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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA

CASE NUMBER:

79005/18

In the matter between:

THE PRUDENTIAL AUTHORITY

Applicant

and

VBS MUTUAL BANK

First Respondent

SIZWENTSALUBAGOBODO GRANT THORNTON (PTY) LTD

(In its capacity as the curator of VBS MUTUAL BANK)

Second Respondent

ANOOSH ROOPLAL N.O.

Third Respondent

THE MINISTER OF FINANCE

Fourth Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that application will be made on behalf of the applicant on the 13TH day of NOVEMBER 2018 at 10:00 or so soon thereafter as counsel may be heard for an order in the following terms –

- 1 that the forms and service provided for in the Uniform Rules of Court be dispensed with and that this application be disposed of as one of urgency as contemplated in Uniform Rule 6(12);
- 2 that the first respondent be placed under final winding-up in the hands of the Master of the High Court of South Africa, Gauteng Division, Pretoria;
- 3 that the attention of the Master of the High Court, Gauteng Division, Pretoria is drawn to the recommendation of the applicant that the third respondent, Anoosh Rooplal, be appointed as the liquidator of the first respondent;
- 4 that the costs of this application be the costs in the winding-up of the first respondent, save in the event of opposition in which event the opposing party is to pay the costs of the opposition to this application;
- 5 further and/or alternative relief.

BE PLEASED TO TAKE NOTICE FURTHER THAT the affidavit of **KUBEN NAIDOO** will be used in support of the application.

BE PLEASED TO TAKE NOTICE FURTHER THAT the applicant has appointed the address of Werksmans Incorporated c/o Danielle du Plessis Attorneys, Spaces Menlyn Maine, Pegasus Building, 210 Amarand Avenue, Waterkloof Glen, Pretoria as the address at which the applicant will accept notice and service of all documents and process in these proceedings.

BE PLEASED TO TAKE NOTICE FURTHER THAT should you wish to oppose the application you are required to –

1. notify the applicant's attorney of record Mr C Manaka (Tel: 011 535 8145 / Email: cmanaka@werksmans.com) / Mrs L Silberman (Tel: 011 535 8134 / Email: lsilberman@werksmans.com) of your intention to oppose by no later than Wednesday, 31 October 2018 at 16h00 in which notice you are to reflect an address for service as contemplated by Rule 6(5)(b) of the Uniform Rules of Court; and
2. deliver an answering affidavit, if any, by no later than Monday, 5 November 2018 at 16h00.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

DATED at SANDTON on this the 29th day of OCTOBER 2018.


WERKSMANS ATTORNEYS
The applicant's attorneys
The Central
96 Rivonia Road
Sandton 2196
Mr C Manaka
Tel: 011 535 8145
Email: cmanaka@werksmans.com
Mrs L Silberman
Tel: 011 535 8134
Email: lsilberman@werksmans.com

c/o **DDP Attorneys Inc.**
Spaces Menlyn Maine
Pegasus Building
210 Amarand Avenue (corner January Masilela Drive)
Waterkloof Glen, Pretoria
Or: 2nd Floor Hilda Law Chambers
339 Hilda Street
Hatfield, Pretoria
Email: danielle@ddpa.co.za
Ref: S00024/001453/ddp

TO:
**THE REGISTRAR OF THE
HIGH COURT, PRETORIA**

AND TO:
VBS MUTUAL BANK
First respondent
82 Wessels Road
Rivonia

AND TO:
SIZWENTSALUBAGOBODO GRANT THORNTON (PTY) LTD
Second respondent
20 Morris Street East
Woodmead
Johannesburg

AND TO:
ANOOSH ROOPLAL
Third respondent
c/o SizweNtsalubaGobodo Grant Thornton (Pty) Ltd.
20 Morris Street East
Woodmead
Johannesburg

AND TO:
THE MINISTER OF FINANCE
Fourth respondent
c/o The State Attorney
Salu House
255 Francis Baard Street
Pretoria
Ref: Thembelihle Nhlanzi
Email: TNhlanzi@justice.gov.za

AND TO:
**THE MASTER OF THE HIGH COURT,
PRETORIA**

Received this the
day of OCTOBER 2018

For: **THE MASTER OF THE HIGH COURT**

AND TO:
THE SOUTH AFRICAN REVENUE SERVICES
Lehae La SARS
299 Bronkhorst Street
Nieuw Muckleneuk
Pretoria

Received this the
day of OCTOBER 2018

For: **SARS PRETORIA**

AND TO:
THE SOUTH AFRICAN REVENUE SERVICES
Megawatt Park
Sunninghill
Johannesburg

Received this the
day of OCTOBER 2018.

For: **SARS JOHANNESBURG**

AND TO:
THE EMPLOYEES OF THE FIRST RESPONDENT
First respondent
82 Wessels Road
Rivonia

SERVICE BY SHERIFF

AND TO:
**TRADE UNIONS REPRESENTING THE
EMPLOYEES OF THE FIRST RESPONDENT**
First respondent
82 Wessels Road
Rivonia

SERVICE BY SHERIFF

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA**

CASE NUMBER:

In the matter between:

THE PRUDENTIAL AUTHORITY

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SIZWENTSALUBAGOBODO GRANT THORNTON (PTY) LTD

(In its capacity as the curator of VBS MUTUAL BANK)

Second Respondent

ANOOSH ROOPLAL N.O.

Third Respondent

THE MINISTER OF FINANCE

Fourth Respondent

FOUNDING AFFIDAVIT

I, the undersigned

KUBEN NAIDOO

do hereby make oath and state that –



- 1 I am the Chief Executive Officer of the Prudential Authority duly appointed in terms of Section 36 of the Financial Sector Regulation Act 9 of 2017 and I am also the Deputy Governor of the South African Reserve Bank ("the SARB") appointed as such in terms of Section 4 of the South African Reserve Bank Act 90 of 1989.
- 2 I am duly authorised to depose to this affidavit.
- 3 The facts contained herein are within my personal knowledge, save where otherwise stated or where the contrary is indicated by the context, and are to the best of my knowledge and belief both true and correct.
- 4 To the extent that I do not possess personal knowledge of the facts contained in this affidavit, I rely on information communicated to me by the individuals named herein and for whom confirmatory affidavits will be filed of record.
- 5 By virtue of my position within the Prudential Authority, I have been closely involved in the curatorship of **VBS MUTUAL BANK** ("VBS") and with the investigation conducted into VBS and as addressed in more detail later in this affidavit. As such I am well placed to depose to this affidavit in support of the liquidation of VBS.

A handwritten signature in black ink, consisting of stylized cursive letters, located in the bottom right corner of the page.

THE PARTIES

- 6 The applicant is the **PRUDENTIAL AUTHORITY**, established as a juristic person operating within the administration of the Reserve Bank in terms of the Section 32 of the Financial Sector Regulation Act 9 of 2017 ("FSR").
- 7 The Prudential Authority has its principal place of business at 370 Helen Joseph Street, Pretoria, Gauteng.
- 8 The first respondent is **VBS MUTUAL BANK**, a mutual bank registered in terms of the Mutual Banks Act 124 of 1993 ("the Mutual Banks Act"), which since 10 March 2018 when it was placed under curatorship by the third respondent, the Minister of Finance, has been managed at 82 Wessels Road, Metropolitan Office Park, Rivonia, Sandton, 2196.
- 9 The second respondent is **SIZWENTSALUBAGOBODO GRANT THORNTON ADVISORY SERVICES PROPRIETARY LIMITED**, a company duly registered and incorporated in accordance with the Company Laws of the Republic of South Africa having registration number: 2005/012995/07. The second respondent was previously known as **SIZWENTSALUBAGOBODO ADVISORY SERVICES PROPRIETARY LIMITED** and is cited in its capacity as the duly appointed curator of VBS, having been so appointed in terms of Section 81 of the Mutual Banks Act as read with 69 of the Banks Act 94 of 1990 ("the Banks Act"). The second respondent's principal place of business and registered address is at 20 Morris Street East, Woodmead, Bryanston,



Gauteng. I attach marked annexure "**FA1**" a copy of the appointment as curator and I attached marked "**FA2**" a certificate issued by the Companies Intellectual Property Commission reflecting the foregoing.

- 10 The third respondent is the **ANOOSH ROOPLAL N.O.**, a major auditor and director of the second respondent at 20 Morris Street East, Woodmead, Bryanston, Gauteng. The third respondent is the representative of the second respondent tasked with the curatorship of VBS.
- 11 The fourth respondent is the **MINISTER OF FINANCE**, cited in his official capacity care of The State Attorney, Salu House, 255 Francis Baard Street, Pretoria.

NATURE OF APPLICATION

- 12 This is an application in terms of Section 75 of the Mutual Banks Act, read together with the provisions of the Companies Act 71 of 2008 ("the 2008 Companies Act"), more particularly Item 9 of Schedule 5 thereof, as further read with the provisions of Section 344, 345 and 346 of the Companies Act 61 of 1973 ("the 1973 Companies Act"), for an order for the winding-up of VBS on the basis that -



- 12.1 it is factually insolvent in that its liabilities significantly exceed its assets and it is commercially insolvent and cannot pay its debts and therefore should be wound-up within the meaning of Section 345 of the Companies Act;
- 12.2 the second respondent ("the curator") is, in terms of Section 69(2)(D) of the Banks Act, of the opinion that there is no reasonable probability that the continuation of the curatorship will enable VBS to pay its debts or meet its obligations and become a successful concern, and has so informed the Prudential Authority, as appears from annexure "FA3"; and
- 12.3 an extensive investigation was conducted in terms of section 134 of the FSR and a report prepared by Advocate Terry Motau SC ("the investigator") for the Prudential Authority and which is publicly available on the website of the Reserve Bank which demonstrates, together with the findings of the curator, that it is also just and equitable that VBS be wound-up as contemplated in Section 344(h) of the 1973 Companies Act.
- 13 The winding-up of VBS will bring to an end the curatorship of VBS, which has been ongoing since 10 March 2018. This is necessary and will be beneficial to the creditors of VBS Bank and in the public interest, as it will enable a liquidator to utilise the mechanisms provided by the insolvency and company law legislation, to recover monies *inter alia* from recipients in terms of void and impeachable transactions.



JURISDICTION

14 I submit that the above Honourable Court has jurisdiction to entertain this application by virtue of the following -

14.1 VBS is not a company and therefore is not registered in terms of the Companies Act with a registered address or registered office;

14.2 VBS is registered as a mutual bank with the Prudential Authority, which registration took place in Pretoria. I attach marked "FA4" the certificate of registration of VBS as a mutual bank;

14.3 the Prudential Authority is situated in Pretoria;

14.4 the curator which conducts the management of VBS, pursuant to VBS having been placed under curatorship by the Minister of Finance, is situated in Johannesburg and, since curatorship, mostly at VBS' commercial offices in Rivonia, Sandton, Johannesburg; and

14.5 factually the main office of VBS is, since curatorship, in Sandton and all of the administrative, management and decision-making functions of VBS have since the inception of curatorship in March 2018, been in Sandton.



15 Accordingly VBS' business and affairs are presently being conducted from an address within the geographical area of jurisdiction of the above Honourable Court.

16 VBS is hopelessly insolvent, both factually and commercially. Against the background of massive frauds and the theft of depositor funds (addressed more fully below) it is of necessity and in the interests of the creditors of VBS and the public, that VBS is wound-up as a matter of urgency.

17 The facts and circumstances giving rise to this application are set out below.

THE PRUDENTIAL AUTHORITY

18 The FSR has the object to achieve a stable financial system that works in the interests of financial customers and it supports balanced and sustainable economic growth in the Republic of South Africa, by establishing, in conjunction with the specific financial sector laws, a regulatory and a supervisory framework that promotes financial stability, safety and soundness of financial institutions, fair treatment and protection of financial customers, efficiency and integrity of financial systems, prevention of financial crime, financial inclusion, transformation of the financial sector and confidence in the financial system.



- 19 The Reserve Bank is responsible for protecting and enhancing financial stability and, if a systemic event has occurred or is imminent, for restoring or maintaining financial stability. The Prudential Authority has the objective to promote and enhance the safety and soundness of financial institutions that provide financial products and securities services, promote and enhance the safety and soundness or market infrastructures, protect financial customers against the risk that those financial institutions may fail to meet their obligations and assist in maintaining financial stability.
- 20 In order to achieve its objectives, the Prudential Authority must, *inter alia*, regulate and supervise, in accordance with the financial sector laws, financial institutions that provide financial products or securities services and market infrastructures, and must also perform any other function conferred on it in terms of any other provision of the FSR or other legislation.
- 21 The Prudential Authority after enactment of the FSR fulfils the role of the Registrar of Banks and therefore has the powers, and the obligations, to act in accordance with the provisions of the Mutual Banks Act and the Banks Act, *inter alia*, when seeking the winding-up of a bank and a mutual bank.
- 22 The FSR read with the Banks Act and the Mutual Banks Act, provide for a continuous primary supervision and regulation of banks by the Prudential Authority before, during and after curatorship and before, during and after winding-up of such a bank.



- 23 In terms of Section 75(2) of the Mutual Banks Act, as read with the Banks Act and the FSR, the Prudential Authority may apply for the winding-up of a Mutual Bank.
- 24 In terms of Section 75(1), the provisions of the 2008 Companies Act, as read with the 1973 Companies Act, relating to the winding-up of companies by the court, shall apply to every Mutual Bank. The regulation and supervision of Mutual Banks by the Prudential Authority, after winding-up, appears from Section 76 of the Mutual Banks Act which provides that no person, other than a person recommended by the Prudential Authority, shall be appointed by the Master of the High Court as liquidator or provisional liquidator of a Mutual Bank.

CURATORSHIP

- 25 VBS was placed under curatorship on 10 March 2018 and the curator was appointed in terms of Section 81 of the Mutual Banks Act as curator to VBS. As I have indicated, the curator is represented by the third respondent ("Rooplal").
- 26 Banks have an important and key role to play in the economy of South Africa as they are a principal depository for the liquid funds of the general public. The safety and ready availability of these funds for transactions and the responsibility for these funds and their management is essential to the stability and efficiency of the financial system.



- 27 Banks also serve as the main conduit for monetary policy between a central bank and the economy. Banks are the backbone for the national payment system in that money that stems from commercial banks is used for payments. This highlights the importance of a reliable and efficient payment mechanism in a well-functioning economy.
- 28 Banks operate as financial intermediaries. They are characterised as such because they place themselves between the ultimate lender and ultimate borrower by transforming primary securities into indirect securities. This role is achieved by banks utilising deposits obtained from depositors to finance the acquisition of liquid assets of uncertain value.
- 29 The risk profile of banks is fundamentally different to that of other institutions. Whilst the general public does not expect its deposits to be subject to any price or other risks, there is no guaranteed repayment of deposits by banks in the absence of any deposit insurance scheme. This is because the nature of the business of a bank renders it vulnerable to abnormal liquidity shortages that might be caused by a run by depositors on a bank. Such an occurrence could have disastrous consequences on an economy in that even solvent banks might be forced to sell assets at a loss when no secondary market exists which affords them a forum in which they can liquidate their assets.
- 30 Banks are also subject to a higher degree of supervision than other institutions. This is done for obvious reasons to –



- 30.1 contribute to a safe and sound financial system in which the general public can trade without fear of losing their savings or investments;
- 30.2 enhance the confidence of and fairness to investors by eliminating bad business practice;
- 30.3 facilitate transparency, integrity and good corporate governance; and
- 30.4 work towards maintaining an efficient financial system in which services are supplied at a competitive price and where the majority of South Africans have access to various financial services.

31 Most importantly, due to the unique risk profile of a bank, one of the most important aspects which the legislature recognised was the need to prevent a run on the bank and this gave rise to a system of curatorship.

32 The purpose of placing a bank under curatorship is primarily to protect the interests of depositors and to attempt to resolve a bank's financial difficulties. It is an indispensable mechanism for South African regulators seeking to address and resolve difficulties faced by banks in distress.

33 The fourth respondent ("the Minister"), upon the recommendation by the Prudential Authority, placed VBS under curatorship. The decision was one made against a determination of, *inter alia*, a severe liquidity crisis faced by VBS over a period of approximately eighteen months prior to the



commencement of the curatorship. In the opinion of the Prudential Authority, VBS was unable to repay, when legally obliged to do so, deposits made with it and would not be able to meet its obligations.

34 The liquidity challenges faced by VBS emanated from the failure of the board of directors and executive management to manage VBS' rapid growth as well as its funding and liquidity position and as it has since transpired, massive frauds which were perpetrated.

35 The curator commenced investigating the affairs of VBS and the initial findings of the curator revealed significant losses in VBS as a result of which, *inter alia*, on 13 April 2018, I, in terms of Section 134 of the FSR, appointed the investigator to conduct an investigation into the affairs of VBS.

36 The report of the investigator, which has been made publicly available and which I will hereinafter refer to as "the investigator's report", reveals, *inter alia*, that –

36.1 there was wide scale looting and pillaging of monies placed on deposit with VBS;

36.2 the 2017 audited financial statements of VBS were fraudulently and materially misstated;

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- 36.3 there were fraudulent misrepresentations made in the monthly regulatory returns which VBS was obliged to submit to the Reserve Bank;
- 36.4 the liabilities of VBS exceeded its assets by approximately R180 million and it was hopelessly insolvent as at 31 March 2017. By the time VBS was placed under curatorship in March 2018, the financial position was far worse;
- 36.5 the principal beneficiary of the looting of VBS was its majority shareholder, Vele Investments Proprietary Limited ("Vele");
- 36.6 there was a fraudulent manipulation of VBS' financial records and deliberate action was taken by executives of VBS to *"cover up the massive cash hole in the bank"*;
- 36.7 the manipulation of VBS' operating system known as EMID was done with ease by the protagonists of the extensive frauds thereby resulting in VBS' largest asset not being recorded in the operating system;
- 36.8 insofar as the 2017 annual financial statements are concerned, the amounts on call and at short-notice, disclosed in the financials, was R770,866,124 which in fact was overstated by R700 million due to non - existent deposits;



36.9 in relation to SAMOS, which is the inter-bank operating system between various banks and the Reserve Bank, there was a massive difference in the SAMOS account of VBS and the amount reflected in the records of VBS. The difference between the amount shown in the VBS trial balance and the actual balance in the SAMOS account amounted to R410 million; and

36.10 notwithstanding, the financials of VBS for 2017 were signed off by the audit partner, the Chief Executive Officer and the Chairman of VBS knowing of the falsities and inaccuracies contained therein.

37 I have attached marked "**FA5**" a copy of the investigator's report (without the annexures) and I refer the above Honourable Court to paragraph 246, on page 138 thereof, which is the penultimate paragraph of the investigator's report and which encapsulates one of his recommendations regarding proceedings to be taken by the Prudential Authority. It reads as follows –

"246. I also recommend that urgent steps be taken to wind-up VBS. It seems clear to me that there is no prospect of saving VBS. It is corrupt and rotten to the core. Indeed, there is hardly a person in its employ in any position of authority who is not, in some way or other, complicit."

38 Focus cannot only be placed on the investigator's report without having regard to the extensive work done by the curator. The curator had to comply with its duties and had to fulfil its objective of protecting the interests of depositors with



a view to addressing the financial difficulties faced by VBS with the aim of restoring it to function as a successful concern.

39 In the course and scope of fulfilling its duties, the curator not only conducted extensive investigations into the affairs of VBS, but it has also made various decisions and has facilitated certain actions, in the interests of VBS which include, *inter alia*, the following –

39.1 the National Treasury, through the Reserve Bank, provided a guarantee to facilitate the repayment, by the Reserve Bank, of up to R100,000 per qualifying retail depositor commencing on Friday, 13 July 2018. After consideration was given to several options and based on objective criteria for how depositors could access their funds, Nedbank Limited ("Nedbank") was selected to facilitate the repayment of deposits. Nedbank is working together with the Reserve Bank and the curator to enable qualifying retail depositors to access their funds;

39.2 17,369 new Nedbank accounts have been opened for VBS retail depositors and funds have been transferred by the Reserve Bank into these accounts in accordance with information from the VBS database. The facilitation process of depositor pay-outs has resulted in approximately 50% of depositors, with balances of up to R100,000, having activated their Nedbank accounts and having access to their funds;



- 39.3 the curator, in attempting to restore stability to VBS and reduce the costs which were stripping the cash inflows of VBS, engaged in a process of reducing the number of staff employed by VBS. The VBS retrenchment consultations commenced on 20 July 2018 in accordance with the provisions of Section 189(3) of the Labour Relations Act 66 of 1995 ("the LRA");
- 39.4 a process of consultation took place up until 12 October 2018, in accordance with the provisions of the LRA and under facilitation by the Commission for Conciliation, Mediation and Arbitration, and after some time and an extensive consultation process, the employees of VBS received notice of retrenchment letters on 12 October 2018. The curator believes that the retrenchment process has been finalised with sufficient consensus on material consultation points having been achieved;
- 39.5 the present number of staff employed by VBS is twenty-five employees whose functions are to assist the curator with the collection of outstanding funds due and owing to VBS (all are situated in Sandton, at the VBS commercial office);
- 39.6 with the transfer and pay-out of the retail depositors, the curator reconsidered the continued operation of all of the branches of VBS, based on anticipated reduction of activity at those branches;



39.7 a number of the branches of VBS have been closed as a result of which only two transactional branches remain open for the receipt of payment on outstanding debts; one in Makhado and the second in Thohoyandou;

39.8 the exercise of the restatement of the 2017 financial statements. In light of the pervasive nature of the fraud and the unreliable information available to the curator, it has been a monumental task for the curator to reconstruct the VBS balance sheet. The curator has nevertheless engaged in the difficult and time consuming exercise of restating the financials of VBS which exercise has produced results which indicate that –

39.8.1 VBS remains hopelessly insolvent;

39.8.2 the liabilities of VBS exceed its assets and therefore it is factually insolvent;

39.8.3 there is no possibility that VBS will be in a position to pay its debts;
and

39.8.4 there is no possibility or prospect of VBS becoming a successful concern.

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40 As a result of the above, on 8 October 2018, the curator addressed correspondence to the Prudential Authority, a copy of which is attached marked "FA3".

41 Annexure "FA3" reads as follows –

- "1. We refer to the report of the curator for VBS Mutual Bank (in curatorship) ("**the Bank**") dated 28 September 2018 – report number 06 ("**the Report**").
2. Based on the financial information contained in the "preliminary" restated 2017 Statement of Financial Position and Statement of Profit or Loss and Other Comprehensive Income of the Bank for the year ended 31 March 2017 (as contained on pages 22 and 23 of the Report), we are of the opinion that there is no reasonable probability that the continuation of the curatorship will enable the Bank to pay its debts or meet its obligations and become a successful concern.
3. This letter is addressed to the Prudential Authority in accordance with the provisions of Section 69(2D) of the Banks Act."

42 Accordingly, the curator has determined that curatorship is no longer viable for VBS.

43 After having received the curator's letter of 8 October 2018 and after having considered the investigator's report, I, in consultation with the Governors of the Reserve Bank, determined that VBS must be placed in final winding-up. VBS



is hopelessly insolvent and massive frauds have been perpetrated against it. There is no prospect of entering into any resolution plan in respect of VBS.

44 A meeting was then convened with the Reserve Bank's legal department (attended by its General Counsel and its Head of Legal), other representatives of the Reserve Bank, the Reserve Bank's external lawyers, Messrs Werksmans Inc and representatives of the curator, on 18 October 2018 and in consultation with me, an instruction was given to the Reserve Bank's attorneys to commence preparation of this application for the final winding-up of VBS. I attach marked "FA6" a confirmatory affidavit deposed to by Denzel Edgar Bostander the Head: Financial Conglomerate Supervision Department with the Prudential Authority confirming the foregoing.

45 It is submitted that in addition to the insolvent position of VBS, in terms of Section 344(h) of the Companies Act, it is just and equitable that VBS be wound-up.

46 Aside from the pillaging and looting of VBS funds and the extensive frauds that have been perpetrated, the purpose and object of VBS no longer exists.

47 Despite the efforts of the curator, the vortex of the black hole created by the role-players named in the investigator's report, has resulted in the disappearance of VBS' substratum and it being objectively impossible for VBS to achieve the purpose of its existence.



- 48 VBS cannot and indeed has not functioned as a depository of funds since curatorship and cannot engage in any transactions whereby it fulfils the role of a conduit for monetary policy nor can it act as a financial intermediary. In other words it does not presently and cannot ever again conduct business as a bank.
- 49 VBS is presently functioning on the basis of an organisation attending to the collections of monies due and owing to it utilising the services of the remaining twenty-five employees referred to above and the services of the curator.
- 50 The present activities relating to VBS are primarily directed at recoveries resulting from the thefts and frauds addressed in the investigator's report and the criminal and civil proceedings recommended therein.
- 51 In the circumstances, VBS should be placed in final winding-up. It will serve no purpose to grant a provisional winding-up order, as the conclusion of the hopeless financial position and the conduct of those who managed VBS, is unavoidable.

APPLICATION BY MAHIKENG LOCAL MUNICIPALITY

- 52 On 19 October 2018, shortly after the decision was taken that VBS should be wound-up, Mahikeng Local Municipality ("Mahikeng") issued an application for the winding-up of VBS under case number: 6326/2018 in the Limpopo Division, Polokwane ("the Mahikeng application"). A copy of the notice of motion and founding affidavit, without annexures, are attached marked "FA7".



53 Although the Prudential Authority agrees that VBS should be placed in winding - up, this should not be done in accordance with the Mahikeng application, for a number of reasons.

54 The Prudential Authority, as I have indicated, is the functionary responsible for the regulation and supervision of mutual banks before, during and after curatorship and winding – up. It is the Prudential Authority which should, in the context of VBS, be in control of the process of terminating the curatorship of VBS and of placing it in winding – up. In this regard, I draw the Court's attention to Section 75(6) of the Mutual Banks Act, which requires, before an application for the winding-up of a mutual bank is presented to the court, for a copy of the application and of every affidavit confirming the facts stated therein, to be lodged with the Prudential Authority and with the Master.

55 The purpose thereof also appears from Section 75(6), namely to provide an opportunity to the Prudential Authority or the Master to consider the application and to report to the Court any facts ascertained, which appear to justify the court in postponing the hearing or dismissing the application.

56 Mahikeng has not complied with Section 75(6) of the Mutual Banks Act.

57 In addition, the Limpopo Division of the High Court does not have jurisdiction to place VBS in winding – up. Since its curatorship, the head office of VBS, as I have indicated, is within the jurisdiction of this court. It serves no-one's purpose

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if the Mahikeng application is granted, only for it to be set aside at a later point in time and to risk the winding-up procedures, if that court did not have jurisdiction.

58 Furthermore, there is a material non-joinder of various parties including the Prudential Authority and the Minister of Finance.

59 Mahikeng has also disregarded the provisions of Section 69(6) of the Banks Act 94 of 1990 which states that –

"6. Whilst such bank is under curatorship –

a. All actions, legal proceedings, the execution of all writs, summonses and other legal process against that bank shall be stayed and not be instituted or proceeded with, without the leave of the court; and

b. ..."

The Prudential Authority is not even cited in the Mahikeng application and Mahikeng does not explain on what basis the court should consider granting leave without having the benefit of having heard from the Prudential Authority and the Minister of Finance. It is the Prudential Authority which terminates curatorship and it is therefore the Prudential Authority which is the rightful party to institute proceedings for the liquidation of a bank.



60 The Prudential Authority is of the opinion that the winding – up of VBS should be granted by this court, as it is the only court having jurisdiction to do so.

URGENCY

61 This application is urgent for the reasons set out below.

62 I refer to the investigator's report wherein he recommends that urgent steps be taken to wind-up VBS. I refer the above Honourable Court to paragraph 246, on page 138, of the investigator's report.

63 As there is no prospect of VBS returning to function as a successful concern (I refer to the curator's letter to the Prudential Authority, annexure "FA3"), there is no need for the inevitable to be delayed.

64 There are criminal and civil proceedings that have to proceed in haste and a liquidator should be appointed as a matter of urgency to pick up the reins and to utilise the machinery provided for in insolvency legislation and the Companies Act to follow the recommendations of the investigator.

65 In particular, the liquidator should take steps expediently to set aside impeachable transactions and to recover monies which were disposed of in terms of voidable and impeachable transactions.



- 66 It is not in the interests of the depositors and the public, where much debate presently rages about the fate of VBS, for the present status quo to remain. Speculation regarding what is to become of VBS and criticism against the applicant and the Reserve Bank for alleged inaction subsequent to receipt of the investigator's report, is a status quo that cannot endure.
- 67 VBS must be wound-up on an urgent basis and a liquidator appointed so that the necessary civil and criminal proceedings can be pursued to hold those accountable for the demise of VBS and so as to achieve as great a recovery as possible for the creditors of VBS.
- 68 As has been indicated, Mahikeng has already brought an urgent application for the winding-up of VBS on 18 October 2018 which is set down for 6 November 2018.
- 69 It is submitted for the reasons set out in this affidavit and in the reports of the investigator and the curator, that the winding-up of VBS is urgent, it is in the public interest and that redress will not be obtained in the ordinary course, for these reasons. The longer it takes for the appointment of a liquidator and for steps to be taken, the more unlikely the recovery of monies and other assets from the recipients will be.



THE LIQUIDATOR

70 In terms of Section 76 of the Mutual Banks Act, no person, other than the person recommended by the Prudential Authority, shall be appointed by the Master as liquidator of a Mutual Bank.

71 In the circumstances, the Prudential Authority recommends the appointment of Rooplal as the liquidator and requests the above Honourable Court to order the Master of the High Court, Gauteng Division, Pretoria to appoint Rooplal as liquidator of VBS.

72 The reasons in support of the above, to the extent that they have not been demonstrated above, are, *inter alia*, as follows –

72.1 Rooplal has, for the past seven months, been inextricably involved in the affairs of VBS;

72.2 Rooplal is aware of the detailed information required to pursue the criminal and civil proceedings referred to in the investigator's report, or what information is to be obtained by investigations in terms of the insolvency and company legislation;

72.3 Rooplal is aware of the detailed information in relation to the depositors and the accounts of the depositors held with Nedbank as well as the



processes put in place to enable the depositors to access their funds and can continue to facilitate this process;

72.4 Rooplal has engaged in the significant task of restating the financial statements of VBS and therefore knows with greater certainty the information as to the misappropriation of funds and the frauds and the exact extent of the recoveries and from which entities they are required. Rooplal, through the curator (together with the investigator) has the information and documentation at his disposal to attend to the recovery process without a new appointee having to take weeks or even months to acquaint him/herself with the level of detail that he has acquired over the past seven months; and

72.5 it will be to the detriment of the creditors of VBS if delays are occasioned as a result of a newly appointed individual with no knowledge of the matter having to take the time that will be required to get up to speed, so to speak, with the mountainous volume of information and documentation uncovered by the curator and the investigator. A substantial amount of time will have to be expended on this exercise to enable him/her to proceed in the accordance with the recommendations as set out in the investigator's report and to pursue the recoveries that are required for the benefit of the creditors of VBS. This will only prejudice the creditors of VBS in that it will significantly delay possible recoveries.



STATUTORY REQUIREMENTS

73 In accordance with Section 75(1) of the Mutual Banks Act, through the 2008 Companies Act, the provisions of the 1973 Companies Act relating to the winding-up of companies apply to every Mutual Bank and accordingly the applicant will comply with the formal requirements of an application of this nature as set out in the 1973 Companies Act in that –

73.1 a certificate will be obtained from the Master of the High Court to the effect that sufficient security has been set for payment of all fees and charges necessary for the prosecution of the winding-up proceedings and all costs of administering VBS until a liquidator is appointed, or if no liquidator is appointed, of all fees and charges necessary for the discharge of VBS from winding-up;

73.2 a copy of this application will be served on the Master of the High Court;

73.3 a copy of this application will be served on the South African Revenue Service;

73.4 a copy of this application will be served on VBS at its operations office in Sandton and, due to there being employees and clients who attend them, the two branch offices which presently remain open, being Makhado and Thohoyandou; and

73.5 a copy of this application will be served on the employees of VBS wherever they may be employed.

SUMMARY

74 In summary, it is submitted that the applicant is entitled to the relief sought in the notice of motion in that –

74.1 it has *locus standi* to bring this application;

74.2 in terms of Section 75 of the Mutual Banks Act, it is the correct party to institute this application for the winding-up of VBS;

74.3 VBS is unable to pay its debts and is commercially insolvent;

74.4 VBS is factually insolvent in that its liabilities exceed its assets;

74.5 it is just and equitable that VBS be wound-up; and

74.6 the formalities prescribed by the 1973 Companies Act have been complied with.

75 In the circumstances, I humbly request the above Honourable Court to grant an order as prayed for in the notice of motion to which this affidavit is attached.





KUBEN NAIDOO

I certify that this affidavit was signed and sworn to before me at Sandton
on this the 29 day of OCTOBER 2018, by the deponent who acknowledged that
he knew and understood the contents of this affidavit, had no objection to taking this
oath, considered this oath to be binding on his conscience and uttered the following
words: 'I swear that the contents of this affidavit are both true and correct, so help me
God.'

