AFFIDAVIT

OF

ANGELO AGRIZZI

ANNEXURE & EXHIBITS

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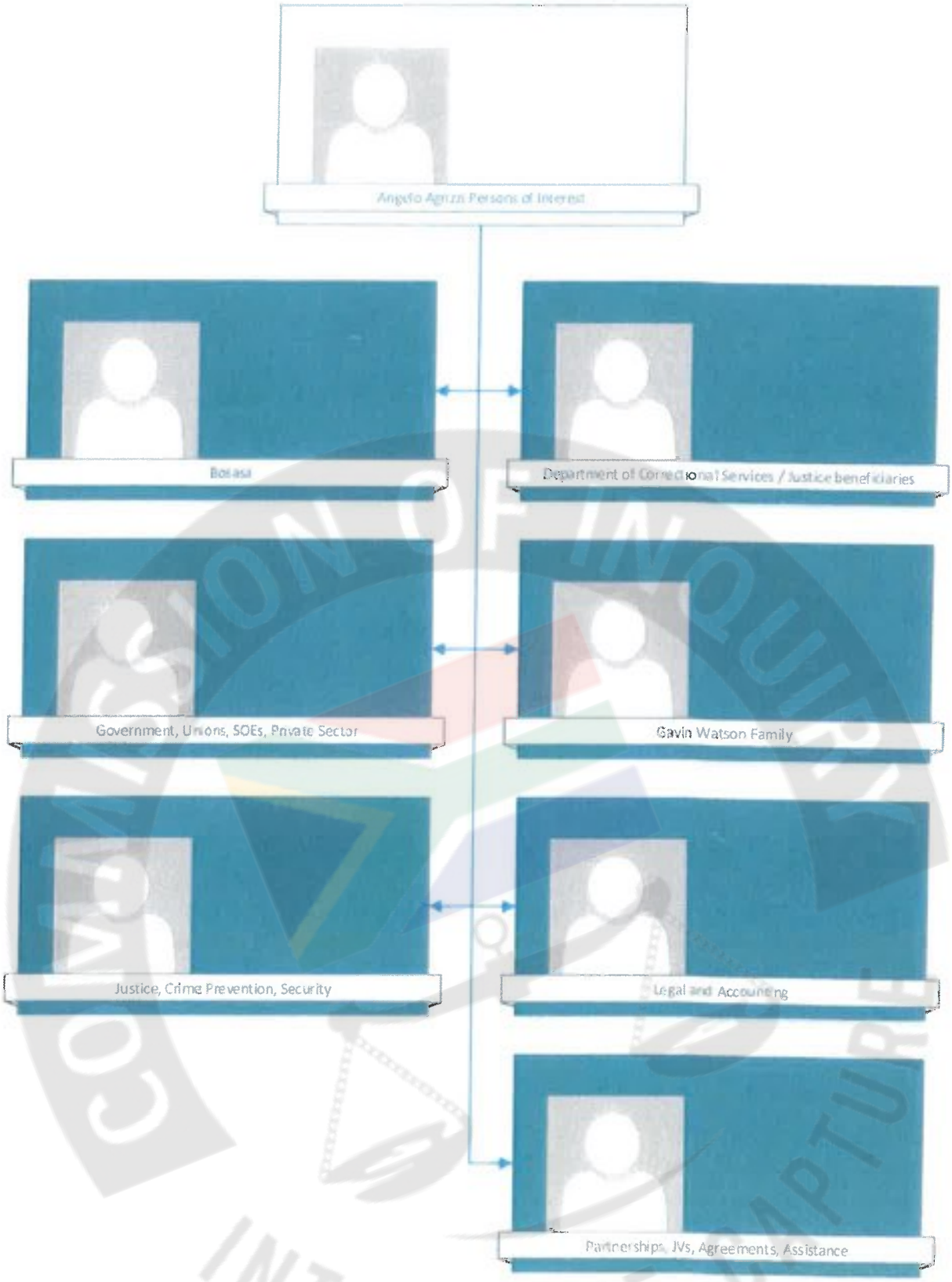
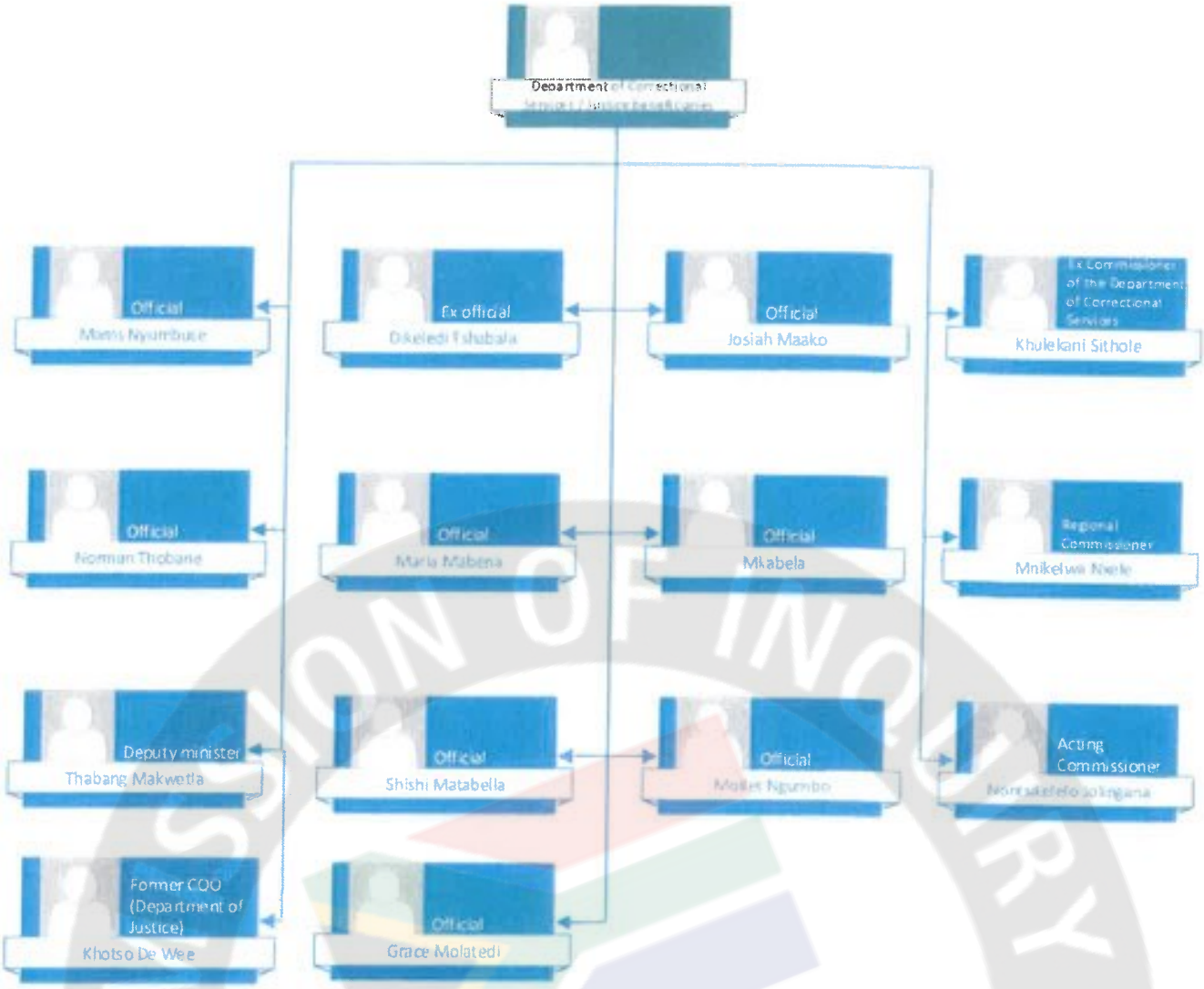
"A"

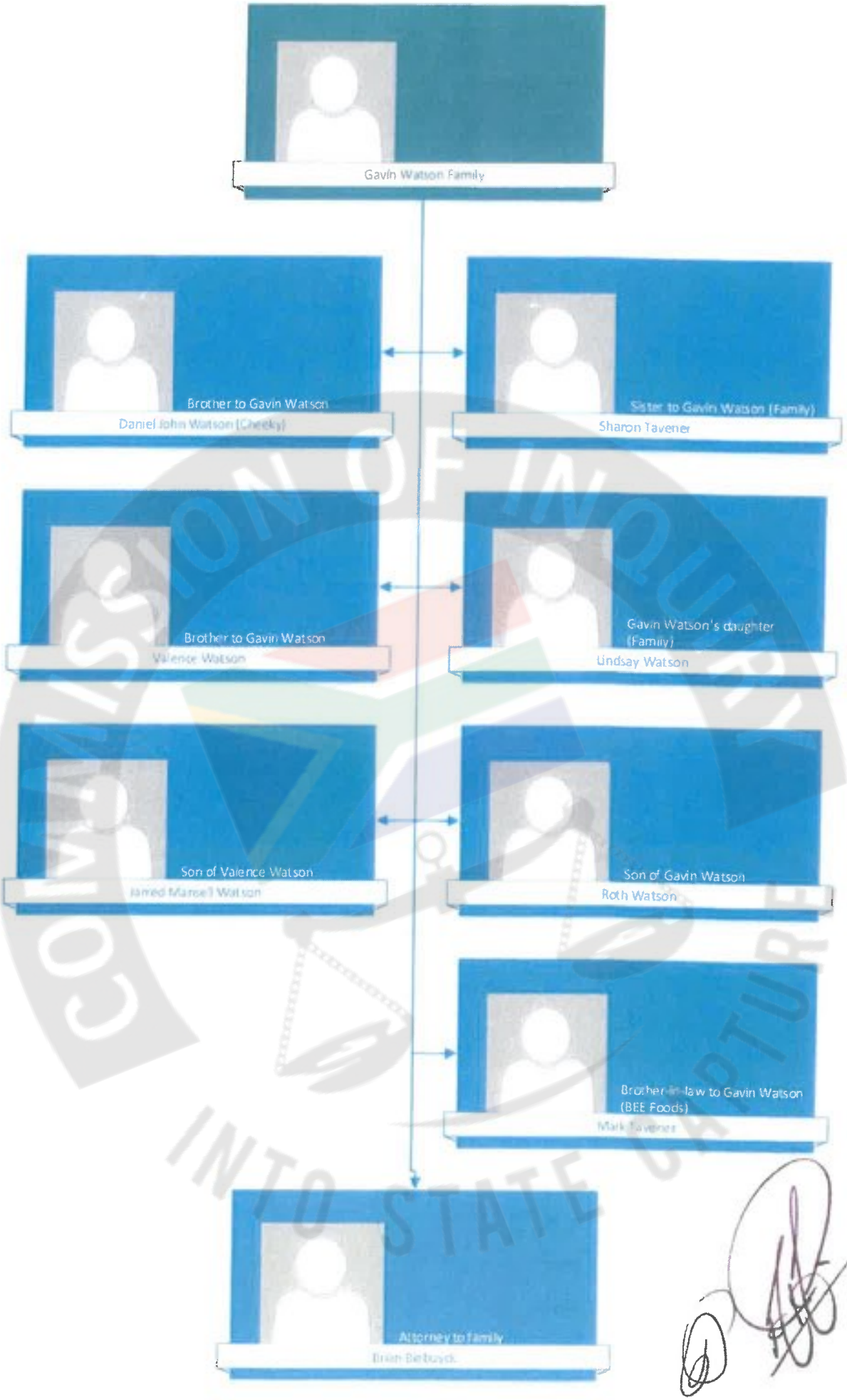
Annexure "A"

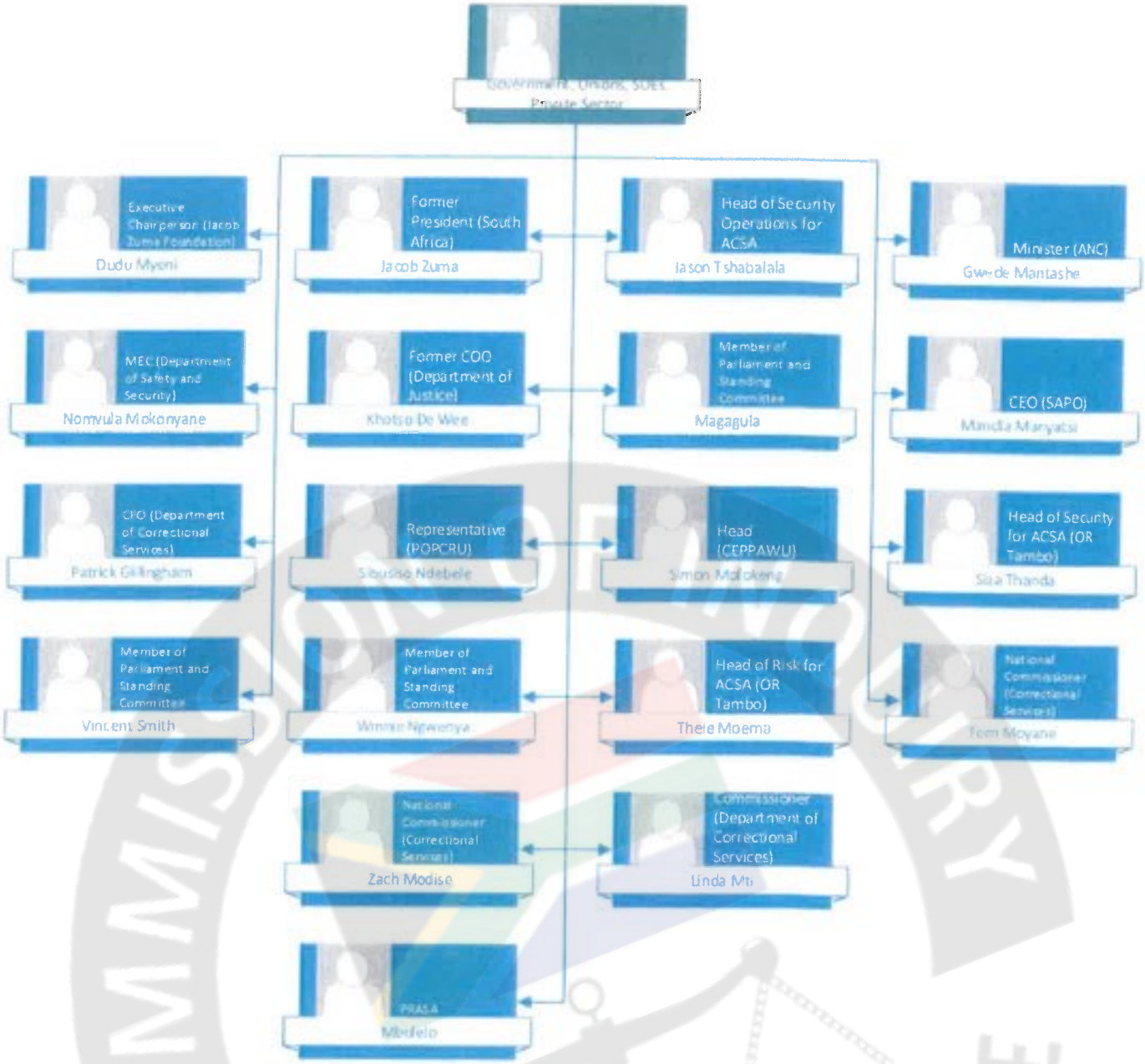

Angelo Agrizzi Persons of Interest
Borasa
Department of Correctional Services / Justice beneficiaries
Government, Unions, SOEs, Private Sector
Gavin Watson Family
Justice, Crime Prevention, Security
Legal and Accounting
Partnerships, JVs, Agreements, Assistance

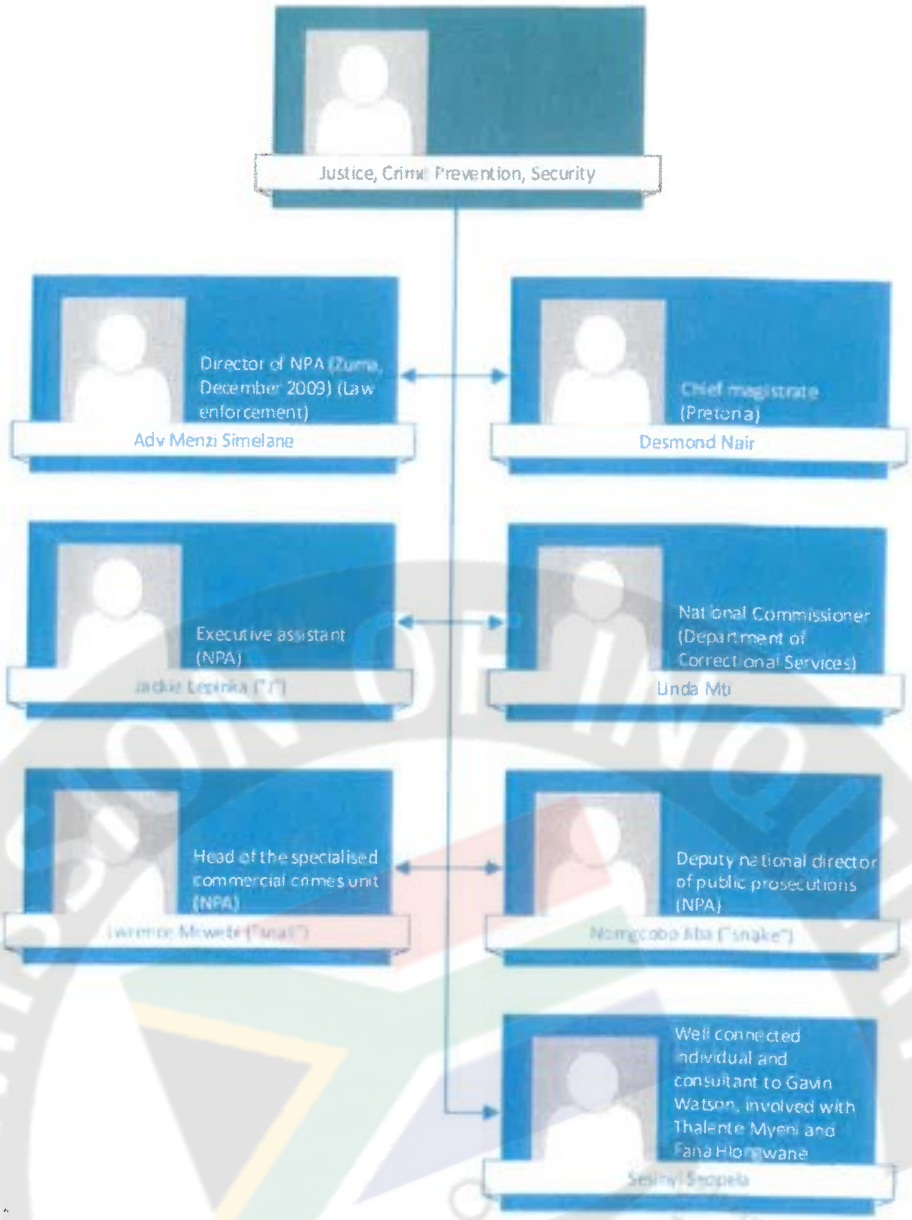
AA-109

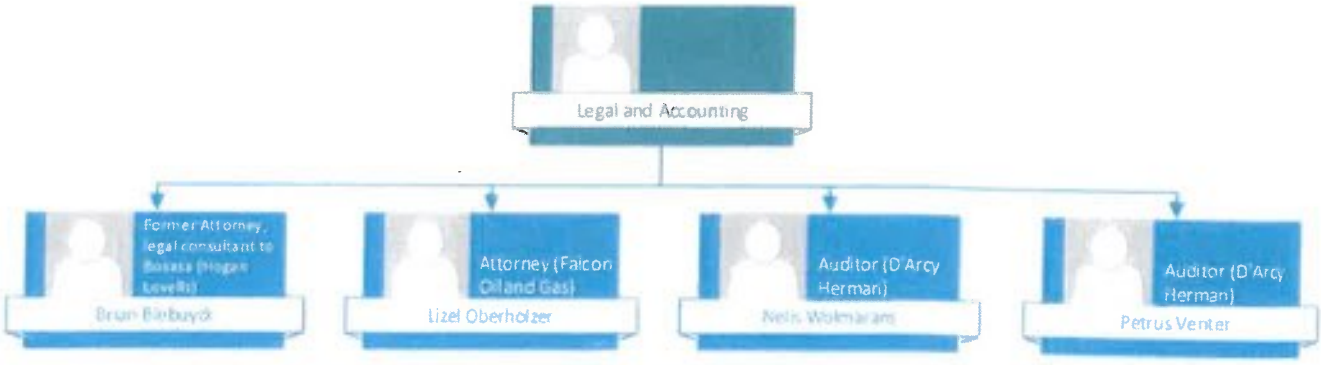

CEO and shareholder (Bosasa)
Gavin Watson
Co-founder, former MD & shareholder (Bosasa)
Danny Mansell
Chairperson, Youth Development Centres (Bosasa)
Nomazulu Thandi Maloko
Former Company Secretary (Bosasa)
Tony Perry
Accountant (Bosasa)
Rika Hundermark
IT specialist (Bosasa)
Gavin Hundermark
Accountant (Bosasa)
Jacques van Zyl
Director and shareholder, St Albans prison (Bosasa)
Carol Munirah Oliveria
CFO (Bosasa)
Andries van Tonder
Former IT (Bosasa)
Leon van Tonder
Director, Youth Development Centres (Bosasa)
Syvion Dlamini
Director of Catering for Correctional Services (Bosasa)
Ishmael Dikane
Former Head of Accounts, moved to Radcor (Bosasa)
Carlos Bonifacio
Former IT (Bosasa)
Max Leeson
Managing director, Sondolo IT (Bosasa)
Trevor Mathenjwa
Director, Youth Development Centres (Bosasa)
Jackie Leyds
Accountant (Bosasa)
Carlen Daubert
Former national operations co-ordinator, Sondolo IT (Bosasa)
Retief van der Merwe
Executive Chairperson and Executive Director of security (Bosasa)
Joe Gumede
Former Employee (Bosasa)
Johnson Vovo
Ex COO (Bosasa)
Angelo Agizzi
Former IT (Bosasa)
William Brandon
Executive director Kgwerano, Group spokesperson (Bosasa)
Papa Leshabane
Company Secretary (Bosasa)
Natasha Olivier
Logistics manager (Bosasa)
Frans Vorster
Regional technical coordinator, Sondolo IT (Bosasa)
Richard Le Roux
Pensioner, brother-in-law to Gavin Watson (Bosasa)
Mark Tavares
Former employee executive chef (Bosasa)
Allister Esau
Maintenance and Technical (Bosasa)
Former employee, current unit leader Seal (Bosasa)
Sydney Manthatha




Gavin Watson Family
Brother to Gavin Watson
Daniel John Watson (Cheeky)
Sister to Gavin Watson (Family)
Sharon Tavener
Brother to Gavin Watson
Valence Watson
Gavin Watson's daughter (Family)
Lindsay Watson
Son of Valence Watson
Jared Marsell Watson
Son of Gavin Watson
Roth Watson
Brother-in-law to Gavin Watson (BEE Foods)
Mark Tavener
Attorney to family
Brian Bielbusch







"B"

Annexure "B"

EXECUTION VERSION

SETTLEMENT AGREEMENT

between

BOSASA OPERATIONS PROPRIETARY LIMITED

and

CONSILIUM BUSINESS CONSULTANTS PROPRIETARY LIMITED

and

DANIEL JOHN WATSON

and

GAVIN JOSEPH WATSON

and

ANGELO AGRIZZI

Hogan Lovells

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1 **PARTIES**

1.1 The Parties to this Agreement are

(a) Bosasa Operations Proprietary Limited

(b) Consilium Business Consultants Proprietary Limited

(c) Daniel John Watson

(d) Gavin Joseph Watson and

(e) Angelo Agrizzi.

1.2 The Parties agree as set out below

2 **INTERPRETATION**

In this Agreement clause headings are for convenience and shall not be used in its interpretation and unless the context clearly indicates a contrary intention

2.1 an expression which denotes

(a) any gender includes the other genders

(b) a natural person includes an artificial or juristic person and vice versa and

(c) the singular includes the plural and *vice versa*

2.2 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings

"**Agreement**" means this settlement agreement and any schedules hereto as amended from time to time

"**Agrizzi**" means Angelo Agrizzi Identity Number 671203 5468 055

"**Bosasa**" means Bosasa Operations Proprietary Limited Registration Number 1981/012426/07 a private company incorporated in accordance with the laws of the RSA

"**Business Day**" means any day other than a Saturday Sunday or official public holiday in the RSA

"**Business**" means any business undertaking or service conducted by any of the Interested Parties from time to time

"**Confidential Information**" means any and all information of and relating to the Interested Parties that is reasonably regarded as confidential being information not in the public domain whether such information is oral or written recorded or stored by electronic magnetic electro-magnetic or other form or process or otherwise in a machine readable form translated from the original form recompiled made into a compilation wholly or partially copied modified updated or otherwise altered or originated or obtained by or coming into possession custody control or knowledge of the Interested Parties or their agents including but without being limited to all inventions technical data software source code research and development information records information and notes products know-how trade secrets designs specifications processes and formulae planning procedures techniques or information marketing plans strategies and

forecasts product development plans financial statements budgets prices costs and financial projections accounting procedures or financial information names and details of consumers clients and agents employee details software developers and consultants and like information and any other matters which relate to the business of the Interested Parties and in respect of which information is not readily available to third parties

"**Consilium**" means Consilium Business Consultants Proprietary Limited Registration Number 2005/042407/07 a private company incorporated in accordance with the laws of the RSA

"**Daniel**" means Daniel John Watson Identity Number 541210 5025 084

"**Effective Date**" means the Signature Date

"**Gavin**" means Gavin Joseph Watson Identity Number 480712 5182 083

"**Intellovate**" means Intellovate Upcast Rod Proprietary Limited Registration Number 2015/333883/07 a private company incorporated in accordance with the laws of the RSA

"**Interested Parties**" means Bosasa Consilium Daniel and Gavin and "**Interested Party**" shall mean either of them as the context may require

"**Lamozest**" means Lamozest Proprietary Limited Registration Number 2012/128412/07 a private company incorporated in accordance with the laws of the RSA

"**Parties**" means Bosasa Consilium Daniel Gavin and Agrizzi and "**Party**" shall mean either of them as the context may require

"**Rand**" or "**R**" means Rand the official currency of the RSA

"**Restraint Period**" means a period of 10 (ten) years from the day on which Agrizzi ceases to be employed by either Bosasa or Consilium

"**Restricted Business**" means any business undertaking or service other than those which are directly or indirectly controlled or undertaken by any of the Interested Parties and which is similar or related to the Business in any way

"**Restricted Clients**" means those clients that placed business with any of the Interested Parties during a period of 24 (twenty four) months prior to the day on which Agrizzi ceases to be employed by either Bosasa or Consilium

"**RSA**" means the Republic of South Africa

"**Signature Date**" means the date of signature of this Agreement by the last Party to do so and

"**Term**" means the term of this Agreement as set out in clause 4

2.3 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on a Party then notwithstanding that it is only in a definition effect shall be given to that provision as if it were a substantive provision in the body of this Agreement

2.4 any reference to any statute regulation or other legislation shall be a reference to that statute regulation or other legislation as at the Signature Date and as amended or substituted from time to time

2.5 if any term is defined within the context of any particular clause in this Agreement 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 Agreement notwithstanding that that term has not been defined in this clause 2

2.6 where any number of days is to be calculated from a particular day such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day

2.7 any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years as the case may be

2.8 expressions defined in this Agreement shall bear the same meanings in the schedules to this Agreement which do not themselves contain their own conflicting definitions

2.9 the use of any expression in this Agreement covering a process available under RSA law such as winding up (without limitation *eiusdem generis*) shall, if any of the Parties is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such aforesaid jurisdiction

2.10 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement that expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this

2.11 any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and if such Party is liquidated or sequestrated or placed under business rescue in terms of Chapter 6 of the Companies Act 71 of 2008 be applicable also to and binding upon that Party's liquidator, trustee or business rescue practitioner as the case may be

2.12 any reference in this Agreement 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

2.13 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 words; and

2.14 the terms of this Agreement having been negotiated, the *contra proferentem* rule shall not be applied in the interpretation of this Agreement

3 **BACKGROUND**

3.1 Agrizzi is currently employed by Bosasa and Consilium and is a close business associate of Daniel and Gavin

3.2 Pursuant to a dispute which arose between Agrizzi and Gavin, agreement has been reached, with the assistance of Daniel, in respect of Agrizzi's continued employment by Bosasa and Consilium

3.3 The Parties accordingly agree as set out below

4 DURATION AND TERMINATION

4.1 This Agreement shall commence on the Effective Date and shall, subject to the remainder of this clause 4, terminate on the day on which Agrizzi ceases to be employed by either Bosasa or Consilium ("**Term**").

4.2 The termination of this agreement for any reason whatsoever shall not affect the operation of any provisions of this Agreement to the extent to which they confer rights or impose obligations upon the Parties which are exercisable or enforceable after the date of termination hereof, and such provisions shall, to that extent, continue to be of full force and effect. The termination of this Agreement shall furthermore, subject to the provisions of this Agreement, not prejudice any rights which may have accrued to the Parties as at the said date of termination.

5 SETTLEMENT

5.1 In consideration for Agrizzi's agreeing

(a) to remain employed by Bosasa and Consilium; and

(b) to be bound by the terms and conditions contemplated in this Agreement

an amount equal to R10 000 000 (ten million Rand) shall be payable by Bosasa to Agrizzi ("**Settlement Amount**").

5.2 The Settlement Amount shall be payable on or before 26 August 2016 by electronic funds transfer, free of any deductions or set-off whatsoever, into a South African bank account nominated by Agrizzi in writing.

6 AMENDMENT OF EMPLOYMENT TERMS

Save for the amendments contemplated in this Agreement, Agrizzi shall continue to be employed by Bosasa and Consilium on the same terms and subject to the same conditions as those which applied prior to the Effective Date.

7 ANNUAL SERVICE BONUS

An annual service bonus equal to an amount of R5 000 000 (five million Rand) shall be paid to Agrizzi in respect of each year or part thereof that Agrizzi remains employed by Bosasa and Consilium. Payment of the service bonus shall be made in equal shares by Bosasa and Consilium on 15 December of each year commencing on 15 December 2016.

8 COST TO COMPANY

Agrizzi's total cost of employment to company shall be R500 000 (five hundred thousand Rand) per month, payable by Bosasa and Consilium in equal shares.

9 SHARE INCENTIVE SCHEME

The Parties shall use their respective best endeavours and co-operate in good faith to procure that, prior to 30 September 2016 or such later date as the Parties may agree to in writing, a non-contributory share incentive scheme in terms of which Agrizzi will be provided with shares in Intellovate and Lamozest is established.

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10. TERMINATION OF AGRIZZI'S EMPLOYMENT

10.1 Given the nature of the relationship between Agrizzi and the Interested Parties, Agrizzi shall not be entitled to summarily terminate his employment with either Bosasa or Consilium.

10.2 If any dispute arises out of or in connection with Agrizzi's employment with either Bosasa or Consilium or if Agrizzi wishes to terminate his employment with either Bosasa or Consilium (collectively referred to as the "**Dispute**") then the Parties shall follow the procedure set out below:

(a) Agrizzi shall give to Gavin written notice of the Dispute setting out its nature and full particulars ("**Dispute Notice**") together with any relevant supporting documents. On service of the Dispute Notice, Agrizzi and Gavin shall attempt in good faith to resolve the Dispute.

(b) If Agrizzi and Gavin are for any reason unable to resolve the Dispute within 10 Business Days of service of the Dispute Notice, then Agrizzi shall be entitled to terminate his employment with either Bosasa or Consilium, subject to him entering into an agreement on terms which are mutually acceptable to both Agrizzi and Gavin, taking into account the best interests of the Interested Parties and which agreement will regulate the terms and conditions applicable to Agrizzi's termination of employment.

11. RESTRAINT OF TRADE

11.1 It is recorded that Agrizzi, in the course of his duties and association with the Interested Parties:

(a) has acquired and will continue to acquire considerable know-how relating to the Business;

(b) will be responsible for the development of the Business and will acquire considerable "know-how" with reference to the Business and the operations/conduct of the Interest Parties;

(c) will have access to or come into possession of information confidential to the Interest Parties including but not limited to the Confidential Information;

(d) will have access to the databases of the Interest Parties and will be intimately concerned with the Business and affairs of the Interest Parties;

(e) has had the opportunity and will continue to have the opportunity of learning and acquiring the trade secrets, business connections and other proprietary and confidential information pertaining to the Interest Parties;

(f) the Interest Parties have expended considerable time, effort and resources in the development of Confidential Information, confidential records and goodwill over a period of time, which must remain confidential in order to ensure the success of the Business; and

(g) only through the Business has Agrizzi gained and will continue to gain skill and expertise within the industries associated with the Business.

1.1.2 Agrizzi acknowledges that from the Signature Date and until the expiry of the Restraint Period he will be in a position to compete unfairly with the Interested Parties as a result of the Confidential Information, trade secrets and knowledge about the Business, operations/conduct, customers, employees and trade connections of the Interested Parties that he has acquired or will acquire and through the connections that he has developed and will develop at the expense of the Interested Parties.

1.1.3 Agrizzi accordingly agrees and acknowledges that in order to protect the legitimate business interests of the Interested Parties and in particular the Confidential Information, goodwill and the stable trained workforce of the Interested Parties it is necessary that he be restrained from carrying on certain activities which would be harmful to the Business and/or the Interested Parties, and that such restraint must be for a period which will adequately serve to protect the Interested Parties from the considerable economic prejudice and substantial and irreversible damage which would potentially be suffered by the Interested Parties were it not to be so restrained.

1.1.4 Agrizzi warrants and undertakes that he will not:

(a) with effect from the Signature Date and until the expiry of the Restraint Period, in any capacity whatsoever (including that of principal, proprietor, agent, broker, partner, representative, assistant, trustee or beneficiary of a trust, manager, member of a close corporation, member of a voluntary association, shareholder, director, employee, consultant, contractor, advisor, financier, demonstrator) directly or indirectly be associated or concerned with or interested or engaged in any Restricted Business or entity carrying on any Restricted Business in the RSA or deal with or engage with any Restricted Clients for the purposes of rendering services that compete with the Business in any respect;

(b) at any time communicate with or furnish any information or advice to any employee of the Business or to any prospective employer of such employee of the Business for the direct or indirect purpose of inducing or causing such employee to leave the employ of any of the Interested Parties and/or to become employed by or in any way directly or indirectly interested in or associated with any Restricted Business;

(c) from the Signature Date and until the expiry of the Restraint Period:

(i) persuade, induce, solicit, encourage or cause any employee of the Business to terminate their employment with any of the Interested Parties and/or become employed by or interested in any manner whatsoever in any Restricted Business;

(ii) employ, offer employment to or cause employment to be offered to any employee of the Business, which is not in response to an advertisement for employment; or

(iii) communicate with or furnish any information or advice to any supplier or customer of the Interested Parties for the direct or indirect purpose of inducing or causing such person to cease being a supplier or customer of the Interested Parties and/or become a supplier of a Restricted Business;

(d) Without limiting the generality of the aforegoing, Agrizzi further undertakes and warrants that with effect from Signature Date and until the expiry of the Restraint Period he will not, in any capacity whatsoever (whether as principal, proprietor,

INITIALS: DELIVERED AGREED

agent broker partner representative assistant trustee or beneficiary of a trust manager member of a close corporation member of a voluntary association shareholder director employee consultant contractor advisor financier demonstrator or otherwise in any part of the RSA and whether for reward or not directly or indirectly undertake or be involved in any Restricted Business

c Agrizzi after due consideration agrees and acknowledges that

having regard to the damages that will result from a breach of any of the restraint undertakings given herein the restraints and undertakings imposed upon him in terms of this Agreement are fair and reasonable and are necessary as to subject matter area and duration and are reasonably necessary in order to preserve and to protect the proprietary interests of the Interested Parties

he has entered into this Agreement freely and voluntarily and that no circumstances exist for its alleging either now or at any future time that he was at a disadvantage in agreeing to the restraint undertakings contained herein or was in anything other than an equal bargaining position with Interested Parties in agreeing to such restraint undertakings

notwithstanding the manner in which the restraints in this clause 11 and the areas comprising the RSA have been grouped together or described geographically each of them constitutes a separate and independent restraint divisible and severable from each of the other restraints and separately enforceable in regard to all aspects thereof including

1 each month from the Signature Date until the expiry of the Restraint Period

2 each province division or council area municipal area magisterial district town and locality falling within the RSA

3 each capacity in relation to the Restricted Business which Agrizzi is prohibited from undertaking in terms of this Agreement and

4 no restraint or combination of restraints shall be limited by reference to or inference from any other restraint or combination of restraints provided however that the invalidity or unenforceability of any one or combination of restraints contained in this Agreement shall not affect the validity and enforceability of the other restraints contained in this Agreement or any combination of such restraints

f Agrizzi has given the restraint undertakings herein contained notwithstanding that he acknowledges that those restraints may limit the employment and investment opportunities available to him thereby potentially limiting his income earning capacity

g Agrizzi agrees that should he at any time dispute the reasonableness of any of the restraint undertakings herein contained then the onus of proving such unreasonableness will be on him

12 NON DISCLOSURE UNDERTAKINGS

12.1 Agrizzi shall not at any time whatsoever whether directly or indirectly use divulge or disclose any Confidential Information to any third party except as required by the Interested Parties

12.2 On request by any Interested Party, Agrizzi shall forthwith return to such Interested Party all Confidential Information and records. Agrizzi shall not retain any copies of same or any extracts therefrom in any form whatsoever upon the surrender thereof by him to the aforementioned Interested Party

12.3 Agrizzi hereby acknowledges that the Confidential Information has a substantial proprietary and monetary value to the Interested Parties and such parties will suffer substantial damages if the aforegoing are used in an unauthorised manner or disclosed other than in accordance with the provisions of this Agreement

12.4 Agrizzi acknowledges that the confidentiality undertakings given by him in this clause 12 shall remain in force indefinitely notwithstanding the termination of this Agreement or his employment by Bosasa or Consilium for any reason whatsoever

12.5 Where Agrizzi is uncertain as to whether any information is confidential he shall in writing request a ruling from any Interested Party which ruling Agrizzi agrees to abide by

12.6 Should Agrizzi at any stage become aware of any improper disclosure or the use of Confidential Information by any other person Agrizzi will immediately bring the matter to the attention of the Interested Parties

13 CONFLICTS

In any instance where there is a conflict between a provision (be it expressed implied or tacit) of this Agreement and any other agreement in respect of Agrizzi's employment by either Bosasa or Consilium as the case may be the provision of this Agreement shall prevail to the extent of the conflict

14 **GENERAL WARRANTIES**

Each Party represents and warrants to the other Party that other than as expressly provided for to the contrary

14.1 it has the necessary power and legal capacity to enter into and perform its obligations under this Agreement and all matters contemplated herein to sue and be sued in its own name to carry on the business which it conducts and to own its assets

14.2 it has taken all necessary corporate and/or internal action to authorise the execution and performance of this Agreement

14.3 the provisions of this Agreement are and shall remain legally binding on it and the obligations imposed on it pursuant to this Agreement constitute its legal valid and binding obligations enforceable in accordance with their terms and

14.4 the execution of this Agreement and performance of its obligations hereunder does not and shall not

(a) contravene any law or regulation to which it is subject

(b) contravene any provision of its constitutional documents or

INR:[illegible]/ARP:[illegible]

(c) conflict with, or result in a breach of any of the terms of, or constitute a default under any agreement or other instrument to which it is a party, or any licence or other authorisation to which it is subject or by which it or any of its property or revenues are bound

so as to prevent it from performing its obligations under this Agreement

15 **NOTICES AND *DOMICILIA***

15.1 The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served, sent or delivered to the Parties

15.2 For purposes of this Agreement, the Parties' respective addresses shall be

(a) Bosasa at 1 Windsor Road, Luipaardsvlei, Mogale City

E-mail angelo.agrizzi@bosasa.com

with a copy simultaneously to

natasha.olivier@bosasa.com

Attention Angelo Agrizzi

(b) Consilium at 774 Waterval Road, Little Falls, 1724

E-mail angelo.agrizzi@bosasa.com

with a copy simultaneously to

natasha.olivier@bosasa.com

Attention Angelo Agrizzi

(c) Daniel at 38 Marseilles Avenue, Woodlands, Lorraine, Port Elizabeth

E-mail djwcic@gmail.com

Attention Daniel John Watson

(d) Gavin at c/o Mogale Business Park, 1 Windsor Road, Luipaardsvlei, Mogale City

E-mail gavin.watson@bosasa.com

Attention Gavin Joseph Watson, and

(e) Agrizzi at 87 Heidelberglaan Estates, Corner Lambert and Broadacres East Footways, Gauteng

E-mail angelo.agrizzi@me.com

Attention Angelo Agrizzi

or at such other address of which the Party concerned may notify the other Party in writing provided that no street address mentioned in this sub-clause shall be changed to a post office box or *poste restante*

15.3 Any notice given in terms of this Agreement shall be in writing and shall:

(a) if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

(b) if posted by prepaid registered post be deemed to have been received by the addressee on the eighth day following the date of such posting; or

(c) if transmitted by electronic mail be deemed to have been received by the addressee on the date of successful transmission;

unless the contrary is proved.

15.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of electronic mail shall be adequate written notice or communication to such Party.

16 **CO-OPERATION AND GOOD FAITH**

16.1 The Parties undertake to co-operate fully and to consult with one another in all respects in regard to their relationship in terms of this Agreement.

16.2 The Parties undertake to act in the utmost good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realisation of the objectives of this Agreement.

16.3 Neither Party shall do, allow to be done or cause to be done, anything which does or may impugn the good name and reputation of the other Party.

17 **BREACH**

Subject to clause 18, if any Party (the **Defaulting Party**) breaches any of the provisions of this Agreement and fails to remedy such breach within 14 (fourteen) days of receipt of written notice from another Party (the **Aggrieved Party**) requiring it to do so, then the Aggrieved Party shall be entitled, without prejudice to its other rights in law and in terms of this Agreement (including any right to claim damages), to claim immediate payment and/or specific performance by the Defaulting Party of its obligations at the date of default.

18 **ARBITRATION**

Any dispute, controversy or claim arising out of or relating to this Agreement, its interpretation, execution, the termination of or invalidity thereof, shall, at Bosasa's cost, be settled by arbitration in accordance with the rules of arbitration of the Arbitration Foundation of Southern Africa ("**AFSA**"). The place of arbitration shall be in Sandton, South Africa. The language to be used in the arbitral proceedings shall be English. Notwithstanding anything contained to the contrary, any of the Parties may seek interim and junctive relief from a court of competent jurisdiction which shall not be deemed as a waiver of any provisions contained in this clause.

19 **INDEPENDENT ADVICE**

Each of the Parties to this Agreement hereby acknowledges and agrees that:

19.1 it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and

19.2 all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Parties' intentions.

20 GOVERNING LAW

20.1 This Agreement shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of the RSA.

20.2 For purposes of applying for urgent relief and in respect of any matters which cannot be resolved between the Parties using commercially reasonable efforts, the Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, held in Johannesburg, in any dispute arising from or in connection with this Agreement.

21 WHOLE AGREEMENT, NO AMENDMENT

21.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof.

21.2 No addition to, novation, amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

21.3 No oral *pactum de non petendo* shall be of any force or effect.

21.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate neither as an estoppel against any Party in respect of its rights under this Agreement, nor so as to preclude such Party (save as to any extension, waiver or relaxation actually given) thereafter from exercising its rights strictly in accordance with this Agreement.

21.5 To the extent permissible by law no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced a Party to enter into the Agreement and/or whether it was negligent or not.

22 NO CESSION OR ASSIGNMENT

Except as expressly provided to the contrary in this Agreement, no Party shall be entitled to cede, assign, transfer or delegate all or any of its rights, obligations and/or interest in

under or in terms of this Agreement to any third party without the prior written consent of the other Parties (which consent shall not be unreasonably withheld)

23 *STIPULATIO ALTERI*

No part of this Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a Party unless the provision in question expressly provides that it does constitute a *stipulatio alteri*

24 **COSTS**

Bosasa shall bear the costs of and incidental to the negotiation, preparation and execution of this Agreement

25 SEVERANCE

25.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force

25.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties

26 SIGNATURE

26.1 This Agreement is signed by the Parties on the dates and at the places indicated below

26.2 Any reference to "signed", "signing" or "signature" of this Agreement shall, notwithstanding anything to the contrary in this Agreement, be read and construed as excluding any form of electronic signature

26.3 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the Signature Date of the Party last signing one of the counterparts

26.4 This Agreement shall be valid and binding upon the Parties hereto, notwithstanding that one or more of the Parties may sign a facsimile or email copy hereof and whether or not such facsimile or email copy contains the signature of any other Party

26.5 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness

26.6 The persons signing this Agreement in a representative capacity warrant their authority to do so

[signature pages to follow]

- 13 -

SIGNED at Mogale City this 26 day of Aug 2016

For BOSASA OPERATIONS PROPRIETARY LIMITED
duly authorised

Signature

GAVIN WATSON
Name of Signatory

CEO
Designation of Signatory

- 14 -

SIGNED at: Mocmle on this 26 day of AUG 2016

For CONSILIUM BUSINESS CONSULTANTS PROPRIETARY LIMITED
duly authorised

Signature

GAVIN J WATSON
Name of Signatory

Designation of Signatory

INRUBOI DRUEWARR 4276FCF

SIGNED at Port Elizabeth this 26 day of August 2019

DANIEL JOHN WATSON

Signature

SIGNED at WOGALE on this 26 day AUG 2019

GAVIN JOSEPH WATSON

Signature

17

SIGNED at SANDTON on this 25 day of August 2016

ANGELO AGRIZZI

Signature

"C"

Annexure "C"

EXECUTION COPY

AGREEMENT
INCORPORATING PROVISIONS REGARDING CONSULTANCY AGREEMENT

between

BIDSASA OPERATIONS PROPRIETARY LIMITED

and

CONSILIUM BUSINESS CONSULTANTS PROPRIETARY LIMITED

and

LEADING PROSPECTS TRADING 111 PROPRIETARY LIMITED

and

GAVIN JOSEPH WATSON

and

ANGELO AGRIZZI

Hogan Lovells

Matter ref: 118901
Our ref: Brian Biebuyck
Hogan Lovells (South Africa)
22 Fredman Drive, Sandton, Johannesburg

11/5/2017

HOGAN LOVELLS

1 **PARTIES**

1.1 The Parties to this Agreement are:

(a) Bosasa Operations Proprietary Limited;

(b) Consilium Business Consultants Proprietary Limited;

(c) Leading Prospects Trading 111 Proprietary Limited;

(d) Gavin Joseph Watson; and

(e) Angelo Agrizzi.

1.2 The Parties agree as set out below.

2. **INTERPRETATION**

In this Agreement, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention:

2.1 an expression which denotes:

(a) any gender includes the other genders;

(b) a natural person includes an artificial or juristic person and *vice versa*; and

(c) the singular includes the plural and vice versa;

2.2 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

"**Agreement**" means this agreement and any schedules hereto, as amended from time to time;

"**Angelo**" means Angelo Agrizzi, Identity Number 671203 5468 085;

"**Bosasa**" means Bosasa Operations Proprietary Limited, Registration Number 1981/012426/07, a private company incorporated in accordance with the laws of the RSA;

"**Business Day**" means any day other than a Saturday, Sunday or official public holiday in the RSA;

"**Business**" means any business, undertaking or service conducted by any of the Interested Parties, from time to time;

"**Confidential Information**" means any and all information of and relating to the Interested Parties that is reasonably regarded as confidential, being information not in the public domain, whether such information is oral or written, recorded or stored by electronic, magnetic, electro-magnetic or other form or process or otherwise in a machine readable form, translated from the original form, recompiled, made into a compilation, wholly or partially copied, modified, updated or otherwise altered, or originated or obtained by, or coming into possession, custody control or knowledge of the Interested Parties or their agents, including but without being limited to all inventions, technical data, software, source code, research and development information, records, information and notes, products, know-how, trade secrets, designs, specifications, processes and formulae, planning procedures, techniques or information, marketing plans, strategies and

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forecasts, product development plans, financial statements, budgets, prices, costs and financial projections, accounting procedures or financial information, names and details of consumers, clients, suppliers and agents, employee details, software developers and consultants, and like information and any other matters which relate to the business of the Interested Parties and in respect of which information is not readily available to third parties;

"Consilium" means Consilium Business Consultants Proprietary Limited, Registration Number 2005/042407/07, a private company incorporated in accordance with the laws of the RSA;

"Effective Date" means the Signature Date or 31 March 2017, which ever date first occurs;

"Gavin" means Gavin Joseph Watson, Identity Number 480712 5182 083;

"Interested Parties" means Bosasa, Consilium, Leading Prospects, all of the companies that comprise the Bosasa Group of Companies and Gavin, and **"Interested Party"** shall mean either of them as the context may require;

"Leading Prospect" means Leading Prospect Trading 111 Proprietary Limited, Registration Number 2002/017229/07 a private company incorporated in accordance with the laws of the RSA;

"Parties" means Bosasa, Consilium, Leading Prospect, Gavin and Angelo and **"Party"** shall mean either of them as the context may require;

"Rand" or **"R"** means Rand, the official currency of the RSA;

"Restraint Period" means a period of 10 (ten) years from 1 April 2017, being the day on which Angelo ceases to be employed by both Bosasa or Consilium;

"Restricted Business" means any business, undertaking or service, other than those which are directly or indirectly controlled or undertaken by any of the Interested Parties and which is similar or related to the Business in any way;

"Restricted Clients" means those clients that placed business with any of the Interested Parties during a period of 24 (twenty four) months prior to 1 April 2017, being the day on which Angelo ceases to be employed by both Bosasa or Consilium;

"RSA" means the Republic of South Africa;

"Signature Date" means the date of signature of this Agreement by the last Party to do so; and

"Term" means the term of this Agreement as set out in clause 4.

2.3 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on a Party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;

2.4 any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Signature Date, and as amended or substituted from time to time;

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2.5 if any term is defined within the context of any particular clause in this Agreement, 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 Agreement, notwithstanding that that term has not been defined in this clause 2;

2.6 where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day;

2.7 any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be;

2.8 expressions defined in this Agreement shall bear the same meanings in the schedules to this Agreement which do not themselves contain their own conflicting definitions;

2.9 the use of any expression in this Agreement covering a process available under RSA law such as winding up (without limitation *eiusdem generis*) shall, if any of the Parties is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;

2.10 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement that expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;

2.11 any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated or placed under business rescue in terms of Chapter 6 of the Companies Act, 71 of 2008, be applicable also to and binding upon that Party's liquidator, trustee or business rescue practitioner, as the case may be;

2.12 any reference in this Agreement 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;

2.13 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; and

2.14 the terms of this Agreement having been negotiated, the *contra proferentem* rule shall not be applied in the interpretation of this Agreement.

3. **BACKGROUND**

3.1 Angelo is currently employed by Bosasa and Consilium and is a close business associate of Gavin.

3.2 Angelo has agreed to resign from and terminate his employment with Bosasa and Consilium, and Gavin, Bosasa and Consilium have accepted Angelo's resignation.

3.3 Gavin and Angelo have agreed that Angelo's services be terminated in accordance with the terms recorded below.

Hogan Lovells

3.4 The Parties accordingly agree as set out below.

4. **TERMINATION OF EMPLOYMENT**

4.1 Angelo hereby resigns from his employment with Bosasa and Consilium with effect 31 March 2017.

4.2 Bosasa and Consilium hereby accept Angelo's resignation of employment as aforesaid.

5 **SEVERANCE**

5.1 In consideration for Angelo agreeing:

(a) to resign his employment with Bosasa and Consilium; and

(b) to be bound by the terms and conditions contemplated in this Agreement,

an amount equal to R26 000 000 (twenty six million Rand) shall be advanced by Consilium to Angelo, and failing Consilium for any reason whatsoever, Leading Prospects shall effect such advance to Angelo ("**Severance Amount**").

5.2 The Severance Amount shall be payable as follows:

5.2.1 R1 000 000 on or before 25 March 2017 by electronic funds transfer, free of any deductions or set-off whatsoever, into a South African bank account nominated in writing by Angelo; and

5.2.2 R15 000 000 on or before 7 April 2017 by electronic funds transfer, free of any deductions or set-off whatsoever, into a South African bank account nominated in writing by Angelo, and

5.2.3 R10 000 000 on or before 30 September 2017 by electronic funds transfer, free of any deductions or set-off whatsoever, into a South African bank account nominated in writing by Angelo.

5.3 The advance of the Severance Amount shall be structured in such a way that it is tax efficient for all the parties involved, and in the event of it being determined that Angelo has breached any of his obligations in terms of this Agreement as determined in accordance clauses 8 and/or 16 below, the aforesaid Severance Amount shall be repayable by Angelo to Consilium and/or Leading Prospects.

6 **CONSULTANCY**

6.1 With effect from the Effective Date Angelo will provide consultancy services to Consilium and Leading Prospects, the extent of which services are to be agreed between Angelo, Consilium and Leading Prospects on an ad hoc basis from time to time, it being envisaged that initially these services will entail a bi-monthly exchange of ideas between Gavin and Angelo, and as further consultancy opportunities evolve, such services will be extended, subject to the review of the extent of such services from time to time ("**Consultancy Agreement**").

6.2 Consilium, and failing Consilium, Leading Prospects, will pay to Angelo a monthly consultancy fee in the gross sum of R150 000.00 (cost to company), ("**Consultancy Fee**") plus retain Angelo on and pay for the medical aid and pension funds of which he is a member on 30 March 2017 in addition to the R150 000 cost to company.

6.3 The Consultancy Fee is to be paid monthly in arrears not later than the 25th of each successive month for as long as the Consultancy Agreement endures.

7. DURATION AND TERMINATION OF THE CONSULTANCY AGREEMENT

7.1 The Consultancy Agreement shall commence on the Effective Date and shall, subject to the remainder of this clause 7, terminate on the fifth anniversary of the Effective Date, subject to one calendar year's notice being given to so terminate on or before the fourth anniversary of the Effective Date ("Term").

7.2 Absent notice of termination being given as aforesaid, the term of the Consultancy Agreement will continue on a year to year basis, subject to one calendar year's notice being given to so terminate, reckoned from the Effective Date.

7.3 The termination of the Consultancy Agreement for any reason whatsoever shall not affect the operation of any provisions of the remainder of the terms of this Agreement to the extent to which they confer rights or impose obligations upon the Parties which are exercisable or enforceable after the date of termination hereof, and such provisions shall, to that extent, continue to be of full force and effect. The termination of this Agreement shall furthermore, subject to the provisions of this Agreement, not prejudice any rights which may have accrued to the Parties as at the said date of termination.

8. DISPUTES IN RELATION TO THE AGREEMENT AND THE CONSULTANCY AGREEMENT

8.1 No party shall be entitled to summarily terminate the Agreement or the Consultancy Agreement.

8.2 If any dispute arises out of or in connection with the Agreement or the Consultancy Agreement, their implementation or any other breach of any parties rights and/or obligations, or if any party wishes to terminate the Agreement or the Consultancy Agreement (other than in accordance with the provisions of clause 8) (collectively referred to as the "Dispute") then the Parties shall follow the procedure set out below:

(a) Angelo or any other Interested Party shall give to Brian Biebuyck ("Brian") written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with any relevant supporting documents. On service of the Dispute Notice, Angelo, any Interested Party and Brian shall meet and attempt in good faith to resolve the Dispute;

(b) If Angelo and any Interested Party are for any reason unable to resolve the Dispute within 20 Business Days of service of the Dispute Notice, then Angelo or any other Interested Party shall be entitled to refer the dispute to arbitration as envisaged and contemplated in terms of clause 16.

9. RESTRAINT OF TRADE

9.1 It is recorded that Angelo, in the course of his duties and association with the Interested Parties:

(a) has acquired considerable know-how relating to the Business;

(b) has been responsible for the development of the Business and has acquired considerable know-how with reference to the Business and the operations/conduct of the Interest Parties;

17/3/2017

(c) has had access to or come into possession of information confidential to the Interest Parties including but not limited to the Confidential Information;

(d) has had access to the databases of the Interest Parties and has been intimately concerned with the Business and affairs of the Interest Parties;

(e) has had the opportunity and will continue (as consultant) to have the opportunity of learning and acquiring the trade secrets, business connections and other proprietary and confidential information pertaining to the Interest Parties;

(f) the Interest Parties have expended considerable time, effort and resources in the development of Confidential Information, confidential records and goodwill over a period of time, which must remain confidential in order to ensure the success of the Business; and

(g) through the Business Angelo gained and (as consultant) will continue to gain skill and expertise within the industries associated with the Business.

9.2 Angelo acknowledges that, from the Signature Date and until the expiry of the Restraint Period, he will be in a position to compete unfairly with the Interested Parties as a result of the Confidential Information, trade secrets and knowledge about the Business, operations/conduct, customers, employees and trade connections of the Interested Parties that he has acquired or will (as consultant) acquire and through the connections that he has developed at the expense of the Interested Parties.

9.3 Angelo accordingly agrees and acknowledges that in order to protect the legitimate business interests of the Interested Parties and in particular the Confidential Information, goodwill and a stable trained workforce of the Interested Parties, it is necessary that he be restrained from carrying on certain activities which would be harmful to the Business and/or the Interested Parties, and that such restraint must be for a period which will adequately serve to protect the Interested Parties from the considerable economic prejudice and substantial and irreversible damage which would potentially be suffered by the Interested Parties were it not to be so restrained.

