

Final forensic report: – Letters of Support to 360 Aviation

Department of Trade and Industry
May 2012

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Distribution list

Distribution

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Section I - Introduction

Preface

We are pleased to submit our final forensic report pertaining to a comprehensive forensic investigation into a letter of support issued to 360 Aviation.

Grant Thornton Advisory Services (Pty) Ltd (“GTAS”) was mandated by the Department of Trade and Industry (“the dti”) on 10 May 2012 to conduct the investigation.

1. Background

1.1 **The dti** requested Grant Thornton to assist in performing a comprehensive forensic investigation into the alleged irregularities as reported in the Sunday Times in March 2012. Inter alia the allegations revolved around the process followed in issuing a letter of support to 360 Aviation, on 12 April 2011 by Mr Riaan Le Roux, Acting DDG: Trade and Investment South Africa (TISA). We were tasked by **the dti** to conduct an investigation focussing on the process followed. The Public Protector is currently conducting an investigation into the remainder of the reported allegations.

2. Objectives of the investigation

2.1 The objectives of the investigation in terms of our mandate were to:

- (i) establish the veracity of the reported allegations concerning Mr. Le Roux;
- (ii) provide a report on the outcome of the investigation with clear recommendations including supporting exhibits; and
- (iii) assist in any disciplinary action, litigation both criminally and/or civilly, if and when necessary.

3. Scope and methodology

3.1 As part of the scope of work we performed the following procedures in order to comply with our mandate:

- (i) obtained an understanding of the allegations made and alleged irregularities;
- (ii) identified and obtained internal and external legislative framework governing the issuing of support letters;
- (iii) obtained all documents relating to the request of support made on 04 February 2011 by 360 Aviation and the subsequent issuing of the letter on 12 April 2011 –

- including copies of previous letters pertaining to 360 Aviation issued as per arrangement with the previous DDG of TISA, Mr Iqbal Sharma;
- (iv) reviewed documents against the actual process required to be followed for the issuing of letters of support against the legislation and due process;
 - (v) determined if the letter issued were solicited from **the dti** in exchange for monetary payments to any **dti** official or whether any official at **the dti** was aware of any payment solicited in return for the letter of support;
 - (vi) obtained and reviewed Mr Le Roux's official response to the allegations raised in the Sunday Times;
 - (vii) obtained and reviewed the Minister's response to questions raised in Parliament;
 - (viii) consulted with role players in the process and prepare consultation notes and sworn statements;
 - (ix) identify any irregular/fraudulent activity pertaining to the issuing of the letter of support;
 - (x) drafted and submitted a detailed report including recommended action with the necessary evidence to support the findings contained in the report; and
 - (xi) recommended improvements in policies and procedures to address any identified control breakdowns and/or deficiencies.

4. Limitations of scope

- 4.1 Ms Pumla Ncapayi, DDG: TISA was not consulted although a meeting was requested. However, the lack of such consultation did not have any material impact on our investigation, findings or recommendations.
- 4.2 Other than the letters itself, some e-mail correspondence and a letter from the Chief Director: Bilateral Trade Relations within the International Trade and Economic Development ("ITED") division, we could not be furnished with any documentation/records relating to the process followed by the previous DDG: TISA, Mr Iqbal Sharma in issuing letters of support to 360 Aviation in 2008. Mr Sharma resigned from **the dti** during October 2010 and was not consulted and/or interviewed during the investigation.
- 4.3 During our investigation we could not be furnished with any particular reference, answers or reasons as to:
- Why the letter of support to 360 Aviation, dated 12 April 2011, was issued in the light of the fact that **the dti** was closing down its foreign economic office in Iran at the time the letter was issued and signed by Mr Le Roux; and
 - Whether the future operations of 360 Aviation as per the letter from Mr Oberholzer, dated 08 April 2011, was briefed into TISA's project plan.
- 4.4 We did not have access to the personnel files of Mr. Riaan Le Roux, or obtain a copy of his performance agreement as Human Resources indicated that his personnel and performance management files were with the Auditor-General.
- 4.5 Furthermore, it was not part of our mandate to investigate the allegations of bribery relating to any other parties or officials outside **the dti**, as reported in the media which implicated private individuals outside **the dti** and possible sanction-busting deals with

Iran as well as possible contraventions of the National Conventional Arms Control Act. We understand that the latter is being investigated by the Public Protector, the United Nations, Canada and the National Conventional Arms Control Committee as quoted in this report. We were only mandated by **the dti** to review the process followed within **the dti** to issue letters of support to 360 Aviation in 2008 and on 12 April 2011.

- 4.6 We did not test whether officials declared their business interests identified during individual searches as this was not part of the original scope.

Distribution

- 4.7 The report is solely for the purpose as set out in the background and objectives of this report and for your attention. It is not to be used for any other purpose, nor to be distributed to any other parties without our prior written consent.

Statutory Audit

- 4.8 The process followed in this investigation does not constitute an audit in accordance with the International Auditing Standards.

Legal Opinion

- 4.9 Although the work performed incorporates our understanding of the law as it stands, we do not express a legal opinion on the issue, but merely state the facts as brought to our attention.

Status of records

- 4.10 The findings in our report are based on documentation obtained from **the dti**.
- 4.11 The report is based on information made available up to the date of the report and the findings and/or recommendations may change, if new information invalidates the information obtained.
- 4.12 We have *verbatim* quoted from documents and reports obtained during the investigation. Grammar and spelling mistakes have not been corrected.

5. Appreciation and future assistance

- 5.1 We would like to take this opportunity to express our appreciation to the management and various members of staff for the assistance and courtesy afforded to us during the course of this review.
- 5.2 We would be pleased to provide you with further assistance and request that you do not hesitate to contact **Richard Walker** on 011 322 4500 or 083 200 5517 with regard to any queries.

Prepared by:



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March 2012

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May 2012

Section II - Executive summary

6. Summary of significant findings

A summary of our comprehensive report is detailed below and the findings thereof are elaborated upon in Section III.

Internal and external legislative framework

- 6.1 The issuing of letters of support to private individuals or organisations is not a core **dti** function or service and therefore there is no policy or standard operating procedure for the issuing of such letters of support to private individuals or organisations within **the dti**. **The dti** would normally refrain from issuing such letters and follow a policy of neutrality as far as practically possible.
- 6.2 We could not substantiate any act of fraud and/or corruption and therefore the prescripts of the Prevention and Combating of Corrupt Activities Act are not applicable.
- 6.3 Officials have a fiduciary duty to act with integrity, ethically and take responsibility for the actions and activities entrusted to him/her as required in terms of the PFMA, SMS Handbook, Public Service Relations and Ethics Management Framework.

Sanctions against Iran

- 6.5 In terms of United Nations Security Council Resolution 1929, issued 09 June 2010; *States are prohibited from selling or in any way transferring to Iran eight broad categories of heavy weapons (battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems).....*
- 6.6 In terms of the United Nations Security Council Resolution there is, *A ban on all countries providing military vehicles, aircraft or warships and missiles or missile systems and related materiel to Iran*. South Africa can thus be banned if found to be violating its UN Security Council obligation: a 2010 resolution prohibited member states from supplying military-related products.

Media coverage and allegations made public

- 6.7 The Media (Sunday Times, Times LIVE, Wall Street Journal, and www.fin24.com) published articles during March 2012, on the letters of support issued by **the dti** to 360 Aviation, including the soliciting of bribes, to get government support for a proposed

R2 billion sanctions-busting deal with Iran involving Ms. Gugu, the partner of the Deputy President Mr. Motlanthe.

- 6.8 The DDG TISA, Ms Pumla Ncapayi requested a forensic investigation into the letters of support provided to 360 Aviation after questions were asked in the National Assembly by Mr DJ Maynier (Democratic Alliance) and comments requested from the Minister of Trade and Industry, Dr Rob Davies.

Letters of support issued to 360 Aviation

- 6.9 On 05 February 2008 and 03 September 2008, the then DDG: TISA, Mr Sharma issued and signed letters of support to 360 Aviation. Limited information on the process followed is available at **the dti**. Prior to the issuing of the letters **the dti** Bilateral Trade Relations unit within the International Trade and Economic Development (“ITED”) division informed 360 Aviation in January 2011 regarding the sanctions in Iran. However, 360 Aviation continued to pursue their request for letters of support and received same in 2008 and 2011 from Mr Sharma and Mr Le Roux, respectively thereby placing South Africa at risk of being accused of engaging in sanction busting deals with Iran.
- 6.10 From documentation obtained it appears that some of the business operations of 360 Aviation related to the export of Bell Helicopters and spare parts to Iran prohibited in terms of the United Nations Security Council Resolution 1929.
- 6.11 On 12 April 2011, Mr. Riaan Le Roux, in his capacity as acting DDG: TISA issued and signed a letter of support to 360 Aviation, based on an email request from Mr. Oberholzer requesting same, based on arrangements with the previous DDG: Mr. Sharma and the letters issued by Mr. Sharma in this regard.
- 6.12 We were provided with email correspondence between Mr. Le Roux and Mr. Victor Mathale, confirming the fact that Mr. Victor Mathale suggested that the same letter of support be issued as in the past. However, Mr. Victor Mathale contested the authenticity of the email correspondence as he never supported the issuing of the letter. He also contested the letter attached to the email denying ever meeting with Mr. Oberholzer or seeing the attached letter. According to him he attached a letter from Mr. Moeketsi in his response to Mr. Le Roux. Mr Mathale could not provide us with the letter or e-mail he referred to. According to him it should be archived on **the dti** e-mail server. We did, however, confirm through physical verification on **the dti** e-mail server during consultation with Mr Le Roux that the email and letter he referred to was received from Mr Mathale and is saved on **the dti** e-mail server.
- 6.13 We confirmed during consultation that Mr. Le Roux did not consult with the following officials during the process of issuing the letter of support to 360 Aviation, as would reasonably have been expected:
- Senior **dti** Officials, Management and Executive Board of **the dti**;
 - The DG, Mr. Lionel October;
 - The Minister, Dr. Rob Davies;
 - Chief of Staff, Mr. Moosa Ebrahim;
 - Office of the Presidency;

- Regulatory Authorities i.e. Defence Export Council; and
 - Director for Middle East, Mr. Daryl Hudson, responsible for Government to Government Relations between South Africa and Iran
- 6.14 Subsequent, to the various questions in the media, relating to the letter of support, Mr Le Roux (currently the COO: TISA) forwarded his official response to the questions from the Sunday Times in a memorandum dated 09 March 2012, to the current DDG: Ms Pumla Ncapayi, outlining the chronology of the events.
- 6.15 According to the response, he obtained copies of the letters previously issued, consulted Mr. Victor Mathale and sent an email to both, Mr. Yunus Hoosen, Acting Chief Director Investment and Mr. Yusuf Timol, Foreign Economic Representative. Mr. Victor Mathale forwarded him a recommendation and a letter by the CEO of 360 Aviation explaining their current and future objectives in Iran. Based on this he issued the letter of support, in good faith.
- 6.17 According to Mr. Le Roux's response to the questions of the Sunday Times, Mr. Le Roux indicated that a due diligence was performed and that the Department followed a specific methodology before issuing the letters. This however, can be viewed as a misrepresentation as we could not be furnished with a copy of the due diligence report or the methodology that was referred to in Mr Le Roux's response to the Sunday Times as **the dti** does not have official policies and procedures governing these activities.
- 6.18 During consultation on 09 May 2012, Mr Le Roux stated that he takes full responsibility for his actions and in hindsight would not have issued the letter or would have followed a different process.
- 6.19 Mr. Le Roux may be considered to have been grossly negligent in that he did not:
- i. follow **the dti** rule to remain neutral and not issue such a letter at all as he ought to have known of this neutrality;
 - ii. seriously have regarded the sanctions imposed on Iran by UNSC Resolution 1929 before issuing the letter;
 - iii. compare all possible future and previous operations of 360 Aviation against the list of sanctions imposed against Iran and the possible consequences for South Africa should the sanctions be contradicted. (According to Mr Le Roux this was an oversight by him at that point in time and he also believe that he was misled by the letter pertaining to the future operations of 360 Aviation in Iran.);
 - iv. consult or request advice and input from other senior **dti** officials, his subordinates, his peers, management, **the dti** Executive Board, the DG, Minister and other government departments such as Office of the Presidency and Regulatory Authorities such as the Defence Export Council and/or the National Conventional Arms Control Committee;
 - v. consult or seek advice from **the dti** division responsible for International Trade and Economic Development, in this instance Mr Daryl Hudson, who is responsible for Government to Government Relations between South Africa and Iran (Bilateral Trade Relations) and who could have advised Mr Le Roux on all industrial sanctions imposed against Iran;

- vi. listen to advice from Mr Mathale to rather refer 360 Aviation to the South African Embassy in Teheran;
- vii. make sure that 360 Aviation and its directors/shareholders/liquidity/financial position/credibility/profile/ reasons for support/future operations were properly validated and vetted;
- viii. protect the good image and reputation of **the dti** and government in general;
- ix. exercise due professional care and integrity, vigilance and professionalism when making the decision to issue and sign the letter;
- x. take possible future risk exposure of **the dti** and government into consideration;
- xi. display sound judgement to build confidence and trust in the Public Service; and
- xii. act responsibly in the circumstances.

6.19 Mr Le Roux and Mr Mathale as per sworn statements did not solicit any financial benefit in return for the issuing of the letter of support and is not/and was not aware of any bribes being paid or requested.

6.20 From company and individual searches it appears that there is no business link or conflict of interest between 360 Aviation, Mr Le Roux, Mr Mathale, Mr Sharma and Mr Timol. However, we established that both Mr. Victor Mathale and Mr. Sharma have other business interests in general not related to the activities of 360 Aviation.

6.21 Although, there are no written policies and procedures governing the issuing of letters of support, Mr. Le Roux did not fulfil his duty to protect the interest of the Department and South Africa at large.

7. Recommendations and Management Comments

7.1 Mr Le Roux should be subjected to disciplinary enquiry in terms of the PFMA, Public Service Regulations - Code of Conduct, **the dti** Ethics Management Framework and SMS handbook and held accountable for bringing **the dti** and public sector into disrepute and for the possible reputational risk South Africa and **the dti** is facing in anticipation of the outcome of all investigations being conducted.

7.2 The Public Protector and the NCACC should be informed about the outcome of this investigation.

7.3 Should the issuing of support letters become part of **the dti**'s mandate and core service, a proper policy and standard operating procedure should be developed and implemented and reviewed regularly.

Management Comments

We discussed the final report with the DDG: TISA, Ms Pumla Ncapayi, on 25 June 2012. Ms Ncapayi indicated that **the dti** does from time to time issue letters of support, but every request is handled on a case by case basis and after proper due diligence is carried out on the purpose of the request. She confirmed that there is no official policy. We were supplied with a letter of endorsement, issued in terms of the BRICS Telecom Submarine Cable Project. The letter was issued to i3 Africa and was signed by the Minister of **the dti**, Mr Rob Davies.

