Generated By	INVESTIGATOR 1	
Reference	20190314	
Report Type	CIPC COMPANY	

SECTION 5



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of Finance. Was there any indication as to who would follow or not really? Who would succeed you?

MINISTER PRAVIN GORDHAN: There might have been that speculation as well.

CHAIRPERSON: Thank you.

MINISTER PRAVIN GORDHAN: In any pre and post-election process that is the sport that the first two roles plays.

CHAIRPERSON: I see.

ADV PAUL PRETORIUS SC: Was there – or let me ask you, Minister, was there any – especially informed speculation in regard to your potential removal?

MINISTER PRAVIN GORDHAN: No, I cannot recollect any. There might well have been.

ADV PAUL PRETORIUS SC: May we then go to paragraph 60 and deal with the circumstances that existed which you have highlighted in your statement on page 26 and following, at the time of the dismissal of Minister Nene as he then was. And you deal first with Denel Asia. As I understand it you do not claim to know the exact reasons for the removal, but you suggest to the Commission that there may be circumstances relevant to that, about which you can testify, am I correct?

MINISTER PRAVIN GORDHAN: Ja, this is anecdotal material if you like. In relation to Minister Nene, I think it is well known now and I think in his own testimony before you he indicated that he refused to sign a particular document and the Russian Federation. And the period some weeks before, not even weeks, perhaps two months before 9 December there were very odd occurrences within cabinet itself and where – maybe in the public domain I cannot recall now, where the Treasury came under constant attack and criticism.

And some had the very simplistic view, Chair, that as the Treasurer the job – your job is just to find the money. In other words somebody decides how much is needed go and find the money, because this is different from give back the money.

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And in the context of what I explained earlier on in relation to managing the fiscus is not as simple as that. So, ja, one cannot – obviously there was something that needed to happen in Minister Nene's term, I think he might have made reference to issues around SAA, which goes post the 2014 elections, SAA was transferred to the Treasury from the Department of Public Enterprises as well.

And we will come to that as well in the statement. So he had to deal with some contentious issues there also and in that sense I suppose he began to share our collective reputation as Finance Ministers for being stubborn, and not just conceding to whatever might be needed at a particular point in time without raising potentially difficult questions.

So that is the issue around Minister Nene. The rest of 61 then deals with the creation of an entity called Denel Asia. I indicated to you previously and earlier on that no government department or entity can create another commercial company without prior consent, both from the relevant executive authority, that, that entity or department falls under and further notification and approval in terms of Section 54 and 51 of the PFMA. And this is one of those instances.

And, ja, there is this so-called pre-notification exercise that was engaged in by Denel and we today know from the Gupta emails and so on that the Denel board was "captured" so were some of the managers at some point in time and part of the cleaning up processes involved some of those elements.

But on 30 October 2015 a so called pre-notification was received from Denel by the Directive General of the National Treasury, so again Mr Fuzile when he appears before you he can give you more detail into that and the – what that pre-notification indicated is that a new structure between, as a result of a partnership agreement between V R Laser a Gupta affiliated entity and Denel itself is going to be created called Denel

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Asia and the idea was that as we indicate on 62 that, and I will read the sentence from this paragraph:

"The joint venture was contemplated purportedly to exploit Denel's intellectual property and propriety information in India. The joint venture was to be known as Denel Asia."

Now Denel, Chairperson, over the years has developed quite remarkable technical capability and a lot of innovation capability. So this intellectual property is the property of the state. So it is all collective property so to speak and it is much sort after then and now. In fact there are lots of funny if I may use that terminology rumours going around about how that intellectual property might be escaping our country at this point in time. But we will come back to that at a later stage.

So what 62 indicates, Chair, is that V R Laser Asia, is a company owned by Mr Salim Essa, I made reference to him earlier on. He is, I think in self-declared exile. He is a Gupta, well known Gupta associate and he would be one of the brokers as we described under a previous hypothesis and as a sole-shareholder and who has a relationship with V R Laser RSA, that is South Africa, owned by Mr Duduzani Zuma and Rajesh Gupta.

The joint venture was contemplated as I said to exploit Denel's intellectual property and propriety information. They do not even say that they are going to act as an agent to sell the products of Denel. It is to exploit the intellectual property. So they were going to actually sell intellectual property, that is in fact the valued asset of the state, it would appear.

ADV PAUL PRETORIUS SC: The allegations that were in the public domain, you have included in the bundle N1A at page s118 to 119, I do not necessarily want us or need us to go there, but simply to ask you, as I have been asked to ask you, you said in your

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evidence that the Denel board at that stage had been captured. On the basis of what do you conclude that?

MINISTER PRAVIN GORDHAN: Well if you look at this page 18 and subsequent reports, which cover the investigative journalism an excellent one at that as well, undertaken by Amabongane and Scorpio, Chair, you will see how different personalities within the Denel enterprise were regular visitors to Dubai, have their household bills paid for in terms of the emails that were disclosed and featured in different ways as this article also indicates in relation to the creation of Denel Asia.

And what followed in particular in terms of the behaviour of the then Chair, of the Denel board, Mr Manshe, I think justifies a conclusion that there was serious collaboration with this Gupta enterprise in this process.

ADV PAUL PRETORIUS SC: Your conclusions then, were they drawn to the analysis of Amabongane or have you had sight of the emails themselves?

MINISTER PRAVIN GORDHAN: Well the rest of the statement covers the various stages of this configuration that we had between the Treasury and Mr Manshe, so perhaps if I take you through that some of the answers to the question, Chair, might appear more clear.

ADV PAUL PRETORIUS SC: Thank you, if you would.

MINISTER PRAVIN GORDHAN: Alright, 64, Chair, we indicate that according to media reports on the information contained in the Gupta leaks and your own investigators, Chair, we have access to the emails, which can confirm this as well for you. One day after Denel submitted its PFMA application to National Treasury on 30 October the Denel Chair, Mr Manshe, forwarded the confidential document – this is a confidential government document to Mr Ashu Chawla, a senior Gupta executive and CEO of Sahara Computers, a company owned by the Gupta family.

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At 65 we indicate that on or about 23 November 2015 Ms Brown the then Minister of Public Enterprises provisionally approved the initiative and set out the various issues that needed to be covered in the former PFMA application.

As the pre-notification was not a formal PFMA process there was no requirement for the Treasury to respond, nor did the Treasury usually respond to such pre-notifications. At 66 emails contained in and reported on by the media following the Gupta leak show that on 7 December 2015 interestingly it is two days before Mr Nene's dismissal Mr Chawla emailed a copy of Ms Brown's in principle approval and a briefing document directly to the personal assistant of Mr Nene.

67, before Mr Nene was removed as Finance Minister. No formal PFMA application had been submitted seeking his approval...[intervenes]

ADV PAUL PRETORIUS SC: According to your evidence it is a requirement of the law?

MINISTER PRAVIN GORDHAN: That is in terms of the requirement of the law. Of the establishment of Denel Asia, therefore Mr Nene had not approved the joint venture. Now here is the coincidence, if you can call it that.

68, however, it is not even days later, or a day later after Mr Nene was removed on 10 December 2015 when Mr – sorry Mr van Rooyen was appointed as Finance Minister, that is on 10 December 2015.

In terms of 69, by 11 December 2015 the formal PFMA application seeking approval for the establishment of Denel Asia was submitted, addressed to the newly installed Minister. So this was just a day after his installation. Mr van Rooyen did not have the opportunity to approve the joint venture prior to him being removed as Finance Minister.

So if you remember I said that he had just two working days, I think, in office.

ADV PAUL PRETORIUS SC: Just before you proceed again, I need to ask you, we know

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that at the time Minister Mansha, Daniel Mansha was the Denel Chair. Do you recall from your own memory any other members of the Denel board at that time?

MINISTER PRAVIN GORDHAN: Several of them had resigned over a period. That time we took over that responsibility earlier this year, in fact two board members remained. And a completely new board was then appointed. But in my other capacity as member of the Public Enterprises Committee, Chair, I did have vocation to be in a meeting of the committee when Denel came along to present its, I think it is financials, and had some interactions with both the senior management of Denel and Mr Mansha himself on that occasion.

May I continue?

ADV PAUL PRETORIUS SC: What legal advice, as you refer to in paragraph 70 did you obtain or did National Treasury obtain in regard to the necessity for approval?

MINISTER PRAVIN GORDHAN: This the officials would have done.

CHAIRPERSON: I am sorry. I am not sure whether when you asked whether you could continue, you wanted to continue in terms of the meeting of the portfolio committee?

MINISTER PRAVIN GORDHAN: No, no, sorry.

CHAIRPERSON: Or you wanted to continue here?

MINISTER PRAVIN GORDHAN: Yes.

CHAIRPERSON: Oh, okay, yes, thank you.

ADV PAUL PRETORIUS SC: Alright you refer to legal advice in paragraph 70 and the question is then what was the content of that advice? As asked was this received by you and National Treasury once you had become Minister?

MINISTER PRAVIN GORDHAN: That is right, yes, because the application was now on my desk so to speak, having been appointed to that position on 13 December 2015 and as we indicate five lines, I think, down, into paragraph 70, the legal advice that was given

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was prior approval was required for the formal establishment of Denel Asia.

ADV PAUL PRETORIUS SC: And that was...[intervenes]

MINISTER PRAVIN GORDHAN: The information was communicated both verbally and in writing on several occasions to Denel as well as to the then Minister of Public Enterprises Ms Brown.

ADV PAUL PRETORIUS SC: Alright, and that approval was required in terms of the several sections of the Public Finance Management Act and the approval was required of the Minister of Finance?

MINISTER PRAVIN GORDHAN: That is correct.

ADV PAUL PRETORIUS SC: You mentioned the sections in paragraph 70. Then would you continue with the fallout as it may be termed, that occurred.

MINISTER PRAVIN GORDHAN: So at paragraph 71, Chair, we make reference to the following, that extraordinary diligent attacks were made on me personally and the National Treasury, more broadly by Mr Mansha as Chairperson of the Denel board. He demanded that I retract in writing to the Denel board comments and statements I had made regarding the lawfulness and desirability of the joint venture and apologise to the Denel board.

He also wanted me to acknowledge that National Treasury had failed to discharge its duties in a diligent and responsible manner, even though the reverse was actually the case. Furthermore...[intervenes]

ADV PAUL PRETORIUS SC: Just before you go on, these exchanges between yourself and Mr Mansha were they personal exchanges? Were they written exchanges? Were they exchanges between legal representatives...[intervenes]

MINISTER PRAVIN GORDHAN: They were media exchanges.

ADV PAUL PRETORIUS SC: Legal representatives?

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MINISTER PRAVIN GORDHAN: Media exchanges.

ADV PAUL PRETORIUS SC: Media exchanges.

MINISTER PRAVIN GORDHAN: I emphasise later in 71 that it is unheard of for a Chairperson of a state owned company to attack a Minister of Finance in public and for the Minister of Public Enterprises responsible for that SOE to take no steps to reign in such attacks to the best of my knowledge.

You also see at page 148 of N1A, I got it right this time.

ADV PAUL PRETORIUS SC: Yes. If you would go there please, that is a Treasury statement.

MINISTER PRAVIN GORDHAN: That is a Treasury media statement.

ADV PAUL PRETORIUS SC: Issued by Treasury.

MINISTER PRAVIN GORDHAN: Yes.

ADV PAUL PRETORIUS SC: By National Treasury.

MINISTER PRAVIN GORDHAN: That is right.

CHAIRPERSON: Mr Pretorius?

ADV PAUL PRETORIUS SC: Would you read that onto the record please?

MINISTER PRAVIN GORDHAN: The whole statement?

ADV PAUL PRETORIUS SC: Insofar as...[intervenes]

CHAIRPERSON: Do you want him to read it into the record or do you want him to read it quietly?

ADV PAUL PRETORIUS SC: No, onto the record please. Well, perhaps we should just deal with the first paragraph, if you could read the first paragraph onto the record?

MINISTER PRAVIN GORDHAN: Alright.

"The National Treasury has noted media reports that Denel may have ventured into a joint venture to form a company that will

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operate from a jurisdiction in Asia."

So this company, Chair, is actually registered in Hong Kong and it is a formidable task to deregister the company, because it had Mr Essa as a 50% partner and Denel as a 50% partner I think, if I got the numbers right and to disestablish it in Hong Kong requires both parties to agree and we cannot find the mysterious Mr Essa.

So the Denel – the current Denel board is having to enter into all sort of legal gymnastics to ensure that the company is deregistered in Hong Kong, just as an update.

So the paragraph further says:

"National Treasury is currently engaging directly with Denel on the matter. The statements seek to clarify facts relating to the transaction."

And I may, Chair, the next paragraph indicates what the President said on 11 December 2015, that is President Zuma.

ADV PAUL PRETORIUS SC: 2015?

MINISTER PRAVIN GORDHAN: 2015.

"There is no state owned entity that can dictate to government how it should be assisted."

And then it goes on. And then the third paragraph:

"The board of a public entity commits an act of financial misconduct where to wilfully or negligently, whether wilfully or negligently fails to comply with the PFMA."

Then it says:

"The Treasury regulations specified that such allegations must be investigated by the executive authority and if confirmed appropriate disciplinary proceedings must be initiated."

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ADV PAUL PRETORIUS SC: Okay. Can we pause there, Minister? The statement then goes on to quote sections of the Public Finance Management Act, which you have referred to. We need not go there, but if you would go over the page please? And just read onto the record the contents of the statement on the second page?

MINISTER PRAVIN GORDHAN:

"In terms of the conditions attached to the 1.85 Billion in guarantees that have been provided by government to Denel any significant transactions that Denel enters into requires the approval of both the Minister of Finance and the Minister of Public Enterprises."

So these are the conditionality's that I have referred to earlier, Chair, that accompany guarantees.

"Section 54(3) allows for an entity to assume that approval has been given if it receives no response from the executive authority within 30 days or within a longer period as may be agreed to between itself and the executive authority."

ADV PAUL PRETORIUS SC: That clause was subject to litigation which we will deal with perhaps tomorrow, Minister.

MINISTER PRAVIN GORDHAN: Ja.

ADV PAUL PRETORIUS SC: If you could just deal with the next paragraph.

MINISTER PRAVIN GORDHAN: The litigation took place after my dismissal.

ADV PAUL PRETORIUS SC: Yes.

MINISTER PRAVIN GORDHAN: So again Mr Fuzile and his affidavit is of very – is very material here. But an interesting point, just for the public to understand as well. You submit an application on 10 December and the Christmas break and the New Year break

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is upon us. The 30 day period ends approximately on the 9th or 10 January when most people are still on leave.

Common sense, if not anything else dictates that you wait until people are back at work. You enquire whether the application has been attended to and if there is any further information required that you supplied the necessary information. Now Mr Fuzile will describe other meetings that took place amongst the officials, between Denel and the National Treasury, if you ask him to.

And that showed that, that is the kind of conversation that needed to actually take place, rather than the assumption that once the 30 day period is over that is the end of the story and you can go ahead and do what you like.

So one must ask the question why the urgency? If you waited another three weeks or four weeks, what would not have happened? And what would the cost have been to whom? And of course the flip side of that coin is who benefits by all of this, by rushing it through?

So people who are involved in this, Chair, might want to then enlighten you on those questions when they appear before you.

ADV PAUL PRETORIUS SC: Just to summarise then, Minister, in the third paragraph no page 149 it is recorded by Treasury that Denel had submitted its application on 10 December 2015, but prior to that application being submitted National Treasury had outlined the information that would be required comprehensively to assess the application that the Minister of Finance was still considering the application and that further information had been requested from Denel.

And then finally the last three lines indicate that on 13 April 2016 that is the date of the media statement made on behalf of Treasury the application was still under consideration and no decision had yet been made?

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MINISTER PRAVIN GORDHAN: And if I may add, Chair, Mr Pretorius, the first three lines of the last paragraph is also very material. More significantly Denel is also required to comply with Section 51(1)(g) which is unequivocal in its requirement that the board of Denel obtain approval before establishing a company.

ADV PAUL PRETORIUS SC: Thank you. If I may just before the adjournment, just relay one more question to you from the legal team. Do you know at all, Minister, why Salim Essa who you have referred to earlier left South Africa? Do you have any knowledge?

CHAIRPERSON: Will you just repeat the question, I did not hear? Why, bla-bla-bla-bla?

ADV PAUL PRETORIUS SC: I am not sure if it is a fair question, whether you are...[intervenes]

MINISTER PRAVIN GORDHAN: It is a very unfair question, Chair, with respect.

ADV PAUL PRETORIUS SC: Let me ask it...[intervenes]

MINISTER PRAVIN GORDHAN: I met Mr Salim Essa, he is not a drinking partner and I only drink water, either, so I think some of his family might be around and you might want to call them and ask them the question, where is your family member and why is he ducking the authorities in South Africa?

ADV PAUL PRETORIUS SC: We will leave it there. Chair, is this a convenient time?

CHAIRPERSON: Okay, okay the time is 16:00. We will take the adjournment and it is the understanding that you are still available tomorrow to continue?

MINISTER PRAVIN GORDHAN: At your service sir.

CHAIRPERSON: Thank you very much. We will adjourn until 10:00 tomorrow. Adjourn.

MEETING ADJOURNS TO 20 NOVEMBER 2018

SECTION 6



ANNEXURE 13

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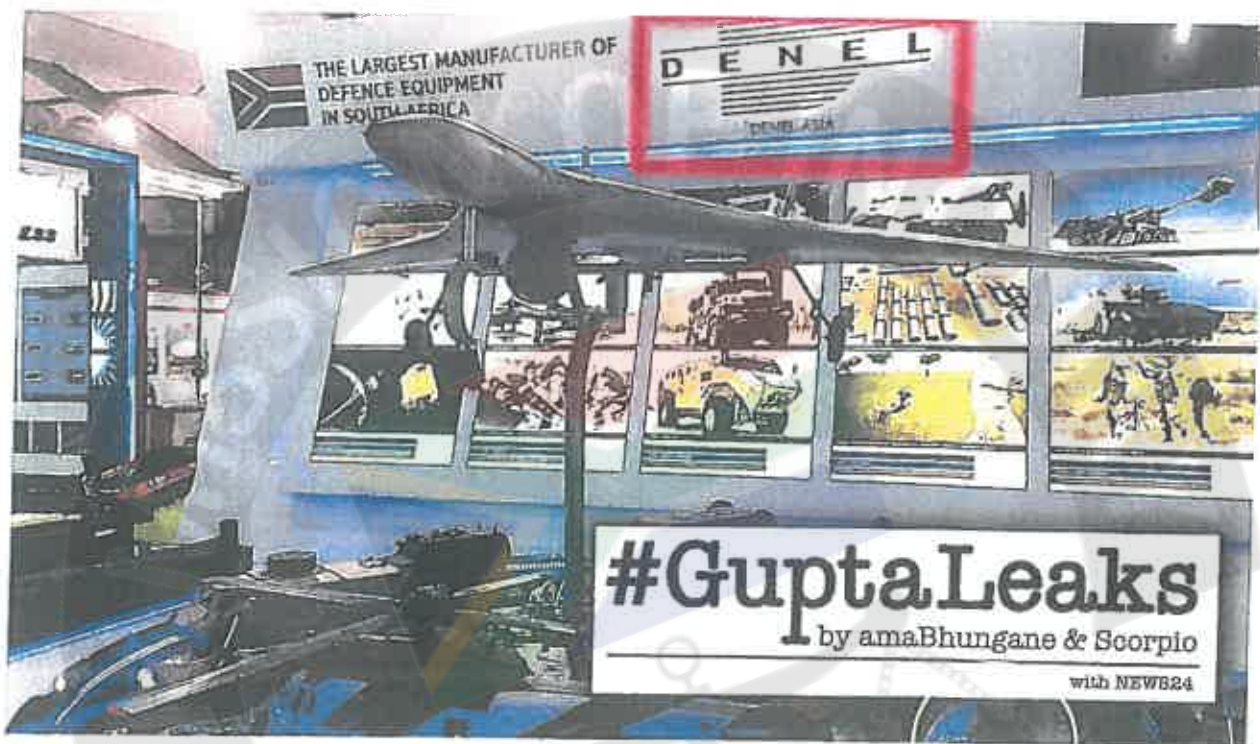
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amaBhungane and Scorpio #GuptaLeaks: How the Guptas screwed Denel

By amaBhungane & Scorpio • 9 June 2017



473 Reactions

Leaked records from the heart of the Gupta business empire help solve the mystery behind Denel Asia, the controversial arms marketing partnership that national treasury has tried to block. By AMABHUNGANE and SCORPIO.

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The #GuptaLeaks show:

- The Guptas tried to sell Denel's intellectual property to India, while watering the state arms company's stake down by half.

- Acting as middlemen, they took the biggest stake for themselves and cut in a powerful Indian tycoon – close to Prime Minister Narendra Modi – for his “influence”.
- They primed, wined and dined Denel’s then new chairman, Dan Mantsha, who sent them confidential government documents.

The Gupta family set themselves up to sell state arms manufacturer Denel’s weapons to India in a deal involving a shady Indian fixer and a powerful tycoon close to prime minister Narendra Modi.

The Guptas arranged to sideline Denel and take the biggest share for themselves even though it was Denel’s proprietary technology that was to be sold.

These details are revealed in the #GuptaLeaks, a trove of electronic data sourced from the heart of the Guptas’ business empire.

In January 2016, Denel announced the formation of Denel Asia, a Hong Kong-based joint venture that it controlled, holding 51%. The rest belonged to a company registered to Gupta lieutenant Salim Essa.

Defending themselves against criticism at the time, Denel and the Guptas claimed that the Gupta family had no interest in the Essa company, VR Laser Asia, and by implication in Denel Asia.

The #GuptaLeaks show they were misleading South Africans.

Emails in the trove show Denel officials knew the overriding purpose of setting up Denel Asia was to sell arms to India – targeting more than US\$8-billion in deals there – via a second joint venture called Denel India.

In Denel India, Denel’s participation was watered down to just 25%.

The Guptas, who brought little to the table besides their political connectivity in South Africa and India, planned to wield a controlling 42% stake – exercised via Essa and their brother-in-law, Anil Gupta.

Anil, a former minister in the Indian state of Uttarakhand, is married to Achla, the Gupta brothers' sister. The controversial Gupta wedding at Sun City celebrated the marriage of Anil and Achla's daughter, Vega.

The files contain emails and draft contracts that show that as Denel Asia was being established in Hong Kong, the Guptas were putting together a second-tier company in India called Denel India, in which their Indian brother-in-law would hold a significant stake.

They also show the Guptas had a direct involvement in the establishment of Denel Asia, suggesting Essa was little more than their proxy.

Denel India was to be owned by Denel (25%) and Essa (24%) via Denel Asia, as well as Anil Gupta (18%) and the Indian multinational Adani Enterprises (33%).

Thus, Denel's participation was to be diluted significantly – and the emails show Denel executives were well aware the company would enjoy only a minority stake in the Indian venture.

Adani was key to the plan, the emails suggest.

Its billionaire founder and chairman, Gautam Adani, is often reported to be close to Modi, the prime minister.

Much like the Guptas and President Jacob Zuma in South Africa, commentators link the rise of Adani's business empire to the political rise of Modi, starting in the early 2000s when Adani supported Modi when he was politically weak.

In one 2016 email, the CEO of the Gupta-owned VR Laser in South Africa, Pieter van der Merwe, objected to a draft contract in which Adani suggested it use nominee shareholders.

Van der Merwe made Adani's role clear:

"We are entering into an agreement with [Adani] as a result of their name, history and connections. If it means they are going to appoint an affiliate who doesn't have any know-how or influence, we do not need a partnership."

Companies in the Adani group have been accused by Indian authorities of money laundering and tax avoidance to the tune of about US\$750-million.

Adani did not respond to an emailed request for comment.

But it was another controversial Indian businessman who appeared to introduce the Guptas to Adani: Kolkata businessman Parasmal Lodha.

Indian authorities recently arrested Lodha for money laundering. He was released on bail last week.

Lodha is very close to the Guptas, the #Guptaleaks show.

They attend each other's family weddings and holidays and a senior Gupta manager once used contacts in the department of home affairs to arrange a South African visa for Lodha.

It was Lodha who in 2013 emailed Tony Gupta, asking him to invite Gautam Adani, among "a few friends", to another Gupta wedding, this time of Anil Gupta's son.

In 2015, as the Guptas were assembling their partnership with Denel and Adani, Lodha reviewed an Adani Enterprises contract within the Denel India structure and emailed comments to Tony Gupta.

Around the same time, Lodha twice helped to arrange for Gautam Adani to visit South Africa.

Lodha did not respond to questions.

The involvement of tainted figures such as Lodha and politically exposed persons such as Adani – along with Essa and the Gupta family – suggest Denel was willing to pursue a recklessly high-risk strategy.

Denel was previously blacklisted from selling arms to India because it had used commissioned agents, a banned practice there.

However, the Denel Asia and Denel India structures circumvented this by including the Guptas – effectively Denel's agents – within the company structures.

After amaBhungane first wrote about Denel Asia in early 2016 (<https://www.dailymaverick.co.za/article/2016-05-29-amabhungane-how-denel-was-hijacked/>), the national treasury confirmed that it viewed the partnership to be illegal.

It said it had not approved the deal under the Public Finance Management Act (PFMA).

Denel publicly disagreed and is now suing treasury and the finance minister.

In a court affidavit, former treasury head Lungisa Fuzile said that in its PFMA application, Denel "discusses two potential partners in India: Adani Group and PIPAVAV, both of which are leading Indian conglomerates expanding into the defence industry. It is not clear why these companies were overlooked by [Denel] in their review of the market and what led [Denel] to the conclusion that VR Laser Asia was the most suitable partner."

The implication seems to be that he too was concerned that the Guptas were simply inserted as agents – although it was via taking a stake in a Denel subsidiary, rather than receiving a fee.

A Denel spokesperson said:

“We have been advised that the Hawks are carrying out an investigation on the matters pertaining to the #GuptaLeaks emails. We would rather give space to the Hawks to undertake their investigations on all these matters fully before making any comments.”

Gupta lawyer and regular spokesperson Gert van der Merwe has refused to comment on #GuptaLeaks claims, saying: “I have no documents or context or instructions. It is inappropriate.”

The #Guptaleaks suggest the Guptas pursued an intricate plan to push their Denel project through, involving inside information and the positioning of sympathetic decision-makers, including four-day finance minister Des van Rooyen.

They contain a number of email threads in which intricate details of the Denel Asia joint-venture are discussed between October 2015 and February 2016.

Inevitably, these lines of correspondence ended up on Tony Gupta’s or Gupta managers’ desks.

For example, the PFMA required Denel to get permission from the ministers of public enterprises and finance before it can strike up a public-private partnership like Denel Asia, which consisted of state-owned Denel on the one hand, and privately owned VR Laser on the other.

One day after Denel submitted its PFMA application to treasury on 30 October 2015, Denel chairman Dan Mantsha forwarded the confidential document to Ashu Chawla, a senior Gupta executive.

The #GuptaLeaks have already exposed how the Guptas hosted Mantsha on lavish trips to Dubai.

But the timing of his meetings and communications with the family and their factotums adds to the impression he was their cats-paw.

On 24 July 2015, Public Enterprises Minister Lynne Brown announced sweeping changes to Denel's non-executive board, leaving only Gupta beneficiary Nkopane "Sparks" Motseki in place and removing experienced directors in favour of relative unknowns.

Key among them was Mantsha, appointed as the new chair of Denel, despite that fact he was struck off as an attorney in 2007 and only re-admitted in 2011.

Just days after his appointment, on 3 August, Mantsha forwarded a copy of his outstanding municipal account for R14,238 to Gupta lieutenant Ashu Chawla.

The same account was again forwarded to Mr. Chawla in October. Both were marked "for your urgent attention."

By 5 August the emails show Mantsha was listed to join Tony Gupta and others on a flight from Johannesburg to Mumbai aboard the Guptas' private jet ZS-OAK.

It is not clear if he was aboard, but he was booked a room with the family at the ITC hotel in Mumbai for 6 and 7 August and he was listed as a passenger for the subsequent Mumbai-Delhi and Delhi-Johannesburg legs.

A few weeks after his return from this jaunt, the new Denel board moved against the existing Denel executive.

On 24 September, the board suspended chief executive Riaz Saloojee, financial director Fikile Mkhontlo, and company secretary Elizabeth Africa. (Since then their supposed disciplinary infractions have all melted away and they have been paid severance packages.)

By 29 September, Chawla was handling the application for a Dubai visa for Mantsha and by the next day the Guptas' travel agent had booked a business class ticket from Dubai to Johannesburg for him, invoiced to a Gupta company for R33,280.

Mantsha failed to respond to detailed questions about his relationship with the Guptas.

But Mantsha was also not the only source the Guptas had providing top-level intelligence on the Denel project.

On 23 November, Public Enterprises Minister Lynne Brown provisionally approved Denel's negotiations with VR Laser Asia to form Denel Asia. One day later, the emails show, Chawla had a copy of her approval.

A few days later, Denel chairman Mantsha sent the same confidential document to Chawla.

To its PFMA application to Minister Brown, Denel attached a spreadsheet of "opportunities that Denel feels confident will be secured jointly with VR Laser Asia". This detailed US\$9.3-billion worth of potential weapons deals in the region. Of this, US\$8.2-billion would be sourced from India.

From November 26 to 29, the Guptas' chosen Indian partner, Adani, was their guest in South Africa.

Mumbai fixer Lodha was instrumental in the arrangements and the emails show his assistant wrote to an Adani staffer noting:

"Meeting with the [South African] President, Ministers and CEOs of mining, power and port has been arrange (sic) on 27th and 28th... Car and necessary security will be arrange (sic) by Mr Gupta."

By this time the Guptas were already shopping for a new finance minister, according to evidence provided to the public protector, and it seems they wanted the Denel Asia joint venture PFMA application to be on his desk when he landed.

Although Brown at public enterprises had given provisional approval, the law required the finance minister to approve the joint venture too.

The #Guptaleaks show that on 7 December, Chawla emailed a copy of Brown's in-principle approval and briefing document directly to the finance minister's personal assistant.

On that day, the minister was still Nhlanhla Nene, but three days later, on 10 December, it was Des van Rooyen.

The very next day Denel submitted its formal PFMA application for Denel Asia to the new finance minister, according to an affidavit delivered in the high court dispute between Denel and treasury over the establishment of the Hong Kong joint venture.

Van Rooyen was removed on 13 December before he could approve Denel Asia – and the status of the joint venture has been in dispute ever since.

That didn't stop the Guptas from trying to forge ahead.

After Van Rooyen's sacking, Mantsha joined a procession of influential figures in a pilgrimage to the Oberoi hotel in Dubai and an audience with the Guptas at their new R325-million pad.

Invoices from the #Guptaleaks show he stayed at the Oberoi between 3 and 6 January 2016 at the expense of the Guptas' Sahara Computers and was chauffeured to their home at L35 Emirates Hills.

Mantsha failed to respond to questions about the purpose of the visit, but presumably it was to regroup.

During this time VR Laser SA chief executive Van der Merwe, Tony Gupta and others continued to exchange thoughts on draft contracts with Adani Enterprises, the emails show.

In one instance, Van der Merwe forwarded to Tony Gupta a chain of correspondence between himself and Denel officials in which they debated whether or not Denel India, the Denel Asia joint venture with Adani, was separately subject to the PFMA.

He said Denel and VR Laser had previously agreed that when Denel applied to the ministers of finance and public enterprises for consent, their planned new Indian company should be disclosed so “as to play open cards with what the parties intend to do”.

And to Tony Gupta, Van der Merwe complained:

“They are missing the point and the reason why we entered into this transaction. In the private sector, time is of the essence. This is the basis on which we have decided to invest in a funding facility.”

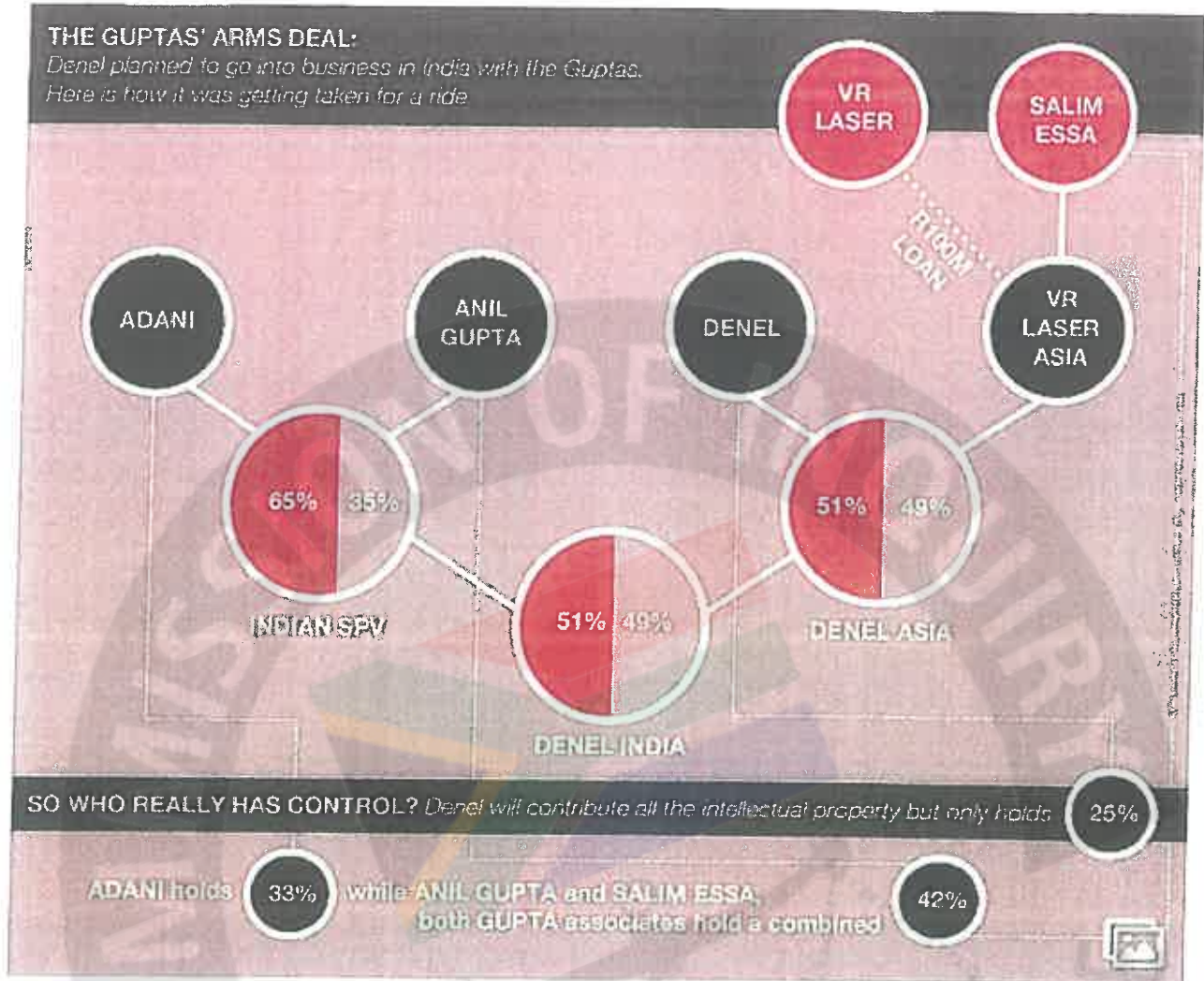
In a February 2016 email to colleagues – after they received questions from amaBhungane – VR Laser CEO Van der Merwe explained that the SA VR Laser was going to loan Denel Asia R20-million a year for five years to cover certain costs.

The terms of this loan have never been explained, but it is clear from the #GuptaLeaks and court records that the plan was for Denel Asia to repay it.

On 5 February 2016 amaBhungane broke the story of the Guptas’ involvement in Denel Asia and treasury began issuing the first of a series of statements questioning the legality of the joint venture.

Denel appeared undaunted.

On 24 February Denel's acting chief executive Zwelakhe Ntshepe signed a board memorandum recording Denel's approval to negotiate the formation of Denel India, in which Denel Asia would have 49% and Adani Enterprises 51%.



Two days later he jetted off on another Gupta jet, ZS-AMG, bound for the Indian city of Goa, which was hosting the 2016 Defexpo, a defence trade show.

Denel's exhibition stand was confidently hosted under the banner of "Denel Asia" – a company that barely existed but promised a turn-over of billions.

Now those dreams are shattered. **DM**

Photo: Denel as an exhibitor at DefExpo 2016.

(Photo: StratPost – South Asian Defence and Strategic Affairs)

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By Greg Nicolson

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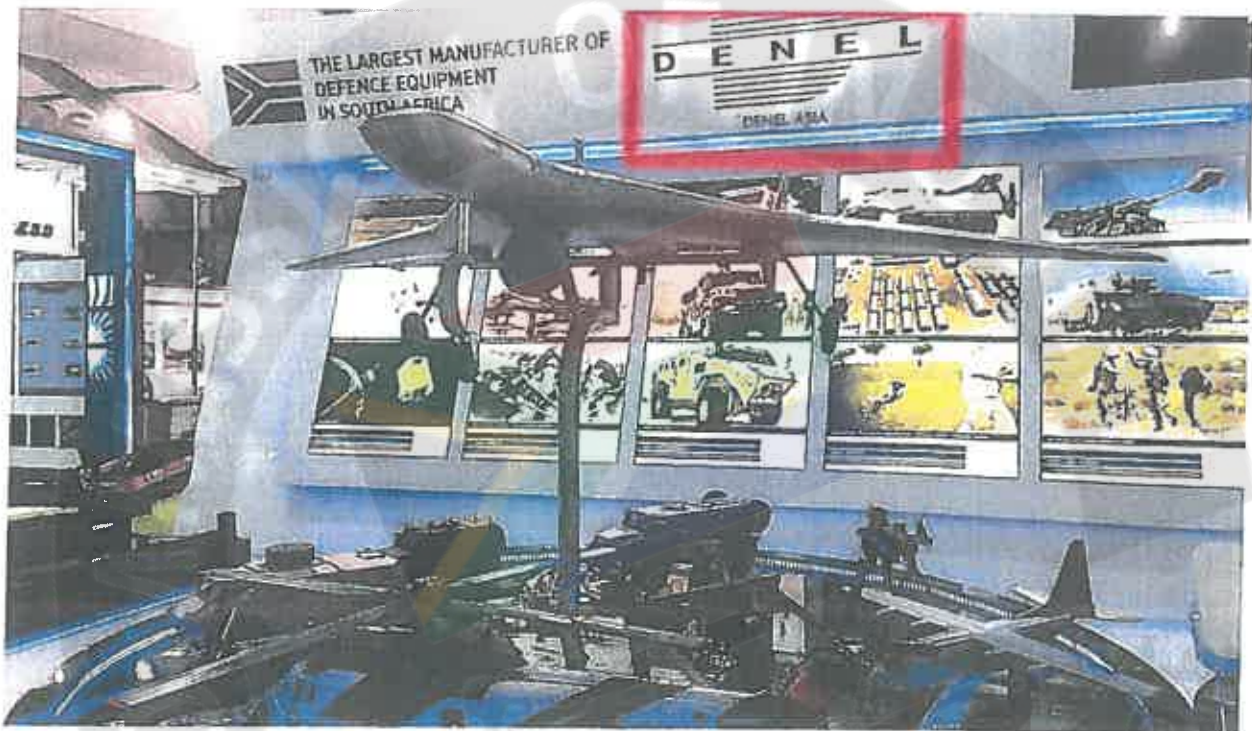
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amaBhungane: How Denel was hijacked

By amaBhungane • 29 May 2016



4 Reactions

An amaBhungane investigation has revealed how the capture of Denel was orchestrated via a boardroom coup executed by Public Enterprises Minister Lynne Brown – contrary to the advice of her own department – followed by the premeditated axing of its top executives. By SAM SOLE for AMABHUNGANE.

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The investigation also shows how the state-owned defence giant is being ushered into the arms of a Gupta-aligned company, VR Laser, despite a due diligence report from law firm ENSafrica, which allegedly raised multiple red flags about the joint venture between Denel and VR Laser Asia.

At stake is Denel's lucrative Asian market — above all, it appears, a potential \$4-billion (R62 billion) tender to deliver long-range artillery to the Indian army.

Four sources who sat on the previous board, but asked not to be named, have confirmed being told that a month before a new board took over on July 26 last year, chief executive Riaz Saloojee was warned that he would be pushed out.

The warning allegedly came from Denel board member Nkopane "Sparks" Motseki, who was allocated a significant personal stake in the Gupta's Shiva uranium mine in 2010. The stake, if he still has it, now has a market value of tens of millions of rands.

Motseki is alleged to have called Saloojee just ahead of a board meeting in June 2015 and told him he and others were to be removed, because Saloojee had been asked to do certain things and had been "too weak" and had not complied or had been blocked by chief financial officer Fikile Mhlontlo, who was "too strong".

Saloojee, Mhlontlo and company secretary Elizabeth Africa were suspended three months later for unspecified infractions.

At the June board meeting, the sources said, then-acting chair Martie Janse van Rensburg approached Motseki informally with a group of co-directors to ask about the allegation, and he allegedly confirmed what he had told Saloojee.

A source familiar with subsequent events told amaBhungane that Van Rensburg was so concerned about the perceived threat to the executives that she repeatedly attempted to arrange a meeting with Public Enterprises Minister Lynne Brown, who cancelled on more than one occasion.

Van Rensburg, the source said, eventually met with deputy minister Bulelani Magwanishe on July 2, 2015 and personally conveyed her concern about the rumours of the executives being removed.

Van Rensburg did not dispute any of the details of the account put to her, but declined to comment.

Brown has refused to comment on any of the detailed allegations put to her by amaBhungane.

Denel confirmed receipt of detailed questions, including those directed at specific directors, including Motseki, but failed to respond.

Key to the executives' suspensions in September 2015 was the wholesale replacement of the board chaired by Van Rensburg. On July 24, Brown announced the "rotation" of the board, sweeping out all the previous non-executive directors but Motseki.

In doing so, Brown abandoned a list of proposed directors prepared for her by the department of public enterprises, which wanted to retain most of the existing board on the basis that they had performed well and had not served their maximum two terms.

AmaBhungane understands that in about June 2015 the entire board file was uplifted from the department by Brown's ministerial office and the department was thereafter excluded from the selection process.

The list eventually presented to cabinet bore no resemblance to the one prepared by the department. It also lacked skills and experience: there was not a single engineer and the majority had never served on a corporate board before, never mind of a highly technical group like Denel.

A number of the new directors also have a chequered past. First among these is the new chair, Dan Mantsha, who is also the legal adviser to communications minister Faith Muthambi.

Mantsha was struck off the roll of attorneys in 2007 for acting in a "dishonest and deceitful manner". While Mantsha was readmitted in 2011, one might imagine this integrity deficit would be a barrier for access to the country's defence sector jewels.

However, a well-placed source at Denel said it was rumoured that Mantsha's particular recommendation was the positive impression he made on the Gupta family. Mantsha was said to have been introduced to the Guptas by Muthambi in July 2014. Muthambi's office declined to respond to questions about the alleged introduction or whether it had taken place at Saxonwold, noting: "We are not in the business of responding to unsubstantiated allegations and innuendos."

Gupta family spokesman Gary Naidoo did not respond to detailed questions. Mantsha did not respond to questions sent to him via Denel.

Once appointed, Mantsha's board lost no time. In late September last year, barely two months after they took office, the new board suspended Saloojee, Mhlontlo and Africa.

The reason cited was a concern over aspects of Denel's R855-million purchase of armoured vehicle manufacturer BAE Land Systems.

However, the previous board, despite being out of office, has recently taken the unusual step of publishing a joint statement affirming that the Land Systems deal made strategic and financial sense and was scrutinised and approved by both Brown's department and Treasury.

And there are other hints that plans to sideline the three executives were premeditated: one source told amaBhungane that Denel's acting CEO, Zwelakhe Ntshepe, and its Land Systems boss, Stephan Burger, told colleagues that they had been interacting with certain members of the new board three months before the new board members' appointment.

And when a forensic investigation into the three executives' conduct failed to incriminate them, the same source alleged, Mantsha, the board chair, sought to have the investigation report withdrawn.

Neither of these claims could be independently verified as neither the Denel board nor the executives responded to questions.

Editor's note: **Burger has since issued a categorical denial** (<https://www.dailymaverick.co.za/documents/document/Stephan-Burger-Letter-To-Daily-Maverick-06062016.pdf>): "I was not and

could never have been privy to the process of appointing the new Denel Board members nor have I met any one or more of them prior to a formal announcement by Denel's shareholder... The allegation that I told colleagues that I "had been interacting with certain members of the new board three months before the new board members' appointment" is wholly denied.

The firm that conducted the probe, Dentons, refused to confirm or deny the claim, citing client confidentiality.

Then, in January this year, came the bombshell: Denel acting chief executive Zwelakhe Ntshepe announced the formation of Denel Asia, a company in which Denel would own 51% and a Hong Kong letterbox company, VR Laser Asia, 49%.

VR Laser Asia is wholly owned by Gupta business partner Salim Essa and is an associate company of VR Laser Services, a South African steel cutting business in which the Guptas have an interest.

Denel Asia's directors are Ajay Gupta's 25-year-old son, Kamal Singhala, Pieter van der Merwe, a lawyer who serves in several Gupta-linked companies, and Denel's Ntshepe and Burger.

Burger is alleged to have told colleagues about a number of visits he made to Saxonwold to see the Guptas and to have expressed the view that the Guptas opened doors in India and provided very high-level contacts. Neither he nor the Gupta's spokesperson responded to questions about this claim.

Editor's note: Burger has now denied this: "The allegations contained in this statement are refuted as false as I have never been to Saxonwold to visit the Guptas... The article has caused severe and possible irreparable damage to my reputation, which is founded on, inter alia, integrity, honesty and accountability."

By March 2016 Denel was touting its products at India's DefExpo (<http://www.defexpoindia.in/>) under the banner of "Denel Asia" (*see main picture*) although neither Brown, nor finance minister Pravin Gordhan had given the necessary authority for the formation of the joint venture.

In fact, according to two well placed sources, Brown is sitting with a due diligence report from law firm ENSafrica warning against the joint venture. The report apparently cites red flags about VR Laser's proximity to so-called "politically exposed persons" and concerns about the company's solvency.

The Denel board has continued vigorously to punt the VR Laser tie-up and push back against Treasury, which has described the formation of Denel Asia as illegal.

In the volatile Indian market, the reliance on the marketing skills of Salim Essa and company may be especially risky.

As the board itself has noted, Denel was blacklisted in India for nearly ten years while a tortuous investigation ensued of a 2005 deal to sell sniper rifles to the Indian army (<http://www.engineeringnews.co.za/print-version/india-ends-ban-on-denel-2014-08-19>), which involved payments to "agents" in an offshore tax-haven.

The Indian Central Bureau of Investigation filed a closure report in 2013, as the charges could not be proved.

The Denel board has said the Denel Asia joint venture was undertaken "to minimise the business risks associated with agents in some of the countries we have identified for business expansion".

According to a source with insight into the transaction, Denel has offered its intellectual property in the Denel Asia in return for a promise of R100 million marketing contribution from VR Laser. Both Denel and Essa failed to answer questions as to whether any of that money has been forthcoming.

Denel also failed to answer questions about what has become of its tie-up with the Indian conglomerate Tata, with whom it produced a prototype truck-mounted howitzer (<http://defenceforumindia.com/tatas-155-mm-howitzer-mounted-gun-system-1072>) for display at Defexpo 2014.



Photo: Tata's 155 mm Howitzer / Mounted Gun System (Defence Forum India)

India plans to secure around 1400 towed guns, 400 truck-mounted guns and 100 tracked (tank-mounted) guns at a total cost of more than \$4-billion, but the country has laid down stringent local content conditions.

The Denel board presumably thinks bringing marketing agents “in-house” will pass muster, but the Indian defence media has already picked up on the controversy over Denel Asia – and the Indian howitzer competition is already littered with shattered reputations.

The Bofors scandal (https://en.wikipedia.org/wiki/Bofors_scandal), which dogged the previous round of artillery purchases, dragged on for more than two decades. **DM**

Main photo: Facing a row because of ties to the South African Gupta family, Denel resurfaced in India as an exhibitor at DefExpo 2016 after years of blacklisting. (Photo: StratPost – South Asian Defence and Strategic Affairs)

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By Greg Nicolson

(https://www.dailymaverick.co.za/article/2018-10-10-r2bn-looted-from-corrupt-rotten-vbs-bank-says-report/?utm_source=homepagify)

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A medium popcorn & soft drink combo is the nutritional equivalent of three quarter-pounders and 12 pieces of butter.

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TRAIN
CRIMINALS

As
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ANNEXURE 14

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

STATEMENT ON REPORTS THAT DENEL ESTABLISHED A JOINT VENTURE

National Treasury has noted media reports that Denel may have entered into a joint venture to form a company that will operate from a jurisdiction in Asia. The National Treasury is currently engaging directly with Denel on the matter. This statement seeks to clarify facts relating to the transaction.

President Jacob Zuma noted in a press statement issued on 11 December 2015 that "...there is no state-owned entity that can dictate to government how it should be assisted. In addition, no chairperson of a board of a state owned company has the power to tell a government Department to which the entity reports, how to support or lead them".

The Board of a public entity commits an act of financial misconduct, where it wilfully or negligently fails to comply with the Public Finance Management Act (PFMA). The Treasury Regulations specifies that such allegations must be investigated by the Executive Authority and, if confirmed, appropriate disciplinary proceedings must be initiated.

State-owned entities are required to obtain approval from the Minister of Finance and/or Minister of Public Enterprises before establishing companies, in terms of the PFMA.

Section 54(2) states that: *"Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:*

- (a) establishment or participation in the establishment of a company;*
- (b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;*
- (c) acquisition or disposal of a significant shareholding in a company;*
- (d) acquisition or disposal of a significant asset;*
- (e) commencement or cessation of a significant business activity; and*
- (f) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement"*



**national treasury**

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

In terms of the conditions attached to the R1.85 billion in guarantees that have been provided by government to Denel, any significant transactions that Denel enters into require the approval of both the Minister of Finance and the Minister of Public Enterprises.

Section 54(3) allows for an entity to *"assume that approval has been given if it receives no response from the executive authority ... within 30 days or within a longer period as may be agreed to between itself and the executive authority"*.

Denel submitted its application in terms of Section 54(2) on 10 December 2015. However, prior to Denel submitting its application, National Treasury had outlined the information that would be required to comprehensively assess the application. The Minister of Finance is still considering this application, and further information has been requested from Denel.

More significantly, Denel is also required to comply with Section 51(1)(g), which is unequivocal in its requirement that the Board of Denel obtain approval before establishing a company. Section 51(1)(g) requires the accounting authority of an entity to *"promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment"*. The National Treasury received a section 51(1)(g) from Denel on 10 December 2015. The application is still under consideration and no decision has yet been made.

Issued on behalf of National Treasury

Date: 13 April 2016

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IOL Gordhan slams Denel after it pleas for R3 billion lifeline

POLITICS / 6 FEBRUARY 2018, 2:05PM / EMSIE FERREIRA



Former finance minister Pravin Gordhan said State arms manufacturer Denel dire financials were linked to dealings with the Gupta family. Picture: Bongani Shilubane

Parliament - State arms manufacturer Denel on Tuesday pleaded for an equity injection as it briefed MPs on its results for the past year, but former finance minister Pravin Gordhan flatly countered that the company's dire financials were linked to its dealings with the Gupta family believed to have corrupted key parastatals.

Gordhan said these allegations had dented business confidence around Denel, and cash alone could not fix the problem.

"The story of state capture has impacted on confidence," Gordhan said as members of Parliament's portfolio committee on public enterprises responded to the financial report.

"A new board needs to be appointed with no emails linked to them, or visits to Dubai. Otherwise we keep asking the CFO and the CEO to do the impossible," he said, adding that in the current financial climate it was hard to see where the funds for a bailout would be found.

Earlier Gordhan remarked that the defiance shown towards him in his capacity as finance minister by Denel chairperson Daniel Mantsha around a partnership with close Gupta associate Salim Essa had been unprecedented.

"Mr Mantsha was very vocal in 2016-17, precisely at the time when the Gupta emails indicated he had a close relationship with the Guptas, particularly at the time when Denel Asia was at play," he said.

Gordhan was referring to a joint venture Denel sought to pursue with Denel-Asia, led by Essa, in the absence of approval from National Treasury, which eventually shut down the deal.

"No CEO has ever challenged a sitting minister as he did, and that was as a result of his relationship with the Gupta family, which impacts on his credibility."

Documents submitted to the committee by Denel said it needed a R3 billion capital injection.

Chief financial officer Odwa Mhlwana said the company's cash flow crisis was due in part to lenders cancelling agreements, forcing it to repay R756 million "in the last few months" that had been designed as five-year loans.

It severely hampered its ability to pay suppliers, who were now demanding cash transfers before delivery, he added.

African News Agency/ANA



Denel slams Treasury over Gupta venture threat

NEWS / 31 AUGUST 2016, 09:45AM / SIYABONGA MKHWANAZI



Pravin Gordhan

*** This article has been edited to remove a picture of Talib Sadik as he was not the GCEO of Denel at the time the venture was pursued. We apologise to Mr Sadik for the error.**

Johannesburg - Denel has become the latest State-Owned Entity to fire a broadside at the National Treasury after it accused it of political grandstanding over its threats to legally block the joint venture with a Gupta-associated company.

The state arms manufacturer also challenged Finance Minister Pravin Gordhan to show leadership and defence of the economy by stopping the court threats. It said Gordhan was disingenuous in his legal threats and had failed to approve the deal to frustrate Denel. The Treasury had indicated it was going to court to stop the Denel joint venture with VR Laser, which is linked to the Guptas.

