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**South African Sports Confederation
and Olympic Committee (SASCOC)**

**Forensic audit and investigation into alleged
irregularities at Athletics South Africa (ASA)**

Report

13 August 2010

Risk Advisory

Deloitte

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13 August 2010

Mr Tubby Reddy
Chief Executive Officer
SASCOC, Olympic House
James and Ethel Grey Park, Atholl Oaklands Road
Melrose
Johannesburg
2041

Dear Mr Reddy

Report – Forensic audit and investigation into possible irregularities at ASA

We are pleased to present you with our final report in respect of the above engagement. The report focuses on our work performed in relation to our mandate, as set out in the signed letter of engagement dated 11 February 2010.

The report has been prepared for your information only and should not be communicated to any third party without our prior written consent.

Should you have any queries or need clarity in respect of the content of this document, please do not hesitate to contact Tommy Prins on +27 12 482 0262 or +27 82 824 2815 or Jolandé de Wet on +27 12 482 0251 or +27 83 635 1564.

Yours sincerely,



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2. Executive Summary

Introduction

- 2.1. Following allegations of possible financial mismanagement, SASCOC requested Deloitte to perform a forensic audit and investigation in respect of possible irregularities at ASA. Ostensibly a company incorporated in terms of section 21 of the Companies Act. We commenced our investigation on 15 February 2010 and focused our investigation on the last cycle of four years prior to the Leadership and Board Members of ASA being suspended in November 2009. Therefore the period covered by our investigation is 1 January 2006 to 31 December 2009, also referred to as the period under review.
- 2.2. In this executive summary we include the key points and findings of our investigation. The executive summary should be read together with the detail included in the full report.

Athletics South Africa operating as a Non-Profit Organisation (NPO) and subsequently as a section 21 company
- 2.3. During our investigation we established that ASA, prior to being incorporated as a section 21 company in November 2006, operated as a voluntary Non Profit Organization (NPO). The purpose of the Non Profit Organisation Act, Act 71 of 1997 (NPO Act), is to provide an environment in which non-profit organisations can flourish and which at the same time establishes an administrative and regulatory framework within which non-profit organisations can conduct their business operations. We established that as a NPO, ASA was not registered in terms of the NPO Act at the Directorate for NPOs. Therefore the NPO Act and its requirements did not apply to ASA prior to becoming a section 21 company.
- 2.4. In respect of ASA operating as an NPO we found that the ASA Board of Members adopted and regarded its Constitution: April 2004 (Constitution: 2004) as its founding and governing document. In the remainder of our report, we set out and discuss in detail the relevant clauses and sections of this Constitution: 2004 insofar as they have a bearing on our investigation and our findings.

- 2.5. We also established that ASA was incorporated under section 21 of the Companies Act with registration number 2006/034767/08 at the Registrar of Companies on 6 November 2006. According to the registration documentation the following individuals are indicated as the directors of ASA:

Director	Position
Mr Leonard Chuene	President
Dr Simon Dlamini	Vice President
Mr Attlee Maponyane	Director
Mr Harold Adams	Director
Mr Stix Stiglingh	Director
Mr Thomas Manoko	Director
Mrs Laraine Lane	Director
Mrs Motlatsi Keikabife	Director

- 2.6. SASCOC has advised that the ASA Board consisted of the following Directors, who were suspended in November 2009:

Director	Position
Mr Leonard Chuene	President
Mr Kakata Maponyane	Vice President
Dr Simon Dlamini	Vice President
Mr Chris Britz	Director
Mr Thomas Manoko	Director
Mrs Laraine Lane	Director
Mrs Snowy Matthews	Director
Mr Hendrick Mokganyetsi	Director
Mr Roger Adams	Director
Mr Godfrey Hammers	Director
Ms Lilly Motete	Director

- 2.7. In respect of ASA's status as a section 21 company it is important to note the contents of a letter that Mr Clifford Cobers (Mr Cobers), SASCOC's Procurement Officer, forwarded to us on 17 June 2010. The letter was dated 17 June 2010 and was received from ASA's attorneys, Wertheim Becker Incorporated. In this letter Mr Monty Hacker (Mr Hacker) of Wertheim Becker Inc referred to an earlier letter sent by him to Mr Molatelo Malehopo (Mr Malehopo), the General Manager of ASA on 28 May 2009. He also mentioned in detail several issues relating to ASA's

status as a section 21 company. The gist of these issues was that there is a misconception in the public domain that ASA is a section 21 company whereas it is in fact not.

- 2.8. We subsequently held a meeting with Mr Hacker on 21 June 2010 to discuss the contents of his letter and the issues pertaining to ASA's status as a section 21 company. During this meeting Mr Hacker stated that:
- he was of the view that after ASA had been registered as a section 21 company the Board of Directors did not formally transfer all the assets and liabilities from ASA, as the former non-profit organisation, to ASA as the newly registered section 21 company.
 - the Board of Directors failed to record and authorize the formal transfer of assets and liabilities of ASA at the office of the Registrar of Companies and Close Corporations (Registrar of Companies) as part of its founding documents *i.e.* the Memorandum of Association and Articles of Association.
 - the membership of ASA, as an NPO was not formally transferred to ASA as a section 21 company.
- 2.9. In view of these arguments we investigated the circumstances surrounding the incorporation and registration of ASA as a section 21 company and obtained legal advice from the commercial law experts in our Legal Department.
- 2.10. In this regard we found that, based upon the registration documents obtained from the Companies and Intellectual Property Registration Office (CIPRO), ASA was *prima facie* legally registered as a section 21 company in November 2006. Therefore the members and directors of the section 21 company are subject to the prescripts of the Companies Act.
- 2.11. In our report we elaborate on our findings confirming ASA's status as a legally registered section 21 company.
- 2.12. It is however important to note that, as our commercial lawyers pointed out to us, there does appear to be a concern regarding the legality of the transfer of Erf 1998, Houghton Estate during the section 21 registration process. Erf 1998 is the property on which the offices of ASA are situated. It is reflected in all of the sets of annual financial statements for the years ending 2005 to 2008 as being the property of ASA. The 2005 annual financial statements for ASA were drafted when ASA was still a NPO Association; for the 2006 financial year end the annual financial statements were drafted for ASA after being incorporated as a section 21 company. In our report we include full details regarding the legality of the transfer of the property.
- 2.13. The concern regarding the legality of the transfer of the property does not affect the legality of the incorporation of ASA as a section 21 company in terms of the Companies Act. Therefore the members and the directors of the section 21 company are subject to the prescripts of the Companies Act.

Legal and Administrative Principles

- 2.14. In section 4 of the report we list the relevant legislative, financial and administrative documentation found during the physical searches of ASA's offices and electronic searches of the forensic images made of the computers found and that appeared to be relevant for purposes of our investigation.

- 2.15. In respect of the period that ASA was still operating as an NPO we found that the only applicable governing documentation was the ASA Constitution: 2004 and the ASA Code of Conduct (Edition September 2004). We only found one version of this ASA Code of Conduct and no other version issued or edited at any time subsequent to September 2004.
- 2.16. In our report we set out and discuss the relevant clauses and sections of the ASA Constitution: 2004.
- 2.17. In respect of the ASA Code of Conduct document we noted that the contents of this document were virtually a copy of all the sections contained in the NPO Act. It appears therefore that this Code of Conduct was compiled as if ASA was registered as an NPO or at least as if it might have been envisaged at some time that ASA would be registered as an NPO. As was already explained above ASA was never registered as an NPO and from the evidence obtained during the investigation it also appears that ASA has never formally implemented and adopted this Code of Conduct. For purposes of the investigation we therefore did not rely on the contents of the ASA Code of Conduct as it was not implemented and applied by ASA.
- 2.18. In respect of the period subsequent to the registration of ASA as a section 21 company, i.e. since November 2006, we perused the following:
- The Companies Act
 - The Memorandum and Articles of Association forming part of the ASA section 21 company registration documents filed at the Registrar of Companies
 - Case law pertaining to the fiduciary duties of directors of companies
 - The Prevention and Combating of Corrupt Activities Act, No 12 of 2004 (PCCA)
 - The policies and procedures that could be found at ASA's offices and on the forensic images of the computers found in the offices of ASA.
 - The minutes of the ASA Board and Management meetings which we were able to obtain.
- 2.19. In respect of the incorporation of ASA as a section 21 company we also conducted various interviews with former and current ASA Board members.
- 2.20. In respect of the Companies Act we make specific reference in the full report to the following sections:
- Section 204: Keeping of Minutes of meetings of companies
 - Section 225: Prohibition of tax free payments to directors
 - Section 226: Prohibition of loans to, or security in connection with transactions by, directors and managers
 - Section 242: Keeping of minutes of directors' and managers' meetings
 - Section 245: Directors' and managers' meetings: attendance register
 - Section 246: Duty of auditor as to minute books and attendance register
 - Section 250: Falsification of books and records
 - Section 251: False statement by directors and others
 - Section 284: Duty of company to keep accounting records
 - Section 286: Duty to make out annual financial statements and to lay them before annual general meeting
 - Section 287A: False or misleading reports
 - Section 295: Annual financial statements to disclose loans to and security for benefit of directors and managers
 - Section 297: Annual financial statements to disclose directors' emoluments and pensions

