



SOUTH AFRICAN RESERVE BANK
SARB Group Secretariat

Memorandum

To : Mr van der Walt
: General Counsel and
: Head: Legal Services Department

From : Clivia Ulland
: Acting Secretary of the Bank

Our ref. no. : SGS/100233

File ref. no. : 9/1/4/2/6/3

Date : 2023-08-22

Governors' Executive Committee meeting: 15 August 2023

Please find attached for your information, the **FINAL RESOLUTION** taken at the abovementioned GEC meeting.

1. **Report on alleged contravention of the Exchange Control Regulations: Ntaba Nyoni Estates Close Corporation trading as Phala Phala Wildlife**

Resolution:

- i) The GEC considered and accepted the Final Financial Surveillance Department Report marked as Annexure A (attached to the minutes) which, read with this resolution, constituted the Final SARB Report regarding this matter.

A handwritten signature in cursive script, appearing to read 'Clivia Ulland'.

Clivia Ulland
Acting Secretary of the Bank



SOUTH AFRICAN RESERVE BANK

Financial Surveillance Department

**Report by the
Financial Surveillance Department of the
South African Reserve Bank
into the alleged contravention of the
Exchange Control Regulations:
Ntaba Nyoni Estates Close Corporation
trading as Phala Phala Wildlife**

2023-08-08

Alleged contraventions of the Exchange Control Regulations: Ntaba Nyoni Estates Close Corporation trading as Phala Phala Wildlife

Table of Contents

Abbreviations	3
1. Introduction	6
2. Scope and purpose	7
3. Information and evidence considered	7
4. Background information	13
5. Preliminary investigation	13
5.1 Request for information to the President	13
5.2 Response by the President to request for information	14
5.3 Request for further particulars	16
5.4 Response to request for further particulars	17
6. Legal framework	19
6.2.1 The Currency and Exchanges Act, 1933	19
6.2.2 The Exchange Control Regulations	20
6.2.3 Delegation of powers	20
6.2.4 Investigation powers	21
6.2.5 Authorised Dealers	21
6.2.6 Exchange Control Regulations and Currency and Exchanges Manual for Authorised Dealers	22
6.2.7 Declaration of foreign currency by visitors to South Africa	24
7. Further investigation and engagements	25
8. Conclusions	30

Annexure A

(Summary of versions from persons that FinSurv interacted with)

For purposes of this report, the following abbreviations are used:

Abbreviation	Meaning
Currency and Exchanges Manual	The Currency and Exchanges Manual for Authorised Dealers
DPCI/Hawks	The Directorate for Priority Crime Investigation
Exchange Control Regulations/Regulations	The Exchange Control Regulations made in terms of Section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933) were promulgated by Government Notice R.1111 of 1 December 1961 and amended up to Government Notice No. R.445 in Government Gazette No. 35430 of 8 June 2012)
FinSurv/the Department	The Financial Surveillance Department of the South African Reserve Bank
Governor	Mr Lesetja Kganyago, Governor of the South African Reserve Bank
HNM Attorneys	Messrs Harris Nupen Molebatsi Incorporated Attorneys. Attorneys of record for the President and Ntaba Nyoni Estates Close Corporation trading as Phala Phala Wildlife
Mr Fraser	Mr Arthur Joseph Peter Fraser. A former Director General of the State Security Agency
Mr Harris	Mr Peter Harris of HNM Attorneys
Mr Hazim	Mr Hazim Mustafa Mohamed Ibrahim
Mr Louw	Mr Paul Louw, Manager: Customs within the Air Modality Division of the South African Revenue Service
Mr Ndlovu	Mr Dumisani Sylvester Ndlovu

Abbreviation	Meaning
Mr Pitts	Mr Calvin Edward Pitts, Manager: Customs within the Air Modality Division of the South African Revenue Service
Mr von Wielligh	Mr Hendrik Efraim von Wielligh. The General Manager of Ntaba Nyoni Estates CC trading as Phala Phala Wildlife
Ms Msiska	Ms Salome Msiska. A Financial Controller employed by Ntaba Nyoni Estates Close Corporation trading as Phala Phala Wildlife
Ntaba Nyoni Estates CC/Phala Phala Wildlife	Ntaba Nyoni Estates Close Corporation trading as Phala Phala Wildlife
Phala Phala/Phala Phala farm	Phala Phala farm is the fixed property owned by The Tshivase Trust on which Ntaba Nyoni Estates Close Corporation trading as Phala Phala Wildlife conducts its business
PPSA	The Office of the Public Protector of the Republic of South Africa
President	Mr Matamela Cyril Ramaphosa, the President of the Republic of South Africa. Sole member of Ntaba Nyoni Estates Close Corporation
SAPS	South African Police Service
SARB	South African Reserve Bank
SARS	South African Revenue Service
Tshivase Trust	The owner of the land on which Phala Phala Wildlife conducts its business. The President is both a trustee and beneficiary of this trust
Treasury	In relation to any matter contemplated by the Exchange Control Regulations, means the Minister of Finance or an officer in the Department of Finance who, by virtue of the division of work in

Abbreviation	Meaning
	that Department, deals with the matter on the authority of the Minister of Finance
Werksmans Attorneys	Werksmans Incorporated Attorneys. FinSurv's external legal advisors in this matter

1. Introduction

- 1.1 On or about 2022-06-01, Mr Fraser, a former Director-General of the State Security Agency, filed an affidavit with the SAPS, in which he requested that the President be investigated.
- 1.2 Mr Fraser alleged, in his affidavit, that the President acted “*in contravention of the Prevention of Organised Crime Act 121 of 1998 . . . [as well as] the Prevention of Corrupt Activities Act 12 of 2004*” and that the President’s conduct amounted to “*contraventions of our various fiscal, currency and exchange control and custom and excise and (sic) regulations.*”
- 1.3 For purposes of this report by the FinSurv of the SARB (this Report), having regard to the SARB’s mandate as hereafter addressed, the allegations against the President were that he received and kept at his premises, without declaring to the relevant authorities, foreign currency in the form of United States Dollar (USD). Mr Fraser alleges that he became aware of this because, on 2020-02-09, there was a housebreaking incident at the President’s main house at the Phala Phala farm and that the foreign currency in question was stolen.
- 1.4 Details of the allegations made by Mr Fraser to the SAPS began circulating in the media almost immediately and the matter also came to the attention of the SARB, which conducted its own investigation into the matter.
- 1.5 The investigation by the SARB was conducted by the FinSurv’s Compliance and Enforcement Division. Pursuant to this investigation by the Compliance and Enforcement Division and legal advice obtained in relation to the investigation conducted in this matter, namely the alleged contravention of Exchange Control Regulation 6(1), FinSurv has prepared this Report, which constitutes FinSurv’s findings in relation to the alleged contravention of the Exchange Control Regulations by Ntaba Nyoni Estates CC.

1.6 Where this Report refers to documents or information gathered and evidence considered, including transcripts of interviews, these documents, other information and evidence are not attached to this Report, so as not to overburden the Report, but are documents, information and evidence which are in the possession of FinSurv and has been considered and relied upon by FinSurv, in the preparation of this Report.

2. Scope and purpose

2.1 This Report deals only with the alleged contravention of Exchange Control Regulation 6(1) in respect of foreign currency allegedly stolen from the President's residence at the Phala Phala farm on 2020-02-09. This is the applicable Exchange Control Regulation in relation to the declaration of foreign currency within 30 days after becoming so entitled to an Authorised Dealer and/or FinSurv.