The state arms manufacturer on Tuesday said it would oppose the court challenge by the Treasury. "It is strange that National Treasury is frustrating the Denel Asia joint venture when Denel is not putting up a capital investment," it said.

"Only VR Asia is putting up R100 million to fund the business with Denel to share 51 percent of the profit," it said.

The treasury and Gordhan have been caught up in simmering battles with State-Owned Entities.

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The ANC on Tuesday came out in support of the treasury in its investigations of coal contracts with the Gupta-owned Tegeta. The contract is said to be worth millions of rand.

This is the latest battle between Denel and Gordhan, after an earlier ugly fight where the finance minister described Denel as belligerent. Denel said it informed the Treasury of a decision to establish Denel Asia in October 29, but said nothing. It said despite the urgency of the matter both the treasury and the department of public enterprises remained silent.

Denel said treasury sprang into action when the name of the Guptas was linked to the deal. "The allegations that Denel is 'captured by the Guptas' are unfounded and politically motivated," said Denel.

"The Gupta family has no business joint venture with Denel and none of the Gupta family members or relatives are shareholders in Denel Asia," it said.



ANNEXURE 15

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IN THE HIGH COURT OF SOUTH AFRICA
SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001

2017 -03- 24

T. G. MALELE
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SUID AFRIKA GAUTENG AFDELING, PRETORIA

Case no: 20749/17

In the matter between:

DENEL SOC LIMITED

Applicant

and

BALJU PRETORIA SENTRAAL
478 PRETORIA 0001
24 -03- 2017

SHERIFF PRETORIA CENTRAL

MINISTER OF FINANCE
DEPARTMENT OF NATIONAL TREASURY

First Respondent
Second Respondent

NOTICE OF MOTION

TAKE NOTICE that the applicant intends making application to the above Honourable Court for an order in the following terms:-

1. An order declaring that:

- 1.1. that the applicant obtained approval, *alternatively*, is deemed to have obtained approval on 10 January 2016 and at least by 29 January 2016 from the second respondent for the conclusion and forming of its joint venture with VR Laser Asia ("the joint venture agreement") by virtue of Section 54(3) read with 51(g) of the Public Finance Management Act, 1999 ("the PFMA");

STATE ATTORNEY of 1999 ("the PFMA");
PRIVATE BAG/PRIVAATSAK X91
2017 -03- 24
PRETORIA 0001
STAATSPROKUREUR

the applicant acted in accordance and compliance with the provisions of sections 51(1), 52(2)(a),

JOY SHERIFF PRETORIA
naily 15/01

54(2)(b) and 54(2)(e) of the PFMA in concluding and forming the joint venture agreement; and

- 1.3. the applicant acted lawfully in concluding and forming its joint venture with VR Laser Asia in terms of the joint venture agreement.
2. Costs payable by any respondent that opposes the application, jointly and severally, with any other respondent that opposes the application.
3. Further and/or alternative relief.

TAKE FURTHER NOTICE that the affidavit of **ZWELAKHE NHLANGANISO NTSHEPE** together with the annexures thereto will be used in support of this application.

TAKE NOTICE FURTHER that the applicants have appointed Khampha Incorporated Attorneys Incorporated as its attorneys of record and nominated address set out below as the address at which they will accept notice and service of all process in these proceedings in terms of Rule 6(5)(b).

TAKE NOTICE FURTHER that if you intend opposing this application you are required:-

- (a) to notify the applicant's attorneys in writing of such intention within 10 (ten) days of service of the application;
- (b) to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in

these proceedings; and

- (c) file your answering affidavit within 15 days of the date on which you serve and file any notice of intention to oppose this application.

TAKE NOTICE that in the event that no such notice of opposition is received, the application will proceed unopposed at **10h00** on **02 May 2017** or so soon thereafter as counsel may be heard.

Signed at **PRETORIA** on this the 23 day of **MARCH 2017**.



KHAMPHA ATTORNEY'S INC
Applicant's Attorneys
C/O T.M CHAUKE INC
2nd floor Eastwing, Sammy Marks Square
314 Church Street,
PRETORIA
Tel: (011) 234 1735
Fax: 086 500 0945
E-mail: azwi@khamphainc.co.za
Ref: AK/Denel/NT01

To:

The **REGISTRAR** of the High Court
PRETORIA

And to:

DEPARTMENT OF NATIONAL TREASURY
First Respondent
40 Church Square, Pretoria
C/O Office of the State Attorney
SALU Building
316 Thabo Sehume Street
(Cnr Thabo Sehume & Francis Baard Streets)
PRETORIA
GAUTENG PROVINCE

SERVICE BY SHERIFF

And to:

MINISTER OF FINANCE
Second Respondent
40 Church Square, Pretoria
C/O Office of the State Attorney
SALU Building
316 Thabo Sehume Street
(Cnr Thabo Sehume & Francis Baard Streets)
PRETORIA
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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case no:

In the matter between:

DENEL SOC LIMITED

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

FOUNDING AFFIDAVIT

I the undersigned,

ZWELAKHE NHLANGANISO NTSHEPE

hereby declare under oath as follows:

1. I am an adult male Acting Chief Executive Officer of the applicant ("Denel").
2. I am duly authorised to depose to this affidavit and to launch this application on behalf of Denel.
3. Unless the context indicates otherwise, the facts contained in this

KJ



affidavit fall within my personal knowledge. Such facts are furthermore to the best of my knowledge and belief both true and correct.

4. To the extent that I lack personal knowledge of any facts in this affidavit, I refer this honourable Court to the confirmatory affidavits attached hereto.

THE PARTIES

5. The applicant is **DENEL SOC LIMITED**, a state-owned company registered and incorporated as such in terms of the company laws of South Africa, read with Public Finance Management Act No 1 of 1999, with its registered office at Nellmapius Drive, Irene, Pretoria ("**Denel**").
6. The first respondent is the **MINISTER OF FINANCE**, a member of the National Cabinet who is cited herein in his official capacity as the executive head of the Treasury who carries out his duties as such from 40 Church Street, Old Reserve Bank Building, 2nd Floor, Pretoria.
7. The second respondent is the **DEPARTMENT OF NATIONAL TREASURY**, a national department established in terms of section 5 of the Public Finance Management Act, 1 of 1999 read with Section 216 of the Constitution of the Republic of South Africa, 1996, with its principal place of business at 240 Madiba Street, Pretoria ("**Treasury**").
8. The Minister of Finance is the head of, and performs an oversight role over, the Treasury. In terms of sub-section 2 of the Public

F. J.



Finance Management Act, 1 of 1999 ("the PFMA"), the Minister takes responsibility for the decisions of the Treasury.

9. The respondents are cited herein only insofar as they may have an interest in the outcome of this application and as such no relief is sought against them save for costs in the event of opposition.

PURPOSE OF THE APPLICATION

10. The purpose of the application is to seek a declaratory order declaring that:

10.1. Denel obtained approval, *alternatively*, is deemed to have obtained approval on 10 January 2016 and at least by 29 January 2016, from the second respondent, for the conclusion and forming of its joint venture with VR Laser Asia ("the joint venture agreement") by virtue of Section 54(3) read with 51(g) of the PFMA;

10.2. Denel acted lawfully and in accordance, and compliance, with the provisions of Sections 51(1)(g), 54(2)(b) and 54(3) of the PFMA in concluding and forming the joint venture agreement.

INTRODUCTION

11. Denel:

11.1. is a state owned commercially-driven company and strategic asset for innovative defence, security and related

KJ

technology solutions whose sole shareholder is the South African Government;

- 11.2. is the largest manufacturer of defence equipment in Africa and operates in the military aerospace and landward defence environment;
- 11.3. is ranked among the world's top 100 global defence manufacturers and is the second largest defence company in the southern hemisphere;
- 11.4. provides turn-key solutions of defence equipment to its client by designing, developing, integrating and supporting artillery, munitions, missiles, aero structures, aircraft maintenance, unmanned aerial vehicle systems and optical payloads based on high-end technology;
- 11.5. has, over the years, built a reputation as a reliable supplier to its many international clients. It supplies systems and consumables to end users as well as sub-systems and components to its industrial client base;
- 11.6. is an important strategic defence contractor in its domestic market and a key supplier to the South African National Defence Force ("SANDF"), both as original equipment manufacturer ("OEM") and for the overhaul, maintenance, repair, refurbishment and upgrade of equipment in the SANDF's arsenal; and
- 11.7. groups together several defence and aerospace divisions and associated companies, provides turn-key solutions of

KJ

defence equipment to clients by designing, developing, integrating and supporting artillery, munitions, missiles, aero structures, aircraft maintenance, unmanned aerial vehicle systems and optical payloads based on high-end technology.

12. The Minister for Public Enterprises has executive authority over Denel and as such appoints an independent Board of Directors (the "Board") which oversees the executive management team responsible for the day-to-day management of Denel.
13. Denel has several equity partnerships, joint ventures and co-operation agreements with various companies in the defence industry.
14. Denel has the following divisions:
 - 14.1. Denel Dynamics – this division house the sovereign technologies and capabilities for the SANDF;
 - 14.2. Denel Vehicles Systems – Strategic;
 - 14.3. Denel Aviation – Strategic;
 - 14.4. Denel Aerostructures – Strategic;
 - 14.5. Denel Land Systems - Strategic;
 - 14.6. Pretoria Metal Pressings (PMP) – Strategic;

KJ

14.7. Denel Integrated Systems and Maritime – Strategic; and

14.8. Overberg Test Range (OTR) – Strategic.

DENEL'S SOURCES OF FUNDING

15. Denel:

15.1. is currently not funded through government grants but from a combination of debt and capital markets;

15.2. is funded mainly through interest bearing borrowings which are backed by government guarantees in the amount of R1.85 billion; and

15.3. has a R3 billion Domestic Medium Term Note ("DMTN") Programme which allows for short and long term debt issuance to fund the group.

16. Treasury has guaranteed a portion of the bonds and the commercial paper issued by Denel under the R3 billion DMTN programme.

DENEL ASIA JOINT VENTURE

17. In line with its strategic objectives, Denel concluded a joint venture agreement with VR Laser Asia, which joint venture involves the marketing and sale of armaments in the Asian market ("the joint venture").

18. In concluding the joint venture, Denel has considered, inter alia,


K.J

the following advantages of partnering with VR Laser Asia in the region:

- 18.1. VR Laser Asia's provision of further design, manufacturing and fabrication skills;
 - 18.2. that VR Laser Asia's is already established in the market / region;
 - 18.3. VR Laser Asia's deeper understanding of the local market and industrial landscape;
 - 18.4. VR Laser Asia's ability to align with local business networks;
 - 18.5. the provision by VR Laser Asia of quick access to local potential production and development partners;
 - 18.6. VR Laser Asia's ability to increase visibility in the market / region;
 - 18.7. further access to operational funding for Denel;
 - 18.8. the growth of the business in a sustainable manner; and
 - 18.9. Denel and VR Laser Asia's ability to share all demonstration costs proportionately to their shareholding.
19. The joint venture agreement is not attached to this affidavit for reasons of the confidentiality provisions contained therein. The

kj

respondents are in possession of a copy of the agreement and Denel will make a copy of the agreement available to the Court with appropriate confidentiality mechanisms in place.

20. VR Laser Asia's entire shareholding is owned by Mr Salim Essa.
21. The parties formed a new joint venture company (or special purpose vehicle) which is registered in Hong Kong under the name Denel Asia Co. Ltd ("**Denel Asia**").
22. Denel owns 51% of the issued share capital in Denel Asia while VR Laser Asia owns the remaining 49%.
23. Prior to the formation of the joint venture, Denel complied with all its obligations under, and in terms of, the provisions of the PFMA by seeking the approval of Treasury and the Minister of Public Enterprises for the formation of a joint venture.
24. The process followed and chronology of events leading to the formation of the joint venture was as follows:-
 - 24.1. 10 September 2015 -- the Board resolved to explore partnering a suitable equity joint venture partner for the Asia Pacific markets with ability to fund the joint venture as Denel did not have the budget for such. In the past, Denel had invested about R500 million in its attempts to establish itself in that market without making any return on such investment.
 - 24.2. 28 October 2015 -- Denel submitted its pre-notification on the proposed formation of Denel Asia to the Minister of

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Public Enterprises. A copy of this pre-notification and proof of delivery are annexed hereto as FA1;

- 24.3. 29 October 2015 – Denel submitted its pre-notification on the proposed formation of Denel Asia to the Minister of Finance and the Director General: National Treasury (“the **Director General**”) in compliance with section 51(1)(g). A copy of the pre-notification and proof of delivery are annexed hereto as FA2;
- 24.4. 22 November 2015 – a presentation was made of the Denel Asia business case to the Denel audit and risk committee;
- 24.5. 23 November 2015 – the Minister of Public Enterprises granted in principle approval for Denel to continue discussions with VR Laser Asia and for Denel to submit a Section 54(2) PFMA application to both the Treasury and the Minister of Finance. A copy of the approval is attached hereto as FA3;
- 24.6. 7 December 2015 – the Board approved the PFMA application subject to certain conditions and regulatory approval;
- 24.7. 9 December 2015 – a meeting was held between Denel, the Department of Public Enterprises (the “DPE”) and Treasury. During this meeting, Denel explained the urgency of the matter and informed Treasury and the DPE that it would file the PFMA application immediately and requested that it should be treated as urgent. Both


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Treasury and DPE agreed to the urgency of the matter. Treasury did not raise any objection with the formation of the said joint venture on this date and had not done so since it was notified through the pre-notification application on the 28 October 2015.

- 24.8. 11 December 2015 – Denel submitted its formal PFMA applications in terms of Sections 51 and 54 of the PFMA to the Ministers of Public Enterprises and Finance (“the PFMA applications”) and receipt of the delivery of the applications was acknowledged in writing. A copy of the formal PFMA application and proof of delivery are attached hereto as FA4.1 and FA4.2 respectively;
- 24.9. The 30 day period as stipulated in Section 54(3) of PFMA expired on 10 January 2016 and the applicant deemed, as it is entitled in law, the approval to have occurred as per the deeming provisions in, *inter alia*, Section 51(g) read with Section 54(3) of the PFMA.
- 24.10. Denel Asia was registered on 29 January 2016.
- 24.11. On 5 February 2016, a letter was addressed from the National Treasury Chief Director: SCM Governance, Monitoring & Compliance to Denel requesting information in order to determine whether “government prescripts” were followed in the formation of Denel Asia. A copy of the letter is attached hereto as FA5. This letter was sent by Treasury almost a month after it was notified of the formation of Denel Asia and two months after the meeting referred to above was held on 9 December 2015 between


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Denel, Treasury and DPE to discuss, *inter alia*, the formation of Denel Asia.

24.12. 4 April 2016 – the South African Reserve Bank gave its approval for the joint venture.

25. It is common cause that neither the Minister of Public Enterprises nor the Minister of Finance (and their respective departments) reacted or responded to either the Section 51(1)(g) or 54(2) applications.
26. Only after the announcement of the formation of the joint venture and the appointment of Mr Pravin Gordhan in the position of Minister of Finance, curiously, Treasury issued a press statement on 13 April 2016 stating that the transaction was not approved and in contravention of the provisions PFMA and that the Denel board has breached corporate governance principles. This is patently not correct. A copy of the Treasury media statement marked as annexure FA6.
27. It is obvious that this unwarranted statement which makes baseless but serious allegations received wide negative media coverage for Denel. As an example, annexures FA7 and FA8 are some of the media articles covering the story.
28. On 14 April 2016, Denel issued a press statement disputing that the transaction was "illegal" and confirming the formation of the joint venture was lawful. In addition, Denel cited the obligations contained in Chapter 3 of the Constitution which enjoins all spheres of government, including all organs of state to co-operate with one another in mutual trust and good faith. A copy



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of the applicant's statement is attached hereto as **FA9**.

29. On 15 April 2016, a meeting was held between representatives of Denel and Treasury at Denel's request, *inter alia*, to clarify the process it followed prior to conclusion of the joint venture and to allay the spurious concerns of Treasury. It is important to point out that (at paragraph of 3.d. of the minute) Treasury, represented by the officials at the said meeting, placed on record at the meeting that "*Denel freeze/put on hold all business operations of the Joint Venture until National Treasury issues their decision on the PFMA application.*" The parties further undertook to work together to resolve any misunderstanding around this matter. A copy of the minutes of this meeting are attached hereto marked annexure **FA10**.

30. On 26 June 2016, Denel addressed correspondence to the Minister of Finance in which it indicated, *inter alia*, that there is no justification for Treasury to have chosen to conduct itself in the manner that it had, that its statement of 13 April 2016 was issued without consultation and was inaccurate and that it is inappropriate to have publically accused Denel and the Board of having committed financial misconduct. A copy of the letter is annexed hereto as **FA11**.

31. On 4 May 2016 during the Treasury budget vote in Parliament, the Minister of Finance made the following statement regarding the Denel Board:

"On the question of Denel, one of the tendencies we are spotting in recent times is that when the boards are beginning to do things they are not supposed to do, they begin to display a level of

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arrogance and belligerence that does not befit the right kind of corporate governance, and the board at Denel needs to take that message".

32. As an example, attached is a copy of a media article confirming the Minister of Finance's statement in parliament marked annexure **FA12**. This statement also received prominent media coverage. An example of such coverage is annexed hereto as **FA13**.
33. On 6 May 2016, Denel issued a statement attempting to correct the false, misleading and defamatory statement made by the Minister of Finance and appealed to Minister of Finance and the Director General to refrain from making baseless public accusations against Denel and the Board (especially not in the media and without proper engagement and consultation). A copy of the statement is annexed hereto as **FA14**.
34. On 29 May 2016, amaBhungane published an article titled "*How Denel was Hijacked*" effectively repeating the allegations by the Minister of Finance. This article is attached as annexure **FA15**.
35. During June 2016, Denel prepared and submitted the requested information to Treasury and confirmed that the submission was made for information purposes only since the approval occurred as per the deeming provisions of the PFMA.
36. Despite Denel's attempts to clarify the matter directly with Treasury, the Minister of Finance and the Director General, in Parliament and other forums, the Minister of Finance and the Director General have continued to state that the joint venture



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transaction was concluded "*illegally*" and this despite, as we understand, having taken legal advice which says the contrary.

37. In this regard, I believe that the Minister of Finance and the Director General have sought, and obtained, legal opinion from senior counsel which is contrary to their views and the position adopted by them (i.e. which opinion supports Denel's contention that it has obtained deemed approval for the joint venture).
38. Despite this, the Minister of Finance and the Director General have publicly persisted with their erroneous views regarding the legality (or otherwise) of the joint venture and have sat idly back having taken no further steps to resolve the matter since having made the unsubstantiated public statements referred to above.
39. I submit that this shows bad faith on the part of Treasury, the Minister of Finance and the Director General and demonstrates the dire need for this Court to bring certainty to the matter.
40. Based on the events described above and the spurious allegations of Treasury, the Minister of Finance and the Director General, Treasury has on a number of occasions indicated that it shall only provide the required support to Denel on dissolution of the joint venture. This is clearly improper pressure. A copy of an email confirming the above is attached marked annexure FA16.
41. In an attempt to resolve the *impasse*, Denel formally proposed (FA11) to have the dispute resolved through application of the Intergovernmental Relations Framework Act 13 of 2005 and Chapter 3 of the Constitution. This proposal was not considered or accepted by Treasury, the Minister of Finance and the Director



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General and they did not propose an alternative dispute resolution mechanism. On the contrary, they have persisted with their decision not to provide any assistance to Denel until the joint venture was terminated and Denel Asia has been "de-registered."

42. In this regard, Denel initiated a meeting and met with the Treasury on the 17 November 2016. The purpose of the meeting was for Denel to request the support of Treasury in respect of its roadshow to investors in order for Denel to renew its existing facilities. At that stage, Treasury informed Mr Odwa Mhlwana, Denel's Acting Chief Financial Officer, that it would only join and support Denel on condition that the joint venture is terminated and Denel Asia is "de-registered." A copy of the confirmatory affidavit of Mr Mhlwana is attached marked FA17.

43. The Minister of Finance and Treasury have, on several occasions, been invited by Parliament to present their views regarding the formation of Denel Asia and the joint venture and on each occasion they have failed to attend Parliament or any such meetings scheduled for this purpose.

THE ROLE OF THE TREASURY, THE MINISTER OF FINANCE AND THE DIRECTOR GENERAL

44. Section 216 of the Constitution, 108 of 1996 ("the Constitution"), provides for the promulgation of national legislation to establish the Treasury.

45. The Treasury, *inter alia*:



- 45.1. was established in terms of Section 5 of the PFMA;
- 45.2. is the national department responsible for financial and fiscal matters; and
- 45.3. is responsible for managing South Africa's national government finances and in so doing supporting efficient and sustainable public financial management which is fundamental to the promotion of economic development, good governance, social progress and a rising standard of living for all South Africans.
46. The Constitution (Chapter 13) mandates the Treasury to ensure transparency, accountability and sound financial controls in the management of public finances.
47. The Minister of Finance is the head of the Treasury. In terms of sub-section 2 of the PFMA, the Minister takes responsibility for the policy (and other) decisions of the Treasury.
48. Section 6 of the PFMA deals with the functions and powers of the Treasury, which include assisting *"departments and constitutional institutions in building their capacity for efficient, effective and transparent financial management."*
49. As mandated by the executive and Parliament, the Treasury must support the optimal allocation and utilisation of financial resources in all spheres of government to reduce poverty and vulnerability among South Africa's most marginalised.
50. The regrettable conduct of the Treasury, the Minister of Finance

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and the Director General towards Denel and referred to, inter alia, below, is a violation of their statutory and constitutional duties.

REGRETTABLE CONDUCT BY TREASURY, THE MINISTER OF FINANCE AND THE DIRECTOR GENERAL TOWARDS DENEL

51. Proceeding on the basis of a deemed approval is not uncommon, as an example -

51.1. during 2012 Denel submitted an application to Treasury in terms of Section 51(1)(g) of the PFMA for approval of the proposed "Tawazun Dynamics" transaction ("the Tawazun transaction");

51.2. despite the lapse of about a 4 year period, no response has ever been received from Treasury to such a PFMA application and/or the Tawazun transaction;

51.3. Denel has proceeded with the Tawazun transaction and has traded on the basis of a deemed approval from Treasury in terms of the provisions of the PFMA;


51.4. Neither Treasury, the Minister of Finance nor the Director General have ever raised concerns regarding the Tawazun transaction and the deemed approval.

52. In the circumstances, Denel can only assume that the reason that Treasury, the Minister of Finance and the Director General have deliberately and publically taken issue with the joint venture agreement with VR Laser Asia is because of the acrimonious

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and personal public dispute that is currently playing itself out between Treasury, the Minister of Finance and the Director General and any entity that the former perceive to be related to, or associated with, the Gupta family (i.e. such as VR Laser Asia through its shareholder, Mr Salim Essa, who is perceived to be associated with the Gupta family).

53. It is clear from the above that Treasury, the Minister of Finance and the Director General have failed (and continue to fail) to discharge their constitutional duties in a professional and responsible manner.
54. It is also obvious that the public statements uttered by Treasury, the Minister of Finance and the Director General have had serious adverse reputational consequences for Denel, have impacted upon Denel's credibility in the market and with various financiers and lenders and that Denel has been obviously and manifestly prejudiced thereby. The widespread perception in the market is that Denel has contravened the PFMA, has concluded an "illegal" transaction and is being led by a board which has no regard for good corporate governance principles.
55. The prejudice and uncertainty caused by this negative perception which has been created by Treasury, the Minister of Finance and the Director General, is borne out by the fact that Denel has had to convince and placate its current and prospective lenders and financiers that such public utterances and perceptions are false, unsubstantiated and incorrect. This has been difficult for Denel to achieve and has created much uncertainty for it in the market.
56. There have also been media reports referring to a threat of

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litigation to be initiated by Treasury, Minister of Finance and the Director General against Denel regarding the formation of the joint venture and these reports have not been contradicted by both the Minister of Finance and Treasury. However, neither Treasury, the Minister of Finance nor the Director General have taken any steps in this regard (other than to obtain the legal opinion referred to above).

57. It is a pity that the Treasury, the Minister of Finance and the Director General have sat idly back and have not made any efforts or taken any positive steps to properly resolve the uncertainty and *impasse* caused by them and their public utterances and pronouncements regarding the legality of the joint venture. It is with this in mind that the only reasonable inference to be drawn by such conduct (and their inactivity) is that the current uncertainty and negative perception suits their ulterior purpose and, *inter alia*, their ongoing public battle with the Gupta family.

58. Because of what is set out above, Denel has had serious difficulties in renewing **essential facilities** that are currently in place and in raising further funding that is required for optimal running of its commercially driven operations. Treasury, the Minister of Finance and the Director General:

58.1. are acutely aware (and have been for several months and as far back as the latter half of 2016) that a possible reason for creditors not wanting to extend such facilities is because of the perception created by the public disagreement between Treasury, the Minister of Finance and the Director General and Denel regarding Denel Asia

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and the joint venture; and

58.2. have themselves identified that it is important to bring the matter of the joint venture and Denel Asia to a close in a manner that would allow for Treasury, the Minister of Finance, the Director General, the DPE and Denel to talk to financiers and lenders with one unified voice.

59. Despite this knowledge, Treasury, the Minister of Finance and the Director General have done precious little to resolve the issues and change this erroneous public perception which is clearly prejudicing and harming Denel. It is with this in mind that Denel is compelled to seek certainty and clarity from this Court on the basis set out in this application.

60. It is in these circumstances that Denel has had no alternative but to approach this Court for, *inter alia*, a declarator that the formation of the joint venture was lawful.

DENEL'S ATTEMPTS TO RESOLVE THE IMPASSE

61. As stated previously, Denel sent a letter (FA11), to the Minister of Finance and suggested that the matter be referred for resolution through intergovernmental relations process as set out in Section 42 of the Intergovernmental Relations Act.

62. In this letter Denel, *inter alia*, stated that:

62.1. it has become apparent from the meetings of the Denel Executives and Treasury officials that Denel and Treasury have a different interpretation and understanding of the

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legislative framework and thus it would seem, the parties have reached a deadlock;

62.2 breaking this deadlock is the first step in resolving the current *impasse* between the parties. Denel re-iterated the proposal made by its Executive Authority (the Minister of Public Enterprises) of convening a bilateral meeting on the matter which would satisfy the prerequisite before a dispute is formally declared in terms of Section 42 Intergovernmental Relations Act.

63. Denel's proposal was simply ignored and the Minister of Finance has thus refused Denel's every reasonable attempt to resolve the *impasse*.
64. Further, a number of attempts have been made to have the dispute resolved through the intervention of Parliament. On more than one occasion when meetings were scheduled with Parliament, the Minister of Finance and Treasury chose to make themselves unavailable. An example of this was on 7 September 2016 when both Denel, Treasury and the Minister of Finance were invited to parliament but Treasury and the Minister of Finance failed to attend.
65. The Treasury, the Minister of Finance and the Director General have disregarded Parliamentary requests to appear to discuss this matter.
66. As recently as 8 March 2017, the Minister of Public Enterprises was invited to, and attended, a Parliamentary Portfolio

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Committee Meeting regarding Denel's liquidity issues and its over reliance on foreign markets. At this meeting the Minister of Public Enterprises stated as follows, *"That brings me to Denel Asia. I signed off on Denel Asia on the PFMA section 54 because this falls under that section. The National Treasury have not signed off on this section 51(g)... I have not heard from National Treasury on this, we don't know whether they agree or not. I have told Denel not to trade on this company..."*.

67. This once more demonstrates that Denel is hamstrung by the Treasury's, the Minister of Finance's and the Director General's refusal to co-operate and find resolution all while the uncertainty persists.

THE MOTIVATIONS OF THE MINISTER OF FINANCE AND THE DIRECTOR GENERAL

68. As I have already said, it is no secret that Treasury, the Minister of Finance and the Director General have waged a personal and public war on any entity that they perceive to be associated with the Gupta family. It is Denel's view that it has been swept up, for no good reason, in this war to its prejudice and to the detriment of all South Africans.
69. Treasury, the Minister of Finance and the Director General have sought to rely on populist narratives created and supported by them to further their war and for an ulterior purpose. This is especially so in circumstances where they have:
- 69.1. ignored Denel's attempts to resolve the *impasse* through the intergovernmental framework and through a

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Parliamentary Process;

- 69.2. allowed other transactions such as the Tawazun transaction to proceed without query when not being associated with, or related to, the Gupta family.

PREJUDICE TO DENEL

70. In the absence of this application for a declarator, manifest uncertainty prevails and Denel is prejudiced, *inter alia*, as follows:

- 70.1. Denel has been unable to proceed with the implementation of the joint venture agreement in circumstances where one of the conditions precedent is the requisite PFMA approval;
- 70.2. Denel's reputation and credibility in the market has been severely impacted by the negative public perception created by Treasury, the Minister of Finance and the Director General regarding the joint venture;
- 70.3. Denel has experienced extreme difficulty in extending existing credit facilities and securing new credit facilities in circumstances where the lenders and financiers have expressed serious concern regarding the negative public perception created by Treasury, the Minister of Finance and the Director General regarding the joint venture and their public dispute with Denel. The respondents have created this situation by contending that Denel has behaved illegally by not obtaining PFMA approval when, to their knowledge, this is untrue but moreover they have

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not acted expeditiously and diligently to resolve the matter as is required by the PFMA and principles of good governance;

70.4. Because of the unresolved dispute between Treasury, the Minister of Finance and the Director General and Denel regarding the joint venture and the resultant uncertainty, Denel Asia has lost out on potential profitable business deals in the Asia Pacific region including, inter alia, not being in a position to tender for the lucrative "*RFI artillery contract*" worth approximately US\$1 billion;

70.5. In acting in this manner and frustrating the operation of the joint venture, the respondents have frustrated the proper and effective operation of Denel and indeed, in the case of the Minister of Finance, he has sabotaged the proper functioning of a parastatal and sacrificed Denel's interest to further his own political war with the Gupta family. Apart from creating massive and unnecessary uncertainty in the sphere in which Denel operates, his conduct runs contrary to what one would expect of a Minister who is behaving impartially and in strict fulfilment of his statutory and constitutional duties. However, aside from the political and constitutional imperative for the Minister to behave properly there is an urgent commercial need for the Court to end the uncertainty created by Treasury, the Minister of Finance and the Director General because this has cast doubt on Denel's rights and obligations in relation to the joint venture agreement and its current and future legal position.

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70.6. Denel has suffered reputational damage and its credibility in the defence market has been impacted as a consequence of the public dispute with it and Treasury, the Minister of Finance and the Director General – it is obvious that potential business deals are negatively impacted when a potential customer, business partner or associate is confronted with this negative perception and public dispute between two State entities;

70.7 Denel is left without certainty regarding its existing, future or contingent rights and/or obligations in terms of, and under, the joint venture agreement. In addition, Denel's joint venture partner suffers similar prejudice in that it is left without certainty regarding its existing, future or contingent rights and/or obligations in terms of, and under, the joint venture agreement.

71. In addition to the prejudice referred to above, Treasury's, the Minister of Finance's and the Director General's regrettable conduct towards Denel has a potential to:

- 71.1. place undue pressure on Denel's liquidity position to execute its contracts;
- 71.2. negative investor sentiment and the public perception of Denel;
- 71.3. impact negatively upon Denel being able to discharge its obligations as set-out in the Defence Review;
- 71.4. result in destabilising Denel's service to the SANDF as it is

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mandated to do, which in turn will ultimately compromise South Africa's defence capability and national security.

72. There clearly exists a dispute between Treasury, the Minister of Finance and the Director General and Denel regarding the status of the deemed PFMA approval of the joint venture. The former is of the view that there is no such deemed approval and Denel is of the view that it has obtained the necessary deemed PFMA approval. This dispute requires determination by this Court in circumstances where it is necessary for the parties to establish whether the condition precedent of PFMA approval, as contained in the joint venture agreement, has been fulfilled.
73. In addition, I submit that this Court ought to exercise its discretion and enquire into and determine the existing, future or contingent rights and obligations of Denel and VR Laser Asia, in respect of the joint venture agreement and to resolve the uncertainty as described above and that currently prevails.

WHEREFORE the applicant prays for an order in terms of the Notice of Motion to which this affidavit is affixed.



DEPONENT

SIGNED before me at Heidelberg SAPS on this the 23rd day of **MARCH 2017**, the deponent having sworn that the contents of this affidavit are both true and correct, acknowledged that the deponent knows and understands the contents of this affidavit, that the deponent has no objection to taking the prescribed oath and that the deponent considers the prescribed oath to be binding on the deponent's conscience.

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KJ Muvundla
S/COT

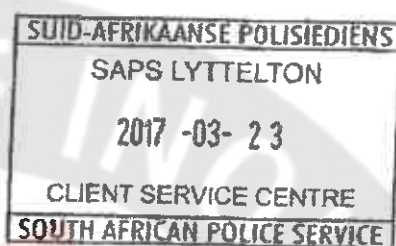
COMMISSIONER OF OATHS

Full names: Justice Katlego Muvundla

Business address: Basden & Gerhard str

Designation: S/COT

Capacity: S/COT





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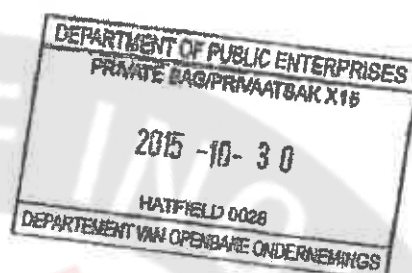
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DENEL GROUP

29 October 2015
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 zwelakhen@denel.co.za

Minister L. Brown
 Minister of Public Enterprises
 Department of Public Enterprises
 Private Bag x15
 HATFIELD
 0028



Dear Minister Brown

PFMA SECTION 54 (2) PRE NOTIFICATION: PROPOSED FORMATION OF DENEL ASIA

This letter serves as a PFMA Section 54 (2) pre-notification informing the Department of Public Enterprises (DPE) of Denel SOC Limited ("Denel") intention to establish an incorporated joint venture company in Hong Kong for purposes of exploiting opportunities in the Asia defense market.

Rationale

The Asia Pacific region is perceived to be the leading global (excluding USA) defense market and a potent force in defense technology innovation. This has resulted in increased defense spending i.e. by 2018 defense budgets across Asia Pacific (excluding USA) are expected to grow by over 19% to about USD 612 billion; the procurement budgets are expected to increase by 28%; research and development projected growth is between 28 and 29% from 2014 to 2018.

Denel's growth strategy as set out in its corporate plan, is based on, inter alia, making inroads into global target markets. The current Denel strategy, based on the internal strengths and weaknesses as well as a regional analysis, is to actively pursue opportunities in the Asia-Pacific market in which Denel has been active since the early 1990's with minimal success.

Denel SOC Ltd, Reg No 1992/001337/30, Nelknapus Drive, Irene
 P O Box 8322, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
 Directors: Mr L D Manisha (Chairman), Mr R Saloojee¹ (Group Chief Executive Officer), Ms M Kgomongoe, Mr T D Mahumapelo,
 Ms P M Mahlangu, Ms N Mandindi, Mr Z Mhlonlo¹, Ms R Mokoena, Mr N J Motseki, Mr T J Msomi, Lt Gen T M Nkabinde (rtd),
 Ms K P S Nishavheni,

¹Executive Director
 Group Company Secretary Ms E M Africa

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Countries such as India, Indonesia, Singapore, Thailand, Brunei, Philippines and Vietnam are considered to be primary target markets for Denel whilst markets such as Myanmar, Sri Lanka and Bangladesh, form secondary target markets.

India uses defense spending to develop its domestic industrial base to create high value jobs. India's government dominated defense industrial base has been open to private sector participation only since 2001 and is highly dependent on imports limiting the contribution of defense spending to economic development. To address this limitation, the government has increased foreign direct investment to 49% ownership of a defense company. This has given rise to the 'Buy Make India' program. This seems to be a growing trend in the region.

In analysing the Denel business in the Asia Pacific region, the following emerged as barriers to entry into this fast growing market:

- lack of multilateral defense relationships;
- inability to provide funding solutions;
- inability to source local production and development partners (particularly in India);
- frequent engagement with end user and industry from a distance not feasible;
- company visibility in the market place/region from a distance is limited;
- need for a conduit for developing/Aligning with local business networks; and
- active participation in regional initiatives from a distance are not feasible.

Given the above barriers, it makes commercial sense for Denel to enter into a joint venture with a company that is already established in the region and which has an established network of potential business sources that will provide immediate and urgent solutions to the barriers raised above.

Rationale for the formation of Denel Asia

VR Laser Asia approached Denel with a business proposition. After careful consideration, Denel recognised the synergies that exist and the ability to jointly take advantage of existing opportunities

The advantages of Denel entering the Asia market with VR Laser Asia include:

- the provision of quick access to local potential production and development partners
- a deeper understanding of the local market and industrial landscape
- the ability to align with local business networks
- access to operational funding
- the ability to increase visibility in the market/region

For the above reasons it is proposed that a company, Denel Asia, be registered in Hong Kong in partnership with VR Laser Asia. Therefore, Denel can leverage on VR Laser Asia's infrastructure and presence in the region.

Financing:

- VR Laser Asia will be responsible for all operational costs for a period of 5 years estimated at a R100 million
- Project funding as and when required will be provided by shareholders.

Financial viability

- In light of the R100 million investment by VR Laser Asia into Denel Asia over a 5 year period for operating costs, the operational financial risks to Denel are minimal.
- Overall there is currently potential business amounting to USD 9.2 billion over the next 5 years that offers Denel lucrative opportunities within this region. These opportunities will be concluded on a commercially viable basis
(See Appendix 2 representing opportunities that Denel feels confident will be secured jointly with VR Laser Asia).

Technology transfer and protection of Denel's IP

- Denel will not alienate its Intellectual Property and technology transfer will be done by way of a licencing agreement between Denel and Denel Asia.
- Applicable royalties of third parties including those of Denel will be addressed.

Risks and mitigation

Risks		Mitigation/Remarks
1.	Reputational	<ul style="list-style-type: none"> • No agents will be involved • Denel has a controlling share

2.	Guarantees	<ul style="list-style-type: none"> Reduced balance sheet exposure due to partnering
3.	Penalties	<ul style="list-style-type: none"> Both Denel and VR Laser Asia, have the skill, expertise and experience to minimise the possibility of penalties being incurred
4.	Legal Exposure	<ul style="list-style-type: none"> Denel SA exposure (Indemnities and no liability in terms of current proceedings and future-transactions to be addressed)
5.	PFMA Conditions	<ul style="list-style-type: none"> Adhere to all shareholder conditions prior to Shareholders Agreement and ancillary agreements.

Governance Structure:

The salient features of the transaction agreed to in principle with VR Laser Asia and as set out in a co-operation agreement, which remains subject to regulatory approval, are as follows:

Company Structure

A new limited liability company (Denel Asia) is to be registered in Hong Kong. It should be noted that the company will be established and managed in line with corporate governance best practices to reflect an independent organisation accountable to its shareholders.

- Denel, will hold 51% of the issued share capital of Denel Asia with the remaining 49% to be held by VR Laser Asia.
- Denel as majority shareholder will be able to influence the strategic direction of Denel Asia at a shareholder level.
- Upon incorporation, a board of directors will be constituted comprising Denel and VR Laser Asia representatives (with Denel appointing the first Chairman).
- Subject to relevant approvals, the Shareholders agreement, Memorandum of Incorporation (MOI) in relation to Denel Asia as well as a licence agreement are to be concluded,

Company Confidential

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finalised and signed between Denel and Denel Asia. These will regulate the terms on which Denel will make certain intellectual property available to Denel Asia. Upon execution of the shareholders' agreements, the co-operation agreement will terminate.

Suspensive Condition

- The co-operation agreement is subject to internal and regulatory approvals.

WAY FORWARD

The following activities will take place towards the establishment of Denel Asia:

Action	Timeline
Negotiation and conclusion of the cooperation agreement	Completed and remains subject to board and PFMA approval.
The formation of Denel Asia has been tabled at the Denel Board	10 September 2015
PFMA pre-notification	30 October 2015
Statutory and Regulatory approvals	November 2015
PFMA submission	November 2015

Recommendation

Denel will keep the Department abreast of developments as it progresses and will submit a full PFMA application once the negotiation process including all ancillary agreements (such as the Shareholders Agreement and Licencing Agreement) has been concluded subject to PFMA and other regulatory approvals.

I trust that you will find the above in order and remain at your disposal for any further clarification that may be required.

Yours faithfully



Mr L. D. Mantsha

CHAIRMAN OF THE DENEL BOARD

30/01/2015

cc. Ms Matsietsi Mokholo – Acting Director-General Department of Public Enterprises
Mr Zwelakhe Ntshepe – Acting GCEO: Denel



Appendix 2

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Estimated Project Income




Country	Products	Quantities	Turnover	Expected Order Date	Probability	Status
India			USD'm			
(20 year market forecast)	Turista/Vehicles (Infantry Fighting Vehicle Program)	DLS 1000	2 000.000	2018	30%	Identify market requirements but no interaction with
	T6 Artillery Turista	DLS 200	760.000	2017	50%	Historical investment of +R200m. Evaluation, Technical & commercial negotiations completed.
	T5-53 Truck Mounted Artillery Gun	DLS 814	2 849.000	2018	50%	Limited trials completed in India by Tata. Influence required to tighten specification.
	G6-52 Wheeled Artillery Gun	DLS 300	2 100.000	2017	50%	Historical investment of +R200m. Evaluation, Technical & commercial negotiations completed.
	5577 Machine Gun	DLS 9533	244.000	2016	50%	Quotation submitted.
	28mm Air Defence Cannon	DLS 400	148.000	2017	50%	Quotation submitted.
	Autocannon: Gapcode Launcher	DLS 3000	135.000	2016	30%	Unexplored opportunity
	NTW20 Anti-Material Rifle	DLS 700	28.700	2016	50%	Unexplored opportunity
	Unarmoured Asaghi Vehicle	DLS 0	-	-	-	Equal contract to be reinstated.
	155mm Ammunition	RDA 0	-	-	-	To be explored
	81mm Modular Charges	RDA 0	-	-	-	ToT completed for ERFA. Opportunity for Asaghi ToT.
			\$ 156.700			Outpost already transferred.
South Africa						
	105mm Towed Artillery Gun	DLS 50	68.800	2017	30%	RFI issued.
	155mm Towed Artillery Gun	DLS 85	90.000	2017	30%	RFI issued.
	105mm Ammunition	RDA 0	-	-	-	RFI issued.
	155mm Ammunition	RDA 0	-	-	-	RFI issued.
	81mm Modular Charges	RDA 0	-	-	-	RFI issued.
			\$ 154.800			
Singapore						
	81mm Naval Cannon Systems	DLS 25	24.200	2016	50%	Follow on order expected.
Thailand						
	81mm Naval Cannon Systems	DLS 40	4.000	2016	70%	Follow on order expected.
	G200 Naval Cannon	DLS 25	75.000	2016	50%	Explore opportunity.
	105mm Towed Howitzer	DLS 82	165.600	2018	30%	Requirement exists. Opportunity to be explored.
	155mm Towed Howitzer	DLS 18	45.000	2020	30%	Requirement exists. Opportunity to be explored.
	155mm Self-Propelled Howitzer	DLS 6	41.500	2022	30%	Requirement exists. Opportunity to be explored.
	35mm DPG Naval Cannon	DLS 10	50.000	2016	30%	Technical presentation made. Budgetary price submitted.
			\$ 36.800			
Indonesia						
	PK-20 Turist	DLS 140	89.450	2016	50%	Product Certified. Explore ToT.
	MT 105mm Armour Turret	DLS 118	372.600	2017	50%	Opportunity exists for medium tank. Explore co-operation with Rheinmetall.
			\$ 462.050			
Philippines						
	G20 Naval Cannon	DLS 28	37.010	2017	40%	RFI issued. Explore opportunity
	G20 Naval Cannon	DLS 12	36.000	2018	30%	RFI issued. Explore opportunity
			\$ 73.010			
Vietnam						
	35mm DPG Naval Cannon	DLS 10	50.000	2017	30%	Technical presentation made.
			\$ 50.000			
Myanmar						
	35mm DPG Naval Cannon. Manufacturing license.	DLS 1	10.000	2016	70%	Technical presentation made. Negotiation available awarded.
			\$ 10.000			
		TOTAL	\$ 286.170			

Probability Level	Definition
0-30%	Requirement identified. Opportunity to be explored.
30-60%	Requirement confirmed. Discussions/exploration ongoing.
>60%	Negotiations in progress.

K.J. [Signature]

ACKNOWLEDGEMENT OF RECEIPT

Letter re. Pre-Notification -- PFMA Application

	Name (Print)	Signature	Date and time
Minister L Brown			
Minister of DPE	keomamang		30/10/2015 16:00
Minister N Nene			30/10/15
Minister of Finance			

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ACKNOWLEDGEMENT OF RECEIPT

Letter re. Pre-Notification – PFMA Application

	Name (Print)	Signature	Date and time
Minister L. Brown			
Minister of DPE	kenomang		30/10/2015 16:00
Minister N Nene			30/10/15
Minister of Finance			

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DENEL GROUP

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29 October 2015

The Honourable Mr Nhlanhla Nene
Minister of Finance
Department of National Treasury
Private Bag X115
PRETORIA
0001

Dear Minister Nene

PFMA SECTION 54 (2) PRE NOTIFICATION: PROPOSED FORMATION OF DENEL ASIA

This letter serves as a PFMA Section 54 (2) pre-notification informing the Department of Public Enterprises (DPE) of Denel SOC Limited ("Denel") intention to establish an incorporated joint venture company in Hong Kong for purposes of exploiting opportunities in the Asia defense market.

Rationale

The Asia Pacific region is perceived to be the leading global (excluding USA) defense market and a potent force in defense technology innovation. This has resulted in increased defense spending i.e. by 2018 defense budgets across Asia Pacific (excluding USA) are expected to grow by over 19% to about USD 612 billion; the procurement budgets are expected to increase by 28%; research and development projected growth is between 28 and 29% from 2014 to 2018.

Denel's growth strategy as set out in its corporate plan, is based on, inter alia, making inroads into global target markets. The current Denel strategy, based on the internal strengths and weaknesses as well as a regional analysis, is to actively pursue opportunities in the Asia-Pacific market in which Denel has been active since the early 1990's with minimal success. Countries such as India, Indonesia, Singapore, Thailand, Brunei, Philippines and Vietnam are considered to be primary target markets for Denel whilst markets such as Myanmar, Sri Lanka and Bangladesh, form secondary target markets.

India uses defense spending to develop its domestic industrial base to create high value jobs. India's government dominated defense industrial base has been open to private sector participation only since 2001 and is highly dependent on imports limiting the contribution of defense spending to economic development. To address this limitation, the government has increased foreign direct investment to 49% ownership of a defense company. This has given rise to the 'Buy Make India' program. This seems to be a growing trend in the region.

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P O Box 8322, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
Directors: Mr L D Mantsha (Chairman), Mr R Saloojee¹ (Group Chief Executive Officer), Ms M Kgomongoe, Mr T D Mahumapelo, Ms P M Mahlangu, Ms N Mandindi, Mr Z Mhlontlo¹, Ms R Mokoena, Mr N J Molseki, Mr T J Msomi, Lt Gen T M Nkabinde (rtd), Ms K P S Ntshavheni,

¹Executive Director
Group Company Secretary: Ms E M Africa

K.J

In analysing the Denel business in the Asia Pacific region, the following emerged as barriers to entry into this fast growing market:

- lack of multilateral defense relationships;
- inability to provide funding solutions;
- inability to source local production and development partners (particularly in India);
- frequent engagement with end user and industry from a distance not feasible;
- company visibility in the market place/region from a distance is limited;
- need for a conduit for developing/Aligning with local business networks; and
- active participation in regional initiatives from a distance are not feasible.

Given the above barriers, it makes commercial sense for Denel to enter into a joint venture with a company that is already established in the region and which has an established network of potential business sources that will provide immediate and urgent solutions to the barriers raised above.

Rationale for the formation of Denel Asia

VR Laser Asia approached Denel with a business proposition. After careful consideration, Denel recognised the synergies that exist and the ability to jointly take advantage of existing opportunities.

The advantages of Denel entering the Asia market with VR Laser Asia include:

- the provision of quick access to local potential production and development partners
- a deeper understanding of the local market and industrial landscape
- the ability to align with local business networks
- access to operational funding
- the ability to increase visibility in the market/region

For the above reasons it is proposed that a company, Denel Asia, be registered in Hong Kong in partnership with VR Laser Asia. Therefore, Denel can leverage on VR Laser Asia's infrastructure and presence in the region.

Financing:

- VR Laser Asia will be responsible for all operational costs for a period of 5 years estimated at a R100 million
- Project funding as and when required will be provided by shareholders.

Financial viability

- In light of the R100 million investment by VR Laser Asia into Denel Asia over a 5 year period for operating costs, the operational financial risks to Denel are minimal.
- Overall there is currently potential business amounting to USD 9,2 billion over the next 5 years that offers Denel lucrative opportunities within this region. These opportunities will be concluded on a commercially viable basis
(See Appendix 2 representing opportunities that Denel feels confident will be secured jointly with VR Laser Asia).

Technology transfer and protection of Denel's IP

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- Denel will not alienate its Intellectual Property and technology transfer will be done by way of a licencing agreement between Denel and Denel Asia.
- Applicable royalties of third parties including those of Denel will be addressed.

Risks and mitigation

Risks		Mitigation/Remarks
1.	Reputational	<ul style="list-style-type: none"> • No agents will be involved • Denel has a controlling share
2.	Guarantees	<ul style="list-style-type: none"> • Reduced balance sheet exposure due to partnering
3.	Penalties	<ul style="list-style-type: none"> • Both Denel and VR Laser Asia, have the skill, expertise and experience to minimise the possibility of penalties being incurred
4.	Legal Exposure	<ul style="list-style-type: none"> • Denel SA exposure (Indemnities and no liability in terms of current proceedings and future transactions to be addressed)
5.	PFMA Conditions	<ul style="list-style-type: none"> • Adhere to all shareholder conditions prior to Shareholders Agreement and ancillary agreements.

Governance Structure:

The salient features of the transaction agreed to in principle with VR Laser Asia and as set out in a co-operation agreement, which remains subject to regulatory approval, are as follows:

Company Structure

A new limited liability company (Denel Asia) is to be registered in Hong Kong. It should be noted that the company will be established and managed in line with corporate governance best practices to reflect an independent organisation accountable to its shareholders.

- Denel, will hold 51% of the issued share capital of Denel Asia with the remaining 49% to be held by VR Laser Asia.
- Denel as majority shareholder will be able to influence the strategic direction of Denel Asia at a shareholder level.
- Upon incorporation, a board of directors will be constituted comprising Denel and VR Laser Asia representatives (with Denel appointing the first Chairman).
- Subject to relevant approvals, the Shareholders agreement, Memorandum of Incorporation (MOI) in relation to Denel Asia as well as a licence agreement are to be concluded, finalised and signed between Denel and Denel Asia. These will regulate the terms on which Denel will make certain intellectual property available to Denel Asia. Upon execution of the shareholders' agreements, the co-operation agreement will terminate.

Suspensive Condition

- The co-operation agreement is subject to internal and regulatory approvals.

WAY FORWARD

The following activities will take place towards the establishment of Denel Asia:

Action	Timeline
Negotiation and conclusion of the cooperation agreement	Completed and remains subject to board and PFMA approval.
The formation of Denel Asia has been tabled at the Denel Board	10 September 2015
PFMA pre-notification	30 October 2015
Statutory and Regulatory approvals	November 2015
PFMA submission	November 2015

Recommendation

Denel will keep the Department abreast of developments as it progresses and will submit a full PFMA application once the negotiation process including all ancillary agreements (such as the Shareholders Agreement and Licencing Agreement) has been concluded subject to PFMA and other regulatory approvals.

I trust that you will find the above in order and remain at your disposal for any further clarification that may be required.

Yours faithfully

Mr L. D. Mantsha
CHAIRMAN OF THE DENEL BOARD

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- cc. Ms Matsietsi Mokholo – Acting ~~Director-General~~ Department of Public Enterprises
Mr Lungisa Fuzile – Director General: National Treasury
Mr Zwelakhe Ntshepe – Acting GCEO: Denel
Mr Odwa Mhlwane – Acting Group Financial Director: Denel



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MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Mr Lungisani Daniel Mantsha
Chairperson of the Denel Board
Denel SOC Ltd
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Centuryon
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Tel: (011) 11 781 0099 / (012) 671 2938

E-mail: dan@lungisanimantshaattorneys.co.za / info@lungisanimantshaattorneys.co.za /
fortune@denel.co.za / tanvav@denel.co.za

Dear Mr Mantsha

Re: PFMA Section 54 (2) Pre-Notification on the Proposed Formation of Denel Asia

The above matter has reference.

I concur with yourself that Pacific Asia defence market will remain on upward trajectory for the foreseeable future. It would therefore make strategic business sense for Denel to position itself to take advantage of the envisaged growth.

However, accessing the Asian market is likely to be daunting for the new entity. Global defense original equipment manufacturers (OEMs) are targeting the growing Asian defence market to compensate for the stagnation at their home markets. They bring with them substantial offset and funding proposals which small companies such as Denel may not be able to provide. The value proposition of VR Laser Asia wanting a tie up with Denel is not clear especially on how it plans to break into this highly competitive market given its own limited global reach.

Given the strategic importance of the Asia-Pacific defence market, I hereby grant in-principle approval for Denel to continue discussions with VR Laser and Denel can submit a section 54 (2) PFMA application to both myself as the Executive Authority and the Minister of Finance.