- Section 302: Duty of company to send annual financial statements to members and Registrar
- Section 424: Liability of directors and others for fraudulent conduct of business

2.21. A summary of our main findings is set out below.

Information obtained from the background searches performed

2.22. We obtained the identity numbers and full names of the suspended Board and Management members and where applicable, the same details for their spouses. These details are included in the table below:

Full names and surnames of suspended individuals	Identity number of suspended	Spouse's name, if applicable	Spouse's identity number, if applicable
Leonard Chuene			
Kakata Attlee Maponyane			
Christian Britz			
Kgashane Thomas Manoko			
Magdalene Matthews			
Hendrick Lepela Mokganyetsi			
Roger Denvor Adams			
Simon Dlamini			
Laraine Daphne Lane			
Godfrey Henry Hammers			
Cecilia Lilly Motete			
Humile Bogatsu			
Molatelo J Malehopo / Molatelo Julius Malehopo			
Phiwe Sybie Mlangeni- Tsholetsane	7910010424000	Mokkwe Andrew	7007200870000

2.23. We also performed background searches on additional individuals and entities identified during the course of the investigation. These individuals and entities included Mr Sindani, Mr Ralph and Zanandi Events Management CC.

The main finding of our investigation: The suspended Board and Management members of ASA are accountable for mismanagement, general neglect and the reckless carrying on of the business of ASA

- 2.24. For purposes of this finding as well as the other findings listed below, it is relevant to reflect on the financial status of ASA for the past financial years, specifically the period under review (2006 to 2009). Having regard to the numbers in the table below it is clear that the financial position of ASA deteriorated significantly while under the management of the currently suspended Board and Management members:

Financial year-end	Profit/(loss)	Profit & loss year on year comparison%
2005	403 763	n/a
2006	(436 360)	-108.07%
2007	(930 479)	-113.24%
2008	(4 064 004)	-336.76%
2009	Not available*	n/a

* the audited financial statements were not available for our review as the external audit has not been completed.

- 2.25. Based on the investigative procedures performed, we are of the opinion that the Management and Directors of ASA:

- failed to perform their duties in respect of the management of ASA funds such as sponsorship contracts
- failed to act in the best interest of the Company
- failed to adhere to some of the provisions of the Companies Act

and that this substantially contributed to ASA's poor financial position.

Irregularities relating to the mismanagement, general neglect and the reckless carrying on of the business of ASA by the suspended ASA Board and Management members

A. NON-COMPLIANCE WITH FIDUCIARY DUTIES

- 2.26. We investigated a specific incident where Mr Chuene's actions in relation to his previous personal assistant, Mrs Thabile Mokgoatjana (Mrs Mokgoatjana), appear to be in contrast with the fiduciary duties associated with directors. As has already been pointed out above in paragraph 2.5 and 2.6 Mr Chuene is a registered Director of ASA.
- 2.27. In February 2007 Mrs Mokgoatjana's cellular phone fell in the water at home and was damaged. As a result thereof Mrs Mokgoatjana requested a substitute cellular phone from the ASA office and the cellular phone previously used by Ms Humile Bogatsu (Ms Bogatsu) was given to her. Mrs Mokgoatjana soon afterwards discovered intimate and private messages, which appeared to have been sent by Mr Chuene to Ms Bogatsu, on this cellular phone. These messages were indicative of a personal relationship between Ms Bogatsu and Mr Chuene.

- 2.28. It appears that the discovery of these messages by Mrs Mokgoatjana led to the conclusion of an agreement between ASA and Mrs Mokgoatjana wherein Mrs Mokgoatjana undertook to "resign" and not to disclose the contents of the messages to any other party. Subsequently Mrs Mokgoatjana "resigned" from ASA in July 2007 and was paid an amount of R82 654 by ASA on condition that she kept quiet about the contents of the messages she found on the cellular phone.
- 2.29. In addition ASA paid amount of R7 752 to the lawyers of ASA - Wertheim Becker Inc - for services related to the "Thabile Mokgoatjana" matter.
- 2.30. Mr Chuene used a total of R90 406 of ASA's funds - to pay Mrs Mokgoatjana (R82 654) and Wertheim Becker Inc (R7 752) - to persuade her to resign and to ensure that she kept quiet about the intimate relationship between Mr Chuene and Ms Bogatsu.
- 2.31. It is therefore clear that these funds were not used in furtherance of ASA's mandate - being the development of athletics - but were in fact used to ensure that Mr Chuene's private affairs were kept confidential. It is also important to note that these costs and the nature thereof were not disclosed to the ASA Board. These costs were also incurred during a period when ASA's financial status had deteriorated.

B. NON-COMPLIANCE WITH THE REQUIREMENTS OF THE COMPANIES ACT IN RESPECT OF LOANS

- 2.32. We noted that staff loans had been made available to various employees of ASA, including Managers and Directors. We considered the staff loan policy as contained in both versions of the ASA Staff Manual (Edition: November 2004 and Edition: August 2008), the Companies Act and ASA Constitution. We also evaluated and considered ASA's financial status and the main purpose of the Company.
- 2.33. Although it is clear from the registration documents who the registered Directors are, it is not clear which incumbent of a position in the ASA office structures could be regarded as being a "manager" or "officer" as defined by the Companies Act. In the adopted Constitution of 2008 it is stated under "Definitions" that a CEO is the: "*Chief Executive Officer of ASA, or if no CEO has been appointed, then the person who is appointed the General Manager by the Board*". Since Mr Sindani's resignation in 2004 no CEO was appointed. Mrs Ferns acted as the General Manager after she was appointed as such during the Annual General Meeting held in April 2005. Since she resigned in March 2008, Mr Molatelo Malehopo acted as the General Manager until his suspension in November 2009.
- 2.34. We are of the view that loans provided to Mr Chuene as a Director of ASA and Mr Malehopo, in his capacity as the General Manager, who is regarded as a CEO in terms of the 2008 Constitution, fall within the purview of Section 226 of the Companies Act, which deals with the "Prohibition of loans to, or security in connection with transactions by, directors and managers". The other managers and employees of ASA, such as Mrs Tsholetsane and Ms Bogatsu who also received staff loans are not deemed to be managers or officers as defined by the Companies Act.
- 2.35. During the investigation we found that in numerous instances ASA funds were given to Messrs Chuene and Malehopo as loans (including staff loans).

- 2.36. The financial status of ASA during the period over which these loans (including staff loans) were granted, was such that it may be questioned whether the loans were in the best interest of the Company.
- Mr Chuene's staff loans*
- 2.37. Initially Mr Chuene's staff loan transactions were accounted for in the general staff loan account (8200/000) used for all ASA employees. In 2007, the Finance Department of ASA opened a trade debtors account for Mr Chuene (account number CHU:100) on the latter's instructions.
- 2.38. All Mr Chuene's staff loan transactions were transferred or reallocated to this trade debtors account in order to "clear" Mr Chuene's staff loan transactions. This resulted in a small or immaterial balance being reflected on the general staff loan accounts in respect of Mr Chuene's staff loan transactions, which created the impression that his staff loan transactions had been settled. The fact that there was a small or immaterial balance should therefore not be interpreted to mean that Mr Chuene had paid off his staff loan transactions.
- 2.39. Ms Nervasha Maharaj (Ms Maharaj), a former ASA accountant, informed us that Mr Chuene instructed the ASA accountants to apply the above accounting practice in respect of his staff loan transactions as he did not want to feature in the ASA staff loan accounts.
- 2.40. In view of the above information and the procedures performed during our investigation, it is clear that there was an intentional misrepresentation relating to Mr Chuene's staff loan transactions which were presented as trade debtors in the ASA Financial Statements for the period 2006 until 2008.
- 2.41. In this regard we also questioned the auditor of ASA, Mr Andre de Beer (Mr de Beer), on 5 July 2010, regarding the manner in which the staff loans were recorded and reflected in the annual financial statements. Mr de Beer confirmed that he was aware that the accountants indeed reflected the staff loans as trade debtors in the ASA financial statements for the period 2006 until 2008. Mr de Beer also admitted that the recording of the staff loans as trade debtors and reflecting same as such in the annual financial statements was incorrect.
- 2.42. In terms of the provisions of the accounting statements IAS 1, 32 and 39, staff loan transactions cannot be recorded and presented as trade debtors in the financial statements. Furthermore, the financial statements did not include a note clearly indicating that Mr Chuene's staff loan transactions were included in the trade debtor balances. This would appear to constitute a fraud perpetrated by Mr Chuene as the users of the financial statements - such as the ASA Board of Directors - were deliberately misled as to the true state of affairs regarding staff loans provided to Mr Chuene.
- 2.43. Section 295 of the Companies Act requires the disclosure of loans to Directors and Managers in the annual financial statements. We established that ASA did not comply with this requirement in respect of loans and staff loans made to Mr Chuene and Mr Malehopo

