

**IN THE HIGH COURT OF SOUTH AFRICA  
(NATAL PROVINCIAL DIVISION)**

In the matter of: -

**THE STATE**

versus

1. **JACOB GEDLEYIHLEKISA ZUMA**
2. **THINT HOLDING (SOUTHERN AFRICA) (PTY) LTD**  
(formerly known as Thomson-CSF Holding (Southern Africa) (Pty) Ltd)  
(hereinafter also referred to as **Thomson Holdings**)  
(as represented by **Pierre Jean-Marie Robert Moynot**)
3. **THINT (PTY) LTD**  
(formerly known as Thomson-CSF (Pty) Ltd)  
(hereinafter also referred to as **Thomson (Pty)**)  
(as represented by **Pierre Jean-Marie Robert Moynot**)

(hereinafter also referred to as the accused)

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**SUMMARY OF SUBSTANTIAL FACTS IN TERMS OF SECTION 144(3)(a) OF  
ACT 51 OF 1977**

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**CHAPTER 1: THE PARTIES RELEVANT TO THE CHARGES**

**A. THOMSON-CSF/THALES/THINT GROUP**

***The Group***

1. The French Thomson-CSF (hereinafter referred to as Thomson-CSF) group of companies has global industrial interests, including interests in the international arms industry.

2. Thomson-CSF was later renamed the Thales group of companies.
3. Thomson-CSF International (France), which later became Thales International, is a division within the Thomson-CSF group.
4. Thomson-CSF International was headed at all relevant times by Jean-Paul Perrier (hereinafter referred to as Perrier).
5. Thales International in its turn had a subsidiary Thales International Africa Ltd (Mauritius).
6. Thales International Africa was headed at all relevant times by Yann Leo Renaud de Jomaron (hereinafter referred to as de Jomaron).

***Thint Holdings (Accused 2)***

7. On 21 May 1996, Thomson-CSF Holding (Southern Africa) (Pty) Ltd was incorporated in South Africa to promote the development of South African industry by entering into joint ventures.
8. Thomson Holdings had an authorized share capital of 100 ordinary shares at a nominal value of R1000.00 per share. On 27 May 1996, 85 shares were issued to Thomson-CSF (France), 10 shares to Nkobi Investments (see below) and 5 shares to Gestilac SA (Switzerland).

On 9 June 1998, the authorised share capital was increased with 17 000 1% redeemable non-cumulative preference shares at R1 000.00 per share and 14 450 shares were issued to Thomson-CSF (France).

On 26 July 1999, Gestilac SA transferred its 5 ordinary shares in Thomson Holdings to Thomson-CSF (France) for \$1 000.00 (R6 145.00). On 27 July 1999, Thomson-CSF (France) transferred its 90 ordinary shares to Thomson-CSF International (France) for R90

701.98. The effect of these transactions was that Thomson-CSF International (France) and Nkobi Investments became the only shareholders in Thomson Holdings.

Also on 27 July 1999 Thomson-CSF (France) transferred 14 450 preference shares to Thomson-CSF International (France) for R14 554 679.00.

On 29 September 1999, the authorised share capital was increased with 22 412 ordinary shares at R1 000.00 per share. On 29 September 1999, 22 412 ordinary shares were issued to Thomson-CSF International (France). On 30 July 1999, Nkobi Investments transferred its 10 ordinary shares to Thomson-CSF International (France) for R500 000.00. The effect of this transaction resulted in Thomson Holdings being wholly owned by Thomson-CSF International (France).

On 4 April 2001, Thales International (formerly Thomson-CSF International), transferred 22 512 ordinary shares and 14 450 preference shares to Thales International Africa Ltd (Mauritius), the latter company thereby replacing the former as sole shareholder of Thomson Holdings.

9. Thomson Holdings changed its name to THINT Holding (Southern Africa) (Pty) Ltd on 23 October 2003.
10. Schabir Shaik (hereinafter referred to as Shaik) was a director from the date of incorporation in 1996 to 30 September 1999, when he resigned from the board.
11. Alain Thétard (hereinafter referred to as Thétard) was appointed as a director on 1 April 1998. Thétard resigned from the board on 30 January 2002.

12. Pierre Jean-Marie Robert Moynot (hereinafter referred to as Moynot) was a director from the date of incorporation in 1996 to 1 April 1998, when he resigned from the board. He was re-appointed as a director on 1 October 2002 and he remains as such.

***Thint (Pty) (Accused 3)***

13. On 16 July 1996 Thomson-CSF (Pty) Ltd was incorporated in South Africa, also to promote the development of South African industry by entering into joint ventures.
14. Thomson Holdings has been the majority shareholder and Nkobi Investments the minority shareholder since 1 August 1996 when 70 shares were issued to Thomson Holdings and 30 to Nkobi Investments. On 16 September 1999 the share capital was increased and on 29 September 1999 shares were issued to Thomson Holdings and Nkobi Investments to cause Thomson Holdings to become the owner of 75% and Nkobi Investments 25% of Thomson (Pty).
15. Thomson (Pty) changed its name to THINT (Pty) Ltd on 19 August 2003.
16. Shaik was a director since the date of incorporation in 1996 to 13 June 2005 when he resigned from the board.
17. Thétard was appointed as a director on 1 April 1998 and resigned on 30 January 2002.
18. Moynot was a director from the date of incorporation in 1996 to 1 April 1998, when he resigned from the board. He was re-appointed as a director on 16 January 2004 and he remains as such.

## **B. THE NKOBI GROUP**

### ***Nkobi Holdings***

19. Nkobi Holdings (Pty) Ltd was registered on 27 February 1995 as a holding company. It was initially wholly owned by Shaik. The shareholding went through various permutations subsequently. Shaik has an effective majority shareholding in Nkobi Holdings, through his interests in the following shareholders of Nkobi Holdings, namely Star Corp SA (Pty) Ltd, Clanwest Investments (Pty) Ltd and Floryn Investments (Pty) Ltd.
20. Nkobi Holdings' only investment is Nkobi Investments.
21. Floryn Investments is ostensibly wholly owned by Shaik. He initially intended to hold the shares as nominee or cedent for the African National Congress, which would have made the latter, from the point of view of Shaik and/or the Nkobi group, a 10% shareholder in Nkobi Holdings.

### ***Nkobi Investments***

22. Nkobi Investments (Pty) Ltd was registered on 24 February 1995 as an investment company. It was initially wholly owned by Shaik. The shareholding went through various permutations until, on 20 August 1998, Nkobi Holdings became the sole shareholder.
23. As described above, Nkobi Investments had an initial minority shareholding in Thomson Holdings. In addition it had, and continues to have, a minority shareholding (25%) in Thomson (Pty).