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

Gregory Michael Lowndes
Commissioner of Oaths
Ex Officio Practising Attorney RSA
56 Wierda Road East
Sandton

" FA I "



South African Reserve Bank
Office of the Deputy Governor
Kuben Naidoo

Ref.: 15/1/

Mr N M Nene, MP
Minister of Finance
National Treasury
Private Bag X115
Pretoria
0001

Dear Minister

VBS Mutual Bank: recommendation to appoint a curator

The letter from the Office of the Registrar of Banks (this Office) dated 22 February 2018, attached hereto as Annexure A, refers.

On 26 February 2018, this Office had requested VBS Mutual Bank (VBS) to provide it with a satisfactory action plan and strategy on how the bank intended to remedy its current liquidity shortage and ease liquidity pressure going forward. At the time of drafting this letter, this Office was informed by VBS that representatives of the bank were still in the process of negotiating with one of its major shareholders, the Public Investment Corporation, for additional funding and/or investment in order to recover from its current liquidity shortage position.

As at the date of this letter, this Office has noted that VBS has failed to raise the aforementioned additional funding.

In light of VBS's current liquidity challenges, it is evident that without an injection of additional funding the bank is unable to meet its financial obligations towards its depositors, a large portion of which constitutes deposits from municipalities. Consequently, I am of the opinion that VBS is unable to repay, when legally obliged to do so, its depositors and to meet its other financial obligations.

I therefore regard it necessary and in the public interest to kindly request you, in your capacity as the Minister of Finance, in terms of section 81 of the Mutual Banks Act 124 of 1993 read with section 69 of the Banks Act 94 of 1990, to appoint SizweNtsalubaGobodo Advisory Services (Pty) Limited (registration number 2005/012995/07 as curator to VBS, with effect from 11 March 2018. SizweNtsalubaGobodo Advisory Services (Pty) Limited (registration number 2005/012995/07) will for purposes of its appointment as curator of VBS at all relevant times be represented by Mr Anoosh Rooplal (of whom an abridged CV is hereby attached marked Annexure B) or, in the event of him becoming unable to adequately fulfil his duties in this regard, by such alternate representative of the curator as the curator, with the approval of the Registrar, may designate.

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This Office is of the view that such an appointment would be in the best interest of the public and VBS's depositors and would present the most suitable and most effective mechanism to facilitate the orderly management of the bank, specifically insofar as it relates to the liquidity problems experienced by VBS. (Pro forma letter pertaining to such appointment, marked Annexure C, is also attached).

In the interim, the Bank Supervision Department and the National Payments System Department of the South African Reserve Bank (SARB) continue to monitor the daily exposures for VBS in the South African Multiple Option Settlement (SAMOS) system to ensure that VBS continues to settle daily. The bank currently has minimal funds in its settlement account to settle payments. Furthermore, at the close of business 6 March 2018, VBS had R0.00 balance in its cash reserve account held at the SARB and minimal unencumbered collateral pledged in the SAMOS system.

As at 31 January 2018, VBS had disclosed that it had 13 703 individual retail depositors and 7 688 depositors from non-profit organisations (e.g. 'stokvels') to the value of R226 million, which this Office recommends being guaranteed the repayment of their deposits.

Should you require any further detail in this regard, please do not hesitate to contact me. I am also available to meet should you have a need to discuss any of the issues raised in this letter.

Yours sincerely

Kubén Naidoo

Kubén Naidoo
Deputy Governor and Registrar of Banks

Date: 8 MARCH 2018

Encl. 4

cc Mr Dondo Mogajane

Mr Ismail Momoniat

*I concur with your
recommendation to appoint
a curator for VBS*

[Signature]
5/03/2018

- Director General: National Treasury

- Deputy Director General: National Treasury

Minister

I recommend that you approve the request of the Registrar, as the Tax Policy division has been engaging with the office of the Registrar, and to ensure that your approval is in the best interests of depositors, and to try and save the bank

[Signature] 10/3/2018

Recommended
[Signature]
10/3/2018

MC

**Certificate issued by the Companies and Intellectual Property
Commission on Thursday, July 12, 2018 02:31
Certificate of Confirmation**



Companies and Intellectual
Property Commission

+ member of the CIPC group

Registration number	2005 / 012995 / 07
Enterprise Name	SIZWENTSALUBAGOBODO GRANT THORNTON ADVISORY SERVICES (PTY) LTD
Enterprise Shortened Name	None provided.
Enterprise Translated Name	None provided.
Registration Date	03/05/2005
Business Start Date	03/05/2005
Enterprise Type	Private Company
Enterprise Status	In Business
Financial year end	December
Main Business/Main Object	ADVISORY SERVICES IN ITS WIDEST FORM
Postal address	P O BOX 2939 SAXONWOLD 2132
Address of registered office	20 MORRIS STREET EAST WOODMEAD BRYANSTON 2132



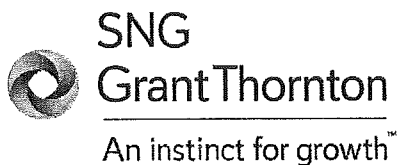
The Companies and Intellectual Property Commission
of South Africa

P.O. BOX 429, PRETORIA, 0001, Republic of South Africa. Docex 256, PRETORIA.

Call Centre Tel 086 100 2472, Website www.cipc.co.za



"FA3"



ATTENTION: MR KUBEN NAIDOO

CEO: Prudential Authority
South African Reserve Bank
370 Helen Joseph Street
Pretoria
0002

8 October 2018

SNG Grant Thornton
20 Morris Street East
Woodmead, 2191
P.O. Box 2939
Saxonwold, 2132
T: 011 231 0600

Dear Sirs

CURATORSHIP OF VBS MUTUAL BANK (IN CURATORSHIP)

- 1 We refer to the report of the Curator for VBS Mutual Bank (in curatorship) ("**the Bank**") dated 28 September 2018 – report number 06 ("**the Report**").
- 2 Based on the financial information contained in the "preliminary" restated 2017 Statement of Financial Position and Statement of Profit or Loss and Other Comprehensive Income of the Bank for the year ended 31 March 2017 (as contained on pages 22 and 23 of the Report), we are of the opinion that there is no reasonable probability that the continuation of the curatorship will enable the Bank to pay its debts or meet its obligations and become a successful concern.
- 3 In the circumstances, we await your further instructions.

Yours faithfully

ANOOSH ROOPLAL
CURATOR: VBS MUTUAL BANK

Victor Sekese [Chief
Executive]

A comprehensive list of all
directors is available at the
company offices or registered
office

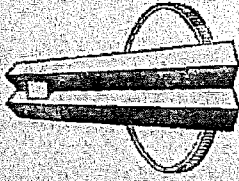
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SizweNtsalubaGobodo Grant Thornton Advisory Registration Number: 2005/012985/07

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Certificate No.
Sertifikaat Nr. 1051



SOUTH AFRICAN RESERVE BANK

Republic of South Africa
Mutual Banks Act, 1993

SUID-AFRIKAANSE RESERWEBANK

Republiek van Suid-Afrika
Wet op Onderlinge Banke, 1993

Office for Banks, Pretoria

Kantoor vir Banke, Pretoria

**CERTIFICATE OF REGISTRATION
AS A MUTUAL BANK**
(Section 14(4) of the Mutual Banks Act, 1993)

**SERTIFIKAAT VAN REGISTRASIE
AS 'N ONDERLINGE BANK**
(Artikel 14(4) van die Wet op Onderlinge Banke, 1993)

I hereby certify that
Ek sertifiseer hiermee dat

VBS MUTUAL BANK

was registered by me as a MUTUAL BANK in terms of section 14(4) of the Mutual Banks Act, 1993.
deur my as 'n ONDERLINGE BANK ingevolge artikel 14(4) van die Wet op Onderlinge Banke, 1993, geregistreer is.

DONE at Pretoria this
ALDUS GEDOEN te Pretoria op hierdie

day of 11TH Two thousand
dag van OCTOBER Tweeduisend 2000

Registrar of Banks
Registrateur van Banke

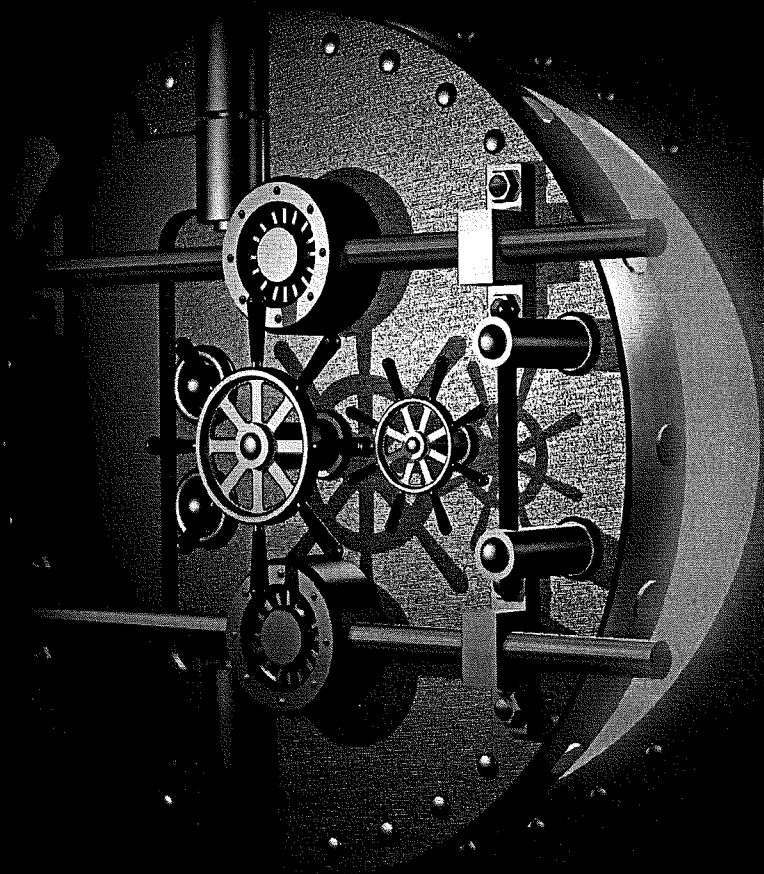
MP 1339

MB 004



THE GREAT BANK HEIST

Investigator's Report to the Prudential Authority



ADVOCATE TERRY MOTAU SC

Assisted by





THE GREAT BANK HEIST

Investigator's Report to the Prudential Authority

VOLUME 1

ADVOCATE TERRY MOTAU SC

Assisted by



A handwritten signature in black ink, located in the bottom right corner of the page. The signature appears to be a stylized representation of the letters "M" and "A".

More than forty years ago the most daring heist in South Africa's banking history took place. A group of industrious thieves, led by the elusive Mister Nightingale, skillfully tunneled their way some twenty-one meters underground into the vault of the Standard Bank in Krugersdorp. The bold bank robbers withdrew the princely sum of R400 000. They disappeared with the loot and no arrests were ever made.

I have, for the past five months, investigated the sorry affairs of the VBS Mutual Bank. My report will reveal that the perpetrators of the heist at VBS made away with almost R2 billion. And they certainly did not put in anything like the hard work and effort of Mister Nightingale and his team.

I trust that, in this case, arrests will be made.



AC

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Appendix A:	Forensic accountants' report
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INTRODUCTION

- 1 Against the backdrop of, *inter alia*, a severe liquidity crisis that prevailed at VBS Mutual Bank ("**VBS**"), the Minister of Finance placed VBS under curatorship with effect from 11 March 2018. SizweNtsalubaGobodo Advisory Services was appointed, in terms of section 81 of the Mutual Banks Act 124 of 1993 ("**the Mutual Banks Act**"), as the curator to VBS. The curator is represented by Anoosh Rooplal.
- 2 On 13 April 2018, and consequent upon the initial findings of the curator which revealed massive losses in VBS, the Deputy Governor of the South African Reserve Bank, in his capacity as the Chief Executive Officer of the Prudential Authority, established in terms of section 32 of the newly promulgated Financial Sector Regulation Act 9 of 2017 ("**the FSR Act**"), appointed me as an investigator in terms of section 134 of the FSR Act for the purposes of conducting an investigation into the affairs of VBS.
- 3 The purpose and primary objective of the investigation is to establish whether or not:
 - 3.1 any of the business of VBS was conducted with the intent to defraud depositors or other creditors of the bank, or for any other fraudulent purpose;
 - 3.2 VBS' business conduct involved questionable and/or reckless business practices or material non-disclosure, with or without the intent to defraud depositors and other creditors; and

- 3.3 there had been any irregular conduct by VBS shareholders, directors, executive management, staff, stakeholders and/or related parties.
- 4 On 13 April 2018 the Prudential Authority also appointed Werksmans Attorneys, represented by Bernard Hotz, in terms of section 134 of the FSR Act, to assist me in the investigation of VBS. Advocates Ross Hutton SC, Christelle van Castricum and Itumeleng Tshoma were subsequently formally appointed by the Prudential Authority to assist me in the investigation. They have provided advice to me throughout the course of the investigation and they have also acted as evidence leaders during the formal interviews that took place over a period of some four and a half months.
- 5 Werksmans appointed several service providers to provide specialised support to the investigation. They have played essential roles in the investigation. They are:
- 5.1 Basileus Consilium Professional Services (Pty) Ltd ("**BCPS**"), who are forensic investigation specialists. BCPS has played a crucial role in the gathering, securing and analysis of evidence that has been presented in the interviews that have taken place in terms of section 136 of the FSR Act.
- 5.2 FACTS Consulting (Pty) Ltd ("**FACTS**"), who are cyber-forensic and data specialists. FACTS took control, under a regime which properly secured the chain of evidence, of enormous numbers of documents. These documents were all scanned and converted to electronic format. FACTS also took control of and mirror imaged the data stored on the computers



and cellular telephones of numerous persons of interest to the investigation. This vast repository of evidence has been collated in electronically searchable form, which has proved an invaluable resource to the investigation.

5.3 Crowe Forensics SA (Pty) Ltd ("**Crowe**"), who are specialist chartered accountants and forensic financial analysts. Crowe has conducted a detailed analysis of numerous transactions and banking accounts that are implicated in the frauds and thefts that have taken place at VBS. Crowe has provided me and my assistants with invaluable assistance in tracing cash flows and has greatly assisted us in our understanding of the sometimes complex technical issues that arose in the enquiry into the role played by VBS' auditors.

6 In the course of the investigation I requested the forensic accountants to undertake a detailed analysis of:

6.1 flow of funds between VBS and the various municipalities which deposited monies with VBS; and

6.2 the flow of funds through VBS' banking system, named EMID, in respect of certain persons that were identified as being of interest to the investigation.

7 They have delivered a report to me, which is contained in Appendix A to this report. I shall, in due course, make reference to various aspects of their report.

PROTECTION AFFORDED TO PERSONS QUESTIONED

8 The investigation has been conducted in accordance with the provisions of the FSR Act. Certain protections are afforded to a person who is questioned or required to produce documents or other information in the course of the investigation.

9 Section 140 of the FSR Act provides as follows:

- "(1) (a) A person who is questioned, or required to produce a document or information, during a supervisory on-site inspection contemplated in section 132, or by an investigator in terms of Part 4 of this Chapter, whether in response to a notice contemplated in section 136, or when an investigator is exercising the powers contemplated in section 137 (6) (a) (iii) to (v), may object to answering the question or to producing the document or the information on the grounds that the answer, the contents of the document or the information may tend to incriminate the person.
 - (b) On such an objection, the official of the financial sector regulator conducting the supervisory on-site inspection or the investigator may require the question to be answered or the document or information to be produced, in which case the person must answer the question or produce the document.
 - (c) An incriminating answer given, and an incriminating document or information produced, as required in terms of paragraph (b), is not admissible in evidence against the person in any criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for a contravention of section 273 based on the false or misleading nature of the answer.
- (2) An official of the financial sector regulator conducting a supervisory on-site inspection or an investigator must inform the person of the right to object in terms of this section at the commencement of the supervisory on-site inspection or the investigation."

10 Many of the persons that were interviewed invoked the immunity provided by section 140(1) of the FSR Act, which constitutes a use immunity. As such, the

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immunity serves only to render self-incriminating answers, documents and other information ("**the protected evidence**") inadmissible in evidence in subsequent criminal proceedings against a person who has obtained the immunity in the manner prescribed by section 140(1). It does not prevent the protected evidence from being used against that person in any other proceedings, including civil proceedings and disciplinary proceedings. Nor does the immunity prevent a prosecution being instituted against that person if evidence substantiating the crime, independently of the protected evidence, is acquired.

THE SEARCH AND SEIZURE OPERATIONS

- 11 The investigation commenced formally with a search and seizure operation conducted in terms of the provisions of section 137 of the FSR Act at VBS' head office at Makhado on Tuesday, 17 April 2018. The investigation team had been informed by the curator's representatives that VBS records were mainly held at Makhado. However, it became immediately clear that other premises of VBS required to be urgently searched and the scope of the search and seizure operation was expanded to include VBS' offices in Sandton and its Thohoyandou branch.
- 12 Subsequently, I made application to a Judge in chambers for the issue of a warrant in terms of section 138 of the FSR Act to enter and search the premises of Vele Investments Limited ("**Vele**") in Sandton. A warrant was issued by a High Court Judge on 2 May 2018 and on Monday, 7 May 2018, a search and seizure operation, as contemplated in section 137 of the FSR Act,

was carried out at Vele's premises. Vele is the ostensible majority shareholder in VBS.

- 13 The search and seizure operations that were conducted formed the principal source of the vast depository of data that the investigation team has had access to in the course of the investigation.

FORMAL INTERVIEWS

- 14 A series of formal interviews was held with various persons that were identified as being likely to provide information relevant to the investigation. The thirty witnesses that were interviewed include directors and employees of VBS, auditors and other players. As the investigation unfolded some witnesses were recalled in order to give further testimony and explanations.
- 15 A detailed summary of the testimony of each of those persons is set out in Appendix B to this report. The full transcripts of their evidence, together with the exhibits referred to in the course of their testimony, accompany this report as Appendix C and Appendix D respectively. Owing to the vast bulk of the transcripts and the exhibits, Appendix C and Appendix D are delivered in electronic format.

THE SCHEME OF THIS REPORT

- 16 I shall set out in this report the findings I have made arising from the investigation. In doing so I will traverse the primary evidence that leads to those findings. The report does not deal with every aspect of the evidence that

has been heard over the past months, but rather concentrates on the salient aspects of the investigation.

17 I shall also set out my recommendations relating to both criminal and civil proceedings that I believe must follow from the investigation.

18 The evidence that has been gathered traverses what I have found to be two principal pillars of unlawfulness that ultimately resulted in the collapse of VBS.

18.1 The one pillar constitutes the methods used by those who had captured VBS which enabled them to embark upon widescale looting and pillaging of the monies placed on deposit at VBS. I found that there were three intertwined processes at play:

18.1.1 Payment of very large sums of money was made to the various perpetrators of the scheme of looting as a reward for their participation, and substantial bribes were paid to certain of VBS' directors and other related parties in order to buy their silence and to look the other way while the looting was going on.

18.1.2 VBS went on a concerted and deliberate campaign to attract very substantial deposits from municipalities and, at a later stage, state entities such as the Passenger Rail Agency of South Africa ("**PRASA**"), by the payment of so-called "*commissions*" in order to solicit such deposits. This, in many instances, included the payment of bribes to various public officials who were in a position to influence the making of such deposits.

- 18.1.3 The captors of VBS manipulated its banking systems by creating enormous fictitious deposits in favour of Vele, its myriad associates and related parties, as well as by obliterating overdrawn banking facilities enjoyed by Vele and its associates running to hundreds of millions of Rands. The captors and their associates went on a massive spending spree at the expense of VBS' depositors.
- 18.2 The other pillar is the way in which, by fraudulent means, the looting of VBS was hidden from view and was allowed to continue and, indeed, escalate. In this regard I shall report my findings on fraudulent misrepresentations contained in VBS' audited annual financial statements for the year ending 31 March 2017 as well as fraudulent misrepresentations that were made in the monthly regulatory returns that VBS was obliged to make to the Registrar of Banks ("**the Registrar**") in terms of the provisions of the Mutual Banks Act and the Regulations made under that Act. I shall also deal with the fraud that permeated the regulatory audit of the returns. These frauds misled the Registrar into believing that VBS was in a financially sound position whereas, in truth, its liabilities exceeded its assets by about R180 million and it was, thus, hopelessly insolvent as at 31 March 2017. By the time that the bank was eventually placed under curatorship the position was exponentially worse. Had the truth been told the Registrar would have been able to act far more expeditiously and the looting could have been stopped much earlier.

19 In this report I shall:

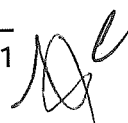
- 19.1 first introduce each person that was interviewed in the course of the investigation and succinctly describe the role they played;
- 19.2 second set out my detailed factual findings in regard to the collapse of VBS and the reasons for arriving at such findings;
- 19.3 third set out, in summary, the extent of the looting of VBS that emerges from the forensic accountants' report; and
- 19.4 finally make my recommendations to the Prudential Authority in regard to:
 - 19.4.1 the preferring of charges against those who have been involved in criminal conduct; and
 - 19.4.2 civil proceedings and other disciplinary steps that ought to be instituted.

THE *DRAMATIS PERSONAE* – A BRIEF INTRODUCTION

20 For convenience, I have divided the *dramatis personae* into three categories – the insiders, the outsiders and the auditors. At times, as will be seen, these lines are somewhat blurred.

21 The "*insiders*" comprise directors and employees of VBS. The following persons were interviewed:

- 21.1 Phophi Londolani Mukhodobwane ("**Mukhodobwane**"), the General Manager of Treasury at VBS. Mukhodobwane, by his own admission,



played a central role in the manipulation of VBS' banking systems as well as the fraudulent misrepresentations contained in the regulatory returns, known as "*DI returns*". Mukhodobwane admitted to receiving vast sums from Vele's banking account at VBS as a reward for his complicity.

21.2 Philip Nicolaas Truter ("**Truter**"), an Executive Director and the Chief Financial Officer of VBS. Truter testified that he was an essential participant in the manipulation of VBS' banking systems, the fraudulent misrepresentations contained in the 2017 annual financial statements and the submission of fraudulent DI returns. Truter also admitted to receiving a large reward from Vele's banking account for his complicity in the scheme.

21.3 Andile Malusi Attwell Ramavhunga ("**Ramavhunga**"), an Executive Director and the Chief Executive Officer of VBS. He is a chartered accountant and banker by profession. Ramavhunga, despite the weight of evidence to the contrary, has steadfastly denied that he was in any way involved in any unlawful conduct. He received vast sums of money from Vele's banking accounts at VBS, but he contends that these payments were for consultancy services that he rendered.

21.4 Paul Magula ("**Magula**"), a Non-Executive Director of VBS, who was appointed as such on the nomination of his erstwhile employer, the Public Investment Corporation ("**PIC**"), which holds some 26% of the issued shares in VBS. Magula, who previously held the post of Executive Head: Risk Management at the PIC, eventually confessed, after putting up strenuous denials, that he had received unlawful payments, made to

two companies which acted as his nominees, in a total amount in excess of R7.6 million in order to buy his silence.

- 21.5 Ernest Nesane, ("**Nesane**"), a Non-Executive Director of VBS, who was also appointed as such on the nomination of the PIC. Nesane, who is a qualified attorney, was the Executive Head: Legal Counsel, Governance and Compliance at the PIC. Like Magula, he eventually confessed, after putting up strenuous denials, that he had received unlawful payments, made to a nominee company, in a total amount in excess of R7.2 million in order to buy his silence. Nesane resigned from his post at the PIC two days after he testified before me.
- 21.6 Phalaphala Avhashoni Ramikosi, ("**Ramikosi**"), a Non-Executive Director of VBS, and the chairman of the Audit Committee. Ramikosi is a chartered accountant and is employed by the South African Police Service as its Chief Financial Officer. As was the case with Magula and Nesane, he eventually confessed, after putting up strenuous denials, that he had received unlawful payments, made to a nominee company for his benefit. The price for his complicity seems, however, to have been significantly lower than theirs.
- 21.7 Hlohonolofatso Tshepiso Mcwazzer ("**Mcwazzer**"), employed by VBS as a Business Development Manager. Mcwazzer testified as to her role in the creation of fraudulent draw-downs on a facility granted to VBS by the PIC. She also testified about the creation of fictitious contract finance agreements, intended to falsely inflate VBS' income.

- 21.8 Bhekwayinkosi Gift Manyanga ("**Manyanga**"), who acted as a consultant to VBS in terms of an agreement between VBS and his company, Bhekwa Holdings (Pty) Ltd. Manyanga, a chartered accountant, was to become the Chief Banking Officer of VBS, but in February 2018 he declined to take up that post. Manyanga testified about the attempts to solicit a R1 billion deposit by PRASA.
- 21.9 Yolanda Deale ("**Deale**"), who was, until February 2017, an accountant in the employ of VBS. After her departure from VBS the looting of the bank proceeded with alacrity.
- 21.10 Dudley Fatcher ("**Fatcher**"), who is employed by VBS as its Information Technology Manager. He gave some insight into the EMID system, including its weaknesses.
- 21.11 Mulimisi Solomon Maposa ("**Maposa**"), who is employed by VBS in a post termed "*Managing Director for Retail*". He is not, despite the grandness of that title, a director of VBS. Maposa testified about the use of numerous banking accounts at VBS which can best be described as "*slush funds*".
- 21.12 Ntendeni Sassa Nemabubuni ("**Nemabubuni**"), who is employed by VBS as the General Manager: Sales. Nemabubuni was intrinsically involved in the payment of bribes to municipal officials. He provided the names of many of these corrupt officials.
- 21.13 Phillip Ndivhuwo Tshililo ("**Tshililo**"), who is nominally the Branch Manager of the Thohoyandou branch of VBS. Tshililo was, however,

effectively redeployed to be the personal assistant and paymaster to the chairman of VBS, Tshifhiwa Matodzi ("**Matodzi**").

22 A variety of persons comprise the "*outsiders*". Although outside the formal structures of VBS, some of these persons played crucial and central roles. Those interviewed were:

- 22.1 Kabelo Matsepe ("**Matsepe**"), a politically connected fixer, who became a very well remunerated middleman and acted as a gatekeeper between VBS and the municipalities. Matsepe's role in the affairs of both VBS and Vele became ubiquitous.
- 22.2 Paul Makhavhu ("**Makhavhu**"), a practicing attorney who acts as advisor to the Venda king, TP Mphephu Ramabulana. Makhavhu, as well as the king, received vast sums of money for lending the support and influence of the royal family to VBS and Vele. He described the receipt of those payments as "*shameful*".
- 22.3 Charl Cilliers ("**Cilliers**"), the Chief Executive Officer of Insure Group (Pty) Ltd, a lucrative business which Vele acquired a substantial stake in using a fictitious deposit of R250 million for the acquisition. Cilliers is a chartered accountant. His company, having received the proceeds of a manifest fraud, now finds itself in an untenable position.
- 22.4 Takalani Veronica Mmbi ("**Mmbi**"), Matodzi's faithful assistant. Mmbi set up and operated numerous companies on Matodzi's behalf that were used to launder some of the funds stolen from VBS. When VBS was put into curatorship Mmbi participated in the disposal of assets by Matodzi. She

also spirited away documentary records. She was remunerated richly for her efforts.

- 22.5 Mmbulaheni Robert Madzonga ("**Madzonga**"), a qualified attorney who was the former Chief Operating Officer of VBS and later COO and then CEO of Vele. Madzonga has denied knowledge of anything untoward. He derived very large rewards, much of which was in the form of undeclared income.
- 22.6 Yvonne Page ("**Page**"), the former acting Group CFO of PRASA who told us about the attempts that were made by VBS to solicit a deposit of R1 billion from PRASA. Her intervention blocked very senior officials at PRASA from depositing that sum into what she described as "*a Ponzi scheme*".
- 22.7 Mariette Venter ("**Venter**"), a chartered accountant and the acting CFO of the Capricorn District Municipality, who stood up to immense pressure and managed to force VBS to return the municipality's funds to it. She was unfairly suspended from her post as a result and pilloried as a racist who did not want to invest public monies in a Black bank.
- 23 The auditors comprise the various members of the KPMG audit team which conducted the statutory and regulatory audits of VBS for the financial year

ending 31 March 2017, as well as the manager of the PWC internal audit team.

The following persons were interviewed:

- 23.1 Zondi Nduli ("**Nduli**"), a third year clerk on the 2017 VBS audit. He prepared a nonsensical audit working paper when he was unable to complete the audit of VBS' cash and bank.
- 23.2 Kafuma Munalula ("**Munalula**"), a qualified chartered accountant who was the audit manager on the 2017 VBS audit. She was the person in charge of the day-to-day audit.
- 23.3 Luan Niewoudt ("**Niewoudt**"), a first year clerk who was initially deployed to audit the cash and bank section.
- 23.4 Tersia Monare ("**Monare**"), a second year clerk who took over the cash and bank audit.
- 23.5 Cindy-Lee Williams ("**Williams**"), another second year clerk, who was involved in various other aspects of the audit.
- 23.6 David Broom ("**Broom**"), a chartered accountant who was the engagement quality control review ("**EQCR**") partner on the 2017 audit.
- 23.7 Cezanne Krieg ("**Krieg**"), a member of the regulatory audit team who audited the DI returns that had been submitted by VBS in accordance with the provisions of the Mutual Banks Act and its regulations.
- 23.8 Johan Scheepers ("**Scheepers**"), a senior member of the regulatory audit team who oversaw Krieg's work.

- 23.9 Nhlanhla Kelvin Siphon Malaba ("**Malaba**"), a chartered accountant who was the engagement partner on the 2017 VBS audit. Malaba had obtained very substantial facilities from VBS which cannot be regarded as arm's length borrowings and were not declared to KPMG. He gave an unqualified audit opinion in circumstances where he knew the financial statements were misstated. He also gave a regulatory audit opinion which he knew to be false.
- 23.10 Regina Erasmus ("**Erasmus**"), the manager of the PWC internal audit team. She provided insight into the limitations of the internal audit. She put paid to any notion that KPMG had relied on the results of the internal audit.
- 24 The most central character in this whole saga – Matodzi, who was the chairman of both VBS and Vele during the period covered by the investigation – was not interviewed. That was the result of a considered and deliberate decision. The overwhelming evidence that has been gathered, from numerous sources, reveals Matodzi to be the kingpin in the fraudulent and theftuous conduct of VBS' business. He, his companies, and his associates have been positively identified as the main beneficiaries of the massive fraud.
- 25 During July 2018, the curator of VBS brought applications to sequester the estates of various individuals, including Matodzi, who had been identified by the curator as being central participants in, and beneficiaries of, the looting of VBS. Matodzi did not oppose the application for his provisional sequestration. However, he delivered a brief affidavit in those proceedings, styled as an "*Explanatory Affidavit*", in which he vehemently proclaimed his

innocence and denied that he played any role whatsoever in the frauds. He sought in his affidavit to lay the blame squarely and solely on Ramavhunga, Mukhodobwane, Truter and certain unnamed "*others within VBS*". He pandered the preposterous tale that Vele had intended to borrow R1.5 billion from VBS but, inadvertently, had neglected to sign the necessary documentation evidencing the grant of such a loan.

- 26 Matodzi's bald denial, and his absurd attempt at an innocent explanation, fly in the face of the weighty evidence which places him squarely in the center of the scandal. In the light of Matodzi's denial of all involvement I adopted the view that it would be a waste of the investigation's time and resources to give Matodzi a platform to plead his innocence. That he can do in another forum in due course.

THE FINDINGS

The first pillar – the capture and looting of VBS

- 27 As already alluded to, the investigation has revealed that the business of VBS was indeed conducted in a fraudulent manner which has resulted in the widespread impoverishment of VBS' depositors for the benefit of Matodzi and his associates.
- 28 The evidence that has been gathered shows that until 2014 VBS was a modest, but financially struggling, mutual bank. It was principally involved in the taking of deposits from retail depositors, including burial societies and stokvels. In turn, it mainly lent money to its clients to acquire immovable

property secured by mortgage bonds. It also made short term loans to its clients against the security of the deposits they had made with the bank.

29 Originally VBS' shareholders were largely its depositors who had chosen to invest by way of paid-up shares. The PIC, which had succeeded to the pension fund of the Venda bantustan government, held a substantial shareholding in VBS. During 2013 Matodzi approached the Venda king, Toni Mphephu Ramabulana, through his advisor, Makhavhu, to put together a structure to acquire a stake in VBS. According to Makhavhu, this led to the establishment of Dyambeu Investments (Pty) Ltd ("**Dyambeu**"), which was owned by Matodzi's company, Brilliant Telecommunications (Pty) Ltd ("**Brilliantel**"), Promafco (Pty) Ltd ("**Promafco**") owned by David Mabilu ("**Mabilu**") and the Vhavenda Trust ("**Vhavenda**") representing the Venda royal family. Vhavenda held 51% of the shares in Dyambeu with Brilliantel and Promafco each holding 24.5%. Dyambeu then purchased 26% of VBS for R6 million.