9.4 Angelo warrants and undertakes that he will not:

(a) with effect from the Signature Date and until the expiry of the Restraint Period, in any capacity whatsoever (including that of principal, proprietor, agent, broker, partner, representative, assistant, trustee or beneficiary of a trust, manager, member of a close corporation, member of a voluntary association, shareholder, director, employee, consultant, contractor, advisor, financier, demonstrator) directly or indirectly be associated or concerned with or interested or engaged in any Restricted Business or entity carrying on any Restricted Business in the RSA or deal with or engage with any Restricted Clients for the purposes of rendering services that compete with the Business in any respect;

(b) at any time communicate with or furnish any information or advice to any employee of the Business or to any prospective employer of such employee of the Business for the direct or indirect purpose of inducing or causing such employee to leave the employ of any of the Interested Parties and/or to become employed by or in any way directly or indirectly interested in or associated with any Restricted Business;

(c) from the Signature Date and until the expiry of the Restraint Period:

(i) persuade, induce, solicit, encourage or cause any employee of the Business to terminate their employment with any of the Interested Parties and/or become employed by or interested in any manner whatever in any Restricted Business;

(ii) employ, offer employment to or cause employment to be offered to any employee of the Business, which is not in response to an advertisement for employment; or

(iii) communicate with or furnish any information or advice to any supplier or customer of the Interested Parties for the direct or indirect purpose of inducing or causing such person to cease being a supplier or customer of the Interested Parties and/or become a supplier of a Restricted Business.

(d) Without limiting the generality of the aforegoing, Angelo further undertakes and warrants that with effect from Signature Date and until the expiry of the Restraint Period, he will not, in any capacity whatsoever (whether as principal, proprietor, agent, broker, partner, representative, assistant, trustee or beneficiary of a trust, manager, member of a close corporation, member of a voluntary association, shareholder, director, employee, consultant, contractor, advisor, financier, demonstrator or otherwise), in any part of the RSA and whether for reward or not directly or indirectly undertake or be involved in any Restricted Business.

(e) Angelo, after due consideration, agrees and acknowledges that:

(i) having regard to the damages that will result from a breach of any of the restraint undertakings given herein, the restraints and undertakings imposed upon him in terms of this Agreement are fair and reasonable and are necessary as to subject matter, area and duration and are reasonably necessary in order to preserve and to protect the proprietary interests of the Interested Parties;

(ii) he has entered into this Agreement freely and voluntarily and that no circumstances exist for its alleging either now or at any future time that he was at a disadvantage in agreeing to the restraint undertakings contained herein or was in anything other than an equal bargaining position with Interested Parties in agreeing to such restraint undertakings;

(iii) notwithstanding the manner in which the restraints in this clause 9 and the areas comprising the RSA have been grouped together or described geographically, each of them constitutes a separate and independent restraint, divisible and severable from each of the other restraints and separately enforceable, in regard to all aspects thereof including:

(1) each month from the Signature Date until the expiry of the Restraint Period;

(2) each province, division or council area, municipal area, magisterial district, town and locality falling within the RSA;

(3) each capacity in relation to the Restricted Business which Agrizzi is prohibited from undertaking in terms of this Agreement; and

(4) no restraint or combination of restraints shall be limited by reference to or inference from any other restraint or combination of

Angelo Agrizzi

restraints, provided however that the invalidity or unenforceability of any one or combination of restraints contained in this Agreement shall not affect the validity and enforceability of the other restraints contained in this Agreement or any combination of such restraints.

(f) Angelo has given the restraint undertakings herein contained notwithstanding that he acknowledges that those restraints may limit the employment and investment opportunities available to him, thereby potentially limiting his income earning capacity.

(g) Angelo agrees that should he at any time dispute the reasonableness of any of the restraint undertakings herein contained, then the onus of proving such unreasonableness will be on him.

10. **NON-DISCLOSURE UNDERTAKINGS**

10.1 Angelo shall not, at any time whatsoever, whether directly or indirectly, use, divulge or disclose any Confidential Information, to any third party except as required by the Interested Parties.

10.2 On request by any Interested Party, Angelo shall forthwith return to such Interested Party all Confidential Information and records. Angelo shall not retain any copies of same or any extracts therefrom, in any form whatsoever, upon the surrender thereof by him to the aforementioned Interested Party.

10.3 Angelo hereby acknowledges that the Confidential Information has a substantial proprietary and monetary value to the Interested Parties, and such parties will suffer substantial damages if the aforegoing are used in an unauthorised manner or disclosed other than in accordance with the provisions of this Agreement.

10.4 Angelo acknowledges that the confidentiality undertakings given by him in this clause 10 shall remain in force indefinitely, notwithstanding the termination of this Agreement or the Consultancy Agreement, for any reason whatsoever.

10.5 Where Angelo is uncertain as to whether any information is confidential, he shall in writing request a ruling from Brian, and failing him, any Interested Party, which ruling Angelo agrees to abide by.

10.6 Should Angelo at any stage become aware of any improper disclosure or the use of Confidential Information by any other person, Angelo will immediately bring the matter to the attention of Brian and the Interested Parties.

10.7 The terms hereof shall remain confidential between the parties and the witnesses to this agreement, and no party shall be entitled, other as may be required in law, to disclose the terms hereof to any other person or party.

11 **CONFLICTS**

In any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Agreement or the Consultancy Agreement respectively and any other agreement, as the case may be, the provision of this Agreement or the Consultancy Agreement respectively shall prevail to the extent of the conflict.

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12. GENERAL WARRANTIES

Each Party represents and warrants to the other Party that, other than as expressly provided for to the contrary:

12.1 it has the necessary power and legal capacity to enter into and perform its obligations under this Agreement and all matters contemplated herein, to sue and be sued in its own name, to carry on the business which it conducts and to own its assets;

12.2 it has taken all necessary corporate and/or internal action to authorise the execution and performance of this Agreement;

12.3 the provisions of this Agreement are and shall remain legally binding on it and the obligations imposed on it pursuant to this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their terms; and

12.4 the execution of this Agreement and performance of its obligations hereunder does not and shall not:

(a) contravene any law or regulation to which it is subject;

(b) contravene any provision of its constitutional documents; or

(c) conflict with, or result in a breach of any of the terms of, or constitute a default under any agreement or other instrument to which it is a party, or any licence or other authorisation to which it is subject, or by which it or any of its property or revenues are bound,

so as to prevent it from performing its obligations under this Agreement.

13. NOTICES AND DOMICILIA

13.1 The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

13.2 For purposes of this Agreement, the Parties' respective addresses shall be:

(a) Bosasa at: 1 Windsor Road, Luipaardsvlei, Mogale City
E-mail: natasha.olivier@bosasa.com
Attention: Gavin Watson;

(b) Consilium at: 774 Waterval Road, Little Falls, 1724
E-mail: natasha.olivier@bosasa.com
Attention: Gavin Watson;

(c) Leading Prospects at: 1 Windsor Road, Luipaardsvlei, Mogale City
E-mail: natasha.olivier@bosasa.com
Attention: Gavin Watson

(d) Gavin at: c/o Mogale Business Park, 1 Windsor Road, Luipaardsvlei, Mogale City

E-mail: gavin.watson@bosasa.com

Attention: Gavin Watson; and

(e) Angelo at: 97 Helderfontein Estates, Cnr William Nicol and Broadacres East Fourways, Gauteng

E-mail: angelo.agrizzi@me.com

Phone: 082 902 6091

Attention: Angelo Agrizzi;

or at such other address of which the Party concerned may notify the other Party in writing provided that no street address mentioned in this sub-clause shall be changed to a post office box or *poste restante*.

13.3 Any notice given in terms of this Agreement shall be in writing and shall:

(a) if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

(b) if posted by prepaid registered post be deemed to have been received by the addressee on the eighth day following the date of such posting; or

(c) if transmitted by electronic mail be deemed to have been received by the addressee on the date of successful transmission,

unless the contrary is proved.

13.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of electronic mail shall be adequate written notice or communication to such Party.

14. **CO-OPERATION AND GOOD FAITH**

14.1 The Parties undertake to co-operate fully and to consult with one another in all respects in regard to their relationship in terms of this Agreement.

14.2 The Parties undertake to act in the utmost good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realisation of the objectives of this Agreement.

14.3 Neither Party shall do, allow to be done or cause to be done, anything which does or may impugn the good name and reputation of the other Party.

15. **BREACH**

Subject to clauses 8 and 18, if any Party (the "**Defaulting Party**") breaches any of the provisions of this Agreement and fails to remedy such breach within 14 (fourteen) days of receipt of written notice from another Party (the "**Aggrieved Party**") requiring it to do so, then the Aggrieved Party shall be entitled, without prejudice to its other rights in law and in terms of this Agreement (including any right to claim damages) to claim immediate

18/3/2017

Hogan Lovells

payment and/or specific performance by the Defaulting Party of its obligations at the date of default.

16. ARBITRATION

Any dispute, controversy or claim arising out of or relating to this Agreement, its interpretation, execution, the termination of or invalidity thereof, shall, at Consilium's cost be settled by arbitration in accordance with the rules of arbitration of the Arbitration Foundation of Southern Africa ("AFSA"). The place of arbitration shall be in Sandton South Africa. The language to be used in the arbitral proceedings shall be English. Notwithstanding anything contained to the contrary, any of the Parties may seek interim and junctive relief from a court of competent jurisdiction which shall not be deemed as a waiver of any provisions contained in this clause 0.

17 INDEPENDENT ADVICE

Each of the Parties to this Agreement hereby acknowledges and agrees that:

17.1 it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and

17.2 all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Parties' intentions.

18 GOVERNING LAW

18.1 This Agreement shall in all respects (including its existence, validity, interpretation implementation, termination and enforcement) be governed by the law of the RSA.

18.2 For purposes of applying for urgent relief and in respect of any matters which cannot be resolved between the Parties using commercially reasonable efforts, the Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, held in Johannesburg in any dispute arising from or in connection with this Agreement.

19. WHOLE AGREEMENT, NO AMENDMENT

19.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof.

19.2 No addition to, novation, amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

19.3 No oral *pactum de non petendo* shall be of any force or effect.

19.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate neither as an estoppel against any Party in respect of its rights under this Agreement, nor so as to preclude such Party (save as to any extension, waiver or relaxation actually given) thereafter from exercising its rights strictly in accordance with this Agreement.

19.5 To the extent permissible by law no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced a Party to enter into the Agreement and/or whether it was negligent or not.

20 **No Cession or Assignment**

Except as expressly provided to the contrary in this Agreement, no Party shall be entitled to cede, assign, transfer or delegate all or any of its rights, obligations and/or interest in, under or in terms of this Agreement to any third party without the prior written consent of the other Parties (which consent shall not be unreasonably withheld).

21 ***Stipulatio Alteri***

No part of this Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a Party unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

22 **Costs**

22.1 Consilium, failing which, Leading prospects, shall bear the costs of and incidental to the negotiation, preparation and execution of this Agreement.

22.2 Provided that Angelo is not in breach of his obligations in terms of the Agreement and/or the Consultancy Agreement, Consilium, failing which, Leading Prospects shall pay all and any legal fees and disbursements that Angelo may incur or in the future incur in relation to any legal matter whatsoever and howsoever arising from his employment with Bosasa and/or Consilium.

23 **Severance**

23.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

23.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

24 **Signature**

24.1 This Agreement is signed by the Parties on the dates and at the places indicated below.

24.2 Any reference to "signed", "signing" or "signature" of this Agreement shall, notwithstanding anything to the contrary in this Agreement, be read and construed as excluding any form of electronic signature.

18/5/2011

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24.3 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the Signature Date of the Party last signing one of the counterparts.

24.4 This Agreement shall be valid and binding upon the Parties thereto, notwithstanding that one or more of the Parties may sign a facsimile or email copy thereof and whether or not such facsimile or email copy contains the signature of any other Party.

24.5 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

24.6 The persons signing this Agreement in a representative capacity warrant their authority to do so.

SIGNED at Clearwater on this 19 day of March 2017

For: BOSASA OPERATIONS PROPRIETARY LIMITED
Duly authorised

Signature

Gavin Joseph Watson
Name of Signatory

Chief Executive Officer
Designation of Signatory

SIGNED at Krugersdorp on this 19 day of March 2017

For: CONSILIUM BUSINESS CONSULTANTS PROPRIETARY LIMITED
Duly authorised

Signature

Margaret Dorothy Langworth
Name of Signatory

Director
Designation of Signatory

SIGNED at Clear water on this 19 day of March 2017

For: LEADING PROSPECTS TRADING 111 PROPRIETARY LIMITED
Duly authorised

Signature

Gavin Joseph Watson
Name of Signatory

Chief Executive officer
Designation of Signatory

SIGNED at Clearwater on this 19 day of March 2017

GAVIN JOSEPH WATSON

Signature

Witness

SIGNED at [illegible] on this 19 day of [illegible] 2017

ANGELO AGRIZZI

Signature

Witness

"D1"

Annexure "D1"

AA-154

SARS

South African Revenue Service

Tax Clearance Certificate Number
0084/2/2015/0006988165

Tax Clearance Certificate - Good Standing

Enquiries
0800 00 7277
Approved Date
2015-04-02
Expiry Date
2016-04-01

Identity Number/ Passport Number	**6712035468085**
Company Registration Number	
Income Tax	**0238636146 - A AGRIZZI**
Trading Name	
Tender Number	**GoodStanding**

It is hereby confirmed that, on the basis of the information at my disposal, the above-mentioned taxpayer has complied with the requirements as set out in section 256(3) of the Tax Administration Act.

This certificate is valid for a period of 12 months unless otherwise communicated by SARS.

Verification of this certificate can be done at any SARS Revenue office nationwide.

Photo copies of this certificate are not valid.

SARS reserves the right to withdraw this certificate at any time should any taxes, levies or duties become due and outstanding by the above taxpayer during the one year period for which the certificate is valid.

This certificate is issued free of charge by SARS.

"D2"

Annexure "D2"

AA-156

Emp Code	AGRA	Date Joined Group	[illegible]	Pay Period	[illegible]
Emp Name	M A AGRIZZ	Date Engaged	16/[illegible]		
Job Title	CHIEF OPERATING OFFICER				
Unit	[illegible] HEAD OFFICE GENERAL	Co Name	BUSASA OPERATIONS [illegible]		
Dept	[illegible] LEADERSHIP				

Emp Code	AGRA	Date Joined Group	[illegible]	Pay Period	[illegible]
Emp Name	M A AGRIZZ	Date Engaged	[illegible]	Co Name	BUSASA OPERATIONS PTY LTD
Known As	ANGELO	Job Title	CHIEF OPERATING OFFICER	Co Address	N B P
ID Number	[illegible]8085	Job Grade	GRADE E[illegible]		WINDSOR RE[illegible]
Emp Address	HELDERBERGEIN EST	Rate Per Hour	[illegible]		[illegible]
	47 NGWENYA STR	Termination Date			
	MORANG			PAYE Ref No	[illegible]
	1682	Account No	[illegible]	UIF Reg No	[illegible]
Cell Phone No	0829028061	Branch No	[illegible]		
Income Tax No	0358636146	Payment Type	ACB		

Earnings

Description	Units	Amount
SALARY	[illegible]	[illegible]
HOUSING ALLOWANCE	0.00	[illegible]
CAR ALLOWANCE	[illegible]	[illegible]
PETROL CARD ALLOWANCE	0.00	[illegible]
PETROL CARD ALLOWANCE MINUS	0.00	-2 924.[illegible]
VARIABLE ALLOWANCE	[illegible]	[illegible]
Total Earnings		201 726.00

Deductions

Description	Units	Amount
PAYE	[illegible]	[illegible]
UIF	[illegible]	[illegible]
ADDITIONAL TAX	[illegible]	[illegible]
PENSION FUND	0.00	[illegible]
DISCOVERY MEDICAL AID	[illegible]	[illegible]
VITALITY	[illegible]	148.00
FUNERAL	[illegible]	[illegible]
MEDICAL AID EXTRA	0.00	5 544.00
Total Deductions		107 848.46
Net Salary		93 877.54

Company Contributions

Description	Units	Amount
[illegible]	[illegible]	[illegible]
UIF	0.00	148.[illegible]
PENSION FUND	0.00	24 043.50
DISCOVERY MEDICAL AID	0.00	5 544.00
VITALITY	0.00	148.00
FUNERAL	0.00	30.00
Total Cost to Company		333 842.87

Year to Date Totals

Description	Amount
Tax Paid	[illegible]
Taxable Earnings	[illegible]
Taxable Company Contributions	[illegible]
Fringe Benefits	[illegible]
Tax Deductible Payments	[illegible]
Provisions	[illegible]
Private Contributions	[illegible]

Leave Balances

Description	Balance B/Fwd	Accrued	Taken	Balance C/Fwd
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

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"D3"

Annexure "D3"

AA-158

Co. Name	CONSILIUM BUSINESS CONSULTANTS	Co. Addr1	PO BOX 2064 FLORIDA HILLS 1716	Payment Dt	2016/12/31
				Dt Engaged	2010/09/01
				Account No	4064211364
				Branch Code	[illegible]
Emp Code	AGRIA				
Emp Name	MR A AGRIZZI				
Emp Address	23 LEADWOOD STREET RANGEVIEW EXT 4 KRUG 1739	Paypoint	SONDOLO IT		
		Department	CONSULTANT		
		Job Title	CONSULTANT	Id Number	[illegible]

Co. Name	CONSILIUM BUSINESS CONSULTANTS	Co. Addr1	PO BOX 2064 FLORIDA HILLS 1716	Payment Dt	2016/12/31
				Dt Engaged	2010/09/01
				Account No	4064211364
				Branch Code	632005
Emp Code	AGRIA				
Emp Name	MR A AGRIZZI				
Emp Address	23 LEADWOOD STREET RANGEVIEW EXT 4 KRUG 1739	Paypoint	SONDOLO IT		
		Department	CONSULTANT		
		Job Title	CONSULTANT	Tax Number	[illegible]
Id Number	[illegible]				

ADDITIONAL INFO		EARNINGS		DEDUCTIONS	
[illegible]	[illegible]	SALARY	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	CONTRA [illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]		[illegible]	[illegible]	[illegible]
[illegible]	[illegible]		[illegible]	[illegible]	[illegible]

YEAR TO DATE TOTALS

[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]

CURRENT PERIOD

[illegible]	[illegible]	Total Earnings	186180.00	Total Deductions	[illegible]
[illegible]	[illegible]				

Sage VIP

NETT PAY 99,469.80

"D4"

Annexure "D4"

AA-160

Emp. Code	AGRA	Date Joined Group	1999/05/28	Pay Period	2016/12/31
Emp. Name	Mr A AGRIZZI	Date Engaged	1999/05/28		
Job Title	CHIEF OPERATING OFFICER				
Unit	001 - HEAD OFFICE GENERAL	Co. Name	BOSASA OPERATIONS (PTY) LTD		
Dept	LEAD - LEADERSHIP				

Emp. Code	AGRA	Date Joined Group	1999/05/28	Pay Period	2016/12/31
Emp. Name	Mr A AGRIZZI	Date Engaged	1999/05/28	Co. Name	BOSASA OPERATIONS (PTY) LTD
Known As	ANGELO	Job Title	CHIEF OPERATING OFFICER	Co. Address	M.B.P.
ID Number	6712035468085	Job Grade	GRADE E1		WINDSOR RD
Emp. Address	HELDERFONTEIN EST	Rate Per Hour	1 011.93		LUIPAARDSVLEI KRUGERSDORP
	47 NGWENYA STR	Termination Date			1739
	MIDRAND			PAYE Ref. No.	7040723332
	1682	Account No.	4084211354	UIF Reg. No.	0309965/9
Cell Phone No.	0829028091	Branch No.	632005		
Income Tax No.	0238636146	Payment Type	ACB		

Earnings

Description	Units	Amount
SALARY	0.00	178 100.00
HOUSING ALLOWANCE	0.00	10 000.00
CAR ALLOWANCE	0.00	12 000.00
PETROL CARD ALLOWANCE	0.00	2 924.98
PETROL CARD ALLOWANCE MINUS	0.00	-2 924.98
VARIABLE ALLOWANCE	0.00	1 626.00
Total Earnings		**201 726.00**

Deductions

Description	Units	Amount
PAYE	0.00	74 313.24
UIF	0.00	148.72
ADDITIONAL TAX	0.00	5 000.00
PENSION FUND	0.00	11 576.50
DISCOVERY MEDICAL AID	0.00	11 088.00
VITALITY	0.00	148.00
FUNERAL	0.00	30.00
MEDICAL AID EXTRA	0.00	5 544.00
Total Deductions		**107 848.46**

Net Salary 93 877.54

Company Contributions

Description	Units	Amount
SDL	0.00	2 022.35
UIF	0.00	148.72
PENSION FUND	0.00	24 043.50
DISCOVERY MEDICAL AID	0.00	5 544.00
VITALITY	0.00	148.00
FUNERAL	0.00	30.00
Total Cost to Company		**233 662.67**

Year to Date Totals

Description	Amount
Tax Paid	629 882.99
Taxable Earnings	1 782 298.62
Taxable Company Contributions	1 358.50
Fringe Benefits	254 139.75
Tax Deductible Deductions	291 666.03
Provisions	0.00
Private Contributions	0.00

Leave Balances

Description	Balance B\Fwd	Accrued	Taken	Balance C\Fwd

God showed how much he loved us by sending His one and only son into the world so that we might have eternal life through him. 1 John 4:9

24; 08:54

Issue: 2019-01-26_12:01:08

"D5"

Annexure "D5"

AA-162

Co. Name	CONSILIUM BUSINESS CONSULTANTS	Co. Addr1	PO BOX 2094 FLORIDA HILLS 1716	Payment Dt	2016/12/31
Emp Code	AGRIA			Dt Engaged	2010/09/01
Emp Name	MR A AGRIZZI			Account No	4084211354
Emp Address	23 LEADWOOD STREET RANGEVIEW EXT 4 KRUG 1739	Paypoint	SONDOLO IT	Branch Code	632005
		Department	CONSULTANT		
		Job Title	CONSULTANT	Id Number	6712035468085

Co. Name	CONSILIUM BUSINESS CONSULTANTS	Co. Addr1	PO BOX 2094 FLORIDA HILLS 1716	Payment Dt	2016/12/31
Emp Code	AGRIA			Dt Engaged	2010/09/01
Emp Name	MR A AGRIZZI			Account No	4084211354
Emp Address	23 LEADWOOD STREET RANGEVIEW EXT 4 KRUG 1739	Paypoint	SONDOLO IT	Branch Code	632005
		Department	CONSULTANT		
		Job Title	CONSULTANT	Tax Number	0238636146
Id Number	6712035468085				

ADDITIONAL INFO		EARNINGS		DEDUCTIONS	
UIF	148.72	SALARY	175150.00	PAYE	67395.23
PENSION	17515.00	CONTRACT ALLOWA	20000.00	UIF	148.72
SKILLS	1834.98			ADD TAX	15000.00
Cost to Company	214648.70			PENSION	13136.25

YEAR TO DATE TOTALS	
Taxable Earnings	1674065.00
Taxable Perks	147406.50
Pension Fund	110554.88
Tax Paid	564195.14

CURRENT PERIOD					
Total Perks	17515.00	Total Earnings	195150.00	Total Deductions	95680.20
Co. Contributions	19498.70				

Sage VIP

NETT PAY 99,469.80

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"D6"

Annexure "D6"

D'ARCY-HERRMAN & CO INC

Limpopo
Tzana Par
23 Duiker Street

Gauteng
269 Voortrekker Road
Monument
Krugersdorp, 1740

PO Box 397, Tzaneen, 0850, South Africa
Postnet Suite 188, Private Bag X3, Paardekraal, 1752
mail@dah.co.za
015 307-1161 / 011 954-5016
086 624-7002
www.dah.co.za

D'Arcy-Herrman & Co / Kie
Chartered Accountants /
Geskarcoleerde Rekenmeesters
gmn international

20 January 2017

To whom it may concern

Dear Sir / Madam,

RE. Update and confirmation of earnings - Mr Angelo Agrizzi with ID Number: 671203 5468 085

This serves to confirm that Mr Agrizzi has been in the employ of the Bosasa Group of Companies since May 1998, and holds the office as the Group Chief Operations Officer.

Mr Agrizzi's current earnings amount to R11,000,000.00 (Eleven Million Rands) per annum and comprises of a basic salary of R500,000.00 per month and a fixed annual retention bonus of R5,000,000.00 per annum.

Note that the bonus is not performance related but is treated as a retention bonus for the period that Mr Agrizzi remains employed by the Group of Companies.

Note for purposes of employment equity returns and confidentiality Mr Agrizzi is paid in equal sums by Bosasa Operations (Pty)Ltd and Consilium Consultants (Pty)Ltd.

Should you require any further clarity please feel free to contact our offices or alternatively the Group Chief Executive Officer, Mr Gavin Watson.

I trust this will suffice.

Yours faithfully,

PS Venter
Associate Director
Tax Practitioner

SAICA

"D7"

Annexure "D7"

SARS

INCOME TAX **ITA34**

Notice of Assessment

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Details

Reference number:	**0238636146**
Document number:	**91**
Date of assessment:	**2018-05-17**
Year of assessment:	**2017**
Type of assessment:	**Additional Assessment**
Period (days):	**365**
Due date:	**2018-07-01**
Second date:	**2018-07-31**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	27391651.00
Deductions allowed	-556321.00
Taxable Income	**26835330.00**
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	10899248.30
Tax credits and adjustments	-10730741.17
Net amount payable under this assessment after allowable credits	**190940.92**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	Y
Selected for audit or verification	N		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2017 year of assessment. Your assessment has been concluded and reflects an amount payable by you of R 190940.92 . Payment should be made by 2018-07-31 after which interest will accrue on this assessment as from 2018-07-01

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

- Electronically via eFiling
- Call the SARS Contact Centre
- At your nearest SARS branch

The final balance is reflected on the remittance advice at the bottom of the Statement of Account. Please note that interest accrues on all taxes payable after the due date so you are advised to pay in full on or before the due date.

The reference to additional tax/understatement penalty in this notice of assessment depends upon the circumstances.
(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

According to the information you declared in your income tax return, you were liable to pay provisional tax for this year of assessment. Kindly note that should your tax circumstances remain the same for the next tax year, as a provisional taxpayer you are required to submit an IRP6 tax return that reflects an estimate of your taxable income for that tax year. A provisional tax payment based on the estimated taxable income must also accompany the IRP 6 tax return. For more information on provisional tax, how you can obtain your IRP6 tax return and submission due dates you can visit the SARS website www.sars.gov.za, or you can contact the SARS Call Centre on 0800 00 SARS (7277).

N you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check amounts to ensure:

rence Number 0238636146 ITA34_RO 2018.05.00

1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised return.

If you are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be delivered to your nearest SARS branch within 30 days of the date of this assessment or sent via registered mail to the address at the top of this notice.

If you are aggrieved by this assessment, you may submit a Notice of Objection (NOO) using the form available from eFiling or your nearest branch to you or by calling 0800 00 SARS (7277). You have 30 days from the date of this assessment in which to do this.
NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **91**
Year of assessment: **2017**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			26980658.00
3605	Annual payment - taxable	21949154.00	21949154.00
3601	Income - taxable	1902911.00	1902911.00
3601	Income - taxable	1824365.00	1824365.00
3605	Annual payment - taxable	239050.00	239050.00
3817	Pension fund contributions Fringe Benefit (defined contribution)	252105.00	252105.00
3713	Other allowances - taxable	240000.00	240000.00
3701	Travelling allowance	207774.00	207774.00
3817	Pension fund contributions Fringe Benefit (defined contribution)	182436.00	182436.00
3713	Other allowances - taxable	120000.00	120000.00
3810	Medical Scheme Fees Fringe Benefit	61209.00	61209.00
3601	Acquisition of assets less than market value	1654.00	1654.00
Local interest income			410993.00
4201	Interest - local	434793.00	410993.00
	Investment exemption	-23800.00	
Income			27391651.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement annuity fund contributions			-350000.00
4029	Retirement fund contributions	992833.00	-350000.00
	Amount b/f from previous year	68198.00	
	Pension fund contributions	692753.00	
	Retirement annuity fund contributions	300080.00	
	Amount c/f to next year	-711031.00	
	Deduction limited to lessor of R350 000 or (27,5% of the greater of the taxable income R 27185330.00 or remuneration R 26772884.00)		
	Deduction limited to Taxable income excluding CGT R 27185330.00, excess amount R 0.00 included in carry-over amount		
Travel claim against allowance			-206321.00
	Vehicle 1		
	Logbook used	Y	
	Purchase Agreement	Yes	
	Date of Purchase	2016-10-19	
	Vehicle registration	20671403	
	Cost price or cash value	2015596.00	
	Kilometres travelled for the period	2016-10-19 - 2017-02-28	
	Opening kilometres	0	
	Closing kilometres	18721	
	Total kilometres	18721	
	Business kilometres claimed	15503	
	Business kilometres allowed	15503	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	144784.00	
	Fixed cost per kilometre	2.82	
	Petrol per kilometre	1.37	
	Maintenance per kilometre	0.80	
	Total cost per kilometre	4.98	
	Business kilometres (deemed or actual) x calculated cost per kilometre	77175.00	
	Vehicle 2		
	Logbook used	Y	
	Purchase Agreement	Yes	
	Date of Purchase	2015-01-15	

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **91**
Year of assessment: **2017**

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
	Vehicle registration	QTGTSAAGP	
	Cost price or cash value	2645366.00	
	Kilometres travelled for the period	2016-03-01 - 2016-10-13	
	Opening kilometres	15831	
	Closing kilometres	44778	
	Total kilometres	28947	
	Business kilometres claimed	24503	
	Business kilometres allowed	24503	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	144784.00	
	Fixed cost per kilometre	3.11	
	Petrol per kilometre	1.37	
	Maintenance per kilometre	0.80	
	Total cost per kilometre	5.27	
	Business kilometres (deemed or actual) x calculated cost per kilometre	129146.00	
4014	Travel expenses-fixed cost	206321.00	-206321.00
Deductions Allowed			**-556321.00**

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	**26835330.00**

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		10921916.30
	Rebates		-22668.00
	Primary	13500.00	
	Medical Scheme Fees Tax Credit	9168.00	
Subtotal			**10899248.30**
	Employees' tax		-10573329.12
4102	PAYE - pay as you earn	9695374.56	
4102	PAYE - pay as you earn	877954.56	
	Previous assessment result		-157412.05
Current assessment - before provisional tax credits and Section 89 Quat interest *			**168507.13**
	Provisional tax credits *		0.00
	Section 89Quat(2) interest on underpayment of provisional tax *		22433.79
Net amount payable under this assessment			**190940.92**

*This amount is separately reflected on your Statement of Account.

Notes

			Amount assessed
1 Information declared that impacts this assessment:			
Married in community of property			
Medical Rebates for persons below 65 without a disability			**9168.00**
Contributions made to medical aid		181854.00	
Medical Scheme Fees Tax Credit:			9168.00
201603	3	764.00	
201604	3	764.00	
201605	3	764.00	
201606	3	764.00	

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **91**
Year of assessment: **2017**

Notes

				Amount assessed
	201607	3	764.00	
	201608	3	764.00	
	201609	3	764.00	
	201610	3	764.00	
	201611	3	764.00	
	201612	3	764.00	
	201701	3	764.00	
	201702	3	764.00	
	Additional Medical Expenses Tax Credits			0.00
	(((181854.00 - (9168.00 x 4)) + 97484.00)-(7.5% x 26835330.00)) x 25%			

Grounds for the assessment

DECLARATION INCORRECT

Declaration Section	Adjustment Reason
NET INVESTMENT INCOME	INCOME CORRECTED

"D8"

Annexure "D8"

SARS

INCOME TAX **ITA34**

Notice of Assessment

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Details

Reference number:	**0238636146**
Document number:	**79**
Date of assessment:	**2017-01-31**
Year of assessment:	**2016**
Type of assessment:	**Original Assessment**
Period (days):	**366**
Due date:	**2017-03-01**
Second date:	**2017-03-31**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	4308867.00
Deductions allowed	-590800.00
Taxable Income	3718067.00
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	1423009.47
Tax credits and adjustments	-1710098.45
Not amount refundable under this assessment after allowable credits	**-287088.98**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	N
Selected for audit or verification	Y		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2016 year of assessment. Your assessment has been concluded and reflects an amount refundable to you of R -287088.98

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

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- Call the SARS Contact Centre
- At your nearest SARS branch

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(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

Please note, however, that the information provided by you in your income tax return does not match the information in the possession of SARS or your return has been selected for verification. Attached you will find a letter containing further instructions for you to resolve this. Please note that any refund which may be due will be withheld pending finalisation of this matter.

According to the information you declared in your income tax return, you were not liable for to pay provisional tax for this year of assessment. Kindly note that should your tax circumstances remain the same, in future, you do not need to submit an IRP6 tax return and pay any provisional

Below you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check these amounts to ensure:
1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised return.

If you are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be delivered to your nearest SARS branch within 30 days of the date of this assessment or sent via registered mail to the address at the top of this notice.

If you are aggrieved by this assessment, you may submit a Notice of Objection (NOO) using the form available from eFiling or your nearest branch to you or by calling 0800 00 SARS (7277). You have 30 days from the date of this assessment in which to do this.
NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **79**
Year of assessment: **2016**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			4308867.00
3601	Income - taxable	1552080.00	1552080.00
3601	Income - taxable	1468165.00	1468165.00
3605	Annual payment - taxable	655865.00	655865.00
3713	Other allowances - taxable	240000.00	240000.00
3701	Travelling allowance	215451.00	215451.00
3713	Other allowances - taxable	120000.00	120000.00
3810	Medical Scheme Fees Fringe Benefit	55782.00	55782.00
3801	Acquisition of assets less than	1524.00	1524.00
Income			4308867.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement funding contributions			-375349.00
4001	Current pension fund contrib	208414.00	-208414.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	2980515.00	
4006	Current retirement annuity fund	184800.00	-166935.00
	Amount b/f from previous year	50333.00	
	Amount c/f to next year	-68198.00	
	Deduction (limited to the amount declared) equal to the greater of:		
	15% of calculated non-retirement funding income, R1750 or R3500 less pension fund contributions		
	Calculated non-retirement funding income	1328352.00	
Travel claim against allowance			-215451.00
	Vehicle 1		
	Logbook used	Y	
	Vehicle registration	QTGTSAAGP	
	Cost price or cash value	2645366.00	
	Kilometres travelled for the period	2015-07-06 - 2016-02-29	
	Opening kilometres	0	
	Closing kilometres	15831	
	Total kilometres	15831	
	Business kilometres claimed	10984	
	Business kilometres allowed	10984	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	140797.00	
	Fixed cost per kilometre	5.81	
	Petrol per kilometre	1.30	
	Maintenance per kilometre	0.76	
	Total cost per kilometre	7.87	
	Business kilometres (deemed or actual) x calculated cost per kilometre	86418.00	
	Vehicle 2		
	Logbook used	Y	
	Vehicle registration	CG03TXGP	
	Cost price or cash value	1583789.00	
	Kilometres travelled for the period	2015-03-01 - 2016-02-29	
	Opening kilometres	27521	
	Closing kilometres	35927	
	Total kilometres	8406	
	Business kilometres claimed	6918	
	Business kilometres allowed	6918	

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **79**
Year of assessment: **2016**

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
	Deemed expenditure		
	Fixed cost based on cost price or cash value	140797.00	
	Fixed cost per kilometre	16.75	
	Petrol per kilometre	1.30	
	Maintenance per kilometre	0.76	
	Total cost per kilometre	18.81	
	Business kilometres (deemed or actual) x calculated cost per kilometre	130125.00	
	Vehicle 3		
	Logbook used	Y	
	Vehicle registration	PANMERA GP	
	Cost price or cash value	2179897.00	
	Kilometres travelled for the period	2015-03-01 - 2015-07-06	
	Opening kilometres	34008	
	Closing kilometres	42253	
	Total kilometres	8245	
	Business kilometres claimed	6963	
	Business kilometres allowed	6963	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	140797.00	
	Fixed cost per kilometre	5.97	
	Petrol per kilometre	1.30	
	Maintenance per kilometre	0.76	
	Total cost per kilometre	8.03	
	Business kilometres (deemed or actual) x calculated cost per kilometre	55928.00	
4014	Travel expenses-fixed cost	272471.00	-215451.00
	Amount in excess of allowance	-57020.00	
Deductions Allowed			**-590880.00**

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	**3718067.00**

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		1445461.47
	Rebates		-22452.00
	Primary	13257.00	
	Medical Scheme Fees Tax Credit	9195.00	
	Foreign tax credits	0.00	
	Foreign Tax Credits Refunded / Discharged		0.00
Subtotal			**1423009.47**
	Employees' tax		-1710098.45
4102	Paye - pay as you earn	1011903.20	
4102	Paye - pay as you earn	698195.25	
	Previous assessment result		0.00
Net amount refundable under this assessment			**-287088.98**

*This amount is separately reflected on your Statement of Account.

Notes

	Amount assessed
1 Information declared that impacts this assessment:	

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **79**
Year of assessment: **2016**

Notes

			Amount assessed
Married in community of property		N	
Medical Rebates for persons below 65 without a disability			**9195.00**
Contributions made to medical aid		176440.00	
Medical Scheme Fees Tax Credit:			9195.00
201503	4	902.00	
201504	4	902.00	
201505	4	902.00	
201506	3	721.00	
201507	3	721.00	
201508	3	721.00	
201509	3	721.00	
201510	3	721.00	
201511	3	721.00	
201512	3	721.00	
201601	3	721.00	
201602	3	721.00	
Additional Medical Expenses Tax Credits			0.00
(((176440.00 - (9195.00 x 4)) + 0.00)-(7.5% x 3718067.00)) x 25%			

"D9"

Annexure "D9"

SARS

INCOME TAX **ITA34**

Notice of Assessment

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

Details

Reference number:	**0238636146**
Document number:	**73**
Date of assessment:	**2015-11-22**
Year of assessment:	**2015**
Type of assessment:	**Original Assessment**
Period (days):	**365**
Due date:	**2016-01-01**
Second date:	**2016-01-31**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	3964960.00
Deductions allowed	-521720.00
Taxable income	3443240.00
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	1270481.75
Tax credits and adjustments	-1318049.31
Net amount refundable under this assessment after allowable credits	**-47567.56**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	Y
Selected for audit or verification	Y		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2015 year of assessment. Your assessment has been concluded and reflects an amount refundable to you of R -47567.56

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

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can visit the SARS website www.sars.gov.za, or you can contact the SARS Call Centre on 0800 00 SARS (7277).

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2. They reflect all your taxable income and allowable deductions for the year

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NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **73**
Year of assessment: **2015**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			3922695.00
3601	Income - taxable	1433732.00	1433732.00
3601	Income - taxable	1371113.00	1371113.00
3605	Annual payment - taxable	489013.00	489013.00
3713	Other allowances - taxable	240000.00	240000.00
3701	Travelling allowance	216910.00	216910.00
3713	Other allowances - taxable	120000.00	120000.00
3810	Medical Scheme Fees Fringe Benefit	50541.00	50541.00
3801	Acquisition of assets less than	1386.00	1386.00
Local interest income			0.00
4201	Interest - local	3924.00	0.00
	Investment exemption	-3924.00	
Other income			42265.00
4214	Other receipts and accruals-profit	42265.00	42265.00
Income			3964960.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			-347164.00
4001	Current pension fund contrib	193497.00	-193497.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	2765953.00	
4006	Current retirement annuity fund	204000.00	-153667.00
	Amount c/f to next year	-50333.00	
	Deduction (limited to the amount declared) equal to the greater of:		
	15% of calculated non-retirement funding income, R1750 or R3500 less pension fund contributions		
	Calculated non-retirement funding income	1199007.00	
Travel claim against allowance			-174556.00
	Vehicle 1		
	Logbook used	Y	
	Vehicle registration	CG03TXGP	
	Cost price or cash value	1563789.00	
	Kilometres travelled for the period	2014-11-17 - 2015-02-27	
	Opening kilometres	21217	
	Closing kilometres	27521	
	Total kilometres	6304	
	Business kilometres claimed	2778	
	Business kilometres allowed	2778	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	139760.00	
	Fixed cost per kilometre	6.26	
	Petrol per kilometre	1.53	
	Maintenance per kilometre	0.71	
	Total cost per kilometre	8.50	
	Business kilometres (deemed or actual) x calculated cost per kilometre	23608.00	
	Vehicle 2		
	Logbook used	Y	
	Vehicle registration	PANMERA GP	
	Cost price or cash value	2179897.00	
	Kilometres travelled for the period	2014-03-01 - 2015-02-28	
	Opening kilometres	10862	

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **73**
Year of assessment: **2015**

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
	Closing kilometres	34008	
	Total kilometres	23146	
	Business kilometres claimed	18230	
	Business kilometres allowed	18230	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	139760.00	
	Fixed cost per kilometre	6.04	
	Petrol per kilometre	1.53	
	Maintenance per kilometre	0.71	
	Total cost per kilometre	8.28	
	Business kilometres (deemed or actual) x calculated cost per kilometre	150948.00	
4014	Travel expenses-fixed cost	174556.00	-174556.00
Deductions Allowed			-521720.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	3443240.00

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		1303268.00
	Rebates		-32786.25
	Primary	12726.00	
	Medical Scheme Fees Tax Credit	10296.00	
	Additional Medical Expenses Tax Credit	9764.25	
	Foreign Tax Credits Refunded / Discharged		0.00
Subtotal			1270481.75
	Employees' tax		-1317682.38
4102	Paye - pay as you earn	719323.13	
4102	Paye - pay as you earn	598359.25	
	Previous assessment result		0.00
Current assessment - before provisional tax credits and Section 89 Quat interest *			-47200.63
	Provisional tax credits *		0.00
	Section 89Quat(4) interest on overpayment of provisional tax *		-366.93
Net amount refundable under this assessment			-47567.56

*This amount is separately reflected on your Statement of Account.

Notes

			Amount assessed
1 Information declared that impacts this assessment:			
	Married in community of property	N	
	Medical Rebates for persons below 65 without a disability		20060.25
	Contributions made to medical aid	202164.00	
	Medical Scheme Fees Tax Credit:		10296.00
201403	4	858.00	
201404	4	858.00	
201405	4	858.00	
201406	4	858.00	
201407	4	858.00	

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **73**
Year of assessment: **2015**

Notes

				Amount assessed
201408	4		858.00	
201409	4		858.00	
201410	4		858.00	
201411	4		858.00	
201412	4		858.00	
201501	4		858.00	
201502	4		858.00	
Additional Medical Expenses Tax Credits				9764.25
(((202164.00 - (10296.00 x 4)) + 136320.00)-(7.5% x 3443240.00)) x 25%				

"D10"

Annexure "D10"

SARS

INCOME TAX **ITA34**

Notice of Assessment

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Details

Reference number:	**0238636146**
Document number:	**70**
Date of assessment:	**2015-03-26**
Year of assessment:	**2014**
Type of assessment:	**Additional Assessment**
Period (days):	**365**
Due date:	**2015-03-26**
Second date:	**2015-04-02**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	3406643.00
Deductions allowed	-423746.00
Taxable income	2982897.00
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	1101147.80
Tax credits and adjustments	-1055360.70
Net amount payable under this assessment after allowable credits	**45787.10**

Compliance Information

Unprocessed payments	**0.00**	**Provisional taxpayer**	**Y**
Selected for audit or verification	**N**		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2014 year of assessment. Your assessment has been concluded and reflects an amount payable by you of R 45787.10 . Payment should be made by 2015-04-02 after which interest will accrue on this assessment as from 2015-03-26

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. The current balance on your assessed account is R 44624.62. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

- Electronically via eFiling
- Call the SARS Contact Centre
- At your nearest SARS branch

The final balance is reflected on the remittance advice at the bottom of the Statement of Account. Please note that interest accrues on all taxes payable after the due date so you are advised to pay in full on or before the due date.

The reference to additional tax/understatement penalty in this notice of assessment depends upon the circumstances.
(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

According to the information you declared in your income tax return, you were liable to pay provisional tax for this year of assessment. Kindly note that should your tax circumstances remain the same for the next tax year, as a provisional taxpayer you are required to submit an IRP6 tax return that reflects an estimate of your taxable income for that tax year. A provisional tax payment based on the estimated taxable income must also accompany the IRP 6 tax return. For more information on provisional tax, how you can obtain your IRP6 tax return and submission due dates you can visit the SARS website www.sars.gov.za, or you can contact the SARS Call Centre on 0800 00 SARS (7277).

e note that your assessment has been adjusted in light of an incorrect declaration. Should this reoccur, an understatement penalty will be

Below you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check these amounts to ensure:
1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised return.

If you are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be delivered to your nearest SARS branch within 30 days of the date of this assessment or sent via registered mail to the address at the top of this notice.

If you are aggrieved by this assessment, you may submit a Notice of Objection (NOO) using the form available from eFiling or your nearest branch to you or by calling 0800 00 SARS (7277). You have 30 days from the date of this assessment in which to do this.
NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **70**
Year of assessment: **2014**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			3300772.00
3601	Income - taxable	1325254.00	1325254.00
3601	Income - taxable	1265953.00	1265953.00
3605	Annual payment - taxable	107500.00	107500.00
3605	Annual payment - taxable	106113.00	106113.00
3701	Travelling allowance	224163.00	224163.00
3713	Other allowances - taxable	120000.00	120000.00
3713	Other allowances - taxable	100000.00	100000.00
3810	Medical Scheme Fees Fringe Benefit	50556.00	50556.00
3801	Acquisition of assets less than	1233.00	1233.00
Local interest income			105871.00
4201	Interest - local	129671.00	105871.00
	Investment exemption	-23800.00	
Income			3406643.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			-258308.00
4001	Current pension fund contrib	178308.00	-178308.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	2548453.00	
4006	Current retirement annuity fund	80000.00	-80000.00
	Deduction (limited to the amount declared) equal to the greater of:		
	15% of calculated non-retirement funding income, R1750 or R3500 less pension fund contributions		
	Calculated non-retirement funding income	858190.00	
Travel claim against allowance			-165438.00
	Vehicle 1		
	Logbook used	Y	
	Vehicle registration	PANMERAG	
	Cost price or cash value	2179897.00	
	Kilometres travelled for the period	2013-10-08 - 2014-02-28	
	Opening kilometres	0	
	Closing kilometres	10862	
	Total kilometres	10862	
	Business kilometres claimed	8664	
	Business kilometres allowed	8664	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	118078.00	
	Fixed cost per kilometre	4.29	
	Petrol per kilometre	1.48	
	Maintenance per kilometre	0.71	
	Total cost per kilometre	6.47	
	Business kilometres (deemed or actual) x calculated cost per kilometre	56062.00	
	Vehicle 2		
	Logbook used	Y	
	Vehicle registration	CH29CW GP	
	Cost price or cash value	1601300.00	
	Kilometres travelled for the period	2013-03-11 - 2014-02-28	
	Opening kilometres	0	
	Closing kilometres	22276	
	Total kilometres	22276	

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **70**
Year of assessment: **2014**

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
	Business kilometres claimed	13297	
	Business kilometres allowed	13297	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	118078.00	
	Fixed cost per kilometre	5.16	
	Petrol per kilometre	1.48	
	Maintenance per kilometre	0.71	
	Total cost per kilometre	7.34	
	Business kilometres (deemed or actual) x calculated cost per kilometre	97566.00	
	Vehicle 3		
	Logbook used	Y	
	Vehicle registration	BV02RJ GP	
	Cost price or cash value	700000.00	
	Kilometres travelled for the period	2013-03-01 - 2013-03-24	
	Opening kilometres	21773	
	Closing kilometres	24077	
	Total kilometres	2304	
	Business kilometres claimed	1125	
	Business kilometres allowed	1125	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	118078.00	
	Fixed cost per kilometre	3.37	
	Petrol per kilometre	1.48	
	Maintenance per kilometre	0.71	
	Total cost per kilometre	5.55	
	Business kilometres (deemed or actual) x calculated cost per kilometre	6246.00	
	Vehicle 4		
	Logbook used	Y	
	Vehicle registration	000AGR GP	
	Cost price or cash value	1453177.00	
	Kilometres travelled for the period	2013-03-01 - 2013-03-11	
	Opening kilometres	15301	
	Closing kilometres	16484	
	Total kilometres	1183	
	Business kilometres claimed	1072	
	Business kilometres allowed	1072	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	118078.00	
	Fixed cost per kilometre	3.01	
	Petrol per kilometre	1.48	
	Maintenance per kilometre	0.71	
	Total cost per kilometre	5.19	
	Business kilometres (deemed or actual) x calculated cost per kilometre	5564.00	
4014	Travel expenses-fixed cost	165438.00	65438.00

Medical deductions

	Contributions made to medical aid	Y	0.00
	Handicapped - you, spouse or children	N	
	Number of members per month		
	03/2013 - 02/2014	4	
	Capping Amount		
4474	Employers medical aid contribution	50556.00	
		50556.00	

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **70**
Year of assessment: **2014**

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
	Excess Component		
4005	Medical fund contributions	147288.00	
4020	Medical fund expenses not recovered from medical fund	15468.00	
	Medical tax credits X 4	-38784.00	
	Calculation of medical deduction	-123972.00	
		0.00	
4008	Medical expenses (total)	0.00	0.00
Deductions Allowed			-423746.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable Income – subject to normal tax	2982897.00

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		1122923.80
	Rebates		-21776.00
	Primary	12080.00	
	Medical Scheme Fees Tax Credit	9696.00	
	Foreign Tax Credits Refunded / Discharged		0.00
Subtotal			1101147.80
	Employees' tax		-1028473.39
4102	Paye - pay as you earn	588193.52	
4102	Paye - pay as you earn	440279.87	
	Previous assessment result		-30326.01
Current assessment - before provisional tax credits and Section 89 Quat interest *			42348.40
	Provisional tax credits *		0.00
	Section 89Quat(2) interest on underpayment of provisional tax *		3438.70
Net amount payable under this assessment			45787.10

*This amount is separately reflected on your Statement of Account.

Notes

		Amount assessed
1 Information declared that impacts this assessment:		
Married in community of property	N	

Grounds for the assessment

ASSESSMENT BASED ON INFORMATION AVAILABLE TO SARS

Declaration Section	Adjustment Reason
NET INVESTMENT INCOME	INCOME NOT DECLARED

"D11"

Annexure "D11"

SARS

INCOME TAX **ITA34**

Notice of Assessment

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Details

Reference number:	**0238636146**
Document number:	**62**
Date of assessment:	**2014-02-21**
Year of assessment:	**2013**
Type of assessment:	**Additional Assessment**
Period (days):	**365**
Due date:	**2014-02-21**
Second date:	**2014-02-28**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	5119209.00
Deductions allowed	-408460.00
Taxable Income	4710749.00
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	1795783.60
Tax credits and adjustments	-1779318.56
Net amount payable under this assessment after allowable credits	**16465.04**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	Y
Selected for audit or verification	N		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2013 year of assessment. Your assessment has been concluded and reflects an amount payable by you of R 16465.04 . Payment should be made by 2014-02-28 after which interest will accrue on this assessment as from 2014-02-21

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. The current balance on your assessed account is R 47402.02. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

- Electronically via eFiling
- Call the SARS Contact Centre
- At your nearest SARS branch

The final balance is reflected on the remittance advice at the bottom of the Statement of Account. Please note that interest accrues on all taxes payable after the due date so you are advised to pay in full on or before the due date.

The reference to additional tax/understatement penalty in this notice of assessment depends upon the circumstances.
(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

According to the information you declared in your income tax return, you were liable to pay provisional tax for this year of assessment. Kindly note that should your tax circumstances remain the same for the next tax year, as a provisional taxpayer you are required to submit an IRP6 tax return that reflects an estimate of your taxable income for that tax year. A provisional tax payment based on the estimated taxable income must also accompany the IRP 6 tax return. For more information on provisional tax, how you can obtain your IRP6 tax return and submission due dates you can visit the SARS website www.sars.gov.za, or you can contact the SARS Call Centre on 0800 00 SARS (727).

v you will find the amounts of income included and deductions allowed in calculating this assessment. It's very important that you check amounts to ensure:

Issue: 2019-01-26_12:01:08

1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised return.

If you are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be delivered to your nearest SARS branch within 30 days of the date of this assessment or sent via registered mail to the address at the top of this notice.

If you are aggrieved by this assessment, you may submit a Notice of Objection (NOO) using the form available from eFing or your nearest branch to you or by calling 0800 00 SARS (7277). You have 30 days from the date of this assessment in which to do this.
NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

AA-192

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **62**
Year of assessment: **2013**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			5082352.00
3601	Income - taxable	2000000.00	2000000.00
3601	Income - taxable	1246856.00	1246856.00
3601	Income - taxable	1121860.00	1121860.00
3605	Annual payment - taxable	300000.00	300000.00
3701	Travelling allowance	246841.00	246841.00
3713	Other allowances - taxable	120000.00	120000.00
3810	Medical aid contributions paid on your behalf	46795.00	46795.00
Local interest income			36857.00
4201	Interest - local	119315.00	36857.00
	Married in community of property - 50% adjustment	-59657.00	
	Investment exemption	-22800.00	
Income			5119209.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			-161619.00
4001	Current pension fund contrib	161619.00	-161619.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	2313860.00	
Travel claim against allowance			-246841.00
	Vehicle 1		
	Logbook used	Y	
	Vehicle registration	000AGR GP	
	Cost price or cash value	1453177.00	
	Kilometres travelled for the period	2012-09-17 - 2013-02-28	
	Opening kilometres	13	
	Closing kilometres	15301	
	Total kilometres	15288	
	Business kilometres claimed	11650	
	Business kilometres allowed	11650	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	119683.00	
	Fixed cost per kilometre	3.54	
	Petrol per kilometre	1.34	
	Maintenance per kilometre	0.68	
	Total cost per kilometre	5.56	
	Business kilometres (deemed or actual) x calculated cost per kilometre	64750.00	
	Vehicle 2		
	Logbook used	Y	
	Vehicle registration	BV02RJ GP	
	Cost price or cash value	700000.00	
	Kilometres travelled for the period	2012-03-19 - 2013-02-03	
	Opening kilometres	24	
	Closing kilometres	21773	
	Total kilometres	21749	
	Business kilometres claimed	16224	
	Business kilometres allowed	16224	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	119683.00	
	Fixed cost per kilometre	4.85	

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **62**
Year of assessment: **2013**

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
	Petrol per kilometre	1.34	
	Maintenance per kilometre	0.68	
	Total cost per kilometre	6.87	
	Business kilometres (deemed or actual) x calculated cost per kilometre	111518.00	
	Vehicle 3		
	Logbook used	Y	
	Vehicle registration	000AGR GP	
	Cost price or cash value	1254849.00	
	Kilometres travelled for the period	2012-03-01 - 2012-09-17	
	Opening kilometres	69003	
	Closing kilometres	84917	
	Total kilometres	15914	
	Business kilometres claimed	11764	
	Business kilometres allowed	11764	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	119683.00	
	Fixed cost per kilometre	4.14	
	Petrol per kilometre	1.34	
	Maintenance per kilometre	0.68	
	Total cost per kilometre	6.16	
	Business kilometres (deemed or actual) x calculated cost per kilometre	72472.00	
	Vehicle 4		
	Logbook used	Y	
	Vehicle registration	BG81YX GP	
	Cost price or cash value	310000.00	
	Kilometres travelled for the period	2012-03-01 - 2012-03-19	
	Opening kilometres	22670	
	Closing kilometres	23169	
	Total kilometres	499	
	Business kilometres claimed	342	
	Business kilometres allowed	342	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	91873.00	
	Fixed cost per kilometre	9.58	
	Petrol per kilometre	1.17	
	Maintenance per kilometre	0.54	
	Total cost per kilometre	11.29	
	Business kilometres (deemed or actual) x calculated cost per kilometre	3862.00	
4014	Travel expenses-fixed cost	252602.00	-246841.00
	Amount in excess of allowance	-5761.00	

Medical deductions 0.00

	Contributions made to medical aid	Y	
	Handicapped - you, spouse or children	N	
	Number of members per month		
	03/2012 - 02/2013	4	
	Capping Amount		
4474	Employers medical aid contribution	46795.00	
		46795.00	
	Excess Component		
4005	Medical fund contributions	121707.00	
4020	Medical fund expenses not recovered from medical fund	58965.00	
	Medical tax credits X 4	-36864.00	
	Calculation of medical deduction	-143808.00	

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: 0238636146
Document number: 62
Year of assessment: 2013

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
		0.00	
4008	Medical expenses (total)	0.00	0.00
Deductions Allowed			-408460.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	4710749.00

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		1816439.60
	Rebates		-20656.00
	Primary	11440.00	
	Medical Scheme Fees Tax Credit	9216.00	
Subtotal			1795783.60
	Employees' tax		-950103.82
4102	Paye - pay as you earn	526173.69	
4102	Paye - pay as you earn	423930.13	
	Previous assessment result		-30936.98
Current assessment - before provisional tax credits and Section 89 Quat interest *			814742.80
	Provisional tax credits *		-800000.00
	2nd Provisional payment	-800000.00	
	Section 89Quat(2) interest on underpayment of provisional tax *		1722.24
Net amount payable under this assessment			16465.04

*This amount is separately reflected on your Statement of Account.

Notes

			Amount assessed
1	**Information declared that impacts this assessment:**		
	Married in community of property	Y	
	Investment income (excl. exempt dividends) - excluded from communal estate	N	
	Capital gain/loss - excluded from communal estate	N	

Grounds for the assessment

ASSESSMENT BASED ON INFORMATION AVAILABLE TO SARS

Declaration Section	Adjustment Reason
NET INVESTMENT INCOME	INCOME CORRECTED

"D12"

Annexure "D12"

SARS

INCOME TAX **ITA34**

Notice of Assessment

A AGRIZZI
PO BOX 1976
RANDFONTEIN
1760

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

Details

Reference number:	**0238636146**
Document number:	**52**
Date of assessment:	**2012-11-22**
Year of assessment:	**2012**
Type of assessment:	**Original Assessment**
Period (days):	**366**
Due date:	**2013-01-01**
Second date:	**2013-01-31**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	1968964.00
Deductions allowed	-309101.00
Taxable income	1659863.00
Taxable income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	589440.20
Tax credits and adjustments	-589233.91
Net amount payable under this assessment after allowable credits	**206.29**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	Y
Selected for audit or verification	Y		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2012 year of assessment. Your assessment has been concluded and reflects an amount payable by you of R 206.29 . Payment should be made by 2013-01-31 after which interest will accrue on this assessment as from 2013-01-01

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

- Electronically via eFiling
- Call the SARS Contact Centre
- At your nearest SARS branch

The final balance is reflected on the remittance advice at the bottom of the Statement of Account. Please note that interest accrues on all taxes payable after the due date so you are advised to pay in full on or before the due date.