### ***Other relevant corporate entities within the Nkobi group***

24. The following companies are all entities within the Nkobi group, being 100% owned by Nkobi Investments. (There are a number of other entities within the Nkobi group.)
- a. Kobifin (Pty) Ltd
  - b. Kobitech (Pty) Ltd
  - c. Proconsult (Pty) Ltd
  - d. Pro Con Africa (Pty) Ltd
  - e. Kobitech Transport Systems (Pty) Ltd

***Other relevant corporate entities***

25. Shaik was the sole shareholder and a director of Clegton Investments (Pty) Ltd.
26. Shaik was the majority shareholder and sole director of Chartley Investments (Pty) Ltd.

***Control of the Nkobi group and other relevant entities***

27. Shaik was at all relevant times a director of, and exercised effective control over, all the corporate entities within the Nkobi group and the other relevant corporate entities mentioned above (Floryn Investments (Pty) Ltd, Clegton Investments (Pty) Ltd and Chartley Investments (Pty) Ltd).

**C. AFRICAN DEFENCE SYSTEMS (PTY) LTD**

28. African Defence Systems (Pty) Ltd (hereinafter also referred to as ADS) was first registered in 1967 under another name. After a history of various owners, Thomson-CSF (France) acquired 7 000 001 shares

on 14 April 1998, to become a joint shareholder (50% plus one share) with Allied Technologies Ltd. On 19 February 1999 Allied Technologies Ltd transferred its shareholding in ADS to Thomson-CSF (France). On 9 June 1999 Thomson-CSF (France) transferred its shareholding in ADS to Thomson-CSF International (France). On 15 September 1999 Thomson-CSF International (France) transferred its shareholding in ADS to Thomson (Pty) (80%) and FBS Holdings (Pty) Ltd (20%).

#### **D. ZUMA (ACCUSED 1)**

29. During the period relevant to this indictment, accused 1 held several high-ranking offices both in the provincial and national executive and in the ANC. Accused 1, by virtue of the various offices he held, had the powers, both formal and *de facto* and/or duties attendant to such offices. While it is not possible to comprehensively define these powers and duties, they included at least the various powers and duties set out below.

#### ***MEC for Economic Affairs and Tourism in KZN (May 1994 to 17 June 1999)***

30. Accused 1 was a member of the KwaZulu-Natal (KZN) legislature and the Minister of Economic Affairs and Tourism for the Province of KwaZulu-Natal from May 1994.
31. As such, accused 1 was clothed in the powers of a member of the provincial Parliament (MPP) and provincial executive (MEC) *inter alia* as set out in section 125 of the Constitution of the Republic of South Africa, 1996 (the Constitution) and the corresponding provisions of Act 200 of 1993 (the Interim Constitution) as well as powers specifically conferred upon him by the Premier of the province in terms of section 132 (2) of the Constitution. These powers included attending

meetings, being privy to the discussions of and participating in the decision-making processes of the Provincial Executive Council. He also exercised political authority over the KZN Department of Economic Affairs and Tourism, which included the determination of departmental policy and confirming the appointment of certain departmental officials. He was accordingly, by virtue of his office, in a position to exercise considerable influence in the affairs of the department.

32. Less formally, accused 1 had *inter alia* the power to compose and dispatch correspondence on official ministerial letterhead carrying the weight of his office and generally to influence both local and foreign businessmen and companies intent upon doing business in KZN.
33. Both the interim and final Constitutions imposed certain duties upon accused 1 by virtue of his office as a MEC of a province. In terms of section 149 of the Interim Constitution accused 1 may not have-
  - (8) taken up any other paid employment, engaged in any activities inconsistent with his membership of the Executive Council, or exposed himself to any situation which carried with it the risk of a conflict between his responsibilities as a member of the Executive Council and his private interests; or
  - (9) used his position as such to enrich himself or any other person.
34. In terms of section 136 of the (final) Constitution accused 1 may not have-
  - (a) undertaken any other paid work;

- (b) acted in any way that was inconsistent with his office, or exposed himself to any situation involving the risk of a conflict between his official responsibilities and private interests; or
  - (c) used his position or any information entrusted to him, to enrich himself or improperly benefit any other person.
35. Accused 1's duties were further circumscribed by the Code of Conduct contained in the Ministerial Handbook of 1994, which remained in force until substituted by an updated version on 5 May 1999, which contains similar provisions. In addition to explicitly compelling a Minister and/or MEC to observe and uphold the Constitution, the Code specifically provides *inter alia* that:
- 1.2 (c) Ministers shall perform their duties in the interests of the nation as a whole and in defence and promotion of the integrity of the nation, avoiding measures which would prejudice the national welfare.
  - 1.3(a) All Ministers shall at all times observe practices that are free from all forms of corruption and shall not use their office, position or privileged information to distribute favours or patronage nor to seek or obtain any personal fortune or favour.
  - 1.3(d) Ministers shall not play any active role in profit making institutions.
  - 1.3(g) Ministers may only accept small gifts and gifts offered on official occasions, provided that they have satisfied themselves that the gifts are not being presented to influence them in an improper manner.

***Deputy President of the African National Congress (December 1997 to date)***

36. In December 1997 accused 1 was elected Deputy President of the African National Congress (“ANC”). Prior to this he held the position of Provincial Chairman of the ANC in KZN.

37. In terms of Rule 16.2 of the African National Congress Constitution as amended and adopted at the 50<sup>th</sup> National Conference in December 1997, the duties and functions of the Deputy President are described as follows:

“The Deputy President shall assist the President, deputise for him or her when necessary and carry out whatever functions are entrusted to him or her by the National Conference, the President or the NEC (National Executive Committee). He or she shall be an ex-officio member of the NWC (National Working Committee).”

38. In terms of Rule 16.1 of the African National Congress Constitution as amended and adopted at the 50<sup>th</sup> National Conference in December 1997, the President has, *inter alia*, the following duties and functions:

“...He or she shall:...

b. Make pronouncements for and on behalf of the NEC outlining and explaining the policy or attitude of the ANC on any question...

d. Under the overall supervision of the NEC, orient and direct the activities of the ANC.”

39. In terms of Rule 26.3.2 of the African National Congress Constitution as amended and adopted at the 50<sup>th</sup> National Conference in December 1997, the following shall be regarded as serious offences:

- c. Behaving corruptly in seeking or accepting any bribe for performing or for not performing any task;
  - d. Engaging in.....abuse of office to obtain.....any other undue advantage from members or others;
  - e. Abuse of elected or employed office in the organization or in the State to obtain any direct or indirect undue advantage or enrichment.
40. It follows that the Deputy President of the ANC has a duty to refrain from such activities.

***Deputy President of South Africa and Leader of Government Business  
(17 June 1999 to 14 June 2005)***

41. Accused 1 was appointed as Deputy President of the Republic of South Africa and a member of the National Assembly of Parliament on 17 June 1999.
42. As Deputy President, accused 1 was in terms of section 90 of the Constitution, clothed with the powers and functions of the President (as set out in sections 84 and 85 of the Constitution) whenever the latter was out of the Republic or otherwise unable to fulfill his duties. In terms of section 91(5) of the Constitution, the Deputy President is also responsible for assisting the President in the execution of the functions of government and for executing any powers and functions assigned to him by the President in terms of section 91(2).