The DDG: TISA agreed to take the following action:

- 7.4 Mr Le Roux will be subjected to appropriate disciplinary action in terms of the PFMA, Public Service Regulations - Code of Conduct, **the dti** Ethics Management Framework and the SMS handbook and will be held accountable for bringing **the dti** and public sector into disrepute and possible reputational risk South Africa and **the dti** is facing in anticipation of the outcome of investigations being conducted.
- 7.5 The Public Protector and the NCACC will be informed about the outcome of this investigation and the steps taken with regards to remedial action.
- 7.6 A proper policy and standard operating procedure will be developed and implemented by the end of 2012 with regards to the issuing of letters of support.

Section III – Detailed findings

8. Internal and external legislative framework

- 8.1 We identified the internal and external legislative framework i.e. policies and procedures relevant to the activities under investigation. Where applicable we have quoted the relevant sections below and highlighted areas of importance or possible non-compliance in red.
- 8.2 There was no policy or standard operating procedure on the issuing of letters of support.
- 8.3 According to the Prevention and Combating of Corrupt Activities Act, Act 12 of 2004: **(Annexure A1)** Chapter 7, Miscellaneous Matters:

Duty to report corrupt transactions

- 34. (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-*
- (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.*

- 8.4 As per sections 44, 45 and 81 of the Public Finance Management Act, Act 1 of 1999 as amended: **(Annexure A2)**

44. Assignment of powers and duties by accounting officers -

- (1) The accounting officer for a department, trading entity or constitutional institution may--*
- (a) in writing delegate any of the powers entrusted or delegated to the accounting officer in terms of this Act, to an official in that department, trading entity or constitutional institution; or*
- (b) instruct any official in that department, trading entity or constitutional institution to perform any of the duties assigned to the accounting officer in terms of this Act.*
- (2) A delegation or instruction to an official in terms of subsection (1)--*
- (a) is subject to any limitations and conditions prescribed in terms of this Act or as the relevant treasury may impose;*
- (b) is subject to any limitations and conditions the accounting officer may impose;*
- (c) may either be to a specific individual or to the holder of a specific post in the relevant department, trading entity or constitutional institution; and*
- (d) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.*

- (3) *The accounting officer may confirm, vary or revoke any decision taken by an official as a result of a delegation or instruction in terms of subsection (1), subject to any rights that may have become vested as a consequence of the decision.*

45. Responsibilities of other officials - An official in a department, trading entity or constitutional institution--

- (a) *must ensure that the system of financial management and internal control established for that department, trading entity or constitutional institution is carried out within the area of responsibility of that official;*
- (b) *is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;*
- (c) *must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;*
- (d) *must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44; and*
- (e) *is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.*

81. Financial misconduct by officials in departments and constitutional institutions -

- (1) *An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer wilfully or negligently--*
- (a) *fails to comply with a requirement of section 38, 39, 40, 41 or 42; or*
- (b) *makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure.*
- (2) *An official of a department, a trading entity or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.*

- 8.5 According to relevant clauses from the Senior Management Services (“SMS”) Handbook: **(Annexure A3)**

**CHAPTER 5
COMPETENCY FRAMEWORK**

1. INTRODUCTION

- 1.1 *The introduction of the SMS Competency Framework is key in ensuring that the Public Service achieves its objective of professionalising the Public Service, especially at the Senior Management level. The SMS Competency Framework will assist in ensuring a consistent approach to human performance throughout the Public Service from National to Provincial levels, and thus help to drive and support all human performance initiatives.*
- 1.2 *In developing the SMS Competency Framework focus was placed on critical generic competencies, which senior managers would be expected to possess, rather than functional/technical competencies, which are essential to a specific department or a specific job. The SMS Competency Framework consists of a set of eleven (11) generic competencies that communicate what is expected of Senior Managers. In addition, this Framework seeks to establish a shared understanding of the critical success factors for performance in the Senior Management Service. This Framework does not*

describe the functions or responsibilities of particular senior management levels for example manager, senior manager or director, chief director, etc. However, they are based on the requirements for the whole of the Senior Management Service in both its current and emerging form.

2. SCOPE OF APPLICABILITY

2.1 *The SMS Competency Framework applies to members of the SMS as defined in the Public Service Regulations, 2001.*

4. STRUCTURE OF THE COMPETENCY FRAMEWORK

4.2 How to use the SMS Competency Dictionary

(1) *There are several benefits of establishing a competency-based approach to human resources, among them:*

4.3 Strategic Alignment

(1) *A competency model will enable the Public Service to bring strategic vision, values and capabilities “down to earth” so they can be linked to daily operations, and have a motivating impact on all staff. A competency model can be a key tool used to create effective alignment between people and the organisation’s strategic requirements as it strives to reform itself.*

4.4 Common Performance Expectations

(1) *The competency model provides the Public Service with a description of the key skills, knowledge, behaviours and attitudes that are expected of its Senior Management cadre. It helps to establish a common set of performance expectations that can be consistently applied throughout the Public Service.*

6. COMPETENCY FRAMEWORK

COMPETENCY NAME	HONESTY AND INTEGRITY		
COMPETENCY DEFINITION	Must be able to display and build the highest standards of ethical and moral conduct in order to promote confidence and trust in the Public Service		
PROVICIENCY LEVELS			
BASIC	COMPETENT	ADVANCED	EXPERT
Realises the implications of not speaking and acting with integrity, but needs guidance in implementing these principles;	Conducts self in accordance with organisational values;	Develops and applies self-corrective measures;	Creates an environment where integrity, honesty and accountability flourish;
Follows through on commitments under supervision; and	Admits own mistakes and weaknesses and seeks help from others when unable to deliver;	Makes proposals and recommendations in a way that wins the trust and support of others;	Develops and implements anti corruption measures;
Follows the rules and regulations of the organisation.	Reports fraud, corruption, nepotism and maladministration;	Promotes transparent and accountable administration;	Is widely recognised as an expert in fighting fraud, corruption and other acts of dishonesty;
	Honours the confidentiality of matters and does not use it for personal gain or the gain of others;	Presents ideas and beliefs in a manner which is consistent with the rules and regulations of the organisation/department;	Sets shared accountabilities and integrity standards across the organisation in support of organisational objectives;
	Deals promptly, and in the interest of the State, with situations where conflict of interest arises;	Acts decisively against corrupt and dishonest conduct;	Is fully responsible for own actions even if it reflects negatively on self or organisation; and
	Establishes trust and shows	Promotes the values and	Creates a culture of

BASIC	COMPETENT	ADVANCED	EXPERT
	confidence in others;	beliefs of the organisation internally and externally;	accountability
	Treats all employees with equal respect;	Co-operates with others and works as a team and not for personal benefit; and	
	Takes responsibility for own actions;	Oversees the acceptance of responsibility and accountability in the organisation	
	Undertakes roles and responsibilities in a sincere and honest manner;		
	Uses work time for organisational matters and not for personal matters; and		
	Shares information openly, while respecting the principle of confidentiality		

CHAPTER 6

ETHICS AND CONDUCT

1. INTRODUCTION

- 1.1 *The purpose of this chapter is to contribute to the development of high ethical standards in the Senior Management Service. It should not be viewed as a set of rules. Rather it serves to illustrate the values and principles that should underpin a manager's behaviour in the work environment. As such, this Chapter is advisory in nature except insofar as reference is made to specific statutory provisions that are binding on public servants generally or members of the Senior Management Service specifically. Managers should familiarize themselves with the provisions as failure to do so might have legal implications for Government.*
- 1.2 *It is important to note that there are rules and guidelines that govern some aspects of senior managers' behaviour, but in some situations senior managers must apply general principles and values based on the nature of public service work. An awareness and understanding of how the application of the rules, guidelines, principles and values come together is essential if senior managers are to make ethical judgements and defensible decisions.*
- 1.3 *Protocols on conduct and ethics cannot cover every possible situation. If a senior manager is unsure of the appropriate action to take in a particular situation, she/he must discuss the matter with her/his colleagues and supervisors. She/he should also obtain as much information as possible on the topic.*
- 1.4 *Through this chapter, the DPSA hopes to contribute to a situation where senior managers take responsibility for their own behaviour and lead such behaviour and practices in their work environment. This chapter will hopefully also give meaning to the competency "Honesty and Integrity" that has been taken up in the SMS Competency Framework.*

2. MANDATORY AND REGULATORY FRAMEWORK

- 2.1 *All public service activities are governed to a greater or lesser degree by legislation. The following provisions specifically regulate the conduct of senior managers:*
- (1) *Section 195(1)(a) of the Constitution, 1996, requires that a high standard of professional ethics must be promoted and maintained in public administration generally.*

- (2) *Section 41(1)(d)(ii) of the Public Service Act, 1994, allows the Minister to make regulations on the management of conduct of officials.*
 - (3) *The Code of Conduct in Chapter 2 of the Regulations gives practical expression to the Constitution and the Public Service Act, 1994.*
 - (4) *The Financial Disclosure of members of the SMS in Chapter 3 of the Regulations prescribes that all managers must disclose their financial interests.*
 - (5) *Part VII/B of Chapter 4 of the Regulations further addresses the promotion of ethical conduct in that it allows the Minister for the Public Service and Administration to issue directives to promote ethical conduct amongst members of the SMS.*
- 2.2 *This Chapter will thus supplement the Code of Conduct (Chapter 2 of Regulations) and the Financial Disclosure Framework (Chapter 3 of Regulations) in that it highlights the key principle that should underpin the conduct of a senior public servant.*

3. VALUES AND PRINCIPLES

- 3.1 *The terms values, ethics and conduct are often used interchangeably and uncertain language is one of the barriers to establish a widely understood framework for ethics.*
- 3.2 *For purposes of uniformity, the following definitions will apply in this chapter:*
- (1) *ethics – what ought to be the ideals of what is just, good and proper;*
 - (2) *values – the commonly held beliefs that guide judgement about what is good and proper, and from which ethical principles derive;*
 - (3) *code of conduct – the rules that translate ideals and values into everyday practice; and*
 - (4) *conduct – the actual behaviour and actions of senior managers*
- 3.3 *Certain values and principles such as integrity and impartiality have always been part of the ethical standard of the Public Service and will remain fundamental to it. The weight placed on values will change and new values will emerge. The notion of changing values does not suggest that there will not be a consistent set of values for public servants/senior managers. Certain values have become more important in recent years, the most obvious being accountability, responsiveness and improved service delivery (Batbo Pele). Values reinforce each other and provide the base for a stronger ethical culture.*
- 3.4 *Rules also play a role in safe-guarding ethical standards as it will govern aspects of senior managers' behaviour. Hence rules have a key role in guiding one's conduct and where there are laws and rules, they must be observed.*
- 3.5 *Less formal sets of rules can augment matters covered by legislation and be an important pointer to correct behaviour in a wide range of circumstances. As mentioned above, the Office of the Public Service Commission (OPSC) has issued a manual to explain the contents of the Code of Conduct. This manual serves as a practical guide to the code in specific kinds of situations.*
- 3.6 *The rest of this chapter highlights the key values and principles that should guide members of the Senior Management Service in their interaction with their superiors, peers, subordinates, and members of the public.*

4. RESPONSIVENESS AND IMPARTIALITY

- 4.1 *The public service exists to provide advice to, and give effect to the policies of the government of the day. Elected governments, whatever their political make-up, are entitled to expect loyalty and dedication from senior managers.*
- 4.2 *Departments have to make their decisions and implement policies and programmes in an environment of rapid change. Therefore, the main responsibilities of senior managers are to:*
- (1) carry out decisions and implement programmes promptly, conscientiously and effectively, and*
 - (2) provide advice which represents the facts accurately, is impartial and maintain a high standard of professional integrity.*
- 4.3 *Decisions must be made (and be seen to be made) impartially. By requiring reasonable and procedurally fair administrative action, section 33 of the Constitution obliges senior managers to take decisions which are free from any actual or apparent bias or prejudice. The Promotion of Administrative Justice Act, 3 of 2000 also promotes responsiveness.*
- 4.4 *In both policy development and program implementation, senior managers need to exercise judgement as to which facts are most relevant, which policy options are most appropriate and which considerations in delegated decision-making are most important. Senior managers should ensure that executing authorities are aware of the values which underpin the policy-advice they have given.*
- 4.5 *Senior managers must have the ability to interpret the priorities and goals of government. **An essential quality is to render free and frank advice, and to draw attention to any unforeseen implications or unintended consequences.***
- 4.6 *Senior managers are responsible for reporting criminal offences that are committed, or if they suspect that such offences could have been committed. They are further expected to be supportive of staff who make or intend to make protected disclosures.*

5. ACCOUNTABILITY

- 5.1 *Accountability is fundamental to good governance and is one of the essential elements of ethical administration. The perceptions of the public on the state of governance and administration are to a large extent determined by whether the government and administration are seen to account for its actions.*
- 5.2 *A description of the responsibilities of accounting officers and senior managers is to be found in Parts 2 and 3 of Chapter 5 of the Public Finance Management Act, 1999 (PFMA).*
- 5.3 *Important points relating to accountability are:*
- (1) adherence to the rule of law is of paramount importance.*
 - (2) the Head of a Department is the accounting officer for a department and may in writing delegate any of the powers (section 44 of the PFMA) entrusted or delegated to her/him to a senior manager in that department or instruct any senior manager to perform any of the duties assigned to the accounting officer in terms of the PFMA.*
 - (3) senior managers provide services on behalf of government to all manner of client groups and individuals in a great variety of circumstances and in so doing -*

- (a) they must adhere to the law and to the policies of government and not pursue their own interests;*
- (b) they are accountable for the quality of their dealings; and*
- (c) they are required to deal equitably, justly and responsively with all individuals/groups.*

- 5.4 *In terms of the PFMA National Treasury may make regulations or issue instructions to promote sound financial administration. In general the regulations and instructions are aimed at the effective, efficient, economical and transparent use of resources.*
- 5.5 *Section 81 of the PFMA clearly indicates that senior managers to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that senior manager wilfully or negligently fails to exercise that power or perform that duty.*
- 5.6 *Senior managers are further required to be frank, open and cooperative with other bodies established under legislation such as the Public Service Commission, Portfolio Committees and the Auditor-General.*

6. LEADERSHIP

- 6.1 *It is of utmost importance that a culture of ethical behaviour is manifested in the senior management and that they exhibit the highest ethical standards in carrying out their duties.*
- 6.2 *Senior managers must provide leadership in the area of ethics and “walk the talk”. They should give firm support to staff who raise problems of an ethical nature and ensure an openness on what constitutes correct conduct.*
- 6.3 *To fulfil this duty senior managers must have a thorough understanding of the Code of Conduct and the ethical standards and values that should shape the ethical culture of their units.*
- 6.4 *Senior managers should treat all people with whom they interact fairly, with courtesy and sensitivity. They must take pride in any advice or service they provide.*
- 6.5 *It is also essential for the proper functioning of departments that senior managers retain the trust and confidence of their Executing Authority and their colleagues in the manner in which they handle their official responsibilities and accountability.*
- 6.6 *Senior managers must lead by example and encourage their staff members to exercise similar qualities of personal and professional behaviour. They should also avoid unnecessary delays in making decisions or taking action.*

CHAPTER 7

MISCONDUCT AND INCAPACITY

1. INTRODUCTION

- 1.1 *The chapter contains the procedures that must be applied in cases of misconduct, incapacity due to poor performance and incapacity due to ill health of members of the SMS (hereafter referred to as “members”). As regards misconduct, PSCBC Resolution 1 of 2003 envisages the issuing of a directive by the Minister for the Public Service and Administration to cover the disciplinary matters of members of the SMS. The procedures for misconduct in paragraph 2 below incorporate those provisions of PSCBC Resolution 1 of 2003, which were considered appropriate and practicable in*

respect of members of the SMS. Regarding incapacity, paragraph 3 reflects PSCBC Resolution 10 of 1999, which deals with the incapacity code and procedure and paragraph 4 reflects PSCBC Resolution 12 of 1999 which deals with the procedure in respect of ill health or injury.

