

COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT CORPORATION

HELD AT

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10

22 JANUARY 2019

DAY 2

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PROCEEDINGS HELD ON 22 JANUARY 2019

ADV JANNIE LUBBE SC: Good morning Mr Commissioner, members. We are ready to proceed but before I do so, I wish to place the following on record; I was informed this morning that my next witness, Mr Fidelis Madavo, was suspended with immediate effect last night by the board of the PIC as a result of a report received by internal audit on the Ayo transaction. The suspension is with immediate effect pending an internal investigation, further internal investigation by the PIC so I was informed. I was at no stage informed by the PIC or the internal audit team of this investigation. I put on record that I find it strange and alarming that the PIC Board is running a parallel
10 investigation into matters covered, in particular, by the terms of reference of this Commission. I will later make further submissions in this regard but, my view is with respect, that it is totally improper and it may be necessary, even at an early stage, to consider calling the chairperson of the board to come and explain to the Commission why this is happening. Notwithstanding all of this, Mr Madavo is here and he has informed me that notwithstanding the immediate suspension he is ready to testify and I would then please require Mr Commissioner to administer the oath.

CHAIRPERSON: Thank you Adv Lubbe. I think we can proceed if the witness is here. We've taken note of what you've informed us this morning. Your full names please?

MR FIDELIS MADAVO: I'm Fidelis Madavo.

20 **CHAIRPERSON:** Do you have any objections to taking the prescribed oath?

MR FIDELIS MADAVO: No Sir.

CHAIRPERSON: If you have no objection will you swear that the evidence you're about to give will be the truth, the whole truth, nothing but the truth, say so help me God.

MR FIDELIS MADAVO: So help me God.

CHAIRPERSON: Thank you. Yes Mr ...

ADV JANNIE LUBBE SC: Thank you Mr Commissioner, can I please ask your leave again to be seated while we lead the evidence?

CHAIRPERSON: Yes.

ADV JANNIE LUBBE SC: Thank you. Before we start with the statement you have prepared Mr Madavo, can you just confirm that you have received this morning a letter by the PIC informing you of your immediate suspension?

MR FIDELIS MADAVO: Yes.

ADV JANNIE LUBBE SC: Did they provide the reason for the suspension?

10 **MR FIDELIS MADAVO:** Ja the reason for the suspension was that as head of the division you know they need to do and they've done a number of ... (intervention)

CHAIRPERSON: Sorry can you pull your mic a bit closer to you?

ADV JANNIE LUBBE SC: Just speak into the mic, that's it.

MR FIDELIS MADAVO: The reason given is that you know there was an internal audit you know investigation into the Ayo transaction and as head of the division they find it proper to suspend me with immediate effect. Further investigations will be ongoing. I must not talk to PIC employees you know at this stage, and that in the, and that you know the documentation on this Ayo transaction which I signed, you know according to the letter, indicate that you know I should be suspended. I also just want to put it on
20 record that this transaction took place when I was overseas. There was a DOA in place and I was not directly involved in this transaction at all but obviously as head of the division I carried the responsibility.

ADV JANNIE LUBBE SC: Thank you. We will later come back to the Ayo transaction but then can we start on page 1 of your statement. Can you just tell the Commissioner and the members who you are, your qualifications, when you were appointed by the

PIC?

MR FIDELIS MADAVO: Yes, my name is Fidelis Madavo I studied with the PIC in 2007 and I've held a number of titles you know in that organisation. I started as a portfolio manager of resources and I'm currently the executive or as of last night the Executive Head of Listed Investments reporting directly to the CEO. My qualifications include a Bachelor of Science in Chemical Engineering; a MSc in Industrial and Administrative Sciences and I've also got an International Executive Development Program Diploma from Wits and London Business School.

ADV JANNIE LUBBE SC: Yes please continue.

- 10 **MR FIDELIS MADAVO:** I've been requested by the evidence leader to go into details of how we invest in the listed space. The Listed Investment Portfolio comprises of the following divisions; Internally Managed Listed Equity, Externally Managed Funds, Fixed Income and Dealing. PIC invests funds on behalf of its clients. Broadly the mandate covers you know, as we say, listed equities, listed fixed income, securities, cash and money markets, unlisted property and for our division, The Listed Investment Division covers the listed equities, listed property, listed fixed income, cash and money markets you know, the portion of the mandate from the client. I must say listed investment constitutes the bulk of the money that we manage. As at 31st March 2018 roughly 80% of the portfolio was invested in listed asset classes and that amount was about R1.96
- 20 billion. In respect of Listed Investments mandates have been provided by the Government Employee Pension Fund, the GPF; the Unemployment Insurance Fund, the UIF; the Compensation Commissioner, CC; Compensation Commissioner Pension Fund; Associated Institutions Pension Fund and other smaller clients. Transactions concluded by the Listed Investment Divisions would be dealt through the following governance committee's in line with the delegation of authority the DOA of the PIC.

The Portfolio Management Committee for Listed Investments which we refer as to PMC Listed; Investment Committee IC and PIC Board as appropriate and I'll go into that when you know reference as to when we need to go to PIC Board. The members of the PMC Listed currently include the CEO or the two executive directors which is the CEO and the CFO. Normally the CEO would be the chairperson of the committee. Then we've got Executive Heads of Risk, Legal, Research and Project Development and Investment Management. There is also the Executive Heads of Listed Investment and then the general managers in the subdivisions of Listed Investments that is the General Manager of Internal Equities, the General Manager of Externally Managed Funds and
10 the General Manager of Fixed Income.

ADV JANNIE LUBBE SC: Can I just interrupt you here and coming back to the Ayo investment. Would it then be correct to say when this investment was considered by the PMC Listed the committee would have been chaired by the CEO and if not available, then by the CFO?

MR FIDELIS MADAVO: Yes, so one you know either the CEO or the CFO and my understanding when it happened was I think the chair was the CFO.

ADV JANNIE LUBBE SC: Thank you.

CHAIRPERSON: You of course heard that you or you know as a fact that that is so it was the CFO who sat?

20 **MR FIDELIS MADAVO:** I think it is a fact in a way you know obviously I wasn't there when I say I heard, you know I read, you know on the minutes.

ADV JANNIE LUBBE SC: So to make it clear the documentation, the minutes will provide that information?

MR FIDELIS MADAVO: That's right. There may be circumstances where proposals are referred to PIC Board or to the client ... (intervention)

ADV JANNIE LUBBE SC: I must again interrupt you there, I'm sorry for that. I want you to explain in what circumstances that will happen?

MR FIDELIS MADAVO: So a good example would be the 5 billion Dollar sorry Rand bridge that we did for Eskom. So when we did that investment a, because of the urgency of it, but also because Eskom at that time was in the media for corporate governance reasons *etcetera*, we had to consult, we went through the processes. PMC, IC and then we referred this thing to Board because of the sensitivity of it but more importantly we were also actually consulted the client. That would be an example where you know we go all the way to Board. And another example would be when we
10 did our first investment in the rest of Africa we put as, you know we have got 5% allocation to the rest of Africa of 5% of our AUM, Assets Under Management, to the rest of Africa and when we did the first investment we felt it was proper to consult the Board to tell the Board that we are going to make this investment, this was the target investment, what they did *etcetera* so that was, that's another example.

ADV JANNIE LUBBE SC: What was the name of the entity that you invested in?

MR FIDELIS MADAVO: Ecobank. Ecobank is in over 30 countries in the rest of Africa and we are one of the large shareholders there alongside the likes of Nedbank and the categories and so on.

ADV JANNIE LUBBE SC: Can you perhaps remember or give an indication of the
20 percentage of shareholding in Ecobank?

MR FIDELIS MADAVO: At that time our holding was 20%. You know when the other shareholders came in and there were equity raises *etcetera* we were diluted, I think currently we are around 13%.

ADV JANNIE LUBBE SC: Thank you.

CHAIRPERSON: My colleague has a question here.

MS GILL MARCUS: Sorry just when you said that you consulted the client can you just say specifically which client?

MR FIDELIS MADAVO: So the client in this case was the GPF and so we consulted the GPF just to let them know that there was going to be this investment.

ADV JANNIE LUBBE SC: Just to make it clear when you talk about that that is the Eskom matter not the Ecobank matter?

MR FIDELIS MADAVO: No this was the Eskom, the Eskom R5 billion bridge.

MR EMMANUEL LEDIGA: Question Mr Madavo, the bulk of the PIC money is in listed companies, why is that so because you know people have been saying it looks like too
10 much money is in listed companies versus sectors that can grow our economy, why is it so that the bulk of the money is in JSE companies?

MR FIDELIS MADAVO: No it's a very good question, I think you know the answer to that is largely is that all investments are driven by the mandate. So as you know the GPF for example has got liabilities on one side and clearly they do their asset liability modelling, we don't do that, they come to us and say you shall invest you know this way, for example for ... (indistinct) or whatever and we take that mandate and we invest you know according to that mandate. So it's very difficult I think for people who don't know how we work, they think we just like the JSE, quite honestly no because we have got for example a huge exposure to Naspers which is troubling us you know but we
20 have to buy Naspers because of it's a big constituent of the index. So it's a function of the mandate and nothing else.

MR EMMANUEL LEDIGA: So meaning that the arguments should be directed to the GEPP basically not the PIC?

MR FIDELIS MADAVO: The PIC is simply the asset manager.

MR EMMANUEL LEDIGA: Yes.

MR FIDELIS MADAVO: And not the owner of the money. So, I think if there was like an *imbizo*, a getting together between the owners of the money and the asset managers you know hopefully at some point there will be a coming together of, obviously realising that their assets and their liabilities on one side and as we all know it's a defined benefit fund. So you know we have to also you know invest in assets that will generate adequate returns.

MR EMMANUEL LEDIGA: Thank you.

MR FIDELIS MADAVO: I will give a description of the investment process as it relates to listed investments; it will make reference to certain committees in certain instances.

10 It is suggested that the investment process be read in conjunction with terms of reference applicable to the relevant committees of the PIC as well as the DOA in as far as it relates to listed investments. The Internally Managed Portfolio is managed via two distinct strategies namely passive and enhanced beta where we try to generate a little bit of outperformance from the benchmark. So alpha, people who talk about alpha which is obviously if you can, if you are following a benchmark and you can add a little bit more you are generating you know this alpha, this return for the pensioners.

The passive strategy replicates the stock waves of the client mandated benchmark by periodically rebalancing the portfolio. It thus has a very small, what we call tracking error, that is deviation from the benchmark and where the quans team, a
20 quantitative team in-house that performs the regularly balancing of this portfolio. The Enhanced Beta Portfolio is also managed using a client mandated benchmark. However, the stock waves may differ slightly, clearly within certain risk parameters to the benchmark. The stock tiles or weights in this fund are based on research or on the research process outlined before and we are going to go into that. There are therefore trades that are made in order to rebalance the fund to reflect the research views of the

investment team. However, the tracking error of this fund remains well below that you would find you know in a defined or active fund.

ADV JANNIE LUBBE SC: In other words if I can put it in lay terms, if you compare the beta with the alpha, beta will be the second prize?

MR FIDELIS MADAVO: Exactly, you know and the reason why we do this really is to, if you come to think of it, we are managing R2 trillion. Of that R2 trillion as I said right at the beginning, approximately 80% of it is in the listed space somewhere. We've got probably around a trillion Rand parked on the JSE. You have to clearly push a lot of that money into passive strategies to protect the portfolio because if markets turn and
10 you are only, you know pursuing active strategies it's possible to burn a lot of cash in a, you know ... So, we have a sizeable number of investment professionals at PIC managing this part of the portfolio and I'm, you know proud to say it's a good team. Over the last two years particularly they have performed well in an environment where we've had issues around Steinhoff and so on. For example when Steinhoff happened the portfolio was outperforming by over 10% you know so it's a team that's delivered what they contracted or were hired to do.

MR EMMANUEL LEDIGA: Two questions Mr Madavo, give us a sense of the numbers on sort of the breakdown between passive and the enhanced beta and then ... (intervention)

20 **MR FIDELIS MADAVO:** So ... (intervention)

MR EMMANUEL LEDIGA: Ja the numbers and the breakdown there. The second question is, I read somewhere in the documents that the PIC would like to increasingly manage more money in-house meaning that as you know about under 10% of your money is managed by you know the outside managers, why is that so given the fact that the PIC says it wants to boost black managers and you know to manage money.

So why is 10% managed by outside money and you still want to decrease that money?

MR FIDELIS MADAVO: I think let me answer the first one first. So if in round terms if you say we are managing 80% of the 2 trillion is managed or is in equities I would say 80% of that 80% is internally managed and 20% is outsourced you know and I'll talk about external managers a bit later. Of the 80% that's internally managed I would say you know 80% of that is passive and 20% is in beta strategies. So the beta strategies is in rough terms we are talking of about 200 billion you know in rough terms which is a very sizeable asset manager if you come to think of it and so we're just trying to add a little bit of, you know, performance on an otherwise passive. Remember the clients,
10 particularly the GPF, will just give us a benchmark and say just beat or you know invest according to this benchmark. If we outperform it we don't get paid for it but we just need to you know make sure we invest according to that benchmark.

MR EMMANUEL LEDIGA: Ja so to be clear then is that 200 billion is in smart investment?

MR FIDELIS MADAVO: Ja in smart and the rest is in passive.

MR EMMANUEL LEDIGA: Which is how much, 700 billion or passive ... (intervention)

MR FIDELIS MADAVO: Ja in round numbers, I like to talk in 80/20 because it's a moving number.

MR EMMANUEL LEDIGA: Okay alright and then the stuff about the black managers
20 and the ... (intervention)

MR FIDELIS MADAVO: If you don't mind can I, when I talk about the asset management part then I will address this because actually it's not correct. All I can say at this stage is we are moving money that is managed by global asset managers BlackRock, we are taking some of that money back to the PIC to enable the team, the internal team, to be able to manage global money as well because at the moment they

are only managing domestic funds. So we are taking some of that to give them the opportunity to manage global funds and at some stage you know, you know just like I think it's a development of our personnel and also development of the PIC at the end of the day. We have had to go to the client to ask for permission to do that but I will address that later.

I think you know what I must point out is in compliance with the Financial Sector Conduct Authority, which is the FSCA it used to be called the FSB Regulation, investment decisions including trading are meant only on publicly available information. You can imagine our size everybody is always trying to see do we have the advantage, do we have inside information on, I can categorically say the team prides itself only on working on publicly available information, whenever there's instances where information comes to the team that is not publicly available the stock is immediately embargoed.

So if you allow me to just talk a little bit about the investment process for the internally managed portfolio. Basically we believe that financial markets are inefficient due to behavioural based biases which cause discrepancies between a company's fundamental value and its market price which is why, clearly people you know trade shares, you know people see things that other people don't see *etcetera*. We believe that a strategy or purchase in quality companies it attract valuations, outperforms the market over time. We employ a discipline framework, the so-called four factor process and I will go into that a little bit later, focussing on rationale and objective analysis to identify those opportunities and guard against falling victim to all these biases that we are talking about.

We believe that the empirical evidence of a quality company is one that generates high returns on its invested equity capital; it's lower than peer group capital risk. We seek to identify these companies and add them to our portfolio, it attract

valuations.

ADV JANNIE LUBBE SC: Can I, sorry to interrupt again, is that what normally is called in lay terms, you focus on the blue chip stock?

MR FIDELIS MADAVO: We indeed focus on blue chip stocks where it's a problem for us though because we tend to hold everything, so the way we do this is if the team strongly believes and they have done their work and we will see – we call them deep dives and so on and they see opportunities, we can add a little bit more to that stock and go overweight. In other words, more than what the benchmark allows. So we take those opportunities, or if we do not like something, we can down weight it and there be
10 underweight that stop in the index.

MR EMMANUEL LEDIGA: Mr Madavo, so that strategy, I am right in saying, is called growth and reasonable price?

MR FIDELIS MADAVO: *Ja*, you could say this.

MR EMMANUEL LEDIGA: You could say that.

MR FIDELIS MADAVO: Yes.

MR EMMANUEL LEDIGA: And then the second question is, if the bulk of your portfolio is passive strategy, the value add, does it happen only in that 200 billion rand portfolio. The smart portfolio.

MR FIDELIS MADAVO: Yes.

20 **MR EMMANUEL LEDIGA:** Because the passive part really is just the numbers [Intervenues].

MR FIDELIS MADAVO: The passive is just following the benchmark [Intervenues].

MR EMMANUEL LEDIGA: So the bulk of the enhanced value is in that the enhanced bigger portion.

MR FIDELIS MADAVO: That is right.

MR EMMANUEL LEDIGA: Okay.

MR FIDELIS MADAVO: And that is where we have got the professionals in. You know, that we have the PIC. That is where they work.

MR EMMANUEL LEDIGA: Okay. Alright. Thank you.

MR FIDELIS MADAVO: So PIC follows a [Indistinct] approach when analysing stocks, so let me go through you know Sector 1 is a competitive advantage quality. To determine a competitive advantage and quality of the Company, we use what we call port as Five Forces Framework. I think, you know to explain it, I think this Five Forces would include threat of new entrance, threat of substitution, bargaining power of buyers, 10 you know and bargaining power of suppliers, competition amongst firms *et cetera* so looking at a company and saying where is it placed, when you look at all these forces. You know, is it – Has it got, you know, supply power. Is it in a corner, you know, threat of new entrance in the sector. There are sectors where companies operate their very low barriers to entry. Anyone can come in and so, so you probably want to avoid buying companies like that.