The reference to additional tax/understatement penalty in this notice of assessment depends upon the circumstances.
(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

It should also be noted that the information provided by you in your income tax return does not match the information in the possession of SARS or your return has been selected for verification. Attached you will find a letter containing further instructions for you to resolve this. Please note that any refund which may be due will be withheld pending finalisation of this matter.

According to the information you declared in your income tax return, you were not liable for to pay provisional tax for this year of assessment. Kindly note that should your tax circumstances remain the same, in future, you do not need to submit an IRP6 tax return and paying provisional

Below you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check these amounts to ensure:
1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised return.

If you are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be delivered to your nearest SARS branch within 30 days of the date of this assessment or sent via registered mail to the address at the top of this notice.

NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **52**
Year of assessment: **2012**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			1968964.00
3601	Income - taxable	990220.00	990220.00
3601	Income - taxable	430550.00	430550.00
3605	Annual payment - taxable	83060.00	83060.00
3605	Annual payment - taxable	36050.00	36050.00
3701	Travelling allowance	264000.00	264000.00
3713	Other allowances - taxable	120000.00	120000.00
3810	Medical aid contributions paid on your behalf	45084.00	45084.00
Income			1968964.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			-96655.00
4001	Current pension fund contrib	96655.00	-96655.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	1420770.00	
Travel claim against allowance			-184606.00
	Vehicle 1		
	Logbook used	Y	
	Vehicle registration	BG81YX GP	
	Cost price or cash value	310000.00	
	Kilometres travelled for the period	2011-05-05 - 2012-02-29	
	Opening kilometres	1146	
	Closing kilometres	22670	
	Total kilometres	21524	
	Business kilometres claimed	10240	
	Business kilometres allowed	10240	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	91873.00	
	Fixed cost per kilometre	3.51	
	Petrol per kilometre	0.94	
	Maintenance per kilometre	0.54	
	Total cost per kilometre	4.99	
	Business kilometres (deemed or actual) x calculated cost per kilometre	51111.00	
	Vehicle 2		
	Logbook used	Y	
	Vehicle registration	000AGR GP	
	Cost price or cash value	1254849.00	
	Kilometres travelled for the period	2011-03-01 - 2012-02-29	
	Opening kilometres	43049	
	Closing kilometres	69003	
	Total kilometres	25954	
	Business kilometres claimed	18482	
	Business kilometres allowed	18482	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	119683.00	
	Fixed cost per kilometre	4.61	
	Petrol per kilometre	1.13	
	Maintenance per kilometre	0.68	
	Total cost per kilometre	6.42	
	Business kilometres (deemed or actual) x calculated cost per kilometre	118624.00	

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **52**
Year of assessment: **2012**

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
	Vehicle 3		
	Logbook used	Y	
	Vehicle registration	YWG170GP	
	Cost price or cash value	225000.00	
	Kilometres travelled for the period	2011-03-01 - 2011-05-05	
	Opening kilometres	27524	
	Closing kilometres	34511	
	Total kilometres	6987	
	Business kilometres claimed	5233	
	Business kilometres allowed	5233	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	66440.00	
	Fixed cost per kilometre	1.71	
	Petrol per kilometre	0.78	
	Maintenance per kilometre	0.35	
	Total cost per kilometre	2.84	
	Business kilometres (deemed or actual) x calculated cost per kilometre	14871.00	
4014	Travel expenses-fixed cost	184606.00	-184606.00
Medical deductions			-27840.00
	Contributions made to medical aid	Y	
	Handicapped - you, spouse or children	N	
	Number of members per month		
	03/2011 - 02/2012	4	
	Capping Amount		
4005	Medical fund contributions	90168.00	
4474	Employers medical aid contribution	45084.00	
3810	Medical aid contributions paid on your behalf	-45084.00	
		-62328.00	
		27840.00	
	Excess Component		
4020	Medical fund expenses not recovered from medical fund	59440.00	
	Contributions in excess of capping subject to 7.5	62328.00	
	Calculation of medical deduction	-121768.00	
		0.00	
4008	Medical expenses (total)	27840.00	-27840.00
Deductions Allowed			-309101.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	1669863.00

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		600195.20
	Rebates		-10755.00
	Primary	10755.00	
Subtotal			589440.20
	Employees' tax		-571191.94
4101	Site -stand. Income tax on empl	45.00	
4102	Payo - pay as you earn	468393.88	
4101	Site -stand. Income tax on empl	45.00	
4102	Paye - pay as you earn	102708.06	

AA-200

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **52**
Year of assessment: **2012**

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Previous assessment result		0.00
Current assessment - before provisional tax credits and Section 89 Quat interest *			18248.26
	Provisional tax credits *		-18046.26
	2nd Provisional payment	-18046.26	
	Section 89Qual(2) interest on underpayment of provisional tax *		4.29
Net amount payable under this assessment			206.29

*This amount is separately reflected on your Statement of Account

Notes

			Amount assessed
1 Information declared that impacts this assessment:			
	Married in community of property	Y	
	Investment income (excl. exempt dividends) - excluded from communal estate	N	
	Capital gain/loss - excluded from communal estate	N	

"D13"

Annexure "D13"

AA-202

SARS

INCOME TAX **ITA34**

Notice of Assessment

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

Details

Reference number:	0238636146
Document number:	45
Date of assessment:	2012-02-07
Year of assessment:	2011
Type of assessment:	Reduced Assessment
Period (days):	365
Due date:	2012-01-01
Second date:	2012-01-31

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	1644692.00
Deductions allowed	-259522.00
Taxable income	1385170.00
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	483738.00
Tax credits and adjustments	-495020.40
Net amount refundable under this assessment after allowable credits	**-11349.37**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	Y
Selected for audit or verification	N		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2011 year of assessment. Your assessment has been issued and reflects an amount refundable to you of R -11349.37

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. The current balance on your assessed account is R 32032.66. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

- Electronically via eFiling
- Call the SARS Contact Centre
- At your nearest SARS branch

The final balance is reflected on the remittance advice at the bottom of the Statement of Account. Please note that interest accrues on all taxes payable after the due date so you are advised to pay in full on or before the due date.

The reference to additional tax/understatement penalty in this notice of assessment depends upon the circumstances.
(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

According to the information you declared in your income tax return, you were not liable for to pay provisional tax for this year of assessment. Kindly note that should your tax circumstances remain the same, in future, you do not need to submit an IRP6 tax return and pay any provisional tax.

Below you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check these amounts to ensure:
1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised return.

If you are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may within 30 days of this assessment, submit a Request for Reason using the form available at the branch or via eFiling. Alternatively you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be sent per registered mail to the address at the top of this notice.

If you are aggrieved by this assessment, you may submit a Notice of Objection (NOO) using the form available from eFiling or your nearest branch or by calling 0800 00 SARS (7277). You have 30 days from the date of this assessment in which to do this.
NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **45**
Year of assessment: **2011**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			1644692.00
3601	Income - taxable	1014458.00	1014458.00
3601	Income - taxable	204000.00	204000.00
3701	Travelling allowance	264000.00	264000.00
3713	Other allowances - taxable	120000.00	120000.00
3810	Medical Scheme Fees Fringe Benefit	41670.00	41670.00
3801	Acquisition of assets less than market value	564.00	564.00
Income			1644692.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			-74590.00
4001	Current pension fund contributions	74590.00	-74590.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	1116160.00	
Travel claim against allowance			-159012.00
	Vehicle 1		
	Logbook used	Y	
	Vehicle registration	000AGRGP	
	Cost price or cash value	1254849.00	
	Kilometres travelled for the period	2010-05-08 - 2011-02-28	
	Opening kilometres	19043	
	Closing kilometres	43049	
	Total kilometres	24006	
	Business kilometres claimed	20188	
	Business kilometres allowed	20188	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	116012.00	
	Fixed cost per kilometre	3.93	
	Petrol per kilometre	1.10	
	Maintenance per kilometre	0.75	
	Total cost per kilometre	5.79	
	Business kilometres (deemed or actual) x calculated cost per kilometre	116834.00	
	Vehicle 2		
	Logbook used	Y	
	Vehicle registration	555AGR	
	Cost price or cash value	771874.00	
	Kilometres travelled for the period	2010-03-01 - 2011-02-28	
	Opening kilometres	9356	
	Closing kilometres	19432	
	Total kilometres	10076	
	Business kilometres claimed	3155	
	Business kilometres allowed	3155	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	116012.00	
	Fixed cost per kilometre	11.51	
	Petrol per kilometre	1.10	
	Maintenance per kilometre	0.75	
	Total cost per kilometre	13.37	
	Business kilometres (deemed or actual) x calculated cost per kilometre	42178.00	
4	Travel expenses-fixed cost	159012.00	-159012.00

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **45**
Year of assessment: **2011**

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Medical deductions			-25920.00
	Contributions made to medical aid	Y	
	Handicapped - you, spouse or children	N	
	Number of members per month		
	03/2010 - 02/2011	4	
	Capping Amount		
4005	Medical fund contributions	83340.00	
4474	Employers medical aid contribution	41670.00	
3810	Medical Scheme Fees Fringe Benefit	-41670.00	
		-57420.00	
		25920.00	
	Excess Component		
4020	Medical fund expenses not recovered from medical fund	22537.00	
	Contributions in excess of capping subject to 7.5	57420.00	
	Calculation of medical deduction	-79957.00	
		0.00	
4006	Medical expenses (total)	25920.00	-25920.00
Deductions Allowed			-259522.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	1385170.00

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		493998.00
	Rebates		-10260.00
	Primary	10260.00	
Subtotal			483738.00
	Employees' tax		-493798.23
4101	SITE - Standard income tax on employees	540.00	
4102	PAYE - pay as you earn	450202.71	
4101	SITE - Standard income tax on employees	267.78	
4102	PAYE - pay as you earn	42787.74	
	Previous assessment result		-1222.17
Current assessment - before provisional tax credits and Section 89 Quat interest *			-11282.40
	Provisional tax credits *		0.00
	Section 89Quat(4) interest on overpayment of provisional tax *		-66.97
Net amount refundable under this assessment			-11349.37

*This amount is separately reflected on your Statement of Account.

Notes

		Amount assessed
1 Information declared that impacts this assessment:		
Married in community of property	Y	

"D14"

Annexure "D14"

SARS

INCOME TAX **ITA34**

Notice of Assessment

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

Details

Reference number:	**0238636146**
Document number:	**38**
Date of assessment:	**2010-11-29**
Year of assessment:	**2010**
Type of assessment:	**Original Assessment**
Period (days):	**365**
Due date:	**2011-01-01**
Second date:	**2011-01-31**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	1127312.00
Deductions allowed	-160206.00
Taxable Income	967106.00
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	320046.40
Tax credits and adjustments	-329335.72
Net amount refundable under this assessment after allowable credits	**-9373.30**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	Y
Selected for audit or verification	N		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2010 year of assessment. Your assessment has been issued and reflects an amount refundable to you of R -9373.30

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. The current balance on your assessed account is R 206.29. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

- Electronically via eFiling
- Call the SARS Contact Centre
- At your nearest SARS branch

The final balance is reflected on the remittance advice at the bottom of the Statement of Account. Please note that interest accrues on all taxes payable after the due date so you are advised to pay in full on or before the due date.

The reference to additional tax/understatement penalty in this notice of assessment depends upon the circumstances.
(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

Below you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check these amounts to ensure:
1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised return.

If you are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may within 30 days of this

assessment, submit a Request for Reason using the form available at the branch or via eFiling. Alternatively you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be sent per registered mail to the address at the top of this notice.

If you are aggrieved by this assessment, you may submit a Notice of Objection (NOO) using the form available from eFiling or your nearest branch or by calling 0800 00 SARS (7277). You have 30 days from the date of this assessment in which to do this.
NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **38**
Year of assessment: **2010**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			1127312.00
3601	Income - taxable	801580.00	801580.00
3701	Travelling allowance	212200.00	212200.00
3713	Other allowances - taxable	99000.00	99000.00
3810	Medical Scheme Fees Fringe Benefit	13968.00	13968.00
3801	Acquisition of assets less than market value	564.00	564.00
Income			1127312.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			-52102.00
4001	Current pension fund contributions	52102.00	-52102.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	0.00	
Travel claim against allowance			-108104.00
	Vehicle 1		
	Logbook used	Y	
	Vehicle registration	555AGRGP	
	Cost price or cash value	771874.00	
	Kilometres travelled for the period	2009-09-16 - 2010-02-28	
	Opening kilometres	22	
	Closing kilometres	9356	
	Total kilometres	9334	
	Business kilometres claimed	5256	
	Business kilometres allowed	0	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	0.00	
	Fixed cost per kilometre	0.00	
	Petrol per kilometre	0.00	
	Maintenance per kilometre	0.00	
	Total cost per kilometre	0.00	
	Business kilometres (deemed or actual) x calculated cost per kilometre	0.00	
	Vehicle 2		
	Logbook used	Y	
	Vehicle registration	555AGRGP	
	Cost price or cash value	636000.00	
	Kilometres travelled for the period	2009-03-01 - 2009-09-16	
	Opening kilometres	118029	
	Closing kilometres	138562	
	Total kilometres	20533	
	Business kilometres claimed	13865	
	Business kilometres allowed	0	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	0.00	
	Fixed cost per kilometre	0.00	
	Petrol per kilometre	0.00	
	Maintenance per kilometre	0.00	
	Total cost per kilometre	0.00	
	Business kilometres (deemed or actual) x calculated cost per kilometre	0.00	
4014	Travel expenses-fixed cost	108104.00	-108104.00
cal deductions			0.00

AA-210

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **38**
Year of assessment: **2010**

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
	Contributions made to medical aid	Y	
	Handicapped - you, spouse or children	N	
	Number of members per month		
	03/2009 - 02/2010	4	
	Capping Amount		
4005	Medical fund contributions	52056.00	
4474	Employers medical aid contribution	38088.00	
3810	Medical Scheme Fees Fringe Benefit	-13968.00	
		-24120.00	
		-52056.00	
		0.00	
	Excess Component		
4020	Medical fund expenses not recovered from medical fund	15685.00	
	Contributions in excess of capping subject to 7.5	52056.00	
	Calculation of medical deduction	-67741.00	
		0.00	
4008	Medical expenses (total)	0.00	0.00
Deductions Allowed			-160206.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	967106.00

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		329802.40
	Rebates		-9756.00
	Primary	9756.00	
Subtotal			320046.40
	Employees' tax		-329335.72
4101	SITE - Standard income tax on employees	1044.00	
4102	PAYE - pay as you earn	328291.72	
	Previous assessment result		0.00
Current assessment - before provisional tax credits and Section 89 Quat interest *			-9289.32
	Provisional tax credits *		0.00
	Section 89Quat(4) interest on overpayment of provisional tax *		-83.98
Net amount refundable under this assessment			-9373.30

*This amount is separately reflected on your Statement of Account.

Notes

		Amount assessed
1 Information declared that impacts this assessment:		
Married in community of property	Y	

"D15"

Annexure "D15"

SARS

INCOME TAX **ITA34**

Notice of Assessment

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON

1528

Tel: 0800007277 Website: www.sars.gov.za

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Details

Reference number:	**0238636146**
Document number:	**25**
Date of assessment:	**2009-11-17**
Year of assessment:	**2009**
Type of assessment:	**Original Assessment**
Period (days):	**365**
Due date:	**2010-01-01**
Second date:	**2010-01-31**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	963969.00
Deductions allowed	-188524.00
Taxable income	775445.00
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	248908.00
Tax credits and adjustments	-278289.44
Net amount refundable under this assessment after allowable credits	**-29632.59**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	Y
Selected for audit or verification	N		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2009 year of assessment. Your assessment has been issued and reflects an amount refundable to you of R -29632.59

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. The current balance on your assessed account is R 0.00. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

- Electronically via eFiling
- Call the SARS Contact Centre
- At your nearest SARS branch

The final balance is reflected on the remittance advice at the bottom of the Statement of Account. Please note that interest accrues on all taxes payable after the due date so you are advised to pay in full on or before the due date.

The reference to additional tax/understatement penalty in this notice of assessment depends upon the circumstances.
(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

Below you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check these amounts to ensure:
1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised return.

are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may within 30 days of this

assessment, submit a Request for Reason using the form available at the branch or via eFiling. Alternatively you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be sent per registered mail to the address at the top of this notice.

If you are aggrieved by this assessment, you may submit a Notice of Objection (NOO) using the form available from eFiling or your nearest branch or by calling 0800 00 SARS (7277). You have 30 days from the date of this assessment in which to do this.
NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **25**
Year of assessment: **2009**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			963969.00
3601	Income - taxable	692160.00	692160.00
3701	Travelling allowance	175200.00	175200.00
3713	Other allowances - taxable	84000.00	84000.00
3810	Medical Scheme Fees Fringe Benefit	12045.00	12045.00
3808	Payment of employee debt	564.00	564.00
Income			963969.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			-44990.00
4001	Current pension fund contributions	44990.00	-44990.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	0.00	
Travel claim against allowance			-135282.00
	Vehicle 1		
	Logbook used	Y	
	Vehicle registration	555AGRGP	
	Cost price or cash value	636000.00	
	Kilometres travelled for the period	2008-03-01 - 2009-02-28	
	Opening kilometres	78854	
	Closing kilometres	118029	
	Total kilometres	39175	
	Business kilometres claimed	28088	
	Business kilometres allowed	0	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	0.00	
	Fixed cost per kilometre	0.00	
	Petrol per kilometre	0.00	
	Maintenance per kilometre	0.00	
	Total cost per kilometre	0.00	
	Business kilometres (deemed or actual) x calculated cost per kilometre	0.00	
4014	Travel expenses-fixed cost	135282.00	-135282.00
Medical deductions			-8252.00
	Contributions made to medical aid	Y	
	Handicapped - you, spouse or children	N	
	Number of members per month		
	03/2008 - 02/2009	4	
	Capping Amount		
4005	Medical fund contributions	46050.00	
4474	Employers medical aid contribution	34005.00	
3810	Medical Scheme Fees Fringe Benefit	-12045.00	
		-21960.00	
		-46050.00	
		0.00	
	Excess Component		
4020	Medical fund expenses not recovered from medical fund	20979.00	
	Contributions in excess of capping subject to 7.5	46050.00	
	Calculation of medical deduction	-58777.00	
		8252.00	

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **25**
Year of assessment: **2009**

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
4008	Medical expenses (total)	8252.00	-8252.00
	Deductions Allowed		-168524.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable income - subject to normal tax	775445.00

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		257188.00
	Rebates		-8280.00
	Primary	8280.00	
Subtotal			248998.00
	Employees' tax		-278289.44
4101	SITE - Standard income tax on employees	2520.00	
4102	PAYE - pay as you earn	275769.44	
	Previous assessment result		0.00
Current assessment - before provisional tax credits and Section 89 Quat Interest *			-29391.44
	Provisional tax credits *		0.00
	Section 89Quat(4) interest on overpayment of provisional tax *		-251.15
Net amount refundable under this assessment			-29632.59

*This amount is separately reflected on your Statement of Account.

Notes

		Amount assessed
1 Information declared that impacts this assessment:		
Married in community of property	Y	

"D16"

Annexure "D16"

SARS

INCOME TAX **ITA34**

Notice of Assessment

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

Details

Reference number:	**0238636146**
Document number:	**16**
Date of assessment:	**2008-09-23**
Year of assessment:	**2008**
Type of assessment:	**Original Assessment**
Period (days):	**366**
Due date:	**2008-11-01**
Second date:	**2008-11-30**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	1120538.00
Deductions allowed	-207151.00
Taxable income	913387.00
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	308739.60
Tax credits and adjustments	-349145.48
Net amount refundable under this assessment after allowable credits	**-40405.68**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	N
Selected for audit or verification	N		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2008 year of assessment. Your assessment has been issued and reflects an amount refundable to you of R -40405.68

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. The current balance on your assessed account is R 0.00. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

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- Call the SARS Contact Centre
- At your nearest SARS branch

The final balance is reflected on the remittance advice at the bottom of the Statement of Account. Please note that interest accrues on all taxes payable after the due date so you are advised to pay in full on or before the due date.

The reference to additional tax/understatement penalty in this notice of assessment depends upon the circumstances.
(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

Below you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check these amounts to ensure:
1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised return.

If you are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may within 30 days of this

assessment, submit a Request for Reason using the form available at the branch or via eFiling. Alternatively you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be sent per registered mail to the address at the top of this notice.

If you are aggrieved by this assessment, you may submit a Notice of Objection (NOO) using the form available from eFiling or your nearest branch or by calling 0800 00 SARS (7277). You have 30 days from the date of this assessment in which to do this.
NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **16**
Year of assessment: **2008**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			1120538.00
3601	Income - taxable	554720.00	554720.00
3605	Annual payment - taxable	300000.00	300000.00
3701	Travelling allowance	175200.00	175200.00
3713	Other allowances - taxable	84000.00	84000.00
3810	Medical Scheme Fees Fringe Benefit	6054.00	6054.00
3808	Payment of employee debt	564.00	564.00
Income			1120538.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			-36056.00
4001	Current pension fund contributions	36056.00	-36056.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	0.00	
Travel claim against allowance			-93313.00
	Vehicle 1		
	Logbook used	Y	
	Vehicle registration	555AGRGP	
	Cost price or cash value	636000.00	
	Kilometres travelled for the period	2007-03-01 - 2008-02-28	
	Opening kilometres	50467	
	Closing kilometres	78854	
	Total kilometres	28387	
	Business kilometres claimed	18796	
	Business kilometres allowed	0	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	0.00	
	Fixed cost per kilometre	0.00	
	Petrol per kilometre	0.00	
	Maintenance per kilometre	0.00	
	Total cost per kilometre	0.00	
	Business kilometres (deemed or actual) x calculated cost per kilometre	0.00	
4014	Travel expenses-fixed cost	93313.00	-93313.00
Medical deductions			-77782.00
	Contributions made to medical aid	Y	
	Handicapped - you, spouse or children	N	
	Number of members per month		
	03/2007 - 02/2008	4	
	Capping Amount		
4005	Medical fund contributions	32508.00	
4474	Employers medical aid contribution	26454.00	
3810	Medical Scheme Fees Fringe Benefit	-6054.00	
		-20400.00	
		-32508.00	
		0.00	
	Excess Component		
4020	Medical fund expenses not recovered from medical fund	119611.00	
	Contributions in excess of capping subject to 7.5	32508.00	
	Calculation of medical deduction	-74337.00	

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **16**
Year of assessment: **2008**

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
		77782.00	
4008	Medical expenses (total)	77782.00	-77782.00
Deductions Allowed			-207151.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	913387.00

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		316479.80
	Rebates		-7740.00
	Primary	7740.00	
Subtotal			308739.80
	Employees' tax		-349145.48
4101	SITE - Standard income tax on employees	3060.00	
4102	PAYE - pay as you earn	346085.48	
	Previous assessment result		0.00
Net amount refundable under this assessment			-40405.68

*This amount is separately reflected on your Statement of Account.

Notes

			Amount assessed
1	**Information declared that impacts this assessment:**		
	Married in community of property	Y	

"D17"

Annexure "D17"

AA-222

SARS

INCOME TAX **ITA34**

Notice of Assessment

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Details

Reference number:	**0238636146**
Document number:	**13**
Date of assessment:	**2007-10-15**
Year of assessment:	**2007**
Type of assessment:	**Reduced Assessment**
Period (days):	**365**
Due date:	**2007-11-01**
Second date:	**2007-11-30**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	1882008.00
Deductions allowed	-206398.00
Taxable income	1675610.00
Taxable income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	620044.00
Tax credits and adjustments	-640053.20
Net amount refundable under this assessment after allowable credits	**-20009.20**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	N
Selected for audit or verification	N		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2007 year of assessment. Your assessment has been issued and reflects an amount refundable to you of R -20009.20

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. The current balance on your assessed account is R 0.00. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

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(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

Below you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check these amounts to ensure:
1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised return.

are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may within 30 days of the

assessment, submit a Request for Reason using the form available at the branch or via eFiling. Alternatively you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be sent per registered mail to the address at the top of this notice.

If you are aggrieved by this assessment, you may submit a Notice of Objection (NOO) using the form available from eFiling or your nearest branch or by calling 0800 00 SARS (7277). You have 30 days from the date of this assessment in which to do this.
NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: 0238636146
Document number: 13
Year of assessment: 2007

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			1882008.00
3601	Income - taxable	415600.00	415600.00
3605	Annual payment - taxable	1203334.00	1203334.00
3701	Travelling allowance	175200.00	175200.00
3713	Other allowances - taxable	84000.00	84000.00
3808	Payment of employee debt	564.00	564.00
3810	Medical Scheme Fees Fringe Benefit	3310.00	3310.00
Income			1882008.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			-27014.00
4001	Current pension fund contributions	27014.00	-27014.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	0.00	
Travel claim against allowance			-107321.00
	Vehicle 1		
	Logbook used	Y	
	Vehicle registration	555AGRGP	
	Cost price or cash value	636000.00	
	Kilometres travelled for the period	2006-03-01 - 2007-02-28	
	Opening kilometres	15873	
	Closing kilometres	50467	
	Total kilometres	34594	
	Business kilometres claimed	24717	
	Business kilometres allowed	0	
	Deemed expenditure		
	Fixed cost based on cost price or cash value	0.00	
	Fixed cost per kilometre	0.00	
	Petrol per kilometre	0.00	
	Maintenance per kilometre	0.00	
	Total cost per kilometre	0.00	
	Business kilometres (deemed or actual) x calculated cost per kilometre	0.00	
4014	Travel expenses-fixed cost	107321.00	-107321.00
Medical deductions			-72063.00
	Contributions made to medical aid	N	
	Handicapped - you, spouse or children	N	
	Capping Amount		
4005	Medical fund contributions	25821.00	
4474	Employers medical aid contribution	22510.00	
		48331.00	
	Excess Component		
4020	Medical fund expenses not recovered from medical fund	177317.00	
		177317.00	
4008	Medical expenses (total)	72063.00	-72063.00
Deductions Allowed			-206398.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	1675610.00

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **13**
Year of assessment: **2007**

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		627244.00
	Rebates		-7200.00
	Primary	7200.00	
Subtotal			620044.00
	Employees' tax		-663765.80
4101	SITE - Standard income tax on employees	3600.00	
4102	PAYE - pay as you earn	660165.80	
	Previous assessment result		23712.60
	Net amount refundable under this assessment		-20009.20

*This amount is separately reflected on your Statement of Account.

Notes

		Amount assessed
1 Information declared that impacts this assessment:		
Married in community of property	Y	

"D18"

Annexure "D18"

SARS

INCOME TAX **ITA34**

Notice of Assessment

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

Details

Reference number:	**0238636146**
Document number:	**9**
Date of assessment:	**2006-07-24**
Year of assessment:	**2006**
Type of assessment:	**Original Assessment**
Period (days):	**365**
Due date:	**2006-09-01**
Second date:	**2006-09-30**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	665705.00
Deductions allowed	-148605.00
Taxable income	517100.00
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	166540.00
Tax credits and adjustments	-181405.38
Net amount refundable under this assessment after allowable credits	**-14865.38**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	N
Selected for audit or verification	N		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2006 year of assessment. Your assessment has been issued and reflects an amount refundable to you of R -14865.38

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. The current balance on your assessed account is R 0.00. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

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- Call the SARS Contact Centre
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(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
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Below you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check these amounts to ensure:
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2. They reflect all your taxable income and allowable deductions for the year

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are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may within 30 days of this

assessment, submit a Request for Reason using the form available at the branch or via eFiling. Alternatively you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be sent per registered mail to the address at the top of this notice.

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NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **9**
Year of assessment: **2006**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			
			665705.00
3601	Income - taxable	366800.00	366800.00
3605	Annual payment - taxable	39141.00	39141.00
3701	Travelling allowance	175200.00	175200.00
3808	Payment of employee debt	564.00	564.00
3713	Other allowances - taxable	84000.00	84000.00
Income			665705.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			
			-23842.00
4001	Current pension fund contributions	23842.00	-23842.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	0.00	
Travel claim against allowance			
			-124763.00
4014	Travel expenses-fixed cost	124763.00	-124763.00
Medical deductions			
			0.00
	Contributions made to medical aid	N	
	Handicapped - you, spouse or children	N	
	Capping Amount		
		0.00	
4008	Medical expenses (total)	0.00	0.00
Deductions Allowed			-148605.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	517100.00

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		172840.00
	Rebates		-6300.00
	Primary	6300.00	
Subtotal			166540.00
	Employees' tax		-181405.38
4101	SITE - Standard income tax on employees	4500.00	
4102	PAYE - pay as you earn	176905.38	
	Previous assessment result		0.00
Net amount refundable under this assessment			-14865.38

*This amount is separately reflected on your Statement of Account.

Notes

		Amount assessed
1 Information declared that impacts this assessment:		
Married in community of property	N	

Issue: 2019-01-26_12:01:08

"D19"

Annexure "D19"

SARS

INCOME TAX **ITA34**

Notice of Assessment

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

Details

Reference number:	**0238636146**
Document number:	**7**
Date of assessment:	**2005-06-03**
Year of assessment:	**2005**
Type of assessment:	**Original Assessment**
Period (days):	**365**
Due date:	**2005-07-01**
Second date:	**2005-07-31**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	647065.00
Deductions allowed	-152720.00
Taxable income	**494345.00**
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	162008.00
Tax credits and adjustments	-179376.00
Net amount refundable under this assessment after allowable credits	**-17368.00**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	N
Selected for audit or verification	N		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2005 year of assessment. Your assessment has been issued and reflects an amount refundable to you of R -17368.00

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. The current balance on your assessed account is R 0.00. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

- Electronically via eFiling
- Call the SARS Contact Centre
- At your nearest SARS branch

The final balance is reflected on the remittance advice at the bottom of the Statement of Account. Please note that interest accrues on all taxes payable after the due date so you are advised to pay in full on or before the due date.

The reference to additional tax/understatement penalty in this notice of assessment depends upon the circumstances.
(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

Below you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check these amounts to ensure:
1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised return.

are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may within 30 days of this

assessment, submit a Request for Reason using the form available at the branch or via eFiling. Alternatively you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be sent per registered mail to the address at the top of this notice.

If you are aggrieved by this assessment, you may submit a Notice of Objection (NOO) using the form available from eFiling or your nearest branch or by calling 0800 00 SARS (7277). You have 30 days from the date of this assessment in which to do this.
NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **7**
Year of assessment: **2005**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			647065.00
3601	Income - taxable	110000.00	110000.00
3605	Annual payment - taxable	20000.00	20000.00
3601	Income - taxable	230000.00	230000.00
3605	Annual payment - taxable	52155.00	52155.00
3701	Travelling allowance	58000.00	58000.00
3713	Other allowances - taxable	16000.00	16000.00
3808	Payment of employee debt	164.00	164.00
3701	Travelling allowance	116400.00	116400.00
3713	Other allowances - taxable	44000.00	44000.00
3808	Payment of employee debt	346.00	346.00
Income			647065.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			-22100.00
4001	Current pension fund contributions	22100.00	-22100.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	0.00	
Travel claim against allowance			-125853.00
4014	Travel expenses-fixed cost	125853.00	-125853.00
Medical deductions			-4767.00
	Contributions made to medical aid	N	
	Handicapped - you, spouse or children	N	
	Capping Amount		
		0.00	
4008	Medical expenses (total)	4767.00	-4767.00
Deductions Allowed			-152720.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	494345.00

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		167808.00
	Rebates		-5800.00
	Primary	5800.00	
Subtotal			162008.00
	Employees' tax		-179376.00
4101	SITE - Standard income tax on employees	1671.23	
4102	PAYE - pay as you earn	53591.74	
4101	SITE - Standard income tax on employees	3328.77	
4102	PAYE - pay as you earn	120784.26	
	Previous assessment result		0.00
Net amount refundable under this assessment			-17368.00

*This amount is separately reflected on your Statement of Account.

Notes

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **7**
Year of assessment: **2005**

			Amount assessed
1 Information declared that impacts this assessment:			
	Married in community of property	N	

"D20"

Annexure "D20"

SARS

INCOME TAX **ITA34**

Notice of Assessment

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

Details

Reference number:	**0238636146**
Document number:	**5**
Date of assessment:	**2004-05-31**
Year of assessment:	**2004**
Type of assessment:	**Original Assessment**
Period (days):	**366**
Due date:	**2004-07-01**
Second date:	**2004-07-31**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	406206.00
Deductions allowed	-122137.00
Taxable income	284069.00
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	80327.60
Tax credits and adjustments	-99558.64
Net amount refundable under this assessment after allowable credits	**-19231.04**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	N
Selected for audit or verification	N		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2004 year of assessment. Your assessment has been issued and reflects an amount refundable to you of R -19231.04

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. The current balance on your assessed account is R 0.00. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

- Electronically via eFiling
- Call the SARS Contact Centre
- At your nearest SARS branch

The final balance is reflected on the remittance advice at the bottom of the Statement of Account. Please note that interest accrues on all taxes payable after the due date so you are advised to pay in full on or before the due date.

The reference to additional tax/understatement penalty in this notice of assessment depends upon the circumstances.
(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

Below you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check these amounts to ensure:
1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised return.

are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may within 3 days of this

assessment, submit a Request for Reason using the form available at the branch or via eFiling. Alternatively you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be sent per registered mail to the address at the top of this notice.

If you are aggrieved by this assessment, you may submit a Notice of Objection (NOO) using the form available from eFiling or your nearest branch or by calling 0800 00 SARS (7277). You have 30 days from the date of this assessment in which to do this.
NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **5**
Year of assessment: **2004**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			406206.00
3601	Income - taxable	204000.00	204000.00
3605	Annual payment - taxable	32159.00	32159.00
3701	Travelling allowance	121600.00	121600.00
3713	Other allowances - taxable	48000.00	48000.00
3808	Payment of employee debt	447.00	447.00
Income			406206.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			-13260.00
4001	Current pension fund contributions	13260.00	-13260.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	0.00	
Travel claim against allowance			-99340.00
4014	Travel expenses-fixed cost	99340.00	-99340.00
Medical deductions			-9537.00
	Contributions made to medical aid	N	
	Handicapped - you, spouse or children	N	
	Capping Amount		
		0.00	
4008	Medical expenses (total)	9537.00	-9537.00
Deductions Allowed			-122137.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	284069.00

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		85727.60
	Rebates		-5400.00
	Primary	5400.00	
Subtotal			80327.60
	Employees' tax		-99558.64
4101	SITE - Standard income tax on employees	5400.00	
4102	PAYE - pay as you earn	94158.64	
	Previous assessment result		0.00
Net amount refundable under this assessment			-19231.04

*This amount is separately reflected on your Statement of Account.

Notes

		Amount assessed
1 Information declared that impacts this assessment:		
	Married in community of property	N

Issue: 2019-01-26_12:01:08

"D21"

Annexure "D21"

SARS

INCOME TAX **ITA34**

Notice of Assessment

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Details

Reference number:	**0238636146**
Document number:	**3**
Date of assessment:	**2003-12-11**
Year of assessment:	**2003**
Type of assessment:	**Original Assessment**
Period (days):	**365**
Due date:	**2004-02-01**
Second date:	**2004-02-29**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	234382.00
Deductions allowed	-92478.00
Taxable Income	141904.00
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	32506.40
Tax credits and adjustments	-48924.26
Net amount refundable under this assessment after allowable credits	**-16417.86**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	N
Selected for audit or verification	N		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2003 year of assessment. Your assessment has been issued and reflects an amount refundable to you of R -16417.86

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. The current balance on your assessed account is R 0.00. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

- Electronically via eFiling
- Call the SARS Contact Centre
- At your nearest SARS branch

The final balance is reflected on the remittance advice at the bottom of the Statement of Account. Please note that interest accrues on all taxes payable after the due date so you are advised to pay in full on or before the due date.

The reference to additional tax/understatement penalty in this notice of assessment depends upon the circumstances.
(i) If additional tax was imposed before the commencement date of the Tax Administration Act (TAA) then adjustment to that additional tax may be made by an assessment issued in terms of the TAA after the commencement date of the TAA
(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

Below you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check these amounts to ensure:
1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised ret n.

are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may withi 30 day of th

assessment, submit a Request for Reason using the form available at the branch or via eFiling. Alternatively you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be sent per registered mail to the address at the top of this notice.

If you are aggrieved by this assessment, you may submit a Notice of Objection (NOO) using the form available from eFiling or your nearest branch or by calling 0800 00 SARS (7277). You have 30 days from the date of this assessment in which to do this.
NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **3**
Year of assessment: **2003**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			234382.00
3601	Income - taxable	147000.00	147000.00
3701	Travelling allowance	75000.00	75000.00
3713	Other allowances - taxable	12000.00	12000.00
3808	Payment of employee debt	382.00	382.00
Income			234382.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			-9555.00
4001	Current pension fund contributions	9555.00	-9555.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	0.00	
Travel claim against allowance			-70795.00
4014	Travel expenses-fixed cost	70795.00	-70795.00
Medical deductions			-12128.00
	Contributions made to medical aid	N	
	Handicapped - you, spouse or children	N	
	Capping Amount		
		0.00	
4008	Medical expenses (total)	12128.00	-12128.00
Deductions Allowed			-92478.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	141904.00

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		37366.40
	Rebates		-4860.00
	Primary	4860.00	
Subtotal			32506.40
	Employees' tax		-48924.26
4101	SITE - Standard income tax on employees	7340.00	
4102	PAYE - pay as you earn	41584.26	
	Previous assessment result		0.00
Net amount refundable under this assessment			-16417.86

*This amount is separately reflected on your Statement of Account.

Notes

			Amount assessed
1	**Information declared that impacts this assessment:**		
	Married in community of property	N	

Issue: 2019-01-26_12:01:08

"D22"

Annexure "D22"

SARS

INCOME TAX **ITA34**

Notice of Assessment

A AGRIZZI
PO BOX 1357
NOORDHEUWEL
1756

Enquiries should be addressed to SARS:

Contact Centre

ALBERTON
1528
Tel: 0800007277 Website: www.sars.gov.za

Details

Reference number:	**0238636146**
Document number:	**1**
Date of assessment:	**2002-11-25**
Year of assessment:	**2002**
Type of assessment:	**Original Assessment**
Period (days):	**365**
Due date:	**2003-01-01**
Second date:	**2003-01-31**

Always quote this reference number when contacting SARS

Assessment Summary Information

	Amount assessed
Income	202341.00
Deductions allowed	-75819.00
Taxable income	126522.00
Taxable Income/Assessed Loss:	
Tax calculation	
Assessed tax after rebates	33128.80
Tax credits and adjustments	-48024.58
Net amount refundable under this assessment after allowable credits	**-14895.78**

Compliance Information

Unprocessed payments	0.00	**Provisional taxpayer**	N
Selected for audit or verification	N		

Dear A AGRIZZI

Thank you for submitting your income tax return for the 2002 year of assessment. Your assessment has been issued and reflects an amount refundable to you of R -14895.78

Please note that this amount only reflects your income tax assessment and does not reflect tax payable under any previous assessment or any other balances on your account. The current balance on your assessed account is R 0.00. For a statement reflecting your final balance (including all amounts payable or refundable under any previous assessment, refunds, payments, additional taxes/ understatement penalties, penalties and interest), please request your statement of account from SARS through the following channels:

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(ii) An assessment issued after the date of commencement of the TAA, in respect of any period that preceded the commencement date of the TAA, may be subject to the imposition of an Understatement Penalty in terms of the TAA as an "understatement" is considered to be a continuing act or omission in terms of the TAA
(iii) An assessment issued after the commencement date of the TAA, for a period that commences after the commencement date of the TAA, may include the levy of an Understatement Penalty.

Below you will find the amounts of income included and deductions allowed in calculating this assessment. It is very important that you check these amounts to ensure:
1. They are correct
2. They reflect all your taxable income and allowable deductions for the year

If you are of the view that the assessment contains a processing, calculation or other error, you should submit a revised return.

are unsure as to how the assessment was concluded or the reasons for any of the adjustments made, you may within 30 days of this

assessment, submit a Request for Reason using the form available at the branch or via eFiling. Alternatively you may write a letter requesting SARS to provide further information as to how the assessment was concluded. This letter must be sent per registered mail to the address at the top of this notice.

If you are aggrieved by this assessment, you may submit a Notice of Objection (NOO) using the form available from eFiling or your nearest branch or by calling 0800 00 SARS (7277). You have 30 days from the date of this assessment in which to do this.
NOTE: Your obligation to pay any amount due is not suspended by any objection or appeal. However, SARS will consider a motivated application for the suspension of payment pending the finalisation of an objection or appeal as stipulated in the Tax Administration Act.

Sincerely
ISSUED ON BEHALF OF THE SOUTH AFRICAN REVENUE SERVICE

SARS

INCOME TAX **ITA34**

Notice of Assessment

Reference number: **0238636146**
Document number: **1**
Year of assessment: **2002**

Income

Code	Description and detail	Computations & adjustments	Amount assessed
Employment income [IRP5/IT3(a)]			202341.00
3601	Income - taxable	132000.00	132000.00
3605	Annual payment - taxable	10000.00	10000.00
3701	Travelling allowance	60000.00	60000.00
3808	Payment of employee debt	341.00	341.00
Income			202341.00

Deductions allowed

Code	Description and detail	Computations & adjustments	Amount assessed
Retirement and income protection contributions			-8580.00
4001	Current pension fund contributions	8580.00	-8580.00
	Deduction (limited to the amount declared) equal to the greater of:		
	7.5% of gross retirement funding income or R1750		
	Gross retirement funding income	0.00	
Travel claim against allowance			-51425.00
4014	Travel expenses-fixed cost	51425.00	-51425.00
Medical deductions			-15814.00
	Contributions made to medical aid	N	
	Handicapped - you, spouse or children	N	
	Capping Amount		
		0.00	
4008	Medical expenses (total)	15814.00	-15814.00
Deductions Allowed			-75819.00

Taxable income

Code	Description and detail	Amount assessed
	Taxable income – subject to normal tax	126522.00

Tax calculation

Code	Description and detail	Computations & adjustments	Amount assessed
	Normal tax		37268.80
	Rebates		-4140.00
	Primary	4140.00	
Subtotal			33128.80
	Employees' tax		-48024.58
4101	SITE - Standard income tax on employees	8720.00	
4102	PAYE - pay as you earn	39304.58	
	Previous assessment result		0.00
Net amount refundable under this assessment			-14895.78

*This amount is separately reflected on your Statement of Account.

Notes

		Amount assessed
1 Information declared that impacts this assessment:		
Married in community of property	N	

"E1"

Annexure "E1"

BOSASA GROUP STRUCTURE

BOSASA EMPOWERMENT & MANAGEMENT SERVICES (PTY) LTD
Reg No. 1999/020406/07

Shareholder:

Mela Womans Investments (Pty) Ltd	34%
Nzunzo Investments (Pty) Ltd	18%
The Employees Trust	22%
Mpako Investments (Pty) Ltd	26%

Directors:
GJ Watson
TI Dikani
J Gumede
M Oliveria (Ms)
NLT Makoko (Ms)

100%

BOSASA OPERATIONS (PTY) LTD
Reg No. 1981/012426/07

Shareholders:
Bosasa Empowerment & Management Services (Pty) Ltd 100%

Directors:
J Gumede (Chair)
GJ Watson
TI Dikani
M Oliveria (Ms)
NLT Makoko (Ms)
PF Leshabane
JSA Leyds (Ms)
SSDT Mathenjwa

34%

MELA WOMANS INVESTMENTS (PTY) LTD
Reg No. 2002/030534/07

Shareholder:
M Oliveria (Ms) 100%

Directors:
M Oliveria (Ms)
NLT Makoko

18%

NZUNZO INVESTMENTS (PTY) LTD
Reg No. 2002/023124/07

Shareholder:
A Mkele Business Trust 100%

Directors:
VA Mkele
SSD Mathenjwa

22%

THE EMPLOYEES TRUST
Reg No. IT 3305/02

Trustees:

GJ Watson
NLT Makoko (Ms)
NM Modungwa (Ms)

26%

MPAKO INVESTMENTS (PTY) LTD
Reg No. 1997/015059/07

Shareholder:
Gavin Watson Family Trust

Director:
G Watson

"E2"

Annexure "E2"

BOSASA OPERATIONS (PTY) LTD
Reg No. 1981/012426/07

Shareholders:
Bosasa Empowerment & Management Services (Pty) Ltd 100%

Directors:
J Gumede (Chair)
SSDT Mathenjwa
TI Dikani
NLT Makoko (Ms)
JSA Leyds (Ms)
GJ Watson
M Oliveria (Ms)
PF Leshabane

SECURITY

Black Rox Security Intelligence Services (Pty) Ltd (Bosasa Security (Pty) Ltd)
Reg No. 1995/010121/07

Directors:
TS Similane
SS Mosehle
J Gumede
M Oliveria
NLT Makoko (Ms)

TRAINING & DEVELOPMENT

ON-IT-1 (PTY) LTD
Reg No. 2003/011025/07

Directors
Johannes Gumede
JSA Leyds

SECURE CARE

Bosasa Youth Development Centres (Pty) Ltd
Reg No. 2003/002608/07

Directors:
MS Dlamini
NLT Makoko (Ms)
M Oliveria
JSA Leyds (Ms)
LSC Scholtz

Leading Prospect Trading 111 (Pty) Ltd t/a Lindela
Reg No. 2002/017229/07

Directors:
TI Dikani
PF Leshabane
M Oliveria
J Gumede
NLT Makoko (Ms)

SOCIAL RESPONSIBILITY

YDF - Youth Development Foundation
Reg. No. 2003/001979/08

Directors:
NLT Makoko (Ms)
JSA Leyds (Ms)
NM Modungwa (Ms)
LSC Scholtz
MS Dlamini
JR van Zyl

OTHER OPERATIONS

Bosasa IT (Pty) Ltd
Reg. No. 2002/025468/07

Directors:
PF Leshabane
M Oliveria (Ms)
TI Dikani
NLT Makoko (Ms)
J Gumede
GJ Watson

Envireco (Pty) Ltd
Reg. No. 2005/038874/07

Directors:
GJ Watson

Biorganics (Pty) Ltd
Reg. No. 2004/034358/07

Directors:
J Gumede
JSA Leyds
AJ van Tonder
PF Leshabane
NLT Makoko
SSDT Mathenjwa

Bosasa Supply Chain Management (Pty) Ltd
Reg. No. 2002/008442/07

Directors:
GJ Watson
J Gumede
M Oliveria
JSA Leyds (Ms)
PF Leshabane

Sun Worx (Pty) Ltd
Reg no: 2012/071437/07

Directors:
RG Watson
NLT Makoko
JSA Leyds

51%

Sondolo IT (Pty) Ltd
Reg No. 2005/000500/07

Directors:
J Gumede
TI Dikani
M Oliveria (Ms)
SSDT Mathenjwa
NLT Makoko (Ms)

Aquaviro Technologies (Pty) Ltd
Reg. No. 2002/025363/07

Directors:
M Oliveria (Ms)
JSA Leyds (Ms)
J Gumede
GJ Watson
PF Leshabane
NLT Makoko (Ms)
TI Dikani

IMS – Integrated Management Services (Pty) Ltd
Reg. No. 2002/031521/07

Directors:
M Oliveria (Ms)
J Gumede
JSA Leyds (Ms)
NLT Makoko (Ms)
GJ Watson
TI Dikani
PF Leshabane

Bosasa Properties (Pty) Ltd
Reg. No. 1989/005154/07

Directors:
PF Leshabane
M Oliveria (Ms)
TI Dikani
NLT Makoko (Ms)
J Gumede
GJ Watson

Intellovate Upcast Rod (Pty) Ltd
Reg No. 2015/333883/07

Directors:
JSA Leyds (Ms)
M Oliveria (Ms)
NLT Makoko (Ms)

"F"

Annexure "F"

Affidavit of Petrus Stephanus Venter
Identity Number 7101245040083
Of Noordheuwel Krugersdorp
Gauteng

Context of TAX Fraud and Racketeering by Gavin Watson

My full names are Petrus Stephanus Venter, a white male aged 46, resident at Noordheuwel Krugersdorp hereby declare that the attached affidavit and the Annexures labeled Files 1 to 2 are a true reflection of the occurrences at Bosasa Group of Companies / African Global Operations and the dealings of Mr. Gavin Joseph Watson

The statements made are in my opinion factual, substantiated by records and copies of invoices and receipts, the intention hereof is not to seek monetary gain, but to clear mine and related parties' names, after being coerced and forced to conduct what we realize what instructions from Gavin Joseph Watson. This matter has affected my health and relationships.

This affidavit is done without any duress or pressure and is done subsequent to the meetings held with Gavin Watson as detailed.

1.

I was employed as an auditor with The South African Revenue Services (SARS) from December 1991 to August 2004.

2.

During my last year with SARS I met Andries van Tonder and Tony Perry from the Bosasa Group. My colleague Johan Terblanche, a Chartered Accountant by profession, conducted an audit on Bosasa Operations (Pty)Ltd.
Johan Terblanche involved me in the audit and we went to the premises of Bosasa Operations where we met with Andries van Tonder and Tony Perry about the audit queries we had.
Before we could conclude the audit, we terminated our Services with SARS. The reason for the termination of my service was the roll out of the Siyaka Project. As a result of the Siyaka Project all the SARS auditors were redeployed to Megawatt Park, Sunninghill.

3.

Two acquaintances of mine approached me and asked me to join their auditing and accounting practice.
I resigned from SARS on 31 August 2004 and joined their firm BesterViljoen Inc. on 1 September 2004.

4

A couple of months later, after joining the BesterViljoen practice, one of the partners and I, approached Tony Perry and Andries van Tonder of Bosasa Operations to take over the audit and tax services of the Group.
Shortly thereafter BesterViljoen Inc. was appointed as the auditors and tax consultant.

INITIAL

5

Over the years I have built up a good relationship with Tony Perry, Andries van Tonder, Gavin Watson, Jacques van Zyl, Carlos Bonifacio, all the directors and other employees of the Bosasa Group.
Gavin Watson realized this and wanted me to get more involved in the business, in the form of a consultant from an external point of view. I was therefore not just a tax consultant for the Bosasa Group.

7

Although I had to attend to the normal duties of a tax consultant, Gavin Watson wanted more from me:

- Gavin Watson informed all the directors that I will be handling their annual personal tax returns and the company will pay for this service.
- I was also instructed to do the annual tax return of Patrick Gillingham and
- The annual tax return of L Mti

8

At the beginning of 2016 Gavin Watson approached me to take over Consilium Business Consultants (Pty)Ltd, a company which belonged to Dr. Jurgen Smith. Dr. Smith was diagnosed with cancer and wanted to exit the company as soon as he could.
Consilium is a labour broker company who employs people for the Bosasa Group of Companies.

9

All Gavin Watson's family members, who renders no services to the Bosasa Group, are also on the payroll. Gavin Watson instructed me to keep this very confidential and I wasn't allowed to discuss this with anybody else other than him.

INITIAL

10

During the middle of August 2017, Gavin Watson approached me to assist him to pay the legal costs of Mr. Hlaudi Motsoeneng.
On 17th August 2017, I received an invoice from Walter Jele from Majavu Attorneys – proof attached

I have paid the total invoice amount of R 1,187,656.82 in two installments:

- 1st payment of R 600,000 on 20 August 2017 – proof attached
- 2nd payment of R 587,656.82 on 21 August 2017 proof attached

11

During September 2017, Gavin Watson approached me to assist him and Syvion Dhlamini to make three payments to Moroko Consultants, Training & Development (Pty)Ltd.
Lindsay Watson prepared a consulting agreement between Miotto Trading & Advisory Holdings (Pty)Ltd and Moroko Consultants, Training & Development (Pty)Ltd – attached – No services have been provided as this is merely a front for other intentions.
I had to make three payments of R 450,000 each to Moroko Consultants. The first payment was made on 30th September 2017 – proof attached.

The second payment was made on 28th October 2017 – proof of payment attached.

The final payment is only due by the end of November 2017.

The agreement mentions that Moroko Consultants will "provide and render consulting services to Miotto for a turnaround business strategy and to provide the necessary training and development to implement such"

12

Gavin Watson approached me once again on 17th October 2017. He wanted me to assist him with a payment towards the purchase of a residential property for Ms. Lindie Gouws.

The amount was for R 2.5 million and I had to consider the amount to be a loan (Ms. Gouws insisted that a loan agreement be drawn up)

Gavin Watson took me to Natasha Olivier and instructed her to pay R 3 million from his personal account into Miotto Trading & Advisory Holdings (Pty)Ltd bank acc.

It must be noted that I could not question Gavin Watson as he would get upset with me, so I made the payments even though I knew that this was not correct

- R 2.5 million was for the purchase of Ms. Gouws residential property and
- R 500,000 to Efg2 with an ABSA Bank account, I was merely told it was for a foundation / trust of Andile Ramaphosa, the son of the Deputy President of the republic of South Africa, I found this strange but wouldn't dare question Gavin Watson.

The R 3 million was paid on 17 October 2017 into Miotto's bank account.

13

On the morning of 6th November 2017, Ms. Gouws called and informed me that she is not going ahead with the transaction and I should repay Gavin Watson's money immediately.

I recall she had a meeting with her attorney, Darryl Ackerman about issues pertaining to Angelo Agrizzi, whom she was paranoid about earlier that morning.
After her meeting with the attorney, she instructed me to repay Gavin Watson' money which I did.

The attorneys who handled the property transaction was Louise Tonkin Inc. and the contact person was Joan Fourie – Attached are all the emails in this regard.

INITIAL

14

I was instructed to pay the R 500,000 (part of the R 3 million payment which was received) to Efg2 into an ABSA account.
Gavin Watson mentioned that the payment is towards Andile Ramaphosa Foundation – proof of payment attached

15

Gavin Watson asked me to assist Lindie Gouws on many occasions, from calming her down to getting her to focus. One of the tasks he instructed me to do was to register a company called The Exchange Space (Pty)Ltd.
The purpose of the company is to do the marketing and Branding of the Bosasa / African Global Group.

Over and above her monthly salary I had to now pay Lindie Gouws a Gross salary of R 42,000 per month in order to clear a net amount of R 24,000. This amount had to go toward Ms. Gouws' bond repayment (R 1 million bond repayable over 10 years – just estimated). Proof of the pay slip is attached.
I want to emphasize the fact that the salary from The Exchange Space (Pty)Ltd was purely for the bond repayment, as Ms. Gouws gets paid from Consilium Business Consultants for her services. Her monthly cost to Company is R 137,717.00

16

I would complain that this practice was incorrect and morally disturbing, but Gavin Watson threatened that my services and those of my company will be terminated. I had to do what was asked from me or else what had happened to so many would happen to me.

17

Gavin Watson always wants someone else to blame for his actions. An example of this was when I had to ask Mr. Angelo Agrizzi what kind of Christian he is. When Mr. Agrizzi took Mr. Watson on about this, I had to take the blame for the attack on Mr. Agrizzi's character. It is a constant and disturbing pattern, that Gavin Watson would instruct people to act illegally and then discard them, or get rid of them as he felt it got rid of the evidence.

Interestingly Gavin Watson would never sign anything, so as to exonerate himself from any wrongdoing. This was evident in the fact that his intention with Graham Richards was to implicate Agrizzi and Van Tonder whereas they never benefitted.

18

Mr. Gavin Watson just kept on making illegal demands and I just couldn't take it anymore. The last nail in the coffin was when he told me to meet with Mr. Patrick Gillingham and to hand him a parcel containing cash, I knew it was cash because it was wrapped in a bank secure bag.
This happened on Friday the 27th of October 2017. I had to go to the office of Bosasa /African Global where Lindsay Watson, the daughter of Gavin Watson, handed me a parcel.
I reluctantly called Mr. Gillingham who met me at my office, at 269 Voortrekker Road Monument Krugersdorp, an hour later. I handed him the parcel and he left. I decided that this will never happen again.

19

Mr. Gavin Watson promoted Louis Passano and Colleen Passano to handle the company and Group finances.
Louis Passano approached me during October 2017 to make changes to his pay slip. He is an employee of Consilium Business Consultants (Pty)Ltd.
He instructed me on behalf of Gavin Watson to reduce his salary from R 137,000 cost to company per month to R 90,000 cost to company per month.

20

When I confronted him about this he was very vague about this, but then he mentioned something about his estate. It was then when I realized that he was sequestrated and should not be in the position of running a company's finances. The second thing is that he wants to show his curator that he earns less than he does. By doing this he will pay a lower amount to his creditors.
I have attached the before and after pay slips. Louis Passano also mentioned that Mr. Gavin Watson will pay the balance in cash. By doing this he defrauds SARS as well as the curator. The actions could eventually impact on Consilium as amounts to a fraudulent

INITIAL
AM

transaction, besides Louis Passano already has a 5-year suspended sentence.

21

Pursuant to the closure of SeaArk, Gavin Watson in a meeting clearly stipulated that he did not want lose the assessed loss of ZAR 138,498,378 as at the 2012 tax year and Gavin Watson insisted, rather more instructed that both Andries van Tonder and I do everything possible to maximize the use of the loss, by filtering the tax exposure of profits in other operations via the entity.

22

Andries van Tonder was instructed to change the main business of the Company to incorporate provision for the Company to utilize the assessed loss by inflating the purchase price of the raw material to other contracts, thereby utilizing the Company (SeaArk) as the newly changed Bosasa Supply Chain, which would handle all major purchases for the Group, reselling the goods at a markup, thereby effectively reducing the profits of the other entities, and averting having to pay the tax on profits.

23

The value of this created an opportunity to evade tax on an amount of R38,779,546.00. I was told that documents and processes were fraudulently manufactured in order to win the SARS investigation by satisfying them that SeaArk did trade for tax purposes which allowed the company to carry forward the assessed loss to future tax years.

24

SARS stipulated that proof had to be submitted to substantiate the claims and the argument of "trade", such proof was then fraudulently drawn up. As a result of the changes made and the submissions made, SARS granted the allowance of the assessed loss.

25

The value of the fraudulent claims on SeaArk is as follows;

CALCULATION

Assessed Loss	-	R 138,498,378.00
At 28%	-	R 38,779,546.00

Expenses and Equipment write offs allowed by SARS pursuant to an investigation triggered.

26

During the period 2015 to 2017, Gavin Watson decided to build residential homes for his newly married son Roth Watson and his daughter Lindsay Watson in Morningside, Sandton.