- 1.2 *This chapter must always be read and applied in conjunction with the Act, the PSR and the Labour Relations Act, 1995, and the PSCBC Resolutions applicable to members of the SMS on the subject matter of this chapter. The DPSA must be approached for assistance whenever uncertainty is experienced regarding the interpretation of any provision contained in this chapter.*

2. DISCIPLINARY CODE AND PROCEDURES FOR MEMBERS

2.1 Purpose and scope

- (1) *The purpose of this Code and Procedure is to -*
- (a) support constructive labour relations in the public service;*
 - (b) promote mutual respect between members and between members and the employer;*
 - (c) ensure that supervisors and members share a common understanding of misconduct and discipline;*
 - (d) promote acceptable conduct;*
 - (e) provide members and the employer with a quick and easy reference for the application of discipline;*
 - (f) avert and correct unacceptable conduct; and*
 - (g) prevent arbitrary or discriminatory actions by supervisors toward members.*

ANNEXURE A

ACTS OF MISCONDUCT

A member will be guilty of misconduct if she or he, among other things (this list is not exhaustive):

- 1. Fails to comply with, or contravenes an Act, regulation or legal obligation.*
- 2. Wilfully or negligently mismanages the finances of the State.*
- 3. Without permission possesses or wrongfully uses the property of the State, or that of another member/employee and/or a visitor.*
- 4. Wilfully, intentionally or negligently damages and or causes loss of state property.*
- 5. Endangers the lives of self or others by disregarding safety rules or regulations.*
- 6. Prejudices the administration, discipline or efficiency of a department, office or institution of the State.*
- 7. Misuses his or her position in the public service to promote or to prejudice the interest of any political party.*
- 8. Steals, bribes or commits fraud.*
- 9. Accepts any compensation in cash or otherwise from a member of the public or another member/employee for performing her or his duties without written approval from the department.*
- 10. Fails to carry out a lawful order or routine instruction without just or reasonable cause.*
- 11. Absents or repeatedly absents herself/ himself from work without reason or permission.*
- 12. Commits an act of sexual harassment.*
- 13. Discriminates against others on the basis of race, gender, disability, sexuality or other grounds outlawed by the Constitution.*
- 14. Performs poorly or inadequately for reasons other than incapacity.*
- 15. Without written approval from her or his department, performs work for compensation in a private capacity for another person or organisation either during or outside working hours.*
- 16. Without authorisation, sleeps on duty.*

17. *While on duty, is under the influence of an intoxicating, illegal, unauthorised, habit-forming and/ or stupefying drug, including alcohol.*
18. *While on duty, conducts herself or himself in an improper, disgraceful and unacceptable manner.*
19. *Contravenes any prescribed Code of Conduct for the public service.*
20. *Assaults, or attempts or threatens to assault, another member/employee or person while on duty.*
21. *Incites other personnel to un-procedural and unlawful conduct.*
22. *Displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour.*
23. *Intimidates or victimises fellow members/employees.*
24. *Prevents other members/employees from belonging to any trade union or body.*
25. *Operates any money lending scheme for members/employees for own benefit during working hours or from the premises of the public service.*
26. *Carries or keeps firearms or other dangerous weapons on state premises, without the written authorisation of the employer.*
27. *Refuses to obey security regulations.*
28. *Gives false statements or evidence in the execution of her or his duties.*
29. *Falsifies records or any other documentation.*
30. *Participates in un-procedural, unprotected and/ or unlawful industrial action.*
31. *Commits a common law or statutory offence while on state premises.*

8.6 As per the Constitution of the Republic of South Africa, Act 108 of 1996, (“Constitution”): **(Annexure A4)**

CHAPTER 2

BILL OF RIGHTS

33. Just administrative action.-

- (1) *Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.*
- (2) *Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.*
- (3) *National legislation must be enacted to give effect to these rights and must-*
 - (a) *provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;*
 - (b) *impose a duty on the state to give effect to the rights in subsections (1) and (2); and*
 - (c) *promote an efficient administration.*

CHAPTER 10

PUBLIC ADMINISTRATION

195. Basic values and principles governing public administration-

- (1) *Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*
 - (a) *A high standard of professional ethics must be promoted and maintained.*
 - (b) *Efficient, economic and effective use of resources must be promoted.*
 - (c) *Public administration must be development-oriented.*
 - (d) *Services must be provided impartially, fairly, equitably and without bias.*
 - (e) *People’s needs must be responded to, and the public must be encouraged to participate in policy-making.*
 - (f) *Public administration must be accountable.*
 - (g) *Transparency must be fostered by providing the public with timely, accessible and accurate information.*

- (h) *Good human-resource management and career-development practices, to maximise human potential, must be cultivated.*
 - (i) *Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.*
- (2) *The above principles apply to-*
- (a) *administration in every sphere of government;*
 - (b) *organs of state; and*
 - (c) *public enterprises.*

8.7 According to the Public Service Regulations, 2001: **(Annexure A5)**

CHAPTER 4
SENIOR MANAGEMENT SERVICE
PART I. ESTABLISHMENT OF SMS
A. PRINCIPLES

To ensure the effective management of each department falling under her or his control, or to execute specialist functions, an executing authority shall create an appropriate number of posts at senior management level. The persons occupying those posts shall be managed as a public service-wide pool of scarce resources to be utilised in the best interests of the public service. The conditions of service of the persons occupying those posts shall accord with their positions as high-level managers or specialists, while employment practices shall be fair and take into account the need to redress the imbalances of the past. Only the finest candidates shall be appointed to those posts and steps shall be taken to retain and develop persons so appointed as a corporate resource.

B. COMPOSITION OF SMS AND GRADING OF POSTS

- B.1 *The SMS shall consist of employees-*
- (a) *who immediately before 1 January 2001 were remunerated on grade 13 and higher; and*
 - (b) *appointed to the SMS on or after 1 January 2001 in the capacities referred to in regulation II B of this Chapter .*
- B.2 *The number of members of the SMS per department and their functions shall be determined by the executing authority through the processes of planning and work organisation as contemplated in Parts III and IV of Chapter 1.*
- B.3 *The grading of SMS posts shall be determined through the job evaluation system determined by the Minister.*

CHAPTER 2
CODE OF CONDUCT FOR THE PUBLIC SERVICE
B. INTRODUCTION

- B.1 *The need exists to provide direction to employees with regard to their relationship with the legislature, political and executive office-bearers, other employees and the public and to indicate the spirit in which employees should perform their duties, what should be done to avoid conflicts of interests and what is expected of them in terms of their personal conduct in public and private life.*

C. CODE OF CONDUCT

C.1 RELATIONSHIP WITH THE LEGISLATURE AND THE EXECUTIVE

An employee-

- C.1.1 *is faithful to the Republic and honours the Constitution and abides thereby in the execution of her or his daily tasks;*
- C.1.2 *puts the public interest first in the execution of her or his duties;*
- C.1.3 *loyally executes the policies of the Government of the day in the performance of her or his official duties as contained in all statutory and other prescripts;*
- C.1.4 *strives to be familiar with and abides by all statutory and other instructions applicable to her or his conduct and duties; and*
- C.1.5 *co-operates with public institutions established under legislation and the Constitution in promoting the public interest.*

C.2 RELATIONSHIP WITH THE PUBLIC

An employee-

- C.2.1 *promotes the unity and well-being of the South African nation in performing her or his official duties;*
- C.2.2 *will serve the public in an unbiased and impartial manner in order to create confidence in the public service;*
- C.2.3 *is polite, helpful and reasonably accessible in her or his dealings with the public, at all times treating members of the public as customers who are entitled to receive high standards of service;*
- C.2.4 *has regard for the circumstances and concerns of the public in performing her or his official duties and in the making of decisions affecting them;*
- C.2.5 *is committed through timely service to the development and upliftment of all South Africans;*
- C.2.6 *does not unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language;*
- C.2.7 *does not abuse her or his position in the public service to promote or prejudice the interest of any political party or interest group;*
- C.2.8 *respects and protects every person's dignity and her or his rights as contained in the Constitution; and*
- C.2.9 *recognises the public's right of access to information, excluding information that is specifically protected by law.*

C.3 RELATIONSHIPS AMONG EMPLOYEES

An employee-

- C.3.1 *co-operates fully with other employees to advance the public interest;*
- C.3.2 *executes all reasonable instructions by persons officially assigned to give them, provided these are not contrary to the provisions of the Constitution and/or any other law;*
- C.3.3 *refrains from favouring relatives and friends in work-related activities and never abuses her or his authority or influences another employee, nor is influenced to abuse her or his authority;*
- C.3.4 *uses the appropriate channels to air her or his grievances or to direct representations;*
- C.3.5 *is committed to the optimal development, motivation and utilisation of her or his staff and the promotion of sound labour and interpersonal relations;*
- C.3.6 *deals fairly, professionally and equitably with other employees, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language; and*
- C.3.7 *refrains from party political activities in the workplace.*

C.4 PERFORMANCE OF DUTIES

An employee-

- C.4.1 *strives to achieve the objectives of her or his institution cost-effectively and in the public's interest;*
- C.4.2 *is creative in thought and in the execution of her or his duties, seeks innovative ways to solve problems and enhances effectiveness and efficiency within the context of the law;*
- C.4.3 *is punctual in the execution of her or his duties;*
- C.4.4 *executes her or his duties in a professional and competent manner;*
- C.4.5 *does not engage in any transaction or action that is in conflict with or infringes on the execution of her or his official duties;*
- C.4.6 *will recuse herself or himself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee;*
- C.4.7 *accepts the responsibility to avail herself or himself of ongoing training and self development throughout her or his career;*
- C.4.8 *is honest and accountable in dealing with public funds and uses the public service's property and other resources effectively, efficiently, and only for authorised official purposes;*
- C.4.9 *promotes sound, efficient, effective, transparent and accountable administration;*

- C.4.10 *in the course of her or his official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest;*
- C.4.11 *gives honest and impartial advice, based on all available relevant information, to higher authority when asked for assistance of this kind; and*
- C.4.12 *honours the confidentiality of matters, documents and discussions, classified or implied as being confidential or secret.*

C.5 PERSONAL CONDUCT AND PRIVATE INTERESTS

An employee-

- C.5.1 *during official duties, dresses and behaves in a manner that enhances the reputation of the public service;*
- C.5.2 *acts responsibly as far as the use of alcoholic beverages or any other substance with an intoxicating effect is concerned;*
- C.5.3 *does not use her or his official position to obtain private gifts or benefits for herself or himself during the performance of her or his official duties nor does she or he accept any gifts or benefits when offered as these may be construed as bribes.*
- C.5.4 *does not use or disclose any official information for personal gain or the gain of others; and*
- C.5.5 *does not, without approval, undertake remunerative work outside her or his official duties or use office equipment for such work.*

8.8 As per the Department's Ethics Management Framework: **(Annexure A6)**

4. ETHICS MANAGEMENT APPROACH

4.3 IDENTIFYING THE RESPONSIBILITIES OF THE EMPLOYER AND EMPLOYEE

4.3.2 Employee

- 4.3.2.1 *The Explanatory Manual on the Code of Conduct for the Public Service establishes ethics principles that are essential for good public administration and these include guidelines for the conduct of a public service employee.*
- 4.3.2.2 *The manual sets out the standards of good conduct for an employee in his/her relationship with the Legislature and the Executive, the public and amongst employees.*
- 4.3.2.3 *The key principles that must be followed are that an employee must –*
 - a) *put the public interest first in the execution of her or his duties and serve the public in an unbiased and impartial manner in order to create confidence in the Public Service.*
 - b) *be loyal and strives to be familiar with and abides by all statutory and other instructions applicable to her or his conduct and duties.*
 - c) *not abuse his or her position in the Public Service to promote or prejudice the interest of any political party or interest group, favour relatives and friends in work-related activities or*

- abuse his or her authority or influences another employee, nor is influenced to abuse her or his authority.*
- d) *recognise the public's right of access to information, excluding information that is specifically protected by law, as well as right to fair administrative justice.*
 - e) *deal fairly, professionally and equitably with other employees, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language.*
 - f) *not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties.*
 - g) *recuse himself or herself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee.*
 - h) *be honest and accountable in dealing with public funds and use **the dti's** property and other resources effectively, efficiently, and only for authorised official purposes.*
 - i) *not use his or her official position to obtain private gifts, hospitalities or benefits for himself or herself during the performance of his or her official duties as these may be construed as bribes.*
 - j) *not undertake remunerative work outside his or her official duties or use office equipment for such work, unless approval is granted in writing for such work.*

5. CONSEQUENCES FOR NON-ADHERENCE

*In the event of non-compliance with the prescripts of this Framework, appropriate action must be taken in accordance with the Disciplinary Code and Procedure that is appropriate in **the dti**. Particular emphasis must be placed on action in instances where the official is in a managerial position, as **the dti** must reflect commitment to good business ethics by applying the same standard to all officials, without fear, favour or prejudice.*

- 8.9 As per the National Conventional Arms Control (“NCAC”) Act, Act no 41 of 2002, as amended by the NCAC amendment Act, Act 73 of 2008, the aim of the act is to: **(Annexures A45 and A46)**

To establish the National Conventional Arms Control Committee; to ensure compliance with the policy of the Government in respect of arms control; to ensure the implementation of a legitimate, effective and transparent control process; to foster national and international confidence in the control procedures; to provide for an Inspectorate to ensure compliance with the provisions of this Act; to provide for guidelines and criteria to be used when assessing applications for permits made in terms of this Act; to ensure adherence to international treaties and agreements; to ensure proper accountability in the trade in controlled arms; to provide for matters connected with the work and conduct of the Committee and its secretariat; and to provide for matters connected therewith.