ADV JANNIE LUBBE SC: Do I understand? I just want to understand it myself. It is a useful tool to do the analysis.

MR FIDELIS MADAVO: Exactly and it is a tool that is, I think there are a lot of people who are in investments would use to and understand quite easily. The second factor is 20 what we would call stewardship or ESG. I think PIC is getting more and more engrossed in this. I think everybody is moving towards ESG and making sure that an ESG means environmental sustainability and governance and we believe that good corporate governance and the adherence to best practice on ESG, ultimately leads to sustainable good returns. We use reports and scoring done by our team, ESG team in the house. In our analysis and engagement with the Board and management of

companies to ensure that best practices are adhered to. I think the difference between the PIC and say other global asset managers is, other global asset managers would avoid buying companies that pollute, companies that lagers in ESG, we would be – We would do the opposite. We would buy those companies and invite them to the PIC seated at the table and try to change their behaviour.

ADV JANNIE LUBBE SC: Do I see a strong influence of King IV?

MR FIDELIS MADAVO: Hundred percent. Yes.

MR EMMANUEL LEDIGA: *Ja*. Question. On this factor, is that it looks like the PIC has been struggling to make the companies compliant. Especially listed companies, 10 but I have seen in the documents also that even the unlisted companies that you guys have invested in, are struggling you know. Is that correct? First thing and especially in terms of corporate governance, you know, Steinhoff, these flags were there before probably, but they were not acted on maybe speedily, so can you just explain a bit about, sort of the success of this concept?

MR FIDELIS MADAVO: I think, look we have come a long way in our ESG engagement. We have got a significantly bigger team now and our engagement starting to bear fruit, we do engage extensively, but you have to understand, PIC, we are never the majority owner in most of these companies. We happen to be a significant Shareholder, so there are times when we go flex our muscle and we are not 20 always successful, but it is registered. So there are times when we have been successful. I think the Steinhoff issue is unfortunate in the defence that we fought for a long time against the Frankfurt or the German listing. It was not, you know, we were not supporters of that. Unfortunately we were not sizeable enough to block that, but I think the JSE has been engaging lately with a lot of Shareholder, including ourselves or what they can do to make changes. There is also the issue around auditor rotation on

the Board, because the auditors as you know for Steinhoff were there for a long time *et cetera* and so there are a lot of issues that have been in discussion. We are on top of that. You know, all I can say, it is work in progress, but we have had some good engagements.

MR EMMANUEL LEDIGA: *Ja*, the one concern is that, the companies in the unlisted space especially, some have not been performing, but one does not see any sanctions, any penalties built in within contract and Shareholder contracts, so I am not sure that if this businesses do not comply, especially given the commitments they made to the PIC, what kind of sanctions and penalties can the PIC impose on those companies?

10 **MR FIDELIS MADAVO**: Well, I would not like to speak for my unlisted colleagues, but [Intervenues].

MR EMMANUEL LEDIGA: Yes. Speak for the listed.

MR FIDELIS MADAVO: I think for our area, I think we have been very, very active. We have put people – Well, not put people, but nominated people who obviously being cognisant, these are listed companies. People who board with these Boards influence the governance *et cetera*. It takes time, but I think we are already seeing some very good things. Recently we increased our stake in MTN and we are quite active there. We want to see change, because this is a company that has been found wanting in a lot of countries. In Nigeria, you know. They are operating in the Middle East *et cetera*,
20 so we want to have people there who are going to represent us and make sure that the governance and so on improves.

MR EMMANUEL LEDIGA: Thank you.

MS GILL MARCUS: You have mentioned Steinhoff a number of times and I am assuming that that would be something in due course, Advocate Lubbe, but if you have mentioned them in your presentation so far, how – Perhaps you could just explain how

big the investment was in Steinhoff and how material, obviously in total, there is always percentages given. The size of you is not material necessarily, but it is very material. If you have got these misgivings, what did you do with it with that size investment?

MR FIDELIS MADAVO: Can I – I note your question, but I will answer it shortly, because I need – I just need to highlight one point just further on in my presentation, then I will answer your question, because it becomes [Intervenues].

MS GILL MARCUS: And I am assuming that this is not the Steinhoff investigation. This has simply arisen because you have raised it that that is a subsequent matter for The Commissions attention.

10 **MR FIDELIS MADAVO**: No. Sure, but I will answer that. Then the other factors are uncertainty and risk [Intervenues].

COMMISSIONER: There is something else my colleague wants to find out.

MR FIDELIS MADAVO: Oh sorry.

MR EMMANUEL LEDIGA: The final stuff – You know our topic on the corporate governance you know and all that. Is that – I mean, is there, I mean if you look at Boards and senior managements on JSE companies, these things, Boards have changed but management does not change much in some sectors. Just before we leave the point, I just want to ask, is the PIC going to be very serious about these things.

20 **MR FIDELIS MADAVO**: Well I think [Intervenues].

MR EMMANUEL LEDIGA: The environmental, you know, corporate governance. All those things.

MR FIDELIS MADAVO: I think [Intervenues].

MR EMMANUEL LEDIGA: is that taken very seriously and in the future, is that going to be taken like seriously. This issue.

MR FIDELIS MADAVO: I can really categorically say, PIC is taking ESG very seriously. The team has grown. We have recently been talking – I think you probably would know RobecoSAM in Switzerland. They are specialists on ESG. We would like to introduce an ESG element more and more into our South African portfolio. We already have it in the global portfolio, so I think I can assure you that the PIC is very serious on ESG. Obviously it is a work in progress. It will take – It is a big portfolio. We are only – We are never the majority owner in all these companies, so you know, we can shout, but if we are outvoted by the others, it would take time for us to, you know – It is much easier for the investments that we making in the rest of Africa, because there, for every
10 investment that we make, we put our people on the Board. We do not trade. It is a buy and hold strategy. We do not trade that portfolio, so it is much easier to police corporate governance and so on. It is much more difficult in South Africa because we cannot put PIC people on these Boards, because of FSB or FSCA. There are regulations, but I can assure you that it is something that the PIC is investing heavily in.

MS GILL MARCUS: And perhaps just a follow-up in a way. You have mentioned a number of times you are not really able to do something because you not majority Shareholder, but in your decision making in going into a company, I am assuming that you are – You invest to a point of being a significant Shareholder. You do not have to be a majority. It certainly enough noise when you are a significant Shareholder to have
20 a lot of weight. To what degree do you – Are you looking at only a majority Shareholder making certain decisions, because if you have got a PIC investment that is a significant Shareholder, you have got a lot of voice, without being majority.

MR FIDELIS MADAVO: *Ja*, maybe I should correct myself there. When we say majority, I think the proper phrase is Shareholder of reference. So if for example, MTN, when we are close to 26 percent, we are now a Shareholder of reference. So, to me

that is important because whenever they do things, they do these things with the understanding that PIC is an investor. We are represented on the Board and our policing of governance then becomes much easier. So I think I was referring to some of the smaller, because we have had issues in some of the smaller companies. Group Five and so on and so on, where we are a Shareholder but we are not a Shareholder of reference and here are other Shareholders like Allen Gray and so on who might be a lot bigger than us, so you know and we are not always pulling or seeing eye to eye with some of these guys, so it becomes a little bit more contentious and difficult.

10 If you would allow me to continue, Factor Four Evaluation and here our key assumption is that the fundamental or fair value of any stock is discoverable. In other words you can look at using different tools to see what is fair value and in most cases we use what we call the discounted cash flow method, where you look at cash flows and you discount them to today and see what the value is and we also use supporting tools that you know priced to earnings, internal [Indistinct] or return priced to NAV on it as a value *et cetera* and the team is always working around its valuation methodologies and perfecting them and so on.

20 Obviously depending on the sector, in mining for example the discounted cash flow is used more and the banks, it may be, you know priced to book or something like that. It varies, but we have a team that is very well schooled and looking at these things on a daily basis. Then we have discussion or information forums that aid the portfolio management process on an on-going basis. We have morning meetings where people discuss recent economic data releases and we can flag what is changing. We have got – And we pride ourselves in this next one. The deep dive meetings where the team do detailed bottom up analysis of the stock various stocks and then they present to the team and people have very animated discussion on the funding and this

really helps us in understanding in making the right investment decisions.

Then we have got sector focus meetings, portfolio manager meetings and these are all meetings that help us to understand better the investment universe.

MR EMMANUEL LEDIGA: Question.

MR FIDELIS MADAVO: *Ja*.

MR EMMANUEL LEDIGA: Can you give us a sense of how big your team is and how is it broken down? Whether it is economic research or mining team and all those [Intervenues].

MR FIDELIS MADAVO: So I think now internal equities only, we have got – So the
10 whole team is probably around 40 – Just under 40 or around 40 individuals and we have got in the internal equities team we probably got about 16/17/18 people and they are broken down in – You know, we have got a mining team. Mining, oil and gas and then we have got financials which will be looking at Banks and the insurers. Then we have got – Well industrials is broken down into two, which is a non-consumer and consumer industrials, so there are two team there and then we have got listed property team. It think that is it. So these are people who would get allocated cash so that the portfolio managers, they can manage and see how they perform and then what the client sees is a one portfolio which is the internal portfolio, so all these support portfolios feed into one portfolio which we then report to the client.

20 **ADV JANNIE LUBBE SC**: Can I just for clarity ask, is this team also working with the team of Mr Dolama, testified about the research team.

MR FIDELIS MADAVO: Yes, so we get all the economic input from Mr Dolama's team and in fact the economics team sits in his team, so as you know the assumptions on growth, on currency and so on are quite integral to our valuation process.

MR EMMANUEL LEDIGA: *Ja*. The valuation of stuff like IO technology, Steinhoff and

all that would come from your team.

MR FIDELIS MADAVO: That is right. So the valuation – Let us take IO. You know the valuation is an appeal that comes in, valuation was done in the team and then we would look at the PLS or the prelisting statement. There is the numbers there and if we think that, you know and remember we are not a short term investor. We are a long term investor and we tend to look at returns over minimum of 2/3 years and beyond. So if we feel that that we are not going to get a return over a period like that, we are not going to invest. If we look at the investment case and what the company is saying they are going to do, you know, then we are not going to invest and so their valuation is
10 done in the team. Yes.

So you know and of course, the last component of the process is the investment view maintenance and I think that you know, we like to see if things change *et cetera* and the team is following information flows and keep testing whether or not view generation assumptions still hold and if things change clearly we need to tilt the portfolio. Corporate actions IPO rights issues and book bills. These are transactions that require PMC or relevant governance approval. You know and however depending on the DOA, some of these may be quite small and they could be within the DOA of the CEO of the PIC but most IPO's go through the PMC and there are also disposals or sales above certain amounts that require PMC or relevant governance committee
20 approval, so the next session on IPO origination *et cetera* is quite similar to what you heard yesterday from [Intervenues].

MR EMMANUEL LEDIGA: Question. Question. I just want to deal with the IPO's and the rights issues and the book bills. Can you just explain the process in terms of how you are approached, who typically approaches you, you know, how the process works for an IPO say or a rights issue or a book bills and just explain them a bit for The

Commission.

MR FIDELIS MADAVO: That is the next paragraph. So you know, so we would receive you know IPO's would come through a number of avenues. Certainly most people would feel free to have meetings with say the CEO, they would go to the CEO or they would come straight to the team. I think in IPO that possibly IPO in this current year, where the – Or Banks will come in, like Standard Bank will come in and say we are working to IPO's this company and this is the timetable *et cetera, et cetera*, so that is IPO's. A book bills, that is typically or rights issues, that is directly from the company or from their advising Bank, so they would typically call you with a few hours to go, you
10 know, 15:00 the market closes at 17:00 and they typically call you and say could we take you over the wall. We are going to raise so much *et cetera, et cetera*, so we have a very, very narrow window, you know, between 15:00 and 17:00, we must make our minds to subscribe, however for book bills and rights issues is not a big problem because we already hold the stock, so the portfolio manager must just you know make up her mind to say, do I like to add more. If they like they can subscribe, then we can go and inform you know PMC at a later – To notify them. Actually it is a notification, because we already hold the stock. The approval comes in terms of IPO's because we do not – It is a new listing and we must involve other teams and I will go through the process now, but roughly that is what it is.

20 **MR EMMANUEL LEDIGA**: And typically with these kinds of transactions, you pay fees to people promoting them. Is it not, like book bills and all that. Did you pay fees to stockbroking firms, to the investment Banks and all that?

MR FIDELIS MADAVO: No, for book bills and rights issues it would must be the stockbroker. Remember you know we simply, we simply or in fact, if at all there are very small fees. We do not – because the bank is acting, not for us, the bank is acting

for the company. They are just phoning and facilitating. We do not have to pay them.

MR EMMANUEL LEDIGA: *Ja. Ja. Okay.*

MR FIDELIS MADAVO: *Ja.*

MR EMMANUEL LEDIGA: Alright.

ADV JANNIE LUBBE SC: Can I also just clear this up and compare it again to the unlisted part of the evidence where the unlisted part, the unsolicited application are the majority. The walk-in clients.

MR FIDELIS MADAVO: *Ja.*

ADV JANNIE LUBBE SC: Not so in the listed division. That is the minority.

10 **MR FIDELIS MADAVO**: No, as the minority, you know, how many IPOs have been on the JSE. Very few, so maybe we have two IPO's a year or whatever, so it is by far the minority. The majority of what we involve ourselves in, is book bills, rights issues, *et cetera*.

ADV JANNIE LUBBE SC: And IPO's.

MR FIDELIS MADAVO: And IPOs, but I be honest you know, they happen – You may have a few in a year. You know, it is not – but people are not – Depending on their environment. They come and want to raise more and more money.

ADV JANNIE LUBBE SC: Before we close this deal origination funding application, can you tell The Commission how did the AO deal entered the PIC space.

20 **MR FIDELIS MADAVO**: So the IO transaction as far as I know, I think came through the CEO's office would typically contact the team to say there is this opportunity. Then phoned – I then ask the team, the portfolio manager of the team to set up the meeting with the company and they had the meeting. Kick off meeting and that is how it started and then the team then obviously worked to develop the investment reports and so on and so on and what would then happen as you see is the first PMC, then you do a

scoping report, first PMC. PMC gives you a go ahead. You do a proper appraisal report and you invite other teams now. Legal risk, ESG, as per what you heard yesterday from the unlisted team and then you go to a second PMC which would then say, yes we like the investment or we do not. That is the process.

MR EMMANUEL LEDIGA: The final question on this section. So book bills and these rights issues typically, they would be done by the largest brokers. Is it not so? Like say Merrill Lynch, the UBS's and all that.

MR FIDELIS MADAVO: No, what we have seen actually – You are right, but what we have seen now is, because PIC is a very big supporter of small stockbrokers and I will
10 talk to that a little bit and what we have seen it, when the big Banks do some of these things, they like to tag with Black stockbrokers, so you may have – You may have UBS with Noah or whatever, so you know that to me seems to be working well.

COMMISSIONER: Mr Commissioner, is that a convenient time to have a 15 minute tea break.

COMMISSIONER: *Ja.*

REGISTRAR: All rise.

MEETING ADJOURNS

MEETING RESUMES

CHAIRPERSON: We said we will adjourn until 11:15 it's now about just after 20 past. I
20 just want to apologise for being late there's some administrative issues that we had to attend to. Yes Mr Lubbe?

ADV JANNIE LUBBE SC: Thank you Chair the witness is ready to proceed.

CHAIRPERSON: I just remind you that you are still under oath.

MR FIDELIS MADAVO: Thank you. So we were on deal scoping. So the investment team will normally prepare their scoping report requesting, so you know just to set the

scene lest, and I'm using an example of an IPO here. So the IPO has come in the investment team will then prepare their scoping report requesting approval to go to due diligence. This report is normally submitted to the Executive Head for review and approval to submit to PMC Listed via the company secretariat. PMC Listed will then consider the submission and either approve or decline which is you know in this case is very similar to what you had on the unlisted and there may be a discussion to say you know the investment case is not strong enough or you know at that stage we also obviously want to know who is behind the listing, which sector, you know Sholto's team you know Sholto Dolamo's research and development team would also come in to say

10 that is an attractive sector. I think if I give you an example there I think Vivo came to list in the, which is an oil trading company, came to list but they were listing in the retail sector of the market and the valuation was quite topic, quite expensive and we didn't feel that we wanted to be part of that at the onset. So there will be IPO's that come in and where they can be also rejected for a number reasons.

If we receive approval from PMC Listed the investment team will then request the various Executive Heads from Risk, Legal, ESG for resources to assist in the DD process of the proposed transaction. Depending on whether the investment team or ESG has internal capacity to do that it may be but in the listed environment it's very rare we go out to get you know help to outsource this DD. This DD is normally

20 done internally.

MR EMMANUEL LEDIGA: Question this deal scoping does it apply you know to IPO's and book bills or just normal transactions you know when you are buying Naspers or SA Breweries?

MR FIDELIS MADAVO: No it would only apply to IPO's and not book bills or rights because remember book bills or right issues happen on stocks that you already hold.

We have already discussed the deep dive and all this, the maintenance process, the morning meetings so the team is already in love with the stock or out of love with it. So by the time the book bill comes they will either want to take more or they want to downsize. So what I'm talking about here applies only to IPO's and so as I said you know the outsourcing part of it to the listed side is not something that, but if we need to, particularly if we are doing investments in the rest of Africa in the rest of Africa we don't just rely on numbers we want people on the ground to tell us you know what is happening in the company.