30 Makhavu testified that *"the people in the royal family are clueless as far as business is concerned"* and that *"We didn't have a single cent as the royal family. Not a single cent"*. The R6 million was paid by Brilliantel and Promafco and Vhavenda received a free pass to its share in Dyambeu.

31 On 24 July 2015, Matodzi became the chairman of the board of directors of VBS. In his first chairman's report, dated 22 June 2016, Matodzi stated that *"I have however been involved with the bank strategy and turnaround since the acquisition of majority stake (sic) in 2013 by Dyambeu Investments under the leadership of His Majesty Khosikhulu Toni Mphephu Ramabulana"*. Although



the office of chairman was nominally a non-executive one, Matodzi became the central force in the conduct of VBS' business.

- 32 Ramavhunga became a non-executive director of VBS during 2013. Matodzi and Ramavhunga had known each other at university. They are both qualified chartered accountants, Matodzi having completed his articles at KPMG. Ramavhunga became the designate Chief Executive Officer of VBS in December 2013 and, with effect from 1 August 2014, he was appointed to the position of Chief Executive Officer on a five-year contract.
- 33 Matodzi and Ramavhunga embarked upon a strategy which was ostensibly aimed at turning VBS around, making it a significant profit making enterprise. There were two main parts to the turnaround strategy. First, VBS' traditional reliance on small retail depositors to fill the bank's coffers was abandoned and VBS now set its sights on obtaining very large, but short term, deposits from municipalities. Second, VBS' conservative lending practices gave way to accommodate far more ambitious, and potentially lucrative, markets to lend money to. VBS entered into numerous high-value fuel financing and contract financing deals with a variety of clients. The evidence reveals that many of those clients were connected to either Matodzi or Ramavhunga.
- 34 The ostensible impact of the turn-around strategy can be discerned from the results reported, over four successive years, in VBS' audited financial statements. In this regard:
- 34.1 In the year ended 31 March 2014 VBS reported a loss of R1 871 982. It had made loans and advances in a total amount of R210 364 202, less

impairments amounting to R583 092. Almost 99% of the loan book was made up by home loans, the remaining 1% being short term personal loans. It held R285 218 985 of depositors' funds. Cash and cash equivalents were reported as R96 177 810.

34.2 In the year ended 31 March 2015 VBS reported a modest profit of R1 027 116. Its loan book now stood at a reported R221 714 243, less impairments of R681 877. Some 85.5% of the loan book was home loans, about 8.3% was in the form of contract finance and 0.7% was short term personal loans. VBS had extended its lending products to include overdrafts (2.1% of the book) and vehicle finance (3.4% of the book). It held depositors' funds amounting to R352 301 042. Cash and cash equivalents were reported to be R144 605 164.

34.3 In the year ended 31 March 2016 VBS' reported profit had risen to R4 888 819. Its loan book had jumped to a reported R697 508 746, less impairments of R2 552 240. Home loans made up 34.5% of the book, contract finance constituted 41.4%, while overdrafts and vehicle finance stood at 11% and 12% respectively. VBS had extended its lending products to include asset finance, constituting 0.8 % of the book. Short term personal loans now made up a mere 0.3% of the loan book. Depositors' funds stood at R621 781 540. Cash and cash equivalents were reported at R250 873 801.

34.4 The audited annual financial statements for 31 March 2017 report a vastly changed position. The still modest reported profit, before tax, was R5 689 010. However, the loans and advances book now stood at

R1 088 803 820, less impairments of R6 972 739. Home loans made up 29.7% of the book, contract finance stood at 38.8%, overdrafts stood at 12.9% and vehicle finance constituted 17.4%. Asset finance and short term personal loans stood at 0.8% and 0.4% of the book respectively. VBS reported holding depositors' funds in the amount of R1 553 659 282. Cash and cash equivalents were reported as being R802 427 245.

- 34.5 As will be shown in due course, the 2017 audited financial statements were, however, materially and fraudulently misstated.

The rewards that were paid

- 35 Mukhodobwane testified that during April and May 2017 Matodzi paid him a so-called "*bonus*" totalling R500 000. Payments were made from Vele's banking account at VBS and were paid into Mukhodobwane's personal account. R350 000 was paid on 13 April 2017 and R150 000 was paid on 13 May 2017. On 5 October 2017 he received a further "*bonus*", this time in the amount of R10 million. This payment was made into an account operated by Lemawave (Pty) Ltd ("**Lemawave**"), which Mukhodobwane admitted was a front for him. He testified that during December 2017 yet another "*bonus*" in the amount of R500 000 was paid.

- 36 Mukhodobwane stated that Matodzi had instructed him on 5 October 2017 to make further "*bonus*" payments from the Vele account as follows:

- 36.1 an amount of R18 million to Matodzi;

- 36.2 an amount of R15 million to the account of Ramavhunga's company, Dambale Holdings (Pty) Ltd ("**Dambale**"); and
- 36.3 an amount of R5 million to be paid into the account of Truter's company, Shangri-La (Pty) Ltd ("**Shangri-La**"), at First National Bank.
- 37 Truter stated in his testimony that he had been promised R5 million but that he had only actually received R2 million.
- 38 Ramavhunga admitted that he, through Dambale, had received the sum of R15 million from Vele's banking account on 5 October 2017. He also admitted that he had received, through Dambale and a company named Munyai, a series of monthly payments of R300 000 from the bank accounts of Vele Petroport (Pty) Ltd ("**Vele Petroport**") and Vele over the period July 2016 until February 2018. He also received R1 million in December 2016. However, he strenuously denied that any of these payments were untoward. He stated that the R15 million was paid to Dambale in respect of a fee earned by him for introducing Matodzi to the vendor of the shares in Mvunonala Holdings (Pty) Ltd ("**Mvunonala**") which he said were acquired by Vele in September 2017. He stated further that the monthly payments of R300 000 and the R1 000 000 payment were earned as management fees for work that he had done in respect of a joint venture between two of VBS' fuel finance customers, Belton Park and Mmampilo.
- 39 Ramavhunga's version cannot be accepted for a number of reasons, *inter alia*:
- 39.1 His employment contract with VBS precluded him from carrying out the sort of activities that he contended were the *causa* for the fees supposedly

earned by him. Ramavhunga attempted to explain this by alleging that he had another employment contract with different terms, but he was unable to produce it.

39.2 As demonstrated more fully below, the agreement between Vele and the vendor of the shares in Mvunonala had already been finalised prior to the date upon which Ramavhunga contended that he had introduced the parties.

39.3 The monthly payments of R300 000 all took place on the same date each month that Vele made a distribution of monies to a variety of related parties, including Magula's front companies, Nesane's front company and Makhavhu, who is the advisor to the Venda king. Each of Magula, Nesane and Makhavhu admitted that there was no lawful cause whatsoever for these payments. Magula and Nesane admitted that the payments were made to them to buy their silence. Makhavhu described the very substantial payments made to him and the Venda king as "*shameful*".

40 Ramavhunga's lame attempts to distance himself from those who admitted receiving substantial rewards for their participation in the looting of VBS has, in my view, a devastating impact on his credibility.

41 His credibility was damaged beyond repair by his mendacious insistence that the R15 million that he had received on 5 October 2017 had been earned by him for introducing the parties to the Mvunonala acquisition.

42 He previously explained that he had earned the R15 million payment for having unlocked the Mvunonala deal with Bongani Mhlanga ("**Mhlanga**")

during September 2017, as Mhlanga, unbeknownst to Matodzi, held the shares in Mvunonala.

- 43 Subsequently, Ramavhunga was shown a resolution by the directors of Mvunonala, including Mhlanga, dated 10 April 2017 in terms of which the transfer of shares from Mhlanga to the Gasela Family Trust ("**Gasela**") was approved, accepted and ratified. It was further resolved that the directors of Mvunonala were authorised to issue and sign the new share certificate in favour of Gasela. He was shown the share certificate in favour of Gasela and he did not dispute this. He admitted that it appears that Mhlanga had given up his claim to a shareholding in Mvunonala as at 10 April 2017 and that the sole shareholder going forward was Gasela.
- 44 He was then referred to a sale of shares and claims agreement between Gasela, Vele and Mvunonala in terms of which Gasela sold its shares in Mvunonala to Vele Investments for R650 million. This agreement was signed by all the parties on 25 August 2017 and a share certificate was issued to Vele on the same day. He agreed that the Mvunonala acquisition was completed in every respect by 25 August 2017. Notwithstanding this concession, he remained adamant that he had earned a fee for bringing about the agreement on 6 September 2017, as he had previously testified.
- 45 Ramavhunga then shifted his ground and stated that Mhlanga "*is actually the Gasela Family Trust*" and that Tshepo Mathopo, the trustee of Gasela, merely acts on the instructions of Mhlanga. He testified that he worked on the deal "*by way of introduction*" around 4, 5 and 6 August 2017 and went to Zimbabwe on 6 September 2017 for the "*stabilisation part of the business*", which

occurred between September and November 2017. He said there were e-mails and WhatsApp communications relating to the deal and the fees agreed upon. But he was unable to produce any of these. His version is patently nonsensical.

- 46 In any event, the above difficulties aside, Ramavhunga faces a further insurmountable conundrum. In purporting to bring Belton Park and Mmampilo together and earning a very substantial fee for doing so, Ramavhunga utilised the bank's confidential information. Any fees that were earned ought to have been earned by the bank. On Ramavhunga's version he appropriated for himself VBS' corporate opportunity.
- 47 Ramavhunga would have me believe that, despite the fact that he was the CEO of VBS for the better part of four years, he was blissfully unaware of what was going on under his nose. I simply do not believe him. In my view it is abundantly clear that Ramavhunga was a central and active participant in the unlawful conduct of VBS' affairs, who was very well rewarded for his complicity.
- 48 Three of the non-executive directors of VBS, being Magula, Nesane and Ramikosi, all confessed that they had been rewarded in an improper manner.
- 49 Magula, after first giving a great deal of false evidence in this regard, eventually found himself constrained to retract his prior evidence and to seek immunity against self-incrimination. He then testified that:

49.1 Hekima Capital (Pty) Ltd and Investar Connect Holdings (Pty) Ltd were front companies which were his vehicles for receiving payments from Vele and Vele Petroport amounting to in excess of R7.6 million; and

49.2 in return for those payments, Matodzi was "*buying silence from those that could speak the truth*".

50 Magula's evidence in regard to the payments he received can be best summed up in the following exchange:

"MR HUTTON: Let me put it as simply as this. Vele could not have acquired all the assets that it purported to acquire, and in each case use VBS' money to do so, had it not been for the fact that a number of people at VBS, holding positions of authority, had facilitated that in different ways. Somebody had to create the accounting conditions through which such payments could be made. Somebody had to authorise payments. Somebody had to allow the flow of funds. And those were different people, at different times, in relation to different transactions. But there was a team of people who did the actual work in getting the money out of the bank and into the pockets of those who were selling assets to Vele. It doesn't appear to me that you were part of that operational methodology of Vele acquiring its assets. What you did was, you were silent, because you knew that what was going on was untoward. Your experience as a lender told you that none of this was legitimate.

MR MAGULA: I can say that. I can agree.

MR HUTTON: You can say that honestly.

MR MAGULA: Yes."

51 Nesane was questioned on payments made by Vele and Vele Petroport into the account of a company named Parallel Properties (Pty) Ltd ("**Parallel**"). The total amount of those payments is R7.1 million. Nesane denied that he was the beneficiary of those payments and he testified that he had merely assisted a

young man named Rudzani Nndwammbe ("Nndwammbe") to set up Parallel and had given him support and guidance out of the goodness of his heart.

52 Shortly after the termination of the interview, Nesane returned and stated that he had reconsidered his testimony and he wished to disclose what he had "*omitted*" prior to the termination of the interview. I formally reconvened the hearing at 19:00 at which point Nesane invoked his right to object in terms of the provisions of section 140 of the FSR Act. His objection was overruled, and he thus acquired the use immunity provided for in section 140(1)(c) in respect of his further testimony. He then testified as follows:

- 52.1 He had set up Parallel for his own benefit and Nndwammbe was merely his nominee.
- 52.2 Parallel received the sum of R7.1 million for Nesane's sole benefit.
- 52.3 He did not earn that sum by providing any lawful services to Vele or Vele Petroport, nor to anyone else.
- 52.4 The only reason for the payment of that sum was to buy his silence and to ensure that he did not properly comply with his fiduciary duties as a director of VBS. He stated that he was required, in effect, to turn a blind eye to the irregular conduct of Matodzi, Ramavhunga and Truter. He stated that he was not aware of the full extent and detail of their irregular conduct.
- 52.5 He gave a number of examples, however, of the manner in which he turned a blind eye.



- 52.6 He testified that the appointment of strategic officers of VBS was supposed to fall within the domain of his Human Resources Committee. However, the appointment of Mukhodobwane as VBS' treasurer had been made by Matodzi and Ramavhunga without reference to his committee. He permitted this to occur by his silence and inaction, to the detriment of VBS. This was also the case with the appointment of Madzonga as the Chief Operating Officer of VBS. However, Madzonga's tenure as such was short lived, owing to his repeated clashes with Ramavhunga.
- 52.7 He was well aware that there was a disconnect between the rosy financial picture painted by the 2017 annual financial statements and the continuous tight liquidity position at VBS. He stated that he did not, however, press any questions about this.
- 52.8 It had come to the attention of the board that very large loans had been made to clients of VBS without the requisite approvals being in place. He specifically mentioned the contract finance facility granted to Leratadima, which was initially R100 million and later increased to R250 million, as a non-performing loan. However, no steps were ever taken to remedy the position. He ascribed this to the fact that numerous members of the board, including himself and Magula, were compromised.
- 52.9 It is his view that the Chairman of the Audit Committee, Ramikosi, must have been somehow compromised as he had vigorously defended VBS' management whenever legitimate concerns were raised by other non-executive directors. He also stated that, in his view, Mbulaheni Manwadu was also somehow compromised.

52.10 He testified that the board had taken a decision that VBS must cease paying commissions to agents in respect of municipal deposits. Management simply ignored the board's decision and no steps were taken to enforce what Nesane termed "*the board's command*".

53 When we interviewed Ramikosi, he was asked about various payments received by him from an entity called Zanoware (Pty) Ltd ("**Zanoware**"). He testified that Zanoware is owned by a friend of his, Goitsewang Alice Manye ("**Manye**"), and that she, through Zanoware, occasionally made loans to Ramikosi totalling R99 400 over the period August 2017 to March 2018. He stated that these supposed loans were personal, not in writing and intended to be repaid to Manye "*as and when the situation comes right*".

54 He was also asked about payments totalling R96 618.16 made by Zanoware to Bopani Holdings, his former wife's business, between May and August 2017. He testified that he was not "*privy to that arrangement*" and, since they have been divorced since 2014, he did not know what the purpose of the payments was.

55 Ramikosi was referred to Zanoware's bank statements and to the fact that the total of R750 000 received by it from March to October 2017 from Venmont Holdings are the sole source of money coming into Zanoware. It was put to Ramikosi that, *inter alia*, Nesane and Magula, received benefits, through the use of front companies, for keeping silent about many irregularities and that the set-up of Zanoware appeared to be the same *modus operandi*. The interview was adjourned at that stage, at Ramikosi's request, in order to provide him with time to reflect.

56 When the interview reconvened on the next day, Ramikosi availed himself of the use immunity in terms of section 140 of the FSR Act in respect of the remainder of the evidence given by him. Subsequently:

56.1 Ramikosi admitted that Zanoware was in fact, and contrary to his previous testimony, a nominee company used by him to receive payments and that Manye was simply his nominee.

56.2 He testified that initially Zanoware was set up to be used for opportunities that may come up in the trucking business. It was set up with a nominee director because Ramikosi thought if he was a director there would be a conflict of interest. He explained that the first payment of R250 000 was said by Matodzi to be a "*windfall*" from deals done. He stated that Zanoware did some catering work for Vele but that no services were rendered by Zanoware that entitled it to later payments. He was taken through all the payments received and testified that:

56.2.1 the payment of R250 000 on 13 March 2017 was not received as a result of any services rendered by Zanoware;

56.2.2 a small part of the payment of R200 000 on 26 July 2017 was received as a result of event management services rendered to Vele by Zanoware but that the bulk of the payment was not earned at all; and

56.2.3 the payment of R300 000 on 29 October 2017 was entirely for Ramikosi's benefit and no services were rendered to earn it.

56.3 He conceded that the payments made to his ex-wife's company were also for his benefit and that there were no "loans" to him by Manye as he had testified the previous day. He admitted that all payments made through the Zanoware account are payments made in respect of his expenses.

56.4 Ramikosi testified that he "*did nothing*" to earn this money and that it was simply "*a windfall*". He stated that "*I get a sense that because from where we sit Vele Investments were doing well, he [Matodzi] felt duty-bound to sort of provide some of these what I call windfalls for lack of a better word*". He denied, however, that he was expected to not be too officious in his duties as non-executive director of VBS and he insisted that he did not "*abrogate*" his responsibilities as a result of receiving these payments. He testified that:

"...I kept on asking questions, to say: What is this? The assurance I got was: Don't worry, it's nothing; what we are dealing with is legit. So I suppose at the time, if we knew that Vele Investments was not as legitimate as it should have been, it would have given a different perspective altogether."

56.5 Ramikosi eventually conceded that:

56.5.1 he knew that, as the chairman of the audit and risk committee, he had to act in a capacity of fiduciary responsibility towards VBS;

56.5.2 he could plainly not receive monies on the side, and he knew that he was entitled to a stipend, his expenses and nothing else; and

56.5.3 he knew that it would be wrong to exploit his relationship with VBS for any personal benefit.

56.6 It was put to Ramikosi that he was well aware that he could not take the R750 000 payment made to Zanoware. He then testified that:

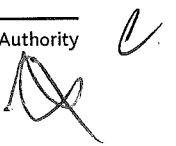
"I agree I was complicit in this arrangement. In hindsight I should have known better, and this is something I know should not have happened."

56.7 After further probing Ramikosi eventually conceded that the intention to disguise his involvement was, in fact, present right from the outset and was aimed at obscuring that he was benefitting from the payments to Zanoware.

56.8 Astonishingly, despite this concession, Ramikosi continued to insist that notwithstanding the fact that he was receiving money from VBS' majority shareholder and its chairman, Matodzi, for doing absolutely nothing, he *"could still create a distinction between what needed to be done. I had kept a separate view of the transaction and the work I needed to do for the bank"*.

57 I find that Ramakosi, despite his self-serving protestations to the contrary, was thoroughly corrupted by the unlawful rewards he received. In the result there was no honest person occupying the vital position of audit committee chair.

58 Madzonga was the Chief Operating Officer ("**COO**") of VBS during a period in 2016. It is somewhat difficult to pin down precisely when that period was. The Reserve Bank was not satisfied with Madzonga's credentials and declined to permit him to take up that position on a permanent basis. Madzonga then became the COO of Vele. In September 2017 he became the CEO of Vele.



Madzonga said he was only in VBS' employ for about a month during May or June 2016. However, his bank account at VBS shows that he received a monthly salary from VBS in September 2016 and October 2016. His bank account also shows monthly salary payments in the amount of R300 000 to him from Vele and Vele Petroport commencing from July 2016.

59 Madzonga has denied that he was in any way involved in the looting of VBS. I am not in a position to make a definitive finding as to what specific role Madzonga may have played. Although the wholesale looting of VBS did not take place while he was an employee of VBS, the principal beneficiary of the looting was certainly Vele, at a time when Madzonga was first its COO then its CEO. Madzonga's denial of any knowledge or involvement in the frauds and thefts rings hollow.

60 What, however, is very plain is that Madzonga was extremely highly rewarded for whatever it was that he did. He, both directly and indirectly through a company named Le Vainqueur (Pty) Ltd, received payments totalling just over R39 million in the period from July 2016 to February 2018 from various VBS accounts, mainly associated with Vele and Matodzi. In this regard:

- 60.1 R3 000 847 was paid from the VBS Corporate bank account;
- 60.2 R4 224 000 was paid from the Foxburgh account;
- 60.3 R11 471 580 was paid from the Vele account;
- 60.4 R1 750 000 was paid from the Vele Petroport account;
- 60.5 R15 000 000 was paid from the Vele Financial Services account;

- 60.6 R2 441 182 was paid from the Firmanox account;
- 60.7 R700 000 was paid from the Black Label Telecoms account;
- 60.8 R400 000 was paid from the Sabicorp account;
- 60.9 R115 000 was paid from the Allcare Administrators account;
- 60.10 R10 000 was paid from the Uhuru Studios account; and
- 60.11 R57 000 was paid from the Inshare account.
- 61 Madzonga testified that he received a monthly salary, net of income tax, in the amount of R300 000 when he became the COO of Vele. His remuneration was increased to a total net after tax package of R400 000 per month and later increased to R500 000 per month net after tax.
- 62 He said he received a signing on bonus of R5 million, again net after tax, when he became the CEO of Vele. A letter signed by Matodzi purports to confirm that. The amount of R4.5 million was paid by Vele into Madzonga's home loan account at VBS.
- 63 Contradictorily, Mmbi, on behalf of Vele, issued a letter on 28 February 2018 when Madzonga was applying to First National Bank for a home loan, certifying that Madzonga "*receives a monthly gross salary of R400 000.00 plus R100 000.00 travel allowance*". Madzonga admitted that the home loan application itself is riddled with substantial misrepresentations made by him about his assets and liabilities.



- 64 Madzonga glibly stated that much of what was received by him was for "services rendered".
- 65 Madzonga was required by me to produce his income tax returns. The returns for 2017 and 2018 reveal that none of the money received by Madzonga, described in paragraph 60, has been declared by him as taxable income in the relevant tax years.
- 66 Madzonga attempted to explain the payment of the sum of R15 million that he received on 9 March 2018 from the Vele Financial Services account as a repayment of a loan in the sum of R15 million he had arranged to be made to VBS by a friend of his, an attorney named Tshepo Mathopo¹, on 19 February 2018 when VBS had put itself in a position where it had insufficient funds to pay a short term deposit made by Insure. I find Madzonga's explanation to be most improbable. The documentary evidence points rather to Mathopo having paid an amount from his trust account that was due to Vele arising from the cancellation of an agreement that a company named Intsika Women Powered Solutions (Pty) Ltd ("**Intsika**") had entered into to purchase shares in a company named Salt Investment No 3 (Pty) Ltd. Intsika was part of Mvunonala which, in turn, was acquired by Vele.

The commissions and bribes that were paid

- 67 Ramavhunga was happy to take credit for the "turn-around strategy" at VBS, and, in particular, the inflow of massive deposits that were made by

¹ This is the same person who features as a trustee of the Gasela Trust in the Mvunonala acquisition. Time constraints on the investigation prevented these issues being explored further with Mathopo.

municipalities. He testified that, in his view, there was nothing at all wrong with a bank paying commissions to middlemen in order to solicit deposits. He suggested that all banks do that. He strenuously denied, however, that he had any knowledge that bribes were being paid to municipal officials to persuade them to make deposits of municipal funds to VBS and, in many instances, to roll-over the funds when they became due for repayment. I find his denials to be disingenuous.

68 Mukhodobwane testified that every deposit ever made by a municipality into VBS arose as a result of a so called "*commission*" or "*consultation fee*" paid to solicit the deposit. In some cases, there were agreements in place that set the "*commission*" at 2% of the sum deposited over the tenure of the deposit. Mukhodobwane stated that invoices for these fees were kept within his own department at the bank and in the finance department. Some were contained in emails. He undertook to compile a complete list of the "*commissions*" paid since 2016, including the identification of each "*consultant*". However, the subsequent and sudden withdrawal of his co-operation with the investigation resulted in this list not being presented.

69 Mukhodobwane stated that initially there was no direct contact between VBS and the municipalities and all payments were made by VBS to the so called "*consultants*", who would then attend to any necessary payment to municipal officials out of the "*commissions*" that they had received.

70 He testified that a certain municipal official complained that he had only received "*a can of Coke*" for his efforts while the "*consultant*" had received R1 million. Mukhodobwane's recollection was that the municipal official was



from Polokwane. He stated that the bank then commenced making direct payments to certain municipal officials. This was mainly dealt with by Nemabubuni, who is the General Manager of Sales at VBS. VBS was, however, unable to cut out the "consultants", who *"in most instances had political ties to either (sic) very powerful people within the ANC structures within that particular region"*.

- 71 Mukhodobwane stated that Nemabubuni dealt directly with the municipal officials. He would inform Mukhodobwane what amounts were required from time to time to bribe municipal officials and funds would then be drawn in cash or transferred from an account at VBS operated in the name of Robvet (Pty) Ltd ("**Robvet**").
- 72 During the course of further questioning on this topic, on 22 May 2018, and following the publication of a news report in The Citizen on that date, Mukhodobwane testified that the kingpin in the so-called "*commission agent*" scheme is the Provincial Treasurer of the African National Congress ("**the ANC**") in Limpopo, Danny Msiza ("**Msiza**"). Mukhodobwane was extremely reluctant to reveal that name and he expressed fear about his personal safety as a result of making this disclosure.
- 73 Mukhodobwane named several other persons involved in the solicitation of municipal deposits, including Matsepe. He handed up a transcript of WhatsApp messages between himself and Ramavhunga on 19 and 22 December 2017 where specific reference was made to "*Kabelo*", "*Bra Danny*" and "*Bauba*" in relation to municipal deposits. It was subsequently



established that "*Bauba*" is a reference to Matsepe. "*Bra Danny*" is a reference to Msiza.

74 Matsepe was interviewed in due course. He is, by his own description, "*politically active*" in Limpopo. His introduction to VBS came about in circumstances where his influence was sought, by the then Municipal Manager at the Capricorn District Municipality ("**Capricorn**") to investigate VBS' failure to release funds that had been deposited by Capricorn at VBS. The term of the deposit had already expired but no repayment was forthcoming. Matsepe met with some VBS officials who told him that there was no attempt to "*run away*" with Capricorn's money. Rather, he was told, the position was that "*what is happening there is that there is a White lady, and because this bank is a Black bank, she's resistant to investing the money with VBS*". Matsepe had been told by the Municipal Manager that the Chief Financial Officer of Capricorn was uncomfortable with continuing to have monies on deposit at VBS as, in her view, the regulations under the Municipal Finance Management Act 56 of 2003 ("**the MFMA**") precluded municipalities from making deposits in mutual banks.

75 I subsequently heard testimony from Venter, a qualified chartered accountant who was the acting Chief Financial Officer of Capricorn at the time, that she had satisfied herself that:

75.1 the MFMA regulations required that a municipality had to invest funds by way of deposits with banks registered in terms of the Banks Act, which precluded investments by way of deposits in mutual banks;

- 75.2 Capricorn's cash and investment policy, established in accordance with the provisions of the MFMA, required that *"investments shall only be made with institutions with a BBB or higher rating investment grade rated by Standard and Poor's or Moody's"*; and
- 75.3 the decision on where to invest municipal funds lay solely with the Chief Financial Officer.
- 76 During December 2015, in Venter's absence, some R60 million had been deposited in VBS at the instance of the Mayor of Capricorn. During June 2016 Venter experienced considerable difficulty in extracting the funds that had been deposited at VBS, despite having given written notice prior to the expiry dates of the deposit terms that the funds were required to be repaid to Capricorn. She received the run around from various bank officials, including Truter. However, when she threatened to refer the matter to the Reserve Bank, the funds were repaid.
- 77 Venter's intervention came at some personal cost to her. She was put under considerable pressure by the then Mayor of Capricorn, Gilbert Kganyago, who told her in no uncertain terms that all investment decisions fell within his sole domain. The Mayor was clearly wrong in that regard. After Venter had successfully obtained the return of the monies from VBS she was rewarded for her efforts by being suspended from her post, albeit for a supposed unrelated matter. The suspension was lifted unceremoniously about a week later and Capricorn refrained from making any further deposits with VBS, making it one of the few municipalities in Limpopo that did not find itself in serious financial difficulty when VBS was placed under curatorship.

- 78 Matsepe's version is that, in the meantime, he was introduced to Matodzi, who persuaded him that the "*white lady*" was incorrect in her interpretation of the MFMA regulations. Matodzi then invited Matsepe to do "*consulting*" work for the bank. This involved Matsepe introducing municipalities to VBS and if "*the municipality invests*" Matsepe would earn a commission calculated at 2% per annum on the amount of each transaction. Matsepe took up the offer with alacrity and his company, Moshate Investments Group (Pty) Ltd ("**Moshate**"), then became a middleman for VBS. In the subsequent period until the time when VBS went into curatorship, Moshate received almost R27 million from this arrangement. The Robvet account was the main source of these payments.
- 79 Matsepe testified that he introduced the mayors, municipal managers and chief financial officers of several municipalities to VBS. He said that simply by virtue of those initial introductions, which took place at an event held at the Ranch Hotel in Polokwane, he earned a commission on every deposit of funds subsequently made by those municipalities, including the occasions when funds already deposited were rolled-over after the term of the deposit had expired.
- 80 Nemabubuni testified that he was instructed by Matodzi to attend at the event at the Ranch. He stated that he met Matsepe at the event. Matsepe was accompanied by Msiza. According to Nemabubuni, Msiza "*did most of the talking*". Matsepe, on the other hand, has denied that Msiza played any significant role in VBS' affairs. However, it is clear that Msiza intervened on numerous occasions when his political influence was required. I have little

doubt that Matsepe, despite his self-importance and bluster, in fact works for Msiza. Nemabubuni colourfully, and I believe accurately, described his impression of the relationship between Matsepe and Msiza in the following terms:

"He was obviously working for Danny, and its just that Danny didn't want to be working on this thing on a daily basis, so he just appointed this small boy to run around."

81 In the course of his evidence, Ramavhunga testified that Matsepe had been introduced to VBS by Msiza. He denied, however, that municipal deposits had been sourced through Msiza. He stated that Msiza had become involved at a stage as a result of a complaint made by Matsepe that he had not been paid some commissions due to him. Ramavhunga was unable to explain a WhatsApp message that he had sent to Mukhodobwane in which he said *"Also let me know if the R50 million from Makhado doesn't come through. Will take this up with Danny"*.

82 Ramavhunga initially denied that any bribes were ever paid to municipal officials to place municipal funds into VBS. He then invoked the use immunity conferred by section 140 of the FSR Act and said, in a hedged manner, that:

"The majority of the municipal managers and CFOs were complaining about them giving us this money for free ... because probably they were never getting anything. So I doubt there are monies that got to them. Even if there were monies that got to them, it was very minimal, because we wouldn't have most of them complaining as to not getting monies. That is why with most of them they were saying: We are not going to roll over because you are not paying our monies. That is the sense I was getting in terms of that. That's why I'm saying I'm not sure whether it was bribes to municipal workers, but I doubt it was that, because they would not be complaining if that was the case."

83 Ultimately, Ramavhunga, having invoked the use immunity, somewhat grudgingly made the following concession:

"MR HUTTON: I am asking you to accept this proposition. You knew, as CEO of the bank, that when a 2% commission was being paid to a commission agent or a middleman, that some of that money – not what proportion, but that some of that money, unknown to you, but a portion of that money – would be used to bribe a municipal official, or a number of municipal officials to ensure that the deposit was made.

MR RAMAVHUNGA: Yes."

84 Nemabubuni, on the other hand, was a great deal more forthcoming. He testified, under the use immunity, that bribes were indeed paid to various municipal officials. He stated that this was done in one of these three ways:

84.1 VBS paid Matsepe his "*commission*", generally by way of a payment from the Robvet account, and Matsepe in turn paid a portion over to some or other municipal official;

84.2 VBS, from the Robvet account, made payment directly to front companies for the benefit of various municipal officials; or

84.3 VBS made cash payments directly to municipal officials. In these instances, the necessary cash would generally be withdrawn at the Makhado branch from the Robvet account.

85 I take the view that the very fact that such payments were made from the Robvet account, as opposed to VBS' own expense account, is demonstrable

proof that the management of VBS did not regard the payments as legitimate operating expenses and sought to conceal them.

- 86 Nemabubuni provided the names of various municipal officials who had, to his knowledge, received bribes. The detail of this evidence is set out in Appendix B.
- 87 During the course of the investigation Matsepe was ordered in terms of section 136 of the FSR Act, to produce his cellphone and to permit a mirror image to be made of his WhatsApp communications. A process, which was agreed to between Matsepe's attorneys and me, then ensued which separated the messages into those that Matsepe conceded were relevant to the affairs of VBS and those which he objected to producing on the grounds of irrelevancy. Amongst the conceded WhatsApp communications are numerous conversations between Matsepe and certain municipal officials where bribes are discussed. There are many other conversations that cast light on Matsepe's ubiquitous role in VBS and Vele. The highlights of these conversations are set out in Appendix B. The full conversations are to be found in Appendix D. I have purposely excluded conversations which appear to be predominantly personal, albeit that VBS' affairs were mentioned in passing.
- 88 In my view one of the most illuminating examples of the rampant corruption and bribery that occurred is to be found in a WhatsApp discussion between Matsepe and Matodzi on 20 December 2017. Matsepe reported to Matodzi that:

"The Mayor of Vhembe is crying she says we must give her and the speaker a Christmas because they are the ones who are making sure we

keep that money for six months. We gave her 300k and she cried and said we gave juniors R1.5 million and we give her 300k ... We said we will consult with you and will sort her out Friday morning ... If we can let's give her 1% or 2 % on a level of trust because she did keep her promise that she will block the money from being withdrawn."