2.2 Therefore, the scope and purpose were limited to whether there were 'exchange control violations'. Other matters and whether they may relate to the breach of any other law or otherwise are matters which are to be addressed by the relevant authorities and/or regulatory bodies and not FinSurv and FinSurv exercises no authority or mandate in relation thereto.

3. Information and evidence considered

For purposes of this Report, FinSurv considered various documents, other information and evidence including the following:

No.	Date	Description
3.1	2022-06-01	Affidavit deposed to by Mr Fraser

No.	Date	Description
3.2	2022-06-03	Letter from the Leader of the Official Opposition: Parliament of RSA to the Governor and the response thereto
3.3	2022-06-06	Letter from Action SA to the Governor and the response thereto
3.4	2022-06-28	Letter from EFF to the Governor re Phala Phala - Affidavit by Mr Fraser regarding the trespassing and housebreaking that occurred at the Phala Phala attached and the response thereto
3.5	2022-09-01	Email from Isighungu Sabasha to the Governor and the response thereto
3.6	2022-08-22	Letter from Hon M J Maswanganyi, MP Chairperson: Standing Committee on Finance Parliament of the Republic of South Africa and the response thereto
3.7	N/A	Cross-border foreign exchange transaction records in the name of Ntaba Nyoni Estates Close Corporation
3.8	N/A	Cross-border foreign exchange transaction records in the name of Tshivase Trust
3.9	N/A	Cross-border foreign exchange transaction records in the name of Mr Hazim
3.10	N/A	Cross-border foreign exchange transaction records in the name of Mrs Bianca Odonoghue
3.11	N/A	Cross-border foreign exchange transaction records in the name of the President
3.12	N/A	Cross-border foreign exchange transaction records in the name of Mr Ndlovu
3.13	N/A	Cross-border foreign exchange transaction records in the name of Mr Von Wielligh

No.	Date	Description
3.14	2022-06-20	Letter to HNM Attorneys re exchange control compliance audit
3.15	2022-08-10	Affidavit deposed to by the President at the request of SARB
3.16	2019-12-25	Acknowledgement of receipt of USD580 000 to Mr Hazim
3.17	2022-08-25	Letter to HNM Attorneys to request further particulars
3.18	2022-09-20	Letter from HNM Attorneys regarding unsigned version of Mr Ndlovu's affidavit
3.19	2022-09-22	Letter from HNM Attorneys in response to letter dated 2022-08-25 (with affidavits attached)
3.20	2022-09-22	Supplementary affidavit of the President at the request of SARB
3.21	2022-09-22	Affidavit deposed to by Mr von Wielligh at the request of SARB
3.22	Undated	Statement of Mr Hazim at the request of SARB
3.23	Undated	Unsigned sworn statement of Mr Ndlovu at the request of SARB
3.24	2022-10-04	Sworn statement of Mr Ndlovu at the request of SARB
3.25	2022-11-24	Letter to HNM Attorneys to request clarity on certain issues addressed by the President as well as additional information
3.26	2022-12-15	Email from HNM Attorneys in response to letter dated 2022-11-24

No.	Date	Description
3.27	N/A	The Exchange Control Regulations made in terms of Section 9 of the Act were promulgated by Government Notice R.1111 of 1 December 1961 and amended up to Government Notice No. R.445 in Government Gazette No. 35430 of 8 June 2012)
3.28	N/A	Currency and Exchanges Manual for Authorised Dealers
3.29	2022-11-30	Report of the Section 89 Independent Panel – Parliament of the Republic of South Africa
3.30	Undated	Submissions made by the President, in terms of Rule 129G(1)(C)(iii) of the National Assembly Rules, to the Independent Panel appointed in terms of Rule 129D of the National Assembly Rules
3.31	2023-03-16	Letter to DPCI to request information
3.32	2022-07-19	Affidavit deposed to by Mr von Wielligh at the request of DPCI
3.33	2022-08-19	Second affidavit deposed to by Mr von Wielligh at the request of DPCI
3.34	2022-08-19	Third affidavit deposed to by Mr von Wielligh at the request of DPCI
3.35	2022-10-24	Affidavit deposed to by Mr Ndlovu at the request of DPCI
3.36	2022-12-10	Affidavit deposed to by Mr Hazim at the request of DPCI
3.37	2022-10-05	Letter from SARS regarding the declaration of foreign currency by Mr Hazim upon his arrival supported by affidavit of Mr P Louw
3.38	2022-10-25	Letter from SARS to request information regarding Mr Hazim

No.	Date	Description
3.39	2022-11-21	Email to SARS to furnish statement of Mr Hazim
3.40	2023-04-26	Letter from SARS relating to the document provided by Mr Hazim
3.41	2022-08-31	Letter from the Public Protector South Africa regarding allegations of a violation of the executive ethics code by the President of the Republic of South Africa Mr MC Ramaphosa
3.42	2022-09-01	Letter to the Public Protector South Africa in response to letter dated 2022-08-31
3.43	2022-09-26	Email from the Public Protector South Africa requesting meeting with FinSurv and the response thereto
3.44	2022-10-07	Subpoena in terms of section 7(4)(a) of the Public Protector Act, 1994 (Act No. 23 of 1994)
3.45	2022-10-17	Letter to the Public Protector South Africa in response to subpoena dated 2022-10-07
3.46	2022-10-17	Email from Public Protector South Africa in response to letter dated 2022-10-17
3.47	2023-02-14	Transcript of first interview with Mr von Wielligh
3.48	2023-02-21	Transcript of interview with Mr Ndlovu
3.49	2023-03-28	Transcript of interview with the President
3.50	2023-04-11	Transcript of second interview with Mr von Wielligh
3.51	2023-04-11	Transcript of interview with Ms Msiska

No.	Date	Description
3.52	2023-02-02	Letter from Werksmans Attorneys to HNM Attorneys to request to interview Messrs Hazim, Ndlovu and von Wielligh
3.53	2023-02-03	Letter from HNM Attorneys to Werksmans Attorneys to advise that they are not in position to arrange an interview with Mr Hazim
3.54	2023-02-07	Letter from Werksmans Attorneys to Mr Hazim to request an interview
3.55	2023-02-09	Letter from Werksmans Attorneys to Mr Hazim to follow up re letter dd 2023-02-02
3.56	2023-02-21	Email from Werksmans Attorneys to Mr Hazim to follow up re letters dated 2023-02-07 and 2023-02-09
3.57	2023-03-03	Letter from Werksmans Attorneys to HNM Attorneys requesting assistance to contact Mr Hazim
3.58	2023-03-06	Email from HNM Attorneys to Werksmans Attorneys in response to letter dated 2023-03-03 to confirm that they are taking instructions
3.59	2023-03-10	Letter from HNM Attorneys to Werksmans Attorneys to advise that they are unable to assist in contacting Mr Hazim
3.60	2023-03-08	Statement by Mr Hazim at the request of SARS
3.61	2023-04-17	Affidavit deposed to by Mr Pitts of SARS
3.62	2023-05-02	Email from Werksmans Attorneys re discussion with Mr Hazim

4. Background information

4.1 During the first week of June 2022 media reports emerged around Mr Fraser's allegations to the SAPS and written complaints were also received by the Governor from the Leader of the Official Opposition in Parliament, i.e., the Democratic Alliance (DA), ActionSA, the Economic Freedom Fighters (EFF), Isighungu Sabasha (a non-profit organisation) as well as the Standing Committee on Finance of the Parliament of the Republic of South Africa.