2.44. Our conclusion is supported by the following facts:

- In light of the provisions of the loan policy contained in the ASA Staff Manual, the Companies Act and ASA's Constitution, it would appear that irregular processes were followed in granting staff loans to Mr Chuene:
 - Mr Chuene did not complete the required ASA staff loan form. He would settle personal expenses, using ASA funds and subsequently instruct the ASA accountants that these transactions should be recorded as staff loans;
 - In some instances private expenses were settled using the ASA corporate credit card and then allocated to the respective staff loan accounts.
 - Mr Chuene had more than one staff loan at a time.
 - Mr Chuene did not repay his staff loan balances within the prescribed time period.
- We could not locate a trade debtors accounting policy which governs the repayment terms of the ASA accounts receivables in accordance with the prescribed accounting principles
- Mr Chuene bypassed the guidelines relating to the ASA staff loans by ensuring that his loans were reflected under "trade debtors" in respect of which there is no payment guideline/ policy in place at ASA.
- Considering the payment history noted during the review of Mr Chuene's staff loan transactions as well as an overall outstanding balance due by Mr Chuene to ASA in 2009, (accumulated since 2006), amounting to R80 397.82, it would appear that Mr Chuene either had no intention to settle his ASA debtor account (representing his staff loan transactions), or was unable to do so.

2.45. In addition, we were unable to locate any evidence that all Directors and all members of the Company had consented to the granting of the loans to Mr Chuene or alternatively that the loans were granted to him in terms of a special resolution approving such loans as required by section 226 of the Companies Act. Therefore these staff loans to the value of R183 451.72 (gross amount) were, besides not being in the best interest of the Company, also made in direct contravention of the provisions of the Companies Act.

Mr Malehopo's staff loans

2.46. In view of the provisions of the loan policy contained in the ASA Staff Manual, the Companies Act and the ASA Constitution, it would appear that the loans granted to Mr Malehopo were irregular. This is mainly based on Mr Malehopo who did not complete the required ASA staff loan form in respect of the utilisation of ASA funds which were subsequently recorded as staff loans. An example of this practice is reflected in instances when private expenses were settled with the ASA corporate credit card and thereafter allocated to his staff loan account. In addition, Mr Malehopo had more than one staff loan at a time and he did not repay his staff loan balances within the prescribed time period.

2.47. We were unable to locate any evidence that all Directors and all members of the Company had consented to the granting of loans to Mr Malehopo, subsequent to April 2008, or alternatively that the loans were granted to him in terms of a special resolution approving such loans as required by section 226 of the Companies Act.

2.48. Mr Malehopo still owes ASA R357.00 in respect of loans made.

Other ASA employees

2.49. It would appear that irregular processes were also followed in respect of loans made to the following other ASA employees:

- Ms Bogatsu
- Mrs Phiwe Tsholetsane (Ms Tsholetsane)
- Mrs Linda Ferns (Mrs Ferns)
- Mr Malehopo (for the period prior to 2008)

in that:

- They did not complete a staff loan application form.
- Private expenses were incurred prior to applying for a staff loan, paid with ASA funds, and then allocated to their respective staff loan accounts. The approval process stipulated in the Staff loan policy was accordingly bypassed.
- Instances were noted where these employees had more than one staff loan at a time.
- Staff loans were not repaid within the prescribed time period and the amounts of the loans exceeded the prescribed limit of one third of their salary.
- All of the above were contrary to the requirements of the ASA loan policy.

2.50. Ms Bogatsu has to date not repaid an amount of R10 694.99 relating to staff loans. The staff loans granted to Mrs Ferns and Mrs Tholetsane have been repaid in full.

2.51. SASCOC should consider the tax implications in respect of staff loans advanced to employees as paragraph 2(f) of the 7th Schedule of the Income Tax Act, Act 58 of 1962 (Income Tax Act) provides that where a loan, exceeding R3 000, has been granted to an employee by his employer and no interest is payable in respect of this loan, or interest is payable at a rate lower than the official rate charged on the loan, the difference between the official rate and the interest paid constitutes a fringe benefit and is taxable. During our investigation we determined that the staff loans were granted interest free and our perusal of the individuals' payslips did not reflect any taxes paid in respect of this provision.

C. THE ALLEGED INCORRECT ALLOCATION OF EXPENSES TO SPECIFIC EVENTS

- 2.52. During several interviews with ASA employees we were informed of various instances where expenses were allocated to a specific event that did not relate to that event. Concerns were therefore raised regarding the specific allocations.
- 2.53. Due to the incorrect allocation of expenses in the General Ledger, one would need to perform a complete reconstruction of the accounting records of ASA for the period under review based on the supporting documents to obtain assurance that the General Ledger and the allocation of expenses was a true reflection of the actual expenditure incurred. We recommend that SASCOC consider the performance of such exercise in order to get a complete picture of the total extent of the irregularities.

D. THE IRREGULARITIES PERTAINING TO PERFORMANCE MANAGEMENT AND PAYROLL RELATED EXPENSES

- 2.54. As part of the allegations pertaining to the mismanagement of ASA funds and also taking into account the financial status of ASA, we investigated the bonus payments made to ASA employees during the period under review.
- 2.55. We also investigated the vehicles sold for R1 to ASA employees.
- Mr Chuene and his position at ASA*
- 2.56. According to ASA's registration documentation and in particular the CM3 form, filed at CIPRO, Mr Chuene was appointed as a director of ASA on 7 November 2006.
- 2.57. Mr Chuene was the President at ASA but to date we have not been able to locate any information pertaining to his duties, responsibilities and the benefits associated with his appointment as President of ASA.
- 2.58. We obtained copies of his salary advices and the information reflected thereon creates the impression that he was an employee of ASA. His employee number was reflected as 4, although his position on his payslip was left blank.
- 2.59. In the absence of an employment contract or any remuneration agreement between Mr Chuene and ASA we can conclude that Mr Chuene's behaviour and corresponding remuneration, created the impression that he was an employee of ASA.
- 2.60. Directors and Management of ASA possibly acted in contravention of the Common law principles such as acting in the best interest of the company and with due care and skill, when permitting bonuses and increases to be paid to the employees while ASA's financial status was deteriorating.
- 2.61. If we consider the financial years from 2006 to 2009, all employees consistently received increases and bonuses (13th/14th cheques) every year despite the fact that the Company's financial position continually deteriorated.

- 2.62. Common law requires that directors and management must act in the best interest of the Company and in terms of section 424 of the Companies Act, reckless trading conducted by the directors of the company could render the directors personally liable for subsequent losses suffered by the company.
- 2.63. We are of the opinion that the increases and bonuses granted were indeed unjustified and paid at a stage that the Company could not afford to provide these benefits. We found no evidence of performance appraisals completed for any of the ASA employees and upon which the increases and bonuses were granted.

Payment of a R150 000 performance bonus to Mr Chuene in November 2007

- 2.64. According to Mr Chuene's pay slip for December 2007 he received an "Incentive Bonus" of R150 000. Mrs Ferns explained that this R150 000 payment was a performance bonus that was approved only by the ASA Finance Committee and not the full ASA Board. Mrs Ferns also provided us with a copy of a letter she wrote to Mr Chuene on 15 November 2007, subsequent to being informed by Dr Dlamini on 5 November 2007 that a performance bonus of R150 000 should be paid to Mr Chuene. In this letter Mrs Ferns recorded her discomfort in respect of the instruction due to the fact that no prior written authority existed to execute such payment. According to Mrs Ferns this was in contravention of ASA's financial policies and procedures.
- 2.65. During the interview with Mr Sticks Stiglingh (Mr Stiglingh) he confirmed that he was part of the ASA Finance Committee that resolved that a R150 000 performance bonus be paid to Mr Chuene. However Mr Stiglingh stated that he was opposed to the R150 000 performance bonus but was overruled by the other members of the ASA Finance Committee. He stated that the previous year a performance bonus of R50 000 was paid to Mr Chuene and he suggested that an increase of approximately 10% on the previous year's bonus would be reasonable. He was uncomfortable with the proposed R150 000 performance bonus because no performance evaluation was performed in respect of Mr Chuene's performance. Mr Stiglingh did not know what Mr Chuene had accomplished to warrant a bonus of R150 000. He agreed with Mrs Ferns that such a bonus had to be approved by the Board which was not done prior to the payment thereof.
- 2.66. The registered Memorandum of Association of ASA states *inter alia* that a bonus can only be paid to any officer or servant of ASA if such payment is made in good faith of reasonable remuneration or to any member of ASA in return for any services actually rendered. In addition section 21.11 of the ASA Constitution requires that the Board control all financial affairs of ASA.
- 2.67. This payment of R150 000 to Mr Chuene accordingly appears to have been irregular.
- Payment of R50 000 as a loan to Mr Chuene in August 2007*
- 2.68. Mr Chuene was granted a loan of R50 000 on 15 August 2007. We found no evidence of Board approval for the said loan which was subsequently repaid on 22 April 2008.
- 2.69. The fact that no Board approval was obtained for this loan, is in direct contravention of section 226 of the Companies Act. Therefore the payment of this loan to Mr Chuene was unlawful.

