

**IN THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE DIVISION, CAPE TOWN**

**CASE NO: 15584/21**

**DELOITTE & TOUCHE**

Intervening Applicant

In the matter between:

**STEINHOFF INTERNATIONAL HOLDINGS  
(PTY) LTD**

Applicant

and

**ALL SCHEME CREDITORS OF STEINHOFF  
INTERNATIONAL HOLDINGS (PTY) LTD**

Respondents

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

**JAN FREDERIK GARVELINK**

hereby state under oath as follows:

- 1 I am a Dutch advocate (*advocaat*), and a member of the Amsterdam Bar, practising as such at Blaisse Lawyers – Amsterdam, situated at Olympisch Stadion 38, 1076 DE Amsterdam, Postbus 75573, 1070 AN, Amsterdam.

- 2 The facts set out in this affidavit are true to the best of my belief and fall within my personal knowledge.
  
- 3 I confirm that the letter referred to by Deloitte SA in its founding affidavit in the above application, and attached to that affidavit and hereto as “**DSA5**”, was drafted and signed by me and I confirm its contents.

---

**JAN FREDERIK GARVELINK**

# Blaisse

Webber Wentzel  
Attn. Mrs. Kathryn Gawith  
PO Box 61771 Marshalltown  
Johannesburg, 2107  
SOUTH AFRICA

Date  
27 September 2021  
Your reference

Our reference  
18020916

**Re: Deloitte SA regarding Steinhoff s155 application**

Olympisch Stadion 38  
1076 DE Amsterdam  
PO box 75573  
1070 AN Amsterdam  
T +31(0)20 305 72 30  
F +31(0)20 305 72 40  
jan.garvelink@blaisse.nu  
www.blaisse.nu

Dear Kathryn,

## **I. PROFESSIONAL BACKGROUND AND QUALIFICATION**

1. As you are aware, I am a Dutch advocate ('advocaat') and have been a member of the Amsterdam bar since 1996. I act for the South African Deloitte member firm in the Steinhoff case.
2. I have been requested by the South African Deloitte member firm to set out some basic principles of Dutch law regarding the suspension of payments (the "SoP" or SoP "proceedings") process in general, and specifically with regard to Steinhoff International Holdings N.V., a public company (*naamloze vennootschap*) incorporated and existing under the laws of the Netherlands, having its official seat in Amsterdam, the Netherlands, and registered with the Dutch Trade Register under number 63570173 ("SIHNV"). In doing so I will rely on Dutch law (especially the Dutch Bankruptcy Act, *Faillissementswet* ("DBA")), European law, public court documents with regard to the SoP of SIHNV and on documents made public by SIHNV, including its composition plan. These are available on the website <https://www.steinhoffsettlement.com/>.
3. I will endeavour to be concise and to adopt a practical approach. I will steer clear of non-Dutch, specifically South African, law but will indicate where the different systems may intersect if that is useful.

## II. GOAL AND BASIC LEGAL STRUCTURE OF DUTCH LAW SUSPENSION OF PAYMENTS PROCEEDINGS

Date  
27 September 2021  
Your reference

4. Dutch suspension of payments proceedings (*surseance van betaling*) are court-supervised reorganization proceedings laid down in the DBA. SoP proceedings are recognised in the countries that are party to the EU Insolvency Regulation (Recast).<sup>1</sup> This happens automatically: no additional formalities are needed.<sup>2</sup> The Dutch courts have exclusive (main) jurisdiction over SIHNV as SIHNV is a Dutch company with its statutory seat in The Netherlands.<sup>3</sup>
5. The main characteristics of SoP Proceedings are:
- a) court-supervision throughout;
  - b) reorganization proceedings, as opposed to liquidation proceedings (*faillissement*);
  - c) a temporary suspension (*moratorium*) of unsecured, non-preferential creditors (the "SoP creditors"); and
  - d) the ability to restructure debts by implementing a composition plan (*akkoord*) through a mechanism in which a majority of the creditors can bind a dissenting minority (a so-called cram down).
6. Whilst bankruptcy proceedings primarily focus on the liquidation of the assets of the debtor, the SoP is intended to give the debtor *temporary* relief from actions of creditors, because if the SoP is successful a restructured and solvent company emerges from the SoP. The SoP enables the debtor to propose a composition plan to its creditors and so to reorganize its debts. The main aim is to prevent liquidation. The SoP will facilitate the debtor – once the composition plan is adopted and sanctioned – to continue its business and the value of the business is

Our reference  
18020916

---

<sup>1</sup> In full: Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast).

<sup>2</sup> Since 1 January 2021 one formal out-of-court restructuring option exist in the Netherlands, however does not benefit (yet) from such automatic recognition.

<sup>3</sup> Parties wishing to contest the authority of the Dutch Courts in a SoP can do so. See below for a brief description.

preserved for the benefit of its stakeholders (employees, shareholders, suppliers, customers etc.).

7. A debtor can apply for an SoP if the debtor foresees that it will be no longer in a position to *fully* pay its long-term debts and feels that a composition with its creditors will be beneficial to all stakeholders. The debtors' debts do not necessarily need to be due and payable nor does it necessarily mean that the debtor is "insolvent" at the time of application. It rather means that the debtor is in some form of actual or anticipated financial distress.<sup>4</sup> The debtor requesting the SoP presents a composition plan to its creditors for them to vote on whether to approve it or not. If the composition plan is adopted by the SoP creditors and sanctioned by the court (the "Court"), the debtor will then need to comply with the composition plan by executing the stipulated provisions and thereafter it will resume its going concern operation. This has the benefit of providing certainty that the debtor can continue its operations in the long term. The composition plan is adopted in case a majority of the SoP creditors votes in favour.<sup>5</sup> The interests of dissenting and non-participating creditors are protected at the sanction hearing. The Court has wide discretionary powers to reject the sanctioning of the composition plan. There are also certain mandatory grounds on which the Court must refuse the sanctioning of the composition plan.

Date  
27 September 2021  
Your reference

Our reference  
18020916

---

<sup>4</sup> See B. Wessels, *Surseance van Betaling*, 8003: “*Suspension of payments serves to prevent a debtor who – due to certain circumstances – is in distress or otherwise short of cash and has difficulty obtaining credit, is declared bankrupt, with the result that [the] company ceases to exist, is forced into liquidation and, as a rule, capital value is lost. Preventing this scenario is an important objective of the [suspension of payments]; the aim is the preservation of the estate and possibly the continuation of the business, based on the expectation that not only the debtor benefits, but also that there is a prospect that the creditors will get a better recovery compared to a bankruptcy (District Court of Arnhem June 28, 1961, NJ 1961/540; District Court Dordrecht March 22, 1962, NJ 1962/533. Leuftink, Surseance van Betaling (1995), p. 39, characterizes the suspension of payments “as a legal-economic instrument for survival, a means to avoid voluntary or forced liquidation or bankruptcy, aimed at the recovery of capital and future profit capacity”.*”

<sup>5</sup> The following majority is required for the adoption of a composition plan: an ordinary majority of the SoP creditors present at the voting hearing who hold at least 50% of all SoP claims in the SoP proceedings (268 DBA). If the required majority in amount is not achieved, the Court can determine that the composition plan shall nevertheless be deemed to be adopted if at least 75% of the SoP creditors in number have voted in favour and the rejection of the composition plan is – in essence – a result of creditors voting unreasonably (268a DBA). If there is a Committee (see below) 75% of attending committee members must cast a vote in favour of the composition plan in order for the composition plan to be adopted at the voting hearing.

8. An overriding principle of the DBA is a pari passu treatment of the SoP creditors. The DBA also recognises that a fair and equitable treatment of SoP creditors is a necessity so that differentiation between SoP creditors - without justification - is not allowed.

Date  
27 September 2021  
Your reference

Our reference  
18020916

### III. BRIEF DESCRIPTION OF THE PROCESS

9. I will set out the various steps of the SoP process in a case such as this one, where a committee of representation (the "Committee") is appointed pursuant to 281a DBA. I will first set out the general rule, then provide some basic facts pertaining to this specific case.

*Company files SoP with the Court.*

10. A company that wants to enter into a SoP needs to file a request with the Court (214(1) DBA). The Court will rule on the request and review whether the legal requirements are met. The opening of the SoP proceedings will be published by the Court in the public insolvency registers (216 DBA).
11. As it had previously announced,<sup>6</sup> SIHNV filed its request to open SoP proceedings on 15 February 2021. With this request SIHNV also filed a draft composition plan to the SoP creditors. The creditors were aware of the filing of the SoP proceedings and the filing of the draft composition plan through public websites of SIHNV, website of the Court, national and international newspapers and also through press statements by SIHNV.

*The Court grants the request, appoints administrators and supervisory judges*

12. The Court usually grants the request provisionally on the same date and it appoints one supervisory judge and one administrator (215 (2) DBA and 223a DBA).

---

<sup>6</sup> SIHNV published a term sheet in October 2020 indicating it intended to implement the global settlement by an inter-conditional composition plan by (i) filing for an SoP proceedings and offering a composition plan and (ii) a pre-prepared compromise plan pursuant to section 155 of the Companies Act 71 of 2008 in South Africa by SIHPL.

# Blaisse

13. The administrator has the task to administer, together with the board, the debtor's business during the suspension of payments and to pay attention to the rights and interests of the involved stakeholders.
14. The supervisory judge advises the administrator on issues that may occur during the SoP proceedings.
15. Given the importance, size and complexity of this case, the Court appointed not one but two experienced supervisory judges and two seasoned and experienced administrators ("*bewindvoerders*").

Date  
27 September 2021  
Your reference

Our reference  
18020916

## *Objections against granting of the SoP*

16. Within eight days after the day on which an SoP was granted, each creditor may file an appeal against the decision to grant the SoP if that creditor feels the Court did not have international jurisdiction (215a DBA).

## *Draft composition plan*

17. The Company has to publish a draft composition plan with the Court's register. Each creditor is able to consult the Court's register (215 (1) and 216 DBA) free of any costs.
18. In this case a draft composition plan was filed with the Court's register as of 15 February 2021 and has been published on <https://www.steinhoffsettlement.com/>.
19. Shortly after the opening of the SoP proceedings, a vote on the draft composition plan is scheduled and if the composition plan is adopted by the SoP creditors and sanctioned by the Court the SoP proceedings will terminate as soon as the sanctioning order has become final and effective (i.e. after lapse of the appeal period).
20. Each creditor (and/or interested party) has had the opportunity to consult the content of the Composition Plan.

# Blaisse

## *Possible appointment of a Committee*

21. If there are over 5000 SoP Creditors, the administrators can apply to the Court for a Committee to be appointed (281a - e DBA). This Committee then considers the composition plan and votes on it. Creditors can oppose the appointment of such Committee before the Court.<sup>7</sup>
22. The administrators filed a request with the Court to appoint a Committee on 23 April 2021.
23. Opposition against the appointment of the Committee was raised by Lancaster and by Hamilton. Papers were filed and there was a hearing before the three judge panel on 19 May 2021. In its decision of 28 May 2021 the Court appointed the Committee. This decision was appealed by Hamilton (Lancaster did not appeal) on 4 June 2021 but was declined by the Court of Appeal of Amsterdam (also a three judge panel) on 29 June 2021. No appeal was lodged with the Supreme Court.
24. The Committee consists of 15 members. Four of them are independent members of known experience and reputable track record in the (international) insolvency field. One of the independent members is a South African law professor, Ms Kathleen van der Linde of the University of Johannesburg. The other 11 committee members represent the various creditors. Several of the active claimant groups representing South African investors and asset managers, including Hamilton<sup>8</sup> and G&E (representing the Public Investment Corporation (PIC) were represented on the Committee.

Date  
27 September 2021  
Your reference  
  
Our reference  
18020916

## *Report of the Administrator, discussion in the Committee*

25. Prior to the voting hearing on the composition plan, the administrator(s) must file a report including an advice to the creditors on the composition plan and describing the process to the Court. (265 (1) DBA). Other interested parties can also share views with the administrators, Court and

---

<sup>7</sup> I refer to the expert opinion of Prof. Mr. N.E.D. Faber on the appointment and powers of the Committee (para. 9, 16, 36, 37, 39-45, 69)

<sup>8</sup> The Hamilton member was appointed later, as Hamilton had opposed the Committee.



Committee or ask to be heard by the Committee. The composition plan is also discussed within the Committee.

**Date**  
27 September 2021  
**Your reference**

26. This advice was given by the administrators on 30 August 2021.<sup>9</sup> The administrators engaged independent financial advisors from Ernst & Young Strategy and Transactions ("EY") to assist them in doing so (see below). The administrators' advice was positive. A copy of their report is attached as "annex A".

**Our reference**  
18020916

27. The Committee heard various parties, including creditors opposing the composition plan at the time. A copy of the report of the Committee dated 8 September 2021 evidencing this is attached as "annex B".

### *The Committee votes in a public Court hearing*

28. The vote takes place in a creditors' meeting (i.e. the voting hearing) in the Court, chaired by the supervisory judges, where the vote is first deliberated. Parties can file papers or be heard during the creditors' meeting and prior to the vote.
29. This session was led by the supervisory judges on 8 September 2021. The Committee voted in favour of the composition plan unanimously.

