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**AFFIDAVIT**

I, the undersigned,

**MAREN BRYNARD DE KLERK**

do hereby state as follows under oath:

1. I am an adult male Namibian legal practitioner, practicing as such under the name and style of De Klerk, Horn and Coetzee Incorporated ("DKHC Inc") at 4 Eadie Street, Windhoek, Republic of Namibia.
2. Unless stated to the contrary, or as appears from the context, the facts herein contained are within my own personal knowledge and belief and are both true and correct.
3. I depose to this affidavit pursuant to the provisions of:
  - 3.1 Section 21 of the Anti-Corruption Act 178 of 2003 ("the AC Act"); and
  - 3.2 Section 204 of the Criminal Procedure Act 51 of 1977 ("the CPA").
4. At the outset:
  - 4.1 I wish to emphasise that this affidavit was prepared without the benefit of a charge sheet or an indictment which I understand the State will pursue against multiple accused in what has become known as the "fishrol" investigation. I understand that in the preparation of this affidavit, the Namibian Police Service and the Prosecutors of the Prosecutor-General ("PG") and investigators at the office of the Anti-Corruption Commission of Namibia ("ACC") may want to expand on my evidence as to allegations against the accused;

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Signature: *ANK*

the events which I explain below may very well constitute notification to the ACC of a corrupt practice, as provided for in terms of Section 17 of

*AKS*

*S*

*AKS*

Chapter 3 of the AC Act and I ask that it be so entered into the records of the ACC;

4.3 insofar as the ACC already engaged with me, I am willing to provide information to them pursuant to the provisions of Section 21(7) of the AC Act;

4.4 whilst I am providing as much information as possible, I have to rely largely on my memory and some of the records which I have available from my mobile phone and my computer. Unfortunately, I do not have access to my office files. I understand that they have been attached by the ACC. Once I am granted access to my files, I will be able to amplify this affidavit and refresh my memory from the documents which were created contemporaneously at the time.

**SECTION 204 OF THE CPA AND SECTION 52 OF THE AC ACT**

5. During consultations with my attorneys and counsel, I have been advised that:

5.1 the facts which I intend to disclose to the ACC and PG may constitute criminal offences;

5.2 the facts which I will disclose may incriminate me from a criminal liability point of view; and

5.3 the ACC and the PG are the only Government Agencies which are entitled, pursuant to the provisions of Section 204 of the CPA and / or Section 32 of the AC Act, to treat me as a State witness in criminal proceedings and for me to seek indemnity from prosecution from a trial court if I co-operate with the PG in forthcoming criminal proceedings.

6. I respectfully request the ACC to provide me with protection provided for in terms of Section 52 of the AC Act and particularly sub-Section 4, to treat me as a person who assisted the ACC in its investigation into offences provided for in the AC Act.

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7. I have decided to make the disclosure evidenced herein and I remain available to amplify this affidavit, should the Nampol and the PG so require.

8. I am informed that based on the facts outlined herein, I may have committed the following offences directly, or as the representative for entities where I held appointments as described herein, or as a result of negligence, for which I may require indemnity from prosecution in forthcoming trials. I offer to testify in forthcoming trials where the State will rely on my evidence. The offences, for which I will seek indemnity, include:

8.1 fraud and theft;

8.2 contravention of Sections of the Financial Intelligence Act;

8.3 contravention of Sections of Organised Crime Act 2004, especially relating to money laundering and racketeering;

8.4 contravention of Sections of the Income Tax Act of 1981 (as amended);

8.5 contravention of Sections of the Value Added Tax Act of 2000;

8.6 contravention of Sections of the Anti-Corruption Act of 2003;

8.7 contravention of Sections of Part 3 and Part 8 of the Companies Act, Act 28 of 2004;

8.8 contravention of Sections of the Legal Practitioners Act of 1995 (as amended); and

8.9 contravention of Sections of the Exchange Control Regulations, 1961.

9. Being implicated in the "fishrol" investigation, at the outset, I wish to draw attention to the following:

9.1 as a result of the "fishrol" investigation, there appeared widespread speculation that I am a suspect or an accused in the matter;

- 9.2 my name has been published and photographs of me have appeared in Namibian newspapers;
- 9.3 the shaming of my name has impacted on me very substantially, so much so, that I have been hospitalized for an extended period and I am currently on very strong anti-depressive medication and under the care of mental health professionals;
- 9.4 I do not have the strongest of personality to deal with psychological and emotional stress;
- 9.5 no indictment or warrant of arrest has been served on me, and as such, I urge the ACC to give me a full opportunity to demonstrate that the evidence I have will be of benefit in the investigation;
- 9.6 whilst I am an attorney at law, even with my skills and my natural suspicion, I did not fully appreciate what I got myself into as explained below. I will explain fully and frankly how I was duped into becoming involved since 30 December 2016;
- 9.7 in the months that followed the initial meeting between myself and a leading politician of Namibia on 30 December 2016, I felt honoured to be associated with the South West Africa People's Organisation ("SWAPO") political party, in hindsight, my office as an attorney at law, was abused for the personal interests of highly influential politically, connected persons;
- 9.8 I believed that my ultimate involvement in the SWAPO campaign to seek the re-election in 2019 of the current President, carried the blessing of the President of Namibia and the SWAPO political party;
- 9.9 I did not mastermind the corruption and bribery scheme in which I played a role. I verily believe that I was, as I understand were other attorneys in Namibia, to facilitate the transfer of funds under a clandestine shield of attorneys' trust accounts;

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- 9.10 I am not a fugitive and I will fully co-operate with law enforcement agencies in Namibia;
- 9.11 in my earlier dealings with the investigating officer (which I motivated and occasioned out of my own free will in January 2020) I was unrepresented;
- 9.12 even before I met with the investigating officer, my firm made a report to the Financial Intelligence Centre Namibia ("FIC") in December 2019, as I believed that it was the right thing to do;
- 9.13 once the matter was reported to the FIC in December 2019, and on their advice, the amount that was retained in my trust account, of approximately N\$ 4 million was ringfenced and retained;
- 9.14 in my first meeting with the ACC on 16 January 2020, I went there without a legal representative. After a few minutes in that meeting I felt like an accused as I was interrogated as being part of the mastermind of the scheme;
- 9.15 whilst I was in hospital in South Africa on 14 February 2020, there was an attempt to abduct me or in the alternative, to assassinate me, or to do me harm. I will explain this below. I am living in hiding as I fear for the wellbeing of my wife and myself;
- 9.16 I am committed to work with the law enforcement agencies in Namibia as I truly believe that I was a cog in the wheel of the extensive bribery and corruption scheme that ultimately also funded the SWAPO political party to fund a political campaign and to benefit influential politicians. My life has been brought to ruins as a result of me being outright stupid and I deeply regret this. I hope to make up for this through my co-operation with the law enforcement agencies of Namibia.

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Signature: 



## IMPORTANT ROLE-PLAYERS

10. To understand the context of this affidavit and the people who feature herein, it is important to explain the key roles which the following persons played in the matter:
- 10.1 Mr Sakeus Shanghala ("**Shanghala**"), the former Attorney-General of the Republic of Namibia who later became the Minister of Justice and who was a key player in SWAPO's election campaign process and other events enumerated below. I do not know how Shanghala came to know James Hatuikulipi, AJ Louw or Mike Nghipunya, but I presume he came to know Bernard Esau through his role and career as a Politician. As far as I can recall, Shanghala knew Johan Penderis long before I met Shanghala around 2011;
- 10.2 Mr James Hatuikulipi ("**Hatuikulipi**"), the Head of Investec Bank, Namibia and businessman, who I believe was the architect of many of the schemes including the SWAPO re-election campaign for the current President referred to below. I have no knowledge as to how Hatuikulipi befriended Shanghala, Bernard Esau and / or Mike Nghipunya, but I do know Hatuikulipi had a longstanding business relationship with Dawie Moller in that they were co-shareholders in a company known as D&M Rail CC, which company to the best of my knowledge and belief was the recipient of Government tenders relating to the laying and construction of railway lines;
- 10.3 Mr Adriaan Jacobus Louw ("**Louw**"), a businessman and important role-player in the fishing industry in Namibia and Angola. When I first met Louw during 2014 I had not yet met his right-hand man, Johannes Breed. I did however meet Johannes Breed a few years later and it was evident to me that they had worked together for some time already. Johannes Breed was always the financial advisor for Louw and Louw's companies and served on Louw's fishing companies. I also do not have any knowledge as to how Louw met Shanghala, Hatuikulipi, Bernard Esau or Mike Nghipunya;

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10.4 Mr Johannes Breed ("**Breed**"), the Chief Financial Officer and advisor

to Louw and his various companies. As explained before, I met Breed during the course of my professional interactions with Louw and similarly I have no information as to how Breed met any of the other role-players in the "fishrol" investigation;

- 10.5 Mr Bernard Esau ("Esau"), the former Minister of Fisheries in Namibia, who was also the Minister that promulgated the Government Gazettes "ratifying" the agreement between the State-owned National Fishing Corporation of Namibia Limited ("Fishcorp") and Seaflower Pelagic Processing (Pty) Ltd ("Seaflower"). Apart from one or two consultations that I had with Esau in order to discuss the drafting of a new will and setting up a Trust for him, I had very little interaction with Esau and I also do not know how he came to know the other role-players mentioned in this paragraph 10;
- 10.6 Mr Mike Nghipunya ("Nghipunya"), the Chief Executive Officer of Fishcorp, played a major role in the joint venture structure with Seaflower;
- 10.7 President Hage Geingob, whom Hatuikulipi made me believe was "the Boss" when reference was made to the latter when certain payments were processed;
- 10.8 Celeste Coetzee ("Coetzee"), a Director of DKHC Inc and who was also the compliance officer of DKHC Inc. Coetzee came to know Louw and Breed whilst working on various matters for them in a professional capacity which Louw had instructed my firm to attend to. In this regard she did work on the litigation matter referred to later below. Coetzee was at all relevant times the compliance officer of DKHC Inc for purposes of the provisions of the Financial Intelligence Act;
- 10.9 Dawie Moller ("Moller"), was a shareholder with Hatuikulipi in D&M Rail as well as a co-member of the latter in MH Properties CC. As explained above, Moller was a longstanding business partner of Hatuikulipi, but I do not know whether he knows any of the other role-players; and

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10.10 Johan Penderis ("Penderis"), is an Accountant and Financial Advisor of the late Mr Mushimba. He was the person who referred Hatuikulipi and Shanghala to me. As far as I can recall Penderis knew Shanghala before I met the latter and during my interactions with Shanghala and Penderis over the years, it became evident to me that Penderis had utilised Shanghala to obtain information and to influence as far as possible the issue surrounding the awarding of catering contracts for various catering companies in which Penderis is a major role-player and shareholder.

### PERSONAL BACKGROUND

11. Before I deal in detail with the events that resulted in the "*fishrot*" investigation, I provide background to appreciate how and where I fit into Namibian business life and the legal profession there.
12. I hold two passports, namely a Namibian Passport bearing number A05124480, and a South African Passport bearing number P0950605. Copies of my mentioned passports are attached as annexures "MDK1-1" and "MDK1-2" respectively. I may be contacted in South Africa on +27 79 573 1232.
13. As at date of this statement, I have not been charged with any crime. The most recent media report appeared in "*the Namibian*" on or about 24 February 2020 and is entitled "*Authorities not pursuing 'missing' Fishrot lawyer*". A copy of this media article is attached hereto as annexure "MDK1-3". The article includes a photograph of me and makes extensive reference to me and to the law firm of which I am the managing director in Namibia. Of significance, is that the article does not suggest that I am even wanted for questioning by the authorities in Namibia. The heading of the article, however, also suggests that I am "*missing*" and that I am in South Africa. In this regard I wish to confirm that I am indeed in South Africa, and that I have made contact with both the Namibian and South African prosecutorial authorities, both of whom are able to easily contact me if required. I am therefore not "*missing*" and since I have not been charged with any offence, I am also not a fugitive. I deal with this later in this statement.

source documents which are at my law office in Namibia. Although I do have copies of certain documents on my laptop, I am severely limited in my ability to provide each and every detail regarding the matters dealt with in this statement without the benefit of my notes and files. This statement therefore is not intended to be exhaustive and I reserve the right to add to or supplement this document as more information becomes available to me.

15. During February 2020, it also became evident to me, through communications with some of my office personnel at the law firm, that my partners had prohibited any of the personnel from having any contact with me whatsoever. The partners further refused to communicate with me regarding outstanding matters and estates that needed urgent attention. They were in fact effectively making it impossible for me to assist with certain files to the detriment of clients' interests and opening the firm and us, as directors and as attorneys, up to potential damages claims. My attorneys are dealing with this issue.
16. I was born on 14 August 1968, at Mariental, Republic of Namibia. I am 51 years of age. I grew up in Mariental and attended the Danie Joubert Primary School there from 1975 up to and including 1980. During or about December 1980, my parents divorced, and I moved with my mother to Paarl, Western Cape, Republic of South Africa. In 1981, I completed my primary education at the WA Joubert Primary School in Paarl. From 1982 to 1986, I attended the Paarl Gymnasium High School and matriculated therefrom.
17. While at High School I was a keen sportsman and was awarded my provincial colours for swimming. I was the school swimming captain and I was also appointed as a prefect. I completed my compulsory two-year national service in the South African Air Force from 1987 to 1988 (both inclusive).
18. In 1989, following the completion of my compulsory South African military service, I enrolled for a B Com (Law) degree at the University of Stellenbosch.
19. Unfortunately, I was required to repeat Roman Law in 1992 without which I was unable to enrol and read for an LLB degree. I therefore temporarily joined my father in his construction and passenger transport business in Mariental, Namibia, during which time I repeated Roman Law at the University of Stellenbosch on a part time basis. While working for my father I earned

approximately N\$ 2 500.00 per month and my father provided me with board, lodging and transport. During this time, I also obtained my heavy-duty driver's license so as to enable me to do part-time work as a bus driver.

20. I successfully passed the outstanding Roman Law course and graduated with my B. Comm (Law) degree from the University of Stellenbosch at the end of 1992. Thereafter I applied, and was accepted to read for, an LLB degree at the University of Stellenbosch on a full-time basis in 1993.
21. In July 1993, I married my wife Maria de Klerk (a South African citizen born on 25 October 1972) and in December 1993 our first child, Joan was born in Durban, South Africa.
22. In order to support our young family, my wife and I each worked part time while I was at university.
23. I duly graduated with an LLB degree from the University of Stellenbosch at a ceremony in December 1994. Copies of my B. Comm (Law) and LLB degrees are annexed hereto marked annexures "MDK1-4" and "MDK1-5" respectively.
24. In and during December 1994 I was offered a position as a State Prosecutor in Windhoek, Namibia at a starting salary of N\$ 4 500.00 per month. Together with my wife and child, I moved to Windhoek in December 1994 where we stayed for one month at a house belonging to a friend of a family member in Olympia, Windhoek.
25. I practiced as a State Prosecutor at the Windhoek Magistrates Court in December 1994. This was an initiation process and a month later, I was transferred to the Gobabis Magistrates Court where I worked until August 1995. While in Gobabis my family resided in accommodation provided to us there by the Government of Namibia as part of my package.
26. In August 1995, I resigned as a State Prosecutor and commenced my articles of clerkship at Muller and Brand Attorneys in Windhoek, with a starting salary of N\$ 4 500.00 per month. I relocated my residence to 48 Jordaan Street Pionierspark, Windhoek, which I rented at a cost of approximately N\$ 1 500.00 per month. My wife was pregnant with our second child at the time, and she

was unemployed. As I was unable to cover my expenses out of my articulated clerk's salary, my father kindly assisted me with a contribution towards our living expenses of approximately N\$ 1 200.00 per month.