4.2 FinSurv carried out an initial inquiry by extracting data from its databases to ascertain whether the parties involved had made declarations or engaged in transactions involving foreign currency, and whether any approvals or exemptions had been granted. The investigation primarily centered on the individuals mentioned in Mr Fraser's allegations to the SAPS. The results of the investigation were negative, as no records were found indicating that any exemptions had been granted or that the aforementioned parties had made significant declarations of, or exchanges involving foreign currency.

4.3 In light of the complaints received by the SARB and the absence of any evidence of exemptions or noteworthy foreign currency transactions involving the individuals in question during the preliminary investigations, it was deemed necessary to consider this matter further. As a result, a formal case was initiated on 2022-06-08, to undertake a more comprehensive inquiry into the matter at hand.

5. Preliminary investigation

5.1 Request for information to the President

5.1.1 On 2022-06-20, a letter was addressed to HNM Attorneys, requesting their client, the President, in terms of the provisions of Exchange Control Regulation 19, to provide FinSurv with a sworn statement or solemn

declaration containing all information relevant to the foreign currency in question, including, inter alia, the following:

- 5.1.1.1 “the exact amounts of foreign currency that were held at and stolen from Phala Phala Wildlife farm;
- 5.1.1.2 confirmation as to whether any of the relevant foreign currency was recovered and, if so, the amount recovered;
- 5.1.1.3 full particulars as to the underlying reason or transaction(s) leading to the said foreign currency being kept at the premises of Phala Phala Wildlife farm, supported by certified copies of all relevant documentation;
- 5.1.1.4 full details of the person who initially took possession of the foreign currency, the capacity in which he/she acted when doing so, how, where and when possession was taken and the person from whom it was received; and
- 5.1.1.5 a detailed family tree depicting the ownership structure of Phala Phala Wildlife farm.”

5.2 Response by the President to the request for information

- 5.2.1 On 2022-08-10 HNM Attorneys provided FinSurv with an affidavit deposed to by the President in response to the request of 2022-06-20. The pertinent details were essentially as follows:
 - 5.2.1.1 Phala Phala farm is owned by the President’s family Trust, The Tshivase Trust.
 - 5.2.1.2 Phala Phala Wildlife is the operating name of Ntaba Nyoni Estates CC, which is a game ranching operation that conducts business at the Phala Phala farm. The President is the sole member of Ntaba Nyoni Estates CC, which business is managed and run by its employees.

- 5.2.1.3 Phala Phala Wildlife breeds and farms a variety of animals, including buffaloes. Animals bred on the farm are routinely sold through auctions or private out-of-hand sales.
- 5.2.1.4 During 2019 the President had a discussion with the General Manager of Phala Phala Wildlife, Mr von Wielligh, regarding the disposal of certain sub-standard buffaloes which were kept in Camp 6. Their thinking at the time was that the buffaloes should be sold as a parcel (rather than individually or having them hunted) because that made better financial sense. The President knew of potential buyers from the Middle East and other African countries and advised Mr von Wielligh accordingly.
- 5.2.1.5 One of the potential buyers identified was a Sudanese citizen, Mr Hazim who visited the Phala Phala farm on 2019-12-25 where he was met by a certain Mr Ndlovu, the acting Lodge Manager, who assisted him in the absence of Mr von Wielligh, who was on leave at the time.
- 5.2.1.6 After being shown a specific 'parcel' of animals in Camp 6, Mr Hazim selected 20 animals which he was interested in. Mr Hazim handed USD580 000 in cash to Mr Ndlovu as payment for the buffaloes he had selected. Mr Ndlovu upon receipt of the money gave Mr Hazim a document printed on a Phala Phala Wildlife letterhead, which reads as follows:

"This is to certify that

I Sylvester Ndlovu

Received a sum of \$580 000 US Dollars from Mr Hazim on 25 December 2019 at Phala Phala Wildlife for the payment of 20 Buffaloes from Camp 6".

- 5.2.1.7 The President visited Phala Phala Wildlife on 2019-12-26 and was appraised by Mr Ndlovu of what had transpired with Mr Hazim on 2019-12-25. Mr Ndlovu relayed to the President that: "Mr Hazim showed

interest in the buffalo and told Mr Ndlovu that he wanted to close the deal and buy the buffalo. Mr Hazim handed over US\$580, 000 in cash to Mr Ndlovu, as payment for the buffalo”.

5.2.1.8 The President then informed Mr Ndlovu that he was proceeding directly to Cape Town the following day, and because Mr von Wielligh was away at the time, the money should be kept at the Phala Phala farm until his next visit, when he *“would have an opportunity to brief Mr von Wielligh to enable him to process the transaction and have the money banked following that.”*

5.2.1.9 On 2020-02-10, whilst abroad, the President was notified by Mr von Wielligh of a security breach that had taken place at the Phala Phala farm the previous day. Following this, Mr Ndlovu also reached out to the President, conveying that the funds received from Mr Hazim had been stolen.

5.2.1.10 It was not unusual for transactions of this nature to be concluded on the basis that payment is made and invoices only generated once all the various regulatory processes and logistical arrangements have been made.

5.2.1.11 None of the stolen funds were recovered and there were ongoing discussions with Mr Hazim on the best way to address the matter.

5.3 Request for further particulars

5.3.1 The President's response required further clarifications and additional details were required for FinSurv to make a determination on whether or not there had been an exchange control violation. Consequently, a subsequent letter was dispatched to HNM Attorneys on 2022-08-25, requesting the President to furnish additional information, including:

5.3.1.1 a sworn statement or solemn declaration deposed to by Mr Hazim, confirming the correctness of the President's affidavit insofar as it referred to him and addressing further additional information;

- 5.3.1.2 a supplementary affidavit by the President addressing, *inter alia*, the authority of Mr Ndlovu to enter into and bind Ntaba Nyoni Estates CC to the relevant agreement of sale with Mr Hazim, confirmation regarding whether or not the USD580 000 constituted the full purchase consideration and whether the price was fair and market related, confirmation that the amount of USD580 000 was the only money stolen from Phala Phala on 2020-02-09 and the reasons why the foreign currency remained unbanked from the date of receipt to the date of the theft;
- 5.3.1.3 a sworn statement or solemn declaration deposed to by Mr Ndlovu confirming, *inter alia*, the matters addressed in the President's affidavit insofar as it related to him and addressing his involvement in the sale of buffalo to Mr Hazim; and
- 5.3.1.4 a sworn statement or solemn declaration deposed to by Mr von Wielligh confirming, *inter alia*, the matters addressed in the President's affidavit insofar as it related to him and his knowledge pertaining to the events which transpired in relation to the sale of buffalo to Mr Hazim.
- 5.3.2 This additional information and further affidavits and statements were received on 2022-09-22. This included a supplementary affidavit by the President, an affidavit by Mr von Wielligh, a signed statement by Mr Hazim and an unsigned sworn statement by Mr Ndlovu which was subsequently supplemented by a signed sworn statement.