In order to protect Denel's status as the holding company, the application should include, amongst other things:

- a comprehensive detailed business case to enable the Minister to express an opinion on the joint venture transaction;
- a comprehensive due diligence report on the financial regulatory legal requirement and regulatory laws governing foreign owned entities in Hong Kong;
- funding plans, all the transaction documents (including the MOU and Cooperation agreements);
- the process followed to select VR Laser as a partner of choice;

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Page 1 of 2

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- e) the proposed structure of the proposed new company and breakdown of estimated operational costs (five year horizon budget indicating clear cost allocation of both parties);
- f) a comprehensive due diligence of VR Laser which includes its financial standing, capabilities and ownership, defence and security product/service range and client base in Asia;
- g) registration details of the company and shareholding of VR Laser Asia;
- h) the reason(s) for a Continent specific versus a Country specific arrangement and indicate the preference of Hong Kong as a preferred domicile;
- i) any studies that were undertaken by the SOC that led to the conclusion that this partner is the most suitable, after VR Laser approached Denel with this business proposition; and
- j) reason(s) why this transaction or similar to it is not proposed in the 2015/16 Corporate Plan.

Thereafter, Denel is required to apply and get approval from the Minister of Finance in terms of Section 51(g) of the PFMA, which is a prerequisite when establishing a new entity. Once such approval has been obtained, all the negotiations, agreements and regulatory processes can be completed.

The Board must also ensure that there is adequate governance oversight regarding the processes that underpin transaction discussions. Issues of conflict of interest, real or perceived, should be adequately monitored. All efforts should be made to minimise risk exposure to both Denel and the Shareholder.

Yours sincerely


MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
 DATE: 22/4/2015

cc Mr Nhlanhla Nene, MP
 Minister of Finance

Tel: (012) 315-5559
 Email: minreg@treasury.gov.za

cc Mr Zwelakhe Ntshope
 Acting Group Chief Executive Officer
 Denel SOC Ltd

Tel: 012 671-2938
 Email: ZwelakheN@denel.co.za / CharleneT@denel.co.za

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DENEL GROUP

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 Ref: Ltr/DPE/Denel Asia/2015

10 December 2015

The Honourable Ms Lynne Brown (MP)
 Minister of Public Enterprises
 Department of Public Enterprises
 Private Bag X15
 HATFIELD
 0028

PER HAND

Dear Honourable Minister

**FORMAL APPLICATION FOR APPROVAL IN TERMS OF SECTION 54(1) AND 54 (2) OF THE
 PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999
 RE PROPOSED ESTABLISHMENT OF DENEL ASIA SOC LIMITED**

We refer to the pre-notification letter dated 29 October 2015, addressed to the Honourable Minister, which pre-notification served to inform the Department of Public Enterprises in terms of Section 54(2) of the Public Finance Management Act 1 of 1999 ("PFMA") of the proposed establishment of a joint venture company in Hong Kong.

We hereby submit the formal application required in terms of the PFMA, more particularly sections 54(1), 54(2)(a), 54(2)(b) and 54(2)(e). In this regard, we shall simultaneously address the queries raised by the Honourable Minister re: the pre-notification letter. We shall equally inform the National Treasury of the proposed establishment of a joint venture company in Hong Kong and its limited financial impact on Denel SOC Limited.

Should any further information be required, please do not hesitate to contact either the Denel Executive Management or myself.

Yours faithfully


 Mr L. D. Mantsha
 CHAIRMAN OF THE DENEL BOARD

cc. Mr Richard Seleke Director-General Department of Public Enterprises
 Mr Zwelakhe Ntshope Acting GCEO: Denel

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 Ms P M Mahlangu, Ms N Mandindi, Mr Z Mhlonilo*, Ms R Mokoena, Mr N J Motseki, Mr T J Msomi, Lt Gen T M Nkabinde (rd),
 Ms K P S Ntshavheni.

*Executive Director
 Group Company Secretary: Ms E M Africa

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APPLICATION IN TERMS OF SECTION 54(1), 54(2)(a), 54(2)(b) and 54(2)(e) OF THE PFMA

1. EXECUTIVE SUMMARY

This document has been prepared in terms of Sections 54(1), 54(2)(a), 54(2)(b) and 54(2)(e) of the Public Finance Management Act No. 1 of 1999 ("PFMA"), as the intention of Denel SOC Ltd ("Denel") is to increase its international footprint and capabilities in line with its growth strategy.

The said application seeks to, inter alia, present a comprehensive business case for the establishment of "Denel Asia SOC Limited" ("Denel Asia") which would be a new subsidiary limited liability company in Hong Kong, with a view to exploiting opportunities in the Asia Pacific defence market.

It is intended that Denel Asia itself will, subject to applicable local legal requirements, in the future also establish further subsidiaries and/or joint venture companies in the Asia region.

2. BACKGROUND

Denel's growth strategy is based on, inter alia, making inroads into global target markets. The current Denel strategy, based on the internal strengths and weaknesses as well as a regional analysis, is to actively pursue opportunities in the Asia-Pacific market in which Denel has been active since the early 1990's.

2.1. Reasons why this transaction is not proposed in the 2015/2016 Corporate Plan

The proposed establishment of Denel Asia was not included in the 2015-2016 Corporate Plan, for inter alia, the following reasons:

- (i) The Asia Pacific market did not play a significant role in Denel's order cover for the 2015/2016 financial year because Denel was excluded from business in India, one of Asia Pacific's largest markets. The reasons for Denel's exclusion from India are fully detailed in paragraph 5.4 below. The opportunity to re-enter Asia-Pacific presented itself when the Indian Ministry of Defence (MOD) lifted its blacklisting against Denel as prior to the upliftment of the blacklisting, Denel could not contemplate the opportunity for doing business in India.
- (ii) Further, the new Board of Directors of Denel, which was appointed only in July 2015, sought to extend Denel's participation in the Asia Pacific market as a way of increasing the order book. This emanated from the fact that there are immediate opportunities that Denel can take advantage of.

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2.2. Governance Process: Denel Internal Approvals

ACTION	TIMELINE
Approval by Denel Board to explore a suitable equity partner for the Asia Pacific region	10 September 2015
Final approval by the Denel Board of the identified equity partner together with the draft PFMA application subject to, inter alia, Denel obtaining the requisite regulatory approvals and subject to certain conditions, which conditions have been dealt with in paragraph 10.1 below.	7 December 2015

2.3. The reasons for Continent Specific vs Country Specific Arrangement and preference for Hong Kong

- (i) Hong Kong is strategically located for business in Asia and can really be seen as the best gateway for doing business in that jurisdiction.
- (ii) Conducting general business in Hong Kong is simple and setting up offices and structures are quick and inexpensive.
- (iii) Foreigners can own 100% of a Hong Kong company and are free to be the sole directors and shareholders of a Hong Kong company. There are no local resident requirements and there are no restrictions on nationality.
- (iv) A Hong Kong company offers global recognition and is very stable. Hong Kong is one of the world's major trading, finance and service centres.
- (v) To open a Hong Kong company, you don't need a physical address in Hong Kong and your physical presence in Hong Kong is not required.
- (vi) Hong Kong adopts a territorial source principle of taxation meaning that all profits generated outside of Hong Kong are tax free and profits generated inside Hong Kong are taxed at 16.5%.
- (vii) The legal system in Hong Kong is still ruled by British law.

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3. REGIONAL STRATEGY

3.1. Studies Undertaken

Rapid and uneven economic development across 25 countries and regions of the Asia-Pacific region both enables and demands new approaches to national defence. By 2018, as global defence spending increases by 5.5 percent, defence budgets across the Asia-Pacific (excluding the US) are expected to grow by over 19 percent (Asia Pacific Defence Outlook 2015 – Deloitte report).

Rapid economic development has also created new sources of vulnerability. While the advancements are essential for developed economies, they require governments to plan for their defence, driving defence budgets and technical requirements upwards and increasing security threats have led to substantial increases in defence spending.

Increasing Global terrorism is also playing a major role in this region. Five Asia-Pacific countries – Pakistan, Philippines, India, Thailand and Bangladesh – accounted for 36 percent of the rise in global terrorist incidents between 2004 and 2013, and 97 percent of the increase within Asia-Pacific. While actual incidents of terrorism remain concentrated in a few nations, regional concerns about terrorism are increasing as Islamic State-related attacks and propaganda proliferate. This also leads to increased defence spending.

Asia-Pacific defence budgets increasingly emphasize procurement and research and development, as nations develop indigenous defence industrial bases and pursue advanced defence technology. Procurement and R&D are projected to grow by 29 and 28 percent respectively from 2014 to 2018, reflecting plans for major new acquisitions in most countries in the region.

Procurement Budget Increases by country

Country	% Increase (2014-2018)	Growth Focus
India	25	Develop Industrial base. Land Based systems Artillery and Infantry weapon systems. Air Defence programs
Singapore	18+	Technology Partners
Cambodia	18+	R&D and Industry development focus.
Indonesia	18+	R&D and Industry development focus. Land Based systems
Pakistan	11	Not Publicly published. Based on current requests. Air Defence and Artillery focus
Vietnam	18+	R&D and Industry development focus. Land Based systems and Air Defence
Philippines	85	R&D and Industry development focus. Land Based systems and Air Defence.

By 2018, rapidly-developing Asia-Pacific nations will command more than half of non-US global defence procurement and two-thirds of non-US defence research and development, making the region a key defence market, and a potent force in defence technology innovation and advancement. Therefore, Denel needs to be in this space.

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3.2. Strategic Relevance of Asia

Countries such as India, Indonesia, Singapore, Thailand, Vietnam and China are considered to be primary target markets for Denel whilst markets such as the Philippines, Myanmar, Sri Lanka and Bangladesh form secondary target markets.

In analysing the Denel business in the Asia Pacific region, the following emerged to Denel management as barriers to entry into this fast growing market:

- lack of multilateral defence relationships;
- inability to provide funding solutions;
- inability to source local production and development partners (particularly in India);
- frequent engagement with end user and industry from a distance not feasible;
- company visibility in the market place/region from a distance not possible;
- need for a lawful conduit for developing/Aligning with local business networks; and
- active participation in regional initiatives from a distance are not feasible.

3.3. Hong Kong as the Country of Incorporation for a Private Limited Company

The salient business requirements for Hong Kong particularly with respect to undertaking business in this jurisdiction is set out in **paragraph 4** below. In essence, the financial, regulatory and legal requirements are substantially similar to that applicable to companies in South Africa.

4. COMPREHENSIVE DUE DILIGENCE REPORT ON THE FINANCIAL REGULATORY LEGAL REQUIREMENTS AND REGULATORY LAWS GOVERNING FOREIGN OWNED ENTITIES IN HONG KONG

Denel has been advised that:

- Hong Kong is situated in the south-eastern coast of China. With a total area of 1104km². The territory comprises Hong Kong Island, Kowloon Peninsula, and the New Territories, which also includes 262 outlying islands.
- Hong Kong became a Special Administration Region of the People's Republic of China on 1 July 1997, after a century and a half of British colonial administration. Under the "one country, two system" policy and constitutional documents, the Basic Law, Hong Kong's existing economic, legal and social systems will be maintained for at least 50 years. Hong Kong does however enjoy a high degree of autonomy except in defence and foreign affairs.
- While the People's Republic of China follows a civil law system, Hong Kong's legal system is based on the traditions of its former colonial master, England. As such, English common law continues to have sway. As in the British system, lawyers are either solicitors (handling paperwork, negotiations, and settlements) or barristers (who can appear in court). The Hong Kong "Basic Law" functions as Hong Kong's constitution, subject to interpretation by the Standing Committee of the National People's Congress.
- The Basic Law of Hong Kong ensures Hong Kong's autonomy in its executive, legislative, and judicial systems, as well as certain foreign relations. It protects freedom of expression, assembly, and religion, forbids torture and unwarranted searches, seizures, and arrest. Furthermore, Hong Kong is ardently capitalist, in spite of Mainland China's (nominal) adherence to socialism.

KJ [Signature]

- Every year since 1995 to about 2013, Hong Kong was voted the world's most free economy by the Heritage Foundation and the Wall Street Journal's Index of Economic Freedom. It also has one of the lowest tax rates in the world. According to studies conducted by PricewaterhouseCoopers and the World Bank Group, Hong Kong is the fourth-easiest place in the world to pay taxes, just behind three countries in the Middle East.
- Hong Kong is ideally located in the heart of Asia and serves as a gateway to and from Mainland China amongst others. These advantages make Hong Kong an attractive place for foreign investors.
- The Companies Ordinance (the "CO") is the main piece of legislation governing companies in Hong Kong.
- Types of Permitted Operations in Hong Kong

Depending on the scope of operations, foreign companies seeking to operate in Hong Kong have three alternative permitted forms of business presence:

- Representative Office

A representative office is suitable for a foreign company that intends to conduct only minimal activities in Hong Kong. A representative office cannot conduct any trade, professional, or business activities or transactions in Hong Kong and cannot enter into any contracts in Hong Kong. A representative office is appropriate, for example, for acting as a liaison office without creating any binding business obligations.

- Branch Office

If a foreign company establishes a place of business in Hong Kong, it will require registration as a foreign company under the CO. A "place of business" includes a place used by a company to transact any business that creates legal obligations. The foreign company is liable for the debts and liabilities of its Hong Kong branch, and a branch office cannot take full advantage of Hong Kong's tax benefits.

- Hong Kong Subsidiary

Due to the limitations of a representative office and branch office as described above, foreign companies usually favour establishing a Hong Kong-incorporated company as a subsidiary to operate in Hong Kong. This is generally the preferred type of business structure because the entity may be sued only to the extent of the limited assets of the Hong Kong subsidiary.

- Classification of a Company

- Under the CO, a "private company" is a company that restricts the right to transfer its shares, prohibits public subscription for its shares or debentures, and limits the number of shareholders to 50. Any company which cannot satisfy all three requirements is a public company. A public company can be listed on a stock exchange or unlisted.
- A company can also be classified by whether it is limited by shares or by guarantee, or is an unlimited company. We have limited our discussion to a company limited by shares, which is the most common type and is usually referred to as a "limited company." A company limited by guarantee in Hong Kong is usually a non-profit organization.

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- The CO makes it clear that there are five types of companies that can be set up under the CO:
 - a public company limited by shares;
 - a private company limited by shares;
 - a public unlimited company with a share capital;
 - a private unlimited company with a share capital; and
 - a company limited by guarantee without a share capital.

▪ Requirements for a Hong Kong Private Company

At a minimum, a Hong Kong private limited company must have the following:

- one shareholder;
- one director;
- a company secretary;
- a registered office address in Hong Kong;
- an auditor; and
- a business registration certificate.

▪ Director

- A director must be at least 18 years of age, must not be an undischarged bankrupt, must not be subject to a disqualification order, must comply with any share qualification requirement, and must consent to act. There is no restriction on the nationality of a director.
- A private company can have a director that is a corporation but at least one director must be a natural person.

▪ Company Secretary

A company secretary must either be an individual resident in Hong Kong or a company with a registered office or place of business in Hong Kong.


▪ Business Registration Certificate

- A one-stop Company and Business Registration Service has been launched by the Companies Registry and the Inland Revenue Department. Applications for both incorporation and business registration are undertaken simultaneously.
- In addition to the business registration certificate, certain types of businesses may need additional forms of licensing. For example, a company conducting regulated financial services activity (such as asset management, dealing in securities, or advising on securities) in Hong Kong requires licenses from the Securities and Futures Commission.

▪ Generally

- There is no prescribed minimum paid-up capital. Under the CO, the concept of nominal or authorized share capital and nominal or par value was abolished. Instead, the articles of the company with a share capital must include a statement of capital containing some prescribed information and the initial shareholdings.
- The same person can be the secretary, director, and shareholder of a company, except that the sole director of a company cannot also be the secretary of the company.
- A company's statutory records must be kept at its registered office. If they are kept at a different place, a notice must be filed with the Companies Registry.

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Under the CO, the articles of association are the sole constitutional document of the company.

- **Information Available to the Public**
Compared to other jurisdictions (e.g., the British Virgin Islands and the Cayman Islands), Hong Kong companies are much more transparent in terms of information that is available to the public. In addition to basic information, one can search for all the documents filed with the Companies Registry in relation to a particular company. One can also search for the registered charges (securities in favour of third parties) of a company and disqualification orders made. Moreover, one can search for all the companies in which an individual has directorships and the particulars of that director, such as his or her identity number and residential address.

o **Establishing a Private Company**

There are two ways of establishing a private company in Hong Kong which is either by incorporating a new company or buying a shelf (or existing) company.

- **Incorporation** involves applying to the Companies Registry, which then issues a certificate of incorporation within four working days after submission of the application by post (online applications may be processed within an hour). The newly incorporated company then needs to be activated by holding its first board meeting and a shareholders' meeting, if necessary.
- **Buying a shelf company** is useful when a company is urgently needed. One just needs to acquire a shelf company and then activate it by effecting a change of shareholders and directors and holding a board meeting (and a shareholders' meeting, if necessary).

o **Continuing Compliance Requirements**

- A company should hold an annual general meeting (AGM) each year, and not more than 15 months from the previous AGM, unless everything that is required to be done at the meeting is done by written resolution and the relevant documents are provided to each member.
- The following matters are usually dealt with at the AGM:
 - adoption of audited accounts comprised of the balance sheets, directors' report, and auditors' report;
 - declaration of dividends;
 - election of directors; and
 - appointment of auditors.
- The CO provides that a company is not required to hold an AGM if it has only one member or the AGM is dispensed with by unanimous members' consent.
- Other compliance requirements include, among others, the following:
 - a company should keep a register of members and a register of directors and secretaries;
 - various returns have to be filed with the Companies Registry within stipulated deadlines for changes in relation to the company, such as changes in directorship and secretary, registered office, share capital, etc.;
 - a company must file an annual return;
 - a company must have annual audited accounts. The CO prescribes detailed requirements regarding the types of accounts to be prepared. A directors' report must also be prepared in conjunction with the annual accounts;
 - shareholders' or board meetings should be held as may be necessary or required under the CO. The minutes or written resolutions should be filed in

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a minute book and resolutions or notices should be filed with the Companies Registry as required under the CO; and

- a company also needs to renew its business registration certificate before it expires and file profit tax returns for the company and the employer's return for its employees with the Inland Revenue Department.
- If a company fails to comply with these requirements, the company and every officer of the company who is in default may be liable for a fine and/or imprisonment.

o Tax Issues

▪ Profits Tax

- Hong Kong adopts a territorial corporate tax system. Corporations are taxed on profits at a rate of 16.5% percent. Profits tax is charged on Hong Kong-sourced profits and is collected by the Inland Revenue Department. The tax rate on profit derived in Hong Kong is the same for Hong Kong and foreign companies.
- Specifically, domestic and foreign entities meeting the following three criteria are subject to profits tax:
 - the entity carries on a trade, profession, or business in Hong Kong;
 - the profits are from such trade, profession, or business carried on by the entity in Hong Kong; and
 - the profits arose in, or were derived from, Hong Kong.
- A Hong Kong resident may derive profits from abroad that are not subject to Hong Kong profits tax; conversely, a non-resident may be liable for tax on profits arising in Hong Kong. The question of whether a business is carried on in Hong Kong and whether profits are derived from Hong Kong is largely one of fact. Profits arising from activities conducted abroad, even if they are remitted into Hong Kong, are not subject to profits tax.

▪ General Tax Benefits

- Dividends or overseas branch profits repatriated to Hong Kong are not subject to Hong Kong tax. In addition, dividends paid by a Hong Kong company to its shareholders are not subject to Hong Kong tax in the hands of shareholders (tax already having been paid by the company on the profits underlying those dividends), nor is there any withholding tax on dividends paid to shareholders outside Hong Kong.
- Capital gains are also tax-exempt. A stamp duty is imposed on certain documents such as share transfers, leases of real property, and sale of real property. There is no sales tax, value-added tax, or estate tax in Hong Kong.

5. SELECTION OF PARTNERS

With a focus on Asia, Denel's approach is to immediately re-enter the India market through Denel Asia as a way of building a business profile in the region. The details of the India strategy and its rationale are discussed below. The choice of partner has mainly been influenced by the plan to use India as an entry point into the Asia market.

5.1. Denel's History in India

Denel entered the India market during 1994 with a wide range of products. During the period 1998 and 2005, Denel participated in tenders issued by the Indian MOD and was successfully awarded contracts for various products including ammunition and land systems products.

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These contracts were for the supply of ammunition, explosives, anti-materiel rifles, fuses and other munitions components such as base bleeds and modular charge systems totaling circa US\$ 282 623 768.00.

Some of these transactions included the transfer of technology for the relevant products sold to the Government of India.

A contract for a significant artillery program for a tracked self-propelled gun resulted in a successful trial being concluded during July 1999 to February 2000 which included the introduction of the G6. The costs of these trials exceeded R500 million. Contract negotiations commenced in February 2003 and were concluded in December 2003 with a contract value of US\$ 1,180,744,682.

On 17 April 2005, an article appeared in the Cape Argus newspaper alleging that Denel had contravened specific Indian legislation. Notwithstanding the lack of proof thereof and Denel's denial that it was in breach of the MOD contracts, the MOD issued a notice of termination of the defence programs and instituted legal proceedings against Denel which resulted in, inter alia, protracted arbitrations. Contracts to the value of US\$ 77,3 million were adversely affected by these actions. Denel was effectively treated in India as if it were blacklisted notwithstanding no formal blacklisting being in force.

In 2007 Denel sought to re-enter the India market as a subcontractor on a tracked gun program where Rheinmetall was the prime contractor. Successful trials for the gun took place during July 2010 and March 2011. However, in 2012, Rheinmetall was recommended for blacklisting which resulted in a termination of the said program. Denel incurred a further loss of a R11 million as a result of this termination.

This confirmed that Denel competing on its own in India on major programs is very high risk.

Since Denel's absence from the market, the procurement rules changed significantly on major programs. In particular, it introduced the requirement for a local Indian industry partner/s based on the "Buy Make India" procurement program. This mandatory requirement combined with Denel's previous unsuccessful attempts to access and remain successful in the Indian market reconfirmed the need for Denel to identify and rather proceed with a local partner in India as opposed to its own.

5.2. Buy Make India

The India "Buy Make Program" requires that local content should be more than 50% as well as inclusion of technology transfer from the foreign Original Equipment Manufacturer (OEM).

Denel is positioning itself for major programs in India which programs are premised on the 'Buy Make India' concept. This means that only Indian Companies that can prove that they have partnered with "foreign technology companies" are allowed to bid as prime contractors.

The Indian procurement process demands a strenuous and protracted product evaluation process which can become extremely costly (as detailed in paragraph 5.1 above and experienced first-hand by Denel).

5.3. India Remains a Lucrative Market

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Despite Denel's previous lack of success in the India market, due largely to circumstances outside its control, the Asia Pacific region and specifically the Indian market remains a lucrative market as more fully set out in **paragraph 3.1** above.

5.4. Possible Partners Explored

As detailed in **paragraph 5.1** above, Denel was inactive in the India market for a significant length of time until verbal notification was received late in 2014 from the Indian Embassy in South Africa informing Denel that the investigation was completed and that we may proceed to conduct business in India.

It must be pointed out that the defence industry is a niche market and the norm in this industry is that a competitor can easily become a strategic partner and vice versa depending on the type of opportunity being explored by the parties.

As Denel needed to finalise a partner in light of a Request for Information (RFI) to be issued on the mounted artillery gun program, an industry visit took place during February 2015 wherein Denel visited the following potential business partners. Securing a suitable partner proved to be unsuccessful as most of the potential business partners that Denel considered were already aligned to other companies. For example, Denel considered the following companies:

- a) **Bharat Forge**
They have a large forging capability and are a well-established defence contractor. They were however already committed to ELBIT (Israeli Company) on artillery programs.
- b) **Larsen and Toubro**
They are a well-established defence contractor but were already committed to NEXTER (French company) on artillery programs.

Given the significant changes in the procurement process as well as Denel's previous unsuccessful experiences coupled with our own internal strengths and weaknesses, a decision was taken not to participate in major programs in India unless there was a distinct advantage that presented itself and which would increase the possibility of us successfully participating in the Indian market.

VR Laser presented to Denel, on an unsolicited basis, a value proposition that was worth considering. The value proposition, more fully set out in **paragraph 5.2** below, was attractive to Denel as it was based on VR Laser Asia's experience as well as market studies conducted during the planning phase of re-entry into India. VR Laser Asia's value proposition allows for Denel to enter into the India market as well as the wider Asia Pacific market.

In the past, Denel has incorporated similar joint venture companies in other countries with some of its suppliers as in the case of Tawazun Dynamics, a joint venture company incorporated in the UAE. Denel has seen and continues to see significant benefits in the incorporation of this joint venture.

Key aspects of the Tawazun Dynamics Joint Venture are, inter alia:

- o It is a risk sharing model; and
- o Intellectual Property (IP) is licenced in Tawazun Dynamics in order to discharge offset obligations.

5.5. Value proposition of VR Asia

As previously indicated, a decision was initially taken (prior to VR Laser Asia's approach) not to re-enter the India market given the informal blacklisting and having not been in the market for a significant length of time.

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It is evident that, in order to be successful on any major defence program in the world, there needs to be a balanced strategy which encompasses, inter alia, the following:

- (i) **A defence solution that supports national objectives**
The VR Asia proposition brought an understanding on national objectives at an industry level and industry knowledge in the form of a well-established, highly respected and highly successful India partners being PIPAVAV and the Adani Group. The Adani Group is an Indian multinational conglomerate company. It has a diversified business portfolio covering resources, logistics, agribusiness and energy supply. The company was founded in 1988 as a commodity trading business. The founder and Chairman, Mr Gautam Adani is a well established business man and has vast knowledge of setting up significant programs. Similarly, PIPAVAV is a reputable Indian company which operates in the armament industry with knowledge of the Indian market.
- (ii) **Compliance to the user specification with a competitive value proposition**
The VR Asia proposition at this level is again Industry knowledge, setting up the not so obvious contenders in a business venture. As indicated above, Denel's initial evaluation of possible partners was unsuccessful as the main contenders were already committed or not willing to share the risk. Through, for example, the Adani business partners in India as well as risk sharing by Indian partners such as PIPAVAV during the pre-contracting phase of the program, participation will be possible. The value proposition in the bidding process will be an Indian solution with local content growing new contenders and establishing new technologies as directed by policy.
- (iii) **A competitive technical solution**
The VR Asia proposition at this level is technical skills in VR South Africa as well as operational funding.

5.6. VR Laser Asia as a partner of choice

Denel has thus concluded that VR Laser Asia Limited, a company incorporated in Hong Kong ("VR Asia"), and aligned with one of Denel's local fabrication specialists (VR Laser South Africa Proprietary Limited ("VR RSA")), as a suitable partner to form a joint venture company. VR RSA, on behalf of VR Asia has presented a suitable business model to Denel for consideration. VR RSA has also undertaken to fund VR Asia in order to enable VR Asia to meet its funding commitments to Denel Asia.

Denel's traditional strength lies in the areas of concept, design, prototyping and weapons integration. In partnering with VR Asia, Denel obtains access to VR RSA's strong capability in industrialisation, production and support of armoured and specialised vehicles.

The advantages of Denel entering the Asia market with VR Asia includes:

- the provision of design, manufacturing and fabrication skills
- a deeper understanding of the local market and industrial landscape
- the ability to align with local business networks
- the provision of quick access to local potential production and development partners
- the ability to increase visibility in the market/region
- access to operational funding
- the ability to grow the business in a sustainable manner
- the ability to share all demonstration costs proportionately to its shareholding

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For the above reasons the partnership with VR Asia, who has satisfied Denel that it is familiar with the landscape of Denel's primary and secondary target markets, makes commercial sense.

Further, it makes commercial sense for Denel to establish a footprint in the market. In order to mitigate the costs and risk of a new market entry, Denel management are of the view that a risk sharing model be adopted. This entails that Denel enter into a joint venture with VR Asia to form Denel Asia.

It is reiterated that VR Asia is a partner of choice for Denel for reasons, which include, details as set out in this paragraph 5, the unsolicited approach made by VR Asia together with, inter alia, its value proposition and the commercial relationship enjoyed between VR Laser RSA and Denel Land Systems (a Denel entity) which has resulted in mutual trust and recognition between the respective parties.

6. ADVANTAGES OF PARTNERING WITH VR LASER ASIA

6.1. Registration Details and shareholding of VR Laser Asia

The registration details of VR Laser Asia are: **VR LASER ASIA LIMITED**, (Company No. 2111273) whose registered office is at Block A, 15/F, Hillier Comm Building, 65-67 Bonham Strand East, Sheung Wan, Hong Kong.

The sole shareholder of VR Laser Asia Limited is Mr Salim Aziz Essa, a South African national with passport no. M00073786. Mr Essa is via the entity Elgasolve Proprietary Limited, the controlling shareholder of VR Laser South Africa Proprietary Limited.

6.2. Networking Capability Expanded

As mentioned in paragraph 5.2 above, VR Laser Asia's network includes, but is not limited to, the following reputable Indian businesses:

6.2.1 Adani's Profile


Mr Gautam Adani, the Chairman and Founder of the Adani Group, has more than 33 years of business experience. Under his leadership, Adani Group has emerged as a global integrated infrastructure player with interests across Resources, Logistics and Energy verticals.

Mr Adani's success story is extraordinary in many ways. His journey has been marked by his ambitious and entrepreneurial vision, coupled with great vigour and hard work. This has not only enabled the Group to achieve numerous milestones but also resulted in creation of a robust business model which is contributing towards building sound infrastructure in India.

Quoted from the Chairman message:

"The government's call for 'Make in India' shall get a fillip with a robust infrastructure that is world class and facilitates the manufacturing industry. It is our endeavour to narrow the energy demand and supply gap, build world class ports so that India becomes a shipping hub and operates mines across the globe with environmental concerns addressed most optimally. We look forward to make inroads into new sectors of infrastructure and aim to excel in all our initiatives."

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Adani's Vision

As part of preparing the Group for the next phase of our growth, we have re-formulated our 2020 vision:

"To be a globally admired leader in integrated infrastructure businesses with a deep commitment to nation building. We shall be known for the scale of our ambition, speed of execution and quality of operation."

(Source: Adani website)

6.2.2 PIPAVAV's Profile

Reliance Infrastructure, together with its wholly owned subsidiary Reliance Defence Systems Private Limited, acquired in March 2015, a controlling share from the promoters of Pipavav Defence.

Reliance Infrastructure Limited (RInfra) is amongst the largest Infrastructure Companies in India, developing Special Purpose Vehicles (SPVs) in several high growth sectors within the Infrastructure space.

PIPAVAV Defence is India's first world class company integrated Defence production company. PIPAVAV was the first private sector company to get a license and contracts to build frontline warships for the Indian Navy.

PIPAVAV has strong partnerships with Global players such as:

- SAAB Technology AG, Sweden on technology transfer for the manufacturing of missiles, underwater systems and Aero-structures for fighter jets
- DCNS (France) Government owned company on Naval programs
- Rosoboron Export Russia on Naval programs
- Atlas Electronica on torpedoes and Sonars for the Indian Navy
- Sagem Defence Securite, part of the Sagem Group on long range air borne multi sensor multi spectral electro optical systems

PIPAVAV has been participating in several land system projects such as:

- Upgrade of several vehicle programs such as BMP2 and tank projects
- Manufacturing and supply of Armour Personnel Carriers
- Several UAV programs

Having regard to the fact that Denel has come in as a late entry competitor on the main programs in India, our partnering options were very limited as the traditional partners that Denel could have considered were in most instances already paired with other major industry players (See paragraph 5.1 above).

In support of India's national objective of developing local privately owned defence companies, partnering with (either one or both) Adani and PIPAVAV will bring major advantages in terms of industry knowledge, manufacturing capability, setting up manufacturing partners, business knowledge and investment capital on major programs. Expanding into the Defence Business forms part of both companies growth vision and both have a history of success.

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6.3. Financial Commitment

VR Laser Asia via VR Laser RSA has committed R100 million in terms of a shareholder loan on an arms-length basis with interest (being at normal market rates).

Denel intends to negotiate a higher amount to be paid at the outset and should this be unsuccessful, it will be referred back to the Denel Board.

Should the joint venture be unsuccessful within the first 5 years of incorporation of the company, VR Asia will not have recourse to Denel to repay the loan but shall bear this risk in totality. This is articulated in the Shareholders Agreement.

7. BUSINESS MODELS

As indicated in paragraph 5.2 above, Denel can best position itself for programs based on the 'Buy Make India' concept. In addition, if there are any similar requirements within the Asia Pacific region, it will be easier to leverage on these opportunities from the India base.

Set out in paragraph 8 below are the 2 main business / contracting models that may arise from identified opportunities in the Asia Pacific region hereafter referred to as Scenario 1 (No Production Scenario) and Scenario 2 (Production Scenario) respectively.

8. CONTRACTING MODEL

8.1. Joint Venture Governance

In order to implement Denel's chosen risk mitigation strategy, Denel has elected that a new limited liability company be registered in Hong Kong (Denel Asia). This ensures that Denel does not inherit any legacy concerns and ensures a speedier due diligence process.

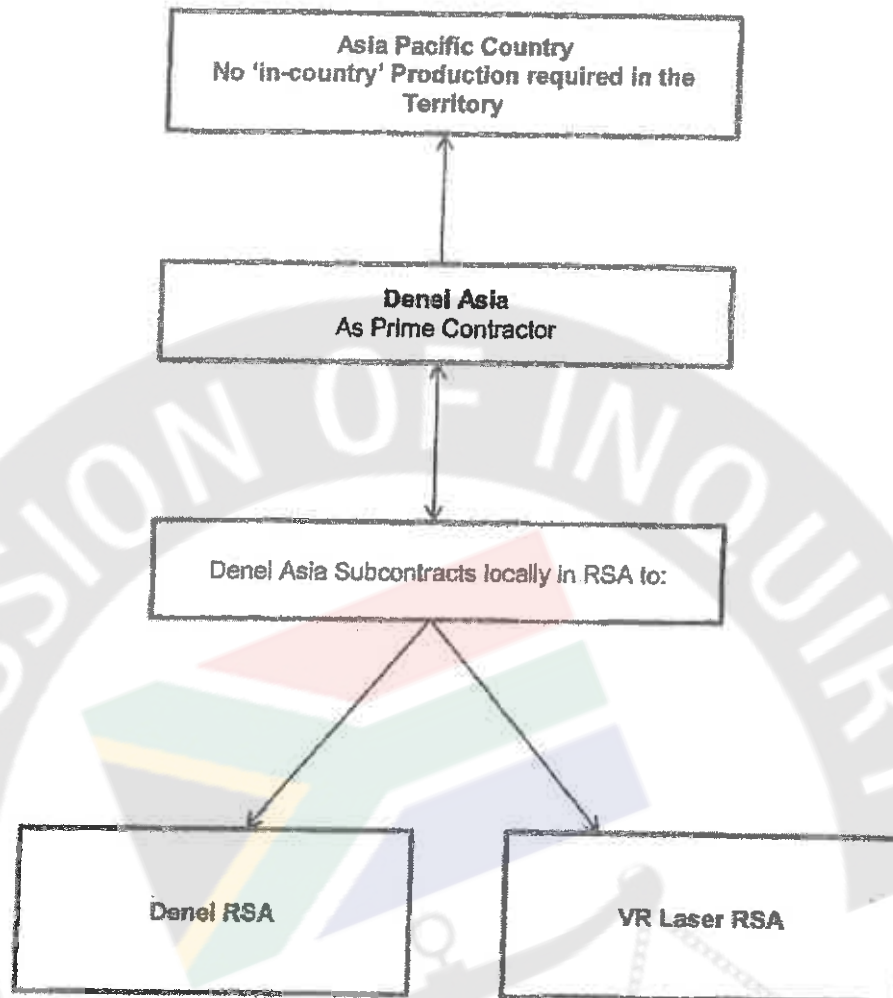
Notwithstanding the fact that Denel Asia will be incorporated in Hong Kong, Denel has to ensure that Denel Asia will be established and managed in line with its status as a state owned company, reflecting Denel's own corporate governance best practices and standards. In this regard, Denel has negotiated a favourable shareholders' agreement entrenching its rights and providing a contractual framework which will ensure Denel Asia's effective governance.

8.2. Contributions by the Parties

Denel management have recognised that the intended shareholders of Denel Asia have differing strengths and capabilities. In this regard, it is envisaged (and the Denel Asia shareholders' agreement provides) that:

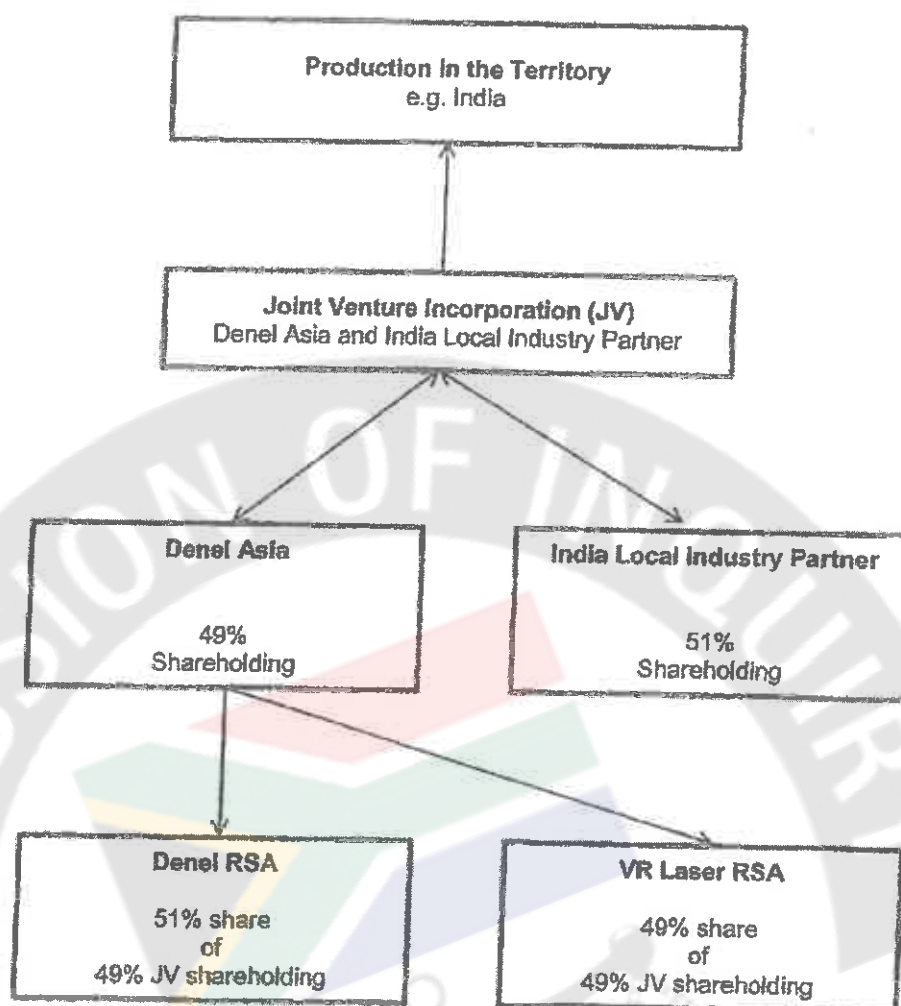
- Denel, will be the technology partner and will hold 51% of the issued share capital and control of Denel Asia. The remaining 49% minority is to be held by VR Asia who will be the networking and industrial partner.
- Other than standard minority protections, Denel as majority shareholder will be able to influence the strategic direction of Denel Asia at a shareholder level as shareholder matters require approval by a simple majority.
- Denel Asia will pursue opportunities in Asia, and, specifically in India using the network of VR Asia. Once an opportunity translates into a firm order:

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Scenario 1:

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Scenario 2:

- (i) It is not envisaged that any production will take place in Hong Kong as this office is essentially a marketing office.
- (ii) Tawazun Dynamics conducts business in accordance with Scenario 2 above.

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8.5. Financing

One of the key supporting drivers for the formation of Denel Asia, is Denel's limited finance obligations. VR Asia has undertaken to invest an amount of R100 million (One Hundred Million Rand) into Denel Asia for operational costs, payable in amounts of R20 million a year for a period of five years.

Thereafter, Denel Asia will, to the extent that external funding is required, source such funding from third party funders. The shareholders (Denel and VR Asia) will also be able to provide funding by way of shareholder loans pro-rated according to their respective shareholding but they are not obliged to provide funding. Denel does not have any definitive finance obligations or exposure to Denel Asia (save for ordinary supply arrangements).

9. INTELLECTUAL PROPERTY (IP) AND LICENCING

9.1. Technology transfer and protection of Denel's IP

- (i) Denel will not alienate its Intellectual Property and technology transfer will be done by way of an applicable licencing agreement between relevant parties.
- (ii) Requisite approvals from Armscor and/or a third party will be obtained prior to licencing this IP.
- (iii) To the extent that royalties are payable to Armscor and/or any third party, Denel Asia will be required to effect such payment.
- (iv) Where Denel is the owner of the IP, there will be no royalty payable by Denel Asia as Denel is the technology partner bringing with it the technology to the joint venture subject to paragraph 9.1 (i) above. This is consistent with the Tawazun Dynamics joint venture model referred to in paragraph 5.7 above.
- (v) In instances where Denel cannot be subcontracted by Denel Asia for technology transfer to a local industry company in a specific jurisdiction, Denel Asia will instead be licenced with a right to extend such licence to an identified local industry company.

10. RISKS AND MITIGATION

Key risks were considered during the assessment of the business and relevant risks taken into account in the negotiation process and contractual framework. Appropriate financial and legal due diligence reviews were performed to identify and mitigate any further risks and the recommendations emanating therefrom have and/or will be adopted and implemented. Appendix B, Appendix C and Appendix D refers.

10.1. Transaction risks and its mitigation

Risks		Mitigation/Remarks
1.	Reputational	<ul style="list-style-type: none"> • Denel has undertaken a due diligence investigation and the recommendations thereof will be implemented. • No agents will be involved.

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Risks		Mitigation/Remarks
		<ul style="list-style-type: none"> Denel has a controlling share and thus can control the direction of Denel Asia.
2.	Guarantees/ Finance Risk	<ul style="list-style-type: none"> VR Asia is funding Denel Asia in the amount of R100 Million (R20 million a year for 5 years). Denel is to engage with VR Asia to secure a greater cash injection in the first 2 years. Denel previously unsuccessfully engaged with VR Asia on this issue. The Board has requested that a re-engagement with VR Asia on this issue is to take place. Reduced balance sheet exposure due to partnering. Denel has limited credit exposure to its subsidiary for normal supply arrangements on preferential terms.
3.	Penalties	<ul style="list-style-type: none"> Both Denel and VR Asia, have the skill, expertise and experience to minimise the possibility of penalties being incurred.
4.	Legal Exposure	<ul style="list-style-type: none"> Denel exposure is seen by the Denel board as limited.
5.	PFMA Conditions	<ul style="list-style-type: none"> Denel will ensure that Denel Asia abides, to the extent applicable to the PFMA, the Denel Shareholder Compact and the Denel Risk and Compliance Frameworks. Adherence to all shareholder conditions prior to Shareholders Agreement and ancillary agreements.
6.	Cooperation Agreement	<ul style="list-style-type: none"> The Shareholders Agreement, once signed, will supersede the Cooperation Agreement (Appendix E).
7.	Protection afforded in terms of the Shareholder Agreement	<ul style="list-style-type: none"> The agreement only becomes effective upon the fulfilment of the suspensive conditions (Clause 4). Control vests in Denel which has a 51% shareholding (Clause 5). There are certain reserved matters which require a 75% majority vote with other matters requiring a simple majority of 51%

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	Risks	Mitigation/Remarks
		<p>in order for the resolution to be passed (Annexure B for reserved matters).</p> <ul style="list-style-type: none"> • There is specific provision for the implementation of anti-bribery, anti-money laundering and anti-corruption policies in the joint venture (Clause 6). • In the event of the joint venture being wound up/dissolved prior to full repayment of the shareholders loan, no liability will accrue to Denel to settle the loan (Clause 16.2). • Denel has the right to investigate the directors and ultimate beneficiaries and shareholders of VR Asia to ensure that such persons have sufficient standing and if not satisfied, Denel has the right to demand that VR Asia repurchases the shares from that person thereby removing the person from being a shareholder of VR Asia (Clause 18.3). • The termination clause (Clause 21) relates to termination on material breach (as opposed to termination for convenience). • Provision is made for termination in circumstances where the Government directs that Denel ceases to be a shareholder for reasons of national security or otherwise (Clause 25.1) • Termination can take place by mutual agreement (Clause 25.1.3). • Termination can also take place where a party frustrates the performance of the other party by making performance impossible or unreasonably expensive or difficult, materially alters the rights and obligations of the parties or materially interferes with the benefits (Clause 25.1.4).
8.	Exit Clause: Termination for convenience	<ul style="list-style-type: none"> • Initial discussions with VR Asia resulted in a rejection of a clause for termination for convenience. • Denel is to engage with VR Asia and address the Board's requirement that such a clause is to be included in the agreement.
9.	Due Diligence	<ul style="list-style-type: none"> • The key risk identified is the potential for bribery and corruption. This is alleviated in the shareholders agreement by the obligation to abide by anti-money laundering (AML) and anti-bribery and anti-corruption (ABC) policies. • Financial viability of VR Laser Asia raising the loan – in the absence of the loan being furnished by VR Asia to the joint venture, it

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Risks		Mitigation/Remarks
		<p>will constitute a material breach and is a ground for termination.</p> <ul style="list-style-type: none"> Denel is satisfied that the loan can be legitimately be raised by VR Laser Asia via its shareholders.
10.	Double Taxation Agreement	<ul style="list-style-type: none"> There are currently discussions between India and Hong Kong re a double tax agreement. The risk of the lack of a double taxation agreement is outweighed by the lucrative opportunities that can be realised in India.

11. DUE DILIGENCE

Denel had procured that a due diligence investigation be undertaken in respect of each of the following areas, which due diligence reports are attached hereto as follows:

1. Regulatory Due Diligence – **Appendix B**
2. Legal Due Diligence – **Appendix B and Appendix C**
3. Financial Due Diligence – **Appendix D**

There were some findings of concern that was raised by the due diligence which are acknowledged. Denel management is however confident that it is able to incorporate the recommendations of the report and will adopt corrective measures in particular related to an anti-corruption policy and compliance framework coupled with rigorous monitoring thereto. See paragraph 10.1 above.

In addition, Denel is satisfied that the shareholder loan can be legitimately raised by VR Laser Asia via its shareholders falling which the breach provision in the Shareholder Agreement will be invoked.

12. FINANCIALS

12.1. Capital Contribution

There will be a capital contribution of 1000 shares issued at USD 1 with Denel taking up 590 shares and VR Laser Asia taking up 490 shares.

12.2. Financial viability

The formation of Denel Asia in the region is opportune as it resolves many challenges that prevent Denel taking advantage of the current regional opportunities. It will also provide solutions to challenges that Denel faces at the moment i.e. to provide funding solutions.

Initially potential business amounting to USD 9.2 billion was identified. This has been tested and evaluated again and based on a realistic probability matrix on the latest marketing intelligence, the potential business is approximately USD 5.8 billion over the next 5 years which Denel could take advantage of (See paragraph 12.3 below).

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12.3. Markets and Opportunities

Denel Asia's forecasted capabilities and market interests are promising.

The business opportunity at a reduced risk via partnering constitutes a logical next step by Denel for entry into a new market. See Appendix F which sets out markets and opportunities.

12.4. Income Statement

R'm	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Sales	0	587	900	1,543	3,087	4,372	6,013	7,025	7,500
Gross Profit	0	117	180	309	617	874	1,203	1,406	1,500
Gross Profit %	0	20	20	20	20	20	20	20	20
Operational Cost	11	14	19	22	27	35	35	35	35
Labour	6	8	12	15	20	25	25	25	25
Marketing	3	4	4	4	4	5	5	5	6
Overheads	2	2	3	3	3	5	5	5	5
Additional Operating Cost to Cover Business Growth	50	46	54	65	127	184	266	316	340
Profit before Interest / Tax / Dividends	(61)	57	107	232	463	656	902	1,054	1,125

Notes

- ¹ The rate of exchange used was R12.50/USD.
- ² The normal yearly operational costs consist mainly of salaries for the office personnel and will increase as more resources are needed to do project management and marketing.
The marketing costs would mainly be for travel and accommodation and direct marketing in the different countries where the opportunities lies.
The operational overheads will be to rent space and equipped the office with the necessary resources to operate effectively. The IT costs will be typically be part of this.
This calculation is based on foreign offices cost structures that are managed by Denel over a very long term.
- ³ The additional operating costs would mainly be used to do big system demonstrations to the potential clients. Any one big full in client country demonstrations could cost between R10m – R20m. This is based on various system demonstrations done in foreign countries.

12.5. Business Funding

Denel is satisfied that it has limited financial exposure in terms of Denel Asia due to the fact that VR Asia will be assuming the primary finance obligations of Denel Asia. Forecasted cash flows are in the view of Denel management sufficient to meet Denel Asia's obligation to VR Asia, which is without recourse to Denel.

- (i) The R100m investment from the Denel partner will fund the basic office operational costs for the first few years until sales are realised. The sales from operations will cover the direct cost and increased operational costs associated with the business case.
- (ii) The R100m investment will be a preferential and secured loan, which will be re-paid to the partner before any future profit sharing takes place.
- (iii) No substantial capital spend will be incurred before an order is obtained and the capital investment will be recovered on the orders obtained.

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12.6. Cash Flow Impact

- (i) The cash shortfall in the first year would have to be financed from either a 12 month short term loan at reasonable international rates negotiate with the partner. Subsequently, the business would be self-funding and sustainable over the medium to long term.

R'm	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Nett Operating Cash	(61)	57	107	232	483	655	902	1,054	1,125
Investment Capital	20	20	20	20	20				
Nett	(41)	77	127	252	483	655	902	1,054	1,125

12.7. Pricing Policy

- (i) There is currently a Memorandum of Agreement that specifies rates which were negotiated and agreed between VR Laser RSA and Denel Land Systems (a trading division of Denel) which provides a basis to the pricing.
- (ii) Paragraph 8.3 above refers.

13. BENEFITS**13.1. Local Manufacturing Development**

By concluding a contract manufacturing agreement with VR RSA (an established provider to Denel), Denel Asia ensures the sustainability of local manufacturing expertise.

13.2. Skills Development

Due to the technological partnering between Denel, Denel Asia and VR RSA, Denel serves its obligation and desire of fostering the development of core skills and technology competencies with black owned and/or black controlled South African entities. A proposition that satisfies a number of key Denel policies.

13.3. Job Creation


By facilitating a black owned and/or controlled South African company (VR RSA), Denel Asia seeks to maintain South African jobs in the skilled and semi-skilled industry sectors. In addition, based on the projected income, significant work will result from Denel Asia contracting with both Denel and VR RSA.

13.4. Human Capital Development / Transformation

We refer the Honourable Minister to our comments contained in paragraphs 13.113.1 and 13.2 above.

14. CONCLUSION

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Asia is one of the fastest growing defence markets. Of the top ten worldwide defence importers in 2014, four were from Asia (India, China, Indonesia and Vietnam) with Singapore and Pakistan making 11 and 12 slots respectively. (Stockholm International Peace Research),

The formation of Denel Asia in the region is opportune as it resolves many challenges that prevent Denel taking advantage of the current regional opportunities. It will also provide solutions to challenges that Denel faces at the moment i.e. provide funding solutions.

15. IMPLEMENTATION PLAN

The following activities will take place towards contract implementation and the establishment of Denel Asia:

Action	Timeline
Negotiation and conclusion of the shareholders agreement	Draft shareholder agreement has been agreed to in principle and awaits Ministerial approval.
Establishment of the Joint Venture Company	
• PFMA pre-notification	Delivered on 30 October 2015
• Draft Shareholders Agreement	Circulated herewith
• Regulatory due diligence, Legal and Financial due diligence	Completed as at 27 November 2015
• Denel Board Approval	7 December 2015
• PFMA submission	10 December 2015
• PFMA Approval expected	January 2016
Approval from the financial surveillance department of the RSA Reserve Bank for establishing a subsidiary outside the common monetary jurisdiction	January 2016
Conclusion of final shareholders agreement and adoption of memorandum of incorporation.	January 2016
Joint Venture Company business activation and procuring all relevant approvals and/or registrations	January / February 2016

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RECOMMENDATION

It is requested that the Honourable Minister notes and approves of Denel's intention to:

1. establish Denel Asia as joint venture company in Hong Kong which company will facilitate the legitimate securing of contracts in the Asia-Pacific region; and
2. establish any further joint ventures, particularly within the India market, to ensure the successful execution of the contracts placed on Denel Asia.

The Denel Board has approved of such establishment subject to the receipt of Ministerial approval in terms of section 51(1)(g), section 54(1) and 54 (2) of the PFMA.

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LIST OF QUERIES RE PRE-NOTIFICATION LETTER

Denel's responses to the specific queries raised by the Honourable Minister has been addressed in the preceding business case. For the sake of completeness, the queries and the paragraph references in the business case to our responses are set out below.

RESPONSES TO SPECIFIC QUERIES

In response to the Honourable Minister Brown's specific queries as contained in her letter to Denel SOC Limited ("Denel"), dated 23 November 2015, we advise as follows:

1. **Comprehensive detailed business case:**
Paragraphs 1 to 14 refers.
2. **Comprehensive due diligence report on the financial regulatory legal requirements and regulatory laws governing foreign owned entities in Hong Kong:**
Paragraph 4 refers.
3. **Funding Plans and Transaction Documents:**
Paragraph 12 refers.
4. **Process followed to select VR Laser as partner of choice:**
Paragraph 5 refers.
5. **Proposed structure of new subsidiary limited liability company in Hong Kong, to be known as "Denel Asia SOC Limited" ("Denel Asia"):**
Paragraph 8.2 above refers.
6. **Comprehensive Due Diligence of VR Laser:**
Paragraph 11 refers.
7. **Registration Details of the company and shareholding of VR Laser Asia:**
Paragraph 6.1 refers.
8. **The reasons for Continent Specific vs Country Specific Arrangement and preference for Hong Kong:**
Paragraph 2.3 refers.
9. **Studies undertaken by Denel to establish VR Laser as a suitable Partner:**
Paragraphs 5 and 6 refers.
10. **Reasons why this transaction is not proposed in the 2015/2016 Corporate Plan:**
Paragraph 2.1 refers.