The houses were to be registered on Gavin Watson's name, to the best of my knowledge.

27

Gavin Watson instructed Andries van Tonder, the Chief Financial Officer of the Group, to oversee the payments to suppliers via the company financial processes and allocate the costs thereof to the various property companies, such as Luipaardsvlei Property, Leading Prospect Trading - Lindela etc., where large revamps were underway. These costs were either capitalized or expensed within the existing property companies that held properties within the Group of Companies. This means from order to invoice and payment the invoices would've had to look authentic.
The invoices were made out to the various entities and Peter Reiger was tasked to attend to the paperwork. I am aware Peter Reiger was instructed to make these fraudulent entries, as he mentioned the matter to me during consultation, I am also aware that he has kept records, due to the fact that Joe Gumede, a director actually enquired as to the rising costs at the Lindela Repatriation Centre. Carlos Bonifacio also queried the rising costs.
I was later tasked to retrench Peter Reiger

INITIAL

This resulted in the costs being absorbed by the Company as Cost of Sales and therefore having been expensed reduced the tax liability on the Company, allowing Gavin Watson the benefit of not paying for the houses personally but also allowing for the benefit to be passed onto the children.

Christo Viljoen, an employee of the company is used to oversee the construction.

28

Mark Taverner, brother in law to Gavin Watson retains Patrick Gillingham on the payroll of BEE foods, on a salary of R65,000 per month and a Company Car Mercedes GLA 200, the full costs are then added to the invoicing of BEE foods

29

During 2015 Gavin Watson, Lindsay Watson and Roth Watson instructed me to assist them with the restructuring of the Watson family entities in order to gain financially from the Bosasa Companies. They've identified the Software license agreements, also known as the Trustmaster Fleet and Trustmaster Youth Centers to be sold to a newly formed entity called Lamozest (Pty)Ltd. Agreements were prepared and the Intellectual Property (IP) was sold via a Phezulu Fencing to Lamozest (Pty).
Lamozest invoices Bosasa Youth Development Centers from August 2015 on average between R 348,000 and R 371,000 per month and Lamozest started off by invoicing Kgwerano Financial Services from August 2015 an amount of R 437,000 per month. This amount came down as the number of vehicles on the contract came down.
I don't think the directors or shareholders of the Bosasa Group are aware of the Profits which are effectively extracted from the Bosasa entities and only the Watson family is gaining from this.

30

The Watson family also wanted me to assist them to move a company called Phezulu Fencing (Pty)Ltd away from the shareholders who were, Bopa and Phafoga into the Watson family structure.
We managed to achieve that and by doing that they got their hands on a R 63 million loan account which Bosasa Operations owes to

INITIAL

Phezulu Fencing. The loan carries interest which means that the loan account just increases on an annual basis.
As far as I know, the directors nor shareholders of the Bosasa Group are aware of the financial gain which the Watson family is getting from this transaction.

Secondly, Phezulu Fencing was involved in a transaction with a company called Dealstream. Three payments of approximately R10 million, R 10 million and R 17 million have been paid from Dealstream to Phezulu Fencing (Pty)Ltd. Gavin Watson did not want to pay tax on these receipts because the company found themselves under cash flow pressure at the time. He insisted that we hide the receipts under contingent liability in the balance sheet instead of income, avoiding paying tax of R 10.3 million.

31

During January and February 2016, Gavin Watson and his daughter Lindsay Watson approached me to review the top shareholding structure of the Bosasa Group. I had to involve top professionals to assist us with this task. I approached Antonie van Wyk, Consultant to TRM Daniel Erasmus Tax Court Practitioners. Antonie drew up the Shareholders Agreement – annexure ...
Clause 16 of the Shareholders agreement refers to a "Call option" – an extract of clause 16

'EXTRACT FROM FILE"

1. ***CALL OPTION***

1.1 Mpako shall have a call option to purchase the BEE Equity of Mela or Nzunzo (or both of them) in the circumstances set out in this clause 1 ("the Call Option").

1.2 Mpako shall have a call option to acquire the BEE Equity of either Mela or Nzunzo should one or more of the following events occur (or the BEE Equity of both should the event occur in respect of both):

1.2.1 in the event that a Fault-based BEE Event, which results in a Rating Failure that is not rectified within 20 business days of the happening of such event, occurs;

1.2.2 any direct or indirect change in the extent of a Specified Interest held by any Entity or natural person in Mela or Nzunzo including, for the avoidance of any

INITIAL

doubt, any direct or indirect change in the extent of a Specified Interest in Mela or Nzunzo as the result of the dissolution of a marriage of Oliveria or Mkele;

1.2.3 *any change in Control of Mela or Nzunzo;*

1.2.4 *any breach of any warranty given by Mela, Nzunzo, Oliveria or the Mkele Trust under clause* ***Error! Reference source not found.*** *above; or*

1.2.5 *in the event of Oliveria or Mkele, as the case may be, being dismissed from the employ of the Company for any reason other than for the operational requirements of the Company (retrenchment) or disability (incapacity due to ill health);*

which event shall be referred to as an "Option Event.

1.3 *At any time following the happening of an Option Event, Mpako may exercise the Call Option by giving written notice to that effect to Mela and/or Nzunzo, as the circumstances may require.*

1.4 *If Mpako duly exercises the Call Option then the sale and purchase which results shall be subject to the following terms:*

1.4.1 *the effective date of the sale shall be the date on which the Call Option Price is determined ("the Call Option Date");*

1.4.2 *if Mpako exercises the Call Option the option price of the Shares ("Call Option Price") shall be determined in accordance with the provisions of clause* ***Error! Reference source not found.****, provided that when any Option Event also qualifies as a Trigger Event the option price shall be 25% of the Call Option Price ("the Default Price");*

1.4.3 *the purchase price for the Loan Account of Mela and/or Nzunzo, as the case may be, shall be the face value thereof as at the Call Option Date;*

1.4.4 *the Call Option Price or the Default Price, as the case may be, shall be payable by Mpako to Mela and/or Nzunzo, as the circumstances may require, in cash in the currency of the Republic of South Africa, within 30 (thirty) days of the Call Option Date and only against fulfilment of all the requirements of Transfer of the Equity Interest of Mela and/or Nzunzo to Mpako as contemplated in clause* ***Error! Reference source not found.****.*

1.5 *In the event of Mpako exercising the Call Option, and insofar as there are any debts owed by Mela or Nzunzo, as the case may be (each of them being referred to as "the Offending Shareholder") to the Company, all such debts shall become immediately due and payable to the Company by the Offending Shareholder. A certificate issued by the Auditors stating the reason and amount so due, shall be prima facie proof of the contents thereof and the Auditor's appointment need not be*

proved. Mela and/or Nzunzo shall be obliged to utilise the proceeds from the sale of their Equity Interest to Mpako to settle such debts.

32

It is important to me to reveal the truth and allow a new start, as I have not unduly benefitted from the corruption and dishonesty created by Gavin Watson.

33

An important note is that on a previous occasion the servers at Bosasa "crashed" resulting in a massive data loss, pursuant to years dealing with Mr. Gavin Watson I learnt that he had arranged that they previously ensured the "crash" so that the SIU could not gather information, Mr. Andries Van Tonder and Mr. Angelo Agrizzi were aware of this. Concerning is during October I had a meeting with Mr. Gavin Watson in the office adjoining Mr. Andries Van Tonder's Mr. Watson then called Ms. Elise Eland to schedule another computer crash, this was discussed in my presence, that he then mentioned that a further circular had to go out notifying the employees that they were supposedly experiencing server issues, so that they would be aware there was "issues" this would ensure that the staff would be under the impression that the failure or crash could not be avoided, that way no one would be suspicious and they could get rid of potentially hazardous data files that could incriminate the Company and its Directors.

34

On the 13th of November 2017, after Carlos Bonifacio had been confronted by Gavin Watson. Gavin Watson contacted me and insisted to see me. I agreed to this and he came to see me at my office on this Friday afternoon (he wanted to meet at his office, but I said no). Carlos told Gavin Watson about my affidavit as well as the affidavits of Andries van Tonder, Frans Vorster and Leon van Tonder. Carlos also informed Gavin about the meeting we had at Angelo Agrizzi's home, the previous evening.

Gavin wanted to know whether I have signed my affidavit. He was very relieved when I told him that I haven't signed the document.

He asked me whether I am prepared to put my hand on the bible, that I haven't signed the affidavit. I told him that I haven't signed the document and that I am prepared to put my hand on the bible.

We had a two-hour meeting. During this meeting I have explained to him that the evidence against him will destroy him. He asked me to believe in him and he assured me that he will get through all of this. He kept on saying that Angelo Agrizzi and Andries van Tonder signed off all the documents in the company and they are also implicated.

Over the past few weeks he kept on saying that he is not going to deny the fact that there were cash transactions in the business. As a matter of fact, he is going to acknowledge this, and testify that Angelo Agrizzi and Andries van Tonder were the creators of the systems and procedures involving these transactions. He knew about this and if the three of them must go to jail, then so be it.

He went down to Port Elizabeth to meet with a friend and his personal legal advisor. The person' name is Graham Richards. He wrote a statement while he was with Graham Richards and he disclosed all of the above in his personal statement. About two weeks ago he called his daughter Lindsay Watson and he told her to come and show me his personal statement, which she did.

35

I kept on telling Gavin Watson that any unlawful transactions will bring the company down. He showed me the name of the Senior SARS official who manages the investigation department. According to Watson he met with this gentleman, who will handle the matter should somebody report him or his companies to SARS. Gavin Watson showed me the name of the SARS official on his phone. The gentleman' name is "Gorbi".

36

In support of any court application I would request that the honorable court subpoena the following persons to testify on the statements made and the truth of the allegations stemming from my statement.

These are as follows;

Carlos Bonifacio	Carien Daubert	Hennie & Christo Viljoen
Christina Herbst	Rika Humdermark	Natasha Olivier
Jacques Van Zyl	Colleen Passano	Munirah Oliveria
Tony Perry	Louis Passano	Andries van Tonder
Lindie Gouws	Magda Van Rensburg	Elise Eland
Andries Erasmus	Richmond Mti	Patrick Gillingham
Frans Vorster	Gavin Watson	Linda Mti
Angelo Agrizzi	Joe Gumede	Patrick Gillingham

Signed by Petrus Stephanus Venter

19th Day of December 2017 at George, Western Cape, South Africa

- SIGNED and SWORN/AFFIRMED to before me at NCOP **day** 18 of December **2017**, the Deponent having acknowledged that she knows and understands the contents of this Affidavit, which is deposed to in accordance with the regulations governing the administration of an oath as more fully set out in Government Notice R 1258 of the 21st July 1972, as amended by Government Notice 1648 dated the 19th of August 1977 and Government Notice 903 dated the 10th July 1998.

COMMISSIONER OF OATHS

2017 -12- 18

FULL NAMES: Andries Maro
STATUS: WO
STREET ADDRESS: Mossel street, Mossel Bay

INITIAL AM

Final Petrus Stephanus Venter HIGHLY CONFIDENTIAL G Watson Tax Fraud

W/O
0452575-2

COMMISSIONER

OF OATHS

FULL NAMES: Andile Mavu

STATUS: W/O

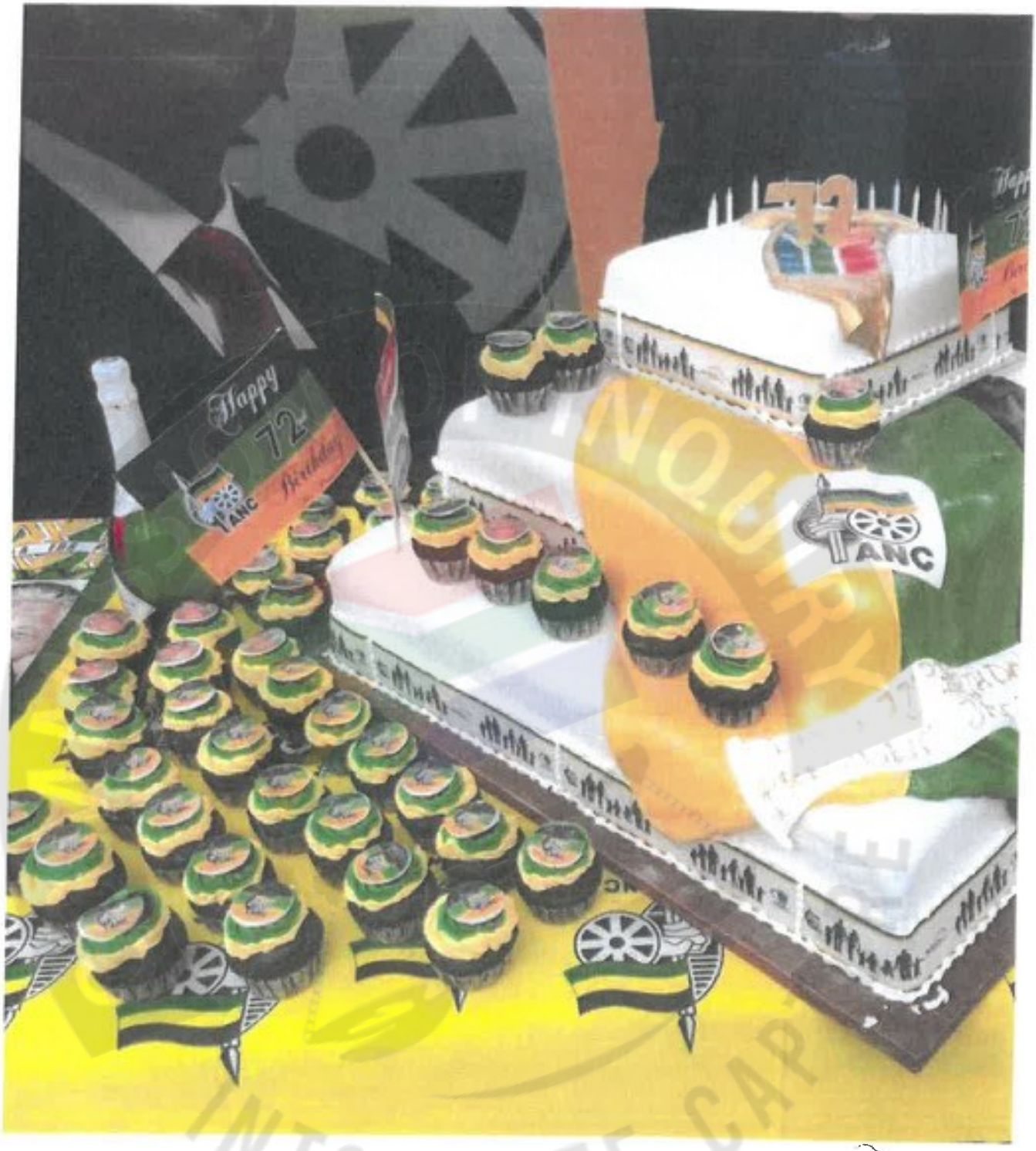
STREET ADDRESS: Mosselbaai, Mossel Bay

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
2017 -12- 18
DATAMA KOP
CSC
SOUTH AFRICAN POLICE SERVICE

INITIAL

"G"

Annexure "G"



"H"

Annexure "H"

Tuesday 05 July 2016

Subject: Fwd: RE:
Date: Tuesday 05 July 2016 at 10:57:00 South Africa Standard Ti
From: brumilda Smith [brs17] <brs17@aber.ac.uk>
To: Vincent Smith <vsmith@anc.org.za>

Get Outlook for iOS

From: Fees Enquiries [incstaff] <incstaff@aber.ac.uk>
Sent: Tuesday, July 5, 2016 10:04
Subject: RE:
To: brumilda Smith [brs17] <brs17@aber.ac.uk>

Dear Brumilda

The fees for next academic year are £10,500. = R2

Kind regards.

Alison

Yr Adran Gyllid/Finance Dept
Canolfan Croesawu Myfyrwyr/Student Welcome Centre
Campws Penglais/Penglais Campus

ACCOMODA; & LIVING COSTS

Oriau Agor - Dydd Llun, Dydd Mawrth, Dydd Iau a Dydd Gwenar 9 am – 4pm, Dydd Mercher 10am – 4pm
Opening Hours – Monday, Tuesday, Thursday and Friday 9am – 4pm, Wednesday 10am 4pm

PAID IN FULL

PRIFYSGOL ABERYSTWYTH UNIVERSITY

Yn unol â pholisi dwyieithog Prifysgol Aberystwyth, mae croeso i chi ohebu â'r Brifysgol yn Gymraeg neu yn Saesneg.
In accordance with the bilingual policy of Aberystwyth University, you are welcome to correspond with the University in either Welsh or English.

From: brumilda Smith [brs17]
Sent: 05 July 2016 08:38
To: fees@aber.ac.uk
Subject:

To whomever it may concern.

I have decided it would be best for me to repeat my first year as a full time student. Would you be able to provide me with the fee requirement and payment structure for 2016/17.

Regards
Brumilda Doreen Smith

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FNB
First National Bank

14 JUL 2019
TELLER 1
250 - 241

BRANCH: KRUGERSDORP
TELLER NO: 4818210
TRACE ID: 70DSWSF1S9MC
DATE: 14/07/2019 TIME: 12:43
CASH DEPOSIT FOR
*EUROBLITZ 46 (PTY) LTD
ACC NO: 62123700818
ACC TYPE: BUSINESS CHEQUE ACCOUNT

CASH AMOUNT: 276,667.90
CHEQUE AMOUNT:
TOTAL AMOUNT: 276,667.90
CLEARED FUNDS:
REFERENCE: EUROBLITZ
PIN NUMBER ENTERED NO
CUSTOMER RECEIPT

Company Report

windeed

Date requested
Reference
Information source: Companies and Intellectual Property Commission

This report is compiled exclusively from the very latest data directly supplied to WinDeed by the Companies and Intellectual Property Commission (CIPC).

COMPANY SUMMARY

Name	[illegible]
Status	IN BUSINESS
Registration number	2002/012907/07
Registration date	2002/05/31

DIRECTOR AND OTHER SUMMARY

ACTIVE

Name	ID Number	Type	Status
[illegible]	[illegible]	DIRECTOR	[illegible]

INACTIVE

Name	ID Number	Type	Status
BISHOP DENNIS JACOBUS	501[illegible]	DIRECTOR	RESIGNED

AUDITOR SUMMARY

INNES E M BUCHANAN & COMPANY
DOUGLAS DIX PEEK AND COMPANY

COMPANY INFORMATION

Enterprise name	EURO BLITZ 48	Status	IN BUSINESS
Registration number	2002/012907/07	Enterprise type	PRIVATE COMPANY
Tax number	9404305147	Business start date	2002/05/31
Short name		Registration date	2002/05/31
Translated name		Financial year end	-
Old reg. number		Fin effective date	2002/05/31
Conv. company No		CK date received	
Region	GAUTENG	CK date	
Country		Date of type	
Country of origin			
Issued shares	-		
Issued capital	100.00		
Authorized shares			
Authorized capital	1 000.00		

Industry code	62
Industry	UNKNOWN
Principal business	
Registered address	102 MELROSE PLACE WILLOWBROOK CLOSE MELROSE [illegible] 2196
Postal address	BOX 87698 [illegible] 2041

DIRECTORS AND OTHER (2)

SMITH, VINCENT GEORGE

Initials		Status	ACTIVE
ID/Passport number	[illegible]5519808[illegible]	Type	DIRECTOR
Date of birth	1960/07/18	Appointment date	2006/12/11
Profession	BUSINESSMAN	Resignation date	
Country of residence	SOUTH AFRICA	Member size (%)	0.00
Residential address	[illegible] STREET [illegible] HILLS ROODEPOORT 1724	Member contribution (R)	[illegible]
Postal address	[illegible] 1724		

BISHOP, DENNIS JACOBUS

Initials	[illegible]	Status	[illegible]
ID/Passport number	5011075078008	Type	DIRECTOR
Date of birth	1950/11/07	Appointment date	2002/05/31
Profession	CLERK	Resignation date	
Country of residence	SOUTH AFRICA	Member size (%)	0.00
Residential address	33 LANGERMANN DRIVE KENSINGTON 2094	Member contribution (R)	0.00
Postal address	P O BOX 28215 KENSINGTON 2101		

SECRETARY COMPANIES AND CCS (NONE)

COMPANY SECRETARY NATURAL PERSONS (NONE)

BOTH DIRECTOR / OFFICERS (NONE)

ALTERNATIVE DIRECTORS (NONE)

OFFICERS (NONE)

LOCAL MANAGERS (NONE)

TRUSTS (NONE)

AUDITORS (2)

INNES G M BUCHANAN & COMPANY

Profession code	CHARTERED ACCOUNTANTS	Status	CURRENT
Profession number	949137	Profession	AUDITOR
Reg. entry date	2006/12/12	Start date	2006/12/12
Expiry date		End date	-
Reference number		CM31 completed	2006/12/12
Fine letter		CM31 received	2006/12/12
Physical address	102 MELROSE PLACE WILLOWBROOK CLOSE MELROSE NORTH 2196		
Postal address	BOX 87698 HOUGHTON 2041		

DOUGLAS DIX PEEK AND COMPANY

Profession code	CHARTERED ACCOUNTS	Status	REMOVED
Profession number	921017E	Profession	ACC
Reg. entry date		Start date	
Expiry date		End date	2006/12/12
Reference number		CM31 completed	
Fine letter		CM31 received	
Physical address			
Postal address			

CAPITAL INFORMATION

Type	No of Shares	Parri Value	Capital Amount (R)	Capital Premium
AUTHORIZED ORDINARY	1 000	0	1 000	0
ISSUED ORDINARY	100	0	100	0

HISTORY

Effective Date	Change Type
2016/06/02	CO/CC ANNUAL RETURN (COMPANY / CLOSE CORPORATION AR FILING - FEE SERVICES REF NO 535087520)
[illegible]	CO/CC ANNUAL RETURN (COMPANY / CLOSE CORPORATION AR FILING - FEE SERVICES REF NO 527218887)
2014/06/02	CO/CC ANNUAL RETURN (COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES REF NO 545201701)
2013/09/05	CO/CC ANNUAL RETURN (COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES REF NO 524351801)
2011/07/05	CANCELLATION OF DEREGISTRATION PROCESS (ANNUAL RETURN NON COMPLIANCE - CANCELLATION OF DEREGISTRATION)
2009/06/11	POSTAL ADDRESS CHANGE (BOX 87698HOUGHTON2041)
2009/06/11	REGISTERED ADDRESS CHANGE (102 MELROSE PLACEWILLOWBROOK CLOSEMELROSE NORTH2196)
2009/05/21	AUDITOR/ACCOUNTING OFFICER CHANGE (NORTH2196BOX 87698HOUGHTON2041STATUS=CURRENT)
2007/08/24	DIRECTOR/MEMBER/SECRETARY/TRUSTEE/PROPRIETOR/ACCOUNTING OFFICER ADDRESS CHANGE (SURNAME=SMITHFULL FORENAMES=VINCENT GEORGEID NO=5007185198081STATUS=ACTIVENATURE OF CHANGE=ADDRESS CHANGE)
2006/12/20	REGISTERED ADDRESS CHANGE (102 WILLOWBROOKWILLOWBROOK CLOSEMELROSE NORTH2196)
[illegible]/12/20	POSTAL ADDRESS CHANGE (BOX 87698HOUGHTON2041)

2006/12/12	AUDITOR/ACC. OFFICER CHANGE [illegible] CHANGE)
2006/12/12	AUDITOR AND OFFICER CHANGE [illegible] AND COMPANY STATUS REMOVE)
2006/12/12	DIRECTOR MEMBER SECRETARY TRUST BOTH DIRECTOR AND OFFICER (SURNAME=SMITH FULL FORENAMES=VINCENT GEORGE ID NO=6007185198081 STATUS ACTIVE NATURE OF CHANGE=ADDRESS)
2006/12/11	DIRECTOR MEMBER SECRETARY TRUST BOTH DIRECTOR AND OFFICER (SURNAME=BISHOPP FULL FORENAMES=[illegible] RESIGNED NATURE OF CHANGE=RESIGNED)
2006/12/11	DIRECTOR MEMBER SECRETARY TRUST BOTH DIRECTOR AND OFFICER (SURNAME=SMITH FULL FORENAMES=VINCENT GEORGE ID NO=6007185198081 STATUS ACTIVE NATURE OF CHANGE=APPOINTED)
2006/05/26	IN DEREGISTRATION CO/CO A-LIST OFFICER (ST) (NO INFORMATION TO DISPLAY)
2002/08/15	POSTAL ADDRESS CHANGE (P O BOX 2821 SKENSINGTON 2101)
2002/08/15	REGISTERED ADDRESS CHANGE (33 LANGERMANN DRIVE KENSINGTON 2094)

S&T

Strategy & Tactics

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TAX INVOICE

VAT REGISTRATION NO: 4060176445

ATTENTION: Papa Leshabane

Bosasa Operations (Pty) Ltd
Reg no.: 1981/012426/07
Vat no.: 4070165735
Mogale Business Park
Windsor road
Luipaardsvlei
Mogale City

Date: 02 September 2015

Inv. No: 781

DETAILS OF INVOICE

Description: Contribution to baseline survey

Research and statistics for the Bosasa Youth centres in Gauteng R233 480, 18.

VAT R37 520, 02

TOTAL **R 268 000, 20**

Fees are payable on presentation of our invoices. Interest at the rate of 2% per month will be charged on invoices not settled within 30 days of presentation.

Bank account: Standard Bank, Thibault Square Account number: 07 098 9931 Branch code: 020909

Issue: 2019-01-26_12:01:08

Your partner in development and knowledge management

Partners: NP Dube D Everatt MJ Smith

"j"

Annexure "j"

EXECUTIVE SUMMARY

The Special Investigating Unit (**SIU**) functions within the statutory framework set out in the Special Investigating Units and Special Tribunals Act 74 of 1996 (**the Act**). The SIU may only investigate matters referred to it for investigation by the President in terms of section 2(1) of the Act. The SIU's intervention in this investigation is authorised by presidential proclamation R44 of 2007 gazetted on 28 November 2007 (**the Proclamation**).

In 2006, various allegations surfaced in the media relating to the allegedly irregular awarding of contracts by the Department of Correctional Services (**DCS**) to Bosasa Operations (Pty) Ltd (**Bosasa**) and its affiliated companies.

Later in 2006, the Public Service Commission (**PSC**) and the Office of the Auditor General (**OAG**) referred specific allegations relating to contracts awarded to Bosasa to the SIU for investigation. Some of the more serious allegations are that:

- An irregular relationship existed between Bosasa or members of the Bosasa Group of Companies and two DCS officials, namely, the former Commissioner of Correctional Services, Mr L Mti (**Commissioner Mti**) and the DCS Chief Financial Officer (**CFO**) Mr P Gillingham (**Gillingham**)
- Commissioner Mti and Gillingham may have unduly received benefits as a result of the award of some of the contracts awarded by DCS to Bosasa and its affiliates
- Two tenders, namely, the kitchens tender and the access control tender, were irregularly extended
- Bosasa and its affiliates were responsible for drafting the bid specifications for these tenders.

Shortly after the publication of the proclamation, the SIU commenced with the investigation of the contracts awarded to Bosasa and its affiliates, namely, the kitchens, access control, fencing and television contracts.

The purpose of this report is to refer in terms of section 4(1)(d) of the Act, the evidence gathered by the SIU relative to the abovementioned contracts which, in its view, points to the commission of an offence by Bosasa and its affiliates and the persons mentioned in this report, to the Acting National Director of Public Prosecutions (**NDPP**) and further, to advise the DCS in terms of section 5(7) of the Act, that the evidence gathered by the SIU justifies the institution of legal proceedings by it against Bosasa and its affiliates and the persons mentioned in this report.

Findings in respect of the kitchens tender: HK2/2004

This contract was awarded to Bosasa on 20 July 2004.

The evidence gathered by the SIU, shows that there were clear deviations from the *National Treasury Supply Chain Management: A Guide for Accounting Officers/Authorities* ***(SCM: Guide for Accounting Officers)***[1], more particularly, in that the end user departments were not included in the bid process. There was also no proper financial planning for this tender in that there was no feasibility study nor needs analysis conducted.

The evidence clearly shows that Gillingham, outside the course of his normal duties, played an integral role from the outset in the procurement process and was irregularly instrumental in developing the tender specifications.

On the evidence of a whistleblower, a former employee of Bosasa **(the witness)**, Bosasa irregularly participated in drafting the specifications for this tender. On the evidence of the witness, the specifications were drafted in such a manner that the security aspects of the tender provided Bosasa with a clear advantage over other bidders.

During the course of a search and seizure operation conducted at Gillingham's residence, a document containing the bid evaluation criteria and guidelines for evaluating the kitchens tender was found in the form of electronic data. Mr J Malan **(Malan)** the SIU cyber forensic expert, determined that this document originated from the computer of Mr A Agrizzi **(Agrizzi)**, Bosasa's Chief Executive Officer/Managing Director. According to Malan, the document was last saved by Agrizzi on 28 June 2004. The evidence shows that this was on the same day that the DCS commenced with its screening of the bids received in respect of the kitchens tender. Whilst, Malan could not determine the date of first creation of the document on Agrizzi's computer, the evidence raises two concerns: first, whether Agrizzi (and as such Bosasa) was in possession of the document at the time that Bosasa's tender was submitted for the kitchens tender, and second, whether Bosasa was a party to the drafting of the evaluation criteria and guidelines for evaluating the tender. Obviously, if this were so, it would not only have subverted the entire procurement process because it would have placed Bosasa in an unduly advantageous position with reference to its competitors, but it would also have exposed the DCS to civil suits from unsuccessful bidders.

The evidence clearly indicates that Gillingham and Commissioner Mti received financial benefits from Bosasa after the award of this tender. The SIU was unable to find any lawful cause for such benefits being made to Gillingham and Commissioner Mti. The evidence

[1] Issued to all Accounting Officers on 26 February 2004; attached as Annexure 1

further shows that Mr WD Mansell (**Mansell**) and Mr J Smith (**Smith**)[2], both employees of the Bosasa Group, were instrumental in effecting these benefits to Gillingham and Commissioner Mti. The timing of the benefits appear to be sufficiently linked to the awarding of the kitchens tender. In the circumstances, it was unlawful for Gillingham and Commissioner Mti to have received these benefits.

The kitchens contract was extended by Commissioner Mti on 17 May 2005. In light of the irregular benefits received by him the extension of this contract was irregular and unlawful.

Recommendations in respect of the kitchens tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by the DCS on account of the award of the kitchens tender to Bosasa
- the DCS considers instituting disciplinary proceedings against Gillingham (Commissioner Mti no longer being in the employ of DCS) arising from his irregular conduct relating to the procurement process involving the kitchens tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Bosasa, the latter's office bearers and to the extent that Mansell, Agrizzi and Smith may not be office bearers of Bosasa, that they also be considered for prosecution in their personal capacities.

Findings in respect of access control tender: HK2/2005

This contract was awarded to Sondolo IT (Pty) Ltd (**Sondolo**), an affiliate company within the Bosasa Group, on 11 April 2005.

The evidence shows that there were clear deviations from the *SCM: Guide for Accounting Officers*, more particularly, in that the end user departments were not included in the bid process. According to the evidence, there was no proper financial planning for this tender in that there was no feasibility study nor needs analysis conducted. The budget for this tender was also significantly exceeded.

The evidence shows that Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process and was irregularly instrumental in developing the tender specifications.

[2] Mr WD Mansell is a consultant to Bosasa; Mr J Smith is the Bosasa Financial Administrator

According to the evidence of both the witness and Malan, Bosasa was irregularly involved in drafting the bid specifications for this tender.

On the evidence of the witness, Agrizzi requested him to prepare specifications in line with the technology Bosasa was employing in the kitchens contract. According to him, the specifications prepared by him were drafted in such a manner that the security aspects afforded Sondolo a clear advantage over the other bidders. The witness subsequently identified a number of similarities between the specifications prepared by him and those in the advertisement for this tender.

On the evidence of Malan, a document titled "cctv bid.doc" was retrieved from the DCS and Bosasa systems. The document contained specifications for the access control tender. Version 2 of the document was found on the Bosasa system, whilst version 4 thereof was emailed by Gillingham from an email address belonging to Bosasa, to Mr S Mlombile (Acting Chief Deputy Commissioner: Corrections) (**Mlombile**) of DCS.

Given the fact that the evidence disclosed that there was a close association between Gillingham and Bosasa, the probabilities point to the fact that he must have been aware of Bosasa's irregular participation in drafting the specifications. In the circumstances, Gillingham and Bosasa's involvement in the drafting of the specifications seriously undermined the fairness of the procurement process.

Despite the fact that the Department of Public Works (**DPW**) had previously been engaged by the DCS to assist in drafting specifications for tenders involving technical detail, the evidence showed that DPW was excluded by Gillingham and Commissioner Mti from the procurement process for this tender, even though technical detail was involved.

The evidence further showed that the bid submission period was reduced from 30 to 21 days, without any apparent or justifiable cause. Given the technical nature of the tender and Bosasa's participation in the drafting of the specifications for the bid, the shortened period for submission of bids allowed Sondolo to enjoy an unfair advantage over the other bidders.

Given the fact that Bosasa operated the kitchens contract and therefore had knowledge of the correctional centre environment, the probabilities point to the fact that Sondolo enjoyed a significant advantage over its competitors because of its relationship with Bosasa.

Despite it being a bid requirement that bidders should have five years' experience, Sondolo was only registered 7 days before the closing of bids but was still awarded the tender. This was obviously irregular.

The evidence clearly indicates that Gillingham received financial benefits from Bosasa after the award of this and the previous tender. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham. The evidence also shows that Gillingham failed to disclose the benefits received by him to either the BEC or the NBAC. Aside from it being unlawful for Gillingham to have received these benefits, it was further irregular for him not to have disclosed this fact before or during the deliberations related to this tender.

The SIU did not conduct a comprehensive financial investigation as in the case of Gillingham, into benefits Commissioner Mti may have received from Bosasa, because of various limitations experienced during the SIU's investigation. However, the limited evidence gathered by the SIU, indicated that he received benefits from Bosasa, a few months before the access tender was granted to Sondolo.

The access control contract was extended by Commissioner Mti on 4 August 2005. In light of the irregular benefits received by him the extension of this contract was irregular and unlawful.

Recommendations in respect of the access control tender: HK2/2005

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by DCS on account of the award of the access control tender to Sondolo
- the DCS considers instituting disciplinary proceedings against Gillingham arising from his irregular conduct relating to the procurement process involving the access control tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Sondolo, Bosasa, their office bearers and to the extent that Agrizzi, Mansell and Smith may not be office bearers of either Sondolo or Bosasa, that they also be considered for prosecution in their personal capacity.

Findings in respect of the fencing tender: HK24/2005

The fencing tender was awarded on 29 November 2005 to Phezulu Fencing (Pty) Ltd (**Phezulu**), an affiliate company within the Bosasa Group.

The evidence shows that there were clear deviations from the DCS SCM User Manual: Directives[3] (**DCS procurement directives**) in that the end user departments were not included in the bid process. There was also no proper financial planning for this tender in that there was no feasibility study or needs analysis conducted, which resulted in the initial budget being significantly exceeded and in addition being further increased by variation orders valued at R 100 million[4].

As in the case of the previous two tenders, the evidence shows that Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process and was irregularly instrumental in the developing of the tender specifications.

In this tender, there was a heavy weighting in the evaluation criteria in favour of the integration of the fences with the computer software system, namely, the ON-IMIS system, which Sondolo introduced through the access control tender. This weighting accordingly favoured Phezulu on account of it being an affiliate of Bosasa.

An issue of concern to the SIU was the fact that substantial payments were made to Phezulu at the outset of the contract without adequate performance. The SIU examined payments made to Phezulu in respect of this tender. In terms of the contract provisions, 90% of the contract price was payable on delivery of the raw materials to the construction sites. The structure of this contract resulted in DCS making very large payments to Phezulu at a very early stage of the contract. Since this payment was shortly before the end of the financial year, the SIU concluded that this was a case of fiscal dumping, that is to say, when departments spend large amounts of money just prior to the financial year end to use up their budget, irrespective of whether the department gets value for money for such spending.

A further issue of concern is the fact that the bid conditions stipulated that fences be erected by 17 March 2006. At the compulsory briefing session for this tender, Gillingham confirmed that the erection of the fences was to be effected by 17 March 2006. Two bidders submitted project plans that complied with this deadline. However, Phezulu submitted two project plans

[3] Came into effect in May 2005
[4] The budget for the project was R 340 million, the contract awarded to Phezulu was R 486 million; in addition R 100 million in variation orders were authorised after the conclusion of the contract.

in terms of which they undertook to deliver raw materials to the sites by 17 March 2006, but would install the fences at a much later date.

In the BEC, Gillingham scored the two service providers referred to above, 0 out of 6 for time and Phezulu a full 6 points, despite the fact that its projected plan did not comply with the timelines. The SIU finds this approach by Gillingham incomprehensible, since on the face of it, Phezulu's project plans clearly did not comply with the tender requirements.

The evidence clearly indicates that Gillingham had received financial benefits after the award of this and the previous two tenders. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith, with close connections to Bosasa, were instrumental in effecting these benefits to Gillingham.

As previously observed, the SIU did not conduct a comprehensive financial investigation as in the case of Gillingham, into benefits Commissioner Mti may have received from Bosasa, because of various limitations experienced during our investigation. However, the limited evidence gathered by the SIU, indicates that he received benefits from Bosasa, a few months before the fencing tender was granted to Phezulu.

The evidence also shows that Gillingham failed to disclose the benefits received by him to either the BEC or NBAC. Aside from it being unlawful for Gillingham to have received these benefits, it was further irregular for him not to disclose this fact before or during the deliberations related to this tender.

Recommendations in respect of the fencing tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that may have been sustained by DCS on account of the award of the tender to Phezulu
- the DCS considers instituting disciplinary proceedings against Gillingham arising from his irregular conduct relating to the procurement process involving the fencing tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Phezulu, Bosasa, their office bearers and to the extent that Mansell and Smith may not be office bearers of either Phezulu or Bosasa, that they also be considered for prosecution in their personal capacity.

Findings in respect of television tender: HK25/2005

This contract was awarded on 3 March 2006 to Sondolo.

The evidence shows there were clear deviations from the DCS procurement directives, in that the end user departments were not included in the bid process. Furthermore, according to the evidence, there was no proper financial planning for this tender in that there was no feasibility study or needs analysis conducted and the budget for the contract was significantly exceeded.

As in the case of the previous three tenders, Gillingham, outside the course of his normal duties played an integral role from the outset in the procurement process and was irregularly instrumental in the developing of the tender specifications.

Sondolo's first invoice for payment was submitted on 13 March 2006, three days after the contract had been signed. The invoice was for R106 million and it was paid on 23 March 2006. This, as in the fencing tender, was once again a case of fiscal dumping.

The evidence clearly indicates that Gillingham received financial benefits from Bosasa after the award of this and the previous tenders. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham. The evidence also shows that Gillingham failed to disclose the benefits received by him, to either the BEC or the NBAC. Aside from it being unlawful for Gillingham to have received these benefits, it was further irregular for him not to have disclosed this fact before or during the deliberations related to this tender.

As previously observed, the SIU did not conduct a comprehensive financial investigation as in the case of Gillingham, into benefits received by Commissioner Mti from Bosasa, because of various limitations experienced during our investigation. However, the limited evidence gathered, indicates that he received benefits from Bosasa, some months before the television tender was granted to Sondolo.

Recommendations in respect of the television tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any loss that may have been sustained by DCS on account of the award of the television tender to Sondolo

- the DCS considers instituting disciplinary proceedings against Gillingham arising from his irregular conduct relating to the procurement process involving the television tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Sondolo, Bosasa, their office bearers and to the extent that Mansell and Smith may not be office bearers of either Sondolo or Bosasa, that they also be considered for prosecution in their personal capacity.

TERMS OF REFERENCE

The SIU functions within the statutory framework set out in the Act. The SIU was established by the President in terms of section 2(1)(a)(i) of the Act and by Proclamation R118 of 31 July 2001. The SIU may only investigate matters referred to it for investigation by the President in terms of section 2(1) of the Act.

In June 2006, various allegations surfaced in the media relating to the allegedly irregular awarding of contracts by the DCS. The allegations specifically involved the Bosasa Group of Companies and two DCS officials, namely the former Commissioner Mti and the DCS CFO Gillingham.

Later in 2006, the PSC and the OAG referred to the SIU various allegations relating to the allegations made in the media. The PSC and OAG expressed particular concern around the regularity of the procurement processes relating to contracts awarded to Bosasa and two affiliated companies, Sondolo and Phezulu as well as to the nature of the relationship between the said companies and Commissioner Mti and Gillingham.

Some of the allegations the SIU was requested to investigate:

- involved whether Commissioner Mti and Gillingham may have unduly benefited from some of the contracts awarded by DCS to Bosasa
- concerned the problem that in relation to two tenders (access control and fencing) the DCS procured services involving technical detail without involving the Department of Public Works
- involved whether the kitchens tender was irregularly extended to include seven extra kitchens – the contract value grew to over R800 million, which included the adding of the additional kitchens resulting in additional expenditure of R82 million
- involved whether the access control tender may have been irregularly extended to include the staffing of the control rooms – the contract value grew from R237 million to almost R437 million, as Sondolo became responsible for monitoring the CCTV control rooms
- related to whether one of the bidders may have drafted the specifications for one or more of the relevant tenders – there were particular concerns around the specifications of the access control and television tenders
- concerned whether Commissioner Mti may have been involved with a company called Lianorah Investments, which had a relationship with Bosasa
- related to the supply of allegedly inferior quality goods in the access control tender.

The SIU requested a proclamation authorising its investigation of the allegations and was accordingly mandated by the President in terms of the Proclamation to investigate any irregularities perpetrated in connection with the procurement of services by the DCS.

In terms of the Proclamation, the SIU was mandated to investigate:

1 The procurement of goods and services by or on behalf of the Department without compliance with the Department's –

(a) policies, procedures, prescripts, directives, guidelines or standing instructions (hereinafter collectively referred to as the "prescripts"); and

(b) procurement and provisioning systems or supply chain management systems prescribed by applicable legislation,

in a manner that was not fair, competitive, transparent, equitable and/or cost-effective and payments made in respect thereof.

2 The failure by officials and employees of the Department to disclose that they had a direct or indirect interest in the suppliers and service providers used by the Department, which represented a conflict of interest.

3 The failure by the officials and employees of the Department to disclose to the Department that they were engaged in unauthorised business activities for remuneration outside the scope of their employment under the Public Service Act, 1994 (Proclamation 103 of 1994) or the Correctional Services Act, 1998 (Act 111 of 1998).

4 The conduct of –

(a) suppliers and service providers to the Department; and

(b) officials and employees of the Department,

which has resulted or may result in a loss of, damage to or a lack of control over public money, public property or other resources of the Department and any conduct directed at or promoting the aforementioned.

5 False or inflated claims by, or on behalf of officials and employees of the Department from certain medical aid schemes.

6 The theft or misuse of property and resources of the Department by officials and employees of the Department.

7 Illegal or irregular practices in terms of which officials and employees of the Department received or solicited benefits from other officials and employees of the Department or from members of the public in connection with the execution of their duties of the failure to execute their duties.

8 The conduct of officials and employees of the Department, which was aimed at influencing or hampering any investigation or the destruction of evidence.

9 The intimidation of officials or employees of the Department or members of the public by officials or employees of the Department with the aim to conceal corrupt or other unlawful practices within the Department.

10 Acts of undue influence and extortion committed by officials and employees of the Department with regard to members of the public and other officials or employees of the Department.

11 Fraud committed by officials and employees of the Department to the detriment of the Department.

The SIU's investigation focussed on the procurement processes related only to the kitchens, access control, fencing and television tenders.

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LIST OF ABBREVIATIONS

BEC	Bid Evaluation Committee
CCTV	Closed Circuit Television
CEO	Chief Executive Officer
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CSIR	Council for Scientific and Industrial Research
DCS / the Department	Department of Correctional Services
DPW	Department of Public Works
EFT	Electronic Funds Transfer
eNaTIS	National Traffic Information Systems
HCC	Head of Correctional Centre
IT	Information Technology
JHB	Johannesburg
NBAC	National Bid Adjudication Committee
NCC	Network Computing Consultants
OAG	Office of the Auditor General
ON-IMIS	Open Network Intelligent Management Information System
PFMA	Public Finance Management Act
PSC	Public Service Commission
RAMP	Repairs and Maintenance Project
SAPS	South African Police Service
SCMU	Supply Chain Management User
SETA	Sector Education and Training Authority
SIU / the Unit	Special Investigating Unit
VPN	Virtual Private Network

PROMINENT ROLE PLAYERS

Individual	Position
Mr Angelo Agrizzi	Chief Executive Officer/General Manager, Bosasa Operations
Mr Carlos Bonifacio	Auditor / Consultant: Consilium
Consilium (Pty) Ltd	Company linked to Bosasa
Ms Megan Gillingham	Mr Gillingham's daughter
Mr Patrick O'Connell Gillingham Jnr	Mr Gillingham's son
Mr Patrick O'Connell Gillingham	Chief Deputy Commissioner: Finance
Mr Ryan Albert Gillingham	Mr Gillingham's son
Mrs Theresa Gillingham	Mr Gillingham's spouse
Grande Four Property Trust	A trust linked to WD Mansell
Mr P Leshabane	Executive Director, Bosasa Group of Companies
Mr William Daniel Mansell	Consultant: Bosasa & Consilium
Mr Jarrod Mansell	Mr Mansell's son
Mrs Lisa Mansell	Mr Mansell's daughter-in-law
Mr Linda Mti	National Commissioner: DCS
Dr Jurgen Smith	Director: Consilium Financial Administrator: Bosasa
Andries van Tonder	CFO: Bosasa
Frans Vorster	Fleet Manager: Bosasa

LIST OF AFFIDAVITS OBTAINED

Name	Current Occupation	No. of Affidavits obtained
Mr C Aries	DCS Secretariat: Bid Adjudication Committee	Applicable to all Tenders
Mr JDE Basson	DCS Deputy Director: Contract Management	HK2/2004
Mr J Breytenbach	Chief Director: Norms and Standards, National Treasury	Applicable to all Tenders
Dr JJ Coetzee	DCS Deputy Commissioner: Operations and Management Support	HK2/2004, HK25/2005
Mr W Damons	DCS Deputy Commissioner: Facilities and Security	HK2/2005, HK24/2005,
Mr P Du Preez	DCS Deputy Director: Security Support	HK2/2005, HK24/2005
Mr F Engelbrecht	DCS Deputy Regional Commissioner: Gauteng	HK2/2004
Ms B George	Legal & Compliance Manager: Construction Industry Development Board	HK24/2005
Mr L Gqili	DCS Director: Formal Education	HK25/2005
Mr CJ Haak	Director: Correctional Services, National Treasury	Applicable to all Tenders
Mr P Leslie	DCS Deputy Director: Budget Control	Applicable to all Tenders
Mr J Lethoba	DCS Director: Systems Development	HK25/2005
Mr J Maako	DCS Director: Contract Management	Applicable to all Tenders
Ms M Mabhena	DCS Director: Health Services	HK2/2004, HK25/2005
Mr T Mapasa	DCS Director: Procurement	Applicable to all Tenders
Mr F Mocheko	DCS Director: Building and Maintenance	HK2/2005
Mr M Ngubo	DCS Deputy Commissioner: Supply Chain Management	HK2/2005
Mr W Pretorius	DCS Deputy Director: Tender Management	HK2/2004, HK24/2005
Mr P Ramorotho	DCS Deputy Director: Nutrition and Hygiene Services	HK 2/2004
Ms J Sishuba	DCS Chief Deputy Commissioner Development and Care	HK2/2004, HK25/2005
Mr HB Steyn	DCS Director: Security Management Services	HK2/2005, HK24/2005
Mr H Truter	DCS Assistant Director: Professional Services Procurement	Applicable to all tenders
Ms S Truter	DCS Assistant Director: Procurement Policy Formulation	Applicable to all Tenders
Mr AJC Venter	DCS Area Co-ordinator: Corrections: Gauteng	HK2/2005 and HK24/2005
Mr F Venter	DCS Assistant Director: Risk Profile Management	Applicable to all Tenders
Mr JP Venter	Principal Engineer: Council for Scientific and Industrial Research	HK25/2005

Name	Current Occupation	No. of Affidavits obtained
Mr M Wolela	DCS Deputy Commissioner: Communications	HK25/2005
The witness	Former Bosasa Employee	HK2/2004 and HK2/2005

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1 INTRODUCTION

1.1 Subject of report

The SIU's findings in the investigation in terms of its terms of reference are set out in this report. The SIU investigated the kitchens, access control, fencing and television tenders. The report addresses the SIU's specific findings in relation to these four tenders.

1.2 Background to report

The SIU and the DCS entered their first investigation partnership on 1 October 2002. This partnership was extended for a further 3-year period on 9 June 2006 and terminated on 31 March 2009. As part of its service offering to the DCS, the SIU was requested to conduct procurement investigations.

Fairly early in the renewed partnership various allegations were raised in the media regarding possible irregularities in the procurement processes followed by DCS in procuring the services of Bosasa, Sondolo and Phezulu. Sondolo and Phezulu form part of the Bosasa Group of Companies. Further information pertaining to the formation and directorships of these companies is contained in section 6 (The Bosasa Group of Companies Structure) below.

This matter was then referred to the SIU in late 2006 by the PSC and the OAG. The SIU was requested to investigate various allegations in respect of these service providers (as set out in the terms of reference) and two specific officials within DCS, namely, Gillingham and Commissioner Mti.

The SIU obtained the Proclamation[5], authorising this and other investigations in the DCS context, which meant the SIU was then in a position to fully investigate these tenders. The SIU then accordingly proceeded with its investigation.

1.3 Objectives of report

Section 4(1)(d) of the Act[6] allows the SIU to refer evidence which points to the commission of an offence to the relevant Prosecuting Authority.

[5] Proclamation R44 of 2007, attached as Annexure 2
[6] The Special Investigating Units and Special Tribunals Act 74 of 1996, attached as Annexure 3

Section 5(7) of the Act provides that if during the course of an investigation, any matter comes to the attention of the Head of the SIU which, in his/her opinion, justifies the institution of legal proceedings by a state institution against any person, he/she may bring such matter to the attention of the State Attorney or the institution concerned, as the case may be.

Bearing the aforesaid provisions in mind, the objectives of the report are to:

- give an exposition of the evidence gathered during the investigation
- provide a summary of the findings based on the evidence
- make recommendations on the institution of legal proceedings.

2 METHODOLOGY

The SIU conducted the investigation as authorised by the Proclamation. The SIU employed a multi-disciplinary team consisting of forensic lawyers, forensic accountants, forensic investigators and cyber forensic experts to conduct this investigation. The SIU applied a uniform methodology across the investigation, involving the following:

- A review of all relevant documentation related to the tenders listed above
- Determining the level of compliance with DCS procurement policy, the relevant procurement legislation and standards set by Treasury
- Conducting interviews with and obtaining affidavits from officials within the DCS involved in the procurement process
- Conducting interviews with officials within Treasury and where necessary obtaining affidavits from them
- Conducting interviews with other witnesses that could shed light on the investigation
- Conducting a financial analysis into the affairs of Gillingham and a more limited analysis in respect of Commissioner Mti
- Conducting search and seizure operations to obtain evidence related to the investigation
- Obtaining and analysing of computer images obtained from Bosasa and various persons who featured in the procurement process
- An analysis of the documentary and electronic evidence obtained by the multi-disciplinary team.

The SIU's conclusions rely on the facts established from the documentary and electronic information obtained during the course of the investigation.

3 OUTLINE OF RELEVANT POLICIES AND SPECIAL LEGISLATION APPLICABLE TO INVESTIGATION

3.1 The DCS procurement policy

A summary of the key steps in the procurement processes in the DCS are set out below.

Identification of a need

A need should be identified for the acquisition of a service or goods. A need is based on a strategic plan of a department within the DCS that serves as a basis for the identification of resources needed to achieve set objectives. The particular department's operational plan specifies the timelines for the acquisition of the resources and the achievement of its set goals. A budget estimate is prepared which expresses the need for funds necessary to acquire the resources.

Availability of Funds

All financial matters must first be finalised before bids are invited, i.e. bids should not be invited if funds are not available.

Drafting of specifications

Specifications should promote the broadest possible competition while simultaneously assuring that critical elements of performance are achieved. Specifications should be based on relevant characteristics and / or performance requirements. The end user is responsible for the drafting of the specifications of tenders, and may obtain assistance from the private sector when preparing the specifications. However, the involvement of the private sector should involve as many role players in the specific sector as possible to ensure that the specifications are as broadly drafted as possible and that they encourage competition.

Site Inspection and Explanatory meetings

Where it is necessary to invite prospective bidders to a site inspection or explanatory meeting, it should be indicated in the invitation to bidders whether this is compulsory

or not. An attendance register should be completed by all attendees. Minutes of such meetings should be taken and distributed to all prospective bidders that attended.

Maintenance

Bidders are requested to indicate the maintenance structure and cost for the resource that is being tendered for. This information is used for evaluation purposes and budgeting.

Preferential Points System

The Preferential Points System (80/20 or 90/10) was designed to promote the socially desirable aim of Black Economic Empowerment (BEE). Depending on the value of the contract, either the 80/20 or the 90/10 points system is applicable. There is a set threshold for government contracts that determines which of the two points systems applies in any given tender. Assuming for argument's sake that the threshold is R5 million, then contracts below that value will be assessed according to the 80/20 system; if the contract is valued at above R5 million, the 90/10 system applies. Thus in dealing with a tender of R5 million or less, 20% of the bid evaluation points should be allocated to the assessment of the bidder's BEE profile, and conversely, when dealing with a tender above R5 million, the 90/10 principle applies and only 10% of the bid evaluation points are allocated to the evaluation of the bidder's BEE status. The particular points system applicable, whether 80/20 or 90/10, should be indicated in the bid documents.

Evaluation Criteria

In all four tenders referred to above and reviewed by the SIU, the price and functionality evaluation criteria were adopted by the DCS. National Treasury Regulations and Practice Notes set out the circumstances in which the price and functionality criteria should be applied.

Compiling bid documents

Bid documents are compiled and issued to prospective bidders by the Procurement Unit (PU) and consist of Specifications, Terms of Reference (TOR), General Conditions and other standard documents which address issues such as pricing, price adjustments, declarations of interest, etc.

Communication with bidders

Before bids close, communication between the officials of the department and prospective bidders may take place to clarify issues about the bid. During the evaluation of bids, delegated officials of the PU may communicate in writing with the bidders to obtain information where it is incomplete for clarification.

Approval to procure and appointment of Bid Evaluation Committee (BEC)

The BEC members are recommended by the end user and approved by the accounting officer of the relevant department seeking to acquire the resource. This committee evaluates bids according to given criteria, supplied at the commencement of the evaluation process. The process remains confidential. All members are required to declare any interests beforehand.

Appointment of the Bid Adjudication Committee (NBAC)

The members of the BAC are appointed by the accounting officer of the relevant department seeking to acquire the resource. There is a national BAC (NBAC) that considers recommendations in all cases with an estimated value of above R5 million. All members are required to declare any interests beforehand. No member of the BAC is appointed to the BEC or vice versa.

Invitation to bid

The PU is responsible for the compilation of the tender invitation based on detailed specifications and available funding. The bid is advertised in the government tender bulletin and in other media. The minimum period of 30 days between the publication date of the bid invitation and the closing time of bids may be extended for longer periods for tenders that are more complicated or shortened in appropriate circumstances. In terms of the advertisement, interested parties are invited to uplift the bid documents from the Department.

The bid documents contain comprehensive details of the procedure to be followed in submitting bids, qualifying criteria, forms to be completed, how the bids would be scored, special bid specifications etc. The bid documents form the sum total of all the information supplied to bidders to enable them to submit their bids. In the bid documents, the BEC may reserve the right to call for presentations from bidders, should this need arise.

Receiving bids and opening of bids

Bids must be opened in public as soon as possible after closing time by officials authorised in writing. Bids are given a registration mark of authenticity and all bids received must be listed. The names of the bidders and their individual total prices should be recorded when bids are opened. All bid documents must be scrutinised and initialled to prevent unnecessary criticism.

In all four tenders investigated by the SIU, the bid documents required bidders to submit their proposals in two separate parts – the one dealing with functionality and the other with price – each part to be contained in a different envelope. The first envelope had to contain the technical proposal (bid relating to functionality) and the second, the price proposal.

Evaluation criteria of bids by BEC

The threshold score for functionality in respect of each of the bids was set at 70%. Only those bidders whose functionality proposals met or bettered the threshold score, qualified to have their price proposals considered.

Once the scoring for the pricing proposals is complete, the scores for the functional and pricing proposals are applied to prescribed formulae to determine which of the bidders scored the highest points.

BAC assessment based on BEC recommendations

All relevant information must be placed before the NBAC to enable it to take an appropriate decision. To this end, all documentation relevant to the BEC's evaluation/scoring of the bidders, as well as the consolidated scoring of points by SCM/PU, is required to be placed before the NBAC.

Should the NBAC have any questions around any of the issues regarding the scoring and evaluation, they should obtain clarification from the bodies concerned that is to say, BEC, PU etc.

Awarding of contract

After the NBAC has approved the awarding of a contract, the successful bidder is advised of the acceptance of its bid by letter/facsimile. The successful bidder is allowed seven days within which to conclude a standard written contract, which must be signed before the validity period of the bid has expired. Bid results are then advertised in at least the government tender bulletin.

Further phases of contract

The further phases of the procurement process - placing an order, payments and contract management - are dealt with peripherally in this report, and therefore they are not set out here.

3.2 Treasury guidelines regarding budgeting for the tender process

Within the DCS, there was a substantial monetary saving in the compensation on employees' budget for the 2005/2006 financial year. Money from this saving was applied to fund some of the tenders under discussion.

The SIU obtained information relevant to the employment of the savings referred to above from Mr CJ Haak[7] (**Haak**) from National Treasury. Haak holds the position of Director: Correctional Services.