10 People often joke to say if you are buying a company in Nigeria the guy with the biggest boat you don't want to be buying that company *etcetera*. So we may want to hire somebody to help us with that. So you know we would see that the normal process, procurement process will then be followed to do that. The approval of the recommended service provider will be done in line with the DOA obviously and the engagement for that person or company must be reviewed by legal and signed in line with the DOA.

MR EMMANUEL LEDIGA: Question.

MR FIDELIS MADAVO: Ja?

MR EMMANUEL LEDIGA: The procurement process for DD's and the other areas is it done by finance or is it done within the divisions?

20 **MR FIDELIS MADAVO:** It's within the division but procurement follows, falls under finance so we work in conjunction with them.

MR EMMANUEL LEDIGA: So it will be a joint effort?

MR FIDELIS MADAVO: Ja.

MR EMMANUEL LEDIGA: Okay thank you.

ADV JANNIE LUBBE SC: Is it the normal supply chain management process in terms

of the PFMA?

MR FIDELIS MADAVO: That's right. And you know when we talk of DD here we're talking really of what I talked about earlier in terms of valuation so we would look at everything from commercial, financial, technical if it's a mining deal to come up with a valuation. To us valuation is key because unlike our listed investments you know these things are going to list on a terminal market, the risk is a lot less than in listed transactions. So to us we just need to make sure that we are comfortable with the valuation. On listing the market would determine the price and if we are correct in our valuation then from day one we may be in the money or so.

10 So when you see some of these aspects of DD I think we want to emphasise here that valuation is – then obviously we then look at other aspects legal, regulatory, ESG *etcetera*. You know the directors of, sequestrated for example, there was a company that was listing in on the JSE and it was not clear because some of the guys had been sequestrated before it was not clear whether they had been cleared you know we also now nowadays look at PEP's politically exposed individual, who is behind the transaction given the noise at the PIC we want to make sure that we have really you know thoroughly researched who we are dealing with.

MR EMMANUEL LEDIGA: Ja question, you know I just wanted to check whether Adv Lubbe about the Ayo valuation, I wanted to ask some questions or is that something we
20 can deal with later as we go along?

MR FIDELIS MADAVO: Well we can, I can partly answer that now.

MR EMMANUEL LEDIGA: Okay because you are here so ... (intervention)

MR FIDELIS MADAVO: Ja I can answer that now.

MR EMMANUEL LEDIGA: Can I just ask I've read that valuation, ja if you could just take us through the process like how it was done, how it was justified, you know as the

head of that division?

MR FIDELIS MADAVO: So the way that team works is that you, the deal comes, it comes into the team the GM will allocate, you know remember I described how the teams are structured. It will go to the team responsible you know for that sector and the portfolio manager will then you know allocate the job to somebody else. It's not anybody's, we don't interfere with the valuation to say value it like this or whatever it is. The portfolio manager and the team who come up with the value for example I can tell you that in the case of for example Sagarmatha our value that we came up with was so far away from the PLS valuation that it was always going to be a very contentious you know thing to have invested.

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In the case of Ayo I think there were a number of assumptions there, you know remember there was, they were going to invest in the British Telkom stake and there were also assumptions in terms of the various platforms you know that they had. The increment of value add in terms of BEE and I think some of that has come through with the contract that they got with Sasol *etcetera*. So you know what I saw you know there was that the valuation, the assumptions, remembering that we're not short term investors we are longer term investors who typically looking two three years out, we felt that you know we could invest provided that there were a number of you know mitigants you know and the possible volatility and volatility would come in a number of ways.

20

One is that there was very little liquidity in the stock so people were getting manipulate that stock quite easily. But the bottom line is that we felt, and the team felt, that you know we could invest and we did invest.

MR EMMANUEL LEDIGA: Was there a lot of debate in the team about that valuation?

MR FIDELIS MADAVO: Not that I'm aware of, you know I think a lot of, you know this process that I described you know the work started in earnest at the beginning of

December, you know culminating in the subscription and you know listing I think around 20 whatever the date was. But as I said earlier on I was out of the country, I only saw these reports after I came back so whether there was a debate or maybe there was a debate but I wasn't part of it.

MR EMMANUEL LEDIGA: Would you say the valuation was at the top end of valuations?

ADV JANNIE LUBBE SC: I'm sorry to intervene, I don't want to be rude. Mr Commissioner but in all fairness to the witness and I think you opened this Commission to say we want a fair process and I understand the merits of the questions but the
10 witness is welcome to answer it, what I'm just trying to put on record is that he has not prepared to come here today to discuss the Ayo investment. He's coming here to give formal generic evidence on the listed investment. The forensic team of the Commission is busy with an in-depth and they're 80% finished of the forensic investigation in Ayo and we hope to answer all the questions that is now asked ... (intervention)

MR EMMANUEL LEDIGA: No thanks I ... (intervention)

ADV JANNIE LUBBE SC: But if Mr Madavo is comfortable to answer it it's fine, I just want to put on record that I don't think he has come here to prepared to answer the Ayo questions.

MR EMMANUEL LEDIGA: No thanks it's why I actually you know asked you know
20 whether he'll be, like he's prepared to answer but if it's too much it's fine I'm happy to drop it.

ADV JANNIE LUBBE SC: Sure, thank you.

MR FIDELIS MADAVO: So following the DD and the investment team would then prepare what we call an appraisal report recommending as I said either you know to invest in this or not and this appraisal report will be accompanied by independent and

therefore I must stress independent reports from ESG Risk and Legal and from thereon I think it's very similar to what we heard yesterday in terms of process of submission of the documents ... (intervention)

ADV JANNIE LUBBE SC: Can I assist you Mr Commissioner, Mr Madavo we've discussed this paragraph 31 to 40 the process is similar to ... (intervention)

MR FIDELIS MADAVO: Ja very similar in terms of how you handle the documentation and so on. And so if we go to 41 if the transaction follows within PMC Listed's DOA PMC Listed will then do the following, they approve the company secretariat prepares the resolution for signoff by the chair and as I say it's usually the CEO or the acting
10 CEO. In the PIC it's the two Executive Directors. The team prepares an appraisal letter for submission to the potential client to inform them of the outcome. As I said at the onset there are subtle difference or indeed differences in the process followed for book bills, rights issues and you know this is really due to the real term nature of listed markets. For most of these the investment team, as I said they already owned the stock, will execute in line with the prevailing DOA and thereafter notify PMC as per the DOA. And I think it's important to stress that we hold this stock already so we already have an opinion on what we should do.

At this point I just want to highlight you know in the market when transactions are done on the listed portfolio you know and examples are Steinhoff and so on, people
20 always look at the listed team to say you know but they are doing these transactions. In the PIC there's a team called the Structured Investment Products team SIP's which sits in the private equity arm of PIC and transactions may be executed by this SIP's team using listed investments. Usually it's done to facilitate B funding. I think an example would be where we have a significant overweight or a significant underweight to the benchmark and if we have a significant overweight we then can do one or two

things. We can just sell the stock into the market or we can facilitate BEE. You know in other words create and SPV, fund the SPV to buy the shares of the PIC and that ... (intervention)

MR EMMANUEL LEDIGA: Question, Steinhoff was part of the SIP process I gather?

MR FIDELIS MADAVO: True.

MR EMMANUEL LEDIGA: What other transactions maybe could you point out?

MR FIDELIS MADAVO: So I think it's Steinhoff Vodacom transaction that when we negotiated the pages of Vodacom shares from National Treasury clearly you know that had to be done by another team because you know the negotiations themselves took
10 long and we have to have very strong Chinese walls between the private equity team and the listed team in order to protect you know the listed portfolio because you know as I said earlier on we can't trade on inside information. So you know those are you know two examples that I can ... (intervention)

MR EMMANUEL LEDIGA: So the Vodacom one was just a straight pages of the shares isn't it?

MR FIDELIS MADAVO: Ja but there was a second leg to it you know which was BEE I don't believe it's been done yet so it is still to come.

MR EMMANUEL LEDIGA: Oh okay, thank you.

ADV JANNIE LUBBE SC: Can you just for the record tell the Commission what is an
20 SPV?

MR FIDELIS MADAVO: Well it's a vehicle, a special purpose vehicle which would hold, which would then have the BEE parties there would be, I guess owners of that SPV and they get funding to purchase the shares of the listed company you know they're obviously you know eventually they will become owners, rightful owners of that stock. At this point I just really want to move, well I think before I leave I just want to say you

know it is important to mention that there is very strict Chinese walls between the unlisted team and the transactions that they do at PIC and the listed team and we do that a) to protect the fact that never at any one point should non-public information flow to the other side. In other words the listed team must not know what the unlisted team are working on. You know I think it's very common in investment banks and so on and other places and we exercise that rigorously. And the Chinese walls are also between the team that runs the external management funds and the internal team because the internal team must not know the positions that outside fund managers are holding. So those things are maintained.

10 So I just wanted talk on the externally managed funds.

ADV JANNIE LUBBE SC: Before you do that, that what you refer to as a Chinese wall can actually also be called an integrity wall?

MR FIDELIS MADAVO: Ja.

ADV JANNIE LUBBE SC: Okay.

MR EMMANUEL LEDIGA: Just as a follow up on that then is that when the external managers come to report to the PIC who do they report to?

MR FIDELIS MADAVO: So they report to the external management team, the one that I'm going to talk to next.

MR EMMANUEL LEDIGA: Yes.

20 **MR FIDELIS MADAVO:** And there's no contamination, they don't meet the internal equities team at all.

MR EMMANUEL LEDIGA: Okay.

MR FIDELIS MADAVO: The internal equity team in fact the external management team they sit well away from this other team, they are on the other side of the building.

MR EMMANUEL LEDIGA: And both teams then report to you?

MR FIDELIS MADAVO: Yes.

MR EMMANUEL LEDIGA: So you are the only person who knows what's happening around those two teams?

MR FIDELIS MADAVO: 100% yes.

MR EMMANUEL LEDIGA: Okay thank you.

MR FIDELIS MADAVO: So the externally managed funds division as you will recall I said you know the overall portfolio is 80% is managed in-house and 20% is outsourced and it's this 20% that is outsourced that we are talking about. The external management funds division is a dual mandate within the PIC. So one is alpha
10 generation, is the satellite portion of the client investments and I think more importantly they also play a transformational role within the South African Investment Industry and the team aims to contract solutions on behalf of clients that constantly add alpha that is returns in excess of the benchmark over the long term in line with the client expectations through what I would characterise as a robust portfolio construction processes while being aware of you know the risk tolerance.

The team aims to contribute to the broader social and economic development of South Africa through allocation of capital to black owned asset management firms supporting black owned stock brokers and increasing participation of black individuals within the industry. To date we have allocated just over 100 billion
20 of funds to BEE managers which is something that the PIC actually should talk more of. To achieve these objectives a diligent investment process is followed. The investment process aims to create outcomes that deliver on all phases of the market cycle by utilising diversifying investment strategies. In other words deep value, value growth and so on and working with external investment managers who individually represent the best skill set in their respective areas of specialisation.

The externally managed funds investment process consists of three key areas; external manager selection, portfolio construction and monitoring each with a clear investment process. The external manager selection process provides a framework for governing the selection of managers and initiates the process of capital allocation. It starts with external investment manager identification followed by DD, due diligence, which incorporates again with pulling in the other teams ESG, risk, legal at the initial and final evaluation stages with the recommendations by these divisions to the relevant governing committees.

10 Identification is the process of short listing external investment managers who meet technical criteria set by the team. The process is done through a request for proposals RFP or a screening process as done by the external management fund team. Prospective external investor managers who meet PIC minimum requirements are requested to complete a DD questionnaire which highlights the details of their firm as it relates to the organisation and its people, investment philosophy process, resources within the business, risk management and portfolio construction *etcetera*. Their response to this DD questionnaire, their responses are scored by a technical evaluation team and prospective external investment managers with a score above a threshold are notified accordingly, this is that onsite DD to verify some of these things will follow. The team that performs that will comprise members of obviously the team itself, ESG, risk
20 *etcetera* supported by legal procurement and internal audit. So it's important to note that.

On site PIC do DD is undertaken to evaluate and validate the information obtained from this questionnaire and the onsite DD is followed by another round of scoring, prospective external investment managers with a score above the required threshold are placed on their approved database of external investment managers.

Further quantitative analysis including portfolio construction is performed by the team before a recommendation of allocation is made to PIC listed. Submissions are also made at this stage to that committee by the other teams ESG, risk and legal and so. If required by the DOA approval will be sought from a higher committee you know IC and you know obviously PMC will then you know submit to IC for that approval.

Upon receipt of the relevant governance committee approval prospective external investment managers who are recommended to be allocated funds will receive notification letters from the PIC and the contracting will then begin facilitated by the legal division. From there we do manage a monitoring and retention process.

10 **MR EMMANUEL LEDIGA:** Question, sorry, two questions, so one would assume that when you hire these managers as you said some would be value, some would be growth, so do you take a number within any particular style like value and all that or do you just take one, or a number of them within each star, is the first question. The second question just give us a sense of the RFB process, how often does it happen and secondly is that do you once you have approved the manager do you give them regular money, so you start giving some money and do you give them regular assets to manage over a period of time.

MR FIDELIS MADAVO: So you know obviously one is aiming to have an optimal mix of managers so that as you know if their value, the value is under stress you don't want
20 to have you know a big weight towards value alone. You want to have an optimal mix, value and growth and so on. So the team will do you know that work, you know portfolio construction etcetera, to see what is the optimal number of managers they have to have in a star to make you know the overall mix a good balance, you know so that work is constantly being done, it tells where you see, you're under-weight value, you want to add more to it etcetera, etcetera, so that's the answer to that question.

In terms of the RFB we try to do, to put out the RFB, it's a lot work as you imagine, we must publish it in the newspapers, we must give people, everyone an opportunity to apply to this thing. The last one we did was you know almost a year now current years, we are busy preparing one now and it should be coming out in the next few months, and I have forgotten the third question.

MR EMMANUEL LEDIGA: Giving the first money to manage do you then give managers more money to manage, how often does that happen.

MR FIDELIS MADAVO: So you know and again I suppose you are talking of the incubation manager. We have this incubation program where people who may have
10 been asset managers, and different asset managers come together and we give them money. If the performance is good etcetera, we do top up you know maybe after one year we do a top-up, remembering that if they are incubation managers they get paid a higher fee because they start with lower you know numbers. We typically start on R800million and we give them a high fee and then I don't do that, so it's done on merit, in other words they have to show that they are performing.

MR EMMANUEL LEDIGA: But the normal ones you give them money once, you don't top-up the mature ones?

MR FIDELIS MADAVO: No, no the mature ones we also do make, top-ups again is driven by performance first of all, but also you know we need to have an optimal mix,
20 we can't just give a lot of top-ups to Golf, we need to make sure that whatever we do at the end of the day with an optimal mix of managers in the solution.

MR EMMANUEL LEDIGA: Thanks.

MR FIDELIS MADAVO: So you know we're talking of manager monitoring I think here you know it's quarterly report backs, and interaction with the team, the team will visit on site to make sure that what we contracted to is being respected. Then I think what I

just want to talk about again here is number 61 which is cause of action is a result of irregularities and other performance. There you have got issues where some managers may change the teams, people leave, there have been disputes in terms of ownership in some cases, and you know bearing in mind that an asset manager is only as good as the people work in it, so you know where you lose people you may have to call the manager in, tell them to bulk up, give them time etcetera, and there are also times when the manager continues to under-perform. However you can't say if value is under stress and the value managers are under-performing, you have to be cognisance with that, you can't just fire them you know because they are under-performing, you have to

10 be patient.

So we tend to look at under-performance over a longer period of time, typically two/three years, and so depending on the significance of an event the team can choose one of four possible courses of action; take no action and continue to monitor the manager, recommend placement of the external manager on a probational status, knowledge the watch list, conduct a comprehensive study known as an in-depth review of the manager or you can recommend you know – and this is really the final straw, you can recommend that we part company with that manager, it's happened in the past, but we try to avoid that one.

MR EMMANUEL LEDIGA: Question, give us a sense of terminations or withdrawing

20 money or sort of reducing funds over time, you know how often does it happen that you literally have to terminate the manager, just off the top of your head.

MR FIDELIS MADAVO: It's not a regular occurrence, it's quite rare, as you know it's the final, final you know course of action. You try to intervene, you try to work with the manager, the only thing you can't do with any manager is to tell them what to buy or sell but you try to reduce you know the tracking error, you try to make sure that they've got

the right people and so on. What you tend to see in most cases is that people take their eye off the ball, they're not buoyed up enough, you know as I said you know any asset management company is as good as the people you have got in it and when you do an attribution analysis to see where the problem is, it's often that the people are not paying attention, so you know I think the short answer to your question is yes, it's happened, you know we've had unfortunately and reluctantly to take money from some black asset managers but it's a very rare occurrence.

Then I think the last section I will cover I will go to fixed income, which is the Fixed Income Division of the PIC manages the majority of bonds in money market
10 instruments you know. I think is it on the 31st of March that team had 692billion almost, or exposure of 692billion you know allocated as follows: 69% to government bonds; 26% to SOE's and 5% to Corporates. I think that's the number that we've got here, so it's quite a big team.