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DENEL GROUP

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 Email: zwelakhe@denel.co.za
 Ref: Lit/NT/Denel Asia2015

10 December 2015

The Honourable Minister D Van Rooyen (MP)
 Minister of Finance
 Department of National Treasury
 Private Bag X115
 PRETORIA
 0001

PER HAND

Dear Honourable Minister

FORMAL APPLICATION FOR APPROVAL IN TERMS OF SECTION 51(1)(g) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999 – PROPOSED ESTABLISHMENT OF DENEL ASIA SOC LIMITED

We refer to the pre-notification letter dated 29 October 2015, addressed to the Honourable Minister Nene, which pre-notification served to inform the Department of Finance in terms of Section 51(1)(g) of the Public Finance Management Act 1 of 1999 ("PFMA") of the proposed establishment of a joint venture company in Hong Kong.

We hereby submit the formal application required in terms of the PFMA. In this regard, we shall simultaneously herewith advise the Department of Public Enterprises of the proposed establishment of a joint venture company in Hong Kong and its limited financial impact on Denel SOC Limited.

Should any further information be required, please do not hesitate to contact either the Denel Executive Management or myself.

Yours faithfully


 Mr L. D. Mantsha
 CHAIRMAN OF THE DENEL BOARD

cc. Honourable Minister L. Brown (MP) Minister of Public Enterprises
 Mr Richard Seleke Director-General: Department of Public Enterprises
 Mr Lungisa Fuzile Director General: National Treasury
 Mr Zwelakhe Ntshope Acting CEO: Denel

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 P O Box 6322, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
 Directors: Mr L D Mantsha (Chairman), Mr R Saloojee* (Group Chief Executive Officer), Ms M Kgomongoe, Mr T D Mahumapelo,
 Ms P M Mahangu, Ms N Mandindi, Mr Z Mhlontlo*, Ms R Mokoena, Mr N J Motseki, Mr T J Msemi, Lt Gen T M Nkabinde (rtd)
 Ms K P S Ntshavheni

*Executive Director
 Group Company Secretary: Ms E M Afriso

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APPLICATION IN TERMS OF SECTION 54(1), 54(2)(a), 54(2)(b) and 54(2)(e) OF THE PFMA

1. EXECUTIVE SUMMARY

This document has been prepared in terms of Sections 54(1), 54(2)(a), 54(2)(b) and 54(2)(e) of the Public Finance Management Act No. 1 of 1999 ("PFMA"), as the intention of Denel SOC Ltd ("Denel") is to increase its international footprint and capabilities in line with its growth strategy.

The said application seeks to, inter alia, present a comprehensive business case for the establishment of "Denel Asia SOC Limited" ("Denel Asia") which would be a new subsidiary limited liability company in Hong Kong, with a view to exploiting opportunities in the Asia Pacific defence market.

It is intended that Denel Asia itself will, subject to applicable local legal requirements, in the future also establish further subsidiaries and/or joint venture companies in the Asia region.

2. BACKGROUND

Denel's growth strategy is based on, inter alia, making inroads into global target markets. The current Denel strategy, based on the internal strengths and weaknesses as well as a regional analysis, is to actively pursue opportunities in the Asia-Pacific market in which Denel has been active since the early 1990's.

2.1. Reasons why this transaction is not proposed in the 2015/2016 Corporate Plan

The proposed establishment of Denel Asia was not included in the 2015-2016 Corporate Plan, for inter alia, the following reasons:

- (i) The Asia Pacific market did not play a significant role in Denel's order cover for the 2015/2016 financial year because Denel was excluded from business in India, one of Asia Pacific's largest markets. The reasons for Denel's exclusion from India are fully detailed in paragraph 5.4 below. The opportunity to re-enter Asia-Pacific presented itself when the Indian Ministry of Defence (MOD) lifted its blacklisting against Denel as prior to the upliftment of the blacklisting, Denel could not contemplate the opportunity for doing business in India.
- (ii) Further, the new Board of Directors of Denel, which was appointed only in July 2015, sought to extend Denel's participation in the Asia Pacific market as a way of increasing the order book. This emanated from the fact that there are immediate opportunities that Denel can take advantage of.

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2.2. Governance Process: Denel Internal Approvals

ACTION	TIMELINE
Approval by Denel Board to explore a suitable equity partner for the Asia Pacific region	10 September 2015
Final approval by the Denel Board of the identified equity partner together with the draft PFMA application subject to, inter alia, Denel obtaining the requisite regulatory approvals and subject to certain conditions, which conditions have been dealt with in paragraph 10.1 below.	7 December 2015

2.3. The reasons for Continent Specific vs Country Specific Arrangement and preference for Hong Kong

- (i) Hong Kong is strategically located for business in Asia and can really be seen as the best gateway for doing business in that jurisdiction.
- (ii) Conducting general business in Hong Kong is simple and setting up offices and structures are quick and inexpensive.
- (iii) Foreigners can own 100% of a Hong Kong company and are free to be the sole directors and shareholders of a Hong Kong company. There are no local resident requirements and there are no restrictions on nationality.
- (iv) A Hong Kong company offers global recognition and is very stable. Hong Kong is one of the world's major trading, finance and service centres.
- (v) To open a Hong Kong company, you don't need a physical address in Hong Kong and your physical presence in Hong Kong is not required
- (vi) Hong Kong adopts a territorial source principle of taxation meaning that all profits generated outside of Hong Kong are tax free and profits generated inside Hong Kong are taxed at 16.5%.
- (vii) The legal system in Hong Kong is still ruled by British law.

3. REGIONAL STRATEGY

3.1. Studies Undertaken

Rapid and uneven economic development across 25 countries and regions of the Asia-Pacific region both enables and demands new approaches to national defence. By 2018, as global defence spending increases by 5.5 percent, defence budgets across the Asia-Pacific (excluding the US) are expected to grow by over 19 percent (Asia Pacific Defence Outlook 2015 – Deloitte report).

Rapid economic development has also created new sources of vulnerability. While the advancements are essential for developed economies, they require governments to plan for their defence, driving defence budgets and technical requirements upwards and increasing security threats have led to substantial increases in defence spending.

Increasing Global terrorism is also playing a major role in this region. Five Asia-Pacific countries – Pakistan, Philippines, India, Thailand and Bangladesh – accounted for 36 percent of the rise in global terrorist incidents between 2004 and 2013, and 97 percent of the increase within Asia-Pacific. While actual incidents of terrorism remain concentrated in a few nations, regional concerns about terrorism are increasing as Islamic State-related attacks and propaganda proliferate. This also leads to increased defence spending.

Asia-Pacific defence budgets increasingly emphasize procurement and research and development, as nations develop indigenous defence industrial bases and pursue advanced defence technology. Procurement and R&D are projected to grow by 29 and 28 percent respectively from 2014 to 2018, reflecting plans for major new acquisitions in most countries in the region.

Procurement Budget Increases by country

Country	% Increase (2014-2018)	Growth Focus
India	25	Develop industrial base. Land Based systems Artillery and Infantry weapon systems. Air Defence programs
Singapore	18+	Technology Partners
Cambodia	18+	R&D and Industry development focus.
Indonesia	18+	R&D and Industry development focus. Land Based systems
Pakistan	11	Not Publicly published. Based on current requests. Air Defence and Artillery focus
Vietnam	18+	R&D and Industry development focus. Land Based systems and Air Defence
Philippines	85	R&D and Industry development focus. Land Based systems and Air Defence.

By 2018, rapidly-developing Asia-Pacific nations will command more than half of non-US global defence procurement and two-thirds of non-US defence research and development, making the region a key defence market, and a potent force in defence technology innovation and advancement. Therefore, Denel needs to be in this space.

3.2. Strategic Relevance of Asia

Countries such as India, Indonesia, Singapore, Thailand, Vietnam and China are considered to be primary target markets for Denel whilst markets such as the Philippines, Myanmar, Sri Lanka and Bangladesh form secondary target markets.

In analysing the Denel business in the Asia Pacific region, the following emerged to Denel management as barriers to entry into this fast growing market:

- o lack of multilateral defence relationships;
- o inability to provide funding solutions;
- o inability to source local production and development partners (particularly in India);
- o frequent engagement with end user and industry from a distance not feasible;
- o company visibility in the market place/region from a distance not possible;
- o need for a lawful conduit for developing/Aligning with local business networks; and
- o active participation in regional initiatives from a distance are not feasible.

3.3. Hong Kong as the Country of Incorporation for a Private Limited Company

The salient business requirements for Hong Kong particularly with respect to undertaking business in this jurisdiction is set out in paragraph 4 below. In essence, the financial, regulatory and legal requirements are substantially similar to that applicable to companies in South Africa.

4. COMPREHENSIVE DUE DILIGENCE REPORT ON THE FINANCIAL REGULATORY LEGAL REQUIREMENTS AND REGULATORY LAWS GOVERNING FOREIGN OWNED ENTITIES IN HONG KONG

Denel has been advised that:

- o Hong Kong is situated in the south-eastern coast of China. With a total area of 1104km². The territory comprises Hong Kong Island, Kowloon Peninsula, and the New Territories, which also includes 262 outlying islands.
- o Hong Kong became a Special Administration Region of the People's Republic of China on 1 July 1997, after a century and a half of British colonial administration. Under the "one country, two system" policy and constitutional documents, the Basic Law, Hong Kong's existing economic, legal and social systems will be maintained for at least 50 years. Hong Kong does however enjoy a high degree of autonomy except in defence and foreign affairs.
- o While the People's Republic of China follows a civil law system, Hong Kong's legal system is based on the traditions of its former colonial master, England. As such, English common law continues to have sway. As in the British system, lawyers are either solicitors (handling paperwork, negotiations, and settlements) or barristers (who can appear in court). The Hong Kong "Basic Law" functions as Hong Kong's constitution, subject to interpretation by the Standing Committee of the National People's Congress.
- o The Basic Law of Hong Kong ensures Hong Kong's autonomy in its executive, legislative, and judicial systems, as well as certain foreign relations. It protects freedom of expression, assembly, and religion, forbids torture and unwarranted searches, seizures, and arrest. Furthermore, Hong Kong is ardently capitalist, in spite of Mainland China's (nominal) adherence to socialism.

- Every year since 1995 to about 2013, Hong Kong was voted the world's most free economy by the Heritage Foundation and the Wall Street Journal's Index of Economic Freedom. It also has one of the lowest tax rates in the world. According to studies conducted by PricewaterhouseCoopers and the World Bank Group, Hong Kong is the fourth-easiest place in the world to pay taxes, just behind three countries in the Middle East.
- Hong Kong is ideally located in the heart of Asia and serves as a gateway to and from Mainland China amongst others. These advantages make Hong Kong an attractive place for foreign investors.
- The Companies Ordinance (the "CO") is the main piece of legislation governing companies in Hong Kong.
- Types of Permitted Operations in Hong Kong

Depending on the scope of operations, foreign companies seeking to operate in Hong Kong have three alternative permitted forms of business presence:

- Representative Office
A representative office is suitable for a foreign company that intends to conduct only minimal activities in Hong Kong. A representative office cannot conduct any trade, professional, or business activities or transactions in Hong Kong and cannot enter into any contracts in Hong Kong. A representative office is appropriate, for example, for acting as a liaison office without creating any binding business obligations.
- Branch Office
If a foreign company establishes a place of business in Hong Kong, it will require registration as a foreign company under the CO. A "place of business" includes a place used by a company to transact any business that creates legal obligations. The foreign company is liable for the debts and liabilities of its Hong Kong branch, and a branch office cannot take full advantage of Hong Kong's tax benefits.
- Hong Kong Subsidiary
Due to the limitations of a representative office and branch office as described above, foreign companies usually favour establishing a Hong Kong-incorporated company as a subsidiary to operate in Hong Kong. This is generally the preferred type of business structure because the entity may be sued only to the extent of the limited assets of the Hong Kong subsidiary.

○ Classification of a Company

- Under the CO, a "private company" is a company that restricts the right to transfer its shares, prohibits public subscription for its shares or debentures, and limits the number of shareholders to 50. Any company which cannot satisfy all three requirements is a public company. A public company can be listed on a stock exchange or unlisted.
- A company can also be classified by whether it is limited by shares or by guarantee, or is an unlimited company. We have limited our discussion to a company limited by shares, which is the most common type and is usually referred to as a "limited company." A company limited by guarantee in Hong Kong is usually a non-profit organization.

- The CO makes it clear that there are five types of companies that can be set up under the CO:
 - a public company limited by shares;
 - a private company limited by shares;
 - a public unlimited company with a share capital;
 - a private unlimited company with a share capital; and
 - a company limited by guarantee without a share capital.

- Requirements for a Hong Kong Private Company

At a minimum, a Hong Kong private limited company must have the following:

- one shareholder;
- one director;
- a company secretary;
- a registered office address in Hong Kong;
- an auditor; and
- a business registration certificate.

- Director

- A director must be at least 18 years of age, must not be an undischarged bankrupt, must not be subject to a disqualification order, must comply with any share qualification requirement, and must consent to act. There is no restriction on the nationality of a director.
- A private company can have a director that is a corporation but at least one director must be a natural person.

- Company Secretary

A company secretary must either be an individual resident in Hong Kong or a company with a registered office or place of business in Hong Kong.


- Business Registration Certificate

- A one-stop Company and Business Registration Service has been launched by the Companies Registry and the Inland Revenue Department. Applications for both incorporation and business registration are undertaken simultaneously.
- In addition to the business registration certificate, certain types of businesses may need additional forms of licensing. For example, a company conducting regulated financial services activity (such as asset management, dealing in securities, or advising on securities) in Hong Kong requires licenses from the Securities and Futures Commission.

- Generally

- There is no prescribed minimum paid-up capital. Under the CO, the concept of nominal or authorized share capital and nominal or par value was abolished. Instead, the articles of the company with a share capital must include a statement of capital containing some prescribed information and the initial shareholdings.
- The same person can be the secretary, director, and shareholder of a company, except that the sole director of a company cannot also be the secretary of the company.
- A company's statutory records must be kept at its registered office. If they are kept at a different place, a notice must be filed with the Companies Registry.

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Under the CO, the articles of association are the sole constitutional document of the company.

- **Information Available to the Public**
Compared to other jurisdictions (e.g., the British Virgin Islands and the Cayman Islands), Hong Kong companies are much more transparent in terms of information that is available to the public. In addition to basic information, one can search for all the documents filed with the Companies Registry in relation to a particular company. One can also search for the registered charges (securities in favour of third parties) of a company and disqualification orders made. Moreover, one can search for all the companies in which an individual has directorships and the particulars of that director, such as his or her identity number and residential address.

o **Establishing a Private Company**

There are two ways of establishing a private company in Hong Kong which is either by incorporating a new company or buying a shelf (or existing) company.

- Incorporation involves applying to the Companies Registry, which then issues a certificate of incorporation within four working days after submission of the application by post (online applications may be processed within an hour). The newly incorporated company then needs to be activated by holding its first board meeting and a shareholders' meeting, if necessary.
- Buying a shelf company is useful when a company is urgently needed. One just needs to acquire a shelf company and then activate it by effecting a change of shareholders and directors and holding a board meeting (and a shareholders' meeting, if necessary).

o **Continuing Compliance Requirements**

- A company should hold an annual general meeting (AGM) each year, and not more than 15 months from the previous AGM, unless everything that is required to be done at the meeting is done by written resolution and the relevant documents are provided to each member.
- The following matters are usually dealt with at the AGM:
 - adoption of audited accounts comprised of the balance sheets, directors' report, and auditors' report;
 - declaration of dividends;
 - election of directors; and
 - appointment of auditors.
- The CO provides that a company is not required to hold an AGM if it has only one member or the AGM is dispensed with by unanimous members' consent.
- Other compliance requirements include, among others, the following:
 - a company should keep a register of members and a register of directors and secretaries;
 - various returns have to be filed with the Companies Registry within stipulated deadlines for changes in relation to the company, such as changes in directorship and secretary, registered office, share capital, etc.;
 - a company must file an annual return;
 - a company must have annual audited accounts. The CO prescribes detailed requirements regarding the types of accounts to be prepared. A directors' report must also be prepared in conjunction with the annual accounts;
- shareholders' or board meetings should be held as may be necessary or required under the CO. The minutes or written resolutions should be filed in

a minute book and resolutions or notices should be filed with the Companies Registry as required under the CO; and

- a company also needs to renew its business registration certificate before it expires and file profit tax returns for the company and the employer's return for its employees with the Inland Revenue Department.
- If a company fails to comply with these requirements, the company and every officer of the company who is in default may be liable for a fine and/or imprisonment.

o Tax Issues

▪ Profits Tax

- Hong Kong adopts a territorial corporate tax system. Corporations are taxed on profits at a rate of 16.5% percent. Profits tax is charged on Hong Kong-sourced profits and is collected by the Inland Revenue Department. The tax rate on profit derived in Hong Kong is the same for Hong Kong and foreign companies.
- Specifically, domestic and foreign entities meeting the following three criteria are subject to profits tax:
 - the entity carries on a trade, profession, or business in Hong Kong;
 - the profits are from such trade, profession, or business carried on by the entity in Hong Kong; and
 - the profits arose in, or were derived from, Hong Kong.
- A Hong Kong resident may derive profits from abroad that are not subject to Hong Kong profits tax; conversely, a non-resident may be liable for tax on profits arising in Hong Kong. The question of whether a business is carried on in Hong Kong and whether profits are derived from Hong Kong is largely one of fact. Profits arising from activities conducted abroad, even if they are remitted into Hong Kong, are not subject to profits tax.

▪ General Tax Benefits

- Dividends or overseas branch profits repatriated to Hong Kong are not subject to Hong Kong tax. In addition, dividends paid by a Hong Kong company to its shareholders are not subject to Hong Kong tax in the hands of shareholders (tax already having been paid by the company on the profits underlying those dividends), nor is there any withholding tax on dividends paid to shareholders outside Hong Kong.
- Capital gains are also tax-exempt. A stamp duty is imposed on certain documents such as share transfers, leases of real property, and sale of real property. There is no sales tax, value-added tax, or estate tax in Hong Kong.

5. SELECTION OF PARTNERS

With a focus on Asia, Denel's approach is to immediately re-enter the India market through Denel Asia as a way of building a business profile in the region. The details of the India strategy and its rationale are discussed below. The choice of partner has mainly been influenced by the plan to use India as an entry point into the Asia market.

5.1. Denel's History in India

Denel entered the India market during 1994 with a wide range of products. During the period 1998 and 2005, Denel participated in tenders issued by the Indian MOD and was successfully awarded contracts for various products including ammunition and land systems products.

These contracts were for the supply of ammunition, explosives, anti-materiel rifles, fuses and other munitions components such as base bleeds and modular charge systems totaling circa US\$ 282 623 768.00.

Some of these transactions included the transfer of technology for the relevant products sold to the Government of India.

A contract for a significant artillery program for a tracked self-propelled gun resulted in a successful trial being concluded during July 1999 to February 2000 which included the introduction of the G6. The costs of these trials exceeded R500 million. Contract negotiations commenced in February 2003 and were concluded in December 2003 with a contract value of US\$ 1,180,744,682.

On 17 April 2005, an article appeared in the Cape Argus newspaper alleging that Denel had contravened specific Indian legislation. Notwithstanding the lack of proof thereof and Denel's denial that it was in breach of the MOD contracts, the MOD issued a notice of termination of the defence programs and instituted legal proceedings against Denel which resulted in, inter alia, protracted arbitrations. Contracts to the value of US\$ 77,3 million were adversely affected by these actions. Denel was effectively treated in India as if it were blacklisted notwithstanding no formal blacklisting being in force.

In 2007 Denel sought to re-enter the India market as a subcontractor on a tracked gun program where Rheinmetall was the prime contractor. Successful trials for the gun took place during July 2010 and March 2011. However, in 2012, Rheinmetall was recommended for blacklisting which resulted in a termination of the said program. Denel incurred a further loss of a R11 million as a result of this termination.

This confirmed that Denel competing on its own in India on major programs is very high risk.

Since Denel's absence from the market, the procurement rules changed significantly on major programs. In particular, it introduced the requirement for a local Indian industry partner/s based on the "Buy Make India" procurement program. This mandatory requirement combined with Denel's previous unsuccessful attempts to access and remain successful in the Indian market reconfirmed the need for Denel to identify and rather proceed with a local partner in India as opposed to its own.

5.2. Buy Make India

The India "Buy Make Program" requires that local content should be more than 50% as well as inclusion of technology transfer from the foreign Original Equipment Manufacturer (OEM).

Denel is positioning itself for major programs in India which programs are premised on the 'Buy Make India' concept. This means that only Indian Companies that can prove that they have partnered with "foreign technology companies" are allowed to bid as prime contractors.

The Indian procurement process demands a strenuous and protracted product evaluation process which can become extremely costly (as detailed in paragraph 5.1 above and experienced first-hand by Denel).

5.3. India Remains a Lucrative Market

Despite Denel's previous lack of success in the India market, due largely to circumstances outside its control, the Asia Pacific region and specifically the Indian market remains a lucrative market as more fully set out in paragraph 3.1 above.

5.4. Possible Partners Explored

As detailed in paragraph 5.1 above, Denel was inactive in the India market for a significant length of time until verbal notification was received late in 2014 from the Indian Embassy in South Africa informing Denel that the investigation was completed and that we may proceed to conduct business in India.

It must be pointed out that the defence industry is a niche market and the norm in this industry is that a competitor can easily become a strategic partner and vice versa depending on the type of opportunity being explored by the parties.

As Denel needed to finalise a partner in light of a Request for Information (RFI) to be issued on the mounted artillery gun program, an industry visit took place during February 2015 wherein Denel visited the following potential business partners. Securing a suitable partner proved to be unsuccessful as most of the potential business partners that Denel considered were already aligned to other companies. For example, Denel considered the following companies:

- a) *Bharat Forge*
They have a large forging capability and are a well-established defence contractor. They were however already committed to ELBIT (Israel Company) on artillery programs.
- b) *Larsen and Toubro*
They are a well-established defence contractor but were already committed to NEXTER (French company) on artillery programs.

Given the significant changes in the procurement process as well as Denel's previous unsuccessful experiences coupled with our own internal strengths and weaknesses, a decision was taken not to participate in major programs in India unless there was a distinct advantage that presented itself and which would increase the possibility of us successfully participating in the Indian market.

VR Laser presented to Denel, on an unsolicited basis, a value proposition that was worth considering. The value proposition, more fully set out in paragraph 5.2 below, was attractive to Denel as it was based on VR Laser Asias' experience as well as market studies conducted during the planning phase of re-entry into India. VR Laser Asia's value proposition allows for Denel to enter into the India market as well as the wider Asia Pacific market.

In the past, Denel has incorporated similar joint venture companies in other countries with some of its suppliers as in the case of Tawuzan Dynamics, a joint venture company incorporated in the UAE. Denel has seen and continues to see significant benefits in the incorporation of this joint venture.

Key aspects of the Tawazun Dynamics Joint Venture are, inter alia:

- o It is a risk sharing model; and
- o Intellectual Property (IP) is licenced in Tawazun Dynamics in order to discharge offset obligations.

5.5. Value proposition of VR Asia

As previously indicated, a decision was initially taken (prior to VR Laser Asias approach) not to re-enter the India market given the informal blacklisting and having not been in the market for a significant length of time.

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It is evident that, in order to be successful on any major defence program in the world, there needs to be a balanced strategy which encompasses, inter alia, the following:

- (i) **A defence solution that supports national objectives**
The VR Asia proposition brought an understanding on national objectives at an industry level and industry knowledge in the form of a well-established, highly respected and highly successful India partners being PIPAVAV and the Adani Group. The Adani Group is an Indian multinational conglomerate company. It has a diversified business portfolio covering resources, logistics, agribusiness and energy supply. The company was founded in 1988 as a commodity trading business. The founder and Chairman, Mr Gautam Adani is a well established business man and has vast knowledge of setting up significant programs. Similarly, PIPAVAV is a reputable Indian company which operates in the armament industry with knowledge of the Indian market.
- (ii) **Compliance to the user specification with a competitive value proposition**
The VR Asia proposition at this level is again Industry knowledge, setting up the not so obvious contenders in a business venture. As indicated above, Denel's initial evaluation of possible partners was unsuccessful as the main contenders were already committed or not willing to share the risk. Through, for example, the Adani business partners in India as well as risk sharing by Indian partners such as PIPAVAV during the pre-contracting phase of the program, participation will be possible. The value proposition in the bidding process will be an Indian solution with local content growing new contenders and establishing new technologies as directed by policy.
- (iii) **A competitive technical solution**
The VR Asia proposition at this level is technical skills in VR South Africa as well as operational funding.

5.6. **VR Laser Asia as a partner of choice**

Denel has thus concluded that VR Laser Asia Limited, a company incorporated in Hong Kong ("VR Asia"), and aligned with one of Denel's local fabrication specialists (VR Laser South Africa Proprietary Limited ("VR RSA")), as a suitable partner to form a joint venture company. VR RSA, on behalf of VR Asia has presented a suitable business model to Denel for consideration. VR RSA has also undertaken to fund VR Asia in order to enable VR Asia to meet its funding commitments to Denel Asia.

Denel's traditional strength lies in the areas of concept, design, prototyping and weapons integration. In partnering with VR Asia, Denel obtains access to VR RSA's strong capability in industrialisation, production and support of armoured and specialised vehicles.

The advantages of Denel entering the Asia market with VR Asia includes:

- the provision of design, manufacturing and fabrication skills
- a deeper understanding of the local market and industrial landscape
- the ability to align with local business networks
- the provision of quick access to local potential production and development partners
- the ability to increase visibility in the market/region
- access to operational funding
- the ability to grow the business in a sustainable manner
- the ability to share all demonstration costs proportionately to its shareholding

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For the above reasons the partnership with VR Asia, who has satisfied Denel that it is familiar with the landscape of Denel's primary and secondary target markets, makes commercial sense.

Further, it makes commercial sense for Denel to establish a footprint in the market. In order to mitigate the costs and risk of a new market entry, Denel management are of the view that a risk sharing model be adopted. This entails that Denel enter into a joint venture with VR Asia to form Denel Asia.

It is reiterated that VR Asia is a partner of choice for Denel for reasons, which include, details as set out in this paragraph 5, the unsolicited approach made by VR Asia together with, inter alia, its value proposition and the commercial relationship enjoyed between VR Laser RSA and Denel Land Systems (a Denel entity) which has resulted in mutual trust and recognition between the respective parties.

6. ADVANTAGES OF PARTNERING WITH VR LASER ASIA

6.1. Registration Details and shareholding of VR Laser Asia

The registration details of VR Laser Asia are: **VR LASER ASIA LIMITED**, (Company No. 2111273) whose registered office is at Block A, 15/F, Hillier Comm Building, 65-67 Bonham Strand East, Sheung Wan, Hong Kong.

The sole shareholder of VR Laser Asia Limited is Mr Salim Aziz Essa, a South African national with passport no. M00073786. Mr Essa is via the entity Elgasolve Proprietary Limited, the controlling shareholder of VR Laser South Africa Proprietary Limited.

6.2. Networking Capability Expanded

As mentioned in paragraph 5.2 above, VR Laser Asia's network includes, but is not limited to, the following reputable Indian businesses:

6.2.1 Adani's Profile

Mr Gautam Adani, the Chairman and Founder of the Adani Group, has more than 33 years of business experience. Under his leadership, Adani Group has emerged as a global integrated infrastructure player with interests across Resources, Logistics and Energy verticals.

Mr Adani's success story is extraordinary in many ways. His journey has been marked by his ambitious and entrepreneurial vision, coupled with great vigour and hard work. This has not only enabled the Group to achieve numerous milestones but also resulted in creation of a robust business model which is contributing towards building sound infrastructure in India.

Quoted from the Chairman message:

"The government's call for 'Make in India' shall get a fillip with a robust infrastructure that is world class and facilitates the manufacturing industry. It is our endeavour to narrow the energy demand and supply gap, build world class ports so that India becomes a shipping hub and operates mines across the globe with environmental concerns addressed most optimally. We look forward to make inroads into new sectors of infrastructure and aim to excel in all our initiatives."

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Adani's Vision

As part of preparing the Group for the next phase of our growth, we have re-formulated our 2020 vision:

"To be a globally admired leader in integrated infrastructure businesses with a deep commitment to nation building. We shall be known for the scale of our ambition, speed of execution and quality of operation."

(Source: Adani website)

6.2.2 PIPAVAV's Profile

Reliance Infrastructure, together with its wholly owned subsidiary Reliance Defence Systems Private Limited, acquired in March 2015, a controlling share from the promoters of Pipavav Defence.

Reliance Infrastructure Limited (RInfra) is amongst the largest Infrastructure Companies in India, developing Special Purpose Vehicles (SPVs) in several high growth sectors within the Infrastructure space.

PIPAVAV Defence is India's first world class company integrated Defence production company. PIPAVAV was the first private sector company to get a license and contracts to build frontline warships for the Indian Navy.

PIPAVAV has strong partnerships with Global players such as:

- SAAB Technology AG, Sweden on technology transfer for the manufacturing of missiles, underwater systems and Aero-structures for fighter jets
- DCNS (France) Government owned company on Naval programs
- Rosoboron Export Russia on Naval programs
- Atlas Electronica on torpedoes and Sonars for the Indian Navy
- Sagem Defence Securite, part of the Sagem Group on long range air borne multi sensor multi spectral electro optical systems

PIPAVAV has been participating in several land system projects such as:

- Upgrade of several vehicle programs such as BMP2 and tank projects
- Manufacturing and supply of Armour Personnel Carriers
- Several UAV programs

Having regard to the fact that Denel has come in as a late entry competitor on the main programs in India, our partnering options were very limited as the traditional partners that Denel could have considered were in most instances already paired with other major industry players (See paragraph 5.1 above).

In support of India's national objective of developing local privately owned defence companies, partnering with (either one or both) Adani and PIPAVAV will bring major advantages in terms of Industry knowledge, manufacturing capability, setting up manufacturing partners, business knowledge and investment capital on major programs. Expanding into the Defence Business forms part of both companies growth vision and both have a history of success.

6.3. Financial Commitment

VR Laser Asia via VR Laser RSA has committed R100 million in terms of a shareholder loan on an arms-length basis with interest (being at normal market rates).

Denel intends to negotiate a higher amount to be paid at the outset and should this be unsuccessful, it will be referred back to the Denel Board.

Should the joint venture be unsuccessful within the first 5 years of incorporation of the company, VR Asia will not have recourse to Denel to repay the loan but shall bear this risk in totality. This is articulated in the Shareholders Agreement.

7. BUSINESS MODELS

As indicated in paragraph 5.2 above, Denel can best position itself for programs based on the 'Buy Make India' concept. In addition, if there are any similar requirements within the Asia Pacific region, it will be easier to leverage on these opportunities from the India base.

Set out in paragraph 8 below are the 2 main business / contracting models that may arise from identified opportunities in the Asia Pacific region hereafter referred to as Scenario 1 (No Production Scenario) and Scenario 2 (Production Scenario) respectively.

8. CONTRACTING MODEL

8.1. Joint Venture Governance

In order to implement Denel's chosen risk mitigation strategy, Denel has elected that a new limited liability company be registered in Hong Kong (Denel Asia). This ensures that Denel does not inherit any legacy concerns and ensures a speedier due diligence process.

Notwithstanding the fact that Denel Asia will be incorporated in Hong Kong, Denel has to ensure that Denel Asia will be established and managed in line with its status as a state owned company, reflecting Denel's own corporate governance best practices and standards. In this regard, Denel has negotiated a favourable shareholders' agreement entrenching its rights and providing a contractual framework which will ensure Denel Asia's effective governance.

8.2. Contributions by the Parties

Denel management have recognised that the intended shareholders of Denel Asia have differing strengths and capabilities. In this regard, it is envisaged (and the Denel Asia shareholders' agreement provides) that:

- o Denel, will be the technology partner and will hold 51% of the issued share capital and control of Denel Asia. The remaining 49% minority is to be held by VR Asia who will be the networking and industrial partner.
- o Other than standard minority protections, Denel as majority shareholder will be able to influence the strategic direction of Denel Asia at a shareholder level as shareholder matters require approval by a simple majority.
- o Denel Asia will pursue opportunities in Asia, and, specifically in India using the network of VR Asia. Once an opportunity translates into a firm order:

- Denel Asia may establish a subsidiary in India in order to satisfy Indian legal requirements;
- Denel Asia will pursuant to a preferential supply agreement with Denel, procure product for delivery to an Indian end-consumer; and
- If and to the extent required, VR RSA will contract, manufacture, and produce for Denel Asia for delivery to an Indian end-user.

Subject to relevant approvals, a Shareholders agreement in relation to Denel Asia has been negotiated. The current draft of the shareholders' agreement is attached hereto as **Appendix A**. The Denel Board has considered the same and taken advice thereon. They are satisfied that Denel has adequately protected itself in relation to Denel Asia.

8.3. Transaction Structure


The cooperation agreement referenced in the pre-notification letter to Minister Brown dated 29 October 2015 is to be superseded by the shareholders' agreement. In addition, Denel, VR RSA and VR Asia are to conclude:

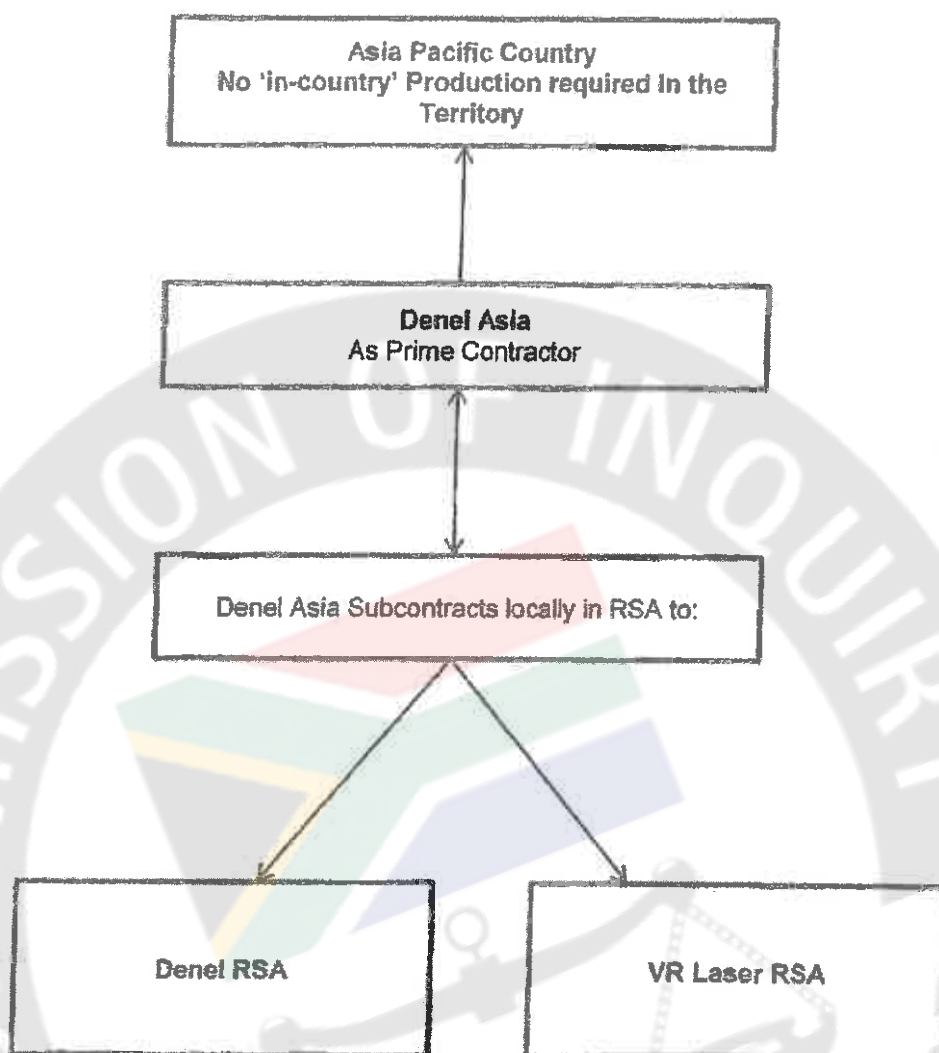
- A standard form Denel supply agreement in relation to the supply of product by Denel to Denel Asia, which will entitle Denel Asia (as a subsidiary of Denel) to preferential pricing and procurement status; and
 - A contract manufacturing agreement between Denel Asia (as customer) and VR RSA (as supplier) in terms whereof, amongst other things:
 - Denel Asia will appoint VR RSA as its preferred contract manufacturer for specialized vehicles and related products in India;
 - VR RSA will supply specialized vehicles and related products at a preferential price, given its indirect interest via VR Asia; and
 - Denel will make available to VR RSA, certain IP on a limited licensed use basis, to enable VR RSA to manufacture/fabricate product.
- See paragraph 12.7 below.

8.4. Schematic representation of the contracting models

8.4.1 Scenario 1 – No Production envisaged in country

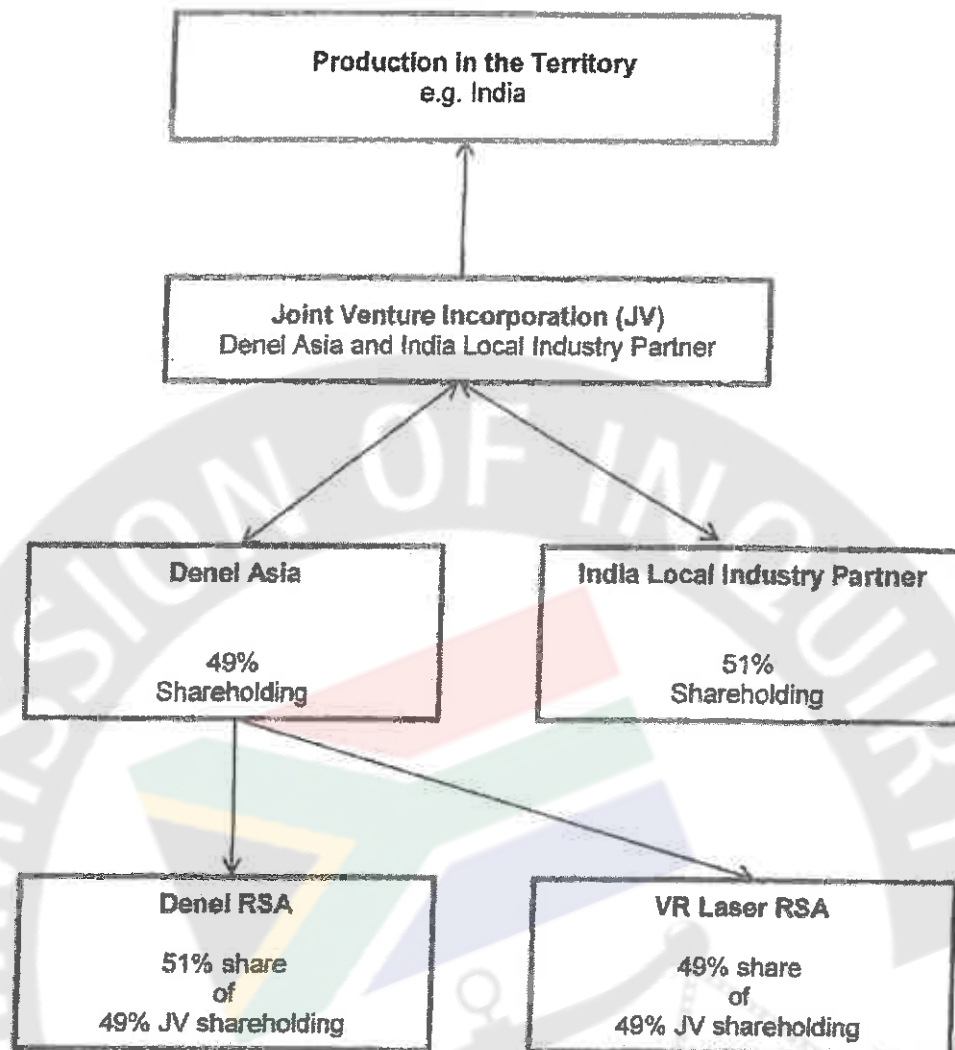
8.4.2 Scenario 2 – In country Production is envisaged

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Scenario 1:

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Scenario 2:

- (i) It is not envisaged that any production will take place in Hong Kong as this office is essentially a marketing office.
- (ii) Tawazun Dynamics conducts business in accordance with Scenario 2 above.

8.5. Financing

One of the key supporting drivers for the formation of Denel Asia, is Denel's limited finance obligations. VR Asia has undertaken to invest an amount of R100 million (One Hundred Million Rand) into Denel Asia for operational costs, payable in amounts of R20 million a year for a period of five years.

Thereafter, Denel Asia will, to the extent that external funding is required, source such funding from third party funders. The shareholders (Denel and VR Asia) will also be able to provide funding by way of shareholder loans pro-rated according to their respective shareholding but they are not obliged to provide funding. Denel does not have any definitive finance obligations or exposure to Denel Asia (save for ordinary supply arrangements).

9. INTELLECTUAL PROPERTY (IP) AND LICENCING

9.1. Technology transfer and protection of Denel's IP

- (i) Denel will not alienate its Intellectual Property and technology transfer will be done by way of an applicable licencing agreement between relevant parties.
- (ii) Requisite approvals from Armscor and/or a third party will be obtained prior to licencing this IP.
- (iii) To the extent that royalties are payable to Armscor and/or any third party, Denel Asia will be required to effect such payment.
- (iv) Where Denel is the owner of the IP, there will be no royalty payable by Denel Asia as Denel is the technology partner bringing with it the technology to the joint venture subject to paragraph 9.1 (i) above. This is consistent with the Tawazun Dynamics joint venture model referred to in paragraph 5.7 above.
- (v) In instances where Denel cannot be subcontracted by Denel Asia for technology transfer to a local industry company in a specific jurisdiction, Denel Asia will instead be licenced with a right to extend such licence to an identified local industry company.

10. RISKS AND MITIGATION

Key risks were considered during the assessment of the business and relevant risks taken into account in the negotiation process and contractual framework. Appropriate financial and legal due diligence reviews were performed to identify and mitigate any further risks and the recommendations emanating therefrom have and/or will be adopted and implemented. Appendix B, Appendix C and Appendix D refers.

10.1. Transaction risks and its mitigation


Risks		Mitigation/Remarks
1.	Reputational	<ul style="list-style-type: none"> Denel has undertaken a due diligence investigation and the recommendations thereof will be implemented. No agents will be involved.

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Risks		Mitigation/Remarks
		<ul style="list-style-type: none"> Denel has a controlling share and thus can control the direction of Denel Asia.
2.	Guarantees/ Finance Risk	<ul style="list-style-type: none"> VR Asia is funding Denel Asia in the amount of R100 Million (R20 million a year for 5 years). Denel is to engage with VR Asia to secure a greater cash injection in the first 2 years. Denel previously unsuccessfully engaged with VR Asia on this issue. The Board has requested that a re-engagement with VR Asia on this issue is to take place. Reduced balance sheet exposure due to partnering. Denel has limited credit exposure to its subsidiary for normal supply arrangements on preferential terms.
3.	Penalties	<ul style="list-style-type: none"> Both Denel and VR Asia, have the skill, expertise and experience to minimise the possibility of penalties being incurred.
4.	Legal Exposure	<ul style="list-style-type: none"> Denel exposure is seen by the Denel board as limited.
5.	PFMA Conditions	<ul style="list-style-type: none"> Denel will ensure that Denel Asia abides, to the extent applicable to the PFMA, the Denel Shareholder Compact and the Denel Risk and Compliance Frameworks. Adherence to all shareholder conditions prior to Shareholders Agreement and ancillary agreements.
6.	Cooperation Agreement	<ul style="list-style-type: none"> The Shareholders Agreement, once signed, will supersede the Cooperation Agreement (Appendix E).
7.	Protection afforded in terms of the Shareholder Agreement	<ul style="list-style-type: none"> The agreement only becomes effective upon the fulfilment of the suspensive conditions (Clause 4). Control vests in Denel which has a 51% shareholding (Clause 5). There are certain reserved matters which require a 75% majority vote with other matters requiring a simple majority of 51%

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	Risks	Mitigation/Remarks
		<p>in order for the resolution to be passed (Annexure B for reserved matters).</p> <ul style="list-style-type: none"> • There is specific provision for the implementation of anti-bribery, anti-money laundering and anti-corruption policies in the joint venture (Clause 6). • In the event of the joint venture being wound up/dissolved prior to full repayment of the shareholders loan, no liability will accrue to Denel to settle the loan (Clause 16.2). • Denel has the right to investigate the directors and ultimate beneficiaries and shareholders of VR Asia to ensure that such persons have sufficient standing and if not satisfied, Denel has the right to demand that VR Asia repurchases the shares from that person thereby removing the person from being a shareholder of VR Asia (Clause 18.3). • The termination clause (Clause 21) relates to termination on material breach (as opposed to termination for convenience). • Provision is made for termination in circumstances where the Government directs that Denel ceases to be a shareholder for reasons of national security or otherwise (Clause 25.1) • Termination can take place by mutual agreement (Clause 25.1.3). • Termination can also take place where a party frustrates the performance of the other party by making performance impossible or unreasonably expensive or difficult, materially alters the rights and obligations of the parties or materially interferes with the benefits (Clause 25.1.4).
8.	Exit Clause: Termination for convenience	<ul style="list-style-type: none"> • Initial discussions with VR Asia resulted in a rejection of a clause for termination for convenience. • Denel is to engage with VR Asia and address the Board's requirement that such a clause is to be included in the agreement.
9.	Due Diligence	<ul style="list-style-type: none"> • The key risk identified is the potential for bribery and corruption. This is alleviated in the shareholders agreement by the obligation to abide by anti-money laundering (AML) and anti-bribery and anti-corruption (ABC) policies. • Financial viability of VR Laser Asia raising the loan – in the absence of the loan being furnished by VR Asia to the joint venture, it

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Risks		Mitigation/Remarks
		<p>will constitute a material breach and is a ground for termination.</p> <ul style="list-style-type: none"> Denel is satisfied that the loan can be legitimately be raised by VR Laser Asia via its shareholders.
10.	Double Taxation Agreement	<ul style="list-style-type: none"> There are currently discussions between India and Hong Kong re a double tax agreement. The risk of the lack of a double taxation agreement is outweighed by the lucrative opportunities that can be realised in India.

11. DUE DILIGENCE

Denel had procured that a due diligence investigation be undertaken in respect of each of the following areas, which due diligence reports are attached hereto as follows:

1. Regulatory Due Diligence – Appendix B
2. Legal Due Diligence – Appendix B and Appendix C
3. Financial Due Diligence – Appendix D

There were some findings of concern that was raised by the due diligence which are acknowledged. Denel management is however confident that it is able to incorporate the recommendations of the report and will adopt corrective measures in particular related to an anti-corruption policy and compliance framework coupled with rigorous monitoring thereto. See paragraph 10.1 above.

In addition, Denel is satisfied that the shareholder loan can be legitimately raised by VR Laser Asia via its shareholders failing which the breach provision in the Shareholder Agreement will be invoked.

12. FINANCIALS


12.1. Capital Contribution

There will be a capital contribution of 1000 shares issued at USD 1 with Denel taking up 590 shares and VR Laser Asia taking up 490 shares.

12.2. Financial viability

The formation of Denel Asia in the region is opportune as it resolves many challenges that prevent Denel taking advantage of the current regional opportunities. It will also provide solutions to challenges that Denel faces at the moment i.e. to provide funding solutions.

Initially potential business amounting to USD 9.2 billion was identified. This has been tested and evaluated again and based on a realistic probability matrix on the latest marketing intelligence, the potential business is approximately USD 5.8 billion over the next 5 years which Denel could take advantage of (See paragraph 12.3 below).

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12.3. Markets and Opportunities

Denel Asia's forecasted capabilities and market interests are promising.

The business opportunity at a reduced risk via partnering constitutes a logical next step by Denel for entry into a new market. See Appendix F which sets out markets and opportunities.

12.4. Income Statement

Rm	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Sales	0	587	900	1,543	3,087	4,372	6,013	7,025	7,500
Gross Profit	0	117	180	308	617	874	1,203	1,405	1,500
Gross Profit %	0	20	20	20	20	20	20	20	20
Operational Cost:	11	14	19	22	27	35	35	35	35
Labour	6	8	12	15	20	25	25	25	25
Marketing	3	4	4	4	4	5	5	5	5
Overheads	2	2	3	3	3	5	5	5	5
Additional Operating Cost to Cover Business Growth	50	45	54	55	127	184	268	316	340
Profit before Interest / Tax / Dividends	(61)	57	107	232	463	655	802	1,054	1,125

Notes

¹ The rate of exchange used was R12.50/USD.

² The normal yearly operational costs consist mainly of salaries for the office personnel and will increase as more resources are needed to do project management and marketing.

The marketing costs would mainly be for travel and accommodation and direct marketing in the different countries where the opportunities lies.

The operational overheads will be to rent space and equipped the office with the necessary resources to operate effectively. The IT costs will be typically be part of this.

This calculation is based on foreign offices cost structures that are managed by Denel over a very long term.

³ The additional operating costs would mainly be used to do big system demonstrations to the potential clients. Any one big full in client country demonstrations could cost between R10m – R20m. This is based on various system demonstrations done in foreign countries.

12.5. Business Funding

Denel is satisfied that it has limited financial exposure in terms of Denel Asia due to the fact that VR Asia will be assuming the primary finance obligations of Denel Asia. Forecasted cash flows are in the view of Denel management sufficient to meet Denel Asia's obligation to VR Asia, which is without recourse to Denel.

- (i) The R100m investment from the Denel partner will fund the basic office operational costs for the first few years until sales are realised. The sales from operations will cover the direct cost and increased operational costs associated with the business case.
- (ii) The R100m investment will be a preferential and secured loan, which will be re-paid to the partner before any future profit sharing takes place.
- (iii) No substantial capital spend will be incurred before an order is obtained and the capital investment will be recovered on the orders obtained.

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12.6. Cash Flow Impact

- (i) The cash shortfall in the first year would have to be financed from either a 12 month short term loan at reasonable international rates negotiate with the partner. Subsequently, the business would be self-funding and sustainable over the medium to long term.

R'm	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Nett Operating Cash	(61)	57	107	232	463	655	902	1,054	1,125
Investment Capital	20	20	20	20	20				
Nett	(41)	77	127	252	483	655	902	1,054	1,125

12.7. Pricing Policy

- (i) There is currently a Memorandum of Agreement that specifies rates which were negotiated and agreed between VR Laser RSA and Denel Land Systems (a trading division of Denel) which provides a basis to the pricing.
- (ii) Paragraph 8.3 above refers.

13. BENEFITS**13.1. Local Manufacturing Development**

By concluding a contract manufacturing agreement with VR RSA (an established provider to Denel), Denel Asia ensures the sustainability of local manufacturing expertise.

13.2. Skills Development

Due to the technological partnering between Denel, Denel Asia and VR RSA, Denel serves its obligation and desire of fostering the development of core skills and technology competencies with black owned and/or black controlled South African entities. A proposition that satisfies a number of key Denel policies.

13.3. Job Creation


By facilitating a black owned and/or controlled South African company (VR RSA), Denel Asia seeks to maintain South African jobs in the skilled and semi-skilled industry sectors. In addition, based on the projected income, significant work will result from Denel Asia contracting with both Denel and VR RSA.

13.4. Human Capital Development / Transformation

We refer the Honourable Minister to our comments contained in paragraphs 13.1, 13.2 and 13.3 above.

14. CONCLUSION

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Asia is one of the fastest growing defence markets. Of the top ten worldwide defence importers in 2014, four were from Asia (India, China, Indonesia and Vietnam) with Singapore and Pakistan making 11 and 12 slots respectively. (Stockholm International Peace Research).

The formation of Denel Asia in the region is opportune as it resolves many challenges that prevent Denel taking advantage of the current regional opportunities. It will also provide solutions to challenges that Denel faces at the moment i.e. provide funding solutions.


15. IMPLEMENTATION PLAN

The following activities will take place towards contract implementation and the establishment of Denel Asia:

Action	Timeline
Negotiation and conclusion of the shareholders agreement	Draft shareholder agreement has been agreed to in principle and awaits Ministerial approval.
Establishment of the Joint Venture Company	
• PFMA pre-notification	Delivered on 30 October 2015
• Draft Shareholders Agreement	Circulated herewith
• Regulatory due diligence, Legal and Financial due diligence	Completed as at 27 November 2015
• Denel Board Approval	7 December 2015
• PFMA submission	10 December 2015
• PFMA Approval expected	January 2016
Approval from the financial surveillance department of the RSA Reserve Bank for establishing a subsidiary outside the common monetary jurisdiction	January 2016
Conclusion of final shareholders agreement and adoption of memorandum of incorporation.	January 2016
Joint Venture Company business activation and procuring all relevant approvals and/or registrations	January / February 2016

RECOMMENDATION

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It is requested that the Honourable Minister notes and approves of Denel's intention to:

1. establish Denel Asia as joint venture company in Hong Kong which company will facilitate the legitimate securing of contracts in the Asia-Pacific region; and
2. establish any further joint ventures, particularly within the India market, to ensure the successful execution of the contracts placed on Denel Asia.

The Denel Board has approved of such establishment subject to the receipt of Ministerial approval in terms of section 51(1)(g), section 54(1) and 54 (2) of the PFMA.