According to Haak, there are specific rules in the Public Finance Management Act (1 of 1999) (**PFMA**) and regulations which permit funds already budgeted for to be moved across to different programmes. It is only when, within the virement rules – moving funds from one programme to another, provided that such movement does not exceed 8% of the total allocation of the transferring programme – the budget from which funds are sought to be transferred is increased, that approval from National Treasury would be required.

Accordingly, the DCS was entitled to re-prioritise funds for the 2005/2006 financial year, and was thus entitled to use the compensation of employees' funds for projects such as fencing, television and other tenders, provided the budget from which these funds were being transferred was not increased.

The DCS accordingly used section 43 of the PFMA to transfer R769 million from the Compensation of Employees programme to the Machinery and Equipment programme under Capital Assets.

The information imparted to the SIU by Haak was confirmed by Mr P Leslie[8] (**Leslie**), the DCS Deputy Director: Budget Control.

According to Leslie, the fact that the funds for the fencing and television tenders were utilised towards the end of the financial year, resulted in the procurement process being rushed. For this reason, according to Leslie, the costs of the fencing and

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[7] See affidavit of Mr Haak, Annexure 4
[8] See affidavit of Mr P Leslie, Annexure 5

television tenders, taken together with a further project relating to information technology and the purchasing of government vehicles, amounted to more than the initial saving of R641 million. Additional funds were subsequently sourced from "white paper" funds in the following year.

Lastly, according to Leslie, National Treasury had complained about spending such large amounts close to the end of the financial year and commented that it was equivalent to "fiscal dumping", i.e. where departments spend large amounts of money just prior to the financial year end to exhaust their budget, ignoring whether the department gets value or not for such spending.

The SIU interviewed Mr J Breytenbach[9] (**Breytenbach**) of National Treasury with a view to obtaining clarity on a number of aspects applicable to the procurement process and to enable the SIU to appraise the procurement processes followed by the DCS and those prescribed by National Treasury.

According to Breytenbach, all goods and services procured by State Departments were required to be procured through the State Tender Board. The amended State Tender Board Regulations now make it possible for accounting officers of national state departments to procure goods and services either through the State Tender Board Act, or alternatively, in terms of the PFMA. On 5 December 2003, National Treasury issued a circular to all accounting officers confirming that they now had this option available to them and, in addition, issued a number of practice notes in terms of the 2003 regulations.

According to a Ms S Truter[10] (**S Truter**), Assistant Director Procurement Policy Formulation, on 8 March 2004, Commissioner Mti, opted for the DCS procuring goods and services in terms of the PFMA. As an interim measure, the DCS used the prescripts of the *ST37: User Manual: Directives* from March 2004 to May 2005, after which its own *DCS SCM User Manual: Directives* came into effect.

According to Breytenbach, in the event of inconsistencies between the prescripts of the ST37 and the SCM prescripts, the prescripts of National Treasury prevail. Furthermore, section 3(3) of the PFMA provides that if there are inconsistencies between any other legislation and the PFMA, the PFMA prevails.

[9] See affidavit of Mr Breytenbach, Annexure 6
[10] See affidavit of Ms S Truter, Annexure 7

Further, according to Breytenbach, planning plays an integral part in SCM, and any irregular, unauthorised or fruitless and wasteful expenditure, is regarded as an act of financial misconduct in terms of section 38(1)(h)(iii) of the PFMA.

Paragraph 4.1.1 of ST37 provides that the department with a requirement for a product will usually initiate the drafting of the specifications or identify an existing specification that meets the requirement.

However, paragraph 4.1.1 only prevailed until 26 October 2004. Thereafter National Treasury's circular entitled 'Implementation of Supply Chain Management of 27 October 2004', provides for the appointment of a Bid Specification Committee (BSC), a BEC and a BAC. Paragraph 4.1(a) of the circular, provides that the BSC is responsible for compiling the bid specifications and that the specifications should be written in an unbiased manner to allow all potential bidders to offer their goods and/or services.

The position regarding the drafting of bid specifications changed with effect from 15 March 2005 when a new set of Treasury Regulations (the 2005 Treasury Regulations), issued in terms of the PFMA, came into effect. Regulation 16A6.2(b) of the 2005 Treasury Regulations, prescribes that a supply chain management system must, in the case of procurement through a bidding process, provide for the establishment, composition and functioning of bid specification, evaluation and adjudication committees. As from 15 March 2005, failure to establish a BSC constitutes irregular expenditure in terms of the PFMA.

Treasury Regulation 6.3(c) of the 2003 regulations provides that procurement through a bidding process, must provide for bids to be advertised for at least 30 days prior to closure, except in urgent cases when bids might be advertised for a shorter period as decided by the accounting officer. The shortening of the closing date for a complex tender may also be regarded as unfair to potential bidders in terms of section 217(1) of the Constitution.

According to Breytenbach, there are no specific prescripts regarding the drafting of evaluation criteria, but ideally the criteria should be drafted by the same person/s or committee that drafted the bid specifications.

In respect of the bid evaluation process, regulation 16A8.3(d) of the 2005 Treasury regulations, provides that a SCM official or other role player must ensure that they do not compromise the credibility or integrity of the SCM system through the acceptance of gifts, hospitality, or any other act. Sub-regulations 16A8.4(a) and (b) provide that if

a SCM official or other role player, or any close family member, partner or associate of such official or other role player, has any private or business interest in any contract to be awarded, that official or other role player must disclose that interest and withdraw from participating in any manner whatsoever in the process relating to that contract. Failure to do so may be regarded as an act of abuse of the SCM system and the official may be charged in terms of Regulation 16A9 of the 2005 Treasury Regulations.

Further, practice note SCM 3 of 2003 introduced the concept of the evaluation of bids based on functionality and price. The evaluation of bids in terms of functionality and price, however, only applies to bids where the services of consultants, such as consulting firms, engineering firms, auditors and research agencies (professional services), are procured.

Paragraph 1.1 of practice note SCM 3 of 2003, specifically provides that the 'evaluation of bids on the basis of functionality and price, do not apply to general services such as construction works, manufacture of goods, operation and maintenance of facilities or plants, surveys, catering, cleaning and security in which the physical aspects of the activity predominates.

According to Breytenbach, the evaluation method involving the application of functionality and price, which was applied in the four tenders referred to above, was incorrectly applied and its application was contrary to Treasury Regulations. According to him, the evaluation method that should have been applied to these tenders was where price was the most important factor.

Breytenbach also explained that there is a duty on the BEC to inform the BAC if the tender price of the recommended bids exceeded the available budget. Section 38(1)(h)(iii) of the PFMA, provides that the accounting officer must take effective and appropriate disciplinary steps against any official in the service of the department, who makes or permits unauthorised, irregular, fruitless and wasteful expenditure. In addition, there is a duty on the BEC to ensure that a recommended bidder's price is reasonable prior to recommending to the BAC that the bid should be awarded to their preferred bidder.

With regard to contract administration, and in particular, upfront or advance payments to contractors, regulation 15.10.1.2(c) of the 2005 Treasury regulations, provides that prepayments for goods or services must be avoided, unless required by the contractual arrangements with the supplier.

Section 38(1)(a)(i) of the PFMA prescribes that an accounting officer must ensure that his/her department has and maintains an effective, efficient and transparent system of financial and risk management and internal control.

Paragraph 16.1.1 of practice note SCM 3 of 2003, provides that any changes to a contract that would in aggregate increase the original amount of the contract by more than 15%, is subject to the approval of the accounting officer or his/her delegate. Variation orders should also not infringe on the provisions of section 217(1) of the Constitution of the Republic of South Africa (Act 108 of 1996) (**Constitution**).

Paragraph 16.1.1 of practice note SCM 3 of 2003, deals with modifications to and extensions of contracts. Although the accounting officer has the authority to approve modifications to and extensions of contracts, such approval should not infringe the provisions of section 217(1) of the Constitution.

Paragraphs 21, 22 and 23 of the practice note SCM 1 of 2003, govern the contractual provisions regarding delays in the supplier's performance, penalties and the determination of default procedures to be followed, when a contractor fails to complete a contract by completion date.

The SIU also interviewed S Truter[11], Assistant Director: Procurement Policy Formulation in the DCS. S Truter explained the DCS policy pertaining to the submission of tax clearance certificates. According to her, practice note SCM 3 of 2006, provides that if the Department is in possession of an original tax clearance certificate, it is not necessary to obtain a new tax clearance certificate each time a price quotation is submitted from that specific supplier.

Lastly, it needs to be observed, that section 217(1) of the Constitution provides that when an organ of state contracts for goods and services, it must do so in accordance with a system that is fair, equitable, transparent, competitive and cost effective.

3.3 The Construction Industry Development Board legislation and regulations

The SIU approached the Construction Industry Development Board (**CIDB**) to obtain information regarding the legislative framework that was applicable to construction tenders. This is specifically relevant to the fencing tender that was advertised in 2005. The purpose of the initial contact with the CIDB was to determine whether the

[11] Ibid

relevant CIDB prescripts had been complied with when the DCS advertised and awarded the tender.

The CIDB was established in April 2001 in terms of the Construction Industry Development Board Act (38 of 2000) (**CIDB Act**), to regulate and develop the construction industry for improved performance in infrastructure delivery. A further aim of the CIDB, is to promote uniform application of policy with regard to the construction industry throughout all spheres of government.

The SIU interviewed Ms B George[12] (**George**), the CIDB Legal and Compliance Manager. George advised the SIU on the provisions of the CIDB Act, its regulations and its application to the construction industry. Further details regarding the application of the CIDB Act and its regulations as regards the fencing tender are discussed later herein in sections 8.3.1 and 8.3.2.

4 LIMITATION ON THE INVESTIGATION

The report is based on the review and analysis of documentary and electronic evidence, interviews conducted and affidavits obtained by the SIU. The investigation, however, was constrained by litigation as explained hereunder.

Bosasa has sought by way of application proceedings in the North Gauteng Division of the High Court of South Africa, to interdict the SIU from investigating the full scope of Bosasa's activities regarding the awarding of the four tenders to it by the DCS. As a result of the application, the SIU gave an undertaking not to interrogate material witnesses pending the finalisation of action proceedings for a final order. The SIU has accordingly not interrogated various Bosasa officials, its auditors and other witnesses, who could impart material information regarding issues relating to the investigation. The investigation has accordingly not been as intensive as the SIU would have wanted, and accordingly, any *lacunae* that exist in the investigation, will be addressed upon the resolution of the litigation between the SIU and Bosasa.

[12] See affidavit of Ms B George, Annexure 8

5 CYBER FORENSIC EXPERTISE ENGAGED BY THE SIU

The SIU employed the services of a cyber forensic expert, Mr J Malan[13] (**Malan**), to assist it with the retrieval and analysis of electronic data obtained from Bosasa and Gillingham.

The SIU served notices in terms of section 5(2)(b) and (c) of the Act, on Bosasa requesting *inter alia* that Bosasa provide the SIU with access to its servers so that the SIU could obtain electronic copies of relevant data relating to this investigation. Bosasa offered to assist the SIU with its investigation. The SIU and Bosasa reached an agreement in terms of which the SIU would be granted access to Bosasa's servers and laptops so that mirror images could be made of them.

The imaging was initially scheduled to take place in the first week of December 2008, but at the request of Bosasa, this process was postponed until the second week of December 2008. From 8 to 16 December 2008, the SIU made mirror images of the data on the Bosasa file server environment, domain controller system, email server, financial system server as well as of the personal laptops of Agrizzi, Mr A van Tonder (**van Tonder**) and Mr F Vorster (**Vorster**). During the imaging process, the SIU was denied access to one server. After the intervention of Adv J Wells, the SIU's Legal Advisor, access was eventually granted and the server was imaged.

Malan analysed the data obtained from Bosasa, using keyword searches. During his initial analysis of the data, he identified that a data deletion utility known as *Erase*[14]*r* had been used to delete a significant amount of data on the servers. Table 1 below, reflects the dates on which the data was erased.

Table 1: Dates of deleted data on Bosasa servers

Server name	Document and folder count	Timeline of modification and deletion	Comment
Domain server ADS01	32 769	24 July 2008	Documents appear to have been overwritten and then deleted
Domain server ADS01	60	2 December 2008	Mostly archived documents were overwritten and deleted
File server	116	3 December 2008	Folder names appear to have been overwritten with random data and then deleted

[13] See affidavit of Mr J Malan, Annexure 9
[14] The Eraser product is marketed as software that can frustrate cyber forensic investigations.

File server	468	4 December 2008	Folder names appear to have been overwritten with random data and then deleted
Domain server ADS01	7 130	6 December 2008	Documents appear to have been overwritten and then deleted

Because of the use of the *Eraser* utility, Malan had to employ advanced data recovery techniques, which assisted him in his endeavour to recover the maximum amount of data.

Malan also analysed the mirror images of Gillingham's computers and other electronic data storage facilities, obtained during a search conducted at Gillingham's residence in terms of section 6 of the Act. The *Eraser* utility was also found on Gillingham's system, but Malan found that the utility was not used extensively on his computer to destroy data.

Documents of particular relevance to the investigation of the kitchens and access control tenders, were retrieved and analysed by Malan and are dealt with under the discussion of these tenders.

6 THE BOSASA GROUP OF COMPANIES STRUCTURE

The SIU conducted an investigation into the establishment and structure of the Bosasa Group of Companies. The SIU's findings are based on information obtained from the Registrar of Companies, the previous auditors of the Bosasa Group, tender documentation submitted by Bosasa, Sondolo and Phezulu and from the official Bosasa website. The SIU's findings are set out below.

6.1 Bosasa Operations (Pty) Ltd

During December 1981, a company known as Emafini (Pty) Ltd was formed by Mr SJH Van Zijl (**Van Zijl**). In December 1984, Smith was appointed to Emafini as a Director. Emafini then changed its name to Meritum Hostels (Pty) Ltd in February 1985.

On 20 June 1996, Van Zijl and Smith entered into a pre-incorporation agreement with a trust, stipulating that a new holding company would be formed and a new operations company would be established to render the services for this holding company, administered by the trust. Mansell signed as a witness to the pre-incorporation agreement.

As a result of this agreement, Meritum Hostels became known as Dyambu Operations (Pty) Ltd (**Dyambu Operations**), and the trust, as the Dyambu Trust and the holding company, as Dyambu Holdings. In November 2000, Dyambu Operations changed its name to Bosasa Operations (Pty) Ltd.

Mansell was an active Director of Dyambu Operations from 1 June 1997. He resigned as a Director of Dyambu Operations in November 2000, when Dyambu Operations became Bosasa. Despite his resignation from Dyambu Operations, he remained on as a consultant with Bosasa and operated as such during the period that Bosasa was awarded contracts from DCS.

6.2 Sondolo IT (Pty) Ltd and Phezulu Fencing (Pty) Ltd

Sondolo, previously known as Mavava Trading (Pty) Ltd, was formed in 2005, while Phezulu, previously known as Nino Construction, changed its name to Phezulu Fencing in 1997.

Upon changing its name in 2005, Sondolo appointed Bester Viljoen Incorporated as its auditors. At this time, Johannes Gumede, Tony Perry, Papa Leshabane, Brian Gwebu, Jacqueline Leyds, Nomazulu Makoko (among others), were appointed as directors of Sondolo. These individuals were all affiliated to Bosasa.

In December 2005, a number of directors resigned from Phezulu, whilst directors such as Jacqueline Leyds and Victor Mhangwana, with previous Bosasa affiliations, were appointed in their stead as the new directors of Phezulu. At this stage, the auditors for Phezulu, were changed from PricewaterhouseCoopers to Bester Viljoen Incorporated, the auditors for Bosasa and Sondolo.

According to the documentation obtained from the Registrar of Companies, Bosasa, Sondolo and Phezulu have the following in common:

- Bester Viljoen Incorporated are their auditors
- Jacqueline Leyds is a director of all three companies
- Bosasa and Sondolo have Johannes Gumede, Munirah Oliveria and Ishmael Mncwaba as directors
- Bosasa and Sondolo share the same physical business address, namely, 1 Windsor Road, Mogale City, Krugersdorp, 1739.

In addition to the above, the documents obtained from the Registrar of Companies indicate that company changes within Sondolo and Phezulu were addressed to

Bosasa. According to the Bosasa website, both Sondolo and Phezulu, fall within the Bosasa Group of Companies.

During the course of the investigation, a document compiled by Agrizzi, was handed to the SIU. This document, entitled *Summary Company Structure*[15], indicated that Sondolo was owned by four companies, namely, Bancar Investment Holdings (Pty) Ltd (25%), Kgwerano Financial Services (Pty) Ltd (25%), Bosasa Youth Development Foundation (10%) and Bosasa (40%). On its website, Bosasa maintains that these companies are all affiliated to the Bosasa Group. The *Summary Company Structure* document in addition, indicated that Phezulu appointed Sondolo as its project manager and integrator of the fencing contract.

Lastly, the tender documentation submitted by Sondolo and Phezulu, confirm that they are part of the Bosasa Group of Companies and that they are dependent on each other for the delivery of services.

7 COMMISSIONER MTI'S FORMAL RELATIONSHIP WITH BOSASA

From the information obtained from the Registrar of Companies, Commissioner Mti is the director of a company called Lianorah Investment Consultancy (Pty) Ltd (**Lianorah**). Further information from the Registrar of Companies indicated that Lianorah is in one way or another, linked to Bosasa. These links include the following:

- Both Sondolo and Lianorah's registration documentation reflects Mr Stephan Kruger as the initial director, with BGB Smit as the auditors
- Both Sondolo and Lianorah appointed Bester Viljoen Incorporated as their new auditor in place of BGB Smit
- Bester Viljoen Incorporated are the auditors for Bosasa.

At the time Lianorah's incorporation, Commissioner Mti was the DCS National Commissioner. The timing of the registration of the above entity appears to coincide with the awarding to Sondolo of the access control tender, on or about 19 April 2005.

The analysis conducted by the SIU, has revealed that Lianorah was deregistered on 20 April 2007.

[15] See Annexure 10

8 ANALYSIS OF CONTRACTS

Against the background of this information, the SIU analysed the procurement process related to the four contracts referred to above. The evaluation of each one, is dealt with below.

8.1 The kitchens tender: HK2/2004

The kitchens tender was awarded to Bosasa on 20 July 2004. The scope of the kitchens tender entailed the providing of full catering services, including full maintenance of kitchen equipment, cleaning and training of DCS staff and inmates, at correctional centres in seven management areas. These areas were Pretoria, Johannesburg, Durban Westville, Krugersdorp, Pollsmoor, Modderbee and St Albans.

The bid was advertised on 21 May 2004, and it required the rendering of services over a 3-year period (1 August 2004 to 31 July 2007), at a cost of approximately R239 427 694 per annum.

8.1.1 Evidence gathered

Engagement with the service provider prior to publication of the tender

The SIU ascertained that a DCS Executive Management Committee (EMC) meeting was held at Supersport Park in Centurion, Pretoria between November 2003 and early 2004. At this meeting, Agrizzi and Leshabane from Bosasa made a presentation to the attending DCS officials, including Commissioner Mti, Gillingham and Mr F Engelbrecht, the Regional Commissioner of DCS, Gauteng (**Engelbrecht**)[16].

The Bosasa presentation was to advise the DCS of the services Bosasa was able to provide, including catering and measures to prevent the theft of food from prison kitchens.

This meeting took place not only prior to the advertising of the kitchens tender, but also before it was made known within the DCS that it would be outsourcing catering services, the full maintenance of kitchen equipment and the training of DCS staff and inmates at correctional centres.

Engelbrecht raised questions regarding the viability of outsourcing catering facilities after the Supersport Park presentation. His concern related to job security of DCS

[16] See affidavit of Mr Engelbrecht, Annexure 11

staff, the sustainability of such a venture, its budget and the effect of such outsourcing on offender labour. He stated that in response to his questions, Commissioner Mti had rudely instructed him to stop asking questions.

During a later EMC meeting held prior to May 2004, in Magaliesburg, Gillingham did a presentation regarding the outsourcing of catering services due to the amendments to the Correctional Services Act (111 of 1998) (**Correctional Services Act**). The relevant amendment to the Correctional Services Act provides:

> *"Food must be well prepared and served at intervals of not less that four and a half hours and not more than 14 hours between the evening meal and breakfast during each 24 hour period".*

During the presentation, Gillingham highlighted the fact that the amendment set requirements which the DCS might not have the capacity to deal with effectively. In addition, he touched on aspects relating to the theft of food in prisons and general hygiene in prison kitchens. At the time of this presentation, Gillingham was the Regional Commissioner: North West, Mpumalanga and Limpopo.

Shortly after the presentation in Magaliesburg, the DCS CFO, Mr Tshivhase (**Tshivhase**), announced that the DCS would be outsourcing catering services. Gillingham was appointed as the project leader for this tender, which was then prioritised. Two DCS procurement officials, namely, Messrs W Pretorius[17] (**Pretorius**) and Truter were requested to assist Gillingham with the project.

According to Engelbrecht, the Directorate: Health Care Services was responsible for nutritional services, and to his knowledge, none of the officials from that Directorate, were consulted by Gillingham regarding the drafting of the specifications for this tender.

The timeline of the tender

According to Mr H Truter (**Truter**)[18], requests to invite bids had to be in writing, and a written instruction to proceed with invitations, needed prior approval. The kitchens tender was approved by Commissioner Mti on 24 May 2004. The bid was advertised on 21 May 2004, and the closing date was 25 June 2004. Compulsory briefing sessions were held from 4–15 June 2004 in all seven management areas where kitchen services were to be outsourced. The awarding of the bid by the NBAC was

[17] See affidavit of Mr Pretorius, Annexure 12
[18] See affidavit of Mr Truter, Annexure 13

scheduled for finalisation on 21 July 2004, but due to delays, the bid was only awarded on 27 July 2004, to Bosasa. Due to the abovementioned delays, Bosasa only commenced with performance on 16 August 2004, as opposed to the original performance date, namely, 1 August 2004.

For ease of reference, the chronological sequence of key events in the tender process for the kitchens tender is encapsulated in Table 2 below.

Table 2: Chronology of events regarding the tender process for the kitchens tender

Date	Activity
21 May 2004 –25 Jun 2004	Advertising of bid
11 Jun 2004	Scheduled bid collection
4 Jun 2004	Compulsory information meeting
4 Jun 2004 – 15 Jun 2004	Compulsory site meetings
25 Jun 2004	Closing date for bids
28 Jun 2004 – 30 Jun 2004	Screening of the bids
1 Jul 2004 – 8 Jul 2004	Evaluation process
12 Jul 2004 – 13 Jul 2004	Compiling by the BEC of their recommendations
14 Jul 2004 – 16 Jul 2007	Verification, preparation, recommendation and submission to the NBAC
20 Jul 2004	Awarding of the bid to Bosasa
21 Jul 2004	Scheduled date on which successful bidder was to be notified of award of bid
27 Jul 2004	Actual date on which Bosasa was informed that it was the successful bidder
29 Jul 2004	Signing of contract between DCS and Bosasa
1 Aug 2004	Scheduled date for commencement of services by Bosasa
16 Aug 2004	Actual date on which Bosasa started to render services

Drafting of the bid specifications

The SIU interviewed Mr T Mapasa (**Mapasa**), the DCS Director: Procurement[19]. According to him, the user department in terms of DCS procurement directives must assume responsibility for identifying the need, motivating the urgency and importance of the proposed tender, indicating the value or benefits to be derived from the tender and the providing of an estimate of the cost of the tender. Accordingly, a preliminary step in the procurement process is the identification by the relevant department of a need that is catered for in terms of its strategic plan.

[19] See affidavit of Mr Mapasa, Annexure 14

The SIU could find no evidence that a needs analysis or feasibility study was conducted prior to the initiation of this tender process.

Although the kitchens contract should have originated in the DCS Directorate: Development & Care, the SIU established that the need for the kitchens contract did not originate in this directorate nor did this directorate initiate the process.

The SIU interviewed Ms J Sishuba (**Sishuba**), DCS Chief Deputy Commissioner: Development and Care and Ms M Mabena (**Mabena**)[20], DCS Director: Health Services. They advised that their directorates were excluded from the entire tender process, despite the fact that nutrition fell under their directorates as end users. According to them, Gillingham had assumed responsibility for the initiation and implementation of the procurement process.

The SIU interviewed the former Director: Security Management Services, Mr AJC Venter[21] (**Venter**). Venter confirmed that he had neither taken part in the tender process for the kitchens tender nor was he or any other official from his directorate approached by either Gillingham or any other official for input in respect of the kitchens tender, specifically with regard to the security elements of the tender.

As regards the drafting of the specifications for the tender under discussion, Pretorius informed the SIU that during a meeting he had with Gillingham, the latter advised that he was developing specifications for the tender and handed Pretorius a two-page document that he was requested to peruse. The document handed to him, however, addressed only the aspects of training and equipment, but not the aspects relating to the preparation of food and ration scales, the heart of the kitchens tender. Pretorius advised that he suggested to Gillingham that the specifications used for the outsourcing of catering services at the Ekuseni Youth Centre be used as the basis for the development of the specifications for the kitchens tender. His subordinate, Truter, emailed these specifications to Gillingham.

Truter confirmed that Gillingham's specifications forwarded to him, were very basic and did not address the important aspects of the tender, such as provisioning of food, preparation, rationing scales, etc. In Truter's view, the tender was rushed, because on 10 May 2004, Gillingham had decided that the tender should be published on 21 May 2004.

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[20] See affidavits of Ms Sishuba and Mabena. Annexure 15 and 16 respectively
[21] See affidavit of Mr Venter, Annexure 17

According to Pretorius and Truter, they advised Gillingham on how to comply with the procurement process. However, they did not assist him with the technical aspects of the specifications, as they did not possess the required technical knowledge.

It is unclear to the SIU what qualified Gillingham to draft the specifications for this bid as he only possessed a matric qualification and was not a nutrition expert.

A review of the tender specifications revealed that a number of unusual specifications were included in the bid, namely:

- The installation of security cameras
- The requirement that bidders must have accredited security personnel with proven track records of installing and monitoring offsite (CCTV) and internet protocol surveillance and be International Standards Organisation 9001:2000 (ISO) compliant
- Bidders were required to have a fully functional integrated maintenance department experienced in facilities management with a minimum of 5 years experience
- Bidders were required to have a temporary mobile facility which complied with minimum health requirements to be utilised whilst the kitchens were being upgraded
- Bidders were required to procure the services of two qualified dieticians on their full time payroll, despite DCS having full-time dieticians on their payroll.

The SIU has further established from the witness[22] that Agrizzi requested him to develop a solution for the installation of various types of security equipment in correctional centre kitchens. According to him, he was informed by Agrizzi that the solution would be added to the tender specifications to ensure that Bosasa enjoyed an advantage over the other bidders. The witness advises that this solution formed part of the eventual tender specifications.

In the bid, the following security equipment was specified:

- Surveillance cameras in the kitchens
- Digital video recorders in each kitchen office
- Control and review personal computers in each kitchen office
- Access control systems in store rooms and fridges

[22] The affidavit of this witness will be withheld and provided to DCS upon request

- Wide area network connectivity to provide off-site surveillance.

During the security roll-out for the kitchens tender in August/September 2004, the witness was introduced to Mansell who had previously visited the Bosasa premises. The witness was informed that Mansell was a consultant and former partner of a Mr G Watson (**Watson**), the CEO of Bosasa. According to the witness, Mansell occupied an office in one of the Bosasa buildings and was often in the company of Agrizzi.

The bid evaluation and adjudication process

On 1 July 2004, the Code of Conduct and Declaration of Interest forms were signed by the members of the BEC in terms of which they were required to declare their interest, if any, in any of the bidders. Gillingham, as chairperson of the BEC, signed this form and indicated that he had no interest in any of the bidders for the kitchens contract.

Despite the fact that the kitchens contract was not a tender for consultant services, the DCS used the price and functionality tender evaluation method. Truter confirms that only Bosasa and Sechaba Catering Services (**Sechaba**) met the threshold for functionality and hence qualified for the second phase.

Members of the BEC[23] were informed by Gillingham, the Chairperson of the BEC, that the purpose of the kitchens tender, was to ensure that DCS complied with the amendments to the Correctional Services Act, with specific reference to section 8(5), referred to earlier.

The SIU interviewed Dr J Coetsee[24] (**Coetsee**), a member of the BEC that evaluated the kitchens tender. He informed the SIU that during the evaluation of the kitchens tender by the BEC, he observed that although the budget for the kitchens tender had been sourced from the Directorate: Health Care Services, this directorate had not requested the tender. Other BEC members further observed that the entire tender process had been managed by Gillingham.

From documentation made available to the SIU, it appears that after the awarding of the contract to Bosasa, a complaint was received from Sechaba, questioning the basis on which the tender was awarded to Bosasa. Sechaba complained that its pricing was reasonable in the light of its knowledge of prisons and high volume

[23] See affidavit of Mr Coetsee, attached as Annexure 18
[24] Ibid

feeding. In its response to the complaint, the DCS stated that the BEC was satisfied that Bosasa had best met the requirements for the tender.

The SIU in the course of its investigation obtained a file relating to allegations of maladministration and misconduct. It was alleged that Gillingham had an affair with his secretary, submitted fraudulent subsistence and travel claims (**S&T claims**) and had intimidated certain staff members.[25] Disciplinary action was recommended by DCS Deputy Commissioner: Legal and Special Operations, Adv T Mqobi (**Mqobi**), and DCS Chief Deputy Commissioner (**CDC**) Central Services, Ms J Schreiner. Contrary to the recommendations, Commissioner Mti sent a letter to Gillingham in which on the one hand he chides him for his misconduct, but on the other thanks him for repaying the irregularly obtained S&T monies. In the same letter, Commissioner Mti proceeded to appoint Gillingham as the DCS Acting CFO, which effectively gave him oversight of the procurement division. This appointment was shortly before the kitchens tender was awarded to Bosasa.

For ease of reference, the names of the members of the BEC and NBAC are set out in Table 3 below. It will be noticed that Gillingham served on both committees, in the BEC as its chairman and in the NBAC, in an advisory capacity.

Table 3: BEC and NBAC members for the kitchens tender

Bid Evaluation Committee	
Gillingham (Chairperson)	CDC Finance
Coetzee	Dir: Formal Education
Davids	Area Commissioner: Johannesburg Management Area
Mabena	Dir: Health Care Services
Mdletye	Area Co-ordinator: Development and Care: Durban Correctional Centre
Moodley	DC: Personnel Corrections
Maako	Dir: Contract Management
Lenkoe	Regional Head: Development and Care: Gauteng
FJ Venter	Secretary to BEC
National Bid Adjudication Committee	
Schreiner (Chairperson)	CDC: Central Services
Sishuba	CDC: Development & Care
Gillingham	CDC: Finance (Advisory Capacity)

[25] These details were obtained from the disciplinary file compiled by the DCS DIU

Ngubo	DC: Supply Chain Management
Mapasa	Dir: Procurement
Pretorius	Procurement: Secretariat
Aries	Procurement: Secretariat
Truter	Procurement

The cyber forensic expert's evidence

Malan recovered a document entitled *Checklist.doc,* obtained from the images seized at Gillingham's residence. The document contains bid evaluation criteria and guidelines for evaluating the kitchens tender. These criteria and guidelines obviously, should not have been in the possession of any bidder and especially not before the submission of tenders, since it would enable the bidder to know in advance the weighting of certain factors relevant to the tender.

Malan was able to establish that the document was created on 28 June 2004, and saved on the same date by Agrizzi. According to Malan, the document originated from Agrizzi's computer but the date of first creation could not be established, given the fact that Bosasa had used the *Eraser* utility to selectively erase certain information on its servers. Significantly, however, 28 June 2004, was the date on which DCS started to screen the bids in the kitchens tender.

Email logs between Agrizzi, Mansell and kobus@bfn.co.za

During the SIU's investigation of the access control tender an email address[26], Kobus@bfn.co.za, was linked to Gillingham.

According to Venter, Gillingham explained to him that kobus@bfn.co.za was his residential e-mail address.

The SIU determined that this email address belonged to an entity called *Network and Computing Consultants* (**NCC**), situated in Bloemfontein.

Mr F De Villiers[27] of NCC informed the SIU that kobus@bfn.co.za was an email address belonging to Bosasa and paid for monthly by Bosasa between August 2004 and March 2005.

[26] Discussed in detail in section 8.2.1 titled "The Bid Specifications"
[27] See affidavit of Mr F De Villiers, attached as Annexure 19

The SIU obtained email logs from NCC and found two emails sent from Gillingham to Agrizzi on 26 April 2004 with the subject, "Tender Evaluation Criteria – Danny Mansell" and "Reviewed Documents". These documents were sent approximately one month before the kitchens tender was advertised.

During a search conducted by the SIU at Gillingham's residence in terms of section 6 of the Act, a business card in Gillingham's name was found that reflected that he was a consultant for *Consilium (Pty) Ltd* (established by the SIU as an affiliate company within the Bosasa Group). Furthermore, the contact information on the card included the email address, kobus@bfn.co.za.[28]

The extension of the kitchens contract

As already observed, the kitchens tender covered seven management areas. The contract signed with Bosasa did not mention seven satellite correctional centres falling within these seven management areas. On 29 September 2004, Bosasa proposed to Gillingham that the seven satellite correctional centres be included by way of an extension of the kitchens tender.

The extension was recommended by Gillingham and authorised by Comissioner Mti on 17 May 2005.

The extension of the kitchens tender period

In October 2006, an extension of the contract was required because the contract would expire on 31 July 2007. The DCS was required to decide whether DCS personnel should render the services in future or a new tender should be advertised. The contract was extended by a year in order for the DCS to determine whether it should outsource the service again or provide the service itself. The contract was further extended for a period of six months.

A new kitchens contract HK14/2008, was awarded to Bosasa on 6 January 2009. The contract period for this contract was three years. In the course of a desktop analysis conducted by the SIU, it could not find any needs analysis or feasibility study for the new contract.

A disqualified bidder, Royal Sechaba (Pty) Ltd, previously Sechaba Catering Services, has since instituted legal proceedings against DCS and Bosasa to have this

[28] See copy of business card. Annexure 20

latter tender process reviewed and set aside. These proceedings are at present pending in the North Gauteng High Court.

Benefits received by Gillingham and Mti

The SIU has established that Gillingham received financial benefits from Bosasa over a period of time, for which he gave no valuable consideration. Whilst on the evidence, the payment of the benefits cannot be directly linked to a particular tender dealt with in this report, the timing of the benefits and the tenders lead the SIU to conclude that there is on the evidence a sufficient link between the benefits and the awarding of all of the tenders dealt with herein.

The benefits received by Gillingham and Commissioner Mti are dealt with in more detail later in section 9 of this report.

8.1.2 Findings

The evidence gathered by the SIU, shows that there were clear deviations from the SCM: Guide for Accounting Officers, more particularly, in that the end user department was not included in the bid process. There was also no proper financial planning for this tender in that there was no feasibility study nor needs analysis conducted.

The evidence shows that Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process in relation to the kitchens tender and was irregularly instrumental in the development of the tender specifications for the tender.

According to the witness, Bosasa irregularly participated in drafting the specifications for the tender under discussion and this fact was not disclosed by Gillingham during the bid evaluation process. On the evidence of the witness, the specifications were drafted in such a manner that the security aspects of the tender provided Bosasa with a clear advantage over other bidders. It is therefore not surprising that only two bidders were found to meet the functionality requirements by the BEC.

Furthermore, on the evidence of the cyber forensic expert, a document containing the bid evaluation criteria and guidelines for evaluating the tender was found in electronic data seized at Gillingham's residence, having originated from Agrizzi. The creation date of this document on Gillingham's computer was 28 June 2004 and was saved on Agrizzi's computer on the same day. Significantly, the DCS commenced with the screening of the tenders received in respect of the kitchens tender on 28 June 2004.

Whilst, Malan could not determine the date of first creation on Agrizzi's computer, the evidence raises two concerns: first, whether Agrizzi (and as such Bosasa) was in possession of the document at the time that Bosasa's tender was submitted for the kitchens tender, and second, whether Bosasa was party to the drafting of the evaluation criteria and guidelines for evaluating the tender. Obviously, if this were so, it would not only have subverted the entire procurement process because it would have placed Bosasa in an unduly advantageous position with reference to its competitors, but it would also have exposed the DCS to civil suits from unsuccessful bidders.

Given the fact that there was no BSC constituted to prepare the specifications for the kitchens tender, the fact that Gillingham played an integral role in the preparation of these specifications, the fact that these specifications were prepared in such a way as to favour Bosasa and the fact that a document containing the bid evaluation criteria and guidelines for evaluating the tender, was found on Gillingham's computer – having originated from Agrizzi – leads the SIU to believe that Bosasa along with Gillingham was not only involved in the drafting of these bid specifications for the kitchens tender but also in the drafting of the bid evaluation and guidelines thereof.

Paragraph 1.1 of practice note SCM 3 of 2003 provides that the price/functionality tender evaluation method applies only in tenders where consultant services are procured. It is therefore clear that to the extent that the kitchens tender did not involve consultant services, the price/functionality tender evaluation method applied to the kitchens tender, was in conflict with paragraph 1.1 of practice note SCM 3 of 2003.

The evidence clearly indicates that Gillingham received financial benefits from Bosasa after the award of the kitchens tender. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham.

The SIU is of the view that the acceptance by Gillingham of financial and other benefits from Bosasa around the time that the kitchens tender was awarded was both irregular and unlawful.

The impact on the kitchens tender and the other tenders, of the receipt of benefits by Gillingham and Commissioner Mti, are more fully dealt with under the discussion of the benefits received by them in section 9.

Turning to the extension of the kitchens contract, the evidence shows that the kitchens tender was extended upon the recommendation by Gillingham and

authorised by Commissioner Mti on 17 May 2005. In light of the irregular benefits received by Commissioner Mti the extension of this contract was irregular and unlawful.

8.1.3 Recommendations in respect of the kitchens tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by DCS on account of the award of the kitchens tender to Bosasa
- the DCS considers instituting disciplinary proceedings against Gillingham (Commissioner Mti no longer being in the employ of DCS) arising from his irregular conduct relating to the procurement process involving the kitchens tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Bosasa, the latter's office bearers and to the extent that Mansell, Agrizzi and Smith may not be office bearers of Bosasa, that they also be considered for prosecution in their personal capacities
- the DCS cooperates with the NPA for the purposes of prosecuting the persons and entities mentioned above.

8.2 The access control tender: HK2/2005

The access control tender was awarded to Sondolo on 11 April 2005. The scope of the access control tender entailed the supply, delivery, installation, commissioning, support and maintenance of a comprehensive access control and body scanning system with CCTV coverage of DCS staff and inmates at 66 Maximum Security Facilities/Centres of Excellence. The advertisement for the access control tender was published on 4 February 2005. The contract was valued at R236 997 385.31.

This tender was extended to include the staffing of the control rooms at the 66 sites. This extension took place after the awarding of the initial contract.

8.2.1 Evidence gathered

The timeline of the tender process

The tender for access control was published on 4 February 2005, with the closing date on 25 February 2005. The usual time for bidders to respond to the tender advertisement is 30 days, but the time for this tender was reduced to 21 days. The authorisation for such a reduction in time was given by the then Acting National Commissioner, Mr V Petersen (**Petersen**) on 27 January 2005.

The SIU established from Venter, the circumstances leading up to the advertising and awarding of this tender. Venter informs that towards the end of 2004, he was informed by Mr W Damons (**Damons**), Deputy Commissioner: Facilities and Security Management, that R90 million that had been budgeted for expenditure on infrastructure within the DCS would not be spent by the DCS Building and Management Division, before the financial year end. Damons instructed him to spend the money to improve security at prisons with existing Repair and Maintenance Programme (**RAMP**) programmes, by means of variation orders. RAMP projects are an initiative started by the DPW to upgrade various government facilities. The DCS, at the time, had many RAMP projects running with the DPW at various correctional centres.

In pursuance of the instruction from Damons, Venter drafted a plan indicating at which correctional centres the money would be spent, what equipment was required, as well as the cost, amounting to R89 517 000. A memorandum requesting approval of the plan was approved by Messrs F Mocheko (**Mocheko**) DCS Director of Building

and Maintenance: Pretoria and Damons on 18 November 2004 after confirmation was received that the money was available.

According to Venter, the plan was approved by Mlombile on 3 December 2004, who commented that Commissioner Mti wanted the option of the DCS acquiring the equipment without the assistance of the DPW due to time constraints. Gillingham then requested him to obtain prices for security equipment as well as the specifications for the following security equipment from the DPW:

- Walk through metal detector
- X-ray scanner
- Security spike boom barrier system, and
- CCTV system (closed circuit television system).

In a memorandum dated 9 December 2004, Venter not only acknowledged the benefits of using the DPW, but also pointed out that his directorate had always been satisfied with the manner in which the DPW had procured equipment in the past. The memorandum was addressed to the following role players within the DCS, namely, Mocheko, Sokupa, Damons, Mlombile, Gillingham and Commissioner Mti.

In Venter's memorandum of 9 December 2004, he requested that the following points be considered:

- Employment of the necessary expertise to ensure that durable equipment was procured
- That the necessary expertise be obtained to ensure that correct equipment was installed, that the components complied with the specifications and were compatible with DCS systems
- The inclusion of a maintenance contract for a minimum period of 5 years
- That long delivery periods may result in some equipment only being installed during the following financial year
- That the DCS should continue to use the expertise of the DPW for the erection of security fences through the RAMP programmes.

According to Venter, he received the following responses to his memorandum:

- Mocheko supported the recommendation that the fences be erected through the DPW
- Sokupa recommended that all the equipment be procured by the DCS's Procurement Directorate

- Damons supported the recommendation that the fences be erected through the DPW, but in addition, recommended a tender process by the DCS in respect of the security equipment
- Gillingham supported the recommendation regarding the security fences, but suggested that the DCS follows its own procurement process in respect of the security equipment and that all the funds should be allocated before the end of March 2005

Commissioner Mti, whilst approving the recommendations made by Sokupa, Damons and Gillingham, commented that the relevant concerns raised by Venter would be taken into consideration, but that the DCS should follow its own tender process so as not to experience delays from the DPW.

For ease of reference, the sequence of key events involved in the bid process for the access control tender, is encapsulated in Table 4.

Table 4: Chronology of events regarding the bid process of tender HK2/2005

Date	Activity
18 Nov 2004	Damons drafts memorandum indicating R90 million available for expenditure, proposing it be utilised at centres with existing RAMP programmes
9 Dec 2004	Commissioner Mti grants approval to proceed with tender
14 Jan 2005	Gillingham commences drafting of tender specifications
24 Jan 2005	Gillingham emails Mlombile bid specifications originating from kobus@bfn.co.za
19 – 26 Jan 2005	Meetings are held to finalise the drafting of tender specifications
27 Jan 2005	Mlombile forwards specifications to Venter
28 Jan 2005	Tender specifications are finalised
4 Feb 2005	Tender is published in the government gazette
14 Feb 2005	Compulsory information briefing is held
25 Feb 2005	Bid closed: 17 bids received as well as 3 late bids
2 Mar 2005	Initial screening of bids is finalised
9 Mar 2005	Motivation for the appointment of BEC members is drafted by Gillingham
16 Mar 2005	Gillingham signs the Declaration of Interest and Code of Conduct
	Instructions are given to the members of the BEC
11 April 2005	NBAC recommends tender be awarded to Sondolo
19 Apr 2005	Contract between DCS and Sondolo is signed

The bid specifications

According to Venter, Mlombile contacted him on 27 January 2006, in connection with an e-mail he had received from Gillingham. Attached to the e-mail, was a document containing specifications for security equipment. Mlombile was concerned by the fact that the individual who had forwarded the document to Gillingham, a certain Kobus with the email address of Kobus@bfn.co.za, was unknown to him. According to Venter, Mlombile suspected that the specifications contained in the document sent to Gillingham, were not drafted by DCS officials.

Venter informed that he investigated the origin of the email and found that the author of the document was an individual called "Danny" and that the e-mail address from which the document had been sent belonged to an entity called *Network and Computing Consultants* (**NCC**), situated in Bloemfontein.

Venter then sent a memorandum to Damons, Mlombile and Gillingham in which he raised his concern not only about the origin of the document forwarded to Gillingham, but also the inadequacy of the bid conditions and specifications in the following respects:

- no provision was made for access control at entrances used by DCS officials and SAPS members, which were also being used for the admission and release of offenders
- no provision was made for access control at gates used by work teams at the Centres of Excellence
- no provision was made for equipment to scan items that were being delivered, or the person/s making the delivery
- the Directorate Security Management Services did not possess the expertise required for the purpose of drafting technical specifications, which the DPW had previously drafted
- the CCTV coverage focussed on people entering the secure areas but no mention was made of people exiting these areas.

Venter further informed that he did not receive any feedback regarding the concerns raised in his memorandum regarding the origin and inadequacy of the bid conditions and specifications that were forwarded to Gillingham. According to Venter, Gillingham explained to him that kobus@bfn.co.za was his residential e-mail address, from which he forwarded the document to his official DCS e-mail address.

Through the SIU's investigation, it was established that there was no Kobus employed as a consultant at the DCS and further, kobus@bfn.co.za, was an email address belonging to Bosasa and paid for monthly by Bosasa between August 2004 and March 2005, which includes the day on which the document was emailed to Gillingham.[29] The SIU was further able to establish that a number of emails were sent by Agrizzi to *Kobus*.[30]

During a search conducted by the SIU at Gillingham's residence in terms of section 6 of the Act, a business card in Gillingham's name was found that reflected that he was a consultant for *Consilium (Pty) Ltd* (previously established by the SIU as an affiliate company within the Bosasa Group). Furthermore, the contact information on the card included the email address, kobus@bfn.co.za.[31]

The SIU was further able to establish that despite it not being within the course and scope of Gillingham's duties, he had assumed responsibility for the drafting of the bid specifications. This fact accords with Venter's evidence that he was not aware of any committee that was formed for the specific purpose of drafting the specifications for this tender.

The witness referred to previously, advised that in December 2004, he was given a document by Agrizzi that contained specifications for security measures at prisons. Agrizzi informed him that the document was for a tender, which the DCS was going to advertise in the near future. Agrizzi instructed him to ensure that the specifications were up to date with modern technology and to align them with the technology Bosasa was employing in the kitchens contract. The witness further advised that his previous involvement in the drafting of the kitchens tender specifications had made the task assigned to him by Agrizzi easier.

The witness further informed that Agrizzi had told him that he (Agrizzi) had informed the Bosasa team that the bid price had to be in the region of R80 million and the bid presentation should include aspects such as system design, costing and maintenance.

The SIU was further advised by the witness that it took him a few weeks to improve upon the specifications contained in the document given to him by Agrizzi. These improved specifications were later presented to Agrizzi.

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[29] See Annexure 19
[30] It is important to note here the email sent between Agrizzi, Mansell and kobus during this tender and the kitchens tender
[31] See Annexure 20

According to the witness, he later identified a number of similarities between his improved specifications and those contained in the tender advertisement.

According to documentation obtained from the Registrar of Companies, Sondolo (Pty) Ltd was only registered as such on 18 February 2005, that is, 7 days before the closing of the tender. Since the tender specifications required a proven track record of at least 5 years in the Information Technology (IT) industry, Sondolo clearly did not satisfy that requirement.

Further information sourced from the Sondolo bid documentation indicated the following shareholding in Sondolo:

- Bosasa (40%)
- Kgwerano Financial Services (Pty) Ltd (25%)
- Bancar Investment Holdings (Pty) Ltd (25%)
- Bosasa Youth Development Foundation (Pty) Ltd (10%) – Section 21 Company

As already observed, Kgwerano, Bancar and Bosasa Youth Development are all affiliate companies within the Bosasa Group.

The witness pointed out the following aspects that would have made it very difficult for other bidders to submit a sufficiently compliant bid:

- Given the close association between Bosasa and Sondolo and the former's knowledge of the prisons environment on account of its contractual relations in terms of the kitchens tender, its prior knowledge of the bid specifications and the exclusion of site visits allowed Sondolo to enjoy an undue advantage over other bidders
- Despite the technical nature of the bid, which would have required intensive research, the normal period of 30 days for the submission of bids was reduced to 21 days.

The cyber forensic expert's evidence

Malan obtained electronic copies from the DCS of the earliest versions of the tender specifications in respect of all the tenders forming the subject of the SIU's investigation into Bosasa and its affiliate companies. During the course of this investigation, Malan mirror imaged the servers of Bosasa and the laptops of Agrizzi, van Tonder and Vorster

Malan used the electronic copies of the bid specifications that he had obtained from the DCS in an effort to establish whether there were any similar or identical bid specifications in the Bosasa data. Despite the deletion of information by Bosasa from its servers, Malan was able to identify a document named *cctv bid.doc* both in the electronic data received from the DCS and on one of Bosasa's servers.

The document on Bosasa's server indicated that it was last printed on 13 January 2005. The author of the document was "Danny" and the document was revision 2. The document contained specifications relating to the access control tender. This document was also found on the DCS server and was attached to an email Mlombile received from Gillingham on 24 January 2005. This document indicated that it was revision 4 of the document; the document found on Bosasa's server was revision 2.

The bid evaluation and adjudication process

On 16 March 2005, the Code of Conduct and Declaration of Interest forms were signed by the members of the BEC, in terms of which they were required to declare their interest, if any, in any of the bidders. Gillingham, as chairperson of the BEC, signed this form, indicating that he had no interest in any of the bidders for this contract.

In this bid, the price/functionality tender evaluation method was utilised. Only Sondolo satisfied the threshold for functionality, thus enabling it to be considered in the pricing phase.

Despite Pinnacle Technology Holding (Pty) Ltd (the second highest bidder) obtaining only 68.13% for functionality, it was included for consideration in the pricing phase.

The BEC recommended to the NBAC that Sondolo be awarded the contract. Following this recommendation, the NBAC after its deliberations awarded the contract to Sondolo on 11 April 2005.

For ease of reference, the name of the members of the BEC and NBAC are set out in in Table 5 below. It will be noticed that Gillingham served on both committees, in the BEC as its chairman and in the NBAC in an advisory capacity.

Table 5: BEC and NBAC members for the access control tender	
Bid Evaluation Committee	
Gillingham (Chairperson)	CDC: Finance
Tshele	Regional Co-ordinator Security: Gauteng
Lethoba	Director Systems Development
Kunene	Regional Commissioner Limpopo, Mpumalanga and North West
Malinga	Area Manager Modderbee
Lenkoe	Regional Head: Development & Care: Gauteng
Damons	DC: Facilities & Security
F Venter	Secretary of the Committee
Steyn	Deputy Director Security Management
National Bid Adjudication Committee	
Sishuba (Chairperson)	CDC: Development & Care
Gillingham	CDC: Finance (Advisory Capacity)
Petersen	CDC: Corporate Services
Ngubo	DC: Supply Chain Management
Sokupa	Dir: Facilities Planning & Development
Mapasa	Dir: Procurement
Pretorius	Acting DD: Tender Management
Ntuli	SPAO: Tenders
Aries	Procurement: Secretariat
Truter	Clerk: Tenders
Du Preez	Clerk: Tenders

The extension of the access control contract

Venter was made a member of the steering committee that managed the access control contract after it was awarded to Sondolo, and as such, attended steering committee meetings.

The witness referred to previously, who also attended various steering committee meetings, informed that when the DCS had to identify DCS officials for training by Sondolo to monitor the control rooms, it became apparent that the DCS was experiencing staff shortages of suitably computer literate personnel, an essential skill required for the access control contract. He further informed that Agrizzi suggested to

him that he propose to the steering committee that Sondolo would be able to provide the DCS with trained personnel to fulfil the function, which he accordingly did. He did not attend further steering committee meetings and was not sure if DCS acted upon his recommendation.

At one of the steering committee meetings, Gillingham raised the question of outsourcing the staffing function for the control rooms. Gillingham questioned the fact whether or not it would be a cheaper option for DCS to appoint a contractor to provide the staff for the control rooms.

Cost comparisons conducted internally in the DCS indicated that outsourcing the staff component would be cheaper than training DCS members to man control rooms. According to Venter, the initial plan was to outsource the staffing function of only the regional and national control rooms. However, in awarding the contract to Sondolo, the local control rooms were also included in the contract.

Ngubo a procurement official within the DCS, requested the extension of the contract via a memorandum. Commissioner Mti extended the contract on 4 August 2005 and the extension was valued at approximately R200 million.

Contract management

According to Mr Steyn[32] (**Steyn**), the former Deputy Director: Security Management Services, all the work for the access control tender was completed. He confirmed that the maintenance agreement for the tender came into effect on 1 April 2007, and that R2 173 567.92 was paid to Sondolo per month, from the Goods and Services budget of the Directorate Security Management Services, for the maintenance.

Although Steyn indicated that there was no problem in the execution of this tender, the OAG highlighted that it has information that the service provider did not deliver the quality of security equipment specified in the bid specifications.

Benefits received by Gillingham and Mti

The SIU has established that Gillingham received financial benefits from Bosasa over a period of time, for which he gave no valuable consideration. Whilst on the evidence, the payment of the benefits cannot be directly linked to a particular tender dealt with in this report, the timing of the benefits and the tenders led the SIU to conclude tha

[32] See affidavit of Mr Steyn, Annexure 21

there is, on the evidence, a sufficient link between the benefits and the awarding of all of the tenders dealt with herein.

The benefits received by Gillingham and Commissioner Mti are dealt with in more detail later in section 9 of this report.

8.2.2 Findings

This contract.was awarded on 11 April.2005 to Sondolo, a company in which Bosasa is a 40% shareholder.

The evidence shows that there were clear deviations from the *SCM: Guide for Accounting Officers*, more particularly, in that the end user departments were not included in the bid processes. According to the evidence, there was no proper financial planning for this tender in that there was no feasibility study or needs analysis conducted and the budget for this tender was significantly exceeded.

As in the kitchens tender, Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process in relation to the access control tender and was greatly instrumental in the development of the tender specifications for the said tender.

On the evidence of the witness and Malan, Bosasa participated in drafting the bid specifications for this tender. Agrizzi, according to the witness, requested him to prepare specifications in line with the technology Bosasa was employing in the kitchens contract. The witness subsequently identified a number of similarities between the specifications prepared by him and those in the advertisement for this tender. Furthermore, on the evidence of the witness, the specifications were drafted in such a manner that the security aspects afforded Bosasa a clear advantage over the other bidders.

On the evidence of Malan, a document titled "cctv bid.doc" was retrieved from the DCS and Bosasa systems. The document contained specifications for the access control tender. Version 2 of the document was found on the Bosasa system, whilst version 4 thereof was emailed by Gillingham from an email address belonging to Bosasa, to Mr S Mlombile (Acting Chief Deputy Commissioner: Corrections) **(Mlombile)** of DCS.

Given the fact that there was no BSC constituted to prepare the specifications for the access control tender, the fact that Gillingham played an integral role in the preparation of these specifications, the fact that these specifications were prepared in such a way as to favour Sondolo and the fact that a document containing the bid

specifications for the tender was found on Bosasa's servers (indicating that it was last printed on 13 January 2005, a day before Gillingham commenced drafting the tender specifications – some three weeks before the tender was published) led the SIU to believe that Sondolo/Bosasa, along with Gillingham, were involved in the drafting of the bid specifications for the access control tender.

The evidence further shows that the bid submission period was reduced to 21 days, without any apparent cause. Given the technical nature of the tender and Bosasa's participation in the drafting of the specifications for the bid, the shortened period for submission of bids and the fact that no site visits were allowed, provided Sondolo with an unfair advantage over the other bidders. The SIU was unable to find any evidence indicating that there was any urgency for the resource covered by the access control tender.

Paragraph 1.1 of practice note SCM 3 of 2003 provides that the price/functionality tender evaluation method only applies in tenders where consultant services are procured. It is therefore clear that to the extent that the access control tender did not involve consultant services, the price/functionality tender evaluation method applied to the access control tender was in conflict with paragraph 1.1 of practice note SCM 3 of 2003.

Since Sondolo enjoyed access to the correctional centre environment because of Bosasa's kitchens contract, the fact that no site visits were allowed, in effect, afforded Sondolo a significant advantage over its competitors.

Furthermore, despite it being a bid requirement that bidders should have five years' experience, Sondolo had only been registered 7 days before the closing of bids, yet Sondolo was awarded the tender. This was obviously irregular, since Sondolo should have been disqualified at the BEC stage.

The evidence clearly indicates that Gillingham and Commissioner Mti had received financial benefits from Bosasa. The SIU was unable to find any lawful cause for such benefits being made to Gillingham and Commissioner Mti. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham and Commissioner Mti.

The SIU is of the view that the acceptance by Gillingham and Commissioner Mti of financial and other benefits from Bosasa around the time that the access control tender was awarded, was both irregular and unlawful. Furthermore, Gillingham's failure – he served on the BEC and the NBAC – to disclose this during the

procurement process infringed paragraph 16A8.4 of the Treasury Regulations and as such, constituted an abuse of the supply chain management system.

The impact on the access control tender and the other tenders of the receipt of benefits by Gillingham and Commissioner Mti, will be dealt with more fully under the discussion of the benefits received by them in section 9 of this report.

Turning to the extension of the access control contract, the evidence shows that the access control tender was extended upon the recommendation of Ngubo and authorised by Commissioner Mti on 4 August 2005. In light of the irregular benefits received by Commissioner Mti the extension of this contract was irregular and unlawful.

8.2.3 Recommendations in respect of the access control tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by DCS on account of the award of the access control tender to Sondolo
- the DCS considers instituting disciplinary proceedings against Gillingham (Commissioner Mti no longer being in the employ of DCS) arising from his irregular conduct relating to the procurement process involving the access control tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Sondolo, Bosasa, their office bearers and to the extent that Agrizzi, Mansell and Smith may not be office bearers of either Sondolo or Bosasa, that they also be considered for prosecution in their personal capacity
- the DCS cooperates with the NPA for the purposes of prosecuting the persons and entities mentioned above.

8.3 The fencing tender: HK24/2005

The fencing tender was awarded to Phezulu on 29 November 2005. The scope of the fencing tender entailed the supply, delivery, installation and commissioning of security outer perimeter fences with taut wire for outer and inner fences and CCTV surveillance cameras at various correctional centres. The contract value was approximately R486 937 910.

The fencing tender was published on 14 October 2005, with closing date on 14 November 2005. The contract between Phezulu and the DCS was signed on 30 November 2005.