Here the process is that potential issuers arrange a meeting with the General Manager of the team and/or the Executive Head of the division to inform the Public Investment Corporation of the new proposed fixed income instrument to be issued. At the meeting the PIC is informed by the leader ranger or issuer of the details of issuer or guarantor as well things like tenure, coupon rate, and characteristic of the proposed bond issuance etcetera, you know those things are discussed there.

20 The fixed income team then would do a scoping report or a desktop analysis to ensure the bond complies with the name and client mandate requirements and check the credit rating of the issuer as well. If the bond issuer passes these checks the fixed income team present the potential transaction to the PMC or list it to request a DD you know, due diligence. A due diligence is undertaken very similar to the equity side of the business where you include, the only difference on this side is we've got a credit team

that then goes and checks, does a credit report, that's the only addition but it's very similar to what I have already articulated, and once these reports are in we go back to PMC, very similar to what you do on the other side, and the process is you know is similar there.

On number 71 such approval is granted, the fixed income team will look at the different bond mandates and portfolios in order to determine if the proposed allocation. The fixed income team then participates in the primary auction or book build as we will call it. If you know obviously SOE's and all the other things that they did do, or these auctions that they do, if the outcome is successful then an allocation of bonds
10 is received, details such as allocations, static data and the National Security's identification number or ISIN, maturity date, yield, etcetera is obtained from the book runner, or the counterparty. The transaction is then booked to the relevant portfolios, matched with counterparty and settled on the settlement date.

ADV JANNIE LUBBE SC: Can I – sorry to interrupt, can you just explain to the Commission what is exactly meant by primary auction book build, it's technical terms, if you could just explain it.

MR FIDELIS MADAVO: Ja, no, no, I think it's – it will be very similar to the equity side where people are raising money essentially, so Sunray or Eskom would come to the market, auction, looking for money, and in many cases, particularly in recent months or
20 you know where there have been issues in terms of corporate governance and so on, a lot of private money is shied away from, so PIC ends up you know being a major participant, but it's parent in some of these auctions.

MR EMMAUEL LEDIGA: Question, within your external managers do you have people managing bond funds, fixed income funds?

MR FIDELIX MADAVO: Yes, we just actually appointed our first you know fixed income

bond managers in the domestic market. We have had three managers, you know one established and two that I would say are developmental managers, but they are all black-owned. Obviously after this the fixed income team manages and monitors the portfolio and I think I will end up there Chair.

MR EMMANUEL LEDIGA: I just want to follow up on one of the first questions which I asked and you said you would look at it, so is the PIC thinking of decreasing the money to external managers over time, or is it looking at increasing the money to external managers over time?

MR FIDELIX MADAVO: Well I think you know the idea is to keep increasing. What we
10 are doing now is if you look at the ratio, you know just to give you highlights, I think if you look at when we started this program, at the PIC in April 2009 roughly 83% of the outsource funds were with non-BEE managers and only 17% was in BEE hands. As of March 2018 that racial has tilted quite sharply, 60% of funds is now in the hands of BEE and 40% is non-BEE, so you know we, as I said you know there is 170billion outsourced currently and 60% of that is with black managers.

The idea really is to reduce allocation to non or to traditional managers and to keep increasing allocation black-owned fund managers, and the definition is 50 + one, and you know a significant element of women and so on in those companies, as well as management control.

20 **MR EMMANUEL LEDIGA:** Thank you.

ADV JANNIE LUBBE SC: Mr Commissioner and members that completes the evidence of Mr Lediga.

CHAIRPERSON: Can I just ask one question, as head of the – what is it, Head of Listed Investments, Executive Head of Listed Investments, are you satisfied with the processes that are followed for instance up to decision whether or not to participate or

would you say there needs to be changes brought in order to speed up matters and so on, or are you satisfied with the processes as they are?

MR FIDELIX MADAVO: I think I would answer it this way. We you know we have improved our processes, particularly over the last two/three years, you know despite the challenges of time to market and so on, even in IPO's you have challenges in that people come one month or so prior to IPO and they want PIC to participate, and we have had instances where we have sent them away to say look we have a process, we have a two-stage process where and we need to do a DD, a proper DD, so I am satisfied that really I think we have improved on our processes, we incorporate other
10 teams in what we do, and you know I think you know – there are challenges in terms of – but on the book builds and those issues but there the risk is very low, because we already own the stock. The IPO's is where you know there can be challenges but for as long you say to the prospective investors, if you said to them look you want the PIC to participate, we have processes, if you don't want our processes then we can come on board after you have IPO'd, I think we have said that.

So you know so am I satisfied? I think I am very satisfied with the changes that we have implemented over time at PIC.

CHAIRPERSON: Thank you.

ADV JANNIE LUBBE SC: Chair if I may with your leave just follow up on that. Thank
20 you, you have reminded me of something I forgot to ask. You have seen the Terms of Reference of this Commission, one of the terms is whether there is any alleged impropriety regarding investment decisions by the PIC, in the media reports in 2017 and 2018 you know IO is one of those, to your knowledge do you know of any impropriety regarding investments made and reported in the media 2017/18?

MR FIDELIX MADAVO: Absolutely not, and I think I am proud to say even if there are

seen to be failings in what we did in IO I don't think there will be any tinge of impropriety that will be found certainly you know not that I'm aware of.

ADV JANNIE LUBBE SC: And do you know whether any director or employee used his or her position or privileges or confidential information for personal gain or to improperly benefit another person?

MR FIDELIX MADAVO: No I am not aware of anyone.

ADV JANNIE LUBBE SC: Thank you Chair.

MR EMMANUEL LEDIGA: I have a question. In point 5 you mentioned dealing, you know I think it's a large part in general, maybe for the record take us through the broad
10 you know part of it in terms of the DRFV process, how often it is and which brokers are being used.

MR FIDELIX MADAVO: So in – you know I think it's important and a lot of people don't realise this, I'm always having to explain this part to people, so we – remember I said we manage a large portion of the portfolio on a passive basis, which means we don't share in the portfolio, in other words we don't trade in the portfolio that much, so despite the fact that we manage a lot of money, we don't generate lots of brokerage. However you know some time ago we decided that we wanted to transform the stockbroking industry. We interviewed all the 52 I think or you know this market has got a lot of brokers, 52 brokers, and we decided, and the aim there was to say you know
20 those that we classify as BEE brokers we will group them on one side and we try to allocate as much of our brokerage to that group. That has been going on and the idea there is to make sure that they grow, they hire new people, they've got a regular source of income etcetera, etcetera. It is not always you know possible to satisfy everybody because as I say we don't generate enough but we try to make sure that you know those brokers you know are the first on our list of allocation. I think over 80% of what

we now give is – you know is to this group, and then the rest is to obviously the bigger global banks because we still – and local banks as well, Standard Bank etcetera, because we still need global research, but you know that program of supporting our stockbrokers is what they were and the second leg in that support scheme is that the money that we have allocated to external managers at least 40% minimum of that trades must go through BEE stockbrokers and we police that as well, so on report backs when they come in we make sure that they are compliant.

MR EMMANUEL LEDIGA: Thanks. The DRFP process how often does it happen, the RFP process for the brokers?

10 **MR FIDELIX MADAVO:** No I think the brokers we don't do that because we saw them right at the beginning, so if for example a black group goes to buy a black stockbroking firm, Concillium, Legae, all those are good examples, they can just come and present themselves to us, show us that they are compliant and we will take them on our list.

MR EMMANUEL LEDIGA: Thank you.

ADV JANNIE LUBBE SC: Mr Commissioner that concludes the evidence, the next witness is ready to proceed, and because of what happened this morning I need I estimate about ten minutes just to discuss certain issues with the next witness. I would not ask for an adjournment, I don't want to waste time before lunch, if I can ask you if we can start at half past twelve and then I can use the rest of the half hour before lunch
20 with this witness.

CHAIRPERSON: Alright, so up till half past twelve, but you will let us know when you are ready?

ADV JANNIE LUBBE SC: Thank you Mr Commissioner.

CHAIRPERSON: Thank you. We will adjourn now until we are advised when to come back.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV JANNIE LUBBE SC: My apology Mr Commissioner it took a bit longer, but Mr Pholwane is ready and he will take the oath.

CHAIRPERSON: Your full names please?

MR CHRIS PHOLWANE: I am Christopher Pholwane.

CHAIRPERSON: Do you have any objection to taking the prescribed oath?

MR CHRIS PHOLWANE: I don't have any objections Chair.

CHAIRPERSON: That being so do you swear that the evidence you are about to give
10 will be the truth, the whole truth and nothing but the truth, raise your right hand and say
so help me God.

MR CHRIS PHOLWANE: So help me God.

ADV JANNIE LUBBE SC: Thank you. Mr Commissioner, members, can I we have the
same arrangement that I can also be seated. Mr Pholwane you are the Executive Head
of Human Resources at the PIC, is that correct?

MR CHRIS PHOLWANE: That is correct.

ADV JANNIE LUBBE SC: And you were appointed to that position on the 1st of June
2014.

MR CHRIS PHOLWANE: That is correct.

20 **ADV JANNIE LUBBE SC:** Can you just state to the Commission what other positions
you held since 2014?

MR CHRIS PHOLWANE: Commissioner I was appointed on the 1st of June as a
General Manager in Human Resources at PIC, up to the 1st of April 2015.
Subsequently there was a restructuring and a new operating model. I then was
appointed as Executive Head of Human Resources from the 1st of April 2015 to date.

Those are the positions that I have held so far within the PIC.

ADV JANNIE LUBBE SC: Thank you. You have prepared a written statement with annexures for presentation in your evidence before the Commission?

MR CHRIS PHOLWANE: That is correct, yes I have.

ADV JANNIE LUBBE SC: Before we start with that Mr Pholwane I want to ask you about the Board Meeting of yesterday, I believe you were invited to a Board Meeting.

MR CHRIS PHOLWANE: That is correct.

ADV JANNIE LUBBE SC: When were you invited?

MR CHRIS PHOLWANE: I saw the invite sometime last week, I can't recall whether it
10 was Thursday or Friday, which then came from the Company Secretariat that I was requested to be present in the Board Meeting scheduled for the 21st of January in around four o'clock in the afternoon.

ADV JANNIE LUBBE SC: Did you attend the meeting?

MR CHRIS PHOLWANE: I went into the meeting at around four and I was excused or I excused myself as at the time it was only Board Members and they indicated that I should wait until I am requested to attend.

ADV JANNIE LUBBE SC: When were you called in?

MR CHRIS PHOLWANE: Excuse me?

ADV JANNIE LUBBE SC: When, at what time were you called in?

20 **MR CHRIS PHOLWANE:** Are you referring to the commencement or at the time where they called me in to join in the Board Meeting?

ADV JANNIE LUBBE SC: To join the Board, this is now after you recused yourself you went back in?

MR CHRIS PHOLWANE: So I went back in the early hours of this morning, roundabout half past one, thereabout, between half past one and three am.

ADV JANNIE LUBBE SC: Can you briefly tell the Commission what happened there?

MR CHRIS PHOLWANE: Commissioner I was asked to respond to a set of questions in relation to the disciplinary charges affecting an employee of PIC which I think would be a subject of my submission today. They asked my view as a Head of HR, in my capacity as Head of HR of PIC, what I thought of the charges, and if whether the charges were warranted and the process that was followed, and I checked that with the Board.

They also asked me around the mutual separation agreement with a member of the team at the time who had entered sometime last year of what I thought around its validity and credibility and I also responded to that effect. I was also asked around a
10 current disciplinary hearing that is in progress, which is also an aspect that I will be dealing with ...(intervention)

ADV JANNIE LUBBE SC: Alright, to make it easier, to save time ...(intervention)

CHAIRPERSON: Can I just request that you speak up a bit, get the mic closer to you.

ADV JANNIE LUBBE SC: To make it easy just to sum up the initial questions related to matters you are dealing with in your statement, the disciplinary hearing of the Company Secretary, the Senior Manager IT, the Head IT, the Executive Head Risk, and the Executive Head Legal.

MR CHRIS PHOLWANE: The disciplinary hearings that I was asked about was in
20 particular reference to the Executive Head IT and the Company Secretariat.

ADV JANNIE LUBBE SC: Okay, thank you. Was there a discussion about Mr Madavo, the Executive Head of the Listed Investment?

MR CHRIS PHOLWANE: There was a discussion in reference to a suspension that I needed to serve this morning which dealt with – be given an outcome of a report from Internal Audit, the details I was not privy to those details.

ADV JANNIE LUBBE SC: That's what I wanted to ask you, you were not presented with the report?

MR CHRIS PHOLWANE: No, I was not presented with the report. And there was also another employee within the listed – that also I had to serve the suspension also this morning.

ADV JANNIE LUBBE SC: And did you serve it ...(intervention)

CHAIRPERSON: Did you have – did you mention a name of someone?

MR CHRIS PHOLWANE: Commissioner?

10 **CHAIRPERSON:** You're lowering your voice so we can't hear clearly, did you mention a name just now?

MR CHRIS PHOLWANE: No I didn't mention a name, I said an employee within the listed environment.

CHAIRPERSON: Within the listed investment side?

MR CHRIS PHOLWANE: Yes Commissioner.

CHAIRPERSON: You didn't mention a name?

MR CHRIS PHOLWANE: I only mentioned, responding to the question from the leading Evidence Leader around Mr Fidelis Madavo. I have not mentioned a name with respect to the other employee no.

CHAIRPERSON: Alright, thanks.

20 **ADV JANNIE LUBBE SC:** Now did you serve the letters of suspension this morning?

MR CHRIS PHOLWANE: Yes I did so I served the letter of suspension this morning to Mr Fidelis Madavo around half past eight, I had called him in this morning just after seven o'clock and informed him that if we could have a meeting at around in the office if he is available. He asked me what was it about, then I said it's in relation to an outcome of a Board Meeting and I would give him the details when we meet this

morning.

ADV JANNIE LUBBE SC: The procedure followed to suspend an employee, what happened last night and this morning is that the normal procedure of the PIC?

MR CHRIS PHOLWANE: Ordinarily Commissioner you would want to provide an opportunity for serving the notice and this morning obviously that was a short time. From a personal point of view and I will refer to the disciplinary hearing later, I mean disciplinary policy later on in terms of what you need to do if you have to serve that. You would make an arrangement for that employee to present himself or herself for the purpose of a meeting and you would explain the nature of the meeting, that is inform
10 the meeting, and also indicate the suspension that is going to be served and provide an opportunity to respond either orally or in written form. That can be done at that very meeting, or it can be done at a later date, depending on the parties what they agree to do and what they indicate at that very point in time, so from procedural point of view there's some elements which I thought would have had an opportunity for Mr Madavo to have indicated his reasons for not being suspended. I did however indicate to him that at any other stage, as I issued the suspension notice that he may want to do that, he can do that, but at the moment the suspension was within (indistinct).

ADV JANNIE LUBBE SC: Were you aware of the investigation conducted by Internal Audit regarding Mr Madavo?

20 **MR CHRIS PHOLWANE:** What I was aware of was a request that I made to coordinate meetings between Internal Audit and several employees within PIC, to that extent that was the detail that I was aware of, whether it was investigation I think at that stage I was not fully briefed in terms of that.

ADV JANNIE LUBBE SC: Are you normally briefed when such investigations are conducted as the Executive HR Manager.

MR CHRIS PHOLWANE: Ordinarily you would want to separate the two processes because the investigations can in some instances be interfered with so the Internal Audit Department may conduct an investigation depending on where it emanates from, so it's either it will come through a whistle-blowing or any incident that is suspected that requires investigation and they will conduct that. HR would only be informed like in this distance either to facilitate the employee to present themselves or at the end of that investigation if there are any recommendations that needs to be made, and HR would be briefed of the findings of the report by Internal Audit in that respect, so from that point of view that will be the process.

10 **ADV JANNIE LUBBE SC:** Thank you Mr Commissioner. That is the introduction. I'm sorry?

MS GILL MARCUS: Sorry, could you just advise how big the Exco is, the total number of the full Exco, whether they're in position or not, what is the total Exco number?

MR CHRIS PHOLWANE: So the approved structure for Exco, permanent Exco members, is around 12, we also have Exco invitees which will be from different departments so we will have the Head of Internal Audit who will be an Exco invitee, we would also have a company Secretariat who will be facilitating and arranging and recording of the minutes of Exco, we would on occasion also have the General Manager of Finance also that would be within the Exco team, and in certain instances
20 we will also have the two other roles that would be the Assistant to the CEO's office, then we also have the Head of Corporate Affairs, that will formulate it.

MS GILL MARCUS: But if you've got a 12 person Exco and if I understand this correctly in terms of suspension or resignations at this point in time the CEO has resigned, you've got four Executive Heads including the suspension of today, that would make it five, your Company Secretary is also suspended, that makes it six, so in

essence 50% of the Exco is either suspended or resigned, is that correct?

MR CHRIS PHOLWANE: That is correct Commissioner.

MS GILL MARCUS: And in addition you've got two, a senior manager from IT that was suspended and an additional person suspended from the listed investments today?

MR CHRIS PHOLWANE: Just a correction on the IT Department, we had a senior or an Executive in IT which was the subject of a mutual separation agreement and then we had a Senior Manager in IT Security Risk and Governance, so that's one Senior Manager within the IT Department.

MS GILL MARCUS: Okay but in essence 50% of your Exco is either suspended or
10 resigned, including Legal, Risk, CEO, Listed Investments.