### *Sanctioning hearing*

30. Once the Committee has voted, the supervisory judges immediately set a date for the Court to hold a public hearing on the sanctioning ("*homologatie*") of the Composition Plan (271 DBA).
31. Prior to the sanctioning hearing the supervisory judges reported their findings to the Court, also including their positive advice to sanction the composition plan.
32. This hearing was held on 16 September 2021. Lancaster filed papers opposing the composition plan prior to the commencement of the sanctioning hearing, but that no other party opposed sanctioning. At the sanctioning hearing Lancaster did not appear in Court and as a

---

<sup>9</sup>[https://www.steinhoffsettlement.com/media/3565094/2021.08.30\\_report\\_section\\_265\\_\\_1\\_\\_dba.pdf](https://www.steinhoffsettlement.com/media/3565094/2021.08.30_report_section_265__1__dba.pdf)

consequence the opposing papers it filed were not allowed by the Court as these were not filed in compliance with the DBA.<sup>10</sup>

Date  
27 September 2021  
Your reference

## *Sanctioning order*

Our reference  
18020916

33. After the vote, the Court (not the supervisory judge) needs to independently decide whether it will sanction the composition plan. Interested parties could oppose this (272 DBA) in the sanctioning hearing that was held on 16 September 2021.
34. The Court has given its decision on the sanctioning of the composition plan on 23 September 2021. The Court has given its reasons with the decision. This decision is attached as Appendix C.
35. The DBA provides for mandatory grounds for the rejection of the composition plan. The Court also has a discretionary power to reject the composition plan on other grounds.
36. The Court will, for example, not sanction the composition plan if certain elementary requirements have not been met, such as the requirement that the amount offered to the SoP creditors under the composition plan may not be less than the expected realization in liquidation proceedings.
37. As you can see in the decision, the Court has weighed the various grounds that may lead to it declining to sanction the composition plan and has rejected these. I refer to the Court's decision for its reasons. The Court then proceeds to sanction the composition plan.
38. Prominent among the issues the Court had to weigh, was the quality of the offer made in the composition plan. The Court finds the offer made is a realistic one, and finds the prospects of creditors under the composition plan compare favourably to a liquidation scenario (see paragraphs 5.7 and 5.8 of the sanctioning order).
39. The Court also needs to consider whether there is sufficient certainty that the composition plan, once in force, can actually be executed by the company. The Court finds this is the case (paragraph 5.9).

---

<sup>10</sup> This is evidenced by the Court's order of 23 September 2021 (see below).

40. Now the Court has sanctioned the composition plan, SIHNV has been restructured from that moment on the terms as set out in the composition plan.<sup>11</sup> Current claims and (contingent) claims (such as the MPC's) are crammed down and replaced by - only - the (payment) obligations following the composition plan. Article 273 of the DBA states that; "*A composition plan which has been sanctioned shall be binding on all SoP creditors.*"
41. Upon a composition plan becoming final and effective following its adoption by creditors at the voting hearing and its sanctioning by the court, the composition plan is binding on all SoP creditors (including dissenting and non-participating creditors), and the cram down becomes effective. By operation of law the cram down applies to all SoP creditors and therefore the effect of the cram down is not limited to certain groups of creditors. Furthermore, SoP creditors cannot evade the statutory cram down by opting out of the compromise contained in the sanctioned composition plan.
42. Upon the composition plan becoming binding and effective, the settlement contained in the composition plan is final and expunges or renders unenforceable any residual part of an ordinary unsecured claim which remains unpaid under the terms of the composition plan. From a Dutch law perspective, no recourse may be taken against any asset of the company (irrespective of whether such assets are located in the Netherlands or abroad) in order to enforce payment of any such expunged/unenforceable residual part of an ordinary unsecured claim.
43. Now the Court has sanctioned the composition plan, SIHNV is on its own feet again, with the important proviso that it *must* execute the composition plan in accordance with its terms, including the obligation to make the necessary cash payments or other contribution(s) in accordance with the composition plan.

Date  
27 September 2021  
Your reference

Our reference  
18020916

---

<sup>11</sup> That is, if there is no appeal. See below.

## IV. DUE PROCESS: SAFEGUARDS FOR CREDITORS IN THE SOP

Date  
27 September 2021  
Your reference

44. I now proceed to address some of the safeguards for creditors built into the Dutch process.
45. I think it is useful to note upfront that creditors (and other stakeholders) can make themselves heard throughout the SoP process at any moment during the SoP proceedings. They can access (1) the court, (2) the supervisory judge(s), (3) the administrator(s) and (4) (if appointed) the committee of representatives. All of these are bound by law to take the position of creditors into account and treat them fairly and equally. Note that a creditor who feels it is not heard or not treated fairly can at all times during the SoP proceedings file a request with the Court to terminate the SoP (242 DBA).
46. The SoP has been in process since February 2021. As I have described above, several parties, notably Hamilton and Lancaster, have used procedural options open to them during the process, but did in the end not oppose sanctioning of the composition plan.
47. In addition, it is clear that many of the creditors, either through their being represented on the Committee, or through contact with either the Committee, the administrators or otherwise were heard, either in person or through correspondence.

Our reference  
18020916

### General – Introduction

48. The legal structure of the SoP is such that it includes numerous safeguards to ensure the rights of creditors are protected. The law provides an array of safeguards for stakeholders that ensure transparency of the process, acknowledgment of their position, a hearing and fair and reasonable treatment.
49. Thus, (i) creditors are ensured access to the Court, (ii) the process is supervised by (independent) supervisory judges, (iii) case management by (independent) court-appointed administrators, (iv) appointment of a Committee in specific defined circumstances, (v) involvement by the Court (a different panel, not including the supervisory judges) to decide upon various requests and sanctioning of the composition plan, (vi)

voting by 75% majority of the Committee members and, (vii) appeal rights against certain decisions by the Court.<sup>12</sup>

Date  
27 September 2021  
Your reference

50. I will not describe each and every avenue, but will thematically focus on some of the protections as offered to SoP creditors.

Our reference  
18020916

51. These safeguards align well with international principles of insolvency law and best practice recommendations contained in, inter alia, the Principles of European Insolvency Law and the UNCITRAL Legislative Guide on Insolvency Law. I understand that South Africa adopted the UNCITRAL Model Law on Cross-Border Insolvency.

## Objection against granting of the SoP

52. Within eight days after the day on which an SoP was granted, each creditor may file an appeal against the decision to grant the SoP if that creditor feels the Court did not have international jurisdiction (215a DBA).

53. To my knowledge such appeal was not filed by a SoP creditor in respect of SIHNV.

## Termination of the SoP once commenced

54. A SoP will be terminated either (i) upon request of one or more of the SoP creditors, (ii) upon request of the administrator(s), (iii) upon recommendation of the supervisory judges or (iv) by the Court *ex officio*:
- a) if the debtor has acted in bad faith in administering the estate during the suspension of payments;
  - b) if the debtor attempts to prejudice its creditors;
  - c) if the debtor acts without the due authorisation of the administrators;
  - d) if the debtor fails to do as required by the Court or the administrators;

---

<sup>12</sup> The Dutch Court system has three layers: the District Court (*Rechtbank*), the Court of Appeal (*Gerechtshof*) and the Supreme Court (*Hoge Raad*). A party does not need prior permission to file an appeal.

# Blaisse

- e) if the state of affairs of the estate appears to be such that it is no longer desirable to maintain the SoP or if it is not anticipated that the debtor will be able to settle with its creditors in due course.
55. As an additional safeguard to these creditors' rights, the law holds that in the cases referred to in the previous paragraph the administrators must apply for termination of the SoP. Creditors can also request the Court to terminate the SoP.
56. In the SoP of SIHNV a creditor filed requests to terminate the SoP. The Court scheduled hearings and gave parties time to make their arguments (these hearings are public). The creditor, however, withdrew the request(s), hence the Court did not have to rule on the request.

Date  
27 September 2021  
Your reference

Our reference  
18020916

## At the sanctioning stage

57. Significant protection is offered to all creditors – in particular to dissenting and non-participating creditors – at the hearing where the composition plan (if adopted by the requisite majorities) will be sanctioned (the "Sanctioning Hearing"). The DBA provides mandatory grounds for the rejection of the composition plan. The Court also has a discretionary power to reject the composition plan on other grounds. Any significant irregularities may be raised at the Sanctioning Hearing against the sanctioning of the composition plan.
58. In the event, sanctioning was not opposed by creditors. As mentioned, Lancaster did file papers, but did not appear. I refer to the attached decision of the Court of 23 September 2021 for more detail.

## Supervision by the Supervisory Judges

59. When the Court opens the SoP proceedings it appoints an impartial judge to supervise the SoP Proceedings. Usually, one supervisory judge is appointed. In the SoP proceedings of SIHNV, two supervisory judges were appointed by the Court. This demonstrates the importance and seriousness which the Dutch courts have attached to this matter. Ms K.M.

van Hassel and Ms. C.H. Rombouts are both senior judges with the insolvency chamber within the court of Amsterdam.<sup>13</sup>

Date  
27 September 2021  
Your reference

60. Individual creditors can raise issues or requests directly with or to the supervisory judge(s).
61. The role of the supervisory judges primarily consists of regulating material procedural matters and advising the administrator upon request or *ex officio*. The supervisory judges can give certain orders. For example they may:
- (a) hear witnesses or order an experts' investigation to clarify the circumstances concerning the suspension of payments (223b DBA);
  - (b) request the court to make such provisions as it will consider necessary to safeguard the interests of the creditors. (225 DBA);
  - (c) advise on the sanctioning of the composition plan (271 DBA);  
and
  - (d) request the court to terminate the SoP proceedings immediately (242 DBA).<sup>14</sup>

Our reference  
18020916

To the best of my knowledge no parties approached the supervisory judges (directly) in the SoP to oppose sanctioning. It is clear from the Court's decision, the supervisory judges support sanctioning of the composition plan as preferable to creditors.

## Case management by Administrators

62. Unlike in some other (European) jurisdictions an administrator in the SoP is not appointed to protect the rights and interests of *one* creditor (e.g. the secured lender). The administrator (jointly with the board of the debtor)

---

<sup>13</sup> Ms. Van Hassel was appointed as judge in 2011 and Ms. Rombouts was appointed as judge in 1995.

<sup>14</sup> Further competences to supervise the SoP are laid down in; articles 227 (2)DBA, 230 (2) DBA, 241A DBA, 255 DBA, 264 (1) DBA, 265 DBA, 267 DBA, 269 DBA, 269a DBA, 269b (1) DBA and 269b (4) DBA.

# Blaisse

must administer the business during the SoP and guard the rights and interests of all involved stakeholders. SoP proceedings do not rely on a “debtor in possession” concept. Creditors can directly access administrators with information, positions, requests etc.

Date  
27 September 2021  
Your reference

Our reference  
18020916

63. Particularly in complex and high-profile cross-border SoP proceedings, administrators must comply with high standards and qualifications. The Court has a list of administrators it will appoint in specific cases.
64. In this case Messrs. Verhoeven and Zijderveld were appointed as administrators. Both administrators are members of the Dutch insolvency association INSOLAD and bound to its code of conduct. Both are also members of INSOL Europe and INSOL International and well versed in cross-border insolvencies. Mr. Verhoeven especially, is one of the most seasoned and experienced administrators in the Netherlands (he was appointed in the bankruptcy of the Dutch Lehman Brothers entity for example).
65. Apart from looking after the interests of the SoP creditors, administrators have certain rights and obligations. I will name a few relevant ones applicable in this case:
66. Reporting obligations. Administrators must publish public reports regularly (227 DBA) on the status of the estate and to describe their findings and steps. Here, the administrators published public reports on 23 April 2021 and 23 July 2021 (see [www.steinhoffsettlement.com/](http://www.steinhoffsettlement.com/)).
67. The administrators must provide independent advice on the Composition Plan. Their advice must include their confirmation that the value of the estate of SIHNV does not substantially exceed the value that is distributed pursuant to the composition plan. This test could also be referred to as a '*no creditor worse off test*'. The administrators published their report on 3 September 2021 on <https://www.steinhoffsettlement.com/>. Their report is positive and in essence confirms to the creditors of SIHNV that accepting the composition plan is better for creditors than a liquidation of SIHNV;<sup>15</sup>

---

<sup>15</sup> "The SoP Administrators hold the view that a reasonable acting SIHNV MPC Claimant or SIHNV Contractual Claimant, having reviewed the information available, would prefer the



# Blaisse

68. The administrators can engage external independent advisors. Here, they engaged EY to assess certain key financial aspects of the composition plan. EY reviewed the technical and financial assumptions used for the Liquidation Comparator (Schedule 6 to the composition plan), the Valuation Principles (Schedule 7 to the composition plan) and the Steinhoff Allocation Plan (Schedule 3 to the composition plan). EY confirmed that a settlement scenario appears to provide high certainty of securing the recovery percentage for the SoP creditors, whereas a liquidation scenario entails a number of risks which could materially decrease the recovery percentage.<sup>16</sup>
69. As a safeguard for the SoP creditors it should be noted that each creditor has the right to request the Court to replace or dismiss one or more administrators.

Date  
27 September 2021  
Your reference

Our reference  
18020916

## Role of the Committee

70. In SoPs with a very high number of SoP Creditors the Court can appoint a committee comprised of representatives acting on behalf of the main constituencies of ordinary unsecured creditors.
71. The Committee needs to vote with a 75% majority of its members. In this case, the Committee has eleven creditor representatives and four independent members, which also means the independent members have a blocking vote.
72. As described above, the Committee receives the advice of the administrators and will also be able to receive input from other interested parties or speak with them. In this case the official record of the voting

---

*payment offered under the SIHNV Composition Plan. The SoP Administrators specifically note in this context that one of the main drivers of the SIHNV Composition Plan is to formalise settlement of (purported) claims made in the context of the Events and Allegations. A typical characteristic of settlements of these types of claims, is the element of finality. Finality can for both sides (i.e. debtor and creditor) very well be almost or equally as important as the agreed economics." (...) In addition, the SoP Administrators also see value in the agreement SIHNV reached with the Deloitte Firms and the D&O Insurers. This value is relatively easily made accessible to creditors eligible to it in connection with the SIHNV Composition Plan. In case the SIHNV Composition Plan does not become effective, unlocking this or any such value would also require costly and protracted litigation, possibly on an individual basis."*

<sup>16</sup> Other powers of the Administrators are laid down in articles 223b DBA, 230 (2) DBA, 240 (2) DBA, 241a DBA, 242 (1-4) DBA, 257 DBA, 247 DBA.

hearing of 8 September 2021 shows the Committee discussed the composition plan and received input from interested parties, including creditors, and then voted unanimously in favour of the SoP.