8.3.1 Evidence gathered

The timeline of the tender

For ease of reference, the chronology of the key events involved in the bid process for the fencing tender, is summarised in Table 6 below.

Table 6: Chronology of the key events involved in the bid process for the fencing tender

Date	Activity
19 Sept 2005	Received the standard technical specifications for outer perimeter fences for prisons from DPW
20–30 Sept 2005	Compilation of bid specifications
4 Oct 2005	Compilation of Bid documents
6 Oct 2005	Request to government printers to publish the bid invitation
14 Oct 2005	Bid invitation is published
18 Oct 2005	Memorandum dated 13 October 2005 received from Dir: Facilities Planning and Development confirming availability of funds and providing "Request to Invite Bids"
25 Oct 2005	Compulsory information meeting
14 Nov 2005	Closing date for bids: 6 Bids were received
15 Nov 2005	Initial screening commenced, Tax clearance certificates were requested from 5 of the 6 bidders
15 Nov 2005	Memorandum to Dir: Security Management to convene BEC
17 Nov 2005	Briefing of the BEC
18 Nov 2005	Evaluation of the points for phase 1
18 Nov 2005	Opened financial proposal of short-listed bidder (phase 3)

Table 6: Chronology of the key events involved in the bid process for the fencing tender

Date	Activity
18 Nov 2005	Calculation of points for phase 4
18 Nov 2005	Compilation of draft recommendation
23 Nov 2005	Finalising recommendation to the NBAC
29 Nov 2005	Recommendation approved by the NBAC
30 Nov 2005	Contract between DCS and Phezulu Fencing is signed
1 Dec 2005	Request government printers to publish the results

Planning of the tender

The SIU could find no evidence indicating that a needs analysis, feasibility studies or proper business plans were compiled for the fencing tender.

The fencing tender was initiated by Gillingham, who on 11 August 2005, requested Damons to obtain permission from Commissioner Mti to erect security fences at 26 Centres of Excellence and 22 High Risk Correctional Centres. Damons in turn instructed Venter to draft the required memorandum. Venter's memorandum was dated 24 August 2005. Venter's memorandum requesting approval for the project and:

- dealt with the utilisation of capital funds earmarked for the construction of 4 New Generation Prisons for the purpose of erecting security fences at 26 Centres of Excellence and 22 High Risk Correctional Centres
- identified the centres where security fences should be erected at an estimated cost of R86 487 000 for the Centres of Excellence and R71 379 500 for the High Risk Centres respectively, bringing the estimated cost of the entire project to R157 866 500
- requested that the procurement process be handled by Gillingham and Ngubo.

Attached to the memorandum were the standard technical specifications for outer perimeter security fences normally used by the DPW. Venter had obtained the specifications, on request of Gillingham, from Mr P du Preez (**Du Preez**), employed at the Mechanical Engineering, Fire and Security division of the DPW.

The need for fencing at correctional centres was previously identified during initial discussions for the access control tender during which Venter had indicated the

necessity of involving the DPW for assistance on account of its expertise[33] in this area. Venter's suggestion of the DPW's involvement in the fencing tender was supported by Mocheko, Damons and Gillingham. However, Gillingham later did an about turn, by recommending that the DCS should do its own procurement to the exclusion of the DPW.

Gillingham submitted his request for approval of the fencing tender on 31 August 2005. In his request, he recommended that the DCS should do its own procurement and not make use of the DPW. Commissioner Mti approved the request, including the recommendation that the DPW not be included in the procurement process. It is not possible to state on which date the approval was given, as the Commissioner did not indicate a date under his signature.

Venter informed that he completed the Request to Invite Bids (Tenders) form, on 11 October 2005, but deliberately refrained from completing the estimated expenditure section, as his directorate did not have the budget for such a project. The R180 million allocated for the project came from the savings on the compensation of employees' budget.

A letter from Sokupa, dated 13 October 2005, confirmed the availability of funds from the capital works budget for an amount of R160 million. This letter was, however, dated a month after the publication of the tender advertisement.

Venter further informed that on 9 November 2005, he was requested by Gillingham to conduct an updated costing exercise, with an instruction to include earth works, outer fences, taut wire detection, security lighting, CCTV coverage and integration costs. Because costing fell out of his normal scope of work, he approached the DPW for assistance. The DPW provided him with average prices but not a detailed costing. Based on this information from the DPW, he made a calculation and concluded that the cost of the project would amount to R347 383 550.

Venter was requested by the SIU to explain how the distances of the fences as reflected in a extract from the bid document, entitled "Appendix A – List of Centres", was determined. He explained that due to time constraints, he had requested the Heads of the centres that he had identified as requiring fencing, to appoint officials to measure the distances by foot.

[33] See Venter's statement, Annexure 17

The fencing tender was later amended by subsequent variation orders, amounting to approximately R100 million. The additional work that was required to be done, included, *inter alia*, the removal of trees and sub-stations, construction of guard houses, blasting and installation of generators due to inadequate electricity supply as well as erecting additional fences.

According to Steyn by 22 May 2009, R94 700 270.77 had been paid to Phezulu in respect of variation orders, with R4 335 087.12 still due to them.

The bid specifications

The evidence revealed that Gillingham was the project leader for the fencing tender. Although he held meetings with Damons and Venter from the Security Directorate (the end user), he did not discuss the technical fencing specifications with them. His discussions with them concerned issues relating to the bid document, such as what type of fences should be installed and at which centres.

According to Venter, the end user was excluded to a large extent in the tender process. Neither he, nor any other official from his directorate, was involved in the drafting, amending or approval of either the tender specifications or the evaluation criteria. His involvement was limited to obtaining standard specifications from the DPW and identifying the centres where fencing was required.

According to Venter, no tender specification committee was constituted for the fencing tender. According to Truter, Gillingham had, in accordance with paragraph 3.3.1.2 of chapter 3 of the SCM User Manual, certified that the specifications for the bid were obtained from the DPW as a standard set of needs that were adapted to DCS's specific circumstances. According to him, Gillingham, however, failed to indicate who assisted in or was responsible for making the adaptations to the specifications.

The bid evaluation and adjudication

There was great interest shown in the bid by virtue of the fact that the compulsory information meeting held on 25 October 2005 attracted 85 attendees from various enterprises, including Phezulu, Bosasa and Sondolo. However, despite the fact that there was wide interest shown in the bid, also manifested by the fact that documents were issued to 73 entities, only six bids were received.

Truter, a procurement official with the DCS, informed the SIU that he had received a request from his supervisor, Pretorius, after closure of the bids, to inform

Commissioner Mti who the bidders were. Despite being uncomfortable with the request, because information relating to the tender was confidential and people outside the procurement process should not have access to such information, Truter drafted such a memorandum to the Commissioner.

The Code of Conduct and Declaration of Interest forms were signed by the members of the BEC on 17 November 2005. Only Mr SG Oosthuizen declared an interest by virtue of the fact that his son was employed by one of the bidders' subcontractors, namely, Teqcon (Pty) Ltd. However, Gillingham signed the Declaration of Interest forms indicating that he did not have a personal interest in any of the bids forming the subject matter of the procurement process in the fencing tender.

The BEC used the functionality and price evaluation method for evaluating the fencing tender. However, according to Breytenbach, this approach was incorrect. The functionality and price evaluation method is only applicable when procuring the services of consultants, and not for general services such as construction work, catering, cleaning or security. The correct evaluation method that should have been used in this tender was the preference point system, as previously described.

It was a bid requirement – confirmed by Gillingham at the compulsory briefing session held on 25 October 2005 – that the erection of fences had to be completed by 17 March 2006.

However, Phezulu submitted two sets of project plans. The first dealt with the delivery of materials up to the completion date of 17 March 2006, while the second dealt with erection of the fences by the middle of 2007. The erection, addressed in the second project plan, ran far beyond the completion date.

However, other bidders, such as Provicom and Intervid, submitted a single plan for the tender with a completion date of 17 March 2006.

Despite the fact that both Provicom and Intervid's project plans were consistent with the completion date, Gillingham scored both these companies 0 out of 6 for time frames, while scoring Phezulu full marks for its time frames.

The DCS, according to George, did not comply with the CIDB prescripts, for the following reasons:

- The fencing tender was subject to the provisions of the CIDB Act and its regulations.
- In terms of regulation 24, the DCS should have stated in its invitation for tenders that only contractors that were duly registered with the CIDB would be

considered for the tender and, in addition, the DCS should have placed the invitation on the CIDB website.

- In terms of regulation 18, the DCS (as the employer) should have registered the fencing project with the CIDB within 21 days of it having been awarded.
- George, requested the CIDB Registry Department to confirm whether the DCS was registered as an employer at the time the tender was advertised and awarded; it was not
- Table 8 of regulation 17, prescribes the upper limits of the value range for the different grades and a contractor can only do construction work for the public sector up to the maximum values consistent with its grade
- In terms of regulation 25(9), the DCS should have established whether Phezulu was registered with the CIDB prior to awarding the contract to it. George, requested the CIDB Registry Department to confirm whether Phezulu had been registered at the time. The Registry Department indicated that Phezulu had registered for the first time on 10 May 2007, with a "7" grading which meant that Phezulu could only do construction work up to a maximum value of R30 million. The DCS should consequently have awarded the tender to a bidder with a grading of "9" due to the fact that the tender exceeded R30 million. There is no limit for a "9" grading.

The evidence shows that the non-compliance by Phezulu with the CIDB Act and its regulations were not brought to the attention of the NBAC by the BEC.

The minutes of the NBAC meeting reflect that Gillingham attended the meeting not only in his capacity as CDC: Finance, but also as a BEC representative. The minutes further reflect that Petersen, in his capacity as chairperson of the NBAC, confirmed with all officials present that none had any financial interest in any of the bids before the NBAC, since such person(s) would be required to excuse themselves when the relevant bid is presented. Two bids were evaluated during this particular NBAC meeting, namely, the fencing tender and tender DCS9/2005. The Declaration of Interest forms were distributed to all officials present at the meeting for their signatures and were returned to the chairperson. As in the case with the BEC, Gillingham signed the Declaration of Interest form on which he declared that he had no interest in either Phezulu or its sub-contractor, Sondolo.

For ease of reference, the names of the members of the BEC and NBAC who participated in the fencing tender, are set out in Table 7 below.

Table 7: BEC and NBAC members for the fencing tender	
Bid Evaluation Committee	
Gillingham (Chairperson)	CDC: Finance
Damons	DC: Facilities and Security
Venter	Dir: Security Management Services
Oosthuizen	DD: Project Management
Madisa	Regional Co-ordinator: Corrections: Gauteng
Morei	Area Co-ordinator: Corrections: Gauteng
Phaal	Secretary of the Committee
National Bid Adjudication Committee	
Petersen (Chairperson)	CDC: Corporate Services
Gillingham	CDC: Finance (CFO) (Advisory Capacity and BEC representative)
Mlombile	CDC: Corrections
Schreiner	CDC: Central Services
Ngubo	DC: Supply Chain Management
Mapasa	Acting Dir: Procurement
Kgwele	SCO: Secretariat
Aries	COII: Secretariat
Truter	Clerk: Tenders
Davids	Clerk: Tenders

Contract management

On 30 November 2005, Truter forwarded a memorandum to Pretorius, instructing that payments were to be made in strict accordance with the contractual conditions, which provided that:

> *"The contract manager must certify invoices to the effect that services were delivered correctly and in accordance with the contract before payment can take place".*

After the commencement of the contract, the DCS received correspondence from Phezulu indicating that all materials to be used in fulfilling the tender would be purchased from local manufacturers and leading suppliers, including Sondolo and a company by the name of Teqcon (Pty) Ltd.

On 14 December 2005, Phezulu forwarded to the Commissioner, a list of deposits required from DCS, as well as an invoice for a pre-payment of R56 410 172.69. The invoice was attached to a spending plan that reflected how payments should be made in terms of the contract. Venter, who had been appointed as project manager, advised that payment of the first invoice was made on 19 December 2005, by Mr F Venter (**F Venter**) from Gillingham's office, without any materials having been delivered or work done. Venter only became aware of the payment after it had been made.

On 18 January 2006, F Venter, forwarded Phezulu's second invoice, dated 13 January 2006, to Damons, requesting him to certify it as correct. The second invoice was for R79 138 225.30. Damons, in turn, forwarded this invoice to Venter.

On 20 January 2006, Venter advised Phezulu that it was not clear from the invoice whether materials amounting to the invoice total had been delivered to the sites, as there were no certified delivery notes attached. Venter's concern was that in terms of the contract with Phezulu, 90% of the contract price was only payable on delivery of the full bill of materials. Gillingham, however, instructed Venter that he should verify the spending plan and make payments in terms thereof. The sole purpose, however, of a spending plan, according to Venter, is to determine when materials would be delivered and their value and thus not to make payments that are contrary to the contract.

On the evidence, it would appear that because of the poor planning of this project, the budget was significantly exceeded and in addition gave rise to variation orders valued at R 100 million[34].

The evidence shows that Phezulu received 90% of the contract value, amounting to approximately R392 million, prior to the end of the financial year in March 2006 and before any fences had been erected.

The evidence further shows that the integration of the fence to the ON-IMIS access control system at the Johannesburg Correctional Centre is still outstanding, despite the completion date for the project being 17 March 2006.

[34] The budget for the project was R 340 million, the contract awarded to Phezulu was R 486 million.

"K"

Annexure "K"

Adriaan Basson and Carien du Plessis, Beeld

Johannesburg – A company with links to Commissioner Linda Mti, the outgoing prisons chief, wrote a large part of a multi-million rand security tender that was subsequently awarded to them by the Department of Correctional Services (DCS).

Sondolo IT, an "unknown player" in the IT sector which is part of the Bosasa group of companies, was last year awarded one of the biggest contracts in the history of this sector (R237 million) for the installation and maintenance of modern access control systems at 66 prisons countrywide.

An investigation by Beeld revealed:

– Employees of the Bosasa group knew of the tender long before it was advertised on February 4 2005;

– Large parts of the tender's technical specifications were written on Bosasa computers in December 2004;

– Mti and Gavin Watson, CEO of Bosasa, have a long-standing relationship since the 1980s when Mti was the commander of Mkhonto weSizwe (MK), the ANC's armed wing, and later became chairperson of the ANC in the Eastern Cape, and

– Patrick Gillingham, financial chief of the DCS, is regularly seen at Bosasa's office in Krugersdorp.

Denial

The DCS last night denied that any "external organisation" participated in the compilation of the tender document.

DCS spokesperson Manelisi Wolela said a technical committee drew up the tender specifications by "improving old specifications" with the "latest technology".

Bosasa group spokesperson Papa Leshabane, denied that his group "consults" with clients on official tender documents or that Bosasa received special treatment by the DCS.

About Gillingham's visits to Bosasa, Leshabane said a number of senior DCS and government officials have visited Bosasa "from time to time". The DCS officials did allegedly visit Bosasa to inspect the premises and receive "training and development sessions".

According to Wolela, Gillingham last visited Bosasa in October 2004 as part of a "delegation" who received training for the implementation of a catering system.

According to Beeld's sources Bosasa already knew at the end of 2004 that a tender for access control systems was going to be advertised by the DCS in the new year.

But the most damning proof of wangling on a high level between the DCS and Bosasa, prior to the tender being advertised, is a 28-page document in Beeld's possession containing technical specifications for the tender.

A forensic investigation was done into this document, which showed that the document was created on December 17 2004 on a Bosasa computer – almost two months before the tender was officially advertised.

Mti resigned last week

Professor Basie von Solms, head of the University of Johannesburg's academy for information technology, compared the Bosasa document with the official tender specifications and found that almost 33% of the technical specifications for the tender were "either taken directly (word for word) or agreed very closely" with the Bosasa document. The awarding of this and other multi-million rand tenders by the DCS to Bosasa companies has been in the news since Beeld revealed Mti's link to Bosasa six months ago.

Apart from his relationship of many years' standing with Watson, the prisons chief is also a director of a private company – Lianorah

Investment Consultancy – which was registered for him by Tony Perry, Bosasa's group secretary.
According to the registrar of companies' records Lianorah is in the process of being deregistered.
The special investigative unit (the Cobras) recently launched an investigation into the awarding of the Bosasa-tenders and others contracts by the DCS.
Mti's resignation was last week accepted by cabinet.
Mti has always denied any impropriety.

End

'Running a R9bn budget – with just matric'
01/12/2006 07:43 – (SA)
Adriaan Basson and Carien du Plessis, Beeld
Johannesburg – The man who has managed the R9bn budget of South Africa's prisons for the last two years, has nothing more than a matric qualification.
Beeld and Die Burger reported on Friday that Patrick Gillingham, who as the financial head of the department of correctional services (DCS) runs the finances of Africa's biggest prison department, has no tertiary qualifications.
Gillingham's post was advertised nationwide last Sunday, and the DCS has confirmed that Minister Ngconde Balfour has now appointed him chief deputy commissioner: corrections.
The move has resulted in other staff changes. Tebogo Motseki, who is in the post at present, becomes the head of central services and Jenny Schreiner moves from the latter position to become chief deputy commissioner: management services.
Informed sources said Balfour had "started to feel the heat", and that was why he moved Gillingham.

Links to Bosasa
A Beeld investigative team earlier named Gillingham as the DCS person who was regularly seen on the premises of the Bosasa group of companies in Krugersdorp.
Various companies in the Bosasa group, including Sondolo IT and Phezulu Fencing, tendered for and won multi-million rand contracts from DCS in the past two years.
Beeld and Die Burger revealed on Thursday that various high profile South Africans, such as President Thabo Mbeki's political adviser, Titus Mafolo, were shareholders of Sondolo IT.
James Selfe, the DA's spokesperson on correctional services, said on Thursday he would have expected someone better qualified to run a multi-million rand budget.
The DCS budget is comparable to the market value of major companies, such as the insurers Mutual and Federal, or Sanlam.
"I don't know what courses he completed in the public service that could qualify him for this job.

Qualified audits
"The department (DCS) has received five qualified audits in a row. That says how unsuitable Gillingham is for the post," Selfe said.
The DCS refused to respond to Beeld's queries about Gillingham's qualifications.
The advertisement, which appeared in various Sunday newspapers, said it was essential that Gillingham's successor should have a B. Comm in accounting.
Gillingham is known to have been a confidant of Linda Mti, the former national chief jailer, who left the service on Thursday.
Beeld and Die Burger disclosed the ties between Mti and Bosasa this year, such as the security tender of R237m for an access system at the

country's jails, which was awarded to Sonolo IT, after the Bosasa group wrote much of the tender specifications for DCS.
Mti is being investigated by the Public Service Commission, while the Cobra's special unit is investigating the DCS's Bosasa tender process.
Mti's acting successor will be announced by Balfour on Friday.
The DA asked again how much had to be uncovered before Balfour would appoint a commission of inquiry into the way tenders from the Bosasa group were treated.
"The minister must show the nation that he is serious about fighting corruption in his department, by appointing a commission of inquiry to investigate these underhand transactions," Selfe said.
DCS spokesperson Manelisi Wolela said Gillingam's move was part of Balfour's efforts to take "service delivery to a higher level".

G123

DEPARTMENT: CORRECTIONAL SERVICES

REPUBLIC OF SOUTH AFRICA

Directorate	CDC FINANCE	Private Bag	X136	City/Town	Pretoria	Postal code	0001
Inq	PO'C GILLINGHAM	Telephone no	012 – 3072620	Fax no	012 –3266351	E-mail	Patrick.gillingham@dcs.gov.za
Your ref		Dated		My Ref	7/1/4	Dated	

MEMORANDUM

RE: ADDITIONAL INFORMATION TO MY FINANCIAL DISCLOSURE – P O'C GILLINGHAM

COMMISSIONER

1. Our personal discussion on this matter refers.

2. Since the document which is designed for the disclosure of the financial status for SMS members does not make provision for the information on personal loans, I wish to bring the following to your attention as discussed.

2.1 I have entered into personal agreements/arrangements with private individuals for assistance for my house and other personal assets.

2.2 I wish to place on record that these individuals are not members of this Department nor are they employed by Government.

3. For your information and record purposes.

P O'C GILLINGHAM 2006/04/12.
CDC FINANCE

Noted
Please ensure that this does not interfere with your job or rather has no conflict of interest to the Department

We Serve With Pride

"M"

Annexure "M"

Prisons graft: Here's the proof, minister

ADRIAAN BASSON | JOHANNESBURG, SOUTH AFRICA - Jan 30 2009 05:00

On Sunday the Department of Correctional Services placed expensive advertisements in three national newspapers, urging anyone with proof of impropriety in the awarding of prisons' contracts to inform South Africa's law enforcement agencies.

This week we present the proof.

Confidential documents and correspondence leaked to the *Mail & Guardian* suggest a highly improper relationship between the department and controversial facilities management group Bosasa.

We can reveal that Bosasa, which has received nearly R3-billion in contracts from Correctional Services Minister Ngconde Balfour's department:

- Had confidential documents leaked to it by the department's former chief financial officer and Balfour confidant Patrick Gillingham;
- Had access to tender documents for major prison projects before they were advertised; and
- Spied on senior correctional services officials during a 2006 workshop.

Bosasa is headed by Eastern Cape businessman Gavin Watson, whose family had close ties with the Eastern Cape ANC during the struggle years, when the Watson brothers became famous for refusing to play rugby for a whites-only Springbok team.

The group also runs the controversial Lindela repatriation camp for the Department of Home Affairs and has large contracts with the South African Post Office, Airports Company of South Africa and the departments of justice and transport.

The Special Investigating Unit (SIU) has been probing Bosasa since 2006 and raided its offices in December. Three weeks after the raid the company was re-awarded the massive prisons catering contract it landed in 2004.

The department's advertisements on Sunday were a reaction to the *M&G*'s report last week of alleged irregularities in the awarding of the latest catering tender.

Former prisons commissioner Vernie Petersen suspended Gillingham in September after receiving a preliminary SIU report. Petersen was later transferred to the sports department in what was widely seen as a reprisal for his opposition to Balfour's attempts to extend the 2004 contract.

Balfour also wanted Gillingham to head the tender committee awarding the new contract, while Petersen insisted that Gillingham not be involved.

2004: A new romance

In 2004 the contract for running prison kitchens was outsourced for the first time. The tender was officially advertised on May 21 in the government's tender bulletin.

But documents show that on May 1 Bosasa employee and co-founder Danny Mansell sent Bosasa's operations coordinator, Angelo Agrizzi, papers containing more than 90% of the conditions and specifications.

ee weeks later the Department of Correctional Services made available the same

document, with the same spelling errors, to the rest of the catering sector.

On August 6 Bosasa was awarded the entire contract, worth R239-million a year, for three years.

The department extended Bosasa's contract for another year and expanded it to include more prisons, adding R82-million to the bill. It was the further extension that led to Petersen's clash with Balfour.

In July 2004 the department also gave Bosasa a R1-million tender for nutritional training for prisons' kitchen staff. Again Mansell sent Agrizzi large parts of the tender document, including bid conditions and specifications, on May 12. The tender was advertised on June 4.

2005: You've got mail

The inclusion of CCTV cameras in the catering tender meant that by 2005 Bosasa had a national control centre to monitor the kitchens.

This linked perfectly with its next contract -- a R237-million tender for access control and CCTV in 66 prisons. It went to a newly registered company, Sondolo IT, which *Beeld* revealed in 2006 was 40% owned by Bosasa Operations.

Other shareholders included former president Thabo Mbeki's political adviser Titus Mafolo and former Strategic Fuel Fund chairperson Seth Phalatse.

On December 17 2004 Bosasa's IT coordinator, Johan Helmand, emailed Agrizzi certain tender specifications that were to appear in the official bid document published on February 4 2005.

On April 29 Sondolo IT was awarded the contract. In 2005 Agrizzi and Gillingham started emailing each other prison research reports and newspaper clippings. On August 29 Gillingham sent Agrizzi a copy of questions from *City Press*, put to the department about the Bosasa contracts, the leaked documents show.

On December 9 2005 Bosasa landed a R487-million prisons' contract for security fencing through a small Cape Town firm, Phezulu Fencing, it had purchased.

There is double proof that the company had privileged information long before the tender was advertised. Three months earlier, on September 25, Agrizzi emailed Mansell a voluminous document containing bid specifications. "Please verify and check, we can sit tomorrow am," Agrizzi wrote.

On October 3 Agrizzi sent a longer version, headed "Fence Doc Final", to the chief executives of Bekaert Bastion and SA Fence & Gate, Michael Rodenburg and Geoff Greyling respectively, under the subject line: "Fence Doc Final ... Very Confidential ...".

This contained the full bid conditions and specifications published by the department on October 14. Bekaert Bastion supplied cladding material and SA Fence & Gate was contracted to do part of the installation.

This week Greyling "categorically" denied seeing a copy of the bid document before it was published. He said: "It should be recorded that the tender was based on the standard public works/correctional services specification with which we are well acquainted from previous

bids. The prior possession of the tender document by anyone would therefore be of no specific advantage to such person."

Colette Stofberg of Bekaert Bastion (now called Betafence) replied that "years before this contract" Betafence provided technical specifications to the department of public works that were used in this tender.

According to an industry insider the big advantage lies in knowing the quantities required for the tender weeks before your competitors.

On October 10 2005 Agrizzi sent Gillingham a six-page document titled "Equipment Specifications & Guidelines". The same section featured in a tender for a comprehensive tele-vision system, comprising 6 000 TVs for communal cells, published four days later.

On November 28 Agrizzi emailed Mansell the confidential evaluation sheet the department used to adjudicate the TV tender, which Sondolo IT won on March 17 2006.

2006: spies in the house

On February 9 Agrizzi sent Gillingham a document, headed "Tender Evaluation Criteria New Waterval", containing comments on bid specifications for a contract for catering services at seven prisons in the Waterval management area, KwaZulu-Natal.

The tender was officially advertised on May 19. Seven days earlier Gillingham sent Agrizzi the confidential evaluation sheet for the Waterval tender with a message: "Hi, Attached please find the reworked evaluation sheet for your comments. You will notice the evaluation sheet for site visits cannot be published and will not form part of this document. Regards, Patrick."

On September 15 Bosasa Operations was awarded the Waterval catering tender, worth R123-million over five years. On April 24 2006 Agrizzi sent Gillingham a letter in which an anonymous writer asks the chairperson of Parliament's correctional services, Dennis Bloem, to "sort out" the attack on the department by "international capitalists" and "activist Afrikaner companies". This week Bloem confirmed receiving such a letter.

On June 21 Agrizzi sent Gillingham a surveillance report of a prisons department security workshop at a Drakensberg hotel in June 2006. The 25-page report makes it clear that the agent was asked to spy on the department's chief deputy commissioner of security, Willem Damons, and his subordinate, Tonie Venter. The report also contains pictures of people and cars at the hotel, as well as the inside of the conference room.

In his message to Gillingham Agrizzi wrote: "I didn't see the reason/need to email you the rest; nothing actually happened." Gillingham replied the next day: "Hi, Thanks for the report and it seems as if they behaved well during their session. Regards."

Bosasa's lawyer, Brian Biebuyck, advised his client not to answer the *M&G*'s questions. He warned the *M&G* to publish "at your peril" and said Bosasa would pursue charges of criminal defamation if defamatory material was printed.

The department's Manelisi Wolela responded that the *M&G*'s questions "are part of a broader brief given to the SIU" and urged the newspaper to provide the unit with proof of propriety. Gillingham did not respond to the *M&G*'s queries.

Pictures from a confidential surveillance report of a senior Department of

"N"

Annexure "N"

BOSASA IT Disaster Log – 8 November 2007

Contents

1. Background 2
2. Scope of Disaster 2
3. Disaster Classification 2
4. Recovery Strategy 2

Datacentrix (Pty) Ltd.

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Lynnwood Ridge
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Fax: +27 12 348 7543

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Fax: +27 11 807 5022

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Hazel Avenue, Highveld
Centurion, Pretoria
PO Box 70315
Lynnwood Ridge, Pretoria
0040 South Africa
Tel: +27 12 665 3700
Fax: +27 12 348 7543

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101 Sanderson Way
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PO Box 6000, Roggebaai
Cape Town, 8012
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3rd Floor African House
12 Buckingham Terrace
Westville, Durban
PO Box 1645, Westville
Durban, 3630
South Africa
Tel: +27 31 267 1777
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To:	Bosasa	**From:**	Kobus Smith
Att:	Johann Fourie	**Tel Number:**	011 – 461-2000
Tel:	011 – 662-6116	**Direct Line:**	011 – 461-2066
Date:	9 November 2007	**Fax Number:**	011 – 461-2050
Ref:	Data Recovery	**Pages:**	1 of 2

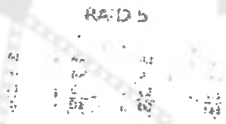
Dear Johann,

It is with regret that I have to inform you that we cannot perform a data recovery on your RAID 5 set due to two hard drives having failed simultaneously. According to our data recovery specialists, it is impossible to rebuild the RAID set if two drives fail.

See RAID 5 diagram below:

RAID 5

Striped set with distributed parity or **interleave parity**. Distributed parity requires all drives but one to be present to operate; drive failure requires replacement, but the array is not destroyed by a single drive failure. Upon drive failure, any subsequent reads can be calculated from the distributed parity such that the drive failure is masked from the end user. The array will have data loss in the event of a second drive failure.



Yours sincerely,

Kobus Smith

"p"

Annexure "p"

April 2016.

TCB 110 CAA.
TSF 20 CAA.
GHU 10 CAB.
RLS 20 CAB.
RIN 20 CAB.
CTJ 30 CAB.

SDL 130 CCN
SJ 30 TVS.

NMR 50 CCY.

J.P. 20 YEC.
ELF 30 YEC
HMN 20 YEC.
RDS 20 YEC
CHIOR 15 YEC.
RCT 10 RLC
RZN 20 CCV.

115.

RLC 300 CCV.
KZN 10 QAU.
+ TGU 50 JOV. — TAKEN 28/4
TGU 30 JOV
TGU 30 CCU.
TAU 25 CCT.
RLF 100 CCA.
LPU 80 CCB.
JRIEF 50 CCV.

TTU 50 CCV.
TTU 30 CCD.
TMK 50 YOC.
TCB 100 YOS

MRP 30 IMC.
MRP 30 IMC.
TMK 20 IMC.
SMS 50 IMC.
MMM 50 IMC.
UNK 50 IMC.
LME 20 IMC.
HAF 50. IMC.

50

HOME AFFAIRS

— JUNE KZN 57,5 CCV. 18/4/2016.
RMTI
SNL
SML. / MBG. / GMITI.
SNA

SMYTHSON

25/2/2016.

?

MJAE 5. BKB 18 OCT.

(1)
- MMM 50 IMN.
- MMB 30 IMN
- MKB 20 IMN.
- SSS 50 IMN
- KLA 50 IMN
- AMK 20 IMN.
- KZO 20 RRJ.
- JM - 15.

AAR 240. LM.

(2)
- AGC 110 ACB.
- VSP 80 ACB.

PCDE 190 NAE.

(3)
- JAR 30 JGM.
- MAK 30 JGM.
- BBN 30 JGM.
- KZN 10 JGM.
- ORT 25 JGM.

125

(4)
- ZMC 300 TTV.
- TRS 100 CCV.

(5)
- OVT 30 TRV.
- TMT 50 MAM.

CCV 425. ABC.

CCV 80 JTV.

(6)
- JNK 100 ACB. ACB 400. ANC.
- JNK 10 ACB.
- RMT 85 ACB.
- TBM 20 ACB.

CCV 215. ANB.

(7)
- ELF 30 TTV.
- MNS 20 OCB.
- CHOIR 15 ALC.
- JST 10 CCV.
- RRLV 20 CCV.
- JCAE 30 CCV.
- OCAO 20 CCV.
- LVB 20 CCV.

OTST 165. ABC.

(8)
- SVV. 80 LIMP.
- OCO
- SVV 20 THA
- SVV 50 NAE.

TBC LAREL.

CCV 150 ABB.

(9)
- RLS 71 CCV.
- TMR 50 CCT.

JET 171 CCV.

CCV 1886 OCT.
1800
186.

CCV1686 OCT

TGM 30 ACA.
TGM 30. ACA.
TGM 30. ACA.
~~TGM 30 ACA~~
TGM 50 MAN.
TGM 25 TMA.
TGM 10 KZN

ACC 110 CCG.
CMT 85 CCG.
SST 100 CCG.
SST 100 SNL.
SNK 20 SLE.
TN 10 SLE.
GMT 100 SLE.
CCV 100 SJB.

ELF 30 ALC.
HMC 20 CCG
POT 20 CCG
MT 20 CCG.
CHR 15 CCG.
~~LPS 10 CCG~~
LPS 50 CCG.

TMC 50 MAG. 100
TMC 50 SAI 100.
TMC 30 MAR
TMC 20 MKC.
TMC 30 DMA.
TMC 50 GGY.
TMC 20 GGY.
NUM 100 GGY.
6 ~~ALF 20~~ TAG.
CHM 10 TAG
5 ~~CCC 20~~ TAG
4 CPT 20 TAG.
3 CNA 20 TAG
2 TST 20 TAG.
1 LPJ 20 TAG.

TMT 50 CCA.
SAL 50 CPT.

57,500.
6,000.
20,000.

ASB 40 SEC.
Paid. 20. Aug 17.

AA-364

MARCH 2016.
PRE PAID CELL NO'S.

(1) SNL 80 CCV.
SNL 30 CMX.
SNL 50 CMO.

(2) ACR 85 CCW
ACR 100 CCB.
SNL 100 CCB.
MMD 50 CCB.
CMC 100 CCB.
SNK 20 CCB.
APY 10 CCB.

(3) ACC 110 CCB.
ATA 20 CCV
AKU 20 CCV.
CMN 10 CCB.
CTA 30 CCB.
ALC 10 CCB.
LAC 20 CCB.

(4) ACC 300 JCV.
ACC 50 JCV.

(5) FMC 50 CCE.

(6) TCA 30 TCE
TMM 30 TCE
MMY 50 TCE.
65
125

(7) KLF 100 CCK.
LB 50 JCB.
KEN 57,5 JCB
MMM 50 JCB.
MM 30 JCB.
SMA 50 JCB.
TSM 30 JCB.
FMC 20 JCB.
MBS 30 JCB

(8) ELF 30 CCY.
YTL 100 CCY.
JAV 30 CCY.
NES 20 CCY.

(9)

DEPOSIT 1460,000=00.
24/3/2016.

NPC 700 CCV.
NPC 1500 CCY. TBC.

"Q1"

Annexure "Q1"

AFFIDAVIT

I, the undersigned,

HENDRIK ANDRIES TRUTER,

state under oath in English:

1

I declare that the information contained in this affidavit is within my personal knowledge and belief, true and correct. I have made this affidavit knowing that if it is tendered in evidence in a court of law, I would be liable for prosecution if I willfully stated anything in it that I knew to be false or which I did not believe to be true

2

I am an adult male, identity number 580714 5025 08 9. I am currently employed as the Assistant Director: Professional Services Procurement at the Department of Correctional Services, Poynton Building, 124 Church Street, Pretoria, my work telephone number is 012 307 2431

3.

The following affidavit relates to the procurement process followed by the Department of Correctional Services in respect of the adjudication of tenders The process is discussed under the following main headings

2

- Identification of a need by end-user and responsibilities
- Bid Invitation Process
- Bid Evaluation Process
- Bid Adjudication Process

4.

Introduction (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 1.2)

The Department's Policy and Procedure is based on Section 217 of the Constitution of the Republic of South Africa, Act 108 of 1996. It is the foundation of all procurement policies and procedures. It prescribes the procedures for the procurement of all goods and services to all organs of state. The procurement of goods and services should be fair, equitable, transparent, competitive and cost-effective

5.

Identification of need by end-user and responsibilities (Project Initiation)

5.1 The end-user identifies the new requirement and or need to renew the current contract

5.2 Ensure the availability of budget. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 1.3.2 – The submission of the BD 28 was only implemented per communication under reference 3/2/P dated 16 November 2006)

5.3 Compile specifications and or Terms of Reference by involving all relevant role-players. If applicable, the Bid Evaluation Methodology, Evaluation Criteria, weights applicable to the criteria, qualifying criteria and threshold score applicable to functional evaluation must also be addressed. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Chapter 3 and Paragraph 15.9.3.1)

5.4 Obtain functional approval in accordance with Delegations, paragraph 4.1.1

5.5 Where applicable, forward a submission to the Commissioner requesting appointment of a Bid Evaluation Committee. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 6.1.2)

5.6 Upon receipt of the functional/Commissioner's approval, requirement forwarded to the Directorate: Procurement for the invitation of bids. If applicable, the request should include detail of compulsory information meeting and/or compulsory site visits during the bid invitation process. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 5.1)

6.

Bid Invitation Process

6.1 Directorate: Procurement receives the approved requirement from the end-user. The Bid Invitation Document is then compiled (e.g. pricing schedule, General Conditions of Contract, Special Conditions, Preference Claim Forms, Specification and or Terms of Reference, etc) and approved. The bid document clearly stipulates details such as the Bid

Number, closing date of the bid, validity period required for the evaluation of the bid, certificates for attendance of compulsory information meetings and site visits,. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 5.3)

6.2 Advertising of Bid Invitation in at least Government Tender Bulletin. The advertisement must also address additional details regarding compulsory information meetings/site visits, if applicable. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 5.4)

6.3 If applicable, the compulsory information meeting is held to afford potential bidders an opportunity to acquaint themselves with the requirements and clarify any uncertainties. Attendance certificates are issued that must be submitted together with the bid. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 5.3.10)

6.4 If applicable, compulsory site visits are held to afford potential bidders the opportunity to inspect and acquaint themselves with the current set up and specific conditions of the relevant sites. Attendance certificates are issued that must be submitted together with the bid. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 5.3.10)

6.5 Closing date and time is normally at 11:00, thirty (30) days after date of advertisement. For more complex bids/projects, a longer period may be allowed for the submission of bids. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 5.11)

6.6 On the closing date and time, bids received are opened in public by a team of at least three (3) officials of whom one (1) is independent from the Directorate Procurement. All bids received are listed when opened and issued with a number. The names of the bidders are read out and where

practical also the prices. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 5.17)

6.7 Bids received after the closing date and time are regarded as late bids and are returned to the bidders unopened. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 5.18.2)

7.

Bid Evaluation Process

Evaluations undertaken by Bid Evaluation Committees:

7.1 Preparation of bid evaluation documents in terms of the pre-determined and approved criteria is done as soon as possible after the closing date of the bid. The following documents are prepared :

(a) Instructions to Bid Evaluation Committee Members to guide them in their roles and responsibilities during the evaluation process;

(b) Code of Conduct;

(c) Declaration of Interest;

(d) Bid Specifications/Terms of Reference; and

(e) Set of evaluation/scoring sheets per bidder that contains the predetermined evaluation criteria. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 15.9.5.2)

7.2 The Chairperson of the Bid Evaluation Committee is informed to arrange with the Committee Members to proceed with the evaluation of the bids.

7.3 During the initial meeting, the Bid Evaluation Committee is properly briefed by a Procurement Official regarding the evaluation process to be followed where-after evaluation is done.

7.4 In cases where qualifying criteria (e.g. Tax Clearance Certificate (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 6.6.2.1), compulsory information meeting/site visit attendance certificate (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 6.6.5.1), undertaking from bidder's financial institution to issue a bank guarantee, etc. is specified in the Specification/ Terms of Reference, the Committee firstly identify those bidders that do not comply. These bidders are then eliminated.

7.5 A threshold score is normally specified in terms of technical/ functional evaluation scores achieved by bidders for the other criteria. Bidders that do not achieve this score are not considered for further evaluation. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraphs 6.27.4.5 and 15.9.5.3)

7.6 If specified in the evaluation methodology, bidders who met the threshold score are invited to present their proposals to the Bid Evaluation Committee. During this meeting the Committee also has the opportunity to clarify uncertainties. Final functional scores are allocated to each of these short-listed bidders.

7.7 If a two-envelope evaluation system is specified, the financial proposals are submitted in a separate sealed envelope. These envelopes are only opened in respect of bidders who achieved the technical threshold score. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 15.9.5.6)

7.8 The short-listed bidders are brought on a comparative basis by combining the technical/functional score with the calculated points for price. These scores are then converted to 90 to adhere to the Preferential Procurement Policy Framework Act, and Preferential Points are finally added. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraphs 15.9.5.4 and 15.9.5.5)

7.9 The Bid Evaluation Committee prepares a recommendation based on their findings by recommending the bidder that achieved the highest final score. The recommendation is then submitted to the Directorate Procurement. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraphs 7.2 and 15.9.5.6)

7.10 National Treasury is approached to determine whether the recommended bidder is restricted or a tender defaulter. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 7.2.4 and Annexure F)

7.11 The recommendation is then submitted to the Bid Adjudication Committee for final consideration.

8.

Bid Adjudication Process

8.1 The Department has a standing Bid Adjudication Committee that is appointed in writing by the Commissioner. This Committee considers the recommendation. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Chapter 8)

8

8.2 After approval is granted by the Bid Adjudication Committee, the successful bidder is informed to make appointment for the signing of a formal contract. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 9.1.1)

8.3 Contracts can only be concluded if bids are still valid. This entails that should it happen during any stage of the evaluation that the validity should expire, it should be extended. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 9.1.2)

8.4 The contract is signed in original by both parties. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 9.1.2)

8.5 The results of the bid are advertised in the Government Tender Bulletin. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 9.6)

8.6 If any of the unsuccessful bidders wishes to obtain reasons for not being successful, an application should be done in writing to the Department. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 9.7)

9.

The appointment of project leaders/managers (if required) is initiated by the end user/management. This is not part of the procurement procedures.

10.

If there is a need for a feasibility study and or business plan, the end user (responsibility manager) will initiate it, but this function is not covered by the procurement manual. The conducting of a feasibility study is compulsory for the procurement of Public Private Partnerships (PPPs), in accordance with Treasury Regulation 16. However it is not compulsory for normal procurement of goods and services.

11.

The end user is responsible to draft specifications. If there is a need, consultants could be appointed in accordance with the procurement directives. No prescripts exist for the formal appointment of specification "committees". (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 3.1.1).

12.

During the drafting of the specification/task directive/terms of reference, the end user is responsible to compile the evaluation criteria and weights linked to it, excluding the RDP Goals (20/10 of the 80/20 and 90/10 principles) which are standardized in the Department. The criteria and weights are therefore also included in the bid invitation document. Regarding the requirement that bidders must show that they "understand the scope" of the work to be done, it depends whether the end user would like to use this as an evaluation criteria. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 15.9.3.2.1(iii))

13.

Upon the receipt of the approved request from the end user, the Directorate Procurement will compile the bid invitation document as well as the request for advertisement in at least the Government Tender Bulletin. The documents are approved by the Delegated Official. The closing period is normally at least thirty (30) days from date of advertisement, but in the case of more complex bids, a longer period may be determined. When adequately motivated, a shorter period may be determined with the prior approval of the Accounting Officer/relevant Bid Adjudication Committee. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 5.11)

14.

The bid box is opened in public on the closing date and time by officials authorized in writing. The process is overseen by a delegated official. The presence of an independent official is requested as from 1 August 2003. A BD 13-form is used to record the bids received, on which all the officials present must sign. No minutes are kept seeing that it is not an official meeting but only a process. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 5.17)

15.

The SBD 2 calls for the submission of an original and valid Tax Clearance Certificate. Prior to 15 February 2006 bidders were afforded a grace period to submit such a certificate if omitted to do so. After the said date the SBD 2 was amended by National Treasury and bids of bidders omitting to submit the valid Tax Clearance Certificate were automatically invalidated. The amended SBD 2 was provided to practice per communication 3/2/P dated 15 February 2006.

In addition to this, qualifying criteria are stipulated as part of the evaluation criteria in some bids, such as the attendance of compulsory information meetings/site visits, undertakings of financial institutions to issue bank guarantees, etc.. In such cases, bidders who do not comply with qualifying criteria, are disqualified.

(*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraphs 6.6.2 and 6.6.5.1)

16.

The end user will indicate to the Procurement Unit if there is a need for a compulsory information session and or site visit and provide details (venue, date and time). If requested the need will be included in the bid invitation document as well as in the advertisement in the Government Tender Bulletin. In such cases attendance certificates are also included in the bid invitation documents. The end user will decide on the chairperson and other representatives of the Department. The process is handled as prescribed in paragraph 5.3.10 of the manual. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraphs 5.3.10 and 15.9.3.1.1)

17.

The end user will propose candidates to the Accounting Officer who will consider them for appointment as Bid Evaluation Committee members of a specific bid. The end user must take into consideration the contents of paragraph 6.1.1 of the manual when proposing the chairperson/ members of the Bid Evaluation Committee. The chairperson of the Bid Evaluation Committee must ensure that a suitable person be appointed as a secretary. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 6.1)

18.

During the first meeting of the Bid Evaluation Committee, all members sign a Code of Conduct and Declaration of Interest. If any member of the BEC declares any interest, the chairperson will decide, taking into account the extent of the interest, whether the member needs to withdraw.

19.

A clear indication of how calculations will be done as well as the formulae is set out in the bid invitation document. These calculations and methods are in accordance with stipulations of paragraphs 15.9.5 of the manual. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 15.9.5)

20.

After the opening of the bids, the bid documents are scrutinized for compliance with basic requirements/ qualifying criteria by the Directorate Procurement, of which the results are highlighted to the BEC. It is then referred to the BEC for evaluation purposes, who do the evaluation, compile a recommendation and submit it to the BAC via the Directorate Procurement.

21.

The relevant Bid Adjudication Committees consider all submissions within their Delegated Powers as amended from time to time, which includes amongst others the acceptance/ rejection of bids, amendment/variation/extension/cancellation/transfer of contracts, etc. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Chapter 8 and Delegated Powers)

22.

The procedure applicable to upfront payments is not incorporated in the Procurement Manual. Upfront payments can only be made if it is a condition of contract and approved accordingly in accordance with Treasury Regulations. In some cases the Department will request bidders to indicate the completion dates as part of their proposals. In other cases, the Department may indicate the envisaged/expected delivery/ completion date. If penalty clauses are not addressed in the contract, paragraph 22 of the GCC which forms part of Annexure B of the Procurement Manual, applies.

23.

The procedures regarding contract management are set out in chapter 10 of the Procurement Manual. The management of contracts resides under the Directorate: Contract Management in cases of professional services/consultants and certain big projects. In such cases, the Directorate: Procurement advises the user also to appoint a project manager to manage the contracts in accordance with the contract conditions.

24.

The Procurement Manual does not specifically refer to variation orders, however paragraph 10.27 sets out the procedures applicable to the amendment of the specification after a binding contract has been concluded. According to these stipulations, the relevant BAC is authorized to consider and approve such amendments.

25.

The Procurement Manual makes provision for the extension of contracts under certain circumstances. The relevant BAC may consider a request of this nature against justifiable reasons. (*Supply Chain Management User Manual: Directives in respect of Procurement*, Paragraph 10.13)

26.

The payment of invoices is not a function of the Directorate: Procurement and not addressed in the Procurement Manual. Payments are managed between the User; Directorate: Logistics and Directorate: Contract Management.

27.

This affidavit consists of 15 pages and is true and correct to the best of my knowledge.

Do you know and understand the contents of this affidavit? YES
Do you have any objections to taking the prescribed oath? NO
Do you consider the prescribed oath to be binding on your conscience? YES

DEPONENT: _____

DATE: 2009-07-07

I certify that the above affidavit was taken by me and that the deponent has acknowledged that he/she knows and understands the contents of the affidavit. This affidavit was sworn to before me and the deponent's signature/mark/thumb print was placed thereon in my presence at Pretoria on 7 July 2019 10 at 10:48.

Ex Officio Commissioner of Oaths
Cornelius Daniel Du Toit
Chief Forensic Investigator
Special Investigating Unit
Rentmeester Building, 2nd Floor,
74 Watermeyer Street,
Meyerspark, Pretoria.

15

"Q2"

Annexure "Q2"

16

Affidavit

I, the undersigned,

Willem Hendrik Jacobus Pretorius

do hereby make an oath and state:

1.

I am an adult male, 49 years of age with identity number 600129 511 8089. I am employed by the Department of Correctional Services (DCS) as Deputy Director: Tender Management at its Head Office in Pretoria.

My contact details are:

Office: 012 307 2020

2.

The facts deposed by me are both true and correct and are within my personal knowledge and belief, save where otherwise stated or the contrary appears from the context thereof.

3.

During January 2009 I was informed by investigators of the Special Investigating Unit (SIU) that they were busy with an investigation into certain tenders that had been awarded by the Department of Correctional Services (DCS) to companies within the Bosasa group of companies. They arranged to interview me in this regard. On 22 January 2009 I was interviewed by Hannes Senekal, Smile Ndlovu and Thuli Skhosana of the SIU at the SIU Head Office in Pretoria.

4.

I can remember that I was called to a meeting by Mr. Tshivhase during the first half of 2004. Mr. Tshivhase was the Chief Financial Officer of DCS at that stage. He informed

me that DCS management had decided to outsource the catering services for some DCS management areas and that Mr. Patrick Gillingham would be the project leader for this process. Mr. Tshivase told me that Mr. Gillingham should be assisted with this project, because DCS had to comply with the amended Correctional Services Act and the White Paper on Corrections pertaining to the three meal system.

5.

Shortly after the meeting with Mr. Tshivhase, Mr. Patrick Gillingham requested me to attend a meeting with him (Mr. Gillingham). During this meeting Mr. Gillingham told me that he was in the process of developing specifications for the tender for the outsourcing of catering services at a number of management areas. Mr. Gillingham then showed me a two page document. He indicated to me that this document was a draft document that formed the basis for certain aspects of the catering tender. Mr. Gillingham then asked me to peruse the document.

6.

I read through the document and realized that it only referred to training and to equipment that should be installed, such as security cameras. It did not refer to any meal plans or catering issues.

7.

I then suggested to Mr. Gillingham that the specifications for the outsourcing of catering services at the Ekuseni Youth Development Centre should be used as a basis for the development of specifications for the new tender.

8.

I then instructed Mr. Hendrik Truter, who held the position of Clerk: Tenders at that stage, to e-mail the Ekuseni specifications to Mr. Gillingham. After the specifications had been forwarded to Mr. Gillingham, Mr. Truter and I assisted Mr. Gillingham with the finalization of the specifications for tender number HK 2/2004 (the tender for the

outsourcing of catering services). We gave inputs from a procurement perspective and not from a technical perspective, because we did not have the technical know how to advise on technical matters.

9.

According to my recollection of events, no other officials from DCS were part of the process of the development of the above specifications. As far as I know no discussions in this regard took place with officials of the department Development and Care at DCS.

10.

According to my recollection of events, no feasibility study had been conducted with regard to the outsourcing of the catering services for this tender. In my opinion the proper procedure would have been to conduct a feasibility study before the start of the tender process.

11.

I was asked whether I knew who had drafted the specifications for tender number HK 30/2005 (the tender for X-ray equipment), but I do not know.

12.

I can remember that Mr. Gillingham also managed the process with regard to the drafting of the specifications for tender number HK 5/2006 (the outsourcing of catering services for the Waterval Management Area). In this case, to the best of my knowledge, officials from Development and Care and other role players were also consulted with regard to the drafting of the specifications and also attended the compulsory information meeting and site visits.

13.

13.1

Mr. Senekal of the SIU asked me specifically whether Mr. Francois Venter of DCS had discussed an invoice from Phezulu Fencing (Pty) Ltd. with me during December 2005. He explained to me that this invoice with regard to the fencing tender, HK 24/2005, was for an amount of R56 410 172. 69. Mr. Senekal also wanted to know whether Mr. Venter had discussed the spending plan that formed part of the contract between DCS and Phezulu Fencing (Pty) Ltd. with me during December 2005.

13.2

As far as I can remember I never had a discussion with Francois Venter at that time with regard to the relevant invoice and/or the spending plan. I also wish to point out, however, that during that period I did not have the authority to approve the payment of such an invoice in any event. It would therefore have been impossible for me to give approval for the payment of the invoice. This is normally the function of the end user.

14.

14.1

Mr. Senekal presented me with a memorandum, dated 22 November 2005, from Mr. Hendrik Truter to Commissioner Mti in terms of which the Commissioner had been informed with regard to the names of the bidders for the Fencing Tender, HK 24/2005 and the TV Tender, HK 25/2005. I attach a copy of this memorandum as **Annexure WHJP 1.** Mr. Senekal wanted to know from me whether I, as Mr. Truter's superior at the time, had instructed Mr. Truter to supply the Commissioner with this information.

14.2

I cannot remember whether I gave such an instruction to Mr. Truter at the time and could find no documentation to assist me in this regard. If I had given such an instruction to Mr. Truter, I would have acted on an instruction from one of my superiors at DCS.

14.3

It is not normal procedure to inform the Commissioner of the identities of bidders before the evaluation of tenders had begun.

15.

I know and understand the contents of this affidavit.
I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience.

(Signature of Deponent)

I certify that the above statement was recorded by me and that the deponent had acknowledge that he knows and understands the contents thereof. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Pretoria on the 20 of July 2009.

Commissioner of Oaths

JOHANNES SENEKAL

(Full Names)

Ex Officio SAP, 2nd Floor, Pentmeester Building, 74 Watermeyer Street, Meyerspark Pretoria

Address

"Q3"

Annexure "Q3"

OFFICE OF THE DPP
PRETORIA

SCCU PRETORIA

Memo

To: ADV M SIMELANE – NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
From: GLYNNIS BREYTENBACH
CC: DR S RAMAITE SC, ADV S C JORDAAN SC
Date: February 4, 2010
Re: BOSASA INVESTIGATION

Dear Adv Simelane

The so-called Bosasa matter was received in this office directly from the SIU during late November 2009. As a result, it had to be referred to the SAPS in order for them to study the material and take a decision on whether or not to open a case docket.

Due to the profile and sensitivity of the matter I approached Commissioner Hans Meiring (the National Head of the Commercial Branch) for assistance in getting the matter allocated to the office for Serious Economic Offences of the SAPS.

The Acting Commanding Officer allocated the matter to Snr Superintendent D J Kriel for further investigation.

Once the material supplied to us had been studied by myself, Adv I Grobler and Mr G Nkadimeng (the prosecution team), and the investigating officer, we had a follow up meeting with Mr Clint Oellermann of the SIU to discuss

the material in their possession but not yet supplied to us, and the admissibility thereof.

Mr Oellermann supplied us with copies of the civil litigation conducted between the SIU and Bosasa during late December, which was then studied by all the role-players when they all returned from their annual leave, in order to determine the impact thereon on the criminal investigation, if any. This was done chiefly with a view to obtaining a clearer understanding of the issues involved, and to avoid any later problems arising as a result of possible derivative evidence. It was essential to understand the nature of the legal challenge against the SIU before proceeding with the investigation proper.

A compact disc containing the initial start-up documentation of the SIU investigation was also supplied, the contents of which have been studied by the team.

Mr Willie Hofmeyr was approached during late 2009 to facilitate a meeting with the Acting Commissioner (Jenny Schreiner), since Mr Oellermann indicated that Mr Hofmeyr had easy access to the Acting Commissioner. This meeting has not yet taken place. It is essential to meet with the Acting Commissioner, since she would be the apposite person to depose to an affidavit to form the "founding" affidavit on which to base the investigation.

In the absence of this statement, the investigation has continued, in as far as it is possible, but no statements have as yet been re-taken by the investigating officer due to the fact that the case docket cannot be registered without the affidavit of the "complainant".

The SIU has not supplied the source documents relating to their report, and we are currently attempting to gain access to these source documents in

order to determine precisely what they have, and how it was obtained, before proceeding with any requests for information from banks and other parties

It is essential to understand whether the documents so obtained by the SIU are admissible and can be used in the criminal investigation, or not admissible, in which case we must retake / re-obtain them in a fashion which allows them to be used in court. This is also to avoid a duplication of documents and work done, and to avoid asking for the same documents more than once from the same institutions.

It was hoped that we would be able to meet with Mr Oellermann during the course of this week in order to refine an affidavit from him which omits all the unnecessary references to the civil litigation currently contained in the report. This aspect has been canvassed with him in detail, and the draft thereof needs to be refined and finalised. He has unfortunately not been available this week, and it is hoped to finalise this aspect during the course of February, along with the affidavit of the Acting Commissioner

In the interim the documents received from the SIU have been read and sorted into what will form the basis of the case docket once the affidavit of the Acting Commissioner has been finalised

An issue that needs to be addressed on an urgent basis is the position of Mr Linda Mtl, who is one of the two main suspects, and who currently holds the position of Head of Security : 2010 World Cup and the impact that this investigation, once it gains momentum (and attracts the attention of the media), might have. Some guidance in this regard would be greatly appreciated.

26

Yours faithfully

GLYNNIS BREYTENBACH
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
SPECIALISED COMMERCIAL CRIME COMPONENT
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS PRETORIA

"Q4"

Annexure "Q4"

The National Prosecuting Authority of South Africa
Igunya Jikelele Lobetshutshisi Bo Mzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

INTERNAL MEMORANDUM

TO: ADV G BREYTENBACH

Cc: Dr S RAMAITE, SC
CC: ADV C JORDAAN
Cc: ADV S MZINYATHI

FROM: ADV. M. SIMELANE
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

SUBJECT: BOSASA INVESTIGATION

DATE: 08 FEBRUARY 2010

Dear Adv Breytenbach,

I have considered your memorandum dated 04th February 2010. Having done so, I am concerned about the turn that the case is taking.

All along, the matter has been reported on with suggestions that it is close to prosecution. Your summary of progress made reveals the opposite. I am therefore concerned that a simple act of obtaining a statement with which to open a docket is proving difficult to do. I would have hoped that by now the SIU itself would provide the required affidavit since it has locus standi to investigate. It therefore can legitimately open a case with the

police. The Department of Correctional Services is less important in this respect. The South African Police Service must be advised to expedite this process.

It also appears that the NPA staff are unlikely to contribute materially at this stage. I suggest that you advise Senior Superintendent DJ Kriel, in writing, what process to follow to get the investigation going. You and your team of Adv Grobler and Mr G Nkadimeng must withdraw from the case until I am advised by the police that a docket has been opened and it is specified what assistance is required from the NPA. Accordingly, I would appreciate that you and your team can withdraw from this case and redirate your time and resources to cases where there are dockets to investigate or prosecute. Please confirm the withdrawal by 09 February 2010.