The three vehicles sold to the employees for R1

- 2.70. We established that according to the minutes of a Special ASA Executive Board Meeting held on 11 September 2004, it was decided that the ASA company vehicles driven by Mr Botes (ASA Board Member at the time), Mrs Ferns and Mr Chuene respectively, be sold to them for R1 each.
- 2.71. Although no mention was made in these minutes, it was understood from our interviews with Ms Reddy and Mrs Ferns that the vehicles were sold for R1 each because of the fact that they forfeited their half yearly performance bonuses. From our investigation we did not find evidence that they received further bonuses during 2004.
- 2.72. We noted that a fourth vehicle (other than the three vehicles mentioned above) was also mentioned in the allegations relating to the vehicles sold for R1. In this regard Mr Mehlo Hlabangane (Mr Hlabangane), an ASA employee in the Events Department, informed us that he used to drive this vehicle, (a Nissan Hardbody) during 2004. He also indicated that he understood that this vehicle was the property of the Soweto Half Marathon Trust and that it was apparently eventually sold in 2006. We, however, obtained eNatis records pertaining to this vehicle which indicate that ASA is in fact still the registered owner thereof.
- 2.73. Our findings in respect of the sale of the 3 vehicles can be summarised as follows:
- They were in fact sold to the three above mentioned employees for R1 each.
 - In the minutes referred to above it was stated that the purchase price of the vehicles driven by Mr Botes and Mrs Ferns have been paid in full and that these vehicles were worth R40 000 and R20 000, respectively. From the financial documentation obtained from the Finance Department we established that the monthly salaries of Mr Botes and Mrs Ferns were R12 482 and R15 621 respectively. This means that if the value of the vehicles received is compared to the monthly salary Mr Botes received a benefit of 320% and Mrs Ferns received a benefit of 128% calculated against their monthly salaries.
 - In general, based on the evidence obtained, it appears that ASA employees were entitled to a 13th and 14th cheque (performance bonuses).
 - Even if it is accepted that they (Mrs Ferns and Mr Botes) received these benefits because they had forfeited their half yearly performance bonuses, it is clear that these benefits significantly exceeded their respective monthly salaries. It is our understanding of the performance evaluation documentation that the normal maximum amount to be approved as a performance bonus for ASA employees should not exceed 100% of an employee's monthly salary.
 - The amounts stated in the minutes (i.e. R40 000 and R20 000) as the value of the cars, appear to be understated and the correct market values for these vehicles (both Honda Ballade 160i Vtect) as per the Mead and McGruther guide, at the time were in fact approximately R82 700 each.

- In the minutes referred to above no reference was made to the value of the vehicle driven by Mr Chuene. From the financial documentation obtained from the Finance Department we established that Mr Chuene's monthly salary at the time of receiving the vehicle was R14 172. According to the Mead McGrouther guide, we established that Mr Chuene's vehicle at the time had a trade in value of approximately R121 900. This means that if the value of the vehicle received is compared to the monthly salary Mr Chuene received an additional benefit of 860%.
- It is clear that this benefit was far in excess of 100% of his monthly salary to which he may have been entitled.
- Despite a vehicle being sold to Mr Chuene in terms of a resolution taken by the ASA Board during a Special Executive Board Meeting on 11 September 2004, it appears that he subsequently failed to transfer the vehicle into his private name and we could not identify same through our eNatis searches.
- We perused financial documentation pertaining to the payment of half yearly bonuses to ASA staff for the year 2004. From this documentation we noticed that Mrs Ferns and Mr Botes did not receive half yearly performance bonuses.
- From our review of the payslips for Mr Botes and Mrs Ferns, we could not find evidence that these employees were individually taxed on this additional benefit.
- Despite the fact that the vehicles were transferred into the employees' respective names, and thus were no longer regarded as ASA property, ASA continued to maintain these vehicles. For example, ASA continued to pay for the services and insurance of Mr Chuene's vehicle, examples of which are contained in the table below.

Date	Description	Amount
18/12/06	Mercedes Benz Sandton	1 839.15
15/02/07	Mercedes Benz Sandton	6 013.11
20/07/07	Mercedes Benz Sandton	2 352.52
10/09/07	Mercedes Benz Rosebank - L Chuene	5 014.55
Total		15 219.33

Due to the allocation of expenses included in the General Ledger not being done properly, and sometimes insufficient details included in the General Ledger, we could not quantify the full amount of the maintenance expenses paid for Mr Chuene and Mrs Ferns' vehicles.

E. THE ABUSE OF CORPORATE CREDIT CARDS AND PETROL CARDS

- 2.74. As indicated above, ASA was making a financial loss during the period under review. Yet during this same period an amount of more than R1 million was spent on the corporate credit and petrol cards.
- 2.75. Our review of the corporate credit and petrol card statements raises the question whether these expenses were incurred with the best interest of the and solely for the purposes and objectives of ASA. Many of the expenses were in respect of entertainment at expensive restaurants and in some instances a large quantity of expensive alcoholic beverages were purchased. An example of such an expense was incurred by Mr Chuene on Thursday 14 November 2008 at 13:50 at the Tsunami Seafood Emporium 18 Johnny Walker Black drinks were consumed by two guests.
- 2.76. In addition to the excessive use of the corporate credit and petrol cards, we also noted expenses that were incurred on the corporate credit and petrol cards to the value of R39 138.60 (R34 742.35 on corporate credit cards and R4 396.25 on corporate petrol cards) during the December holiday period when the offices were traditionally closed. The ASA Staff Manual specifically indicates that no business related expenditure may be incurred, whilst the Company is closed (as a result of public holiday / year-end closure). It appeared on the face of it that these expenses may have been of a personal nature and not in the best interest of ASA, as no planned meetings or events were identified for the relevant period.
- 2.77. When taking the above findings into account, it can be deduced that certain directors and other employees issued with corporate credit and petrol cards, failed to apply the necessary caution or care in accruing these expenses.
- 2.78. From our interviews with Board Members, it became clear that the Board was not aware and were also not informed of the excessive spending by the ASA management during this financially difficult time. It must also be reiterated that as directors and managers of ASA it was their duty and responsibility that they should have exercised caution in their spending due to the financial position of the company.
- 2.79. From our review of the expenses incurred through the usage of the corporate credit cards, the business nature of a number of transactions was questionable. It would appear that some of these expenses seem to have been incurred purely because it was convenient to do so and it is also possible that the expenditure might have been for private purposes. However, due to a lack of supporting documentation and reconciliations and further supporting evidence regarding whether these expenses were incurred as a result of business events, duties or responsibilities, we cannot quantify the expenses which were of a personal nature.
- 2.80. If indeed the expenses incurred on the corporate credit and petrol cards were of a personal nature, this poses a dual problem in that:
- Firstly the staff loan application procedures were not followed
 - Secondly many of the staff loans were never repaid as prescribed in the repayment terms, which may be indicative of an intention not to repay or an inability to do so.

2.81. Based on our analysis above we identified the persons, mainly management and directors, who may have been abusing the system, as:

- Ms Bogatsu
- Mrs Ferns
- Mr Malehopo
- Mr Chuene

F. EXCESSIVE CELLULAR PHONE EXPENDITURE

- 2.82. The review of the cellular phone accounts and the settlement thereof indicated that no reconciliation or allocations of cost were performed by ASA prior to settling these accounts with the service provider.
- 2.83. It should be noted that our preliminary finding is that the cell phone expenses amounting to R670 161 appeared to be excessive, taking into account the financially difficult position ASA was in and the fact that controls such as proper reconciliations were lacking.
- 2.84. The lack of reconciliation and allocation of cost make it difficult to determine the true nature of the cell phone expenses and whether these expenses were incurred in the best interest of the Company and were business related.

G. EXCESSIVE HONORARIUMS PAID TO BOARD MEMBERS

- 2.85. During our scrutiny of the financial documentation kept in the Finance Department at ASA we found a copy of a document detailing honorarium payments made to ASA board members for the period 19 March 2008 to 17 July 2009.
- 2.86. We noted that there was a substantial increase in the amount paid since March 2009. Prior to this date the standard honorarium payment ranged from R947 to R966 per person per meeting.
- 2.87. It appears that from 19 March 2009, ASA Board Members received an honorarium payment of R5 000 per ASA meeting attended by the respective ASA Board Member.
- 2.88. During the investigation we obtained two sets of minutes for an ASA Board meeting that was held on 13 March 2009. The first set appears to be only a draft as it still contains spelling errors and some aspects were not minuted whereas they were minuted in the second set. During our interviews with Mr Chris Britz (Mr Britz) and Mr Godfrey Hammers (Mr Hammers) (ASA directors who were present during the 13 March 2009 Board meeting), they confirmed that the second set is indeed the correct set that was sent to them as the final version of the minutes of the meeting.
- 2.89. In this regard, we reviewed the second set of minutes and noted that in section 7 of the minutes it was stated that Mr Malehopo reported that ASA's deficit had been accumulated over the years and that this situation was never reported to the Board. The income statement of the annual financial statements for the year-end 2008 indicated a deficit of R4 064 004.

