



29 August 2018

Brief: Steinhoff Matter

This briefing document summarises the two previous briefings by the regulatory and law enforcement agencies of South Africa, National Treasury, GEPF and PIC and Steinhoff regarding the sudden collapse in the shares of Steinhoff International NV in December 2017 and allegations of accounting irregularities. It also highlights the follow-up issues for the August 29 briefing.

1. Steinhoff's Initial Meeting

- 1.1. The Parliamentary Committees received a briefing on the Steinhoff matter from Steinhoff's Acting Chairperson, Ms Heather Sonn, who was appointed in December. Dr Christo Wiese was also in attendance although he ceased to be the Chairperson of Steinhoff in December. The JSE, National Treasury, the Reserve Bank, the Financial Services Board, the Independent Regulatory Board of Auditors, the Government Employees Pension Fund (GEPF), and the Public Investment Corporation (PIC) gave presentations to the Committees on what they were doing to ensure that losses are minimised and investigations are expedited and they hold to account those who were involved in wrongdoing at Steinhoff.
- 1.2. A summary of the group's structure was given, together with a background to the company's sudden dip in its share prices. Steinhoff said that they had subsequently appointed PwC to investigate this crisis on behalf of Steinhoff. It further said that the Board came to know of the crisis from its external auditors, Deloitte, that its financial statements could not be signed-off 3 days before they were due.
- 1.3. Steinhoff has got a complex structure as it operates in 32 countries and has subsidiaries in all of them. The main company is registered in the Netherlands as Steinhoff International Holdings, with a primary listing in the Frankfurt Stock Exchange (FSE) in Germany, and a secondary listing in the Johannesburg Stock Exchange (JSE).
- 1.4. Steinhoff is historically a South African company that re-domiciled and listed abroad. It however still has a significant number of investors from South Africa. The biggest institutional investor is

the GEPF, whose investments are mainly managed by the PIC, as its main asset manager. There are other private asset managers who are mandated by the GEPF and the PIC.

- 1.5. The Committees were given different figures on the amount of exposure of the GEPF in Steinhoff by the GEPF and the PIC. These organisations were asked by the Committees to reconcile their figures and supply the Committees with the precise value of exposure. The book losses are somewhere above R21 billion, if the BEE transaction concluded last year by Lancaster and Steinhoff, to the tune of R9.3 billion, is excluded.
- 1.6. The GEPF and the PIC assured the Committees that the value of exposure to the losses are not actual as Steinhoff may still bounce back because its underlying assets (which are the businesses that Steinhoff owns primarily in the retail sector) were sound. Steinhoff assured the Committees that all its retail shops and businesses were all trading and no jobs had been lost thus far. Up until now (August), the value of the shares has not rebounded as initially expected.
- 1.7. The GEPF and the PIC further assured the Committees that as at 23 January 2017, GEPF shares at Steinhoff only represented 0.167% of the total GEPF investment portfolio.
- 1.8. The FSB highlighted that not only the public sector employees who are GEPF members were exposed to losses, but many others on private pension funds and SOEs. It said that out of the 1651 active funds that it regulates, 948 had reported an exposure to Steinhoff shares. The decline of these investments by 08 December amounted to potential losses of R18 billion.
- 1.9. Although in percentage terms of total assets under management in the economy, these potential losses are small, the Committees raised concerns at this decline. Although the losses were not actual then, as many investors held on to their stock, they were huge and would cause financial instability if the situation deteriorated and could lead to the collapse of Steinhoff.
- 1.10. The Committees urged all regulators to perform their legally mandated roles. They emphasised that regulators should play their oversight role of uncovering the truth and holding those involved to account. The GEPF and the PIC should also take the necessary actions to ensure that they safeguard the pensions of public servants and mitigate risk. In trying to assure investors, they should not lose sight of the enormity of the decline in the value of shares or trivialise the matter.
- 1.11. The Directorate of Market Abuse of the FSB said that they had registered two cases of possible insider trading and one case of possibly false, misleading or deceptive statements under the Financial Markets Act which could result in possible administrative fines.
- 1.12. The FSB also said it was interacting with its counterparts, BaFin in Germany, the Frankfurt Stock Exchange and the German Prosecutors in Oldenburg, the Netherlands authorities and the Securities Exchange in the US (pertaining to activities of the Viceroy Group