- 89 Matodzi replied *"Go ahead ... But she must know the formula"*. Matsepe then said *"The formula was going to give her a lot of money ... But anyway she did a good job when the juniors were killing us for the 200m she deserves it"*. After Matodzi asked how much was involved, Matsepe replied with:

"If we do the formula we are going to do 2% of R200 for 2 months and thereafter 2% of 150M for 4 months because they withdrew R50M and it will play around R2.3 my thinking is that lets do it half and promise to give her more when she bring back the 50M they withdrew."

- 90 Matodzi agreed to that, but on 16 January 2018 Matsepe reported that Msiza was most displeased by the outcome:

"Chair please get in touch with Danny and sort out this Vhembe thing, he is seriously unhappy and disappointed on how we are treating it and him and it might come back to bite us. He feels there is a level of mistrust towards him based on how we are treating this Vhembe thing. He says him and the mayor have been dealing with this thing of the maturity of Vhembe together and the mayor has been keeping her promise as far as stopping withdrawals and notifying us on time and finding out if we will be able to give funds should they need them like they did with the R50M of water affairs and the R20M of salaries in December. She went to the extent of managing investments from her office just so she can have our back covered and protected from officials, what hit him is when I conveyed a message to him from Phophi that he wants an official roll over and the mayor must send an invoice directly to Sassa. He feels that he has put his neck and both of the mayor on the block to protect us and we seem not to be trusting him. Please get in touch with him because I don't want this to backfire on us".

- 91 Matsepe was not VBS' only middleman. The restraints of time and available resources prevented the pursuit of a wider investigation in this regard by way of formal interviews in terms of section 136 of the FSR Act.

92 The forensic accountants' report, Appendix A, reveals that over the period from 27 January 2015 until the advent of the curatorship, with reference to EMID accounts, VBS received over R3.4 billion from municipalities. In turn, it made payments to municipalities in an amount of just over R2.3 billion.

93 As appears from the report, at 30 April 2018 the amount remaining in VBS on account of municipal deposits was R1 229 840 197. This balance, which includes the impact of fees and interest, is made up as follows:

93.1	Dr Ruth S Mompoti Municipality	R101 809 221
93.2	Elias Motsoaledi Local Municipality	R55 986
93.3	Ephraim Mogale Local Municipality	R84 709 134
93.4	Fetakgomo Greater Tubatse Municipality	R245 146 632
93.5	Greater Giyani Municipality	R161 666 561
93.6	Lepelle Nkumpi Local Municipality	R154 909 101
93.7	Limpopo Municipality	R122 410 521
93.8	Madibeng Local Municipality	R31 483 008
93.9	Mafikeng Local Municipality	R84 975 493
93.10	Makhado Local Municipality	R62 734 416
93.11	Merafong Local Municipality	R51 005 929
93.12	Moretele Local Municipality	R51 562 568



93.13 Vhembe District Municipality (R2 977)

93.14 West Rand District Municipality R77 374 602

94 VBS' ambitions, at a certain point, went beyond the solicitation of deposits from municipalities and the bank set its sights on the vast sums under the control of parastatals and state owned enterprises. This led to various attempts to obtain enormous deposits from PRASA.

95 Mukhodobwane testified that VBS had attempted to obtain a deposit in the sum of R1 billion from PRASA in the latter part of 2017. A "*commission*" of R1.5 million was paid to a group of union officials from SATAWU who had claimed the ability to "*facilitate*" such a deposit from PRASA. VBS paid that amount to the SATAWU officials, through a front, in anticipation of the deposit being made.

96 According to Mukhodobwane's understanding the successful facilitation of the deposit from PRASA would be dependent upon "*NDZ*" succeeding to the Presidency of the ANC at the party's elective conference held in December 2017.

97 Mukhodobwane testified that after the "*unexpected*" outcome of the ANC elective conference, a renewed attempt was made in January 2018 to pursue the solicitation of a R1 billion deposit from PRASA.

98 A letter dated 24 January 2018 which was addressed by Ramavhunga to Cromet Molepo, the Acting Group CEO of PRASA, was found amongst the records of VBS taken by the investigation team during its search and seizure



operation at VBS' offices. That letter was put to Mukhodobwane. He stated, after reading the letter, that he had not seen it before and that he doubted that Ramavhunga was the author and speculated that Matodzi had written it. However, Ramavhunga later stated that he was indeed the author.

99 Mukhodobwane stated that he had been involved in the setting of an interest rate of 9.25% on what was to be a R1 billion deposit for a period of twelve months. He viewed 9.25% as a high interest rate, but VBS was desperate for the funds. He stated that the cost to VBS of obtaining the deposit would, however, be far greater than the amount of the interest that would accrue on the deposit, as a "*commission*" of somewhere between R30 million and R40 million would have to be paid to highly placed PRASA officials in order to obtain the deposit. He confirmed that the deposit was ultimately not made by PRASA and he said that the multi-million Rand bribe was not paid by VBS.

100 Ramavhunga also testified in relation to the negotiations to solicit a R1 billion deposit from PRASA. He was asked if he was aware that R1.5 million had been paid to a group of SATAWU officials initially as a commission aimed at soliciting a deposit from PRASA. His answer was "*It could have been. I know the donation was probably around December*". He then stated that "*I know for a fact that we were asked to put money into the Dudu Myeni Foundation*". He confirmed that he gave an instruction to make payment to what he referred to as the "*Dudu Myeni Foundation*", stating that "*it was just a donation, because they were going to make our life easier. Because Dudu Myeni does not work for PRASA, so I can't say she was going to influence the process*". He confirmed that the process that he meant was the process of obtaining R1 billion from



PRASA. He believed that the payment to the "*Dudu Myeni Foundation*" was not R1.5 million, but only R1 million.

101 I understand that there is no entity known as the Dudu Myeni Foundation. I assume that Ramavhunga intended to refer to the Jacob G Zuma Foundation, which is chaired by Myeni.

102 Ramavhunga stated that he could not recall who told him that VBS needed to make a donation to the "*Dudu Myeni Foundation*". He informed us that he recalled some form of e-mail correspondence in which the "*donation aspect*" was put in writing. However, no such correspondence has been provided. Ramavhunga stated that the request for a donation to the "*Dudu Myeni Foundation*" arose at the same time as the PRASA deal.

103 The former acting Group Chief Financial Officer of PRASA, Yvonne Page ("**Page**"), was interviewed. She informed us that PRASA is required to invest funds in accordance with its investment policy and Treasury regulations. Page stated that VBS' representatives had approached the then acting CEO of PRASA, Lindikhaya Zide ("**Zide**"), to persuade him to place funds amounting to R1 billion with VBS. Zide subsequently told Page to follow up with VBS.

104 Page stated that:

"We asked for their financials which were not forthcoming. Then we went on to the internet and printed the annual financial statements. Anybody in my position would have done the same. The financials for March 2016 showed that their total assets were R1 billion. How can a normal person invest R1 billion into a company whose total assets is a R1 billion? It just does not make any sense."

- 105 She stated that after considering the financial statements it was evident that VBS was not a proper place to house PRASA's funds. However, Zide informed her that *"This is political, and we have to invest R500 million and then later another R500 million. I said to him there is absolutely no way we can do that."*
- 106 Page further stated that VBS did not have an F1 rating, which made its risk profile very high. She explained that an F1 rating relates to the quality of assets held by the potential investment house. Furthermore, in terms of policy and Treasury regulations, PRASA could only invest with registered banks.
- 107 Page said that further correspondence was received from VBS. She stated that the letters did not convince her otherwise and, in any event, no investment of this sort could be made without tabling the issue with Treasury.
- 108 Page stated that in December 2017, Cromet Molepo ("**Molepo**") was appointed as the acting CEO in place of Zide.
- 109 Page stated that on 15 January 2018 she was summoned to attend a meeting in Molepo's office. Upon her arrival, Manyanga of VBS was already with Molepo. This suggested to her that Manyanga had easy access to the acting CEO. She testified that Matsepe also attended the meeting.
- 110 She said that on 16 January 2018, Manyanga addressed an email to various officials at PRASA *"confirming"* that the investment will be made *"as agreed"* and that PRASA should forward the necessary FICA documents in order to conclude the transaction.

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111 Page further stated that upon receipt of the letter from Manyanga she sent a replying email to him stating that:

"Please note that we have not agreed to opening the account as per below. Once we have decided to go ahead, the necessary process will be followed. Please also note that we did not agree to invest R500 million as a first instalment to R1 billion. So, where we are now, there is no proposed transaction from our side at the current moment. We will have a discussion with Lesetja, once he is back as was committed yesterday, and, where needed, we will follow up with Treasury, etc."

112 Page stated that she then received an email from Manyanga attaching a letter from PRASA, dated 6 November 2017, signed by Zide, which reads as follows:

"Dear Mr A Ramavhunga.

On behalf of the Passenger Rail Agency of South Africa (PRASA), I duly acknowledge the receipt of the letter sent with VBS Mutual Bank's proposed investment terms. We have considered VBS Mutual Bank's proposal, and we fittingly accept your offer of 8.25% pa interest, and flexible terms as per our needs.

We intend to commence with an investment of R1 000 000 000.00 only (1 Billion Rands), further steps regarding such will be communicated thereafter.

Our finance department will be in contact with you to facilitate the necessary arrangements for the transaction within the next 21 working days. We are excited by the opportunity to work with an institution such as yours."

113 On 24 January 2018, Ramavhunga addressed a letter to Molepo, recording that after a "*fruitful and constructive*" meeting between Molepo and Matodzi, VBS had now approved an increased interest rate of 9.25%. Molepo then, on the same day, gave a directive by email to Page saying "*Because of the strategic nature of the proposal in terms of transformation, kindly prepare a submission for approval by the nominee of the BOC*". The email was copied to the then chairperson of PRASA's board of control, Advocate T A N Makhubele SC.



- 114 Page said that the interest rate offered by VBS was a red flag. It suggested to her that VBS was nothing more than a Ponzi scheme as the big banks would not have offered a similar rate.
- 115 Page did not do as Molepo had directed. Instead she wrote back to him saying *"Please note where we are at the moment the investment cannot be made – as discussed, we will give you a full write up"*. She then informed Treasury of the situation. The affair subsequently became public knowledge and PRASA did not proceed any further in the ensuing glare of publicity.
- 116 Page's steadfast and principled refusal to bend the rules saved PRASA from making what would have proved to be a very bad *"investment"*. I have not been able to ascertain whether or not Mukhodobwane is correct in his assertion that the multi-million Rand bribe was not paid.
- 117 Ramavhunga later testified that the PRASA deposit was *"awarded"* in terms of the Zide letter dated 6 November 2017, and also in a second letter from Molepo in January 2018. He was, however, unable to produce the second letter.
- 118 Curiously, Ramavhunga emphatically denied having any knowledge of who Matsepe was referring to in a series of WhatsApp messages between the two of them on 20 January 2018 in which Matsepe said, with reference to PRASA, that *"I think this Prasa is important more especially that we can get the funds by Wednesday"*, *"The guy is going to give us money"*, *"He was just uncomfortable about many people being involved"*, *"He has R13bn investments with all the banks"* and *"So he will give us 1bn and if we do it right he gives us another 2 after a month"*. Ramavhunga persisted with his denial of who *"the*

guy" at Prasa was, despite having replied to Matsepe saying "Let him give us the money, then we will be sorted for the rest of the year".

119 Matsepe further wrote *"He says he can make it 24 months fixed"* to which Ramavhunga replied *"Eish that would be great"*. Matsepe then wrote *"Then we will be able to push this rating thing with full force and play in the bigger market"* followed by *"For more parastatal funds"*. Ramavhunga's response was *"Transnet and SAA"*.

120 In my view, taking all of this evidence into account, Mukhodobwane's testimony that a multimillion rand bribe was going to be paid to highly placed PRASA officials in order to secure the R1 billion deposit is most probably true. In my view, Ramavhunga's feigned ignorance about the identity of the person referred to by Matsepe in the WhatsApp conversation on 20 January 2018 lends support to this. Ramavhunga had been in communication with Molepo about this very transaction. It is most strange that he would then deny any knowledge of who *"the guy"* at PRASA was unless he was very much aware that there was something untoward about the transaction and feared that he would be drawn on this in further questions. And it is, of course, most significant that the PRASA *"guy"* remained unnamed in the WhatsApp discussion. If the proposed transaction was above board there would have been no need to hide the identity of the PRASA official involved.

121 The absurdity of Ramavhunga's feigned ignorance is demonstrated by the following extract from the transcript of his evidence:

"MR HUTTON: Mr Ramavhunga, I will ask you one final time,
 who is "the guy"?"



MR RAMAVHUNGA: I don't know, Chair. I've said that before.

MR HUTTON: Well, nowhere here do you ask him: Who is the guy? Surely it would have been immensely useful to know who the guy is who is going to bring all this money into VBS, and resolve all of your liquidity problems for the next year, and allow you to become a bigger player, push your rating thing with full force, play in the bigger market, and obtain more parastatal funds. So surely the identity of "the guy" would have been something that you wanted to know.

MR RAMAVHUNGA: If I was interested in the transaction, yes, but I'm simply saying I was not interested in this transaction.

MR HUTTON: But you are clearly interested in the transaction, because you keep on saying: "Yes, that will be great. Let him give us the money. Then we'll be sorted...". "Sure, let's fix it.". You have repeated expressions of happiness about this, but you weren't interested. You weren't interested at all. Is that right?

MR RAMAVHUNGA: Yes.

MR HUTTON: Is that what we must believe?

MR RAMAVHUNGA: Yes."

122 Mukhadowane testified about a further occasion when a significant bribe might have been paid. He testified there was an ongoing attempt by VBS to obtain a facility of R2 billion from the PIC. He testified that on 8 April 2017 he was instructed by Matodzi to collect an amount of R5 million in cash from the bank's Makhado branch. Mukhadowane was directed by Matodzi to take the cash by helicopter from Makhado to Lanseria airport where he was met by Matodzi. Upon his arrival at Lanseria, Mukhadowane asked Matodzi what the money was for and Matodzi responded that the money was required to be paid to "Dr Dan" to obtain his cooperation in facilitating the funding of VBS'

requirements by the PIC. Mukhodobwane understood that as a reference to the Chief Executive Officer of the PIC.

123 However, Mukhodobwane is unaware of whether or not the R5 million was indeed paid to "Dr Dan" by Matodzi as the R2 billion line of funding was not forthcoming from the PIC. Mukhodobwane speculated that Matodzi might have lied to him about the purpose of the R5 million in cash and that Matodzi may have required and used the cash for his own purposes. I cannot, in these circumstances, make any definitive finding, but I certainly regard the matter as worthy of further investigation by the authorities in due course.

The methods of looting and pillaging

124 Truter testified that significant amounts were lent to various parties by VBS, particularly in terms of contract finance and overdraft facilities, without proper credit approval being obtained. It is very plain to me that contract financing was a prime location of the looting of funds from VBS. Astonishingly, the contract finance book, which eventually became the single largest asset of VBS, was not recorded in the bank's operating system, known as EMID, but was simply recorded on an Excel spreadsheet, which could be manipulated with ease.

125 A number of witnesses were probed about the failure to bring the contract finance book onto EMID. I was told that the EMID system would have to be further developed in order to accommodate the specific requirements involved in recording contract finance deals. I find this explanation to be wanting. No one was able to give any sensible explanation of what makes the recording of

a contract finance deal materially different to the recording of any other banking product, such as a home loan, vehicle finance agreement or overdraft, which the EMID system was perfectly capable of accommodating. Moreover, contract finance had been a very significant part of the bank's product offering since 2015, yet little progress was made in the ensuing years to bring the contract finance book onto EMID. In my view, the inescapable inference that must be drawn from this is that it better suited the interests of those who sought to manipulate VBS' banking systems for their own benefit to keep contract finance off the EMID system.

126 There are many examples of vehicle finance facilities and mortgage bond facilities granted to associates and parties related to Vele and Matodzi where few, if any, monthly instalments were honoured. There are also very large overdraft facilities where no amounts were ever paid into the accounts and the facility limits simply increased to permit the escalating out flows. I shall, in due course, deal in detail with the "soft" facilities of this nature that were "enjoyed" by the KPMG audit engagement partner, Malaba.

127 I have earlier in this report referred to Vele as an "ostensible" shareholder in VBS. During 2017 Vele purported to take up a 53% shareholding in VBS. This was purportedly in terms of a rights issue. Vele, which was not an existing shareholder at the time of the rights issue, was therefore not entitled to take up any shares on offer. However, Vele managed to convince the board of directors of VBS to accept an amount of R80 million as an equity investment against the issue of a majority shareholding. In truth, Vele invested absolutely

nothing into VBS and, as will be demonstrated below, it acquired the shares by a blatant fraud.

128 By late 2016 Vele had embarked on a trail of major acquisitions. The first notable acquisition involved a company named Insure Group Managers Ltd ("**Insure**"). Insure was a very attractive target, for both Vele and VBS. It conducts business as an independent intermediary to the short-term insurance market – in essence providing a treasury function – collecting premiums on behalf of numerous brokers and making the necessary distributions of the premiums collected by it to various insurers as well to payment to brokers in respect of their commissions. Insure collects vast sums each month and it earns interest from banking the monies collected by it for the period before it makes the distributions to insurers and brokers. In addition to the benefit of the interest earned on these short-term deposits, Insure charges a fee to its clients for the treasury function it performs.

129 For some time Insure had wished to obtain capital to expand its business into new areas. Ultimately its dealmaker, a Mauritian company named Summit Strategic Partners Limited ("**Summit**"), introduced Insure to a company named Foxburgh Capital (Pty) Ltd ("**Foxburgh**") which was acting on behalf of Vele. In due course agreements were entered into between Insure, its shareholders being Inshare (Pty) Ltd and one Ian du Toit, and Foxburgh in terms of which Foxburgh would subscribe for 26% of the issued share capital in Insure, in terms of a subscription agreement, and would provide a loan to Insure in terms of a convertible loan agreement. The total amount involved was R250 million. As I understand it, by way of a further agreement Foxburgh

would cede its rights under these agreements to either Vele or a company nominated by Vele.

130 Mukhodobwane stated that he was given instructions by Matodzi to create a deposit in favour of Insure in the amount of R250 million "*through a suspense account*". He explained that no money would be brought into VBS in order to fund the "*deposit*" of R250 million which was to be made available to Insure. Nor would a loan in that amount be made by VBS to Vele.

131 Truter testified to the following effect:

"What happened is that Phophi came to me in the office one day and said: we need to create a R250 million – essentially like a security – which will enable the Vele Group to purchase a stake in the Insure Group and that the money would stay there as some kind of guarantee fund or essentially a guarantee, and that would allow Vele to then buy a stake in the Insure Group. He asked me specifics around what would the best way be to do that on the banking system. This is where – obviously I wasn't too comfortable, but I advised him how best or what possible option were available on the banking system to create this deposit."

132 Truter explained that the only legitimate suspense account within VBS was the SAMOS settlement account. He stated, however, that a "*suspense account*" was specifically created to facilitate the making available of the R250 million "*deposit*" in favour of Insure. He testified as follows:

"On the EMID system it allows you to create a credit journal, so we passed a credit journal to the suspense account, to create the R250 million into the suspense account, to create the funds being available, and then from there, there was an internal transfer done from that account to the Insure Group investment account."

133 He explained the whereabouts of the corresponding entry in the bank's books as follows:

"If you do a credit journal then it will be on the trial balance. It will show on - what do you call it? It's like an unallocated suspense account on the trial balance. It will essentially pull it through to that account, the journal that was created ... The one leg would be against the product control, which is the product control for this corporate suspense account, and the other leg would be against the unallocated suspense. So both would lie on the trial balance, and would be in balance, like that. Essentially the deposits after this allocation to Insure Group would be inflated by R250 million. However, the unallocated suspense is also inflated and that is where, subsequent to this, we allocated this to - we called it an unreconciled SAMOS settlement account, and that was essentially in the financial statements allocated to a cash control account which in turn was reported as part of the cash figure at the end of 2016."

134 Once the R250 million fraudulent deposit was created in a 32 day notice account in Insure's name, Insure made numerous drawdowns on the account over the following months. Insure, in turn, deposited R18 million into the account and substantial interest accrued on the account. As at the date of curatorship a credit balance of about R75 million remained in the account. It is clear to me that Insure received the proceeds of a crime.

135 I shall deal later in this report with the enormous "*cash hole*" that was created in VBS. Truter's evidence quoted above identifies and explains the genesis of that cash shortfall, which was then fraudulently concealed in the audited financial statements for the year ended 31 March 2017 and in the DI returns rendered by VBS to the Registrar of Banks in terms of the provisions of section 53 of the Mutual Banks Act.

136 With the "*acquisition*" of the stake in Insure, in the fraudulent manner described above, large short-term deposits were made by Insure to VBS. The very first such deposit was in the amount of R80 million on 6 March 2017. That sum was almost immediately withdrawn by Insure. However, the proof of payment of the R80 million from Insure's banking account at First National



Bank into VBS was later used by Mukhodobwane, on Matodzi's instructions, to serve as supposed evidence that VBS had received payment of the amount of R80 million as a purported equity investment by Vele in order to acquire 8 million shares in VBS and thus become a 53% shareholder in the bank.

137 A share suspense account was created in VBS' records, showing a credit balance of R80 million. This was entirely fictitious as no such amount had in fact been paid by Vele or indeed by anyone on its behalf for this purpose. Mukhodobwane testified that the board of directors had been "*blindsided*" by this fraudulent scheme and had, in due course, erroneously permitted the issue of 8 million shares to Vele. Bearing in mind that a considerable number of VBS' directors were on the take, I believe that Mukhodobwane's description may be somewhat generous to the board.

138 In as much as the R80 million did not in fact exist, this also contributed to the "*cash hole*" in VBS as at 31 March 2017.

139 In the course of the investigation a number of further acquisitions made by Vele, which followed a similar *modus operandi* to the Insure acquisition, were identified. They are:

139.1 Malibongwe Petroleum, where a fictitious deposit of R40 million was created;

139.2 Anglo African Finance, where a fictitious deposit of R80 million was created;

139.3 Interlog, where a fictitious deposit of R8 million was created;

139.4 Mvunonala, where a fictitious deposit of R300 million was created; and

139.5 Fairsure, where a fictitious deposit of R27 million was created.

140 Vele was, either directly or indirectly, the beneficiary of these fraudulent transactions. The net effect was to systematically steal funds which had been entrusted by depositors to the bank. It was this wholesale looting of the funds held on deposit by the bank that gave rise to what, on the face of it, appeared to be a liquidity issue. However, a lack of liquidity would imply merely that there was a mismatch between short-term deposits and long-term lendings by VBS. This, of course, was not the actual reason for the "illiquidity" experienced by VBS. That "illiquidity" was the result of the wholesale theft of the bank's funds.

141 On 19 March 2017 Matodzi met with Mukhodobwane and Truter at the clubhouse at the Eagle Canyon Estate where he resided. At that meeting he gave instructions to Mukhodobwane and Truter to carry out an audacious scheme to further impoverish VBS for the benefit of Matodzi and a large number of his associates. This time Matodzi's instructions were very detailed and were put in writing by him in the form of an Excel spreadsheet, which he handed to Truter at the meeting. On 29 March 2017 Matodzi, using a private Gmail address, sent a revised spreadsheet to Mukhodobwane, at his private Gmail address. I shall refer to this as "*the Eagle Canyon spreadsheet*".

142 The net effect of the instruction contained in the Eagle Canyon spreadsheet was to:

- 142.1 wipe out the overdrawn balances on some 34 accounts held at VBS in the names of Matodzi and various of his associates and companies in which he held an interest, by the crediting of those accounts with fictitious amounts totaling R248 950 000;
- 142.2 create new and, in most cases, increased overdraft facilities on these 34 accounts;
- 142.3 create fictitious "*investments*" in the names of Matodzi and five other parties associated with or related to him, in a total amount of R200 million; and
- 142.4 cause shares in VBS to be issued to Matodzi and various of the related parties to the value of R190 million.

143 Mukhodobwane and Truter both testified that effect was given to the first, second and third instructions recorded above. Truter said, however, that he was not "*comfortable*" in giving effect to the fourth instruction. The intended issue of shares did however include the R80 million shareholding that Vele ultimately acquired through the fraud I have described earlier.

144 The beneficiaries of the first and second instructions were as follows:

- 144.1 Matodzi received a R3 million deposit and a R7.5 million facility;



- 144.2 Mmampilo Suppliers (Pty) Ltd received a R8 million deposit and a R12 million facility on one of its accounts;
- 144.3 Mmampilo received a further R3.5 million deposit and a R3 million facility on another of its accounts;
- 144.4 Africasana Trading Enterprise received a R4.5 million deposit and a R3.5 million facility;
- 144.5 Venmont Built Environment (Pty) Ltd received a R5 million deposit and a R3 million facility;
- 144.6 Tiisang Risk and Assurance Consulting received a R7 million deposit and a R5.85 million facility;
- 144.7 Makuya received a R1 million deposit and a R 900 000 facility;
- 144.8 Belton Park Trading 134 received a R3.5 million deposit and a R3 million facility;
- 144.9 Hlomphanang Logistics received a R13.5 million deposit and a R12.2 million facility;
- 144.10 Mafanzwaini received a R500 000 deposit and a R460 000 facility;
- 144.11 Dzata Trust received a R9 million deposit and an R8.5 million facility;
- 144.12 Vhavenda Heritage Trust received a R1 million deposit and a R2 million facility;

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- 144.13 Venmont Holdings (Pty) Ltd received a R15 million deposit and a R15 million facility;
- 144.14 MML Food Services (Pty) Ltd received a R19 million deposit and a R17.5 million facility;
- 144.15 Firmanox (Pty) Ltd received a R15.5 million deposit and a R15.35 million facility;
- 144.16 Black Label Telecoms (Pty) Ltd received a R5.5 million deposit and a R5 million facility;
- 144.17 Sabicorp (Pty) Ltd received a R6.5 million deposit and a R6 million facility;
- 144.18 Robvet received a R10 million deposit and an R8.5 million facility;
- 144.19 Allcare Administrators received a R6 million deposit and a R5.3 million facility;
- 144.20 Vele received a R16 million deposit and a R15 million facility on one of its accounts;
- 144.21 Vele received a R3 million deposit and a R1.5 million facility on another of its accounts;
- 144.22 Nhluvuko Automation System CC received a R6.1 million deposit and a R4 million facility;
- 144.23 Cards-Ezi received a R4.5 million deposit and a R4 million facility;
- 144.24 Vantpix (Pty) Ltd received a R4.2 million deposit and a R4 million facility;

- 144.25 Vanticode (Pty) Ltd received a R5.1 million deposit and a R4 904 854 facility;
- 144.26 Zanocube (Pty) Ltd received a R8.2 million deposit and a R7 994 573 facility;
- 144.27 Vantifusion (Pty) Ltd received a R6.7 million deposit and a R6 492 806 facility;
- 144.28 Bonulog (Pty) Ltd received a R5.5 million deposit and a R5 261 388 facility;
- 144.29 Bonusec (Pty) Ltd received a R5.15 million deposit and a R4 927 347 facility;
- 144.30 Bonuset (Pty) Ltd received a R8 million deposit and a R7 543 394 facility;
- 144.31 Bonuspace (Pty) Ltd received a R4 million deposit and a R4 927 347 facility;
- 144.32 Viridesol (Pty) Ltd received a R4 million deposit and a R3 017 298 facility;
- 144.33 Wegezi Power Holdings (Pty) Ltd received a R15 million deposit and a R12.5 million facility; and
- 144.34 Shimba La Ndou Family Trust received a R7.5 million deposit and a R5 million facility.

145 Makuya, Mafanzwaini, Dzata Trust and Vhavenda Heritage Trust were all identified by Mukhodobwane as being associated with the Venda king.

According to Mukhodobwane, the remaining beneficiaries are all related to Matodzi.

146 Mukhodobwane testified that, aside from the written instructions, Matodzi also invited him to write off the overdrawn balance in the Lemawave account, which stood at R5.4 million. Mukhodobwane did not hesitate in taking up that invitation.

147 The beneficiaries of the "*investments*" in the third instruction were as follows:

147.1 Matodzi received R30 million;

147.2 TP Mphephu, the Venda king, received R8 million;

147.3 Wegezi received R25 million;

147.4 Tiisang received R75 million;

147.5 Vele received R28 million; and

147.6 Venmont received R34 million.

148 Plainly, these unlawful transactions, which were all taken account of in the financial statements for the year ending 31 March 2017, had a very significant impact on the falsely reported balances as at that date.

149 I earlier alluded to the contract finance book at VBS. The 2017 annual financial statements record the contract finance debt to VBS as standing at a very substantial R421 885 640 with a somewhat conservative impairment allowance of just over R3.5 million. Truter testified, however, that in his view

between 80 to 90% of the contract finance book should have been impaired on the basis of non-performance.

150 Because the contract finance book was kept on an Excel spreadsheet rather than on the EMID system, there were no automatic reports generated when the facilities were not serviced by the borrowers. Moreover, statements of account were manually generated by those in control of the contract finance records. Mcwazzer, who by her own admission was engaged in various forms of fraudulent conduct in regard to contract finance facilities, was in effective control of the contract finance records.

151 Ramavhunga sought to explain that contract finance funding was "*off balance sheet*" and thus not subject to the normal credit granting procedures. He attempted to explain this rather startling concept by saying that the PIC had granted a R350 million ring-fenced facility to VBS to be used solely for fuel financing facilities and, later, contract finance facilities generally. He initially stated that the PIC had subordinated its claim to repayment of the loan, but that contention soon proved to be false. That left his attempts at explanation for the paucity of control in the conduct of the contract financing book in the realms of absurdity.

152 VBS, at least in theory, had a strict form of delegation of authority for the making of lending decisions. That policy was, however, honoured in the breach rather than in the observance. Certain managers and the CEO had authority to make lending decisions up to certain set limits. Beyond those limits, a credit committee made up by members of the board of directors was able to grant credit in amounts up to 25% of VBS' qualifying capital. Any facility granted to



a client in an amount beyond this could only be granted with the approval of the Reserve Bank. In reality, however, the credit committee was almost never convened, and exceptionally large loans were made on the sole authority of either Matodzi or Ramavhunga and indeed, in certain instances, in sums that not only exceeded the levels that would have required Reserve Bank approval but sometimes substantially exceeding the bank's total qualifying capital.

153 A significant case in point relates to the contract finance facilities granted to Leratadima Marketing (Pty) Ltd ("**Leratadima**"). Leratadima, a start-up company with no balance sheet to speak of, was granted a facility of R100 million. This facility was granted on the sole authority of Ramavhunga. At the time VBS' qualifying capital stood at about R70 million. Supposedly, Leratadima would service the facility by the receipt of monies earned by it from a lucrative contract that it had entered into with the Universal Service and Access Agency of South Africa ("**USAASA**"). It appears that at some stage the facility was increased to R250 million. By 31 May 2017 Leratadima's exposure to VBS was about R138 million. By that stage Leratadima had become embroiled in a dispute with USAASA and any flow of funds from that source to service the facility had ceased.

154 There are many other examples of high value facilities being granted in the contract finance book, although none of the others came anywhere near the Leratadima exposure, which alone constituted about one third of the whole contract finance book as at 31 May 2017. By way of example, Vele had three contract finance deals with an exposure of almost R40 million as at that date. We were informed that Vele used these funds to acquire Wegezi. Other



examples as at the end of May 2017 are Leruo Petroleum which had an exposure of almost R22 million to VBS, Masiza Petroleum, with an exposure of R24 million and Belton Park with an exposure of R36.5 million. These entities are all related to Matodzi. On Ramavhunga's discredited version, he was involved with Belton Park and Mmampilo. Ramavhunga granted a facility to Mmampilo, which stood at R4.6 million as at 31 May 2017. The conflict of interest is blatant.

155 Mukhodobwane and Mcwazzer both testified about their involvement in the fraudulent scheme that was hatched by Matodzi to falsely inflate the profits of VBS. The fraudulent scheme was referred to by its participants as Black Ops. It spawned a WhatsApp group entitled "*Black Ops/VBS profits*"

156 Mukhodobwane testified that:

- 156.1 the objective of "*Black Ops*" was to generate fictitious profits that would be reported in the 2018 financial year;
- 156.2 the scheme was hatched at a meeting held at the Eagle Canyon Club House during July 2017. This coincided with the finalisation of the 2017 audit, by which time it was clear that there was a massive, but hidden, cash shortfall in VBS;
- 156.3 Matodzi, Truter and Ramavhunga were "*all in the know*"; and
- 156.4 the KPMG audit partner, Malaba, "*would have known*".

157 Mukhodobwane handed up an original file of documents constituting fictitious contract finance agreements supposedly entered into between real companies



and close corporations, who were simply lending their names to the scheme and VBS.