MR CHRIS PHOLWANE: That is the current position yes.

MS GILL MARCUS: And IT and the Company Secretary?

MR CHRIS PHOLWANE: That's correct yes.

MS GILL MARCUS: Thank you.

ADV JANNIE LUBBE SC: Mr Pholwane just to conclude this last night's Board Meeting was a full Board Meeting?

MR CHRIS PHOLWANE: I think it quorated yes.

ADV JANNIE LUBBE SC: Can you just enlighten the Commission who did most of the talking and questioning of yourself at the Board meeting?

20 **MR CHRIS PHOLWANE:** I initially came through and joined the meeting and Ms Sibusisele Zulu indicated that I would respond to a set of questions, amongst which dealt with the suspension document, the charge sheet, the mutual separation agreement and also later on the issuance of the suspensions that I dispensed this morning.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner.

COMMISSIONER: Let me just ask, I'm worried about the mutual separation agreement, was just a formal document waiting to be signed or had it been signed, what is it?

MR CHRIS PHOLWANE: So Chairperson the mutual separation agreement is also subject of my submission because I think it formed the term of reference which I was requested to respond to. It's a document that was attached to early last year, signed and that was dispersed last year so I was asked questions on it.

CHAIRPERSON: So it was not for purposes of the meeting that you were invited to? It does not involve Mr Madavo?

10 **MR CHRIS PHOLWANE:** It did not involve Mr Madavo yes.

CHAIRPERSON: I see, yes.

MS GILL MARCUS: Chair just for clarity on that, is it a generic mutual separation agreement or was it relating to a particular person and was it drawn up with the intent of implementing it, with a particular person in mind?

MR CHRIS PHOLWANE: So Commissioner the document, the mutual separation document was not related to the parties currently that are suspended, it was related to a former employee which was dispensed last year, I think around April if I'm not mistaken.

20 **ADV JANNIE LUBBE SC:** Can I clear this up Mr Commissioner, the agreement was done last year and at last night's meeting you were questioned on your opinion of the merits of that agreement, is that correct?

MR CHRIS PHOLWANE: That is correct yes.

CHAIRPERSON: I'm not sure I understand, I mean ...

ADV JANNIE LUBBE SC: Chair the evidence will be that during last year, during a disciplinary hearing the PIC before conclusion of the disciplinary matter entered into a

voluntary separation agreement with the employee charged. That was signed and sealed.

CHAIRPERSON: And that employee was Head of IT?

ADV JANNIE LUBBE SC: Head of IT, exactly.

CHAIRPERSON: Now what was it doing in this meeting?

ADV JANNIE LUBBE SC: The witness will testify later that he was asked whether he agrees with the agreement and the amount settled for by the PIC. The last aspect Mr Pholwane this internal audit investigation that was initiated against Ms Hodani, when did it start? Can you tell or don't you know?

10 **MR CHRIS PHOLWANE:** I would not know the exact date but I think it was late in December.

ADV JANNIE LUBBE SC: Well let me make it easier for you, you know that the whole top structure of the PIC went down to Cape Town to make a presentation to SCOPA.

MR CHRIS PHOLWANE: That is correct, I am aware of that.

ADV JANNIE LUBBE SC: Was this started before or after that presentation?

MR CHRIS PHOLWANE: It will be after that presentation.

ADV JANNIE LUBBE SC: Thank you, thank you Mr Commissioner. Mr Commissioner it's now nearly one o'clock, can we take the lunch adjournment?

CHAIRPERSON: Yes we will adjourn until two o'clock.

20 **MEETING ADJOURNS**

MEETING RESUMES

ADV JANNIE LUBBE SC: Thank you Chairperson. Can I just make sure that you and the members are all in possession of a file with the statement and Annexures to the statement, thank you. The witness is – if you can just remind him that he is still under oath.

CHAIRPERSON: Can I remind you that you are still under oath Mr Pholwane, thank you, you may be seated.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner. Mr Pholwane you have prepared a statement by request for the Commission, can you start with that on paragraph two please, I think you've already dealt with one.

MR CHRIS PHOLWANE: Thanks Chair.

ADV JANNIE LUBBE SC: Put it up, put it up.

MR CHRIS PHOLWANE: The paragraph two deals with the organisational design and development of the Public Investment Corporation, the governance in relation to the structure, the PIC structure is premised by the strategy and operating model that the Board has identified as fit for purpose. Section 8.1 of the Delegation of Authority governs the approval process with regards to changes to an organisational structure. Here I have made reference to Annexure A for the copy of the Delegation of Authority. If Chair may allow me if I can just go through to 8.1 and maybe read it out in terms of that aspect. 8.1 on the delegation of authority under the title Human Resources deals particularly with changes to the organisational structure. 8.1.1 – and I'm not going to read everything I just want to just deal with those three aspects because it's in reference to some of the terms of reference of the Commission. It deals with approval to create or move a position in tier one and two, by explanation tier one refers to the Executive Directors, tier two refers to the Executive or direct reports to the Executive Directors. Mainly tier two refers to the Executive Committee.

So in other words in order to create or approve a position the delegation of authority in that regard is indicated. As you will see that there is a reference guide in terms of the letters A and A* and B and a D, those refer to the authority that does the approval of that specific item identified in the delegation of authority, and in this

instance the 8.1 deals with the changes on the organisational structure so what I read out in terms of 8.1.1 has to do with the top tier structure of the PIC, namely the – as the Chief Directors and Exco, so the approval in that regard would be the Chairman, I mean the PIC Board as well as the HRRC which is the Human Resource Committee which would make a recommendation to Boards to approve.

If I go back to the paragraph that I referred to on 2.13 there we deal with the Minister's directive if we like, the shareholder as in the Minister of Finance sent a letter addressed to the Chairman of the Board indicating that PIC should seek the shareholders approval for any salary adjustments above CPI and any allowing of any
10 incentives.

MR EMMANUEL LEDIGA: Sorry, is that 2.1? Where are you now?

MR CHRIS PHOLWANE: Yes, so I have gone past the 2.11, I am going to 2.13, reading my submission. This deals with the adjustment, or salary adjustments with regards to the tier one and tier two that are referred to earlier on. As you would notice and appreciate that the shareholders, particularly in this instance deals with salaries and incentives, and as we proceed and I am going to deal with the guidance thereof, the Section 7.1.12 of the Memorandum of Incorporation I think a colleague of mine dealt with this, the Acting Company Secretariat, in terms of how the Memorandum of the PIC was constituted, and in here specifically it identifies Eskom members shall be
20 appointed in terms of their appointment as well as the Executive Directors and their roles and that you will find within Annexure C of the Memorandum.

What I would like to concern myself with Chair, we can make reference to that later on, is just the application process of this governance document. So the current structure as we have it of the PIC was approved by the Board in 2015. The Board further obtained approval from the shareholder with regards to the top tier

structure and this is in reference to Annexure D for the Board Resolution approving the parent structure and Annexure E gives for the approval by the Minister of the structure. The Board approval was post recommendation but the Human Resource and Remuneration Committee which recommended to the Board the new structure, and you can refer to Annexure F in terms of the process that was also considered, where all the jobs on the structure, the top structure were graded, and which was presented to the HRRC on the 30th of January 2015.

In 2017 there was a review, a further review of the structure which was obtained by the Board, in there they referred to Annexure G for Board approval of the reviewed structure. The implication of this review in terms of the top structure was that the position of Executive Head, Corporate Services, no longer existed. Then the position of General Manager, Investment Management was reviewed and enhanced to the Executive Head of Investment Management. This then meant that the position of GM Investment Management was redundant and the incumbent for the GM Investment Management position was then absorbed into the position of Executive Head Investment Management. Refer to Annexure A for the memo where the absorption of the approval of the GM Investment in terms of the appointment of the then incumbent to become executive head was obtained.

Matters that deals with recruitment, and this is on page 4, 2.3, and the governance related to that. The PIC follows the recommend policy and processes when sourcing and appointing employees. I have attached the recruitment and selection policy for future references. Under Section 8.2 of the Delegation Authority it also governs the approval process with regards to the recruitment and remuneration. This you would obtain on Annexure A in terms of Delegation of Authority, and in this respect it deals particularly with the structure referred to in terms of tier one and tier two

as well as tier three and four, within PIC.

Suffice to say that the Recruitment and Selection Policy details the following as it relates to acquiring staff or talent in the market. All the processes that needs to be complied with when recruiting for a vacant position are indicated there. All the processes that need to be complied with when recruiting an employee who is required to be a FIAS representative and all the processes that need to be complied with when recruiting an employee on a temporary basis and fixed term, and all the process that are required to be complied with when recruiting a foreign national and all the process that need to be complied with when seconding an employee, whether within or outside
10 PIC as well as the process that needs to be complied with in regards to promotions.

So what the Recruitment Process actually provides both policy and procedural format that needs to be followed, and that is what I am going to deal with in the next part, which is on Section 529 of the Recruitment and Selection Policy.

ADV JANNIE LUBBE SC: Can we just stop there, what are – are there special requirements when a person applies for a job where FAIS is applicable?

MR CHRIS PHOLWANE: Yes Commissioner, there's special requirements that the person has to be compliant with the requirements, specifically with regards to the process and product and advice that they will need to provide. So it would mean that they would have to be accredited to do so, so an examination normally would be done,
20 RA1, RA2, depending on the product and the advice that the incumbent would be providing, so most employees who are in that position whether a key individual or a key representative would need to go through that qualification criteria before you could provide the service.

MS GILL MARCUS: In relation to the criteria given that you have a CEO that has resigned has there been an advert or a job description or whatever you call that

proposal, to advertise for a new CEO, do you have something that has been drawn up or would you be using the same one as you did for the previous CEO?

MR CHRIS PHOLWANE: So Commissioner I will probably slightly longer in my response to that, perhaps maybe just deal particularly with the issue of when you advertise a position. In essence you would need to – and we refer to in the process here as you will notice, on step one it indicates a request which particularly deal with filling in a vacant position. In there I would engage with a line manager, and in this instance it would be the Board, or the shareholder ...(intervention)

MS GILL MARCUS: Has that been done?

10 **MR CHRIS PHOLWANE:** Not yet in terms of the current dispensation not yet, with respect to the current situation that we are in. There it would be articulated in terms of specific competencies that you know we would be looking at that fulfil the role that needs to be recruited for.

MS GILL MARCUS: Is that competency determined by the shareholder or by the Board or by both?

MR CHRIS PHOLWANE: It could be by both but in essence it will be by Board, in consultation with the shareholder in that there are specific requirements that need to be included in those competencies.

20 **MS GILL MARCUS:** But as I understand from the notes that I read is that the appointment of these positions is actually the shareholder and consultation with Cabinet?

MR CHRIS PHOLWANE: That's correct. So the Board would make a proposal and a recommendation, the interview process will be also conducted by the shareholder but they make a recommendation, I mean the Board will make a recommendation in terms of whether the short-listing process. It could be that the Chairperson is also delegated

to do so, or the Chairperson of the Board who may also take it upon themselves but obviously this has to be within the PIC and if there's anything on the requirements of the job the HR Department will have to be involved in drawing up that job specification and description, because you know the CEO reports and he is an employee of PIC so that has to be within that organisational structure. From a process point of view in terms of appointment and the likes the shareholder obviously would then make the determination of the successful candidate. They will and may participate in the interview process as well.

10 So on step one as the Commissioner had asked on around the vacancy request, positions are advertised, the position that is vacant, then shortlisted and the screening process would ensue. Psychometric and competence based assessment when applicable we will also be looking at and then an interview session will also proceed. The successful candidate if they meet all the requirements of the role would therefore be recommended for appointment and the approval would therefore appoint, in that instance you know the HR would compile and make a recommendation, then we also have to ensure that you know from a positioning and a budget cost of that role we have adequately budgeted for it and they Finance Department would sign also in that respect and the final approval whoever it would be in line with the delegation of authority would do so.

20 On page 5 Chairperson you would notice that I'm dealing particularly with one of the areas, and I think I had engagement with the lead investigator in around some of the appointments and I just dealt initially in the last one with the Executive Head of Investment Management.

Now the position that I will be dealing with is in respect of Investor Relations and application process. If this person was advertised, as the position was advertised

internally on the 7th of March 2018, and interviews were conducted on the 22nd of March 2018 and the appointment was approved on the 27 March. I've made reference to documentary evidence in that respect for the memo that approved the permanent appointment of the investor relations position in that regard.

MR EMMANUEL LEDIGA: Question. When you appoint people do you look sort of internally only or do you look at externally and what drives the process of both internal and external process?

MR CHRIS PHOLWANE: So from a recruitment policy would advertise both internally and externally. We would give internal employees a preference so that we are in line
10 with ensuring that we promote our internal talent and more so that there is a quicker process of, you know, being part of the culture within PIC and knowledge of that but that does not disadvantage any external applicant to any position that we advertise.

I would be the panel members in terms of the decision-making, the selection process that we'll consider if any of the applicants meet the requirements of the role and that is normally done through interviews and there are scoring and they score independently and the highest candidate or the candidate that gets the highest score normally will be recommended for appointment.

So there are both instances where internally and external candidates may compete for the position at the same time.

20 **MS GILL MARCUS:** What is the rate of staff turnover? I mean, if you've got the differential between your senior management levels and lower levels?

MR CHRIS PHOLWANE: So we – under the period, period under the review, I would say the current turnover on the senior management, I think we alluded to that, meaning to qualify, you know, in terms of how I would calculate the turnover.

The incidence of dismissal and disciplinary, we would flag it, but turnover

would look at your normal voluntary resignation as a key determination in terms of whether the employees from retention point of view, you know, and the brand point of view would then leave the organisation.

Dismissal, an event that is unforeseeable as well as if employees are deceased during their career, so there are instances where those would be excluded in our calculation but in general we will then consider voluntary resignation as a determination of turnover.

The PIC currently was - an overall staff was under 10% by the 31 December in 2018. The turnover – and I'm now indicating with the exco team, or senior
10 management, if you like, will probably be lower than that, if I exclude the dismissals and the disciplinary hearing.

MS GILL MARCUS: If you include the dismissals what is that because obviously dismissals throughout the organisation, not just at the senior, what would the turnover be?

MR CHRIS PHOLWANE: If I include all of them?

MS GILL MARCUS: Ja.

MR CHRIS PHOLWANE: I would be slightly higher than the norm, I think it probably be ranging between 15 to 20%.

MS GILL MARCUS: If that is correct you're already saying that if it's between 15 and
20 20% if we took the upper level you'd say the normal voluntary staff turnover is 10 and the dismissals is 10?

MR CHRIS PHOLWANE: Ja. Well, if I look at the numbers – so if I can maybe indulge the Commissioner, so we have – I just want to look at the PIC headcount at the stage, I will forward the information as it were – as at 31 December we had close to about 405 employees in total within PIC in terms of the distinction on the permanent – where's the

permanent? So the permanent will be 347. The other could consist of other temporary employees and employees that participate on our graduate programme which we referred to as the PIC 6.

So if we're working on the number 347, you know, your 10% will probably constitute around about 34 or so and if it would be 20%, it will be slighter higher, in and around 68, thereabout.

MS GILL MARCUS: But the point I'm just asking is that if we're working on the 347, the voluntary resignations is about 10% and if we include dismissals, you're saying between 15 and 20%. So the dismissals are – if we take the upper range of what
10 you're saying, the 20%, your voluntary resignations and your dismissals are almost equal, is that correct?

MR CHRIS PHOLWANE: Look, I think I would need to check that, I won't immediately...(intervention)

MS GILL MARCUS: If you can check it, I just think that...

MR CHRIS PHOLWANE: Ja.

MS GILL MARCUS: You know, if you're saying – it would be useful just to know...(intervention)

MR CHRIS PHOLWANE: Absolutely, ja.

MS GILL MARCUS: Ja.

20 **MR CHRIS PHOLWANE:** I would probably think, you know, the dismissal be more on the conservative side vis-à-vis the voluntary resignation.

MS GILL MARCUS: Okay.

MR CHRIS PHOLWANE: Ja. May I continue? I was on page 5 and now I'm dealing with the aspects that deals with remuneration which I believe was also a subject of terms of reference.

The PIC follows the remuneration policy and process when determination of employees. I had also ensured that the remuneration policies are attached on annexure J1. The following are some of the key features in the remuneration policy. Section 10, this Section indicates the salary benchmark that the PIC would utilise. That is, each position shall be graded based on the Patterson grading scale.

And Section 12. in the policy this section indicates the components of the remuneration structure versus the guaranteed remuneration which would be the cost to company. So PIC uses the cost to company formula for salaries and fringe benefits. This would also include another component which is variable remuneration. In this
10 instance, incentives or bonuses.

Section 12, this section governs the principles that would be adhered to when determining cost to company for all employees. So when it looks at annual increases, you'll notice that in Section 12.1.3 of the policy which I've taken the liberty of extracting a table from the policy on page 6, that's table 1. PIC follows a high performance values driven culture.

You'll notice on the extreme left of the table it's an indication of performance rating as well as on the two columns on the extreme right. It will be a percentage increases that will be applicable, so these would be in accordance with a rating obtained by an employee and what percentage increase will that employee obtain if
20 increases were to be awarded.