43. As a member of the national Cabinet, accused 1 had the power to attend meetings and be privy to the discussions of and participate in the decision-making processes of Cabinet.
44. Less formally, accused 1 had *inter alia* the power to compose and dispatch correspondence on official letterhead of the Presidency carrying the weight of that office, meet with government officials and influential persons from countries around the world and generally to exercise the influence attendant upon the holder of the second highest office in the government of this country.
45. The Constitution imposed certain duties upon accused 1 by virtue of his office as a member of the cabinet. In terms of section 96(2) of the Constitution, accused 1 may not have-
  - (a) undertaken any other paid work;
  - (b) acted in any way that was inconsistent with his office, or exposed himself to any situation involving the risk of a conflict between his official responsibilities and private interests; or
  - (c) used his position or any information entrusted to him, to enrich himself or improperly benefit any other person.
46. The Code of Conduct in Regard to Financial Interests, as adopted by the Joint Meeting of the Rules Committees of the National Assembly and the Senate on 21 May 1996, applied to him in his capacity as a member of the National Assembly. In terms of paragraph 1.1 of the Code, accused 1 was duty bound to maintain the highest standards of propriety to ensure that his integrity and that of the political institutions in which he served were beyond question. In terms of paragraph 1.2, accused 1 was duty bound not to have placed himself in a position

which conflicts with his responsibilities as a public representative in Parliament, nor may he have taken any improper benefit, profit or advantage from the office of Member. He was also duty bound to disclose to the Registrar of Members Interests all registrable financial interests, including outside remuneration, gifts and hospitality and any other benefit of a material nature.

47. Accused 1's duties were further circumscribed by the Code of Conduct contained in the Ministerial Handbook of 5 May 1999, which contains provisions similar to those set out in paragraph 35 above. This Code of Conduct circumscribed the conduct of Ministers until replaced by the Executive Ethics Code of 2000.
  
48. The Executive Ethics Code of 2000 promulgated in terms of section 2(1) of the Executive Members Ethics Act, No. 82 of 1998 applied to accused 1 in his capacity as Deputy President and member of Cabinet. It too imposed a duty on accused 1 to maintain the highest standards of ethical propriety and expanded on his constitutional duties by prohibiting him from, *inter alia*:
  - (a) willfully misleading the legislature;
  
  - (b) undertaking any other paid work;
  
  - (c) acting in any way that is inconsistent with his office;
  
  - (d) exposing himself to any situation involving the risk of a conflict between his official responsibilities and his private interests;
  
  - (e) using his position or any information entrusted to him, to enrich himself or improperly benefit any other person; or

(f) acting in a way that may compromise the credibility or integrity of his office or of the government.

49. The Executive Ethics Code furthermore imposed a duty on accused 1 to disclose the same financial interests to the Secretary of Cabinet as he was obliged to disclose to Parliament and, in addition, to disclose his liabilities.

50. In June 1999 accused 1 was also appointed Leader of Government Business in the National Assembly of Parliament in terms of section 91(4) of the Constitution. His functions included acting as a link between the executive and parliament and ensuring that legislation emanating from the executive reached parliament on time.

**CHAPTER 2:                      THE BENEFITS**

**E. ACCUSED 1'S BENEFIT FROM SHAIK, THE NKOKI GROUP, THINT AND OTHER RELEVANT ENTITIES**

***General Corruption***

51. Accused 1 to 3, Shaik and the companies comprising the Nkobi group ("the Nkobi Group") formed a common purpose to bribe accused 1 through an ongoing series of payments from Shaik and the Nkobi Group to and on behalf of Zuma, as set out in the **schedule**, and through various services provided free of charge by Shaik and the Nkobi Group to accused 1, as described more fully hereunder. The common purpose between accused 1, Shaik and the Nkobi Group was formed on or before 25 October 1995. Accused 2 and 3 became party to this common purpose.
52. Shaik and/or the relevant corporate entities within the Nkobi group and/or the other relevant corporate entities have benefited accused 1 in the period 25 October 1995 to 1 July 2005, through 783 payments totaling R4 072 499.85 (Four million and seventy two thousand four hundred and ninety nine Rand and eighty five cents), as set out in the **schedule** (hereinafter referred to as the "**schedule benefits**"). This was by way of payments from Shaik and/or the relevant corporate entities within the Nkobi group and/or the other relevant corporate entities to accused 1 and various parties for the benefit of accused 1.
53. On 28 February 1999 an amount of R1 282 027.63 was irregularly written off in the Nkobi accounting records (Kobifin (Pty) Ltd) under the description of "Development costs of Prodiba". Included in the amount so written-off as development costs were various amounts paid to

accused 1, totaling R283 451.16. The balance represented amounts that Shaik and Floryn Investments (Pty) Ltd owed to the Nkobi group. This resulted in the misrepresentation of the 1999 Annual Financial Statements of Kobifin (Pty) Ltd, in that accounts receivable or director's and/or related third party loans were understated. Alternatively, retained income was overstated. More importantly, the record of the bulk of the payments to/on behalf of accused 1 up to that date, and any obligation by accused 1 to repay such amounts as may have been said to exist, were effectively expunged from the books of the Nkobi Group.

54. As a result of the questioning of Nkobi's external auditors (Davis Strachan and Taylor – "DS&T") by Directorate of Special Investigations ("DSO") investigators in 2002, the write-off of the loan accounts as Development Costs was declared to be a "fundamental error" in terms of a letter issued by DS&T on 11 Feb 2003. Several of the payments so written off were consequently reversed in the 2002 Annual Financial Statements of Kobifin (Pty) Ltd. However, only R68 818.66 of the payments identified to and on behalf of accused 1, originally included in the amount written off, formed part of the reversal. In the result, identified payments to/on behalf of accused 1 totaling R214 632.50 remain written off in the books of the Nkobi Group, despite the reversal in the 2002 restated annual financial statements.
55. The schedule payments to accused 1 make no legitimate business sense, in that neither Shaik, the Nkobi group, nor the other relevant entities could afford the payments, being at all times in a cash-starved position (at least until August 2004), relying on and at times exceeding bank overdrafts and thus effectively borrowing money from banks at the prevailing interest rates to make the said payments interest free. On the other hand, the group's survival depended upon obtaining

profitable new business, *inter alia*, with the assistance of accused 1, and also accused 2 and 3.