9. Sanctions against Iran

- 9.1 As per summary of the United Nations Security Council Resolution 1929, 09 June 2010: **(Annexure A7)**

Resolution

Observations

In the preamble of the resolution, the Council reaffirmed its commitment to the Nuclear Non-Proliferation Treaty, its provisions therein and obligations on parties to the Treaty. The International Atomic Energy

Agency (IAEA) Board of Governors had adopted a resolution stating that a solution to the Iranian nuclear issue would contribute to global non-proliferation efforts and the Middle East region free of weapons of mass destruction.

There was concern that Iran had not yet fully suspended uranium enrichment activities, resumed co-operation with the IAEA or clarified issues relating to a possible military dimension to its nuclear program.

The Council recognised that access to diverse, reliable energy was critical for sustainable growth and development, and emphasised the rights of states in international trade. It called upon Iran to ratify the Comprehensive Nuclear-Test-Ban Treaty and was determined to take appropriate measures to make Iran comply with provisions in previous Security Council resolutions and requirements of the IAEA.

Acts

Acting under Article 41 of Chapter VII of the United Nations Charter, the Council determined that the Iranian government had yet to meet the requirements of previous Security Council resolutions and IAEA requirements. It affirmed that Iran should immediately co-operate with the IAEA on all outstanding issues, particularly with regards to activity at Qom, clarifications on a possible military use of the nuclear program and granting unrestricted access to all sites, persons, equipment and documents requested by the IAEA. The Council also decided that Iran should comply with the Safeguards Agreement with the IAEA, not undertake any further reprocessing, heavy water-related or enrichment-related activities or acquire commercial interests in other states involving uranium mining or use of nuclear materials and technology.

Further provisions of the resolution included:

- *Iran could not participate in any activities related to ballistic missiles.*
- *A ban on all countries providing military vehicles, aircraft or warships and missiles or missile systems and related materiel to Iran;*
- *A ban on training, financing or assistance related to such arms and materiel and restraint over the sale of other arms and materiel to Iran;*
- *A travel ban on individuals listed in the annexes of the resolution, with exceptions decided by the Committee established in Resolution 1737;*
- *The freezing of funds and assets of the Army of the Guardians of the Islamic Revolution and Islamic Republic of Iran Shipping Lines.*

All states were furthermore recommended to undertake the following:

- *Inspect all cargo to and from Iran in accordance with the Convention on the Law of the Sea and civil aviation agreements for prohibited items and report within five days explanations for the search and the findings from such inspections;*
- *The seizure and disposal of prohibited items;*
- *Prevent the provision of fuel, supplies and servicing of Iranian vessels if they are involved in prohibited activities;*
- *Provide information to the Committee concerning attempts to evade the sanctions by Iran Air or Iran Shipping Lines to other companies;*
- *Prevent the provision of financial services that may be used for sensitive nuclear activities;*
- *Exercise vigilance when dealing with Iranian individuals or entities if such business could contribute to Iran's sensitive nuclear activities;*

- *Prohibit the opening of Iranian banks in their territory and prevent Iranian banks from entering into relationships with banks in their jurisdiction if there is reason to suspect the activities could contribute to sensitive proliferation activities in Iran;*
- *Prevent financial institutions operating in their territories from opening offices and accounts in Iran if they would contribute to Iran's proliferation sensitive activities.*

9.2 The UN Security Council resolution regarding Iran was passed on 09 June 2010. A fact sheet was issued by the American White House that outlined the resolution's new set of sanctions against Iran. As per the fact sheet: **(Annexure A8)**

"The resolution restates the Security Council's longstanding demand that Iran's suspend its enrichment program and other proscribed nuclear activities. It also highlights and clarifies Iran's existing obligations to accept and facilitate the implementation of rigorous international safeguards on its nuclear program. The resolution imposes a series of new sanctions that will increase the cost to Iran's leaders of their current irresponsible policies. These measures include:

1. Ban on Iranian certain nuclear and missile investment abroad.

Iran is prohibited from investing in sensitive nuclear activities abroad, like uranium enrichment and reprocessing activities, where it could acquire nuclear technology and know-how, as well as activities involving ballistic missiles capable of delivering nuclear weapons. The ban also applies to investment in uranium mining.

2. Conventional arms ban.

States are prohibited from selling or in any way transferring to Iran eight broad categories of heavy weapons (battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems). States are similarly prohibited from providing technical or financial assistance for such systems, or spare parts. States are also to exercise vigilance and restraint in supplying any other arms or related materiel to Iran.

3. Ban on ballistic missile activities.

Iran is prohibited from undertaking any activity related to ballistic missiles capable of carrying nuclear weapons and States are required to take all necessary measure to prevent the transfer of related technology or technical assistance.

4. Additional items banned for transfer.

The resolution updates and adds to the list of technical items related to nuclear and missile proliferation that are banned for transfer to and from Iran.

5. New cargo inspection framework.

Iran is subject to a new regime for inspection of suspicious cargo to detect and stop Iran's smuggling. States should inspect any vessel on their territory suspected of carrying prohibited cargo, including banned conventional arms or sensitive nuclear or missile items. States are also expected to cooperate in such inspections on the high seas.

6. New procedures to deal with contraband items.

Once prohibited items are found, States are now obligated to seize and dispose of the items.

7. Ban on bunkering services.

States are required not to provide critical support services (e.g., fuel, water) to ships suspected of carrying prohibited cargo.

8. Measures to restrict the Islamic Republic of Iran Shipping Lines (IRISL) and Iran Air's cargo division.

States must require their nationals to exercise vigilance over IRISL, a known sanctions violator. Three IRISL-related companies will have their assets frozen. States are requested to report any information on activities by IRISL and Iran's Air's cargo division to evade sanctions, including by renaming vessels.

9. New tools to block proliferation finance.

States are called upon to prevent any financial service -- including insurance or reinsurance -- and freeze any asset that could contribute to Iran's proliferation. This broad language will help states take action when there are suspected financial links to Iran's banned nuclear activities.

10. Vigilance over all Iran's companies.

States are required to ensure their nationals exercise vigilance when doing business with any Iranian firm, including IRGC and IRISL, to make sure such business does not contribute to Iran's proliferation.

11. New banking measures.

States are called upon to prohibit on their territories new banking relationships with Iran, including the opening of any new branches of Iranian banks, joint ventures and correspondent banking relationships, if there is a suspected link to proliferation. States also should prohibit their own financial institutions from opening branches in Iran if there is a suspected link to proliferation.

12. New measures to limit the role of the Islamic Revolutionary Guard Corps (IRGC).

The resolution highlights the IRGC's role in proliferation and requires states to mandate that businesses exercise vigilance over all transactions involving the IRGC. Fifteen IRGC-related companies linked to proliferation will have their assets frozen.

13. Targeted sanctions on specific individuals and entities.

Forty Iranian companies and one individual will be subject to an asset freeze. The individual -- the head of a critical nuclear research program -- will also be subject to a travel ban. Thirty-five additional individuals previously subject to "travel vigilance" will now be subject to a travel ban.

14. Appointment of a UN sanctions monitoring panel.

A UN "Panel of Experts" will be established to monitor states' implementation of the sanctions, report on sanctions violations and recommend ways to continually improve enforcement.

In addition to imposing these sanctions, the resolution highlights the potential linkage between Iran's energy sector revenues and procurement and its nuclear activities and proliferation. It also stresses the need to exercise vigilance over all Iranian banks -- specifically including the Central Bank of Iran -- to prevent proliferation-related transactions.

10. Media coverage and allegations made

- 10.1 On 11 March 2012, the Sunday Times issued an article "Nothing for Mahala" relating to the letters of support issued by the dti to 360 Aviation, the possibility of bribes being solicited, a possible sanction busting deal with Iran linked to 360 Aviation and the latest letter of support issued by Mr. Le Roux on 12 April 2011. As per the article: (**Annexure A9**)

Nothing for Mahala

DEPUTY President Kgalema Motlanthe's partner, Gugu Mtshali, has been implicated in soliciting a R104-million "bribe" to obtain government support for a South African company trying to clinch a R2-billion sanctions-busting deal with Iran.

Mtshali and associates of Motlanthe, including former De Beers executive Raisaka Masebelanga, met delegates of Cape Town-based 360 Aviation at a Bryanston, Joburg, restaurant to discuss "buying" government support for the deal on February 17 2011.

Barry Oberholzer, MD of 360 Aviation, said: "We believe we were being asked [for] a bribe ... in exchange for [government] support."

By then 360 Aviation had been instrumental in supplying Iran with a Bell helicopter, spare parts and three airliners via South Africa through an ingenious sanctions-busting scheme - but the company needed top-level political support to pull off a new deal.

This week, Motlanthe said he had no knowledge of his partner's involvement with 360 Aviation.

The deputy president's spokesman, Thabo Masebe said: "He has at no stage discussed such a matter with any person, including the Department of Trade and Industry.

"The deputy president did not meet with 360 Aviation in the manner suggested or at all."

However, 360 Aviation director Marcel Oberholzer confirmed to the Sunday Times this week that he had in fact met Motlanthe in June 2011 with Masebelanga, although they had not discussed the deal.

The plan, which ultimately collapsed, would have seen a politically connected South African front company, set up by 360 Aviation, win a five-year contract worth at least R450-million a year to supply US-made Bell helicopters and parts to the National Iranian Oil Company.

Crucially, aviation experts say, many Bell spare parts can be used in Iranian attack helicopters, potentially bolstering Iranian military firepower. The new deal would also have led to South Africa violating its UN Security Council obligation: a 2010 resolution prohibited member states from supplying military-related products.

Through access to recordings and confidential documents - understood to have also been obtained and analysed by US intelligence agencies - and interviews with three sources directly involved in putting together the deal, the Sunday Times has established that:

- *Mtshali was at the Bryanston meeting at which Masebelanga solicited a R10-million "bribe" and a R94-million profit share to obtain "support for the deal" from the government;*
- *Motlanthe's associates followed through on their side of the deal, obtaining a letter signed by Department of Trade and Industry (DTI) acting deputy director-general Riaan le Roux; and*
- *Mtshali planned to fly to Iran with Masebelanga and another close associate of Motlanthe, former Land Bank executive Herman Moeketsi, to clinch the deal.*

In written responses, Mtshali told the Sunday Times she had "never attended a formal meeting" with 360 Aviation. After being sent the recording on which her voice can be heard, she refused to comment further. But the Sunday Times has learnt that she privately admitted being "introduced" to 360 Aviation MD Barry Oberholzer.

These revelations of how Motlanthe's romantic partner was involved in a bid to "sell" government support come as Barry Oberholzer spoke about his role in setting up the scheme, and how US intelligence had sought his assistance in nailing Iran sanctions-busting schemes.

Barry Oberholzer told the Sunday Times the purpose of the Bryanston meeting was to secure a support letter for the Iran deal from Motlanthe, through his associates.

"This was primarily for political protection from prosecution and assistance at a high level in Iran," he said.

His explanation is supported by a recording of the meeting, which leaves no doubt that the discussion - held in the presence of the deputy president's partner - was about how to "buy" government support for a lucrative sanctions-busting opportunity.

The price: an upfront R10-million "consultancy fee" and shares worth an estimated R94-million.

Masebelanga clearly spells out his ethos of government support for sale: the R10-million fee to get the ball rolling. "There is nothing for mahala," he said.

In the recording, mysterious North West businessman Joe Mboweni says he works "on instructions from mama", which is understood to be Mtshali, and adds that he is "obviously" interested in discussing the profit share. To which Mtshali is heard saying: "Joe will be instructing."

Mboweni adds: "When you are a politician you are not just political, you must also look at the commercial side."

He says "Rai" (Masebelanga) should negotiate a "relationship agreement" that will define the "equity and roles of each party" in the deal, then get "the letter".

Attempts to reach Mboweni were unsuccessful.

Two months later, on April 12, Le Roux signed the "letter of support" saying the Department of Trade and Industry "supports the initiatives by 360 Aviation" as it "welcomes the expanding trade and investment relations with the Islamic Republic of Iran".

That same day, Moeketsi took the letter to the Intercontinental Hotel at OR Tambo International Airport and gave it to Barry Oberholzer.

On April 18, Moeketsi sent Barry Oberholzer an e-mail headed "Iran agreement and passport photos." Attached were copies of Mtshali, Masebelanga and Moeketsi's passports, and the "commission agreement in respect of consultancy to obtain government support letter".

The agreement, signed by Moeketsi and Masebelanga, clearly lays out the terms: they will "obtain a support letter from the South African government" in exchange for a fee of R10-million, to be split 50/50 between them.

Although Mtshali is not mentioned in that agreement, the recording of the Bryanston meeting suggests she was part of the overall plan.

At that recorded meeting, Masebelanga tells Barry Oberholzer that: "In this, I am not alone, so I have to discuss this with everyone, and Joe, [who acts for Mtshali], is our point man."

This suggests that the payments would be shared between all the parties, not just Masebelanga and Moeketsi.

Even though Motlanthe's associates delivered on their side of the bargain, the deal ultimately collapsed when 360 Aviation could not agree on terms with the National Iranian Oil Company, so it never paid the R10-million fee to Motlanthe's associates.

"If the deal had gone through, we would have paid that R10-million," Barry Oberholzer told the Sunday Times.

But 360 Aviation did use the letter for another deal - to buy, from a US supplier, Bell parts worth R2-million, which are destined for Iran. The Sunday Times understands this is of interest to US intelligence agencies.

The US embassy would not confirm or deny this, or that Barry Oberholzer had passed information to its intelligence agencies.

When the Sunday Times confronted Masebelanga with the agreement, he said "I regret it" and that it was "a bit inappropriate, unfortunate".

Later, however, Masebelanga sent a written response saying that the contract he had signed was "doctored beyond belief", as it did not include the full intentions of the parties.

*This is contradicted by his business partner and former Land Bank executive, Moeketsi, who confirmed to the Sunday Times that he had obtained the support letter from **the DTI**, and that he was expecting R5-million for doing so.*

Masebelanga also denied that Mtshali had ever "had a meeting" with Barry Oberholzer to discuss the deal, despite confirmation from a number of people involved that they did indeed meet.

"If you wish to, crucify me on the cross of [a] lack of foresight about how the proposed business turned out, but leave [Motlanthe] and Gugu out of this."

Masebelanga did admit, however, that he had planned to "bring in" Mtshali and Mboweni in his business deals with 360 Aviation at a later stage.