5.4 Response to request for further particulars

- 5.4.1 As a result of the information including affidavits, statements and further documentation provided to FinSurv the position as at 2022-09-22, can be summarised as follows:

- 5.4.1.1 During 2019, the President and Mr Von Wielligh had a discussion, and decided that certain lower quality buffaloes, located in Camp 6 on the Phala Phala farm ought to be sold as a 'parcel' as opposed to be hunted or auctioned off.
- 5.4.1.2 The President was aware of potential buyers and towards the end of 2019, undertook to find potential buyers for the buffaloes.
- 5.4.1.3 On 2019-12-25 Mr Hazim arrived at the Phala Phala farm. Upon his arrival, he was taken to Camp 6, which contained the buffaloes that were to be sold. On Mr Hazim's version, he identified 20 buffaloes that he was happy with. Mr Ndlovu advised him that the price per buffalo was R400 000. Mr Hazim considered this amount to be reasonable and in order to secure the 20 buffaloes that he was interested in, he gave USD580 000 to Mr Ndlovu. Mr Ndlovu's evidence is that at the day's exchange rate, this equated to approximately R8 000 000.
- 5.4.1.4 On Mr Hazim's version he gave the USD580 000 as a security deposit. It would be used as payment for the buffaloes only once he had secured end-buyers and relayed that information to Phala Phala Wildlife. Neither the President nor Mr Ndlovu mentioned the condition regarding end-buyers in their affidavits.
- 5.4.1.5 According to the President and Mr Ndlovu, the purchase could not be finalised until the necessary approvals were obtained and further processes were undertaken.
- 5.4.1.6 Mr Ndlovu provided Mr Hazim with a 'note' to record the fact that he had received the USD580 000 in cash from him.
- 5.4.1.7 Mr Ndlovu stored the funds in the safe at the Phala Phala farm and informed the President on 2019-12-26 of what had transpired the previous day. The President advised Mr Ndlovu that the money could only be dealt with upon

his return to the Phala Phala farm when he would *“have the transaction discussed and processed with Mr von Wielligh.”*

- 5.4.1.8 On or about 2019-12-30 Mr Ndlovu decided to move the foreign currency from the safe (to which many employees had access and which was used for general storage purposes at the Phala Phala farm) to a bedroom in the President’s house on the Phala Phala farm (which he considered to be a safer place) and hid it under the cushions of a sofa, for fear of same being stolen while he would be on leave.
- 5.4.1.9 On 2020-02-10 it was discovered that the President’s house had been broken into and the foreign currency stolen.
- 5.4.1.10 As a result of the theft and other factors, including Covid-19, the animals were not delivered to Mr Hazim.

6. Legal framework

6.1 At this point it is useful to refer to the legal framework applicable to exchange controls and in particular the holding of foreign currency by a South African resident, as this will inform the consideration of the matter at hand.

6.2 For the purposes of this Report, the following are highlighted:

6.2.1 The Currency and Exchanges Act, 1933 (Act No. 9 of 1933)

6.2.1.1 Section 9 of the Currency and Exchanges, 1933 (Act No. 9 of 1933) (the Act) is the foundation of exchange controls in South Africa. Section 9(1) of the Act provides that:

- (i) *“The Governor-General may make regulations in regard to any matter directly or indirectly relating to or affecting or having any bearing upon currency, banking or exchanges.”*

6.2.1.2 By virtue of the definition clause of the Interpretation Act, 1957 (Act No. 33 of 1957), the 'Governor-General' today means the President of the Republic of South Africa.

6.2.2 The Exchange Control Regulations

6.2.2.1 The Exchange Control Regulations made in terms of section 9 of the Act were promulgated by Government Notice R.1111 of 1 December 1961 and amended up to Government Notice No. R.445 in Government Gazette No. 35430 of 8 June 2012.

6.2.3 Delegation of powers

6.2.3.1 In terms of the Exchange Control Regulations, the control over South Africa's foreign currency reserves as well as the accruals and spending thereof is vested in the Treasury. The Treasury is defined in the Exchange Control Regulations as:

"In relation to any matter contemplated in these Regulations, the Minister of Finance or an officer in the Department of Finance who, by virtue of the division of work in that department, deals with the matter on the authority of the Minister of Finance."

6.2.3.2 The responsibility for exchange control policy vests with the Minister of Finance, who delegated certain powers and functions to designated officials of the SARB in terms of Exchange Control Regulation 22E, which reads as follows:

"22E Delegation of powers

(1) The Minister of Finance may delegate to any person any power or function conferred upon the Treasury by any provision of these Regulations or assign to any such person a duty imposed thereunder to the Treasury."

6.2.3.3 Treasury has specifically delegated to the Governor, a Deputy-Governor, the Head of the Department, as well as various other officials in the Department, certain powers, functions and duties assigned to and imposed upon the Treasury under the Exchange Control Regulations.

6.2.4 Investigation powers

6.2.4.1 The SARB (through FinSurv) is empowered to conduct investigations or to appoint investigators under Exchange Control Regulation 19, which reads as follows:

“(1) The Treasury, or any person authorised by the Treasury, may order any person to furnish any information at such person's disposal which the Treasury or such authorised person deems necessary for the purposes of these Regulations and any person generally or specifically appointed by the Treasury for the purpose may enter the residential or business premises of a person so ordered and may inspect any books or documents belonging to, or under the control of such person.”

6.2.5 Authorised Dealers

6.2.5.1 Treasury appointed certain commercial banks to act as ‘Authorised Dealers in foreign exchange’ which gives them the right to buy and sell foreign currency, subject to the conditions and within the limits prescribed by FinSurv. The Authorised Dealers are not agents of FinSurv but act on behalf of their clients in regard to exchange control issues. They also act on behalf of their clients in seeking approvals from FinSurv for such clients.

6.2.5.2 An Authorised Dealer is not authorised to give permissions as contemplated in the Exchange Control Regulations and is not “a person authorised by the Treasury” as referred to in the Exchange Control Regulations, for example in Exchange Control Regulation 3. An Authorised Dealer is, by virtue of its appointment as such by the Minister of Finance, entitled to administratively

implement the permissions as provided for in the Currency and Exchanges Manual, referred to below. The Currency and Exchanges Manual is updated and amended from time to time to reflect changes in general permissions granted, changes in conditions to which permissions are subject, and administrative instructions to Authorised Dealers.

6.2.5.3 Applications for permission to carry out foreign exchange transactions received by Authorised Dealers from their clients are dealt with by them if the applications fall within the parameters outlined in the Currency and Exchanges Manual, without reference to FinSurv. When, however, an application falls outside the ambit of the general permissions dealt with in the Currency and Exchanges Manual, the application must be referred to FinSurv, by the Authorised Dealer on behalf of its client. Such application is then dealt with by FinSurv, as set out below.

6.2.6 The relevant provisions of the Exchange Control Regulations and Currency and Exchanges Manual for Authorised Dealers

6.2.6.1 Exchange Control Regulations 6

(i) Exchange Control Regulation 6, inter alia, provides as follows:

“(1) Every person resident in the Republic who becomes entitled to sell or to procure the sale of any foreign currency, shall within thirty days after becoming so entitled, make or cause to be made, a declaration in writing of such foreign currency to the Treasury or to an authorised dealer.