158 A list of names of these companies and corporations, together with CIPC documentation and identification documentation relating to their directors and members, was delivered to Mukhodobwane by Gobusamang Mothoagae ("**Mothoagae**") of Tiisang. It must be pointed out that Tiisang, who Mukhodobwane has identified as a party related to Matodzi, was a very substantial beneficiary of the manipulation of VBS' banking records following the instructions given by Matodzi to Truter and Mukhodobwane recorded in the Eagle Canyon spreadsheet. Not only was Tiisang's existing overdraft extinguished, but a separate fictitious deposit in the amount of R75 million was created in its favour.

159 Matodzi instructed Mukhodobwane to obtain the assistance of Mcwazzer in drafting fictitious contracts between VBS and the various entities whose details Mothoagae had provided. The various participants, being the principals of these entities, were rewarded for lending their names. Mcwazzer drafted the wording that was used in the resulting fictitious contracts, suretyships and facility letters. But the supposed facilities recorded in the documentation were never actually granted. This scheme was intended to create the impression that extremely large initiation and other fees had been earned by VBS and could be shown as income in VBS' hands in the 2018 financial year.

160 Mukhodobwane then received documentation from Mothoagae which had been pre-signed by the representatives of the supposed clients. Mothoagae had received Mcwazzer's wording and had then completed the fictitious



contract documentation and obtained the necessary "*client*" signatures. Mukhodobwane took the documentation to Ramavhunga for his signature. Mukhodobwane handed the original documents, which are signed by Ramavhunga, to the investigator.

161 Mukhodobwane testified that Ramavhunga signed the documents in his presence and also that Ramavhunga well knew that they were false.

162 Mcwazzer confirmed that she was a participant in the so-called "*BlackOps/ VBS profits*" WhatsApp group. She objected to questions in regard to her participation and her evidence on this issue is accordingly subject to the use immunity conferred by section 140(1)(c).

163 She identified the other participants in the group as being Truter, Mukhodobwane and Mothoagae. Mothoagae is identified as "*Busa*" in the transcript. Later, however, in her evidence, Mcwazzer stated that the initial meeting only included Matodzi and Busa and that Matodzi had told her to speak to Mukhodobwane to obtain further instructions. She stated that Ramavhunga was not present at any meetings relating to Black Ops, nor was his name mentioned.

164 She confirmed that the scheme was intended to create the impression that VBS was making new lendings and that significant amounts of interest, initiation fees and other fees were being generated as a result. She testified that it was quite clear to her that the "*profits*" supposedly generated were fictitious.

165 She confirmed her active participation in the creation of the fictitious documentation. She also testified that no accounts were ever opened on the EMID banking system in relation to these fictitious contracts. She stated that the initiation fees set out in the fictitious documents were well in excess of the bank's usual initiation fees. She also stated that the so-called profit sharing fee, set at 10%, recorded in the fictitious contracts was a new invention and had never been seen by her previously. That was also the case in relation to so-called monthly capital fees, which were set at 5%.

166 Mcwazzer admitted that she knew that the fictitious contracts were used to create the impression that VBS was making significant monthly profits on the supposed loans and that this would be used for VBS' reporting to *inter alia* the Reserve Bank about its liquidity and profit position. She also admitted that she was well aware that it was likely that, at some stage, the fraud would be exposed.

167 Ramavhunga, consistent with his stance generally, denied being involved in anything untoward. He admitted that he had signed all of the "Black Ops" contract finance facilities but said that he would not have seen the supporting documentation in respect of these applications. He admitted that although he had signed the contracts he never saw any credit committee recommendations or approvals.

168 Ramavhunga was informed by us that Mcwazzer had testified that each and every one of these contracts was fictitious and that they had been created in order to falsely inflate VBS' profits. He immediately responded defensively that "*my question is how would she know because she was on maternity leave?*".

169 Black Ops was not the only fraudulent activity that Mcwazzer was involved in.

She also participated in the creation of falsified addendums to fuel facility agreements in order to mislead the PIC into permitting further drawdowns on the R350 million facility it had extended to VBS.

170 Mcwazzer objected, in terms of the provisions of section 140(1)(a) of the FSR Act, to answering questions concerning the addendum to the fuel finance facility purportedly entered into by a company named Imbani Projects (Pty) Ltd ("**Imbani**"). Previously Truter had testified that this was an example of a fraudulent document that had been created in order to mislead the PIC into permitting further drawdowns on the facility that it had granted to VBS. The investigator ordered Mcwazzer to answer the questions pertaining to this matter and she accordingly obtained the use immunity conferred by section 140(1)(c). The immunity extends to all questions put to her in regard to purported addendums to revolving fuel finance facilities and the surrounding circumstances.

171 Mcwazzer confirmed that the purported addendum did not arise from a request from Imbani but rather that the document was created pursuant to an agreement between herself, Matodzi and Truter to do so. She confirmed that the document had not been signed by anyone authorised on behalf of Imbani. She identified Mmampilo, Thlokaina, MDZ and Leruo as existing clients whose names were similarly used to defraud the PIC. She stated that Belton Park and Seraj may also have been used in this way. She testified that in the case of the Thlokaina addendum, she had personally copied and pasted

the customer's signature and details from the original agreement that had been entered into.

172 She stated that she was personally aware of the direct participation of herself, Truter and Nhlanhla Nkuna of VBS' finance department in the fraudulent creation of the addendums. She stated that Truter had told her that this was to be done on the suggestion of Matodzi and Ramavhunga. The fraudulent drawdowns on the PIC facility were used to improve VBS' liquidity position.

The second pillar – the fraudulent concealment

The audited financial statements for the year ended 31 March 2017

173 Truter testified that the preparation of VBS' annual financial statements for 2015, 2016 and 2017 was under his control. He testified that the 2015 financial statements are accurate. There are certain inaccuracies in the 2016 financial statements. But they are not, for present purposes, material. The 2017 financials are, however, grossly misleading. In this regard:

173.1 The information disclosed in the 2017 annual financial statements was taken by Truter from VBS' financial records, and in particular the trial balance in its general ledger, which he knew had been falsified in numerous material respects. On the strength of a recommendation by KPMG's third year audit trainee, Truter employed the services of a firm named A4B to prepare the statements. But that firm did no more than present, in an auditable form, the manipulated financial information provided by Truter.

- 173.2 According to Truter, when the KPMG audit team commenced the audit of the 2017 financial statements, a junior trainee auditor raised the concern that the cash on hand that they had established with reference to the bank statements of the various banks where VBS holds its funds did not accord with the amounts recorded in the trial balance and the draft financial statements.
- 173.3 The amount at call and at short notice disclosed in the 2017 financial statements amounts to R770 866 124. That amount is, in truth, overstated by approximately R700 million. Truter testified that the overstatement is largely a result of the phantom deposits created by means of the "*suspense accounts*" which Vele and its associates had the advantage of.
- 173.4 He testified that although much of what was disclosed in the accounts was a fair presentation, a massive difference occurred in the SAMOS account. He confirmed that the difference between the amount shown in the trial balance and the actual balance in the SAMOS account amounted to approximately R410 million. He also confirmed that the amount of R245 788 840.06 reflected in the trial balance as the amount in the VBS Corporate Banking Product Control account mostly arose from the R250 million fictitious Insure deposit. As such the supposed balance in that account was largely fictitious.
- 173.5 Truter testified that the audit clerks from KPMG could not obtain information from VBS because he "*...didn't really have an answer for them*". He testified, however, that KPMG could have obtained a SAMOS

account statement from the Reserve Bank as a third party confirmation and could have also easily obtained such a statement without the account number, as there are a limited number of settlement accounts on the SAMOS system.

173.6 Truter dealt with Nduli, the KPMG third year audit clerk, during the 2017 audit. He confirmed that Nduli was pressing for audit information that would enable him to complete the audit of cash and bank.

173.7 Due to the continuous pressure for information in respect of cash and bank from Nduli, Truter contacted Malaba, who then came to VBS' offices and met with Truter. Truter testified that he had a close relationship with Malaba and felt comfortable discussing the matter with him in order to find a solution. He said, however, that he did not know "*how much he knew about the scheme*" and so he used words like "*unreconciling amounts*" and "*capacity issues*", but that he did tell Malaba about the amounts and the exact difference. Truter testified that during this meeting:

"He did make the comment to say: Do you want to tell me there is this hole of half a billion Rand? ... He did seem surprised, but it didn't seem like it was the worst thing that he's ever heard type of thing. His response was: Do you want to tell me there's half a billion Rand that's missing, or a difference, and – you know, he didn't seem to – how can I put it – he didn't go and say: Philip, this is it, we have to now call the Reserve Bank and tell them about this, and all of that. That was not his response." (Emphasis supplied)

173.8 As I set out later, Malaba disputes ever having discussed the huge difference or the amount involved. After the first interview with Malaba

his version was put to Truter in a further interview. Truter disputed Malaba's version and denied Malaba's assertion that all that was discussed was that Truter needed to do a reconciliation. Truter also testified that he had shown Malaba some documents, including the Direct Transact report and the SAMOS account, and explained to Malaba that *"this was the only place where these reconciling differences could be"*.

173.9 Truter testified that he sent the following WhatsApp message to Matodzi after his meeting with Malaba:

"Had quick meeting with Sipho now. We will show it as reconciling item. B sheet will remain what it is".

173.10 Truter understood Malaba's suggestion to mean that if there was a *"reconciliation"* it would suffice as audit evidence and no adjustment to the balance sheet would be necessary.

173.11 Truter testified that the audit manager, Munalula, subsequently contacted him and requested the reconciliation as they wanted to conclude the audit but Truter did not provide it to her and, in fact, he never completed a reconciliation. He conceded that, in truth, he knew that he could not ever reconcile the difference.

173.12 Truter attended the audit committee meeting on 30 June 2017 when the report was presented by Munalula and Malaba but as far as he could recall, no outstanding requirements relating to cash and bank were mentioned.



173.13 On 17 July 2017 Malaba signed the Auditor's Report stating that in KPMG's opinion the financial statements "*fairly present, in all material respects, the financial position of VBS Mutual Bank as at 31 March 2017, and its financial performance and cash flows for the year then ended in accordance with International Financial Reporting Standards (IFRS) and the requirements of the Mutual Bank's (sic) Act*".

174 The various members of the KPMG audit team were interviewed. In order to gain context, the interviews traversed many issues concerning the audit. However, I deem it appropriate in this main report to deal solely with the issues concerning the audit of cash and cash equivalents. That requires a consideration of the relevant evidence given by Nduli, Munalula, Niewoudt, Monare, Broom and Malaba.

175 Nduli testified as follows:

175.1 He was a third year audit clerk in the employ of KPMG during the statutory audit of VBS' annual financial statements for the year ended 31 March 2017. He was also involved in the 2015 audit as well as the 2016 audit.

175.2 He described in detail the standard and straight forward audit procedures that had been adopted in the audit of cash and cash equivalents in the VBS audit in 2016. He testified to the accuracy of the audit working paper in support of the procedures that were carried out in the 2016 audit of cash and cash equivalents and pointed to the audit evidence that accompanied the working paper.

175.3 He was then questioned about the audit working paper that he had prepared for the 2017 cash audit. He described it as "*far from similar*" to the 2016 working paper. He testified that initially a working paper had been prepared by the first year clerk, Niewoudt, in similar form to the 2016 working paper. However, neither Niewoudt nor the second year clerk who had also worked on the cash audit, Monare, were able to obtain fundamental and necessary information from VBS management to enable them to complete the cash audit. They were even unable to identify the actual bank accounts that were recorded in the general ledger by their respective account numbers. Without that information they were unable to complete the simple task of obtaining external bank confirmations.

175.4 He then took over the cash audit. He was similarly unable to, as he put it, get the audit "*over the line*". He then prepared a very different form of working paper which sought to set out, under descriptive headings, the various bank account balances shown in the general ledger, the balances shown on the related bank statements and, in a final column, any difference between the general ledger amount and the bank statement amount. He testified that his first iteration of the working paper in that format essentially placed almost the entirety of the general ledger balances into the difference column as there were almost no bank statements available to compare.

175.5 Nduli was then questioned on the fact that the amount reflected in the general ledger in respect of the SAMOS Settlement Account, being R413 965 858.59, was not remotely in line with the balance on the

SAMOS Settlement Account statement for 31 March 2017, which reflected a credit balance of R4 302 941.99. He stated that he had requested the SAMOS Settlement bank statement from the Financial Manager of VBS but he had not been provided with a copy. However, on one occasion he looked at a file held by the Financial Manager and he saw the statement in the file and noted the "*massive*" difference.

175.6 Once he had established that there was a very substantial difference he reported to Munalula. He testified as follows:

"I remember it was a Friday afternoon and I spoke to her on the phone, I stepped outside and I said to her: Look, Kafuma, there is cash missing here because none of this is stacking up. I've spoken to the lady who deals with the Pastel stuff, and she agrees that these are suspense accounts and do not quantify to actual cash. I've raised an audit misstatement of this massive thing – it was almost all of it, I think."

175.7 He said that at the time the difference he had established was close to R700 million. He stated that Munalula told him that she would speak to "*the partner*". He testified that later that afternoon Munalula called him back and said words to the effect of "*Sipho said he would look at it*". He then testified that:

"Then I recall it could have been on the Monday or Tuesday, and I can't remember the exact date – I recall going back to VBS and being informed that – I don't know if it was by Kafuma or Philip, but I was told, because now I had presented this to Philip and said: Philip, this cash is actually not here. ... I showed Philip the difference and he had indicated to me that this difference was understood by Sipho. Sipho knows what this difference is. ... And he and Andile, who is the CEO, are going to perform specific procedures around this, so ... Sipho Malaba is going to perform the procedures. ... I then documented this, because I didn't know what to do about these quantum which weren't tying up."

175.8 He went on to state that:

"When Sipho signed the audit and I realised that my work paper hadn't changed, it was still there, and there were no additional procedures performed on cash, and there was no additional information that's been placed on the audit file, that's when I said: Okay, no, then I've actually been led down the wrong hole, or I've been led incorrectly here, because now there is actually an audit difference and me putting this amount in the statement column and me saying "were performed" is actually incorrect, because nothing was done subsequently. I was told that something would be done, and that those differences were understood."

175.9 Nduli sought and obtained the use immunity in regard to further questions about his actions in putting up a misleading working paper in the audit file. He then testified that:

175.9.1 The working paper, in the form that appears in the audit file, was prepared by him on 30 July 2017.

175.9.2 He had moved the differences over to the statement column having received the specific instruction that Malaba was "*comfortable with cash*".

175.9.3 The fact that "*the partner was comfortable that there was no difference informed me that my working paper was not correct in its prior iteration and I needed to adjust it*".

175.10 Upon the resumption of his interview on 25 June 2018, Nduli stated that after Munalula had reported to him that Malaba said he was comfortable with the cash:

"As a result of that I then changed this working paper, on the basis that: the audit has been signed, there are no differences on cash, and let me just make sure I document this thing in terms, firstly,



of what I understand about these amounts, which I never actually got to see in a statement. What I understood about these amounts, which I never actually saw in the statement, was that Mr Malaba and Andile had performed specific procedures. ... Obviously it is quite a strange thing for a partner to say that to you, in that, as I said in my previous testimony, this isn't a very complicated procedure, so what are Sipho and Andile specifically reconciling that I can't reconcile myself. But if you're getting the instruction, that's the instruction, that they are going to reconcile it. I'm not sure what they're reconciling and what more they're going to be doing that I couldn't possibly have done, but they had a better sense than I had of what they were going to do."

175.11 He specifically testified that, after he had been told that Malaba had signed the audit opinion and was satisfied with cash, he had gone back into the audit file to see if there was any additional audit documentation arising from these specific procedures, but he noted that there were no additional procedures and that the working paper was precisely as he had left it some weeks earlier. It was at that stage that he moved the amounts from the difference column to the statement column and inserted the notes N1 and N2. Note N1 reads "*Specific procedures were performed by the Partner and CEO respectively*", which note relates *inter alia* to the SAMOS Settlement Account and a VBS Corporate Banking product with a balance of R245 788 840.06. He testified that by adding this explanation the working paper could be closed off.

175.12 He then testified that during August 2017 the KPMG regulatory audit team, which was auditing VBS' DI returns for 31 March 2017, had experienced "*... a lot of confusion as to issues they had now picked up around the cash – the same issues I had picked up around the cash*". He stated that this gave rise to a telephonic discussion between Krieg of the

regulatory audit team and Malaba, in his presence, when Malaba assured Krieg that *"he was going to sort it out or it was going to be sorted out"*.

175.13 He testified that he was most concerned at this stage and he raised his concerns with his counselling partner, Riaz Muradmia, and the counselling manager, Michael Rasch. However, he received little assistance from them.

175.14 It was demonstrated to Nduli that the metadata on the electronic audit file showed that he had made a further revision to the audit working paper on 15 September 2017, just prior to the final close out date for the audit, being 60 days after the sign off date. Nduli then stated, again under use immunity, that prior to 15 September 2017, the N1 note simply read as follows: *"specific procedures were performed"*. On 15 September 2017 he added the words *"by the Partner and CEO respectively"*. He stated that it would be best to obtain his laptop from KPMG to see precisely how and when the wording had changed.

175.15 He testified that *"... I do recall being in a panic on 15 September, when I had to close out this file and I also recall then also making sure that I covered myself"*.

176 Munalula testified to the following effect:

176.1 She is a qualified chartered accountant and was the Audit Manager for the VBS audit on 2017. She has been on secondment with KPMG South Africa from KPMG Zambia.

176.2 She stated that she had become aware as early as mid-May 2017 that there was a clear and evident discrepancy between the available bank statements and the amounts set out in the general ledger. She said that, in the circumstances, she had requested that banking reconciliations be done by VBS, but that such reconciliations were never forthcoming during the time she was on the audit. She confirmed that Nduli had discussed the fact that there were enormous differences. She stated that *"I did raise it several times with the engagement partner, but he told me that he was auditing the cash section"*. She stated that when she brought the matter to Malaba's attention *"he told me that he was handling it, and that I should tell Zondi to just leave it because he's handling it"*. She was uncertain as to whether he had stated that he was dealing with it together with the CEO or the CFO of VBS but that *"he was meeting with one of them and that they were sorting it out; that they were auditing or sorting it out"*.

176.3 Malaba had not specifically come back to her to give her further information about resolving the discrepancy in cash and cash equivalents. She testified that:

"He didn't come back to me, but I raised bank reconciliations as outstanding in the report to the Audit Committee. I raised that as an outstanding item, and I gave the document to him to review. He asked that I remove that as outstanding, because he said he had handled it, had sorted it out and it was no longer an issue."

176.4 She made the original version of her draft report to the audit committee available to the investigator. She pointed out Malaba's handwritten changes to her draft, and in particular she pointed out that on page 5 of

the document he had crossed out, with a green marker, the words "*not all bank reconciliations have been received*". She stated that she simply accepted Malaba's statement without demur and deleted the words from the final version of the report. She stated that "*at the time it didn't seem that there was reason to question him*". She testified that at the time she had not looked at the detail of what the difference was, but only that "*it wasn't complete*". She stated that she had seen Nduli's working paper which at the time showed that the differences added up to R700 million or thereabouts. She testified that when Malaba later told her that she should remove the reference in the report to reconciliations not having been received, she regarded that as an instruction.

- 176.5 She testified further that on 17 July 2017 she had addressed an sms to Malaba in the following terms:

"Hi Sipho

Are you okay for the VBS opinion to be signed in light of the EMID report still outstanding and also if you're happy that cash is fine? They want to print today."

- 176.6 Malaba's response, by sms, was "*Yes, happy to go ahead*".
- 176.7 She testified that she had asked Malaba if he was happy to sign off the cash section because as at 17 July 2017 the working paper was outstanding and "*the work wasn't complete*".
- 176.8 She stated that she had instructed Nduli to make a reference in his audit working paper to "*say where the partner had audited*". She testified that

she had given that instruction telephonically and was unable to state the date upon which the instruction had been given.

176.9 She said that it was unusual for her to be asking the partner if he is happy, as she had done on 17 July 2017, because it should be the other way around.

176.10 She was asked why she had failed to make a note in the working paper file subsequent to her discussion with Malaba when he stated that he would be dealing with cash. She explained that this was not required:

"No, because it was work-in-progress. It's something that was progressing, and we were having a discussion on, and he was saying he was sorting it out, he was working on it. and then at some point that should have been uploaded onto the working paper file."

176.11 She testified that she had felt uneasy as a result of the unusualness of what had occurred. She discussed her unease with a fellow manager, Abeeku Diafo. She told him that she was uncomfortable about the cash audit "... because Sipho had said he was taking care of it, but that we didn't necessarily have a working paper on file".

176.12 She explained that she had used the words "*not all bank reconciliations have been received*" in her draft report to the audit committee rather than the words "*the bank reconciliations have not been received*":

"Because from my understanding not all the statements have differences. I think there were a few that had agreed. So, we didn't require bank reconciliations for all of them."

176.13 She was emphatic that she had not informed Malaba that the bank reconciliations had been received. She repeatedly reiterated that Malaba had specifically told her that "*it was no longer outstanding*" and "*it had been resolved*".

176.14 She testified that:

"... it wasn't a discussion, it was an instruction from him, and a confirmation from him, to say that it had been resolved, it was no longer outstanding, and remove that as outstanding from the document. So it wasn't an actual conversation as to how many or what had actually been received. There was no such discussion. I put it there as outstanding, because according to me it was outstanding."

176.15 She said that she had had one further communication with Malaba regarding the audit on or about 25 August 2017. She stated that Nduli had contacted her because the regulatory team wanted the cash working paper. She told Nduli that she would call Malaba to have him get in touch with the regulatory team to explain to them what he had done in relation to the cash audit. She then called Malaba and told him that Krieg required the cash working paper:

"He said: Okay, you can give it to her. Then I said: But, remember, you said you were doing this work. Then he said: Oh yes, I did, hey. Okay, I'll give her a call, I'll talk to her about it".

177 Niewoudt testified as follows:

177.1 He was a first-year audit clerk in the employ of KPMG during the 2017 audit of VBS. It was his first bank audit. He was involved in several aspects of the audit.

177.2 The audit of cash and cash equivalents was originally assigned to him, but by the time he left the audit engagement he had not yet received the information required and accordingly he did no substantive work on the audit of cash and bank at all.

177.3 He explained that the "*testing procedure*" for the cash audit entails a letter being sent to the external bank requesting that bank to state the balance that is held to the credit of VBS as at year end.

177.4 When he was initially assigned to cash and bank, he was to test the balance of cash and bank as at 31 March 2017. The starting point is the trial balance. He explained that:

"You want to test the balance of cash and bank at year end, because that balance needs to tie back to the balance that is in your financial statements – so it will be on your balance sheet – and it also needs to tie back to the balance that you have in your cash flow statement. If whatever is in your balance sheet and your cash flow statement doesn't match to the confirmation documents that you received from the bank, then you know something is wrong."

177.5 He confirmed that SAMOS is an interbank operating system between various banks and the South African Reserve Bank and that the SAMOS account can be accessed by the relevant bank. He said "*from there you can request a statement from any date. That can be generated at the client*". It does not require an external bank to send the SAMOS statement.

177.6 He stated that he was required, on the instructions of Nduli, to do the following in relation to cash and bank:

177.6.1 He was required to e-mail the "*respective parties directly*", including ABSA, First National Bank and other corporate banks. According to his recollection, he was given a list of people to contact at the relevant institutions.

177.6.2 He provided the investigation with a series of letters from VBS, signed by Truter on 8 May 2017, requesting the balances as at year end from the relevant banks. He confirmed that these letters are the starting point for obtaining a bank confirmation and that:

"The purpose of this request is for the external bank to be at liberty to disclose the information. If they get a request like this, for instance from KPMG, they will not disclose this information, because it is to a third party."

177.6.3 He explained that what is required as audit evidence is an "*independent statement*" and that such a statement would be sufficient as audit evidence in so far as it was received from the relevant third-party bank and it contains an official bank stamp.

177.6.4 He also explained that the letters that were provided followed requests by VBS to Standard Bank, Standard Chartered, First National Bank and ABSA Bank.

177.6.5 He was referred to various statements and e-mails provided to him and, in particular, to an e-mail sent to him from Viwe Zibulwana at VBS, attaching confirmations of banking details from ABSA. He



received that e-mail on 26 May 2017, which was his last day at VBS. He confirmed that the confirmations of banking details do not constitute evidence of what is in the accounts but are merely of use in identifying the accounts held by VBS. He testified that when he received these confirmations of banking details he populated a list which had the account name and account number on, so "*that when I actually receive the balance from the client I can populate that further into the working paper*".

177.6.6 He confirmed that on 30 May 2017 he received an e-mail from Zibulwana attaching an e-mail and attachments from ABSA, including the "*balance confirmations*", which ought to have been sought in the first place and which would constitute proper audit evidence of the balances in those ABSA accounts. However, by this date he was no longer on the audit and was, in fact, on leave. The e-mail was also sent to Nduli.

177.6.7 He was shown the SAMOS account statement as at 31 March 2017. He confirmed that he had never seen that statement before. He stated that, from an audit evidence perspective, he would regard it as the same as those statements accessed and printed by VBS internally and that he would not rely on them as audit evidence. He was asked what step he would have taken, had he been given this document during the audit, to confirm the balance of the SAMOS account. He stated that:

"In terms of opinion, as I've not done this before, my opinion would be that you would have to email a representative of the Reserve Bank to request that information from them. Unless you can request via SAMOS that they actually send you an internally-generated statement as well, that is coming directly from the Reserve Bank system, and has not been downloaded where it can be up for editing."

177.7 He was asked what he would have done if he had seen the divergence between the amount in the SAMOS statement and the amount stated on the general ledger. He stated that:

"The amount in the financial statements, that being the bank and cash amounts, would need to speak to the amounts that have been confirmed. In terms of this line item it will have to speak to R4,3 million and not R413 million. It means that you would have a write down of your bank account of over R400 million, yes."

177.8 He stated that VBS would do a reconciliation and *"if there was a bank reconciliation, we would have to obtain evidence for those items in the reconciliation"* but also confirmed that in the event of a SAMOS account, it would actually not even be susceptible to a bank reconciliation because the SAMOS account is a reconciling account anyway.

178 Monare testified as follows:

178.1 She was previously employed by KPMG and was a second year audit clerk in the 2017 VBS audit. She was involved in various aspects of the audit, including the cash audit.

178.2 In respect of the testing of cash and bank, she stated she was involved from the outset because, since she was doing the interest income analytic, it made sense to also do cash and bank. She stated that cash and bank is a *"very easy section"* where the auditors have a listing of all

the bank accounts provided by the client. They are then supposed to obtain all the bank statements, record the amounts recorded by the client against the amounts in the statements and assess the difference, if any. She testified in this respect as follows:

178.2.1 External bank confirmations should be obtained by addressing a letter to the banks, on a VBS letter head, in terms of which VBS authorises the external bank to provide confirmations directly to the auditors. She stated that usually the auditors draft these letters and then request the client to put it on the client's letterhead and sign it. The auditors will then send the letters to the banks or log a request on a service named confirmations.com.

178.2.2 It is essential that these confirmations are received directly from the banks. She testified that:

"It's an auditing principle. The whole purpose of requesting the information to be conveyed directly to us, as the auditors, is to eliminate the risk of manipulation of information."

178.2.3 She confirmed Niewoudt's evidence that information came in from VBS in "*dribs and drabs*" and was not complete. She stated that she had not seen the statements, provided to the investigation by Niewoudt, from Standard Bank and that the statements that she had when she was working on cash and bank were internal and were not received from any financial institution. She testified that:

"Well, initially when I tested bank and cash I asked why we weren't using confirmations.com; why weren't we using external statements. It seemed that in the previous year it



wasn't the case either, so that was going to be the approach for the current year. I didn't have all of the bank statements, so I asked Philip if he could log on to his internet banking, and I could observe him logging on, so I could see there wasn't an alteration of information, and if he could print that for me so that could put something on file – agree some numbers. The gist of the conversation was that he was not able to do that, and that the information would be provided in due course."

- 178.2.4 She agreed that the statements by ABSA and Standard Bank, provided to the investigation by Niewoudt, would suffice as satisfactory audit evidence for the amounts reflected on the trial balance. She had, however, not seen these before the interview.
- 178.2.5 She confirmed that by the time she rolled off the audit at the end of May 2017 or first week of June 2017, she had not been able to complete the audit of cash and bank as she did not have the outstanding bank statements. She testified that she had a working paper which had the names of the accounts as per the lead sheet, what was in the internal statements and that the accounts for which she did not have any statements were highlighted in yellow. She recalled that there were accounts for around R400 million that were still outstanding.
- 178.2.6 She confirmed that if there is a difference between the bank confirmation and the amount in the trial balance, then management would prepare, if possible, a reconciliation statement which in turn would be audited. It would remain a difference until reconciled. She also confirmed that, in the case of the audit of a bank, no difference in cash is really ever immaterial.

- 178.2.7 Monare was provided with the SAMOS settlement account statement and she stated that she had never seen this statement before. She confirmed, however, that the SAMOS statement, as all other statements, should immediately be at VBS' fingertips.
- 178.2.8 She confirmed that, had she seen the SAMOS statement, she would have recorded the R410 million difference in the difference column. She also stated that a difference of such magnitude should have been escalated very quickly.
- 178.2.9 When Monare rolled off the audit she handed over her "*workings*" to Nduli. At that stage she had very few bank statements and no external confirmations. In the absence of bank statements there would not have been a request for reconciliations yet.
- 178.2.10 In addition, the working paper that is in the e-audit file is very different from the working paper that she left when she rolled off the audit. She confirmed that the closed-off working paper prepared by Nduli is not her working paper. With regard to the Note 1 on Nduli's working paper and the manner in which it was done, she testified that she would never have included a note saying that "*specific procedures were performed by the Partner and CEO*" and that, in any event, the working paper makes no audit sense. She said that:

"No, you can't say – if the amounts weren't there it shouldn't be in the statement column, firstly. Secondly, it's very unusual for a partner to spend whatever his charge-out rate is on such a very simple section. They usually focus on high-risk areas and if there are unresolved differences. I wouldn't have signed off a working paper if a partner said he did that.

I would say: Okay, you sign it off. That's why I didn't sign off the equity roll forward. I wasn't happy myself with what I got."

179 Broom testified as follows:

179.1 He was appointed as the Engagement Quality Control Review partner ("**the EQCR partner**"). He had been involved in the VBS audit for a number of years prior to 2017. He testified that the role of the EQCR partner is *"to review and then see that the quality of the work is maintained, and also to be used as a sounding board for the team"*. He conducted his role solely in the KPMG offices and has never met any of the VBS directors or attended Audit Committee meetings.

179.2 He said he had no involvement in reviewing the cash section of the audit file and that it had not been identified in the audit planning as a significant risk area. Accordingly, he did not look at any of the relevant working paper screens. He stated that:

"However, when I did look at the screen and saw the comment there, I was shattered. There didn't appear to be audit evidence supporting the cash and bank".

179.3 He stated that auditing cash and bank is a simple process and accordingly not a significant risk in auditing. He stated that in respect of big balances, the team would have called for bank certificates from the external banks.

179.4 After his retirement in February 2018 he had no access to any KPMG files, but that KPMG had granted him access to the e-audit file for purposes of the interview with the investigator. He stated that:

"Once I got that, then I was able to have a look at the e-audit file, and that was when I went and had a closer look at the cash and bank. I was trying to wonder where the issues were, I went to that working paper, and it sort of stood out like a sore thumb at that point".

179.5 He was then taken through the cash and bank working paper. In this regard he had the following to say:

179.5.1 The 2017 working paper differs substantially from the 2016 working paper.

179.5.2 There is no audit evidence attached to the 2017 working paper.

179.5.3 He observed that:

"Certainly, there shouldn't be as audit evidence 'Note 1: Specific procedures were performed by the partner and CEO respectively'."

179.5.4 He stated that he "*was shattered*" when he saw that note. When asked why he was shattered, he explained that:

"I had heard there were balances that didn't have supporting evidence, and there was speculation that there were funds missing. So when I was looking, I thought: Well, where could it be? Because when I finished my review there was no issue from my side at all on 30 June, when I signed off and the financials were signed off a bit later. I was looking, if there was a hole, for where it could be. When I saw that, I thought to myself: Oh, well, I think I've found it".

179.6 Broom was referred to the difference in the balances of the SAMOS account, as reflected in the general ledger, and in the actual statement of account. He testified that in the event of a junior not being placed in possession of the required audit evidence it will be escalated to the senior

clerks, then to the manager and ultimately to the partner. He said that *"if the engagement partner is having difficulties with it, and it becomes an issue, that is when he should come to the EQCR partner"*.

179.7 He was given the gist of the evidence given by Nduli, Munalula and Malaba and the disputes were pointed out to him. He was told how it came about that Nduli inserted the Note 1.

179.8 He testified that neither Munalula nor Malaba *"brought it"* to him. He stated that:

"...But they didn't come and consult with me, so I'm not in a position to comment. As I said before, if anything – and if Sipho carried out his audit engagement function properly, he should have come to me and said: Look, we've got a major issue here, how do we take it forward? And he didn't do that".