- 2.90. Despite the poor financial position, and the fact that the Board had been informed thereof, the Board on 13 March 2009 resolved that the following recommendations be implemented with immediate effect:
- A general salary increase of ten percent for all employees of ASA
 - New director's emolument for 2009 as recommended by the remuneration committee
- 2.91. Section 12.2 of the minutes stated that Dr Dlamini proposed that: "*the President's emolument should have benefits because the one presented was minimal*". It was further recorded that this proposal was supported by the Board.
- 2.92. Justification for the proposal in section 12.2 was provided by Mr Thomas Manoko (Mr Manoko) (Chairperson of the ASA Finance Committee) who explained that these costs had been budgeted for since most of the consultants had been off-loaded from the budget.
- 2.93. During discussions with Mr Hammers and Mr Britz, they confirmed that it was resolved that Mr Chuene's honorarium be increased to R35 000, that the director's emoluments be increased from R900 to R5 000 per meeting and that the ASA staff's salaries be increased by ten percent.
- 2.94. Both Mr Hammers and Mr Britz confirmed that the poor financial position of ASA was discussed during this meeting. They also confirmed that it was explained by Mr Manoko that the services of the consultants including Mr Sindani's, had been terminated and therefore there were sufficient budgeted funds available for the increases of Mr Chuene's honorarium, the director's emoluments and the staff salaries increases.
- 2.95. Our review of Mr Chuene's pay slips indicated that his salary in fact increased from R19 067.40, in February 2009, to R35 000 in March 2009.
- 2.96. In light of the fact that it was also reported in the minutes of the 13 March 2009 Board meeting that the Board of ASA was trying to address, these increased honorarium payments were not in the best interest of the Company.
- 2.97. We noted during our search and subsequent inspection of the company records that there were no attendance registers in respect of directors and managers meetings as required by section 245 of the Companies Act.

H. EXCESSIVE PAYMENTS TO MR BANELE SINDANI

- 2.98. Our investigation into the employment of Mr Sindani revealed that ASA paid a total net amount of R1 762 682.79 to Mr Sindani in his capacity as strategic consultant. This amount was paid as follows:
- R499 932.79 via payroll
 - R1 262 750.00 in respect of invoices Mr Sindani submitted to ASA.
- 2.99. During our interview with Mr Sindani he informed us that he was initially appointed as CEO of ASA in August 2007, and then Mr Chuene unilaterally changed his appointment to that of a strategic consultant approximately one month later. This occurred during September 2007, but was backdated to 16 August 2007. Mr Sindani had no formal employment contract, only an employment letter.
- 2.100. Mr Sindani informed us that his appointment initially as CEO was based on a presentation he had made to the Board during June 2007. He confirmed that Mr Chuene arranged this presentation on his behalf and the position of CEO was not advertised.
- 2.101. We were unable to obtain evidence that a recruitment process had been followed in respect of the appointment of Mr Sindani as CEO/Strategic Consultant of ASA.
- 2.102. According to Mr Sindani's he was appointed by the Board upon the recommendation of Mr Chuene and based on the presentation he had made to the Board.
- 2.103. During our interview with Mr Sindani he was vague regarding direct questions in respect of the duties and specific deliverables he was required to perform, and merely stated that he attended meetings and drafted several strategic documents. We obtained a few strategy documents which appeared to have been prepared by Mr Sindani, but these documents were on the face of it generic and did not appear to hold any significant strategic value to ASA.
- 2.104. ASA did not appear to have received value commensurate with the remuneration paid to Mr Sindani and the expense was confirmed by the auditors in the Management report for the year ended 2007, as a reason for the deficit suffered by ASA during 2007.
- 2.105. Mr Sindani admitted to us that: *"his salary was probably excessive given the time he spent on ASA's operations as he definitely did not spend 8 hours a day thereon"*.
- 2.106. He however justified his salary by indicating that he was willing to perform these duties and would have started doing so in January 2008 in terms of his verbal contract, but Mr Chuene prevented him from doing so.
- 2.107. The Board Members we interviewed were not aware of the extent of Mr Sindani's remuneration.
- 2.108. The lack of a transparent appointment process, appropriate consultation and planning in conjunction with the Board, the substantial remuneration package earned by Mr Sindani and the apparently insignificant deliverables provided by him, create the concern that the relationship between Mr Chuene and Mr Sindani may not have been arm's length as part of a standard employment relationship.

- 2.109. We recommend that this relationship be investigated by the South African Police Service in order to ascertain whether it was in fact an arm's length relationship.
- 2.110. Mrs Ferns indicated that Mr Sindani was also provided with an amount of USD20 000 to "lobby" key individuals in Japan during August 2007 to vote for Mr Chuene's election to the IAAF Council. Ms Ferns confirmed that these funds were given to Ms Bogatsu who was to give them to Mr Sindani. No further details regarding the value added to ASA or the necessity for Mr Sindani to go on the trip to Japan could be obtained. Mr Sindani denied ever receiving these monies.
- 2.111. It appeared from our review of the ASA accounting records that the USD20 000 was accounted for against the Master Currency Expense account. No reconciliation was subsequently submitted by either Mr Sindani or Mr Chuene detailing how the USD20 000 was spent.

I. APPOINTMENT OF AND PAYMENTS MADE TO SEQUEL EXPERIENCE

- 2.112. During our investigation we compared the entities in which the suspended Management and Board members had business interests, with the list of suppliers /service providers to ASA. The results of our comparison revealed one instance where a manager of ASA, Mrs Tsholetsane, had a business interest in a service provider. The service provider appeared on the 2009 Pastel list of ASA suppliers. The details of the entity is illustrated in the tables below:

Pastel Supplier Code	SEQ100
Pastel Supplier Name	Sequel Experience

CIPRO Entity Name	SEQUEL EXPERIENCE
CIPRO Director Name	PHIWE TSHOLETSANE
CIPRO Director ID	7910010424086

- 2.113. Our investigation into the ownership of Sequel Experience CC (Sequel) revealed that Mrs Tsholetsane is the sole member of Sequel which was registered on 13 August 2007. Sequel's office address is the same as Mrs Tsholetsane's physical address namely no 7 Tuscan Manor Four, Wilgeheuwel, Roodepoort, 1724.
- 2.114. Mrs Tsholetsane informed us that ASA operated its procurement process on a 3 quote system. The line manger (in the Marketing and Events division), in this regard Mrs Tsholetsane, would provide 3 quotes to the General Manager (Mrs Ferns or Mr Malehopo) and then upon approval of the selected quote, appoint the relevant supplier.
- 2.115. It appeared that Mr Malehopo approved the majority of the purchase orders submitted by Mrs Tsholetsane in respect of services to be rendered by Sequel during 2009. Substantial amounts were paid to Sequel during 2009 as indicated in the table below.

- 2.116. We could not locate any documentation indicating that a proper or regular procurement process was followed in respect of the transactions with Sequel Experience. We were unable to conclude if the necessary three quote system was applied as we could only obtain one quote in respect of the first payment to Sequel Experience. Mrs Ferns advised us that she allowed Mrs Tsholetsane to select the most appropriate quote as part of the empowering process of line managers in ASA. Mrs Ferns trusted her as an employee and authorised the single quote presented to her without requesting and/or perusing the other two quotes.
- 2.117. A quantification of payments made to Sequel in respect of services rendered to ASA during the period under review is illustrated in the table below:

Name	Account	Amount
2007		
Sequel Experience	1009/115	58 250.00
2008		
Sequel Experience	1009/115	68 750.00
2009		
Sequel Experience	SEQ100	498 475.22
Total		623 475.22

- 2.118. Mrs Tsholetsane occupied a management position at ASA and as such had a fiduciary duty towards ASA to disclose her interest in a supplier dealing with ASA. We could not locate a register containing the declaration of interest as required by the ASA Constitutions and therefore could not establish whether other personnel of ASA adhered to this requirement.
- 2.119. Mrs Tsholetsane, in any event admitted that she did not disclose this interest to ASA because she:
- Did not think it was necessary to disclose this
 - Was not aware of the requirements of the ASA Constitution
 - Is not familiar with the term "*Conflict of Interest*"
 - Did not want people to say that Sequel was selected due to the fact that it was her company and that she unfairly benefited through ASA making use of Sequel's services.
- 2.120. Mrs Tsholetsane's behaviour was not in the best interests of her employer and she appears to have committed fraud in that she intentionally failed to disclose her interest in Sequel and her actions may also fall within the ambit of section 10 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004.
- 2.121. We were recently informed that Mrs Tsholetsane resigned from ASA during June 2010.