Date  
27 September 2021  
Your reference

## V. DEAL STRUCTURE AND CONNECTION BETWEEN DUTCH SOP AND SOUTH AFRICAN S155 PROPOSAL

Our reference  
18020916

### *Negotiations towards "global peace"*

73. I now address the relevance of the Dutch SoP proceedings to the s155 proposal underway in South Africa.
74. Many parties have been negotiating a system of (interlinking) Steinhoff-related settlements over the course of 2018-2021. A lot of parties, organised in numerous groups, have sought to recover alleged losses. Those willing to contribute monies to a settlement are only willing to do so in return for getting releases, not only from the ultimate recipients of payments, but also from each other and other third parties. There are many parties who are able both to pursue claims and also be the subject of claims, which means that a web of interlinked releases is necessary to achieve the 'global peace' that has been the ultimate goal of the negotiations. The structure of this 'Steinhoff Global Settlement' is complex.
75. The adoption and sanctioning of a composition plan through the procedural mechanism of an SoP proceeding allows SIHNV to ensure that all SoP creditors get treated fairly and allows SIHNV to achieve a full and final resolution of contingent claims and/or potential recourse claims. Obtaining such full and final resolution is crucial in order to return financial stability, not only for SIHNV, but also for its subsidiaries and their stakeholders, such as employees, current creditors, shareholders etc
76. Reaching the Steinhoff Global Settlement has been a long and arduous process, including negotiations with many interested parties, including representatives of shareholders such as G&E (whose clients include the PIC) and Hamilton. It would be fair to say they are tough negotiators.
77. I would refer to Messrs. Peters and Warringa, acting for the PIC, which I understand represent many South-African pensioners, who during the

voting on the 8<sup>th</sup> of September in the Amsterdam Court said that "*the PIC is aware the Steinhoff Global Settlement is no perfect solution, but that the PIC fully supports it, as it is the best result that can be achieved and what is needed now is certainty*".

Date  
27 September 2021  
Your reference  
  
Our reference  
18020916

## *Interdependence between SoP Proceedings and S155 proposal*

78. The interconnection of the SoP and s155 Proposal is part of both the composition plan for the SoP and for the s155 Proposal and part of many of the settlements that have been agreed between many of the stakeholders. The deal structure is very much interdependent, with many (parallel) settlements between many parties having been negotiated. All of these settlements, many of them inter-conditional,<sup>17</sup> revolve around one central pin: the Settlement Effective Date,<sup>18</sup> which in turn depends on the success of two elements: the success of the SoP of SIHNV and the s155 Proposal of SHIPL. Note that the execution of the composition plan (after sanctioning by the Court) is conditional on the sanctioning of the s155 Proposal. I understand the opposite is also the case, with the execution of the s155 Proposal being conditional upon sanctioning of the SoP.
79. As mentioned, in addition to the SoP and s155 composition plans, deals struck with stakeholders, including the MPCs, have the successful restructuring of the group through the SoP and s155 Proposal as a condition. I understand the same goes for the settlements SIHNV and SHIPL have entered into with (individual) MPC representatives, Vendors and creditors.
80. Thus a failure of either the SoP or the s155 Proposal respectively means the converse proposal or proceeding will also fail, together with the contribution and the release rights and obligations contained in the interconnected settlements, as the conditions in the interconnected settlements would not be met. Basically, if just one part fails, both would go.

---

<sup>17</sup> I will not deal with SARB approval in this letter, as that is a purely South African issue.

<sup>18</sup> See below.

## *Support for composition plan and S155 Proposal*

**Date**  
27 September 2021  
**Your reference**

**Our reference**  
18020916

81. On 8 September 2021 the Committee voted unanimously in favour of the composition plan. On 23 September 2021 the Court sanctioned the composition plan. Given that the composition plan was voted in favour for unanimously by the Committee, the sanctioning order will in principle not be appealable<sup>19</sup> and becomes immediately final and binding. As discussed above, both SIHNV and its SoP creditors are then bound by the composition plan.<sup>20</sup>
  
82. The Steinhoff Global Settlement, including the SoP and s155 Proposal that are part thereof, enjoy almost universal support from creditors. The votes in the SoP and the three classes in the s155 Proposal were (near) unanimous. It is also supported by other stakeholders, including the D&O (insurers) and the Deloitte firms, who are willing to make significant monetary contributions on top of the amounts as offered by SIHNV and SIHPL, but only if the SoP and s155 Proposal are both sanctioned by the Dutch and South African courts respectively. The structure of the Deloitte and D&O offers is such that these contributions will flow to MPC Claimants (shareholders) with an additional amount earmarked for certain contractual claimants, but excluding financial creditors and insiders. As is acknowledged in the administrators' report, these contributions are only available based upon a successful SoP and s155 Proposal. In case those fail, the contributions would not be made available. In addition to these monetary contributions, Deloitte and the D&O are to provide releases and waivers of their claims against SIHNV and SIPHL.<sup>21</sup>

---

<sup>19</sup> There is a very limited appeal possibility for members of the Committee. The appeal period will lapse on 2 October at 00.00am CET. After the unanimous approval of the composition plan options are very limited as the DBA provides for a rather theoretical option for Committee members that approved the composition plan to appeal the Court's sanctioning order despite their earlier approval of the plan. Grounds for such an appeal are very limited. As per the date of this letter I understand that no appeal has been lodged against the SoP sanctioning order.

<sup>20</sup> As mentioned, the SoP remains conditional, most notably on the success of the s155 Proposal. Once the conditions are met it will be final.

<sup>21</sup> Deloitte has substantial claims against SIHNV and SHIPL, based in both contract and tort, and would normally be able to take recourse for any third party claims. As part of the global settlement, Deloitte and the D&O would relinquish these.

83. If either the SoP or s155 Proposal fails, a disintegration of the Steinhoff Global Settlement, a collapse of the share price and decades of multi-jurisdictional litigation become likely.<sup>22</sup>

Date  
27 September 2021  
Your reference

## *Sanctioning application in South Africa*

Our reference  
18020916

84. I will now turn to the sanction application brought by SIHNV in South Africa.
85. If the sanction application of SIHNV were to fail it is safe to say that the Steinhoff Global Settlement will be jeopardized. As mentioned, we would anticipate years of litigation if that were to happen. The significant cash contributions offered by the D&O and Deloitte would not materialise.
86. After 4 years of negotiating many parties have been able to implement a settlement in various jurisdictions. The vast majority agrees and supports SIHNV being restructured as a going concern and does not want to be faced with a liquidation scenario as described in the Liquidation Report of 27 August 2021 as the recovery for all creditors will be lower and the damages for other stakeholders (suppliers, employees etc) will be very significant.
87. The Steinhoff Global Settlement offers the certainty of imminent payment and an end to costs and litigation. Its failure would bring uncertainty, potentially very substantial delays, lower returns, years of litigation and enormous costs, all of which the many parties involved have sought to put an end to through good-faith negotiations.
88. A failure of the SoP and s155 will result in a very large drop in the current share price of SIHNV, potentially to near zero, hurting current investors considerably. The market capitalisation today hovers around EUR 790.000.000: I would expect this value to largely disappear in a liquidation scenario.
89. The Steinhoff Global Settlement enjoys (very) wide-ranging support among a wide range of stakeholders. This is no coincidence. Failure of

---

<sup>22</sup> I will refrain from painting possible scenario's as that is extremely hard. What this would exactly look like is impossible to predict given the very large number of moving parts.

# Blaisse

the s155 application in South Africa will lead to a lot of uncertainty for a lot of stakeholders involved and is likely to cause delays and destroy value. It will be most detrimental to the Steinhoff Global Settlement (that has taken such effort to achieve).

**Date**  
27 September 2021  
**Your reference**

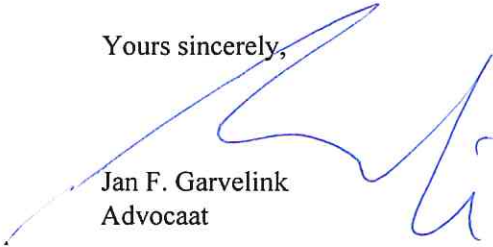
**Our reference**  
18020916

## VI. CONCLUSION

90. I trust this letter is informative. Obviously, this letter does not cover all that can be said about the subject. Volumes have been written about the SoP. The court documents and the documentation on <https://www.steinhoffsettlement.com/> are far more extensive than this letter. I do, however, think this is the gist of it.

Yours sincerely,

Jan F. Garvelink  
Advocaat



**REPORT PURSUANT TO SECTION 265 (1) DUTCH BANKRUPTCY ACT,  
DATED 30 AUGUST 2021 IN THE SUSPENSION OF PAYMENTS OF:**

**STEINHOFF INTERNATIONAL HOLDINGS N.V.**

Amsterdam District Court

Suspension of payments number: C/13/21/4 S

Date of Voting Hearing: 3 September 2021

SoP Administrators: F. Verhoeven and C.R. Zijderveld

Supervisory Judges: K.M. van Hassel and C.H. Rombouts

- 1. INTRODUCTION .....3
  - 1.1. Course of key events .....3
  - 1.2. SIHPL Section 155 Proposal .....5
  - 1.3. Role SoP Administrators; SIHNV Composition Plan .....5
- 2. KEY ELEMENTS OF SIHNV COMPOSITION PLAN .....7
  - 2.1. Types of creditors and offered compensation .....7
  - 2.2. Treatment of categories of creditors .....9
  - 2.3. Valuation methodologies ..... 11
  - 2.4. Performance of the SIHNV Composition Plan..... 13
- 3. FINANCIAL REVIEW ..... 13
  - 3.1. Liquidation scenario ..... 13
  - 3.2. Key observations Financial Advisor ..... 16
  - Claim value ..... 16
  - Value of PPH ..... 16
- 4. ANALYSIS ..... 18
  - 4.1. Introduction ..... 18
  - 4.2. NCWO test..... 19
  - 4.3. Performance of the SIHNV Composition Plan..... 21
  - 4.4. Reasonable and fair treatment of creditors ..... 24
  - 4.5. Other ..... 29
- 5. CONCLUSION ..... 29



## 1. INTRODUCTION

### 1.1. Course of key events

- 1.1.1. Steinhoff International Holdings N.V. ("**SIHNV**") is incorporated in the Netherlands and it is the top holding company of the Steinhoff Group<sup>1</sup>, a group of companies primarily active in the production and sale of household articles and general goods through various (retail) enterprises in Europe, South Africa, the United States and Australasia. Before SIHNV was incorporated as the top holding company, the Steinhoff Group's ultimate parent, was an entity currently named Steinhoff International Holdings Proprietary Limited ("**SIHPL**") and it is incorporated in South Africa.
- 1.1.2. By a press release dated 5 December 2017, SIHNV announced that possibly accounting irregularities had occurred. Since then both SIHNV and SIHPL, as well as the Steinhoff Group's former auditor (the "**Deloitte Firms**") and several former directors of the group, have been held liable by (representatives of) claimants and have become the subject of various claims and legal proceedings in the Netherlands, Germany and South Africa. These proceedings have been initiated by investors, former investors or their representatives and/or successors, including various so-called active claimant groups ("**ACGs**").
- 1.1.3. The events described in the announcement of 5 December 2017 (and certain announcements made shortly thereafter), resulted in an immediate liquidity shortfall for SIHNV. Third party financing became due and payable and SIHNV and its relevant affiliates entered into negotiations with certain financial creditors of the Steinhoff Group. On 20 July 2018 a lock-up agreement was concluded with these financial creditors in which, amongst other things, a standstill was agreed in respect of payment obligations of SIHNV, SIHPL, and certain other relevant subsidiaries (e.g., Steinhoff Europe AG ("**SEAG**"), Steinhoff Finance Holding GmbH ("**SFHG**") and Stripes U.S. Holding, Inc.).
- 1.1.4. The negotiations and agreements concluded between SIHNV and these financial creditors, gave SIHNV (and, as a consequence, the Steinhoff Group) the opportunity to stabilise its financial position for a period of three years and to explore more sustainable restructuring solutions to safeguard its immediate future. The Steinhoff Group went through several restructuring proceedings to restructure various layers of debt. For the implementation of those restructuring proceedings the Steinhoff Group - *inter alia* - entered into a Company Voluntary Arrangement ("**CVA**") in respect of debts owed by SEAG and SFHG and that were guaranteed by SIHNV. The agreements of SEAG and SFHG under their respective CVAs were adopted on 14 December 2018 after a vote by the respective requisite majority of creditors present at a creditors' meetings and were subsequently implemented through several credit agreements, Contingent Payment Undertakings

---

<sup>1</sup> Unless defined otherwise, capitalised terms used in this report have the meaning assigned to them in Schedule 1 to the SIHNV Composition Plan.

("SEAG/SFHG CPUs") and an agreement, generally referred to as the Umbrella Agreement.

- 1.1.5. Apart from restructurings at the level of SEAG and SFHG, SIHNV also was involved in the restructuring of its indirect subsidiary Hemisphere International Properties B.V. ("**Hemisphere**") through the entry into a credit agreement and a Contingent Payment Undertaking (the "**Hemisphere CPU**" and, together with the SEAG/SFHG CPUs, the "**CPUs**"). As a result of the CVAs as well as the Hemisphere restructuring, SIHNV became bound by various CPUs. The CPUs are newly created financial debt instruments that replaced multiple guarantees previously issued by SIHNV. For more background on these financial restructurings, reference is made to the corporate Steinhoff website ([www.steinhoffinternational.com](http://www.steinhoffinternational.com)).<sup>2</sup>
- 1.1.6. As a further phase in its restructuring processes the Steinhoff Group intends to come to an overall settlement with the claimants mentioned in paragraph 1.1.2 above by means of a Dutch law composition plan (*ontwerp van een akkoord*) offered by SIHNV in this suspension of payments (the "**SIHNV Composition Plan**") and a compromise or arrangement proposed by SIHPL to the creditors and claimants defined therein pursuant to section 155 of the South African Companies Act No. 71 of 2008 (the "**SIHPL Section 155 Proposal**"). This overall settlement also provides for certain contributions by the Deloitte Firms and several D&O Insurers. These elements together, provide for a settlement as envisaged by SIHNV and SIHPL and is also referred to as the "**Steinhoff Group Settlement**".
- 1.1.7. Attached as **Annex 1** is a simplified structure chart of the Steinhoff Group also showing the main debt and the structure of the CPUs.
- 1.1.8. On 15 February 2021, SIHNV requested the Amsterdam District Court to grant a provisional suspension of payments (*voorlopig verleende surseance van betaling*; "**SoP**"). Attached to its SoP request, SIHNV filed a first draft of the SIHNV Composition Plan. On that same date the Amsterdam District Court granted SIHNV the SoP and appointed F. Verhoeven as administrator (*bewindvoerder*) and K.M. van Hassel and C.H. Rombouts as supervisory judges (*rechters-commissarissen*) (the "**Supervisory Judges**"). On 18 February 2021, the Amsterdam District Court appointed C.R. Zijderveld as co-administrator (together with F. Verhoeven referred to as the "**SoP Administrators**").
- 1.1.9. The SIHNV Composition Plan has been amended on 23 March 2021, 15 June 2021 and 11 August 2021. This report primarily addresses the amended plan of 11 August 2021.
- 1.1.10. The Amsterdam District Court initially determined the consultation on the SIHNV Composition Plan on 30 June 2021. At the request of the SoP Administrators, this date

---

<sup>2</sup> SIHNV (and SIHPL) also operate a separate website, dealing with issues relating directly to the SoP process and the Section 155 process; see para. 1.1.10.

was rescheduled to 3 September 2021, 09.30 (CET) (the "**Voting Hearing**"). Also, on 5 March 2021 the Amsterdam District Court decided that the SoP Administrators were allowed (i) to engage a claims administrator for the SoP claims filing process and (ii) to publish relevant announcements and convocations via <https://steinhoffsettlement.com/> (the "**Website**")

- 1.1.11. The SoP Administrators, in consultation with SIHNV, and in accordance with the relevant provisions in the Dutch Bankruptcy Act ("**DBA**"), requested the Amsterdam District Court to appoint a committee of representation (*commissie van vertegenwoordiging*) (the "**SoP Committee of Representation**"), consisting of representatives of the most important creditors and categories of creditors at SIHNV level. This request was opposed by an (alleged) creditor and a creditor representative group. On 28 May 2021, the Amsterdam District Court granted the request. This judgment was appealed by a creditor representative group; this appeal was declared inadmissible on 29 June 2021.
- 1.1.12. The SoP Committee of Representation consists of 15 members, of which four are independent. The SoP Committee of Representation members will cast a vote on the SIHNV Composition Plan instead of individual creditors at the Voting Hearing. Reference is made to the Website for the exact composition of the SoP Committee of Representation.