2) Every person resident in the Republic who becomes entitled to assign or to procure the assignment of any right to receive outside the Republic, in respect of any credit or of any balance at a bank, payment of any amount in a foreign currency shall, within thirty days after becoming so entitled, make or cause to be made, a declaration in writing of such right to the Treasury or to an authorised dealer.

(3) Any person who has, in terms of sub-regulation (1) or (2), made a declaration in writing to the Treasury or to an authorised dealer, shall be deemed to have offered such foreign currency or such right, as the case may be, for sale to the Treasury or to such authorised dealer and the Treasury or such authorised dealer may purchase such foreign currency or such right at a price which, in the case of foreign currency, shall not be less than the market value of that currency on the day of purchase and, in the case of a right, shall be such as the Treasury may fix.

(4) Any person from whom the Treasury or an authorised dealer purchases foreign currency or a right in terms of this regulation shall do all things necessary for the purpose of transferring that foreign currency or assigning that right to the Treasury or to such authorised dealer.

(5) No person who is entitled (whether actually or contingently) to receive a payment in a foreign currency shall, except with permission granted by or on behalf of the Treasury and in accordance with such conditions as may be imposed by the Treasury or on its behalf do, or refrain from doing, any act with intent to secure that –

- (a) the receipt by him of the whole or any part of the payment in such currency is delayed.*
- (b) the payment ceases, in whole or in part, to be receivable by him or receivable in that currency.*
- (c) the contingency on which the right to receive payment as aforesaid is dependent (including the declaration of a dividend or profit by a company in which such person has an interest), does not eventuate.*

(6) Any foreign currency or any right in respect of which a declaration has been made in terms of sub-regulation (1) or (2) but which has not been purchased by the Treasury or by a person authorised by the Treasury to act under this regulation shall not be sold, transferred or otherwise disposed of without the permission of the Treasury and in accordance with such conditions as the Treasury may impose.”

6.2.6.2 The Currency and Exchanges Manual for Authorised Dealers

(i) Section B.5: Introduction of foreign currency by foreign nationals

Section B.5(A)(iii)(b) provides that foreign visitors (tourists) to South Africa may introduce foreign currency in any amount and in any form (e.g., foreign bank notes, travellers cheques).

(ii) Section B.18: Control of Exports – General

Section B.18(A)(i) provides that Authorised Dealers must ensure that all exporters are aware of their legal obligation in terms of the provisions of Regulations 6, 10 and 11 offer for sale to an Authorised Dealer the full foreign currency proceeds within 30 days after becoming entitled thereto or deal with it in accordance with the rules applicable to the Customer Foreign Currency accounts.

(iii) Section B.20: Acceptance of foreign bank notes and foreign currency travellers' cheques

Section B.20, inter alia, provides that foreign bank notes or other foreign currency instruments such as traveller's cheques may be accepted in payment of exports and services rendered subject to the condition that exporters receiving payment in this manner must, declare and offer for sale such foreign currency to an Authorised Dealer not later than the following business day after acquisition thereof.

6.2.7 Declaration of foreign currency by visitors to the Republic of South Africa

6.2.7.1 The Exchange Control Regulations place no obligation on non-residents visiting the Republic to declare any foreign currency that they may have in their possession on arrival.

7. Further investigation and engagements

7.1 Based on the information, documentation and evidence received and considered as at 2022-09-22 and as addressed above, FinSurv then considered this in conjunction with the legal framework applicable to exchange controls and legal advice and determined that further information, evidence and investigation would be required in order to conclude the investigation into this matter and in particular whether the agreement for the sale of the 20 buffalos was concluded on 2019-12-25, but the obligations to pay and deliver the buffalo were subject to conditions; or whether the conclusion of the agreement itself was subject to conditions. In this regard and on 2022-11-22 further correspondence was addressed to HNM Attorneys requesting further information and clarification from the President and others.

7.2 HNM Attorneys responded to the aforementioned request on 2022-12-15. With regard to the pertinent issue of the nature of the agreement concluded with Mr Hazim, FinSurv were advised, *inter alia*, that:

7.2.1 *“Mr Hazim and Mr Ndlovu did not conclude an agreement for the sale of the buffalos on 25 December 2019. That is because Mr Ndlovu needed to obtain approval on the correctness of the pricing for each buffalo from Mr von Wielligh. Some of the animals were older and some were younger; a detailed schedule of these would have been available to Mr von Wielligh, but was not readily available at the time to Mr Ndlovu, and Mr von Wielligh would have been best placed to confirm the best price for each animal. Instead, Mr Hazim paid the money to Mr Ndlovu to secure the buffalos, but on the understanding that the agreement was subject to the following conditions:*

7.2.1.1 *that the final total price had to be confirmed; and*

- 7.2.1.2 *that several administrative steps needed to be successfully completed in order to arrange for export and delivery. The outcome of this process was in itself subject to various tests and veterinary procedures that had to be undertaken. These include:*
- (i) *Notifying the State Vet about the buffalos that are intended to be sold so that they can arrange to bleed (extract blood samples) the buffalos for purposes of testing them for all controlled diseases (e.g. tuberculosis, brucellosis) before the movement date.*
 - (ii) *Bleeding the buffalos at Phala Phala Wildlife on a date agreed to with the State Vet. The Phala Phala Wildlife Private Vet is asked to be present when the State Vet comes to the Phala Phala farm in order to assist in the bleeding of the buffalos. The Private Vet assists in darting the buffalos and moving them to the quarantine facility. The bleeding and the movement of the buffalos to the quarantine facility will all happen on the same day.*
 - (iii) *The buffalos will stay in quarantine (separate facility on the Phala Phala farm) until the blood results are confirmed negative (i.e. the buffalos are found not to have a disease) for all the diseases tested.*
 - (iv) *Once the test results are received from Onderste-Poort (state veterinary facility) and the buffalos are found to have a disease, Phala Phala Wildlife would not be able to conclude the agreement. However, if the test results are negative, then the State Vet is informed accordingly and advised that the buffalos can be moved to the new location (destination).*
 - (v) *The State Vet will require the negative test results and start the application process to move the buffalos to their final destination.*
 - (vi) *Once the State Vet from the final destination approves the importation of the buffalos to their new location, the local State Vet will notify Phala Phala*

Wildlife that the intended movement has been approved and that arrangements can be made for the final movement process.

- (vii) *Phala Phala Wildlife will then apply for a transportation permit at the Department of Agriculture.*
- (viii) *Once the final transportation permit is received from the Department, arrangements for the transportation of the buffalos can commence.*
- (ix) *The loading of the buffalos will be done with the help of the Phala Phala Wildlife Private Vet. The State Vet will also be present to seal the truck (compartments) once all the buffalos are loaded onto the truck. The State Vet will then provide the transporter with a Red Cross (X) permit to transport the buffalos legally.*
- (x) *The State Vet on the receiving side will be present when all the buffalos are offloaded and will break the seals and check that the red cross permit is correct.*
- (xi) *This whole process can take between 3 to 18 months depending on the destination. As a result of this, it is not uncommon for buffalos to stay on the Phala Phala farm of the seller for even longer periods of time.”*

7.3 In January 2023 and after considering the responses received, FinSurv proceeded to conduct interviews with:

7.3.1 Mr von Wielligh on 2023-02-14;

7.3.2 Mr Ndlovu on 2023-02-21;

7.3.3 a further interview with Mr von Wielligh on 2023-04-11;