179.9 He was asked whether it could ever be left on the basis of going to the CFO and saying that he had better do reconciliations. Broom stated that he does not believe that would amount to appropriate and sufficient audit evidence.

179.10 Broom testified that Malaba was not at the office *"all that much"* and was not present when he reviewed the audit. He stated that the EQCR review meeting was postponed several times so that Malaba could attend, but ultimately it was only Munalula and Broom at the meeting.

179.11 He was then asked about issues concerning VBS' equity position. He stated that this was not included in his EQCR review. He agreed that the proof of payment in the working papers is not demonstrative of VBS

having received R80 million as share capital and that it would not have satisfied him as proof of payment for the shares. He confirmed that it would have required further investigation.

- 179.12 Broom was referred to the 2017 annual financial statements and taken through some of the impairments noted. He was informed that the contract finance book was not kept on the EMID system but in Excel and he stated that he was not aware of that but that it would have been a cause of concern. He was also informed about the Leratadima exposure and asked how it happens in the circumstances that in the financial statements the contract finance book is impaired to less than 1% while, having regard to the Leratadima exposure, it should actually be impaired by 80%. He was also asked whether it is possible for auditors to miss this. He stated that:

"You know, just generally, if you have corrupt clients – both management and possibly directors, and I don't know – from an auditor's point of view it becomes more and more difficult to audit an entity. A similar sort of thing would be – and I don't know what Sipho has disclosed to you, if anything, but when you have an engagement partner who you establish afterwards didn't disclose all his possible conflicts of interest with the bank, and when you're relying on that engagement partner, and you're relying on the management, the manager and your audit team, it does become a very, very difficult audit. I'm not saying they shouldn't have picked up something, but it becomes very challenging."

- 179.13 He was "*very surprised*" to hear that VBS had been placed under curatorship. He received a call, on 3 April 2018, from Jan Vliegenhart, the KPMG Risk Management Partner, who told him about the lack of audit evidence and "*the R800 million*". They agreed to meet at KPMG's offices the following week. He then contacted Malaba, who suggested that

they meet. They met for coffee the following week. he learned of Malaba's loans with VBS at that meeting. He stated that Malaba told him they were all at arm's length. He subsequently had a meeting at KPMG where they discussed "*some of the issues*" and he then learned "*from the firm*" that the exposures of Malaba and Dumit Tsuma ("**Tshuma**") to VBS (through their wives' companies) totalled some R28 million. He then realised that the loans were not necessarily at arm's length.

179.14 He was informed of the combined indebtedness of Ihaawu Lesizwe Trading (Pty) Ltd ("**Ihaawu Lesizwe**") and Betanologix (Pty) Ltd ("**Betanologix**") to VBS and was asked whether it could ever be possible that someone in the same position as Malaba at KPMG could have the wherewithal to pay off R30 million in debt. He said that he did not believe so and that "*from his earnings from KPMG it's impossible to fund those sort of borrowings*". He also stated that:

"What that means is that at our coffee meeting those were not at arm's length, and he certainly didn't disclose those amounts. But those were not at arm's length, he would have had a conflict of interest, and he would not have been independent of the bank that he was the engagement partner."

179.15 He was shown the Ihaawu Lesizwe bond account where the monthly payments of R70 000 were reversed almost every month. He then said the following:

"If I knew then what I know now, I wouldn't have wanted to be the EQCR partner on that, and Siphos should not have been the engagement partner, and another partner should have been appointed ... No, with another partner, I would, but I'm saying with Siphos, if I knew about Siphos. I would have said: It's impossible to be an independent reviewer if he's conflicted, he has a conflict of interests and he's not independent".

179.16 He stated that auditors are allowed to hold facilities and loans at banks that they audit, unless such banks are security exchange clients, provided that such loans or facilities are *"in the ordinary course of business"*. Such loans or borrowings must be *"at arm's length in terms of their normal banking operations, and normal terms. They can't be at special terms and not be funded, or special interest rates or anything like that"*. He testified that if such loans are not in the normal course of business, they should be disclosed and an auditor having facilities of that nature should recuse himself from being appointed as the engagement partner of that bank. He confirmed that, given the circumstances, Malaba should not have been on the VBS audit.

179.17 He explained the process relating specifically to the *"declaration of independence"* required from each member of an audit team. This was done by replying to an e-mail sent out by Nduli which, if *"reply"* is pressed, contains a *"confirm"* and *"report"* option. Malaba, in this manner, had declared that he was independent and that *"no violations or special dispensations exist"*.

180 Malaba testified as follows:

180.1 He qualified as a chartered accountant some eighteen years ago. He did his articles at KPMG. After stints at various other firms after he qualified, he rejoined KPMG in 2006 as a partner. He became the engagement partner for the VBS audit about five or six years ago.

180.2 There was only one key contact person that he dealt with on the audit, being Truter. At the outset he stated that he recalled that there was an issue around the reconciliation of the SAMOS account. He stated that:

"It was communicated, I think it was, through the manager, if I recall correctly. This is over a year ago. She said there was an issue reconciling the amounts in the SAMOS account. I said I was going to speak to Philip. I subsequently did have a meeting with Philip, and Philip said he was struggling to reconcile the SAMOS account. I said: Well, we're about to close if I recall. It was like a 15 or 20 minute conversation. I was saying: Well, I think your guys still need to reconcile it; you need to get additional resources, whatever it may be. And that was it. That was the end of the discussion."²
(Emphasis supplied)

180.3 He said that he thought that his discussion with Truter was the last that he had heard from either the manager or from Truter in this regard. It is noteworthy that, on his version, the reconciliation was outstanding at a point when he last discussed the matter with Truter and that it related to cash. I shall return to this later.

180.4 When asked to comment on note N1 on the cash working paper, he stated:

"That's incorrect. When I was still at KPMG that question was asked of me, and the only person, again, that I dealt with in respect of the audit at VBS was Philip. He's not the CEO. And there were no specific procedures. If you see anything that I've looked at in the file, it has my signature on it. So this is a problem. I know that Kafuma did raise the issue around the SAMOS accounts, and I did speak to Philip about that, but there were no specific procedures that were conducted by myself." (Emphasis supplied)

180.5 Malaba testified about the draft report to the audit committee that Munalula had prepared. He confirmed that the purpose of his green

² It is important to note that Malaba knew that the bank needed to do the reconciliation.

scribble and asterisk was that the words "*not all bank reconciliations have been received*" was to be deleted and that this deletion was required by him before the report went to the audit committee. When asked why that had been so, he stated that:

"I assume at that point that – because normally, when I would go through this, we would be having a discussion to say: What's still outstanding, what's outstanding, what has been done, what is the issue? I can only assume that at that point I had been given some representation that the bank reconciliations had been resolved or had been received. That's all I can think of at this stage."

180.6 He testified that:

"I know [Munalula] did send me an sms at some point, saying – I don't know it was – sorry, the time lines are a bit wonky here, but she did send an sms to me, saying that: Siphon, the bank issues – Philip has not sorted out the bank. Or something along those lines. There were issues with the bank. And then I said fine – I don't know if I called Philip, or if that was before or after our meeting, but there was some communication around that, yes."

180.7 He stated that after his discussion with Truter, Truter did not come back to him in this regard. He said "... *I think he then continued dealing with the team. I didn't follow up. I didn't go after the fact*". Malaba was asked "*Did [Munalula] go on to tell you that all the bank reconciliations had been received and that there was no issue in relation to cash and cash equivalents or does that go without saying?*". His response was "*That goes without saying*".

180.8 He stated that he could not say that Munalula had pertinently advised him that all reconciliations had been received. He put it thus:

"It goes without saying we were going through a document together. Is this an issue? Is it not an issue? All that should be in

this document are issues in our minds. That's why I sit down with her to go through this document. That's why I review it."

180.9 The version given by Truter to in the course of his evidence about their discussion concerning the very substantial cash discrepancy was put *verbatim* to Malaba. His response was as follows:

"It's true to the extent that I said he should do the reconciliation. That's point number one. Point number two, he didn't say anything about this half a billion Rand. There was no talk of fictitious deposits, it was that he was struggling to do this reconciliation, as he had done before. And I told him to complete the reconciliation, and I went ... So the only thing that I'm saying that is correct there is that I told him to do a reconciliation between the GL and the TB. There was no discussion of fictitious transactions, there was no discussion of fraud, there was no discussion of hiding things. And could I also add something else. One thing that we seem not to have been able to touch on is that Philip and the Reserve Bank and VBS in general had an ongoing relationship with the Reserve Bank and the reporting. The Reserve Bank did not like the reporting. I'm sure, if you interview Delarese she will give you feedback in terms of the issues around the reporting from VBS. So these differences of R150 million, or whatever it is, from a Reserve Bank perspective – the biggest issue is with the Reserve Bank, no one else. Not the users of the financials. That's why I keep going back to these DI returns. The DI returns that we qualified are the biggest issue in their lives, just to give you context. So if we knew of R400 million that was missing, to qualify for R400 million, or adjust accordingly, it wouldn't have been an issue in my life at all. The kind of issues that they had, were they were the only black bank in South Africa. If they were insolvent to the extent of R100 million or R200 million, they would have found funding in the next financial year, they would not have been closed down. This is totally unnecessary, in my mind. There is nothing in my mind that can justify them trying to falsify – I don't know why they did it, but I'm just saying falsify these accounts to that extent, because it would have been resolved over time. They would have got support, just doing the right thing. They would still have been standing today, in my mind." (Emphasis supplied)

180.10 Malaba testified that he had comfort in signing off the 2017 annual financial statements because he had the audit committee meeting with Munalula and Broom and that neither of them raised a red flag on any issue.

- 180.11 He eventually conceded that, on the facts, at the time that he took out the outstanding reconciliation item in the draft audit report and at the time that he signed off the annual financial statements, the reconciliation that he told Truter to do had in fact not been done. But for his removal of the note regarding outstanding reconciliations, the issue would have remained alive and would have had to be escalated to the audit committee. Malaba's attempt to deny knowledge of, first, the extent of the cash hole and, second, any wrongdoing on his part, is both unfathomable and unsustainable.
- 180.12 Munalula's sms to Malaba dated 17 July 2017 was shown to him. In the sms she asked him whether he was *"okay for the VBS opinion to be signed in light of the EMID report still outstanding"* and whether he was *"happy that cash was fine"*, and his response that *"Yes, happy to go ahead"*. Malaba simply told us that *"At that point in time ... I was happy"*.
- 180.13 The forensic investigation into the records of VBS had revealed Malaba was likely to have been the beneficiary of very substantial, and largely unserviced, facilities granted by VBS. The facilities were not in his name and he had not made any declaration to KPMG about the existence of such facilities. However, the bank's records showed Malaba as the contact person and a signatory for several of the accounts. Thus, when the interview resumed on 20 August 2018 Malaba was asked about facilities granted by VBS to Ihaawu Lesizwe and Betanologix.
- 180.14 Malaba testified that Ihaawu Lesizwe is a company owned by his wife, Jacqueline Jasmin Malaba, and that it enjoyed several vehicle finance



facilities, a mortgage bond and an overdraft facility on a classic business account with VBS. Malaba and his wife are signatories on all these facilities. The Malabas' residential home in Fourways is the one purchased by way of the mortgage bond held with VBS.

- 180.15 Malaba stated that his wife and his cousin are the shareholders and directors of Ihaawu Lesizwe and that he is neither a shareholder nor a director for the sake of "*convenience*".
- 180.16 He testified that all the facilities for Ihaawu Lesizwe were granted to it by VBS on the strength of his personal details and on his salary from KPMG because Ihaawu Lesizwe could not, on its own balance sheet, afford any of these facilities. He conceded that in reality he was personally borrowing the money, and merely using Ihaawu Lesizwe as a vehicle. He also confirmed that Ihaawu Lesizwe has never traded.
- 180.17 He was asked about the first vehicle finance agreement, which was for a Range Rover Evoque. The debit orders for payments to this account were almost invariably reversed and VBS never took any collection steps on the accounts apart from making phone calls to him from time to time. It was also pointed out to him that this finance was obtained through VBS' closed motor vehicle finance scheme, which provided special terms only available to employees, directors and shareholders of VBS. He confirmed that Ihaawu Lesizwe is not a member of this scheme and said that it was "*an error*" to have entered into an agreement on this basis. He later agreed that the fact that Ihaawu Lesizwe was represented in the agreement as a member of the scheme amounts to a falsity.

- 180.18 Malaba confirmed that the second vehicle, a Discovery 3.0 TSD, was financed in terms of the same type of contract as the Evoque had been and that, again, the representation in that agreement of Ihaawu Lesizwe as a member of the scheme, was yet another "error". He also confirmed that there were many reversals of debit orders on this facility.
- 180.19 He confirmed the third vehicle finance facility in respect of a Mercedes Benz and that, while debit orders were continuously reversed, no steps were taken by VBS. He simply testified that he did not know why VBS did not take any steps to exercise its rights in the event of default.
- 180.20 He stated that a mortgage bond was granted in an amount of R7 322 484.30 and that he made payment in respect thereof from his Standard bank account. He confirmed that, apart from about two monthly instalments in 2016 and one payment of R341 000 which was made into the account from the overdrawn Ihaawu Lesizwe business account, almost all the debit orders on the mortgage account were reversed and that VBS took no real steps to exercise its rights on default.
- 180.21 He was asked why he continuously failed to make payment on these facilities and he responded that he "*was over-stretched*".
- 180.22 On 7 June 2017 an entity named Khavho Enterprises made a payment of R250 000 into Ihaawu Lesizwe's mortgage bond account, which then brought that account up to date. He, however, testified that he has "*not a clue*" who Khavho Enterprises is and that he did not notice that the payment of R250 000 had been made. I find that to be manifestly

improbable. Maposa had testified to us previously that Khavho Enterprises was one of the "*slush funds*" conducted at VBS to make disguised payments on behalf of VBS and Vele. This was put to him, but he maintained that he knew nothing about the payment. He also denied having any knowledge about subsequent payments into this account emanating from an entity called Musavilla, in the sum of R83 635.19, and from Robvet, in the sum of R90 000. As previously stated, Robvet has been clearly identified as a slush fund. Once again, Malaba said he never noticed these payments coming into the mortgage bond account. And once again, I find his version to be manifestly improbable. He clearly appreciated the difficulty in providing a plausible explanation for how money stolen from VBS found its way into an account held and used for his benefit. This is because there is none.

- 180.23 He confirmed that Ihaawu Lesizwe obtained an overdraft facility with VBS and that the use of that facility was for his personal benefit. The facility was initially granted in the amount of R2 million. He stated that the limit was successively increased to R5 million, then to either R7 million or R8 million and finally to R11 million. By the date of the curatorship the outstanding balance on the account, numbered 010011973002, was in excess of R11.5 million. From the date of the opening of that account, being 27 January 2016, not one single cent has ever been paid into the account. He used the facility to pay for a variety of personal expenses. These included the repayment of some R2 224 130 to KPMG in respect of a loan granted to him and the purchase of further vehicles, including a

Peugeot (R248 900) and a Range Rover Sport (R840 000). On 10 August 2017 he paid R1 534 814 for a Landrover Discovery. On the same day he paid R1 465 186 to Oxford University as tuition fees for a Master's in Business Administration degree course he had enrolled in at that institution. On 20 December 2017 he transferred an amount of R3 million to his personal account at First National Bank. He said that *"went for university fees again, and I had to pay for air tickets, school fees and things like that"*.

180.24 It is very clear that he was living very far beyond his means. He informed us that his ordinary salary after tax was between R120 000 and R130 000 per month. He stated that he anticipated that he would receive an annual after tax profit share from KPMG of between R1 million and R1.5 million. The monthly interest alone on the various facilities enjoyed by him amounted to approximately R290 000, an amount in excess of his estimated after tax income.

180.25 He was asked how, when he was so *"over-stretched"* that he was unable to properly service any of the vehicle finance accounts or the mortgage bond, he was able to obtain ever increasing overdraft facilities which were quickly utilised up to the absolute limit. He stated, enigmatically, that the facility was *"more flexible"*. He was also asked why VBS took no recovery steps when the facility was used up to the hilt while no payments were being made into it to service it. He answered that *"it was in its overdraft limit"*. That is just nonsense – no normal bank would put up

with a customer who abused his facilities in the manner that Malaba was permitted to do.

- 180.26 He steadfastly denied, despite all of this, that the facilities granted to him through Ihaawu Lesizwe were "soft" facilities and that the absence of any steps being taken against him was solely due to his very close relationship with the powers within VBS.
- 180.27 He stated that when requesting the increases in the facility he did so by way of oral discussions or e-mail correspondence to Ramavhunga and Matodzi. He stated that they would then presumably send the requests to the Credit Department and he then submitted proper applications. He did not, however, produce these applications when they were demanded. His evidence later shifted and he stated that, when the increases were granted, he did not provide any supporting documents and his credit worthiness was not reassessed.
- 180.28 He also stated that in November 2017 the facility was again increased by a further R3 million, despite the fact that he was already in breach of the facility limit then standing at R8 million. In this instance he said he spoke to Matodzi and Ramavhunga and they referred the request to Mukhodobwane. He was not required to put up any supporting documentation for his request for an increase in the facility. He also confirmed that all communications relating to his personal banking requirements were made to Ramavhunga on the latter's private Gmail account and not on the official VBS e-mail system.

180.29 The resort to private email accounts, of course, means that the communications did not find their way into VBS' records. He was unable to explain why this method of communication was chosen. But it is obvious to me that this was part of the scheme to hide his involvement as much as possible.

180.30 When his interview recommenced on 3 September 2018 Malaba was again questioned about the manner in which he applied for increased facilities. He handed in an e-mail dated 16 February 2017 addressed by him to Ramavhunga, both using their private Gmail accounts, in which he requested an increase in the Ihaawu Lesizwe facility from R2 million to R12 million. He confirmed that he received no reply, but he said it was discussed in a telephone conversation. He admitted that there is no record of what the facility is, on what basis a credit lending decision is made and there is no facility letter. There is, in fact, nothing more than a single e-mail, unrecorded by the bank, and a possible telephone conversation confirming the grant of the massive increase. I point out that this e-mail stands in stark conflict with the evidence that he previously gave regarding the numerous increases in the overdraft facility.

180.31 He was also questioned about the overdraft facility granted to Betanologix. The nominal directors and shareholders of Betanologix are his wife and the wife of Dumi Tshuma ("**Tshuma**"), his colleague at KPMG. Malaba conceded that he and Tshuma were behind Betanologix. Betanologix, in a similar manner to Ihaawu Lesizwe, ended up with a

massive overdraft facility which stood at almost R9.7 million at the time of the commencement of the curatorship. Once again, until that date not a single cent had been paid into the Betanologix account to service it. Subsequent to the curator's appointment two payments of R40 000 each were made into the account. However, monthly interest is running at a rate more than double that.

180.32 I note from the Betanologix bank statement that there was a single payment of R200 000 out of that account to Tshuma, whereas there are payments to Ihaawu Lesizwe amounting to more than R1.7 million as well as payments to Malaba amounting to R450 000. If, in fact, Tshuma and Malaba were partners in the Betanologix enterprise then Malaba was clearly the senior partner.

180.33 Malaba insisted that, because VBS embraced "*black business*" and wanted to empower black people to start their own companies, VBS would give funding to anyone answering that description who required it. He then qualified that by adding that it would still have to be on application and after having assessed creditworthiness. The following exchange then ensued:

"CHAIRPERSON: Which is something that did not happen here. That's the context in which the proposition is being put to you. Is it your contention that this accords with arm's length lending practices between the bank and its auditor?"

MR MALABA: Arm's length, as in being a facility that would be afforded to anyone on the street?

CHAIRPERSON: Correct, in that manner.

MR MALABA: For example, we'd be saying that if you want and phoned the CEO, would he give you a R5 million facility? Yes, he would.

CHAIRPERSON: In this manner?

MR MALABA: Yes.

CHAIRPERSON: No credit application?

MR MALABA: No, I was an existing customer."

180.34 He confirmed that as at December 2017 he owed VBS about R8 million in respect of the mortgage bond and R11 million in respect of the overdraft facility and was not servicing the very substantial interest that was accruing on either. In addition, he conceded that he was liable for the repayment of the Betanologix debt, then standing at R9.5 million. He said, however, that he would have been able to repay the various debts to VBS from his salary and his profit share earned from KPMG over the next three to four years. He eventually conceded that his after tax salary and profit share would not even have been enough to service the annual interest on these accounts, far less permit him to make any repayment of the capital sum. He attempted, however, to backtrack on this concession by contending that Betanologix was planning on developing some properties and that he may have been able to pay the facilities from profits made through that entity.

180.35 Malaba steadfastly denied that any of this was unusual. Eventually, after the following was put to him, he conceded that he unduly benefited from his relationship with VBS:

"CHAIRPERSON: And the impression that is created here is that by virtue of your proximity to the bank, you benefitted by getting facilities, which, to your knowledge, could not have been granted by a regular bank or a normal bank conducting regular lending practices. So it can't be good enough for you to say: Well, I applied to Andile, I sent him an email, and Andile increased it. Because effectively what you're saying is you told Andile: I want x amount more, and Andile granted it. Because, of course, it was not an application, you were just telling him this was how much more you wanted, and Andile would simply give you that, because there was no consideration of any application. Even on your version you were not applying because you didn't give any supporting documents.

MR MALABA: Okay, I concede in that, yes."

180.36 He confirmed that he did not disclose at the start of the 2017 VBS audit that he had these facilities with VBS because "*technically*" he was not a director or shareholder of either Ihaawu Lesizwe or Betanolgix. He ultimately, but somewhat grudgingly, conceded that he ought to have declared these facilities. He also conceded that the circumstances in which the facilities were granted to him and the fact that no steps were taken against him despite the massive arrears meant that these were not loans made by the audit client bank "*under normal lending procedures, terms and conditions generally available to the public*" which is the threshold for disclosure set by KPMG and imposed on its audit staff when auditing that bank.

180.37 He conceded that a letter written, at his request, by the chief risk officer of VBS to KPMG on 2 October 2017 in which it was confirmed that the

facilities were granted at arm's length and that they were all "*in good standing*", contained various obvious misrepresentations.

180.38 Malaba was asked about a report, signed by him, relating to large exposures and exposures to related parties that KPMG was requested to perform in October 2016. He informed us that, despite the fact that Ihaawu Lesizwe's exposure by then was about R11 million, and thus to his knowledge a "*large exposure*" in the context of what was being reported on, this exposure was not included in the report simply because it did not form part of the "*data dump*" provided by VBS management. I find this to be a most disingenuous explanation, that is palpably self-serving.

180.39 Malaba's counsel requested, and was given, the opportunity to re-examine Malaba. During the re-examination, which mainly consisted of leading questions and propositions put to Malaba by his counsel, Malaba reverted to his earlier denial that he was provided with ever increasing facilities in an irregular way. He also again insisted that he would have been able to repay R30 million worth of debt to VBS from his salary and bonuses. Aside from Malaba laying all the blame for the failed cash and bank audit on Munalula, and contending that he could not be held responsible for reckless lending by VBS, nothing of any real consequence turned on the re-examination.

181 During the course of the investigation it was submitted on behalf of Malaba that, in relation to the misstatement or discrepancy in the cash and cash

equivalents section of the audit, it was significant that the internal auditors, PWC, had *"also not found any such misstatement and/or discrepancy"*.

182 Erasmus, the manager of the PWC internal audit team, was interviewed on this narrow issue. She testified that PWC had not carried out an audit of cash and cash equivalents. She said that the focus of the internal audit was focused on cash and cash management, specifically on how the branches deal with the cash that they have at each branch. She explained that:

"So it would cover, for instance, whether or not the branch had exceeded the overall cash limit allocated to the branch. It will cover whether the tellers were accurately dealing with their cash reconciling, physical cash back to balances. It would also cover ATMs, petty cash within the branch, and it would cover sundry debtors and creditors at branch level. Now, how do you set that? There is a vast difference between that work and what would be required from an external auditor when they audit the financial statements to be able to give an opinion on the cash and bank statement on the financials. There is no way that any of the work that we did under that internal audit, called cash management, could have identified or even confirmed a bank cash balance."

183 She testified that obtaining external bank confirmations to confirm bank balances was never included in the internal audit plan for PWC and PWC never did any work in that area. She said that the statement that PWC did not find any misstatements or inaccuracies in respect of cash and bank is accordingly factually correct. She stated that:

"We never found any discrepancies. What needs to be taken into account is that it was never part of our duties, our internal audit plan or our agreement with VBS to conduct such testing."

Summation regarding fraud in the financial statements

184 On his own version Truter committed fraud in relation to the preparation of the annual financial statements of VBS for the year ending 31 March 2017. It is, moreover, plain to me that Matodzi and Ramavhunga were well aware that the annual financial statements were fraudulent when they signed the directors' statement of responsibility on 4 July 2017 and thus they also committed fraud.

185 I have come to the conclusion, based on a careful consideration of all of the evidence that has been received, that Malaba was indeed complicit in the cover-up of the vast "*cash hole*" in VBS as at 31 March 2017 by signing a fraudulent audit report on 17 July 2017. In this regard:

185.1 I am mindful of the fact that Truter's evidence must be approached with great circumspection as he is a self-confessed fraudster.

185.2 I have also approached the evidence of Nduli with considerable circumspection. He knew full well that he had prepared an audit working paper in respect of the cash audit that was wholly misleading. His explanations for why he did that are troubling. He plainly acted with a guilty conscience when he made the final change to his working paper on 15 September 2017, which was plainly done to cover his own back. It appears to me that Nduli had misunderstood the nature of Krieg's regulatory audit and he thought that she was on the verge of discovering the cash hole.

- 185.3 I am also troubled by various aspects of Munalula's evidence. In particular, it appears to me that she had several opportunities to challenge Malaba about the manner in which he was conducting the audit, yet she did not take up those opportunities. However, I certainly found her to be a far more honest and reliable witness than Malaba.
- 185.4 In the final analysis I find that the weight of all of the evidence, both by way of oral testimony and the vast amount of documentation, overshadows the reservations I have identified above.
- 185.5 In particular, Malaba's manifest dependence on the vast sums of money that were liberally bestowed on him by VBS plainly compromised him. He deliberately disguised the fact that he was the beneficiary of the various facilities. At the most basic level, had he been honest he would have applied for facilities in his own name and not sought to hide them. The facilities granted to him were the very antithesis of arms-length loans. Malaba well knew what his disclosure duties, aimed at warranting his independence, were. But he deliberately refrained from making the obviously required disclosure. When KPMG made an enquiry about his facilities at VBS he obtained a fraudulent letter from VBS to put KPMG off the scent. He also undertook to implement corrective measures and informed KPMG that he had done so, when he had not. All these things weigh heavily against him.
- 185.6 He signed the Auditor's Report to the annual financial statements knowing that the reconciliation that was solely intended to address the massive cash shortfall that was escalated to him, had not been received



from management. Munalula included this as an issue to be raised with the audit committee and Malaba caused it to be removed.

185.7 Munalula also sent him an SMS asking if he was happy to which he responded in the affirmative.

185.8 The probabilities are heavily stark against Malaba. His version is simply implausible. So to his denial.

185.9 People like Magula, Nesane, Ramikosi, Makhavu and the Venda king were seduced by the vast amounts of money that were strewn about by VBS and Vele. They were paid handsomely for their influence and their silence. Ramavhunga, Mukhodobwane, Maposa and Truter were richly rewarded for their active participation in the unlawfulness that engulfed VBS and Vele. In my view, Malaba was no different. He received vast sums and he was required to do as his paymasters required of him. I have come to the conclusion that he willingly played his part in the fraudulent scheme by signing the audit opinion for the 2017 annual financial statements of VBS, well knowing that the amounts reported in the financial statements in respect of cash and cash equivalents were grossly inflated and misstated.

185.10 I not only do not believe his version, but I reject it as well.

186 In all the circumstances, I find that Malaba approved and signed off on VBS' financial statements for the year ended 31 March 2017, knowing of the falsities and inaccuracies contained therein. This is fraud.

The DI returns and the regulatory audit opinion

187 Before dealing with the evidence that has been obtained relating to the DI returns that were made by VBS and the regulatory audit of those returns, it is necessary to sketch out the material statutory and regulatory framework.

188 Section 53 of the Mutual Banks Act provides as follows:

- "(1) A mutual bank shall, in order to enable the Registrar to determine –
- (a) whether the mutual bank is complying with the provisions of section 48 and 50 of this Act or of section 10A of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), as applied by section 49 of this Act; or
 - (b) the nature and amounts of the mutual bank's assets, liabilities and contingent liabilities,
- furnish the Registrar, subject to the provisions of subsection (3A), with returns.
- (2) ...
- (3) A mutual bank shall, in addition to the returns referred to in subsection (1), furnish the Registrar, subject to subsection (3A), with the prescribed returns, including returns relating to the extent and management of risk exposures in the conduct of its business.
- (3A) The returns referred to in subsections (1) and (3) shall be prepared in conformity with generally accepted accounting practice and shall be furnished to the Registrar in respect of such period, at such times and on such a form as may be prescribed.
- (4) A mutual bank shall furnish the Registrar, in respect of those of the respective returns referred to in subsections (1) and (3) which most nearly coincide with the end of the financial year of the mutual bank, with a report by the auditor of the mutual bank in which is stated whether or not those returns fairly and in conformity with generally accepted accounting practice, present those affairs of the mutual bank to which the returns relate and the Registrar may, if he or she deems it necessary, require the mutual bank so to furnish him or her with such a report in respect of any other of those forms furnished during the financial year.



- (5) A mutual bank shall, at such times as may be prescribed, furnish the Registrar with such further prescribed information as the Registrar may require."

189 On 28 December 1993 the Minister of Finance made regulations under section 91 of the Mutual Banks Act, set out in Government Notice number R.2508, published in Regulation Gazette number 5227 ("**the Regulations**").

190 The reference to "*the Registrar*" in the Mutual Banks Act and in the Regulations is to the Registrar of Banks. Upon the commencement of the FSR Act on 1 April 2018 the office of the Registrar was abolished and the functions of the Registrar were taken over by the Prudential Authority.

191 Regulation 6(1) requires that the auditor of a mutual bank shall annually report on the mutual bank's financial position and the result of its operations as reflected in all the returns, submitted in terms of section 53 of the Mutual Banks Act, referred to in Regulation 6(5) that had been submitted to the Registrar as at the end of the financial year end of the reporting mutual bank.

192 Regulation 6(2) requires the auditor to report whether in his opinion the information contained in the returns at year end, in all material respects:

192.1 reasonably reflects the information of the management accounts;

192.2 is complete in so far as all relevant information contained in the accounting and other records at the reporting date has been extracted therefrom and recorded in the returns;

192.3 is accurate in so far as it correctly reflects information contained in, and extracted from, the accounting and other records at the reporting date; and

192.4 was prepared using the same accounting policies as those contained in the management and statutory accounts.

193 Regulation 6(5) requires that the audit report contemplated in Regulation 6(1) shall be rendered in accordance with the wording and practices recommended from time to time by the South African Institute of Chartered Accountants and shall be in respect of Forms DI 100, DI 110, DI 200, DI 300, DI 310, DI 400, DI 401, DI 402, DI 403, DI 410, DI 420, DI 430, DI 500, DI 510, DI 520, DI 600, DI 700, DI 701, DI 702 and DI 704 submitted in respect of the reporting bank's operations.

194 VBS submitted the returns required in terms of section 53 of the Mutual Banks Act, read with the Regulations, in respect of the month ending 31 March 2017. The returns were prepared by various employees of VBS under the control and direction of Truter and Mukhodobwane.

195 Truter testified that there were many errors in the DI reporting due to the fact that Deale had left VBS' employ and there was simply not enough and sufficient capacity to attend to the reporting properly. He requested assistance from PWC and KMPG trainees. In the course of the regulatory audit KPMG picked up on the erroneous reporting of the settlement accounts as "*Interbank*". Truter confirmed that he commented in this regard and said in the management report that it required to be reported in the same way it had



been in the 2016 audit. He did so in an attempt to push the Registrar away from a further enquiry into what might be inside those accounts if they were reported as "*other assets*".

196 One of the returns that was submitted was the Form DI 100 return ("**the DI 100 return**"), which requires a setting out of VBS' monthly balance sheet in the manner required by Regulation 19.

197 The evidence discloses that at the time of the submission of the DI 100 return for the month ended 31 March 2017, Truter and Mukhodobwane were aware that the DI 100 return was false in at least the following respects:

197.1 line number 4, being "*Non-Bank funding – repayable in SA Rand*", under column 4, in the amount of "1,553,650"³ was falsely inflated by approximately R500 000 000; and

197.2 line number 40, being "*Interbank (including intragroup)*", under column 1, in the amount of "770,866" was false. This recordal ought to have been in respect of cash held by VBS at external banks only. The true position was that VBS only held cash at external banks as at 31 March 2017 in the amount of approximately R70 000 000.