I note the point that you make regarding Mr Mti. It is mischievous to say the least. Firstly, there is no police docket or investigation underway. Secondly, and by your own admission, there is still an assessment to be made on the evidentiary value of the information currently available. How therefore you can start speculating and making suggestions regarding any person, is beyond belief, unless of course it is a manifestation of a mindset with predetermined outcomes. My suggestion would be that you follow the advice in the last sentence of paragraph 3 above.

Kind regards

Adv. M. Simelane
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

DATE:

S.I.U. PROSECUTORS WITH DELEGATIONS

"Q5"

Annexure "Q5"

MINUTES

SPECIAL EXTENDED MINISTERIAL MEETING

Business Unit Name:	National Prosecuting Authority		
Meeting Name:	SPECIAL EXTENDED MINISTERIAL MEETING		
Venue:	CAPE TOWN, MINISTRY J&CD		
Meeting Number:	01/2010	**File Ref:**	3/2/3/2
Date:	2010/03/09	**Time:**	09:00 – 13:00
Chairperson:	Honourable Minister of Justice Mr JT Radebe	**Secretariat:**	Mr T Tlali & Ms J Lepinka
Purpose/objective(s) of meeting:	Briefing on various matters		

DISTRIBUTION:

Name	Capacity
Documents distributed to all attendees	Minister JT Radebe, Minister NN MAPISA-Nqakula, Adv M Simelane

	Item
1.	**Opening and welcome**
	• The Chairperson opened the meeting and welcomed all the members with a quote: *Once you approve of yourself you will find it easy to improve yourself.* • He explained the reason for the briefing session .
2.	**Adoption of agenda**
	No amendments to the agenda were proposed.
3.	**SIU Report RE: Bosasa Investigation**
	• A presentation of the report was made by Adv M Simelane. • Challenges of the report was outlined ie. the ur constitutionality of the report in that the evidence as contained in the said report was contaminated. The SIU report cannot hold any water in any Court and that any presiding officer will not proceed with the report at hand. • SIU investigation was not inline with the proper administration of Justice, "without fear, favour and/or prejudice" incorrect Sections out of their mandate was used to find evidence, statements were not done according to the prescripts. • Political vendetta/agenda identified. • Manipulation of the public identified in that report was discussed in Parliament prior to same being handed over to the relevant Exec Authority; media coverage over the report prior to having heard or confirmed any criminality n the mentioned senior officials of DCS; not guilty until proven guilty approach as enshrined in the constitution was totally ignored; • A concern on credibility of certain individuals and/or the effected organisation is a serious concern and might cost the NPA much with possible litigations. • A predetermined element was identified as well as the race of both the investigators (SAPS) (SIU) and prosecutors (NPA). • Close monitoring is important to ensure fair trial and investigation if any.

	• Minister of Police and NatComm to be taken on board and be advised of the concerns raised. • Statements taken without the consent of the Executive Authority, which is of grave concern.
4.	The year in perspective
4.1	AFU • Adv Willie Hofmeyr to be informed that all AFU regional heads will report to DPPs in each jurisdiction with effect from 01.04.2010. • Letter informing him that he cannot head two institutions has been given to him and the Presidency has been advised of the need for a new head of SIU and/or possible Proclamation for SIU to fall within DPCI.
5.	**Closing remarks by Chairperson**
	• Chairperson, thanked all in attendance. Minister of Correctional Services thanked the NDPP for the briefing and requested the minutes to be classified as Top Secret and not to be circulated by email.
	The meeting adjourned at 13:00
	Minutes approved by: Chairperson **Signed:**

"Q6"

Annexure "Q6"

SPECIALISED COMMERCIAL CRIME UNIT

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

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TO	:	The National Director of Public Prosecutions: Adv. Menzi Simelani
FROM	:	Adv MC de Kock
DATE	:	17 November 2010
SUBJECT	:	BOSASA Matter

1. Purpose

The purpose of this report is to apprise the NDPP of the status quo with regard to the Special Investigation Unit report on BOSASA.

2. Introduction

The SIU recommended that the NDPP considers instituting criminal proceedings against Mr Gillingham, Commissioner Mti, Sondolo, Bosasa, their office bearers and to the extent that Messrs Mansell and Smith may not be office bearers of either Sondolo or Bosasa, that they also be considered for prosecution in their personal capacity.

This conclusion was reached as a result of the investigation conducted by the SIU and the "evidence" that they had gathered.

3. Limitations of the SIU investigation

The SIU report makes it clear that their investigation suffered from certain limitations. I quote from page viii of the executive summary: "...the SIU did not conduct a comprehensive financial investigation as in the case of Gillingham, into benefits received by Commissioner Mti from Bosasa, *because of various limitations experienced during our investgation*", and "...the limited evidence gathered, indicates that he (Mti) received benefits from Bosasa, some months before the television tender was granted to Sondolo."

4. The evidence gathered by the SIU

The SIU started with their investigation shortly after the Presidential Proclamation was issued on 28 November 2007. They investigated the contracts awarded to Bosasa "*and its affiliates*" and ended up recommending that legal proceedings

be instituted against Bosasa *"and its affiliates and the persons mentioned in the report."*

The SIU investigation into the Bosasa group of companies followed on various media reports of irregularities pertaining to the awarding of contracts by the Department of Correctional Services to Bosasa Operations (Pty) Ltd and its affiliated companies. The importance of and reliance on the company profile and structure is made clear by the fact that a full chapter gets devoted to this topic.

The following is stated in respect of the SIU investigation. ". the SIU's findings are based on information obtained from the Registrar of Companies, the previous auditors of the Bosasa Group, tender documentation submitted by Bosasa, Sondolo and Phezulu and from the official Bosasa website."

It would appear as if the SIU relied on information that was submitted to them without questioning the veracity of the facts that were conveyed to them. In order to illustrate my point I will quote from the SIU report and then provide the contrasting or contradictory information thus far revealed by the SAPS investigation.

The SIU reported on the origins of Bosasa Operations (Pty) Ltd and said.

"During December 1981, a company known as Emafini (Pty) Ltd was formed by Mr SJH Van Zijl. In December 1984, Smith was appointed to Emafini as a Director. Emafini then changed its name to Meritum Hostels (Pty) Ltd in February 1985.

On 20 June 1996, Van Zijl and Smith entered into a pre-incorporation agreement with a trust, stipulating that a new holding company would be formed and a new operations company would be established to render the services for this holding company, administered by the trust. Mansell signed as witness to the pre-incorporation agreement.

As a result of this agreement, Meritum Hostels became known as Dyambu Operations (Pty) Ltd ...."

We are in possession of the certificate of change of name of a company (Form CM 9) supplied to us by CIPRO. According to the CIPRO documentation, Meritum Hostels (Edms) Bpk requested the registrar of companies to note the fact that Meritum Hostels would in future be called Dyambu Operations (Pty) Ltd. The change of name was officially recorded on 11 April 1996. If the information that was made available to us is correct, the official change of name and the "special resolution" taken by the company preceded the "pre-incorporation agreement" allegedly entered into between Van Zijl and Smith. (Compare SIU report p.14 - 15)

The following is stated in respect of "Sondolo IT (Pty) Ltd":

"Upon changing its name in 2005, Sondolo appointed Bester Viljoen Incorporated as its auditors. At this time, Johannes Gumede, Tony Perry, Papa Leshabane, Brian Gwebu, Jacqueline Leyds, Nomazulu Makoko (among others), were appointed as directors of Sondolo ...."

The CIPRO documentation that was made available to me would seem to indicate that Mavava Trading 119 (Pty) Ltd, changed its name to Sondolo IT on 22 February 2005 and that Terrence Anthony Perry was appointed as "public officer" (company secretary) a few days earlier on 10 February 2005. Terrence Anthony (Tony) Perry was never appointed as a director of Sondolo IT.

The SIU indicates that it relied on a document compiled by Angelo Agrizzi, the "Chief Executive Officer/General Manager" of Bosasa Operations. They state the following:

"During the course of the investigation, a document compiled by Agrizzi, was handed to the SIU. The document, entitled *Summary Company Structure* (Annexure 10 to the SIU report), indicated that Sondolo was owned by four companies, namely Bancar Investment Holdings (Pty) Ltd (25%), Kgwerano Financial Services (Pty) Ltd (25%), Bosasa Youth Development Foundation (10%) and Bosasa (40%)".

The content of the document that was made available to us as Annexure 10 differs considerably from the verbal description found in the report. Annexure 10 sets out the company structure of Bosasa Operations (Pty) Ltd. No reference is made to any entity called "Phezulu Fencing (Pty) Ltd" whilst the only reference to "Sondolo" relates to a company called "Sondolo Facilities and Management Services (Pty) Ltd." The company registration number of Sondolo Facilities and Management Services (Pty) Ltd is given as 2004/003023/07 whilst the registration number of Sondolo IT (Pty) Ltd is given as 2005/000500/07.

Ballastrade Trade and Investments (Pty) Ltd (2002/008442/07) listed in Annexure 10 as a "dormant shelf company" changed its name to "Seaark Africa (Pty) Ltd" during February 2006 and would appear to be actively involved in business. The company referred to as "Bosasa Agri Co (Pty) Ltd" (2002/025363/07) has been known as "Seaark Africa Operations (Pty) Ltd" since October 2007.

It would thus appear as if the SIU received information from various (and sometimes unreliable) sources and made use of the information either without verifying the facts or failing to point out the anomalies to those reading the report.

4. Aspects that would require SAPS attention

From information put at our disposal it would appear as if the bid box in respect of the kitchen tender (HK2/2004) was opened one (1) week earlier than the scheduled date. If this information is correct, the Bosasa bid was only received by DCS after officials had opened the bid box. This may be a serious irregularity and we would have expected it to be mentioned in the SIU report.

5. Conclusion

The SIU report would appear to have been drafted in a careless and almost casual fashion. The lack of accuracy and precision with the drafting of the report will give ample opportunity to those seeking to fault it.

The SIU has placed themselves and the SAPS investigators in a dilemma by casting doubt upon the reliability of their own report. We will need to establish the veracity of the facts and at least try and ground the conclusions reached by the SIU. We must know what information is reliable and what is not. This "verification process" will take some time.

We hope to be able to salvage as much of the report as is possible and minimize the potential damage that may have been caused. The admission of the "limitations" experienced by the SIU investigators may not be enough to hide the fact that the report was released at a premature point during the investigation.

The purpose of the SIU investigation may have influenced and informed the product that they produced. In as far as the report may have been true to their mandate it is also clear that it would not stand up to scrutiny in a criminal court. The burden of proof that is placed on the prosecution in a criminal trial has its own specific requirements. The criminal investigation must empower the prosecution to bear the onus and succeed in their quest to prove the case against the accused.

Yours faithfully

MC de Kock

MC DE KOCK
DEPUTY DIRECTOR OF PUBLIC OF PROSECUTIONS
CCC PRETORIA

"Q7"

Annexure "Q7"

AA-406

SECRET

44

26/18/2

INFORMATION NOTE

To: The Commander: Anti Corruption Task Team
Directorate for Priority Crime Investigations (DPCI)
South African Police Service

PROGRESS OF INVESTIGATION: BOSASA INVESTIGATION: PC 5: PRETORIA CENTRAL CAS 1556/02/2010

1. The previous report dated 17 October 2011 refers.

2. **STATEMENTS OBTAINED SINCE PREVIOUS REPORT**

   2.1 Mr J Shilubane - former DCS official - IT Department

3. **WITNESSES CONSULTED AND DRAFT STATEMENTS BEING PREPARED FOR SIGNATURE**

   3.1 Commissioner J Schreiner - DCS - Bid Adjudication Committee – She is still going through her own notes and efforts are being made to obtain minutes of Executive Management Committee Meetings as there are no copies of the minutes in the official records of DCS available. Further appointment to continue with consultation will be arranged as soon as Com Schreiner have worked through her own notes.

SECRET

3.2 Mr F J Venter - DCS - P A to Mr Gillingham and Secretary of Bid Evaluation Committee – Have notes that were left in the office of the current CFO. Arrangements were made with the CFO to retrieve documents from his office on 26 October 2011. Further consultation scheduled for 26 October 2011.

3.3 Mr H A Truter - DCS Tender Management - Consulted with him on 20 and 21 October 2011. He verified the index that was prepared of the documents of DCS that he handed over to Col Kriel on 25 January 2011that was paginated in his presence. The drafting of his statement commenced. Further tentative appointments are scheduled for 27 and 28 October 2011.

4. **INVESTIGATION OUTSTANDING**

4.1 Obtain statement of Sanette Truter.
4.2 Obtain statement of Mr Ngubo - DCS - Bid Adjudication Committee
4.3 Obtain statement of Mr H T Mapasa - DCS - Bid Adjudication Committee
4.4 Obtain statement of Ms J Sishuba - DCS - Bid Adjudication Committee
4.5 Obtain statement of Mr F Engelbrecht (Cape Town)
4.6 Obtain statement of Mr J D E Basson from Contract Management.
4.7 Obtain statement from SARS re tax clearance certificates of all four successful bidders.
4.8 Obtain statement of Mr Maako - DCS - Contract management.
4.9 Obtain statement of Mr Sokupa (Apparently now at UCT) - former DCS member - Bid Adjudication Committee
4.10 Consult with Mr Jason Jordaan of SIU re all electronic evidence collected by SIU.
4.11 Consult with Jacques Malan re mirror imaging of Bosasa Servers.

5 **OTHER MEETINGS ATTENDED**

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5.1 A meeting was attended with the Prosecutor, advocate M De Kock, re comments with regard to the statement of Mr W Pretorius and the annexures attached thereto.

5.2 A meeting was attended on 18 October 2011 with representatives of SIU Legal Section Mr B Walser, the Prosecutor advocate M De Kock, Brig van Graan, adv De Villiers of the AFU, Brigadier Moodley and Mr J Kluyts. This meeting relates to a subpoena served on Mr W Hofmeyr by the legal representative of Mail and Guardian Newspaper compelling Mr Hofmeyr to supply them with a copy of the SIU report together with the annexures thereto. The purpose of the meeting was to assess the impact that this might have on a criminal prosecution and whether there are legal grounds for the SIU not to comply with this subpoena. A further meeting is scheduled to take place on 28 October 2011 in order to take a decision on how to deal with this matter.

5.3 A meeting was attended with Mr J Le Roux to establish what electronic evidence was gathered by the SIU during their initial investigation. Contact details for Mr Jason Jordaan and Mr Jacques Malan was obtained. Both were contacted to arrange appointments but were not reachable. Meetings will be arranged with them.

6. RECORDS OF EXECUTIVE MANAGEMENT MEETINGS

6.1 In consultations with Commissioner Schreiner she informed that the decisions to invite bids for the four tenders under investigation were all taken at Executive Management Level and will be reflected on the minutes of the Executive Management Committee meetings that took place during the period under investigation. In order to assist she gave instruction that the minutes of all Executive Management Committee meetings for the period be drawn from DCS records by their Office management staff. It was however discovered that the minutes of the

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meetings for this period is not available in their records. Further arrangements were made to give the investigators access to their storeroom where the records are filed. A list of available documentation was made available which was perused and possible relevant documents identified. On 24 October 2011 Lieutenant Colonel Smit and Brigadier Saayman visited the store room and started to peruse the possibly relevant documentation. This process will continue on 25 October 2011.

6.2 It was further established through consultation with Mr F J Venter, the previous Personal Assistant of Mr Gillingham, that there are still documentation created by himself as well as documentation of Mr Gillingham which is stored in the office of the current CFO. Arrangements were made with the current CFO Mr Sokela for access to these records. The records will be scrutinised on 26 October 2011 to establish whether there is any documentation that can contribute to proving the alleged offences.

7. Progress will be reported.

	:	COLONEL
GROUP COMMANDER	:	ANTI CORRUPTION TASK TEAM
D J KRIEL	:	DIVISION: PRIORITY CRIME INVESTIGATION

Date:

Noted:

	:	BRIGADIER
COMMANDER	:	ANTI CORRUPTION TASK TEAM
K MOODLEY	:	DIVISION: PRIORITY CRIME INVESTIGATION

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Date:

Noted:

: MAJOR GENERAL

HEAD: COMMERCIAL BRANCH : DIVISION: PRIORITY CRIMEINVESTIGATIONS

JW MEIRING

Date:

Information note compiled by	:	Colonel D J Kriel
Code and telephone number	:	(012) 336 0778
Date	:	17 October 2011

Information note perused and verified by	:	Brigadier M J Saayman
Code and telephone number	:	(012) 3360773
Date	:	17 October 2011

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26/18/2

SECRET

INFORMATION NOTE

To: The Commander: Anti Corruption Task Team
Directorate for Priority Crime Investigations (DPCI)
South African Police Service

INFORMATION REQUESTED: BOSASA INVESTIGATION: PC 5: PRETORIA CENTRAL CAS 1556/02/2010

1. **STATEMENTS OBTAINED TO DATE**

1.1 Dir Malatsi - DCS - Complainant
1.2 Mr Clint Oellermann - SIU - Attaching SIU Report
1.3 Hendrik Willem Van Staden - DCS - Tender Management
1.4 Jacobus Johannes Venter - DCS – Finance: Management accounting
1.5 Antonie Johannes Christoffel Venter - DCS - Security
1.6 Sinah Dimakatso Moruane - DCS - Bid Evaluation Committee
1.7 Stephanus Gerhardus Oosthuizen - DCS - Bid Evaluation Committee
1.8 Christopher Mark Aries - DCS - Secretary: Bid Adjudication Committee
1.9 Bhekumunzi Sydwell Manzini - DCS - Bid Evaluation Committee
1.10 Taela Hosea Malinga - DCS - Bid Evaluation Committee
1.11 Sharon Jabulile Kunene - DCS - Bid Evaluation Committee
1.12 Mbongeni Andile Mdletye - DCS - Bid Evaluation Committee
1.13 Mashaea Joseph Lethoba - DCS - Bid Evaluation Committee
1.14 Eric Phenya - former DCS member - Bid Evaluation Committee
1.15 Jacobus Petrus Venter - CSIR
1.16 Peter Leslie - DCS - Finance: Budget Control

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1.17 Mabote Philemon Tshele - DCS - Bid Evaluation Committee
1.18 Jacobus Johannes Coetzee - DCS - Bid Evaluation Committee
1.19 Ntwampe Solomon Morei - DCS - Bid Evaluation Committee
1.20 Luvuyo Gqili - DCS - Bid Evaluation Committee
1.21 Elizabeth Adriana Phaal - DCS - Secretary: Bid Evaluation Committee
1.22 Mamotshabi Elizabeth Madisa - DCS - Bid Evaluation Committee
1.23 Willem Damons - DCS - Bid Evaluation Committee
1.24 Hendrik Baltus Steyn - DCS - Bid Evaluation Committee
1.25 Deon Thomas - Sterlings Livings
1.26 Marita van der Schyff - Lindsay Saker
1.27 Michael Neil Thomas - Lindsay Saker
1.28 Jacobus Willem van der Merwe - Lindsay Saker
1.29 Johanna Sophia Susanna Kok - VW The Glen
1.30 Johan Heyneke - Grand Central Motors
1.31 Robert Christiaan Seegers - VW The Glen
1.32 Izak Daniel Petrus Burger - Van der Merwe Inc
1.33 Martha Jacoba Zietsman - HMZ Architects
1.34 Sizakele Charlotte Maringa - Former Bosasa employee
1.35 Sophia Louisa Pretorius - formerly employed at Midstream Estate
1.36 Elizabeth Johanna Catharina Le Roux - Booysen Dreyer Nolte Attorneys
1.37 Mrs K M Mabena - DCS - Bid Evaluation Committee
1.38 Mr B F Lenkoe - Former DCS Member - Bid Evaluation Committee
1.39 Willem Hendrik Jacobus Pretorius - DCS - Tender Management

2. **BANK STATEMENTS OBTAINED IN TERMS OF SECTION 205 OF ACT 51/1977**

2.1 FNB Cheque Account 53460019343 - Mr. L.M. Mti from 3/12/2003 (statement 20) to 04/05/2011(statement 111).

2.2 FNB Cheque Account 62297802475 - CENRITE 29/01/2011 (statement 1) to 29/04/2011 (statement 4).

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2.3 Wesbank Account 10013009508 – Mr. L.M. Mti Volkswagen Triptronic 2009/12/10 – 2011/07/01 with H.P. and supporting documents.

2.4 FNB Money Market account 62103081915 Miss. S. Ntjana 27/03/2006 (statement 1) to 20/06/2011 (statement 22) plus:

a) I.D. S. Ntjana

b) Authority to operate on account i.t.o. T N. Ntjana

c) I.D. T.N. Ntjana

2.5 Set of FNB Accounts opening documents for Mr. S.S. Mpoza

2.6 ABSA Cheque Account 40 5355 9092 for Miss T.N. Ntjana period31/12/2003 (statement 33) to 30/04/2011 (statement 120). File of opening documents; internal bank documents etc.

2.7 Standard Bank Home Loan Account 362232393 Mr. L.M. Mti period 31/05/2005 to 4/5/2011.

2.8 Standard Bank Fin Rent (VAF) Account 68 504 950 0001 Mrs. T.N. Ntjana (2006 – 2011).

2.9 ABSA Mortgage Loan Account 80 6878 9036 Mr. L.M. Mti period February 2008 to February 2011.

2.10 ABSA Mortgage Loan Account 80 6243 0865 Autumn Storm Investments 106 (Pty) Ltd. period 30/11/2009 to 28/2/2011 and supporting documents.

2.11 ABSA Mortgage loan Account 80 6054 2005 Autumn Storm Investments 119 (Pty) Ltd. Period 31/5/2005 to 28/2/2006.

2.12 FNB Cheque Account 53460019343 - Mr. L.M. Mti from 3/12/2003 (statement 20) to 04/05/2011(statement 111).

2.13 FNB Credit Card Account 4483 8100 0080 7008 Mr. L.M. Mti period 21/08/2007 (statement 158) to 12/04/2011 (statement 200).

2.14 FNB Credit Card Account 4901 0705 7203 6007 Mr. L.M. Mti period 20/12/2003 to 03/08/2007.

3. **WITNESSES CONSULTED AND DRAFT STATEMENTS BEING PREPARED FOR SIGNATURE**

SECRET

3.1 Commissioner J Schreiner - DCS - Bid Adjudication Committee

3.2 Mr F J Venter - DCS - P A to Mr Gillingham and Secretary of Bid Evaluation Committee

3.3 Mr J A N Breytenbach - National Treasury

3.4 Mr C Haak - National Treasury

4 **INVESTIGATION OUTSTANDING**

4.1 Obtain statement of Mr H Truter.

4.2 Obtain statement of Sanette Truter.

4.3 Obtain statement of Mr Ngubo - DCS - Bid Adjudication Committee

4.4 Obtain statement of Mr H T Mapasa - DCS - Bid Adjudication Committee

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4.12 Consult with Jacques Malan re mirror imaging of Bosasa Servers.

5. Progress will be reported.

: COLONEL

GROUP COMMANDER : ANTI CORRUPTION TASK TEAM

AA-415

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SECRET

D J KRIEL : DIVISION: PRIORITY CRIME INVESTIGATION

Date:

Noted:

: BRIGADIER

COMMANDER : ANTI CORRUPTION TASK TEAM

K MOODLEY : DIVISION: PRIORITY CRIME INVESTIGATION

Date:

Noted:

MAJOR GENERAL

HEAD: COMMERCIAL BRANCH

DIVISION: PRIORITY CRIME INVESTIGATIONS

JW MEIRING

Date:

Information note compiled by	:	Colonel D J Kriel
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Information note perused and verified by	:	Brigadier M J Saayman
Code and telephone number	:	(012) 3360773

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Date 17 October 2011

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"Q8"

Annexure "Q8"

SS

Mail & Guardian Subpoena *duces tecum* dated 14 February 2011

Background

During October 2011 I received a request to comment on a subpoena *duces tecum* that was served on the Special Investigative Unit during February 2011.

The subpoena was issued by the Registrar of the South Gauteng High Court in Johannesburg at the behest of the Mail & Guardian Newspaper. It informs the SIU that Willie Hofmeyr is to appear in the Johannesburg High Court on 28 July 2011 in order to produce the following documents "*in his possession or control*":

(a) A copy of the report prepared by the Special Investigative Unit in 2009 into alleged procurement irregularities in the Department of Correctional Services, and

(b) The deeds, documents, writing or tape recordings referred to in paragraph 1.

The request itself appears ambiguous as "paragraph 1" of the subpoena only mentions a report and nothing else.

It is not known if the SIU requested the Mail & Guardian for clarity on this issue. For purposes of this discussion I will assume that the subpoena was meant to request copies of any (title) deeds, documents, writings or tape recordings referred to in the SIU report.

The Weber Wentzel Covering Letter dated 15 February 2011

The subpoena *duces tecum* dated 14 February 2011 was accompanied by a covering letter issued by Weber Wentzel Attorneys. The covering letter was dated 15 February 2011.

In the covering letter it is stated that Weber Wentzel represents Mr. Adriaan Basson (a newspaper journalist) and M&G Limited in a defamation action brought against them by Bosasa Operations (Pty) Ltd.

Paragraph 2 of the covering letter calls on Willie Hofmeyr (the Head of the SIU) to "produce to the court a copy of the report prepared by the

Special Investigative Unit into alleged procurement irregularities in the Department of Correctional Services in 2009".

The SIU Response

On 25 March 2011, Robert Walser the SIU Corporate Lawyer, acknowledge receipt of the subpoena *duces tecum* and informed Weber Wentzel that it would not be a simple matter to determine whether the report you seek to access by means of the subpoena is privileged or not and that they would need to take time to obtain legal advice *and secure representations from interested parties.*

The SAPS and the NPA would obviously be regarded as "interested parties".

The Subpoena duces tecum

Validity of the Subpoena

The rules of court makes it possible for any party who desires the attendance of any person ***to give evidence*** or produce a document at a trial to sue out from the office of the registrar one or more subpoenas for that purpose. (LAWSA – Volume 3 paragraph 293)

On a technical level, the "*subpoena*" (supplied to us) would appear to be invalid. On the face of it, the subpoena bears the date stamp of the Registrar of the South Gauteng High Court in Johannesburg. The date stamp is badly reproduced and may have been issued on the 14th.

There is no other indication that the Mail & Guardian intended to "sue out from the office of the registrar". The second page of the subpoena only refers to the date as "on *February* 2011".

It would not appear to have been signed or "authorised" by anyone in particular. The area requiring the signature of the designated official has been left blank.

I am of the view that even though it may have been the intention of the Mail & Guardian (or even the registrar) to issue a subpoena, the issuing

process was carried out in such a haphazard way that the witness cannot be sure that a due process was followed and that the subpoena was indeed issued "*out*" from the office of the registrar.

The requirement of a legible and verifiable signature of a designated public official on what appears to be official documents is the first safeguard against possible abuse of the authority of the registrar and his office. (Compare ***S v Stevens 1983 (3) SA 649 (A)*** at 658D-G for the views of our courts on documents that gets produced under cover of defective and illegible signatures)

The right to subpoena witnesses by way of a subpoena duces tecum

Civil litigants sometimes abuse their right to subpoena witnesses by way of a subpoena *duces tecum*. The issue relating to the abuse of a legitimate court process was discussed in ***Meyers v Marcus and another [2004] 2 All SA 438 (C)*** paragraph 24. The following was said:

"As the above extract from the judgment in *Beinash v Wixley (supra)* clearly shows, a subpoena may amount to an abuse of the process of the court notwithstanding the fact that the subpoenaed witness may be able to give relevant evidence or produce relevant documents. To put it differently, the issues of relevance and abuse of process, though possibly interrelated, are separate and distinct. Thus, a subpoena issued in respect of a witness unable to give relevant evidence or to produce relevant documents will ordinarily amount to an abuse of the process of the court.

However, the converse is not necessarily true: the evidence sought to be obtained may be relevant and yet amount to an abuse of the process. This will be so, *inter alia,* where the subpoena is issued for an improper purpose."

It will be argued that the issuing of the Mail & Guardian subpoena amounts to an abuse of process on both these levels.

Defamation

The Defamation Action

The Webber Wentzel letter dated 15 February 2011 fails to mention anything specific about the civil action that was brought by Bosasa Operations (Pty) Ltd except to say that it relates to defamation.

During May 2010 the Mail & Guardian newspaper published a newspaper report entitled '***The Story Behind 'Kitchen confidential'***' in it they divulge more detail about the said defamation action. It would appear as if the Mail & Guardian is being sued for damages in the amount of R500 000.00.

The Facts surrounding the Defamation Action

The facts surrounding the defamation action can be pieced together from information divulged in media reports like, '***The Story Behind 'Kitchen confidential'*** mentioned above.

In this particular newspaper report, the second defendant, reports on the 'investigation' of the first defendant.

The style of the newspaper report is in the form of an interview. The second defendant gives a 'verbatim' account of the 'story behind the story' as it unfolded during January 2009. I quote from the newspaper report:

"My investigation intensified in January 2009 after Bosasa was awarded yet another multimillion rand tender by the prisons department.

After I published an article (January 23) asking serious questions of the Department of Correctional Services (DCS) for awarding yet another tender to Bosasa, the department placed expensive advertisements in two Sunday newspapers, urging members of the public with evidence of wrongdoing to come forward. The *Mail & Guardian* answered then minister Ngconde Balfour's call on January 30 by publishing a litany of email correspondence between Bosasa's chief operating officer and the department's finance chief (Patrick Gillingham), showing a blatant ***corrupt relationship*** between the parties."

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The defamation action would appear to be founded on this particular allegation, namely, the existence of a ***corrupt relationship*** between the parties.

I quote from the same newspaper story:

"The *M&G* was also continuously threatened with legal action by Bosasa's lawyers. Bosasa never pursued criminal charges against the *M&G* and me, but in ***July*** they issued summons against us, claiming damages of R500 000 in the South Gauteng High Court for alleged defamation.

The *M&G* is defending the case and ***we are satisfied that we have more than enough proof to justify labelling the relationship between the parties as "corrupt".***"

The Defamation Action and the SIU Report

The defamation action would seem to flow from the fact that the *Mail & Guardian* decided to use the infamous "corrupt relationship" label to describe the bond or connection between the parties.

This may not be the only 'fact' forming the basis of the defamation action but this particular newspaper report at least makes it clear that the defamation action was launched at least three (3) months prior to Willie Hofmeyrs' report to parliament.

Definition and elements of defamation

The following is stated in LAWSA in respect of the delict of defamation:

"The delict of defamation is the unlawful publication, *animo iniuriandi,* of a defamatory statement concerning the plaintiff. A statement is defamatory if it has the effect of injuring a plaintiff's reputation. ... The elements of the delict can therefore be summarised as the unlawful or wrongful publication, *animo iniuriandi,* of a defamatory statement concerning the plaintiff. ***It is not an element of defamation that the statement should have been false because the defamatory nature of a statement is not dependent on its falsity.*** Once the *plaintiff establishes* that a defendant has published a defamatory statement concerning him or herself, it is presumed that the publication was both

unlawful and intentional. A defendant wishing to avoid liability for defamation must then raise a defence which rebuts either unlawfulness or intention." (Compare LAWSA (2nd edition) Volume 7 – paragraph 234)

The fact that the ***falsity*** (and therefore also the ***truth***) of a statement is irrelevant as far as the elements of the delict are concerned finds support in a number of decisions emanating from the Supreme Court of Appeal. (Compare ***Sutter v Brown 1926 AD 155***, and ***National Media Ltd v Bogoshi [1998] 4 ALL SA 347 (SCA)***)

The ***Bogoshi*** judgment (supra) makes this issue quite clear. Hefer JA said:

"In my judgment we must adopt this approach by stating that the publication in the press of ***false*** defamatory allegations of fact will not be regarded as unlawful if, upon consideration of all the circumstances of the case, it is found to have been ***reasonable*** to publish the particular facts in the particular way and at the particular time." (Compare p. 361)

The newspaper will in essence have to prove that the "defamatory statement" or allegations were based on information obtained from a reliable source and that they took the necessary steps to verify the information, prior to publication. (Compare ***Bogoshi*** (supra) p. 361)

I have not fully researched this issue but if the general viewpoint or statement of the current legal position is correct, then the contents of the SIU report cannot make ***any contribution*** towards the issues that would be central to the defamation claim. Put differently, the SIU report was not available at the time of the publication of the defamatory newspaper report(s) and could therefore not have been used to "***verify***" the information that the newspaper received from the source.

The SIU may rightfully want to know in what way the report may possibly contribute towards or assist the *Mail & Guardian* in their defence of the defamation action.

Possible abuse of civil procedure by the plaintiff

The defamation action instituted by Bosasa Operations may be nothing but a clever tactical ploy. Bosasa may have more than one purpose in mind. They may be trying to force the M & G Media Limited to present

them with a copy of the "Mail & Guardian report" and thus in a way attempt to "legitimize" evidence that they themselves have obtained illegally.

The defamation action may be a disguised attempt to force the SIU to "publish" the report. Bosasa may also (by way of the Mail & Guardian as "intermediary") want to obtain privileged source material. They may have realised that the SIU report and the attachments would be the first line of defence to be raised by the newspaper.

The possible motivation and subjective (self serving) aims of the parties to the civil suit will be discussed in more detail below.

Docket Privilege and Risks

Nexus between the SIU report and the defamation action

It is difficult to fathom how the SIU report could assist the Mail & Guardian in defending a defamation action. The SIU report could at most only serve to corroborate the views of the first defendant as published by the second defendant.

The traditional views on "corroboration" is that it is evidence that could (in some material respect) support evidence derived from another source. The SIU report would not appear to have been in existence at the time when the 'defamatory' newspaper report or series of newspaper reports were first published.

Possession and Control of the SIU report

The Mail & Guardian subpoenaed the head of the SIU for a report transmitted to another government institution. The report is at present in the possession and under the control of the SAPS. It is currently under protection of a specific type of privilege namely "docket privilege". The Mail & Guardian may arguably not even be entitled to a copy of the report from this particular source as they would hardly be cited as an accused in any future criminal prosecution.

The Risks Involved

The purpose of the subpoena may be benign in nature and only require the witness to "produce" certain documents. If the parties only require the "production" of the documents, the documents will be handed over to the registrar and the "parties" would then be allowed to inspect and copy the records prior to the registrar returning them to the witness. The process may however be far more invasive. If a witness is required to attend court and identify the documents or records, he must take the oath. The "other party" (in this instance one of the possible suspects in the criminal matter namely Bosasa) will then be entitled to cross-examine the witness.

In this regard, the following was stated in ***Waterhouse v Shields 1924 CPD 155***:

"Where a witness is called to produce and identify certain documents and is sworn the party other than the one producing the witness has full right of cross-examination and is entitled to cross-examine the witness generally upon the case."

The subpoena that was served on the SIU makes it abundantly clear that the "witness" will be required to testify about the documents. The Mail & Guardian "hereby tender the payment of witness fees in the amount of R150.00 together with all reasonable and necessary travelling expenses".

There can be no doubt that Bosasa will welcome any opportunity to cross-examine the head of the SIU about the report that was produced.

The practical implications of the testimony and cross-examination of the head of the SIU would be the following:

- Bosasa and its legal representatives would not only get the opportunity to "discover" the SIU report they will also be given full rights of "general" cross-examination prior to them being required to plea on any possible criminal charges.

- Should the State decide to call the head of the SIU or any other official from the unit to testify about the report the suspects would get a second opportunity to cross-examine on the contents of the report as well as the preparation thereof.
- The Mail & Guardian will use the opportunity to consult with the "witness" and extract as much out of him as is possible in order to "fuel" future newspaper reports and fill in the gaps that may exist in their own investigation.

These are but a few of the practical risks and possible prejudice that could be suffered by the prosecution. The premature "release" of the fruits of the SIU investigation could also hamper the ongoing criminal investigation.

Claiming Privilege

Privileged Documents

Rule 38(1)(b) of the Uniform Rules of court states the following:

"Any witness who has been required to produce any deed, document, writing or tape recording at the trial ....shall hand it over to the registrar as soon as possible, unless the witness claims that the deed, document, writing or tape recording is privileged..."

The rule only refers to "privilege" as a generic concept and fails to specify the particular type of privilege that could be claimed.

Litigation Privilege

I am of the view that the SIU report may be protected from disclosure by "work product" privilege or "litigation" privilege. The authors of "The South African Law of Evidence" (formerly Hoffmann and Zeffertt), devotes a full chapter to the topic "Privilege". They discuss two (2) lesser known areas of privilege "work product" and "litigation privilege".

The area of "litigation privilege" relates to materials obtained in anticipation of litigation. The authors refer to the Canadian case of *Ottowa-Carleton (Regional Municipality) v Consumers Gas Co. (1990) 74 OR (2d) 637* at 643 where the following was stated: "The adversarial system is based on the assumption that if each side presents its case in

the strongest light the court will be best able to determine the truth. Counsel must be free to make the fullest investigation and research without risking disclosure of his opinions, strategies and conclusions to opposing counsel...." (Compare p. 591). The authors elaborate on this point by referring to *R v Steyn 1954 (1) SA 324 (A)* and other cases that followed it. They proceed to say: "It has been recognised by our courts that 'when statements are procured from witnesses for the purpose that what they say shall be given in evidence in a lawsuit that is contemplated, those statements are protected against disclosure'. I would like to define the principle even further by stating that "and documents attached to the statement as annexure" would also be protected.

The wider privilege entitles a litigant to refuse to disclose any communication that forms part of a litigation brief. In the United States this area is called the "work product" doctrine. (Compare p. 592-3) The authors explain the difference between "legal professional privilege" and "litigation privilege". Litigation privilege will in short cover "the materials for the brief". Protecting the records collected by the SAPS during the investigation phase of the case from disclosure would avoid interests that are "contrary" to the enforcement of justice. This will not only avoid the tampering with witnesses but prevent the unscrupulous from obtaining any unfair advantage. (Compare p. 593 - 4)

Finding Support for the 'work product' argument

The SIU was requested to investigate certain issues and supply the government with a report. The executive summary to the SIU report states that evidence was gathered that points to the commission of certain offences and that the matter is therefore referred to the relevant Prosecuting Authority. The SIU referred to the provisions of section 4(1)(d) and 5(7) of the SIU Act. The Promotion of Access to Information Act states that an information officer of a public body may refuse a request for access should the "record" contain "an account of a ...deliberation that has occurred" for the purpose of taking a decision in the exercise of a power or performance of a duty "conferred or imposed by law." (Compare section 44(1)(a)(ii) of PAIA) It may be argued that the SIU report would fall into this category of information.

The Status of the Report

Official Information and the issue of confidentiality

The SIU report may in the first instance be described as 'official information'.

Official information means information not open or officially disclosed to the public.

The report was prepared by the SIU at the instruction of the President. The Report has not been released and the current status is that it has been transferred from one "official" to another in the course of his / their duty.

The SIU Report was produced in official confidence and the confidential status thereof is still in force. The fact that the report may be regarded as a confidential communication with a limited distribution list and restricted disclosure to five (5) high ranking government officials only is made clear by the report itself. The confidentiality clause found on page 10 ('X') of the report states the following:

" ***The contents of this report are strictly confidential and may not be disclosed, in whole or in part, to any person or authority other than the addressees listed above, without the prior written consent of the Head of the SIU. Failure to adhere to this confidentiality clause will result in prosecution. Any person breaching the required confidentiality shall be liable to indemnify the SIU and its members against any claim by any third party, arising from such breach.***"

The Mail & Guardian subpoena would clearly be aimed at breaching the still intact confidential status of the report. The Mail & Guardian has never made an application to the head of the SIU to receive an officially sanctioned copy of the report. The ***City Press*** newspaper has displayed utter contempt for the confidential status of the report by publishing extracts from it. The subpoena may be nothing but a clever ploy to avoid the possibility of criminal prosecution and limiting the "fall out" or risks associated with a "third party" suing them for damages and a breach of confidentiality. If M&G Media Limited placed them in harm's way by

publishing a still confidential report, they must not shy away from the consequences.

Traditionally all relevant evidence was admissible and South African court had very little concern with how it was obtained. The Mail & Guardian would still seem to operate under the impression that illegal is "OK". The traditional position has changed dramatically as a result of the South African Constitution. Now, evidence obtained through a breach of fundamental rights can only be admitted if it is justifiable in terms of the limitation clause of the Bill of Rights contained in the Constitution. Civil court also has the discretion to exclude unfairly obtained evidence. Civil courts are also obliged to promote the spirit, purport and objects of the Bill of Rights. [Compare LAWSA Volume 9 paragraph 765 for a discussion of illegally and unfairly obtained evidence]

Unauthorised Possession of the SIU Report

Background

The matter of ***Protea Technology Limited and another v Wainer and others [1997] 3 ALL SA 594 (W)*** provides us with the following interpretation of the phrase "confidential information":

"The Act does not define "confidential information" but the expression must surely mean such information as the communicator does not intend to disclose to any person other than the person to whom he is speaking and any other person to whom the disclosure of such information is necessary or impliedly intended to be restricted. I think that there is a distinction between "confidential" information and "private" information. The scope of privacy will be discussed below. Confidentiality can exist even in relation to the communication of information which is in the public domain or is the property of another and, therefore, not private." (Compare judgment p. 603)

(1) Possession and Distribution of the report

The Eversheds letter dated 16 November 2009 and addressed to the State Attorney Cape Town allege that a copy of the SIU report was furnished to Bosasa Operations (Pty) Ltd by "Mr. Gillingham's attorneys".

Neither Mr. Gillingham nor his attorneys could legally receive disclosure of the report unless they received the "prior written consent of the Head of the SIU."

I have not been placed in possession of any application / requests for such a "written consent" or a copy of a document purporting to have been issued by the head of the SIU allowing partial or full disclosure of the report to anyone except the persons mentioned on the distribution list. The person(s) who provided Mr. Gillingham or his attorneys with a copy of the report would clearly have committed a criminal offence.

It is my respectful submission that Bosasa Operations is in possession of an unauthorised copy of the SIU report. The mere fact that they (may have) received a copy of the report from an attorney does not in any way legalize their possession of the document.

Possession of the report by M & G Media Limited

I have been informed that extracts from the SIU report appeared in the *City Press* newspaper. M & G Media Limited has not given any indication as to the origin of their copy. They may have received their copy from Mr. Gillingham's attorney but I doubt this to be the case. If the report was "leaked" to them, their copy would be illegal and unauthorised.

Full particulars as to the source of their copy may in due course be revealed to us.

Unauthorised Disclosure of the Report

The SIU report clearly prohibits that unauthorised distribution and/ or possession thereof. The confidentiality clause inserted in the report clearly states that disclosure of the contents amounts to a criminal offence. The document would appear to have been classified as 'confidential' instead of 'restricted'.

The publication *Constitutional Law of South Africa (2nd edition) Volume 3* p. 42 – 171 provides the following information on the national security policy of South - Africa.

The Minimum Information Security Standards ('MISS') was approved by Cabinet in 1996. The following is stated about 'MISS':

"MISS has not been published in any official document nor is it generally publicised though it is applicable to all departments and organs of state."

MISS *inter alia* provides for document security. The author states that the document classification regime is at the heart of 'MISS'. Documents may be classified as (a) restricted, (b) confidential, (c) secret, or (d) top secret.

The author refers to the failure of government to publish 'MISS', and proceed to state the following:

"It is remarkable in itself that, in a constitutional democracy founded in part on openness, a document so broad in scope and setting out the detailed constraints upon the exercise of power to withhold information from the public domain, which has the form of regulations or legislation, and which potentially results in the imposition of severe criminal sanctions should not be published through the standard mechanisms for government publication and, at the very least, gazetted."

In terms of 'MISS' the responsibility for classification rests with the author or head of the state institution concerned, or his delegate. By 'imposing' a particular classification on a document the author or head of the state institution in question, in essence removes the document from the public domain. 'MISS' itself does not create offences, but a wide range of offences, with severe penalties, for unlawful disclosure of classified information are created under a number of different pieces of legislation, including the *Protection of Information Act 84 of 1982.*

The deliberate violation or repeated violations of the confidentiality clause contained in the SIU report would be of importance in deciding whether the illegally obtained evidence is to be of further use (or perhaps abuse) by the M & G Limited.

The mere fact that the report fails to mention the *Protection of Information Act ('PIA')* or gives any formal description of the applicable legislation does not detract from the serious nature of any violation of the applicable legislation.

(2) Disclosure of the Report

Both Bosasa and the Mail & Guardian may want to claim having legitimately received disclosure of the report. I am of the view that neither of the parties will succeed in arguing for 'legitimate disclosure'. It is quite conceivable that the reports were obtained from two or more separate sources. The factors that would militate against a defence of lawful disclosure will be discussed individually

(a) The Bosasa Report

I am of the opinion the Bosasa will not succeed in claiming legitimate possession or disclosure of the report.

The following factors will inhibit such a defence:

- The report makes it clear that only five (5) individuals / entities will be allowed to possess the report.
- The copy said to be in possession of Bosasa / Eversheds were allegedly supplied to Gillingham by DCS at his disciplinary hearing. If this allegation proves to be correct, the DCS officials responsible for the disclosure / "release" of the report may arguably face disciplinary steps and / or criminal prosecution as a result of his / her / their behaviour.
- It may be argued that the "confidentiality" in respect of the report remains intact because disciplinary proceedings are "confidential" in themselves. The fact that Gillingham has received a copy merely indicates the fairness with which DCS were conducting his disciplinary hearing. Possession of the report (under these circumstances) would not necessarily amount to a breach of the confidentiality clause. The disclosure of the report was for a specific (and limited) purpose and occurred under 'confidential' circumstances.
- If the report was indeed made available to Gillingham for purposes of the disciplinary hearing, it would be safe to assume that

Gillingham would have been informed of the still intact confidential status of the report.

- It would be safe to assume that Gillingham would have been informed that the report can and will be made available to him for the limited purpose of the disciplinary hearing. Possession or disclosure of the report must be distinguished from the distribution thereof. If he distributed the report or caused the distribution thereof to others, he may very well be in breach of confidentiality.
- It would be safe to assume that DCS did not waive the confidentiality of the report by providing Gillingham with a copy. The only person that would legally be entitled to "release" the report would be the individual or entity that restricted it. If the SIU removed the report from the public domain by classifying it as "confidential" then they would also be the only entity that can remove the restriction. DCS would not have the capacity to "de-classify' the report.
- DCS was at all times in control of the "disciplinary process". It can be argued that Gillingham would have received a copy of the report on condition that the contents are treated as 'confidential'. It would be" for his eyes only".
- When Gillingham was dismissed he ceased to be a DCS employee and his subsequent possession of the report became illegal.

(b) The Mail & Guardian Report

I am of the opinion that Adriaan Basson and M & G Media Limited would find themselves in a more precarious situation should they face the possibility of a criminal prosecution or further civil action flowing from their possession and subsequent publication of portions of the classified SIU report. I am of the view that they will not succeed with any defence claiming legitimate possession or valid disclosure of the report. The "right to know" and the sister argument "to let the public know" will appear anaemic against the tapestry of facts surrounding the publication of the Bosasa / DCS saga.

The following factors will inhibit any defence:

- If the newspaper reporter obtained his copy from Gillingham or the same attorneys as was mentioned in the Eversheds letter, the '*Bosasa*' argument would also apply to them.
- If someone else (besides Gillingham) provided the M&G with a copy it must be illegal because:

  They only have an incomplete version of the report – i.e. the narrative version without the annexures'.

This in itself proves (1) that the unknown person who supplied them with a copy did not have access to the complete report, or (2) only 'leaked' a portion of the report with the purpose of keeping the rest a secret.

If the source had access to the complete report (and legally so) they would not have hesitated to provide the M&G with a full report. Logic dictates that the person would have supplied the M&G a complete set of documents if it had been obtained legally.

The source in all likelihood made a clandestine copy of the "narrative portion" of the report. If the person had possession of the full report and ample time to copy the complete set of documents, then he or she would have done so.

The incomplete nature of the report as well as the secretive and clandestine manner of disclosure will indicate that the reporter as well as the newspaper that published the extracts must have been aware of the fact that they have obtained an unauthorised copy. NB

They will struggle to convince a court that they did not have knowledge of their dishonest possession and the possible dishonest motivation of the person that provided them with a copy of the report. NB

The illegal nature of the report finds illustration in the fact that it is was only disclosed in part and is therefore incomplete.

The Facts

Fact Driven Approach

Determining the Facts

Every matter involving the disclosure of restricted, confidential or secret information will involve a determination of the facts. Every case has its own unique "basket of facts" that would determine the right(s) that requires protection. The "fact driven" approach was also endorsed in cases such as *Unitas Hospital* and the *Masetla* matter. (Compare paragraph [18])

In the *Masetlha* matter (supra) Sachs J made mention of issues such as the "factual matrix" and the specific enquiry required when "constitutionally protected interests interact with each other" as well as the "intensity of their engagement".

He specifically referred to the *Shabalala* matter and said: "...the names of informers in criminal matters should not be revealed at any stage even if such non-disclosure were to some extent to limit the capacity of the accused to make his or her defence." (Compare judgment paragraphs [161] and [162])

The position of the Mail & Guardian

The executive summary of the SIU report states that the SIU's "*intervention*" was authorised by a presidential proclamation R44 of 2007 gazetted on 28 November 2007. The SIU only commenced with their investigation into the contracts awarded to Bosasa *and its affiliates*, shortly after the publication of the proclamation. The SIU was not the first entity that displayed an interest in the activities of Bosasa. The media would appear to have reported on this matter as early as 2006. The SIU report states the following:

"In 2006 various allegations surfaced in the media relating to the alleged irregular awarding of contracts by the Department of Correctional Services (DCS) to Bosasa Operations (Pty) Ltd (Bosasa) and its affiliated companies."

It can be assumed that the reference to "media" was meant to imply the Mail & Guardian Newspaper as well as its reporter Adriaan Basson. I conducted a five minute search on the internet and uncovered the following information:

"The *Mail & Guardian"* reported in late 2007 on the SIU's investigation into tender rigging in the department, which includes massive tenders awarded to the Bosasa group."

In the May 2010 report with the title ***The Story Behind "Kitchen confidential"*** the reporter boasts that:

"The *M&G* was also continuously threatened with legal action by Bosasa's lawyers. Bosasa never pursued criminal charges against the *M&G* and me, but in July they issued summons against us, claiming damages of R500 000 in the South Gauteng High Court for alleged defamation."

The reporter adds the following rider to the "*defamation*" twist:

"***The M&G is defending the case and we are satisfied that we have more than enough proof to justify labelling the relationship between the parties as 'corrupt'.***"

Legitimising Unconstitutionally Obtained Evidence

The Constitutional Perspective

Courts would normally look favourably upon a claim of a litigant if the request to gain access to documents or other information can "reasonable be required to assert or protect a threatened right or to advance a cause of action". (Compare *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services: In Re Masetlha v President of the Republic of South Africa and Another 2008 (5) SA 31 (CC)* paragraph [25])

The M&G will have to prove that they require the SIU report in order to protect a threatened right. I am sceptical that they will succeed with this argument

Related Legislation

Under PAIA information officer of a public body may refuse access to records of a public body if "the prosecution of an alleged offender is

being prepared or about to commence or pending and the (particular) record could reasonably be expected to (1) impede the prosecution, or (2) result in a miscarriage of justice in that prosecution". (Compare section 39(1)(b)(ii) of the Act)

Using a Legitimate Process to achieve an Illegitimate Purpose

Civil proceedings differ substantially from criminal proceedings. In civil proceedings, a litigant is obliged to disclose his case. He or she is also obliged to discover all documents, including those which might damage his own case, or which might directly or indirectly enable his adversary to advance his case. Obtaining tainted or illegitimate documents or other records may conceivably advance the case of a party to a civil suit and may therefore become a desirable objective. The traditional or "Pre-Constitutional" approach taken by our courts was that relevant evidence was admissible and that a court was not concerned with how it was obtained. With the advent of the Constitutional era things changed. Civil courts no longer follow a mechanical approach to illegally obtained evidence. The ***Fedics*** and ***Protea Technology*** matters to be discussed below will illustrate the new and more balanced approach taken by civil courts.

Fedics Group (Pty) Ltd and another v Matus and others; Fedics Group (Pty) Ltd and another v Murphy and others [1997] 4 ALL SA 14 (C) considered the civil approach to evidence obtained in violation of a civil litigant's constitutional rights. The facts of the matter are not important to this discussion except to say that the tainted documents forming the subject matter of the dispute was obtained by way of an illegal search.

The court first gave consideration to the "traditional approach" and thereafter made the following remarks in paragraph [92] of the judgment:

"Without trying to formulate principles of general validity or rules of general application, the implications of these differences between criminal and civil proceedings in the present context are, in my view, twofold. On one hand, the litigant who seeks to introduce evidence which was obtained through a deliberate violation of constitutional rights

will have to explain why he could not achieve justice by following the ordinary procedure – including the Anton Pillar procedure – available to him. On the other hand, the Court will, in the exercise of its discretion, have regard to the type of evidence which was in fact obtained. Is it the type of evidence which could never be lawfully obtained and / or introduced without the opponent's co-operation, such as privileged communications, or the recording of a tapped telephone conversation – or is it the type of evidence involved in this case, namely documents and information which the litigant would or should eventually have obtained through lawful means? In the latter case, the Court should, I think, be more inclined to exercise its discretion in favour of the litigant who seeks to introduce the evidence than it would be in the case of the former."

In addition to the desired approach to be taken by civil courts in respect of unconstitutionally obtained evidence the court made the valid remark that it was (a) not asked to *authorise* an infringement, or (b) to *condone* a constitutional infringement, but that it was asked to (c) *ignore* the constitutional infringement for the purposes of *this* litigation. [Compare paragraph [86] of the judgment]

The admissibility of evidence obtained in breach of a right was also taken under scrutiny in the matter of ***Protea Technology Limited and another v Wainer and others [1997] 3 ALL SA 594 (W)***. The learned judge made the comment that the common law was for many years inflexible in its refusal to exclude evidence illegally obtained. The court referred to the erstwhile reliance on the philosophy that the end justifies the means. The almost fatalistic approach would seem to have been that unlawful conduct would expose the perpetrator to a possible criminal prosecution and that the criminal sanction could be made more severe by an action for damages. If the threat of prosecution and the possibility of paying damages were insufficient discouragement to those that had the intention to break the law, then the attitude of the courts would be "so be it". Views like these are today outdated.

The learned judge referred to the modern approach as required by the Constitutional era:

"If the common law is at odds with the Constitution the courts must, if that can realistically be done, develop the common law in such a manner as to promote the spirit, purport and objects of the Bill of Rights. Such development requires the test of admissibility to be formulated differently: any evidence which depends upon the breach of a fundamental constitutional right can only be admitted if the admission of the evidence is justifiable by the standards laid down in section 36(1). Thus if a person proves, whether in civil or criminal proceedings that a right identified in Chapter 2 of the Constitution has been infringed, the onus lies upon the party who seeks the benefit in any way from that infringement to satisfy the court that the common law (or statute as the case may be) provides a limitation of the nature referred to in section 36(1). *Prima facie,* the complainant has the right to have it excluded. In order to decide whether it should be regarded as partially or wholly overridden, each case will have to be considered on its own facts and discretion exercised with judicial regard to the substance of section 36(1). Thus, for example, that the breach of rights occurred in conjunction with a breach of the criminal law is not itself decisive .... Section 36(1) of the Constitution seeks to ensure that the wider vision is maintained. Uncovering the truth and exposing the ungodly are not thereby relegated to unimportance. They are, as they ever have been, weights in the scales of justice." (Compare p. 610 – 611 of the judgment)

In the matter of ***Protea Technology*** (supra) the court pointed out that both parties to the litigation were accused by the other of dishonesty and improper motives and that the process of balancing interests can seldom be mathematically quantified. The court decided to admit the unconstitutionally obtained evidence as it would be quite wrong to allow one party to damage and malign the other while depriving the other of relevant material at its disposal to disprove such allegations. (Compare judgment p. 612)

The matter at hand can on a factual level be distinguished from both the ***Fedics*** and ***Protea Technology*** matters referred to above. The particular and distinguishing features of the ***Bosasa Operations (Pty) Ltd / Basson and M&G Media Limited South Gauteng Court Case***

No: 09/29700 (hereinafter only referred to as the Bosasa / Mail & Guardian matter), can be summarised as follows:

(1) The Mail & Guardian served a subpoena *duces tecum* on the head of the SIU in an attempt to obtain a copy of a confidential report prepared by the Special Investigative Unit in pursuance to a presidential proclamation.

(2) The report clearly states that the contents thereof are: (i) strictly confidential, (ii) that it may not be disclosed, in whole or in part to any person or authority other than a very limited number of individuals, and (iii) that failure to adhere to the confidentiality clause of the report will result in prosecution.

The Legal Position

Documents supplied in confidence

Confidential information must be distinguished from documents that were supplied "in confidence". The former classification relates to a certain status awarded to certain records and is discussed in the *Masetlha* case (supra). (Compare paragraphs [29], [30] and [32] of the Constitutional Court judgement)

Enforcing the "Right to know"

In the *Masetlha* case (supra) the Constitutional Court described the "rights" of a newspaper as "the right to know and to let the public know and nothing more". (Compare paragraph [28])

The "right to know" also requires a balanced approach and the possible prejudice to any future criminal prosecution must also be determined.

Protecting Confidential or Secret Information

The desired approach to be taken in respect of information that fall within the category of "secret" or protected or restricted was considered in the Constitutional Court case *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services: In Re Masetlha v President of the Republic of South Africa and Another 2008 (5) SA 31 (CC).*

Protecting the Integrity of the judicial process

Courts may be called upon to protect the integrity of the judicial process. The following was stated in the *Brummer* matter (supra): "There is no doubt in my mind that the integrity of the judicial process is an essential component of the rule of law and the integrity of the judicial process may be severely compromised if a record, which a party to litigation intends to use to prove his claim or disprove the other party's claim, was made available to a third party before the trial is finalised. A disclosure might create a huge risk of prejudice to the administration of justice." (Compare paragraph [46] of the judgment]

The early release of information forming part of a police investigation (albeit for a valid reason) may be devastating to the final outcome of the criminal case. (Compare *Masetlha* (supra) paragraph [33] for the "early release" response to a claim for disclosure). The principles laid down in the "Shabalala" matter may result in information being restricted and the "non-disclosure" may limit the rights of accused and/or others. (Compare *Masetlha* (supra) paragraph [162] for competitive interests that may be brought to bear on matters due to "context-sensitive jurisprudence that is driven by justice rather than rules".)