J. IAAF

- 2.122. There were concerns surrounding the allowances and *per diems* which Mr Chuene received from the IAAF in his capacity as IAAF member for attending meetings on behalf of the IAAF and whether ASA also reimbursed or settled some of the expenses Mr Chuene incurred in his capacity as IAAF member.
- 2.123. We could not find relevant IAAF policies during the searches of the ASA offices and the forensic images made of the computers and server at ASA. We also requested such policies from the IAAF but were not provided with any relevant IAAF policies in respect of *per diem* payments.
- 2.124. We noted that for the period 2007 to 2009 Mr Chuene received an amount of R264 463.95 from ASA and R199 975.95 from the IAAF as *per diem* payments for the same events.
- 2.125. It was noteworthy that Mr Chuene's presence in respect of his IAAF meeting attendances was often required for a shorter period of time but that he seemingly elected to prolong his stay on ASA's account. We could not obtain any evidence confirming a business reason for having to prolong his stay.
- 2.126. Although we did not obtain a formal policy prohibiting the acceptance of duplicate *per diem* payments, it appeared that Mr Chuene, as a director of ASA, did not act in the best interest of ASA when accepting duplicate *per diem* payments.
- 2.127. We recommend that it should be established whether the IAAF would have been prepared to pay *per diems* to Mr Chuene for the same events that he received *per diems* from ASA.
- 2.128. We could not obtain evidence that Mr Chuene paid any taxes on the *per diems* received from the IAAF. This point is discussed further in the *per diems* section below.

K. PER DIEMS

- 2.129. Due to the nature of ASA's business activities certain management and staff were required to attend events out of town. This entitled them to a *per diem* allowance and we reviewed the information we were able to obtain in this regard.
- 2.130. During electronic searches conducted of the computer images made, we only located two ASA Travel and Accommodation Policies on the scanned image of the ASA server's hard drives. These documents were titled respectively:
- "The ASA Travel Accommodation Car Hire & Subsistence Policy - Version1-2002" (Version 1) and
 - "The ASA Travel, Accommodation, Car Hire & Subsistence Policy - Version2-2007" (Version 2)
- 2.131. Apart from these two policies we did not find any other document relating to travel and accommodation or any recent *per diem* adjustments.

- 2.132. During the investigation the ASA accountants informed us that they were not sure whether there was in fact a formal travel policy in place which determined and stipulated the terms and conditions under which *per diem* payments could be made. They informed us that normally they would receive the documentation pertaining to *per diem* requests from Mr Wilfred Daniels (Mr Daniels) or Mr Thabiso Moletsane (Mr Moletsane), the ASA team managers, Mr Malehopo, the General Manager and Ms Bogatsu from Head Office. These documents contained all the details regarding the *per diem* allowances required.
- 2.133. We discussed the *per diem* allocation process with Mr Moletsane who confirmed that during his tenure at ASA he would draft budgets for international athletics events. Mr Moletsane stated that as part of this process he would obtain details regarding the *per diem* allocation in respect of athletes, team management members, team doctors and coaches from Mr Malehopo.
- 2.134. Mr Moletsane also stated that on numerous occasions he requested a copy of the relevant policy documentation from Mr Malehopo in order to plan and draft the budget in respect of *per diem* payment allocation to the athletics team. Mr Malehopo never gave him any relevant document containing details pertaining to *per diem* payments and instead, just informed him what the *per diem* allocation details per event should be, assuring him that these details were correct. Mr Moletsane informed us that it appeared to him that there was no formal policy established and implemented in respect of *per diem* payments.
- 2.135. During our interview with Mrs Mokgoatjana she informed us that during her tenure at ASA there was never a formally adopted policy regarding *per diem* allowances and that Mr Chuene normally dictated what the *per diem* allowance should be in respect of his foreign travels.
- 2.136. During the investigation we perused all the "Accommodation" and "Per Diem" files kept in the ASA Finance office for the period 2007 to 2009. In this regard we specifically searched for all documentary evidence pertaining to all *per diems* paid to Mr Chuene, Mr Malehopo and Ms Bogatsu.
- 2.137. In respect of Mr Chuene, Mr Malehopo and Ms Bogatsu we found supporting documentation indicating that the following amounts relating to *per diems* were paid to them during the period 2007 to 2009:
- | | |
|---------------|--------------------|
| • Mr Chuene | R755 935.24 |
| • Mr Malehopo | R 86 203.69 |
| • Ms Bogatsu | <u>R102 898.49</u> |
| Total | R945 037.42 |
- 2.138. Given that there appeared to have been no formal policy in respect of *per diem* payments we were unable to make any findings whether any of the *per diem* payments made to the three individuals mentioned above was irregular and/or unreasonable.
- 2.139. The only clear exception was the *per diem* payment obtained by Ms Bogatsu when she was part of the Team Management that accompanied the South African Team to the IAAF World Championships held in Berlin, Germany during 15 to 23 August 2009. The details of this *per diem* payment are discussed in paragraph 7.3.395 below.
- 2.140. In view of the worsening financial position of ASA during the period of 2007 to 2009 when a deficit was recorded for each year, a total amount of R945 037.42 paid as *per diem* payments appears to be significant.

2.141. We reviewed the pay slips Mr Chuene, Mr Malehopo and Ms Bogatsu for the period 2007 to 2009 and found no *per diem* payments reflected as income thereon. These *per diem* payments were also not reflected as income on the IRP 5 Tax forms kept by ASA in respect of these employees for the same period.

2.142. The management report for the year ended 2007 stated that benefits such as the *per diems* had to be within the limits prescribed in the tax legislation, alternatively the recipient was required pay additional taxes on the amounts in excess thereof. A note on this report was recorded as follows:

"Noted: Will be implemented with immediate effect. IT3's will be issued for 2007"

2.143. It is our understanding that the subsistence allowances paid to employees who travel overseas for business purposes which is allowed in terms of the provisions of the Income Tax Act (section 8(1)(c)), can be summarised as follows:

- 2007 – USD 190 per day
- 2008 – USD 200 per day
- 2009 – USD 215 per day

2.144. Based on the Income Tax Act any amount above the allowed limits indicated above were taxable in the hands of the individual receiving such allowance.

2.145. Mr Chuene was the only employee from our review of the subsistence allowance that continuously between 2007 and 2009 received a subsistence allowance greater than the amount allowed by the Income Tax Act. As indicated above, we could not obtain any evidence that the excess subsistence allowance received were taxed in the hands of the individual. From our quantification, of which the detail is included in Annexure 112, the following summary is provided for subsistence allowances received by Mr Chuene:

Financial year	Per diem per day received	Per diem per day allowed by Income Tax Act	Excess per diem received but not taxed	Total amount received in excess of the Income Tax Allowance (R)
2007	USD 300	USD 190	USD 110	R81 774
2008	USD 300	USD 200	USD 100	R65 770
2009	USD 300	USD 215	USD 85	R47 864
Total				R195 408

2.146. As indicated above we could not obtain any evidence that Mr Chuene paid any taxes as prescribed in the Income Tax Act's on the *per diems* received from the IAAF. In total Mr Chuene received USD 53 900 as *per diem* payments from the IAAF for the period 2006 to 2009. Due to insufficient information we could not determine the amount in excess of that prescribed in the Income Tax Act and on which he would be liable to have paid tax.

L. OTHER UNUSUAL OPERATIONS AND TRANSACTIONS

Management report issues

- 2.147. We noted that various issues were highlighted in the ASA Auditor's Management Reports on a recurring basis, which it appears the ASA Management failed to address properly or at all. This was evidence of a consistent lack of commitment to apply proper procedures, policies, controls and create management accountability in accordance with sound governance principles.

Review and comparison of cash book transactions and corresponding bank statements

- 2.148. During this review we:
- Ensured that all ASA bank accounts had been identified and the information obtained was discussed and confirmed with ASA's auditors.
 - Ensured that all ASA bank statements were available for review
 - Compared Cashbook transactions for the period under review to the transactions reflected in the corresponding bank statement.
- 2.149. We noted an unusual payment relating to a debit order on behalf of Mr Chuene, which was processed from what appears to be a "non-active" ASA bank account, a Nedbank account with account number: 1469 104 407. (No other transactions were processed on this Nedbank account).
- 2.150. In total, since 1 January 2009 to 31 December 2009, an amount of R14 235.14 was deducted from the ASA non-active bank account in favour of Mr Chuene. This was done in ten instalments of R1 212.64 each and two instalments of R1 054.47 each.
- 2.151. The following description was provided in the cash book for these transactions: "*Salaries – Provident Fund – L. Chuene*". As we did not have a copy of any agreement between ASA and Mr Chuene, we did not know whether this benefit formed part of his total remuneration package. However, even if it did, such payments to directors must, in terms of section 297 of the Companies Act, be reflected in the annual financial statements of the company. Our perusal of the annual financial statements did not reveal that such payments had been recorded.
- 2.152. We were unable to obtain a satisfactory explanation for this debit order, whether it had been approved appropriately and/or whether ASA was obliged to pay this amount on behalf of Mr Chuene.