## **1.2. SIHPL Section 155 Proposal**

- 1.2.1. The SoP Administrators understand that the SIHNV Composition Plan will only become effective if the SIHPL Section 155 Proposal becomes effective (and vice-versa the same applies as well). The SoP Administrators understand that this inter-conditionality is driven by the aim to come to finality, i.e. the Steinhoff Group Settlement. The date on which both plans become fully effective (in accordance with their terms) is also referred to as the "**Settlement Effective Date**".
- 1.2.2. The SIHPL Section 155 Proposal will be voted upon on 6 September 2021. The board of directors of SIHPL informed the SoP Administrators that certain legal proceedings against SIHPL are pending as of the date of this report. This report does not contain an overview or assessment of the SIHPL Section 155 Proposal. The SoP Administrators refer to the Website for more information in that respect.

## **1.3. Role SoP Administrators; SIHNV Composition Plan**

- 1.3.1. For an explanation of the actual role of the SoP Administrators reference is made to the public reports as published on the Website. Also, for more information on the background to the SoP process, as well as other information and documents that may be of relevance to creditors, the SoP Administrators refer to the Website.
- 1.3.2. The SoP Administrators have not been involved in the preparation of the SIHNV Composition Plan (including the amendments). In accordance with section 252 DBA, the SIHNV Composition Plan has been prepared by SIHNV and it is proposed by SIHNV.

- 1.3.3. The SoP Administrators are not advisors, legal, financial, or otherwise, to (any member of) the Steinhoff Group, any stakeholder or individual creditor<sup>3</sup> or to the joint creditors of SIHNV. Creditors can form an independent opinion on the merits of the SIHNV Composition Plan and obtain external legal and/or financial advice if necessary. Whilst the SIHNV Composition Plan will be voted upon by the SoP Committee of Representation, individual creditors have been given the opportunity to provide their views and opinions on the plan to the SoP Committee of Representation, SIHNV and the SoP Administrators.<sup>4</sup>
- 1.3.4. This report is based on the SoP Administrators' understanding of the SIHNV Composition Plan. For a full and complete overview (and understanding) of the SIHNV Composition Plan, the SoP Administrators refer to the document itself (including, for the avoidance of doubt, all its schedules as well as other (related) documents, as posted on the Website).
- 1.3.5. In as far as voting on the SIHNV Composition Plan is concerned, each member of the SoP Committee of Representation must personally weigh up the matter and take a decision on the substance of the SIHNV Composition Plan and the consequences related to the acceptance or rejection of thereof, and then vote as he or she may deem fit.
- 1.3.6. The SoP Administrators assume that the members of the SoP Committee of Representation, in the context of the considerations to be made by them on the merits of the SIHNV Composition Plan, have read the SIHNV Composition Plan (including, for the avoidance of doubt, its schedules) and other relevant documentation as is published on the Website.
- 1.3.7. The SoP Administrators have had regular interactions with the independent members of the SoP Committee of Representation and have been interviewed by the full SoP Committee of Representation. The SoP Committee of Representation has developed a thorough process to allow its members to assess the SIHNV Composition Plan. As part of this process the SoP Committee of Representation has pro-actively requested and collected information.
- 1.3.8. This report and the information and views contained therein is governed by the scope of section 265 DBA. Although SIHNV and its advisors have taken a constructive stance and have, where required, provided the SoP Administrators with relevant input, the SoP Administrators cannot and do not guarantee that the information contained in this report is complete or correct.
- 1.3.9. Moreover, the efforts and decisions made by SIHNV in the years preceding the SoP can by their nature not fully be revisited by the SoP Administrators (assuming they would be

---

<sup>3</sup> In this report, when referring to a "creditor" or to "creditors", it is assumed that each such a creditor has a valid or admitted claim against SIHNV. The SoP Administrators understand that certain types of creditors' claims are only recognised by SIHNV under the condition that the SIHNV Composition Plan will become effective in accordance with its terms.

<sup>4</sup> See notice of 17 August 2021 as published on the Website.

bound to do so under Dutch law). As a result, and also considering the limited time available to the SoP Administrators to prepare this report, the SoP Administrators have focused their efforts on what they believe to be the key elements of the SIHNV Composition Plan. Hence, this report is not intended to give a complete overview or assessment of SIHNV's financial position and the SIHNV Composition Plan and should not be read or construed as such. It is intended to describe the SoP Administrators' findings in broad outline.

- 1.3.10. The SoP Administrators have engaged EY Strategy and Transactions as their financial advisor (the "**Financial Advisor**") to assess certain key financial aspects of the SIHNV Composition plan. More specifically, the Financial Advisor reviewed the technical and financial assumptions used for the Liquidation Comparator (Schedule 6 to the SIHNV Composition Plan), the Valuation Principles (Schedule 7 to the SIHNV Composition Plan) and the Steinhoff Allocation Plan (Schedule 3 to the SIHNV Composition Plan).
- 1.3.11. The Financial Advisor based its assessment on information provided by SIHNV and the Analysis Group Ltd. ("**AG**"). AG has been engaged by Linklaters LLP (the legal advisor to SIHNV and SIHPL) on behalf of SIHNV. For an extensive overview of the scope and limitations of the Financial Advisor's work for the SoP Administrators reference is made to **Annex 2**. The Financial Advisor finalised its work on 30 August 2021. Based on work products provided by the Financial Advisor, the SoP Administrators prepared their own summary and understanding of certain financial key items of the SIHNV Composition Plan (see paragraph 3).
- 1.3.12. One (alleged) creditor provided input to the SoP Administrators in the context of this report. By way of a notice dated 17 August 2021, the SoP Administrators invited creditors to provide their views on the SIHNV Composition Plan. Apart from the one creditor mentioned, no other input has been received to date. In addition, the SoP Committee of Representation put certain questions to the SoP Administrators. The SoP Administrators have addressed these questions in a response letter, the interview with the SoP Committee of Representation and in this report.
- 1.3.13. The SoP Administrators requested SIHNV to review a final draft of this report in order to inspect it for any factual incorrectness or inconsistencies. This report was provided to the SoP Committee of Representation and published on the Website on 30 August 2021. The SoP Administrators may issue a further or amended report.

## **2. KEY ELEMENTS OF SIHNV COMPOSITION PLAN**

### **2.1. Types of creditors and offered compensation**

- 2.1.1. The SoP Administrators understand that the SIHNV Composition Plan is the result of multi-party negotiations that were aimed at providing finality in respect of the issues that arose in the context of the events disclosed on and after 5 December 2017. It is for that reason

that the SIHNV Composition Plan has a certain complexity. In this paragraph, the SoP Administrators will set out their high-level understanding of SIHNV Composition Plan.

2.1.2. The SIHNV Composition Plan distinguishes seven categories of creditors:

1. SIHNV MPC Claimants: creditors with (alleged) claims for damages against SIHNV that relate to the Events and/or the Allegations<sup>5</sup>, arising from the acquisition of shares in SIHNV listed on the Frankfurt Stock Exchange of Johannesburg Stock Exchange between close of business on 6 December 2015 and close of business on 5 December 2017, insofar as these shares were still held on close of business on 5 December 2017.
2. SIHNV Contractual Claimants: creditors with (alleged) claims against SIHNV that relate to the Events and/or the Allegations, resulting from the conclusion of contracts with certain Steinhoff Group companies under which SIHNV issued or delivered shares in exchange for the contribution or assets of or payment of money by those creditors.
3. SIHNV Financial Creditors: creditors with financial claims against SIHNV under the CPUs entered into by SIHNV.
4. Intra-Group Creditors: creditors with claims against SIHNV arising from two intra-group loans.
5. Non-Qualifying Claimants: parties who have initiated legal proceedings against SIHNV and who do not qualify as SIHNV MPC Claimants or SIHNV Contractual Claimants.
6. Contingent Creditors: creditors who do not fall under one of the aforementioned categories. These are mainly (alleged) creditors currently unknown to SIHNV.
7. Other Unsecured Creditors: creditors with commercial claims, in particular certain service providers.

2.1.3. The SoP Administrators understand that the SIHNV Financial Creditors, Intra-Group Creditors and Other Unsecured Creditors are the only creditors that are acknowledged payable (*worden erkend*) by SIHNV. All other categories of creditors are in the SIHNV Composition Plan acknowledged by SIHNV for the purpose of the implementation of the SIHNV Composition Plan only, and if that implementation fails, SIHNV – as the SoP Administrators understand – will continue to oppose the claims held by these categories of creditors.

---

<sup>5</sup> The SIHNV Composition Plan refers to the events disclosed on and after 5 December 2017 (and the issues that arose afterwards) as the "Events" and the "Allegations"; this terminology is used in this report as well. Please also refer to footnote 1.

- 2.1.4. All categories of creditors listed above qualify as general unsecured creditors and as such are subjected to the SoP. By virtue of these categories, SIHNV makes a distinction between type of claims; the categories do not intend to create class voting (to the extent that would even be possible under Dutch law). To date, the SoP Administrators have not come across creditors who assert a preference (*voorrecht*) or a right of pledge or mortgage (*pand- of hypotheekrecht*) in respect of any of SIHNV's assets.
- 2.1.5. The various categories of creditors are treated differently. This treatment is driven by the different nature of the claims held. For example, SIHNV MPC Claimants assert tort claims, SIHNV Contractual Claimants primarily assert rescission claims and SIHNV Financial Creditors have contractual claims arising from financial agreements. Within a category, creditors in general are treated equally.

## 2.2. Treatment of categories of creditors

The SIHNV Composition Plan offers SIHNV MPC Claimants, SIHPL MPC Claimants and SIHNV Contractual Claimants a pro rata payment in proportion to the nominal value of their claims. The gross amount available to make this payment is set out in the table below (the "**Gross Settlement Fund**"). Certain costs are deducted from this and as a result, a fund is available from which these claimants will be paid; the SIHNV Composition Plan refers to this fund as the "**SoP Settlement Fund**".

	Total estimated settlement amount
SIHNV and SIHPL Market Purchase Claimants	EUR 442m
SIHNV Contractual Claimants	EUR 171m
Total	EUR 613m

- 2.2.1. The Gross Settlement Fund has a cash portion and a share portion. The cash portion is EUR 153,200,000 and ZAR 2,616,300,000. The share portion consists of 349,000,000 PPH Shares (valued at ZAR 15 per share). The cash / share allocation can change as provided for under the SIHNV Composition Plan; e.g. SIHNV has the option to convert the share portion into a cash portion. Out of the EUR 613 million in funds, approximately EUR 432 million is expected to be recovered by SIHNV MPC Claimants and SIHNV Contractual Claimants, with the remainder to be recovered by SIHPL MPC Claimants. In this latter respect, SIHNV is to receive compensation from SIHPL for paying SIHPL MPC Claimants

to this extent, in the form of a loan note with priority ranking to be issued by SIHPL in the sum of EUR 164 million.

- 2.2.2. The foregoing distinctions in the cash and settlement portions, the currency and the allocation between the SIHPL MPC Claimants, SIHNV MPC Claimants and SIHNV Contractual Claimants are based on estimates made by SIHNV and AG. These estimates depend on, among other things, the size of the groups of claimants that bring claims and are entitled to receive payment under the SIHNV Composition Plan.
- 2.2.3. The SIHNV MPC Claimants and SIHNV Contractual Claimants may claim additional payment from the Deloitte Firms and the D&O Insurers as made available in support of the Steinhoff Group Settlement. The contributions from the Deloitte Firms and the D&O Insurers are not part of but should be considered as additional compensation to the consideration made available by SIHNV.
- 2.2.4. The contribution by the Deloitte Firms is EUR 70.34 million: EUR 55.34 million for all SIHPL and SIHNV MPC Claimants and EUR 15 million for certain SIHPL and SIHNV Contractual Claimants. The contribution by the D&O Insurers is EUR 70.5 million: EUR 55.5 million for SIHNV and SIHPL MPC Claimants and EUR 15 million for certain SIHPL and SIHNV Contractual Claimants.
- 2.2.5. For completeness' sake, it is noted that on 11 August 2021 SIHPL announced an amendment of the SIHPL Section 155 Proposal. More precisely, SIHPL is offering the SIHPL MPC Claimants an additional amount of ZAR 3,214 million (approx. EUR 188 million). This amount is not available to SIHNV MPC Claimants or SIHNV Contractual Claimants and it is not part of the SoP Settlement Fund. The SoP Administrators do not have a view on this amendment as it relates to the SIHPL Section 155 Proposal.
- 2.2.6. By operation of the SIHNV Composition Plan becoming effective, SIHNV MPC Claimants and SIHNV Contractual Claimants grant a final discharge of any and all claims in relation to the Events and/or the Allegations against (inter alia) SIHNV, the Steinhoff Group and – also subject to receipt by SRF of the settlement amounts payable by the Deloitte Firms and the D&O Insurers – certain former Steinhoff Group directors and officers (the "**D&Os**"), the D&O Insurers and the Steinhoff auditors (be it that creditors that wish to recover from the funds provided by the Deloitte Firms and the D&Os and D&O insurers also need to separately sign for release of the Steinhoff auditors and the D&Os and the D&O Insurers).
- 2.2.7. Claims of SIHNV MPC Claimants and SIHNV Contractual Claimants are valued by the Claims Administrator on the basis of certain Valuation Principles as set out in the SIHNV Composition Plan.
- 2.2.8. Non-Qualifying Claimants and Contingent Creditors can receive payment from a separate reserve fund (the "**Reserve Fund**"), amounting to the same percentage that SIHNV MPC Claimants and SIHNV Contractual Claimants receive on the nominal value of their claims.