*Mtshali said she had "no knowledge of the letter from **the DTT**" and "has not been party to any agreement with 360 Aviation".*

Though she admits providing her passport to Masebelanga, she says this was for him to arrange for her "to travel to Botswana".

However, e-mails from Moeketsi to Barry Oberholzer, titled "Iran trip", include copies of Mtshali's passport. When it was put to Moeketsi that the documents clearly implied he had helped facilitate Mtshali going to Iran to clinch the deal, he said "yes".

Motlanthe himself denied any knowledge of the deal or 360 Aviation, or that his associates tried to "sell" government support for the sanctions-busting deal.

But this was contradicted by Barry's Oberholzer's brother, Marcel. He said he had a "meet and greet" with Motlanthe at a private home in Houghton.

Motlanthe and Mtshali live in Houghton Estate in a R7-million home owned by Investec director Peter Malungani.

Marcel Oberholzer said: "We didn't talk much or discuss our business dealings. He wished us well and thanked us for our visit."

***The DTT** said it was "disturbed by allegations that a letter issued with bona fide intentions could be used to allegedly solicit bribes, or to contravene international agreements".*

*Spokesman Sidwell Medupe said **the DTT** would consider launching a probe, as the letter was provided for free "to assist a South African company operating in a challenging environment".*

- 10.2 A follow up article was placed in the Times LIVE on 15 March 2012 indicating that the National Conventional Arms Control Committee ("NCACC") was probing the Iran claims. As per the article: **(Annexure A10)**

Arms Committee probing Iran claims

The National Conventional Arms Control Committee (NCACC) is investigating a weekend newspaper report that South Africa has been exporting attack helicopters to Iran through an elaborate set of front companies.

Individuals and companies mentioned in the Sunday Times newspaper's report were being investigated, Vanessa du Toit, a director at the NCACC inspectorate, told Parliament's joint standing committee on defence on Thursday.

"We have already started investigations against the companies mentioned and individuals mentioned. We will report back to NCACC should we find any contravention of the NCACA (National Conventional Arms Control Act)."

According to the article, a Canadian company, Eagle Copters, would buy 1979 Bell 212 helicopters from Hudson Flight LLC in Texas, the USA. Eagle Copters would then sell the Bell 212 helicopters to a Johannesburg registered front company called Gemini Moon 477.

The helicopters would be taken to OR Tambo International Airport in Johannesburg aboard Dutch airline KLM.

Once the helicopters were in South Africa, they would be de-registered and then re-registered, with Iran as the end-user. They would then be shipped abroad on a Russian cargo aircraft.

According to the report "a big factory in Tebran" was using reverse-engineered helicopter parts for the military. The parts would most probably be used in military attack helicopters. Reverse engineering involves analysing or taking a piece of equipment apart, with the aim of making a duplicate.

Justice Minister Jeff Radebe told the committee South Africa did not allow any exports of "equipment" to Iran.

"We do not authorise any equipment to Iran because in the main there are United Nations Security Council sanctions against Iran, so we do not do that as a matter of course," he said.

- 10.3 On 18 March 2012, the Sunday Times placed an article stating that Canada, the United Nations, the Public Protector as well as the NCACC are probing South Africa's role in busting sanctions against Iran. As per the article: **(Annexure A11)**

Canada and the United Nations - as well as Public Protector Thuli Madonsela and the National Conventional Arms Control Committee - are set to probe South Africa's role in busting sanctions against Iran.

This follows a Sunday Times exposé last week that revealed how SA front companies are used to ship US helicopters and spare parts to Iran.

The report also exposed how Deputy President Kgalema Motlanthe's partner, Gugu Mtshali, was implicated in an attempt to solicit a bribe to get government support for a proposed R2-billion sanctions-busting deal with Iran.

The Sunday Times understands Madonsela will tomorrow announce a formal probe focusing on whether Mtshali was involved in a bid to sell government support.

On Thursday, the government's arms control committee told parliament it was probing alleged sanctions-busters, a list that includes 360 Aviation, Gemini Moon and Tigris International.

Aviation experts say some spare parts shipped to Iran can be used for military purposes, which violates UN sanctions.

Barry Oberholzer, managing director of 360 Aviation, who gave the FBI documentation in return for immunity from prosecution, says these are just some of the deals taking place under the noses of the authorities.

Oberholzer controversially went public last week on the sanctions-busting scheme he was involved in, as well as detailing the attempt to solicit a bribe from his company.

One report given to US intelligence in February 2011 says Iran's modus operandi is to "locate and create front companies in countries that are Iran-friendly, such as South Africa, and to use these countries for procurement and trans-shipment".

This week, the UN said it would "look into such reports", while the Sunday Times understands Canada's Border Services Agency is also investigating the South African deals.

On Monday, Motlanthe asked Madonsela to investigate the allegations against Mtshali. "The deputy president and Mtshali will make themselves available to provide any information," he said in a statement.

A recording of a meeting attended by Mtshali in February last year showed that former De Beers executive Raisaka Masebelanga asked for R10-million and shares worth R94-million to get a "letter of support" from the government to help 360 Aviation get business in Iran.

"There is nothing for mahala," he told the meeting.

Though the deal fell through and the bribe wasn't paid, the written R10-million "agreement" was signed by Masebelanga and former Land Bank executive Herman Moeketsi.

Moeketsi then obtained a letter from the Department of Trade and Industry supporting "the initiatives by 360 Aviation".

Last week, Mtshali said she never attended a "formal meeting" with 360 Aviation, but would not comment on the recording. She said she was "firmly of the view" that she had done nothing wrong.

But Oberholzer reiterated this week that Mtshali did attend the meeting. "I was there, and she was introduced to me as the deputy president's girlfriend," he said.

Oberholzer said he would "welcome any investigation by the arms control committee and the public protector" and would cooperate fully.

He said he went public because he had worked "as an operative for the Americans, providing them with information on how this worked" for a year, but now wanted to leave that life behind.

"I felt it would be safer for me and my family to reveal publicly what I know at this stage, even if it makes people uncomfortable," he said.

360 Aviation helped set up a Cape Town-based front company called Gemini Moon 477, which bought a Bell 212 helicopter from Canada's Eagle Copters.

Gemini Moon - secretly owned by Iranian company Heli Kish through proxy shareholders in Canada and the United Arab Emirates - deregistered the helicopter and shipped it to Iran.

Milton Smith, a director of Gemini Moon, denied any wrongdoing and said he would also cooperate with investigators. "I've got nothing to hide."

The US embassy said it "does not comment on specific law-enforcement or security matters", but stressed UN resolutions on Iran were "binding on all member states".

- 10.4 Further to the above article, the Sunday Times published another article on 18 March 2012 on Zimbabwe's role as a potential conduit for military equipment destined for Iran. As per the article: **(Annexure A12)**

Zimbabwe's role as a potential conduit for military equipment destined for Iran is likely to come under the spotlight as international agencies probe claims that bribes were solicited in South Africa for sanctions-busting deals with the Persian Gulf state.

This week, Iranian President Mahmoud Ahmadinejad met Emmerson Mnangagwa, the Zimbabwe Defence Minister, in Tebran and pledged to strengthen relations in defiance of international sanctions against both countries.

Separately, Iranian Defence Minister Brigadier-General Ahmad Vahidi met Mnangagwa, and pledged to "reinvigorate Zimbabwe's defence power", according to Fars News Agency.

This comes days after Gugu Mtshali, the girlfriend of South African Deputy President Kgalema Motlanthe, was implicated in soliciting a R104-million "bribe" to obtain government support for a company that tried to clinch a R2-billion sanctions-busting deal with Iran.

Last week, the South African edition of the Sunday Times revealed that Mtshali and associates of Motlanthe, including former De Beers executive Raisaka Masebelanga, met delegates of Cape Town-based 360 Aviation at a Bryanston, Johannesburg restaurant to discuss "buying" government support for the deal on February 17 last year.

Barry Oberholzer, managing director of 360 Aviation, said: "We believe we were being asked [for] a bribe ... in exchange for [government] support." This week Motlanthe asked South African public protector Thuli Madonsela to probe the allegations, as he and Mtshali were "firmly of the view that they have committed no wrongdoing of any kind".

Justice Minister Jeff Radebe told the parliament's defence committee the government's National Conventional Arms Control Committee (NCACC) was probing 360 Aviation and other alleged sanctions-busters.

"We have already started investigations against the companies mentioned and individuals mentioned. We will report back to NCACC should we find any contravention of the National Conventional Arms Control Act," director Vanessa du Toit is reported to have said.

This may yet implicate Zimbabwean companies in the transfer of US-made equipment with dual civilian and military use to Iran.

South Africa is a signatory to a number of United Nations resolutions, including a 2010 resolution that says all states "shall prevent the direct or indirect supply, sale or transfer to Iran" of any tanks, combat vehicles, attack helicopters or "related material, including spare parts".

While Zimbabwe was not part of the Security Council that voted on that resolution, it remains a member of the United Nations obliged to implement the resolutions.

Allegations, as yet unconfirmed, suggest helicopters with potential military application may have been transported from South Africa through Zimbabwe en route to Tebran.

Last week's revelations threaten to blow the lid on how other companies, besides 360 Aviation, helped ship equipment with potential military use to Iran.

Oberholzer confirmed that 360 Aviation had been instrumental in supplying Iran with a Bell helicopter, spare parts and three airliners via South Africa through an ingenious sanctions-busting scheme - but the company needed top-level political support to pull off a new deal.

However, Motlanthe denied that he had any knowledge of his partner's involvement with 360 Aviation.

The deputy president's spokesman, Thabo Masebe, said: "He has at no stage discussed such a matter with any person, including the South African Department of Trade and Industry. The deputy president did not meet with 360 Aviation in the manner suggested or at all."

However, 360 Aviation co-founder Marcel Oberholzer told the Sunday Times that he had in fact met Motlanthe in June 2011 with Masebelanga, although they had not discussed the deal.

The plan, which ultimately collapsed, would have seen a front company - set up by 360 Aviation - win a five-year contract, worth at least R450-million a year, to supply US-made Bell helicopters and parts to the National Iranian Oil Company.

Crucially, aviation experts say, many Bell spare parts can be used in Iranian attack helicopters, potentially bolstering Iranian military firepower. The new deal would also have led to South Africa violating its UN Security Council obligation - the 2010 resolution prohibited member states from supplying military-related products.

Through access to recordings and confidential documents and interviews with three sources directly involved in the deal, the Sunday Times has established that:

Mtshali was at the Bryanston meeting at which Masebelanga solicited a R10-million "bribe" and a R94-million profit share to obtain "support for the deal" from the government;

Motlanthe's associates obtained a letter signed by Riaan le Roux, the Department of Trade and Industry's acting deputy director-general; and

Mtshali planned to fly to Iran with Masebelanga and another close associate of Motlanthe, former Land Bank executive Herman Moeketsi, to clinch the deal.

In written responses, Mtshali said she had "never attended a formal meeting" with 360 Aviation. After being sent the recording on which her voice can be heard, she refused to comment further.

But the Sunday Times has learnt that she privately admitted being "introduced" to Barry Oberholzer.

These revelations of how Motlanthe's romantic partner was involved in a bid to "sell" government support come as Barry Oberholzer spoke about his role in setting up the scheme, and how US intelligence had sought his assistance in nailing Iran sanctions-busting schemes.

Barry Oberholzer said the purpose of the Bryanston meeting was to secure a support letter for the Iran deal from Motlanthe, through his associates: "This was primarily for political protection from prosecution and assistance at a high level in Iran."

His explanation is supported by a recording of the meeting, which leaves no doubt that the discussion - held in Mtshali's presence - was about how to "buy" government support for a lucrative sanctions-busting opportunity.

The price: an up-front R10-million "consultancy fee" and shares worth about R94-million. Masebelanga clearly spells out his ethos of government support for sale, the R10-million fee to get the ball rolling. "There is nothing for mahala," he said.

In the recording, North West businessman Joe Mboweni says he works "on instructions from mama", who is understood to be Mtshali, and adds that he is "obviously" interested in discussing the profit share. To which Mtshali is heard saying: "Joe will be instructing." Mboweni adds: "When you are a politician you are not just political, you must also look at the commercial side."

Attempts to reach Mboweni this week were unsuccessful.

When the Sunday Times confronted Masebelanga with the agreement, he said: "I regret it" and that it was "a bit inappropriate, unfortunate".

*Later, however, he sent a written response, saying the contract he had signed was "doctored beyond belief", as it did not include the full intentions of the parties. This is contradicted by his business partner Moeketsi, who confirmed that he had obtained the support letter from the Department of Trade and Industry (**DTI**), and was expecting R5-million for doing so.*

*Mtshali said she had "no knowledge of the letter from **the DTI**" and "has not been party to any agreement with 360 Aviation". *The Department of Trade and Industry said it would consider launching a probe.**

- 10.5 On 20 March 2012, the current DDG TISA, Ms Pumla Ncapayi requested a forensic investigation into the letters of support provided to 360 Aviation. As per the request forwarded to Mr Vincent Jones (Director: Forensics and Compliance - **dti**: Internal Audit): **(Annexure A13)**

SUBJECT: Investigation into letters of support written to 360 Aviation.

Further to the discussion at 14:00 today, 20 March 2012, with the DDG and Operations Director of TISA re: the letters of support on behalf of the Department of Trade and Industry and the South African Government sent to companies doing business with Iran. Given that there had been sanctions imposed on Iran for a number of years prior to these letters being issued and with regards to the allegations by the Sunday Times on Sunday 11 and 18 March 2012, it is requested that a forensic investigation be conducted to ascertain the following:

- 1. The department's role in issuing the letter of support to 360 Aviation in 2008, 2009 and 2011?*
- 2. Were other Government departments and the Presidency consulted with since the letters mention the South African Governments support of these trade activities?*
- 3. In particular, why was this letter of the 12 April 2011 issued in the light of the fact that **the dti** was closing down the foreign economic office in Iran at the time the letter was written?*
- 4. Was the project briefed into TISA's plan?*

Attached, please find all the relevant documentation pertaining to the above. Please do not hesitate to contact the appropriate official in TISA should there be any queries.