27. In November 1995, my second child, Jacques Maren was born in Durban, South Africa.
28. During or about 1995, my mother became incapacitated as she was diagnosed with rheumatoid arthritis and systemic sclerosis and she was unable to work. I had to contribute to her monthly expenses ever since I started earning a salary, from 1995, which monthly contributions steadily increased. I had to buy her two motor vehicles over a twenty-year period as hers had become totally dilapidated and since September 2019, I have basically been covering all her monthly expenses which placed an additional financial burden on me.
29. During or about February 1997, my principal at Muller and Brand Attorneys, Mr Philip Ellis ("Ellis") left the law firm to start his own law firm under the name and style of Ellis and Partners. Ellis asked me to follow him as his articulated clerk, and, if in due course I was admitted as an attorney, to stay on in his new practice as a Professional Assistant. My salary remained N\$ 4 500.00 per month for the remainder of my articles of clerkship.
30. I was admitted to practice as an attorney in Namibia during or about April 1997 and began to practice law as an attorney at Ellis and Partners. A copy of my admission certificate is attached hereto as annexure "MDK1-6".
31. In November 1998, I was admitted as a Conveyancer in the Republic of Namibia. A copy of my admission certificate to practice as a conveyancer is attached hereto marked as annexure "MDK1-7".
32. My salary at Ellis and Partners while I was employed there as a professional assistant was incentive based.
33. While I was at Ellis and Partners, I specialized in the following areas of law:

33.1 conveyancing;

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33.2 High Court litigation; and

33.3 basic commercial legal work for example, sale of business agreements.

34. During my tenure as a professional assistant at Ellis and Partners from 1997 to 2001, my family's financial position improved because of my increased remuneration, and also because my wife, Maria, had commenced employment at First National Bank, Windhoek in its marketing department at a salary of approximately N\$ 4 000.00 per month when she started working there in approximately 1998. Maria's salary later increased to approximately N\$ 6 000.00 per month by the time she left FNB in 2002. In 1997 my wife and I were able to rent a townhouse in Avis, Windhoek, at a monthly rental of approximately N\$ 4 400.00 per month.
35. By 2001, it became apparent to both me and to Ellis, that our long-term association would not be as partners. I wanted to "row my own boat" and did not want to be an employee. Accordingly, in September 2001, I resigned from my position at Ellis and Partners and left to start my own law firm in Windhoek under the name and style of MB de Klerk and Associates. With the consent and support of Ellis, I was permitted to take clients with whom I enjoyed a relationship with me to my new law firm, together with one secretary. I also appointed a messenger and a part time bookkeeper.
36. The firm set up offices in Stein Street, Windhoek. Initially, the firm was very small. My overheads including rental of N\$ 7 500.00 per month, in aggregate amounted to N\$ 25 000.00 per month, and my drawings were approximately the same. The firm specialized in conveyancing and basic commercial work including leases, employment agreements and liquor license applications.
37. Towards the end of 2000 my wife and I purchased a townhouse at 4 Quenta Street, Ludwigdorf, Windhoek for a purchase consideration of N\$ 550 000.00. As my wife and I were both employed, we were able to secure a 100% mortgage bond over the property. This was the house that my family and I lived in until April 2003, when my wife and I bought our current residence situated at 4 Ursula Street, Ludwigdorf, Windhoek.

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38. In April 2002, I was admitted as a Notary Public in the Republic of Namibia. A copy of my admission certificate to practice as a conveyancer is attached hereto as annexure "MDK1-8".
39. By the end of 2002, the firm had grown to the point that it required a larger infrastructure and more up market premises. Accordingly, at the end of 2002 the firm relocated to 7 Luderitz Street, Windhoek. From 2002 until 2005 my law firm grew steadily.
40. By 2005, the firm had grown to an extent that I felt comfortable enough to purchase offices for the firm. I therefore, in the name of a close corporation wholly owned by me, called Lemur Investments Number Nine CC, in 2005 (I think it was in May), purchased an immovable property situated at Section 135 Maerua Park, Windhoek for a purchase consideration of N\$ 550 000.00 with a 100% mortgage bond from Windhoek Bank. The mortgage bond and operating costs was funded by a lease agreement concluded between the law firm and the close corporation with a monthly rental of approximately N\$ 11 000.00 per month.
41. During 2009, and because of my children attending primary school, I became a member of the Windhoek Afrikaans Private School Board and served on the Board until 2011. In order to spend more time with my son, I also coached one of the school's junior rugby teams every year from 2006 to 2009, and I also refereed some of the primary school rugby games during official matches.
42. I was a trustee and founder of the Windhoek Afrikaans Privaatskool sports trust which trust I set up around 2009/2010 to create assistance for talented needy sports pupils. Due to work commitments, I resigned from this trust during 2012.
43. During 2010 to 2017, I also served on the Ethics Committee of the Law Society and I became chairman of one of the two committees from 2013 until my resignation in 2017. The core function of this committee was basically to sift through complaints by members of the public made against members of the fraternity, and after considering the same, to refer complaints which exhibited a clear *prima facie* complaint, to the disciplinary committee for further action.

by the Law Society, I nevertheless agreed to serve on the taxation committee during 2018 and 2019.

45. The law firm was on a growth path, and my partners and I had every confidence that this trend would continue. Accordingly, at the end of 2013, I sold the building situated at section 135 for approximately N\$ 1 million and together with Horn, we formed Bellissima Investments Fifty-Five CC (Registration number: CC/2005/235) in order to purchase larger offices in a higher profile part of Windhoek. My share of the close corporation then as now is 66%, and Horn's is 34%. A building situated at 4 Eadie Street, Windhoek for N\$ 3.9 million in the name of the close corporation. Two mortgage bonds are registered over the property. The first bond is in the amount of approximately N\$ 3.9 million which was for the purchase consideration, and the second bond, in the amount of approximately N\$ 750 000.00 was used to renovate the building. The total bond repayments of approximately N\$ 52 000.00 per month is funded out of law firm rental. Horn and I signed personal suretyships for these bond repayment obligations. Although this investment by the law firm in infrastructure was higher than before, I felt sufficiently confident to take the financial risk because all indications at the time were that the law firm would be able to fund this increased commitment out of business (predominantly out of conveyancing and commercial work) that appeared to be in the pipeline. In addition, it had become clear to Horn and myself that unless we lifted the profile of the law firm, we would not be able to attract the cream of the legal work on offer in Windhoek. Initially the law firm, *albeit* with some difficulty, was able to fund this rental and its overheads, but as our business flow was increasing, I was not concerned.
46. As I shall explain shortly, in 2014 I was appointed by Aaron Mushimba ("Mushimba") as the executor of the Mushimba Estate, and this offered me the prospect of good fee income in the short term. In late 2015 however, financial prospects began to change for the law firm. The Namibian economy was in decline, but more importantly, being a "white only" law firm, it had become clear that like all other "white only" owned businesses, we had become marginalized and would be excluded from business opportunities that were being given to black attorneys. In this regard it is important to appreciate the racial turmoil that has characterized the history of Namibia, and how the ruling party, SWAPO, a former revolutionary movement, much like the African National Congress ("ANC") in South Africa, was intent on transferring wealth and business



opportunity to black persons. In practice this meant that only persons who were loyal to the ruling party, SWAPO would be able to secure work in the Namibian economy. As we did not belong to this exclusive "club", and had no SWAPO affiliations, our growth opportunities had become extremely limited.

47. In 2016 the Namibian Government tabled the National Equitable Economic Empowerment Bill ("the Empowerment Bill"). In a nutshell, this Empowerment Bill (which is yet to become law) seeks to make it compulsory for a minimum of a 25% share of all Namibian businesses (whether dealing with the Namibian Government or not), to be owned by "racially disadvantaged persons". This became a source of extreme concern to me, and to my clients, and on a personal level my confidence took a severe knock. I began to have severe panic attacks and had difficulty sleeping. I consulted with a physiotherapist regularly to help alleviate spasms in my back and in my neck which I attribute to this stress. During this time, I seriously considered whether or not to emigrate as the proposed Bill was posing in a very real danger to my livelihood, because of all the people I was supporting financially because it potentially placed an increased strain on my personal finances.

48. I had become so concerned with the Empowerment Bill, and the threat this posed to my business, that I prepared and filed a lengthy objection to the Bill. A copy of the final objection is in my Windhoek office, but I do have an unsigned draft on my computer. A copy of this unsigned objection is attached as annexure "MDK1-9". I foresaw a scenario where I would become financially embarrassed in the eyes of my partners, clients, family and friends if this Empowerment Bill became law. It was clear to me that I would need to find alternative sources of income if I was to maintain the lifestyle to which my family and I had become accustomed.


#### BACKGROUND WHICH LED TO THE FORMING OF SEAFLOWER PELAGIC PROCESSING (PTY) LTD

49. I had, since 2014, acted for Louw, a very successful and wealthy Namibian businessman whose family is heavily involved in a variety of businesses in Southern Africa, including the fishing sector of the Namibian and Angolan economy. Louw was referred to me by a colleague, Attorney Evert Gous, to

assist him with matters surrounding an agricultural transaction, an area in which I have expertise. I duly assisted Louw, who I believe was suitably impressed (he said as much) and thereafter I began to receive further instructions from him.

50. Sometime in 2016 (I cannot recall exactly when), Louw approached me to assist him with a litigation involving a company owned by him in Angola called African Selection Trust SA ("AST"). The litigation had been pending since 2014. The matter was largely attended to by Coetzee of my law firm.
51. A further example is when in 2016, I assisted Louw with the purchase of his father's farms and obtaining a waiver certificate for same from the Minister of Lands and Resettlement, and also by concluding and finalising a lease agreement between Louw and his father in respect of another commercial farm owned by Louw's father.
52. In December 2016 I was on holiday with my family in the Western Cape. I received a peculiar phone call from the then Attorney-General, Shanghala. I was surprised to receive the phone call, as I was on holiday. Shanghala explained to me that he needed to see me urgently. In view of his senior position as the Attorney-General of Namibia, me being an attorney and serving with him on the Trust of the late Mushimba, I agreed to meet with him as he suggested that he needed to see me urgently regarding a possible venture with Louw. On or about 28 December 2016, I received a WhatsApp from Louw informing me about a deal that was urgent. As it was my daughter's birthday on 29 December 2016, I requested him to meet me in the Western Cape on Friday, 30 December 2016 which he agreed to. On the morning of 30 December 2016, I received a further WhatsApp from Louw informing me that Shanghala and Hatuikulipi would be attending the meeting as well. As I stated above, I knew Louw as a prominent businessman and one of my clients. In view of the fact that I knew both of them, I did not ask any further detail as to what the meeting would be about. I agreed to meet with them on 30 December 2016. Screenshots of the WhatsApp conversation appear below:

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Signature: 

53. The meeting was arranged for early morning. Shanghala was accompanied to the meeting by Louw and a well-spoken black gentleman who was introduced to me as Hatuikulipi. I have secured a forensic copy of my telephone which retained all the WhatsApp messages and same is available to the investigators.
54. After exchanging pleasantries, Shanghala explained that there was a tremendous opportunity that he and Louw wanted to ventilate with me as I was "chosen" to be part of this opportunity. During the initial part of the meeting they discussed amongst themselves the social meeting and interaction the three of them had had, a day or two before, at a VIP Section of the Shimi Beach Club in Cape Town and how much they had enjoyed the same. It was clear to me that Louw, Shanghala and Hatuikulipi had various previous discussions and interactions regarding the opportunity Shanghala referred to.
55. I was intrigued. Shanghala explained the following:
- 55.1 firstly, he said that all of us would be able to make a lot of money;
- 55.2 secondly, he explained that in his capacity to vet all agreements for Government, he was in a position to approve a proposed joint venture between Fischorp and an entity to be created in Namibia in the fishing industry. As I shall explain below, this entity came to be known as Seaflower;
- 55.3 thirdly, Shanghala explained to me that the amendment to Namibian fishing legislation which had as its cornerstone the creation of land-based fishing processing plants, had opened the door for a joint venture between Fishcorp and investors in the Namibian and Angolan fishing sectors of the economy;
- 55.4 fourthly, one of the biggest players in this sector was Louw, who was the owner of AST in Angola. Louw wanted to become involved in Namibia in the fishing industry and discussions had already taken place between Louw and / or his representatives and the Minister of Fisheries in Namibia, Esau, who had informed Shanghala that Louw was to enjoy a preferent right to all and any business opportunities flowing from the aforesaid change in legislation. Shanghala went to

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Signature: 

6:08

+27 83 250 5721

28 Dec 2016

Hi Maren  
ek opsoek na jou?

In kort  
as ons erens n koffie kon drink  
hier in kaap?  
ek wil graag iets dringend  
bespraek oor n deal vlgnde jaar  
waar ons vinnig uit die blokke  
moet wees

Hi aj. Wanneer het jy in gedagte  
en waar?

net wat jou pas  
ek is maklik  
ek in waterfront/Radisson area  
waar jy in wereld? ek kan  
soontoe ook kom

In langebaan. Kan nie more nie-  
my dogter verjaar. Vrydag  
miskien?

6:09

+27 83 250 5721

jy moet net se waar in  
langebaan  
koffie winkel of so iets

Ok sal jou laat weet

dankie vir jou tyd  
ek wardeer  
sou nie pla as dit nie nodig was  
nie

Reg so

30 Dec 2016

More aj kry my 11h by die  
farmhouse hotel in langebaan  
asb

more

ok dis reg  
daar kom 2 manne saam  
maar ek glo jy weet reeds

Weet net van sackey. Wie nog?

I certify that the above is a true and correct copy of the original which was submitted and that from my observations the original has not been altered in any manner.

Signature: *Anik*

great length to stress to me how excited he was to become involved in a commercial venture with Louw because, as he put it, "AJ is the real deal";

55.5 Louw explained that he was a major player in the fishing industry and that he had the know-how and resources to "partner" with Fishcorp in a concept that would return very substantial profits to the role-players;

55.6 Shanghala explained to me that he was in effect under an "instruction" from Esau to ensure that the agreements were concluded with Louw and that they were on terms and conditions that were favourable to Louw and / or his companies. I was left with the impression that Louw had cut some secret deal with Esau and Shanghala to make sure that he was awarded the contracts;

55.7 Louw explained to me that he was not prepared to commit the significant monies required to set up the land-based plants unless he was sure that the plants would be given sufficient business to justify that investment;

55.8 in order to give effect to the above arrangement, a joint-venture between the Government-owned Fishcorp and an entity which later became known as African Selection Fishing (Pty) Ltd ("ASF") would be set-up. This joint venture would be called Seaflower. Time was of the essence and a shareholders' agreement had to be finalised as a matter of extreme urgency for this to take place. I shall explain below, this shareholders agreement was signed on or about 30 January 2017, less than a month later;

55.9 it was clear to me that the expectation of Louw to have received the preferential treatment or a right as to the fishing quotas was something that was going to be secured to him, without competing in any competitive area and that Shanghala or the Minister were going to ensure that in the execution of their public powers they were going to afford him the benefits of fishing rights, which he would otherwise not have been able to obtain;

55.10 Louw explained to me that the opportunities for me to become involved with this were numerous and that this represented a wonderful opportunity for me to grow personally, professionally and commercially, inasmuch as:

55.10.1 the role-players were key members of the ruling political party, SWAPO, and that by becoming associated with this group of people, I would increase my profile and network to the extent that I could do business and legal work at this level;

55.10.2 several legal agreements would be required here;

55.10.3 there was an opportunity for me to be allocated shares in the ventures;

55.10.4 I would be appointed as a Director of his Namibian fishing enterprise, ASF and of the new joint-venture, Seaflower;

55.11 I did not ask Louw or Shanghala for details of how much money I stood to make, but it was quite clear to me that this was substantial because Louw had said to me that the money I stood to make, would be "telephone numbers". I was blown away at how this opportunity might change my life for the better, especially because my income-earning potential had been contracting due to the fact that I was not affiliated to SWAPO, and to be doing business with the likes of Louw;

55.12 as I explain herein, I believe that I am uniquely positioned between business and the politicians to provide insight into the *modus operandi* employed, because I became the tool / nexus / conduit through which the role-players implemented the events explained herein;

55.13 Louw and Shanghala explained that the next steps were as follows:

55.13.1 I was to obtain a shelf-company with ASF as a 60% shareholder and Fishcorp as a 40% shareholder;

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Signature: 



Status Report of Fishcorp in order for me to commence work on the agreements as well as to establish the new company. On 9 January 2017 Louw advised that he had instructed Auas Secretarial Services to set-up a new company which he called Namibian Pelagic Processing (Pty) Ltd which company's name later changed to Seaflower Pelatic Processing (Pty) Ltd. On the same day, Hatuikulipi responded and requested Mike Nghipunya to forward the relevant documentation to me which he did later the same day. Copies of these e-mails are attached hereto in a bundle marked as annexure "MDK2-1". On 12 January 2017 Louw requested feedback on the progress of the agreements as is evident from his e-mail of the same date attached as annexure "MDK2-2". I interpose to mention that the subject heading of the string of e-mails is titled Project CWB which is an abbreviation for Project Walvis Bay. During the remaining three weeks of January 2017, various exchanges between the respective parties took place as to what specific clauses and / or conditions were to be included in the bouquet of agreements. Examples of the emails so exchanged between the parties regarding the agreements are evidenced below:

*"Hi Maren,*

*Kindly find attached our comments to the Resolution, Quota Usage Agreement and Subscription Agreement. For ease of reference we worked on the drafts which contained Mike's comments as well.*

*We are busy reviewing the Shareholders Agreement and will provide our comments during the course of tomorrow.*

*Regards*

*Peter Johns*

**From:** Maren de Klerk [mailto:maren@mbdklaw.com]

**Sent:** 28 January 2017 11:03 AM

**To:** 'Mike Nghipunya'; Peter Johns

**Cc:** James Hatuikulipi; adriaan louw; Johan Breed; Peter Johns

**Subject:** Re: FishCor Resolution (WR 15.12.16)

*Thank you Mike*

*Regards*

*Marén*

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Signature: 



NCS

55.13.2 I would be provided with a draft quota usage agreement which I needed to amend for the purposes of this transaction, to be entered into between Fishcorp and Seaflower; and

55.13.3 I needed to draft a shareholders' agreement;

55.14 Louw explained to me that he had selected me to draw the agreements because he trusted me implicitly and wanted to be sure that there was no prospect of any competitor getting wind of what we were doing and to ensure that his interests were adequately protected. I needed to vet and comment on a draft subscription agreement which would be prepared by Peter Johns ("Johns"). At all relevant times during the finalisation of the Seaflower transaction Johns was the attorney acting for and on behalf of Fishcorp;

55.15 I am embarrassed to acknowledge that I realised that what Shanghala was explaining to me, was to participate in an unlawful corruption scheme. Shanghala was going to abuse his office (as the Attorney General) to sign off on agreements which would be to the benefit of Louw, and ultimately, me; and

55.16 Louw was at the meeting in his own vehicle, an Aston Martin. After the meeting, I distinctly recall commenting on how beautiful his motor vehicle was and how it was my dream to own such a vehicle at some point in my future. Louw explained to me that if I played my cards correctly, I would make enough money to buy myself the car of my dreams. Louw again impressed upon me the urgency with which the agreements had to be prepared and the secrecy of the entire arrangement;

56. Because of the urgency to finalise the agreements impressed upon me by Louw, I cut my holiday short by a week and upon my return to office in Windhoek, I immediately started to work on the agreements. By virtue of the urgency of the matter impressed upon me by Louw in particular I sent an e-mail to Louw, Shanghala and Hatuikulipi on 9 January 2017 and requested that they

I certify that the document is a true reproduction / copy of the original which forward the relevant Act and other required documents, including the Company and that from my observations, the original has not been altered in any manner.

Kindly see attached.  
Thanks Johan for pointing out this out.

**Peter Johns**

**From:** Peter Johns <peter@esinamibia.com>  
**Sent:** 29 January 2017 06:27 PM  
**To:** 'Maren de Klerk'; 'Mike Nghipunya'  
**Cc:** 'James Hatuikulipi'; 'adriaan louw'; 'Johan Breed'  
**Subject:** RE: FishCor Resolution (WR 15.12.16)

Hi Maren,  
Further to our previous mail, kindly find attached our comments relating to the draft Shareholders Agreement.

Regards  
**Peter Johns**

**From:** Peter Johns <peter@esinamibia.com>  
**Sent:** 29 January 2017 06:50 AM  
**To:** 'Maren de Klerk'; 'Mike Nghipunya'  
**Cc:** 'James Hatuikulipi'; 'adriaan louw'; 'Johan Breed'  
**Subject:** RE: FishCor Resolution (WR 15.12.16)

Hi Maren,  
I've attached the Quota Usage agreement again with our track changes. I've also included a PDF version in case the Word version doesn't show the track changes.

Regards  
**Peter Johns**

**From:** Maren de Klerk [mailto:maren@mbdklaw.com]  
**Sent:** 28 January 2017 04:04 PM  
**To:** Peter Johns; 'Mike Nghipunya'  
**Cc:** 'James Hatuikulipi'; 'adriaan louw'; 'Johan Breed'  
**Subject:** Re: FishCor Resolution (WR 15.12.16)

Thank you Peter

I certify that the document is a true reproduction / copy of the original which was examined by me and that from my observations...

**From:** Mike Nghipunya <miken@seaflower.com.na>

**Date:** Saturday, January 28, 2017 10:47 AM

**To:** Maren de Klerk <maren@mbdklaw.com>

**Cc:** James Hatuikulipi <james.hatuikulipi@gmail.com>, adriaan louw wcsajl@gmail.com>, Johan Breed <breedjohan0@gmail.com>, Peter Johns <peter@esinamibia.com>

**Subject:** Re: FW: FishCor Resolution (WR 15.12.16)

Dear Maren

Herewith, attached is the resolution with my track changes

Regards,

Tate Mike

On Fri, Jan 27, 2017 at 4:25 PM, Maren de Klerk <maren@mbdklaw.com> wrote:

Hi Gents

Herewith the proposed resolution for your perusal and comments.

This document is, by virtue of Monday's Board meeting, the most urgent, so please give your feedback /comments on this document by latest 08h00 on Monday

Regards

Maren

**From:** Peter Johns <peter@esinamibia.com>

**Date:** Sunday, 29 January 2017 at 7:32 PM

**To:** Maren de Klerk <maren@mbdklaw.com>, 'Mike Nghipunya' <miken@seaflower.com.na>

**Cc:** 'James Hatuikulipi' <james.hatuikulipi@gmail.com>, 'adriaan louw' <wcsajl@gmail.com>, 'Johan Breed' <breedjohan0@gmail.com>

**Subject:** RE: FishCor Resolution (WR 15.12.16)

Dear All,

Apologies, please ignore my previous mail, I attached my comments on

I certify that the document is a ~~transparent~~ draft.  
copy of the original which was examined by me  
and that from my observations, the original has not

Please advise whether you made any comments to the Quota Usage agreement as no track changes were indicated. It could be a format problem.

Regards

Maren"

57. In order to explain the challenges surrounding the transaction it is necessary to understand two legislative challenges facing the fishing industry at the time, creating the landscape to have implemented the corrupt creation of Seaflower and what flowed therefrom. These were:

**Amendment to Namibian Marine Resources Act, 2000**

- 57.1 fishing quotas of both a commercial and of a non-commercial nature had been allocated to Fishcorp. Although I have no personal knowledge of these matters, I believe that these quotas were issued to Fishcorp by the Namibian Minister of Fisheries (in this case Mr Esau);
- 57.2 Fishcorp in turn, would delegate some of these rights to third parties. This led to an abuse inasmuch as these third parties preferred to process and freeze the fishing catches on board the fishing trawlers, as opposed to conducting these activities on land, seemingly because this was far more cost effective, to the detriment of the Namibian land-based workforce;
- 57.3 Seemingly as a result hereof, on 15 May 2017, an amendment was enacted to the **Namibian Marine Resources Act, 2000** in effect making it compulsory for seafood processing and freezing activities to take place on Namibian land, and not at sea, and thereby generate employment and other economic opportunities for Namibians. This land-based processing later became a material factor to be considered when fishing rights were delegated. The proclamation of the 15 May 2017 amendment was known to be on the cards, and the purpose of the Seaflower joint venture was to set up a structure that would be able to unlock business opportunities in compliance with, and in time for, the 15 May 2017 amendment;

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Signature: 

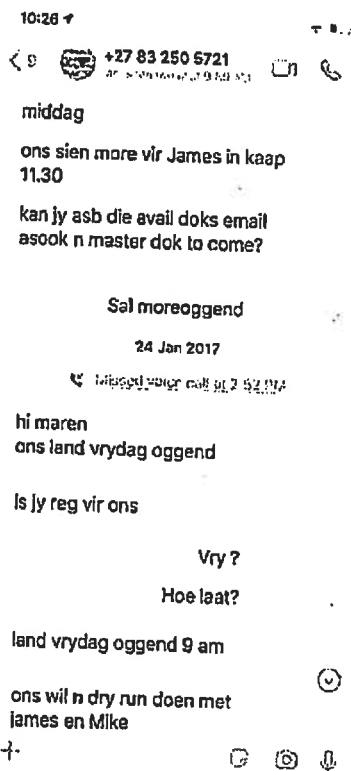


KW


**The Empowerment Bill**

57.4 Louw was deeply concerned that unless he took steps to comply with the pending 25% shareholding requirement contemplated by the Empowerment Bill, he would be unable to raise certain funding from Norway he needed to build a processing and freezing plant in Namibia.

58. On 19 January 2017 I received a further WhatsApp from Louw enquiring about the progress of the agreements and informing me that he would be meeting Hatuikulipi in Cape Town on 20 January 2017. I assumed that the intended meeting would relate to the upcoming venture. A screenshot of the WhatsApp conversation appears below:



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Signature: 

59. I had various meetings with the legal representative of Fishcorp, Johns, at my office. The reason why the meetings took place at my office was because Johns was my junior. These meetings generally lasted for an hour and we also discussed the pending acquisition of shares in Etale Properties (Pty) Ltd ("Etale") by Fishcorp, which was an essential part of the joint-venture transaction. I mention that the purchase of the shares in Etale was important,

because Etale owned the property on which a factoring and processing facility would be built for the business activities of Seaflower. As I mentioned earlier, the amendment to the Marine Resources Act was designed to promote the erection of such facilities on land so as to create employment opportunities for Namibians, and Seaflower needed this facility in order to conduct its business operations there.

60. The parties eventually agreed to all the terms and conditions and the agreements were finalised under tremendous pressure on or about 30 January 2017. On or about Friday, 27 January 2017 and at my offices the parties had a "dry" run on the agreements and discussed and agreed to the final outstanding issues. I attach hereto a copy of the e-mail from Hatuikulipi, as annexure "MDK2-3". Copies of these agreements are on my laptop and I tender to make same available if required. Louw signed the quota usage, subscription and Seaflower shareholders agreements on behalf of Seaflower and ASF.
61. In retrospect, I have come to realise that an interesting nuance with the Seaflower transaction presented itself, inasmuch as Johns informed me that Namibian Competition Commission approval was required for the transaction. Ordinarily, when Competition Commission approval is a prerequisite to a transaction, I customarily include such Competition Commission approval as a suspensive condition to the transaction. When I proposed to do so, I was informed by Johns that Clause 5(e) of the subscription agreement already contained a condition which stipulated that Fishcorp would be responsible to obtain the approval of the Namibian Competition Commission.
62. The said Clause 5(e) of the subscription agreement read together with the introductory clause read as follows:

*"The obligation of FISHCORP for the Subscribed Shares on the Completion Date and to pay the Subscription Price at Completion shall be subject to the satisfaction as determined by, or waiver by, FISHCORP of the following conditions on or before the completion date:*

**(e) Approvals and Consents**

*There shall have been obtained all governmental, corporate, creditors'*

I certify that the documents are true and correct copies of the original documents and that no alterations have been made in any manner.

shareholders and other necessary licenses, approvals of consents for the FISHCORP subscription under the Agreement, including Competition Commission approval."

63. Although less than ideal, I prepared the agreements on the basis that the Competition Commission approval would be done by Fishcorp. This approval by the Competition Commission was eventually given by the Commission in June 2017. The following exchange of e-mail between myself and Johns relating to the outstanding Namibian Competition Commission approval, bears scrutiny. I set same out below:

**From:** Maren de Klerk [mailto:maren@mbdklaw.com]  
**Sent:** 01 February 2017 02:32 PM  
**To:** 'Mike Nghipunya'; Peter Johns  
**Cc:** Johan Breed; 'adriaan louw'; 'James Hatuikulipi'  
**Subject:** FW: FISHCOR Scanned signed Shareholders Agreement and Subscription Agreement

Hi Gents

Please see attached, copies of the two signed agreements, the Quota Usage Agreement having been send two days ago.

Kind regards

Maren

**From:** Peter Johns [mailto:peter@esinamibia.com]  
**Sent:** 10 March 2017 09:04 AM  
**To:** 'Maren de Klerk'  
**Subject:** RE: FISHCOR Scanned signed Shareholders Agreement and Subscription Agreement

Hi Maren

As discussed telephonically kindly find attached the questionnaire to be completed on behalf of the African Selection Fishing Namibia (Pty) Ltd group of companies.

If you have any queries, do not hesitate to contact me.

I certify that the document is a true reproduction / copy of the original which was examined by me and that from my observations, the original has not been altered in any manner.

Signature: 



*Regards*

*Peter Johns*

*From: Peter Johns <peter@esinamibia.com>*

*Date: Friday, March 24, 2017 12:09 PM*

*To: Maren de Klerk <maren@mbdklaw.com>*

*Subject: RE: FISHCOR Scanned signed Shareholders Agreement and Subscription Agreement*

*Hi Maren,*

*Have you received any feedback from your client with regard to the NaCC information request.*

*We need this info asap as we need to file the merger notices by latest 31 March 2017 in terms of the suspensive conditions to the sale agreement.*

*Regards*

*Peter Johns*

*From: Maren de Klerk [mailto:maren@lawdhc.com]*

*Sent: 27 March 2017 08:01 AM*

*To: Peter Johns*

*Subject: Re: FISHCOR Scanned signed Shareholders Agreement and Subscription Agreement*

*Morning Peter*

*I had to wait for the Financials to be finalized which I received on Friday.*

*I will revert soonest.*

*Kind regards*

*From: Peter Johns <peter@esinamibia.com>*

*Date: Tuesday, March 28, 2017 5:10 PM*

*To: Maren de Klerk <maren@lawdhc.com>*

*Subject: RE: FISHCOR Scanned signed Shareholders Agreement and*

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**Subscription Agreement**

Hi Maren,

We running out of time quite quickly, would it be possible to share the information that you have in order for us to start populating the merger notices?

Regards

**Peter Johns**

**From:** Maren de Klerk [mailto:maren@lawdhc.com]

**Sent:** 30 March 2017 12:28 PM

**To:** Peter Johns

**Subject:** Re: FISHCOR Scanned signed Shareholders Agreement and Subscription Agreement

Hi Peter

Ok my clients have confirmed that they have no existing businesses in Namibia nor any assets. (all in Angola)

I will send the questionnaire with my handwritten insertions and annexes over in hard copy.

Please let me know if you require anything else.

Kind regards

**From:** Peter Johns <peter@esinamibia.com>

**Date:** Thursday, March 30, 2017 12:50 PM

**To:** Maren de Klerk <maren@lawdhc.com>

**Subject:** RE: FISHCOR Scanned signed Shareholders Agreement and Subscription Agreement

Thank you, I'll finalise the merger notices this afternoon and forward you same for comment.

Please can you sign the attached certificate of accuracy in duplicate and have it delivered with the hard copies to our office. I'll attach same to the Merger Notice once you sign off.

Regards  
I certify that the document is a true reproduction /  
copy of the original which was examined by me  
and that from my observations, the document has  
not been altered in any way.

**Peter Johns**

**From:** Maren de Klerk [mailto:maren@lawdhc.com]

**Sent:** 30 March 2017 02:48 PM

**To:** Peter Johns

**Subject:** Re: FISHCOR Scanned signed Shareholders Agreement and Subscription Agreement

Thanks Peter

I only received this now but will send it also.

Do I need to do an affidavit re the data that is unavailable?

Regards

**From:** Peter Johns peter@esinamibia.com

**Date:** Friday, 31 March 2017 at 8:06 AM

**To:** Maren de Klerk maren@lawdhc.com

**Subject:** RE: FISHCOR Scanned signed Shareholders Agreement and Subscription Agreement

Hi Maren,

I usually don't provide affidavits unless requested, I think we should be fine for now.

Regards

**Peter Johns"**

64. From the above exchange of e-mails, it is clear that questions were being raised by the Namibian Competition Commission in relation to:
- 64.1 the nature of the activities of the Louw Group of companies (called the "AFSN Group");
  - 64.2 the locality of these activities; and
  - 64.3 the shareholders of the fishing entities, especially the Louw joint-venture fishing enterprise in Angola in which Helena dos Santos is a

I certify that the document is a true ~~Shareholder~~ copy of the original which was examined by me and that from my observations, the original has not been altered in any manner.