7.3.4 the President on 2023-03-28; and

7.3.5 Ms Msiska on 2023-04-11.

7.4 Despite FinSurv's efforts, it was unable to secure an interview with Mr Hazim.

7.5 Based on the information gathered, the interviews conducted and the evidence available to FinSurv, it is apparent that there are certain inconsistencies and non-alignment in the evidence that is relevant to the question which FinSurv must address i.e., whether a right to the foreign currency had accrued to Ntaba Nyoni Estates CC or not. What is however clear, both from the information and evidence gathered from the President, Mr Ndlovu and Mr von Wielligh on the one hand, and the evidence of Mr Hazim on the other, is that there were conditions precedent attached to the sale transaction. Therefore, with regard to the inconsistencies and instances of non-alignment or for that matter where there may have been conflicting versions in certain aspects of the evidence, these need to be viewed in accordance with the SARB's narrow mandate in terms of Exchange Control Regulation 6(1). FinSurv also obtained legal advice regarding the application of Exchange Control Regulation 6(1) and the relevance and impact of the inconsistencies and non-alignment of certain of the evidence. Summaries of the versions of the persons with whom FinSurv interacted are included in Annexure A to this Report.

7.6 Based on the aforementioned mandate, FinSurv focused its consideration with regard to the versions on the question of whether a right to the foreign currency had accrued to Ntaba Nyoni Estates CC, which entitled it to sell or procure the sale of the foreign currency within the meaning of Exchange Control Regulation 6(1).

7.7 Notwithstanding certain inconsistencies and non-alignment in the evidence, as referred to above (and as is apparent from the summaries in Annexure A hereto), FinSurv as part of its investigation, identified core evidence which

remained undisturbed and signaled that Ntaba Nyoni Estates CC, on the available evidence, did not become entitled to the foreign currency that it received from Mr Hazim. The core evidence was as follows:

- 7.7.1 Mr Hazim left money at the Phala Phala farm as a security deposit to demonstrate that he was a serious buyer or to secure the buffaloes. His intention was to identify end-buyers before actually concluding the transaction. Mr Ndlovu made no reference to this in his interview or his affidavit. The President denied having any knowledge of what Mr Hazim intended to do. This appears to support the version that Mr Ndlovu was not aware of any condition precedent relating to end-buyers.
- 7.7.2 Mr Ndlovu's evidence that he received foreign currency from Mr Hazim and gave him (Mr Hazim) a handwritten note to confirm that he received USD from him for the purchase of buffalo. Mr Ndlovu confirmed that the purchase of the buffalo could not be finalised because he still needed to obtain approval and thereafter further processes would be undertaken such as calling the State Vet, checking whether the animals were in good health and obtaining the necessary permits to move the animals.
- 7.7.3 The President's account of events was that there could not have been a binding contract of sale until the animals were examined by the necessary State Vet and certain matters were complied with including the completion of the blood work. That account seemed consistent with the description by Mr von Wielligh of standard industry practice which was as follows:
 - 7.7.3.1 the risk passes from the seller to the purchaser upon the successful transportation of the animals to the purchaser; and
 - 7.7.3.2 the purchase price ordinarily only becomes payable upon the transportation of animals to the purchaser.

- 7.8 On the basis of the core evidence and having regard to the SARB's narrow mandate in relation to this matter it would appear to FinSurv that:
- 7.8.1 both the buyer (Mr Hazim) and the seller (Ntaba Nyoni Estates CC) albeit for different reasons intended that certain conditions precedent be fulfilled before there was a finalised sale of buffalo;
 - 7.8.2 at the time of the encounter with Mr Ndlovu, Mr Hazim told Mr Ndlovu that he was leaving the money to demonstrate that he was serious about the sale;
 - 7.8.3 the seller's version is not contradicted, it is corroborated by Mr von Wielligh's objective evidence. Objective because Mr von Wielligh described the actual process and how it worked in the industry. He does so without having being present when Mr Ndlovu and Mr Hazim met. FinSurv has no reason to believe that the account is deliberately designed to fit the sequence of events in the transaction, given the facts at its disposal; and
 - 7.8.4 the foreign currency was stolen before the conditions precedent to the sale could be fulfilled.

8. Conclusion

- 8.1 At the outset it is mentioned that FinSurv's investigation and approach is not premised on the unquestioning acceptance of the versions placed before the investigators and that all the truth has been told. It is premised on the need to reach conclusions on the relevant facts before FinSurv and to restrict the investigation to the scope and purpose set out in paragraph 2 above dealing with the scope and purpose.
- 8.2 The applicability of Exchange Control Regulation 6(1) in this particular matter would depend on whether there existed a perfected transaction, i.e., an unconditional contract for the purchase and sale of the buffalos. It follows

that if there was such an unconditional contract, an entitlement to the foreign currency on the part of Ntaba Nyoni Estates CC would exist, triggering the obligation under Exchange Control Regulation 6(1) for Ntaba Nyoni Estates CC to make or cause to be made, within 30 days, a declaration in writing of such foreign currency to FinSurv or to an Authorised Dealer. Conversely, if there was no perfected transaction, there would not be a legal entitlement by Ntaba Nyoni Estates CC) to the foreign currency and therefore Exchange Control Regulation 6(1) would not apply.

- 8.3 Based on the information available to FinSurv, as set forth above, as well as that the sale was subject to conditions precedent, FinSurv is of the considered view that the transaction was not a perfected transaction which gave rise to a legal entitlement by Ntaba Nyoni Estates CC to the foreign currency.
- 8.4 It appears from the facts available to FinSurv (as related to exchange controls) and which have not been contradicted by any other evidence which is available to FinSurv, that the obligation under Exchange Control Regulation 6(1) was not triggered on the part of Ntaba Nyoni Estates CC upon receipt of the foreign currency from Mr Hazim. In these circumstances there would not be a breach of Exchange Control Regulation 6(1) by Ntaba Nyoni Estates CC.
- 8.5 Accordingly, FinSurv, on the facts available to it, cannot conclude that there was a contravention of Exchange Control Regulation 6(1) by either, the President or Ntaba Nyoni Estates CC.



2023-08-08

Tsumbedzo Charles Nevhutanda
Acting Head of Department: Financial Surveillance

Date

Annexure A

Summary of versions from persons that the Financial Surveillance Department interacted with in respect of the Phala Phala investigation**1. Mr Ndlovu**

1.1 Mr Ndlovu provided the SARB with an unsigned statement on or about 2022-08-10. A signed version was subsequently provided. He narrated that there were about 60 buffalos in camp 6 at Phala Phala farm, some of which were considered to be substandard. The President and Mr von Wielligh mentioned to Mr Ndlovu that the sub-standard buffalos would be sold, and that the asking price for each buffalo would be R400 000.00.

1.2 Mr Hazim arrived at Phala Phala farm on 2019-12-25 and indicated that he was there to enquire about the buffalo that were for sale. Mr Ndlovu assumed that he was referring to the buffalo in camp 6. They then drove there. He (Mr Ndlovu) told Mr Hazim the price per buffalo, and that the total for 20 buffalo would be R8 million. *“Mr Hazim said that he was interested in the buffalos and would pay in dollars.”* He handed Mr Ndlovu two canvas bags containing an amount of USD580 000 which was then stored in the safe at the visitors’ centre on the Phala Phala farm. Mr Hazim indicated that he was paying in dollars because *“it was the only currency that he had at the time, and he wanted to make sure that he secured the buffalos.”*

1.3 In exchange, Mr Ndlovu gave Mr Hazim *“a note to record that I had received the money.”*

1.4 Mr Ndlovu further stated in his statement as follows:

“I told Mr Hazim that the purchase could not be finalised because I still needed to obtain approval, and thereafter further processes would be undertaken such

as calling the State vet to check whether the animals were in good health and obtaining the necessary permits to move the animals.”