Non-Qualifying Claimants and Contingent Creditors are only entitled to payment to the extent such claim is established by a binding judgement or a settlement with SIHNV.

- 2.2.9. By operation of the SIHNV Composition Plan becoming effective, the Non-Qualifying Claimants and Contingent Creditors grant final discharge of any and all claims in relation to the Events and/or the Allegations against (inter alia) SIHNV, the Steinhoff Group and – also subject to receipt by SRF of the settlement amounts payable by the Deloitte Firms and the D&O Insurers – certain former D&Os, the D&O Insurers and the Steinhoff auditors (be it that creditors that wish to recover from the funds provided by the Deloitte Firms, the D&Os and D&O insurers, also need to separately sign for release of the Steinhoff auditors, the D&Os and the D&O Insurers). Non-Qualifying Claimants and Contingent Creditors retain the right to (continue) pursuing the binding determination of their claims against SIHNV in legal proceedings.
- 2.2.10. SIHNV Financial Creditors, Intra-Group Creditors and Other Unsecured Creditors do not receive immediate compensation under the SIHNV Composition Plan. These creditors accept that SIHNV will first discharge any liability towards (mainly) the SIHNV MPC Claimants and the SIHNV Contractual Claimants (thus allowing the cash outflow required to effectuate the SIHNV Composition Plan) before making a recovery against SIHNV. Recourse for the SIHNV Financial Creditors thus is limited to any of SIHNV's assets remaining after such payments.
- 2.2.11. In addition, the maturity date of the CPUs held by SIHNV Financial Creditors will be extended until 30 June 2023 if the SIHNV Composition Plan becomes effective (with the option of an additional extension of six months).
- 2.2.12. The SIHNV Financial Creditors will (by operation of the SIHNV Composition Plan) grant a final discharge of any and all claims in relation to the Events and/or the Allegations against (inter alia) SIHNV, the Steinhoff Group and – also subject to receipt by SRF of the settlement amounts payable by the Deloitte Firms and the D&O Insurers – certain former D&Os, the D&O Insurers and the Steinhoff auditors, without being eligible to receive payment out of the settlement amounts provided by the D&O Insurers and the Deloitte Firms.

## **2.3. Valuation methodologies**

- 2.3.1. The SIHNV Composition Plan applies different valuation methodologies per type of claims.
- 2.3.2. The claims of SIHNV MPC Claimants are valued with a method based on the extent to which relevant shares were overpriced in the period between 6 December 2015 c.o.b. and 6 December 2017 c.o.b. This is calculated based on the decrease in value of the SIHNV shares as a result of the disclosures in the first week of December 2017 (the Inflation Methodology as defined in the SIHNV Composition Plan). The SoP Administrators understand the calculation as follows:

- the total amount of what a SIHNV MPC Claimant overpaid during the relevant period as a result of an inflated share price on the relevant purchase dates, **minus**
  - the total amount of what a SIHNV MPC Claimant has received during the relevant period as result of a sale at an inflated share price on the relevant sales dates.
- 2.3.3. The Inflation Methodology calculates the estimated difference between the actual share price and the hypothetical share price if the Events and/or Allegations had not taken place (i.e., estimated inflation), in both cases at the time of the relevant purchases. The Claim Value is the sum of the estimated inflation included in all purchases by a claimant minus the estimated inflation included in all sales by a claimant.
- 2.3.4. The claims of SIHNV Contractual Claimants, irrespective whether these claims are based on rescission or damages, are valued using a method that is based on:
- a consideration of the original price at which the relevant shares were acquired, **minus**
  - a post-December 2017 floor price as a measure of the actual value of the shares (including certain other adjustments, e.g., to take into account dividends received from those shares) (the Rescission Methodology as defined in the SIHNV Composition Plan).
- 2.3.5. The Rescission Methodology calculates the difference between the original transaction price on the one hand and the "actual value" of the shares using a post-December 2017 "minimum price" of a relevant transaction (minus certain benefits enjoyed in connection with holding those shares). The Claim Value is the original transaction price minus dividends, any sales proceeds and the "minimum price" for shares that were still held on 5 December 2017.
- 2.3.6. The SoP Administrators understand that the reason for the different valuation methodologies used for claims held by SIHNV MPC Claimants and SIHNV Contractual Claimants respectively, is the different legal bases for these claims. The claims of SIHNV Contractual Claimants are based on contractual liability (i.e., misrepresentation or error, (possibly) leading to a right to terminate a contract and/or claim damages). The claims of SIHNV MPC Claimants are based on non-contractual liability (tort) arising from purchases made on the stock exchange based on allegedly misleading disclosures by SIHNV or SIHPL.
- 2.3.7. The value of the claims of Non-Qualifying Claimants and Contingent Creditors would be the value resulting from a binding judgement or settlement between relevant parties.
- 2.3.8. The SIHNV Composition Plan does not contain a valuation method for the claims of SIHNV Financial Creditors, Intra-Group Creditors and Other Unsecured Creditors, because they are not entitled to immediate payment under the SIHNV Composition Plan. Aside from this, less or no subjectivity exists when calculating the amount of the claims held by these creditors (most claims follow from contracts that exactly set out the amount).

## 2.4. Performance of the SIHNV Composition Plan

- 2.4.1. In order to give effect to the SIHNV Composition Plan and the SIHPL Section 155 Proposal upon the Settlement Effective Date, Stichting Steinhoff Recovery Foundation ("**SRF**") was incorporated on 24 August 2021. SRF is governed by a board of directors, of which two directors are independent from the Steinhoff Group. The chairperson is independent and has a casting vote in case of a tie in decision making.
- 2.4.2. SRF will receive the Gross Settlement Fund. In the execution of the SIHNV Composition Plan SRF will distribute the SoP Settlement Fund and the additional contributions by the Deloitte Firms and the D&O insurers to the SIHNV MPC Claimants, the SIHPL MPC Claimants, certain SIHNV Contractual Claimants and certain SIHPL Contractual Claimants. SRF will do so pursuant to the SRF and Claims Administration Conditions (Schedule 2 to the SIHNV Composition Plan).
- 2.4.3. SRF will become bound to the SIHNV Composition Plan as of the Settlement Effective Date by countersigning the SIHNV Composition Plan.
- 2.4.4. The SoP Administrators understand that any claim for payment from the SoP Settlement Fund or the Reserve Fund arising from the SIHNV Composition Plan shall be subject to an expiry period (*vervaltermijn*) which ends on the Bar Date: the date falling three months after the Settlement Effective Date.

## 3. FINANCIAL REVIEW

### 3.1. Liquidation scenario

- 3.1.1. The Liquidation Comparator is a simplified simulation of a hypothetical liquidation of SIHNV on a standalone basis (*enkelvoudig*). For more background, reference is made to paragraph 123 of Part A of the SIHNV Composition Plan.
- 3.1.2. The SoP Administrators understand that the Liquidation Comparator is an analysis prepared by AG; SIHNV has included the Liquidation Comparator to the SIHNV Composition Plan and as such relies on it. The calculations made by AG are subject to numerous technical and financial assumptions.
- 3.1.3. On a simplified basis, the entire Steinhoff Group (i.e. consolidated) can be split into two parts: the European businesses and the South African businesses. This split also follows from the group structure. SIHNV owns shares in two major holding companies: (i) Steinhoff Investment Holdings Limited ("**SIHL**"), holding all the entities that own the South African Businesses (the "**South African Entities**") and (ii) Steenbok Newco 1 Ltd. ("**Newco 1**") holding all the entities that own the European businesses (as well as some businesses in the USA and Australasia) (the "**European Entities**"). Also see Annex 1 in this context.
- 3.1.4. AG assessed the theoretical liquidation value of these two holding structures (representing the vast majority of assets and liabilities of SIHNV) under the assumption that a liquidation

would commence on 31 August 2021 and whereby all assets are forecast to be sold during an 18-month period and the group's liquidation would end after approximately ten years at which stage a final distribution to SIHNV's creditors is made.

- 3.1.5. AG has assessed the liquidation value of the two main holding companies, as well as their four major subsidiaries (six entities in total). This entails a significant simplification of the full legal structure of the Steinhoff Group of companies which consist of over 500 legal entities. The analysis performed by AG is therefore not an actual entity-by-entity liquidation assessment.
- 3.1.6. According to AG, in a liquidation scenario, the liabilities of the European Entities exceed the liquidation value of their respective assets, leaving no distributable equity value in the share capital of Newco 1. Therefore, no liquidation proceeds would be up-streamed to SIHNV from the European Entities.
- 3.1.7. AG estimates there will be EUR 2,443 million of positive equity value in the South African Entities. This is mainly driven by the expected value of Steinhoff Africa Holdings Pty Ltd. ("**SAHPL**"); no distributable equity value is assumed in SIHPL in a liquidation scenario. The largest and key contributing asset to the positive equity in SAHPL is its 68% equity stake in Pepkor Holdings Ltd. ("**PPH**"). PPH is a listed entity, trading on the Johannesburg Stock Exchange.
- 3.1.8. In its baseline scenario AG assumes that after the disposal of the PPH stake (and other less material South African assets), proceeds can be distributed from the South African Entities to SIHL in August 2024, and after having satisfied the liabilities at SIHL, an estimated EUR 1,400 million of equity value would be left at SIHL as of 31 August 2026; this amount will be available to distribute to SIHNV. After adding additional cash (presumably cash-at-hand at SIHNV level at that time) and subtracting liquidation costs at SIHNV, SIHNV would have EUR 1,344 million of expected liquidation proceeds as of 31 August 2031 to be distributed to SIHNV's claimants (see graph below).<sup>6</sup>

---

<sup>6</sup> As mentioned, these numbers refer to AG's baseline scenario. In a low case PPH scenario, SIHNV would have approximately €1,064m of asset value available as of 31 August 2031, and in the high PPH case, SIHNV would have approximately €1,644m of asset value available as of 31 August 2031.



Source: Simplified Summary of AG's Liquidation Analysis – reference is made to AG Report dated 12 August 2021, Exhibit 2

- 3.1.9. AG estimates that in its baseline scenario claims held by the SIHNV MPC Claimants and SIHNV Contractual Claimants (including interest) would amount to EUR 5,036 million as of 31 August 2021. The total amount of other claims, including claims under the CPUs and claims held by intercompany creditors, would be EUR 9,877 million. In total, SIHNV's liabilities would amount to EUR 14,913 million. SIHNV estimates that on this basis SIHNV MPC Claimants and SIHNV Contractual Claimants would, on the aggregate of their claims, receive EUR 391 million in liquidation proceeds (discounted to 31 August 2021).
- 3.1.10. Expressed in percentage recoveries, in the baseline scenario the present value of the expected recovery for creditors in a liquidation scenario would be 7.8% as of 31 August 2021 (see table below). The expected recovery applies for all SIHNV claimants, as they are treated on a *pari passu* basis.

### Total SIHNV Litigant Claims (per August 2021)

Currency: €m	Baseline Scenario	High Case Scenario	Low Case Scenario
SIHNV Contractual Claims	2,013	2,013	2,013
SIHNV MPC	3,023	5,578	1,564
<b>Total SIHNV Litigant Claims <b>A</b></b>	<b>5,036</b>	<b>7,591</b>	<b>3,577</b>
CPU Creditor claims <b>B</b>	9,182	9,182	9,182
Intercompany claim <b>C</b>	695	695	695
<b>Total SIHNV Claims</b>	<b>14,912</b>	<b>17,468</b>	<b>13,453</b>

### Total Recovery in Liquidation

	Baseline Scenario	High Case Scenario	Low Case Scenario
Mean expected liquidation proceeds available to SIHNV liabilities as of August 2021 <b>D</b>	1,344	1,344	1,344
SIHNV Litigant claims recovery August 2021 <b>E</b> $E = D \times [A / (A + B + C)]$	454	584	357
Present value SIHNV litigant claims recovery August 2021 <b>F</b> $F = E / 1.015^{10}$	391	503	308
<b>Recovery in liquidation</b>			
Including statutory interest on claims <b>G</b> $G = F / A$	7.8%	6.6%	8.6%
Excluding statutory interest on claims <b>H</b> $H = E / [A / 1.077]$	8.4%	7.1%	9.3%

- 3.1.11. AG's 'high case' and 'low case' scenarios in the table above are driven by differences in values and the amount of claims expected to be filed by SIHNV MPC Claimants, i.e. how many claimants will actually file claims and for which amounts? In the 'high case' more claims are filed with a higher than expected total value; in the 'low case' fewer claims are filed. Each scenario assumes that SIHNV MPC Claimants and SIHNV Contractual Claimants successfully bring claims.<sup>7</sup>
- 3.1.12. Given that the liquidation value available to claimants at the level of SIHNV is mostly driven by the liquidation value of PPH, AG also prepared an analysis showing a 'low PPH case' and a 'high PPH case'. These are scenarios where the proceeds of the liquidation as compared to the baseline scenario are lower than estimated ('low PPH case') or higher than estimated ('high PPH case') by applying various discount factors. In these scenarios, the present value of expected recoveries in liquidation drops to 6.2% in the 'low PPH case'; in a 'high PPH case', the present value of expected recoveries rises to 9.6% (these scenarios are not included in the table above).

## **3.2. Key observations Financial Advisor**

- 3.2.1. The Financial Advisor made a number of observations regarding AG's approach and assumptions in estimating the value of claims expected to be filed by the SIHNV MPC Claimants and SIHNV Contractual Claimants and (in connection therewith) the value of the key assets in the South African Entities and European Entities.