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ACKNOWLEDGEMENT OF RECEIPT

FORMAL APPLICATION FOR APPROVAL IN TERMS OF SECTION 54(1) AND 54 (2) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999 RE PROPOSED ESTABLISHMENT OF DENEL ASIA SOC LIMITED

	Name (Print)	Signature	Date and time
Minister L Brown Minister of DPE	Mahlaku		11/12/15 12h50
Minister D Van Rooyen Minister of Finance	Fzans		11/12/15 13:18
Mr Lungisa Fuzile Director General National Treasury	Fzans Fzans		11/12/15 13:18
Mr Richard Seleke Director General DPE	Mahlaku		11/12/15 12h50

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001

Enquiries: Vukani Ndaba Tel: (012) 315 5070 Fax: (012) 326 5445 Email: vukani.ndaba@treasury.gov.za

Ref: 43/12/5/1

Mr Z. Ntshope
Acting Group Chief Executive Officer
Denel SOC (Ltd)
P O Box 8322
PRETORIA
0046

Dear Mr Ntshope

JOINT VENTURE BETWEEN DENEL SOC (LTD) AND VR LASER

The Office of the Chief Procurement Officer received information that Denel SOC (Ltd) entered into joint venture agreement with VR Laser in order to find market for world class product in Asia

It is not clear whether government prescripts were complied with when finalizing this joint venture agreement.

In order for National Treasury to verify compliance with relevant prescripts, you are requested to submit the following documents for review:

- Board approval to pursue the deal;
- Advert and proposals received;
- Minutes of the relevant committees;
- Board resolution;
- Minister's approval;
- Joint venture agreement; and
- Any other relevant document.

Kindly ensure that the requested documents are submitted to National Treasury by not later than 10 February 2016.

Kind regards.

SOLLY TSHITANGANO
CHIEF DIRECTOR: SCM GOVERNANCE, MONITORING & COMPLIANCE

DATE: 5/2/2016

CC: Mr M.R. Seleke
Director-General: Department of Public Enterprise

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national treasury

 Department:
 National Treasury
 REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

STATEMENT ON REPORTS THAT DENEL ESTABLISHED A JOINT VENTURE

National Treasury has noted media reports that Denel may have entered into a joint venture to form a company that will operate from a jurisdiction in Asia. The National Treasury is currently engaging directly with Denel on the matter. This statement seeks to clarify facts relating to the transaction.

President Jacob Zuma noted in a press statement issued on 11 December 2015 that "...there is no state-owned entity that can dictate to government how it should be assisted. In addition, no chairperson of a board of a state owned company has the power to tell a government Department to which the entity reports, how to support or lead them".

The Board of a public entity commits an act of financial misconduct, where it wilfully or negligently fails to comply with the Public Finance Management Act (PFMA). The Treasury Regulations specifies that such allegations must be investigated by the Executive Authority and, if confirmed, appropriate disciplinary proceedings must be initiated.

State-owned entities are required to obtain approval from the Minister of Finance and/or Minister of Public Enterprises before establishing companies, in terms of the PFMA.

Section 54(2) states that: "Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:

- (a) establishment or participation in the establishment of a company;
- (b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- (c) acquisition or disposal of a significant shareholding in a company;
- (d) acquisition or disposal of a significant asset;
- (e) commencement or cessation of a significant business activity; and
- (f) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement"

Enquiries: Communications Unit
 Email: media@treasury.gov.za
 Tel: (012) 315 5944



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**national treasury**Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

In terms of the conditions attached to the R1.85 billion in guarantees that have been provided by government to Denel, any significant transactions that Denel enters into require the approval of both the Minister of Finance and the Minister of Public Enterprises.

Section 54(3) allows for an entity to *"assume that approval has been given if it receives no response from the executive authority ... within 30 days or within a longer period as may be agreed to between itself and the executive authority"*.

Denel submitted its application in terms of Section 54(2) on 10 December 2015. However, prior to Denel submitting its application, National Treasury had outlined the information that would be required to comprehensively assess the application. The Minister of Finance is still considering this application, and further information has been requested from Denel.

More significantly, Denel is also required to comply with Section 51(1)(g), which is unequivocal in its requirement that the Board of Denel obtain approval before establishing a company. Section 51(1)(g) requires the accounting authority of an entity to *"promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment"*. The National Treasury received a section 51(1)(g) from Denel on 10 December 2015. The application is still under consideration and no decision has yet been made.

Issued on behalf of National Treasury

Date: 13 April 2016

Enquiries: Communications Unit
Email: media@treasury.gov.za
Tel: (012) 315 5944



K. J. [Signature]

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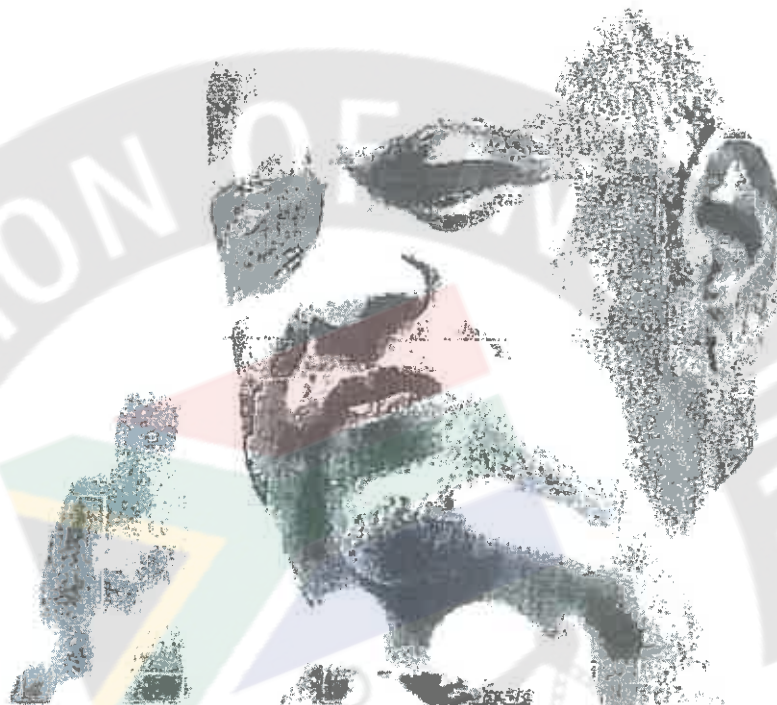
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Gupta deal block wins Gordhan praise

NEWS / 14 April 2016, 12:07pm

 Mogomotsi Magome and Bernadette Wolhuter




Finance Minister Pravin Gordhan will not meet with the Hawks to answer questions relating to the probe into claims of a rogue spy unit with Sars. File picture: Leon Lestrade

Johannesburg/Durban - Finance Minister Pravin Gordhan's scuppering of a controversial Gupta-linked deal by state-owned arms manufacturer Denel, has been welcomed by leading political analysts.

Analysts Daniel Silke and Dr Somadoda Fikeni hailed the move for its fiscal prudence and common sense.

Both said Gordhan's action enjoyed wide support within the factionally divided ANC.

Gordhan said on Wednesday that due processes were not followed in the deal,

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thus making the transaction illegal.

Denel and VR Laser Services – a company in which the Gupta family and President Jacob Zuma's son Duduzane Zuma hold a 25% stake – formed a joint venture, Denel Asia, which would sell Denel products to the Asian market.

Silke, director of the Political Futures Consultancy, said there was a concerted effort from Gordhan and treasury to begin a process of questioning the broader role and performance of state-owned enterprises and related institutions.

He said there was an attempt being made to clean up the "messy" activities of these enterprises.

"We are going to see more scrutiny of these deals that are undertaken by state-owned enterprises in future."

He saw this as part of Gordhan beginning to respond to the rating agencies' requests to tighten performance standards in South Africa.

"It is the beginning of a more concentrated effort by government to focus on what should be the core business of state owned enterprises and review the deals that have plagued the sector and contributed to its inefficiency."

He said Gordhan had "substantial support" from the ruling party.

"He has successfully conveyed a sense of urgency when it comes to turning around what he can and putting a positive spin on the requests of the rating agencies."

It looked like "the penny had dropped" and that people were starting to realise the country needed to do all it could to to avoid a downgrade, he said.

Fikeni, a policy and political analyst at Unisa, said: "When the economy is not doing well and ratings agencies are likely to be negative, you can't go out borrowing more money to secure deals until you're on safer ground."

It stood to reason that any minister would be more cautious and stop to ask for the motivation behind the deal and see if there existed any linkages to the economic needs that were pressing for the country.

Gordhan enjoyed strong support from the mainstream of the ruling party, Fikeni said. "A few might have been eyeing the deal out but the general mood is against State capture."

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Fikeni said treasury had been placed in a position of power now.

"The hands of ministers close to the Guptas have been weakened because almost all of them have to go through treasury now."

Wednesday's announcement by Gordhan is part of a wider drive by the minister to stamp his authority on state-owned enterprises and head off questionable deals since his return in December.

He has stalled any movement on the state's R1 trillion-nuclear power plans, making the Gupta acquisition of a uranium mine look like an expensive gamble that might well not pay off.

Gordhan also forced SA Airways to honour an existing aircraft leasing deal with French company Airbus.

Gordhan's statement hinted at the motives and timing of December's axing of Nhlanhla Nene from the Finance Ministry.

The deal is believed to be at the centre of the suspension of three Denel executives, who insiders allege were moved to make way for the controversial transaction after a new board was appointed by Public Enterprises Minister Lynne Brown last year.

Denel announced the joint venture in January this year, but Gordhan said on Wednesday the establishment of the company was not approved by him or Brown. "State-owned entities are required to obtain approval from the minister of finance and/or minister of public enterprises before establishing companies, in terms of the PFMA (Public Finance Management Act)," said Gordhan.

He added that in terms of the conditions attached to the R1.85 billion in guarantees provided by the government to Denel, any significant transaction that Denel entered into required the approval of both the ministers of finance and of public enterprises.

Zuma removed Nene on the night of December 9, by means of an after-hours media statement. He was replaced by alleged Gupta pick, Des van Rooyen.

Denel submitted its application for approval the very next morning, seemingly expecting quick acquiescence from the new minister.

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A political backlash coupled with a financial markets meltdown brought a quick end to Van Rooyen's tenure. He was replaced by Gordhan four days later. Given what the National Treasury is now saying about the status of the deal, this was before he could sign off on the Gupta deal.

But this didn't stop Denel, now under the control of a new board and with its top executive management suspended, from announcing the establishment of Denel Asia as a done deal in January.

The controversial transaction is said to be behind the suspension of Denel's top three executives – chief executive Riaz Salojee, chief financial officer Fikile Mhlonto and company secretary Elizabeth Africa.

Denel has refused to divulge details of the charges faced by them.

"The investigation of the three senior officials has not been finalised yet," said company spokeswoman, Vuyelwa Qinga.

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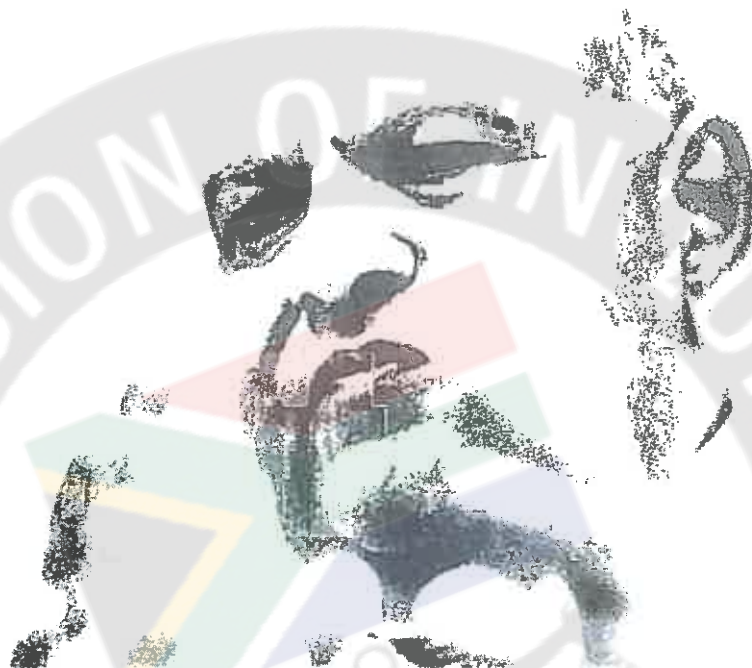
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Guptas' Denel deal illegal

POLITICS / 14 April 2016, 06:55am

 MOGOMOTSI MAGOME



Finance Minister Pravin Gordhan will not meet with the Hawks to answer questions relating to the probe into claims of a rogue spy unit with Sars. File picture: Leon Lestrade

Johannesburg - The controversial Gupta-linked deal by state-owned arms manufacturer Denel is close to collapse because due processes were not followed, Finance Minister Pravin Gordhan said on Wednesday, thus making the transaction illegal.

Denel and VR Laser Services - a company in which the Gupta family and President Jacob Zuma's son Duduzane Zuma hold a 25 percent stake - formed a joint venture known as Denel Asia which would sell Denel products to the Asian market.

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Denel then hit back, implicitly accusing the minister of acting in bad faith and against the principle of co-operative governance.

Gordhan also said in response to concerns over ailing national airline SAA that while the goal remained to find a minority equity partner, the first priority was to get it "on its feet" and ensure it was well managed and governed.

Deputy Finance Minister Mcebisi Jonas said earlier this would include the appointment of a full board, which would then have to fill the vacancies left in key executive positions.

SAA has requested a bailout of R5bn and has been unable to table its annual report because of auditor concerns over its status as a going concern, amid reports it is insolvent.


Gordhan said, however, work on SOE reform was making progress in an interministerial committee chaired by Deputy President Cyril Ramaphosa.

In the written version of his speech, which he didn't complete, Gordhan said the Treasury was helping to develop a framework for private sector participation and for explicitly costing the developmental mandates of SOCs.

"Good progress" had been made and proposals were under discussion in the committee.

"As part of this reform process, work is in progress on a holistic resolution of the governance and financial issues affecting our state-owned airlines. A Terms of Reference for advice on the realignment of these enterprises and an appropriate group corporate structure has been developed," he said.

Political Bureau

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Fuss about Guptas misguided, says Brown**(<http://www.iol.co.za/news/politics/fuss-about-guptas-misguided-says-brown-2014714>)**

ACDP MP Steve Swart cited Denel, which has forged ahead with a joint venture with a company linked to the Gupta family despite lacking the necessary approval from Gordhan, as an example of the finance minister being undermined.

"On the question of Denel, one of the tendencies we are spotting in recent times is that when the boards are beginning to do things they're not supposed to do, they begin to display a level of arrogance and belligerence that doesn't befit the right kind of corporate governance, and the board at Denel needs to take that message," Gordhan said in response.

Irked Denel takes swipe at Gordhan**(<http://www.iol.co.za/news/politics/irked-denel-takes-swipe-at-gordhan-2009852>)**

The Denel board was to have appeared before Parliament's public enterprises oversight committee on Tuesday to explain events at the company, where two executives remain on suspension pending disciplinary proceedings and the CEO has been removed, allegedly over their resistance to the joint venture.

The company was required in terms of the Public Finance Management Act to get approval from Gordhan and Public Enterprises Minister Lynne Brown before proceeding, which both have said it did not.

However, in a media briefing on her budget last week, Brown said it was possible the deal was technically legal since the Treasury was supposed to have responded to the request for approval within a reasonable period, failing which the entity could assume it had been given.

The question hinged on the interpretation of a "reasonable period", Brown said, but added she had asked for the joint venture company, Denel Asia, not to trade in the meantime.

The row took an ugly turn last month, after Gordhan had issued a statement making it clear that as far as he was concerned approval had not been given because the Treasury had asked Denel to provide more information before it could finalise the request.

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DENEL GROUP

DENEL MEDIA STATEMENT ON NATIONAL TREASURY PRONOUNCEMENTS

14 April 2016

Denel has noted media reports with regards to the National Treasury (NT) views on the new venture company Denel has entered into as a vehicle to penetrate the Asia-Pacific markets.

Chapter 3 of the Constitution enjoins all spheres of government, including organs of state like the NT and Denel SOC, to co-operate with one another in mutual trust and good faith. That includes an expectation to always deal with matters of mutual interest internally and underpinned by principles of cooperative governance and inter-governmental relations.

Denel SOC will continue to engage with NT directly to ensure that any misunderstanding between Denel and the NT about the Denel Asia joint venture is resolved amicably.

For further information, contact:
Vuyelwa Qinga (Ms)
Group Executive: Communication & Public Affairs
Cell: +27 (0) 82 686 2198
email: pamm@denel.co.za

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EXTRACT OF THE MEETING HELD ON THE 15TH APRIL 2016 STARTING AT 14H30 BETWEEN
NATIONAL TREASURY (NT) AND DENEL SOC LIMITED (Denel).

VENUE: Pretoria – National Treasury Building at 40 Church Street.

ATTENDEES: Zwelakhe Ntshepe -Denel Group Chief Executive Officer (Acting)

Odwa Mhlwana – Denel Group Chief Financial Officer (Acting)

Ismael Momoniat – Acting Director General - National Treasury

Other National Treasury Officials (Please fill in the names)

SUBJECT: Following the recent media statements suggesting that Denel might have violated the PFMA act 1 of 1999 in its endeavours to establishing Denel Asia (Joint Venture between Denel SOC Limited and VR Laser Asia), the meeting was to discuss how Denel felt that Denel believes that no law was violated when NT had not provided specific approval to the transaction in terms of section 51(g) and 54(2) of the PFMA.

EXTRACT: Mr Momoniat, opened the meeting with an introduction that highlighted the following:

1. It is not NT's intention to deal with other organs of state through the media, however given that this specific issue was deemed to be of public interest as well as the media enquiries received by NT on this issue since the media launch by Denel of its Asia joint venture on the 28th January 2016, A media statement was issued by National Treasury on the 14th April 2016.
2. NT's statement was not saying that Denel had violated any act but carefully crafted in response to the media releases observed in the past both from Denel and DPE given that no approval had been given by NT, that Denel MIGHT have violated the act, stating the process to be followed in the event that this was to be proven. This meeting is thus a first step to establishing whether the PFMA has been violated or not.
3. Emphasised the fact that NT has special powers (no specifics of what powers) to act against organs of state that violated governance prescripts.
4. Requested Denel to explain its actions as it relates to whether approvals had been granted or not regarding this Asia Joint Venture.

Mr Ntshepe started articulating Denel's historic involvement in Asia with specific emphasis on India as follows:

1. Denel had been out of India for about 13 years, blacklisted on allegations of misconduct with regards to its partnerships in that market

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which were later (around February 2016) thrown out of court and Denel cleared.

2. At the time, prior to being blacklisted, Denel spent in the region of R350m on business development activities for which no return was ever realised on such investment.
3. Emphasised the importance of the Indian market to Denel's growth strategy and the fact that after the USA, India is the next biggest defence market globally.
4. That at the time Denel got Clearance and lifting of the blacklisting, there were major opportunities which Denel had to play catch up on urgently to stay in the race to winning the contracts with very limited time.
5. India's Defence rules specifically require that defence articles are "Made" in India thus eliminating an opportunity of Denel selling directly from RSA into India.
6. Emphasised that VR Laser South Africa is a business that Denel had business dealings with for a very long time (+/- 10 yrs) and that this business is now under new ownership that found the business relationship already in existence between VR Laser RSA and Denel.
7. Introduced Mr Mhlwana to take the meeting through the governance element of the transaction.

Mr Mhlwana went on to explain the compliance regime that governed the transaction and how Denel obtained compliance assurance.

1. Two sections of the PFMA as well as the conditions to the approval of the government guarantee issued to Denel, were considered in progressing through this transaction and these pieces emphasised the following
 - a. In essence, Section 54(2) required that this transaction be subject to the approval by the executive authority with notification of the National Treasury. This section further stipulates that if no response is received from the executive authority in 30 days, the applicant may deem the application as approved.
 - b. In essence, Section 51 (1)(g) required that the National Treasury be notified of this transaction and be granted reasonable time to provide its approval.
 - c. The condition to the approval of the government guarantee issued to Denel required that for all 54(2) approval requests, National Treasury is not only informed/notified but is also an approver similar to the executive authority.

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2. The governance compliance regime in concluding the formation of Denel Asia was explained in detail to the National Treasury Officials highlighting the following:

- a. Section 54(2) as it relates to the approval by the executive authority and notification of the National Treasury was fully complied with given the expiry of the 30 day period as stipulated in the act.
- b. Section 51(1)(g) as it relates to the reasonable time to be afforded to National Treasury in seeking their approval was also complied to fully given that this section read together with section 54(2) does provide clear guidance on how long the reasonable time is which National Treasury has to provide its approval decision. Denel Stressed the fact that the 30 day period expired on the 12th of January 2016 with the joint venture only established on the 29th January 2016 and that during this time no response was ever received from National Treasury.
- c. The approval condition to the government guarantee elevated National Treasury to approval status in line with the executive authority in all matters relating to section 54(2) approval requests. This was therefore complied to fully as stipulated in (a) above.

3. National Treasury's reaction to Denel's position articulated in 2 above was as follows:

- a. Further meetings with the National Treasury Director General on his return are necessary as well as a separate meeting with the Minister of Finance attended amongst others by Denel's executive authority and the chairperson of the board will be necessary to discuss this matter further. These meetings will be arranged by National Treasury urgently.
- b. All future media statements on the matter to be co-ordinated between the National Treasury, Denel and DPE.
- c. A letter to Denel will be issued on Monday, requesting additional information on the transaction for National Treasury to review the PFMA application and make their final decision
- d. That Denel Freeze/put on hold all business operations of the Joint Venture until National Treasury issues their decision on the PFMA application
- e. Strong concerns on Denel's legal interpretation as stipulated in 2(b) above. National Treasury's submission was that there is

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case law on the definition of reasonable time and that it constitutes taking strong consideration of the specific circumstances such as the December holidays, historic time taken by National Treasury in approving similar applications.

Other than the notion that Denel freezes all operations of Denel Asia and that the joint venture is not valid and all operations must wait for a another review process, point (a) and (b) above was agreed to by Denel. Denel's position as articulated in point 2 above remains and that the transaction is valid and Denel has fully complied with all legislative requirements.



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The Office of the Chairperson of the Denel Board
 Fax: +27 (12) 671 2751

Denel@denel.co.za

TO: Mr P Gordhan, MP
 Minister of Finance
 Private Bag X115
 PRETORIA
 0001

TO: Ms L Brown, MP
 Minister of Public Enterprises
 Private Bag X15
 HATFIELD
 0028

Dear Minister Gordhan and Minister Brown,

**DENEL'S APPLICATION IN TERMS OF SECTIONS 54 AND 51(1) (g) OF THE
 PUBLIC FINANCE MANAGEMENT ACT REGARDING ESTABLISHMENT OF
 DENEL ASIA**

1. INTRODUCTION

I refer to your letter dated 10 June 2016 regarding the above matter which we have also discussed with our shareholder representative, the Department of Public Enterprises and have noted the contents thereof. This letter is our response to your letter in your capacity as the Head of National Treasury. We have also noted that your letter contain some inaccuracies relating to certain critical dates and fails to refer to certain important communication between the Denel Executives and National Treasury officials relating to this matter.

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Directors: Mr L D Mantsha (Chairman), Mr R Sathoojee (Group Chief Executive Officer), Ms M Kgomoengoe, Ms P M Mahlangu, Ms N Mandindl, Mr Z Mhfontle, Ms R Mokoena, Mr N J Motseki, Mr T J Msoni, Lt Gen T M Nkabinde (rtd), Ms K P S Ntshavheni,

¹Executive Director

Group Company Secretary: Ms E M Africa

Handwritten signatures and initials: KB, KJ, and a circular stamp.

The Board of Denel SOC Limited ("Denel") agrees that Denel and National Treasury ought to work towards a speedy resolution of this matter with a view to protect the reputation of both institutions and Government as a whole.

2. REQUEST FOR ADDITIONAL INFORMATION

With regard to the National Treasury's request for information, I have been advised that Denel's executives are engaging with National Treasury officials with a view to provide the requested information and that such shall be received by National Treasury soon. However, we would like to put it on record that such requested information is being provided not for purposes of approving the transaction in question but merely to comply with your request as it is our view that the transaction has the necessary approval.

3. COMPLIANCE WITH THE PFMA

As regards Denel's compliance with the relevant provisions of the PFMA with respect to the Denel Asia transaction, it is clear that this has become a question of different legal interpretation of the applicable provisions of the legislation. From Denel's perspective, the salient facts and circumstances to be taken into account in determining "*reasonable time*" in this matter are as follows:

3.1 On 29 October 2015, Denel submitted its pre-notification on the proposed formation of Denel Asia to the Honourable Minister Nene (the then Minister of Finance);

3.2 On 23 November 2015, the Minister of Public Enterprises granted in principle approval for Denel to continue discussions with VR Laser and for Denel to submit a Section 54(2) PFMA application to both the Ministers of Public Enterprises and Finance, respectively.

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Executive Director
Group Company Secretary: Ms E M Africa

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3.3 A copy of the above in principle approval to Denel was also provided to National Treasury at the same time as it was provided to us by the Minister of Public Enterprises.

3.4 On 7 December 2015, the Board of Denel resolved to give final approval of the equity partner (VR Laser) and the draft PFMA application subject to certain conditions and regulatory approval;

3.5 On 9 December 2015, a meeting was held at Protea Hotel Hatfield, between Denel, Department of Public Enterprises and National Treasury represented by Mr Mogorosi Lebethe, Mr Lloyd Ramakobya, Mr Silondwe Nkosi and Ms Tsholofelo Marotholi in which the Denel Asia Pre-notification and the application were discussed;

3.6 On 10 December 2015, Denel and VR Laser concluded a shareholders agreement subject to certain suspensive conditions including Denel obtaining approval, *inter alia*, in terms of Sections 51 and 54 of the PFMA;

3.7 On 11 December 2015, Denel submitted its formal PFMA applications in terms of Sections 51 and 54 of the PFMA to the Minister of Public Enterprises and the Minister of Finance and receipt of the delivery thereof was acknowledged in writing ("the PFMA applications");

3.8 That National Treasury did not respond, adversely or otherwise, to the 29 October 2015 pre-notification and to the 11 December 2015 applications;

3.9 On 10 January 2016, a 30 day period had expired from the date of delivery of the PFMA applications;

3.10 That it is not obligatory for National Treasury to respond when it does not wish to object and/or oppose a particular application;

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Executive Director
Group Company Secretary: Ms E M Africa

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3.11 The deeming provisions contained in Section 54(3) of the PFMA (i.e. where approval is deemed after the lapse of 30 days since submission of the application);

3.12 On 29 January 2016, Denel Asia was formed and incorporated in Hong Kong and the formation thereof was announced in the media;

3.13 On 5 February 2016, a letter was addressed from the National Treasury Chief Director: SCM Governance, Monitoring & Compliance to Denel requesting information in order to determine whether "government prescripts" were followed in the formation of Denel Asia;

3.14 On 19 February 2016, the Chairman of the Board of Denel addressed a letter to National Treasury indicating that the response to National Treasury's 5 February 2016 letter would be forthcoming once sign off from the Board has been obtained.

It is worth repeating Denel's understanding of the legislative framework that governs the transaction in relation to the facts as set out above.

Section 54(3) of the PFMA provides that a public entity may assume that approval has been given if it receives no response from the executive authority on a submission made under Section 54(2), within 30 days from date of submission of the PFMA application.

Denel submitted PFMA application to both the Ministers of Public Enterprises and Finance on 11 December 2015 and the 30-day period consequently expired on 10 January 2016 on which date the application was deemed to have been approved and Denel was thereafter entitled to proceed in respect of the Section 54 application, as it did.

Section 51(1)(g) of the PFMA requires that Denel must promptly inform National Treasury of a new entity which it intends to establish and allow

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¹Executive Director
Group Company Secretary: Ms E M Africa



National Treasury a "reasonable time" to submit its decision prior to formal establishment. The Board of Denel has been advised that since the PFMA does not define what a "reasonable time" for National Treasury to give its decision [prior to implementation and formal establishment as referred to in Section 51(1)(g)] the period that constitutes a "reasonable time" depends on the facts and circumstances of each case.

We are advised that on a purposive interpretation of Section 51(1)(g) as well as an approach to interpretation which considers Section 51(1)(g) in the context of a holistic reading of the PFMA that guidance as to what constitutes a "reasonable time" for the purposes of Section 51(1)(g) is to be found in Section 54(3). This is so, because the event envisaged in Section 51(1)(g) i.e. the formation of a new entity is one which in many circumstances would be subsumed in Section 54(2).

Put differently the intention to establish a new entity could well also come under Section 54(2)(a) [the establishment of a company]; Section 54(2)(c) [the acquisition of a shareholding in a company]; 54(2)(d) [the acquisition of a significant asset]; or 54(2)(e) [the commencement of a significant business activity] or be part of a transaction which is inextricably linked with these activities. Once this is appreciated it would be untenable that Section 54(3) would allow for the transaction to proceed if no response is received within 30 days whilst the period under Section 51(1)(g) (to obtain a decision from National Treasury) would exceed 30 days for the very same event or a composite transaction also involving that event.

In addition, it should be noted that Section 54(2) of the PFMA deals with the conclusion of the transactions identified, whilst Section 51(1)(g) is triggered by the mere intention to establish a new entity. Regard was had to the fact that the mere establishment of a new entity may not in, and of itself, result in the potential incurring of financial liabilities or obligations whereas many of the activities envisaged by Section 54(2) would by their very nature probably

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Executive Director
Group Company Secretary: Ms E M Africa

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involve the incurring of potential financial liabilities and obligations. For these further reasons we are advised that it could hardly be the intention of the legislature that Section 51(1)(g) would permit National Treasury to take a longer period to consider the formation of a new entity than that envisaged in Section 54(3).

Also, if Section 51(1)(g) continues to apply after there has been a deemed approval under Section 54(3) it could lead to absurd results. It cannot be that the same matter requires separate approval. Thus, we were of the view (and remain of this view) that National Treasury had 30 days to convey its decision if it was against the formal establishment of the joint venture or Denel Asia.

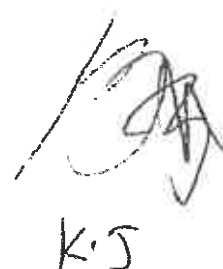
In any event, on 29 October 2015 Denel addressed a pre-notification notice to the Minister of Finance and to Mr Lungisa Fuzile (Director General: National Treasury). Although it is described as a pre-notification in terms of Section 54, it meets the requirements of notice under Section 51(1)(g). This is so, because this notice clearly serves the purpose of informing the National Treasury of the new entity which Denel intended to form as the notice expressly informs that it is intended that a company (Denel Asia) is to be registered in Hong Kong in partnership with VR Laser Asia. It was open to National Treasury on receipt of the pre-notification notice to raise any objection it may have had.

At all material times, National Treasury and Denel have always been aware of the pre notification, the actual application and the urgency in respect of the transaction.

On 23 November 2015 when the Minister of Public Enterprises granted an in principle approval, National Treasury were made aware of this and yet elected not to do anything.

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¹Executive Director
Group Company Secretary: Ms E M Africa



On 9 December 2015 in a meeting between Denel, National Treasury and the Department of Public Enterprises, Denel informed both parties that it was in the process of concluding the application for submission in terms of the PFMA. The meeting addressed the basis for urgency during this meeting after Denel raised a concern regarding delays from Department of Public Enterprises and National Treasury relating to approval of applications.

It is significant to point out National Treasury thus had almost 70 days to revert with its objection (i.e. from 29 October 2015 to 10 January 2016). National Treasury recorded no such objection and indeed only raised a query after the period for the deemed consent under Section 54(2) had expired (in fact almost a month after the deemed consent).

For, *inter alia*, these reasons the Board was satisfied that the "reasonable time" envisaged in Section 51(1)(g) of the PFMA is not greater than 30 days.

We would like to put it on record that Denel has never been made aware of the condition attached to the guarantee which requires the approval by the Minister of Finance as set out in your letter. This has only been brought to our attention after receipt of your letter referred to above.

However, it is my understanding of the conditions attached in terms of Section 70(1) of the PFMA to the government guarantee that permission must be obtained from the respective Ministers in terms of the provisions of the PFMA. It would be absurd that approval for the same transaction is required to be obtained, from the same Minister, and on the same terms, on more than one occasion.

Given what is set out above, Denel remains of the view that there was full compliance with the requirements as set out in the PFMA and consequently the conditions attached to the provision of the government guarantee.

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Directors: Mr L D Mantsha (Chairman), Mr R Saloojee (Group Chief Executive Officer), Ms M Kgomongoe, Ms P M Mahlangu, Ms N Mendindi, Mr Z Mhlontlo, Ms R Mokoena, Mr N J Motseki, Mr T J Msomi, Lt Gen T M Nkabinde (rtd), Ms K P S Ntshavheni,

*Executive Director

Group Company Secretary: Ms E M Africa

K. J

4. MEDIA STATEMENTS

It is not unusual for parties to have a diametrically different understanding and/or interpretation of a particular legislative framework and that difference, in my view, can never justify the manner in which National Treasury chose to handle this matter in the public space, especially in circumstances where the parties are constitutionally obliged to foster good relations.

On 13 April 2016, without engaging Denel any further and despite the Constitutional imperatives of good intergovernmental relations, National Treasury issued a startling, inaccurate and entirely inappropriate media statement, amongst other things, accusing the Denel Board of having committed "financial misconduct" through non-compliance with the PFMA, threatening investigation by the Executive Authority and disciplinary action. The adverse consequences for the business of Denel and its reputation in the market are quite obvious.

Needless to say, the Board of Denel had no alternative but to issue its own press statement noting the National Treasury statement, urging for co-operation between the parties in mutual trust and good faith to ensure that the matter was resolved.

On 3 May 2016, during a Parliamentary sitting during a debate on budget vote, you were quoted as making the following concerning and compromising remarks:

"On the question of Denel, one of the tendencies we are spotting in recent times is that when the boards are beginning to do things they are not supposed to do, they begin to display a level of arrogance and belligerence that does not befit the right kind of corporate governance, and the board at Denel needs to take that message".

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Directors: Mr L D Mantsha (Chairman), Mr R Selopjee1 (Group Chief Executive Officer), Ms M Kgomongo, Ms P M Mahangu, Ms N Maudindi, Mr Z Mhlonzi, Ms R Mokoena, Mr N J Motseki, Mr T J Msomi, Lt Gen T M Nkabinde (ret), Ms K P S Ntshavheni,

¹Executive Director
Group Company Secretary: Ms E M Africa

[Handwritten signature]
KJ

I believe that it will also help this process a great deal for you to either substantiate by providing factual basis your alleged statement that the Denel board is "arrogant and belligerent" and; if such could not be substantiated, to retract such statement in writing to the Denel Board and through the media as inaccurate and lacking factual basis to support it.

5. PROPOSED RESOLUTION

What has become apparent from the meetings of the Denel Executives and National Treasury officials, the letter under reply and what is set out above is that Denel and National Treasury have a different interpretation and understanding of the legislative framework and thus it would seem, have reached a deadlock.

It is my view that breaking this deadlock is the first step in resolving the current impasse between the parties. It is the Intergovernmental Relations Act which enjoins the parties to break the deadlock and settle this intergovernmental dispute in accordance with Chapter 4 thereof. In an attempt to resolve this deadlock, I would like to re-iterate the proposal made by my Executive Authority of convening a bilateral meeting on this matter. Such a bilateral meeting will also satisfy the prerequisite before a dispute may be formally declared in terms of Section 42 Intergovernmental Relations Act.

I trust that you will find the above in order.

Kind regards.


Mr Daniel Lugisani Mantsha

Chairman of the Denel Board

Date: 28/6/2016

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¹Executive Director

Group Company Secretary: Ms E M Africa

K/S 

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 (/) Companies (/Business-Report/Companies)

Gordhan slams 'arrogant' Denel


COMPANIES / 4 May 2016, 1:54pm

 Craig Dodds

Both the Hawks and the National Prosecuting Authority have denied the pending arrest of Finance Minister Pravin Gordhan. File picture: Siphiwe Sibeko

Parliament - Finance Minister Pravin Gordhan has slammed the "arrogance and belligerence" of boards of some state-owned companies, saying arms maker Denel, in particular, should heed his message.

Gordhan was responding to the debate on the Treasury budget vote in Parliament on Wednesday, in which a number of MPs questioned the government's commitment to follow through on promised reforms, suggesting Gordhan did not have the full backing of the cabinet in his efforts to stave off a looming ratings downgrade.

K.J. 

Fuss about Guptas misguided, says Brown

(<http://www.iol.co.za/news/politics/fuss-about-guptas-misguided-says-brown-2014714>)

ACDP MP Steve Swart cited Denel, which has forged ahead with a joint venture with a company linked to the Gupta family despite lacking the necessary approval from Gordhan, as an example of the finance minister being undermined.

"On the question of Denel, one of the tendencies we are spotting in recent times is that when the boards are beginning to do things they're not supposed to do, they begin to display a level of arrogance and belligerence that doesn't befit the right kind of corporate governance, and the board at Denel needs to take that message," Gordhan said in response.

Irked Denel takes swipe at Gordhan

(<http://www.iol.co.za/news/politics/irked-denel-takes-swipe-at-gordhan-2009852>)


The Denel board was to have appeared before Parliament's public enterprises oversight committee on Tuesday to explain events at the company, where two executives remain on suspension pending disciplinary proceedings and the CEO has been removed, allegedly over their resistance to the joint venture.

The company was required in terms of the Public Finance Management Act to get approval from Gordhan and Public Enterprises Minister Lynne Brown before proceeding, which both have said it did not.

However, in a media briefing on her budget last week, Brown said it was possible the deal was technically legal since the Treasury was supposed to have responded to the request for approval within a reasonable period, failing which the entity could assume it had been given.

The question hinged on the interpretation of a "reasonable period", Brown said, but added she had asked for the joint venture company, Denel Asia, not to trade in the meantime.

The row took an ugly turn last month, after Gordhan had issued a statement making it clear that as far as he was concerned approval had not been given because the Treasury had asked Denel to provide more information before it could finalise the request.

k.s. 

Denel then hit back, implicitly accusing the minister of acting in bad faith and against the principle of co-operative governance.

Gordhan also said in response to concerns over ailing national airline SAA that while the goal remained to find a minority equity partner, the first priority was to get it "on its feet" and ensure it was well managed and governed.

Deputy Finance Minister Mcebisi Jonas said earlier this would include the appointment of a full board, which would then have to fill the vacancies left in key executive positions.

SAA has requested a bailout of R5bn and has been unable to table its annual report because of auditor concerns over its status as a going concern, amid reports it is insolvent.

Gordhan said, however, work on SOE reform was making progress in an interministerial committee chaired by Deputy President Cyril Ramaphosa.

In the written version of his speech, which he didn't complete, Gordhan said the Treasury was helping to develop a framework for private sector participation and for explicitly costing the developmental mandates of SOCs.

"Good progress" had been made and proposals were under discussion in the committee.

"As part of this reform process, work is in progress on a holistic resolution of the governance and financial issues affecting our state-owned airlines. A Terms of Reference for advice on the realignment of these enterprises and an appropriate group corporate structure has been developed," he said.

Political Bureau

KJ A

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 (/) News (/News) Politics (/News/Politics)

War of words between Gordhan, Denel heats up

POLITICS / 6 May 2016, 09:24am

 Craig Dodds




Minister of Finance Pravin Gordhan delivering his Budget speech in Parliament, Cape Town. 24/02/2016 Kopano Tlape GCIS

Parliament - The public spat between Finance Minister Pravin Gordhan and the board of Denel has erupted again after he accused it of arrogance, with the board hitting back on Thursday and effectively telling the minister to keep quiet.

In his reply to the debate on the National Treasury budget on Wednesday, Gordhan said he had noticed a trend of "arrogance and belligerence" among boards of state-owned companies when they began to "do things they're not supposed to do".

He singled out Denel, saying the board should take note of the message.

Instead, the board issued a statement denying "categorically" that it or the Denel

KS 

executive were arrogant and belligerent.

"The minister's accusations are unsubstantiated, baseless and unfounded," said spokeswoman Pam Malinda.

She said the executive had met Treasury officials twice in recent weeks to address "the misunderstanding relating to the establishment of Denel Asia".

The "misunderstanding" refers to Denel's position, which it reiterated in the statement, that it had complied with the requirements of sections 51(1)g and 54(2) and (3) of the Public Finance Management Act (PFMA), in terms of which it must seek approval from the public enterprises and finance ministers for the establishment of a new company.

Both ministers - Lynne Brown and Gordhan - have denied that this permission was ever granted.


Denel Asia is a joint venture with a company - VR Laser Asia - with ties to the controversial Gupta family.

Gordhan had previously warned Denel that failure to comply with the PFMA amounted to financial misconduct, potentially attracting disciplinary charges, after which the board implicitly accused him of acting in bad faith by speaking on the matter in public while the firm was in discussions with the Treasury to clarify the matter.

Yesterday, Malinda said Denel and the Treasury had agreed in their discussions not to make unilateral public statements while the talks continued.

"The Denel board is taken aback by the minister's statements, which are a clear violation of the undertakings given by National Treasury and also a flagrant violation of chapter 3 of our constitution," Malinda said, referring to the principle of co-operative governance.

While Gordhan said on Wednesday the Denel board's attitude was not in keeping with "the right kind of corporate governance", Malinda said it would "continue to observe the highest standards of governance, and will above all ensure that applicable legislation like the PFMA is complied with to in full, not only its letter but also its spirit".

KJ 

A meeting between Denel and Parliament's oversight committee on public enterprises to allow it to explain events at the company has been postponed, possibly until next week.

Political Bureau

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K.T. 



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DENEL GROUP

Dated: 05 May 2016

DENEL BOARD MEDIA STATEMENT

The Denel board has noted the Media statements attributed to Minister Pravin Gordhan, and wishes to categorically deny that the Denel board or its executives are arrogant and belligerent.

The Minister's accusations are unsubstantiated, baseless and unfounded. Denel executives have in recent weeks met with National Treasury officials twice, addressing the misunderstanding relating to the establishment of Denel Asia. During the two meetings, amongst other things it was agreed that neither National Treasury nor Denel would unilaterally make public statements on these matters until such time discussions are concluded.

The Denel board is taken aback by the Minister's statements which are a clear violation of the undertakings given by National Treasury and also a flagrant violation of chapter 3 of our constitution. We appeal to the Minister to refrain from making such comments and allow the engagement between Denel and National Treasury to reach its finality.

The Denel board will continue to observe the highest standards of governance, and will above all ensure that applicable legislation like the PFMA is complied to in full, not only its letter but also its spirit. The establishment of Denel Asia was done in compliance with section 51(1) (g) and section 54 (2) and (3) of the PFMA.

Issued by: Denel SOC Board of Directors

K.J.

A handwritten signature in black ink, appearing to be "K.J." with a stylized flourish.

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Business

amaBhungane: How Denel was hijacked

- AMABHUNGANE

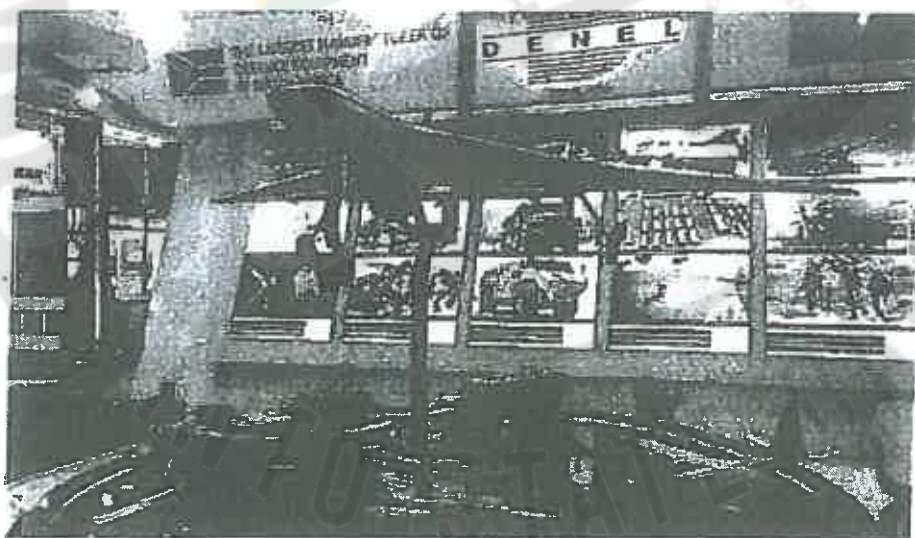
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- 29 May 2016 09:54 (South Africa)

Reactions



Main photo: Facing a row because of ties to the South African Gupta family, Denel resurfaced in India as an exhibitor at DefExpo 2016 after years of blacklisting. (Photo: StratPost – South Asian Defence and Strategic Affairs)

(<https://www.dailymaverick.co.za/article/2016-05-29-amaBhungane-how-denel-was-hijacked/>)

K.J.

An amaBhungane investigation has revealed how the capture of Denel was orchestrated via a boardroom coup executed by Public Enterprises Minister Lynne Brown – contrary to the advice of her own department – followed by the premeditated axing of its top executives. By SAM SOLE for AMABHUNGANE.

The investigation also shows how the state-owned defence giant is being ushered into the arms of a Gupta-aligned company, VR Laser, despite a due diligence report from law firm ENSAfrica, which allegedly raised multiple red flags about the joint venture between Denel and VR Laser Asia.

At stake is Denel's lucrative Asian market – above all, it appears, a potential \$4-billion (R62 billion) tender to deliver long-range artillery to the Indian army.

Four sources who sat on the previous board, but asked not to be named, have confirmed being told that a month before a new board took over on July 26 last year, chief executive Riaz Saloojee was warned that he would be pushed out.

The warning allegedly came from Denel board member Nkopane "Sparks" Motseki, who was allocated a significant personal stake in the Gupatas' Shiva uranium mine in 2010. The stake, if he still has it, now has a market value of tens of millions of rands.

Motseki is alleged to have called Saloojee just ahead of a board meeting in June 2015 and told him he and others were to be removed, because Saloojee had been asked to do certain things and had been "too weak" and had not complied or had been blocked by chief financial officer Fikile Mhlontlo, who was "too strong".

Saloojee, Mhlontlo and company secretary Elizabeth Africa were suspended three months later for unspecified infractions.

At the June board meeting, the sources said, then-acting chair Martie Janse van Rensburg approached Motseki informally with a group of co-directors to ask about the allegation, and he allegedly confirmed what he had told Saloojee.

A source familiar with subsequent events told amaBhungane that Van Rensburg was so concerned about the perceived threat to the executives that she repeatedly attempted to arrange a meeting with Public Enterprises Minister Lynne Brown, who cancelled on more than one occasion.

Van Rensburg, the source said, eventually met with deputy minister Bulelani Magwanishe on July 2, 2015 and personally conveyed her concern about the rumours of the executives being removed.

Van Rensburg did not dispute any of the details of the account put to her, but declined to comment.

Brown has refused to comment on any of the detailed allegations put to her by amaBhungane.

Denel confirmed receipt of detailed questions, including those directed at specific directors, including Motseki, but failed to respond.

Key to the executives' suspensions in September 2015 was the wholesale replacement of the board chaired by Van Rensburg. On July 24, Brown announced the "rotation" of the board, sweeping out all the previous non-executive directors but Motseki.

In doing so, Brown abandoned a list of proposed directors prepared for her by the department of public enterprises, which wanted to retain most of the existing board on the basis that they had performed well and had not served their maximum two terms.

AmaBhungane understands that in about June 2015 the entire board file was uplifted from the department by Brown's ministerial office and the department was thereafter excluded from the selection process.

The list eventually presented to cabinet bore no resemblance to the one prepared by the department. It also lacked skills and experience: there was not a single engineer and the majority had never served on a corporate board before, never mind of a highly technical group like Denel.

A number of the new directors also have a chequered past. First among these is the new chair, Dan Mantsha, who is also the legal adviser to communications minister Faith Muthambi.

Mantsha was struck off the roll of attorneys in 2007 for acting in a "dishonest and deceitful manner". While Mantsha was readmitted in 2011, one might imagine this integrity deficit would be a barrier for access to the country's defence sector jewels.

K.S. 

However, a well-placed source at Denel said it was rumoured that Mantsha's particular recommendation was the positive impression he made on the Gupta family. Mantsha was said to have been introduced to the Guptas by Muthambi in July 2014. Muthambi's office declined to respond to questions about the alleged introduction or whether it had taken place at Saxonwold, noting: "We are not in the business of responding to unsubstantiated allegations and innuendos."

Gupta family spokesman Gary Naidoo did not respond to detailed questions. Mantsha did not respond to questions sent to him via Denel.

Once appointed, Mantsha's board lost no time. In late September last year, barely two months after they took office, the new board suspended Saloojee, Mhlontlo and Africa.

The reason cited was a concern over aspects of Denel's R855-million purchase of armoured vehicle manufacturer BAE Land Systems.

However, the previous board, despite being out of office, has recently taken the unusual step of publishing a joint statement affirming that the Land Systems deal made strategic and financial sense and was scrutinised and approved by both Brown's department and Treasury.

And there are other hints that plans to sideline the three executives were premeditated: one source told amaBhungane that Denel's acting CEO, Zwelakhe Ntshepe, and its Land Systems boss, Stephan Burger, told colleagues that they had been interacting with certain members of the new board three months before the new board members' appointment.

And when a forensic investigation into the three executives' conduct failed to incriminate them, the same source alleged, Mantsha, the board chair, sought to have the investigation report withdrawn.

Neither of these claims could be independently verified as neither the Denel board nor the executives responded to questions.

Editor's note: Burger has since issued a categorical denial (<https://www.dailymaverick.co.za/documents/document/Stephan-Burger-Letter-To-Daily-Maverick-06062016.pdf>): "I was not and could never have been privy to the process of appointing the new Denel Board members nor have I met any one or more of them prior to a formal announcement by Denel's shareholder... The allegation that I told colleagues that I "had been interacting with certain members of the new board three months before the new board members' appointment" is wholly denied.

The firm that conducted the probe, Dentons, refused to confirm or deny the claim, citing client confidentiality.

Then, in January this year, came the bombshell: Denel acting chief executive Zwelakhe Ntshepe announced the formation of Denel Asia, a company in which Denel would own 51% and a Hong Kong letterbox company, VR Laser Asia, 49%.

VR Laser Asia is wholly owned by Gupta business partner Salim Essa and is an associate company of VR Laser Services, a South African steel cutting business in which the Guptas have an interest.

Denel Asia's directors are Ajay Gupta's 25-year-old son, Kamal Singhala, Pieter van der Merwe, a lawyer who serves in several Gupta-linked companies, and Denel's Ntshepe and Burger.


Burger is alleged to have told colleagues about a number of visits he made to Saxonwold to see the Guptas and to have expressed the view that the Guptas opened doors in India and provided very high-level contacts. Neither he nor the Gupta's spokesperson responded to questions about this claim.

Editor's note: Burger has now denied this: "The allegations contained in this statement are refuted as false as I have never been to Saxonwold to visit the Guptas... The article has caused severe and possible irreparable damage to my reputation, which is founded on, inter alia, integrity, honesty and accountability."

By March 2016 Denel was touting its products at India's DefExpo (<http://www.defexpoindia.in/>) under the banner of "Denel Asia" (see main picture) although neither Brown, nor finance minister Pravin Gordhan had given the necessary authority for the formation of the joint venture.

In fact, according to two well placed sources, Brown is sitting with a due diligence report from law firm ENSAfrica warning against the joint venture. The report apparently cites red flags about VR Laser's proximity to so-called "politically exposed persons" and concerns about the company's solvency.

The Denel board has continued vigorously to punt the VR Laser tie-up and push back against Treasury, which has described the formation of Denel Asia as illegal.

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In the volatile Indian market, the reliance on the marketing skills of Salim Essa and company may be especially risky.

As the board itself has noted, Denel was blacklisted in India for nearly ten years while a tortuous investigation ensued of a 2005 deal to sell sniper rifles to the Indian army (<http://www.engineeringnews.co.za/print-version/india-ends-ban-on-denel-2014-08-19>), which involved payments to "agents" in an offshore tax-haven.

The Indian Central Bureau of Investigation filed a closure report in 2013, as the charges could not be proved.

The Denel board has said the Denel Asia joint venture was undertaken "to minimise the business risks associated with agents in some of the countries we have identified for business expansion".

According to a source with insight into the transaction, Denel has offered its intellectual property in the Denel Asia in return for a promise of R100 million marketing contribution from VR Laser. Both Denel and Essa failed to answer questions as to whether any of that money has been forthcoming.

Denel also failed to answer questions about what has become of its tie-up with the Indian conglomerate Tata, with whom it produced a prototype truck-mounted howitzer (<http://defenceforumindia.com/tatas-155-mm-howitzer-mounted-gun-system-1072>) for display at Defexpo 2014.



Photo: Tata's 155 mm Howitzer / Mounted Gun System (Defence Forum India)

India plans to secure around 1400 towed guns, 400 truck-mounted guns and 100 tracked (tank-mounted) guns at a total cost of more than \$4-billion, but the country has laid down stringent local content conditions.

The Denel board presumably thinks bringing marketing agents "in-house" will pass muster, but the Indian defence media has already picked up on the controversy over Denel Asia – and the Indian howitzer competition is already littered with shattered reputations.