which may be shorting the stock and using its publications to destabilise the markets with a motive of benefitting from the downward movement of shares)- to get more information on possible violations by Steinhoff. They further said that Steinhoff was cooperating with their investigations and they were interacting with the JSE.

- 1.13. The JSE reported that they were also playing their regulatory role as monitoring the trading of securities to detect and report any market manipulation conduct to the FSB.
- 1.14. The Independent Regulatory Board of Auditors reported that they opened an investigation into the audits of Steinhoff in December last year. It said that Deloitte had provided a response to their queries this month and it expects to finish its investigations within the next couple of months.
- 1.15. The Committees said they would develop a strategy of holding these regulatory bodies, the JSE, FSB (now Financial Sector Conduct Authority) and IRBA to account on their investigations.
- 1.16. The Committees will also look at whether there are any regulatory and legislative gaps in the country's regulatory framework. The Committees were very concerned that while the German authorities picked up this issue two years ago, there were no early warning signs that were picked up or acted upon timeously by the South African regulators. The Committees believed that this may point to lack of capacity of the country's regulators or lack of early warning systems and this may require more controls or regulatory/ legislative interventions.
- 1.17. Steinhoff reported that it had opened a case of corruption with the Hawks against its former CEO, Mr Marcus Jooste. The Committees welcomed this and believed that more cases against other accomplices should be opened, investigated and that people must go to jail if they are found guilty.
- 1.18. The Reserve Bank represented by the Registrar of Bank (Banking Supervision Division- which is now called the Prudential Authority following the coming into effect of the Financial Sector Regulation Act (FSRA)) reported that the actual collapse of Steinhoff would result in significant losses for banks, lenders and investors, but it was of the view that this will not result in financial instability. Although the Committees believe that the Reserve Bank must communicate positive and reassuring messages, the Committees were not fully convinced by this view as it failed to appreciate the worst case scenario. SARB stated that it regulates banks and does not directly regulate Steinhoff.
- 1.19. The Committees were of the view that the Reserve Bank should tighten its oversight role on exchange control and outbound flows of capital. It was important to monitor that as Steinhoff disposes of some of its South African assets to shore up its liquidity in South Africa and other

markets, there is no capital flight out of South Africa. The Reserve Bank assured the Committees that it is monitoring the situation. The Committee said it will hold the Reserve Bank to account on this issue.

1.20. The Committees said they will be monitoring the situation closely to ensure that the investments of South Africans are protected. They said they will also play a more focussed oversight role in ensuring that the regulators do what they are supposed to do to hold anyone responsible for the Steinhoff situation accountable. The Committees said they would like to see both corrective and punitive action for law violators.

1.21. The Committees said that Steinhoff was a systemically important multinational company. In light of this, consideration must be given to regulating such big corporations appropriately to minimise risk, approve their equity acquisitions in financial institutions, carefully monitor their debt issuance, and regulatory approval for re-domicile when they shift their primary listing from South Africa to other countries.

1.22. With over 130 000 employees throughout the world, in 32 countries, with 12 000 retail outlets, 21 manufacturing facilities and 40 retail brands, Steinhoff was no different to a significantly important financial institution (SIFI), the Committees said. They said that Steinhoff's failure could result in a calamity that is as big as Enron.

2. Steinhoff Follow-Up Meeting in March 2018

2.1. In the follow-up meeting Steinhoff was represented by its attorneys from Werksmans as the management board members were attending a conference of the global group in the UK. The attorney, Mr Robert Driman, reported that progress had been made in stabilising the company since the initial meeting with the Committees in January.