We have also look at what you probably may not understand, A1 to E2, those are our grades. In other words, employees are graded in terms of their job. A1 would be the lowest grade within the organisation and F5 plus or G would be the highest grade. In this instance the table indicates A1 to E2, what percentage increases are applicable and on E3 to F5, what percentage increases are applicable. You will notice

that immediately when you look at the ratings that performance rating of 2 to 2.99, there is no allocation of increases for any employee that gets that performance rating and from performance rating 3 right up to 5 you will notice that there is an applicable performance increase that the employee might get which would include and in this respect a CPI from 3 and you'll notice there's differentiation between A1 to E2 and E3 to E5. So it's a lot more easier on A1 to E2, if I can use that word to obtain CPI plus a percentage that recognises that performance at a specific performance level.

However, senior roles, E3 to E5, you'll notice that a performance increase which is that which is above CPI are applicable here, you would need to obtain a score
10 of at least between 4 and 4.19 or 4 and 5 to be able to get any CPI plus an applicable increase percentage. The maximum thereof is CPI plus 5%.

So this governs the allocation in terms of increases that apply in PIC.

MS GILL MARCUS: Sorry, can I just ask you, if you had to give us an example of an F5 CPI plus 5%, which would be the maximum somebody could earn.

MR CHRIS PHOLWANE: Yes.

MS GILL MARCUS: So what would that total be?

MR CHRIS PHOLWANE: So it would be the inflation rate as applicable, so what we'd use under CPI is that we use the CPI as declared by the Reserve Bank on the 31 March of every financial year.

20 **MS GILL MARCUS**: Sure.

MR CHRIS PHOLWANE: And a 5% of...(intervention)

MS GILL MARCUS: No, I want the actual number. If you took CPI at 5%.

MR CHRIS PHOLWANE: Ja.

MS GILL MARCUS: And you said you added 5% so the 10% increase...(intervention)

MR CHRIS PHOLWANE: So if CPI, for example, is 4% then the total increase would

be 9%.

MS GILL MARCUS: Yes, but 9% on what? If you're talking about an F5?

MR CHRIS PHOLWANE: On the total guaranteed payment.

MS GILL MARCUS: Ja, but what I want to ask is what is that amount?

MR CHRIS PHOLWANE: Well, I'd have to...(intervention)

MS GILL MARCUS: What is the maximum in money terms that a person would get if they were F5, CPI plus 5%. So let's assume it's 4% and 5%.

MR CHRIS PHOLWANE: Ja.

MS GILL MARCUS: It's 9%. What would that take, what would that be as a maximum
10 earning?

MR CHRIS PHOLWANE: Plus a percentage that recognises that performance at a specific performance level. However, senior roles E(3) to E(5) you will notice that a performance increase, which is that which is above CPI in the applicable year, you would need to obtain a score of at least between 4 and 4.19, or 4 and 5 to be able to get any CPI plus an applicable increase percentage. The maximum thereof is CPI, plus 5%. So this governs the allocation in terms of increases that apply in PIC.

MS GILL MARCUS: Sorry, can I just ... (intervention)

MR EMMANUEL LEDIGA: Question – Oh ...

MS GILL MARCUS: Can I just ask you, if you had to give us an example of an F(5)
20 CPI plus 5%, which would be the maximum somebody could earn ...

MR CHRIS PHOLWANE: Yes.

MS GILL MARCUS: ... one would assume – what would that total be?

MR CHRIS PHOLWANE: So it would be the inflation rate as applicable. So what we'll use under CPI is that we use the CPI as declared by the Reserve Bank on 31 March of every financial year.

MS GILL MARCUS: Sure.

MR CHRIS PHOLWANE: And 5% of the ... (intervention)

MS GILL MARCUS: No, I want the actual number. If you took CPI at 5% and you said you added 5%, so a 10% increase ... (intervention)

MR CHRIS PHOLWANE: So if CPI for example is 4%, then the total increase would be 9%.

MS GILL MARCUS: Yes, but 9% on what?

MR CHRIS PHOLWANE: On ... (intervention)

MS GILL MARCUS: If you're talking about an F(5) ... (intervention)

10 **MR CHRIS PHOLWANE:** ... on the total guarantees payable.

MS GILL MARCUS: Ja, but what I want to ask is what is that amount?

MR CHRIS PHOLWANE: Well, I'll have to look at ... (intervention)

MS GILL MARCUS: What is the maximum in money terms that a person would get if they were F(5), CPI plus 5%. So let's assume it's 4% and 5%, it's 9% ...

MR CHRIS PHOLWANE: Ja.

MS GILL MARCUS: ... what would that take – what would that be as a maximum earning?

MR CHRIS PHOLWANE: So the F(5) – so there's a – F(5) has got a specific amount in terms of, ja.

20 **MS GILL MARCUS:** Ja.

MR CHRIS PHOLWANE: So it could be an amount – let us assume – and I'm making an example – that a total guaranteed pay of a person that earns 5 million at an F(5) level, so the increase would be – if CPI was 5 ... – 10%, that would be 5. (intervention)

MS GILL MARCUS: 5 million.

MR CHRIS PHOLWANE: Ja, 5 million.

MS GILL MARCUS: Is that the max... – I'm really trying to get from you what is the highest guaranteed pay in your organisation.

MR CHRIS PHOLWANE: Total guaranteed pay as in the highest – so the highest earner – let me put it that way, the highest earner would be the CEO.

MS GILL MARCUS: Right.

MR CHRIS PHOLWANE: And that value, I think, at the moment is close to around 6 million plus, if not more than that, but I will need to verify that.

MS GILL MARCUS: So if we said it was 6 million and you added your CPI, it would then be plus 5% of that, plus – so it's 9%. So you're talking about another ...

10 **MR CHRIS PHOLWANE:** 600 000.

MS GILL MARCUS: Ja.

MR CHRIS PHOLWANE: Yes, thereabout.

MS GILL MARCUS: Okay.

MR CHRIS PHOLWANE: Ja.

MR EMMANUEL LEDIGA: Mr Pholwane, two questions. In terms of the grading of their staff ...

MR CHRIS PHOLWANE: Yes.

MR EMMANUEL LEDIGA: ... would (5)F or what (4)F maybe, would there be people within that, say general managers or like (5)F is just the CEO? So I'm just asking within
20 the various bands there are people, just give me some idea there.

MR CHRIS PHOLWANE: Ja.

MR EMMANUEL LEDIGA: And then the second one is on – if somebody got a 3 – a 2 to 2.99 rating, do they get bonuses and all that?

MR CHRIS PHOLWANE: No. So as you notice that on – between the rating of 2 and 2.99, the employee will not be eligible for an incentive, neither will the employee be

eligible for a CPI increase in that specific year.

MR EMMANUEL LEDIGA: Question, the first question.

MR CHRIS PHOLWANE: So the grade – we use a grading range which we call a broad-banding in essence. So grade F to F(1), you will find mostly is senior management and it can be general managers, fund principals, as well as the executive heads. The highest grade so far within PIC as currently stands, is grade F(5+), which is a G-band – what we refer to as a G-band. And the next highest grade will be F(5), and between F(1) and F(5) you would find senior management and fund principals in that range.

10 **MR EMMANUEL LEDIGA:** Including general managers and the others?

MR CHRIS PHOLWANE: That's correct, yes, ja.

MR EMMANUEL LEDIGA: Okay, thank you.

MR CHRIS PHOLWANE: I think some of the aspects we've touched with, but I'll just give a key highlight. So Section 12.1 of the policy indicates that the variable remuneration will be determined. Below are the key highlights of this section. So Section 12.1.15 indicates that for incentive to be allocated to the business or corporate performance. When we refer to business corporate performance, we refer to the PIC balance score card, which forms the basis on which PIC's performance is evaluated. So for an incentive to be able to be paid, the balance score card needs to at least be at a
20 minimum of a 3 in terms of the rating. And also the other aspects ... (intervention)

MR EMMANUEL LEDIGA: Question – just a question, you know, when people talk about the balance score card, some people might not understand this. Maybe you could take us briefly through that.

MR CHRIS PHOLWANE: Thanks. So the balance score card within PIC has got four dimensions, which then deals particularly with the strategic imperative and objectives.

One that will have a client focus, that will be the first dimensions. The other one will deal with internal business processes. Then the other ones will deal with the financial component and learning and growth.

The principle and concept of the balance score card was, I think, started by an author, Arthur Kaplan and others, in terms of the concept. It's a widely used phenomenon of, you know, measuring performance and different aspects. It moved away from the old principle of looking at financial performance for a business to all these three different dimensions.

MR EMMANUEL LEDIGA: So this is the one where you would allocate... (intervention)

10 **MR CHRIS PHOLWANE:** Specific ... (intervention)

MR EMMANUEL LEDIGA: ... 20% of the weight to financial ... (intervention)

MR CHRIS PHOLWANE: Absolutely, yes, that's correct.

MR EMMANUEL LEDIGA: 30% to this, and all that.

MR CHRIS PHOLWANE: Ja, ja. And you will have specific key performance areas ... (intervention)

MR EMMANUEL LEDIGA: Ja.

MR CHRIS PHOLWANE: ... and key performance indicators that you will monitor throughout.

MR EMMANUEL LEDIGA: Okay, that's for the company.

20 **MR CHRIS PHOLWANE:** Yes.

MR EMMANUEL LEDIGA: What about for the employees, the ... (intervention)

MR CHRIS PHOLWANE: Similarly the employees have got balance score card which are cascaded from the corporate, and you'll see that you'll have the overall corporate balance scorecard. Then it goes through to the next level, which is the executive heads, and from then it goes to the direct reports of the executive heads as well. There

will be specific waiting and emphasis, depending on the level in which employees are in within PIC.

MR EMMANUEL LEDIGA: They follow the broad balance (indistinct) concept, yes ... (intervention)

MR CHRIS PHOLWANE: Absolutely, concept, yes.

MR EMMANUEL LEDIGA: ... of the company.

MR CHRIS PHOLWANE: Absolutely, yes, ja.

MR EMMANUEL LEDIGA: Okay, thank you.

MR CHRIS PHOLWANE: The other component for an incentive to be declared is that
10 the consideration of our net profit and management fees and financial sustainable register has to be at a minimum of a 10, post the allocation of the bonus. So that's the other consideration in that regard. The other section that deals with the bonus pool allocation shall only be calculated, based on the audited financial statements.

So it is only until that the financial statements are audited and we have a result that you can form a basis of that. What's important about that aspect is that the – you are able then to calculate what the management fees that have been generated in that specific year are indicating from a value point of view. And that's when – if they are 10% and that 10% from our determination of the bonus pool, would give you an indication of what the bonus pool would be.

20 Then the rest just deals with eligibility of short-term incentives and how the short-term incentives are calculated. Similarly with long-term incentives and the eligibility thereof and how these are calculated, these are all indicated in the policy, as well as when would the long-term incentives be vesting. Section ... (intervention)

MR EMMANUEL LEDIGA: Another question.

MR CHRIS PHOLWANE: Yes.

MR EMMANUEL LEDIGA: You got vesting somewhere here.

MR CHRIS PHOLWANE: Absolutely, yes.

MR EMMANUEL LEDIGA: Vesting, do you allocate shares to employees?

MR CHRIS PHOLWANE: So PIC does not trade as corporate, if I can put it that way. So – and it doesn't have shares. So we have a cash component. So a percentage of the bonus pool will constitute F, long-term incentives. In this instance PIC we have 64% of the total bonus pool, constitutes the short-term incentives. And 36 will therefore constitute a long-term incentive.

For the long-term incentives it's limited to a certain pool of employees. That
10 would be graded grades D(5), right up to the highest level. This is in line with market practice in terms of identifying critical skills that participate in long-term incentives. So we use the cash component.

MR EMMANUEL LEDIGA: The vesting period then is anything from what – three to five years and all?

MR CHRIS PHOLWANE: So the vesting period is of – I mean the vesting of the LTI, from the year of allocation, is three years. If an employee performs and miss the requirements every year there's an allocation, depending on whether that bonus point has been declared otherwise.

MR EMMANUEL LEDIGA: Sure, thanks.

20 **MR CHRIS PHOLWANE:** I will probably deal with some of the complex issues, particularly which I think have been much of a consternation with regards to remuneration and incentives are pretty much an error that we've been battling with over the past four years in PIC.

This then starts with the letter from a shareholder in 2014, where a letter was addressed to the chairman of the board, indicating that given the current and tight

economic environment, government introduced cost containment measures, which include, amongst others, moderation in the remuneration and performance bonus.

MR EMMANUEL LEDIGA: Sorry, where are you now?

CHAIRPERSON: Where are you in your (indistinct)?

MR CHRIS PHOLWANE: I'm on 3.1.2.

MR EMMANUEL LEDIGA: 3?

MR CHRIS PHOLWANE: On page 7.

MR EMMANUEL LEDIGA: Ja, okay.

MR CHRIS PHOLWANE: 3.1, 2.10.

10 **MR EMMANUEL LEDIGA**: Okay.

MR CHRIS PHOLWANE: It starts in 2014, the shareholder.

MR EMMANUEL LEDIGA: Ja, okay, we've got you.

MR CHRIS PHOLWANE: So we received a letter from the minister, basically dealing with – and I also made reference to a letter earlier on – dealing with how PIC should be managing its remuneration, in particular respect of bonus pools as it were. So there's a remuneration policy that we have in PIC, which was approved by board, and board would have a delegation of authority if you go through that, with respect to the bonus pool of PIC.

20 And in this respect we then got an indication from the shareholder in terms of what should happen going forward if we were to allocate bonuses. And I also referred to the shareholder compact. That also dealt specifically with how PIC shall treat this. I must also indicate that this has been an area that was of great consternation, and it still remains an area that needs to be finalised with regards to the acceptable practice between shareholder, you know, determination of bonus pool and board, with respect, to an entity like PIC.

ADV JANNIE LUBBE SC: Can you just elaborate what you mean by creating great consternation?

MR CHRIS PHOLWANE: So we've had a number of grievances expressed, also from employees, and I would imagine these would probably be directed to management that, you know, bonus pool seem to be reduced every year as it were. And we will provide reasons that, you know, the reduction of the bonus pool is not so much related to the performance of PIC, but in most cases it's influenced by the directive from the shareholder and you would go through this process of explaining this in various meetings.

10 So that's where the basis would be and you would have to provide more convincing reasons as to why this is the case, because employees – and by right – they understand the remuneration policy, and they perform in accordance to the expectations. So when an employee performs, they expect to be rewarded adequately as passed by the remuneration policy. However, we've had obviously these directives which we must comply with – we need to – but I think it's an area that needs to be dealt with, as it were, if I can say that.

ADV JANNIE LUBBE SC: But normally consternation is diffused by proper communication with employees. Did this happen?

20 **MR CHRIS PHOLWANE:** So let me maybe go back to a year. I just want to get to it because you don't have the information before, so it's more my submission. I think in and around 2014/15 thereabout, I think that's where the first area of consternation occurred. So PIC bonuses were paid in and around, I think, about July, August as a general rule.

 Then we got the directive with respect to what bonus we should be paying from national treasury. That delayed the payment and I think that's where – if I can use

the word – things started happening within PIC. And then obvious we would have staff meetings to explain that, you know, there's been a delay, we are still undergoing through a process, we are engaging with national treasury and, and, and.

And as soon as we get approval of that, then that is immediately communicated. What I've sought to do in most times, is to indicate, you know, what values of those bonus pool had been approved and ... (intervention)

ADV JANNIE LUBBE SC: But I don't want to dwell too long on this. It's been reported to us that there's also a delay in payment of bonuses for 2018/'19. What is the reason? If that is the situation, what is the reason?

10 **MR CHRIS PHOLWANE:** 2018/'19 – so there was an interpretation issue with regards to the bonus pool that was, you know, declared for that specific year. I think it's more '17/'18, ja, in that respect. So on page 9, Commissioner, you will notice that there's a table there, table 2, on paragraph 3.2.39, which then provides the history and genesis of the allocation of bonuses where the shareholder has approved and what the policy in terms of – the remuneration policy of PIC would indicate at each performance that the PIC would have obtained.

You'll see the figures on – in 2015 and '16, and also 2016 and '17, and '17 and '18. The shareholder approval would be generally a directive. I think recently the shareholder evaluated the performance of the PIC and provided determination of what
20 bonuses should be applicable, and then we got a letter to that effect.

We also had an issue in terms of whether a shareholder can determine the bonus pool for the rest of the employees. I notice that one of the Commissioners asked question whether there's a separate pool between normal employees and an executive. So the bonus pool of PIC is one. So the delay was caused by the fact that the executives were not at that time approved to be getting the STI.

And as a result of that we had engaged with the shareholder, as well as the principal to deal with that aspect. Then the shareholder gave us permission to pay out the bonuses for the employees and the executives' bonuses was withheld, and I think it was paid in December thereabout.

MR EMMANUEL LEDIGA: The question here, so are you saying that the bonus pool is determined by the shareholder, as opposed by the policies of the PIC, what authority does the shareholder rely on in terms of putting out the bonus pool as a first question. And then the – let's answer that at one firstly.

MR CHRIS PHOLWANE: Ja. Commissioner, I think that is a matter that needs to be
10 dealt with from a governance point of view. My understanding is that the board generally would have – and this will also fall within the key 4, you know, determine initiatives of remuneration, but the shareholder may express, you know, a view in terms of, you know, how the board may deal with bonus pool.

But in this instance it may be focused on senior management and indicate that, you know, this will be – it may – I'm just saying the shareholder may focus on senior management. But the board in terms of how it stands now with PIC from a governance point of view, is the one that determines the overall bonus pool. What needs then to be dealt with, is the aspect that deals with senior management.