56. Furthermore, and whether the loans were affordable or not, it was not the Nkobi group's legitimate business to make payments to accused 1 or other politicians.
57. Even during the period August 2004 to 1 July 2005, the average positive cash balance of the group was substantially less than the cumulative schedule payments to accused 1.
58. Some of the schedule payments are described and/or treated in certain Nkobi documents as loans, although the treatment is inconsistent. The final accounting treatment of R1 137 722.48 of the total payments of R4 072 499.85 does not reflect the payments as loans. However, the schedule payments were intended by Shaik, the Nkobi Group and the present accused as bribes, whatever their description.
59. Even if the abovementioned schedule payments could properly be regarded as loans, they nevertheless amounted to "benefits" within the meaning of sections 1(1)(a) and (b) of Act No. 94 of 1992 and "gratifications" within the meaning of sections 1, 3(a) and (b) and 10(a) and (b) of Act No. 12 of 2004, as explained more fully below. The schedule benefits were paid to accused 1 in circumstances where he would not have been able to obtain such funding commercially. The following features of the payments constitute benefits to accused 1:
  - a. The facility of providing the funds to accused 1 is itself a benefit.
  - b. Inasmuch as the funds may have been provided interest-free, this is a benefit.

- c. Inasmuch as interest may have purported to have been charged, interest payments were deferred. This is a benefit.
  - d. Inasmuch as capital payments may have purported to have been due, these were deferred. This is a benefit.
  - e. The funds were paid without security. This is not a usual commercial practice with banks, more especially in respect of a customer with accused 1's risk profile. This accordingly constitutes a benefit.
  - f. An appraisal of a debtor's ability to repay a loan is a matter of some importance to banks and other commercial sources of credit. Inasmuch as accused 1's ability to repay the money that Shaik and/or Nkobi advanced to him was and remains seriously questionable, the "loans" are not commercial and they are a benefit to accused 1. The notional interest payments alone are beyond any legitimate means of repayment available to accused 1.
  - g. Despite Nkobi's precarious position with the banks, Shaik and Nkobi made no effort to recover any of the payments from accused 1. This failure to demand repayment is itself a benefit to accused 1. Shaik did not intend to enforce the terms of the "loan" and neither has he done so. This is a benefit.
60. The abovementioned benefits are hereinafter referred to as the "facility benefits".
61. Shaik purported to act as accused 1's financial adviser and/or special economic adviser without charging any fee or demanding any lawful

remuneration for this service. In this capacity Shaik provided the following types of services free of charge:

- a. Managing accused 1's financial affairs;
- b. Corresponding with and meeting accused 1's creditors;
- c. Negotiating with accused 1's creditors and their legal representatives;
- d. Corresponding with, meeting and dealing with accused 1's bankers, and introducing accused 1 to new bankers and services;
- e. Providing legal advice and services to accused 1 through Shaik's/Nkobi's attorneys;
- f. Utilizing the administrative, secretarial and personnel resources of the Nkobi group for managing the affairs of accused 1 and his family;
- g. Attending to the accommodation requirements of accused 1;
- h. Attending to the financial and other affairs of accused 1's family members;
- i. Assisting accused 1 to complete his tax returns;
- j. Assisting accused 1 to complete the prescribed declarations of interests to Parliament and to the Secretary to the Cabinet.

62. The abovementioned services, provided free of charge, constitute benefits to accused 1 (hereinafter referred to as the “**service benefits**”).

***General corruption giving rise to the specific corruption***

63. During 1998, accused 1 intervened and assisted Shaik, the Nkobi group and the Thomson-CSF group to resolve a dispute that had arisen regarding Nkobi's participation with accused 3 in the acquisition of ADS. The details are described more fully below.
64. From the point of view of Nkobi, this was an instance of obtaining the assistance of accused 1 to ensure the group's survival by obtaining profitable new business.
65. From the point of view of accused 1, this was an instance of him using his powers as MEC and/or Deputy President of the ANC to further the private business interests of Shaik and the Nkobi Group.
66. From the Thomson-CSF perspective, this was an instance of obtaining advance political support, approval or assurance from accused 1 for its choice of South African partners to gain an advantage over its bidding competitors for business relating to the arms deal described below.
67. Accused 1's assistance as described, and his anticipated assistance relating to the arms deal was informal and it did not form part of the official bidding/selection process.
68. The abovementioned dispute was resolved in principle with accused 1's assistance during 1998. The legalities pursuant to the agreement in principle regarding the restructuring that ensured Nkobi's participation in ADS with accused 3 were completed in September 1999.

69. On 9 September 1999, Patricia de Lille gave notice in Parliament that she wished to table a motion regarding alleged irregularities in the arms deal. The Presidency immediately issued a statement denying accused 1's involvement. De Lille's motion was tabled in Parliament on 21 September 1999. The matter received extensive publicity.
70. Also at about this time and on 28 September 1999, the Minister of Defence approved the arms deal as a subject for the Auditor General's special review.

### ***Specific corruption***

71. In the period 1999 to 2000, accused 2 and 3 (acting through Thétard) and/or Thomson-CSF (France) and/or Thomson-CSF International (France) and/or Thales International Africa Ltd (Mauritius) (acting through Perrier and/or de Jomaron) conspired with Shaik and his Nkobi group and accused 1, to pay accused 1 the amount of R500 000 per annum (hereinafter referred to as "the **annual benefits**") as a bribe in exchange for accused 1's protection of the Thomson-CSF group in respect of the investigation into the corvettes ("Project Sitron") part of the arms deal and for his support of the Thomson-CSF group for future projects. These annual payments were to continue until the first payment of dividends by ADS.
72. Shaik, also acting on accused 1's behalf, had met with Thétard on 30 September 1999 to convey accused 1's request for a bribe to Thétard. Thereafter, and also in furtherance of the common purpose to achieve the objectives of the conspiracy to pay and receive the bribe and to secure accused 1's protection of and support for the Thomson-CSF group as described, contact between the conspirators continued. This was by way of correspondence and meetings between Shaik, Thétard

(acting as director of accused 2 and 3 and as the representative of the Thomson-CSF group in South Africa), accused 1, Perrier and/or de Jomaron.

73. It was agreed between the parties that the bribes would not be paid directly to accused 1, but that some method of payment would be employed that was calculated to disguise the true nature of the payments so as to avoid detection. Consequently, during the period late 2000 to early 2001, Kobifin (Pty) Ltd entered into a so-called "service provider agreement" with Thomson-CSF International Africa Ltd in Mauritius, as a device to conceal or disguise the true nature and source of the payment of the bribe. In terms of the agreement, remuneration was to be paid in installments of R250 000. The first two installments were initially due before the end of December 2000 and on 28 February 2001 respectively. Shaik stipulated that the total remuneration was to be R1 million.
  
74. Accused 1 needed funds to pay for the development of his traditional residential village estate at Nkandla in rural northern KZN. Plans for the development were dated March 2000. The development commenced in approximately July 2000. The final tender amount agreed to was R1 340 000 (after the development was commenced with). The development was finalized during March 2001. Various arrangements were made during the construction and subsequently to provide finance on accused 1's behalf. At no stage during construction and thereafter has accused 1 been able to settle the outstanding amount or obtain finance without the intervention and assistance of third parties, including arrangements for payment through Shaik in accordance with the agreement to disguise payments to accused 1 described above.