Disclosing the fruits of the criminal investigation

The normal disclosure process of the contents of a police docket excludes third parties like the news media. The *Shabalala* judgment is not the only source of information or legal guideline that we have in determining the use (or abuse) of information contained in a police docket. Subsequent legislation like section 39 of the PAIA also refers to this topic. The mandatory protection of police dockets is of high importance. Section 39 refers to some of the limitations aimed at the protection of the administration of justice.

It must be understood that the body of law relating to the "protection of the administration of justice" is a broad category that evolves from day to day. Government is seized with the duty to protect society in general this includes the "right" to ensure effective policing and to facilitate the investigation and prosecution of crime. This may also include the responsibility to ease the prosecution's task of securing convictions in

certain high priority crime areas. (Compare *S v Mbatha; S v Prinsloo 1996 (2) SA 464 (CC)* paragraph [16])

Conclusion

Summary of the Facts

(1) The manner in which the Mail & Guardian obtained a copy of the SIU report. [The Mail & Guardian never approached the Office of President / SIU to validly obtain a copy of the SIU report]

(2) The *Mail & Guardian* wants the "duces tecum" copy of the SIU report to replace their illegally obtained document. This approach is a clear indication and demonstration of their intended abuse of the court process.

(3) The subpoena *duces tecum* amounts to nothing more than a fishing expedition. Courts should not encourage this type of behaviour. Courts must strive to promote fairness and avoid abuse. (Compare *Unitas Hospital v Van Wyk and Another 2006 (4) SA 436 (SCA)*

(4) The mere fact that the *Mail & Guardian* decided use a subpoena *duces tecum* to obtain legitimate disclosure and possession of the SIU report, do not detract from the fact that an investigation is under way, and that a prosecution may flow from such an investigation, would thus in itself be a factor that requires consideration.

(5) The court will have to give recognition to the 'conflicting public interest' principle. The well known decision of *Key v Attorney General* pointed out that tension exists in any democratic criminal justice system and that this principle will inevitably require that conflicting public interests namely the "right to access of information" and the equally important public interest in bringing criminals to book, be weighed up. (Compare *Key v Attorney-General, Cape Provincial Division and Another 1996 (4) SA 187 (CC)* at 195G-196B)

(6) The Constitutional Court has a duty to preventing conduct that hinders or threatens to hinder the administration of justice. (Compare *S v Singo 2002 (4) SA 858 (CC)* at paragraphs [41] and [42]- for the

expression of the desire to provide "appropriate relief" to those in need of assistance)

The health and wellbeing of the administration of justice is of paramount importance to society. Court's may respond to an overzealous request for information by allowing it to be trimmed and proceed to supply the applicant with a reduced record. (Compare *CCII Systems* (supra) paragraph [11] for an example of a voluntary decision taken by the applicant to water down the original request.)

(7) The "integrity of the judicial process" is of high importance. If documents are made available before any criminal trial is finalised, the disclosure itself may create a huge risk of prejudice to the administration of justice. Courts will interpret the Act with fairness to all. (Compare *Brummer* (supra) paragraphs [46] and [47])

(8) I am of the view that there are various levels of argument that could be advanced in support of the view that the subpoena amounts to an abuse of the process of court.

Adv. M. C. De Kock

(SCCU) Pretoria

28 October 2011

"Q9"

Annexure "Q9"

ANNEXURE A

BOSASA INVESTIGATION

Subpoena issued in terms of Section 205 of Act 51 of 1977

Wording of Section 205

205 Judge, regional court magistrate or magistrate may take evidence as to an alleged offence

(1) A judge of a High Court, a regional court magistrate or a magistrate may, subject to the provisions of subsection (4) and section 15 of the Regulation of Interception of Communications and Provision of Communication – related Information Act, 2002, upon the request of a Director of Public Prosecutions or a public prosecutor authorised thereto in writing by the Director of Public Prosecutions, require the attendance before him or her of any other judge, regional court magistrate or magistrate, for examination by the Director of Public Prosecutions or the public prosecutor authorized thereto in writing by the Director of Public Prosecutions, of any person who is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed: Provided that if such person furnishes that information to the satisfaction of the Director of Public Prosecutions or public prosecutor concerned prior to the date on which he or she is required to appear before a judge, regional court magistrate or magistrate, he or she shall be under no further obligation to appear before a judge, regional court magistrate or magistrate.

(2) The provisions of sections 162 to 165 inclusive, 179 to 181 inclusive, 187 to 189 inclusive, 191 and 204 shall *mutatis mutandis* apply with reference to the proceedings under subsection (1).

(3) The examination of any person under subsection (1) may be conducted in private at any place designated by the judge, regional court magistrate or magistrate.

(4) A person required in terms of subsection (1) to appear before a judge, a regional court magistrate or a magistrate for examination, and who refuses or fails to give the information contemplated in subsection (1), shall not be sentenced to imprisonment as contemplated in section 189 unless the judge, regional court magistrate or magistrate concerned, as the case may be, is also of the opinion that the furnishing of such information is necessary for the administration of justice or the maintenance of law and order.

The use of lawful powers vested in our courts

The author of *Commentary on the Criminal Procedure Act* starts his discussion of section 205 with the following sentence: "This section is

generally used to compel a person who refuses to make a statement to the police to furnish the required information under oath."

The courts of our country (and others around the world) are vested with the power to compel citizens to furnish information if the relevant court is of the opinion "that the furnishing of such information is necessary for the administration of justice or the maintenance of law and order". The Supreme Court of Appeal has on many occasions in the past expressed the opinion that citizens are required to assist in the fight against crime. In *Veneta Mineraria Spa v Carolina Collieries (Pty) Ltd 1987 (4) SA 883 (A)* at *886*, Viljoen JA stated the following in respect of the term "jurisdiction":

"A lawful power to decide *something* in a case or to adjudicate upon a case, and to give effective judgment, that is, *to have the power to compel* the person condemned to make satisfaction."

The administrative and criminal jurisdiction of courts overlap[1] and every process issued out of any court shall be in force throughout the Republic.[2]

The following explanation of the lawful and legitimate powers of our courts are found in *Ewing McDonald & Co. Ltd. v M & M Products 1991 (1) SA 252 (AD) at p. 327*:

"Now the jurisdiction of the courts of every country is territorial in its extent and character, for it is derived from the sovereign power, which is necessarily limited by the boundaries of the State over which it holds sway. Within those boundaries the sovereign power is supreme, and all persons, whether citizens, inhabitants, or casual visitors, who are present within those boundaries and so long as they are present, and all property (whether movable or immovable) for the time being within those boundaries, are subject to it and to the laws which it has enacted or recognised."[3]

Section 205 of the Criminal Procedure Act allows a public prosecutor to approach a judge, regional court magistrate or "a magistrate" to require the attendance before him of "any person" who is likely to give material or relevant information as to any alleged offence.

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[1] Section 2 (1) and 2 (2) of the Magistrates Courts Act, No. 32 of 1944
[2] Section 4 (3) of the Magistrates Courts Act, No. 32 of 1944
[3] [1991] 1 All SA 319 (A) at 326 - 327

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It has been decided by our courts that the words "any person" includes an artificial person. (Compare *De Villiers v Nedfin Bank, a division of Nedcor Bank Ltd 1997 (2) SA 76 (ECD)* at *80E*)

The Investigative Authority of the State

The investigative authority of the State rests on 'the longstanding principle that "the public has a right to every man's evidence".[4] The *subpoena* issued in accordance with the procedure laid down in section 205 is nothing but the exercise of that authority. This does not amount to the abuse of power, it amounts to the legitimate exercise of a "sovereign power" that requires citizens and foreigners alike, to assist in the administration of justice.[5] There is nothing in law that can prevent the *issuing magistrate* from enforcing the attendance of any examinee.[6]

Contempt of Court and the Refusal to Testify

A prosecutor would normally revert to the section 205 procedure if he or she anticipates that a witness will be unwilling to do so, but "is likely to give material or relevant information as to any alleged offence.

The following is stated in the general or introductory discussion on section 205 found in *Commentary on the Criminal Procedure Act* by Du Toit *et al.* at p. 23-51

"Where a person's attendance is procured in terms of s 205(1) he may be compelled, inter alia, to take the oath and to answer any questions put to him unless he has a 'just excuse' for his refusal, as s 205(2) expressly applies the provisions of s 189 to such proceedings."

Section 189 of the Criminal Procedure Act refers to recalcitrant witnesses and the fact that they could be sentenced to imprisonment should they fail to co-operate without having a 'just excuse'.

At first glance it would seem as if the punishment prescribed in section 189 follows on the refusal to testify. This construction may not be altogether accurate. The exact nature of "contempt of court" proceedings

[4] Commentary (supra) at p. 23 – 52 with specific reference to the decision of *Branzburg v Hayes et al 408 US 665 (1972) at 688*
[5] S v Cornelissen (supra) at p. 53 d -54 d
[6] S v Cornelissen (supra) at p. 51 f - i

was explained by Nestadt J. in *Protea Holdings v Wriwt and Another 1978 (3) SA 856 (W)* at 868 A – H:

"It becomes necessary, therefore, to deal briefly with the nature of contempt proceedings of this kind. The object of this type of proceeding, which is concerned with the wilful refusal or failure to comply with an order of Court, is the imposition of a penalty in order to vindicate the Court's honour consequent upon the disregard of its order and to compel the performance thereof (Herbstein and Van Winsen *The Civil Practice of the Superior Courts in South Africa* 2nd ed at 583). Not all orders of Court will on their breach give rise to this sort of remedy. A distinction is drawn between orders *ad pecuniam solvendam* and orders *ad factum praestandum.* It is unnecessary to deal with this further, because the order of Court with which I am dealing, namely an interdict, being "a most solemn and authoritative form of order", is a classic example of that type of order which is enforced by contempt of Court proceedings. Though the proceedings are or may be civil in nature, the contempt constitutes a criminal offence. I refer in this regard to what Steyn CJ said in *S v Beyers 1968 (3) SA 70 (A)* at *80*:

"Dat daar n gevestigde prosedure bestaan waarvolgens n gedingvoerder wat n bevel teen sy teenparty verkry het, in sy eie belang bestraffing van sy teenparty weens minagting van die Hof kan aanvra om gehoorsaamheid aan die bevel af te dwing, val nie te betwyfel nie. Dit is n proses van tweeslagtige aard wat volgens sivielregtelike prosedure afgehandel word. In navolging van die Engelse reg word die minagting dan beskryf as siviele minagting. Dit is egter ewe duidelik dat hierdie vorm van minagting nie deurgaans n strafregtelike inhoud ontse is nie. Dit word telkens beskryf en behandel as n misdaad met geen aanduiding dat dit anders as die gemeenregtelike minagting van die hof beskou word nie.... Die opvatting dat dit inderdaad n misdaad is, blyk ten duidelikste uit die feit dat n gewone straf opgele word as die aansoek slaag. Strafoplegging sonder dat n misdaad gepleeg is, sou in ons reg iets onbestaanbaar wees. Al is afdwinging van n burgerlike verpligting die hoofdoel van die straf, dan word dit nogtans nie opgele bloot omdat die verpligting nie nagekom is nie, maar uit hoofde van misdadige minagting van die Hof wat daarmee gepaard gegaan het."

In so far as these principles can be made applicable to section 205 and its compatriot section, section 189, it is clear that we must distinguish between two (2) separate situations that could possibly arise.

If the prosecutor succeeds in obtaining a section 205 *subpoena,* in order to obtain certain information and the witness is willing to provide the information but fails to respond to the *subpoena,* he will be brought to Court as a result of his failure to obey the *subpoena*. In such a situation the "examinee" will be found to be in "culpable remiss" and forced to

furnish the necessary information. The court will be requested to enquire why the evidence was not produced timeously.

If the witness is truly recalcitrant, he (or she) will most probably turn up at Court at the designated time and place but inform the Court that he (or she) is unwilling to provide the information as he (or she) "has a just excuse", for the failure to produce the required information. Any witness who refuses to testify must exhibit the "refusing" state of mind".[7] The mere fact that there is a "demand to testify" cannot *per se* be equated to a refusal.

The "recalcitrant witness" will be punished on the principle of contempt of Court. Nestadt J. expressed no compassion for those that disobey Court orders. He said the following in *Protea Holdings v Wriwt and Another, (supra)* at p. *871H*:

"It is vital to the administration of justice that those affected by Court orders obey them. Our Courts cannot tolerate the disregard of its orders. Accordingly, it seems to me that I would be failing in my duty if I did not impose a punishment which takes into account the serious nature of this type of offence."

The *subpoena* that gets issued in terms of section 205 is accompanied by a return of service. Even though section 205 makes no specific mention of section 54 of the Criminal Procedure Act, there cannot be any doubt that a Court would be empowered to *issue a warrant of arrest* in accordance with the procedure described in section 55(2) of the said Act. The failure of the witness or "examinee" to appear in court on the allocated date will *normally* result in the issuing of a warrant of arrest. The seriousness of the occasion will inform the remainder of the process. It is not compulsory that the warrant of arrest *must* be executed before the examinee can be heard.[8]

The Eversheds Representation dated 31 October 2012

On 31 October 2012 Advocate L. Mrwebi, the Head of the Specialised Commercial Crimes Unit, received a document in the style of a letter from Brian Biebuyck on behalf of his clients Mr. Mark Taverner and his wife Mrs Sharon Taverner. The letter inter alia states the following:

[7] See R v Karrim [1951] 2 All SA 248 (N) on the interpretation of the word 'refuse'
[8] Terry v Botes and another [2002] 3 All SA 798 (C) at 802

"We address you at the instance of our clients Mr Mark Taverner and his wife Mrs Sharon Taverner who regrettably continue to be hounded by the Specialised Commercial Crimes Unit as appears from the attached section 205 *subpoenas* now served on them at the instance of Colonel Danie Kriel and Advocate Marieke de Kock."

The writer continuous in paragraph 2:

"We have previously advised Colonel Kriel that our clients are not prepared to meet with him or furnish him with a statement..... To now issue Section 205 *subpoenas* in the light what has gone before clearly illustrates that the Special Commercial Crimes Unit persists in its efforts to harass our clients employing the strong arm tactics associated with the powers under Section 205.

In our view the serving of these *subpoenas* constitutes harassment, intimidation and the badgering of our clients in a manner reminiscent of apartheid styled intimidation of purported witnesses, to coerce them into making some form of statement in pursuit of a spurious and unsustainable criminal prosecution against others."

The writer thereafter submits that the issuing of the *subpoenas* constitute an abuse of the process and stand to be set aside on one or more or all bases set out below, namely (and I summarise):

(1) The *subpoenas* have not been issued for a legitimate purpose.

(2) The *subpoenas* have not been issued in relation to a *bona fide* investigation.

(3) The *subpoenas* have (rather) been issued to intimidate our clients.

(4) The *subpoenas* have been issued (and so our clients believe) to orchestrate *yet another* "trial by media" in the printed and electronic press.

(5) The terms of the *subpoena* (and the information requested) are over broad and wide ranging in their scope.

(6) The *subpoenas* seek documentation and information in relation to financial records of a close corporation as far back as 2005, in

circumstances where the close corporation has a legal obligation to only maintain such records for a period of 5 years i.e. cut off 2007.

(7) Whilst on the face of it the *subpoena* purports to have been issued by Magistrate Naidoo pursuant to representations made by the Director of Public Prosecutions (given the over broad and vague assertions in relation to the offense purportedly under investigation), it is entirely unlikely that any or sufficient information was placed before Magistrate Naidoo to enable her (a) to properly exercise a discretion and (b) to (form) an independent judgment before reaching the conclusion that the issue of the *subpoenas* in question were:

- Appropriate (and)
- Lawful (and)
- That our clients were potentially (?) witnesses able to furnish information relative to the purported offences.

(8) Given that the alleged offences purportedly under investigation are devoid of any detail which would enable the magistrate to have properly applied her mind, no rational decision in regard the issue or otherwise of the *subpoenas* was capable of being taken.

The writer proceeds to describe some personal circumstances in respect of his clients and then proceeds:

In light of the aforegoing, we are instructed to call on you, as we hereby do, to confirm to us in writing by no later than close of business on Monday, 5 November 2012 that the attached Section 205 *subpoenas* have been withdrawn and will not be acted upon, failing which, our instructions are –

(a) To apply to court to have such *subpoenas* set aside on the basis set out herein;

Alternatively

(b) That our clients be excused from attendance at court on 20 November 2012 given their personal circumstances referred to above.

The writer concludes his "address" by stating that he trusts that it will not be necessary for our clients to institute the aforesaid proceedings and "that you will undertake the necessary steps to withdraw the *subpoenas* in question.

Comments on the Eversheds Letter

Given the instruction that "the prosecutors report by 10 am on 2 November 2012 (so that I can respond to the lawyers) and the limited time to provide a written response to the "representation", the following issues can be highlighted:

(a) The submission that the Mr and Mrs Taverner "continue to be hounded" by the SCCU, is unsupported by any substantiating facts. The "SCCU" has not had any dealings with Mr or Mrs Taverner since the start of the BOSASA investigation. None of the prosecutors have ever had any contact with any of the two individuals. Colonel Kriel informs me that he first met Mr. Taverner on 10 July 2012. Colonel Kriel has never met Mrs. Taverner in person or even spoke to her on the phone.

(b) The writer states that the section 205 *subpoenas* were served on Mr and Mrs Taverner "at the instance of Colonel Danie Kriel and Advocate Marieke de Kock". The section 205 *subpoena* is normally issued by a magistrate on the strength of an application by the prosecutor and the process is of a formal and procedural nature. This is not a personal vendetta or "strong arm tactics" aimed at harassing or intimidating some individual or certain members of society. This is the use of a legitimate procedure aimed at securing the attendance of examinees in accordance with a legitimate Chapter 23 process.

(c) The writer indicates that his clients are not prepared to meet the investigator (or) to furnish him with a statement. This is a clear indication that the witnesses are unwilling to co-operate with the investigators. The witnesses ("examinees") exhibit the required "refusing state of mind" and can with confidence be described as recalcitrant.

(d) The procedure found in section 205 has withstood Constitutional scrutiny (Compare the judgment of *Nel v Le Roux NO and others* (infra)) and can therefore not be defined as "harassment" or "intimidation" or "badgering".

(e) The writer submits that the process is an "apartheid styled intimidation" to coerce them to make "some form of statement" in the pursuit of a spurious and unsustainable criminal prosecution. The case was registered with the SAPS during February 2010, since then substantial evidence has been gathered supporting the initial suspicions. The evidence obtained point to criminal behaviour and the investigation cannot be defined as either "spurious" or "unsustainable". The writer gives no indication of any reasons why any future prosecution (against others) should be doomed to failure or why it is considered "spurious" [false, bogus, fake or unauthentic] or "unsustainable" [indefensible, weak, unsound, invalid or flawed].

(f) The writer concludes paragraph 3 of the letter by stating that the required statement would be obtained in pursuit of a "criminal prosecution against others". He declares that he represents Mr and Mrs Taverner and the close corporation referred to as Purple Primula 47 CC. It is well documented that Mr. Biebuyck regularly communicates on behalf of BOSASA. His track record of appearances on behalf of BOSASA and employees of the company cast some doubt on his ability to give Mr and Mrs Taverner the objective and uncoloured assistance that they require. The representation under discussion creates the impression that he is not able to draw a distinction between the various parties that he has assisted over time.

(g) The writer indicates that the issuing of the *subpoenas* constitute an abuse of process as the *subpoenas* have not been issued for a legitimate purpose. This amounts to a false generalisation. The submission made by the writer clearly rests on some unknown assumption. This is nothing but a wrong impression. The *enquiry magistrate* is the proper person to determine and pronounce on these issues.

(h) The writer contends that the *subpoenas* have not been issued in relation to a *bona fide* investigation. This allegation is clearly without foundation and another example of an error in reasoning.

(i) The writer makes the submission that the *subpoenas* have been issued to intimidate his clients. One may reasonably ask how a *subpoena* issued out from a prescribed and defined statutory process

can result in the intimidation of a witness. The writer clearly tries to sway the reader with the use of emotional language.

(j) The writer claims that the *subpoenas* have been issued to orchestrate (yet another) trial by media against "our clients". I am not aware of any recent media coverage that Mr. or Mrs Taverner or Purple Primula 47 CC has ever been exposed to. A quick internet search only revealed a report concerning Mr. Taverner and the Hotel & Restaurant industry. The search in respect of "Sharon Hope Taverner" failed to turn up any results. A search in respect of Purple Primula 47 CC was just as uneventful. I presume Mr. Biebuyck will be able to substantiate what at first glance appears to be a misleading statement. Section 205(3) clearly states that the "enquiry" be conducted in private at any place designated for the purpose. The writer fails to indicate why or how the process will involve the media.

(k) The writer advances no reasons for his classification of the *subpoena* as "over broad". This phrase has a specific application and would at least have to be substantiated in some way. The *enquiry magistrate* is legally bound to determine issues raised by the examinees should he regard it as relevant. The same applies to the issues surrounding the "scope" of the enquiry.

(l) The writer states that the *subpoena* seeks documentation. (May we suggest that the writer consider the wording of "Annexure A to Schedule 1" of the *subpoenas*)

(m) The *subpoena* was issued by a magistrate. The writer fails to indicate why he makes the suggestion that the *subpoena* (purports) to have been issued by a magistrate.

(n) The further submissions relating to "the offences (purportedly) under investigation", the "appropriateness" and "lawfulness" of the *subpoenas* etc. are issues that can be raised at the *enquiry* should Mr. Biebuyck be in possession of instructions to ventilate these issues in the appropriate forum.

(o) The writer requests Adv. Mrwebi to "withdraw" the *subpoenas*. This submission would assume the Special Director to have superior powers to the *enquiry magistrate*. (Please compare the relevant case law in

respect of the respective functions and duties of the *issuing magistrate* and the *enquiry magistrate* listed as part of this response.)

(p) The writer (in the alternative) requests that his clients *"be excused from attendance at court* on 20 November 2012". The failure to attend the examination proceedings is a grave step with certain procedural consequences. The Special Director cannot excuse the witnesses from the court appearance. The legal representatives of Mr and Mrs Taverner can approach the relevant magistrate at any time prior to the 20th of November 2012 and it is suggested that they contact the prosecutors (and the court) to make the necessary arrangements.

It is respectfully submitted that should the writer have any legitimate grounds for making any of the abovementioned submissions and the confidence to raise them in a court of law, then he should do so. These concerns and issues should be raised in court. The person appointed and judicially entrusted to deal with the appropriateness of any "excuse" that may be raised is the magistrate.

The Section 205 Process

The procedure in obtaining a section 205 *subpoena* is of a *sui generis* nature and just like the procedure described in section 55(2) of the Criminal Procedure act it can be sub - divided into *two phases*. The *first* phase of the process involves the so-called *issuing magistrate*, whilst the *second* phase involves the *enquiry magistrate.*[9]

It is important to note that section 205 can be described as a "procedural tool" with a general application. Section 205 enables the Director of Public Prosecutions (as represented by the designated prosecutor) to obtain information "as to any alleged offence" whether or not it is known by whom the offence was committed.[10]

Section 205 has in the past been used to obtain information from medical doctors[11], journalists[12] and bank employees. In general it can be used to obtain information from any possible witness.

[9] Commentary on the Criminal Procedure Act by Du Toit et al. p. 23 – 52B
[10] Section 205(1) of the Criminal Procedure Act, No. 51 of 1977
[11] Davis v Additional Magistrate, Johannesburg, and Others [1989] 4 All SA 195 (W)

(2) Section 205 and the Responsibilities of the Issuing Magistrate

The *first phase* of the enquiry requires of the *issuing magistrate* to exercise a judgment as to whether the circumstances placed before him warrant the issue of a *subpoena* upon the person named by the prosecutor.[13] The judgment must be *independent* and needs to consist of two (2) separate issues.

The magistrate must in the first instance determine if the application by the prosecutor reveals "the existence in law, of the alleged offence".[14] If the issuing magistrate has by way of the exercise of an independent judgment, confirmed for him or herself that the investigating officer in the criminal matter has been seized with the investigation of an offence that requires the production of "material or relevant information", the issuing magistrate can move to the second question.

The second question revolves around the "likelihood of the prospective witness being able to give material evidence regarding the offence."[15]

The offence (or alleged offences) specified in the application received from the prosecutor is but one of a host of factors that the *issuing magistrate* can consider in his determination of the validity of the application. Put differently, the offence (or alleged offences) mentioned by the prosecutor is not the only factor that could be used to determine the adequacy of the request.[16]

(3) Section 205 and the Constitution

The author of *Commentary on the Criminal Procedure Act*, voices his opposition to the use of section 205, by referring to the "procedure" involved. He states the following:

"The Constitution expressly recognizes the rights to *inter alia*, privacy (s 14) and administrative justice (s 33) as well as the rights of accused persons to silence and a fair trial (s 35). A procedure that treats a witness as an accused person and that requires him to divulge information after being compelled to do so by a judicial officer

[12] S v Cornelissen; Cornelissen v Zeelie NO en Andere 1994(2) SASV 41 (W), Matisonn v Additional Magistrate, CT and Another 1980 (2) SA 619 (CPD), R v Parker 1966 (2) SA 56 (RA)
[13] Commentary (supra) at p. 23 – 52B
[14] Commentary (supra) at p. 23 – 52C
[15] Commentary (supra) at p. 23 – 52C
[16] Davis v Additional Magistrate, Johannesburg, and others 1989 (4) SA 299 (W) at 305

who has acquired the power so to compel him by reason of a decision of another judicial officer, made without the exercise of a proper judgment and without according him the right to be heard, would seem, *prima facie*, to infringe all these rights. The extent to which the infringement of these rights will, in each case be considered to be reasonable, justifiable and, where appropriate, also necessary remains to be determined. It is submitted, however, that decisions made by the *issuing magistrate* without at least a proper judgment of the merits are unacceptable."[17]

Du Toit, the author of *Commentary on the Criminal Procedure Act* refers to Stegmann J, who in turn refers to MacDonald JA in the decision *R v Parker 1966 (2) SA 56 (RA)*, when he makes the following submission:

"Procedures such as those laid down by s 205 constituted in MacDonald JA's opinion, an inroad into the right of privacy possessed by every member of the public and imposed a duty on (*issuing*) magistrates to ensure that members of the public are not unduly harassed by inquisitions. Magistrates are bound to take these rights into account when exercising their discretion, as well as the fact that persons whose rights to privacy are infringed are not given a right to be heard at this stage of the procedure."[18]

The passage from the judgement in *R v Parker (supra)* gives a slightly different impression, I quote directly from the said judgment:

"The occasions on which a person is compelled to testify are clearly defined by law. As far as possible the right of a person to keep information to himself is respected and it is only when respect for privacy would or might adversely affect the interests of justice that the law intervenes to compel a person to speak. The procedure laid down in sec. 102 is exceptional (no similar procedure is to be found in the criminal laws in force in the United Kingdom) and constitutes an inroad into the right of privacy possessed by every member of the public."[19]

This extract from the judgment in *R v Parker*, provides us with the context in which these words were said. If we want to interpret and apply *Parker* in a South African context, we must first ask ourselves the following question, "Is there anything in our law that would define the occasion on which a particular person (in this instance a corporate entity – Purple Primula 47 CC trading as Stylus Metal Design Studio and the two (2) members representing the said entity), would be compelled to testify?"

[17] Commentary (supra) at p. 23-52C
[18] Commentary (supra) at p. 23-52C
[19] R v Parker 1966 (2) SA 56 (RA) at 58D

The author of *Commentary* and Mr. Biebuyck *would* seem to confuse the right of the accused with the responsibilities of the witness.

The author of *Commentary* conveniently fails to mention the judgment of *Nel v Le Roux NO and others 1996 (3) SA 562 (CC)*. The particular judgment was delivered by Ackermann J. with Chaskalson, Mahomed, Didcott, Kriegler, Langa, Mokgoro, O'Regan and Sachs concurring. Ackermann J. said the following in paragraph [11] of the judgment:

"The s 25(3) rights to a fair trial accrue only to an accused person. The recalcitrant examinee who, on refusing or failing to answer a question, triggers the possible operation of the imprisonment provisions of s 189(1) is not, in my view, an 'accused person' for purposes of the protection afforded by s 25(3) of the Constitution. Such examinee is unquestionably entitled to procedural fairness, a matter which will be dealt with below, but not directly to s 25(3) rights, for the simple reason that such examinee is not an accused facing criminal prosecution. The s 189(1) proceedings are not regarded as criminal proceedings,[20] do not result in the examinee being convicted of an offence,[21] and the imprisonment of an examinee is not regarded as a criminal sentence or treated as such. If after being imprisoned, an examinee becomes willing to testify this would entitle the examinee to immediate release; in American parlance such examinees 'carry the keys of their prison in their own pockets'.[22] The imprisonment provisions in s 189 constitute nothing more than process in aid of the essential objective of compelling witnesses who have a legal duty to testify to do so; it does not constitute a criminal trial, nor make an accused of the examinee. This disposes of the attack directly based on the s 25(3) fair trial rights."

The "examinee" remains a witness; he may turn out to be a recalcitrant witness or may for some valid reason be unwilling to testify, but the procedure that is used cannot be described as "an inquisition" and does not infringe on his or her rights.

Responsibilities and Duties of the Enquiry Magistrate

The responsibilities and duties of the *issuing magistrate* originate in the oversight function mentioned above. The duties of the *issuing magistrate* should be clearly distinguished from the responsibilities (and duties) of the *enquiry magistrate*.

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[20] Ackermann J. referred to S v Heyman and Another 1966 (4) SA 598 (A)
[21] Natal Law Society v N 1985 (4) SA 115 (N) at 116F
[22] In re Nevitt 117 F 448, 461 (CA 8th Cir, 1902); Shillitani v United States 384 US 364 (1966) at 368 and La Fave and Israel *Criminal Procedure* 2nd ed (1992) at 382

The author of *Commentary on the Criminal Procedure Act* gives the following explanation of the activities of the *enquiry magistrate*:

"Once the *subpoena* has been authorised it can be assumed, in the absence of evidence to the contrary, that the *issuing magistrate* (or judge) exercised a proper discretion. It is then for the person subpoenaed to produce countervailing evidence, which would require the enquiry magistrate (or judge) to decide whether the subpoena was validly authorised."[23]

The author of *Commentary* lists a number of instances where the *enquiry magistrate* may hold the *subpoena* to be "void". This submission should be understood in the context of the *Matisonn* judgment.[24]

The attendance of "the person concerned" may be obtained informally and a subpoena may not even have been obtained (in the present instance the witnesses gave an early indication that they did not want to be interviewed and therefore the more formal route of a *valid subpoena* cannot be faulted).

The views expressed by the author of *Commentary* may be open to some criticism. The conclusion however is clear; the powers of the *enquiry magistrate* are limited.[25]

The *enquiry* and *issuing magistrate* would normally be of equal status. The *enquiry magistrate* would not be vested with any powers of review in respect of the activities of the *issuing magistrate*.

The magistrate has no jurisdiction to embark on a formal enquiry. He or she cannot hear any evidence in order to review, correct or set aside the instructions of the *issuing magistrate*. He cannot withdraw the *subpoena*. He cannot cancel the *subpoena*. He cannot pronounce on the validity of the *subpoena*.

Procedural or technical defects must be distinguished from the instance where the witness genuinely knows nothing concerning the alleged offence.[26] The views expressed in *Hiemstra's Criminal Procedure* are more succinct. The following is stated in *Hiemstra*:

[23] Commentary (supra) at p. 23-52C
[24] Matisonn v Additional Magistrate, Cape Town, and Another 1980 (2) SA 619 (C)
[25] Matisonn (supra) at p. 625F
[26] Matisonn (supra) at p. 623E-F and 627A-B

"When a magistrate is of the view that the proceedings were not launched in accordance with the stipulations of section 205, such as when the subpoena was not authorised by a magistrate or when the witness cannot give any relevant information, the proceedings are stopped. The magistrate however does not have the power to investigate how it came about that another judicial officer authorised questioning."[27]

The *enquiry magistrate* can only stop the proceedings if they are in conflict with the objects (objectives) of section 205.[28] This procedure is best explained by stating that the duties of first and second magistrate may overlap.[29]

The *enquiry magistrate* can exercise his discretion in favour of the examinee. The purpose of the section 205 procedure would be to obtain a statement from the examinee. Uncertainty about the "nature of the offence alleged" does not constitute a bar to the issue of the subpoena, nor to the duty of the examinee to obey it.[30] The examinee cannot complain about any technical or formal defect in respect of the wording of the *subpoena* if he or she complied with the order by attending the enquiry.[31]

If the person who issued the *subpoena* was not a magistrate, the "instruction" would be void in the sense of it being "unproductive of legal consequence".[32] The absence of a "jurisdictional fact" should be distinguished from the absence of legal authority.

As a general rule, the determination of an "administrative official" is final. The court can only enquire whether the official has in fact decided, not whether the decision is right or wrong.[33] The following was stated in *Netto v Clarkson and Another 1974 (1) SA 66 (D & CLD)* at 68H:

"The Court can interfere and declare the exercise of the power invalid on the ground of non-observance of the jurisdictional fact only where it is shown that the repository of the power, in deciding that the pre-requisite state of affairs existed, acted *mala fide* or from ulterior motive or failed to apply his mind to the matter."

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[27] Hiemstra's Criminal Procedure by Albert Kruger at p. 23-52
[28] Matisonn (supra) at p. 626 F-G
[29] S v Cornelissen (supra) p. 73 b - f
[30] Matisonn (supra) at p. 628B
[31] Matisonn (supra) at p. 628H
[32] Ex parte Singer; Law Society, Transvaal, Intervening 1984 (2) SA 757 (A) at 762 H – 763 A
[33] Theron v Ring van Wellington, NG Sendingkerk in SA 1976 (2) SA 1 (A) at 34 H

The Close Corporation Purple Primula 47 CC and its members Mr. and Mrs Taverner (each with a 50% share in the entity) can be considered, competent and compellable witnesses. The true purpose of the court proceedings or "examination" envisaged in section 205(3) is to make a determination on the matter of necessity. Once the court has made the determination that a witness is required to give the requested evidence, in the words of section 205 (4) "that there is a necessity to furnish the information" and the court has ruled on the "excuse" or warned the witness on the continued "failure" to provide the information, it can impose the punishment as contemplated in section 189. The functions of the *enquiry magistrate* is directed towards *necessity* or the precise extent to which the witness is compellable whilst the *issuing magistrate* will have to determine if the *circumstances* put forward in the application, will justify the issuing of the order.

The Requirements of the Section 205 Application

The submissions made by the prosecutor can take the form of an allegation.[34] The prosecutor cannot rely on a "supposed offence" it must be an alleged offence.[35]

The application will be adequately substantiated if there is a probability (likelihood or prospect) that the examinee would be in a position to furnish material and relevant information with regard to the alleged offence.[36] It is not necessary that all possible offences be mentioned.[37]

The prosecutor obtains the right to approach the court when the crime or elements thereof occurred within the territorial area of the court or the harmful effect thereof were felt within the courts area of jurisdiction. The *issuing magistrate* considers the *circumstances* placed before him in exercising his "judgment".

It can respectfully be submitted that the *issuing magistrate* would be able to consider the following factors in reaching his conclusion:

(1) Can it be said that the investigating officer was busy with the investigation of a reasonable complaint?

[34] S v Cornelissen (supra) at p. 60 e-f
[35] S v Cornelissen (supra) at p. 68 c - h
[3636] S v Cornelissen (supra) at p. 92 g – 93 c
[37] S v Cornelissen (supra) at p. 95 a-b

(2) Can it be said that the investigating officer was acting on credible information?

(3) Has any investigation taken place? (Would there be any information to indicate that a previously "unreasonable complaint" has since been substantiated and thus become more reasonable?)

(4) Can it be said that the "suspicion" itself may be reasonable?

In *R v Da Silva [2006] 4 All ER 900* the court referred with approval to *Shaaban Bin Hussien and Others v Chong Fook Kam and Another [1969] 3 All ER 1626* (the decision quoted in the matter of *Powell NO (infra)* as well as the guidelines issued by the Financial Intelligence Centre). Longmore LJ stated the following:

"Thus in *Hussien v Chong Fook Kam [1969] 3 All ER 1626, [1970] AC 942*, in which the Privy Council decided that reasonable suspicion was not the same as *prima facie* proof, Lord Devlin said: 'Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: "I suspect but I cannot prove". Suspicion arises at or near the starting point of an investigation of which the obtaining of *prima facie* proof is the end."

Longmore LJ gave his own interpretation of the word "suspecting":

"It seems to us that the essential element in the word 'suspect' and its affiliates, in this context[38], is that the defendant must think that there is a reasonable possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice. But the statute does not require the suspicion to be 'clear' or 'firmly grounded and targeted on specific facts', or based upon 'reasonable grounds'."

If we use this explanation to try and aid the court in giving some content to the *circumstances* that the *issuing magistrate* may take into consideration, then the following may be suggested. The *issuing magistrate* may want to ask him or herself if there is a <u>reasonable possibility</u> that some information or some document(s) XXX The possibility need not be 'clear' or 'firmly grounded' or 'targeted on specific facts' or even based upon reasonable grounds. It should however be more than mere imagination. The possibility that the particular avenue of investigation could turn out to be a dead end would not stand in the way of conducting the investigation.

[38] The "context" of the interpretation of the word "suspecting" was section 93A(1)(a) of the Criminal Justice Act, 1988, of the UK

The evidence may not yet be adequate to establish the offence.[39] The section 205 application may be near the starting point of the investigation, at that time when *prima facie* proof is still lacking.[40]

The Court Order Required

The issuing of an "order" in terms of section 236 can (and is normally) decided on information put forward by way of an affidavit. The court will look into the *circumstances* put forward by the applicant in order to decide if the *subpoena* can be issued.

The *issuing* activity is of a *sui generis* nature, it cannot be described as an action. It may be more appropriate to define the *issuing activity* as an administrative task.[41]

The court can (in exceptional circumstances) call upon the investigator to give *viva voce* evidence. The *issuing stage* of the process is devoid of any factual dispute and therefore cross – examination never takes place.

The activity that results in the section 205 *subpoena* being issued can in some respects be said to resemble an *ex parte* application. The following similarities can be pointed out. The prosecutor or applicant would be the only person who is interested in the relief which is being claimed and the relief sought may be seen as a preliminary step in the proceedings.[42] The court would grant the relief when the request is substantiated by satisfactory evidence.[43]

The following description of the *ex parte* process is found in *Burgerlike Prosesreg in die Landdroshowe* (supra) in the part dealing with Rule 55:

"Die *ex-parte* aansoek om n interdik verloop kortliks soos volg: Die applikant stel n beedigde verklaring op waarin hy die feite waarop die aansoek berus en die aard

[39] Haysom (supra) at 158 F – H
[40] Powell NO and others v Van Der Merwe NO and others 2005 (1) SACR 317 (SCA) – paragraph[36] and [37]
[41] Terry v Botes and another [2002] 3 All SA 798 (C) at 801
[42] Erasmus, Superior Court Practice by Van Loggerenberg et al at B1 - 41
[43] Erasmus (supra) at B1 – 42B

van die bevel wat hy of sy vra uiteensit. Hierdie verklaring word tesame met n kennisgewing waarin die datum van aansoek en die gevraagde bevel uiteengesit is by die klerk van die hof indien. Kennis van die aansoek word nie aan die persoon teen wie die interdik aangevra word, gegee nie. Op die datum en tyd wat in oorleg met die klerk van die hof gereel is, word die aansoek deur die hof aangehoor. Tydens die verhoor , wat nie in die ope hof plaasvind nie, kan die applikant of sy of haar regsverteenwoordiger sy of haar saak aan die hof voordra en moet die hof n beslissing oor die aansoek gee."[44]

The *enquiry magistrate* would be entitled to accept the request to be valid, "examinee", provide the information on or before the return date.[45]

In the exceptional event of the examinee being unable to provide the "required information" they would be entitled to object to the *subpoena* by stating that it did not create any occasion to respond. The examinee will thus claim a lack of knowledge.

The author of *Burgerlike Prosesreg* (supra) explains the practicalities of this type of situation:

"Die feite waarop n aansoek om n interdik berus, moet ingevolge reel 56(2) in die applikant se beedigde verklaring uiteengesit word. Dit moet uit die feite ... blyk dat aan die vereistes wat vir die verlening van n interdik gestel word, voldoen is. Indien dit nie die geval is nie, openbaar die beedigde verklaring nie n skuldoorsaak nie en kan n interdik nie op grond daarvan verleen word nie.

Die punt dat die applikant se beedigde verklaring nie n skuldoorsaak openbaar nie, kan deur die respondent ter bestryding van die interdik op die keerdatum van die bevel *nisi* opgewerp word. Hoewel die punt in wese n betoog op die meriete is, word tog in gevalle waar die aansoek klaarblyklik ongegrond is, toegelaat dat dit *in limine* geopper word. Ten spydte daarvan dat n respondent wat n aansoek wil bestry normaalweg n beedigde verklaring moet indien waarin die gronde vir sy of haar teenkanting uiteengesit word, kan dit in buitengewone gevalle tog gebeur dat die hof n aansoek wat nie n skuldoorsaak openbaar nie van die hand wys, selfs al is so n verklaring nie ingedien nie. ..... Wanneer *in limine* aangevoer word dat n applikant se beedigde verklaring nie n skuldoorsaak openbaar nie, of anders gestel, dat dit nie die gevraagde regshulp regverdig nie, word slegs daardie verklaring in ag geneem en die bewerings wat daarin gemaak word as bewese aanvaar."[46]

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[44] Burgerlike Prosesreg in die Landdroshowe (supra) Afd. L - 55
[45] Erasmus (supra) at B1 – 44
[46] Afd L - 57

The *enquiry magistrate* would only be allowed to interfere with the activities of the *issuing magistrate* should the facts set out in the affidavit fail to disclose a cause of action. The bank would thus have a "just excuse" if they are "unlikely" (unable) to give the material or relevant information".[47] The court will not be entitled to act in terms of section 205(4) if the examinee is able to give an adequate explanation for the failure to produce the information. This will obviously require the examinee to indicate why the evidence is not available.

The public prosecutor will specify the date on which the "material or relevant" information must be furnished. The "compliance date" will precede the "appearance date".[48] If the information has not been made available on or before the "compliance date" the issue of dispute will by implication revolve around the failure to comply with the court order. If the prosecutor is not satisfied that all the required information was received, the prosecutor will cite "partial compliance" as the reason for the section 205 examination.

General Remarks

Dirty Money

On many occasions the main aim of the investigator would be to trace stolen money and to find out what has happened to it. Investigators often "Follow the money". If it is the purpose of the investigator to discover the final destination of the dirty money, he or she may (out of necessity) require access to the bank accounts of innocent third parties. Every transaction so recorded may be regarded as a necessary link in the chain of payment. The persons called upon to provide the information would in essence be asked to disclose the identity of the wrongdoers.[49] The jurisdiction of the court may thus rest on the (dirty) nature of the "money".

In essence the investigator is only busy following the dirty traces of the money as it leads away from the scene of crime. The suspect will only

[47] Section 205(1) of the Criminal Procedure Act No. 51 of 1977
[48] Section 205(1) of the Criminal Procedure Act, No. 51 of 1977
[49] Norwich Pharmacal Co v Customs and Excise Comrs [1973] 2 All ER 943, [1974] AC 133, [1973] 3 WLR 164, HL

face prosecution if it can eventually be proved that he or she received or dealt with the dirty money or in some way benefitted from the proceeds of the crime.

The Information Requested

The information requested and later obtained by way of the section 205 process does not always end up being used in court. The process may sometimes uncover information that is of little use. The task of the investigator is to investigate allegations of criminality. The investigation of crime including suspicious financial transactions requires the examination of information and records that may (or may not be available) in order to find out what can be proved. These activities can fairly be described as part of the process of investigating a crime or a possible crime with a view to prosecution. Relevance to the point of dispute in the criminal trial would determine if the evidence eventually gets used.

The Benefits of Business Records

The benefit of business records and other documentary evidence and the dispassionate events they record was explained by Squires J. in *S v Shaik and Others 2007 (1) SACR 142 (D&CLD)* at 160c-d:

"Moreover, the oral evidence was reinforced by a small avalanche of documents, about 27 files of them .... But these were perceptibly more helpful, in that they came from many different sources and covered a long period of time and, placed in chronological sequence, often in the form of inquiry and response, their contents produced a clearer picture of contemporary events than fallible human memory could do. In many instances they effectively constituted the dots which, when joined by the logic of cause and effect, could found a compelling, if circumstantial, conclusion. As the Eastern sage puts it, 'As today is the effect of yesterday, so also is it the cause of tomorrow.' And, of course, separate, isolated circumstances that, in combination, point strongly to a particular conclusion can often carry more weight than direct oral explanations"

Conclusion

A proper appreciation of the section 236 evidence gathering mechanism would facilitate the exercise of the oversight function of the courts. I therefore make the following submissions:

(1) The investigative authority of the State rests on 'the longstanding principle that "the public has a right to every man's evidence".[50] The *subpoena* issued in accordance with the procedure laid down in section 205 is nothing but the exercise of that authority. This does not amount to the abuse of power, it amounts to the legitimate exercise of a "sovereign power" that requires citizens and foreigners alike, to assist in the administration of justice.

(2) Section 189(1) makes it clear that a witness will not be considered recalcitrant if he or she "has a just excuse for the refusal or failure". The formal inquiry in front of a magistrate may be seen as a mechanism designed to encourage freedom of speech and communication. The magistrate will not allow questioning that is protected by or falls into the category of "just excuse".

(3) The application will be adequately substantiated if there is a probability that the examinee would be in a position to furnish material and relevant information with regard to the alleged offence.

(4) It is not necessary that all possible offences be listed.

(5) The *issuing magistrate* only considers the *circumstances* placed before him in exercising his or her judgment.

(6) The *issuing magistrate* will grant the relief if the request is substantiated by satisfactory evidence. The *issuing stage* of the proceedings is devoid of any factual dispute and the information as to the alleged offence may be obtained whether or not it is known by whom the offence was committed.

(7) The *compulsory disclosure* of corporate records should not be considered as oppressive or even exceptional in nature. The presence of suspicious activities would by definition make it reasonable and proper for the corporate entity (artificial person) to allow disclosure.

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[50] Commentary (supra) at p. 23 – 52 with specific reference to the decision of *Branzburg v Hayes et al 408 US 665 (1972) at 688*

(8) The "right to know" has been defined with sufficient clarity and must be distinguished from any unprincipled invasion of privacy.

(9) The powers of the *enquiry magistrate* are limited in nature. He or she cannot hear any evidence in order to review, correct or set aside the instructions of the *issuing magistrate*.

(10) The *enquiry magistrate* cannot withdraw the *subpoena*, cancel the *subpoena* or in any way pronounce on the validity of the *subpoena*.

(11) The public prosecutor will specify the date on which the material or relevant information must be furnished. The "compliance date" so specified will precede the "appearance date".

(12) If the information is made available on or before the "compliance date" and the prosecutor is satisfied that the affidavit is in accordance with the provisions of section 236 of the Criminal Procedure Act, the proceedings will be terminated and the *enquiry magistrate* will not become involved.

(13) If the requested information was not made available or if the compliance was of a partial nature, the dispute between the parties will require the attention of the *enquiry magistrate*. The nature of the dispute will be determined by the facts in issue.

(14) Uncertainty about the nature of the offence alleged does not constitute a bar to the issuing of the *subpoena* or the duty of the examinee to obey it.

(15) The examinee cannot complain about any technical or formal defect in respect of the wording of the *subpoena* if he or she complied with the order by attending the enquiry.

(16) The *enquiry magistrate* can only enquire whether the official (the *issuing magistrate*) has in fact made a decision on the *circumstances* placed before him or her. The *enquiry magistrate* cannot decide if the decision (or *judgment*) was right or wrong. The *enquiry magistrate* will

only be allowed to interfere with the determination that was made should it transpire that the *issuing magistrate* acted *mala fide* or from ulterior motive or if he or she failed to apply his or her mind to the matter.

(17) If the *pre-requisite state of affairs* cannot be faulted, the activities of the *enquiry magistrate* will focus on the "just excuse" dispute described in section 189 of the Criminal Procedure Act, No. 51 of 1977.

(18) The activities of the *issuing magistrate* revolves around the "oversight function" described above whilst the duties and responsibilities of the *enquiry magistrate* involves the failure of the examinee to comply with the section 205 *subpoena*.

Conclusion

The letter forwarded to Advocate Mrwebi is clearly an irregular attempt to review the issuing of the *subpoenas*, avoid the required court appearance by the witnesses and mislead the NPA as to the true facts concerning the legal process.

Advocate M. C. de Kock

Advocate AGJ van Rensburg

(SCCU – Pretoria – 1 November 2012)

"Q10"

Annexure "Q10"

Specialised Commercial Crime Unit

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2 November 2012

MEMORANDUM

FROM: SCCU: PRETORIA – ADVS MOKGATLHE, DE KOCK AND JANSE VAN RENSBURG

TO: ADV L S MRWEBI, SPECIAL DIRECTO OF PUBLIC PROSECUTIONS – HEAD OF THE SPECIALISED COMMERCIAL CRIME UNIT.

SUBJECT: **IN RE REPRESENTATION , EVERSHEDS: SUBPOENAS ISSUED IN TERMS OF SECTION 205 OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977 ISSUED TO SYDNEY MARK TAVERNER AND SHARON HOPE TAVERNER.**

1. In respect of the representation received on 31 October 2012 and your e-mail communication dated 1 November 2012 please find the following:

(1) A written response from Advs De Kock and Janse van Rensburg setting out the legal position and their views on the merits of the representation – **Annexure A.**

(2) A copy of the judgement of *Nel v Le Roux NO and Others 1996 (3) SA 562 (CC)* on any Constitutional challenge to the section 205 subpoenas.

(3) The BOSASA investigation relates to a tender fraud scheme in the amount of more than 2 billion rands. The investigation commenced as a result of a SIU report recommending that a criminal investigation be instituted against Mr Patrick

Gillingham and others. The report is attached as **Annexure B**.

(4) The background and facts surrounding the case is set out in the report.

(5) The investigation is not yet completed and a charge sheet has not yet been drafted.

(6) During the investigation it was established that payments amounting to R550,000-00 were made to Stylus Metal Design Studio from 14 October 2005 – 17 January 2006 by W D Mansell and Grande Four Property Trust (both prospective suspects). The said Stylus Metal Design Studio is the trading name of Purple Primula 47 CC of which Mr and Mrs Taverner are the members.

(7) It is important for the Prosecution to establish what these payments were intended and made for.

(8) There exists no other viable procedure to establish why the payments were made and Mr and Mrs Taverner has since the beginning been un-cooperative.

(9) The actions of the Prosecution and the issuing of the subpoenas can easily be defended.

M P MOKGATLHE
ACTING REGIONAL HEAD:
SSCU: PRETORIA

"Q11"

Annexure "Q11"

AA-474

141

[redacted]

Subject: FW: SCCU status on the following cases:

Importance: High

From: [redacted]
Sent: 22 November 2012 03:23 PM
To: Silas Ramaite; Lawrence S. Mrwebi
Cc: Veliswa Nzukuma; Feziswa Diko (MF); Palesa NP. Matsi
Subject: FW: SCCU status on the following cases:
Importance: High

Good afternoon

Trailing emails refers.

Reports submitted to the ANDPP were not in line with what she requested. The ANDPP is requesting progress reports for the below mentioned cases:

- Tannenbum
- Bosasa
- State vs R Mdhluli
- State vs Kagisho Dichabe and others including Cutberth Gwangwa and J Malema; and
- State vs Terrence Joubert and others

The said reports should outline the following:

Current status;
Available evidence;
Where the said case is currently; and
If not on the court roll by when will it be enrolled

Detailed feedback/reports on these case should be submitted to this office on or before the 28 November 2012. Upon receipt of the said reports a meeting will be scheduled between the ANDPP and the prosecutors responsible for the prosecution of the said cases to come and brief the ANDPP accordingly. In terms of the Bosasa case please be advised that this matter needs to finalised ASAP as the matter has been investigated for many years and from the submitted reports it is clear that there is no evidence and or prospect of successful prosecution. This has been confirmed by both Lt Gen Dramat and Adv M De Kock the lead prosecutor.

The ANDPP has indicated further that no resource will be allocated to any case for longer duration. You are therefore requested to ensure that prosecutors focus on cases where there is sufficient evidence as this is fruitless and wasteful expenditure.

Kind regards

ackie Lepinka

er Executive Support to the NDPP

Tel: 012 845 6757 Fax: 012 843 2758

Cell: 084 701 7081 E-mail: jlepinka@npa.gov.za

"Attempt the impossible in order to improve your work"

From: Palesa NP. Matsi
Sent: 22 November 2012 02:38 PM
To: Jackie Lepinka
Subject: RE: SCCU status on the following cases:

The correct name is Tanen Bum.

From: Jackie Lepinka
Sent: 22 November 2012 02:03 PM
To: Palesa NP. Matsi
Subject: RE: SCCU status on the following cases:

Are you sure is Town and Bam?

From: Palesa NP. Matsi
Sent: 22 November 2012 10:05 AM
To: Jackie Lepinka
Subject: FW: SCCU status on the following cases:

Dear Ms Lepinka

Please see the email below

But this is what the ANDPP is looking for:

Status report on the following cases:

Town and Bam
Bosasa
Mdluli
Malema
Walley Rodde
The ANDPP says where is the evidence, where is the case currently , and if the case is not enrolled before court then when is that going to happen. After receiving all those reports the Prosecutors will then come and present those reports.

From: Palesa NP. Matsi
Sent: 20 November 2012 01:54 PM
To: Veliswa Nzukuma; Feziswa Diko (MF)
Cc: Silas Ramaite; Lawrence S. Mrwebi
Subject: SCCU status on the following cases:

King one
Bosasa
Mduli
Julius Malema

Dear Colleagues

The above matter refers.

Please note that the ANDPP would like to discuss the above matters with your Principals on Thursday 22 November 2012 at 10:h00 in the NPS boardroom. Kindly confirm availability.

Kind regards

Palesa

"Q12"

Annexure "Q12"

Specialised Commercial Crime Unit

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

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TO: ADV M MOKGATLHE
ACTING REGIONAL HEAD: SCCU

FROM: ADV M DE KOCK

DATE: 26 NOVEMBER 2012

SUBJECT: PROGRESS REPORT ON THE BOSASA INVESTIGATION

Background

The SAPS investigation commenced during February 2010. The full background to the SAPS investigation is set out in a 75 page report prepared by the Special Investigation Unit and attached hereto as Annexure A. The SIU investigation resulted from various allegations that surfaced in the media relating to the irregular awarding of contracts by the Department of Correctional Services (**DCS**) to Bosasa Operations (Pty) Ltd (**Bosasa**). In conclusion the SIU found that an irregular/improper and corrupt relationship existed between Bosasa (or members of the Bosasa Group of Companies) and two DCS officials, namely the former Commissioner of Correctional Services, Mr. L. Mti and the DCS Chief Financial Officer, Mr. P. Gillingham. The SIU pointed out that they did not conduct a comprehensive financial investigation into the benefits allegedly received by Commissioner Mti because of various limitations experienced during their investigation. The SIU was of the view that the entire procurement process in respect of the four (4) tenders in question was undermined to the extent that Bosasa and its affiliates were unduly and unfairly advantaged as against their competitors for and in respect of the various tenders.

Summary of the Available Evidence

The SAPS investigation clearly indicates criminal behaviour on the part of Patrick Gillingham, W.D. Mansell, R. Hoeksma and others. The benefits received by Gillingham includes the vehicles mentioned in the SIU report, cash and cheques

deposits, foreign travel and the property referred to as Erf 106 Midstream Estate. The investigation in respect of the benefits received by Commissioner Mti is still underway. The current SAPS investigation relates to three (3) previously unknown bank accounts of Mti.

Section 205 subpoenas issued in respect of Mr. and Mrs. Taverner

Two witnesses a Mr. and Mrs. Taverner have recently been subpoenaed to appear in court and testify about payments in the amount of R550 000 made to an entity called Stylus Metal Design Studio. Prior to the scheduled court appearance on 20 November 2012, Brian Biebuyck of the firm Eversheds, called on Advocate Mrwebi (the SCCU Special Director) to withdraw the subpoenas issued by the court. Mr. Biebuyck, described the court process as efforts to harass his clients and the employment of strong arm tactics. He described the section 205 process as intimidation and badgering constituting an abuse of process. We informed the Special Director that the Eversheds letter amounted to an irregular attempt to review the issuing of the subpoenas, avoid the required court appearance by the witnesses and mislead the NPA as to the true facts concerning the legal process. The Special Director informed Brian Biebuyck that the application to the magistrate for the issuance of the subpoena was well considered and that the activities related to a lawful investigative process. He declined to withdraw the subpoenas stating that such behaviour would amount to an unlawful review of the decision of the issuing magistrate.

Mr. and Mrs. Taverner duly appeared in court on the 16th of November 2012 and the matter was postponed until the 14th of February 2013. The date was so arranged at the request of Advocate Theron appearing on behalf of the examinees.

Matters under investigation and way forward

The investigation of the matter is not yet completed and a charge sheet has not been drafted. Almost 200 statements have been obtained since the start of the investigation. We are still of the view that the investigation will take another six (6) months to complete. Advocate van Rensburg and myself are in regular contact with the investigators.

Anticipated Date of Enrolment

It is difficult to speculate on the anticipated date of enrolment but it would definitely be impossible to enrol the matter prior to the 14th of February 2013.

Other Issues

I am not yet in a position to specify the proposed charges against the suspects. The investigation is still in progress and I cannot give a summary of the nature and quality of the current and still to be obtained evidence except to say that we do not anticipate it to be challenged on any known grounds. No legal issues and/or challenges other than the court proceedings mentioned above has been brought to our attention. We will have more clarity on the issuing of the section 205 subpoenas on the 14th of February 2013.

Hoping you find the above in order.

Regards

MC DE KOCK
DEPUTY DIRECTOR OF PUBLIC OF PROSECUTION
SCCU PRETORIA