Signature: 

65. I continued to receive questions via e-mail from Johns which I referred to Louw's financial advisor, Breed, who provided me with the answers to these questions, which I in turn communicated to Johns. Copies of these e-mails are attached hereto as annexure "MDK2-4".

66. During the period February 2017 and March 2017, the following events transpired:

66.1 on 5 February 2017, I received an instruction from Hatuikulipi via e-mail to prepare succinct notes on the proposed transaction including the agreements, etcetera, so that he and Shanghala would be in a position to brief the Minister of Fisheries and "that he may be in a position to further brief his superiors". The e-mail further stated the following: "If you could complete this by end of business Tuesday, this would enable him to seek council with the Attorney General on the needed amendment to the co-operation agreement with in the week, so as to secure the quota for the duration of the agreement." A copy of this e-mail is attached hereto as annexure "MDK2-5". The wording of this e-mail, gives away the plan which was hatched by recording that a fishing quota will be secured based on a document that I was creating and which Shanghala was going to ensure execution of within the realms of Government;

66.2 on 7 February 2017, I prepared the first draft of the Executive Summary and e-mailed Hatuikulipi and copied Nghipunya, Louw and Breed on the e-mail. Copies of the e-mail and the Executive Summary are attached hereto as annexure "MDK2-6". The fact that I had to copy Nghipunya, Louw and Breed is indicative that they were all fully knowledgeable that we were attempting to secure a fishing quota for Seaflower through the conspiracy of Shanghala, Hatuikulipi, Nghipunya, Louw, Breed, myself and I verily believe, Esau and others;

66.3 following a further exchange of e-mails, I provided my final marked up comments to the Executive Summary on 8 February 2017. On the same day, Hatuikulipi instructed Nghipunya to insert the Executive Summary on a Fishcorp letterhead which was duly done by Nghipunya

I certify that the document is a copy of the original which was examined by me and that from my observations, the original has not been altered in any manner.

Signature: 

and forwarded to Hatuikulipi for his signature. Copies of the e-mails so exchanged as well as a copy of the unsigned Executive Summary are attached hereto in a bundle as annexure "MDK2-7";

66.4 on 1 March 2017, Ngipunya requested me to forward a copy of the shareholders agreement of Seaflower to the office of the Minister of Fishery and Marine Resources which I duly did. A copy of the said e-mail from Nghipunya is attached hereto as annexure "MDK2-8";

66.5 on 1 March 2017 the Minister of Fisheries and Marine Resources addressed a letter to Shanghala in his capacity as Attorney General. The subject heading of this letter read "SUBJECT: REALISATION OF LANDBASED OPERATIONS IN THE HORSE MACKEREL FISHERY BY FISHCORP". The content of the said letter reads as follows (a copy of the letter is attached hereto as annexure "MDK2-9");

*"As a matter of fact, I have for sometime now consistently urged the majors in the Horse Mackerel Fishery to invest in land based (sic) operations that will add value to the fishery catches and products.*

*My objective has always been to ensure that the largest biomass contributes to food security, job creation and import substitution.*

*In the meanwhile a few have heeded my call, however following the designation of FISHCORP by the Ministry of Fisheries and Marine Resources, as well as the conclusion of a co-operation Agreement in terms of the Fishcorp Founding Legislation, I am now forwarding to you the signed Agreement by Fishcorp and its technical partner for the purpose of realising their commitment to the operation of a land base processing and can implant at Walvis Bay for Horse Mackerel.*

*Could you therefore advice on how I, as the Minister can perform my end of the bargain so as to ensure the viability of this endeavour which I have instructed Fishcorp to realise as*

*per the Fishcorp Legislation.*

*I look forward to your consultation as such, that will enable me to contribute and complete our Harambee Prosperity Plan targets.*

*I remain, Comrade Attorney General."*

- 66.6 this note was clearly not genuine as it was simply created to provide a cover-up for what was already planned since 30 December 2016 and explained above;
- 66.7 on 20 March 2017, and subsequent to application for finance at FNB, e-mails were exchanged between Hatuikulipi, Breed and Nghipunya. In the e-mail of even date of Nghipunya reference is made in paragraph 1 thereof to "SPP". This was a reference to Seaflower Pelagic Processing (Pty) Ltd. The quota agreement referred to by Nghipunya is in fact a reference to the signed quota usage agreement which was signed on 30 January 2017 together with the shareholders and subscription agreements. The reference in Nghipunya's e-mail to the Title Deeds and the filing, refers to the Competition Commission filing and approval of the Etale property purchase and the subsequent transfer of the shares in Etale Property (Pty) Ltd as contemplated in terms of Paragraph 5(e) of the subscription agreement referred to above;
- 66.8 on 23 March 2017 I received several documents via courier relating to the sale of shares between Fishcorp and Curzola Island Investments (Pty) Ltd for the sale of his shares in Etale, which company was registered owner of Erf 3690 Walvis Bay. I do not have access to any of these documents currently as should be in a file located in the office in Windhoek;
- 66.9 a further condition of the subscription agreement and in particular clause 5 (g) thereof, is that Fishcorp was obliged to, after approval of the Competition Commission, to transfer or cede 100% of the issued shares in Etale to Seaflower;

- 66.10 the aforesaid transfer of the shares was further confirmed in an e-mail by Nghipunya on 11 July 2017 in which e-mail he also confirmed the ground-breaking ceremony which was scheduled for 4 August 2017. A copy of this e-mail is attached as annexure "MDK2-10". On 4 October 2017 and pursuant to an e-mail request to Nghipunya, Nghipunya confirmed that the shares in Etale had been transferred to Seaflower as contemplated above and on the afternoon of the 4th of October 2017 Nghipunya sent me an e-mail attaching the relevant share certificate, a copy of which is attached hereto as annexure "MDK2-11";
- 66.11 during or about March 2017, Louw engaged in negotiations with Bidvest for the potential purchase of a vessel and a property of United Fishing Enterprises in Walvis Bay;
- 66.12 for the above purposes I was presented with a term sheet prepared by Joos Agenbach, the Attorney acting for Bidvest in respect of the negotiations;
- 66.13 although these negotiations never came to fruition the process continued for several months;
- 66.14 on 31 March 2017, I received an e-mail from Louw with the subject heading "TERM SHEETS", a free translation of the content thereof which reads as follows:

*"Morning Maren*

*Last night I had a long meeting with our guys. They made a few changes. I will phone you about one aspect.*

*And then on Sunday they will test the draft with the boss."*

- 66.15 it is not clear to me who the reference to "the boss" in this context is, but I assume that it refers to the Minister of Fisheries or the President. A copy of this e-mail dated 31 March 2017 is attached hereto as annexure "MDK2-12".

I certify that the document is a true reproduction / copy of the original which was examined by me and that from my observations, the original has not been altered in any manner.

Signature: *AMW*

### Appointment as a Director of Seaflower and ASF

67. During the set-up of Seaflower and ASF, Louw requested me to become a director of both Companies. I was surprised by this. At this stage and apart from the limited exposure I had to the fishing industry up to that time I can only speculate that Louw wanted to appoint me as director of the aforesaid Fishing companies as a result of our longstanding attorney / client relationship and the associated trust that he had in me.
68. I was duly appointed as a director of ASF and as a director of Seaflower at the beginning of 2017. While I was a director of ASF and of Seaflower:
- 68.1 I provided my input on a quota usage agreement between Seaflower and Fishcorp which had been prepared by Fishcorp's attorneys. This agreement was signed on 30 January 2017. A copy of this agreement is attached hereto as annexure "MDK3-1";
- 68.2 I provided my input on a Fishcorp shareholders' agreement prepared by Fishcorp's attorneys. This agreement was signed on 30 January 2017. A copy of this agreement is attached hereto as annexure "MDK3-2";
- 68.3 I provided my input on a Fishcorp subscription agreement prepared by Fishcorp's attorneys. This agreement was signed on 30 January 2017. A copy of this agreement is attached hereto as annexure "MDK3-3";
- 68.4 Louw accepted a recommendation from the CEO of Fishcorp, Hatuikulipi to transfer 25% of ASF into a shelf company, and for this shareholding to be retained there until we had clarity on whether or not the Empowerment Bill would become law. The plan was for the shares in this shelf company to be held by me in my capacity as a nominee. As instructed, I secured a shelf company from a company secretary with whom I did business, being Celax Investments Number One (Pty) Ltd ("Celax Investments") (Registration number 2017/0063) to hold 25% of ASF. Copies of the company formation documentation I have access to are attached hereto in a bundle as annexure "MDK3-4(a)". I

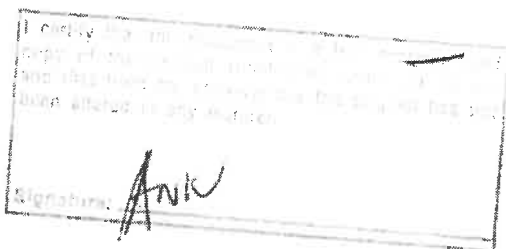


was the sole registered shareholder of the company. The company was never audited, and no financial statements have ever been prepared. The company operated one bank account at the Bank Windhoek under account number: 800 685 0450. I was the sole signatory on this bank account. Copies of these bank statements are attached hereto in a bundle marked as annexure "MDK3-4(b)". The creation of Celax Investments gave birth to a second component of the corrupt scheme. It is this vehicle, which was used by Nghipunya and Hatuikulipi, to transfer millions of Namibian dollars into and which were effectively ran through my Trust account.

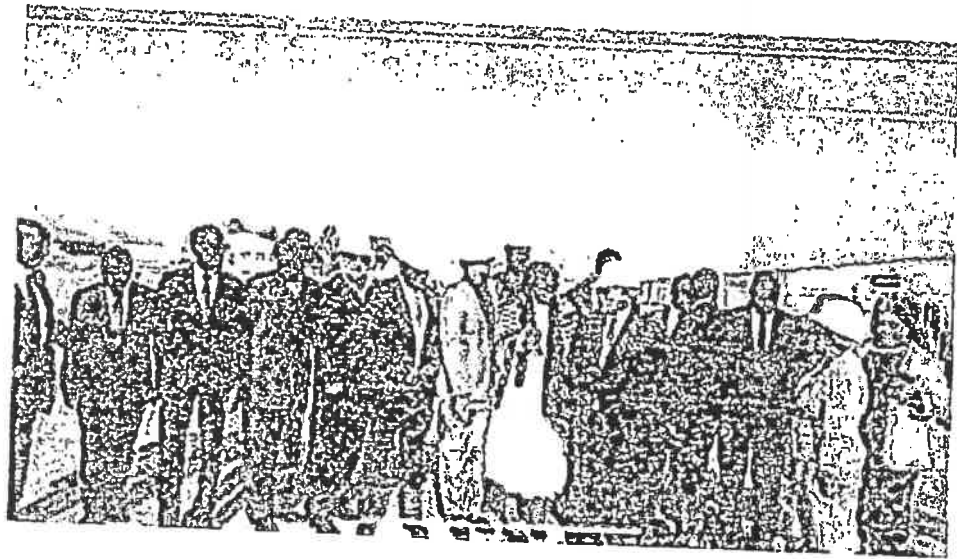
69. On or about 11 July 2017, Nghipunya sent an e-mail to all the Directors of Seaflower confirming the registration of Seaflower and the opening of its bank account. Nghipunya also made mention that once the Competition Commission approval would be obtained the shares in the Etale Property would be transferred to Seaflower in terms of Paragraph 5(e) of the subscription agreement. He further indicated that the Fishcorp Board Meeting would be held in the morning of 3 August 2017 in order to brief Fishcorp about the joint venture and to arrange for the ground-breaking Ceremony which was set for 4 August 2017. A copy of his e-mail is attached hereto as annexure "MDK3-4(c)".

#### CONSTRUCTION OF THE SEAFLOWER FACTORY

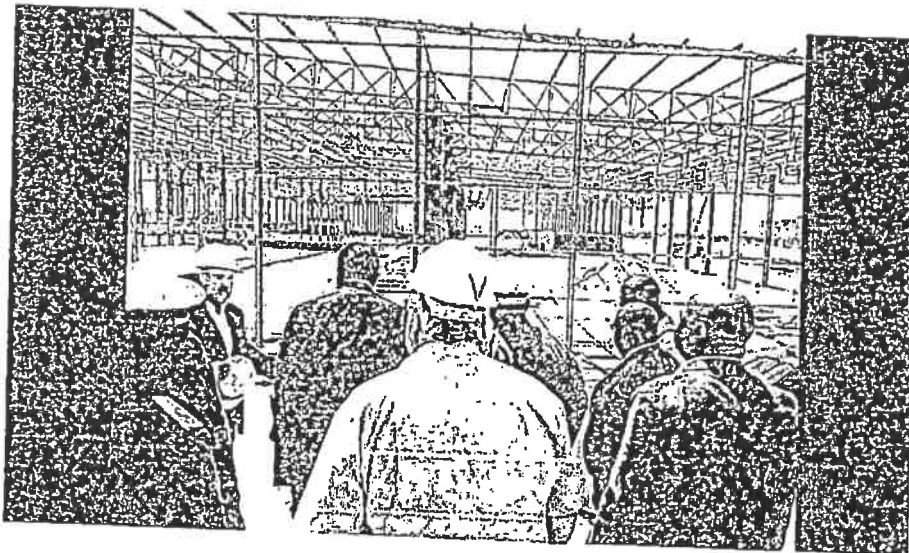
70. The construction of the factory by Seaflower already started during May 2017 and the ground-breaking ceremony for the factory was held on 4 August 2017 or on 5 August 2017. In substantiation hereof please see below a photo taken at the ground-breaking ceremony as forwarded to me by Louw:



*[Handwritten signature]*  
*[Handwritten initials]*

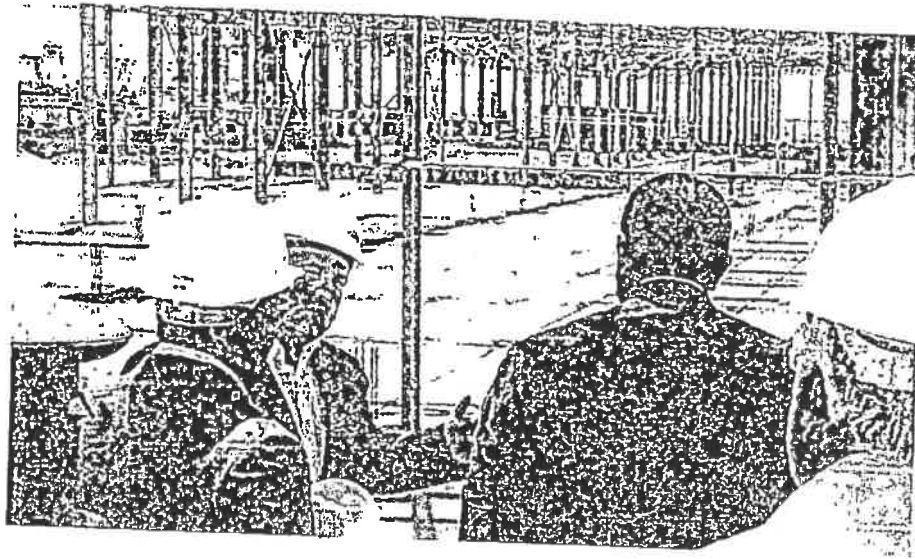


71. During or about 28 October 2017, an official State visit by the President of Namibia was arranged and conducted at the construction site of the Seaflower factory, which was still under construction, and in substantiation thereof I insert hereto two photographs sent to me on WhatsApp by Louw, depicting Louw talking to the President and the Minister of Fisheries (Esau), as is evident below:



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*[Handwritten signature]*



72. During or about January 2019, as far as I can recall the Seaflower factory started with operations by processing the first catches. In this regard Louw sent me a short WhatsApp video thereof on 29 January 2019.

73. During or about 29 July 2019, an official State visit was arranged at the Seaflower factory for the benefit of the President of Zimbabwe and which visit the President of Namibia, Louw, Nghipunya, Breed and others were present. Although I was not part of this State visit, Louw sent me a photograph by WhatsApp relating to the said State visit and which photograph I insert below:

11:53



+27 83 250 5721  
29,07/2019, 9:02 PM

WhatsApp



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and that from my observations, the original has not  
been altered in any manner.