Honorariums paid to volunteers

- 2.153. We investigated the honorariums ASA paid to volunteers used during events. While we did not find any evidence of irregularities we recommend that proper controls and policies are documented in order to standardise and record the selection process and subsequent controls in this regard.

Insurance

- 2.154. It recently came to our attention that there were concerns regarding insurance paid by ASA on behalf of athletes.
- 2.155. During the investigation we discussed this matter with Mr Richard Stander (Mr Stander) and Mr Tshifhiwa Magogodel (Mr Magogodel). Mr Stander is currently the CEO of Boland Athletics and was requested by SASCOC to manage the affairs of ASA in the interim on their behalf. Mr Magogodel is the current ASA finance accountant who was appointed when Ms Reddy resigned in March 2010.
- 2.156. Mr Stander and Mr Magogodel informed us that prior to October 2009 ASA made use of an insurance broker, Mr Keith Eardley (Mr Eardley) of Berkshire Solutions Insurance & Finance (a registered financial services provider) to manage the ASA insurance policy at Mutual & Federal. In September 2009 ASA terminated its contract with Mr Eardley and appointed Hereford Risk Solutions (Pty) Ltd (HRS Insurance) as its new brokers. HRS Insurance acted as ASA's brokers in respect of the insurance policy at Mutual & Federal for the period of September 2009 to December 2009.
- 2.157. In December 2009 Mr Ray Mali (Mr Mali), the interim ASA administrator appointed by SASCOC, terminated the services of HRS Insurance and re-appointed Berkshire Solutions as ASA's insurance brokers.
- 2.158. We were informed that during an event every athlete participates with a registration number allocated to them personally. This number is linked to an insurance component amounting to approximately R6 per annum per athlete.
- 2.159. Mr Stander informed us that 10 athletes instituted claims based on this insurance during the period of October 2009 to December 2009. When ASA considered these claims they were advised by the insurance broker, Mr Eardley, that he did not represent ASA. These athletes' claims were subsequently directly settled by ASA and not through HRS Insurance. Mr Stander informed us that at the time he was led to believe that ASA had to settle these claims as ASA had not paid their insurance premiums to Mutual & Federal for the last quarter of 2009.
- 2.160. We also contacted Mr Eardley who confirmed Mutual & Federal informed him in September 2009 that ASA had terminated his services and appointed a new insurance broker. Mr Eardly also confirmed that he was re-appointed in December 2009 when Mr Mali signed a new broker authorisation agreement with Berkshire Solutions.
- 2.161. We requested Mr Magogodel to search for all the relevant financial supporting documentation in the ASA finance office in respect of all insurance payments made to Mutual & Federal. Mr Magogodel subsequently found four quarterly statements from Mutual & Federal covering the period January 2009 to December 2009. Mr Magogodel also found attached to these quarterly statements supporting bank documentation.
- 2.162. These documents indicated that ASA had paid all their quarterly premiums of R120 000 as required and implied that ASA's athletes were in fact insured at all times during 2009.

2.163. It is important to note that in November 2009 the ASA Board and specific ASA employees were suspended and an interim administrator was appointed. It appears that during the period of September 2009 to December 2009 when ASA terminated Berkshire Solution's services and then re-appointed Berkshire Solutions there may have been a miscommunication between the two insurance brokers and the new interim administrators at ASA.

2.164. It is recommended that the interim administrators take up this matter with representatives of Mutual & Federal in respect of the claims ASA paid to the athletes. It appears that because ASA had in fact duly paid all the required insurance premiums to Mutual & Federal the athletes' claims paid, can possibly be recovered from them.

Withdrawals from the ASA bond account:

2.165. The review of financial information received from ASA indicated that two withdrawals were made from the ASA Nedbank bond account (Home Loan Account number 814 304 084 681).

2.166. The details of these withdrawals are as follows:

Year	Amount
2007	1 700 000
2009	200 000
Total	1 900 000

2.167. Mrs Ferns informed us that the withdrawal made in 2007 was made following an instruction from Mr Chuene.

2.168. Ms Reddy informed us that the second withdrawal made in 2009 was made following an instruction from Mr Malehopo.

2.169. The ASA Accountants confirmed during interviews that these funds were withdrawn and transferred into ASA's main bank account, (Nedbank account number: 1469 154 226), in order to enable ASA to at pay operational expenses such as salaries, due to a cash flow shortage. We did not identify any repayment of these withdrawals into the Bond account.

Expenditure incurred by Ms Bogatsu during the IAAF World Championships held in Berlin, Germany during 15-23 August 2009

- 2.170. We were informed by SASCOC that Ms Bogatsu was part of the Team Management that accompanied the South African Team to the IAAF World Championships held in Berlin, Germany during 15 to 23 August 2009. It was alleged that during this period Ms Bogatsu returned to South Africa for a week to apparently write an examination and thereafter returned to Germany for the remainder of the World Championships.
- 2.171. We confirmed that Ms Bogatsu travelled to South Africa for the period 8 to 15 August 2009 to complete an examination and subsequently returned to Germany on 16 August 2009. Brooklyn Travel, ASA's travel agents, informed us that Ms Bogatsu made use of her accumulated SAA Voyager miles to obtain a free return ticket to fly to South Africa and back to Germany.
- 2.172. Ms Bogatsu, however, used her ASA credit card to pay the departure taxes of R3838.00 in respect of the return ticket acquired with her Voyager Miles, which she subsequently allocated to the IAAF World Championship, ASA event code. In addition, as a further result of the adjustment to the flight arrangements, a cancellation penalty fee in the amount of R880, was also added to ASA's account.
- 2.173. We noted from the financial records that Ms Bogatsu received a *per diem* allowance of USD 4 000 for the period 16 July to 26 August 2009. This amounted to USD 100 per day. This would imply that Ms Bogatsu was paid a *per diem* allowance whilst she was in South Africa from 8 to 15 August 2009, which she was not entitled to. We could find no evidence that Ms Bogatsu reimbursed ASA the amount due in respect of the 7 days *per diem* or that this amount was allocated to her staff loan account.
- 2.174. At the time of receiving the *per diem* allowance in July 2009 the rand/dollar exchange rate was USD1/R8.14. Using this exchange rate, Ms Bogatsu received a total amount of R32 560 as *per diems*. The amount that Ms Bogatsu received for the 7 day period that she was not in Germany but in South Africa was R5 698.
- 2.175. Ms Bogatsu irregularly obtained funds from ASA and never repaid same. This may constitute theft or fraud as she must have known that she was not entitled to a *per diem* whilst she was in South Africa. She knew that she would travel back and did not alert the financial officer dealing with the payments of *per diems* that she would be abroad for only a part of the time. She never offered to or repaid the amount.
- 2.176. Therefore it would appear that Ms Bogatsu could have stolen a total amount of R10 416 (R5 698 + R4 718) of ASA's funds when she adjusted her flight arrangements and did not reimburse ASA the *per diem* amount received in respect of the period of 8 August 2009 to 15 August 2009

Excessive expenses in respect of the "back room"

- 2.177. In view of allegations that luxurious and extravagant improvements had been performed in respect of a "room at the back" of ASA's property, we visited the room but did not find evidence of any such extravagant or luxurious improvements.
- 2.178. The room was a standard room and contained a three quarter bed, with a standard bathroom.
- 2.179. From our high level review of the ASA cashbook we did not identify any excessive expenditure incurred pertaining to this room.

Evidence found pertaining to an alleged banned substance in Mr Malehopo's office

- 2.180. During the initial physical searches of the offices we found a small container containing an ampule named "Actovegin". The contents of the email found next to this ampule referred to this ampule as a banned substance. From the contents of the correspondence it appeared that a particular athlete was injected with this substance during an overseas event. It also appeared that the doctor, Dr Maaki Ramagole, raised concerns regarding the legality of this substance and the matter was escalated to Mr Malehopo, Mr Daniels and Dr Harold Adams (Dr Adams).
- 2.181. In this regard we interviewed Mr Daniels and Dr Adams who informed us that they were aware of the incident. Mr Daniels stated that at the time he referred the matter to Mr Malehopo for his attention. Dr Adams stated that he reported the matter to the IAAF Council during a meeting held not long after. Dr Adams stated that he was informed by the IAAF that "Actovegin" was not a banned substance at the time. However Dr Adams further stated that "Actovegin" was a listed substance at the time and has subsequently been declared a banned substance by the IAAF.

- 2.182. We recommend that SASCOC further investigate the matter.