Our policy says in consultation with the shareholder, but so far that
20 consultation has more – in more instances been a directive in terms of this is the value of the bonus pool in which you should get. So it will be either be reflected as a percentage of the total expenditure and in which has happened in previous years and that presents a problem because when you are contracted and you have specific KPIs, you want to focus on that wish that has been contracted, as it were, for you to be able to determine that and you get ... (intervention)

MR EMMANUEL LEDIGA: Just – ja, continue.

MR CHRIS PHOLWANE: Ja, and if you were to look at the corporate plan, the balance score card and allocate weight, I think it would be best to be able to say, you know, for – in order for you – and as it happens in most asset management – to say well, for you to reach this level, this will be your bonus pool. At this performance rate, this will be your bonus pool, so that it is transparent, it's crisp and everyone knows what is expected.

I think the challenge so far is that at the end of the performance year then, you know, then the bonus is sort of meddled with from pool and determination point of view. And I can understand and appreciate some of the concerns because naturally
10 PIC is classified as a state-owned entity and therefore it needs to be sort of following the rest of the state-owned entities.

But we have a uniqueness in the sense that it's almost one institution that is having two different – I mean five, you know, elements. You have the private equity with the listed (indistinct), and you won't find any one organisation having that level of complexity. And more so, you know, we have to follow the asset management and balance that with the State-owned remuneration guidelines as it were.

MR EMMANUEL LEDIGA: Let me – could it be that when the shareholders says they are cutting the bonus pool from say 50% to 20%, maybe could be – could it be that they
20 are saying they have given you KPIs, and you guys haven't met them?

MR CHRIS PHOLWANE: Well ... (intervention)

MR EMMANUEL LEDIGA: And do they explain the reasoning within that directive?

MR CHRIS PHOLWANE: Ja, I think, Commissioner, that's wherein lies the challenge because that explanation comes in at the end. So it would have been a lot more better if you would have the opportunity of dealing with that at the beginning of the contracting

phase. I may hasten to say that the 20% in this instance that has been referred to, was referred to as a percentage allocated to our total personal expenditure, and we still have to understand what that means in terms of constituting a bonus pool. But equally you still have to understand what elements on the balance score card or KPIs that PIC needs to deal with in order to satisfy that alloca... – and what informs it. I think that discussion is something that still needs to be followed through, as it were.

MR EMMANUEL LEDIGA: Ja. And I'm sure they will deal with the letter that caused some problems in terms of saying the minister wrote the letter, the bonus pool was smaller than – you know was much less than that ... (intervention)

10 **MR CHRIS PHOLWANE:** Yes.

MR EMMANUEL LEDIGA: ... but I'm sure that will be dealt with at some point in time.

MR CHRIS PHOLWANE: Ja.

MR EMMANUEL LEDIGA: Adv Lubbe.

ADV JANNIE LUBBE SC: It will be dealt with, yes.

MR CHRIS PHOLWANE: So the next part that I'll be dealing with, its disciplinary proceedings. We sort of touched on – earlier onto this, so I don't know if ... (intervention)

ADV JANNIE LUBBE SC: Before you do that, and before we conclude the remuneration part of your testimony, in terms of the terms of reference of the
20 Commission, the Commission is requested to look at whether there are discriminatory practices with regard to remuneration and performance award of PIC employees. Do you know of any such instances?

MR CHRIS PHOLWANE: Commissioner, no I'm not aware of any discriminatory practices, I am aware of differentiation with regards to performance. So as you've – as we've alluded to in page 6, specific performance rating would indicate what component

of either an increase or incentive, an employee would be eligible for and we follow the general guidelines. And if, in the event, that employees are in any case dissatisfied with whatever bid that has been assigned to them, we have the grievance procedure that they could follow on and deal specifically with those aspects, and that could be a process that would deal with those.

But from a discrimination point of view I'm not aware of. What I can indicate is that the awarding and allocation of incentives is a process which is quite rigorous, were you would have first the performance management process that will sort of ensue and inform it. We'll have a moderation committee in which employees performance
10 ratings will be moderated and communication between individual employees would be indicated in terms of the final rating that's allocated.

The rating as I alluded to earlier on determines, you know, the bonus and the pool and they are shown in that pool, depending the grade in which the employees find themselves in. So from a process point of view there's an – and then there's internal audits. So before any pay-out of incentive is made, internal audit will audit each and every employee if whether the calculation thereof, you know, is in line with the policy or it's in line with what they will eligible for in that point of view.

What then happens is that calculation it's confirmed, and individual amounts are allocated to individuals and individuals are given letters. I just want to deal with
20 another aspect from a governance point of view. HR will compile that this is the bonus pool and then it gets approved by the human resource. Human resource would then refer it to board, board, you know, would then approve what is this. Then we then allocate. The overall approval. So finance will confirm what is available. Then the CEO would also confirm approval to pay out incentives. So that is the process.

ADV JANNIE LUBBE SC: Thank you. The next ... (intervention)

CHAIRPERSON: But is the allocation your responsibility, HR's responsibility?

MR CHRIS PHOLWANE: That's correct. So we do the calculations in according to the model and that follows the remuneration policy, yes.

ADV JANNIE LUBBE SC: Thank you, Mr Commissioner. The next issue is whether mutual separation agreements concluded in 2017 and 2018 with senior executives of the PIC, complied with internal policies of the PIC, and whether pay-outs made for this purpose were prudent.

MR CHRIS PHOLWANE: Commissioner, if I can just maybe deal with that. We sort of touched on earlier on this morning around that. The mutual agreement generally
10 become an outcome of a disciplinary hearing, and I think it's common cause that in any disciplinary or a dispute, you might seek for a resolution of that dispute. So in most cases it will either be advanced by a disputing party, or it could be initiated by the Chairperson of the hearing.

And in this instance this specific issue of this mutual agreement that was dealt with in 2017/'18 was focused and initiated as part of the discussion between the parties. So that will be the employee representative and then PIC representatives. So the chairperson of the hearing indicated if whether the parties are amenable to resolving the dispute at that point in time.

Then obviously that's a matter that was considered by both parties. I was
20 the employer representative in that case in point, delegated by the CEO at the time. I then informed and engaged with the CEO and so CEO – there's a matter before us before we can continue with the disciplinary hearing that are we amenable to a mutual separation discussion, as it were.

Then he indicated, Chris, there's no harm in exploring that alternative. Let's see how it goes. And from that basis, you know, it was made in good faith, and both

parties participated and voluntarily so, and had legal representation and then the mutual agreement was concluded.

ADV JANNIE LUBBE SC: What is the position with the CEO that left the PIC end of last year? Is there a mutual separation agreement?

MR CHRIS PHOLWANE: Not that I'm aware of, no.

ADV JANNIE LUBBE SC: Then 1.14, whether the PIC followed due and proper process in 2017 and '18 in the appointment of senior executive heads and senior managers, whether on a permanent or fixed-term contracts.

MR CHRIS PHOLWANE: Commissioner, I think I dealt with this aspect. I may not
10 have necessarily mentioned that, but just to go back to that. I've dealt with the recommended process as it were, and I think in this respect it will deal with senior manager and I mentioned the role of general manager, investment management, which was then converted into the executive head, investment management.

That role was redundant and we had followed due processes with regards to submission made to the HRRC, as well as the board in respect of this specific position, and the necessary approvals were obtained. In this instance, you know, the position became redundant and elevated to the executive head. The employee in that role and the company in that role was absorbed. And this is not an extraordinary process.

So in instances where there are elements of what you would call Section
20 189, or elements where the position is declared redundant, the first point is to absorb a person that's in that position. However, considering whether they meet the minimum requirements of that. So we've done it before as well, so there's nothing untoward as far as that is concerned.

ADV JANNIE LUBBE SC: Thank you. Can you then proceed with disciplinary proceedings.

MR EMMANUEL LEDIGA: Just a question just before you go. You mention that there were challenges with bonuses within the PIC. Were they – the challenges, were they just the bonus pool issue, or there were individual issues of - on the bonuses side?

MR CHRIS PHOLWANE: I might need to get clarification in terms of individual issues. What do you mean by that?

MR EMMANUEL LEDIGA: Ja, the challenges were they – was the problem only within the bonus pool issues between the shareholder and the PIC, or were there problems in terms of allocations to individuals within the PIC?

MR CHRIS PHOLWANE: Okay thanks, Commissioner, for clarifying. So I may take
10 you maybe to page 9 on that table 2. So if you look at page 9, table 2, you'll notice 2015/'16, 2016/'17 and 2017/'18. You will see the values of the bonus pool allocated. Ordinarily – and I think it's common cause and human behaviour – that as and when we improve our performance, we expect a higher bonus pool.

You will see there's a fluctuation that would happen in terms of the size of the pool as determined by the policy and the size of the pool as allocated by the shareholder. When the pool is reduced, invariably this will influence the allocation to every recipient of the incentives.

So in that regard, you know, it will obvious cause consternation if I had received this year a certain value and the following year it's reduced by 30%, 40% or
20 even 50% in some cases. That obviously will create problems. So we had experienced in that. So the bonus pool itself would therefore aggravate the level of demotivation and discomfort in the organisation.

MR EMMANUEL LEDIGA: What intrigues me is that, I mean it seems sort of a reasonable thing, but I mean this caused a lot of problems, you know, given the documents we read, you know. I mean how could this cause so much problems?

Wasn't it explained properly, or what?

MR CHRIS PHOLWANE: So we can deal with whether communication was effective, or not. But I think the elephant in the room remains that when you expect over and above a performance – and maybe I may reflect on the last year's financial year in terms of PIC's performance. We received a corporate rating higher than any other year before and we received the least bonus pool allocation.

So that gives you a context in terms of the impact and effect that will have from a motivational point of view. So I can communicate to somebody that has performed exceptionally well and say, you've done exceptionally well, but unfortunately
10 your bonus this year it's halved of what you had receive in the previous financial year. That would make someone very unhappy.

CHAIRPERSON: Thanks.

MS GILL MARCUS: Sorry, if I could just have – if you looked at the numbers because your 2017/2018...

MR CHRIS PHOLWANE: Yes.

MS GILL MARCUS: ...the shareholder approved pool is roughly half of what the remuneration policy would be.

MR CHRIS PHOLWANE: That...(intervention)

MS GILL MARCUS: And is that a result of the determination by the shareholder that
20 the pool size is restricted to a certain amount and therefore you've only got that to divide among the staff proportionately to their performance?

MR CHRIS PHOLWANE: Ja, that is correct. So that amount was reflected as a percentage and you get that total value for distribution. Yes, that's correct.

MS GILL MARCUS: Is that related to 3.1.2.1.2 when National Treasury instructed that 20% of total personal expenditure shall be the pool?

MR CHRIS PHOLWANE: So that one specifically refers to this current financial year, so that's 2018/'19.

MS GILL MARCUS: So it will be this current year?

MR CHRIS PHOLWANE: That's correct, yes.

MS GILL MARCUS: That will be.

MR CHRIS PHOLWANE: So...(intervention)

MS GILL MARCUS: So is that going to be bigger or smaller than your 123?

MR CHRIS PHOLWANE: It will be smaller so the 20%...(intervention)

MS GILL MARCUS: So there's a reducing...

10 **MR CHRIS PHOLWANE**: There's a further reduction, that is correct.

MS GILL MARCUS: Further reduction.

MR CHRIS PHOLWANE: Yes, ja. Disciplinary proceedings - so there's a whole section that I deal with specifically with regards to the disciplinary policy but maybe from a governance point of view it's also regulated by our DOA, Delegation of Authority.

You'll notice that every now and then we'll make reference to that Delegation of Authority because that's an element that sort of guides our practices.

Over and above that we have the policy itself that we would look at which is also in compliance with the labour legislation in the country.

20 So the primary objective of disciplinary – and this you'll find in most organisations - to ensure that, you know, you enforce desirable behaviour by employees that is consistent with that organisation. In this instant we consent in terms of PIC stated values and practices and to ensure the maintenance and compliance by all employees with PIC policies, processes during their normal execution of their duties.

The general approach and principle adopted throughout the disciplinary proceedings is that of corrective action rather than punitive action.

The administration thereof is premised on the procedural and substantive fairness which is in line with our Labour Relations Act and our labour related legislation in the execution and dispensing of discipline.

The PIC follows the disciplinary process when dealing with matters of misconduct and I made reference to annexure M which we'll then maybe deal with, key features of the policy itself.

I've sort of summarised key features, I don't necessarily want to repeat those, not unless I'm directed specifically to focus on all of them but what you'll get is a sense that a disciplinary is directed at fostering and maintaining positive behaviour, to ensure that we have stable interpersonal relations amongst employees, the reasonable and just corrective action of all behaviour and then the sound, sustained, constant application of discipline. And then it's also meant to ensure that there's a maintenance of standard of performance in order to achieve the employer's goals.

Key principles also that we look at, legal representation is permissible within PIC upon escalation. In other words, if there's a disciplinary action that will ensue, an employee may request for legal representation. However, this would be to their cost. So the legal representative is allowed in our disciplinary hearing.

Disciplinary procedures should not incorporate the accoutrements of a criminal trial so we veer away from, you know, criminal trial procedures and just deal particularly with what the disciplinary hearing is intended for.

PIC complies and advocates for trends and principles of the Labour Relations Act and legislations that are relevant in administering justice.

No employee shall be subjected to arbitrary action so we discourage that sort of behaviour.

The employee is entitled that employees conduct and act in good faith in all

their dealings whilst in employment relationship with the employer. Any form of alleged misconduct may be investigated and if, on the face of it, the investigation indicate misconduct has occurred a disciplinary action may be instituted against the alleged transgressor.

Formal hearings may be instituted for any transgressions deemed to be of a serious nature. Transgressions should be attended to timeously and resolved within reasonable time.

And then the policy goes on in terms of roles and responsibilities of parties within the disputes in Section 6 and the delegation of authority obviously indicates what approval mechanisms are required for disciplinaries and in the event that an employee is aggrieved with the outcome of disciplinary hearing, then they're able to register that grievance and if that grievance is not resolved within the organisation then they may approach the necessary forum such as the CCMA and the Labour Court for further adjudication. So that, Commissioner, is by and large the premise on which this applies.

Now I may want to concentrate our efforts on page 12 which may be dealt with some specific indications. What I'm going to deal with specifically right now deals with what currently is – it's at play in terms of the application of the disciplinary processes required, approval for disciplinary actions and grievances including suspensions.

20 **ADV JANNIE LUBBE SC:** If I may interrupt? The Commission and members, they have this in the statement.

MR CHRIS PHOLWANE: Yes.

ADV JANNIE LUBBE SC: We know that the disciplinary proceedings against the company secretary is not concluded. Can you just briefly conclude what is the position with the company secretary?

MR CHRIS PHOLWANE: So the company secretary is still currently suspended. There is a scheduled hearing towards the latter part of the month, I think between the 28th right up to around the 30th in which the company secretary will respond in that respect.

What I can update the Commissioner at this stage is that the employer witnesses have been led, the evidence has been led and cross-examined and we are in the process where the version of the company secretary will need to be put at this moment in front of the Chairperson.

ADV JANNIE LUBBE SC: Thank you. Can you then deal with the senior manager IT, Risk and IT governance?

10 **MR CHRIS PHOLWANE:** Okay.

ADV JANNIE LUBBE SC: Can you just – you don't have to go through...

MR CHRIS PHOLWANE: Yes.

ADV JANNIE LUBBE SC: With your permission, Mr Commissioner, you can just conclude what happened, was there a disciplinary hearing? Was it concluded? What the outcome, etcetera.

MR CHRIS PHOLWANE: Absolutely. So that hearing took place, charges were served, disciplinary charges were served, the hearing was conducted by an independent Chairperson. The employee was found guilty and a summary dismissal sanction was allocated. Since the employee has left the employ of PIC. However, the matter is now
20 sitting at the CCMA for further adjudication. We had gone through a conciliation, now we're focusing on arbitration and it's also scheduled sometime ...(intervention)

ADV JANNIE LUBBE SC: Can you just confirm that the Chairperson of that disciplinary hearing was a senior counsel from the...

MR CHRIS PHOLWANE: Johannesburg Bar.

ADV JANNIE LUBBE SC: From the...?

MR CHRIS PHOLWANE: Johannesburg Bar.

ADV JANNIE LUBBE SC: Johannesburg Bar.

MR CHRIS PHOLWANE: Yes.

ADV JANNIE LUBBE SC: Thank you.

MR CHRIS PHOLWANE: Question: The manager in this section here, this problem started to crop up but the person had been there for two to three months as far as I can recall the documents. If it's true, what could have caused so much angst or trouble for a person who had just been there for two or three months in the PIC?

Commissioner, I don't want to speculate in terms of what could have caused
10 it but I think it was an alarming, you know, discovery and revelation to the PIC wherein
within a short period of time that you've had to discipline an employee.

So as to the motivation thereof, I think that still remains to be unearthed. At
this instance I won't be able to provide reasons as to why that actually was the case.

However, I had provided the Commissioner with the record of the case, so it
was recorded. So any further details I think would be indicated in that regard. I've also
...(intervention)

ADV JANNIE LUBBE SC: Sorry...

MR CHRIS PHOLWANE: Yes.

ADV JANNIE LUBBE SC: The complete record including the decision of the
20 disciplinary chairperson is part of this bundle.