### Claim value

- 3.2.2. The Financial Advisor supports the overall approach taken by AG to estimate the claim value of the SIHNV Contractual Claimants at EUR 2,013 million as per August 2021. The Financial Advisor also supports the overall approach taken by AG to estimate the claim value of the SIHNV MPC Claimants at EUR 3,023 million (baseline) as per August 2021. Also, the claim value of the SIHNV MPC Claimants in the high case scenario (EUR 5,578 million) and low case scenario (EUR 1,564 million) appears to be understandable.

### Value of PPH

- 3.2.3. For the South African Entities (and to the extent relevant, the European Entities), the Financial Advisor analysed the key assumptions used by AG to assess the total liquidation value of their key assets and the impact on the estimated liquidation proceeds. Mainly driven by an assessment of the liquidation value of the 68% equity stake in PPH by the South African Entities, the Financial Advisor identified illustrative sensitised total liquidation

---

<sup>7</sup> It is uncertain in a liquidation scenario whether those claimants will in fact be able to bring claims successfully, given the complexity of the underlying claims and the fact that SIHNV (and possibly other stakeholders) dispute the validity of such claims. If these claimants are not successful, this reduces the aggregate claim values in liquidation and consequently improves the relative recoveries of other (acknowledged) creditors.

proceeds in a range of EUR 2,003 million (low case) to EUR 2,291 million (high case). AG, in comparison, calculates expected liquidation proceeds of EUR 1,344 million.

- 3.2.4. The 68% equity stake in PPH is valued by AG at EUR 1,634 million on 31 August 2031, whereas the Financial Advisor identified illustrative sensitised PPH value in the range of EUR 2,257 million and EUR 2,512 million. The difference between AG and the Financial Advisor is mainly explained by a difference of opinion on the assumed (liquidation) discount to be applied on a "block sale" scenario of the PPH shares in an assumed 18-month timeframe in a liquidation scenario.
- 3.2.5. AG highlights that the (forced) sale of the 68% PPH stake in a liquidation scenario is subject to significant discounts in the range of 25% to 50% (at an average 38% in the baseline scenario). The Financial Advisor recognises (and agrees to) the need to apply a discount, but it disagrees with certain assumptions AG uses to underpin its discount. On balance, the Financial Advisor takes the view that a lower discount would be more appropriate and assumes a discount of 15% in a low case and 11% in a high case.

#### Illustrative sensitised recovery in liquidation percentage

- 3.2.6. Based on the liquidation waterfall assumed by AG, the identified illustrative sensitised total liquidation values of the South African and European assets result, in a baseline scenario and according to calculations made by the Financial Advisor, in an expected recovery in liquidation of 11.6% (low) to 13.2% (high). As mentioned above, the difference in outcome is mainly driven by the assessment of the liquidation value of the 68% equity stake in PPH.
- 3.2.7. The Financial Advisor notes with emphasis that (also given the limitations of its scope of work), these sensitised recovery in liquidation percentages should not be read as an adjusted view by the Financial Advisor of the recovery in liquidation percentage as assessed by AG but that these have been calculated to show an illustrative scenario without altering any of the other parameters in the AG liquidation model.
- 3.2.8. Although the sensitised recovery in liquidation percentages as calculated by the Financial Advisor are higher than AG's calculation of an expected recovery in settlement (8.6% as per August 2021) and the expected recovery in liquidation (7.8% as per August 2021), the Financial Advisor highlights that these sensitised recovery percentages should not be assessed in isolation. Other non-quantifiable risks and upsides should also be included in the assessment of the recovery percentages in a liquidation or settlement scenario. The Financial Advisor has highlighted certain non-quantifiable risks and upsides (see below).
- 3.2.9. Both AG and the Financial Advisor have identified material liquidation execution risks ("**Execution Risks**"). AG considers certain Execution Risks regarding the liquidation of the assets as a part of its liquidation discounts but did not separately quantify those Execution Risks. The Financial Advisor does not consider Execution Risks to be part of the liquidation discounts on the PPH shares. AG, despite considering Execution Risks, only partially adjusts for or quantifies its calculation of the liquidation discounts on the PPH shares for

Execution Risks. The Financial Advisor also did not adjust for or quantify Execution Risks outside of the context of liquidation discounts on the PPH shares, since this was outside of its scope of work.

- 3.2.10. On a conceptual level, the following Execution Risks can be identified (non-exhaustive):
1. the risk of additional tax and non-tax claims arriving in a liquidation scenario;
  2. the risk of not having regulatory approvals (partially or in full) for upstreaming cash out of South African to SIHNV;
  3. the risk of a refusal of recognition of a non-South African insolvency office holder (in the event that SIHNV is put into formal insolvency proceedings); and
  4. (operational) disentanglement issues, delays in the timeline, unexpected market and/or regulatory events.
- 3.2.11. The inherent complexities and uncertainties caused by Execution Risks, make it difficult to quantify their impact on the eventual proceeds / recovery rates in case of a liquidation. To provide an indication, the Financial Advisor notes that if its calculations of the outcome in a recovery in liquidation (range of 11.6% (low case) to 13.2% (high case), as per August 2021) are subjected to value erosion due to Execution Risks in a range of 26% (low case) and 35% (high case), the outcome in liquidation would be equal or less than the outcome in a recovery in settlement (of 8.6% in August 2021).
- 3.2.12. Execution Risks are avoided in a settlement scenario. The SIHNV Composition Plan assumes the distribution of fixed amounts rather than fixed recovery percentages. As a result, any unclaimed funds in a settlement scenario are redistributed to claimants that come forward – this may result in higher recoveries compared to a liquidation scenario.
- 3.2.13. In a liquidation scenario, there is a risk that other claims are filed and that despite being disputed still need to be accounted for, whereas under the SIHNV Composition Plan that risk is excluded. As a result, in a liquidation scenario, lower recovery percentages are not unlikely (despite the fact that the Financial Advisors calculates potential higher estimated liquidation proceeds than AG).
- 3.2.14. Based on the above, the Financial Advisor highlights that a settlement scenario appears to provide high certainty on the recovery percentage for the claimants, whereas a liquidation scenario entails a number of risks which could materially decrease the recovery in liquidation percentage.

## **4. ANALYSIS**

### **4.1. Introduction**

- 4.1.1. In this section of the report the SoP Administrators address several items they deem relevant for the assessment of the SIHNV Composition Plan. In doing so, the SoP



Administrators also (where relevant) consider these items in the context of the confirmation refusal grounds as included in section 272 (2) DBA.

## 4.2. NCWO test

- 4.2.1. Pursuant to section 272 (2) sub 1 DBA, the value of the 'SIHNV estate' should not substantially exceed the value that is distributed pursuant to the SIHNV Composition Plan. This test could also be referred to as a 'no creditor worse off test' ("**NCWO Test**"). In order to give substance to a NCWO Test, scenarios alternative to the SIHNV Composition Plan need to be determined and reviewed. The question that needs answering is what the 'expected alternative or 'reasonable alternative' to the SIHNV Composition Plan is.
- 4.2.2. Often the most realistic alternative to adoption and confirmation of a composition plan, is a bankruptcy liquidation. In the case of SIHNV, it is not certain whether the alternative would indeed be a bankruptcy liquidation. The operational status of the Steinhoff Group is such that *if* certain creditors would be willing to further extent payment obligations SIHNV could – in the immediately foreseeable future – probably fulfil its debts if and when they become due. It is in this context that it is relevant that SIHNV only recognises claims as filed by SIHNV MPC Claimants and SIHNV Contractual Claimants for the purpose of reaching the Steinhoff Group Settlement (also by means of the SIHNV Composition Plan). It is thus not unlikely that – should the SIHNV Composition Plan fail – SIHNV would not be declared bankrupt.
- 4.2.3. However, insofar as the SoP Administrators can assess and are in a position to make predictions about SIHNV's future, should the SIHNV Composition Plan fail, it is likely to assume that the window of opportunity that SIHNV has to come to the Steinhoff Group Settlement will more likely than not be closed. Besides the compensation offered under the SIHNV Composition Plan, this plan (i) is to a large degree conditional on the co-operation of parties that have agreed to either grant standstills and other extensions of looming liabilities; and (ii) benefits from the monetary contributions by the Deloitte Firms and D&O Insurers. The commitment of these parties was hard fought by SIHNV and as the SoP Administrators understand, these commitments are not likely to be either maintained for a long period of time or easily re-negotiated if the SIHNV Composition Plan fails to become effective.
- 4.2.4. This means that for the purposes of determining what the alternative would be, the assumption is that SIHNV would sell ('liquidate') its assets in order to satisfy its creditors. To a certain extent it is relatively indifferent whether SIHNV's assets would be liquidated via a bankruptcy process or whether this would be done otherwise. SIHNV – in order to repay its creditors – would need to liquidate its assets in an as controlled as possible manner. Hence, the assumption that, regardless of whether a liquidation is controlled by a bankruptcy trustee or by SIHNV itself, in both situations:
  - all assets will (to the extent possible) be liquidated in an orderly manner;

- SIHNV's material liabilities will be subjected to further litigation both in respect of validity (i.e. does a claimant have a due and payable claim?) as well as ranking (is a shareholder claimant's claim subordinated or not?)<sup>8</sup>;
  - additional assets now made available under the SIHNV Composition Plan (contributions from the Deloitte Firms and the D&O Insurers) could only (possibly) be monetised through litigation or renewed settlement efforts; and
  - costs of the liquidation will increase.
- 4.2.5. The Liquidation Comparator as prepared by AG assumes a 'liquidation' to be the alternative to the SIHNV Composition Plan. The SoP Administrators conclude that a 'liquidation' as used in the Liquidation Comparator sufficiently aligns with how the SoP Administrators define a liquidation for the purposes of determining the alternative as set out above.
- 4.2.6. As follows from paragraph 3.2, the Financial Advisor's illustrative sensitised calculation of what the recovery would be in a liquidation scenario, results in a recovery rate between 11.6% and 13.2%. In comparison, the offer under the SIHNV Composition Plan (base case scenario) amounts to a recovery rate of 8.6%, whereas AG assumes a recovery of 7.8% in liquidation. As mentioned in paragraph 3.2 above, the Financial Advisor emphasises that it is not automatically said that a recovery rate of 11.6% is a realistic outcome; it is merely indicative.
- 4.2.7. Both AG and the Financial Advisor identify Execution Risks in the context of a liquidation (see paragraph 3.2.10). The Financial Advisor takes the view that, given the specific environment the Steinhoff Group operates in and given its size and operational complexity, the Execution Risks are significant, be it that the Financial Advisor is not able to quantify these risks in meaningful detail. Quantifying this risk requires analyses that fall outside of the scope of work as agreed with the Financial Advisor.
- 4.2.8. Notwithstanding, and subject to certain caveats, the Financial Advisor has calculated (as an illustrative scenario) that in case the Execution Risks would materialise (in a low case scenario) as a proxy to be set at 26%, the recovery rate for creditors would equal the recovery rate of 8.6% in case the SIHNV Composition Plan becomes effective (35% in a high case scenario).
- 4.2.9. The SoP Administrators observe that on balance the key assumptions and valuations as used by AG appear to have been made on a prudent basis and are understandable considering the inherent complexity involved and the restrictions the Steinhoff Group faces due to the distressed situation it finds itself in. The exception to this observation, lies in the assumption used to calculate the PPH stake in a liquidation scenario. The SoP Administrators, based on the input by the Financial Advisor, believe there are reasons to

---

<sup>8</sup> Such litigation may be triggered by the debtor itself, an insolvency office holder if formal insolvency proceedings would be opened but also by other creditors, like the SIHNV Financial Creditors.

come to an initial higher value of the PPH stake, be it that it is not unlikely that in an actual liquidation scenario – also due to the effects of Execution Risks – the actual recovery rate for creditors will end up being (significantly) lower than the outcome calculated by the Financial Advisor as an illustrative sensitivity.

- 4.2.10. Aside from the mathematical approach as taken by AG and the Financial Advisor, the SoP Administrators note that the outcome of a liquidation process as described in a model (as is the case for the Liquidation Comparator) is 'hypothetical' and based on multiple assumptions, many of which are subject to debate. As a result (and as is generally accepted) valuations are not the result of exact science. In this respect the SoP Administrators add the following.
- 4.2.11. Apart from the financial aspects, the SoP Administrators see other aspects that require consideration. For instance, in case the SIHNV Composition Plan does not become effective, both SIHNV MPC Claimants and SIHNV Contractual Claimants run additional risks.
- 4.2.12. As SIHNV has taken the formal position that both categories of claims are only recognised for the values under the SIHNV Composition Plan and conditional upon the plan's execution, such claimants will have to start or – as the case may be – continue legal proceedings against SIHNV. Such proceedings in various countries will be protracted and costly and carry an inherent risk. Creditors run a significant risk that SIHNV MPC Claimants or SIHNV Contractual Claimants are unable to prove their respective claims in a respective court of law.
- 4.2.13. The current offer under the SIHNV Composition Plan whereby these creditors receive payment for settled claim amounts with the certainty that payment is received relatively soon, likely is preferable and appears to be considered preferable as evidenced by the ACGs expression of support.
- 4.2.14. Certain of the aforementioned circumstances provide creditors with a distinct and quantifiable advantage compared to the alternative (i.e. a liquidation). In addition, the SoP Administrators take the view that it is far from certain that creditors are worse off under the SIHNV Composition Plan, compared to the alternative.

### **4.3. Performance of the SIHNV Composition Plan**

- 4.3.1. Section 272 (2) sub 2 DBA, requires that performance of the SIHNV Composition Plan is sufficiently safeguarded. In this respect, the SoP Administrators identify certain points of attention.

#### Funds flow process

- 4.3.2. The proceeds for the SoP Settlement Fund originate out of the Steinhoff Group, more specific mostly out of SAHPL. The SoP Administrators have been informed about the flow of funds process in this respect and have received a draft of the funds flow agreement to

which the relevant Steinhoff Group-entities will become a party. The SoP Administrators understand that the flow of funds, in shortest of summaries, means that relevant subsidiaries (i.e. Ainsley Holdings (Pty) Ltd. as holder of 68% of the PPH shares), SIHPL and SAHPL) will free up and distribute funds within the Steinhoff Group by way of settling intercompany balances (if any) and by making dividend payments. Once received by SIHNV, SIHNV will transfer the relevant proceeds to SRF. SIHPL and SAHPL will also be funding SRF directly.