198 The remaining amount of approximately R700 000 000 represented monies allegedly held by VBS in settlement accounts. Truter and Muhodobwane were aware that, in truth, there was no more than R4 300 000 in such accounts which ought to have been recorded in line 74, column 1, of the DI 100 return

³ Regulation 17(2) provides that "*amounts shall be shown to the nearest thousand units of currency, for example, R4 107 498 and R4 107 540 shall be reported as R4 107 and R4 108, respectively*".

as "*Other assets, including remittances in transit and properties in possession*" in addition to the amount "70,413" recorded in that line of the DI 100 return.

199 A great deal of evidence was received from Krieg and Scheepers about the regulatory audit that they performed on the various DI returns dated for the month ended 31 March 2017. They found a plethora of errors in the returns which gave rise to a substantive report being prepared by them which detailed these errors in the DI returns.

200 The fundamental point of departure for Krieg and Scheepers, however, was the audited annual financial statements for the year ended 31 March 2017. It is important to understand that Krieg and Scheepers were not re-auditing the annual financial statements – they were auditing the DI returns. Krieg put it neatly in the following terms:

"I then have a form, or I have several forms, but two of my forms are also balance sheets and income statements, and I reconcile my numbers to the financial statements that are already audited. I don't re-audit the numbers, I just agree to the financial statements, and then from there the numbers are mapped into risk returns. Then I would test those calculations and those mappings to see if they've done it in compliance with the Mutual Banks Act Regulations."

201 Krieg reports to Scheepers and they both report to Malaba, who signs off both the regulatory and statutory audit reports. The ultimate responsibility for the regulatory audit lies with Malaba as audit partner in charge.

202 Krieg testified that she went in on 16 May 2017 to start the regulatory audit. At the time she had a team of clerks to assist her. However, the clerks informed her after one day on the audit that "*things were not tying up*" in respect of the DI returns. She went to Truter to discuss this issue and he essentially told her

that due to a lack of resources and skill, as a result of Deale's resignation in February 2017, they had put up March returns which did not reflect the true position in March. Krieg suggested to Truter that the most appropriate way forward would be to *"fix the returns and have the correct position as at March, and I'd audit that"*. Krieg agreed to postpone the regulatory audit in order for VBS to correct the March returns, resubmit them to the Reserve Bank and then she would call for the returns from the Reserve Bank and audit the resubmitted version.

203 She confirmed that the purpose of the various DI returns is so that the Reserve Bank can assess the risk.

204 Krieg stated that when she eventually started the regulatory audit in August 2017, she did so without a team because there was such an enormous time-constraint.

205 Nduli's evidence that a regulatory audit clerk contacted him in August and requested information on cash and bank was put to Krieg. She explained that, since she worked without a team in August, Nduli's evidence that he received a call in August cannot be correct and that such a call was probably made in July 2017.

206 Krieg explained that she did not, contrary to what was testified by Nduli, pick up on the same concerns that Nduli had in relation to cash and bank, being the inability to match cash in bank accounts to cash in the trial balance. She stated that she would not be seeking bank confirmations and would simply

rely on the amounts stated in the financial statements. She stated, however, that:

"But I did pick up that an amount of R702 million was reported as an interbank balance on the DI return, and when I looked at the breakdown of that amount it was labelled as "*settlement account*". And I raised a finding to say a settlement account is not a bank balance and that it's reported incorrectly."

207 She referred to the DI 100 return containing the balance sheet and explained that R702 million of the R770 million reported there as "*assets*" in the form of inter-bank accounts, was labelled as "*settlement account*" and accordingly incorrectly reported as inter-bank balances. Thus, she confirmed, her concern was not about whether the R702 million actually existed and finding audit evidence in support of its existence, but rather about the manner in which its existence ought to be reported in the DI returns.

208 Later, when she was again referred to this issue, Krieg testified that settlement accounts or suspense accounts should be reported under "*Other assets, including remittances in transit and properties in possession*". She explained the reason for the reporting of settlement or suspense accounts in this manner as follows:

"My understanding is that those accounts – money has come in, but you haven't yet allocated it to the counter-party, so there's a process where the money then needs to be allocated to a product and a counter-party. And if that process has not taken place yet, it's sitting in a suspense account before allocation, and that's why you would put it under 'other'."

209 She confirmed that settlement accounts should be reported in "*other*" because the money is effectively "*in transit*" and also because there is a different risk profile attached to external bank accounts and settlement accounts.



210 She stated that she was at no stage alerted of the fact that cash and cash equivalents were not adding up.

211 She confirmed that a comprehensive document setting out all issues relating to the regulatory audit, styled "Annexure A", was drafted by her with some assistance from Scheepers. She confirmed that she audited each of the DI reports in terms of Regulation 6(1) (that is DI 100, 110, 200 and 400). She stated that the regulatory auditors were able to give an audit opinion because they were able to reconcile the numbers to the balance sheet and income statement in the audited financial statements. She explained that *"at that point in time we believed that the regulatory terms were misstated because the lady who prepared the returns resigned, the bank had a shortage of skills and resources, that it was an isolated regulatory problem, and that the audited financial statements were correct"*.

212 Krieg explained that the errors they found were pointed out and noted as having been based on information provided. They also pointed out the differences but stated that *"we had comfort that the financial statements were correct, and the DI 100 was misstated because of lack of skills and resources"*. She stated that she reported in her management note in the working paper that *"the differences will be corrected with the resubmission, to align to the annual financial statements"*. The report, containing the management notes, was then provided to Truter for his comments which were then simply recorded.

213 She confirmed that she accepted at face value that the reason for the uneven texture of the DI returns was a lack of skill and not as a result of deliberate manipulation.

214 Krieg testified that the "*interbank issue*" was raised in many different points in the audit report. She stated that "*as it flows from the balance sheet throughout the set of DI returns it has an impact on various returns and the calculation of risk*", for instance the DI 300 report, which is the liquidity risk maturity ladder report. She explained that the liquidity risk maturity ladder is where assets and liabilities are mapped into "*maturity buckets*" and when liabilities are then deducted from assets across the maturity buckets "*it creates this gap where you can see money due to be received and netted against money that's payable*".

215 Krieg confirmed that it assists in seeing the match between assets and liabilities and that there is a liquidity issue, for example, when the bank has lent out a lot of money long term and brought in a lot of money by way of short-term deposits. Then there is a mismatch which may potentially create liquidity problems. She was asked how having an incorrect disclosure of R702 million worth of funds held on deposit as interbank, when in fact the amounts are in settlement accounts, would impact on the liquidity issue. She testified that by reporting it the way that VBS had, an incorrect impression is created that these are funds held with external banks while in fact they are not.

216 Krieg stressed that her impression at the time was not that there was a deliberate attempt to mislead but rather an incompetent attempt to comply with the reporting obligations. She said that she did not know who submitted



the DI reports on behalf of VBS but that various people, including "*Phophi, Ntokozo, Ronewa*", were responsible for completing the returns. She testified that Mukhodobwane was responsible for the liquidity risk returns, that Ronewa was the contact person for the "*700 series*" and that Truter was the person where "*the buck stopped*".

217 She testified that she requested Truter to deal with unresolved queries but that she was sent from pillar to post and battled to get answers from him.

218 When asked about the telephonic conversation with Malaba that Nduli had testified about and where Malaba apparently told her that he was going to "*sort it out*", she stated that:

"Yes. I definitely had the conversation with Sipho, but I don't recall having it at that point, and on the phone. I don't recall it happening like that. I spoke to Sipho about the suspense accounts when I was talking him through my report, and I do recall mentioning to him that: The audit has been delayed, I'm not getting evidence, and we're going to be late on the deadline. And him saying he would speak to Kafuma to give me whatever they can give me from the audit file..."

219 When asked whether Nduli got this completely wrong, she testified that:

"I think he misunderstood, if we had the conversation, but I know Zondi and I spoke several times, and I know he does like saying things like – his words were like: The client is slack; they're not forthcoming with evidence. So I know he had concerns. I know he couldn't provide me with evidence for the settlement accounts, or the evidence that he gave me from his audit file on, for instance home loans, the totals are so different that it didn't even make sense to go into the detail, because they're so far removed from one another you can't even start reconciling..."

220 Krieg was taken through Nduli's working paper, the ultimate changes he made and his evidence in that regard. She testified that she had never seen Nduli's

working paper before but, having seen it now, she understood his dilemma and his subsequent "*panic*" about cash.

221 She said that she completed the audit reports and annexure A by 31 August 2017 for review by Malaba. Krieg, Malaba and Scheepers had a meeting on 31 August 2017 and they took Malaba through the report and the findings. She testified that:

"Johan did most of the talking. We took Sipho through the findings and made him aware that – well, at one point I recall Sipho saying: Okay Johan, level with me, this is a big regulatory problem. Do we think its just ignorance, or is there a bigger issue? And we then agreed that we thought it was just a competence issue and that we would then launch a product to train the bank".

222 She was asked whether Malaba signed the report on 31 August 2017 and she stated that:

"Well, in that meeting he asked me to leave the reports with him, that he wanted to go through the reports in his own time, in more detail, and that I had to email him the reports. He took the hard copies of the regulatory reports that I had there for him to sign, and I then started asking him: have you completed your review? Please sign the reports, we need to submit – all the way up until 11 October. ... He said that he thought that if the Reserve Bank received a report like this, cold, just being delivered, and they went through it, it would be taken out of context, and he wanted to go with the bank to the Reserve Bank to, what he called "give it a soft landing" and contextualise the issues. So they were delaying the submission of the reports so that they could, in person, explain the findings to the Reserve Bank before I submitted."

223 She testified that, since 31 August, she sent emails and made various calls to Malaba for his signature to the reports but her calls were mostly unanswered and not returned. Scheepers started calling Malaba asking him to sign the reports. She recalls that on at least one occasion Malaba told Scheepers that he would sign the reports but then did not do so. She stated that:

"Eventually, after I went to David Broom. Johan Scheepers was overseas and it was two days before the trilateral, I still didn't have any response from Sipho, and I didn't have signed reports..."

224 The trilateral meeting was scheduled by the Reserve Bank for 13 October 2017 to be held at VBS' premises. Krieg testified that by 11 October she had still not received any response from Malaba nor had he signed the audit reports and accordingly the reports had still not been submitted. Because Scheepers was overseas she approached Broom and informed him that she had significant findings and that she believed the Reserve Bank should see her report before the trilateral meeting but that Malaba had still not signed the reports. Broom later informed her that he and the other risk partner, Tracy Middlemiss, spoke to Malaba and that he said he would sign the reports. Krieg finally received the signed audit reports from Malaba at 15h15 that afternoon and she submitted them to the Reserve Bank at 15h45 on 11 October 2017.

225 At the trilateral meeting on 13 October 2017, which was also attended by Malaba and Munalula, Krieg informed the Registrar's representatives that they had qualified the DI 310, 500, 505 and 510 audit reports and had given emphasis of matter opinions on the DI 100, 110, 200, 300 and 440 reports. She took them through the findings but only at a high level. She left it to the Reserve Bank to discuss with VBS any findings they wanted to discuss in detail, unless they asked her for clarification or more information.

226 Malaba testified that VBS' submitting erroneous DI returns was "*nothing new*" and they had been "*struggling for years*" with the DI returns. He stated that this was due to Truter struggling with the DI returns and that Truter required

greater support. He confirmed that the DI returns for March 2017 had to be significantly amended and resubmitted.

227 He confirmed that the reporting of the VBS Settlement Control Account and the SAMOS account in the DI 100 return as "*interbank*" was incorrect and they should have been reported as "*other assets*".

228 Malaba agreed that the reporting, in the DI 300 return, of R770 866 000 as "*deposits held*" was incorrect as it included the R702 866 000 which ought to have been reported as "*other assets*" and thus should not have been included in deposits. This resulted in the risk profile of VBS changing dramatically.

229 He also agreed that the proposition that the reporting of the settlement accounts in the manner that VBS reported them obfuscated the fact that about R700 million was non-existent.

230 Malaba confirmed that he wanted to give the regulatory audit report a "*soft landing*" in the sense that he wanted to meet with the Reserve Bank first instead of simply e-mailing the reports to them.

231 He recalled that at the Tri-lateral meeting Matodzi was "*flippant about the concerns raised by the Reserve Bank*".

Summation on the submission and auditing of the DI returns

232 Truter and Mukhodobwane were at the center of the fraudulent manipulation of VBS's financial records. To cover up their manipulation they had to make it difficult for the Registrar to obtain a clear picture of VBS' actual risk profile. The misdescription in the DI 100 return of the SAMOS account and the VBS



Settlement Control Account as representing cash on deposit at external banks was deliberately done by them to cover up the massive cash hole in the bank.

233 I find, on their own versions, that Truter and Mukhodobwane committed fraud by submitting the DI 100 return for the month ended 31 March 2017.

234 I have reached the following conclusions in regard to the regulatory audit:

- 234.1 Krieg and Scheepers cannot be criticised for accepting, at face value, the balances disclosed for cash and cash equivalents in the audited financial statements. It was not their task to conduct an audit of what had already been audited.
- 234.2 The regulatory audit revealed numerous irregularities and errors in the way the various DI returns for the month ended 31 March 2017 were prepared. These irregularities and errors certainly did not all arise from any lack of skill on the part of those who prepared the returns.
- 234.3 I have already reached the conclusion that Malaba was aware that there was a cash hole when, on 17 July 2017, he gave his audit opinion in respect of the annual financial statements for the year ended 31 March 2017. He knew that the cash and cash equivalents disclosed in the financial statements were significantly misstated, even though he contends that he did not know the precise amount of the misstatement.
- 234.4 Thus, when Malaba was required to sign the regulatory audit reports that had been prepared by Krieg and Scheepers he knew that, in addition to the errors and irregularities that had been referred to in the reports and

in annexure A, there was a very significant misstatement in the amount that had been disclosed as being held by VBS in bank accounts.

234.5 I accordingly find that Malaba committed fraud by approving and signing the report in terms of Regulation 6(1) in respect of the DI 100 return for the month ended 31 March 2017.

THE EXTENT OF THE LOOTING

235 It was not possible, in the course of the interviews, to obtain a clear picture of the precise amount that has been looted from VBS by its captors. Indeed, that is something that the curator will need to ascertain accurately when he completes a full restatement of VBS' financial position. Nor was I able to ascertain, with precision, the amounts that every participant in the looting received. To a great extent, I have been limited by what the various interviewees confessed to.

236 The forensic accountants have, however, set out in their report a detailed analysis of cash flows which gives a far clearer and more accurate picture of the extent of the looting of VBS.

237 It emerges from the forensic accountants' report that the amount of R1 894 923 674 was gratuitously received from VBS by some fifty three persons of interest, both natural and juristic, over the period 1 March 2015 to 17 June 2018. I specifically refer to Table 8 in Appendix A.

238 Amongst the biggest recipients, directly and indirectly, of these gratuitous payments are:

238.1	Vele and its associates	R936 669 111
238.2	Tshifhiwa Matodzi	R325 896 831
238.3	Free State Development Corporation	R104 130 932
238.4	Kabelo Matsepe	R35 400 105
238.5	Sipho Malaba	R33 978 379
238.6	Phophi Mukhodobwane	R30 572 296
238.7	Paul Makhavu	R30 461 788
238.8	Robert Madzonga	R30 372 282
238.9	Andile Ramavhunga	R28 925 934
238.10	Solly Maposa	R24 441 877
238.11	Ralliom Razwinane	R24 224 198
238.12	Firmanox	R17 748 384
238.13	The Venda king, Toni Mphephu	R17 729 758
238.14	Ndivhuwo Khangale	R16 830 091
238.15	Sechaba Serote	R16 653 458
238.16	Ernest Nesane	R16 646 086
238.17	Brian Shivambu	R16 148 569
238.18	Foxburgh	R15 104 100

238.19	Paul Magula	R14 818 098
238.20	Charl Cilliers	R12 683 947
238.21	Tiisang Private Capital	R12 489 230
238.22	Maanda Manyatshe	R11 279 242
238.23	Sasa Nemabubuni	R9 169 288
238.24	Sabicorp	R8 453 585
238.25	Avashoni Ramikosi	R5 972 288
238.26	Takalani Mmbi	R4 404 178
238.27	Phillip Tshililo	R2 039 990

THE RECOMMENDATIONS

Recommendations regarding criminal proceedings

239 The investigation has revealed a wide range of criminality in the conduct of the affairs of VBS. That is also so in regard to Vele. Indeed, it emerges very clearly that VBS and Vele have been operated as a single criminal enterprise, with Matodzi firmly at the helm.

240 It is imperative that those who have been identified as participating and benefitting from this criminal enterprise be charged and prosecuted.

241 I recommend that:

242 I recommend that the following persons be charged and prosecuted:



241.1 The Prudential Authority takes immediate steps to pursue criminal charges against those that have been identified as being responsible for the cover-up constituted by the publication of the fraudulent audited financial statements for the year ended 31 March 2017, the submission of the fraudulent DI returns for the month ended 31 March 2017 and the fraudulent report in terms of Regulation 6(1) dated 31 August 2017. Those frauds were perpetrated directly on the Registrar of Banks and the complaint is relatively easy to formulate.

241.2 The Prudential Authority, whether alone or together with the curator, takes steps to lay criminal complaints against:

241.2.1 those that have been identified as being the perpetrators of the scheme of theft of funds from VBS;

241.2.2 those who benefitted from the receipt of funds through theft or fraud;
and

241.2.3 those who have committed crimes involving corruption, whether as the maker of bribes or as the recipient of bribes.

242 I recommend that the entirety of this report, including its appendices, be made available to the relevant law enforcement authorities to enable the authorities to further investigate the crimes reported on and to seek the prosecution of the perpetrators.

243 I further recommend that the Prudential Authority inform the South African Revenue Services ("**SARS**") of the multitude of offences and flagrant non-

compliance with tax laws that have been uncovered in the course of this investigation to enable SARS to pursue both criminal charges and tax recovery against the offenders.

Recommendations regarding civil and other proceedings

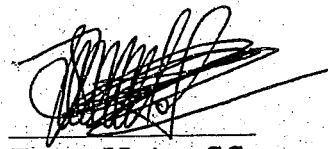
244 I recommend that the Prudential Authority disclose to the curator such parts of the report that it deems appropriate to enable the curator to:

- 244.1 seek the grant of final orders of sequestration against those who have already been provisionally sequestered on the application of the curator;
- 244.2 institute further proceedings for civil recoveries, including sequestration and winding-up proceedings, against those who have benefitted from the thefts and frauds;
- 244.3 seek the intervention of the Asset Forfeiture Unit to preserve and confiscate the proceeds of the crimes that have been committed; and

245 I recommend further that an auditor's liability claim be instituted by the Prudential Authority, the curator and National Treasury against KPMG for recovery of their respective damages.

246 I also recommend that urgent steps be taken to wind-up VBS. It seems clear to me that there is no prospect of saving VBS. It is corrupt and rotten to the core. Indeed, there is hardly a person in its employ in any position of authority who is not, in some way or other, complicit.

247 Finally, as has been noted repeatedly in this report, many of those implicated in the looting of VBS are chartered accountants and some are attorneys. They are not fit and proper persons to fill those offices, which require utmost honesty and integrity. I recommend that the Prudential Authority refers complaints about these persons to the relevant professional bodies having jurisdiction so that steps can be taken to strip them of their status.



Terry Motau SC
Investigator
Johannesburg,
30 September 2018



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA**

CASE NUMBER:

In the matter between:

THE PRUDENTIAL AUTHORITY

Applicant

and

VBS MUTUAL BANK

First Respondent

SIZWENTSALUBAGOBODO GRANT THORNTON (PTY) LTD

(In its capacity as the curator of VBS MUTUAL BANK)

Second Respondent

ANOOSH ROOPLAL N.O.

Third Respondent

THE MINISTER OF FINANCE


Fourth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned

DENZEL EDGAR BOSTANDER

do hereby make oath and state that –



- 1 I am the Head: Financial Conglomerate Supervision Department with the Prudential Authority of the South African Reserve Bank.
- 2 I am duly authorised to depose to this affidavit.
- 3 The facts contained herein are within my personal knowledge and both true and correct.
- 4 By virtue of my position within the Prudential Authority, I have been closely involved in the curatorship of **VBS MUTUAL BANK** ("VBS") and with the investigation conducted into VBS and as addressed in more detail later in this affidavit. As such I am well placed to depose to this affidavit in support of the liquidation of VBS.
- 5 I have read the founding affidavit of **KUBEN NAIDOO** and I confirm the truth and correctness of the contents thereof.



DENZEL EDGAR BOSTANDER

I certify that this affidavit was signed and sworn to before me at Sandton on this the 29th day of OCTOBER 2018, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

Gregory Michael Lowndes
Commissioner of Oaths
Ex Officio Practising Attorney RSA
56 Wierda Road East
Sandton



"FA 7"

IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

Case no: 6326/2018

In the matter between:

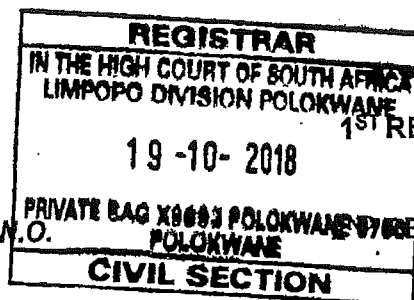
MAHIKENG LOCAL MUNICIPALITY

APPLICANT

and

VBS MUTUAL BANK
(LICENCE NO: 1051)

ANOOSH ROOPLAL N.O.



NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the abovenamed Applicant intends making application in this Honourable Court on Tuesday, 6 November 2018 at 10:00, or as soon thereafter as counsel on behalf of the Applicant can be heard, for an order in the following terms:

1. That this application be adjudicated upon as an urgent application and that the ordinary forms and time periods, otherwise provided for in the Uniform Rules, be dispensed with in terms of Uniform Rule of Court 6(12)(a);
2. That, to the extent necessary, permission and consent is hereby granted to the Applicant, under the provisions of Section 69(6) of the Banks Act, 94 of 1990 ("the Banks Act") to pursue the relief requested in this notice of motion against the First Respondent;

[Handwritten signature]

- 2 -

3. That an order for the final winding-up of the First Respondent be granted;
4. That the costs of this application be costs in the winding-up;
5. Further and/or alternative relief.

BE PLEASED TO TAKE NOTICE that the affidavits of MOOKETSI JACOB MOLAMU, JOHN MARTIN SMALBERGER NEL, WILHELM PIETER SCHÖLTZ and NICKY BOSMAN will be used in support of this application.

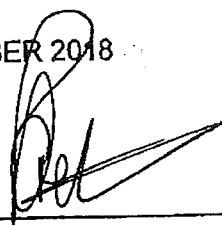
TO: THE RESPONDENTS

Should you intend opposing this application then you are required to file a notice of your intention to oppose, as well as your answering affidavit, on or before Friday, 26 October 2018 at 16:00.

Be informed that, the Applicant then may reply on or before noon on Thursday, 1 November 2018, whereafter the matter would be enrolled for hearing on Tuesday, 6 November 2018 at 10:00.

Kindly enrol the matter accordingly.

SIGNED AT POLOKWANE on the 19 day of OCTOBER 2018



SCHÖLTZ ATTORNEYS
ATTORNEYS FOR THE APPLICANT

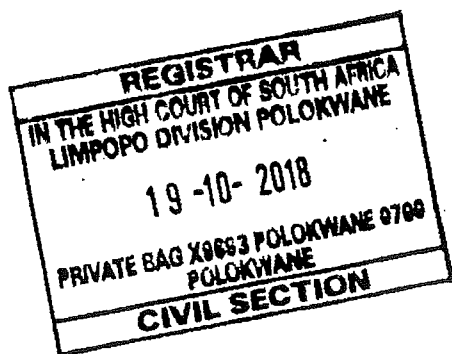
REF: Mr. Schöltz

TEL: 018-293 2822

EMAIL: pventer@timdutoit.co.za

C/O BOSMAN ATTORNEYS

37 VOORTREKKER STREET



- 3 -

POLOKWANE

TEL: 015-291 3863

FAX: 015-291 3907

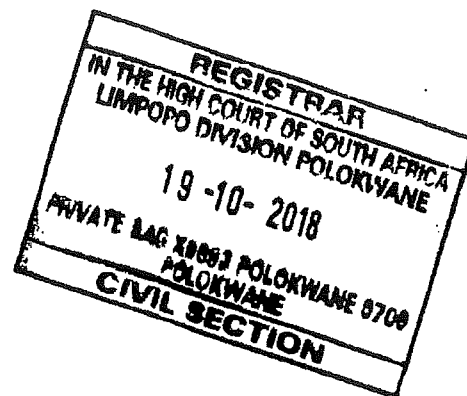
EMAIL: office@bosmanattorneys.com

REF: N BOSMAN

TDTCCO

TO: THE REGISTRAR OF THE HIGH COURT
POLOKWANE

AND TO: THE MASTER OF THE HIGH COURT
HIGH COURT BUILDING, BLOCK B
CNR BODENSTEIN & BICCARD STREET
POLOKWANE



BY HAND

AND TO: SOUTH AFRICAN REVENUE SERVICES
LANDDROS MARÉ STREET
POLOKWANE

BY HAND

AND TO: THE FIRST RESPONDENT
VBS MUTUAL BANK
25 ERASMUS STREET
MAKHADO
LIMPOPO PROVINCE

BY SHERIFF

- 4 -

AND TO: ANY EMPLOYEES/TRADE UNIONS
OF THE FIRST RESPONDENT
VBS MUTUAL BANK
25 ERASMUS STREET
MAKHADO
LIMPOPO PROVINCE

BY SHERIFF

AND TO: THE FIRST RESPONDENT
VBS MUTUAL BANK
SHOP 2, MOORE CENTRE
MAKHADO
LIMPOPO PROVINCE

BY SHERIFF

AND TO: ANY EMPLOYEES/TRADE UNIONS
OF THE FIRST RESPONDENT
VBS MUTUAL BANK
SHOP 2, MOORE CENTRE
MAKHADO
LIMPOPO PROVINCE

BY SHERIFF

AND TO: THE FIRST RESPONDENT
VBS MUTUAL BANK
AT ITS CORPORATE OFFICE
82 WESSELS ROAD
METROPOLITAN OFFICE PARK
BLOCK G
FIRST FLOOR
RIVONIA
GAUTENG PROVINCE

BY SHERIFF



AND TO: ANY EMPLOYEES/TRADE UNIONS
OF THE FIRST RESPONDENT
VBS MUTUAL BANK
AT ITS CORPORATE OFFICE
82 WESSELS ROAD
METROPOLITAN OFFICE PARK
BLOCK G
FIRST FLOOR
RIVONIA
GAUTENG PROVINCE

BY SHERIFF

AND TO: THE SECOND RESPONDENT
A ROOPLAL N.O.
20 MORRIS STREET,
WOODMEAD,
JOHANNESBURG,
GAUTENG.

PER SHERIFF

AND TO: THE SECOND RESPONDENT
A ROOPLAL N.O.
C/O WERKSMANS ATTORNEYS
REF: J STOCKWELL
EMAIL: jstockwell@werksmans.com

VIA EMAIL

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AND TO: THE REGISTRAR OF BANKS
C/O THE SOUTH AFRICAN RESERVE BANK
370 HELEN JOSEPH STREET
PRETORIA
GAUTENG

BY HAND

AND TO: THE PRUDENTIAL AUTHORITY
C/O THE SOUTH AFRICAN RESERVE BANK
370 HELEN JOSEPH STREET
PRETORIA
GAUTENG

BY HAND



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

Case no:

In the matter between:

MAHIKENG LOCAL MUNICIPALITY

APPLICANT

and

**VBS MUTUAL BANK
(LICENCE NO: 1051)**

1ST RESPONDENT

ANOOSH ROOPLAL N.O.

2ND RESPONDENT

FOUNDING AFFIDAVIT

I, the undersigned,

MOOKETSI JACOB MOLAMU

(ID: 670624 5692 088)

do hereby declare under oath and state as follows:

THE DEPONENT:

1.

- 1.1. I am a major male and the current Acting Municipal Manager of the Mahikeng Local Municipality (herein after "the Applicant"), a local Municipality and legal entity with full legal capacity, with reference to what is stated in Section 2 of the *Local Government: Municipal Systems Act*, Act 32 of 2000 (herein after "the Systems Act"), read with the provisions of Chapter 7 of the *Constitution of the Republic of*

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South Africa, Act 108 of 1996 (herein after "the Constitution"), and Sections 9(f) and 12, read with Section 14 of the *Local Government: Municipal Structures Act*, Act 117 of 1998 (herein after "the Structures Act"), with the address of its main offices situated at Cnr University Drive and Hector Peterson Road, Mmabatho, 2745, Private Bag X63, Mmabatho, 2735, with Telephone number: (018) 381 – 0111 and Facsimile number: (018) 384 – 8430;

- 1.2. I was duly appointed in this capacity, on 30 August 2018, in terms of Section 54A(1)(b) of the Systems Act, by virtue of Council Resolution No.: A. :97/08/2018. A true copy of this Resolution is annexed hereto, marked as **Annexure "A1"**;
- 1.3. I took office on 30 August 2018 and have since then been conducting my official duties / functions and exercising my statutory and delegated powers at the Applicant's main offices, situated Cnr University Drive and Hector Peterson Road, Mmabatho, 2745, Private Bag X63, Mmabatho, 2735, with Telephone number: (018) 381 – 0111 and Facsimile number: (018) 384 – 8430;
- 1.4. As the Applicant's Acting Municipal Manager, I am duly authorised to depose to this affidavit, and to bring the current proceedings. The facts contained herein fall within my personal knowledge and are evident from the records of the Applicant, unless the contrary is stated or appears from the context, and are both true and correct. I attach hereto, marked as **Annexure "A2"**, an affidavit by the Applicant's Executive Mayor, Ms. Khutsafalo Betty Diakanyo (herein after "the Executive Mayor"), in confirmation of the aforementioned;
- 1.5. By virtue of my appointment with the Applicant I attend to the administration of, *inter alia*, the financial matters of the Applicant. In that capacity I have been involved in the attempts to deal with and recover funds owed to the Applicant by the 1st Respondent. I have access to all the Applicant's documents relating to the subject. Those

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documents are in my possession and under my control, unless otherwise indicated.

- 1.6. As I shall demonstrate later, not all the allegations which I depose to in this affidavit fall within my own knowledge. However, where I rely upon information provided to me by others, I shall do so upon the strength of their confirmatory affidavits which will be attached to this affidavit as annexures.
- 1.7. Furthermore, I shall also rely upon information and/or evidence that may constitute hearsay evidence. I have however been advised that it is a sound and trite principle that, in urgent applications, the Court adjudicates upon matters with a degree of latitude, and that that includes the principle that a Court will accommodate and lean towards the admission of hearsay evidence. Therefore, to the extent necessary, I request the above Honourable Court to allow me to rely on hearsay evidence, which in essence relates to a very important and damning report about the 1st Respondent, authored by a highly respected senior counsel of the Johannesburg Bar, Adv Terry Motau SC. In this regard, I have been advised that, normally, a Court would be reluctant to simply have regard to allegations contained in a report, especially lengthy reports, particularly in the absence of a confirmatory affidavit by the author of the report. However, under the principle which I have articulated earlier, I respectfully submit that there are compelling reasons in this particular matter to allow the hearsay evidence, and in that context, with reference to the Motau report, I shall rely upon the following facts and/or circumstances for the request to rely upon the observations made, recommendations made and findings arrived at in the particular report:
- 1.7.1. I submit that the author is a highly respected and competent jurist, with good skill and the ability, as a trained lawyer, to forensically assess accurate facts from inaccurate facts.

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- 1.7.2. It appears clearly from the report that the bulk of what is contained therein emanates directly from admissions and concessions made by those with whom the learned advocate had interactions and deliberations. Therefore, the bulk of the report is not so much an opinion of the author, but merely a recordal in writing by a respected jurist, of what others had admitted to before him.
- 1.7.3. Given the extreme urgency with which this matter has to be brought, it is impossible to procure confirmatory affidavits of those who have assisted the learned advocate in procuring the report, and as far as Adv Motau SC himself is concerned, I have been advised that as a general principle advocates are by their internal rules of the Bar Council strictly prohibited from deposing to confirmatory affidavits or affidavits, without having first procured Bar Council permission.
- 1.7.4. Adv Motau SC had the benefit of being assisted by a reputable firm of attorneys, Werksmans Attorneys, of Sandton in Johannesburg and apart from them, also by a team of forensic accountants.
- 1.7.5. Furthermore, the matters contained in the Motau report upon which I rely, are also to a large extent corroborated by the investigation conducted by the Applicant's attorneys of record in Potchefstroom, and have furthermore been publically ventilated. The shocking state of affairs relating to the 1st Respondent has become a matter of public knowledge and there are already very extensive reports in the press, both on television and in the printed media, relating to the misconduct, fraud, mismanagement and reckless trading that led to the downfall of the 1st Respondent.
- 1.7.6. Therefore, there is corroboration in abundance for what is contained in the Motau report.

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THE PARTIES:

2.