75. On 16 February 2001, R249 725.00 was transferred from Thales International Africa – Mauritius to the ABSA current account of Kobitech (Pty) Ltd as a first payment in pursuance of the abovementioned scheme.
76. Within eight days (on 24 February 2001) and in furtherance of the common purpose to bribe accused 1, Kobitech (Pty) Ltd paid R250 000 to Development Africa, a trust to which accused 1 was indebted to the sum of R 1 million, in reduction of accused 1's liability to Development Africa.
77. At the same time, Kobitech (Pty) Ltd issued three post-dated cheques, with numbers sequential to the first paid cheque of R250 000, each also in the amount of R250 000 and each in favour of Development Africa.
78. The payment to Development Africa and the issuing of the post-dated cheques were for the credit of accused 1.
79. On 19 April 2001 Kobitech (Pty) Ltd requested ABSA Bank to stop payment on the three cheques each for R250 000 in favour of Development Africa.
80. On 4 September 2001 Shaik received a deposit of R175 000 from Kobitech (Pty) Ltd. On 5 September 2001 a cheque to the value of R125 000 was drawn against Shaik's account in favour of Development Africa. On 17 September 2001 a further cheque of R125 000 was drawn against Shaik's account in favour of Development Africa.
81. The schedule and/or facility and/or service and/or annual benefits received and/or to be received by accused 1 as aforementioned from

or on behalf of Shaik and/or the other relevant corporate entities, as set out above, constituted benefits within the meaning of section 1(1) of Act No. 94 of 1992 which were not legally due to accused 1.

82. The schedule and/or facility and/or service and/or annual benefits received and/or to be received by accused 1 as aforementioned from or on behalf of Shaik and/or the other relevant corporate entities, as set out above, also constituted gratifications within the meaning of section 1 of Act 12 of 2004, as explained more fully below.
83. The benefits advanced to accused 1, for all the reasons mentioned above, were corruptly made in furtherance of an ongoing scheme and common purpose to influence accused 1 to use his office or position to advance the private business interests of Shaik and/or the Thomson-CSF group, including accused 2 and 3 and/or to reward accused 1 for so doing.

**CHAPTER 3:                    THE BUSINESS INTERESTS****F. THE PRIVATE BUSINESS INTERESTS OF SHAIK, THE NKOKI GROUP AND THE THOMSON-CSF GROUP*****General***

84. Nkobi's main business was to enter into joint ventures with local and foreign companies with a view to obtaining lucrative government contracts. Shaik made it clear that Nkobi's role in joint ventures with other partners was to provide political connections (as opposed to financial resources or technical expertise). It was generally well understood that the political connection was so strong from Shaik's side that there was no need for Nkobi to provide the money or the expertise. Shaik's political connections included pre-eminently his connection with accused 1, which in turn was founded also on accused 1's financial dependence on Shaik. Accused 1 well knew that Shaik's ability to continue financially supporting him depended on Shaik's business success, including his success with accused 2 and 3 and their joint ventures. Shaik accords specific prominence to his relationship with accused 1 in promotional material relating to the Nkobi group.

***Joint ventures between the Thomson and Nkobi groups***

85. Shareholders agreements were entered into between the Thomson and Nkobi groups on 22 May and 17 July 1996. In terms of these agreements, Thomson business in South Africa, conducted through accused 3, would be in partnership with Nkobi.

86. Consequently, Thomson and Nkobi were joint venture partners (together with Denel) in obtaining the award of the contract for credit

card type drivers' licences during 1996 – 1997 (the Prodiba joint venture).

87. There were a number of joint ventures and possible future joint ventures between Nkobi and Thomson, including projects in transport, tourism, justice, finance, prisons, hospitals, water, the Durban airport, the ID card contract, the N2, N3 and N4 road projects, the third cellular telephone network, the arms deal set out below and other military deals, and smart card technology.

### ***The Arms Deal***

88. In the design for the South African Defence Force, which was recommended in the Defence Review, various types of military equipment were identified as being required by the Force.
89. In order to procure the said military equipment, requests for information were submitted on 23 September 1997 to various other countries, and after receipt of such information by the closing date of 31 October 1997, requests for offers were issued to short-listed potential suppliers.
90. The process to procure the various types of equipment was generally known as the Strategic Defence Package Acquisition Programme, or the arms deal.

### ***The Formal and Informal Processes***

91. The formal evaluation of the competing bidders for contracts arising from the arms deal was conducted through an ostensibly rigorous and scientific evaluation process conducted by various committees of military and other experts and representatives of the various interested bodies. The final authority for awarding the contracts resided in an *ad*

*hoc* committee of cabinet ministers chaired by the then Deputy President Mbeki.

92. However, a separate and parallel process of informal meetings and communications occurred (hereinafter referred to as the “informal process”) in which persons and entities interested in participating in the contracts sought to glean information on the process and exert influence, directly or indirectly, on formal decision makers. This also held true in relation to the corvette program (Project Sitron).
93. Through this informal process, it became known at an early stage, even before the award and adjudication processes were completed, to a select group of persons and entities (including Shaik, Thomson-CSF and accused 2 and 3) that ADS was likely to be awarded the contract for the supply of the combat suite for the corvettes.

***Efforts by Thomson CSF to position itself to participate in the Corvette Contract***

94. The need to upgrade the capacity of the navy’s surface vessels was identified as early as 1993. A process to acquire such vessels was launched and reached an advanced stage, but was subsequently rejected by cabinet in favour of a more comprehensive process to update equipment throughout the armed services. As part of this comprehensive update, the acquisition of 4 patrol corvettes was approved.
95. Thomson-CSF was anxious to participate in this contract, preferably as a primary contractor, failing which as a supplier of the combat suite. To this end, it set about as early as 1995 to acquire an interest in ADS, which it believed to be the favoured supplier of the combat suite, through accused 2 and 3.

***The Selection of the Correct BEE Partner***

96. Thomson-CSF, and subsequently accused 2 and 3, were of the view that in order to ensure their participation in the combat suite through ADS, it was essential to acquire a local black economic empowerment (BEE) partner. However, it was considered vital to select the “right” BEE partner. The major criterion for the selection of such a partner was its political connectivity (whether this was founded on one or more corrupt relationships of mutual support or otherwise), since Thomson-CSF, and subsequently accused 2 and 3, were of the view that the final decisions for the award of such contracts are always taken at a political level. At the time of the joint venture agreement described above, Nkobi was regarded as a BEE partner which met this criterion, *inter alia* because of the corrupt relationship between Shaik and accused 1.
97. However, at approximately the same time as the request for information was submitted by the South African government to foreign suppliers in September 1997, Thomson-CSF became concerned that its choice of Nkobi as its South African partner for the proposed acquisition of ADS (all with a view to successfully bidding for the combat suites as described), did not carry the approval of influential figures within the South African government. It was thus decided that the shares in ADS would be acquired directly by Thomson-CSF (France) and not by accused 3, to the exclusion of Nkobi, until the issue of suitable local partners could be resolved. This decision to exclude Nkobi was despite the shareholders’ agreement between Thomson and Nkobi. Consequently, Thomson-CSF (France) acquired 50% plus one share of ADS on 14 April 1998.