- 10.6 The above request for a comprehensive forensic investigation followed due to questions being asked in the National Assembly by Mr DJ Maynier (Democratic Alliance) and comments to be given by the Minister of Trade and Industry, Dr Rob Davies. The questions to be posted to the Minister were forwarded to **the dti** on 16 March 2012, for written reply on 22 March 2012. The questions and answers were as follows: (**Annexure A14**)

***THE NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY***

761. Mr D J Maynier (DA) to ask the Minister of Trade and Industry:

- (1) Whether his department issued any letters of support to companies (a) to do business or (b) doing business with Iran in (i) 2009, (ii) 2010, (iii) 2011 and (iv) 2012; if not, what is the position in this regard; if so, in each case, (aa) on what date was the letters issued and (bb) what (aaa) is the name of the person who (aaaa) issued and (bbbbb) received these letters, (bbb) was the name of the company involved, (ccc) goods or services did the company provide and (ddd) are the further relevant details;*
- (2) whether his department conducted any investigations before issuing the letters of support; if not, why not, in each case; if so, what are the relevant details in each case;*
- (3) whether other departments were consulted before issuing the letters of support; if not, why not; if so, (a) which departments were consulted and (b) what are the further relevant details;*
- (4) whether his department is conducting an investigation into any of these letters of support; if not, why not, in each case; if so, what are the relevant details in each case?*

Reply:

Question 1

- a) The Department issued no letters of support for doing business in Iran in (I) 2009, (ii) 2010. In (iii) 2011 a letter was issued and (iv) 2012 no letters were issued with regards to Iran. (v) In 2008 the Department issued two letters of support to 360 Aviation signed by*

the then Deputy Director General Mr I Sharma on 5 February 2008 and 3 September 2008 respectively.

Year 2011

- (aa) *The letter of support was issued on 12 April 2011*
- (bb)
- (aaa) *Mr A J le Roux, then Acting Deputy Director General*
- (aaaa) *Trade and Investment South Africa*
- (bbbb) *Mr B Oberholzer, CEO 360 Aviation*
- (bbb) *360 Aviation*
- (ccc) *Services offered by the company included aviation project management and services:*
- Delivery of Bell 212 HP Helicopters*
 - Setup of companies importing/exporting aircrafts*
 - Supply of helicopter spare parts to Persian Aviation Gulf Services*
 - Setup of a local company for large Iranian Oil Firm*
 - Supply of consultant services to Iran Air*
 - Various investment programs for Iran Investment Company (IIC)*
 - Advising Mahan Airlines on proper procurement to re-fleet their airline*
 - Advising and brokering fleet procurement for Aseman Airlines*
 - Providing the National Iranian Oil Company (NIOC) of support services of spare parts and aviation services to maximize oil extraction in the Persian Gulf.*
- (ddd) *The request for support was for a forthcoming visit to Iran scheduled for May 2011*

Year 2008

- (aa) *The letter of support was issued on 5 February 2008*
- (bb)
- (aaa)
- (aaaa) *Mr Iqbal Sharma, then Deputy Director General of Trade and Investment South Africa*
- (bbbb) *Mr A Mansourian, Iran Air*
- (bbb) *360 Aviation*
- (ccc) *The letter was addressed to Iran Air, preceding their visit to South Africa in 2008, to support a venture between Iran Air and 360 Aviation.*

Year 2008

- (aa) *The letter of support was issued on 5 February 2008*
- (bb)
- (aaa)
- (aaaa) *Mr Iqbal Sharma, then Deputy Director General, Trade and Investment South Africa*
- (bbbb) *Mr B Oberholzer, CEO of 360 Aviation*
- (bbb) *360 Aviation*
- (ccc) *Services offered by the company included aviation project management and services*

Question 2

*A review of 360 Aviation's previous contacts with **the dti** and interactions they had with entities in Iran was done. The company was also requested, and duly complied when requested to produce a signed letter regarding their past interactions with Iran and their future objectives in Iran.*

Question 3

*No other Departments were consulted and **the dti** issued the letter of support unilaterally.*

Question 4

The Department is conducting an investigation into the supply of letters of support.

- 10.7 On 28 March 2012 an article appeared in the Wall Street Journal that South Africa is to probe the letter supporting Iran trade link. As per the article: **(Annexure A15)**

South Africa to Probe Letter Supporting Iran Trade Link

JOHANNESBURG—South Africa's Department of Trade and Industry said it is investigating letters of government support it issued to a local aviation company implicated in an alleged plan to sell U.S.-made helicopters to Tebran, which could possibly have contravened a United Nations embargo on supplying military-related products to Iran.

The department provided a letter of support in April 2011 to Cape Town-based 360 Aviation ahead of a trip it was making to Iran in May last year, Minister of Trade and Industry Rob Davies said on Tuesday in a written reply to questions submitted by a member of opposition party the Democratic Alliance.

360 Aviation is tied to an investigation by South Africa's anticorruption watchdog, the Public Protector, of reports that Deputy President Kgalema Motlanthe's partner, Gugu Mtshali, solicited bribes from the company in exchange for government support to sell U.S.-made helicopters through South Africa to Iran.

The plan never materialized, according to a March 11 article in South African newspaper the Sunday Times.

In his response to Parliament, Mr. Davies said 360 Aviation offered to provide equipment, including goods such as U.S.-made Bell 212 HP helicopters, and advisory services to a number of Iranian businesses, including Iran Air and the National Iranian Oil Co.

U.N. sanctions prohibit member countries from selling military equipment such as tanks or helicopters to Iran.

Mr. Davies' comments followed the Sunday Times report, which said Ms. Mtshali allegedly sought a 104 million-rand (\$13.7 million) bribe from 360 Aviation. The company's phones have been down since the report was released and emails to the company have been rejected.

Mr. Motlanthe said last week that he and Ms. Mtshali "are firmly of the view that they have committed no wrongdoing of any kind in relation to the alleged events," and welcomed the investigation by the Public Protector.

Mr. Davies said the letter of government support submitted to 360 Aviation in April last year was the third such letter given to the company. The department also provided two letters of support to 360 Aviation in 2008. He said the matter was under investigation.

The scandal has emerged ahead of the African National Congress leadership conference in December, when observers say Mr. Motlanthe could be a rival to incumbent President Jacob Zuma for the party leadership. Over the weekend, Mr. Motlanthe appeared at a rally with ousted ANC youth league President Julius Malema, who was once a supporter of Mr. Zuma but has become critical of the president.

- 10.8 On 28 March 2012 another article appeared on www.fn24.com commenting on the dti's probe, as per the article: **(Annexure A16)**

DTI probes letters backing business in Iran

Cape Town - The department of trade and industry (DTI) is conducting an investigation into the supply of letters of support to a company doing business with Iran.

In a written reply to a question in the National Assembly, Trade and Industry Minister Rob Davies said the DTI issued a letter of support on April 12 2011 to 360 Aviation.

Services offered by the company included the delivery of Bell 212 HP helicopters, setting up companies importing and exporting aircraft, supplying helicopter spare parts to Persian Aviation Gulf Services, supplying consultant services to Iran Air, and providing the National Iranian Oil Company with support services for spare parts and aviation services.

The request for support was for a forthcoming visit to Iran scheduled for May 2011, Davies said.

No letters of support for doing business in Iran were issued in 2009 and 2010. In 2008 the department issued two letters of support to 360 Aviation on February 5.

One was addressed to Iran Air, preceding its visit to South Africa in 2008, to support a venture between Iran Air and 360 Aviation, and the second in support of aviation project management services.

Davies said a review of 360 Aviation's "previous contacts with the DTI and interactions they had with entities in Iran was done and the two letters issued in 2008 were retrieved".

"The company was also requested, and duly complied when requested, to produce a signed letter regarding their past interactions with Iran and their future objectives in Iran."

The department was conducting an investigation into the supply of letters of support, he said.

Democratic Alliance spokesperson David Maynier welcomed the probe into the letters of support "in potential violation of a United Nations arms embargo on Iran".

One of the letters - dated April 12 2011 - signed by then acting deputy director general Riaan Le Roux was a major concern.

“The letter was allegedly used to solicit a bribe of R10m by a group of business people which included Deputy President Kgalema Motlanthe’s partner Gugu Mtshali, and the letter could have risked drawing the (DTI) into what would have amounted to state-sponsored sanctions-busting in Iran,” Maynier said.

*“And how is it that **the DTI** so easily supplied a letter of support to a company specialising in aviation project management and services to do business in Iran after the imposition of a comprehensive arms embargo on Iran by the United Nations?”*

*“One would have expected alarms bells to have gone off somewhere in **the DTI**,” he said.*

10.9 On 28 March 2012, the DA officially welcomed the investigation into **DTI** “letters of support” for possible sanctions busting business in Iran. As per the press release: **(Annexure A17)**

The Democratic Alliance (DA) welcomes Minister of Trade and Industry Rob Davies’ announcement that letters of support, provided by the Department of Trade and Industry to a company looking to do business in Iran, in potential violation of a United Nations arms embargo on Iran, will be investigated.

In a reply to a parliamentary question the Minister revealed that the Department of Trade and Industry (DTI) had provided three letters supporting a company called “360 Aviation” doing business in Iran.

The services offered by the company included aviation project management and services including the delivery of Bell 212 helicopters, the supply of spare parts to Persian Aviation Gulf Services and providing spare part and aviation services to the National Iranian Oil Company.

One of the letters, dated 12 April 2011, which was signed by Riaan Le Roux (Acting Deputy Director-General, Trade and Investment South Africa, in the Department of Trade and Industry) is a major concern because:

- *the letter was allegedly used to solicit a bribe of R10 million by a group of business people which included Deputy President Kgalema Motlanthe’s partner Gugu Mtshali; and*
- *the letter could have risked drawing the (DTI) into what would have amounted to state-sponsored sanctions-busting in Iran.*

*Was the letter of support supplied by **the DTI** part of a "pay to play" scam, where high-level government support was provided for business deals in return for bribes?*

*And how is it that **the DTI** so easily supplied a letter of support to a company specialising in aviation project management and services to do business in Iran after the imposition of a comprehensive arms embargo on Iran by the United Nations?*

*One would have expected alarms bells to have gone off somewhere in **the DTI**.*

However, this does not appear to have happened and the letter of support was issued; remarkably stating that:

“This letter serves to confirm that the Department of Trade and Industry in the Republic of South Africa support the initiatives by the Three 60 Aviation.

Three 60 Aviation has established business relationships with leading enterprises in the Islamic Republic of Iran.

The South African government welcomes expanding trade and investment relations with the Islamic Republic of Iran”.

The letters of support were issued unilaterally without consulting any other department.

There does not appear to have been any deal between 360 Aviation and Iran in 2011.

However, the supply of helicopters and helicopter parts, which could have been used for military purposes, could have breached the United Nations Security Council arms embargo on Iran.

The DTI does not appear to have carried out proper “due diligence” on the company, before issuing the letters of support, in order to determine whether there was a risk of a potential breach of the United Nations arms embargo on Iran.

The letters of support could therefore have risked drawing the DTI into what would have amounted to state-sponsored sanctions-busting in Iran.

The DA therefore welcomes the investigation into the letters of support and will push, not only for the investigation to be fast-tracked, but for the results of the investigation to be made public.

We cannot allow South Africa to become a conduit for the export of “dual use goods” which could be used for military purposes in violation of the United Nations arms embargo on Iran.

- 10.10 On 10 May 2012 the dti appointed Grant Thornton to conduct the investigation. (Annexure A18)

11. Letters of support issued

- 11.1 On 12 April 2011, Mr. Riaan Le Roux, in his capacity as acting DDG: TISA issued and signed a letter of support addressed to 360 Aviation. (Annexure A27)
- 11.2 Subsequently, various questions were raised in the media, including the Sunday Times, following the letter of support. (Paragraph 10 above refers)
- 11.3 On 09 March 2012, Mr Le Roux (currently the COO: TISA) forwarded his official response to the questions from the Sunday Times: RE 360 Aviation in a memorandum to the current DDG: Ms Pumla Ncapayi. As per his response: (Annexure A19)

SUBJECT: RESPONSE TO QUESTIONS FROM SUNDAY TIMES RE 360 AVIATION

1. AIM

To brief the DDG on the circumstances that led to the questions from the Sunday Times.

2. BACKGROUND

This is a chronology of events as they unfolded between February and April 2011.

- 1. On 4 February 2011 the Executive Assistant, Talitha Setsbedi forwarded a mail (See Annexure A) to me from Mr Barry Oberholzer from 360 Aviation. In this e-mail he requested that a letter of support be issued to his company based on an earlier arrangement with the previous DDG of TISA, Mr Iqbal Sharma.*
- 2. I then requested Talitha to request 360 Aviation to provide me with the letters that the previous DDG signed to support 360 Aviation.*
- 3. Only on 4 April 2011 was I contacted by Mr Herman Moeketsi an equity partner in 360 Aviation with PDF format copies of the letters issued by Mr Sharma earlier. (See Annexure B for the e-mail and Annexures C and D the two previous letters of support)*
- 4. I was not comfortable with terms being used like "issue a letter"*
- 5. On 7 April 2011 I sent an e-mail (Annexure E) to Mr Moeketsi, copying the Acting Chief Director Investment, Yunus Hoosen and the dti's Foreign Economic Representative in Iran Mr Yusuf Timol. In the e-mail I pointed out that these letters should be adequate for the purpose intended and that the dti office in Teheran will support them.*
- 6. I had also asked Mr Victor Mathale to assist in forming a decision to support the company or not.*
- 7. On 11 April 2011 Mr Mathale forwarded a recommendation to me by e-mail that summarised his interaction with 360 Aviation (Annexure F) and also included a signed letter by the CEO of 360 Aviation explaining their current and future objectives in Iran.*
- 8. On the basis of this a letter of support was drawn up and signed by myself in good faith hoping to assist a South African company doing business in a difficult country. (See Annexure G)*

3. Responses to questions from Sunday Times

a. Question

Riaan Le Roux provided this document, which appears to have been promised to Three60 Aviation in return for a payment. This implies that government support is "for sale". What were the circumstances under which Riaan Le Roux provided this letter?

Response

The Department does not issue letters of support without ensuring that a proper process is followed to ensure the correct use of such a letter. In some countries across the globe doing business without support from Government is difficult and sometimes impossible. South African companies do not pay for this assistance. 360 Aviation approached the Department with a request to assist them in trying to expand their business in Iran. Before issuing the letter of support a due diligence was done on 360 Aviation.

Under no circumstances was there any contact between Riaan le Roux and any official of 360 Aviation other than professional contact. There are very strict rules applicable for the issuing of a letter of support and in this case the letter was issued as a bona fide attempt to assist a South African company operating in a challenging environment. There was never an attempt from 360 Aviation to solicit the letter in exchange for monetary favours nor was it solicited from 360 Aviation.

b. Question

Was Riaan Le Roux aware that a payment was solicited in return for this letter of support?