2.2. Mr Louis Strydom of PwC, the company appointed by Steinhoff to investigate the accounting irregularities, reported on the progress of the investigation. He said that 14 different work-streams, with 60 people globally, had been established to investigate the accounting irregularities. Special reviews were also being conducted to determine which Steinhoff subsidiaries were not affected by the irregularities.

2.3. Mr Asogaren Chetty of the Companies and Intellectual Property Commission (CIPC) said that external companies listed in South Africa were not subject to some provisions of the Companies Act. These companies were technically allowed to contract out of certain civil and criminal provisions of the Companies Act, he said. He cited section 214 of the Companies Act, which deals with some of the duties of directors. Mr Chetty said that the CIPC had issued a compliance

notice against Steinhoff under section 214 of the Companies Act, regarding the falsification of accounting records. The board of Steinhoff had been given 6 months to provide the CIPC with the names of individuals who were involved and institute criminal action against them. He added that the CIPC said that an application will be made to declare delinquent those involved in wrongdoing. The criminal charges that had been laid by Steinhoff against Mr Marcus Jooste were in term of the PRECCAA, and not in terms of the Companies Act.

- 2.4. Ms N Newton-King of the JSE reported that the JSE had suspended Steinhoff's bonds and preferential shares from trading on 1 March as the Group had failed to publish its financial statements. She said that PwC's forensic investigation would shed some light on whether Steinhoff's financial statements needed to be restated or not. The JSE was further working with the FSE and other regulators and was actively monitoring the trading activity on Steinhoff shares as part of its surveillance functions. She said that the Steinhoff matter had raised questions about the regulatory scheme and governance. Some of these were around the diversity of boards, board appointments and the authority of shareholders in appointing board members and the role of the boards.
- 2.5. Mr Alex Pascoe of the FSB/FSCA reported that four investigations were currently being pursued by the Directorate of Market Abuse. Two related to possible insider trading involving trades between August and December 2017. Another investigation related to misstatement of accounts for 2015/16 financial statements and 2017 interim results. Steinhoff executives had been interrogated and summonses had been issued to some of them (including Mr Marcus Jooste, the former CEO). The last investigation related to short-selling.
- 2.6. Mr Imran Vanker of IRBA said IRBA had launched an investigation in December 2017. Deloitte, the auditors of Steinhoff, had responded to IRBA's inquiries on 20 January in respect of the 2014, 2015 and 2016 audits. After receiving the responses, IRBA had decided to extend the period of its investigations to 2012. Mr Vanker said IRBA was prioritising the Steinhoff investigation, despite human resource constraints, as it only had 5 investigators who were investigating over a hundred investigations.
- 2.7. Major-General Alfred Khana of the DPCI (Hawks) informed members that the Hawks were investigating three criminal investigations; two reported in Stellenbosch and one, in Sandton. The Hawks were working with the regulators and international (Interpol) and foreign agencies in Germany and Holland, he said. The Hawks were also studying the class action in the Netherlands as it could highlight some wrongdoing committed. Major-General said that Steinhoff had not reported a case to the Hawks, but merely submitted a section 34 report on the eve of Steinhoff's appearance to the Committee in January.