- 4.3.3. The SoP Administrators understand that at the date of this report, the flow of funds process (and the related legal documentation) has not yet been finalised by SIHNV and the Steinhoff Group. The fact that the required steps are not finalised yet is not an issue at present. SIHNV needs to evidence at the confirmation hearing that the Gross Settlement Fund will be available to SRF immediately prior to the Settlement Effective Date. In this context the SoP Administrators note the Steinhoff Group intends to conclude South African law governed security rights in favour of SRF. These rights will be vested over cash and PPH shares in favour of SRF. In case the relevant Steinhoff Group entity that will be under an obligation to fund the Settlement Fund as described in paragraph 4.3.2., misses a due payment to SRF before the Settlement Effective Date, SRF will be able to enforce its security rights over the secured assets. The SoP Administrators understand that this security will be put in place as soon as possible.
- 4.3.4. The fact that the SoP Settlement Fund will be put outside of the control of SIHNV and also otherwise will no longer be part of the SIHNV estate, provides a level of certainty for creditors for the performance of the SIHNV Composition Plan. This is strengthened by the fact that SRF is controlled by independent directors and will be granted a security as described above. In addition, the rules and guidelines for SRF to make distributions (the SRF and Claims Administration Conditions) are mechanical in nature. It is expected that SRF will not often need to apply judgment, safeguards have been put in place: creditors who disagree with SRF can avail themselves of a dispute mechanism.
- 4.3.5. In summary, the SoP Administrators understand that the performance of the SIHNV Composition Plan appears to be sufficiently guaranteed due to the following:
1. All payments resulting from the SIHNV Composition Plan will be made by SRF.
  2. SRF is set up as an independent entity governed by a board of newly appointed directors, with two directors being entirely independent from the Steinhoff Group.
  3. SRF has appointed Computershare as the claims administrator to function independently from both SIHNV and individual creditors.
  4. The SRF and Claims Administration Conditions (Schedule 2 to the SIHNV Composition Plan) intend to provide for a clear and unbiased treatment of creditors by SRF (with the option to resolve disputes efficiently via binding advice (see Schedule 5 to the SRF and Claims Administration Conditions)).

5. Although the flow of funds process (including related documents) has not yet been finalised by SIHNV, the SoP Administrators have no indications that this will not be set up and executed in a manner that effects a timely transfer of the Gross Settlement Fund to SRF.

4.3.6. SIHNV has informed the SoP Administrators that it will ensure that sufficient funds are kept for Non-Qualifying Claimants and Contingent Creditors via the so-called 'Reserve Fund' and that the Reserve Fund will be in place after the Bar Date. As is the case for the Gross Settlement Fund, SIHNV could be held to sufficiently evidence at the confirmation hearing that the Reserve Fund will be in place in time.

#### Litigation in South Africa

4.3.7. At the time of issuance of this report, SIHNV is engaged in litigation in South Africa. A provisional order has been sought for the liquidation of SIHNV by certain applicants that are also referred to as the 'Tekkie Town Claimants' (also see announcements made by SIHNV on its website, [www.steinhoffinternational.com](http://www.steinhoffinternational.com)). The SoP Administrators have intervened in these proceedings. The SoP Administrators intervened also because pursuant to Dutch law, the SoP has universal effect. This being the case, there should be no basis to make SIHNV subject to foreign insolvency proceedings such as the currently pending provisional liquidation application.

4.3.8. In the event the Tekkie Town Claimants are successful in this liquidation application, especially if this were to occur before the Settlement Effective Date or before the turnover of the Gross Settlement Fund to SRF, the performance of the SIHNV Composition Plan could be in jeopardy. SIHNV have informed the SoP Administrators that it has reasonable prospects of success dismissing the relevant application.

4.3.9. At the time of this report also other relevant litigation is pending in South Africa against SIHPL. SIHNV and SIHPL informed the SoP Administrators that it is likely that SIHPL will be successful in all pieces of litigation. The SoP Administrators understand from SIHNV and SIHPL that for this reason, the pending litigation should not obstruct the performance of the SIHNV Composition Plan.

4.3.10. In addition, it appears to the SoP Administrators that the Steinhoff Group cannot allow itself to be led by the threat of pending or announced litigation. A different stance would seriously hamper the process of finalising the Steinhoff Global Settlement, because in that case any opposing creditor could frustrate the process by initiating proceedings.

4.3.11. The SoP Administrators note that SIHPL has expressed its confidence that the SIHPL Section 155 Proposal may be expected to receive sufficient support to get approved and sanctioned in South Africa.

4.3.12. In view of all of the above, the SoP Administrators conclude that at present it cannot be determined that the litigation pending before South Africa courts prevents or will prevent a proper performance of the SIHNV Composition Plan.

#### **4.4. Reasonable and fair treatment of creditors**

4.4.1. Section 272 (2) sub 3 DBA aims to protect creditors against a composition plan whereby individual creditors are favoured over other creditors or that has been concluded on unfair grounds.

4.4.2. Under Dutch law (and in the context of a suspension of payments composition plan) creditors with equal rights should be treated equally (*paritas creditorum*). It is possible to deviate from the principle of *paritas creditorum* provided it does not lead to great unfairness and there are reasonable and objective grounds for a deviation.<sup>9</sup> In this context the following elements can be of interest.

##### Treatment of categories of creditors

4.4.3. The SIHNV Composition Plan makes a distinction between various categories of unsecured creditors. Within the various categories of creditors, no real distinction is made. The categorisation is based on the differences in claims held or alleged. Creditors within the same category are in general treated equally, both because (i) claims of creditors within the same category are valued identically and (ii) the distribution percentage for claims of creditors within the same category is identical.

4.4.4. The SIHNV Composition Plan distinguishes the following overall categories of unsecured creditors:

1. SIHNV MPC Claimants and SIHNV Contractual Claimants;
2. SIHNV Financial Creditors, Intra-Group Creditors and Other Unsecured Creditors;  
and
3. Non-Qualifying Claimants and Contingent Creditors.

4.4.5. In essence and for the purpose of this report, the most relevant category of creditors is the SIHNV MPC Claimants, the SIHNV Contractual Claimants and the SIHNV Financial Creditors.

4.4.6. Other Unsecured Creditors are involved for minor amounts and can likely be deemed to have *de facto* preference due to set off positions or otherwise. The Intra-Group Creditors have the benefit of a continuation of the group in case the Steinhoff Global Settlement succeeds and seemingly for that reason do not participate in any distribution. Finally, the Non-Qualifying Claimants and Contingent Claimants are apparently not numerous, but

---

<sup>9</sup> E.g. see court of appeal Amsterdam 30 November 1938, *NJ* 1939, p. 1982, and district court of Utrecht 9 August 1989, *NJ* 1990/399 (*Breevast*).

more importantly, they are disputed by SIHNV, be it that via the Reserve Fund these claimants may get a pro-rata distribution in case a binding court judgment or settlement would dictate so.

- 4.4.7. Generally speaking, a distinction as made in the SIHNV Composition Plan – according to which different categories of unsecured creditors are offered (a different combination of) cash, securities and/or the preservation of certain contractual rights – should be acceptable.
- 4.4.8. More in detail, the SoP Administrators understand that the SIHNV MPC Claimants and SIHNV Contractual Claimants, as well as the SIHNV Financial Creditors are treated differently in the SIHNV Composition Plan in terms of (i) payment/distribution and (ii) claim valuation.

#### Distribution

- 4.4.9. The SIHNV Composition Plan distinguishes between distribution in a combination of cash and (possibly) shares and preservation of contractual rights.
  - 1. SIHNV MPC Claimants and Contractual Claimants will – in return for a full and final release – receive a payment in cash and PPH shares.
  - 2. SIHNV Financial Creditors, do not receive immediate compensation, but their contractual rights are preserved.
- 4.4.10. SIHNV equally offers SIHNV MPC Claimants and SIHNV Contractual Claimants a distribution in cash and partially in PPH shares. SIHNV Financial Creditors obtain a preservation of their rights whilst not receiving any immediate payment. (except for holders of the Hemisphere CPU – see paras. 68 and 103 of part A of the SIHNV Composition Plan). In addition, the SIHNV Financial Creditors release SIHNV (and other Steinhoff Group entities, related parties, the Deloitte Firms, certain former D&O's and the S&O Insurers) from any and all claims that they may have in relation to the Events and/or Allegations.
- 4.4.11. By means of the SIHNV Composition Plan, SIHNV settles with the SIHNV MPC Claimants and the SIHNV Contractual Claimants any loss that may have resulted from the Events and/or Allegations. In addition, the SIHNV Financial Creditors allow the SIHNV MPC Claimants and SIHNV Contractual Claimants to make a recovery from the Deloitte Firms and the D&O Insurers without having a similar benefit. In essence, this means that as a result of the Steinhoff Group Settlement the SIHNV Financial Creditors will be the only remaining relevant category of creditors for SIHNV with claims that will not be immediately due and payable.
- 4.4.12. The SoP Administrators believe this different treatment to appear acceptable considering that:

1. the SIHNV Financial Creditors in essence are allowing SIHNV MPC Claimants and SIHNV Contractual Claimants to (i) receive payment on claims the SIHNV Financial Creditors only agree to be recognised by SIHNV under the SIHNV Composition Plan and (ii) be paid first, and (iii) in respect of the funds made available by the D&O Insurers, and the Deloitte Firms, allowing the SIHNV MPC Claimants and SIHNV Contractual Claimants to take sole recourse.
  2. The claims of SIHNV MPC Claimants and SIHNV Contractual Claimants are recognised for the purposes of the SIHNV Composition Plan and will therefore receive (i) certainty of payment, (ii) distribution of cash and PPH shares out of the SoP Settlement Fund and (iii) distribution of cash made available by D&O Insurers and the Deloitte Firms.
  3. the SIHNV Composition Plan is the result of extensive negotiations between various categories of creditors and various SIHNV creditors have expressed that they consider the Steinhoff Group Settlement and its implementation to be in the best interest of all parties involved.
- 4.4.13. In the SoP Administrators' opinion, the preservation of the contractual rights of SIHNV Financial Creditors does not lead to unfairness and there appear to be objective grounds to treat the claims held by these creditors differently from claims held by other unsecured creditors of SIHNV.
- 4.4.14. The SoP Administrators are not aware of any secret favouritism nor have the SoP Administrators assessed that the SIHNV Composition Plan has been established by deceit, by favouring one or more creditors or by other unfair means.
- 4.4.15. The SoP Administrators point out that the appointment of the SoP Committee of Representation contributes to the prevention of a SIHNV Composition Plan favouring one specific creditor or category of creditors. Even if an agreement favouring a creditor were to have been concluded between creditors and SIHNV and if such favouring had influenced the formation of the composition plan, (and again: this has not been assessed), those individual creditors are not allowed to vote on the SIHNV Composition Plan. The members of the SoP Committee of Representation cast their votes on the SIHNV Composition Plan and although these members have been nominated by the various creditors and represent their interests, they are expected to vote on the SIHNV Composition Plan as they deem fit. The latter is especially true for the independent members on the SoP Committee of Representation as these members have not been nominated by the various creditor groups and as such do not represent any particular, individual interest.
- 4.4.16. In the context of equal treatment of creditors, the SoP Administrators point out two specific items:



1. The cost compensation to Active Claimant Groups (representative groups for MPC Claimants; "**ACGs**") by SAHPL.
2. SIHNV Financial Creditors that hold the Hemisphere CPU will receive an immediate payment in PPH shares and cash whilst other SIHNV Financial Creditors receive no immediate payment.

(1) *Cost Compensation ACGs*

- 4.4.17. In respect of the cost compensation offered to the ACGs, the SoP Administrators understand that the ACGs do not have a direct claim against SIHNV for the cost compensation and that this compensation is paid by SAHPL. As such, it does not directly dilute the SoP Settlement Fund and Reserve Fund.
- 4.4.18. The SoP Administrators understand this payment to be a crucial element in order to arrive at the Steinhoff Group Settlement. The ACGs apparently have made costs in pursuing a settlement with the Steinhoff Group, and the ACGs continue to make costs, for instance in the context of claim filings. A contribution to of these costs is part of the commercial undertakings in the context of the Steinhoff Group Settlement. A cost contribution provision in itself does not fall outside the scope of permissible undertakings under Dutch contract law.
- 4.4.19. The cost compensation is not secretly offered but rather publicly communicated. In light of these circumstances, the SoP Administrators do not believe the cost compensation to be in conflict with section 272 (2) sub 3 DBA.

(2) *Hemisphere CPU Payment*

- 4.4.20. The SoP Administrators understand that under the relevant finance documents related to the Hemisphere CPU, SIHNV has the obligation to make the payment as disclosed under the SIHNV Composition Plan. The SIHNV Composition Plan states that this is the result of a 'commercial bargain'.
- 4.4.21. The SoP Administrators have been informed that this payment under the Hemisphere CPU probably cannot be crammed down. An attempt to cram down the Hemisphere CPU in the SoP process will likely fail due to the fact that this would trigger a default of the financing at the Hemisphere level. This in turn will likely trigger cross-defaults resulting in financial instability for of the group as a whole.
- 4.4.22. This being the case – also when considering a payment of EUR 66 million out of a total settlement fund of EUR 1,600 million – the SoP Administrators view the different treatment of the Hemisphere CPU as understandable.

Claim valuation

- 4.4.23. In terms of claim valuation, the SIHNV Composition Plan distinguishes between two valuation methodologies: Inflation Methodology and Rescission Methodology. MPC

Claimants are valued according to the Inflation Methodology and Contractual Claimants are valued according to the Rescission Methodology.

- 4.4.24. The claims of SIHNV Financial Creditors, Intra-Group Creditors and Other Unsecured Creditors correspond with the value of the claim as laid down in the respective contracts and are as such not subject to valuation.
- 4.4.25. The SoP Administrators are of the opinion that certain valuation principles need to be part of the structure of the SIHNV Composition Plan. Without valuation principles, it would not be possible to treat creditors within the same category on an equal basis.
- 4.4.26. Under Dutch law, tort claims are considered as claims which contain an undetermined or uncertain value. The value of such claims is difficult to estimate. In estimating such claims, the application of objective and general valuation principles significantly contributes to the equal treatment of claimants.
- 4.4.27. The SoP Administrators understand that many claims against SIHNV may be governed by other laws than Dutch law (e.g., German or South African law) complicating the question on how to value the claims.
- 4.4.28. The use of objective and reasonable valuation principles in the SIHNV Composition Plan, such as providing for a universal application among similarly situated creditors, promotes the equal treatment of unsecured creditors. The application of the Valuation Principles across the full spectrum of tort claimants, secures an equal standard pursuant to which distributions can be made.
- 4.4.29. This is in contrast to the breach of a *pari passu* treatment which would follow in case no valuation principles are imposed and instead would need to rely on judgement by different courts in different jurisdictions.
- 4.4.30. In the SoP Administrators' opinion, the difference in valuation methodology between MPC Claimants and Contractual Claimants does not lead to unfairness or injustice and there are reasonable and objective grounds to apply the Valuation Principles to the different categories of unsecured creditors.