Response

No, not at the time in April 2011 or at any later stage.

c. Question

*How often do **the DTI**, and Riaan Le Roux provide letters of support like this?*

Response

*The Department does support South African businesses doing business abroad with letters of support, particularly in countries where doing business with Government support is a necessity. This is part of its normal trade- and investment activities and is a free service. The Department follows a specific methodology before the issuing of a letter of support. This entails amongst other verifying the background of the business the company is involved in, in a particular country. A number of sources such as previous contact with the company, information from **the dti** Foreign Economic Representative in the country and direct due diligence by meeting with the requesting company is used. It is also standard procedure that the company provide **the dti** with a written request spelling out what support is required.*

This methodology was followed with 360 Aviation before the letter was issued.

d. Question

*The letter was provided for supplying helicopters of US origin to Iran, which potentially constitutes sanctions-busting activity. How could such a letter have been provided for such an activity? To what extent does **the DTI** take responsibility for actions that breach our international agreements, as a consequence of such a letter of support? How do you react to claims that **the DTI** facilitated sanctions-busting activity, especially following a bribe?*

Response

*The letter from 360 Aviation only stated helicopters for civilian use in their letter. A letter of support will never be issued by **the dti** in contravention of specific international agreements. **The dti** does not engage in sanction busting.*

e. Question

*How does **the dti** react to such an allegation? Will you launch any investigation into the circumstances of this case?*

Response

*The Department is disturbed by allegations that a letter issued with bona fide intentions from **the dti** could be used to allegedly solicit bribes or to contravene international agreements to which South Africa subscribe.*

***The dti** will investigate if a formal complaint is received from any of the parties mentioned by you.*

4. Conclusion

I am quite willing for an investigation into my financial affairs and willing to submit the background information and the answers to the question in the form of a sworn statement as a true reflection of my actions.

- 11.4 We obtained copies of the supporting documents/Annexures referred to by Mr Le Roux in his response above. The following paragraphs deal with such documents and the process followed.
- 11.5 On 04 February 2011, Mr Barry Oberholzer, Managing Director: 360 Aviation forwarded an e-mail to Ms Talitha Setshedi (Executive Assistant – DDG’s Office) requesting a new letter of support, as per the letters previously issued during 2008, by the then DDG of TISA, Mr Sharma. Ms Setshedi forwarded the e-mail to Mr Le Roux by. The e-mail included some of the original correspondence for letter issued in 2008. The e-mails were as follows: **(Annexure A20)**

Riaan le Roux - FW: Iran Letter

From: Barry H Oberholzer Jr <barry@360-aviation.com>
To: <tsetshedi@thedti.gov.za>
Date: Fri, Feb 4, 2011 02:23 PM
Subject: FW: Iran Letter
Attachments: scan_3.pdf

Hi Talitha

Trust all is well.

*As you know, **Iqbal was kind enough to issue us with a letter of support to trade with Iranian companies** and it has assisted us a lot in the past.*

Seeing that the letter is now almost 3 years old I would like to request whether a new letter can be issued stating the strong relations between SA and Iran and the SA Govt stance on trading between the 2 countries. We have 2 large tenders in for work there and this letter will assist us tremendously.

I have attached the letter again.

Thanks again!

*Barry H. Oberholzer Jr.
Managing Director*

*On 2/5/08 2:44 PM, "Talitha Setsbedi"
<tsetsbedi@thedti.gov.za> wrote:
** High Priority ***

Dear Sir

Attached please find a letter from Deputy Director- General of Trade and Investment South Africa for your attention.

Regards

*Talitha Setsbedi
Office of the Deputy Director General
Trade and Investment South Africa*

"Marcel F. Oberholzer" <marcel@360-aviation.com> 2008/02/04 03:36 PM

Iqbal,

Hope you are well.

Raisaka mentioned that you requested the address for the contact person, which is:

Dr. Mansourian

Iran Air

Tehran Iran

Please scan and email final letter to me I will then forward to Dr Mansourian.

Kind Regards,

*Marcel F. Oberholzer
Managing Director - Three | 60 Aviation
Aircraft Sales - Leasing - Contracts*

- 11.6 On 04 April 2011, Mr Herman Moeketsi forwarded the previous letters of support to Mr Le Roux via e-mail. The e-mail correspondence as follows: **(Annexure A21)**

Riaan le Roux - Republic of Tehran Trade and Investment Relations

Transmitted herewith please find copies of two letters as received from your office in 2008 as discussed. Chief, it would be appreciated if you would please issue new letters as the aforementioned 2008 ones are already outdated.

- 11.7 The previous letters of support were issued by the previous DDG: TISA, Mr Sharma on 03 September 2008 (**Annexure A22**) and 05 February 2008 (**Annexure A23**) respectively. The letters were as follows:

Letter One:

05 February 2008

Dr Mansourian

***IRAN AIR
Tehran
Islamic Republic of Iran***

Dear Dr. Mansourian,

*I write this letter to you in relation to the possible business structure you may establish with a South African company, Three60 Aviation. **The dti welcomes this initiative against the backdrop of our strong political relationship and growing economic relationship.** We would welcome your delegation's visit to South Africa and would be very happy to meet with you to discuss how **the dti** could assist in ensuring a successful venture between Iran Air and Three60 Aviation.*

Please be assured of our highest consideration.

Kind Regards

Iqbal Meer Sharma

DDG

TISA

Letter Two:

*Mr. Barry Hoberholzer Jr
Three 60 Aviation (Pty) Ltd
99 Jip de Jager Ave
Ground & 1 st Floor
Barinors Vineyard North Vineyards Office Estate
Cape Town
South Africa*

To Whom It may Concern:

The South African Department of Trade and Industry (the dti) met with Three 60 Aviation a South African company in the Aviation industry.

Three 60 Aviation has been looking keenly at establishing business relationships with leading relevant enterprises in the Islamic Republic of Tehran. The SA government welcomes the expanding trade and investment relations with the Islamic Republic of Tehran.

Your support to Three 60 Aviation in developing mutual trade between our countries would be appreciated.

Yours sincerely

Iqbal Meer Sharma
DDG: TISA
Department of Trade and Industry
03/09/2008

- 11.8 During our investigation no additional documents and/or records were exhibited to us relating to the process followed during 2008, other than the above emails and letters (**Annexures A20 to A23**). We confirmed that Mr Sharma resigned in October 2010 and therefore did not consult or interview him. (**Annexure A29**)
- 11.9 On 07 April 2011, Mr Le Roux forwarded an e-mail to Mr Moeketsi, copying the Acting Chief Director Investment, Yunus Hoosen and **the dti's** Foreign Economic Representative in Iran, Mr Yusuf Timol. In the e-mail Mr Le Roux pointed out that the previous letters should be adequate for the purpose intended and that **the dti** office in Teheran will be able to support 360 Aviation further. The e-mail stated the following: (**Annexure A24**)

I consulted with colleagues on this and wish to advise that these letters are still valid and can be used as such. I am copying this to our office in Teheran to assist you with whatever assistance you may require on the ground.

- 11.10 Mr. Le Roux asked Mr. Victor Mathale (Director: Foreign Services Management) to assist in reaching a decision on whether to support the company. On 11 April 2011, Mr. Mathale forwarded a recommendation to Mr. Le Roux via e-mail summarising his interaction with 360 Aviation and his recommendation. As per his e-mail: (**Annexure A25**)

Riaan I spoke to Herman Moeketsi as requested on Friday. He still feels that he should get an updated letter.

I further requested him to provide an update on the developments in Iran to establish whether there is a need for us to re-issue the letter.

Attached is copy of the letter that Herman wrote on updates regarding their involvement in Iran.

I suggest that the same generic letter be written but referring Herman to the South African Embassy in Teheran should they need further support.

Let's discuss the matter as I have indicated to Herman that I will revert to him.

- 11.11 The e-mail from Mr. Mathale included a signed letter from the Managing Director of 360 Aviation, Mr. Barry Oberholzer, dated 08 April 2011, explaining the current and future objectives of 360 Aviation in Iran. As per the letter: (**Annexure A26**)

We refer to our current and historic dealings with companies within the Islamic Republic of Iran.

Since we received the indicated support letters from the Department of Trade and Industry we have been successful in the following transactions:

- *Delivery of a Bell 212 HP helicopter for our client, Heli Kish. They are currently using this helicopter for offshore oil rig support services, much like Petro SA uses the SAAF at the moment for operations in Mossel Bay.*
- *Setup of a local company, Tigris International SA (Pty) Ltd, who then purchased 3 Airbus A300 aircraft from China Southern Airlines and they are now in operation with Saba Airlines in Iran. We assisted them in the import/export of these goods*
- *Supply of helicopter spare parts to Persian Aviation Gulf Services*
- *Setup of a local company for one of the largest Iranian Oil Firms, Fateh Sanat Kimia. They will be using this company for investment in Africa.*
- *Supply of consultant services to Iran Air on how to structure their airline to maximize profits and how to procure spare parts and lease of aircraft through leading suppliers in the industry.*

We are planning a trip to Iran in May 2011 in order to finalize the following future opportunities:

- *Various investment programs for Iran Investment Company (IIC)*
- *Advising Mahan Airlines on proper procurement to re-fleet their airline*
- *Advising and brokering fleet procurement for Aseman Airlines*
- *Providing the National Iranian Oil Company (NIOC) of support services of spare parts and aviation services to maximize oil extraction in the Persian Gulf.*

We will be accompanied on this trip by our equity partners Mr. Raisaka Masebelanga and Mr. Herman Moeketsi.

We trust that the above has given an insight of our capabilities to further strengthen the relationship between the two countries by way of completing the above-mentioned projects which will succeed by your full support.

11.12 On 12 April 2011, Mr Le Roux signed and issued the following letter of support to 360 Aviation: **(Annexure A27)**

12 April 2011

TO WHOM IT MAY CONCERN

This letter serves to confirm that the Department of Trade and Industry, In the Republic of South Africa support the initiatives by the Three 60 Aviation.

Three 60 Aviation has established business relationship with leading enterprises in the Islamic Republic of Iran. The South African government welcomes the expanding trade and investment relations with the Islamic Republic of Iran

Yours faithfully

*Acting Deputy Director-General
Trade and Investment South Africa*

11.13 We consulted with Ms Lynne Smillie – Director Operations: TISA on 07 May 2012. Ms. Smillie was provided with a copy of the consultation notes and accepted it as a true reflection of our consultation/discussion. Ms Smillie was the acting COO: TISA during February/April 2011 when Mr Le Roux issued the letter of support to 360 Aviation. The consultation notes are reproduced below: **(Annexure A28)**

1. *Mr Riaan Le Roux, in his capacity as acting DDG: Trade and Investment South Africa (TISA), signed and issued a letter of support to 360 Aviation on 12 April 2011 for trading purposes with the Islamic Republic of Iran.*
2. *The letter indicated that the South African government supported the expanding trade and investment relations with the Islamic Republic of Iran.*
3. *Although the letter stated the support of the South African government it appears from the process followed that Mr Le Roux did not consult with the DG (Mr Lionel October) or the Minister (Dr Rob Davies) or any other Government department or the Office of the President to confirm such support. The Chief of Staff, Mr Moosa Embrahim, can also be consulted in this regard.*
4. *According to Ms Smillie she was the acting COO: TISA in February/April 2011 and was not consulted by Mr Le Roux during the process followed to issue the letter in April 2011.*
5. *According to Ms Smillie **the dti** does not have a mandate to issue such letters and there is no official policy or process in place as it is not a **dti** function.*
6. *Following the media reports in the Sunday Times the minister was requested to attend a Parliamentary Committee session where he had to provide response on questions raised with regards to the issuing of the letter.*
7. *According to Ms Smillie the minister raised his concerns in a media statement following the Parliamentary session and stated that a forensic investigation will be conducted.*
8. *Mr Le Roux was assisted by Mr Victor Mathale (then Director: Foreign Services Management) now Director: International Operations in forming a decision to support the company or not. According to Ms Smillie, Mr Mathale was newly appointed in this post when he assisted Mr Le Roux.*
9. *Although e-mail correspondence from Mr Le Roux indicates that Mr Yusif Timol (**dti** Foreign Economic Representative in Iran) was copied during the process to issue the letter, the Iran Office was closing down at the time the letter was issued and Mr Timol was transferred to London where he is now stationed.*
10. *The investigation team should also consult with Mr Yunus Hoosen (then acting Chief Director: Investment), now Chief Director: Investment.*
11. *It is unknown if the 360 Aviation project was briefed into TISA's plan, especially since sanctions were instituted against Iran for a number of years covering the time period the letter of support was issued.*
12. *Ms Smillie does not know what process was followed in 2008 when similar letters to 360 Aviation were issued and signed by the previous DDG: TISA, Mr Iqbal Meer Sharma.*

11.14 We consulted with Mr Victor Mathale – Director Foreign Service Management: TISA on 09 May 2012. Mr Mathale was provided with a copy of the consultation notes and he accepted it as a true reflection of our consultation/discussion with the following change as reflected in red below: **(Annexure A31)**

1. *Mr Riaan Le Roux, in his capacity as acting DDG: Trade and Investment South Africa (TISA), had a meeting with Mr Herman Moeketsi on Friday 08 April 2011. Mr Mathale was not part of the meeting or discussions during the meeting.*

2. *After the meeting Mr Le Roux introduced Mr Moeketsi to Mr Mathale indicating that 360 Aviation wanted a letter of support for trading purposes with the Islamic Republic of Iran. I do not recall Mr Moeketsi mentioning 360 Aviation. He mentioned their business interests in Iran relating to selling helicopters.*
3. *Mr Moeketsi spoke in general about 360 Aviation's operations in Iran and was not specific about the new developments in Iran on which the new letter of support was required.*
4. *Mr Mathale requested Mr Moeketsi to provide an update regarding 360 Aviation's involvement in Iran.*
5. *According to Mr Mathale he received such a letter from Mr Moeketsi and attached it to his e-mail forwarded to Mr Le Roux on 11 April 2011. The letter was attached as file "Letter Iran 2. doc."*
6. *During consultation we showed Mr Mathale a copy of the letter "Letter Iran 2.doc." that Mr Le Roux provided us with. This letter was from Mr Barry H Oberholzer Jr providing an update regarding 360 Aviation's involvement in Iran. According to Mr Mathale he never saw such a letter, the letter he reacted on was from Mr Moeketsi and he never met or had any conversation with Mr Oberholzer.*
7. *Mr Mathale indicated that the original email he forwarded Mr Le Roux should be archived and that he will look for it and forward it to us.*
8. *Mr Mathale stated that he did not support the issuing of a new letter to 360 Aviation as he believed the old letters was still valid. He indicated that he believed 360 Aviation should have been referred to the South African Embassy in Teheran and as such included it in his email to Mr Le Roux on 11 April 2011.*
9. *Mr Mathale was aware of the sanctions against Iran and specifically the "Everything but Arms" ban.*

11.15 Mr Mathale did not provide us with the letter he claims he received from Mr Moeketsi although he indicated during consultation that he would do so. Mr Mathale could not provide us with the letter or e-mail he referred to although we requested it from him. According to him it should be archived on **the dti** e-mail server. We did, however, confirm through physical verification on **the dti** e-mail server during consultation with Mr Le Roux that the email and letter he referred to was received from Mr Mathale and is saved on **the dti** e-mail server.