**BOARD MEETINGS OF SEAFLOWER AND ASF**

74. During January 2018, I received an e-mail from the auditors of Fishcorp requesting a copy of the share certificate of Fishcorp and Seaflower as well as a copy of the shareholders' agreement of Seaflower which I duly forwarded to them.
75. I never attended nor was I asked to attend any board meeting of ASF. I did however attend several Seaflower board meetings, all of which with one exception took place in Walvis Bay (the other meeting took place in Windhoek). Copies of the Seaflower director meeting agendas and minutes that I have in my possession are attached hereto in a bundle marked as annexure "MDK3-5".
76. Seaflower had several board and shareholders' meetings over a period of approximately two years. My role as director representing Seaflower at the board meetings was very limited because I had limited knowledge about the fishing industry.
77. I am able to establish from my computer records that the first board meeting that I can recall was held on 3 August 2017. I attended this meeting and attach hereto the draft minutes of the meeting as annexure "MDK3-5".
78. A further board meeting was held on 29 January 2018.
79. Another board meeting and AGM was held on 16 August 2018. During this meeting the shareholders agreed to amend the shareholders' agreement and the quota usage agreement, as is evident from annexure "MDK3-5" hereto. The issues that were so amended *inter alia* pertained to:
- 79.1 the increase of the value under point 5 of Annexure B (Specially protected matters) from N\$ 2 million to N\$ 5 million;
- 79.2 the amendment of the date to 2033 because of Seaflower not being able to access the full quota of 50,000 tons in 2018;
- 79.3 the amendment of 200 Nautical miles to 400 Nautical miles which is the EEZ of the Republic of Namibia in the preamble in the quota usage

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agreement;

- 79.4 the correction in the preamble of the 5-year period to read 15 years, as well as the amendment of the percentage of the quota usage fee.
80. Apart from one or two occasions, the relationship between the role-players at board meetings was mostly courteous and friendly. Nghipunya was always dressed in a smart suit whilst Hatuikulipi was sometimes dressed in a suit but other times dressed smart casually whilst Louw, Breed and I were dressed more informally.
81. Other board meetings that were held were held on, *inter alia*, 29 November 2018, 29 January 2019, 9 September 2019 and 9 December 2019.
82. The next Board meeting I can recall was held on 9 September 2019 at my offices, as is evident from annexure "MDK3-5" hereto. During this board meeting the following matters were discussed:
- 82.1 the financial results for 30 June 2019;
  - 82.2 the development of SPP brand;
  - 82.3 capacity and vessel performance;
  - 82.4 the quota usage fee;
  - 82.5 quota levies;
  - 82.6 catching of excess quota; and
  - 82.7 the waiver of the second quarter board meeting.
83. Prior to the meeting of 9 September 2019, Louw requested me to prepare an opinion / ruling on the issue of the quota allocation as contemplated in the quota usage agreement which I prepared on an urgent basis and sent to Louw on or about 6 September 2019. A copy of this opinion / ruling is attached hereto

84. During the board meeting held on 9 September 2019, there was a major difference of opinion between Louw and Breed on the one side, and Nghipunya and Hatuikulipi on the other side. As I can recall, Louw was unhappy about the non-allocation of the 2018 quota from Fishcorp, and Hatuikulipi was very defensive and advanced various reasons why it had not been done.
85. This meeting was held at my office in Windhoek and the arguments regarding the quota between Louw on the one hand and Hatuikulipi and Nghipunya on the other hand, became so heated, that Hatuikulipi later stormed out of the meeting.
86. I do recall that after the meeting, Louw informed me that he had a suspicion that Fishcorp had sold that particular year's quota to a third party in order to raise funds either for Fishcorp or themselves, to the detriment of Seaflower.
87. To the best of my recollection, the next board meeting was held in December 2019. I was unable to attend this meeting, and I made the necessary apology. A copy of the draft minutes of the board meeting held on 9 December 2019 is attached hereto as annexure "MDK3-5". From the minutes it is evident that Hatuikulipi and Nghipunya resigned as a result of the "fishrot" investigation.
88. I interpose here to mention that I was a director appointed by Louw to represent ASF on the board of Seaflower. Because of my limited exposure to the fishing industry, and by virtue of the fact that Louw was a very prominent, and also a very large client of mine, I basically followed all his instructions, and voted along the lines that he preferred at board meetings. My role as a director was very limited and I basically fulfilled the function of a gatekeeper, proposing solutions to potential deadlock situations which arose at the meetings. I was expected to vote with Louw and all decisions in favour of ASF.
89. I have to emphasise that in my capacity as the Director of Celax Investments, at no point in time, did I independently represent the company or the shareholders at an ASF Board meeting level, or influenced that Board on behalf of the shareholders who I ostensibly represented. I accepted that the 25% shareholding was either owned, or at least effectively controlled, by Shanghala, Hatuikulipi and Nghipunya. I met with Hatuikulipi at my Windhoek offices on

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Signature: 

four or five occasions to discuss the conclusion of the quota share and the shareholders' and subscription agreements. On numerous occasions Hatuikulipi stressed the importance of the jobs that the new dispensation would be creating, and in fact, as best I recall, at least 700 new Namibian jobs were expected to be created at the onshore processing and freezing plant that was to be built in Walvis Bay by Seaflower.

90. Although my function as a director of Seaflower and of ASF did not offer me any direct financial advantages (other than the legal work), I was nevertheless extremely excited at the prospect of doing work for Seaflower. I was not paid a directors' fee by either company. To the best of my knowledge no dividends were ever paid from ASF to Celax Investments. I was however paid for my time expended on these activities as an attorney. The other directors of Seaflower were Hatuikulipi and Nghipunya, a member of the SWAPO "boys club". I therefore immediately jumped at the opportunity to broaden my profile as I saw this as a means to diversify my reliance upon law firm income, to generate further law firm business, and to be honest, and more importantly, to become closer to the SWAPO "boys club", without which my financial development would be stunted for the reasons I have explained above.
91. In the latter part of 2018, I frequently engaged with Breed and Louw in other legal instructions which I do not believe to be of relevance to this affidavit, suffice it to indicate that I grew closer to Louw and Breed in view of the volume of work that I was doing for them.

**New Pelagic Fishing Processing (Pty) Ltd and due diligence investigation of Celax Investments**

92. In April 2018, I received an instruction that:

92.1 one of the Louw's companies (if I remember correctly it was called New Pelagic Fishing Processing (Pty) Ltd), purchased a property situate next to the new land-based factory that Louw had erected;

92.2 Breed e-mailed me on 16 April 2018 and advised me that they were

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with negotiations for the purchase of the said property and

enquired whether the intended transaction would require Competition Commission approval. A copy of his e-mail is attached hereto as annexure "MDK3-7";

92.3 this transaction occurred during or about September 2018 or October 2018, and basically compromised the purchase of shares in an entity known as NMS Properties (Pty) Ltd, which company was the registered owner of the adjacent erf. NMS Properties (Pty) Ltd was wholly owned by the Alan Burns Louw Family Trust; and

92.4 the total purchase consideration for the shares was about N\$ 90 million and because it was such a large transaction, we had to obtain and also assisted with the application to obtain the merger approval for the transaction from the Namibian Competition Commission. The Competition Commission approved the merger on 27 September 2018. A copy of the approval notice of the Competition Commission is attached hereto as annexure "MDK3-8".

93. During or about October 2018, I was also instructed by Louw to assist and advise on certain concerns that a company known as the Olaolsen Gruppen had concerning the status of Celax Investments as a shareholder in ASF. It was my understanding that the transaction with Olaolsen Gruppen was to raise the necessary finances to complete the factory and to obtain start-up capital for same. In this regard I had to on a regular basis, provide confirmation that the main reason for the 1/3 ownership of Celax Investments in AFS was to comply with the intended Empowerment Bill requirements as further discussed below. The financing arrangements with the Olaolsen Gruppen was known as Project Blossom. Apart from my limited involvement as explained earlier in this paragraph, I was not involved with the negotiations between Louw's companies and the Olaolsen Gruppen, but I do recall that agreement between them was signed because Louw sent me a WhatsApp photograph on or about 18 October 2018, depicting him and two other unknown gentlemen signing the agreements. This photograph is inserted below:

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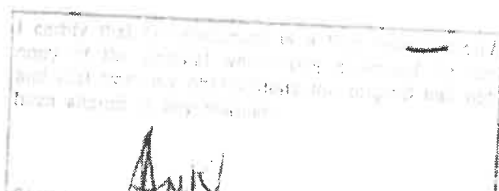
**The acquisition of Erf 373 and Erf 374 Walvis Bay by a Louw entity from Oloff Walter Hennig**

94. During January 2019, my firm received instruction from John Gilmour who was the Head of Compliance for Louw's Group of Companies to assist with the purchase by Louw of two properties of Oloff Walter Hennig ("Hennig") in Langstrand, Walvis Bay. These properties were described as Erf 373 and 374 Langstrand respectively. I recall that the total purchase consideration for both the aforesaid properties amounted to N\$ 10 million, and that the one property was registered in a close corporation. We duly assisted with the preparation of the sale agreements and the transfer of the properties into the name of Louw and / or his nominees but although Hennig through his representative was anxious to finalise the transactions there were various delays for the finances that Louw arranged as well as the cancellation requirements from Hennig's Bank with the result that the transactions were only concluded during April 2019. Even with the benefit of hindsight I had no reason to believe that Hennig was involved in any business with Louw that I had knowledge of but I got the distinct impression that Hennig was in financial trouble and Louw agreed to assist him by purchasing the aforesaid properties. I interpose here to mention that I have never met the said Hennig but only dealt with him through his representatives on e-mail or on telephone in the conclusion of the aforesaid transaction.

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## THE FISHROT INVESTIGATION MADE PUBLIC

95. During November 2019, publications appeared which started the "fishrot" investigation. I received a WhatsApp message from Louw who drew my attention to an Al Jazeera investigation video which was published. I accessed the video and I was shocked to witness the disclosures made therein.
96. Louw telephoned me in December 2019 and explained to me that he was very concerned about the reputation of Seaflower and its involvement with Fishcorp as well as whether the agreements concluded with Fishcorp and Seaflower (and referred to above) would pass legal muster.
97. I wanted to resign my directorships from his companies because of the bad press and the negative association as well as the potential reputational damage I would suffer. He however persuaded me by WhatsApp not to resign because in his opinion, it would appear as if I did something wrong and that there was no and there would not be any investigation against Seaflower, and that I should rather wait for the intended Board Meeting of Seaflower in February before resigning.
98. Louw was furious with Shanghala and Hatuikulipi when the "fishrot" investigation became public, to such an extent that he orally instructed me to transfer a minimum of 75% of the shares in Celax Investments to his name. Louw insisted that because of the actions of Shanghala and Hatuikulipi, he no longer believed that they were entitled to the equity in Celax Investments, because the Empowerment Bill was no longer on the cards. He therefore instructed me to transfer the shares in Celax Investments to him with effect from 1 January 2018 which I duly did during December 2019, through Colostos Business Trust, which I always utilized for company secretarial work. A copy of the invoice pertaining to Louw's instruction, is reflected below. Louw was furious with the content of the invoice, because he felt it disclosed too much information and he communicated the same to me.



Seaflower Pelagic Processing (Pty) Ltd

[ur ref: N]

Walvis Bay

4 December 2019

In Rechnung mit

In Rekening met **De Klerk, Horn & Coetzee**  
VAT No: 7617478-01-5

In Account with

TAX INVOICE NO 1301/2019	
11 November to 3 December 2019	TO: Numerous attendances; phone calls, meetings and discussions with outgoing direct restructuring of minority shareholder; etc transfer, directors resignations; handling, etc.
	Plus 15% VAT
	TOTAL DUE, OWING AND PAYABLE

**PAYMENT-ADVICE**

From: Seaflower Pelagic Processing (Pty) Ltd

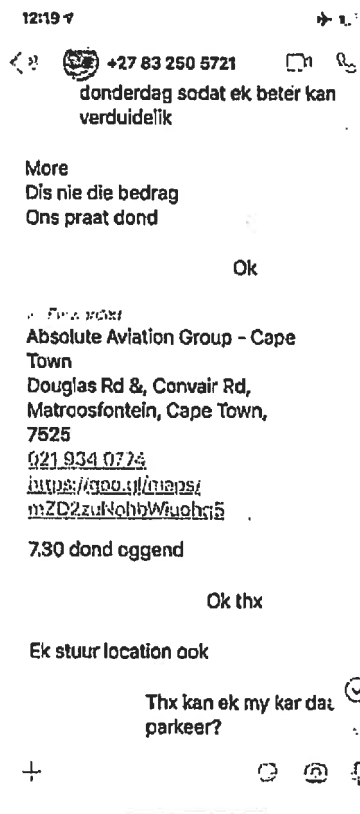


99. In January 2020, whilst I was in Windhoek, Louw came to see me and instructed me to retransfer the 75% back to my name which I instructed Colostos to do. He also advised that he would remove Celax Investments altogether as a shareholder in ASF. I interpose to mention here that up to 29 December 2019, Louw was unaware of my involvement as paymaster in Celax Investments. A copy of the Company Status Report reflecting Louw's temporary 75% shareholding in Celax Investments, is attached hereto as annexure "MDK3-9".
100. Without access to my records I am unable to comment on whether or not Louw had a mandate or consent from Shanghala and Hatuikulipi to give the instructions concerning the Celax share transfers to me. I have instructed my attorneys to investigate this aspect further for me. I recommended to Louw that we should consult with a senior counsel at the Namibian Bar, and he instructed me to set up a consultation. I duly set up a consultation with Esi Schimming Chase SC ("Schimming Chase SC") on 29 December 2019.

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101. Counsel was briefed with all the relevant documentation and unequivocally confirmed that our involvement with Seaflower was not a basis to tie Louw or me to the bribery and corruption allegations that were being levelled against Fishcorp, and moreover that the quota usage agreement and the shareholders' and subscription agreement I mentioned earlier were similarly unaffected. Obviously, neither me nor Louw explained the events detailed in this affidavit which started with the meeting in December 2016. I nevertheless decided to resign as a director of ASF and of Seaflower on 1 January 2020.

102. For purposes of the consultation on 29 December 2019, we flew in Louw's Lear 45 jet via Walvis Bay to Windhoek. I had to be at Absolute Aviation Group in Cape Town at 07h30. Below is a screenshot of Louw's WhatsApp message to me in this regard:



103. During the return leg of the flight I told Louw of my involvement as paymaster in Celax Investments. He did not appear to be too concerned but he did ask me to consider possible solutions as to how to limit any exposure and damage to him and / or Seaflower. I told him that I would request the Company Secretary to

expunge the records of the transaction concerning the share transfer that was done in December 2019.

104. To the best of my knowledge Seaflower had no dealings with AST in Angola (not to be confused with ASF). My only knowledge of AST prior to the exposure of its name in the Aljazeera documentary at the end of 2019, was that I knew that it was owned (I think entirely) by the Louw family, and that it was involved in the litigation against the Bidvest subsidiary I have discussed above.

#### **HOW CELAX INVESTMENTS WAS USED IN THE SWAPO ELECTION CAMPAIGN**

105. I have, for many years, enjoyed a healthy business relationship and association with Penderis, an accountant, businessman and financial advisor in Windhoek. Penderis was extremely well connected and had friends and clients in Government spheres. I had met Penderis when I was still with Ellis in 1997 / 1998, and over the years, Penderis had referred several clients to me. Penderis and I became close friends and I also assisted him personally with a variety of commercial legal matters over the years.
106. My relationship with Penderis led me to be appointed to act for Mushimba for approximately twenty years until his death in August 2014. Mushimba was an extremely successful and prominent Namibian businessman who owned shares in several catering and other businesses. Certain of the catering businesses were jointly owned by Mushimba and Penderis. The legal work I did for Mushimba was mostly of a commercial nature. Mushimba was an extremely loyal client of mine, who followed me from law firm to law firm, and I have no hesitation in saying that we became close friends.
107. Like Penderis, Mushimba was an extremely well-connected businessman with associations with Government officials. Penderis and Mushimba held various shares in a number of catering companies who regularly obtained Government Catering Contracts. As mentioned earlier, Penderis had many connections in Government circles and one such connection, who was also known to Penderis, was a lawyer affiliated to the Namibian Law Commission, being Shanghala. Shanghala and Mushimba were extremely close and Shanghala

I certify that the document is a true reproduction / copy of the original which I regarded Mushimba as his mentor and father figure. and that from my observations, the original has not been altered.