Committees' Deliberations on the follow-up briefing of March 2018

- 2.8. The Committees expressed concern that the former CEO of Steinhoff, Mr Marcus Jooste, has refused to attend the briefing at Parliament. The Committees resolved that they would subpoena Mr Jooste to appear in its August follow up briefing. This however should be done with some circumspection as Mr Jooste, although not yet charged, is a suspect facing regulatory and criminal charges and his appearance before the Committees could prejudice his rights to a fair trial if he is subsequently criminally charged. The Committees further agreed that Mr Ben le Grange, the former CFO, should be invited to appear before the Committees in the follow-up meeting of August.
- 2.9. The Committee expressed concerns at the legal and regulatory gaps in the Companies Act, especially with regards to the personal liability of directors who usually hid behind the corporate veil. The Committees said that areas of improvement should be urgently identified and acted upon.
- 2.10. The Committees raised concerns on the media reports that bonus payments were to be made to Steinhoff executives. They were of the view such bonus payments should be halted and not be paid out as the company was facing challenges.
- 2.11. The Committees expressed disappointment at the progress of the FSB/FSCA investigations. (The FSB/FSCA said that it was constrained by section 88 of the Financial Markets Act from revealing further details of their investigations.)
- 2.12. The Committees raised concerns about the capacity of IRBA given that it had only 5 investigators who were investigating over 150 cases. They said that IRBA's role had become far more important given what had been happening within the auditing sector in the recent past. The Standing Committee on Finance was asked to put more pressure on the National Treasury to avail more funding to empower IRBA.
- 2.13. The Committees raised further concerns that Steinhoff may have reported the case to the Hawks because they were going to appear before Parliament the next day.
- 2.14. The Committees stressed that through the briefings, Parliament was not conducting any investigation, but holding those who account to them accountable. They did not seek to supplant the different roles of law enforcement and regulatory agencies. They said that they recognised that the Steinhoff investigations were complex and time-consuming. The Committees would however continue to request for updates on the progress of these investigations.

3. FOLLOW UP ISSUES FOR THE AUGUST 2018 BRIEFING

3.1. STEINHOFF

- To provide an update on the state of affairs.
- What has been the actual losses since December?
- What has been the performance of the underlying companies of Steinhoff? Are there any threats to job losses?
- Has Steinhoff opened any cases in terms of the Companies Act, if so against who?
- Is there any ongoing civil litigation of any kind by or against Steinhoff or any of its current and former directors, arising from the December incidents? What is the likely impact of such litigation on the company?
- Any recovery plan in place and progress in implementing it.

3.2. GEPF/PIC

- To provide an update of its exposure to Steinhoff currently.
- Did the GEPF/PIC suffer any actual losses as a result of selling any of its shares at Steinhoff?
- What has the GEPF/PIC done to mitigate risk?
- What lessons could be drawn from the Steinhoff events?

REGULATORY AND LAW ENFORCEMENT AGENCIES

3.3. FSB/FSCA

- Update on the four investigations. Have any been concluded?
- Any additional investigations?
- Any weaknesses or gaps in the legislation or regulations that the FSCA thinks should be considered by Parliament?

3.4. RESERVE BANK / PRUDENTIAL AUTHORITY

- The Reserve Bank could be asked to reveal the number and value of exchange control approvals that Steinhoff or its subsidiaries has requested and was granted (or not granted) from December last year to date (August 2018).
- Any weaknesses or gaps in any legislation or regulations that the Reserve Bank/ Prudential Authority thinks should be considered by Parliament?

3.5. JOHANNESBURG STOCK EXCHANGE

- Update on the release of financial statements by Steinhoff
- Is the trading of Steinhoff bonds and preferential shares still suspended?
- Any suggestions on how the laws and regulations and governance arrangements could be improved regarding the diversity of boards, board appointments and the authority of shareholders in appointing board members and the role of the boards.

3.6. COMPANIES AND INTELLECTUAL PROPERTY COMMISSION (CIPC)

- Update on the CIPC's investigation regarding the falsification of records
- Has the CIPC received all the information it requires regarding its section 214 Compliance notice to Steinhoff
- Have criminal charges in terms of the Companies Act been laid by Steinhoff
- Has Mr Marcus Jooste been finally interrogated?
- Has the application to declare delinquent some of the executives of Steinhoff been made and what is the progress?

3.7. IRBA

- Update on investigations and the timeframe for possible conclusion

3.8. DPCI/HAWKS

- Update on investigations and the timeframe for possible conclusion.
- Any additional cases that have been reported.

END_____