98. Due to the uncertainty of accused 2 and 3 as to the suitability of Nkobi as the correct BEE partner, accused 2 and 3 entered into negotiations with various other potential BEE partners, including a company styled Coordinated Network Investments (Pty) Ltd (“CNI”, led by one Reuel Khoza) and Futuristic Business Solutions (Pty) Ltd (“FBS”, led by the former Chief of the SANDF, General Lambert Moloi)

### ***The Resolution of the BEE Dilemma***

99. In response to the request for offers, *inter alia* for corvettes, the German Frigate Consortium submitted an offer dated 11 May 1998 to supply the corvettes. The bid included ADS as the proposed supplier of the combat suites. It was also proposed in the bid that ADS would join the joint venture as a consortium partner in the final contract.
100. As indicated above, Nkobi was at this stage excluded from ADS. Thomson-CSF, on the other hand, was urgently seeking the informal political support it considered necessary to improve its chances of a successful bid involving ADS.
101. Moynot, as the then director of accused 2 and 3, suggested as early as 28 November 1997 that a meeting between Perrier and accused 1 should be sought, *inter alia* to resolve the issue of informal approval.
102. Similarly, on 17 March 1998, Shaik indicated that accused 1 wished to meet Perrier to resolve the issue.
103. The resolution of the issue would include the prospect that Nkobi should participate in ADS and ultimately share in the profits that were to be derived from the arms deal. The prospective benefit to Nkobi would also enable it to continue supporting accused 1.

104. Apart from the German Frigate Consortium, the South African government also received offers from the other short-listed parties. After the closing date for the receipt of offers on 13 May 1998, the next step in the official process was to select a preferred bidder. The Strategic Offers Committee met on 1 and 2 July 1998 for this purpose and specifically to consolidate the scores of the various technical teams that were evaluating various aspects of each bid.
105. Accused 1 met Perrier in London on 2 July 1998 with Shaik, in accordance with both Thomson's and Shaik's wishes. Thomson required accused 1's approval of its ADS partner. Shaik required his approval of Nkobi as such ADS partner in order to cause Thomson to reverse its decision to exclude Nkobi from the ADS acquisition.
106. Accused 1 indicated that he approved of Nkobi as a suitable partner and it was decided in principle to reverse the earlier Thomson decision to exclude it from ADS.
107. Chippy Shaik is Shaik's brother. He was at this time Chief of Acquisitions in the department of defence and as such he directed and participated in the arms acquisition process. Thétard sought a meeting with him on 3 July 1998, which was held on 8 July 1998. During this meeting, Chippy Shaik indicated that he was aware of the meeting in London on 2 July 1998 between accused 1, Perrier and Shaik at which accused 1 had indicated his approval of Nkobi as a partner with Thomson in ADS.
108. The resolution of the dispute between Thomson and Nkobi was taken further, once again with the assistance of accused 1, at a meeting on 18 November 1998 at the Nkobi offices in Durban. The formalities of the earlier agreement were decided upon. In terms of the agreement reached on 18 November 1998, Thomson-CSF (France) would sell to

Nkobi Investments, through accused 3, an effective shareholding in ADS. The result of this was that Nkobi Investments would become a joint venture partner with Thomson in the German Frigate Consortium bid and so joined the successful bidder in the corvette bid. The ADS portion of the corvette contract was worth R1,3 billion, with R450 million coming directly to ADS and the balance going to sub-contractors. In the result, the Nkobi and Thomson groups stood to benefit from profits arising from the corvette contract.

109. In addition to Nkobi, accused 2 and 3 also included FBS as a 20% direct empowerment partner in ADS. CNI was ultimately excluded from participation.
110. The German Frigate Consortium bid was approved as the preferred bidder by the South African cabinet on 18 November 1998.
111. The actual transactions involving the sale of shares were registered in 1999. The most relevant transaction is that of 15 September 1999, when Thomson-CSF International (France) transferred 25 500 000 shares in ADS to Thomson (Pty), giving Thomson (Pty) 80% of ADS and consequently Nkobi Investments an indirect 20% interest in ADS.
112. A negotiating phase between the South African government and the German Frigate Consortium as the preferred bidder followed after 18 November 1998. The final contract was signed on 3 December 1999 between the government and a new consortium named the European South Africa Patrol Corvette Consortium (ESAPCC). This new consortium included ADS as a principal contractor to supply the combat suites, as originally proposed in the German Frigate Consortium bid.

***Protection against investigations pertaining to alleged irregularities in respect of the arms deal***

113. During November 1998, the Defence Audit Centre of the Office of the Auditor-General identified the procurement of the Strategic Defence Package Acquisition Programme as a high-risk area from an audit point of view and decided on the need to perform a special review of the procurement process. On 28 September 1999 the Minister of Defence, MPG Lekota, approved the Auditor General's audit review into the procurement process.
114. Questions relating to alleged irregularities in the Strategic Defence Package Acquisition Programme arose from September 1999. These were raised in the press and in Parliament. Allegations of corruption in respect of the award of the contract for the corvette programme were raised in the media from February 2000. The allegations of corruption included allegations against Chippy Shaik, Schabir Shaik, accused 1, ADS and Thomson CSF.
115. As the matter progressed, the South African government eventually faced requests to appoint the Heath Special Investigation Unit to investigate irregularities relating to the arms deal. This was endorsed by the Parliamentary Standing Committee for Public Accounts (SCOPA), whose 14<sup>th</sup> report recommending a joint investigation into the arms deal process by the Auditor General, the Public Protector, the Scorpions and the Heath Commission was adopted by Parliament on 3 November 2000. The report *inter alia* specifically raises concerns regarding the possible role played by "influential parties" in determining the choice of subcontractors (such as ADS) by prime contractors. The Heath Special Investigation Unit was a statutory agency mandated to investigate irregularities and had the power, in terms of the applicable

legislation and the due process prescribed, to seek to set aside contracts tainted by irregularities.

116. There was a perception on the part of Shaik, the Nkobi group and accused 2 and 3 that it would be in their interests to be protected against such investigations, *inter alia*, because they did not wish it to be discovered that accused 1 had intervened informally to assist in the resolution of the ADS dispute for the benefit of the Nkobi and Thomson groups, whilst receiving payments from Shaik and the Nkobi group. As mentioned above, the bribe of R500 000 per annum was in exchange for, *inter alia*, accused 1's protection.
117. In a letter dated 19 January 2001, signed in his capacity as "Leader of Government Business" in Parliament, accused 1 addressed a long letter to Gavin Woods, then chairperson of the Parliamentary Standing Committee on Public Accounts. It included the contention that there was no need for the Heath Unit to be involved in any investigation of the arms deal. The letter was also copied to the various prime contractors, one of which was the German Frigate Consortium, which included Thomson CSF and ADS.