11.16 Mr Mathale provided us with a sworn statement/affidavit on 15 May 2012 stating that during his career of 15 years at **the dti** he did not engage in any activity that would have resulted in him obtaining any financial gain, including the issuing of the letter of support to 360 Aviation, on 12 April 2011 by Mr Le Roux. According to the sworn statement/affidavit from, Mr. Mathale he is not aware of any financial gain that could possibly have emanated from the issuing of the letter. **(Annexure A32)**

11.17 We consulted with Mr Riaan Le Roux, on 09 May 2012. Mr Le Roux was provided with a copy of the consultation notes and responded with an updated version of the consultation notes on 21 May 2012, as a true reflection of the discussions that took place during consultation. The updated consultation notes reflect the following: **(Annexure A33)**

1. *On 4 February 2011, Ms Talitha Setsbedi (Executive Assistant) forwarded an e-mail to Mr Le Roux from Mr Barry Oberholzer (Managing Director: 360 Aviation. In the e-mail Mr Oberholzer requested that a letter of support be issued to 360 Aviation based on an earlier arrangement with the previous DDG of TISA, Mr Iqbal Sharma.*
2. *Mr Le Roux stated that he was not part of the process when the previous letters were issued by the previous DDG, Mr Sharma in 2008.*

3. *Mr Le Roux immediately requested Ms Setsbedi to request 360 Aviation to provide him with the letters that the previous DDG signed to support 360 Aviation.*
4. *Nothing transpired between February and April 2011.*
5. *On 4 April 2011 Mr Le Roux was contacted by Mr Herman Moeketsi an equity partner in 360 Aviation with PDF format copies of the letters issued by Mr Sharma earlier in 2008.*
6. *On 7 April 2011 Mr Le Roux forwarded an e-mail to Mr Moeketsi, copying the then Acting Chief Director Investment, Mr Yunus Hoosen and **the dti's** Foreign Economic Representative in Iran Mr Yusuf Timol. In the e-mail Mr Le Roux pointed out that the previous letters should be adequate for the purpose intended and that **the dti's** office in Teberan will support them.*
7. *Mr Le Roux asked Mr Victor Mathale (then Director: Foreign Services Management) to assist in forming a decision to support the company or not. He asked Mr Mathale as Mr Mathale at that point in time was the most senior person available to assist. According to Mr Le Roux he could not consult the then Acting Chief Director Investment, Mr Yunus Hoosen as he was in China and did not approach the then Acting Chief Director: Exports, Ms Pumla Ncapayi as he believed it was an investment matter and not an export matter.*
8. *On 11 April 2011, Mr Mathale forwarded a recommendation to Mr Le Roux by e-mail summarizing Mr Mathale's interaction with 360 Aviation. Attached to the e-mail was a signed letter by the MD of 360 Aviation, Mr Barry H Oberholzer Jr, explaining their current and future objectives in Iran. The letter was attached to the e-mail as file "Letter Iran2.doc.")*
9. *On the basis of this a letter of support was drawn up and signed by Mr Le Roux in good faith hoping to assist a South African company doing business in a difficult country.*
10. *According to Mr Le Roux he based the issuing of the letter of support to 360 Aviation on the future opportunities of the company as stated in the letter by Mr Oberholzer and not the part in the letter where Mr Oberholzer stated that in the past 360 Aviation had been successful with the delivery of Bell 212 HP Helicopters and spare parts to Iran. According to Mr Le Roux this was an oversight by him at that point in time and he also believe that he was misled by the letter pertaining to the future operations of 360 Aviation in Iran.*
10. *Mr Riaan Le Roux, in his capacity then as acting DDG: Trade and Investment South Africa (TISA), signed and issued the letter of support to 360 Aviation on 12 April 2011 for government support to assist in expanding trade and investment relations trading purposes with the Islamic Republic of Iran.*
11. *The letter indicated that the South African government supported the expanding trade and investment relations with the Islamic Republic of Iran. According to Mr Le Roux he did not consult with the DG (Mr Lionel October) or the Minister (Dr Rob Davies) or any other Government department or the Office of the President to confirm such support.*
12. *According to Mr Le Roux he takes full responsibility for issuing and signing the letter and indicated that **with hindsight he would not have done so or would have followed a different process.** Contextually he also pointed out that at that time every senior post above Director was filled by officials acting in that position. At that stage TISA did not have any Chief Directors other than himself. Currently the Division have 4 permanently appointed Chief Directors. This serious human- and leadership shortage did impact on the Division.*
13. *According to Mr Le Roux he did not consult with Ms Smillie the then acting COO: TISA as it was an investment issue and not an operational one.*
14. *There is no standard operating procedure or policy for the issuing of letters of support.*
15. *A standard operating procedure/policy is now been developed and carries the support of the Minister.*
16. *The informal process followed in the past and for the issuing of the letter to 360 Aviation on 12 April 2011 included the following:*

- a. *Confirming the specific business operations of the requesting company in writing.*
 - b. *Objective and independent review and recommendation of a second party not issuing and signing the letter.*
 - c. *“Due diligence”*
17. *Mr Le Roux can remember 4 or 5 previous instances where such letters of support, or indirect support by assisting companies on the ground in countries where it is difficult to do business without Government assistance, were issued in the previous three (3) years. Two of them very successful, the Bateman Construction/Civil Engineering in Russia and the Pamodzi group obtaining the Antonov Agency for servicing all Antonov aircraft in Africa in South Africa.*

11.18 On 15 May 2012 we received an affidavit/sworn statement from Mr Le Roux in which he solemnly declared that he has not derived any financial benefit at any time, directly or indirectly, by signing a letter of support on 12 April 2012, to 360 Aviation for their projects in Iran. **(Annexure A34)**

11.19 On 09 May 2012 we also consulted with Mr Yunus Hoosen – Chief Director Investment Promotion. Mr Hoosen was provided with a copy of the consultation notes and confirmed same as a true reflection of our discussion. Mr Hoosen was the Acting Chief Director Investment in February/April 2011 when the letter of support was issued to 360 Aviation by Mr Le Roux. As per consultation notes: **(Annexure A35)**

1. *Mr Hoosen was not part of the process when the previous letters of support to 360 Aviation were issued in 2008 by the previous DDG of TISA: Mr Iqbal Sharma and can therefore not comment on the process followed.*
2. *Mr Hoosen, although copied in on one (1) e-mail by Mr Le Roux, was not part of the process when Mr Le Roux issued a letter of support to 360 Aviation on 12 April 2011, and can therefore not comment on the process followed.*
3. *According to Mr Hoosen he was overseas in China when Mr Le Roux copied him in on the e-mail and could therefore not provide any response to Mr le Roux.*
4. *Mr Hoosen did not meet with any representative from 360 Aviation.*
5. *Mr Hoosen indicated that it is not the mandate or core function of **the dti** to issue any letters of support to any individual company, person or organisation and therefore there is no official policy or standard operating procedure.*
6. *Mr Hoosen however said that should he issue such a letter he would have followed the following process:*
 - *Proper validation of company, directors, shareholders, contacts and addresses.*
 - *Proper CIPRO check.*
 - *Credibility, liquidity and proper due-diligence.*
 - *Complete and detail profile of company, directors and shareholders.*
 - *Detail and proper understanding of developments, operations, services and products the letter of support is required for.*
 - *Consultation and input from senior **dti** officials, management, the DG, Minister and other government departments such as Office of the Presidency and Regulatory Authorities such as the Defence Export Council.*
 - *Consultation with **the dti** unit responsible for International Trade Economic Development, in this instance Mr Daryl Hudson, who is responsible for Government to Government Relations between South Africa and Iran and who will know of all industrial sanctions imposed against Iran.*
7. *Mr Hoosen indicated that we should also consult with Mr Hudson during our investigation.*

11.20 We could not consult with Mr. Hudson during the investigation. We received the following e-mail correspondence from Mr. Victor Mathale regarding the involvement of Mr. Daryl Hudson during the process of issuing the letter of support to 360 Aviation. **(Annexures A36 to A38)**

1. *Like I said, I have just arrived from NEPAD and only met Mr Moeketsi after he being introduced by Riaan. The issue relating Darrel being consulted did not cross my mind and I did not know then that Darrel was the Director for the Middle East hence I recommended to Mr Moeketsi to approach the South African Embassy in Teheran. I would not know whether Riaan consulted Darrel on this matter.*
2. *If I had met and knew that Darrel was the Director for the Middle East, he could have warned me or reminded me of the issues at play. I am not aware that Darrel warned Riaan about issuing of the letter. There was no meeting or an encounter between me and Darrel.*
3. *I personally knew about the sanctions against Iran and I have stated that in my meeting with you. The EBA Principle was in place and I know its implications. Like I said I have not met Darrel prior and during the process and no discussion was ever held regarding the issue of the letter.*

11.21 Mr. Le Roux confirmed via email on 10 May 2012 that he did not consult Mr. Daryl Hudson during the process of issuing the letter of support to 360 Aviation. **(Annexures A36 to A38)**

11.22 On 11 May 2012, Mr. Daryl Hudson responded via email to enquiries regarding his involvement in the process regarding the issuing of letters of support to 360 Aviation stating that

... Apart from what I read in the media, I do not have much further information on the above.

The company in question did approach us for a letter in January 2008. Attached is the letter we provided them at the time.

11.23 Mr Hudson provided us with a copy of **the dti's** response to 360 Aviation dated 11 January 2008, addressed to Mr. Marcel Oberholzer, Managing Director, 360 Aviation. In the response **dti** warned 360 Aviation against the sanctions in Iran. However, 360 Aviation continued to pursue letters of support and received same in 2008 and 2011 from Mr Sharma and Mr Le Roux respectively **increasing the risk that South Africa might be exposed for sanction busting deals with Iran**. As per the previous response to 360 Aviation in January 2008 from the Chief Director: Bilateral Trade Relations - ITED, Mr. Mudunwazi Baloyi: **(Annexure A38)**

IRANIAN TRADE RELATIONS

1. *The Department of Trade and Industry (**the dti**) hereby wishes to acknowledge your e-mail of 8 January 2008 regarding the above.*
2. ***The dti would like to point out UN Security Council (UNSC) Resolution 1737 of 2006 and 1747 of 2007 (including its Annexes), which Three 60 Aviation should be mindful of when deciding to have any trade relations with any***

Iranian companies or persons. These resolutions can be accessed at: <http://www.un.org/documents/scres.htm>, alternatively it can be made available by means of e-mail.

3. *The dti cannot prohibit South African companies to trade with Iranian companies and/or persons unless those companies and/or persons are specially mentioned in any of the UNSC Resolutions and its Annexes, mentioned above. Based on the information the dti has, Iran Air is not listed in terms of these resolutions; this may however change at any time, should new UNSC Resolutions be adopted.*
4. *In addition to those mandatory UNSC sanctions, the EU and the United States of America have existing civil aviation sanctions on Iran, which Three 60 Aviation should be aware of, especially relating to the commercial risks involved. In this regard the origin of aircraft and parts should be borne in mind.*
5. *There have also been instances of non-payment in both South-Africa and Iran for goods and services, in spite of the fact that these were legal imports and exports.*

11.24 We consulted with **the dti** Chief of Staff, Mr Moosa Ebrahim, on 14 May 2012. As per consultation with Mr Ebrahim: **(Annexure A39)**

1. *Mr Ebrahim indicated that in his career, while he worked under three (3) ministers, he cannot recall a single letter of endorsement where the Office of the Ministry or the dti has endorsed a private company. He was therefore surprised when it came to light that Mr Le Roux has issued such a letter to 360 Aviation in April 2011.*
2. *From time to time there are requests from companies or NGO's to obtain letters of support from the dti, sometimes up to approximately 30 a week, but it is dti's policy to refrain from such letters and to avoid it at all cost.*
3. *It is dti's policy and underwritten rule to stay totally neutral and the dti never issued such letters. Although operational departments and directorates within the dti do have some latitude to run their operations independently they do have to adhere to the general rules of the dti.*
4. *Should such a letter be issued, especially in light of the political environment and interest, one should obtain guidance from the Executive Board of the dti, and the general support from the DG, the Minister and Government,*
5. *Mr Ebrahim believe the letter and the subsequent media coverage and possible linking of the letter to bribery and sanction-busting deals had a negative impact on the reputation and image of the dti and the RSA government in general.*
6. *Mr Ebrahim emphasised that because there is no certainty of the purpose, background, or future litigation involving any request, it is not a dti function or mandate to issue such letters and therefore there is no standard operating procedure or policy.*

11.25 We were not furnished with any particular reference, answers or reasons relating to the following questioned posed:

- Why the letter of support to 360 Aviation, dated 12 April 2011, was issued in the light of the fact that **the dti** was closing down its foreign economic office in Iran at the time the letter was issued and signed by Mr. Le Roux; and
- Whether the future operations of 360 Aviation as per the letter from Mr. Oberholzer, dated 08 April 2011, was briefed about TISA's project plan.

11.26 We confirmed through company and individual searches that there are no business links or conflicts of interest between 360 Aviation, Mr. Le Roux, Mr. Sharma, Mr. Mathale or Mr. Timol. Our searches revealed as follows: **(Annexures A40 to A44)**

Company/Individual	Active Directors	Id Number	Business Interests	Registration number
360 Aviation	Barend Hendrik Oberholzer	83090115283085		2007/019710/07
Le Roux Adriaan Jacobus		5904265099083	None	
Sharma Iqbal Meer		6703215788087	Issar Investment Holdings	M2011/001160/07
			Transnet	M1990/000900/06
			Nulane Investments 204	2008/020988/07
			Appledore Investments	2006/015185/07
			Mufase Investments	2006/014732/07
			Meer Sharma and Associates	1994/040814/23
			GMT Concepts	2009/021921/07
Mathale Wilfred Victor		5204155867081	Southern African International Passenger and Association	K2012/082247/08
			Umthwentwe Trading and Projects	K2012/017865/07
			Rendigraph	2009/007150/07
			Purple Sunshine Trading 4	2008/024240/07
			Setlalemodise Transport	2004/031620/07
			Motholo Retail Enterprises	2006/032232/07
			African Spirit Trading 206	2006/007378/07
			Westbridge Trading	2006/003063/07
			Independent Fingerprint Information Systems	2003/017452/07
			Business Litigation Management	2002/024573/07
			Nescad Africa	2004/063328/23
			Naicco Systems	2004/033019/07
			Modisi Comfort and Logistics	2007/020850/07
			Kareenbosch Petroleum Investments	2010/021711/07
			ADF Telecoms SA	2011/007967/07
Timol Yusuf Ismail		7305255189082	City Square Trading 905	2007/007004/07
			Golden Ribbon Trading 155	2005/022722/07
			Execucabs	1998/030501/23