The Bofors scandal (https://en.wikipedia.org/wiki/Bofors_scandal), which dogged the previous round of artillery purchases, dragged on for more than two decades. **DM**

Main photo: Facing a row because of ties to the South African Gupta family, Denel resurfaced in India as an exhibitor at DefExpo 2016 after years of blacklisting. (Photo: StratPost – South Asian Defence and Strategic Affairs)

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Share Your Thoughts

KJ

FA 16

Marius Potgieter

From: Avril Halstead <Avril.Halstead@treasury.gov.za>
Sent: 19 November 2016 01:00 PM
To: Merinda Dartnall
Cc: Theo Kleynhans; Marius Potgieter; Unathi Ngwenya; Mercy Magadze
Subject: Re: Denel meeting with NT_17_11_2016.docx1

Hello

Just to record that there are a few factual errors in the notes from the meeting. Inter alia, whilst I indicated I would be briefing my principles on the meeting, I did not commit to check whether it would be acceptable if Denel confirmed that the company was dormant. Nevertheless, based on the feedback I provided, I can confirm that National Treasury require that the company be unwound.

Avril

Sent from my iPhone

On 19 Nov 2016, at 12:13 PM, Merinda Dartnall <MerindaD@denel.co.za> wrote:

Dear Avril

In our meeting on Thursday, I did promise that I would get in touch with Denel board members in an effort to obtain their position on the proposal that you presented to us. I would like to confirm that I'm still busy with the board members and will be providing you an update on Monday. For ease of reference I have attached the notes relating to the meeting we had.

Kind Regards
Odwa

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<Denel meeting with NT_17_11_2016.docx1.pdf>



Handwritten signature and initials: A stylized 'B' followed by 'KJ'.

FA 17
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

293

Case no:

In the matter between:

DENEL SOC LIMITED

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

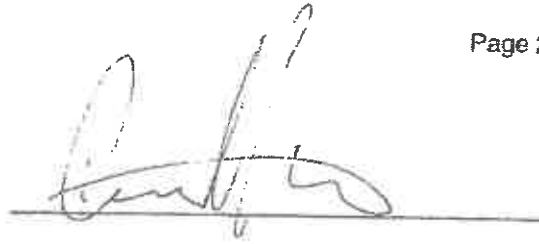
CONFIRMATORY AFFIDAVIT

I the undersigned

ZIPHIWO MADODODWA MHLWANA

do hereby make oath and state that:

1. I am an adult male acting Chief Financial Officer of the applicant.
2. I have read the founding affidavit of **MR ZWELAKHE NHLANGANISO NTSHEPE** and confirm that to the best of my knowledge and belief such contents to be true and correct to the extent that they relate to me.

**DEPONENT**

Thus done and sworn to, before me, at
Lyttelton SAPS on this the 23rd day of
March 2017, by the Deponent who has acknowledged that
he knows and understands the contents of this affidavit, which contents
are true and correct, that he has no objection to taking the prescribed
oath, which he considers as binding on his conscience.



7216 3607
K J Moundtse
S/est

COMMISSIONER OF OATHS

SUID-AFRIKAANSE POLISIEDIENS
SAPS LYTTELTON
2017 -03- 23
CLIENT SERVICE CENTRE
SOUTH AFRICAN POLICE SERVICE

STATE ATTORNEY
DX 298 PRETORIA

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

CASE NO: 20749/17

In the matter between:

DENEL SOC LIMITED

Applicant

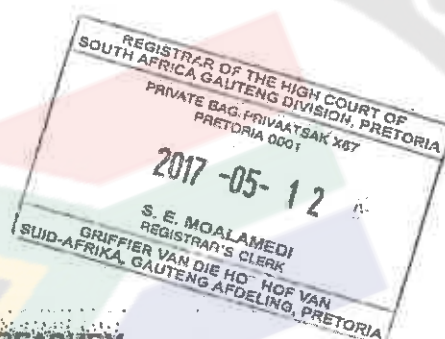
and

MINISTER OF FINANCE

1st Respondent

DEPARTMENT OF NATIONAL TREASURY

2nd Respondent




FILING SHEET

BE PLEASED TO TAKE NOTICE THAT the respondents hereby file their answering affidavit.

DATED at PRETORIA this 11th day of May 2017.

FILED BY:


THE STATE ATTORNEY
(Attorneys for the Respondents)
SALU BUILDING
255 Francis Beard Street
(Schoeman Street)
Cnr Thabo Sehume (Andries) &
Francis Beard (Schoeman Streets)
PRETORIA, 0001
Ref: 2152/16/Z32
Enq: T. Nhlanzi/ T Ndhlovu
Tel: (012) 309 1575/1504

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE
HIGH COURT
PRETORIA**

AND TO: **KHAMPHA ATTORNEYS INC
ATTORNEYS FOR THE APPLICANT**

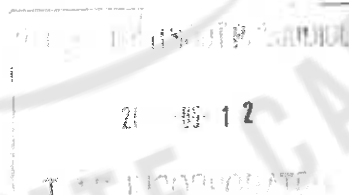
C/O T.M. CHAUKE INC.
2nd Floor Eastwing, Sammy Marks Square
PRETORIA

Tel: 011 234 1735

Fax: 086 500 0945

E-mail: azwi@kamphainc.co.za

Ref: AK/Denel/NT01



Zingisa Zenani

From: Microsoft Outlook
To: azwi@kamphainc.co.za; Nhlanzi Thembelihle; TNdhlovu@justice.gov.za
Sent: 11 May 2017 08:14 PM
Subject: Relayed: DENEL SOC LTD//MINISTER OF FINANCE AND ANOTHER

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

azwi@kamphainc.co.za (azwi@kamphainc.co.za)

[Nhlanzi Thembelihle \(TNhlanzi@justice.gov.za\)](mailto:Nhlanzi.Thembelihle@justice.gov.za)

TNdhlovu@justice.gov.za (TNdhlovu@justice.gov.za)

Subject: DENEL SOC LTD//MINISTER OF FINANCE AND ANOTHER



Zingisa Zenani

From: Zingisa Zenani
Sent: 11 May 2017 08:14 PM
To: 'azwi@kamphainc.co.za'
Cc: Nhlanzi Thembelihle; TNdhlovu@justice.gov.za; Thandeka Ncala
Subject: DENEL SOC LTD//MINISTER OF FINANCE AND ANOTHER
Attachments: S041000657_1705111552000.pdf; SKM_C55817051120040.pdf

Tracking:**Recipient****Delivery**

'azwi@kamphainc.co.za'

Nhlanzi Thembelihle

TNdhlovu@justice.gov.za

Thandeka Ncala

Delivered: 2017/05/11 08:14 PM

Your Ref: AK/DENEL/NT01

Dear Azwi,

On behalf of the state attorney, please find attached, copies of the Respondents' filing sheet and answering affidavit for your kind attention.

Kind regards

Zingisa Zenani (for Ms T. Nhlanzi)
National Treasury

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case no: 20749/17

In the matter between:

DENEL SOC LTD

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

ANSWERING AFFIDAVIT

I, the undersigned,

LUNGISA FUZILE

do hereby make an oath and state that:

A. INTRODUCTION

1. I am the Director-General in the Department of National Treasury, the second respondent herein ("National Treasury"). I am duly authorised to oppose this matter on behalf of the first and second respondents.
2. My primary responsibilities as Director-General of National Treasury include managing the department, producing a sound and sustainable national budget, managing government's financial assets and liabilities, overseeing government accounting policies and standards, regulating public sector procurement through

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policy formulation, developing appropriate fiscal policy and financial management, and improving financial management throughout government.

3. I am therefore the appropriate person to depose to this affidavit.
4. The facts to which I depose are, except where the context indicates otherwise or I expressly say so, within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
5. Any legal submissions that I may make are so made on the advice of the legal representatives of National Treasury and I believe them to be correct.
6. In this application, the applicant seeks an order declaring that:
 - 6.1. the applicant obtained approval *alternatively* is deemed to have obtained approval on 10 January 2016 and at least by 29 January 2016 from National Treasury for the conclusion and forming of the joint venture with VR Laser Asia by virtue of section 54(3) read with section 51(1)(g) of the Public Finance Management Act, 1 of 1999 ("the PFMA");
 - 6.2. the applicant acted in accordance and compliance with the provisions of section 51(1), 52(2)(a), 54(2)(b) and 54(2)(e) of the PFMA in concluding and forming the joint venture agreement with VR Laser Asia ("the JV Agreement"); and
 - 6.3. the applicant acted lawfully in concluding and forming its joint venture with VR Laser Asia in terms of the JV Agreement.

B. THE SCHEME OF THIS AFFIDAVIT

7. I have read the applicant's founding papers and propose to deal with it as follows:

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- 7.1. Firstly, I shall set out the factual background to this matter;
- 7.2. Secondly, I provide a brief synopsis of the grounds on which this application is opposed;
- 7.3. Thirdly, I shall set out the relevant legislative framework in terms of section 51(1)(g) and section 54(2) of the PFMA for the establishment of a joint venture company. I shall show how the applicant's case fits within that legislative framework thereby demonstrating that:
- 7.3.1. there was no approval or deemed approval for the conclusion and forming of the joint venture, Denel Asia Co. Ltd ("the JV"); and
- 7.3.2. the applicant failed to act in accordance with the PFMA in concluding the JV Agreement and thus failed to act lawfully.
- 7.4. Finally, and to the extent necessary, I shall deal sequentially with the specific averments that the applicant makes in its founding affidavit.

C. SYNOPSIS OF THE RESPONDENTS' OPPOSITION

8. In summary, the respondents oppose this application on, amongst others, the following grounds:
- 8.1. There is a material non-joinder in that the applicant ought to have joined the following parties who have a direct and material interest in the outcome of this application:
- 8.1.1. The Minister of Public Enterprises;
- 8.1.2. Denel Asia; and
- 8.1.3. VR Laser Asia.

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8.2. The legal position set out in section 51(1)(g) of the PFMA is clear and unambiguous. There can be no reasonable doubt about the proper interpretation of this section. In these circumstances, in exercising its discretion under section 21(1)(c) of the Superior Courts Act 10 of 2013, this Court should decline to grant the declaratory relief sought by the applicant;

8.3. The interpretation of section 51(1)(g) contended for by the applicant is clearly untenable:

8.3.1. The applicant provides absolutely no basis for contending that the words "a reasonable time" used in section 51(1)(g) should be interpreted to mean 30 days;

8.3.2. If the applicant's argument is that in this case, a reasonable time must be interpreted to mean 30 days, then the proper remedy open to the applicant was to approach a Court for an order compelling the Minister to decide the application. It is not competent for the applicant to appropriate unto itself the power to decide the application by purporting to invoke a non-existent deeming provision;

8.3.3. Even if, for the purposes of argument, one was to accept that "reasonable time" means 30 days, section 51(1)(g) quite plainly does not contain a deeming provision which deems that approval is granted after the expiry of the 30 days. Furthermore, the language used in the section does not permit this court to read such a deeming provision into section 51(1)(g). The only way in which this Court is empowered to read such words into the section is if this court finds that section 51(1)(g) is inconsistent with the Constitution. In such a case, this Court may exercise its constitutional remedial power to read words into the section to

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cure the unconstitutionality. Given that the constitutionality of section 51(1)(g) is not an issue before this Court, this Court does not have the power to read words into the PFMA. To do so would infringe on the doctrine of separation of powers;

8.4. It is a condition of the government guarantee issued to the applicant that it has to get the explicit approval of both the Minister of Public Enterprises and the Minister of Finance in terms of section 54 of the PFMA. This has not happened. Hence the suspensive conditions to the agreement have not been met.

D. MATERIAL NON-JOINDER

9. In this application, the applicant seeks declaratory relief relating to the legality of the JV Agreement entered into with VR Laser Asia. On this basis alone, the applicant was obliged to join the other party to the agreement, VR Laser Asia, as a party to these proceedings.
10. At the heart of this case is the question of whether Denel Asia has been lawfully established. Denel Asia ought to have been joined as a party.
11. In order to succeed in obtaining the relief sought in its notice of motion, the applicant must demonstrate approval by the Minister of Finance as well as the Minister of Public Enterprises. The Minister of Public Enterprises ought to thus have been joined as a party.

E. FACTUAL BACKGROUND

12. The applicant is a state owned entity and was incorporated as a private company in 1992 in terms of the South African Companies Act, 62 of 1973. Its sole shareholder is the South African Government.

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13. On 30 October 2015, the applicant addressed a letter to National Treasury titled *"PFMA SECTION 54 (2) PRE NOTIFICATION: PROPOSED FORMATION OF DENEL ASIA"*. A copy of the letter is annexed to the founding affidavit as "FA2". As appears from the recommendation on page 6 of the letter, the applicant undertook to *"...keep the Department abreast of developments as it progresses and will submit a full PFMA application once the negotiation process including all ancillary agreements (such as the Shareholders Agreement and Licencing Agreement) has been concluded subject to PFMA and other regulatory approvals."* It should be noted that the submission of pre-notifications is an administrative practice that was introduced by the Department of Public Enterprises in order to streamline the consideration of applications under section 54(2). Whilst National Treasury receives copies of these and reviews them, it does not consider these to be formal applications and therefore does not respond formally. It is only once there has been a final submission that the Minister of finance will engage formally with it in line with the provisions of the PFMA.
14. On 23 November 2015, the Minister of Public Enterprises informed the applicant, amongst other things, that the applicant *"...is required to apply and get approval from the Minister of Finance in terms of Section 51(g) of the PFMA, which is a prerequisite when establishing a new entity. Once such approval has been obtained, all the negotiations, agreements and regulatory processes can be completed."* A copy of the letter is annexed hereto marked "LF1".
15. On 9 December 2015, the Department of Public Enterprises held its monthly monitoring committee meeting. Officials from National Treasury were also in attendance. A copy of the minute of that meeting is annexed hereto marked "LF2". I also annex hereto a confirmatory affidavit from Lloyd Ramakobya, marked "LF3" who attended the meeting on behalf of National Treasury and who confirms that "LF2" is an accurate recordal of the meeting. As appears from paragraph 2 of the

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minute under the heading "Discussion", National Treasury sought clarity from the applicant on whether the applicant would make an application in terms of section 51(1)(g) of the PFMA or section 54(2) of the PFMA. The applicant responded that the application would be submitted in terms of section 51(1)(g). The applicant was advised to refer to the Practice Note on Applications under section 54 of the PFMA by Public Entities in drawing up its application.

16. The date of 9 December 2015 is also significant because on that day President Zuma removed then Minister of Finance, Mr Nhlanhla Nene, from his position as Minister and head of National Treasury. Former Minister Nene was replaced by Minister Van Rooyen. Minister Van Rooyen remained in this position for four days before he was replaced by former Minister Pravin Gordhan. Former Minister Gordhan occupied the position of Finance Minister until he was removed from the position on 30 March 2017.
17. On 11 December 2015, the applicant submitted its application to then Minister of Finance, Mr Van Rooyen, for the establishment of a joint venture in Hong Kong ("the application for approval"). The application for approval was received by the Ministry: Finance on 11 December 2015. A copy of the application for approval is annexed to the founding affidavit as "FA4.2".
- 17.1. The covering letter to the application for approval is signed by the Chairman of the Board of the applicant and is addressed to the then Minister of Finance, D. Van Rooyen. It is headed:
- "FORMAL APPLICATION FOR APPROVAL IN TERMS OF SECTION 51(1)(g) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999 – PROPOSED ESTABLISHMENT OF DENEL ASIA SOC LIMITED"

- 17.2. The Executive Summary of the application for approval states that the document *"has been prepared in terms of Sections 54(1), 54(2)(a), 54(2)(b) and 54(2)(e)"* of the PFMA.
- 17.3. Clause 5.6 on page 12 of the application for approval states that the applicant concluded that VR Laser Asia, a company incorporated in Hong Kong was a suitable partner to form a joint venture company.
- 17.4. Clause 15 on page 25 of the application for approval sets out the 'Implementation Plan'. It states, amongst other things, that the *"Draft shareholder agreement has been agreed to in principle and awaits Ministerial approval"*.
- 17.5. The recommendation made by the applicant on page 26 of the application for approval states that:
- "It is requested that the Honourable Minister notes and approves of Denel's intention to:*
1. *establish Denel Asia as joint venture company in Hong Kong which company will facilitate the legitimate securing of contracts in the Asia-Pacific region; and*
 2. *establish any further joint ventures, particularly within the India market, to ensure the successful execution of the contracts placed on Denel Asia.*
- The Denel Board has approved of such establishment subject to the receipt of the Ministerial approval in terms of section 51(1)(g), section 54(1) and 54(2) of the PFMA."*
18. On 27 January 2016 a meeting was held between officials of National Treasury, the applicant and DPE. A copy of a minute of the meeting is attached marked "LF4". I also annex hereto a confirmatory affidavit from Ms Tsholofelo Morotholi, marked

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"LF4 B' who attended the meeting on behalf of the National Treasury and who confirms that "LF4" is an accurate record of what transpired at the meeting. The meeting was one of the regular monthly meetings convened by National Treasury and DPE to monitor Denel as a result of the R1.85 billion government guarantee that has been issued to support the company. At these monthly technical meetings compliance with the guarantee conditions, the financial performance and position of Denel and any other matters that may impact on this position are discussed.

19. At that meeting the parties discussed, *inter alia*, the application by the applicant for approval of the Denel Asia transaction. There was consensus that the application was a complex one. The applicant was informed by National Treasury as well as the DPE that they had concerns about the venture. Some of the issues traversed include:

- 19.1. The parties agreed that the period of 30 days was inadequate to properly assess the application for PFMA approval;
- 19.2. The DPE mentioned that the business case was weak;
- 19.3. National Treasury indicated that they were still processing the application, before submitting it for consideration by the Minister. However they needed additional information in order to complete this process.

20. On 29 January 2016, there were media reports that the applicant had already announced the alleged establishment of the JV saying it had partnered with VR Laser Asia. A copy of one such media report is annexed hereto marked "LF5".

21. A few days later, on 5 February 2016, the Office of the Chief Procurement Officer ("OCP"), which has specific responsibility for ensuring adherence to procurement related legal prescripts, wrote a letter (annexed to the founding affidavit marked "FA5") to the applicant stating that :

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- 21.1. it was not clear whether government prescripts were complied with when finalising the JV agreement; and
- 21.2. in order for National Treasury to verify compliance with relevant prescripts, the applicant was requested to provide National Treasury with all relevant documents, including, the Minister's approval.

The applicant responded on 10 February 2016 indicating that they are in the process of studying the requirements set out in "FA5" and that they would revert by Friday, 19 February 2016. A copy of this letter is annexed marked "LF6". No response was received by 19 February 2016. Instead on 13 April 2016, the applicant responded by purporting to provide the information sought by the OCP. In relation to approval by the Minister of Finance, the letter stated that "*Section 51(g) of the PFM Act 1 of 1999 further requires that the National Treasury be allowed a **REASONABLE TIME** to submit its decision prior to formal establishment of the joint venture. Section 51(g) read together with section 54(2) defines a reasonable time as 30 days from the date of submission which in this particular case was 11 December 2015, 30 days thus expiring on 11 January 2016. This led to Denel assuming approval by both the Executive Authority as well as National Treasury which then lead to the establishment of the joint venture.*" A copy of the applicant's response is annexed hereto marked "LF7".

- 22. On 13 April 2016, National Treasury issued a statement that the applicant's application for approval was still being considered by the Minister of Finance and no decision had yet been made. Furthermore, that further information had been requested from the applicant. The statement also outlined the legal prescripts that apply to applications in terms of Section 54 and Section 51 of the PFMA. A copy of the statement is annexed hereto marked "LF8"

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23. At the insistence of National Treasury an urgent meeting took place with the applicant on 15 April 2016. In that meeting Denel confirmed that the JV had been established. National Treasury, represented by the Acting Director General at the time, Deputy Director-General Mr Ismail Momoniat, reiterated Treasury's stance that the Minister of Finance had not granted the requisite approval and that therefore the JV agreement was not valid. At the meeting, the applicant reiterated their interpretation of the PFMA, in line with that captured in the letter of 13 April 2016 and claimed that they had a legal opinion supporting this position. Denel was requested to provide National Treasury with a copy of such legal opinion which they agreed to do, but which has still not been forthcoming. A confirmatory affidavit by Mr Momoniat is annexed marked "LF9".
24. On 18 April 2016, the applicant wrote a letter to National Treasury in terms of which it purported to record elements of the discussion that took place at the meeting of 15 April 2016. A copy of the letter is annexed hereto marked "LF10". This letter included as an attachment a purported recordal of the meeting but which has not been approved as a true reflection of proceedings by both parties. This document is attached to the founding affidavit as "FA10".
25. On 18 April 2016, National Treasury responded to the applicant's letter. A copy of this response is annexed marked "LF11". National Treasury advised the applicant, amongst other things, that:
- 25.1. It would revert on the accuracy of the recordal of the meeting (i.e. "FA10");
 - 25.2. the application for approval was still under consideration and that the required approval from National Treasury had not been granted as yet;
 - 25.3. National Treasury differed with the applicant's interpretation of the law that the applicant could assume that the application was approved after the expiry of 30 days;

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- 25.4. National Treasury is of the view that there was no compliance with the provisions of the PFMA, in particular section 51(1)(g) thereof in that no decision has been taken by National Treasury in terms of the section;
- 25.5. A follow up meeting to determine a way forward should be urgently convened;
- 25.6. In order for National Treasury to properly assess the application for approval, the applicant must submit additional information itemised in paragraph 6 of the letter;
- 25.7. Pending a decision on whether to approve or not, the applicant may not proceed with the JV;
- 25.8. Whilst the application for approval is under consideration, all operations under the JV be ceased with immediate effect pending National Treasury's decision. The aim being to limit the negative consequences which may arise from potential non-compliance with the PFMA.
26. On 19 April 2016, a further meeting was held with the applicant. I attended that meeting in which the applicant was again informed that the approval had not been granted and that further information was needed in order to finalise the application.
27. On 21 April 2016, the applicant sought clarity from National Treasury as regards the additional information National Treasury requested in order to assess the application for approval. A copy of the letter is annexed hereto marked "LF12".
28. On 26 April 2016, I responded on behalf of National Treasury to the applicant's letter providing the clarity which the applicant sought. A copy of the letter is annexed hereto marked "LF13".
- 28.1. I emphasised that most of the information requested is standard in relation to applications of the kind and that the information is intended to enable

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National Treasury to evaluate the likely financial impact of the proposal. The attention of the applicant was once again drawn to the Practice Note on Applications under section 54 of the PFMA by Public Entities. A copy of the practice note is attached marked "LF14".

- 28.2. The information that had been requested was aimed at enabling National Treasury to comprehensively assess the application for approval, including evaluating the financial impact of the proposal, assessing any risks that might arise from the transaction and that appropriate mitigations are in place, and ensuring that there is full compliance with all relevant statutes and regulations. Such an evaluation is especially important in the case of the applicant given the guarantees the South African government has extended to the company to enable it to maintain its going concern status. Several rating agencies have highlighted government's contingent liability exposure to state owned companies as a risk for the sovereign credit rating.
29. The additional information was however not forthcoming from the applicant. Accordingly, on 11 May 2016 I sent the applicant an email informing them that without the additional information, National Treasury will not be in a position to comprehensively assess all aspects of the application before reaching a decision. A copy of the email is annexed hereto marked "LF15".
30. Having still not received the requested information, on 10 June 2016, the Minister of Finance addressed a formal request for information (in terms of section 54 (1) of the PFMA) to the applicant. The Minister of Finance further indicated in the letter that there could be no assumption of deemed approval. A copy of the letter is annexed hereto marked "LF16". In that letter the Minister indicated amongst others that:

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- 30.1. Government wanted to work with Denel to resolve the matter in a way that protects the reputation of Denel as well as Government as a whole;
- 30.2. This was especially important at a time when the country is under close scrutiny, inter alia, by rating agencies;
- 30.3. A downgrade in the sovereign credit rating would have negative repercussions for government's capacity to deliver on its objectives to promote growth, development and job creation;
- 30.4. National Treasury does not agree with Denel's interpretation of the PFMA and detailed the legal basis for disagreeing with Denel's interpretation;
- 30.5. There was no legal or factual basis to conclude that a 'reasonable time' as contemplated in section 51(1)(g) was no more than 30 days;
- 30.6. Denel should have contacted National Treasury to ascertain the status of its application rather than assume that approval had been granted.
31. On 28 June 2016, the applicant requested an extension of time within which to respond to the letter dated 26 April 2016. A copy of the applicant's letter is annexed hereto marked "LF18". I granted the extension on 29 June 2016. A copy of this letter is annexed hereto marked "LF 19".
32. The response by the applicant dated 28 June 2016 is annexed to the founding affidavit marked "FA11". In that response the applicant maintains that its interpretation of section 51(1)(g) of the PFMA is correct, but fails to provide further supporting arguments or arguments to counter National Treasury's legal interpretation as outlined in the Minister's letter. It also pointed out that it would provide National Treasury with the additional information requested but that the information was provided not for the purposes of the approval but merely to comply with the request.

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33. As appears from the letter, the applicant states that the applicant's compliance with the relevant provisions of the PFMA has become a question of different legal interpretation of the applicable provisions and that on "a purposive interpretation of Section 51(1)(g)...in the context of a holistic reading of the PFMA that guidance as to what constitutes a "reasonable time" for the purposes of Section 51(1)(g) is to be found in Section 54(3). This is so, because the event envisaged in Section 51(1)(g) i.e. the formation of a new entity is one which in many circumstances would be subsumed in Section 54(2)".
34. On 14 July 2016, the applicant addressed a letter to me in terms of which it responded to the request for additional information but stated that in its view, the approval process has been concluded and that the requested information is purely for information purposes and not for any approval process. A copy of the letter is annexed hereto marked "LF20".
35. In considering application, National Treasury had identified a number of key areas of concern, for which the information that had been requested by National Treasury was fundamental to be able to properly assess the application. In this regard the information provided in the application did not comprehensively address all the issues that had been requested by National Treasury. In addition new issues which were emerging, making it difficult to finalise the application.
- 35.1. The applicant has not provided us with any written legal opinion to support their interpretation of the deemed approval.
- 35.2. In its application for approval, the applicant indicated that the establishment of the JV would enable the Denel Group to re-enter the Indian defence market and exploit other defence opportunities in the Asian Pacific region.

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- 35.3. The applicant initially entered the Indian defence market in 1994. However from 2005, the applicant was effectively blacklisted on allegations of misconduct with regards to its partnerships in the Indian market.
- 35.4. The applicant was fined USD77.3 million for contravention of India's legislation and in 2007 the applicant recognised further losses amounting to USD11 million where the applicant acted as a subcontractor of Rheinmetall, whilst Rheinmetall was blacklisted. The applicant had indicated that the allegations that had resulted in the applicant's blacklisting were thrown out of court and in 2014, it received a note verbale from the Indian Embassy highlighting that the applicant may proceed to conduct business in India again.
- 35.5. In its 2015/2016 Corporate Plan, the applicant had not contemplated entry back into the Asia Pacific market. It is not clear what resulted in the change of heart and no explanation is provided. The applicant has only the importance of the Indian market to the applicant's growth strategy. In the application for approval, the applicant outlined that the Denel Group had explored the Indian market. Local partners were required in order to operate in India. The applicant indicated that they gave consideration to Bharat Forge and Larson and Turbo, however, the applicant indicated that they found that most of the potential partners were already linked to other Original Equipment Manufacturers. Subsequently, VR Laser South Africa approached the applicant to form the JV. The application for approval discusses two potential partners in India: Adani Group and PIPAVAV, both of which are leading Indian conglomerates expanding into the defence industry. It is not clear why these companies were overlooked by the applicant in their review of the market and what led the applicant to the conclusion that VR Laser Asia was the most suitable partner.

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35.6. In the application for approval, the applicant indicated that its contribution to the JV will be in the form of its Intellectual Property, which will enable the applicant to hold a majority shareholding of 51% in the JV. The remaining 49% shall be held by VR Laser Asia via its R100 million contribution which will be made over a period of 5 years (R20 million per annum). VR Laser Asia was to fund its contribution through a shareholder loan from VR Laser South Africa.

35.7. Notwithstanding the request, only a high level income statement for the JV has been provided in the application for approval. The cash flow statement provided by the applicant was not comprehensive and was insufficient to allow for a proper analysis. No balance sheet was provided. From the little financial information provided it appears that there will be a significant cash shortfall in the current year 2016/17 and it is not clear how this will be met. The applicant failed to provide the additional required information as per National Treasury's request. Moreover the applicant failed to provide a scenario demonstrating the impact on the performance of the JV should Hong Kong and India fail to conclude a double taxation agreement was also not provided.

35.8. According to the application for approval, the Board of the applicant had required the applicant to negotiate a higher amount be paid up front otherwise the matter was to be referred back to the Board. This was to secure financial viability of the JV during the first two years of operation. No indication has been provided of whether such agreements took place and whether there has been any amendment to the timing of the cash injections. In the absence of an amendment, the applicant needs to provide clarity on how the cash shortfall will be met.

35.9. The applicant stated that it will fund the JV with a "preferential and secured loan" of R100 million. Should the JV be unsuccessful the Group may have an incentive to repay VR Laser in order to avoid losing the assets that were used as collateral for the loan or in order to protect their brand. This may worsen the Group's liquidity situation which, according to National Treasury, is fragile.

35.10. The applicant in its application for approval states that no funds will be allocated by the Denel Group to the JV. However, the applicant in its exchange control application requested permission from the South African Revenue Bank to make a capital investment in the JV.

35.11. The applicant appointed Singania and Partners as well as ENS Africa Forensics to conduct a due diligence on the JV. The reports were included in the application for approval. Key issues which emerge from the reports include, amongst others, the following:

35.11.1. VR Laser South Africa is currently in a technically insolvent position. It appears not to be in a position to raise the money required to advance VR Laser Asia so as to enable the establishment of the JV.

35.11.2. The last few sets of signed Annual Financial Statements of VR Laser South Africa were issued with qualified audit opinions.

35.11.3. VR Laser South Africa funds its business operations and capital commitments through loan financing raised from its shareholders. The shareholders have been identified as politically exposed persons.

35.11.4. VR Laser Asia is a shell company that is registered in Hong Kong and is yet to commence trading. ENS Africa held the view that the

statement that "VR Asia has an established network of potential business sources which continue to expand" may be unfounded.

35.12. With regard to VR Laser Asia's track record and/or international networks including capacity in assisting the applicant to secure business in Asia, the applicant referred National Treasury to the initial application for approval. No additional information regarding the competitive landscape, business strategy and marketing plan was provided as had been requested.

35.13. In conclusion, the analysis of the application for approval highlighted a number of issues which would need to be appropriately resolved before the application could be supported, which included the following:

35.13.1. In its 2015/2016 Corporate Plan, the applicant had indicated that it will be pursuing additional capabilities and diversifying its operations with the aim of attaining financial sustainability in the long term. No significant Asian focus was contemplated.

35.13.2. There appeared to be no sound basis for selecting VR Laser Asia as a partner;

35.13.3. The rationale for establishing a JV in Hong Kong as opposed to other jurisdictions had not been provided.

35.13.4. Part of the motivation for the transaction is that it will enable job creation and the advancement of broad-based black economic empowerment in South Africa however, this appeared to be misaligned with India's requirements.

35.13.5. The proposal for the applicant to sell products at preferential terms to the JV is not in the best interests of the applicant or Government.

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35.13.6. There were discrepancies between the PFMA applications and the exchange control application, specifically with respect to the proposal to establish a further company, Denel India, and the requirement for the applicant to contribute funds to the establishment of the JV. No application for the establishment for Denel India had been submitted.

35.13.7. A comprehensive business case and detailed financial projections had not been provided to enable a thorough assessment of the impact of the JV on the applicant's financial positions. However, the information provided indicated that there will be a substantial cash shortfall in the current year.

36. On 24 November 2016, I received a letter from the Acting Group CEO of the applicant providing an undertaking that Denel Asia will remain dormant until such time that the Minister of Finance and the Minister of Public Enterprises have reached consensus and Denel receives an instruction to proceed from the Department of Public Enterprises. A copy of this letter is annexed marked "LF21".

F. THE PFMA

37. As set out above, the applicant submitted an application to National Treasury for approval in terms of section 51(1)(g) of the PFMA for the establishment of the JV.
38. The applicant contends that the application was made not only in terms of section 51(1)(g) of the PFMA but also in terms of section 54(2) of the PFMA.
39. The significance of this contention relates to the time period for approval in respect of the two sections. While section 51(1)(g) of the PFMA provides for a "reasonable period" for approval, section 54(2) (read with section 54(3)) of the PFMA provides

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for approval within 30 days failing which it will be assumed that approval has been given (unless agreed otherwise) by the executive authority.

40. It appears that, instead of bringing two applications: one under section 51(1)(g) of the PFMA and the other under section 54(2), the applicant conflated the two applications and brought one application which was filed under both sections. This notwithstanding the fact that the PFMA envisages two distinct applications which, as demonstrated below, are brought under distinct statutory provisions and directed at different decision-makers. These applications would also elicit separate approvals from the respective Departments.

The section 51(1)(g) process

41. Section 51 of the PFMA provides for the general responsibilities of accounting authorities. Section 51(1)(g) reads as follows:

"51 General responsibilities of accounting authorities

(1) An accounting authority for a public entity-

(g) must promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment; ..."

42. Section 54 of the PFMA provides for the information that needs to be submitted by accounting authorities. Section 54(2) and 54(3) provides that:

"54 Information to be submitted by accounting authorities

...

(2) Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in

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writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:

- (a) establishment or participation in the establishment of a company;
 - (b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
 - (c) acquisition or disposal of a significant shareholding in a company;
 - (d) acquisition or disposal of a significant asset;
 - (e) commencement or cessation of a significant business activity; and
 - (f) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.
- (3) A public entity may assume that approval has been given if it receives no response from the executive authority on a submission in terms of subsection (2) within 30 days or within a longer period as may be agreed to between itself and the executive authority.
- (4) The executive authority may exempt a public entity listed in Schedule 2 or 3 from subsection (2)."

43. From an ordinary reading of section 51(1)(g) and section 54(2) of the PFMA, it is evident that there are key differences between the two sections. These include the following:

43.1. Section 51(1)(g) falls under the heading "General responsibilities of accounting authorities" and requires that an accounting authority timeously

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inform National Treasury on any new entity which it intends to establish and allow National Treasury a reasonable time to submit its decision prior to formal establishment. Section 54(2) on the other hand appears under the heading "Information to be submitted by accounting authorities" and requires that Treasury be informed of the transaction and that the relevant Executive Authority approve the transaction.

- 43.2. It is evident that section 54(2) provides for the oversight role of National Treasury and the relevant executive authority over the relevant institution. This is clearly distinguishable from the role played by National Treasury and the Minister of Finance as the custodians of fiscal policy and public finance management catered for in section 51(1)(g).
- 43.3. Section 51(1)(g) requires that the decision to approve be taken by National Treasury and that National Treasury be given a reasonable time to submit its decision. Section 54(2) on the other hand requires that National Treasury be informed of the decision but provides for the executive authority to approve the transaction.
- 43.4. Section 54(2) read with section 54(3) contains a deeming provision which states that an entity may assume that approval has been given if the entity receives no response from the executive authority within 30 days. In sharp contrast, section 51(1)(g) does not contain such a deeming provision. While it provides that National Treasury has to respond within a reasonable time, it fails to provide that approval must be assumed should Treasury not revert within a reasonable time.
- 43.5. Section 51(1)(g) specifies that National Treasury be allowed a reasonable time to submit its decision. On the other hand, section 54(2), read with section 54(3), expressly provides for a specific time (that is within 30 days) in respect of the executive authority.

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44. Given the key textual differences between section 51(1)(g) and section 54(2), and on application of the *expressio unius est exclusio alterius* principle, the proper interpretation of two sections is the following:

44.1. The specified time period contained in section 54(2) cannot be incorporated into section 51(1)(g) for the following reasons:

44.1.1. This is not consistent with the express language of these provisions; and

44.1.2. This is inconsistent with the clear legislative intention to have a 30 day period apply to section 54(2) and a "reasonable period" apply to section 51(1)(g).

44.2. In any event, even should the 30 day period apply to section 51(1)(g), there is no assumption incorporated into this section that with the effluxion of the prescribed period, approval for the transaction is deemed. Put differently, even should this Court accept that the words "reasonable period" used in section 51(1)(g) should be interpreted as incorporating a 30 day period for consideration by National Treasury (which is denied), there is no provision in the PFMA which provides that on the expiry of this period, approval is assumed. There is no basis in law for this Court to, through an interpretative exercise, introduce such a provision into section 51(1)(g). This would do violence to the language of the PFMA by placing upon it a meaning of which it is not reasonably capable.

What is a 'reasonable period'?

45. What constitutes a *reasonable period* is a question of fact. It is a measure which can be given meaning only within the context of the circumstances which prevail at a point in time. It is thus incorrect for the applicant to seek to impose a rigidity by providing that the reasonable period must be construed as 30 days.

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46. In assessing the reasonableness of the period in question, much depends upon the nature of the particular application, the enquiries that need to be made, the volume of similar applications that needs to be dealt with, the administrative capacity that is available for processing such applications, and other matters of that nature. In the present matter, the following are some of the relevant facts:

46.1. On 9 December 2015 (two day before the application for approval was submitted), a new Minister of Finance, Minister Van Rooyen was appointed;

46.2. By 13 December 2015, Minister Van Rooyen was replaced by another Minister;

46.3. As a result thereof, the markets were affected and the Minister of Finance and National Treasury had to concentrate its efforts on restoring market confidence;

46.4. National Treasury closed during the Christmas and New Year period and its staff were on holiday;

46.5. January and February are the busiest months for the Minister of Finance and National Treasury because of the preparations for the Minister's budget speech in the National Assembly which took place on 24 February 2016.

47. In light of the above, a reasonable period could not be assumed to be the 30 day period envisaged in section 54 of the PFMA. In any event, as evident from the correspondence between National Treasury and the applicant, all of National Treasury's concerns relating to the application had not been addressed. Engagement between the parties was therefore ongoing.

48. In these circumstances it is clear that there is no approval from National Treasury under section 51(1)(g). The applicant has therefore not complied with the PFMA in establishing the JV.

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G. THE EFFECT OF THE GOVERNMENT GUARANTEE THAT WAS GIVEN TO THE APPLICANT

49. The applicant has long been experiencing serious liquidity challenges.
50. In light of these challenges, Government support was and continues to be required.
51. In 2012, the applicant requested National Treasury to renew the applicant's R1,85 billion guarantees from Government for a 5 year term.
52. The Minister of Finance concurred to the renewal of the R1,85 billion government guarantee issued to the applicant subject to the following conditions ("the **Guarantee Conditions**"):
- 52.1. National Treasury to approve the terms of the financing raised against the guarantee before any agreements are concluded;
 - 52.2. Any transactions undertaken in terms of section 54 of the PFMA to be subject to approval of the Minister of Finance as well as the Minister of Public Enterprises;
 - 52.3. The applicant to indicate its strategy for returning the Group to a business that is able to break even without recapitalisation and demonstrate the method gradually reducing its reliance on government support;
 - 52.4. The applicant to forward monthly progress reports on the turnaround strategy, deliverables in the implementation of the strategy to the Ministry of Finance, Department of Public Enterprises, Department of Defence and Military Veterans and the Department of Trade and Industry;
 - 52.5. A monitoring committee chaired by the Department of Public Enterprises and comprising of National Treasury, Department of Defence and Military Veterans and the Department of Trade and Industry to be established to

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monitor progress on the turnaround of the applicant and implementation of the strategy;

52.6. The Department of Public Enterprises to provide a plan which includes the option of ring fencing/disposing of the Denel Aerostructures as it is the only consistently loss making entity within the Group; and

52.7. The applicant to provide its historical conversion rate in terms of its order pipeline from indicative into firm secure orders as well as the strategies it intends to implement to ensure that the corporate plan targets are met and the mitigation strategies should the desired conversion rates not be achieved.

53. A copy of the letter of guarantee is annexed hereto as "LF22".

54. The effect of the Guarantee Conditions is that the Minister of Finance requires that every transaction undertaken in terms of section 54 of the PFMA must be subject to the approval of the Minister of Finance as well as the Minister of Public Enterprises.

55. This approval which is provided for in the Guarantee Conditions stands distinct from the approvals required under section 51 and section 54 of the PFMA.

56. The Guarantee Conditions qualify the terms of the guarantee and therefore have full legal effect. They create a distinct legal obligation on the applicant to obtain the Minister of Public Enterprises' and the Minister of Finance's approval prior to entering into the types of transactions envisaged in section 54(2) of the PFMA. The implication of this is that:

56.1. Even if the applicant is correct in its interpretation of section 51(1)(g) and Section 54(2) of the PFMA, it still has to obtain approval under the Guarantee. This approval is not subject to any express time bar; and

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56.2. There is no provision which deems that approval is granted after the lapse of a specified period of time.

57. The legal effect of the Guarantee Condition is the following:

57.1. Section 70 of the PFMA provides for guarantees, indemnities and securities by Cabinet members. Section 70(1) in particular provides that:

"70 Guarantees, indemnities and securities by Cabinet members

(1) A Cabinet member, with the written concurrence of the Minister (given either specifically in each case or generally with regard to a category of cases and subject to any conditions approved by the Minister), may issue a guarantee, indemnity or security which binds-

(a) the National Revenue Fund in respect of a financial commitment incurred or to be incurred by the national executive; or

(b) a national public entity referred to in section 66

(3) (c) in respect of a financial commitment incurred or to be incurred by that public entity."

57.2. Section 1 of the PFMA defines "Minister" as the Minister of Finance.

58. The effect of this is that the conditions qualify the terms of the guarantee and therefore have full legal effect. Moreover, the imposition of conditions by the Minister (referred to in section 70 as the 'approval of conditions') form part and parcel of the decision by the Minister to concur with the issuing of the guarantee. The conditions, once approved by the Minister, qualify the concurrence by the Minister and therefore forms an intrinsic part of the decision to issue the guarantee in terms of section 70(1) of the PFMA.

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59. The conditions of the guarantee create a distinct legal obligation on Denel to obtain the Minister's approval prior to entering into the types of transactions envisaged in section 54(2) of the PFMA.
60. The Minister of Finance has not provided the approval envisaged in the Guarantee Conditions. The applicant has therefore failed to comply with the Conditions.

H. THE JV AGREEMENT

61. The JV Agreement contains various suspensive conditions.
62. Clause 4 of the JV Agreement states that the entire agreement (save for the "immediately operative provisions" that is clauses 1, 2, 4 and 28 to 32) is subject to fulfilment of, amongst others, the following suspensive conditions:
- 62.1. approval under section 51(1)(g) of the PFMA;
 - 62.2. approval under section 54(2) of the PFMA;
 - 62.3. approval under section 66 of the PFMA; and
 - 62.4. The applicant obtaining the relevant approvals required of it from the National Treasury for the execution and implementation of the agreement.
63. I have already set out above that the applicant was required to obtain the approval of National Treasury and the Minister of Finance under
- 63.1. section 51(1)(g) of the PFMA; and
 - 63.2. the Guarantee Conditions.
64. These approvals were not obtained and hence the conditions set out in the JV Agreement were not fulfilled. The effect of the suspensive conditions is that the operation of the obligations flowing from the contract is suspended pending the occurrence or non-occurrence of the particular specified event. Since the conditions

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were not fulfilled, the JV Agreement becomes *void ab initio*. In terms of the JV Agreement, these suspensive conditions may not be waived nor may they be deemed to be fictionally fulfilled.

65. In light of the conditions precedent set out in clause 4 of the JV Agreement, it is evident that these were not met and therefore no valid agreement came into being.

I. RESPONSE TO SPECIFIC AVERMENTS IN THE FOUNDING AFFIDAVIT

66. I now turn to deal with the specific averments in the founding affidavit to the extent necessary. Any factual allegation or legal submission which I do not specifically deal with in this affidavit is deemed to be denied.

67. Ad paragraph 3

As I demonstrate throughout this affidavit, I deny that all the contents of the founding affidavit are true and correct.

68. Ad paragraph 4 to 9

These allegations are noted.

69. Ad paragraph 10

For the reasons demonstrated in this affidavit, I deny that the applicant is entitled to the relief sought.

70. Ad paragraph 11 to 14

These allegations are noted.

71. Ad paragraphs 15 to 16

71.1. The applicant has long been experiencing serious liquidity challenges.

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71.2. In light of these challenges, Government's financial support was and continues to be required.

71.3. In 2012, the applicant requested National Treasury to renew the applicant's R1,85 billion guarantees from Government for a 5 year time. The guarantee was issued by the Minister of Public Enterprises acting with the concurrence of the Minister of Finance.

71.4. The Minister of Finance concurred to the renewal of the issuance of the R1,85 billion government guarantee to the applicant subject to the Guarantee Conditions dealt with earlier in this affidavit.

71.5. Save as is inconsistent with what is stated above, these allegations are admitted.

72. Ad paragraphs 17 to 20

The application for approval of the JV agreement is still being considered by National Treasury. In the circumstances, I can neither confirm nor deny these allegations. In any event, given that this is not a review of a decision by the Minister (or the failure to take a decision) the merits of the application for approval are not relevant. To the extent that it is relevant, I put the applicant to the proof of these allegations.

73. Ad paragraphs 21 to 23

73.1. As indicated above, there was no approval by the Minister for the conclusion of the JV agreement. In any event, the suspensive conditions provided for in the JV agreement were not met. Hence the agreement has not come into force and effect.

73.2. These allegations are accordingly denied.

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74. Ad paragraphs 24 to 24.12

74.1. On 9 December 2015, the Department of Public Enterprises held its monthly monitoring committee meeting. Officials from National Treasury were also in attendance. As appears from paragraph 2 of the minute ("LF2" hereto) under the heading "Discussion", National Treasury sought clarity from the applicant on:

74.1.1. What rendered the proposed transaction urgent; and

74.1.2. Whether the applicant would make application in terms of section 51(g) of the PFMA or section 54(2) of the PFMA.

74.2. The response from the applicant was that the application would be submitted in terms of section 51(g). The applicant also indicated that the matter was urgent because the deadline for the submission of the RFP/RFPS is due in January 2016 and that there was an opportunity for a major air defence gun contract in an Asian country.

74.3. National Treasury did not agree that the proposed transaction was urgent. It would not have been in a position to do so simply because the application had at that stage not been submitted. The proposed JV transaction has significant financial and governance implications. It is imperative that the matter be properly assessed with due regard to the applicable legal and government prescripts. This weighty process cannot be truncated on tenuous grounds of urgency. The "deemed approval" is denied for the reasons demonstrated elsewhere in this affidavit. The application for approval is still being considered by National Treasury and no approval has been granted.

74.4. Save as aforesaid, these allegations are denied.

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75. Ad paragraph 25

These allegations are denied. The matter was duly considered (and is still being considered) by National Treasury on behalf of the Minister of Finance.

76. Ad paragraph 26

76.1. This is denied.

76.2. As indicated above, on 27 January 2016, officials of National Treasury and DPE met with the applicant's representatives to discuss the application for approval.

76.3. Furthermore, as demonstrated by "FA5" to the founding affidavit, on 5 February 2016 officials from National Treasury expressed disquiet about the applicant's handling of the JV agreement. This letter was in response to media reports on the establishment of Denel Asia. A copy of one such report dated 29 January 2016 is attached marked "LF4".

77. Ad paragraph 27

I deny that the statement was unwarranted and that the allegations are baseless.

78. Ad paragraph 28

While I note that the applicant issued a statement, I dispute the contents thereof.

79. Ad paragraph 29

79.1. At the heart of the concerns raised by Treasury are the interests of the fiscus and the financial viability of the initiative. It is unfathomable how these can be described as "spurious" by the applicant.

79.2. I deny that "FA10" is an accurate record of the meeting.

79.3. The remaining allegations are denied.

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80. Ad paragraph 30

Save for admitting that "FA11" was sent by the applicant to the Minister on 26 June 2016, the remaining allegations are denied.

81. Ad paragraphs 31 to 34

81.1. I deny the alleged statements were false, misleading and defamatory.

81.2. The remaining allegations are noted.

82. Ad paragraphs 35 and 36

This is denied. The approval has still not been granted. Hence the JV transaction has been concluded illegally.

85. Ad paragraphs 37

Save for stating that any opinion obtained by the respondents is privileged the contents hereof are denied

86. Ad paragraphs 38 to 39

86.1. The allegations that we acted in error or in bad faith are so outrageous that they do not even merit a response.

86.2. Furthermore, as demonstrated above, we have entered into protracted engagement with the applicant in order to obtain sufficient information to enable us to take a decision on the approval application. The correspondence between National Treasury and the applicant bear testimony to the extent to which we have gone in order to be as accommodating as possible in order to resolve this matter. The applicant has however been intransigent in its stance. This notwithstanding the fact that its interpretation of the PFMA is palpably flawed.

86.3. The remaining allegations are denied.

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87. Ad paragraph 40

87.1. It is correct that the position of National Treasury is that Denel Asia has been established unlawfully in that, in terms of section 51(1)(g) of the PFMA, the applicant is obliged to obtain the approval of National Treasury prior to formally establishing a new entity.

87.2. The implication of this straightforward application of section 51(1)(g) is that while the application for approval is under consideration, the company should be dissolved. The aim behind this is to limit the negative consequences which may arise from potential non-compliance with the PFMA if the requisite approval is not granted and the JV agreement is ultimately set aside.

88. Ad paragraph 41

88.1. National Treasury did not approve the establishment of Denel Asia, any "deadlock breaking mechanism" had to involve the deregistration of this entity at least until the approval process had been completed.

88.2. It is false to claim that National Treasury did not provide assistance to the applicant. On the contrary, National Treasury was actively involved in engaging with the applicant with a view to procuring all the relevant information needed to properly assess the application.

88.3. The remaining allegations are denied.

89. Ad paragraph 42

89.1. The purpose of the meeting held on 17 November 2016 was to discuss the applicant's liquidity challenges relating to the lack of appetite from capital markets on the term note and how National Treasury can assist the applicant.

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89.2. At that meeting, National Treasury was represented by Ms Avril Halstead and two others. Ms Halstead indicated that the position of National Treasury was that it would assist with the road shows and supporting the applicant with obtaining support from investment houses on condition that the applicant unwinds its established Denel Asia joint venture.

89.3. The reasoning behind this was quite simply that the Denel Asia transaction was still in dispute. As National Treasury and Denel were not in accord on this matter, it would be more likely to damage investor confidence and appetite should National Treasury accompany Denel on its road show. Investors were aware of the dispute between National Treasury and Denel regarding the lawfulness of the transaction and would seek clarity on the details of the dispute. It would be unlawful to mislead investors. Unwinding the transaction would ensure that there was no longer a matter a dispute.

90. Ad paragraph 43

This is denied. On one occasion the Minister and I addressed a letter asking to be excused from attending a meeting of the Portfolio Committee on Public Enterprises which was held on 7 September 2016 due to the fact that we were attending the G20 Summit in China with the President therefore did not have time to prepare a presentation for the portfolio committee.

91. Ad paragraphs 44 to 50

91.1. I have explained, at length, the approach adopted by National Treasury to the establishment of Denel Asia and the rationale for this approach. I deny that our approach is 'regrettable' or in any way untoward.

91.2. We have self-evidently acted in strict compliance with the Constitution and the PFMA.

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91.3. The remaining allegations are denied.

92. Ad paragraph 51

92.1. The parallel drawn by the applicant between the Tawazun transaction and the present one is unfortunate and misleading. It is false to claim that there was no response from National Treasury to the Tawazun transaction. As demonstrated below, the interaction between National Treasury and the applicant lasted for well over six months after the application for approval was filed.

92.2. The Tawazun transaction was an application by the applicant for the establishment of a new company ("Newco") in the United Arab Emirates and acquisition of a 49% shareholding in Newco. This application was received by the Minister of Finance on 19 December 2011.

92.3. On 9 February 2012, a meeting was held between the applicant, National Treasury and the Department of Public Enterprises to clarify issues relating to the transaction. One of the officials representing National Treasury at the meeting was Ms Leona Mlauli. A confirmatory affidavit from Ms Mlauli is annexed marked "LF23".

92.4. In March 2012, there were email exchanges between Ms Mlauli from National Treasury and representatives of the applicant regarding the Tawazun transaction. A copy hereof is attached marked "LF24". As is evident from the attached emails, National Treasury was still considering the application and sought further clarification on the enforcement of call and put options under UAE law.

92.5. A second meeting took place on 12 April 2012 to address additional legal issues. Ms Mlauli was one of the representatives of National Treasury who attended the meeting. The details of the issues discussed are intricate. In

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order to avoid prolixity I do not intend to burden this Court with this extraneous information. However, should the applicant dispute this, National Treasury will apply for leave to place these facts before this Court.

92.6. By June 2012, following a cabinet reshuffle, the Minister of Defence had not yet approved the transaction. Similarly, the Minister of Finance was still considering the application for approval. At this stage, there was ongoing engagement between National Treasury (represented by Ms Mlauli and others) and the applicant on the Tawazun application. Copies of emails which demonstrate this are attached marked "LF25". As is evident from these emails, the engagement between the applicant and National Treasury was still ongoing in June 2012. By that stage the Minister had not yet taken a decision to approve the transaction.

92.7. After a process of engagement that spanned a period of over six months, all of the concerns raised by National Treasury had been addressed by the applicant. The applicant was well aware that there were no remaining concerns and that queries had been adequately addressed.

92.8. In any event, the Tawazun transaction differed substantially from the transaction at hand. In that transaction:

92.8.1. The applicant gave an indication that the bank facilities amounting to USD 173 million for phase 1 in the joint venture was secured. This was included in Denel Dynamics Plan for 2012/2013.

92.8.2. The applicant indicated that its financial exposure to the joint venture is capped as there is no on-going obligation from the Group to fund the business.

92.8.3. There are no negative tax implications.

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92.8.4. The applicant provided financial statements and the financial impact of phase 1 in the Denel Dynamics Plan.

92.8.5. The Denel Group indicated that it had carried out all the commercial, technical, operational and legal aspects pertaining to the applicant's participation in the JV.

92.8.6. The applicant indicated that the transaction would assist in creating jobs. An estimated number of 40 positions would be created within Denel Dynamics.