***Furthering other private business interests of the accused***

118. The main business of the Nkobi group was to enter into joint ventures with local and foreign businesses in order to secure contracts in the public sphere. Shaik and the Nkobi group sought to secure business partners and business opportunities primarily by trading on Shaik's political connectivity. This was done in three main ways:
- Firstly by advertising Shaik's "political connectivity" with *inter alia* accused 1, for instance by advertising his relationship as "financial

advisor” or “special economic advisor” to accused 1 in his various offices;

- Secondly by relying on accused 1 to meet or correspond with prospective business partners in order to advance his/its private business interests; and
- Thirdly by threatening prospective business partners, explicitly or impliedly, that he would resort to accused 1 if they did not act in accordance with Shaik’s wishes.

119. Accused 1 allowed Shaik to act in this manner as a result of the schedule and/or facility and/or service benefits received from Shaik and the Nkobi group, acting in common purpose with accused 2 and 3.

120. In addition to the ADS instance described above, Shaik relied on accused 1’s name and/or assistance in negotiations or communications with or in respect of (*inter alia*) the following :

- a. David Wilson of the Renong Group of Malaysia concerning the Point Development
- b. Peter Watt of Altron
- c. Deva Pannoosami of Southern Crest Marketing Services and Professor John Lennon of Glasgow Caledonian University concerning the Eco-Tourism School
- d. Thomson-CSF France
- e. Kuwaiti businessmen Ali and Fouad Al-Ghanim
- f. The establishment of an Nkobi Bank
- g. Kent and Jeffrey Crane of Crane (Africa)(Pty) Ltd, and James Roth of Roth International (USA)
- h. Hakim Belo-Osagie - Chairman of United Bank for Africa PLC (Nigeria)

- i. Grant Scriven of Venson PLC (UK)
- j. Jean-Marc Pizano of ATE
- k. The Indonesia – South Africa Business Club
- l. Haryono Eddyarto of PT Surveyor Indonesia
- m. The Cyprus Development Bank Limited
- n. Ron Coopersmith (USA)
- o. Bruce Allen Johnson of the Hudson Institute (USA)
- p. IGT (USA)
- q. Peter Shortt of the International Business and Development Group (UK)
- r. John S Kendall of Unisys Corporation (USA)
- s. John Chettle of Freedman, Kroll and Simonds (USA)
- t. Dr Khalid Abdullah Tarique Al-Mansour
- u. PT Surveyor Indonesia
- v. Queen City Properties (Pty) Limited
- w. PFI Briefing
- x. Wilberforce Institute
- y. Aids project
- z. Her Majesty's Consul
- aa. Procon Fischer (Pty) Limited
- bb. Professor Green Thompson

**CHAPTER 5: THE CHARGES**

121. Accused 1 committed the crime of Corruption in contravention of the Corruption Act, No. 94 of 1992 and/or the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004 by receiving the schedule, facility and service benefits and gratifications in return for providing the weight of all his offices in favour of the accused in the circumstances described above, according to the currency of each respective Act, as detailed in the Indictment. (Count 2 and its alternative and sub-counts).
122. Accused 2 and 3 committed the crime of Corruption in contravention of the Corruption Act, No. 94 of 1992 and/or the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004 by being party to a common purpose to give to accused 1 the schedule, facility and service benefits and gratifications as described above, according to the currency of each respective Act, as detailed in the Indictment. (Count 3 and its alternative and sub-counts).
123. Accused 1 committed the crime of Corruption in contravention of the Corruption Act, No. 94 of 1992 by receiving the annual benefits as described above, as detailed in the Indictment. (Count 4).
124. Accused 2 and 3 committed the crime of Corruption in contravention of the Corruption Act, No. 94 of 1992 by being party to a common purpose to give to accused 1 the annual benefits as described above, as detailed in the Indictment. (Count 5).
125. All the accused committed the crime of Money–laundering in contravention of section 4, read with sections 1 and 8 of the Prevention of Organised Crime Act, No. 121 of 1998, by being party to a common purpose to disguise the payment of the bribe by way of the annual

benefits to accused 1 as described above, as detailed in the Indictment. (Count 6).

126. Alternatively, all the accused committed the crime of the acquisition, possession or use of proceeds of unlawful activities in contravention of section 6, read with sections 1 and 8 of the Prevention of Organised Crime Act, No. 121 of 1998 by being party to a common purpose to acquire, possess or use the annual benefits, being the proceeds of corruption, to be paid to accused 1 as described above, as detailed in the Indictment. (Alternatively to Count 6).
127. Accused 1 committed the crime of Fraud by failing to declare all the benefits to Parliament and the Secretary to the Cabinet as described above, as detailed in the Indictment. (Counts 7 to 8).
128. Accused 1 committed the crime of Fraud by failing to answer honestly to a question in Parliament concerning the meeting in March 2000, when the terms of the corruption involving the annual benefits were settled between the accused and Shaik as described above, as detailed in the Indictment. (Count 9)
129. Accused 1 committed the crime of Fraud by failing to declare to SARS the gross income which he received by way of the schedule benefits, as described above, as detailed in the Indictment. (Counts 10 to 18)
130. All the accused committed the crime of Racketeering in contravention of Section 2(1)(e) read with Sections 1, 2(2) and 3 of the Prevention of Organised Crime Act, No. 121 of 1998, by participating in the conduct, directly or indirectly, of the Nkobi Enterprise's affairs through a pattern of racketeering activities, being all the various crimes and racketeering acts in Counts 2 to 18. All the crimes were designed in one way or

another, to further the aims of the Enterprise. This is detailed further below.

## **CHAPTER 6: THE RACKETEERING CHARGE (COUNT 1)**

### **A. RACKETEERING OFFENCES IN GENERAL**

131. The **Prevention of Organised Crime Act, No. 121 of 1998**, (POCA) includes provisions in Chapter 2 that make it a crime to engage in racketeering.
132. Section 1(1) of POCA states that an “**enterprise**” includes any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity”.
133. Section 1(1) of POCA states that “**[P]attern of racketeering activity**” means the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 and includes at least two offences referred to in Schedule 1, of which one of the offences occurred after the commencement of this Act and the last offence occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to in Schedule 1.”

### **B. THE ENTERPRISE**

134. Nkobi Investments (Pty) Ltd was an enterprise within the meaning of Section 1(1) of POCA, being a corporation within the meaning of Section 1(1) of POCA (“the Enterprise”).
135. At all material times, Shaik was a director, CEO and controlling shareholder of Nkobi Investments and, as such, Shaik managed the Enterprise.

136. The Enterprise had its main offices at Suite 502, Victoria Main Building, 71 Victoria Embankment, Durban.
137. The Enterprise through its subsidiaries and associated companies, as more specifically set forth in the General Preamble to the Indictment, operated as an ostensibly legitimate group of companies, whose main business was to form joint ventures with foreign and local businesses, more particularly as a “Black Economic Empowerment” (“BEE”) partner, and so to bid for lucrative contracts, primarily in the public sphere.
138. The Enterprise and its subsidiaries had little to offer in the way of capital or expertise and relied primarily on Shaik’s much heralded “political connectivity” to attract partners with these resources and to secure an advantage over any competitors in obtaining contracts.
139. Apart from the legitimate objectives of the Enterprise, it also pursued certain illegitimate objectives, as set out further below, acting both in its own capacity as well as through various subsidiaries and associated companies and persons, including Shaik and the accused.