Allegations pertaining to the alleged destruction of ASA documents

Hard copy documents

- 2.183. During the investigation we interviewed Mrs Esther Motlana (Mrs Motlana), an assistant in the ASA finance department, regarding the allegation that ASA documents were destroyed during or shortly after the suspension of management and the ASA Board of Directors during early November 2009.
- 2.184. Mrs Motlana explained that the day prior to the suspension of the ASA Board on 5 November 2009 she noticed that Mr Malehopo was shredding documents in his office. Mr Malehopo requested her to assist him in taking documents out of various lever arch files and shredding them. He explained to her that the reason for this was for "recycling purposes" as they had to clean out the lever arch files dated 2007 in order to re-use the files for current documentation.
- 2.185. She had not found it strange as it was normally the practice that towards the end of the year that they "recycled" the lever arch files to get rid of old documents and to provide empty files for the office.
- 2.186. Mrs Motlana could not remember the type of documents shredded and was only aware of documents being shredded in Mr Malehopo's office.
- 2.187. Mrs Motlana informed us that the following day while they continued with the shredding process, Mr Mali, Mr Cobers and other representatives of SASCOC arrived at ASA's office and she learnt that the ASA Board and some employees were suspended and that Mr Mali was appointed as the interim administrator for ASA. Mrs Motlana indicated that Mr Mali had noticed that she was busy shredding documentation in Mr Malehopo's office.

- 2.188. Not long after the suspension of the ASA Board Mr Mali questioned her about the shredding of the documents and she had confirmed that she was instructed by Mr Malehopo to assist him in the shredding of documents and that she did not specifically know what documents were shredded.
- 2.189. Mrs Motlana informed us that it was only when Mr Mali questioned her that she thought it was strange and suspicious that Mr Malehopo had shredded documents the day before his suspension.
- 2.190. However Mrs Motlana reiterated that she did not know whether Mr Malehopo was destroying documentary evidence that could implicate him in the investigation instituted by SASCOC.
- 2.191. Mrs Motlana remembered that at the time the shredded documents were put in plastic disposal bags that were removed from Mr Malehopo's office by the ASA office cleaner, Mrs Lizzy Vukeya (Mrs Vukeya).
- 2.192. We also interviewed Mrs Vukeya who stated that she could not remember specifically whether she removed the disposal bags from Mr Malehopo's office in the days after the suspension of the ASA Board. Mrs Vukeya further stated that it is quite possible that she could have removed the disposal bags as it is normally part of her duties to remove the shredded documents from Mr Malehopo's office whenever the shredder's waste bin was full. Mrs Vukeya added that normally she would have taken the disposal bags outside where they would be picked up together with all the other waste disposal bags.
- 2.193. This was the only available evidence supporting the allegation that just after the suspension of the ASA board and employees in November 2009, documents kept in ASA's offices were destroyed.

Electronic documents

- 2.194. Our findings in respect of access to and deletion of documents on the computers used by the suspended Board and Management team members on or close to the date of suspension (5 November 2009) can be summarised as follows:
- 2.195. As per the recycle bin on the computer of Ms Bogatsu, we found 7 files and 1 folder that were deleted during the period 27 October 2009 to 4 November 2009. However, thousands of files were recovered (undeleted) during the recovery process from the image of Ms Bogatsu. All recovered files and folders were handed over to the investigation team for further analysis.
- 2.196. As per the recycle bin on the computer of Mr Malehopo, we found 15 files were deleted during the period 31 July 2008 to 13 October 2009. A copy of these files extracted from the recycle bin was handed over to the investigation team for further analysis.
- 2.197. Thousands of files were recovered (undeleted) during the recovery process from the image of Mr Malehopo. All recovered files and folders were handed over to the investigation team for further analysis.
- 2.198. It was noted that Mrs Tsholetsane's computer's recycle bin contained 53 folders and 39 files that had been deleted on the day of her suspension (5 November 2009).
- 2.199. Other deleted files were noted from the 21 April 2009 to the 15 October 2009. These mainly constituted personal picture files (photographs).

2.200. All these deleted files were recovered and reviewed during our investigation.

Our Recommendations

2.201. Based on the findings included in the Executive Summary above, we want to draw your attention to the following recommendations pertaining to possible disciplinary actions against specific individuals as well as SASCOC's reporting duties in respect of certain transgressions we have noted. The remainder of our recommendations regarding areas such as operational controls are included at the end of our report in section 8 below.

Disciplinary actions in respect of the ASA Board

2.202. In respect of the ASA Board members, based on the findings included in the Executive Summary, we are of the view that they neglected to perform their duties and responsibilities in accordance with the requirements of the Companies Act and their fiduciary duties to the company. We could not find sufficient evidence indicating that the whole Board of Directors acted *male fide* or intentionally to the detriment of ASA. We thus recommend that those members who are not disciplined should receive proper corporate governance training in order to enable them to manage and direct ASA efficiently, in the event that they are allowed or requested to resume their functions.

Disciplinary actions in respect of specific individuals

2.203. In view of our findings above we recommend that SASCOC pursue disciplinary steps and/or consider instituting criminal proceedings where applicable against the following individuals:

Mr Chuene:

- For contravening section 226 of the Companies Act as well as ASA's internal policies and procedures in respect of the loans and staff loans that were irregularly obtained by him.
- For committing possible fraud in that he instructed the accountant of ASA to record his staff loan transactions as trade debtors and thereby misleading the users of the ASA annual financial statements regarding the true nature of the trade debtors balances recorded in the annual financial statements of ASA.
- For committing possible fraud and corruption in respect of the payments made to Mrs Mokgoatjana and the lawyers, Wertheim Becker Inc.
- For recklessly carrying on the business of ASA e.g. the appointment and excessive remuneration paid to Mr Sindani in contravention of section 424 of the Companies Act.
- For failing to comply with his fiduciary duties and responsibilities as a director.
- For possible tax fraud in that he may have failed to declare and pay taxes on income in the form of *per diems*.
- For failing to submit a reconciliation with supporting documents in respect of the USD 20 000 received for the Osaka trip.

Mr Malehopo:

- For contravening section 226 of the Companies Act as well as ASA's internal policies and procedures in respect of the loans that were irregularly obtained by him for the period subsequent to April 2008.
- For recklessly carrying on the business of ASA in contravention of section 424 of the Companies Act.
- For failing to comply with his fiduciary duties and responsibilities as a director.

Mrs Tsholetsane:

- Possible fraud and corruption committed in respect of the procuring of Sequel's services in that she did not disclose her interest as the sole member of Sequel and entered into contracts with Sequel on behalf of ASA.
- For contravening the provisions of clause 16.4 of the ASA's 2008 Constitution when she did not disclose her interest in Sequel Experience.

Ms Bogatsu:

- For failing to adhere to ASA's internal policies and procedures specifically relating to the staff loans and corporate credit card expenses.
- For possible theft and fraud in respect of the abuse and non repayment of *per diems* and the utilisation of the corporate credit card for the payment of airport taxes for her personal return flight to South Africa.
- For contravention of the ASA Staff Manual's provisions regarding the use of ASA laptops as her laptop was used to access pornographic websites.
- In respect of the Osaka trip, for receiving the USD 20 000 from Mrs Ferns and subsequently failing to submit a reconciliation with supporting documents.

SASCOC's reporting obligation in terms of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004

2.204. In respect of the evidence discussed and the findings pertaining to the possibly corrupt and fraudulent activities by the identified individuals, it is important that SASCOC and the interim ASA Board take note of section 34 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004. This section provides as follows:

“34. Duty to report corrupt transactions.—

(1) Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed—

(a) an offence under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2; or

(b) the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.

(2) Subject to the provisions of section 37 (2), any person who fails to comply with subsection (1), is guilty of an offence.

(3) (a) Upon receipt of a report referred to in subsection (1), the police official concerned must take down the report in the manner directed by the National Commissioner, and forthwith provide the person who made the report with an acknowledgment of receipt of such report.

2.205. It is therefore recommended that SASCOC and the interim ASA Board report the suspected criminal activities to the South African Police Service (SAPS), as failure to do so by the persons in a position of authority may attract criminal liability and significant penalties. Further investigation by the SAPS and the utilisation of their powers may also unearth further evidence of undue

benefits or gratification which may in turn warrant further criminal or civil action against the implicated individuals.

2.206. More details to this reporting duty are included in section 8 below.

Recommendations in respect of ASA's auditor

2.207. In respect of the auditor's (Mr de Beer) knowledge and involvement in reflecting Mr Chuene's staff loans as trade debtors in the ASA annual financial statements for the period 2006 to 2008 it is important to note the following sections of the Auditing Profession Act No. 26 of 2005 (Auditing Profession Act):

- Section 45 provides that a registered auditor has a duty to report irregularities committed to the Independent Regulatory Board for Auditors (IRBA). A reportable irregularity includes any unlawful act such as fraud.
- Section 52 provides that a registered auditor who fails to report a reportable irregularity shall be guilty of an offence

Although there is no legal obligation on SASCOC to report Mr de Beer to IRBA, we recommend that SASCOC should consider lodging a complaint at IRBA.

Recommendations in respect of *per diems* paid to Mr Chuene, Ms Bogatsu and Mr Malehopo

SASCOC should report to SARS that Mr Chuene did not pay tax according to section 8(1)(c) of the Income Tax Act on the *per diems* he received from both ASA and the IAAF. SASCOC should also report to SARS that the *per diems* received by Mr Chuene, Ms Bogatsu and Mr Malehopo were not reflected on the IRP 5's as requested by the Income Tax Act.