92.9. In the current transaction on the other hand:

92.9.1. The applicant was required to seek approval from both the Minister of Finance and Minister of Public Enterprises in terms of the Guarantee Conditions.

92.9.2. The applicant indicated that its contribution to the JV will be in the form of its Intellectual Property which will enable the applicant to hold a majority shareholding of 51% in the JV. The remaining 49% was to be held by VR Laser Asia via its R 100 million contribution, which will be made over a period of 5 years (R 20 million per annum). VR Laser Asia was to fund its contribution through a loan from its shareholder company, VR Laser South Africa. However, VR Laser South Africa's ability to advance the loan to VR Laser Asia is questionable as the due diligence reports conducted by Singania and Partners as well as ENS Africa Forensics on the JV indicated that VR Laser South Africa is technically insolvent in that the company's liabilities exceed its assets by approximately R 22 million.

92.9.3. The Board of the applicant, in its approval of the transaction, had required the applicant to negotiate a higher amount to be paid up

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front otherwise the matter was to be referred back to the Board. This was to secure the financial viability of the JV during the first two years of operation. No indication has been provided by the applicant when requested to do so on whether such engagements took place and whether there has been any amendment to the timing of the cash injections.

92.9.4. The applicant clearly states in its application for approval that no funds will be allocated by the Denel Group to the JV. However, the applicant in its exchange control application has requested permission from the South African Reserve Bank to make a capital investment in the JV. The applicant requested permission to make capital investments as a start-up capital for the JV and Denel India. This contradicts what the applicant had communicated to National Treasury in the application for approval.

92.9.5. The applicant in the application for approval indicates that there were discussions underway between India and Hong Kong with respect to a double tax agreement. The applicant further pointed out that the lack of a double tax agreement is outweighed by the lucrative opportunities that can be realised in India. The applicant was requested to provide a scenario illustrating the impact on the performance of the JV should no double tax treaty be agreed to. The applicant failed to provide this information.

92.9.6. The applicant provided a snap shot Income Statement and demonstrated a cash flow impact, which National Treasury did not view as comprehensive to enable a thorough assessment of the impact of the JV on the applicant's financial position. From the little financial information that was provided, National Treasury

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found that there will be a substantial cash shortfall in the current year.

92.9.7. The due diligence reports attached to the application for approval revealed a number of concerns.

92.9.8. The motivation that the transaction will enable job creation and the advancement of broad-based black economic empowerment in South Africa appears to be misaligned with the India's requirements which require that 30% on a cost basis be manufactured in India as per the Defence Procurement Procedures undertaken by its Minister of Defence in India.

92.10. Hence Tawazun is distinguishable from the present matter.

92.11. The remaining allegations are denied.

93. Ad paragraph 52

93.1. I deny that there is a "personal public dispute" between National Treasury and any entity associated with the Gupta family. In terms of section 216 of the Constitution, National Treasury has a crucial constitutional role to play in ensuring both transparency and expenditure control in state entities. National Treasury also has the constitutionally assigned function of ensuring compliance by state entities and state owned entities with the PFMA. has tried, unsuccessfully, to resolve this matter.

93.2. Furthermore, in terms of section 6 of the PFMA, National Treasury is statutorily obliged to promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of entities like the applicant and to enforce compliance with the PFMA.

93.3. National Treasury's handling of the application for approval is strictly in compliance with applicable statutory and government prescripts. In view

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hereof, it is an indictment on the applicant and its business dealings that it perceives the enforcement of the law as an attack on a particular family or an associate company.

94. Ad paragraph 53

I reject these spurious allegations. The applicant seems determined to personalise this dispute instead of focussing on ensuring that the constitution and the law is upheld and that decisions are made in a lawful manner in the interests of Denel as an entity and the country as a whole.

95. Ad paragraphs 54 to 60

95.1. If the applicant has suffered any adverse reputational consequences, then this is as a result of its unlawful conduct in establishing Denel Asia without the requisite Ministerial approval.

95.2. Regrettably, the current application is bound to aggravate the situation in that it exposes the applicant's flawed interpretation of the applicable statutory and governance regime.

95.3. The remaining allegations are denied.

96. Ad paragraphs 61 to 67

96.1. I have already dealt with the allegations in this paragraph. The application for approval has not been finalised because the applicant has failed to furnish all the information needed to do so.

96.2. These allegations are accordingly denied.

97. Ad paragraphs 68 and 69

The allegations contained in these paragraphs have already been dealt with. They are denied.

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98. Ad paragraphs 70 to 73

Any alleged prejudice the applicant has suffered is of the applicant's own making. It has unlawfully proceeded to establish Denel Asia in the absence of the required Ministerial consent.

98.1. The allegations that National Treasury and/or the erstwhile Minister have acted for improper motives is scandalous and devoid of any truth. As I have been at pains to demonstrate, the handling of this approval application was done in strict compliance with the law. It bears repeating that the purpose of ensuring compliance with the PFMA is to secure transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which the PFMA applies.

98.2. National Treasury is responsible for managing South Africa's national government finances. The Constitution of the Republic of South Africa mandates National Treasury to ensure transparency, accountability and sound financial controls in the management of public finances.

98.3. My responsibility as the Director-General of National Treasury includes managing government's financial assets and liabilities, overseeing government accounting policies and standards, regulating public sector procurement through policy formulation, developing appropriate fiscal policy and financial management, and improving financial management throughout government.

98.4. National Treasury is therefore statutorily obliged to rigorously scrutinise the application in order to ascertain that it is sound. Any allegation of malfeasance on the part of the former Minister of Finance and National Treasury officials is unwarranted.

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98.5. For the reasons set out in this affidavit this Court should not grant the relief sought. In any event -

98.5.1. The applicant has not made out a case for a declaratory order;

98.5.2. The applicant's interpretation of the legislation is implausible. It requires that this Court read words into section 51(1)(g) of the PFMA. This is not permissible in the absence of a declaration of constitutional invalidity; and

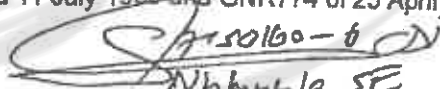
98.5.3. This Court should be slow to prevent National Treasury from properly carrying out its vital constitutional and statutory functions.

J. CONCLUSION

99. For all these reasons, I submit that the application fails to be dismissed with costs, such costs to include the costs consequent upon the employment of two counsel.


LUNGISA FUZILE

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to at Pretoria on this 11 day of May 2017 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.


Nhlantla SE



COMMISSIONER OF OATHS

Name: Sibusiso E Nhlantla
Address: 231 Pretorius street
Capacity: Constable

LF1



MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

MINISTRY OF FINANCE

23 NOV 2015

M4/1/4
MINISTER OF FINANCE

2335/15

Private Bag X15 Harare 8026 Tel (012) 431 1160 Fax (012) 431 1039
Private Bag 90872, CAPE TOWN 8000 Tel (021) 461 6276 Fax (021) 465 2381/461 1741

Mr Lungisani Daniel Mantsha
Chairperson of the Denel Board
Denel SOC Ltd
P O Box 8322
Centurion
0046

Tel: (011) 11 781 0099 / (012) 671 2038

E-mail: dan@luisenimantshaattorneys.co.za / info@luisenimantshaattorneys.co.za /
fortune@denel.co.za / tanvav@denel.co.za

Dear Mr Mantsha

Re: PFMA Section 54 (2) Pre-Notification on the Proposed Formation of Denel Asia

The above matter has reference.

I concur with yourself that Pacific Asia defence market will remain on upward trajectory for the foreseeable future. It would therefore make strategic business sense for Denel to position itself to take advantage of the envisaged growth.

However, accessing the Asian market is likely to be daunting for the new entity. Global defence original equipment manufacturers (OEMs) are targeting the growing Asian defence market to compensate for the stagnation at their home markets. They bring with them substantial offset and funding proposals which small companies such as Denel may not be able to provide. The value proposition of VR Laser Asia wanting a tie up with Denel is not clear especially on how it plans to break into this highly competitive market given its own limited global reach.

Given the strategic importance of the Asia-Pacific defence market, I hereby grant in-principle approval for Denel to continue discussions with VR Laser and Denel can submit a section 54 (2) PFMA application to both myself as the Executive Authority and the Minister of Finance.

In order to protect Denel's status as the holding company, the application should include, amongst other things:

- a comprehensive detailed business case to enable the Minister to express an opinion on the joint venture transaction;
- a comprehensive due diligence report on the financial regulatory legal requirement and regulatory laws governing foreign owned entities in Hong Kong;
- funding plans, all the transaction documents (including the MOU and Cooperation agreements);
- the process followed to select VR Laser as a partner of choice;

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- e) the proposed structure of the proposed new company and breakdown of estimated operational costs (five year horizon budget indicating clear cost allocation of both parties);
- f) a comprehensive due diligence of VR Laser which includes its financial standing, capabilities and ownership, defence and security product/service range and client base in Asia;
- g) registration details of the company and shareholding of VR Laser Asia;
- h) the reason(s) for a Continent specific versus a Country specific arrangement and indicate the preference of Hong Kong as a preferred domicile;
- i) any studies that were undertaken by the SOC that led to the conclusion that this partner is the most suitable, after VR Laser approached Denel with this business proposition; and
- j) reason(s) why this transaction or similar to it is not proposed in the 2015/16 Corporate Plan.

Thereafter, Denel is required to apply and get approval from the Minister of Finance in terms of Section 51(g) of the PFMA, which is a prerequisite when establishing a new entity. Once such approval has been obtained, all the negotiations, agreements and regulatory processes can be completed.

The Board must also ensure that there is adequate governance oversight regarding the processes that underpin transaction discussions. Issues of conflict of interest, real or perceived, should be adequately monitored. All efforts should be made to minimise risk exposure to both Denel and the Shareholder.

Yours sincerely


MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
 DATE: 23/4/2016

cc Mr Nhlanhla Nene, MP
 ∴ Minister of Finance

Tel: (012) 315-5559
 Email: mnene@treasury.gov.za

cc Mr Zwelakhe Ntshope
 ∴ Acting Group Chief Executive Officer
 Denel SOC Ltd

Tel: 012 671-2938
 Email: ZwelakheN@denel.co.za / CharleneT@denel.co.za

LF2

345



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Monthly Monitoring Committee Meeting

Wednesday, 09 December 2015

14:00 – 16H00

Venue: Protea Hotel, Hatfield

The Chairperson (Mr Kgathatso Tlhakudi) opened the meeting and welcomed all present.

Mr Kgathatso Tlhakudi

Mr Weekend Bangane

Ms Vuyo Tlale

Mr Xolile Mahlangu

Department of Public Enterprises

Mr Zwelakhe Ntshepe

Mr Jan Wessels

Mr Odwa Mhlwana

Ms Marina Uys

Denel

Mr Mogorosi Lebethe

Mr Lloyd Ramakobya

Mr Silondwe Nkosi

Ms Tsholofelo Marothodi

National Treasury

Mr Sedipa Senoamadi-DPE

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Ms Phumzile Maseko-DPE

Ms Gloria Mabindisa-DPE

Ms Thembi Mapheto-Denel

Mr Gawle van Zyl-Denel

1.1. The agenda was adopted without any additions.

1.2. The minutes of the previous meeting (19 November 2015) were adopted s.

2.1. Denel Asia PFMA Pre-Notification

2.1.1. Denel informed the Department that it is in the process of concluding the following processes with regards to the PFMA pre-notification submission:

2.1.1.1. Finalisation of the submission of the formal application to the Department;

2.1.1.2. Completion of the due diligence;

2.1.1.3. Conclusion of the business case;

2.1.1.4. Board is expected to sign all the necessary documentation for submission;

2.1.1.5. Board requested management to add additional information.

2.1.2. DPE and NT asked Denel what prompted a sense of urgency concerning this application;

2.1.3. Denel responded that the deadline for submission of RFP/RFPS is due in January 2016 and that there is also an opportunity for a major air defence gun contract in one of the Asian countries.

2.1.4. Denel indicated that India has also introduced a new policy regarding business trading. The new policy requires the company selling arms to India to establish the manufacturing plant in the country.

2.1.5. Denel raised a concern regarding delays from DPE and NT in approving PFMA's e.g. LSSA took nine months to approve.

2.1.6. NT sought clarity on whether the application will be submitted in terms of s 51 (g) or s 54 (2). Denel responded that the application will be submitted in terms of s 51 (g).

2.2. 2015 October Monthly Report

2.2.1. Denel shared the October monthly report presentation. The presentation is hereby attached and marked as Annexure "A".

2.3. Liquidity Requirements

2.3.1. Denel is developing a funding model which is aimed at addressing liquidity challenges. It will focus on:

- A relook of the Denel group and its structure particularly cash burn;
- Secondly, the relationship that Denel has with Armscor particularly contract arrangements and formalisation of acquisitions.

2.3.2. Denel indicated that it is on the knife-edge in terms of supplier payments. Cash is only available for operations. Supplier payments are adjusted every month. Some of the suppliers have also renegotiated payment arrangements.

2.3.3. DPE advised Denel to utilise proceeds from the sale of the Phillipi land to help alleviate some of the challenges.

2.4. Working Capital Management

2.4.1. DPE requested Denel to prepare a presentation on Work In Progress which will be discussed at the 2016/17 SHC meeting.

2.5. 2016/17 Shareholder Compact

2.5.1. It was agreed amongst all the parties to defer the discussion to a separate meeting.

2.6. Landwards Cluster Strategic Position

2.6.1. Denel is engaged in a process to deregister DVS and consolidate the business into DLS to form landwards business.

2.6.2. An assurance was given by Denel that the proposed merger will be transparent.

2.6.3. The process will merge the combat and turret business, the vehicle business (DVS + Mechem business) and Mechem demining and DVS Gear ratio.

2.7. LSSA Post Transaction Due Diligence Report

2.7.1. DPE reminded Denel that the report is due on 11 December 2015.

2.7.2. Denel committed to meet the deadline.

3.1 Set-up of the shareholder compact (SHC) meeting.

3.2 Submission by Denel of the C2 PFMA letter to DPE.

3.3 Working capital management presentation to be presented by Denel at the SHC meeting.

3.4 Discussion on DVS transformation.

3.5 Submission of the LSSA post transaction due diligence report on or before 11 December 2015.

The meeting was adjourned at 16H00.

APPROVED BY:

MR KGATHATSO TLHAKUDI (CHAIRPERSON)

DATE:

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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 20749/17

In the matter between:

DENEL SOC LTD

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

LLOYD RAMAKOBYA

do hereby make an oath and state that:

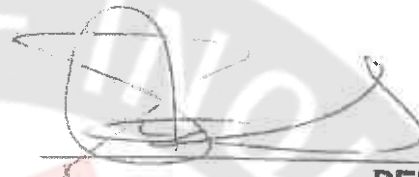
1. I am a Director: Investment Analysis in the Asset and Liability Management Division in the Department of National Treasury the second respondent herein ("National Treasury"). I am duly authorised to depose to this affidavit.

LR

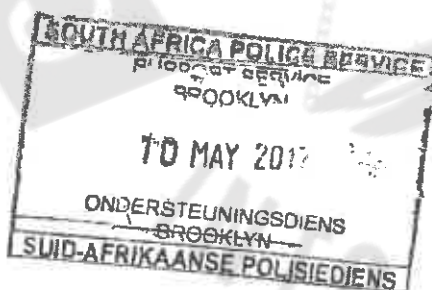
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2. The facts to which I depose are, except where the context indicates otherwise or I expressly say so, within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the answering affidavit of the Director-General **LUNGISA FUZILE** and confirm the correctness thereof insofar as same refers or relates to me.


DEPONENT

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he/she knows and understands the contents of this affidavit, which affidavit was signed and sworn to at Brooklyn on this the 09th day of May 2017 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.




COMMISSIONER OF OATHS
Het. Maschaga

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public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

**Denel Asia PFMA and Monthly Monitoring
Committee**

Wednesday, 27 January 2016

14:00 – 16H00

Venue: Legae Boardroom, DPE Offices

The Chairperson (Mr Kgathatso Tlhakudi) opened the meeting and welcomed all present.

Mr Kgathatso Tlhakudi

Mr Sedipa Senoamadi

Ms Phumzile Maseko

Ms Gloria Mabindisa

Mr Xolile Mahlangu

Department of Public Enterprises

Mr Mogorosi Lebethe

Mr Silondwe Nkosi

Ms Tsholofelo Marotholi

National Treasury

Mr Weekend Bangane- DPE

Ms Vuyo Tlale- DPE

ADOPTION OF THE MINUTES

1.1. The minutes of the previous meeting (09 December 2015) was postponed to the next meeting..

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2.1. Denel Asia PFMA Pre-Notification

2.1.1. The parties were of the view that the 30 day period for the Denel Asia PFMA application was rather short to have gone through submitted documents in order to make an informative decision DPE mentioned that the business case was weak in that;

2.1.1.1. Strategy to get into India is not convincing as VR Laser has no proven experience or business operations in Asia,

2.1.1.2. Suitability of VR Laser to fund the joint venture while the due diligence suggests that the entity is surviving on shareholder loans; and

2.1.1.3. Conclusion of the business case;

2.1.1.4. Red flags on characters that are politically exposed were highlighted in the due diligence;

2.1.1.5. Board requested management to add additional information.

2.1.2. National Treasury (NT) advised that they have not yet concluded on a position on the application. However, there were issues that they wanted to raise with Denel. Among these issues, National Treasury pointed out;

2.1.2.1. That Denel reported as having been blacklisted in India, however, without (formal) written communication to this regard;

2.1.2.2. Denel's questionable majority ownership of the joint venture while not contributing to the R100m to be issued by VR Laser, with the latter taking all the risk;

2.1.2.3. The question of whether the oversight role by the shareholder and National Treasury remains the same or affected by the laws governing Hong Kong, if the latter is true, how the two departments are planning to work around this.

2.1.2.4. As a result, NT will request additional information and seek clarity. NT's intention is to issue a letter to Denel to request the above.

2.1.3. Furthermore, NT advised that their principals were cautious in approving PFMA applications with set conditions for compliance but prefer that all conditions be met

before approval. Denel raised a concern regarding delays from DPE and NT in approving PFMA's e.g. LSSA took nine months to approve.

2.1.4. Also, NT is concerned about the credibility risk portrayed by a trend of acquisitions by Denel that had not been included in the Corporate Plan.

2.1.5. NT requested that DPE share their views of the Denel Asia PFMA application.

2.1.6. DPE finds it odd that Denel is pursuing the Asia PFMA considering that it failed to conclude the C2 PFMA acquisition due to limited cash resources. NT indicated that it will request a letter from Denel which confirms the unsuccessful acquisition of C2 PFMA.

2.2. General Matters

2.2.1. The parties agreed to include the following agenda items in the February 2016 monthly meeting:

2.2.1.1. Presentation on working capital management and work in progress;

2.2.1.2. Presentation on liquidity;

2.2.1.3. Oversubscription of the R850 million coupon bond.

3.1 NT to issue a letter to Denel concerning additional information and clarity on the Asia PFMA.

3.2 Inclusion as agenda items presentations on working capital, liquidity and work in progress.

The meeting was adjourned at 16H00.

APPROVED BY:

MR KGATHATSO TLHAKUDI (CHAIRPERSON)

DATE:

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354

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 20749/17

In the matter between:

DENEL SOC LTD

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

TSHOLOFELO MOROTHOLI

do hereby make an oath and state that:

1. I am a Senior Analyst: General Sector in the Asset and Liability Management Division in the Department of National Treasury, the second respondent herein ("National Treasury"). I am duly authorised to depose to this affidavit.

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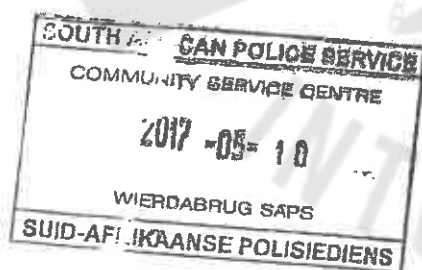
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2. The facts to which I depose are, except where the context indicates otherwise or I expressly say so, within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the answering affidavit of the Director-General **LUNGISA FUZILE** and confirm the correctness thereof insofar as same refers or relates to me.

[Signature]

DEPONENT

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he/she knows and understands the contents of this affidavit, which affidavit was signed and sworn to at _____ on this the _____ day of _____ 2017 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.



[Signature]
COMMISSIONER OF OATHS.

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Denel expands its horizons

Companies | 29 January 2016
Siphelele Dlodla

Johannesburg - South African defence and technology group Denel is extending its footprint into the Asia-Pacific defence markets with the establishment of a joint-venture company in Hong Kong.

The arms producer announced the establishment of Denel Asia in a statement on Friday, saying it has partnered with VR Laser, another South African defence and technology company.

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SA defence and technology company Denel produces armoured vehicles, among other things. File picture: Supplied

This partnership is also earmarked to give Denel access to VR Laser's capabilities in fabrication, production and support of armoured vehicles which will now be combined with Denel's strengths in the areas of design and systems integration.

Zwelakhe Ntshepe, the acting group CEO of Denel, said in the statement that there are a number of opportunities opening up in Asian countries, where defence budgets are increasing.

"This is a vitally important region for Denel to expand its business and find new markets for our world-class products, especially in the fields of artillery, armoured vehicles, missiles and unmanned aerial vehicles," Ntshepe said.

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The arms producer said Denel Asia will focus its marketing attention on countries such as India, Singapore, Cambodia, Indonesia, Pakistan, Vietnam and the Philippines, which have all announced their intentions to embark on major new defence acquisitions and grow their research and development budgets in the next four years.

Denel said research shows that by 2018 the Asia-Pacific nations will command more than half of global defence procurement outside of the US and two-thirds of non-US defence research.

"We need a firm foothold in this region and the establishment of Denel Asia with its headquarters in Hong Kong will give us a strong presence and the ability to pursue opportunities that will soon arise," Ntshepe added.

Peter van der Merwe, the CEO of VR Laser, in the same statement on Friday said his company welcomes the opportunity to work with Denel and to make inroads into new regional markets.

"Denel is a trusted name in the global defence industry, as one of the top 100 industry companies in the world. VR Laser has expertise in defence technology and understanding of the south-east Asia defence markets," Van der Merwe said.

Denel showed a sustained annual growth in revenue of 28 percent and a projected order book of more than R35 billion at the end of the 2015 financial year.

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Source: <http://www.iol.co.za/business-report/companies/denel-expands-its-horizons-1977303#>

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Denel expands its horizons

Companies | 29 January 2016
Siphelele Dlodla

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Share this story

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"We need a firm foothold in this region and the establishment of Denel Asia with its headquarters in Hong Kong will give us a strong presence and the ability to pursue opportunities that will soon arise," Ntshhepe added.

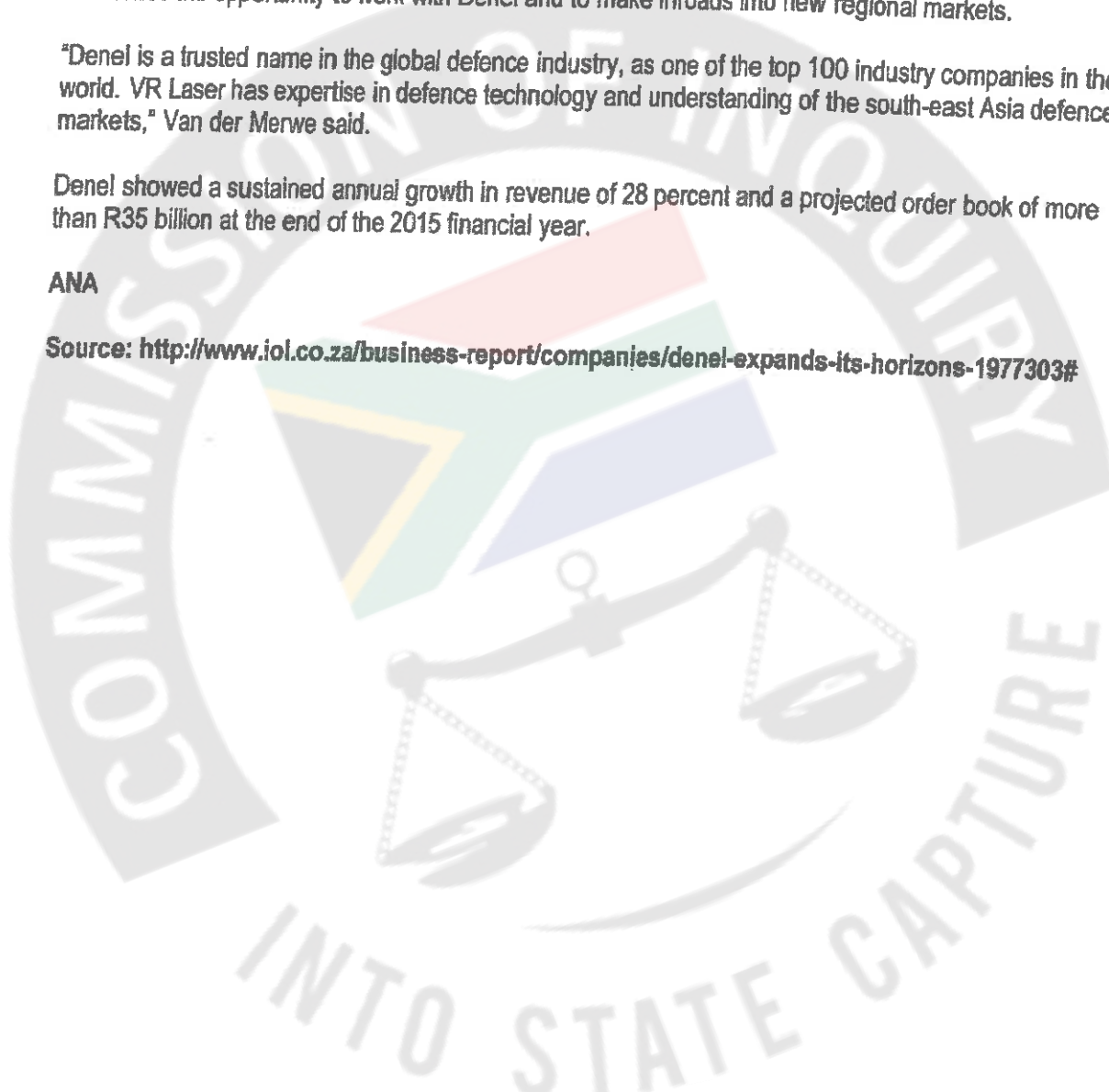
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ANA

Source: <http://www.iol.co.za/business-report/companies/denel-expands-its-horizons-1977303#>



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DENEL GROUP

10 February 2016
Tel: +27 12 671 2758
Fax: +27 12 671 2751
zwelakhe@denel.co.za

Mr Solly Sthitangano
Department of National Treasury
Chief Director: SCM Governance, Monitoring &
Compliance
Private Bag X115
Pretoria
0001

Dear Mr Sthitangano

JOINT VENTURE BETWEEN DENEL SOC (LTD) AND VR LASER

We hereby acknowledge receipt of your letter received on the 9th of February, reference 43/12/5/1.

We are in the process of studying your requirements and will revert back on Friday the 19th of February 2016.

Kind regards

Zwelakhe Ntshope
Group Executive Officer (Acting)

Denel SOC Ltd, Reg No 188200183730, Helderberg Drive, Iskra
P O Box 6222, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
Directors: Mr L D Mordaka (Chairman), Mr R Saloojee (Group Chief Executive Officer), Ms M Kgomoagoo, Mr T D Mahumapelo, Ms P M Makhango, Ms N Mankwe, Mr Z Mkhondo, Ms R Mkhosana, Mr N J Mkhond, Mr T J Mkhond, Mr Gao T M Njabande (id), Ms K P S Nkomo.

Executive Director
Group Company Secretary: Ms E M Allen

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DENEL GROUP

Tel: +27 12 671 2758
 Fax: +27 12 671 2833
 Email: Zmofishen@denel.co.za
 Ref: Ltr/NT/Denel/VR Laser Asia/13Apr16

13 April 2016

Mr Solly Tshitangano
 Chief Director: SCM Governance, Monitoring and Compliance
 National Treasury
 Private Bag X115
 PRETORIA
 0001

Dear Solly,

JOINT VENTURE BETWEEN DENEL SOC LTD AND VR LASER ASIA

Your letter dated 5 February 2016 has reference.

Please find attached hereto the information as requested:

- 1) Board approval to pursue the deal. Refer to Annexure 1.
- 2) Adverts and proposals received:
 - As stated in the business case submitted to National Treasury on 11 December 2015 as part of the application in terms of section 51(1), 54(2)(a), 54(2)(b) and 54(2)(e) of the PFMA we highlighted in detail in paragraph 5 the selection method of the partner. In short, as part of Denel's common business practise in establishing strategic partners in the global market we do not send out adverts to identify partners but do evaluate a shortlist of key specific potential partners based on market intelligence. Examples of joint ventures incorporated in the past following same process are Tawazun Dynamics incorporated in the UAE. Two other companies that were considered for potential partnership was Bharat Forge as well as Larsen & Toubro, the both of which had already partnered with other international OEMs.
- 3) Minutes of relevant committees and board resolutions. Refer to Annexure 2.
- 4) Minister's approval. Refer to Annexure 3:
 - Section 51(g) of the PFM Act 1 of 1989 further requires that the National Treasury be allowed a **REASONABLE TIME** to submit its decision prior to formal establishment of the joint venture. Section 51(g) read together with section 54(2) defines a reasonable time as 30 days from the date of submission which in this particular case was 11 December 2015, 30 days thus expiring on 11 January 2016. This lead to Denel assuming approval by both the Executive Authority as well as National Treasury which then lead to the establishment of the joint venture.
- 5) Joint venture agreement and other relevant documents:
 - These were all submitted to National Treasury on 11 December 2015 as part of the formal PFMA application for approval.

Denel SOC Ltd, Reg No 1998/001997/30, Nelmapius Drive, Irene
 P O Box 8322, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
 Directors: Mr L D Mantsha (Chairman), Mr R Seloojee* (Group Chief Executive Officer), Ms M Kgomoaga, Mr T D Mahumapelo,
 Ms P M Mahlangu, Ms N Mandindl, Mr Z Mhlonilo*, Ms R Mokoena, Mr N J Motseidi, Mr T J Moomi, Lt Gen T M Nkabinde (ret),
 Ms K P S Nshayihani,

*Executive Director
 Group Company Secretary: Ms E M Africa

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Please do not hesitate to contact me should you require any further information.

Yours faithfully



Zwelakhe Ntshane
GROUP CHIEF EXECUTIVE OFFICER (ACTING)

cc. Mr Mogokare Richard Seleke – Director General: Department of Public Enterprises
Mr Lugisani Daniel Mantsha – Chairman of the Denel Board
Mr Odwa Mhivana – Acting Group Chief Financial Officer: Denel



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national treasury

 Department:
 National Treasury
 REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

STATEMENT ON REPORTS THAT DENEL ESTABLISHED A JOINT VENTURE

National Treasury has noted media reports that Denel may have entered into a joint venture to form a company that will operate from a jurisdiction in Asia. The National Treasury is currently engaging directly with Denel on the matter. This statement seeks to clarify facts relating to the transaction.

President Jacob Zuma noted in a press statement issued on 11 December 2015 that "...there is no state-owned entity that can dictate to government how it should be assisted. In addition, no chairperson of a board of a state owned company has the power to tell a government Department to which the entity reports, how to support or lead them".

The Board of a public entity commits an act of financial misconduct, where it wilfully or negligently fails to comply with the Public Finance Management Act (PFMA). The Treasury Regulations specifies that such allegations must be investigated by the Executive Authority and, if confirmed, appropriate disciplinary proceedings must be initiated.

State-owned entities are required to obtain approval from the Minister of Finance and/or Minister of Public Enterprises before establishing companies, in terms of the PFMA.

Section 54(2) states that: "Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:

- (a) establishment or participation in the establishment of a company;
- (b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- (c) acquisition or disposal of a significant shareholding in a company;
- (d) acquisition or disposal of a significant asset;
- (e) commencement or cessation of a significant business activity; and
- (f) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement"

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**national treasury**

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

In terms of the conditions attached to the R1.85 billion in guarantees that have been provided by government to Denel, any significant transactions that Denel enters into require the approval of both the Minister of Finance and the Minister of Public Enterprises.

Section 54(3) allows for an entity to "assume that approval has been given if it receives no response from the executive authority ... within 30 days or within a longer period as may be agreed to between itself and the executive authority".

Denel submitted its application in terms of Section 54(2) on 10 December 2015. However, prior to Denel submitting its application, National Treasury had outlined the information that would be required to comprehensively assess the application. The Minister of Finance is still considering this application, and further information has been requested from Denel.

More significantly, Denel is also required to comply with Section 51(1)(g), which is unequivocal in its requirement that the Board of Denel obtain approval before establishing a company. Section 51(1)(g) requires the accounting authority of an entity to "promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment". The National Treasury received a section 51(1)(g) from Denel on 10 December 2015. The application is still under consideration and no decision has yet been made.

Issued on behalf of National Treasury

Date: 13 April 2016

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 20749/17

In the matter between:

DENEL SOC LTD

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

ISMAIL MOMONIAT

do hereby make an oath and state that:

1. I am the Deputy Director-General: Tax and Financial Sector Policy in the Department of National Treasury, the second respondent herein ("**National Treasury**"). I am duly authorised to depose to this affidavit.

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2. The facts to which I depose are, except where the context indicates otherwise or I expressly say so, within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the answering affidavit of the Director-General **LUNGISA FUZILE** and confirm the correctness thereof insofar as same refers or relates to me.


DEPONENT

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he/she knows and understands the contents of this affidavit, which affidavit was signed and sworn to at *Pretoria* on this the *11* day of *May* - 2017 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.


COMMISSIONER OF OATHS

DAVID TLOTI
PRACTISING ATTORNEY
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DENEL GROUP

Tel: +27 12 671 2758
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 Ref: Ltr/NT/Denel/VR/LaserAsia/13Apr16
 18 April 2016

DIRECTOR-GENERAL National Treasury Pretoria 2016 -04- 22 Ref No Received by: H. Maphangwa

Mr Ismail Momoniat
 Acting Director-General
 National Treasury
 Private Bag X115
 PRETORIA
 0001

Dear Mr Momoniat,

JOINT VENTURE BETWEEN DENEL SOC LTD AND VR LASER ASIA

The meeting of the 15th April 2016 between Denel SOC Limited and National Treasury regarding the approval status of the recently established Denel Asia joint venture has reference.

We are always appreciative of engagements of this nature as it is our strong belief, as supported by the constitution that organs of the state should never have to deal with one another through the media but endeavour to resolve issues amongst themselves.

To avoid any potential misunderstanding and as part of the normal governance processes, we deemed it necessary that we reduce the key elements of our discussion into writing considering that this meeting is only the start of a process to still unfold.

I have attached our transcription as per our understanding of the key discussion and decisions taken in that meeting. I humbly request that you review this attachment and please revert back to me should you wish to add any elements you might view as significant as per our discussion.

Please do not hesitate to contact me should you require any further information.

Yours faithfully

Zwelakhe Ntshepe
GROUP CHIEF EXECUTIVE OFFICER (ACTING)

cc. Mr Lungisa Fuzile - Director General: National Treasury
 Mr Mogokare Richard Seleke - Director General: Department of Public Enterprises
 Mr Odwa Mhlwana - Acting Group Chief Financial Officer: Denel

Denel SOC Ltd, Reg No 1992/001337/30, Nelmapius Drive, Irene
 P O Box 8322, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
 Directors: Mr L D Mantsha (Chairman), Mr R Saloojee (Group Chief Executive Officer), Ms M Kgomogoe, Mr T D Mahumapelo,
 Ms P M Mahlangu, Ms N Madingi, Mr Z Mhlonlo, Ms R Mokoena, Mr N J Motseki, Mr T J Msomi, Lt Gen T M Nkabinde (retd),
 Ms K P S Ntshavhanyi

Executive Director
 Group Company Secretary: Ms EM Africa

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EXTRACT OF THE MEETING HELD ON THE 15TH APRIL 2016 STARTING AT 14H30 BETWEEN NATIONAL TREASURY (NT) AND DENEL SOC LIMITED (Denel).

VENUE: Pretoria – National Treasury Building at 40 Church Street.

ATENDEES: Zwelakhe Ntshepe -Denel Group Chief Executive Officer (Acting)
Odwa Mhlwana – Denel Group Chief Financial Officer (Acting)
Ismail Momoniat – Acting Director General - National Treasury
Other National Treasury Officials (Please fill in the names)

SUBJECT: Following the recent media statements suggesting that Denel might have violated the PFM act 1 of 1999 in its endeavours to establishing Denel Asia (Joint Venture between Denel SOC Limited and VR Laser Asia), the meeting was to discuss how Denel it is that Denel believes that no law was violated when NT had not provided specific approval to the transaction in terms of section 51(g) and 54(2) of the PFMA.

EXTRACT: Mr Momoniat, opened the meeting with an introduction that highlighted the following:

1. It is not NT's intention to deal with other organs of state through the media, however given that this specific issue was deemed to be of public interest as well as the media enquiries received by NT on this issue since the media launch by Denel of its Asia joint venture on the 28th January 2016, A media statement was issued by National Treasury on the 14th April 2016.
2. NT's statement was not saying that Denel had violated any act but carefully crafted in response to the media releases observed in the past both from Denel and DPE given that no approval had been given by NT, that Denel MIGHT have violated the act, stating the process to be followed in the event that this was to be proven. This meeting is thus a first step to establishing whether the PFMA has been violated or not.
3. Emphasised the fact that NT has special powers (no specifics of what powers) to act against organs of state that violated governance prescripts.
4. Requested Denel to explain its actions as it relates to whether approvals had been granted or not regarding this Asia Joint Venture.

Mr Ntshepe started articulating Denel's historic involvement in Asia with specific emphasis on India as follows:

1. Denel had been out of India for about 13 years, blacklisted on allegations of misconduct with regards to its partnerships in that market

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- which were later (around February 2016) thrown out of court and Denel cleared.
2. At the time, prior to being blacklisted, Denel spent in the region of R350m on business development activities for which no return was ever realised on such investment.
 3. Emphasised the importance of the Indian market to Denel's growth strategy and the fact that after the USA, India is the next biggest defence market globally.
 4. That at the time Denel got Clearance and lifting of the blacklisting, there were major opportunities which Denel had to play catch up on urgently to stay in the race to winning the contracts with very limited time.
 5. India's Defence rules specifically require that defence articles are "Made" in India thus eliminating an opportunity of Denel selling directly from RSA into India.
 6. Emphasised that VR Laser South Africa is a business that Denel had business dealings with for a very long time (+/- 10 yrs) and that this business is now under new ownership that found the business relationship already in existence between VR Laser RSA and Denel.
 7. Introduced Mr Mhlwana to take the meeting through the governance element of the transaction.

Mr Mhlwana went on to explain the compliance regime that governed the transaction and how Denel obtained compliance assurance.

1. Two sections of the PFMA as well as the conditions to the approval of the government guarantee issued to Denel, were considered in progressing through this transaction and these pieces emphasised the following
 - a. In essence, Section 54(2) required that this transaction be subject to the approval by the executive authority with notification of the National Treasury. This section further stipulates that if no response is received from the executive authority in 30 days, the applicant may deem the application as approved.
 - b. In essence, Section 51 (1)(g) required that the National Treasury be notified of this transaction and be granted reasonable time to provide its approval.
 - c. The condition to the approval of the government guarantee issued to Denel required that for all 554(2) approval requests, National Treasury is not only informed/notified but is also an approver similar to the executive authority.

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2. The governance compliance regime in concluding the formation of Denel Asia was explained in detail to the National Treasury Officials highlighting the following:

- a. Section 54(2) as it relates to the approval by the executive authority and notification of the National Treasury was fully complied with given the expiry of the 30 day period as stipulated in the act.
- b. Section 51(1)(g) as it relates to the reasonable time to be afforded to National Treasury in seeking their approval was also complied to fully given that this section read together with section 54(2) does provide clear guidance on how long the reasonable time is which National Treasury has to provide its approval decision. Denel Stressed the fact that the 30 day period expired on the 12th of January 2016 with the joint venture only established on the 29th January 2016 and that during this time no response was ever received from National Treasury.

c. The approval condition to the government guarantee elevated National Treasury to approval status in line with the executive authority in all matters relating to section 54(2) approval requests. This was therefore complied to fully as stipulated in (a) above.

3. National Treasury's reaction to Denel's position articulated in 2 above was as follows:

- a. Further meetings with the National Treasury Director General on his return are necessary as well as a separate meeting with the Minister of Finance attended amongst others by Denel's executive authority and the chairperson of the board will be necessary to discuss this matter further. These meetings will be arranged by National Treasury urgently.
- b. All future media statements on the matter to be co-ordinated between the National Treasury, Denel and DPE.
- c. A letter to Denel will be issued on Monday, requesting additional information on the transaction for National Treasury to review the PFMA application and make their final decision
- d. That Denel Freeze/put on hold all business operations of the Joint Venture until National Treasury issues their decision on the PFMA application
- e. Strong concerns on Denel's legal interpretation as stipulated in 2(b) above. National Treasury's submission was that there is

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case law on the definition of reasonable time and that it constitutes taking strong consideration of the specific circumstances such as the December holidays, historic time taken by National Treasury in approving similar applications.

Other than the notion that Denel freezes all operations of Denel Asia and that the joint venture is not valid and all operations must wait for a another review process, point (a) and (b) above was agreed to by Denel. Denel's position as articulated in point 2 above remains and that the transaction is valid and Denel has fully complied with all legislative requirements.



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**national treasury**

Department:
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Mr. Z Ntshepe
Acting Chief Executive Officer
Denel SOC Ltd
P O Box 8322
PRETORIA
0001



**DENEL'S APPLICATION IN TERMS OF SECTION 51(g) AND 54 OF THE PUBLIC FINANCE
MANAGEMENT ACT ("PFMA") FOR THE ESTABLISHMENT OF DENEL ASIA SOC LIMITED**

The abovementioned matter refers.

The National Treasury would like to express its appreciation and gratitude to the acting CEO and the acting CFO ("the executives") of Denel SOC Ltd for availing themselves at short notice for the urgent meeting with the Acting DG: Mr. Ismail Momoniat and the National Treasury team on Friday 15 April 2016. The National Treasury further acknowledges Denel's letter dated 18 March 2016, the contents of which is still being reviewed. The National Treasury may respond thereto at a more opportune time.

The National Treasury would like to confirm that:

- 1 The purpose of the aforementioned meeting was to clarify the status of the PFMA application made by Denel on 11 December 2015;
- 2 The National Treasury advised the executives present that the application was still under consideration and that no approvals by the National Treasury had been granted as yet;
- 3 The National Treasury differed with Denel's interpretation of the law (as stated by the two executives) which had led Denel to assume that the application was approved after the expiry of 30 days;
- 4 The National Treasury is of the view that there was no compliance with the provisions of the PFMA, in particular section 51((1)g) thereof in that no decision has been taken by the National Treasury in terms of the aforementioned section;

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5 The National Treasury proposed that a follow up meeting to determine a way forward be urgently convened on Tuesday, 19 April 2016; and

6 The National Treasury will proceed with its consideration of the application.

In order for the National Treasury to properly assess the application, Denel is requested to submit the following:

- (a) Denel's previously incurred millions of Rands in losses with no formal blacklisting in force and the entity's re-entry into the Indian market appears to be based on a verbal notification from the Indian Embassy. Provide clarity on how this regulatory risk will be managed going forward;
- (b) The procurement process that was followed in order to identify VR Laser Asia as the preferred partner as well as the assessment of other potential partners that were considered;
- (c) Clarity on the track record and ownership of VR Laser Asia and its capacity to contribute to assisting Denel in securing business in Asia;
- (d) The valuation and rationale that informed the proposed shareholding structure of the JV: Denel Asia;
- (e) Clarity regarding the funding source(s) post the 5 year period, including written confirmation that VR Laser Asia shall not have recourse to Denel in the event the JV is unsuccessful within the first 5 years as stated in the application;
- (f) Clarity on whether the JV would have the exclusive right to market Denel products in the targeted countries;
- (g) Detailed financial projections for each of the respective years, which would include, but not limited to:
 - i. Projected Financial performance, Positions and Cash-Flow, including assumptions driving the projected performance and cash-flows;
 - ii. Projected management accounts and assumptions for all capital and operational expenditure;
 - iii. Net Present Value (NPV) calculations and assumptions for any capital assets to be acquired (if any);
 - iv. Accounting policies to be adopted for the JV, including how Denel's Intellectual Property will be recognised, measured and disclosed in the accounting records of the JV;
 - v. Dividend policies relating to the JV;
- (h) Additional information pertaining to competitive landscape, business strategy and marketing plan;

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- (i) Information pertaining to the final decision between India and Hong Kong on the outstanding double tax agreement. Moreover, should India and Hong Kong fail to reach consensus on the matter, Denel should illustrate the impact of this scenario on the performance of the JV;
- (j) With respect to the Intellectual Property (IP) that belongs to other parties (Armcor and third parties), has Denel engaged with the respective parties regarding the licencing of the IP? Should the parties not agree to licence their IP to the JV, does Denel have mitigating strategies in place to ensure that the operations of the JV are not negatively impacted;
- (k) Alternative options that Denel shall explore should VR Laser Asia reject Denel's Exit Clause: Termination of Convenience;
- (l) An overview of the strategies that Denel shall put in place to ensure that it's operations and reputation are not compromised; and
- (m) Clarity on how the proposed transaction will impact on the existing corporate plan.

In addition to providing this information, Denel is requested to avail itself for engagements on the PFMA application with the designated officials of the National Treasury should these be required. The information already submitted in response to the letter of 5 February 2016 from the Chief Director: Supply Chain Management Governance, Monitoring and Compliance is acknowledged.

Please note that, pending a decision on whether to approve or not, Denel may not proceed with the Joint Venture. For this reason, the National Treasury requested that whilst the application is under consideration, all operations under the Joint Venture be ceased with immediate effect pending the National Treasury's decision. The aim is to limit the negative consequences which may arise from potential non-compliance with the PFMA. Kindly confirm as a matter of extreme urgency whether the operations have been ceased as requested.

I trust that the above is in order.

Kind regards



ISMAIL MOMONIAT

ACTING DIRECTOR-GENERAL

DATE: 18-4-2016

cc. Mr MR Seleke

Director-General: Department of Public Enterprises

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DENEL GROUP

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 Email: ZwelakheN@denel.co.za
 Ref: Ltr/NT/Denel/VRLaserAsia/21Apr16

21 April 2016

Mr Ismail Momoniat
 Acting Director-General
 National Treasury
 Private Bag X115
 PRETORIA
 0001

Dear Mr Momoniat,

DENEL'S APPLICATION IN TERMS OF SECTION 51(g) AND 54 OF THE PUBLIC FINANCE MANAGEMENT ACT ("PFMA") FOR THE ESTABLISHMENT OF DENEL ASIA SOC LIMITED

Denel hereby acknowledges receipt of your letter dated 18 April 2016 regarding the matter referred to above.

Without prejudice to Denel's position on this matter as articulated in the meeting of the 15th April 2016, we are in the process of collating the information as requested in your letter and will be responding to this fully as a matter of urgency.

We would like to clarify a few of those questions to ensure that our response is addressing your specific issues:

Question (a)

Please clarify what "regulatory risk" referred to in this questions relate to?

Question (g)(iii)&(iv)

Please confirm how the information requested in these two questions will assist the department in its evaluation of the application.

Question (h)

Please specify what additional information you are looking for in this question.

Question (i)

Please provide us with details on the "pending final decision" on double tax agreement between India and Hong Kong as referred to in this question.

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 P O Box 8322, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
 Directors: Mr L D Mantsha (Chairman), Mr R Seloojee (Group Chief Executive Officer), Ms M Kgomongoe, Mr T D Mahumapelo,
 Ms P M Mahlangu, Ms N Marudini, Mr Z Mhondo¹, Ms R Mokoena, Mr N J Motsaid, Mr T J Msomi, Lt Gen T M Nkabinde (retd),
 Ms K P S Ntshavheni,

¹Executive Director
 Group Company Secretary: Ms E M Africa

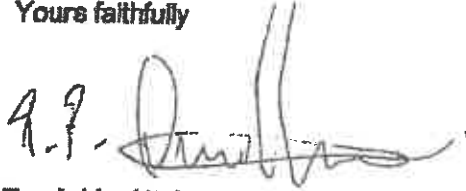
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Please do not hesitate to contact me should you require any further information.

Yours faithfully



Zwelakhe Ntshepe
GROUP CHIEF EXECUTIVE OFFICER (ACTING)

- cc. Mr Lungisa Fuzile - Director General: National Treasury
Mr Mogokare Richard Seleke - Director General: Department of Public Enterprises
Mr Lugisani Daniel Mantsha - Chairman of the Denel Board
Mr Odwa Mthwana - Acting Group Chief Financial Officer: Denel



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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001 Tel: +27 12 315 5904 Fax: +27 12 328 5145

Mr Z Ntshepe
Group Executive Officer (Acting)
Denel SOC Ltd (Denel)
P O Box 8322
PRETORIA
0001

Dear Mr Ntshepe

DENEL'S APPLICATION IN TERMS OF SECTIONS 51(1)(g) AND 54 OF THE PUBLIC FINANCE MANAGEMENT ACT (PFMA) FOR THE ESTABLISHMENT OF DENEL ASIA SOC LIMITED

1. I refer to your letter dated 21 April 2016, in respect of the abovementioned matter.
2. In terms of your letter, you seek clarification on certain issues raised in our letter dated 15 April 2016.
3. In light of the urgency of this matter and our discussions held at the meetings of 15 and 16 April 2016, I had indicated that matters on clarification should be dealt with expeditiously through liaising with the relevant official/s. Nevertheless, I am taking the time to acknowledge your letter formally.
4. The additional information relating to the matters where you requested clarity is outlined below.

Questions raised by Denel	National Treasury response
Question (a): Please clarify what "regulatory risk" referred to in this questions relate to?	Clarify on how Denel will ensure that the Joint Venture will meet all regulatory requirements both in India and Hong Kong to mitigate against the possibility of financial losses being incurred similar to those Denel realised when it was blacklisted in India during 2005. In particular, Denel should provide clarity on whether the company has written confirmation regarding the lifting of the blacklisting in India enabling the company's re-entry into the Indian market.
Question (h): Please specify what additional information you are looking for in this question.	In the application, Denel highlighted that one of the reasons for establishing the Joint Venture was to leverage VR Laser Asia's marketing network. However, the due diligence conducted by ENSAfrica indicated that it was unable to comment on the ability of VR Laser Asia to establish business links/relationships in Asia. Additionally, the due diligence report highlighted that VR Laser Asia is a shell company that is yet to commence trading. Denel should detail VR Laser Asia's knowledge of Asia's competitive

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Questions raised by Denel:	National Treasury response:
	landscape, its networks and experience operating in the Asian market. Furthermore, Denel should give an indication on how the expertise of VR Laser and its marketing networks in particular will contribute to Denel delivering on this strategy to compete and market itself successfully in the Asian market.
Question (I): Please provide us with details on the "pending final decision" on the double tax agreement between India and Hong Kong as referred to this question.	In the PFMA application, Denel has stated that there are discussions between India and Hong Kong with respect to a double tax agreement. Denel should provide clarity on whether the two parties have reached consensus with respect to this matter and the potential implications on the performance of the Joint Venture should the countries fail to reach consensus.

5. The detailed financial information is required to evaluate the impact that the proposed subsidiary could have on Denel given that it will need to be consolidated in the company's financial accounts. This is in line with the information requirements set out in the Practice Note on Applications under Section 54 of the PFMA by Public Entities which was shared with you during the meetings. As I highlighted, the Practice Note outlines the information to be included in Section 54 and Section 51 applications. Until all the required information has been submitted the National Treasury cannot properly assess the applications and make a decision.

6. I appreciate your commitment to collating and submitting the required information.

I trust that you find the above in order.

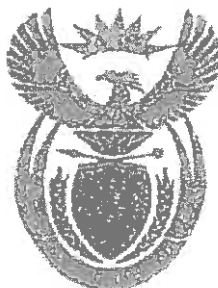

LUNGISA FUZILE
DIRECTOR-GENERAL

DATE: 26/4/2016

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**NATIONAL TREASURY
REPUBLIC OF SOUTH AFRICA**

Enquiries: Higgo Du Toit Ref: Tel: 315 5758 Fax: 323 1783
E-mail: higgo.dutoit@treasury.gov.za

**TO : ACCOUNTING OFFICERS OF ALL NATIONAL DEPARTMENTS;
: ACCOUNTING AUTHORITIES OF ALL PUBLIC ENTITIES; AND
: HEADS OF PROVINCIAL TREASURIES**

**PRACTICE NOTE ON APPLICATIONS UNDER SECTION 54 OF THE PUBLIC
FINANCE MANAGEMENT ACT NO.1 OF 1999 (AS AMENDED) ("PFMA") BY
PUBLIC ENTITIES**

1 BACKGROUND

In terms of section 54(2) of the PFMA, before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:

- (a) Establishment or participation in the establishment of a company;
- (b) Participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- (c) Acquisition or disposal of a significant shareholding in a company;
- (d) Acquisition or disposal of a significant asset;
- (e) Commencement or cessation of a significant business activity; and
- (f) A significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

In addition, section 51(1)(g) requires the Accounting Authority for a public entity to promptly inform the National Treasury on any new entity it intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment.

Furthermore, in terms of Treasury Regulation 28.3.1 of the PFMA, a public entity must develop and agree a significance framework with that entity's Executive Authority.

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C.F.

PRACTICE NOTE ON APPLICATIONS UNDER SECTION 54 OF THE PUBLIC FINANCE MANAGEMENT ACT NO.1 OF 1999 (AS AMENDED) ("PFMA") BY PUBLIC ENTITIES

NB This Practice Note is directed at approvals pertaining to section 54(2) and section 51(1)(g) of the PFMA only. Each public entity must still obtain all other legal approvals necessary, for example, the Companies Act and Exchange Control requirements, regulatory approvals, etc.