1.5 The President arrived at the Phala Phala farm the next day, on 2019-12-26. On his arrival, Mr Ndlovu advised him of Mr Hazim’s visit the previous day and the fact of the US\$ in the safe. In response, the President said that:

“since he was going on holiday, the money could only be dealt with (banked and submitted to the authorities) upon his return to the farm, and he would have the transaction discussed and processed with Mr Von Wielligh as the General Manager.”

1.6 Mr Ndlovu moved the money from the safe to the President’s house before he went on leave as he thought it would be safer there. The money remained there until it was stolen on or about 2020-02-10.

1.7 Mr Ndlovu was interviewed on 2023-02-21. He commenced by repeating the account provided in his statement, providing clarity on the following issues:

1.7.1 when he met Mr Hazim, he was acting as the lodge manager at the Phala Phala farm. His duties included the sale of animals;

1.7.2 he had taken down the tag numbers of the buffalo which were considered to be sub-standard, as these were the buffalo that could be sold;

1.7.3 he specifically advised Mr Hazim that the deal or purchase is not complete because he was still waiting for approval from the General Manager and the President;

1.7.4 he accordingly did not give an invoice to Mr Hazim, but rather furnished him with an acknowledgement letter that he had received the US\$ from him. He also did not give Mr Hazim a list of the tag numbers of the buffalo that Mr Hazim sought to purchase;

- 1.7.5 he left the acknowledgement letter and the list of tag numbers of the buffalos that Mr Hazim sought to purchase at the President's house. He did not advise Mr von Wielligh that they were there;
- 1.7.6 he was told that the sale price for each buffalo was R400 000, but did not know whether that price included vet fees and transport;
- 1.7.7 he advised the President on 2019-12-26 what had transpired (that Mr Hazim bought the buffalo which were at camp 6) and the President indicated that they would deal with the money upon his return, by which stage the General Manager would also be back; and
- 1.7.8 at that stage the President also indicated that they would report the money to the authorities and bank it upon his return.
- 1.8 Later in his interview, Mr Ndlovu was asked about a statement from the President to the effect that only Mr von Wielligh could have given approval on the correctness of the pricing of each buffalo. He sought to backtrack to some degree on his evidence that the price for each buffalo was certainly R400 000, suggesting that perhaps there was a further discussion between the President and Mr von Wielligh on pricing of which he was not aware. However, he was clear that no further discussion was communicated to him and so he understood that he was authorized to sell the buffalo as a package at R400 000 per animal. This does not appear to be a contradiction at all, or that the backtracking is material. He understood the price to be R400 000 at the time and was unaware of an altered position subsequently.
- 1.9 In response to the President's assertion that he ought to have followed up with Mr von Wielligh about the correct pricing for the buffalo, Mr Ndlovu stated that he could not do so until the President had briefed Mr von Wielligh on the transaction and they had advised him to proceed with the transaction.

1.10 It appears from the above that while there are areas on which Mr. Ndlovu's evidence is not clear, he did not contradict his statement in his subsequent interview in any material respects. The thread that runs through his evidence is that he was authorized to sell the buffalo at R400 000 a head, but that he advised Mr Hazim that the transaction would not be complete until he had received the necessary approval from the President and Mr von Wielligh. He did not ever receive any such approval.

2. Mr Hazim

2.1 The upshot of Mr Hazim's version is that:

2.1.1 he identified 15 female and 5 male buffalos in the camp that he was happy with and Mr Ndlovu told him that the price for each buffalo was R400 000.00 which he thought was reasonable;

2.1.2 he told Mr Ndlovu that he had US dollars with him and could give him cash immediately to secure the buffalos. It was his intention to sell the buffalos for a profit so he wanted to identify end buyers before actually concluding the transaction; and

2.1.3 his intention was to leave money at Phala Phala farm for the value of the buffalos as a security deposit and if he found end buyers, the money that he left at Phala Phala farm would be used to pay for those buffalos which were sold.

2.2 Mr Hazim did not participate in any further interviews with the SARB.

2.3 On 2022-12-10, Mr Hazim deposed to another affidavit to the SAPS in order to assist the SAPS in its investigation. A copy of that affidavit was provided to FinSurv on 2023-04-20.

2.4 In that affidavit, Mr Hazim records that:

“On 25 December 2019, I travelled to Limpopo where I visited Phala-Phala Game Farm belonging to the President of the Republic of South Africa, Mr Cyril Ramaphosa. I was taken there by the driver in a limousine from Sun City Resort. At Phala-Phala Game Farm I met with one Mr Sylvester Ndlovu ("Mr Ndlovu"), who introduced himself as one of the Managers at Phala-Phala Game Farm. Mr Ndlovu then took me to Camp 6 where the buffalos that were offered for sale were being kept. I was impressed with the buffalos that I saw, and identified twenty (20) buffalos, (15 females and five males), to purchase. Mr Ndlovu informed me that they were R400, 000 each. Since I had cash with me and wanted to seal the deal, I then paid an amount of USD580, 000 and Mr Ndlovu acknowledged the said amount from me and provided me a cash receipt in that regard. . .”

Mr Ndlovu and I agreed that the export permits (inclusive of vaccinations and other certificates) would be prepared and kept at Phala-Phala Game Farm until the regulatory processes were finalised. Unfortunately, that process could not be finalised as it was impacted upon by the Covid-19 pandemic.” [Underlining added].

2.5 There is an inconsistency between what Mr Hazim said in his statement to the SARB before the one for the SAPS. There, he said this:

“I told Mr Ndlovu that I had US dollars with me and could give him cash immediately to secure the buffalos. . . It was my intention to sell the buffalos for a profit so I wanted to identify end buyers before actually concluding the transaction. My intention was to leave money at Phala Phala farm for the value of the buffalos as security deposit and if I found end buyers, the money that I left at Phala Phala farm would be used to pay for those buffalos which were sold.

Due to the Covid-19 lockdown, I struggled to find end buyers because the game market had slowed down. There was also a restriction on movement of animals as a result of the lockdowns. . . . No arrangements were made with

regard to logistics for transporting the animals as this would only have been arranged once end buyers were identified and secured. Only once I had identified end buyers, would I have been able to provide the necessary information to Phala Phala farm for it to obtain the veterinarian certificates, conclude other legal documents and finalise the transaction." [Underlining added].

- 2.6 That he wanted to find end-buyers seems consistent with his supine disposition for a period of almost two and a half years.

3. The President

- 3.1 In the President's affidavit, the President recorded there that on 2019-12-26, Mr Ndlovu briefed him about the events of the previous day, in relation to the sale of the 20 buffalo in camp 6 and the receipt of U\$580 000. He then told Mr Ndlovu that he was:

"proceeding directly to Cape Town the following day, and because Mr von Wielligh was away at the time, the money should be kept at Phala Phala farm until I next visited, when I would have an opportunity to brief Mr von Wielligh to enable him to process the transaction and have the money banked following that". [underlining added].