108. As recommended by Penderis and Mushimba in 2011 (I cannot recall exactly), Shanghala approached me to assist him with a personal matter, namely, to draft a will, and to set up and to register an *inter vivos* family trust for him, which I duly did. I believe that Shanghala was impressed with my expertise and professionalism, and he stated as such. I was also advised by Penderis and Mushimba that Shanghala was very fond of me, and that he had a high regard for my professionalism and legal ability, especially in the sphere of trust law. I was excited at the prospect of doing further work for Shanghala.
109. Mushimba passed away in August 2014. Mushimba left a substantial estate in excess of N\$ 400 million, and in terms of his will, the majority of this wealth landed up in his family trust, the Mushimba Family Trust of which I was an original trustee. Penderis was also a trustee of this trust. The beneficiaries were unhappy that two white persons were trustees of the trust, and in order to placate them, I accepted Penderis' recommendation that Shanghala be added as a trustee of the trust. Shanghala was accordingly added as an additional trustee at the end of 2015 (I cannot recall the exact date).
110. In my capacity as a trustee of the Mushimba Trust, Penderis, Shanghala and I would meet frequently, usually once a month, to discuss the affairs of the trust. Shanghala proved to be an extremely competent trustee, with considerable commercial knowledge and insight. He played a leading role in resolving potential conflict between the heirs and made several very sensible proposals that Penderis and I supported.
111. As a result of our co-trustee relationship and flowing from our dealings with the fishing quota agreement, Shanghala and I developed a healthy respect for each other, and it would be true to say that by May 2017 / June 2017 I trusted him implicitly.
112. Following on the meeting on 30 December 2016 in the Western Cape and during or about May 2017 / June 2017, Shanghala telephoned me to arrange a meeting at my offices together with Hatuikulipi. I duly scheduled the meeting which took place in my boardroom at my Eadie Street, Windhoek offices. (A few days after the initial meeting, Penderis informed me that Shanghala and Hatuikulipi had approached him regarding suggestions as to which attorney



they could use, and Penderis suggested that they approach me). The meeting lasted for approximately two hours. As stated before, I do not have access to my files, and what I have set out below is my best recollection of what transpired at this meeting. At the meeting:

112.1 Shanghala told me that Hatuikulipi was the head of Investec Bank, Namibia. Hatuikulipi gave me a business card confirming same. As I mentioned earlier, I had previous dealings with Hatuikulipi in his capacity as the CEO of Fishcorp, but I was unaware that he was employed at Investec Bank Namibia, let alone that he was the CEO of the bank;

112.2 Shanghala and Hatuikulipi explained to me that they had been mandated by President Hage Geingob, who they referred to as "*the Boss*" to set up a structure to deal with the management and distribution of contributions paid to SWAPO and the Government by their supporters. I was advised that these contributions were expected to increase dramatically ahead of the upcoming local and Government elections. According to Shanghala and Hatuikulipi, no structure was in place to administer or distribute these contributions, and the collection and payment thereof to date had taken place in a chaotic manner. I interpose here to mention that Hatuikulipi had the habit of referring to me and other persons in e-mails as "*boss*" but although he used this word interchangeably it was clear to me that the reference to "*the Boss*" with regard to the structure referred to above was a clear reference to President Geingob.

112.3 I was told that some of these contributions had been made to SWAPO directly, and some of these contributions had been made to Government owned entities such as Fishcorp. With the benefit of hindsight, I admit that the fact that donations were allegedly being made to a Government owned company and not only to SWAPO, should have rung alarm bells, but I did not interrogate this aspect further;

112.4 according to Shanghala, "*the Boss*" had become extremely concerned that SWAPO had lost control over the contribution collection process,

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Signature: *ANK*

*S*

*RLS*

and that there was no system in place to link the money received to the ultimate beneficiary. Shanghala explained that he, together with Hatuikulipi, had been personally mandated by "the Boss" to find a solution to the problem;


112.5 Shanghala informed me that "the Boss" had appointed Hatuikulipi as his economic advisor to design a bespoke structure to manage and to distribute these contributions. As I shall explain shortly, this structure initially was to be called "*Ndilimani*" (literally translated to mean "*Dynamite*"), but this name was rejected by the Namibian Registrar of Companies, as there were other companies already registered with that name, and the name was later changed and registered as "*SIFA*" (I do not recall what this name means);

112.6 Shanghala described Hatuikulipi as the "*architect*" of the *Ndilimani* project and he confirmed to me that "the Boss" had accepted Hatuikulipi's recommendation to proceed as follows:

112.6.1 monies already received would be transferred into attorneys' trust accounts where they would be managed by the attorneys operating these accounts as fiduciaries as instructed by Shanghala and Hatuikulipi until the *Ndilimani* structure was in place. I cannot recall if Shanghala or Hatuikulipi mentioned the names of the other Namibian attorneys who they had approached, or intended to approach;

112.6.2 new monies would be deposited into the *Ndilimani* structure to be administered in terms of the rules of that structure. Shanghala and Hatuikulipi explained that because of their prior dealings with me, and because my experience and expertise as a lawyer who dealt with trusts was known to them, they had recommended to "the Boss" that I should be approached as the attorney to advise, and to assist them with setting up of the *Ndilimani* Structure, and "the Boss" had agreed.

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Signature: 



113. Hatuikulipi, Shanghala and I spent quite some time discussing various ways in which the project could be structured. As I have stated, I do not have access to my files, but if I did, I believe that the following will appear from my notes:
- 113.1 Hatuikulipi believed that a trust should be at the centre of the Ndilimani Structure. This trust would own the shares in a holding company, which in turn would own the shares in separate subsidiaries each set up for a special purpose;
- 113.2 neither the holding company nor the trust had yet been formed and Shanghala was anxious that sizeable donations expected ahead of the upcoming elections had to be dealt with urgently.
114. The legal work I would need to do was extensive. In exchange for this legal work, for setting up the structure and for advising SWAPO and the Government in regard to the matter I would be paid a fee of approximately 2,5% of the value of the money flowing through the structure. My mind raced at the prospect of how much money I could make from this new venture.
115. Given my previous dealings with Shanghala and with Hatuikulipi, because Shanghala was the Attorney General of Namibia, and because Hatuikulipi was known to me as the CEO of Fishcorp, a prominent Government company, I had absolutely no reason to doubt the veracity of what Shanghala and Hatuikulipi had explained to me, or that the Ndilimani structure carried the blessing of "*the Boss*". To the contrary, I believed that the initiative was born out of a desire to manage matters in a lawful and in an accountable manner, and I felt flattered and honoured that "*the Boss*" had selected me for this important fiduciary function. With the benefit of hindsight, I am ashamed to say that I can now see that I allowed myself to become duped. I was excited at the prospect of generating substantial fee income, and with the prospect of broadening my network and opportunities to do business in Government circles and with SWAPO via the Ndilimani project. I therefore agreed to assist. Hatuikulipi, but especially Shanghala, was always neatly dressed in what appeared to be very expensive suits and it was obviously that they got along very well. During all my engagements with Shanghala I could not help but notice that he was always wearing different and expensive watches.

116. Insofar as the money to be deposited into the attorneys' trust accounts is concerned, I proposed that a written mandate should be set up between SWAPO or the Government or the Government owned company, as the case may be, and the attorney managing the trust account that clearly articulated what the money was to be used for, how it was to be disbursed, what fees would be charged by the attorney, and so on.
117. Shanghala and Hatuikulipi agreed that the execution of a written mandate was essential and advised me that they would revert to me with specific instructions in this regard once they had discussed the matter with "the Boss". I there and then at the meeting printed out the standard mandate attorneys use for clients who invest into their trust account, and handed a copy thereof to Shanghala with a request that he and Hatuikulipi revert to me with their comments so that I could attend to insert the changes on our precedent.
118. Shanghala and Hatuikulipi promised to revert to me with their comments. Again, with the benefit of hindsight, I know now that I should not have allowed matters to proceed any further, if indeed at all, unless and until I had the signed mandate. Instead, I was blinded by the fee income I stood to make.
119. I have reflected profusely about my obligation to question and verify further the legitimacy of the structure, the origin of the monies, and the true identity of the recipients of the money. Although I was curious about these matters, it was only later that I became suspicious and that I started to get a sense that I was being used as a puppet to achieve other objectives.
120. I chose not to raise these issues with Hatuikulipi or with Shanghala, because at that stage, I did not want to give them a reason to take this matter away from me, and thereby forfeit this extremely lucrative financial opportunity and my relationship with these influential people.
121. I confirm that in my role as attorney for the Louw family, and / or as a director of Seaflower, I did not encounter the Namibian Minister of Fisheries, Esau at all. However, during the initial phases of the negotiation of the quota participation agreement, I did meet and have dealings with Shanghala the Attorney General of Namibia who accompanied Hatuikulipi to some (but not all) of the meetings I had with him as a sort of Government legal advisor. I deal with my association

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with Shanghala later in this statement, but for now I want to mention that on one occasion on or about 8 November 2017 Shanghala accompanied Esau to a meeting at my offices to discuss his will and the formation of a Family Trust. After the consultation I drew the requested draft documents for Esau, which was finalised on 14 November 2017 and on which date I sent him an e-mail confirming that the draft documents were ready for collection at my reception desk and which he collected, but he never reverted with any comments thereon and accordingly the Will was never finalised and neither was the Trust set-up for Esau. A copy of the e-mail dated 14 November 2017 is attached hereto as annexure "MDK3-10".

122. During November 2017, Hatuikulipi also instructed me to pay a deposit for a plot for Esau and to register a close corporation for Esau and his wife, into which close corporation the aforesaid plot was to be transferred. I duly paid a deposit of N\$ 50 000.00 to the transferring attorneys (ENSafrica), and later the balance of the purchase consideration (less the amount financed paid by Esau) to the transferring attorneys. The close corporation was registered as Otjiwarongo Plot 51 CC and the property was eventually registered in the name thereof on 28 February 2018. A copy of the e-mail confirming registration is attached hereto as annexure "MDK3-11".
123. During October 2018, Hatuikulipi instructed me to attend to the conveyancing of a vacant piece of land in Outapi and also requested me to create a new shelf company in which the property was to be registered.
124. During 2018 (as best I can recall) I also, on the instructions of Hatuikulipi, set up a Trust for his cousin, Tamson Hatuikulipi which I duly did.
125. The anticipated opportunities created by my new associations at Seaflower did not immediately come to fruition, and my financial predicament remained a concern. The law firm and my personal overheads had become a constant source of stress for me, and I felt that I had no choice but to "spread my risk" by selling some equity in the law firm, and thereby raising some cash to pay down my personal debt:

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Signature: *ANK*

125.1 accordingly on or about 1 March 2017, I sold 17% of my equity in the law firm to Coetzee for N\$ 1 200 000.00. Coetzee is an attorney who,

before her admission as such, had been articulated to me. As Coetzee was newly admitted, she did not have the capital reserves available to pay this entire purchase price all at once. As much as I needed the full purchase price to be paid to me immediately, I had little choice but to agree to let Coetzee pay off her purchase price to me over time, with a payment moratorium in the first year. An unsigned copy of the agreement I concluded with Coetzee is attached hereto marked as annexure "MDK3-12";

125.2 DHC Incorporated practicing at 4 Eadie Street, Windhoek, Republic of Namibia was accordingly established. The shareholding of the firm at this stage was me with 50%, Coetzee with 17% and Horn with 33%. A copy of the shareholders' agreement concluded between us is attached as annexure "MDK3-13";

125.3 on or about 1 March 2018, Mr Petrus Strauss ("Strauss") joined the firm and in terms of an agreement concluded between the "partners", Strauss acquired 11% of the shares in the law firm from me, and 6% from Horn for a total purchase consideration of N\$ 1 292 000.00 of which N\$ 500 000.00 was paid on 30 March 2018, and the balance of N\$ 792 000.00 was to be paid off over ten years. To date Strauss has paid approximately N\$ 130 000.00. A copy of this agreement is attached hereto as annexure "MDK3-14".

126. During the meeting at my office in May 2017 / June 2017, and already dealt with above, Shanghala explained that he had instructions to deal with the matter urgently, and that I could expect to receive instructions on how to proceed very soon. In the interim, and as a temporary measure, I was instructed to use Celax Investments to deal with, and ring fence new contributions until the Ndilimani Structure had been set up. Once the Ndilimani Structure had been set up, ownership of the shares in the SPV (previously registered in my name for the ASF matter) would be transferred into the holding company within the structure. Hatuikulipi observed that in so doing, the purpose for which the ASF shares had been transferred into Celax Investments also would not be compromised because the Ndilimani structure was 100% earmarked for "racially disadvantaged persons". I have located a copy of a

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organogram drawn in my presence by Shanghala which sets out

how Celax Investments would become part of the Ndilimani Structure. A copy thereof is attached hereto as annexure "MDK4-1". As previously explained, I accepted that the 25% shareholding was either owned, or at least effectively controlled, by Shanghala, Hatuikulipi and Nghipunya and I therefore implemented Shanghala's instruction.

127. As I shall demonstrate shortly, Celax Investments began to receive and process substantial amounts of monies for Shanghala and Hatuikulipi. Insofar as these monies may have been stolen funds, I am advised that I may have received stolen funds and assisted in the crime of theft. I want to make it clear that at the time, I did not know that the monies were stolen, if it indeed was. In receiving these amounts, I did not ensure that my firm followed the obligations placed on me and on my firm, pursuant to the provisions of the Financial Intelligence Act of 2012.

128. Pursuant to the meeting held at my offices with Shanghala and Hatuikulipi earlier in the month, on 30 June 2017 a deposit of N\$ 200 000.00 was made into my trust account. The reference was "Fishcorp". In support hereof I attach a trust bank statement for the month of June 2017 as annexure "MDK5-1". Shortly after this deposit was made (perhaps a day or two later) I received a telephone call from Shanghala to verify whether or not the deposit had been made, and to inform me that he or his secretary "Anel van der Vyfer" would be sending me invoices from certain purveyors who had rendered services to SWAPO to pay from this money. Shortly thereafter the invoices were sent through to me in aggregate amounting to N\$ 174 929.00 for payment as follows:

128.1 Outapi Town Lodge – N\$ 10 856.00;

128.2 Embroidery Zone – N\$ 2 140.00;

128.3 Karnic Distributors – N\$ 5 848.82;

128.4 Trailer Man CC – N\$ 3 500.00;

128.5 African Packaging – N\$ 507.15;

- 128.6 Cash payment – N\$ 7 400.00;
- 128.7 African Packaging – N\$ 443.23;
- 128.8 DS Ngololo – N\$ 4 500.00;
- 128.9 Edjonga B and B – N\$ 16 000.00;
- 128.10 Karnic Distributors – N\$ 9 550.84;
- 128.11 Model Pick and Pay – N\$ 13 638.35;
- 128.12 Model Pick and Pay – N\$ 1 812.84;
- 128.13 Edjonga B and B – N\$ 3 600.00;
- 128.14 Bundu Investments CC – N\$ 11 100.00;
- 128.15 Omusati Regional Council – N\$ 40 005.80;
- 128.16 Cash payment – N\$ 600.00;
- 128.17 Dinapama Manufacturing – N\$ 33 430.50.

- 129. Invoices in respect of the above transactions are attached hereto in a bundle marked as annexure "MDK5-2". I received no instructions to debit a fee against this money, and accordingly I did not do so.
- 130. On 17 July 2017, I received WhatsApp instructions from Hatuikulipi to pay an invoice from Dinapama Manufacturing in the amount of N\$ 33 430.00, which WhatsApp contained the invoice in the said amount. A screenshot of the WhatsApp message appears below:

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copy of the original which was examined by me  
and that from my observations, the original has not  
been altered in any manner.

ANUC

12:47

< Connecting...

We pay Stage Audio Directly  
banking details on the quotation



I believe this the last from  
SWAPO Youth Conference! We  
pay from original 2m SWAPO

6 Sep 2017

Good day Sir! Hope all good.