2 PURPOSE

This document seeks to provide guidance to public entities on the following:

- The development of the aforementioned significance framework;
- The information that should be submitted by an Accounting Authority to its Executive Authority in support of a section 54(2) application.

3 SIGNIFICANCE FRAMEWORK – GUIDING PRINCIPLES

3.1 Section 54(2)(a) [Establishment or participation in the establishment of a company]:

- 3.1.1 Any transaction of this nature that causes any interest (equity or loans) to be taken by the public entity in the company to be established, requires approval from the Executive Authority irrespective of its materiality or significance.
- 3.1.2 Concerning participation in the establishment of a company, where an interest (equity or loans) is to be taken by the public entity in the company to be established, any involvement by a particular public entity in the establishment process will necessitate an application for approval, regardless of the degree of involvement by that public entity.
- 3.1.3 Following from 3.1.1 and 3.1.2 above, where no interest (equity or loans) is to be had by the public entity in the company to be established, for example the public entity is only facilitating the formation on behalf of or with other parties in pursuance of a social objective, such participation need not necessitate an application.
- 3.1.4 It must be noted that the establishment (or participation in the establishment) by a public entity of any company that is domiciled outside the Republic of South Africa also falls under this subsection.
- 3.1.5 For purposes of establishment of an entity as envisaged under section 51(1)(g), the above principles will also apply.

3.2 Section 54(2)(b) [Participation in a significant partnership, trust, unincorporated joint venture or similar arrangement]:

- 3.2.1 Any transaction involving the above that entails incorporation under the Companies Act (or similar foreign legislation) should be dealt with under 3.1 above.
- 3.2.2 For transactions not entailing incorporation, significance is determined by a rand amount derived from the parameters outlined in 3.7 below.
- 3.2.2.1 However, participation in any partnership, trust, unincorporated joint venture or similar arrangement that is located outside the Republic of South Africa is to be regarded as significant, thus necessitating an application for approval, irrespective of the rand amount involved.

PRACTICE NOTE ON APPLICATIONS UNDER SECTION 54 OF THE PUBLIC FINANCE MANAGEMENT ACT NO.1 OF 1999 (AS AMENDED) ("PFMA") BY PUBLIC ENTITIES

3.2.3 For purposes of establishment of an entity as envisaged under section 51(1)(g), transactions not regarded as significant in terms of 3.2.2. and 3.2.2.1 above need not require an application.

3.3 Section 54(2)(c) [Acquisition or disposal of a significant shareholding in a company]:

3.3.1 Where any of the following occurs, the transaction is to be regarded as significant:

- 3.3.1.1** Where ownership control is affected; or
- 3.3.1.2** Where the public entity's right to pass or block a special resolution is affected; or
- 3.3.1.3** There is a change in shareholding of at least 20%; or
- 3.3.1.4** For an acquisition, any transaction that results in a shareholding of at least 20% in a company.

The Executive Authority is at liberty to specify a lower percentage on a case-by-case basis where it deems necessary, e.g. where the company concerned is domiciled in a foreign country.

3.4 Section 54(2)(d) [Acquisition or disposal of a significant asset]:

- 3.4.1** Although the acquisition or disposal of shares or of an interest in an unincorporated vehicle, as envisaged by sections 54(2)(b), (c) and (f), would also be an acquisition or disposal of an asset, such transactions are more appropriately dealt with under the guidelines for those subsections.
- 3.4.2** Assets classified as current assets according to generally accepted accounting practice need not be regarded as falling under this subsection.
- 3.4.3** The acquisition / disposal of all assets other than those referred to in 3.4.1 and 3.4.2 above should be regarded as significant if its rand value falls within the parameters outlined in 3.7 below.
- 3.4.4** Regarding the acquisition of assets through a finance lease, the principles in both 3.4.2 and 3.4.3 will apply.

3.5 Section 54(2)(e) [Commencement or cessation of a significant business activity]:

- 3.5.1** A business activity that falls within a public entity's core business need not be regarded as falling under this subsection.
- 3.5.2** A business activity that falls outside of a public entity's core business should be regarded as significant if its rand value falls within the parameters outlined in 3.7 below.

3.6 Section 54(2)(f) [A significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement]:

- 3.6.1** The significance of a change in interest as envisaged in this subsection, and thus the guidance per 3.6.2 to 3.6.4 below, should only be considered if the participation in the partnership, trust, unincorporated joint venture or similar arrangement was originally regarded as significant per 3.2 above.
- 3.6.2** Any change in interest the rand value of which exceeds the significance limits as determined per 3.7 below, should be regarded as significant.

PRACTICE NOTE ON APPLICATIONS UNDER SECTION 54 OF THE PUBLIC FINANCE MANAGEMENT ACT NO.1 OF 1999 (AS AMENDED) ("PFMA") BY PUBLIC ENTITIES

- 3.6.3** Where the nature changes between any of the vehicles (that is, between a partnership, trust, unincorporated joint venture or similar arrangement), this should be regarded as significant.
- 3.6.4** Any transaction that results in a cumulative interest of at least 20% in the vehicle (partnership, trust, unincorporated joint venture or similar arrangement) should be regarded as significant.
- 3.6.4.1** Any subsequent transaction that results in an increase of the cumulative interest by at least 10% in the vehicle (partnership, trust, unincorporated joint venture or similar arrangement) should be regarded as significant.

The Executive Authority is at liberty to specify a lower percentage on a case-by-case basis where it deems necessary, e.g. where the operations of the vehicle concerned is in a foreign country.

3.7 Guidance on setting the parameters for the rand value determination of significance for purposes of 3.2.2, 3.4.3, 3.5.2 and 3.6.2 above

It should be noted that in terms of Treasury Regulation 28.3.1, acceptable levels of significance must be agreed with the Executive Authority. In arriving at acceptable levels of significance, the guiding principles set out below should be applied.

- 3.7.1** The parameters are derived from the rand values of certain elements of the individual public entity's audited annual financial statements, as follows:

Element:	% range to be applied against R value
Total Assets	1% - 2%
Total Revenue	0,5% - 1%
Profit after tax	2% - 5%

The finalised rand amount to be applied for purposes of determining the significance threshold for each public entity will require sound judgment:

- The rand value of the above elements will differ from one public entity to the next;
 - The most appropriate % chosen within the range is also entity-specific;
 - The rand amounts calculated per element may require averaging in the interests of prudence;
 - Qualitative factors, for example, where the transaction is likely to result in large-scale retrenchments should also be taken into account.
- 3.7.2** The latest available audited financial statements should be used to calculate the above.
- 3.7.3** The elements as well as % range selected should be consistent from one year to the next.
- 3.7.4** The finalised rand amount should be reviewed at least annually.

Mercy Magadze

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From: Avril Halstead
Sent: 20 May 2016 09:23 AM
To: Mercy Magadze
Subject: FW: Denel's PFMA application: Denel Asia
Importance: High

From: Lungisa Fuzile
Sent: 11 May 2016 06:42 PM
To: odwam@denel.co.za
Cc: Avril Halstead; Anthony Julies; Ismail Momoniat
Subject: Denel's PFMA application: Denel Asia
Importance: High

Dear Odwa,

It is just about two weeks since our meeting. As I had incited at the meeting, I believe we have the ability to resolve most challenges including the one relating to Denel's application. In this regard, it is important to keep the channels of communication between our institutions open. Notwithstanding media reports to the contrary, National Treasury would still like to work with Denel to resolve this matter in a way that protects the reputation of both institutions and government as a whole.

Following on from the meetings of 15 and 19 April 2016 between National Treasury and Denel, Denel was requested to provide additional information with respect to the Section 51(1)(g) and Section 54 applications. Further information was provided to Denel on the additional information requirements in the letter dated 26 April 2016.

As indicated in the meetings, National Treasury is still committed to fast-tracking consideration of the application. Indeed, most of the information requested is standard in relation to applications of this kind. It is intended to enable the Treasury to evaluate the likely financial impact of the proposal. In addition to making sure that the proposed deal/structure is in full compliance with all relevant statutes and regulation, such an evaluation is even more important in the case of Denel given the guarantees government has extended to the company to enable it to maintain its going concern status.

It was our understanding that there was urgency on Denel's side to resolve this matter quickly. Moreover, given the media attention that this transaction is continuing to receive, there is a need to swiftly conclude on this matter.

Without the additional information being provided, the National Treasury will not be in a position to comprehensively assess all aspects of the application before reaching a decision. After checking with my colleagues on the progress since our last meeting I was somewhat perturbed to learn that we are not very far from where we

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were the last time we met. This left me very concerned. In the spirit of cooperation, I am following up to find out when we can anticipate receiving the information. Are there perhaps some unanticipated obstacles that have been encountered? If such exist please advise me so that I can assist with resolving them.

Yours

Lungisa Fuzile



LF 16



**MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA**

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PO Box 29, Cape Town, 8000, Tel: +27 21 464 6100, Fax: +27 21 461 2934

Ref. M4/1/4 (2335/15)

Mr LD Mantsha
Chairman of Denel
P O Box 8322
CENTURION
0046

Dear Mr Mantsha

FORMAL REQUEST FOR INFORMATION IN TERMS OF SECTION 54(1) OF THE PUBLIC FINANCE MANAGEMENT ACT WITH RESPECT TO THE FORMAL APPLICATION FOR APPROVAL IN TERMS OF SECTION 51(1)(g) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999 – PROPOSED ESTABLISHMENT OF DENEL ASIA

I refer to your correspondence dated 10 December 2015 regarding the above mentioned matter.

Notwithstanding media reports to the contrary, government would like to work with Denel to resolve this matter in a way that protects the reputation of both the institution and government as a whole. This is especially important at a time when the country is under such close scrutiny, inter alia by rating agencies. A downgrade in the sovereign credit rating would have negative repercussions for government's capacity to deliver on its objectives to promote growth, development and job creation.

I am informed that two meetings have taken place on 15 and 19 April 2016 between the Denel executives and the National Treasury officials in an effort to resolve issues pertaining to the application. At these meetings, Denel confirmed that Denel Asia was established on 29 January 2016. Denel explained its position stating that it has fully complied with all legislative requirements and that the transaction is valid. Denel indicated that it had assumed that approval had been granted with respect to the application in terms of Section 54(2) of the Public Finance Management Act (PFMA) following the expiry of the 30 day period, as provided for in Section 54(3) of the PFMA. With respect to the Section 51(1)(g) application, Denel indicated that the 30 day period specified under Section 54 had been taken as guide of the reasonable time to be afforded to the National Treasury in reaching its decision on the application in terms of Section 51.

However, the National Treasury officials advised the executives that they do not concur with Denel's interpretation of the relevant sections of the PFMA and hold the view that there was not compliance with its provisions.

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The application in terms of section 51(1)(g) and Section 54(2) of the PFMA is under consideration and no approvals have been granted.

The conditions attached in terms of Section 70(1) of the PFMA to the R1.85 billion guarantee that has been issued to Denel included a requirement that "Any transactions undertaken in terms of Section 54 of the PFMA are subject to approval of the Minister [of Finance] as well as the Minister of Public Enterprises". I have been advised that the conditions create a distinct legal obligation on Denel to obtain both Ministers' approval prior to entering into the types of transactions envisaged in Section 54(2) of the PFMA. Moreover, the deeming provision contained in Section 54(3) of the PFMA is not imported.

In terms of Section 51(1)(g) of the PFMA, the period that constitutes a reasonable time depends on the circumstances of each case, which in this case included, amongst others, the following:

- On 10 December 2015, a new Minister was appointed;
- By 13 December 2015, that Minister was replaced by another;
- As a result thereof, the markets were affected and the Minister and the National Treasury had to concentrate their efforts on restoring market confidence;
- The National Treasury closed during the Christmas and New Year period and its staff were on vacation; and
- January and February are the busiest months for the Minister and the National Treasury because of the budget preparations.

In light of the above, a reasonable period could not be assumed to be the 30-day period envisaged in Section 54 of the PFMA. Moreover, there is no assumption of deemed approval incorporated into Section 51 as is provided for in Section 54: a decision from the National Treasury is required prior to the formal establishment of a company. In any event, in the spirit of cooperating in mutual trust and good faith, Denel should have contacted the National Treasury to ascertain the status of its application rather than assume that approval was granted.

The National Treasury officials informed Denel that they would proceed with consideration of the application and that in the meanwhile, all operations of Denel Asia should be ceased pending the decision. Denel was requested to submit additional information which was specified in a letter dated 18 April 2016. On 26 April 2016, the National Treasury responded to Denel's request for further clarity. As no response had been received from Denel by 11 May 2016, the Director-General of the National Treasury wrote to the Denel Chief Financial Officer enquiring about the delay and offering his assistance in resolving any unanticipated obstacles. Despite these several requests, Denel has failed to provide the information requested.

The information request is standard in relation to applications of this nature and is aimed at enabling the National Treasury to comprehensively assess the application, including evaluating the financial impact of the proposal, assessing whether any risks might arise from the transaction and that appropriate mitigations are in place, and ensuring that there is full compliance with all relevant statutes and regulations. Such an evaluation is especially important in the case of Denel given the guarantees which government has extended to the company to enable maintain ensure of its going concern status. Several rating agencies

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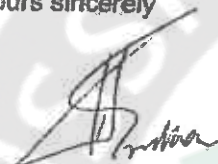
have highlighted government's contingent liability exposure to state owned companies as a risk for the sovereign credit rating.

I understand that the Denel executives underlined the importance of the Indian market for Denel's growth strategy and that there was urgency to re-enter the market in time to position the company for upcoming defense contracts. Moreover, given the negative media attention that this transaction is continuing to receive, there is a need to swiftly conclude this matter. The National Treasury is committed to fast-tracking consideration of the application but requires the additional information from Denel to complete a comprehensive assessment.

In view of the urgency of this matter and taking into account the time that has already elapsed, the National Treasury hereby formally requires, in terms of Section 54(1) of the PFMA, that the Board of Denel submits all the information that has been requested by no later than 31 May 2016. In the event that the Board fails to submit the information, the Board as the accounting authority of Denel, will be in breach of its duties under the PFMA and must report its inability together with its reasons for failing to comply by no later than 28 June 2016.

I trust that you will find the above in order.

Yours sincerely



PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 10-06-2016



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DENEL GROUP

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 Email: ZwelaKheN@denel.co.za
 Ref: Ltr/NT/28Jun16

28 June 2016

Mr Lungisa Fuzile
 Director General: NT
 Department of Finance
 Private Bag X115
 PRETORIA
 0001

Dear Mr Fuzile,

DENEL ASIA – INFORMATION REQUESTED BY NATIONAL TREASURY

Your letter dated 26 April 2016 has reference. We hereby request an extension to respond to the matters as raised in your letter to 4 July 2016. This will allow us to provide a more comprehensive response.

Your favourable response will be highly appreciated.

Yours faithfully

[Signature]
 Zwelakhe Ntshope
 ACTING GROUP CHIEF EXECUTIVE OFFICER

cc Mr Anthony Julles – DDG: Asset & Liability Management – NT

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 P O Box 6322, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
 Directors: Mr L D Mantsha (Chairman), Mr R Saloojee¹ (Group Chief Executive Officer), Ms M Kgomogoe, Mr T D Mahumapelo,
 Ms P M Mahlangu, Ms N Mandindl, Mr Z Mhlonko¹, Ms R Mokoena, Mr N J Motsedl, Mr T J Msomi, Lt Gen T M Nkabinde (retd),
 Ma K P S Ntshweni,
¹Executive Director
 Group Company Secretary: Ms E M Africa

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**national treasury**Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Mr Z Ntshepe
Acting Group Chief Executive Officer
Denel Group
PO Box 8322
Centurion
0046

Fax: 012 671 2944

Dear Mr Ntshepe

FORMAL REQUEST FOR INFORMATION IN TERMS OF SECTION 54(1) OF THE PUBLIC FINANCE MANAGEMENT ACT WITH RESPECT TO THE FORMAL APPLICATION FOR APPROVAL IN TERMS OF SECTION 51(1)(g) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999 - PROPOSED ESTABLISHMENT OF DENEL ASIA

Your letter of 28 June 2016 on the above mentioned matter has reference.

In the letter of 10 June 2016, the Minister of Finance had required, in terms of Section 54(1) of the Public Finance Management Act (PFMA), that Denel submit all the information that had been requested, failing which the Board would be in breach of its fiduciary duties.

Your request for an extension until 4 July 2016 to submit the required information, that had previously been requested by National Treasury, is approved.

I trust that you will find the above in order.

Yours sincerely


LUNGISA FUZILE
DIRECTOR-GENERAL
DATE: 27/6/2016

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DENEL GROUP

Tel: +27 12 6

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Email: ZwelekhheN@denel.com

Ref: Ltr/NT/Denel/VR Laser Asia/

14 July 2016

Mr Lungisa Fuzile
 Director-General
 National Treasury
 Private Bag X115
 PRETORIA
 0001

Dear Mr Fuzile,

JOINT VENTURE BETWEEN DENEL SOC LTD AND VR LASER ASIA

Your letters dated 18th and 26th April 2016 have reference.

We would like to draw your attention to the discussions previously held with you during the two meetings held with you and your team as well as all written communication to yours and the minister's office from both myself and our board chairman, wherein we made the fact that the establishment of DenelAsia was arrived at after duly following the relevant prescripts of the PFMA act.

Both your letters referred to above are requesting further information, purporting that such information will assist your office in evaluating Denel's application in terms of S51(g) and 54 of the PFMA towards a decision on whether to approve or not, the establishment of Denel Asia joint venture. I would like to put it on record that in Denel's view the approval process has been concluded as allowed for by the PFMA and thus provision of any information on the establishment of Denel Asia is purely for information purposes and not for any approval process.

Appendix A attached hereto provides additional information as requested in your letters.

Yours faithfully

Zwelekhhe Ntshepe
 GROUP CHIEF EXECUTIVE OFFICER (ACTING)

cc. Mr Mogokare Richard Seleke - Director General: Department of Public Enterprises
 Mr Odwa Mhlwana - Acting Group Chief Financial Officer: Denel

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 Ms N Mandindi, Mr Z Mhlontlo¹, Ms R Mokoena, Mr N J Motseki, Mr T J Msomi, Lt Gen T M Nkabinde (rd), Ms K P S Ntshavheni

¹Executive Director
 Group Company Secretary: Ms EM Africa

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APPENDIX A

	Response
Question (a)	The re-entry into the Indian market is not based on "verbal" notification but on a "note verbale" See Appendix B. The fact that Denel holds 51% equity on the joint venture allows for Denel governance policies which had been updated since our previous experiences in India, to be applicable to ensure that the associated risks are actively managed.
Question (b)	As a norm with establishment of international business partnerships, the process of identifying a suitable partner is not a procurement process. Example to this is the Joint venture we have in UAE, Tawazun was the only potential partner considered. In this particular joint venture, a few potential industrial partners were considered and due to the late start we had in the race, these players had already partnered with global Original Equipment Manufacturers in competition with Denel. These potential partners considered are Bharat Forge and Larsen and Turbo discussed in section 5.4 of the PFMA application submitted.
Question (c)	Section 5.5, 5.6, 6.1 and 6.2 of the PFMA application provides a complete answer to this question.
Question (d)	Denel Asia is a start-up company and therefore the shareholding structure is not based on any valuation but the to enforce Denel's governance processes and manage the risks identified during the due diligence process, it was non-negotiable that Denel holds at least 51% equity in the venture. The value add by VR Asia is the business development funding of the R100m, Industrial networks in the region as well as the links to the steel cutting, bending and fabrication capability.
Question (e)	<ul style="list-style-type: none"> Paragraph 16.2 of the "Subscription and Shareholders Agreement" is the written confirmation that there will be no recourse to Denel from VR Asia in respect of the loans to the Joint venture in the event of the JV being unsuccessful. Post 5 years, if the business is successful in securing contracts, will be funded through commercial banking lines. Amongst the Denel board's conditions in approving the venture was the fact that the venture cannot be funded out of Denel and engagements should be held with VR to fund the business even beyond the agreed R100m and beyond the 5 year period. Should the business be unsuccessful in securing contracts, the parties can agree to wind down the business.
Question (f)	Yes, the JV will have exclusive rights to market in the region
Question (g)	Refer to Appendix C
	V – The dividend policy is contained in paragraph 15 of the "Subscription and Shareholders Agreement"
Question (h)	<p>All prominent defence players particularly in India are either in direct competition or already partnered with international OEM's and thus already positioned to compete and thus not available to partner with Denel. VR Asia owners have very strong non-defence industrial links into India which can be leveraged to further partner with adjacent industries for in country transfer of technology and manufacturing.</p> <p>VR's networks are tabulated in section 6.2 of the "PFMA application"</p>
Question (i)	Worst case scenario being that the 2 countries do not reach consensus on the DTA, the JV partners would individually benefit through subcontracts from the selling JV to supply either complete products, semi or completely knocked down kits on which full margins would be made and accept that to remain competitive, the JV would remain without necessarily making profit on profits (from subcontracting)

	Response
Question (j)	The establishment of a JV of this nature follows a precedence set a number of times before thus with well-established models behind it. No product whose IP belongs to a third party would be exploited without the consent of such third party and certainly compensation for such exploitation of IP. All imminent opportunities are for products whose IP is 100% owned by Denel.
Question (k)	Alternative option is the clause already agreed to that Denel's shareholder representing the Government of RSA directs Denel to cease being a shareholder on reasons of national security or otherwise
Question (l)	Denel has assumed the effective control of the venture, allowing application of all Denel policies related operations and reputation. The governance framework applicable to Denel will also be applicable to the JV including the internal audit assurance function.
Question (m)	<p>The impact of this JV to the current corporate plan will be all positive.</p> <p>As previously stated the JV will not be funded from Denel thus poised to instead provide the ever needed cash resources to Denel in two approaches:</p> <ol style="list-style-type: none"> 1. Denel subcontracted to supply either complete products, SKD's or CKD's. 2. Profit share and dividends from the JV. <p>The projected cash flows and profitability are reflected in section 12.4 and 12.6 of the PFMA application</p>

APPENDIX B

No. 311/2014

The High Commission of India presents its compliments to the Department of International Relations and Cooperation of the Republic of South Africa and has the honour to convey that in the matter relating to request for mutual legal assistance in the matter of Denel (Pty) Ltd., the concerned authorities in India have treated the matter as closed. Accordingly, the request for assistance in this case stands withdrawn. High Commission of India wishes to convey its deep appreciation for the cooperation extended by the South African authorities.

The High Commission of India avails itself of this opportunity to renew to the Department of International Relations and Cooperation of the Republic of South Africa the assurances of its highest consideration.

Pretoria, 20



Department of International Relations and Cooperation
Government of the Republic of South Africa
Pretoria
[Attn: Mr. J. Young, Acting Director (South Asia)]

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APPENDIX C

NT INFORMATION REQUEST DENEL ASIA

ITEM 6(G) (I) AND (II) FINANCIAL PROJECTIONS, ASSUMPTIONS, CASH AND OPERATING COSTS

1. ASSUMPTIONS

- Sales are based on a probability matrix of the latest marketing intelligence (Annexure A). The opportunities listed come from market intelligence and studies done over the past 20 years during contract negotiations with various potential clients. The \$9.2bn opportunities has been tested and evaluated and \$5.9bn was regarded as a realistic number.
- Gross profit is projected at a level that is market competitive and realistic, based on competitor analyses and pricing proposals discussed with potential clients.
- Reasonable lead times assumed from order intake to sales dates based on past experience. This is required for the development of the large systems. The development cycle to completion is well known per product family within the group.
- Denel contribute the product and product knowledge. Denel has invested more than R500m on development and demonstrations over the past 20 years.
- The major value add on the contracts will be in the client's country to address offsets. The manufacturing of products will be done in the country where the contract is finalised.
- Joint Venture on a 51/49 shareholding (Denel 51%).
- The R100m investment from the Denel partner will fund the office operational cost for the first few years until sales pick up.
- The R100m investment will be a preferential and secured loan, which will be re-paid to the partner before any future profit sharing takes place.

2. FINANCIAL PROJECTIONS

Rm	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Sales	0	587	900	1,543	3,087	4,372	6,013	7,025	7,500
Gross Profit	0	117	180	309	617	874	1,203	1,405	1,500
Gross Profit %	0	20	20	20	20	20	20	20	20
Operational Cost	11	14	19	22	27	35	35	35	35
Labour	8	8	12	15	20	25	25	25	25
Marketing	3	4	4	4	4	5	5	5	5
Overheads	2	2	3	3	3	5	5	5	5
Additional Operating Cost to Cover Business Growth	50	46	54	55	127	184	266	318	340
Profit before Interest / Tax / Dividends	(61)	57	107	232	463	655	802	1,054	1,125

3. OPERATIONAL COSTS

This cost is based on foreign offices cost structures that are currently managed by Denel.

The annual operational costs consist mainly of salaries for the office personnel and will increase as more resources are needed to do project management and marketing.

The marketing costs would mainly be for travel and accommodation and direct marketing in the different countries where the opportunities lies.

The operational overheads will be to rent space and equipped the office with the necessary resources to operate effectively e.g. IT costs.

The additional operating costs would mainly be used to do big system demonstrations to the

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potential clients. Client country demonstrations typically cost between R10m to R20m. This is based on previous system demonstrations done in foreign countries.

4. CASH FLOW IMPACT

The first year cash shortfall would have to be financed from a one year short term loan at reasonable international rates, after this the business should be self-funded.

R'm	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Nett Operating Cash	(61)	57	107	232	463	655	902	1,054	1,125
Investment Capital	20	20	20	20	20				
Nett	(41)	77	127	252	483	655	902	1,054	1,125

ITEM 6(G) (III) NPV NET OF CAPITAL REQUIREMENTS

The joint venture company will facilitate the legitimate securing of contracts in the Asia-Pacific region. Denel Asia Management will adopt a risk sharing model which will entail Denel Asia entering into various joint venture companies in those primary and secondary target markets where the opportunities exists and subject to the local legislation in the different regions. In order to access opportunities in its primary target market, Denel Asia will partner with local industry partners initially contemplated in India but also in other primary and secondary target markets as required. It is therefore not envisaged that production and the resulting capital investment cost will be incurred in the Joint Venture. The expected cashflows net of investment is therefore projected as above.

ITEM 6(G) (IV) ACCOUNTING POLICIES AND INTELLECTUAL PROPERTY

The joint venture will be 51% owned by Denel and therefore subject to PFMA and Denel accounting policies.

No licence agreement has been finalised between the parties. Denel intends to be able to licence directly with the client where Denel Asia subcontracts Denel for transfer of technology. Alternatively Denel will enter into an agreement with Denel Asia that it will extend a licence agreement to Denel Asia to contract with the client directly if the client requires this. This is subject to client requirements and will be on a case by case basis. Denel will maintain full IP rights and will either licence to the client directly or to Denel Asia. There is to be no alienation of the IP to either Denel Asia or to the client.

5. In the PFMA application to DPE and Treasury, the following was indicated re INTELLECTUAL PROPERTY (IP) AND LICENCING:

"Technology transfer and protection of Denel's IP:

- (i) Denel will not alienate its Intellectual Property and technology transfer will be done by way of an applicable licencing agreement between relevant parties.
- (ii) Requisite approvals from Armscor and/or a third party will be obtained prior to licencing this IP.
- (iii) To the extent that royalties are payable to Armscor and/or any third party, Denel Asia will be required to effect such payment.
- (iv) Where Denel is the owner of the IP, there will be no royalty payable by Denel Asia as Denel is the technology partner bringing with it the technology to the joint venture... This is consistent with the Tawazun Dynamics joint venture model...
- (v) In instances where Denel cannot be subcontracted by Denel Asia for technology transfer to a local industry company in a specific jurisdiction, Denel Asia will instead be licenced with a right to extend such licence to an identified local industry company."

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DENEL GROUP

Date: 24 November 2018

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Fax: +27 12 671 2751

zwelakhe@denel.co.za

Mr Lungisa Fuzile
 Director-General
 National Treasury
 Private Bag X115
 Pretoria
 0001

Dear Mr Fuzile

DENEL ASIA JOINT VENTURE

The process relating to the establishment of Denel Asia has been a subject of lengthy deliberations which has now been agreed to be resolved between National Treasury and DPE.

Following the request from both DPE and NT that Denel must not trade through this joint venture until such time as consensus has been reached by the two departments, Denel has complied fully.

Denel Asia will remain dormant until such time the two Ministers have reached consensus and Denel received an instruction to proceed from DPE.

I trust that you will find this in order. Should you require any further information and/or clarification, please do not hesitate to contact me.

Yours faithfully

Mr Zwelakhe Ntshope
 Group CEO (Acting)
 Denel SOC Ltd

Denel SOC Ltd, Reg No 1982/001337/30, Nalimplus Drive, Irene
 P O Box 8322, Centurion, 0046, South Africa. Tel: +27 (0)12 671 2700, Fax: +27 (0)12 671 2751
 Directors: Mr L D Mentsha (Chairman), Mr R Saloojee (Group Chief Executive Officer), Ms M Kgomongos, Ms P M Mahlangu,
 Ms R Mokoena, Mr N J Motseki, Mr T J Msimi, Lt Gen T M Nkabinde (ret), Ms K P S Ntshavheni

¹Executive Director

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Ref. M3/4/2/2 (2945/12)

Mr MKN Gqaba, MP
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028

Dear Malusi

RE: DENEL'S REQUEST TO RENEW ITS R1.85 BILLION IN GUARANTEES FOR A 5 YEAR TERM

I refer to your letter dated 20 August 2012 regarding the above mentioned matter which was received by my office on the 17th September 2012.

I note Denel's R1.85 billion in guaranteed debt comprising of three separate guarantees (R420 million, R880 million and R550 million) is maturing on 28 September 2012 and that the entity is not in a financial position to settle this debt. However, I am concerned that after three consecutive years of renewing these guarantees there is still only partial compliance to the conditions. I am also disappointed in the delay in submitting this request given that several months ago, it was evident that the guarantee would need to be extended when it expired on 28 September 2012.

Denel's pursuit of export initiatives to augment declining local spend is satisfying; however rigorous oversight is required to ensure that these are executed timeously to deliver on the entity's turnaround plan. Furthermore, I am still concerned that there remains no plan for the possible unbundling of the Denel Aerostructures business.

Given that Denel has insufficient liquidity to settle the R1.85 billion guaranteed debt which would result in the entity defaulting under its commercial paper programme, Government support is required. I am therefore willing to concur to consolidate the three separate guarantees into one guarantee of R1.85 billion for a 5 year period ending on 30 September 2017. This strategy will create certainty for both Denel and investors by mitigating against default and refinance risk by taking advantage and locking into the current lower interest rates for a longer period.

Moreover, my support for the renewal of Denel's R1.850 billion guarantees is subject to the following conditions:

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1. National Treasury (NT) to approve the terms of the financing raised against the guarantee before any agreements are concluded;
2. Any transactions undertaken in terms of Section 54 of the Public Finance Management Act (PFMA) to be subject to approval of the Minister of Finance as well as the Minister of Public Enterprises;
3. Denel to indicate its strategy for returning the Group to a business that is able to break even without recapitalisation and demonstrate the method of gradually reducing its reliance on government support;
4. Denel to forward monthly progress reports on the turnaround strategy, deliverables in the implementation of the strategy to the Ministry of Finance, DPE, Department of Defence and Military Veterans (DoDaMV) and the Department of Trade Industry (DTI);
5. A monitoring committee chaired by DPE and comprising of NT, DoDaMV and DTI to be established to monitor progress on the turnaround of Denel and implementation of the strategy;
6. DPE to provide a plan which includes the option of ring fencing/disposing of the Denel Aerostructures as it is the only consistently loss making entity within the Group; and
7. Denel to provide its historical conversion rate in terms of its order pipeline from indicative into firm secure orders as well as the strategies it intends to implement to ensure that the corporate plan targets are met and the mitigation strategies should the desired conversion rates not be achieved.

I trust that you will find the above to be in order.

Kind regards



PRAVIN J GORDHAN
MINISTER OF FINANCE
Date: 26-04-2012

SE



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 20749/17

In the matter between:

DENEL SOC LTD

Applicant

and

MINISTER OF FINANCE

First Respondent

DEPARTMENT OF NATIONAL TREASURY

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

LEONA MLAULI

do hereby make an oath and state that:

1. I am an Analyst: Transport and Defence in the Asset and Liability Management Division in the Department of National Treasury, the second respondent herein ("National Treasury"). I am duly authorised to depose to this affidavit.

J.S.M.M. SE

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2. The facts to which I depose are, except where the context indicates otherwise or I expressly say so, within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the answering affidavit of the Director-General **LUNGISA FUZILE** and confirm the correctness thereof insofar as same refers or relates to me.



DEPONENT

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he/she knows and understands the contents of this affidavit, which affidavit was signed and sworn to at *Pretoria* on this the *10* day of *May*. 2017 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.




COMMISSIONER OF OATHS

Samuel Mphahlele
26 Uthmaniyah Square
Pretoria
011 551 5121

LSM

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LF24

Stephen Ralekwa

From: Thandeka Ncala
Sent: 05 May 2017 03:08 PM
To: Stephen Ralekwa
Subject: FW: Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO

From: Leona Dukada
Sent: 05 May 2017 03:06 PM
To: Thandeka Ncala
Subject: FW: Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO

From: Leona Dukada
Sent: 10 April 2017 04:08 PM
To: Mercy Magadze; Tsholofelo Marotholi
Cc: Ravesh Rajlal
Subject: FW: Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO

From: John Morris [<mailto:JohnM@denel.co.za>]
Sent: 20 March 2012 11:18 AM
To: Ravesh Rajlal
Cc: Faaiza Haffeejee; Leona Mlauli
Subject: RE: Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO

Hi Ravesh

We will revert to you urgently.

Regards

John

From: Ravesh Rajlal [<mailto:Ravesh.Rajlal@treasury.gov.za>]
Sent: 20 March 2012 08:23 AM
To: John Morris
Cc: Faaiza Haffeejee; Leona Mlauli
Subject: RE: Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO

Hi John,

Your urgent response in finalising this issue would be appreciated.

Kind regards,

Ravesh

From: Leona Mlauli
Sent: Monday, March 19, 2012 9:48 AM

402

To: JohnM@denel.co.za**Cc:** Ravesh Rajlal; Faaiza Haffjee**Subject:** Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO

Good day Sir,

I trust that you are well this morning.

We would like to find out from you, with regards to the Section 54(2)(a) & (c) and 51 (g) application for the establishment of the NEWCO, Denel does not indicate in what way the call or put option would be problematic as per your response from the consolidated issues document, won't you kindly help and expand what you meant by put and call options being problematic under the UAE law ?

Thanks,

Regards

Leona Misokuhle Mlauli

Chief Directorate: Sector Oversight

Asset and Liability Management

Tel: (012) 315 5519, Fax: (086) 655 5716, Cell: 076 505 2861

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**national treasury**

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

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PROUD HOST OF WORLD ECONOMIC
FORUM ON AFRICA 2017, DURBAN.

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LF 25

Stephen Ralekwa

From: Thandeka Ncala
Sent: 05 May 2017 03:08 PM
To: Stephen Ralekwa
Subject: FW: Denel's Section 54(2)(c) PFMA application: LMT

From: Leona Dukada
Sent: 05 May 2017 03:08 PM
To: Thandeka Ncala
Subject: FW: Denel's Section 54(2)(c) PFMA application: LMT

From: Leona Dukada
Sent: 10 April 2017 04:09 PM
To: Mercy Magadze; Tsholofelo Marotholi
Cc: Ravesh Rajlal
Subject: FW: Denel's Section 54(2)(c) PFMA application: LMT

From: John Morris [<mailto:JohnM@denel.co.za>]
Sent: 08 June 2012 04:51 PM
To: Leona Mlauli; Weekend Bangane
Subject: FW: Denel's Section 54(2)(c) PFMA application: LMT

Hi Leona

The answers to the questions below are as follows:

1. Pamodzi entered the business at the end of 2011 and has paid the R15m for the Preference Shares.
2. Should Denel have failed to obtain PFMA approval for the subscription of Preference Shares and the exercise of the Call Option by 30 April 2012, Pamodzi (SPV) would have had the right to repay Denel's R12,75m pre-payment through the subscription of LMT Preference Shares and to take over Denel's 51% Call Option. If SPV did not acquire Denel's interests as aforesaid, then Denel would have retained its Call Option until the initial expiry date which is in June 2013. Bear in mind that, despite this provision in the transaction agreements, it was essential for Denel to enter the business to gain control of LMT as a strategic supplier.
3. The current overdraft facility with Standard Bank is at R3,8m. Standard Bank does not want to increase the facility and intended to terminate the facility at the end of May 2012 - we had to ask them to extend the facility for a short while. The shareholders resolved on 31 May 2012 to extend a R15m loan to LMT through Denel's facilities with FNB. Pamodzi Investment Holdings issued a corporate guarantee to Denel to underwrite 29% of the facility (pro-rata to shareholding) and LMT existing shareholders (Mr Nel et al) issued indemnities to Denel for 20% (pro-rata to shareholding) of the facility.
4. The IDC has also finalised its due diligence on the R20m working capital facility for LMT and we are expect a decision from the IDC within the next few weeks

Please contact us should you require any further information.

Regards

LF

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John

From: Weekend Bangane [<mailto:Weekend.Bangane@dpe.gov.za>]
Sent: 07 June 2012 11:29 AM
To: John Morris
Subject: FW: Denel's Section 54(2)(c) PFMA application: LMT

Dear John

See the questions from Treasury.

Your assistance is highly sought.

Kind regards,

Weekend Bangane

ADDG: Denel & Alexkor, MANUFACTURING ENTERPRISES

+27 (0)83 327 4425 +27 (0)12 431 1127 +27 (0)12 342 7850 Weekend.Bangane@dpe.gov.za
 1090 Arcadia Street InfoTech Building Hatfield Pretoria Switchboard: +27 12 431 1000

**public enterprises**

Department
Public Enterprises
REPUBLIC OF SOUTH AFRICA



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From: Leona Mlauli [<mailto:Leona.Mlauli@treasury.gov.za>]

Sent: 07 June 2012 11:05 AM**To:** Weekend Bangane**Cc:** Mohlala Tabudi; Charmaine Yssel**Subject:** Denel's Section 54(2)(c) PFMA application

Dear Sir,

I trust that you are well.

I am currently finalizing a Memo to the Minister on the LMT acquisition, I just would like to quickly ask you to help me understand the following:

- Has Pamodzi finalized the investment yet?
- What happens if Denel doesn't exercise the call option?
- The condition number 6 from the approval letter that was sent by DPE to Denel, does it talk to the LMT Products debt to Standard Bank for a bank facility of R9600,000 that was signed on the 4th June? If yes how has the merger addressed this?

Thank you Sir,

Leona Misokuhle Mlauli
 Chief Directorate: Sector Oversight
 Asset and Liability Management

SE LF

Tel: (012) 315 5519, Fax: (086) 655 5716, Cell: 076 505 2861

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national treasury

Department:
National Treasury
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Stephen Ralekwa**Subject:**

FW: URGENT

From: Leona Dukada
Sent: 10 April 2017 04:09 PM
To: Mercy Magadze; Tsholofelo Marotholi
Cc: Ravesh Rajlal
Subject: FW: URGENT

From: John Morris [<mailto:JohnM@denel.co.za>]
Sent: 20 June 2012 03:06 PM
To: Leona Mlauli
Subject: RE: URGENT

Hi Leona, I have asked DLS to answer this. As explained on the phone, the 3 year period is not correct and was not included in the PFMA application.

Always happy to assist.

Regards

John

From: Leona Mlauli [<mailto:Leona.Mlauli@treasury.gov.za>]
Sent: 20 June 2012 02:40 PM
To: John Morris
Subject: URGENT
Importance: High

Good day Sir,

I trust that you are this afternoon.

Won't you kindly please confirm the statement below, I doubt its correct?? It can't be R280 million over three years?

1. Commercially, the manufacturer of the Hoefyster platforms by a DLS/LMT merger has been agreed in principle with Patria. The acquisition of LMT will generate additional business of approximately R1.5 billion with potential profits of R262 million under the Hoefyster production contract over a period of three years (2013 – 2015). Combined with a savings of R18 million on the cost of the turret structures, the result is an amount of R280 million profits on Hoefyster.

Thanks,

Leona Misokuhle Mlauli
 Chief Directorate: Sector Oversight
 Asset and Liability Management
 Tel: (012) 315 5519, Fax: (086) 655 5716, Cell: 076 505 2861

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OF

Pursuit of excellence in life will always, always yield to best achievements!!! – Author: Myself

SECTION 7



MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA: The FICA Act had to be amended.

MR LUNGISA FUZILE: Hm.

ADV VINCENT MALEKA: And we know it has been and ultimately the President signed and we know that the Financial Sector Regulation Act has been passed.

MR LUNGISA FUZILE: Hm.

ADV VINCENT MALEKA: And the Twin Peaks model is now in operation. So those issues were canvassed in detail and I wonder whether there is anything that is left for you to say in relation to the closure of the bank accounts.

10 **MR LUNGISA FUZILE:** No, nothing that is all.

ADV VINCENT MALEKA: Then we go to the second last issue which is the Denel VR Laser deal on page 65 and again I have to say to the Chairperson that this issue is going to become rust, become rust at detail or in detail by my colleague Ms Gcabashe who is busy with Denel, but just give us the highlights of your contribution on that deal, because you were part and parcel of the affidavit that was signed by National Treasury to oppose the application for Denel for a direct order that it has procured the relevant permission in terms of Section 54 of the PFMA.

MR LUNGISA FUZILE: Yes. I mean it, it has been covered in quite detail by I, Mr Gordhan did that and you are right. It will become back later on, but the one point I
20 just wanted to add on this was that I was astounded by the determination of the people involved to just proceed with a transaction without the requisite approvals and in the words Minister Gordhan their belligerence which was reflected as I remember in my case and the fact that they could issue even a very terse statement which was attacking him personally and the Treasury as a department or institution in response to a letter that never existed but, but what was even more striking about this was the fact that for

a very long time and I take this to be a reflection of the fragility of our system at the time most of the people, when I say most I mean perhaps an over generalisation, but people in Government for whom things like this ought to have mattered they did not seem to matter. It was left to be the Treasury/Minister Gordhan's problem with Denel. Whereas what we have at risk were the following two things. One, was the risk that the intellectual property which was borne out of investments made out of South African taxpayers money were going to be externalised or exported just easily like that. Secondly, it was the fact that in fact Denel had been propped up by Government through guarantees to the tune of about 1.8 billion and therefore needed to be using or

10 commercialising its intellectual property in a manner that would have enabled it to raise the money into service. It had to reduce the risk that those guarantees would be called and there they were willing to externalise very easily at, at excessively generous prices or contractual arrangements and doing so by the way without the requisite approvals.

ADV VINCENT MALEKA: As a matter of interest do you know what happened to that litigation after you filed your opposing affidavit?

MR LUNGISA FUZILE: Yes, I am told that Denel withdrew. They pulled back.

ADV VINCENT MALEKA: Okay and do you know the context why Denel which initiated the application suddenly went a change of heart and withdrew the application?

MR LUNGISA FUZILE: No, the honest truth is that I do not know, because I do not

20 know if they changed on the board and stuff preceded, but I do not know. I did not check that part.

ADV VINCENT MALEKA: Ms Gcabashe will deal with that. Finally your reflective conclusions about your resignation as the DG of Treasury and those are the painful reflective remarks you make and I would not be presumptuous. I would like you to deal with them.

Section 8





When they have to be paid, they are paid immediately on submission of invoice"; and

ee) Transnet spokesman Mboniso Sigonyela said Transnet awarded contracts to McKinsey and Regiments for various professional support services. "The contracts were awarded in line with Transnet's procurement policies and procedures for a period of between one and two years."

4.15. In light of the above mentioned article, I decided to investigate contracts awarded by Transnet to Regiments Capital and Trillian. The investigation into Transnet will however form part of the next phase of the investigation.

Allegations raised against Denel

4.16. Denel was established in 1991 and is a state-owned entity which specialises in arms and aerospace manufacturing. In 1992 the decision was taken to incorporate Denel under the portfolio of the Department of Public Enterprise.

4.17. According to Denel's website, *"Denel provides turn-key solutions of defence equipment to its clients by designing, developing, integrating and supporting artillery, munitions, missiles, aerostructures, aircraft maintenance, unmanned aerial vehicle systems and optical payloads based on high-end technology. Its defence capabilities date back more than 70 years when some of Denel's first manufacturing plants were established."*

4.18. Denel has over the years entered into numerous co-operation agreements, joint ventures and equity partnerships which enable Denel to be a leading manufacturer within the aeronautical and arms manufacturing industry as well as a key supplier to the South African National Defence Force.



- 4.19. Denel has 12 main divisions under which it conducts its various business activities. According to Denel's integrated company report 2015/2016, they rank among the world's top 100 global defence manufacturers. This makes Denel one of the key State Owned Entities, which need to be managed effectively and efficiently in order to promote growth within the South African economy.
- 4.20. With regards to allegations raised against Denel, I noted an article in the Mail and Guardian styled *"Guptas conquer state arms firm Denel"* dated 5 February 2016. The article raised the following allegations against Denel:
- a) *"The Guptas have done it again – this time by teaming up with state-owned arms manufacturer Denel to profit from the sale of its products in the East"*
 - b) *Denel announced the formation of joint venture company Denel Asia last week but did not identify the controversial family as shareholders by name;*
 - c) *The family's latest success in appropriating state opportunity comes amid a revolt in the ruling alliance about their influence in high places;*
 - d) *Following the ANC executive's annual lekgotla last week, party secretary general Gwede Mantashe reportedly said that a "warning came out very strongly" against the "capture" of state-owned enterprises by "people outside the state";*
 - e) *Recent controversies include the acquisition of Optimum Coal, an Eskom supplier, by a Gupta company. Optimum's owner, Glencore, agreed to sell after the power utility squeezed Optimum financially and Mineral Resources Minister Mosebenzi Zwane visited Glencore's Swiss headquarters at the same time as a Gupta delegation;*



- f) *Eskom has denied it influenced the sale, saying a R2.5-billion fine it imposed on Optimum for poor quality coal was provided for in their contract. Zwane's spokesperson has said the minister's visit to Switzerland was according to his policy of engaging with stakeholders and to avoid job losses;*
- g) *There are similar claims, though, of unfair play paving the way to the Denel deal – in this instance over the bodies of officials who might have opposed it;*
- h) *The joint venture was concluded in the absence of Denel's permanent chief executive, chief financial officer and company secretary, all three of whom are on suspension;*
- i) *Several sources sympathetic to the three have indicated that there is a strong suspicion they were removed to clear the way for the deal. Denel says they were suspended for their roles in an unrelated matter;*
- j) *Announcing the joint venture, Denel said in a press release last week Thursday that Denel Asia, headquartered in Hong Kong, would help Denel "find new markets for our world-class products, especially in the fields of artillery, armoured vehicles, missiles and unmanned aerial vehicles";*
- k) *Denel Asia would "focus its marketing attention on countries such as India, Singapore, Cambodia, Indonesia, Pakistan, Vietnam and the Philippines who have all announced their intentions to embark on major new defence acquisitions";*
- l) *Denel's joint venture partner in the company was identified as "VR Laser, a company with 20 years extensive experience [in] defence and technology in South Africa". Denel also said that VR Laser had "a good understanding" of the target "markets and opportunities";*



- m) *Denel did not answer amaBhungane questions this week about Denel Asia's ownership breakdown. But Hong Kong corporate records show that it was founded on January 29 with Denel holding 51% and VR Laser Asia 49%;*
- n) *VR Laser Asia was registered in Hong Kong after the Gupta family and associates acquired VR Laser Services, a Boksburg engineering firm, two years ago – another deal that attracted controversy (see "VR Laser and the Guptas" below);*
- o) *VR Laser Services specializes in steel cutting and processing. Its only apparent exposure to the defence industry is as supplier of components such as armour plate and armoured vehicle hulls. And although the Guptas themselves have done business in at least India and Singapore, VR Laser Services' own footprint is local;*
- p) *Denel did not answer amaBhungane questions probing the value of VR Laser's contribution and the possibility that the Guptas would profit from Denel sales without contributing to them. The questions included:*
- i. *What value would VR Laser bring to the joint venture given its apparently limited experience in defence marketing and limited exposure to the Denel product range, which extends well beyond armoured vehicles?; and*
 - ii. *Would Denel Asia have the exclusive right to market Denel products in the target countries or would Denel and its other subsidiaries also have the right to market there?*
- q) *Momentum for the joint venture appears to have built after Public Enterprises Minister Lynne Brown appointed a new Denel board in late July. She retained*



only one member of the outgoing board, Johannes "Sparks" Motseki, "for purposes of continuity";

- r) Motseki, a former treasurer of the Umkhonto weSizwe Military Veterans Association, is a Gupta business partner. A company of which he is the sole director was allocated 1.3% in a Gupta-led consortium that bought a uranium mining company now named Shiva Uranium in 2010;*
- s) These shares, if Motseki still has them, would now be worth about R80-million based on the claimed net asset value of Oakbay Resources and Energy, Shiva's listed parent;*
- t) Denel did not answer directly whether Motseki had recused himself from making decisions about the joint venture, but said: "Mr J Motseki has fiduciary duty to act in the best interest of Denel and has never influenced Denel to do business with any persons that he knows in whatever capacity.";*
- u) Among the new board's first acts, in September, was to suspend Denel chief executive Riaz Saloojee, chief financial officer Fikile Mhlontlo and company secretary Elizabeth Africa. No formal reasons were given at the time;*
- v) Denel this week said Saloojee and Mhlontlo were "suspended in respect [of] their roles in the acquisition of LSSA [Land Systems South Africa] by Denel, where Denel paid R855-million, of which Denel business was negatively affected. The disciplinary process is under way.";*
- w) Denel bought LSSA, an armoured vehicle manufacturer, from arms multinational BAE Systems before the new board's appointment;*



- x) *There are questions, however, about the strength of the charges against the officials. One legal and one other source acquainted with the matter this week said disciplinary hearings have not commenced but that an informal mediation process was about to start;*
- y) *The three officials said they were precluded from commenting. Their attorney, Zarina Walele, also declined comment;*
- z) *Gupta family spokesman Gary Naidoo failed to respond to questions by the time of going to press. VR Laser chief executive Pieter van der Merwe did not return calls or respond to questions emailed both to the firm and to Naidoo for VR Laser's attention;*
- aa) *VR Laser Services first came to wider public attention in July 2014 in an amaBhungane story headlined: "[Transnet tender boss's R50-billion double game](#)";*
- bb) *The story outlined how a friend of the Guptas, Iqbal Sharma, had obtained an interest in the company while it was in pole position to benefit from subcontracts in Transnet's R50-billion tender for locomotives. At the same time, he was chairing the Transnet committee that oversaw the tender process;*
- cc) *Sharma denied any conflict of interest and took amaBhungane to the press ombudsman, but his complaint was dismissed;*
- dd) *At the time, a key part of the story was that the Guptas' interest in VR Laser was not initially disclosed. Westdawn Investments, a Gupta contract mining company, better known as JIC Mining Services, took a 25% stake in VR Laser Services, and Salim Essa, another Gupta business associate, took*



75%. Duduzane Zuma, the president's son, also acquired a stake through Westdawn. Sharma's stake was by ownership of VR Laser's premises;

- ee) Since then, the Gupta family's control of VR Laser has become clearer. Corporate records show that VR Laser is registered to the same Grayston, Sandton, office park where other Gupta businesses are based. VR Laser's only three directors are Essa, Pushpaveni Govender, who is also a director of other Gupta companies, and Kamal Singhala, a 25-year-old nephew of the Guptas who gives his address as the family's Saxonwold compound;
- ff) Denel launched its Gupta joint venture, Denel Asia, without approval from the finance and public enterprises ministers as required;
- gg) Public Enterprises Minister Lynne Brown's spokesperson, Colin Cruywagen, said on Thursday: "Minister Brown gave pre-approval with strict conditions that included a viability study and a due diligence on the transaction. There are still other conditions to be met before final approval can be granted";
- hh) Pressed whether the minister, who represents the government as Denel's only shareholder, was concerned about the launch of the deal, Cruywagen would only say: "Interactions between the minister and the board are confidential. For questions about operational matters of Denel, I refer you to Denel and the board"; and
- ii) The treasury's spokesperson, Phumza Macanda, said Denel's application seeking Finance Minister Pravin Gordhan's approval had been received but the treasury "is still processing it". She said Denel required both ministers' approval under the Public Finance Management Act as "it is a significant transaction" for Denel and in line with government guarantee conditions.



Denel did not respond to urgent questions on Thursday whether it and its board exceeded their authority".

- 4.21. I have decided to investigate contracts concluded between Denel and VR Laser Services as referenced in the above media article. The investigation into Denel will however form part of the next phase of the investigation.

Allegations raised against SAA

- 4.22. SAA is South Africa's largest airline and the national flag carrier. SAA operates and owns the lost cost airline **Mango**.
- 4.23. SAA has been the subject of extensive scrutiny, particularly relating to the numerous losses which the airlines has suffered over recent years.
- 4.24. I noted the following allegations regarding SAA in the media:
- a) Fin24 reported that SAA had spent R9.4m on purchasing about six million copies of the New Age newspaper, which is owned by the Gupta family;
 - b) Finance Minister Nhlanhla Nene replied to a parliamentary question posed by the DA that since March 2011, SAA purchased 5 927 000 copies of The New Age that were supplied to domestic on-board flights, lounges and airports;
 - c) The newspaper was in circulation for just three months before SAA started buying the New Age and its circulation figures are not audited by the Audit Bureau of Circulations;
 - d) Natasha Mazzone, DA shadow minister of Public Enterprises, wants Brown to investigate whether President Jacob Zuma had any influence on the