- 3.2 In paragraph 97 of his affidavit before the Constitutional Court, the President said this:

"Another example of the Panel's irrational (and illogical) approach to evidence is the rejection of the only evidence before it and relying on conjecture or speculation instead. In this regard the Panel speculated that I gave permission that the cash should be stuffed inside a sofa, when the only evidence which was before the Panel was that I had given the contrary instruction to Mr Ndlovu, that the money must be banked . . ." [underling added].

- 3.3 This seems to contradict the version in the President's affidavit of 2022-08-10, that the money would be banked once Mr von Wielligh had been briefed.
- 3.4 The President was interviewed on 2023-03-28, where he clarified the following:
- 3.4.1 That when he decided to sell the buffalo and knew that there would likely be a willing buyer in the Middle East or the northern Africa, he had never spoken to Mr Hazim directly. His identification of that market was more of a generic statement.
- 3.4.2 He did not recall a meeting involving himself, Mr von Wielligh and Mr Ndlovu at which it was agreed that the animals in camp six should be sold at R400 000 each. He did indicate that he would likely have discussed with Mr von Wielligh that the sale of the buffalo as a parcel would be able to attract a purchase price of R400 000 per animal, and that although he does not recall whether Mr Ndlovu was part of that conversation, word of this may have spread to him as well.
- 3.4.3 He confirmed that Mr Ndlovu was authorized to deal with the sale of the buffalo on 2019-12-25.
- 3.4.4 He acknowledged that Mr von Wielligh was not aware of the transaction until after the theft. He suggested that it would have been Mr Ndlovu's responsibility to inform him of this, but that they did not have an easy relationship, and this could have been the reason why there was a delay.
- 3.4.5 Finally, he confirmed that he had no knowledge of Mr Hazim's stated intention to find end buyers for the buffalo. All he knew, and all that was relayed to him by Mr Ndlovu, was that Mr Hazim visited Phala Phala farm, that he bought the buffaloes and that he paid R400 000 for them.
- 3.5 The President indicated that he was not aware of any communication with Mr Hazim following the theft on 2020-02-10. He acknowledged, however, that he owes Mr Hazim either the buffalo or his money and stated that arrangements

would be made to deliver the buffalo or refund Mr Hazim over an agreed period once “this whole thing settles”. Some of the buffalo had calves. He said that those would belong to Mr Hazim.

- 3.6 In an attempt to resolve the inconsistency outlined at paragraphs 3.1 and 3.2 above, the President was asked whether he had given a direct instruction to Mr Ndlovu to bank the money. He indicated that what he meant in both instances was that the money should have been banked, but that this should have been done under the tutelage of Mr von Wielligh. In other words, that Mr Ndlovu was under an obligation to speak to Mr von Wielligh and follow the necessary processes for the money to be banked.
- 3.7 Finally, the President stated unequivocally that there would be no contract until all of the necessary processes had been followed, including examination by the vets, and the blood work. In other words, if an animal is found to be sick, the parties would continue to negotiate, including on a replacement animal, prior to final conclusion of the sale. These processes do, however, take a long time to conclude.
- 3.8 It was put to the President during his interview that there was a discrepancy between the statements as to whether he left Phala Phala farm on 2019-12-26 or 2019-12-27. This does not appear to be a material discrepancy that would have any impact on the matters under investigation.
- 3.9 Based on the above, it would appear that there are no material inconsistencies in the President’s account of events. In essence, his version is that Mr Ndlovu was authorised to sell the animals, and that initially R400 000 per animal was tentatively touted as the selling price but that the actual price would depend on other factors. These needed to be ironed out and the price needed to be confirmed with Mr von Wielligh. Mr Ndlovu may have heard the R400 000 as the selling price per animal and operated on that basis.

4. Mr Von Wielligh

4.1 Mr von Wielligh's version of events, in essence, was that:

“Mr Ramaphosa mentioned that he might have foreign investors interested in the buffaloes. Later in 2019, I followed up with Mr Ramaphosa with regard to selling the buffaloes. He undertook to follow up with his potential investors. . . . In early 2020, Mr Ramaphosa told me that he had made a good deal [on] the buffalo and that he would give me the details when he next saw me.”

4.2 Mr von Wielligh was interviewed twice, first on 2023-02-14 and then on 2023-04-11. He provided the following clarifications:

4.2.1 Although expected to have been made aware, he was not informed of the transaction for the sale of the buffalo.

4.2.2 When asked whether managers have the authority to sell certain animals, his response was that “that's a weakness of our business.” We understand this to mean that at that stage Mr Ndlovu did in fact have the authority to sell the buffalo to Mr Hazim, but that Mr von Wielligh holds the view that he ought not to have had such authority.

4.2.3 He explained that the President may have interacted with Mr Ndlovu directly, which could be why he did not have any knowledge of the transaction until after the money was stolen. He indicated in this regard that he had never heard Mr Hazim's name until the theft of the money.

4.2.4 When asked what ought to have happened to the cash paid for the buffalo, he indicated that he would ordinarily do a cursory inspection, prepare an invoice and report it to the President, at which stage the money would be deposited into a bank account.

- 4.2.5 There is a substantial variation in price per animal, depending on the particular circumstances of each case. An amount of R400 000 per buffalo is an average price on auction.
- 4.2.6 Although it was initially necessary to secure the approval from the members of the Close Corporation for each particular sale, this has not been the case since approximately 2017. This appeared to be a curious statement because, as we understand it, the Close Corporation has only one member – the President.
- 4.2.7 He currently holds no instructions to refund Mr Hazim or to engage with him on the President's behalf.
- 4.3 Mr von Wielligh provided an account of the processes that must be followed in order for the sale of buffalo to be processed, confirming that there would be action required from both the buyer and the seller:
- 4.3.1 As a first step, the buyer is required to provide an import permit.
- 4.3.2 Upon receipt of the import permit, and an agreement as to the date of transportation, the seller attends to taking blood and other samples for testing, placing the animals in quarantine and obtaining a Red Cross permit to allow for the transport of the animals.
- 4.3.3 Ordinarily, payment for the buffalo would only be made when they are loaded onto the truck.
- 4.3.4 The risk passes from the seller to the buyer on the day that the "buffalo wakes up on his transport", unless otherwise specified in a contract. For example, the parties may agree that the animals remain on the seller's property for a specified period in exchange for a fee to attend to them as required.

5. Ms Msiska

- 5.1 Ms Msiska had not provided any affidavits to FinSurv. She was interviewed for the first time on 2023-04-11.
- 5.2 During her interview, Ms Msiska said that she obtained the list of the tag numbers corresponding to the animals in which Mr Hazim had expressed an interest from the main house. Mr Ndlovu described the list to her as a list of buffalo that were sold and asked her to take the list because “he knows that I do permits”. He did not indicate what she should do with the list.
- 5.3 Ms Msiska stated that she printed the list for Mr Ndlovu and then waited for Mr von Wielligh before doing anything else. She could not process any permits without Mr von Wielligh’s approval. However, she did not discuss the matter with him at any stage.
- 5.4 Ms Msiska further stated that she is responsible for recording the sale of animals. There exists one database containing information about the animals on Phala Phala farm, including the mother and father of each animal. There is a separate document indicating animals to be loaded onto transport as well as a sales book that contains a sales order number for all animals that are purchased.