131. On 4 August 2017, a deposit of N\$ 3 099 966.69 was made into my trust account. The reference in this case was "Government Communication". In support hereof, I attach a trust bank statement for the month of August 2017 as annexure "MDK5-3". Shortly thereafter the invoices were sent through to me in aggregate amounting to N\$ 2 965 778.18 for payment as follows:

131.1 Naftal Shailemo – N\$ 940 778.18;

131.2 SWAPO Kalahari District – N\$ 25 000.00;

131.3 SWAPO Party Youth League Special Events – N\$ 500 000.00;

131.4 Omkumo Cultural Trust – N\$ 1 500 000.00.

132. Invoices and proof of payments of the above transactions in respect of the above transactions are attached hereto in a bundle marked as annexure "MDK5-4" to "MDK5-7". Again, I received no instructions to debit a fee against

I certify that the document this money and accordingly I did not do so.  
copy of the original which was examined by me  
and that from my observations, the original has not  
been altered in any way.

133. As appears from a copy of my August 2017 trust account bank statement, on 4 August 2017 a deposit of N\$ 14 million was made into my trust bank account. The reference in this instance was "Mermaria Seafood Nam". On the telephonic instructions of Hatuikulipi this amount was transferred to Celax Investments on 5 August 2017. On this occasion, I was instructed to debit a fee of N\$ 234 500.00.
134. On 9 August 2017, I received the following e-mail from Shanghala, on which Hatuikulipi was copied, with the subject line "Establishment of Ndilimani Entities". A copy of this e-mail is attached as annexure "MDK5-8". The e-mail stated:

*"Dear Maren,*

1. *James and I have been mandated by the SWAPO Party Secretary-General to assist in restructuring the Ndilimani Cultural Troupe into a modern, sustainable and well governed entity and to oversee the election campaign funding process.*
2. *Could you kindly assist with the setting up of the following entities with the following purposes?:*
  - 2.1 *Ndilimani Trust [This trust would own Ndilimani Holdings (Pty) Ltd. James and I would be the donors on behalf of the SWAPO Party. We would be the first Trustees. At a given point, we would resign and the SWAPO Party Secretary-General should be the one to appoint further trustees. The purpose of this trust is to administer the affairs of the Ndilimani Cultural Troupe. All rights in any music produced or to be produced by the Cultural Troupe would either be owned by this trust or an entity owned by the trust]*
  - 2.2 *Ndilimani Holdings (Pty) Ltd [This is the entity in which assets can be held that can ensure that long term sustainable existence (rights, shares etc. in other entities).*  
*James and I would be the board of director appointees of the trust, which would own this company 100%]*
  - 2.3 *Ndilimani Cultural Troupe (Pty) Ltd [This is where all band members would be employed. We need to set up employment contracts for all 15 of them. James and I would*



*be the first directors appointed by the Trust. This company is also to be owned 100% by the Trust, or it can be a subsidiary of Ndilimani Holdings (Pty) Ltd. James what is your view? All assets to be bought would be owned here by this entity.*

3. *James and I can be consulted should you require any instructions further but note that various entities will effect donations for this purpose.*

*Thank you,  
Sacky Shanghala"*

(own emphasis)

135. On 9 August 2017, at 8:47, I received the following e-mail from Hatuikulipi who copied Shanghala thereon, a copy of which is attached as annexure "MDK5-8":

*"Hi Maren and Sacky,  
I will suggest Ndilimani Cultural Troupe (Pty) Ltd should be as subsidiary of Holdings. The Trust to own Holdings and Intellectual Property. This a much cleaner structure and more functional.  
Regards,  
James"*

136. Hatuikulipi's comments were consistent with my understanding of how the Ndilimani Structure was anticipated to evolve i.e. with each activity / asset / enterprise being ringfenced as a subsidiary of Ndilimani Holdings (Pty) Ltd.

137. On or about 10 August 2017, I telephoned Shanghala to inform him that I would be delighted to assist and suggested that we meet in order to iron out the details. He agreed but explained that he and Hatuikulipi had a meeting coming up with "the Boss" at which meeting they would be finalizing certain aspects (I cannot recall what they were or whether Shanghala in fact told me the details). I do recall mentioning to Shanghala that we would need to reach agreement on the fees to be paid, and he remarked: "*don't worry we will sort this all out in time, but in the meantime we will authorize you to deduct fees from the monies you are paying out for us, and this will all come out in the wash*" (or words to this effect). Shanghala asked me to stand by for further instructions regarding the structure which he would be sending through soon.



138. On 10 August 2017, a deposit of N\$ 3 000 000.00 was made into my trust account. The reference in this case was "Fishcorp". In support thereof I refer again to my trust account bank statement for the month of August 2017. Further invoices were sent to me by Hatuikulipi and / or Shanghala which in aggregate amounted to N\$ 2 279 045.09 for payment as follows:

138.1 Standard Bank (for credit JK Nombanza) – N\$ 443 622.00;

138.2 Stage Audio Works – N\$ 999 242.59;

138.3 Dinapama Manufacturing – N\$ 33 430.50;

138.4 Onkumo Cultural Trust – N\$ 125 000.00;

138.5 iStore – N\$ 106 397.00;

138.6 Veikko Nekundi – N\$ 20 000.00;

138.7 E. Nekongo – N\$ 65 000.00;

138.8 KDF Entertainment – N\$ 50 000.00;

138.9 Pro X Studio – N\$ 152 950.00;

138.10 Okaheke Pale – N\$ 16 848.00;

138.11 Trip Travel – N\$ 159 680.00;

138.12 Vivacious – N\$ 35 000.00;

138.13 Brand Business Solutions – N\$ 71 875.00.

139. On 15 August 2017, I received a WhatsApp message from Hatuikulipi which read as follows:

I certify that the document is a true reproduction / copy of the original which was *initialled* and that from my observations, the original has not been altered in any manner.

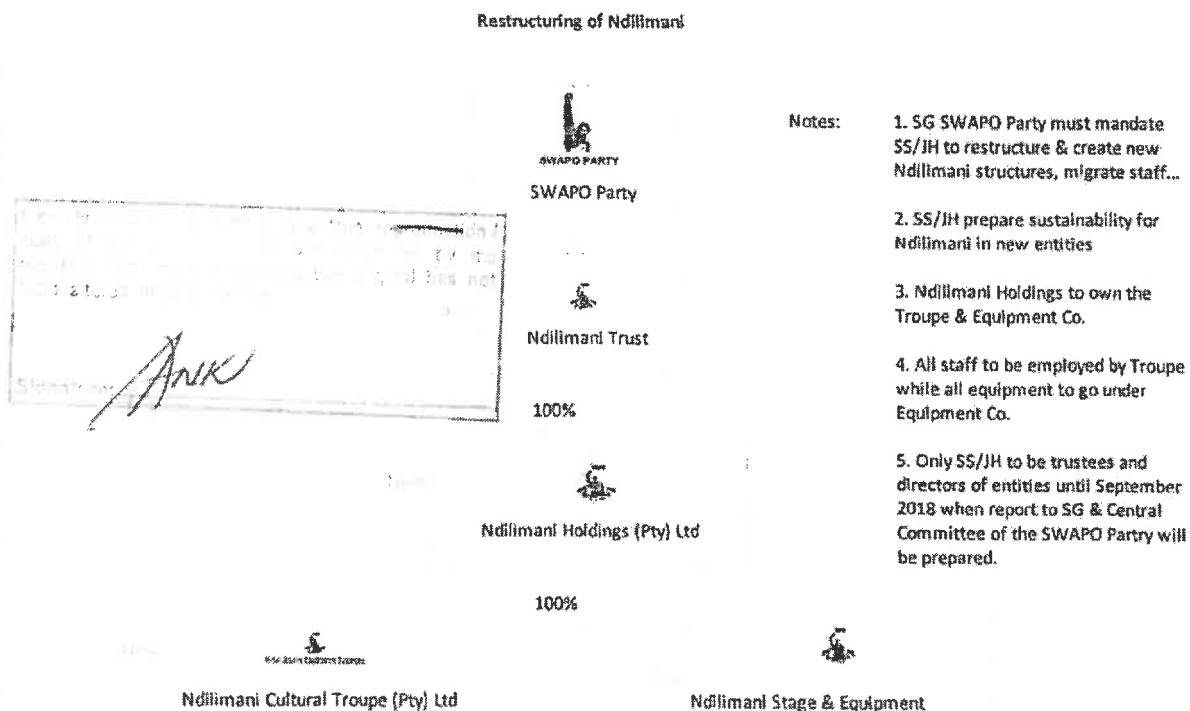
*Maren, good morning. Please, pay N\$ 2 million from Celax as*



*discussed for the Boss! Send POP when done. Otuafika Logistics CC,  
Acc no. 8004027421, Bank Windhoek, Main Branch 481972, CHK*

(own emphasis)

140. The aforesaid payment was processed by me from the account of Celax Investments on 17 August 2017. A copy of Celax Investment's bank statement for August 2017 is attached hereto as annexure "MDK5-9". I was not instructed to debit a fee and I did not do so.
141. On 16 August 2017, Shanghala sent me an e-mail and an organogram depicting the Ndilimani Structure (a copy of covering note and annexure is attached hereto and marked as annexure "MDK5-10"). On the right-hand side of the diagram five "instructions" appear as follows:



142. This diagram accords with the handwritten organogram drawn in my presence by Shanghala when we met at my office a month or two earlier. During the aforesaid meeting, Shanghala also handed me a written draft budget in his own handwriting for the Ndilimani Structure.
143. On 22 August 2017 Shanghala sent me an e-mail of which a copy is attached

hereto as annexure "MDK5-11". The e-mail stated:

"Dear Maren,

1. In addition to the set up of the entities, the following contracts may be required:
  - 1.1 Employment Contracts between Ndilimani Cultural Troupe (Pty) Ltd and Staff;
  - 1.2 Performance Contract for Ndilimani and Clients; and
  - 1.3 Shareholders Agreements between Ndilimani Holdings (Pty) Ltd and Ndilimani Trust, as well as the Ndilimani Cultural Troupe (Pty) Ltd and with Ndilimani Property and Equipment (Pty) Ltd.
2. As agreed, there should be a N\$5,000.00 (Five Thousand Namibia Dollars) Subsistence and Travel for the band. They will be departing for Katima Mulilo to perform at the SWAPO Party Youth League (SPYL) Congress there. Could you therefore release the N\$75,000.00 (Seventy Five Thousand Namibia Dollars) for the 15 staff members please? We should also release the N\$50,000.00 (Fifty Thousand Namibia Dollars) for their logistics. As they leave tomorrow, the sooner the better. My apologies for the delay. The total is N\$120,000.00 (One Hundred and Twenty Namibia Dollars).
3. Let me know when we can consult as to the content of those agreements.

Thanks and Good Night."

144. Later that day, Shanghala sent me a further e-mail, attached hereto as annexure "MDK5-12", as follows:

"Dear Maren,

Until we have set up our entities (Ndilimani Trust, Holdings etc.), we can use for their purposes their following account:


Om'Kumo Cultural Trust

Bank Windhoek

Account Number: 8003201135

Branch Code: 486372

Thanks."

I hereby certify that the above is a true and correct copy of the original document as it appears in my records.  
Signature: 

145. From the above e-mail it is clear that Shanghala was under pressure to get the process underway as soon as possible and was not prepared to wait until the Ndilimani structure was operational.
146. I duly drafted the trust deed of the Ndilimani Trust reflecting Shanghala and Hatuikulipi as donors and as trustees (as directed in the organogram e-mailed to me on 9 August 2017). The beneficiary of the Ndilimani Trust would likely have been reflected as SWAPO (although I cannot recall). Insofar as the juristic entities is concerned, my company secretarial consultant prepared the necessary documents to reserve the name "*Ndilimani*". Sometime in late August 2017 / early September 2017, Shanghala and Hatuikulipi met with me in my law offices to sign the documents and same were thereafter submitted by me to the relevant Government departments. I proceeded in the interim to draw all the agreements Shanghala had instructed me to draw. I observe that this was a considerable amount of work for which I expected to be paid out of the donations and contributions as agreed with Shanghala and Hatuikulipi.
147. A few days after submitting the Ndilimani name reservation, I was informed that the name had been rejected. On or about 7 September 2017, I in consultation with Celeste Cramer submitted a written objection to the Registrar of Companies, a copy of which is attached hereto as annexure "MDK5-13". This objection was unsuccessful. The trust bearing the name "*Ndilimani*" was however registered on 7 November 2017 as appears from a trust certificate issued by the Master of the Namibian High Court on or about 7 November 2017. A copy is attached hereto as annexure "MDK5-14".
148. Although I had drawn each and every agreement I had been instructed to draw, and soft copies of these drafts had been e-mailed to Hatuikulipi and Shanghala, and hard copies of these drafts had been collected from my offices by Hatuikulipi and / or Shanghala, and notwithstanding multiple requests from me to Shanghala and Hatuikulipi to revert to me with their comments to these agreements, no further instructions were forthcoming. Each time I enquired as to the status of the matter I was instructed to "*wait*" as the "*Boss' approval remained outstanding*".

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Signature: 

149. Although I did not receive any further instructions regarding the agreements I

has been instructed to draw, which task I completed, I continued to receive instructions to pay monies out of Celax Investments as detailed in annexure "MDK5-15" hereto until the end of calendar year 2018.

150. My instructions from Shanghala and Hatuikulipi took several forms, namely, *inter alia*:

150.1 WhatsApp messages;

150.2 e-mails;

150.3 telephone calls; and/or

150.4 instructions given to me during meetings at my offices.

151. Sometimes I was given supporting invoices, and other times I was not. I did not verify the accuracy of these invoices, nor did I investigate who the beneficial owners of these companies were.

152. As before, I was sometimes instructed to take a fee, and sometimes I was not. I at no time took a fee unless I was so instructed. Although I was aware that the fees I was authorized to deduct from the monies I disbursed from Celax Investments were for my services as an administrator, and in relation to the commercial legal work I had done, and would still need to do, the amount of fees I was authorized to deduct often was vague, and I was seldom given sufficient particularity regarding the breakdown of the fees, what tasks the fees were for, what fee was to be paid to me personally, what fee was to be paid to the law firm, and who I was supposed to invoice for these fees. As I am separated from my records, I am unable to provide exact particularity, but my best estimate is that I earned approximately N\$ 4 million in fees from the time that I was appointed as a director of Seaflower.

153. From time to time, Hatuikulipi (but not Shanghala) would ask me for a reconciliation and for proofs of payment or for bank statements – which I always provided.

from both Shanghala and Hatuikulipi to effect payments to Third Parties as reflected in the table below:

Date	Instruction From	Instruction Received	Payee	Amount N\$	Annexure
17 July 2017	JH	WhatsApp	Dina Pama Manufacturing & Supplies	33 430.50	MDK6-(1)
8 August 2017	JH	Letter	Naftal Shallemo	940 774.18	MDK6-(2)
8 August 2017	JH	Letter	JTH Trading	3 000 000.00	MDK6-(2)
8 August 2017	JH	Letter	Erongo Clear & Forwarding	3 000 000.00	MDK6-(2)
8 August 2017	JH	Letter	SWAPO Party via MOYO Estate	500 000.00	MDK6-(2)
15 August 2017	JH	WhatsApp	Otuafika Logistics CC	2 000 000.00	MDK6-(3)
17 August 2017	JH	WhatsApp	Stage Audio Works	999 242.59	MDK6-(4)
22 August 2017	SS	E-mail	Onkumo Cultural Trust	125 000.00	MDK6-(5)
6 September 2017	JH	WhatsApp	JTH Trading	1 000 000.00	MDK6-(6)
6 September 2017	JH	WhatsApp	Erongo Clearing & Forwarding	1 000 000.00	MDK6-(6)
6 September 2017	JH	WhatsApp	Otuafika Logistics CC	2 000 000.00	MDK6-(6)
6 September 2017	SS	WhatsApp	Core Consumer Electronics	106 397.00	MDK6-(7)
11 September 2017	SS	WhatsApp	V Nekundi	20 000.00	MDK6-(8)
29 September 2017	SS	WhatsApp	E Nekongo	65 000.00	MDK6-(9)
10 October 2017	SS	WhatsApp	KDF Entertainment	50 000.00	MDK6-(10)
26 October 2017	JH	WhatsApp	Otuafika Logistics CC	1 000 000.00	MDK6-(11)
19 December 2017	JH	WhatsApp	J Gabriel	150 000.00	MDK6-(12)
19 December 2017	JH	WhatsApp	Jnom Trust	150 000.00	MDK6-(12)
12 February 2018	JH	WhatsApp	JTH Trading	2 000 000.00	MDK6-(13)
7 June 2018	JH	WhatsApp	JTH Trading	2 730 000.00	MDK6-(14)
7 June 2018	JH	WhatsApp	Otuafika Logistics CC	1 706 250.00	MDK6-(14)
7 June 2018	JH	WhatsApp	Phonlil Trust	1 706 250.00	MDK6-(14)
3 October 2018	JH	WhatsApp	JTH Trading	3 000 040.00	MDK6-(15)
3 October 2018	JH	WhatsApp	Otuafika Logistics CC	2 280 000.00	MDK6-(15)
3 October 2018	JH	WhatsApp	Phonlil Trust	1 520 000.00	MDK6-(15)

155. Copies of the instructions as reflected in the above table under the heading "*Nature of Instruction*" are attached hereto as annexures "MDK6-(1)" to "MDK6-15".