### **C. THE OBJECTS AND METHODS OF THE ENTERPRISE**

In addition to the objects set forth in the General Preamble, the objects of the Enterprise included, but were not limited to the following:

140. To cultivate and maintain corrupt relationships with persons in positions of political power and high government office, including accused no. 1, in order to cultivate “political connectivity”;

141. To make payments to and on behalf of such persons in return for their services in advancing the interests of the Enterprise as and when required;
142. It was part of the objectives of the Enterprise that it, its employees, and persons and entities associated with it, would conceal or disguise payments to persons of political power and high government office, including accused 1;
143. It was nevertheless also part of the objectives of the Enterprise to procure funding or future funding from potential business partners, as described in paragraph 147 below, through its reliance on political connectivity, with the intention of enabling the Enterprise, its subsidiary and associated companies and Shaik to maintain the payments to persons of political power and high government office, including accused 1, in return for their services in advancing the interests of the Enterprise and its business partners as and when required;
144. To advertise political connectivity to or create the perception of political connectivity in the minds of potential business partners and thereby to induce, persuade or intimidate such partners to enter into, and maintain, joint venture agreements with the enterprise and on terms favourable to the enterprise and thereby also to enable the Enterprise to maintain its payments to persons of political power and high government office;
145. To attempt, through corrupt means, to secure lucrative contracts in the public sphere, either alone or through joint venture partnerships with other business partners;
146. To secure financing in the form of capital investments and loans to fund the operations of the enterprise;

147. To preserve and protect the enterprise, its members and its profits through the use of political connections. Such preservation and protection included protection against official investigations and/or prosecution;
148. Nevertheless to maintain the appearance that the Enterprise was a legitimate business.

**D. PERSONS AND ENTITIES EMPLOYED BY OR ASSOCIATED WITH THE ENTERPRISE AND WHO PARTICIPATED IN THE CONDUCT OF ITS AFFAIRS**

These included *inter alios*:

**Accused 1**

149. Accused 1 was employed by, alternatively associated with, the Enterprise:
150. The series of benefits paid by the Enterprise and its subsidiaries and associates to or on behalf of accused 1 over a period of nearly 10 years amounted to a salary in the form of a retainer, in return for which accused 1 would perform services for the Enterprise as and when required. This amounted to accused 1's *de facto* employment by the Enterprise within the meaning of the Act.
151. Alternatively and in any event, accused 1 was associated with the Enterprise in one or more of the following manners:
  - Through his close and longstanding association with Shaik, the manager of the enterprise;

- Through Shaik's position as his personal financial advisor and/or special economic advisor;
  - Through the schedule benefits which he received from the Enterprise.
  - Through the service and facility benefits which the enterprise provided to him;
  - Through his *de facto* shareholding in the Enterprise;
  - Through the "political connectivity" which he provided to the Enterprise; and/or
  - Through the services which he performed on behalf of the enterprise.
152. In one or both of these capacities, accused 1 participated in the conduct, directly or indirectly, of the Enterprise's affairs through a pattern of racketeering activity, to wit by:
- Advising, counselling and/or assisting Shaik in the management or conduct of the Enterprise's affairs as described in paragraph C above;
  - Corruptly accepting the schedule benefits set out in the **Schedule** and more fully described below, each payment constituting a separate racketeering act;
  - Corruptly accepting the facility benefits more fully described below;
  - Corruptly accepting the service benefits more fully described below;
  - Corruptly agreeing to accept the annual benefits until the first payment of ADS dividends;
  - Furthering and/or attempting and/or agreeing to further the business of the Enterprise;
  - Protecting and/or attempting and/or agreeing to protect the Enterprise from criminal investigation and/or prosecution;

- Concealing the fact that he received benefits, payments, and/or advantages from the Enterprise and/or its subsidiaries or other associates of the Enterprise; and/or
- Concealing that he committed or omitted to do any act in relation to his powers and/or duties to further the interests of the Enterprise.

**Accused 2 and 3**

153. Accused 2 and 3 were associated with the Enterprise in that they were joint venture partners with the Enterprise in the ADS combat suite contract and with a subsidiary of the Enterprise in the Prodiba drivers' licence contract. They were also complicit in the Enterprise's payments to accused 1 with a view to benefiting from the Enterprise's resultant "political connectivity".
154. Accused 2 and 3 participated in the conduct of the Enterprise's affairs, directly or indirectly, through a pattern of racketeering activity, to wit by:
- Advising, counselling and/or assisting Shaik in the management or conduct of the Enterprise's affairs as described in paragraph C above;
  - Making common purpose with the Enterprise in corruptly providing the schedule and/or service and/or facility benefits described above;
  - Facilitating the Enterprise's entrée into the Prodiba and combat suite contracts;
  - Enabling the Enterprise to conduct its affairs, including its illegitimate affairs, by providing it with the necessary capital, which also enabled the Enterprise to continue its schedule payments to accused 1;
  - Corruptly entering into an agreement with Shaik and/or the Enterprise and accused 1 to pay accused 1 a bribe of the annual benefits until the first payment of ADS dividends;

- Entering into a money laundering agreement, arrangement or transaction with the Enterprise in order to disguise the nature, source disposition or movement of the monies paid to or for accused 1 in pursuance of the said bribe agreement and/or to enable or assist the Enterprise and accused 1 to avoid prosecution; and/or
- Paying a sum of R250 000 to the Enterprise for the benefit of accused 1 in pursuance of the said bribe agreement.

#### **E. PATTERN OF RACKETEERING ACTIVITY**

155. In furtherance of the objectives of the Enterprise and in order to secure the necessary political connectivity, benefits were provided to a number of politicians and holders of high government office, in particular accused 1, through the Enterprise.
156. More specifically, benefits provided through the Enterprise included, but were not limited to:
- Corruptly paying the schedule benefits to or on behalf of accused 1, each payment constituting a separate racketeering act;
  - Corruptly providing to accused 1 the facility benefits;
  - Corruptly providing to accused 1 the service benefits;
  - Corruptly entering into an agreement with accused 1 to 3 to pay accused 1 the annual benefits until the first payment of ADS dividends;
  - Concealing the giving and receipt of benefits to or on behalf of accused 1 and any acts performed or omitted by accused 1 for or on behalf of the Enterprise.
157. One or more of the accused, individually or together, committed the racketeering acts set forth in the Indictment and the alternatives thereto.

**CHAPTER 6: MISCELLANEOUS**

158. Shaik and the relevant Nkobi entities stood trial in the High Court at Durban between October 2004 and June 2005, resulting in their conviction on Corruption, Fraud and Money-laundering charges. The facts on which the prosecution was founded were similar to the present prosecution, involving some of the schedule benefits and the annual benefits.

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