MR CHRIS PHOLWANE: That's correct, yes, ja. Although one couldn't find that
particular reason in the Cassim document and all that. One couldn't discern what could
have caused such angst within such a short time.

Well, if I may respond, there was reference by the affected employee and I
think that reference you'll find in the records.

ADV JANNIE LUBBE SC: Thank you. Okay and you then deal with the disciplinary of the Executive Head IT.

MR CHRIS PHOLWANE: So, Chair, the disciplinary of the Executive Head of IT, I think part of this process has been concluded and I've responded earlier on. Precautionary suspension was issued and we've stated the information around that. Charges were levelled, it was also chaired by an independent senior counsel. This is the one that ended up in a mutual settlement agreement that I dealt with earlier on and as it stands now, that process is concluded.

ADV JANNIE LUBBE SC: Can I just ask you this? During this process – and Mr
10 Commissioner it will be dealt with later in detail – the PIC was represented by counsel or an attorney.

MR CHRIS PHOLWANE: That's correct, yes.

ADV JANNIE LUBBE SC: And the employee, IT Head, was represented by counsel.

MR CHRIS PHOLWANE: That's correct, yes.

ADV JANNIE LUBBE SC: The agreement was signed, I believe, in March/April last year?

MR CHRIS PHOLWANE: That is correct.

ADV JANNIE LUBBE SC: April last year.

MR CHRIS PHOLWANE: It was April.

20 **ADV JANNIE LUBBE SC:** Was this separation agreement disclosed to the board?

MR CHRIS PHOLWANE: That is correct. So not necessarily the terms themselves but what I tend to do particularly with very senior management – and I must hasten to inform the Commissioner that the shareholder had expressed, you know, concern also in terms of this view and required that PIC update the shareholder in terms of what really is going on with this and so the shareholder would have been informed. The

board would also have been informed, there is documentation to that effect that supports that correspondence. So at all times the board would have been apprised of the developments within PIC in relation to this.

ADV JANNIE LUBBE SC: Who signed the separation agreement on behalf of the PIC?

MR CHRIS PHOLWANE: So I was the employer representative, so I did sign on that behalf. So I was delegated at the time by the CEO to the affairs of representing the PIC so I signed it.

ADV JANNIE LUBBE SC: Now can I ask you, Mr Pholwane, since date of signature
10 of this separation agreement till last night did anybody at the PIC ask you about your views on the merits of this agreement?

MR CHRIS PHOLWANE: Not that I can think of. What you may find is it's just comments out, you know, but not any formal views around what I thought about other than last night or early this morning. I think early this morning.

ADV JANNIE LUBBE SC: Thank you. Can you then deal with the disciplinary of the executive head?

MS GILL MARCUS: Sorry, can I just ask a – well, you know, this is something that seems to permeate a lot of the discussion, this dissatisfaction about this particular mutual separation agreement. Were there other separation agreements that had been
20 signed before and what is the issue in this one that has caused such repercussions with board and shareholder and what does it mean in terms of your 5.1.3.2 (c):

“Some of the facts that subsequently came out post the mutual settlement agreement indicated behaviour that is incongruent to PIC values and code of conduct.”

Does that mean that if things came out post the settlement agreement that were not

disclosed or were not aware that it could nullify the agreement or should nullify the agreement and were the terms of settlement so different that it's had this repercussion?

I mean, I don't understand why one item – unless there's something very distinct about it. So what is distinct about it?

And when you said you informed the board but the board wasn't aware of the terms, surely the most important question is the terms because you set precedent with terms.

MR CHRIS PHOLWANE: So, Chair, if I may respond? So definitely it was precedent settlement which dealt with to the value of 29 months of the guaranteed pay of the affected individual, 29 months of the value of that guaranteed pay of the individual. In other words...(intervention)

MS GILL MARCUS: So they were paid for more than two and half years?

MR CHRIS PHOLWANE: Yes, that is correct, yes. So I would imagine from a precedent point of view, so that was the – would be the issue, I would imagine.

The settlement on its own, it's an outcome of a negotiation between the two parties where there would be a position expressed and in this respect there was issues that were tabulated to the employer. Amongst them was the potential loss of incentives, both short term and long term, if the employee was to, you know, exit the organisation and then they would also look at the potential to be able to be employed within a specific period of time, as we all have an appreciation of the unemployment rate in South Africa and opportunities in respect of certain skills.

So those were some of the factors that would influence the discussions in and around the separation.

But equally, and I need to state this, both parties were represented by legal counsel. The separation was entered – the agreement was entered to voluntarily and it

was made in good faith and I think that's very important to grasp. If there's anything untoward - and the Commissioner had referred to the facts as established on page 15 on number (c) - those facts came out of a disciplinary hearing which, had we had those opportunity, and agree the settlement or if required, a disciplinary process would have continued had we known those at the time.

So the other part that you dealt with, Commissioner, was whether this should be set aside or nullified. I think it would be important for the Commission to also assess this component as it remains an issue of consternation to adjudicate for herself if this needs to be set aside but I would also indicate and advise the Commission that all facts
10 and all parties need to put their point across in terms of what really occurred in this instance from the onset up to the conclusion thereof.

CHAIRPERSON: Just to be clear, so according to you, I mean, including all the calculations you mentioned, was this done within the PIC policies?

MR CHRIS PHOLWANE: Ja, within the policies - as I referred to, you know, from a policy point of view it's an outcome of a disciplinary hearing and then you may want to settle. We - you don't police or have something that says that you will have mutual settlement, you know, as a form of a policy so there's a decision and a sanction or you arrive at a certain decision in disciplinary hearings and then you'll deal with that.

What probably the Commissioner may want to direct the question is to was
20 this prudent? And I think that was attended to.

Was it made in good faith? Do I, as the head of HR, think that it's excessive? Yes I do. As I indicated it was a precedent settlement, we've never had anything like that. We've had settlements before and none exceeding 12 months, if I'm not mistaken so we had one for about 12 months or so - I mean, for about ten months and six months, those that I can recall. In some instances less than that period but

none exceeding 24 months. So this would have been the first, so it is precedent setting.

ADV JANNIE LUBBE SC: Mr Commissioner, if I can assist at this stage just to place on record that we have already consulted with the former head of IT and she has indicated that she is keen to come to the Commission to tell her side of the story so she will be called as a witness.

MS GILL MARCUS: I think that would be very helpful because the other two points that you make in the outcome of the disciplinary are very concerning and you qualify it by saying “it appears that” but it appears that first from your wording here is that this
10 was an investigation by the police and that during that investigation she was conveniently out for lunch and therefore was not part of that and was absent during that.

And secondly, that the allegations, if correct, are extremely serious to come to any settlement that gave administration rights to senior managers in IT to access PIC systems, to monitor senior management emails and other confidential information outside the scope of work.

Now that is a very serious allegation in my view if you're looking at confidential information that is – you know that people can make a lot of money out of.

So I think if those were the allegations then the settlement does – of that
20 nature, does get called into question, so I think that if she is coming to appear before the Commission that would be helpful to answer the allegations because clearly those allegations have not been settled.

MR CHRIS PHOLWANE: Absolutely, so Commissioner and that's the point around pointing that out in a case that this was to be questioned. You say these are areas, these allegations that still need to be tested because as it occurs, they came to light,

you know, at the duration of another disciplinary hearing and came about that.

There was some elements in the forensic report but you could not conclude, you know, convincingly that this was indeed the case until such time that that information was volunteered into that disciplinary hearing and there's a record to that effect which I think needs to be tested as it were.

I must also indicate that I think late last year around December we had received a letter as PIC from the affected employee that they wish to tender their submission to the Commission and in some instances deal with this issue or any other matter that they would deal. So I understand that that is the case.

10 **MR EMMANUEL LEDIGA:** I just want to check something. These terminations of employees, are these part of the whistle blowing issues? Are these people who were sort of fingered in the S & G report or this could be separate things. 2331

MR CHRIS PHOLWANE: Commissioner, I think – you see, when once there's whistle blowing, I'm unfortunately going to have to take you through a process of whistle blowing. PIC has got – and I hope that the head of internal audit will also deal with that extensively. PIC has got a whistle blowing process and policy, we call it fraud prevention in which I think the Head of Risk normally would deal with that policy.

20 By and large there's a process in which any whistle blowing by an employee, they are encouraged and I would add we have received a few of them and in some instances those have been investigated but that's not within my ambit, that's within the ambit of internal audit. It is only until I get a report that will require HR to intervene and that I would intervene. But the whistle blowing policy and process is there and is available.

Nothing at this stage in terms of the disciplinary hearings that we've conducted has pointed out nor anyone throughout this process has indicated that they

are in actual fact are whistle blowers or whistle blowing.

There is a reference but there's nothing specifically that says in actual fact my actions was that of a whistle blower and therefore they will fall within the necessary protection that is afforded to whistle blowers. Up to this stage they are just averments towards that but nothing concrete.

MR EMMANUEL LEDIGA: So basically you are saying it's really part of the leaking of some information then?

MR CHRIS PHOLWANE: Well, I'm not saying it's part of, I'm indicating that I don't have anything at this stage. That is my evidence that suggests that this was whistle
10 blowing activity. From a leaking information those are areas that we dealt with in a disciplinary action where a report pointed out that, you know, an individual accessed that information and that information was distributed to other forums. That part I'm aware of and it's on record in terms of the disciplinary hearings.

ADV JANNIE LUBBE SC: Then we can conclude with the disciplinary of the Risk and Legal Counsel, Governance and Compliance. As I understand the situation, Mr Pholwane is that both of them served on the board of the VBS Bank.

MR CHRIS PHOLWANE: That is correct, they were nominee directors of the PIC to and investing company.

ADV JANNIE LUBBE SC: Yes and the action taken against them is directly connected
20 with their failure to act in the best interest of the PIC while serving on this board. Can you just briefly explain?

MR CHRIS PHOLWANE: Ja, perhaps I can elaborate and maybe just deal with each occurrence. So the Executive Head of Risk specifically, the disciplinary process partly focused initially on performance management and leading and managing the risk function, so those were areas that were preferred from a charges point of view to the

employee.

What came to surface was the – and we couldn't prove this at the point and at the time of the disciplinary hearing – is the fact that there was some, if you like, overlooking of fiduciary duties or fulfilling of the fiduciary duties that they would have been entrusted as directors in their nominee – you know, as nominees in the investing companies.

What this would mean, and I don't want probably deal with governance and issues, whether you have a duty to inform or not, but what this would mean is that if there's any information – and this was tested in the disciplinary hearing particularly with
10 the Head of Risk that it is impossible not to be aware of the goings and the operations of an entity especially in matters dealing with litigation and let me maybe explain more what I mean by this. There was information that came to light that...(intervention)

MS GILL MARCUS: Sorry, could you talk closer to the mic?

MR CHRIS PHOLWANE: There was information that came to light that during the disciplinary hearing that there was a litigation against this investing company that was in dispute with National Treasury if whether they will be recipients or take deposits from municipalities, as it were and it would be odd for a director not to be aware of this litigation against an institution that they have oversight on and this was tested and I think that's where the areas of suspicion around their role in this regard.

20 What then emerged subsequently with the – I think the investigation conducted by the Reserve Bank, was that these nominee directors were fingered to have been participants at least in the maladministration and overlooking what actually occurred in that institution.

So when this was brought to our attention and with the Head of Risk, we dealt with performance management issues and that duty of good faith not being

exercised as well as the fiduciary duties exercised and the employee was dismissed and the matter currently is still sitting with the CCMA and has been referred there.

With the head of legal, when that information came to fore we were advised by a letter I think from the Reserve Bank that PIC needs to take corrective action as it became – they became aware that our nominee director was also involved in this maladministration.

Immediately when this came to our attention I then engaged the CEO who then informed me that this was the information that he had received and I advised him that a suspension needs to be issued and I set up an appointment with the affected
10 employee for the following day because I had learnt about this later in the afternoon and in the morning of the intended meeting a resignation letter was submitted to PIC and that's the employee had left the PIC.

MS GILL MARCUS: I think when we're looking at some of these things it would be useful perhaps just to dateline some of them. It's sometimes a bit difficult to know given the period just when this occurred.

MR CHRIS PHOLWANE: Ja.

MS GILL MARCUS: But that's one type of action against this – these are two very senior people, your head of risk, a very critical element in the PIC and your head of legal on whose advice I'm assuming the PIC depends a great deal.

20 Has the PIC taken steps to look into everything over a period going backwards or forwards but certainly backwards where Risk and Legal have advised and made recommendations and to see whether there were other instances by these people of either disinformation, misinformation, manipulation or something that was improper because I would be very surprised if there's only one instance.

How would there only be one instance if people do this in relation to – and

perhaps you want to name the entity because I mean people know what the entity is. But it would be useful to say if you've done this in relation to this entity knowing these are your responsibilities internally in the organisation, have you looked at whether in fact this is a red flag for other advised deals, information assessments because why would it be one deal only?

MR CHRIS PHOLWANE: So Commissioner, what I'm aware of at this stage is that the – and I stand under correction, the internal audit team had been informed and there is an investigation currently underway to look at the particular individuals and if there's any more, I've not - I don't have the details of that investigation but I'm aware that
10 there is an activity that is underway with regards to that. Whether it's only this specific entity and you've said naming it, it was VBS. So if there's anything other than that I suppose that is something that would also be looked at but I'm not aware of the total scope of that investigation.

What I can also confirm from an activity point of view that also occurred and I think this information was communicated I think in a parliamentary committee, I'm not sure when, that the PIC would be looking at, you know, either pursuing criminal charges if that's the route that will follow to ensure that this is addressed.

We have also made submission or in the process of making submission to deal with the status as board members. I think there's a process underway in terms of
20 that. What I can confidently confirm is that we had debarred them in terms of the FACA (sic), so the financial services – you know, financial services, yes.

So we've done specific action to prevent the two individuals from providing financial advisory or even to deal with that going forward.

MS GILL MARCUS: Notified the Financial Service (sic) Conduct Authority.

MR CHRIS PHOLWANE: Yes, we had done that, yes.

ADV JANNIE LUBBE SC: My last question. In terms of the proclamation and terms of reference, do you have any personal knowledge of any impropriety regarding investments decisions by the PIC that was reported in the media in 2017/'18 contravening any legislation PIC policy or contractual obligations?

MR CHRIS PHOLWANE: So, Chair, the only information currently to my disposal is that which I've dealt with right now of impropriety which came about as a result of the investigation by SARB. I do not have, you know, *prima facie* evidence in terms of any other employee not unless, you know, it has been brought to my attention and I didn't pay attention to that, that would be odd, but nothing so far that came to my attention
10 other than these two aspects that we related to the VBS saga.

ADV JANNIE LUBBE SC: Do you have any personal knowledge whether a director or employee of the PIC used his or her position or privileges – privileges or confidential information for any personal gain or to improperly benefit another person?

MR CHRIS PHOLWANE: So what I'm aware of particularly is in relation to the two reports that were conducted and which were a subject of disciplinary hearings. One, it's a matter that's under consideration in terms of the disciplinary hearing as we have which is the SNG report which provides indication that some information that employees may have come about could have been used for other means other than what is intended to, but that is still a matter that is subject to adjudication.

20 The other one was confirmed in a disciplinary hearing where that information was obtained and used as we currently have this date and this is in respect of the senior manager in IT Security Risk and Governance.

 The other information that I potentially could be aware of and maybe Commissioner Lediga, you referred to whistle blowing incident reported some time last year, I can't remember the specific time which the internal audit investigated which the

public protector also investigated and it was in relation to either on alternation or manipulation of remuneration and incentives. What I'm aware of, there was an employee within my department who made an affidavit and I hope that that person will present himself in this who may have had access to privileged information and I would venture to say that he used it to either his benefit or benefit of others.

ADV JANNIE LUBBE SC: Thank you. For the record, Mr Commissioner and members, employees and former employees have approached us with information. We're in the process of consultation and drafting of statements and depending on what they come up with and if they present their cases before the Commission Mr Pholwane
10 must just be warned that he may have to come back to the Commission to answer to those allegations that may or may not be brought before the Commission.

CHAIRPERSON: In fact Adv Lubbe, the three of us discussed that and sort of realised that what we should have done with regard to all the witnesses to inform them that they might be called back to come and give further evidence should it be necessary?

ADV JANNIE LUBBE SC: Ja, I can give you the assurance that I have done so although it's not on record but I've informed them that this is the first stage of the investigation and the Commission work to set the framework of the work but they will most definitely be asked to come back to answer to specific allegations.

CHAIRPERSON: Give us the number again, I didn't hear the number, the employees
20 who have come forward, the number?

ADV JANNIE LUBBE SC: At the moment it's about...(intervention)

CHAIRPERSON: Oh there was no number you didn't say a number.

ADV JANNIE LUBBE SC: I didn't, no. Mr Commissioner, if there's no more questions this is the work for the day. We are ready to start tomorrow morning again at ten and according to the schedule, we plan to I think adjourn at 11.30, we have – the person

who will testify tomorrow is the internal auditor and according to our estimates he will finish his evidence in an hour and a half.

CHAIRPERSON: Thank you. So for now Mr Pholwane can be excused for now.

MR CHRIS PHOLWANE: Thank you, Chair.

WITNESS EXCUSED

CHAIRPERSON: Yes, alright. And we can then adjourn until tomorrow morning.

Alright, the sitting will adjourn until tomorrow morning at 10.00. Thank you.

MEETING ADJOURNS TO 23 JANUARY 2019