156. Upon having access to my files, I will be able to verify the above with more detail.

157. During the latter part of 2017 I became suspicious concerning the large amounts that I was instructed to transfer to Third Parties and the recurrence of such Third Parties in the payment instructions. I recall that on various occasions

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*[Signature]*

I had questioned Hatuikulipi whether these were above board and each time he assured me that the payments were in order and that it carried the knowledge and approval of the President. Hatuikulipi further impressed upon me the importance of keeping the whole project secret.

158. In addition to the payments as reflected in the table above, the following large payments were also made to the entities and on the dates described below:

158.1 JTH Trading, an amount of N\$ 3 040 000.00 on 16 November 2018 (see annexure "MDK7-17(1)");

158.2 Otuaifika Logistics:

158.2.1 N\$ 2 million on 16 August 2017 (see annexure "MDK7-17(2)");

158.2.2 N\$ 2 199 590.00 on 14 February 2018 (see annexure "MDK7-17(3)");

158.2.3 N\$ 2 280 000.00 on 16 November 2018 (see annexure "MDK7-17(4)");

158.3 Onkumo Cultural Trust, an amount of N\$ 100 000.00 on 10 October 2017 (see annexure "MDK7-17(5)");

158.4 MH Properties an amount of N\$ 3.5 million (see annexure "MDK7-17(6)") and N\$ 4.5 million (see annexure "MDK7-17(7)") respectively on 23 October 2017;

158.5 Phonlil Trust:

158.5.1 N\$ 2 million on 11 November 2017 (see annexure "MDK7-17(8)");

158.5.2 N\$ 3.5 million on 10 November 2017 (see annexure "MDK7-17(9)");

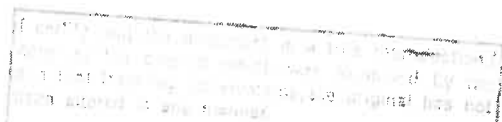
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- 158.5.3 N\$ 1.5 million on 11 November 2017 (see annexure "MDK7-17(10)");
- 158.6 Ndjako Investments an amount of N\$ 2 million on 20 August 2018 (see annexure "MDK7-17(11)");
- 158.7 cash payment to Hatuikulipi in an amount of N\$ 500 000.00 on 25 October 2017 (see annexure "MDK7-17(12)").
159. Copies of the aforesaid proof of payments, and the cash receipt, signed by Hatuikulipi in respect of the amount paid to him, are attached hereto in a bundle as annexure "MDK7-17(1) to MDK7-17(12)".
160. At the end of 2018 I was instructed by Dawie Möller to assist in a transaction relating to a farm that he and Hatuikulipi wanted to purchase and which involved MH Properties CC. It became evident to me that MH Properties CC was one of the beneficiaries of the payments made by Celax Investments during October 2017 and which confirmed my suspicions that I was being used as a puppet to achieve other ulterior objectives but as I mentioned in Paragraph 101 above, I chose not to raise these issues with them.

#### **BARZAN MATTER**

161. Early during January 2019 Hatuikulipi approached me and consulted me at my office. During the said consultation he said that he had two projects that were imminent, one relating to a gas project and another one relating to a diamond project. He advised that he would give further instructions in due course but that in the meantime requested me to set-up and/or require a new shelf company for him of which he would be the sole Director and the shareholder would be another company namely Cambadara Holdings (Pty) Ltd ("Cambadara"). On 15 January 2019 Hatuikulipi sent me a WhatsApp requesting me what progress I had made on the setting up of the shelf company. A screenshot of the WhatsApp between 15 January and 28 January 2019 appears below:



1:09

< 9 Connecting...

14 Jan 2019

Hi Maren, I trust you are well.  
Are you able to arrange the the  
Shelfco for diamonds project  
latest my Wednesday morning.  
Rather urgent as we need to  
conclude termsheets

Thanks

Ok will attend to it asap

Thank you Sir!

15 Jan 2019

Ola Boss! Just a reminder of  
Shelco

Yes im on it. Who will be the  
directors and shareholders?

Director myself and shareholder  
Cambadara Holdings (Pty) Ltd

+ [image] [image] [image]

1:10

< 9 Connecting...

Yes im on it. Who will be the  
directors and shareholders?

Director myself and shareholder  
Cambadara Holdings (Pty) Ltd

16 Jan 2019

Morning James. Can you please  
send me company status report  
of Cambadara. ?

28 Jan 2019

Morning James. When can you  
come by to sign the company  
docs for serve 129?

I will arrive in Whk tomorrqw  
night! So wll come sign on  
Wednesday

Ok cool

29 Aug 2019

+ [image] [image] [image]

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copy of the original which was examined by me  
and that from my observations, the original has not  
been altered in any manner.

162. I obtained a shelf company for Hatuikulipi from AUAS Secretarial Services by the name of Serve Investments One Two Nine (Pty) Ltd. Attached hereto are copies of the Company documentation in respect of Serve Investments One Two Nine (Pty) Ltd as well as Cambadara, as annexures "MDK8-1".
163. Although I made several enquiries thereafter regarding the imminent projects as referred to above, he simply advised that both matters were still on hold and I received no further instructions from him in this regard.
164. During August 2019 I was approached by Dong Zhang ("Zhang"), who communicated to me via e-mail to my law firm address that he is a Hong Kong based lawyer who acts for a Qatari Company, Barzan Energy and Gas Company Ltd IPTC-17317MS ("Barzan") and that he wanted to appoint an agent for the company in Namibia. A copy of this e-mail is attached hereto as annexure "MDK8-2". I have no idea why I was selected, and whether or not the gas projects mentioned by Hatuikulipi in January 2019 had anything to do with this matter, but with the benefit of hindsight, I can only assume that it was because of a referral by Hatuikulipi, Shanghala or by someone who was aware that I was willing to act as a paymaster using my trust account.
165. I agreed to act and in due course I received documents from Zhang appointing me as the Qatari company's agent. I was instructed to open a bank account at Kaspi Bank in Kazakhstan which I duly did. I mention that I was required to pay a security deposit of US\$ 60 000.00 which I duly did because I felt there was no risk as I was the sole signatory on this bank account.
166. On or about 10 October 2019, Zhang under cover of an e-mail sent me a copy of a sale agreement for the sale of Gas by Barzan to Otsuka in Japan Holdings ("Otsuka"). In terms of this agreement, a copy of which is attached hereto as annexure "MDK8-3", my duties as Barzan's agent was to receive the purchase price of US\$ 68,953 million as a deposit on the account, to confirm same, and to ensure that a *lien* was placed on the monies until the quality of the gas could be verified.
167. The payment of US\$ 68,953 million was made by Otsuka and I had a *lien*

I certify that the document is a true reproduction / copy of the original which was examined by me and that from my observations the original is placed on the purchase price as instructed. Proof of payment is attached hereto

as annexure "MDK8-4".

168. Approximately three weeks later Zhang informed me telephonically that the ship with the gas had arrived in Japan and that the gas now needed to be tested.
169. Approximately a further week later, Zhang telephoned me to advise me that the quality of the gas was not acceptable to the Japanese purchaser, and that the parties had agreed to have the gas purified by a Bulgarian company, Imperial Ventures. He duly forwarded me a copy of the agreement between the parties and Imperial Ventures executed on 15 November 2019. A copy of the agreement is attached hereto as annexure "MDK8-5".
170. Zhang then telephoned me a few days later and informed me that the CEO of Barzan had a stroke and was in a coma. Barzan was required to pay 50% of the purification fee amounting to US\$ 230 000.00, failing which the entire transaction would come to nought. Zhang advised that if I was willing to pay the US\$ 230 000.00, and the purification could proceed, the gas transaction could be completed, and my fee would be increased by US\$ 460 000.00.
171. As I did not have the money, and because I saw this as an investment opportunity, on or about 17 November 2019. As I explained earlier, when I saw Hatuikulipi a few days later on 17 November 2019, I told him about the situation and if he would be prepared to fund the purification on risk because if successful Celax Investments would be able to double its money. Hatuikulipi authorized me to make the transfer which I did via my personal account in order to simplify the exchange control process.
172. Approximately two weeks later Zhang telephoned me to inform me that the purification process was unsuccessful, and that the money was lost.
173. From the end of 2018 until November 2019, I continued to meet Hatuikulipi and Shanghala regularly (usually in my office) to discuss a wide range of matters including but extending beyond the ambit of donations and the Cultural Troupe. As best I can recall, these discussions concerned property related transactions, rental agreements, an insurance related matter and other advice of a commercial nature. I however, received no further instructions from Shanghala or from Hatuikulipi to pay out any monies to third party beneficiaries. I was

I certify that the document is a copy of the original which was examined by me and that from my observations, the original has not been altered in any manner.

Signature: 

instructed to debit in aggregate approximately N\$ 200 000.00 from monies held in Celax Investments for my legal and advisory work. I withdrew these fees as instructed.

174. On or about 17 November 2019 (I cannot recall exactly) I telephoned Hatuikulipi to come to a meeting at my offices to discuss the Barzan investment opportunity as explained above. At this meeting on the same day, Hatuikulipi authorized me to transfer the US\$ 230 000.00 required (via my personal account because of exchange control limitations). Hatuikulipi also instructed me to transfer N\$ 1 million to Attorney Appolus Shikwameni's trust account. I duly did so and debited a fee of approximately N\$ 190 000.00 as authorised by Hatuikulipi.

#### THE EVENTS WHICH FOLLOWED AFTER NOVEMBER 2019

175. The "*fishrot*" investigation became public in the press at the end of November 2019. I recognized some of the names of the entities allegedly involved in the events that lead to the "*fishrot*" investigation. I approached Coetzee, the firm's compliance officer, and we agreed that my and the firm's involvement should be reported to the FIC. Coetzee was requested to attend at the FIC's offices in Windhoek and to upload the report onto the FIC online system. She duly did so in December 2019.

176. In December 2019, the law firm was instructed to "*ringfence*" all remaining funds held for SWAPO and / or Shanghala and / or Hatuikulipi in our trust account, and we did so. This in aggregate amounts to approximately N\$ 4.6 million, and to the best of my knowledge, this amount remains "*ringfenced*" within the law firm's trust account.

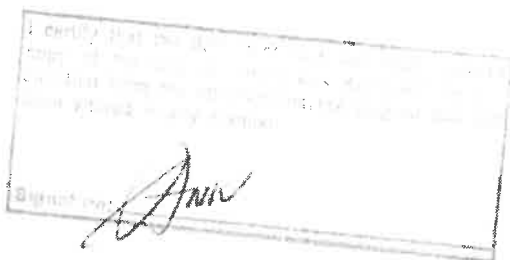
177. During December 2019 I struggled badly with my mental health which was made worse with the severe stress associated with the "*fishrot*" investigation. On 15 January 2020, I made contact with the Namibian Police Services official who was dealing with the matter, Commissioner Nelius Becker ("*Becker*"), and met him together with my friend and colleague Christie Mostert on that same day (15 January 2020) at a coffee shop at the Old Breweries in Windhoek in

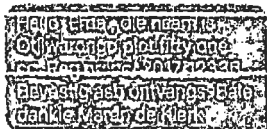
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order to discuss the matter. Becker advised me to contact Advocate Ema van

der Merwe ("Adv Van der Merwe"), the second in charge of the ACC. I informed Becker that I had no objection thereto, and that I would wait for Adv Van der Merwe to contact me. Adv Van der Merwe phoned me early that evening, and in a courteous manner suggested that we only meet as soon as possible to have a preliminary discussion about the matter, which we agreed would take place at 3 pm the following day.


178. The next day at noon I consulted Schimming Chase SC and requested her to accompany me to the meeting with Adv Van der Merwe. She advised that it would be better if I went to the meeting alone, without any representation as it might create the impression that I have something to hide.
179. Upon my arrival at the offices of the ACC, the atmosphere was quite hostile. I was confronted by a panel of seven or eight people including Adv Van der Merwe. I was confronted with several questions for which I was wholly unprepared. Adv Van der Merwe informed me that the ACC was aware of the payments I had been making for Shanghala and that I had to explain why I had not approached them in November 2019 when the "fishrot" investigation became public in the media. I explained that I, together with my firm, had reported the matter to the FIC, and that we were of the belief that this was sufficient. In hindsight, this was a very short-sighted view to take.
180. During the meeting and after being questioned I, *inter alia*, told the ACC of the entity that was used for the property transfer of Esau. Adv Van der Merwe requested me to provide them with the details of Esau's entity. As I could not immediately remember the name, I undertook to co-operate with the ACC in their investigation and revert with the information so sought. Upon my return to my office, I went through my records and provided the name and registration number of Esau's entity to Adv Van der Merwe by way of text message at 17h12 on 16 January 2020, as is evident below:





181. I suffered a nervous breakdown on 17 January 2020. I was subsequently admitted to a mental health facility on 25 January 2020 until 14 February 2020. Events following my admission to this mental facility are set out in an affidavit filed with the South African Police Services on 20 February 2020. A copy of this affidavit is attached as "MDK9-1".
182. I further wish to disclose that I had on some occasions certified documents for close acquaintances, especially for Penderis, such as passports and identity documents without verifying the original documents. and furthermore, I signed affidavits deposed to by colleagues without them being present in my office.
183. I have been advised by my legal representatives, that I am obliged to cooperate with the investigation of the ACC in terms of the AC Act. That much, was expected from me when I met with Adv Van der Merwe as well.
184. Whilst I have incriminated myself in this affidavit, I sincerely hope to be used as a State witness within the ambit of Section 204 of the CPA and that I may receive protection in terms of Section 52(4) of the AC Act.
185. I remain available to assist in the investigation.
186. This affidavit was prepared under substantial constraints of the impact of COVID-19, more particularly, in that I could not meet with my attorney and counsel personally to finalise this affidavit. Given the urgency of the matter, it was decided to complete the affidavit, notwithstanding the limitations of not having access to documents. I respectfully request that this affidavit be treated as *secret* until the investigation is completed as I verily believe that my life is at risk.

I certify that the document is a true reproduction /  
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and that from my observations, the original has not  
been altered in any manner.

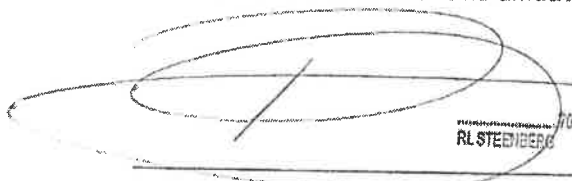
Signature: 

STELLENBOSCH  
DATED AT ~~CAPE TOWN~~ ON THIS THE 17<sup>th</sup> DAY OF APRIL 2020.

*F RLS*

  
MAREN BRYNARD DE KLERK

I certify that this affidavit was signed and sworn to before me at Stellenbosch on this the 17 day of APRIL 2020, by the deponent after he declared that he knew and understood the contents of this affidavit, that he had no objection to taking the prescribed oath which he regarded as binding on his conscience, and after he uttered the words: "I swear that the contents of this affidavit are true, so help me God".

  
RL STEENBERG 7031427-6

COMMISSIONER OF OATHS

THE REPUBLIC OF SOUTH AFRICA  
STELLENBOSCH  
2020-04-17  
STATIONER GENERAL  
STATIONERS & PRINTERS

I certify that the above is a true and correct copy of the original and that the same has been attested in accordance with the provisions of the Oaths Act, 1956 (Act No. 46 of 1956).

Signature: 