The Applicant

2.1. The Applicant is the **MAHIKENG LOCAL MUNICIPALITY**, a local Municipality and legal entity with full legal capacity, with reference to what is stated in Section 2 of the Systems Act, read with the provisions of Chapter 7 of the Constitution and Sections 9(f) and 12, read with Section 14 of the Structures Act, with the address of its main offices situated at Cnr University Drive and Hector Peterson Road, Mmabatho, 2745, Private Bag X63, Mmabatho, 2735, with Telephone number: (018) 381 – 0111 and Facsimile number: (018) 384 – 8430, **CARE OF SCHÖLTZ ATTORNEYS** 55 James Moroka Avenue, Stadsentrum, Suite 5, Potchefstroom, with postal address P.O. Box 6025, Bailliepark, 2526, telephone number (018) 293 – 2822 and facsimile number (018) 293 – 2847 and email: cisca@scholtzattorneys.co.za;

The Respondents

2.2. The 1st Respondent is **VBS MUTUAL BANK**, registered in terms of the *Mutual Banks Act*, Act 124 of 1993 (herein after "the Mutual Banks Act"), with its head office situated at 25 Erasmus Street, Makhado, Limpopo Province and / or its principal place of business at Shop 2, Moore Centrum, Louis Trichardt, Limpopo Province, postal address at P.O. Box 4556, Louis Trichardt, 0920, with Telephone number: (015) 516 – 0359 and Facsimile number: (015) 516 2112;

2.3. The 1st Respondent is presently under curatorship in terms of an appointment made in terms of Section 81 of the Mutual Banks Act, read with Section 69(1) (a) of the *Banks Act* 94 of 1990 (herein after "the Banks Act");

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- 2.4. The 2nd Respondent is **ANOOSH ROOPLAL N.O.**, an adult male, herein cited in his capacity as the representative of SizweNtsalubo-Gobodo Incorporated. The 2nd Respondent is a director of SizweNtsalubaGobodo Incorporated, a firm of auditors with offices situated at 20 Morris Street East, Woodmead, 2191, with Telephone number: (011) 231- 0600, Facsimile number: (011) 234 - 0933, his full and further details unknown to me;
- 2.5. A true copy of the 2nd Respondent's letter of appointment in the said capacity is attached hereto, marked as **Annexure "A3"**;
- 2.6. No order is sought against the 2nd Respondent unless the 2nd Respondent unsuccessfully opposes this application, in which event a costs order shall be sought against him.

JURISDICTION:

3.

- 3.1. This is an application for the winding-up of the 1st Respondent as contemplated in Section 75 of the Mutual Banks Act. It is submitted that the above Honourable Court has jurisdiction to adjudicate and dispose of this matter as a result of the fact that the 1st Respondent operated or operates as a mutual bank within the geographical jurisdictional area of the above Honourable Court;
- 3.2. It has or had three branches, respectively located in Thohoyandou, Sibasa and Makhado. Its head office is or was located in Makhado, which falls within the jurisdictional area of the above Honourable Court. I aver that its principal place of business is consequently situated in Makhado within the geographical jurisdictional area of the above Honourable Court.

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PURPOSE OF THIS APPLICATION:

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4.1. I confirm that this is an application for the winding-up of the 1st Respondent. The Applicant is of the opinion that the 1st Respondent should be wound-up for the following reason:

4.1.1. it being unable to pay its debts; and

4.1.2. It being just and equitable to do so.

4.2. The aforementioned grounds for winding-up, are the well known grounds applicable to the winding-up of companies, as contained in Chapter 14 of the now partially repealed Companies Act, 61 of 1973. I submit that these grounds for winding-up have been incorporated in Section 75(1) of the Mutual Banks Act, which I quote as follows for the convenience of this Honourable Court:

"75. Winding-up by court:

(1) Subject to the provisions of this section, the provisions of the Companies Act relating to the winding-up of companies by the court shall mutatis mutandis apply to every mutual bank."

4.3. Section 75(2) provides that an order for the winding-up of a mutual bank may be granted by the Court on the application of any creditor. As stated herein the Applicant is a major and undisputed creditor of the 1st Respondent.

4.4. Furthermore, by virtue of Section 75(4) of the Mutual Banks Act, an order for the winding-up of a mutual bank by the Court shall not be made unless the Court is satisfied *"that it is not desirable that the mutual bank be placed under judicial management"*.

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- 4.5. There is, however, no longer in the South African law a concept such as judicial management, and I respectfully submit that on a proper interpretation, the reference must now be to the substitute for judicial management which, in effect, is business rescue proceedings, as contemplated in the new Companies Act, 71 of 2008.
- 4.6. On that premise, I submit that a winding-up is to be preferred over a potential business rescue, and in this regard I refer to the following facts and/or circumstances:
- 4.6.1. There is no competing application for business rescue by any one who may have had *locus standi*, and the fact that no one has resorted to bringing business rescue proceedings in respect of the 1st Respondent speaks for itself.
- 4.6.2. It is only by applying the law relating to insolvency, and more particularly the very effective powers of investigation, and impeachment of voidable dispositions, that can result in a benefit for creditors and the members of the 1st Respondent. Given the gargantuan fraud perpetrated in relation to the 1st Respondent, there is a crucial need for liquidators to urgently embark upon a thorough investigation. That liquidators can do adequately by the machinery relating to the law of insolvency, in particular the enquiry mechanisms, whereby even recalcitrant witnesses can under compulsion of law be forced to give evidence within a matter of days. A quick investigation is what is required.
- 4.6.3. Although there are provisions in the Mutual Banks Act, suggesting that, in the instance of dispositions, a curator may apply the disposition provisions of the law relating to insolvency, that process is not as effective as a full blown liquidation, because the institution of impeachment proceedings is simplified in the law relating to insolvency as a result of the effective prior compulsive enquiry which liquidators can do, which coincidentally has not been bestowed upon a curator of a bank under curatorship.

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- 4.6.4. Furthermore, the Courts have held that the fact that a business rescue practitioner's fees are not structured and governed and clearly outlined, as provided for insofar as a liquidator, is a further factor why a Court ought to lean towards liquidation as opposed to business rescue.
- 4.6.5. I submit with the greatest of respect that it is rather preposterous for anyone to propose a business rescue in the prevailing circumstances. In this regard I have been advised that there are primary and secondary objects in a business rescue. None of those objects can be achieved in the present matter.
- 4.6.6. The primary object would be to return the 1st Respondent to its operative business. I respectfully submit that the public harm suffered by the 1st Respondent, and the lack of faith which the general public now already has in the 1st Respondent, will result in no right thinking depositor investing his funds in a deposit bearing account with the 1st Respondent. These deposits are critically necessary for the ordinary running of the business of a bank. Furthermore, no other institution would have the appetite to throw a financial lifeline for the 1st Respondent.
- 4.6.7. The secondary object would be that through a business rescue a better dividend would be yielded for creditors as opposed to a winding-up. However, as I shall demonstrate soon, the bulk of the potential recoveries for creditors lies in the effective pursuance of enforcement proceedings, and impeachment proceedings, against the culprits who had embarked upon what was described in the Motau report as the biggest bank heist ever. If compared to the rather pale and incompetent powers of a business rescue practitioner, as far as misconduct is concerned, the option of a business rescue pales into insignificance. In a business rescue the only remedy available, when it comes to wrongdoing, is to report that wrongdoing to the management of the business. This I have

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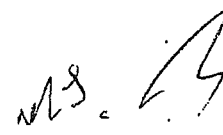

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been advised is contained in Section 141 of the new Companies Act, 71 of 2008, which prescribes, if a practitioner concludes that there is evidence in the dealings of a company of voidable transactions or a failure by the company to perform obligations, or reckless trading, then the business rescue practitioner must direct the management to take the necessary steps to rectify the matter (see Section 141(2)(c)). Here the very management was the cause of the predicament.

- 4.6.8. The fact that an entity has become embroiled in a litany of pending court cases militates against business rescue. This is the case here.
- 4.6.9. Having regard to the provisions of the new Companies Act relating to business rescue and supervision, those proceedings, once commenced, are open ended and could probably include further court applications, which may drag the matter out for a considerable period of time. This would be even more so if there are parties involved who are seeking to obstruct the creditors.
- 4.6.10. Liquidators would be far better equipped to deal with the fact that the 1st Respondent has become a rudderless ship, and the liquidators will be in a better position to negotiate severance packages with employees which would not be to the prejudice of the general body of creditors and concurrent creditors such as the Applicant.

THE DEBTS DUE TO THE APPLICANT:

5.

- 5.1. The Applicant is a creditor of the 1st Respondent;
- 5.2. The 1st Respondent is indebted to the Applicant in an amount of at least R84,975,493.03 plus interest on the said amount at a rate of 3.05% per annum, calculated daily on the outstanding balance and
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capitalized monthly in arrears as of 29 May 2018 to date of payment, both days included;

- 5.3. A true copy of the latest Investment Certificate in the Applicant's possession, as issued by the 1st Respondent on 29 May 2018, evidencing the aforementioned, is attached hereto and marked as **Annexure "A4"**;
- 5.4. The aforesaid amount is the capital and interest of amounts deposited by the Applicant into an account under control of the First Respondent, on or about the following days and in the following amounts:
- 5.4.1. 3 August 2017 – R10,000,000.00 (Ten Million Rand);
- 5.4.2. 5 October 2017 – R4,000,000.00 (Four Million Rand);
- 5.4.3. 9 November 2017 – R15,000,000.00 (Fifteen Million Rand);
- 5.4.4. 6 December 2017 – R60,191,000.00 (Sixty Million, One Hundred and Ninety One Thousand Rand).
- 5.5. The following withdrawal was made by the Applicant and honoured by the 1st Respondent:
- 5.5.1. 20 September 2017 – R7,000,000.00 (Seven Million Rand).
- 5.6. The Applicant's Municipal Manager, Mr. Thabo Isaac Mokwena (herein after "Mokwena") was convinced to make this investment with the 1st Respondent pursuant to a strategic planning session which the Applicant held from 13 to 17 March 2017 at the Bona Bona Game Lodge situated between Klerksdorp and Wolmaransstad. It is my understanding that the 1st Respondent was invited to do a presentation of its model of banking facilities, cash management and investment at the strategic planning session. ~~Although I was not present,~~ ^{MS} the aforementioned is evident from a report which Mokwena presented to Council during June 2018 in relation to the Applicant's investment with the 1st Respondent;
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5.7. I must mention that the Applicant's Council has, in the interim, resolved to:

5.7.1. Suspend Mokwena in terms of a Resolution taken on 30 August 2018. His suspension came as a consequence of serious allegations of financial misconduct which relate to, *inter alia*, the investment with the 1st Respondent;

5.7.2. Institute disciplinary proceedings against Mokwena, in terms of a Resolution taken on 4 October 2018. Some of the charges to be levelled against Mokwena will also relate to the investment with the 1st Respondent.

5.8. The investment with the 1st Respondent was to be repaid to the Applicant on request. According to the Applicant's records, the following requests were made and were not honoured by the 1st Respondent:

5.8.1. On 28 November 2017 an amount of R15,000,000.00 (Fifteen Million Rand);

5.8.2. On 8 December 2017 an amount of R60,191,000.00 (Sixty Million, One Hundred and Ninety One Thousand Rand);

5.8.3. On 27 February 2018 an amount of R10,000,000.00 (Ten Million Rand).

5.9. The aforementioned is evident from correspondence addressed by Mokwena to the 2nd Respondent on 9 April 2018, in terms of which Mokwena requested an immediate withdrawal of the Applicant's full investment. A true copy of the said correspondence is attached hereto, marked as **Annexure "A5"**;

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- 5.10. The Applicant was not overly concerned to invest funds with the 1st Respondent. The Applicant was informed of the profile of the 1st Respondent and accepted the 1st Respondent to be a bank registered and regulated by the South African Reserve Bank under licence. The aforementioned made the Applicant at ease and moved it to invest its funds;
- 5.11. The detail of what the 1st Respondent presented to the Applicant was, for all practical purposes, that which is evident from an introductory document that the Applicant's attorney also sourced from the internet. A copy of the aforementioned document is attached hereto and marked as **Annexure "A6"**;
- 5.12. The Applicant's belief has however drastically changed during the past few days, *inter alia*, as a consequence of an interim disciplinary investigation report compiled by the Applicant's attorneys. The crux thereof conformed to the Forensic Investigation Report into the affairs of the 1st Respondent, which was rendered to the Prudential Authority by Adv. Terry Motau SC, a member of the Johannesburg Bar;
- 5.13. The disciplinary investigation by the Applicant's attorneys commenced during the beginning of September 2018 and an interim report was presented to the Applicant's Council on 4 October 2018. The report, with reference to the allegations pertaining to the investment with the 1st Respondent, highlighted the following:
- 5.13.1. That Mokwena made a material misrepresentation of facts and also misled Council insofar as the investments made with the 1st Respondent are concerned;
- 5.13.2. The investments with the 1st Respondent were in contravention of Regulation 6 of the *Local Government: Municipal Investments Regulations*, as the 1st Respondent is not registered in terms of the Banks Act;
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- 5.13.3. Mokwena's conduct in relation to the investment was in contravention of Regulation 5, as there was clearly a lack of acceptable standard of care applied;
- 5.13.4. The investments were also in contravention of the Applicant's Cash Management and Investments Policy, as approved by Council in terms of Resolution No.: A: 96/06/2018.
- 5.14. The interim disciplinary investigation report was followed by the forensic investigation report by Adv. Terry Motau SC, which was in pursuance of Adv. Motau's appointment as an investigator, in terms of Section 134 of the *Financial Sector Regulations Act*, Act 9 of 2017, by the Deputy Governor of the South Africa Reserve Bank and Chief Executive Officer of the Prudential Authority, Mr. Kubin Naldoo;
- 5.15. I do not intend to restate the relevant part(s) of the forensic investigation report and the findings in relation thereto, as I am aware that the same has in the interim been made public.

APPLICANT'S SECURITY:

6.

The Applicant does not hold any form of security for the repayment of the aforementioned amount.

HISTORY AND BACKGROUND:

7.

- 7.1. In this application I limit the history and background to the absolute bare minimum. The history and known facts pertaining to the investment, Mokwena's involvement and the facts which ultimately resulted in this application, have already been recorded under paragraph 5 herein above;

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- 7.2. I will therefore, and herein below, briefly depict the background of this matter, within the Applicant's knowledge, in respect of the 1st Respondent's status;
- 7.3. During March 2018 the Applicant was informed of what was stated at a press conference held by the Governor of the South African Reserve Bank, Mr. Lesetja Kganyago;
- 7.4. At the time the Applicant took note of the fact that the 1st Respondent was allegedly experiencing some liquidity challenges and that a curator was appointed by the Reserve Bank to attend to the challenges and to rectify the problem;
- 7.5. The Applicant did not consider the matter to be urgent at the time and it did not take immediate action, as it was under the impression that there would be no risk to its investment and that the challenges would be managed and overcome by the curator, with the assistance of the South African Reserve Bank;
- 7.6. Subsequently, the Applicant was provided with a copy of the press release issued in respect of the said press conference. A true copy thereof is attached hereto and marked as **Annexure "A7"**. I refer to the content thereof in as much as it may be necessary;
- 7.7. During March 2018 the Applicant was also alerted to a further letter directed by the Curatorship team, detailing and informing the public of what has transpired and the fact that the 1st Respondent was not being closed down and the limitation on withdrawals. It also stated that deposits by municipalities were "effectively frozen" without the option of withdrawal and / or interest to be paid out. A true copy of this letter, dated 19 March 2018, is attached hereto and marked as **Annexure "A8"**;
- 7.8. During the period between March 2018 and until very recently, the Applicant remained under the impression that matters would be taken

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care of by the curator. At some stage the Applicant took note, once again through the media, that the curator was taking legal action against Vele Investments (Pty) Limited, a shareholder of the 1st Respondent, and some of the officials in the employment of the 1st Respondent due to improper conduct by this entity and the individuals who unlawfully enriched themselves with funds that emanated from the 1st Respondent;

- 7.9. Once again, having taken note of these actions, the Applicant remained under the impression that the curator was in charge of matters and that the curator has taken action to recover and recoup losses which emanated from dishonest conduct to the benefit of the creditors of the 1st Respondent. The Applicant also took note of the fact that a forensic investigation was commissioned and that well-known and respected lawyers were appointed to deal with that investigation;
- 7.10. During July 2018, the Applicant was made aware of the fact that the curators, with the assistance of National Treasury, came to the rescue of some of the depositors;
- 7.11. The same benefits were however not available to other creditors. It was in particular not available to the Applicant. A true copy of a letter directed to customers, dated 9 July 2018, detailing this development, is attached hereto and marked as **Annexure "A9"**;
- 7.12. It was only recently that the Applicant was informed that a report (the Motau report) has been issued by Adv. Terry Motau SC and the attorneys assisting him, Werksmans of Johannesburg. From this report the extent of the 1st Respondent's challenges came to the Applicant's attention. The results of the report were also widely published in the media. I attach hereto, marked as **Annexure "A10"** a copy of the report, without annexures, which the Applicant's legal representatives sourced from the Internet;

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- 7.13. The content of this report can be summarized to confirm that there has been fraudulent activities and theft of epic proportions at the 1st Respondent, perpetrated by its directors, management and employees. It would seem from the report that they were ably assisted by lawyers, auditors and other parties, to such an extent that the report identifies that approximately two billion rand has been lost and stolen by more than 50 persons of interest, in the period between March 2015 to June 2018. I refer in this regard to the content of clause 237 of the Motau report already attached hereto;
- 7.14. What is of critical importance is that, from this report, it seems that the theft and looting continued beyond the appointment of the curator during March 2018. There is probably no guarantee that it is not continuing at this stage as well;
- 7.15. Apart from other recommendations, the Motau report recommends that urgent steps be taken to wind-up the 1st Respondent. He comes to the conclusion that there is no prospect of saving the 1st Respondent. He furthermore concludes that the 1st Respondent is corrupt and rotten to the core. He further states that there is hardly a person in the employment of the 1st Respondent in any position of authority who is not, in some one or other way, complicit in what has transpired at the 1st Respondent;
- 7.16. I have dealt with Mokwena's actions and the fact that it became apparent to the Applicant, during a Council meeting held on 8 October 2018, that Mokwena, in all probabilities, wilfully misled the Applicant in relation to his dealings with the 1st Respondent and the investments made. One of these investments, amounting to R60,191,000.00 (Sixty Million, One Hundred and Ninety One Thousand Rand), which was deposited on 6 December 2017, was in fact a payment which the Applicant received from Treasury, having been erroneously made. It was a duplicate payment in respect of the Applicant's equitable share. All evidence, with reference to the interim disciplinary investigation report by Schöltz Attorneys, points thereto that Mokwena was aware

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of the erroneous payment. The ramifications and prejudice in relation to the aforementioned should be self-evident. The Applicant is now in fact indebted to Treasury in the amount of R60,191,000.00 (Sixty Million, One Hundred and Ninety One Thousand Rand) in relation to this duplicate payment. This in itself has dire consequences insofar as the Applicant's constitutional obligations to render basic services to its community.

THE RESPONDENT IS UNABLE TO PAY ITS DEBTS:

8.

- 8.1. I state that it is clear from the abovementioned statements that the 1st Respondent is unable to pay its debts. It is required to repay the debts owed to the Applicant. That obligation arose during or about November 2017. It has not paid its debts and in the circumstances referred to in the report attached hereto, the Applicant has come to the conclusion that this situation will not improve;
- 8.2. The Applicant stands to lose a substantial amount of money with little prospect that it will be recovered from the 1st Respondent. It further seems that the liquidity which the 1st Respondent faces were in actual fact not a problem of a short term nature;
- 8.3. It is clear from the report that no reliance can be placed on the financial statements of the 1st Respondent, which became available in recent years. There is a need for a total restatement of the financial position of the 1st Respondent. The Applicant has come to the conclusion that the 1st Respondent, apart from being commercially insolvent, is probably also factually insolvent, having regard of the extent of the shortfall identified in the report.
- 8.4. The Motau report, at different levels, confirms the 1st Respondent's inability to pay its debts, and also its factual insolvency. On page 10 of that report the statement is made that the 1st Respondent is factually insolvent and that its liabilities exceed its assets to the tune of

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R180 million. Then, on pages 22, 50 and 75 there are statements made to the effect that, prior to the receipt by the 1st Respondent of a magnitude of deposits towards 2016, the 1st Respondent had only shown a fairly modest income. In addition, the profit margins were relatively narrow. Then came a flood of deposits which were unfortunately to a large extent misappropriated and/or mismanaged. So given and on the overall analysis of the 1st Respondent, with reference to how it traded, there is no prospect whatsoever that the 1st Respondent will be in a position to trade itself out of its financial predicaments.

IT IS JUST AND EQUITABLE FOR THE RESPONDENT TO BE WOUND-

UP:

9.

- 9.1. It is clear that the 1st Respondent has lost its substratum. It cannot and does not function in the manner which a mutual bank is required to function. This much is clear from the Motau report;
- 9.2. It has further, since the curatorship commenced, not taken any deposits from the public and / or depositors. It is not trading in the normal sense anymore. This has been confirmed to one of the Applicant's lawyers, Mr. Jacques Nel, by Mr. Jonathan Stockdale from the attorneys firm, Werksman, assisting the curator;
- 9.3. The 1st Respondent could further not manage its own affairs to repay its creditors and the depositors when it had the obligation to do so. As a result of the implosion of its trading activities, and probably for other reasons as well, the curator had to make arrangements with the Reserve Bank to have certain deposits transferred to other banks under some sort of a guarantee from the Reserve Bank;
- 9.4. I already attached hereto as **Annexures "A8" and "A9"**, letters detailing certain interim arrangements ostensibly directed towards alleviating the then perceived challenges the 1st Respondent faced;

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- 9.5. I have, however, been informed that these arrangements translate to a preference of some creditors in favour of other creditors, with particular reference to the so called "Municipal Deposits", including the amounts owed to the Applicant.
- 9.6. I have been advised that the just and equitable ground for winding-up is a broad equitable base for affording the Court the power to liquidate and that, over the decades, certain features have been recognised as constituting grounds for liquidation on this basis. Such recognised grounds, which find application in this matter, are the grounds that, firstly, the substratum of the 1st Respondent has disappeared, and secondly, that there appears to be fraud in the conducting of the affairs of the 1st Respondent.
- 9.7. I therefore respectfully submit that there exist multiple cogent grounds for the winding-up of the 1st Respondent. In fact, a compelling case for its winding-up had been made out.

SECTION 69(6) OF THE BANKS ACT:

10.

- 10.1. The Applicant has been advised that it is necessary for it, whilst the 1st Respondent remains under curatorship, to obtain the leave of the above Honourable Court to institute legal proceedings and *in casu* this application. The Applicant is of the opinion that leave should be considered in conjunction with the merits of the application to be instituted;
- 10.2. The Applicant submits that a proper case has been made out for the relief otherwise requested in the notice of motion accompanying this affidavit. The Applicant therefore respectfully submits that this is a matter where the Court should exercise its discretion in favour of the Applicant and allow relief to the Applicant to pursue this application.

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- 10.3. I have been advised that, at least in the context of prescription, and in the context of the National Credit Act, it has been held that the purpose of an application of this nature is to bring about a *concursum creditorum*, and that the purpose of an application such as this is not a proceeding for the recovery of a debt. Therefore, there may very well be an argument to be made that an application of this nature is not hit by the prohibition against enforcement proceedings as stipulated in Section 69(6) of the Banks Act. To the extent that this Honourable Court may find that an application of this nature is also included in the kind of relief for which one must procure the court's permission in order to pursue against a bank under curatorship, then I respectfully submit that a compelling case is made out for the granting of such relief.
- 10.4. To do otherwise would be effectively to further stimulate the problems which have already arisen, and which require urgent investigation. Furthermore, it was surely not the intention of the legislature, so I have been advised, that given the facts and circumstances of this particular matter, that an application of this nature ought not to be entertained.
- 10.5. In the context of a curatorship I have been advised that the true purpose behind such a methodology was to avoid what was generally referred to as "a run on the bank". Therefore, the overall purpose of the prohibition is to avoid certain creditors from approaching the bank with repayment requests or some creditors to act quickly to get a judgment in order to procure payment, whereas the rest of the uninformed or perhaps not so enthusiastic creditors remain behind. However, by the very nature of this application there is brought about a general *concursum creditorum* which would be to the advantage of all creditors and not only a single one.
- 10.6. In addition I have been advised that it is not necessary to bring a separate application first in order to procure such consent and to thereafter bring only an application of this nature. Proper legal argu-

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ment will be presented to the Court at the hearing of this matter, should the Court require such argument.

SECURITY:

11.

The Applicant instructed its attorney to set security as is required in law. A separate affidavit is attached to the notice of motion, together with this affidavit, confirming that security was set.

FURTHER SUPPORTING AFFIDAVITS:

12.

In support of some of the statements as is set out herein I attach hereto affidavits by:

12.1. John Martin Smalberger Nel, an attorney in Pretoria assisting the Applicant's attorneys with this application, marked as **Annexure "A10"**;

12.2. Wilhelm Pieter Schöltz, an attorney in Potchefstroom at the firm Schöltz Attorneys, the Applicant's attorneys of record, marked as **Annexure "A11"**.

SERVICE:

13.

This application will be served in the following manner:

13.1. at the principal place of business of the 1st Respondent at its head office in Makhado;

13.2. at the corporate office of the 1st Respondent in Rivonia, Johannesburg;

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- 13.3. on the 2nd Respondent at his address situated at 20 Morris Street, Woodmead, Johannesburg, Gauteng.
- 13.4. at the offices of the South African Revenue Services;
- 13.5. at the Master of the above Honourable Court;
- 13.6. at the Registrar of Banks;
- 13.7. on the employees of the 1st Respondent. The Applicant remains under the impression that the 1st Respondent has not ceased to trade despite the fact that it does not take deposits from the public and despite the fact that withdrawals are now managed by a third party. The Applicant is uncertain what the fate of employees was / will be. The Applicant nevertheless believes that any possible employees of the 1st Respondent will take note of this application if this application is served at the 1st Respondent's head office and Corporate Office. The Applicant does not have any knowledge as to whether those employees may be members of a trade union or not. Once this application is served, better particularity will be procured regarding employees.
- 13.8. The Prudential Authority.

URGENCY:

14.

I have been advised and respectfully submit that this application is urgent, that the Applicant will be unable to obtain redress at a hearing in due course and that the Applicant's failure to comply with the Honourable Court's rules in respect of notice, service and process should be condoned and that this application should be heard as one of urgency, in terms of rule 6(12), for the following reasons:

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- 14.1. I submit that an application of this nature is, for commercial reasons, ordinarily perceived to be urgent. The state of affairs referred to above, in particular in the Motau report, supports such a view;
- 14.2. the investigating team that worked on the Motau report has, after extensive investigations and findings, come to the conclusion that it is urgent for the 1st Respondent to be wound up;
- 14.3. despite the fact that the report has been available since 30 September 2018 it appears that no steps have been taken by the curator to wind up the 1st Respondent. It is therefore necessary for other parties and in this instance the Applicant as a creditor, to pursue such an application;
- 14.4. from media reports it is clear that the attempts by the curator to take action against perpetrators are being frustrated by the process of normal litigation. The Applicant understands from press reports that Vele Investments (Pty) Limited has been finally wound-up, but that it is now in the process of appealing such order;
- 14.5. the Applicant further understands that the other parties against whom sequestration applications were launched are also now opposing those applications. It will take years for those applications to be finalized in the event that they are defended with the purpose to frustrate;
- 14.6. in the event that the 1st Respondent is wound-up the liquidators will have the added mechanisms of the Insolvency Law to their disposal in order to expeditiously investigate matters, in particular the theft of monies from the 1st Respondent;
- 14.7. any further delay in winding up the 1st Respondent and taking action against the more than 50 perpetrators of fraud and theft will have the result that funds and assets may be dissipated by such perpetrators to the detriment of the collection thereof on behalf of the 1st Respondent;

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- 14.8. the expenses related to conducting the 1st Respondent's affairs under curatorship will come to an end and will be paid by creditors having an interest therein, as is contemplated in the Insolvency Law, as opposed to the present situation where some creditors are paid, others not and the expenses of the entity itself are not shared *pro rata* or by the creditors that benefit therefrom;
- 14.9. the Applicant's investment in terms of the *Local Government: Municipal Finance Management Act*, Act 56 of 2003 (herein after "the MFMA"), with regard to its fiduciary obligations, stands to be regarded as either irregular and / or unauthorised and / or fruitless and wasteful expenditure;
- 14.10. The Applicant's constitutional and statutory obligations, insofar as basic service delivery, are hampered by the delays in procuring repayment, accompanied by the prejudice which its community stands to suffer as a consequence of the loss of funds.
- 14.11. I respectfully submit that there is also an element of public policy and public interest relevant in this matter. The conduct in relation to the 1st Respondent has caused enormous harm to the banking industry in general, which is one of the sound pillars of stability in the South African economy. Therefore it is critically necessary for robust action to be taken against the perpetrators of the fraud, as soon as is humanly possible. This would at least send out a clear message as a deterrent to such fraudsters, but would also restore some confidence in the banking industry as such.
- 14.12. Although the 1st Respondent is receiving no further deposits, the 2nd Respondent has apparently not taken any steps to either reduce or to retrench the 1st Respondent's workforce. It appears that the matter may appear to be a volatile one for the 2nd Respondent, and that may explain his reluctance. However, a liquidator is by virtue of the law relating to insolvency compelled to enter into negotiations and to conclude severance packages with employees; which are usually set


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at a standard rate, which, so I have been advised, would normally be the equivalent of 1 week's pay for every year's work. These are however not strict requirements. At present there appears to be an undue preference in favour of the existing workforce in the sense that although there, with the greatest of respect, appear not to be any significant tasks lying ahead for the continuation of the 1st Respondent's business, they are nonetheless paid their salaries and the 1st Respondent is apparently not sufficiently well equipped, given his restricted statutory powers and functions, to deal with the workforce and the problems presented by the workforce.

- 14.13. I have been advised that it was often stated that justice delayed is justice denied. I respectfully submit that the sooner the hands of the law are laid upon the convoluted affairs of the 1st Respondent, the better for all concerned, in particular the defrauded and frustrated creditors.
- 14.14. There is a further reason which militates strongly against an application in the ordinary course. This flows from the legal effect of Sections 341(2), read with 348 of Chapter 14 of the partially repealed Companies Act. These provisions, read together, are to the effect that once an application for liquidation is issued at Court then any disposition made thereafter by an entity is void (and not voidable), unless the Court directs otherwise. Furthermore I have been advised that it is only under extremely narrow and very exceptional circumstances that a Court would validate a disposition made after the effective date of winding-up. Therefore, everyone who now touches money emanating from the 1st Respondent stands at risk that such a payment made to such a recipient may later be visited by a nullity by virtue of operation of law. Therefore, in order to achieve legal certainty, and to avoid a large group of uninformed and innocent persons to suffer irreparable harm, the sooner the inevitable winding-up of the 1st Respondent is achieved, the better.

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COSTS:

15.

The Applicant is entitled to request that costs be ordered in its favour. The Applicant shall further request costs to be awarded in its favour against any party, other than the 1st Respondent, opposing this application unsuccessfully.

A FINAL ORDER:

16.

I have been advised that, in an application of this nature, there is no constraint upon the Court to issue, as a matter of course, a provisional order before a final order for winding-up. In this matter there are in fact compelling reasons to issue a final order of winding-up, and it is in the interest of justice to do so, for the following reasons:

- 16.1. It is abundantly clear that the 1st Respondent must be liquidated and that cogent grounds for the winding-up exist.
- 16.2. The granting of a provisional order will only result in unnecessary expenses and a waste of time. It would furthermore potentially delay the bringing about of the first and second meetings of creditors, which are critically necessary in order for the achievement of the appointment of a final liquidator, and the consequential bestowing upon the final liquidator of the powers and authority to commence with the mammoth task of unravelling the convoluted and fraudulent affairs of the 1st Respondent.
- 16.3. It is only once a final order is made that the Master of this Honourable Court is by law obliged to convene a first meeting of creditors, whereafter the rest of the processes are set in motion. A first meeting of creditors cannot be convened upon merely the granting of a provisional order.

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- 16.4. The regulatory authorities have already regarded it as of sufficient need to appoint a curator for the 1st Respondent, and to grant a provisional order would only delay the appointment of a final liquidator.
- 16.5. Provisional liquidators effectively only possess what can be described as preservation powers, and the appointment of a provisional liquidator, which will necessarily result upon the granting of a provisional order only, would compel unnecessary court applications to be brought by the provisional liquidators requesting the court for an extension of their powers, etc.
- 16.6. I respectfully submit that this is a matter where the above Honourable Court ought to grant a final winding-up order as soon as possible.

CONCLUSION:

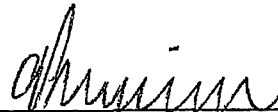
17.

In the circumstances the Applicant prays for an order as set out in the notice of motion.



DEPONENT

I certify that the Deponent acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at Mafikeng on this the 18 day of October 2018, the Regulations contained in Government Notice No R1258 dated 21 July 1972, as amended, having been complied with.



COMMISSIONER OF OATHS
ANTON PETER MÜLLER

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