#### Bar Date

- 4.4.31. The SoP Administrators understand that if creditors do not file a claim prior to the Bar Date, this will result in a loss of their share in the proceeds available for distribution. Thus, a cancellation of claims is effective if creditors fail to submit their claims prior to the Bar Date (the date falling three months after the Settlement Effective Date).
- 4.4.32. In Dutch SoP proceedings, no statutory basis is provided for a bar date (other than in bankruptcy proceedings). However, the Bar Date in the SIHNV Composition Plan does not apply during the SoP Proceedings since the Bar Date only becomes effective after the

SoP has ended. The Bar Date is part of the SIHNV Composition Plan and as such it is a contractual matter between SIHNV and its creditors.

- 4.4.33. A three-month period until the Bar Date may be seen as short, but in the SoP Administrators' view it is not. The way the SIHNV Composition Plan operates, distributions cannot be made until the total quantum of filed claims is known. An extended bar date would thus delay payments to claimants who filed their claims in time. In addition, the SoP Administrators note that in the period preceding the Bar Date (i.e. as of the start of the SoP) the SIHNV Composition Plan has been available, thus the applicability of the Bar Date is also known for a significant period of time.
- 4.4.34. The SoP Administrators believe that setting a bar date makes sense within the framework of the performance of the SIHNV Composition Plan and that this Bar Date is reasonable.

#### **4.5. Other**

- 4.5.1. For the sake of completeness, the SoP Administrators note that it seems that the SIHNV Composition Plan has overwhelming support from the various creditor constituencies. This is a relevant indicator as to the degree of anticipated acceptance of the SIHNV Composition Plan and needs to be weighed accordingly when assessing it.

### **5. CONCLUSION**

- 5.1.1. When considering the merits of the SIHNV Composition Plan one should try to formulate the best possible answer to this question: should a creditor prefer the certainty of the offer made under the SIHNV Composition Plan over the uncertainty of what it may on an individual basis recover if the SIHNV Composition Plan would not come into effect?
- 5.1.2. The SoP Administrators hold the view that a reasonable acting SIHNV MPC Claimant or SIHNV Contractual Claimant, having reviewed the information available, would prefer the payment offered under the SIHNV Composition Plan. The SoP Administrators specifically note in this context that one of the main drivers of the SIHNV Composition Plan is to formalise settlement of (purported) claims made in the context of the Events and Allegations. A typical characteristic of settlements of these types of claims, is the element of finality. Finality can for both sides (i.e. debtor and creditor) very well be almost or equally as important as the agreed economics.

SIHNV and certain creditors have reserved their respective rights to fully contest and litigate any and all claims made by SIHNV MPC Claimants and SIHNV Contractual Claimants, should the SIHNV Composition Plan not become effective. In such scenario, individual claims will be brought against SIHNV and protracted and costly litigation will likely follow. On an individual basis, some SIHNV MPC Claimants or SIHNV Contractual Claimants might be successful, some might receive nothing at all. A composition plan that not only recognises these claims, but also applies similar, transparently communicated

valuation principles to these claims, results in a more equal treatment of creditors belonging to the same category.

In addition, the SoP Administrators also see value in the agreement SIHNV reached with the Deloitte Firms and the D&O Insurers. This value is relatively easily made accessible to creditors eligible to it in connection with the SIHNV Composition Plan. In case the SIHNV Composition Plan does not become effective, unlocking this or any such value would also require costly and protracted litigation, possibly on an individual basis.

- 5.1.3. With respect to other creditors (SIHNV Financial Creditors), the SIHNV Composition Plan provides certainty because claims brought by SIHNV MPC Claimants or SIHNV Contractual Claimants are resolved. As a result of the SIHNV Composition Plan the Steinhoff Group will become a financially more stable counterpart to the SIHNV Financial Creditors.
- 5.1.4. Lastly, the SoP Administrators stress that – and this applies to all categories of SIHNV's creditors – a liquidation will be time consuming and will lead to or add uncertainty for all creditors. It is not unlikely that a liquidation scenario may result in a worse outcome for the joint creditors compared to what is offered under the SIHNV Composition Plan.
- 5.1.5. On balance the SoP Administrators deem the SIHNV Composition Plan to offer an equitable consideration and outcome to all creditors concerned.
- 5.1.6. This paragraph 5 is an integral part of this report and as such can only be understood and construed in the context of the entire report and thus should not be read or interpreted in isolation.

Amsterdam, 30 August 2021,

F. Verhoeven and C.R. Zijderveld,

SoP Administrators



## **Annex 2 - scope and limitations of the Financial Advisor's work**

### **Introduction Financial Advisor**

As per 20 May 2021 the SoP Administrators engaged EY Strategy and Transactions as their financial advisors (the “**Financial Advisor**”) to assess certain key financial aspects of the SIHNV Composition Plan. More specifically the Financial Advisor performed the following analysis:

Analyse the Steinhoff Allocation Plan (Schedule 3), Valuation Principles (Schedule 7) and Liquidation Comparator (schedule 6), containing the underlying financial and technical assumptions and calculations which are included in the SIHNV Composition Plan in order to submit the Administrators with relevant financial information which can be used in the assessment of the SIHNV Composition Plan and to use their advisory report in the suspension of payment proceedings of SIHNV in the Netherlands.

EY has concluded its report on 30 August 2021 after coordination with SIHNV's board and advisors for factual alignment.

### **Limitations of the scope of work of the Financial Advisor**

The work performed by the Financial Advisor consisted primarily analytical procedures applied to the data, information and explanations provided to the Financial Advisor. In both the Financial Advisor's engagement letter and Report the limitation of the Financial Advisor scope of work is extensively described. Below we have listed the key limitations of the Financial Advisor's scope of work:

- The work performed has not been provided in accordance with auditing, review or other standards generally accepted in the Netherlands and do not, therefore, constitute any opinion or report as issued within the framework of audits. In addition, none of the work performed qualify as a legal opinion;
- The (updated) Liquidation Comparator is highly sensitive to several key assumptions which are based on estimates and made by SIHNV and its advisors. The Financial Advisor has performed a sanity-check on these variables and has considered the reasonableness of the assumptions used within the analysis. The Financial Advisor did not consider or has been requested to identify any (possible) alternatives to the SIHNV Composition Plan and (updated) Liquidation Comparator or performed an independent valuation of SIHNV's assets;
- The Financial Advisor did not review legal documentation and has relied upon summaries and interpretations of contractual positions provided by SIHNV and their legal advisors;
- SIHPL S155 Proposal was out of scope for the Financial Advisor;
- The Financial Advisor was not able to perform an analysis of the theoretical liquidation value on an entity-by-entity basis as SIHNV and its advisors have not performed their

liquidation analysis at an individual company level. SIHNV has performed a theoretical liquidation analysis at the level of the main six holding companies only.

## MEMORANDUM

To: Suspension of Payments Steinhoff  
International Holdings N.V.

From: Frans Crul, secretary to the Committee

Date: 8 September 2021

Reference: 0287794.0001/3886102

Subject: Report Committee of Representation

GEWAARMERKT  
Amsterdam, 8 September 2021  
Deponent/Ortfer De rechter/Commissaris  
CHR

**1 INTRODUCTION**

- 1.1 In the provisional suspension of payments of Steinhoff International Holdings N.V. (**SIHNV** or the **Company**), the court appointed administrators, Mr Frederic Verhoeven and Mr Chrisiaan Zijderveld (the **Administrators**) requested the District Court of Amsterdam to appoint a Committee of Representation (the **Committee**) as referred to in Article 281e of the Dutch Bankruptcy Act (*Faillissementswet*, **DBA**). The District Court of Amsterdam granted the Administrators' request by decision of 28 May 2021 and appointed the Committee as such. The Committee is comprised of fifteen members, eleven of which are representatives of creditors or groups of creditors of SIHNV (the **Bound Members**), and four of which are independent members appointed on the basis of their specific expertise (the **Independent Members**). At the voting hearing that commenced on 3 September 2021 and subsequently was adjourned until 8 September 2021 (the **Voting Hearing**), the members of the Committee will vote on the composition plan offered by SIHNV in this suspension of payments procedure: the **Composition**.
- 1.2 At its constitutive meeting of 24 June 2021, the Committee appointed Frans Crul as its secretary. In that capacity, I am hereby providing a concise report of the Committee's activities to date. Before doing so, I briefly reflect on the nature and background of the Committee.

**2 THE COMMITTEE**

- 2.1 As already noted above the Committee was appointed by the District Court of Amsterdam in accordance with Article 281e DBA. The composition of the Committee is considered to reflect the most important groups of creditors. The DBA does not further specify the activities of the Committee other than that the Committee Members vote on the Composition instead of the debtor's creditors. As such, the constitution of a Committee has a radical impact on individual creditors' rights. Not only is a creditor's right to vote on the Composition transferred to the Committee, but also adjacent rights, such as the right to appeal against a possible conformation of the Composition are transferred to the Committee Members.
- 2.2 Since the DBA provides little guidance on the activities of the Committee, the Committee has adopted certain rules of procedure (the **Rules**) at its constitutive meeting. The Rules are attached to this report as annex 1. The Rules are intended to supplement the provision of Section 281e DBA and provides for several procedural safeguards and rules in relation to the operation and procedures to be adhered to by the Committee.
- 2.3 It is noted that the only formal meeting of the Committee is the Voting Hearing in front of the Supervisory Judge. All activities prior to the Voting Hearing are 'informal' by nature, although the Committee has deemed in the interest of all parties involved to somehow formalize their activities, as described in the Rules.



### 3 ACTIVITIES COMMITTEE

- 3.1 The point of departure of the Independent Members differed substantially from that of the Bound Members. Until their appointment by the District Court of Amsterdam, the Independent Members were not involved in any way in SIHNV or any of its creditors. By contrast, the Bound Members are representatives of creditors or groups of creditors of SIHNV, and in that capacity have already been involved for quite some time in the detailed creation of the Composition. Understandably, when the Independent Members commenced their activities they had a considerable information backlog as compared to the Bound Members.
- 3.2 The Committee's activities have been aimed at ensuring that all Members are sufficiently able to cast an informed vote regarding the Composition at the Voting Hearing. When the Committee commenced its activities, Paul Kuipers and Marc Noldus of Linklaters provided a presentation on behalf of SIHNV regarding the main lines of the Composition. Under the direction of its Chair, the Committee subsequently conducted several interviews during which the interviewees were invited to provide their opinion regarding the Composition and its creation. The meetings and interviews proceeded harmoniously, without exception, and various positions were explained and discussed.
- 3.3 It is emphasized that the meetings were not aimed at coming to a joint vote or position with regard to the Composition, but rather at the exchange of arguments and information. All Members of the Committee will cast an individual vote at the Voting Hearing and at the Voting Hearing only.
- 3.4 The following individuals or groups were interviewed by the Committee with in principle all Committee Members being present<sup>1</sup>:
- Peter Wakkie in his capacity as member of SIHNV's Litigation Committee;
  - Lancaster 101 (RF) (Pty) Ltd (**Lancaster**);
  - the Bound Members representing the Financial Creditors;
  - the Bound Members representing the MPC Claimants with the exception of Hamilton, VEB and PIC;
  - the Bound Member representing the Contractual Claimants;
  - the Bound Member representing Hamilton;
  - Analysis Group (financial advisor engaged by SIHNV);
  - SIHNV's Board members Louis du Preez and Theodore de Klerk;
  - the Administrators together with EY (financial advisor engaged by the Administrators).<sup>2</sup>
- 3.5 The Committee has had plenary meetings on 9 August 2021, 2 September 2021 and 7 September 2021. The purpose of the plenary meeting on 9 August 2021 was to discuss the Committee's work until then and to discuss any issues going forward. The plenary meetings on 2 and 7 September 2021 took place in preparation of the Voting Hearing.
- 3.6 For all the above-mentioned interviews and meetings, notes were taken and distributed amongst the Committee Members. A more extensive overview of the interviews, including names of the interviewees and dates is attached as annex 2.
- 3.7 The Independent Members asked the interviewees to draw up a position paper prior to their interview, in which answers could be given to at least the following three questions:

---

<sup>1</sup> It may be that certain Committee Members were not able to attend an interview, but all interviews were open to all Committee Members.

<sup>2</sup> Only the Committee Members that had signed Release Letters with EY prior to the interview were allowed to join the part of this interview in which EY commented on its report, please also refer to paragraph 3.13.

- are you of the opinion that the Composition is balanced and reasonable in respect of all of SIHNV's creditors?;
- are there specific parts of the Composition that should be given special attention by the Independent or other Members in their decision-making?; and
- in your opinion, what are SIHNV's prospects in the event that the Composition is not adopted or approved?

- 3.8 The position papers served as the starting point for the interviews to be conducted. The Committee found the position papers to be very useful.
- 3.9 After the first seven interviews, the Independent Members sent a letter to the Administrators that contained multiple questions related to topics and issues that were identified upon review of the Composition, the available documentation and during the interviews. The letter dated 6 August 2021 is attached as annex 3. The Administrators responded to this letter on 25 August 2021, the contents of which are confidential at the request of the Administrators. The topics and issues addressed have also been discussed in the Administrators' report in accordance with Article 265 DBA dated 30 August 2021 (the **Administrators' Report**).
- 3.10 As of the appointment of the Committee, SIHNV made (upon the request of the Committee) a large number of (confidential) documents available to the Committee, including financing documentation, legal opinions and procedural documents. These documents are available to the entire Committee in an online data room that is managed and secured by the secretary. Obviously, the Committee was also able to take cognisance of information that is available to the public, including the Composition in particular, via [www.steinhoffsettlement.com](http://www.steinhoffsettlement.com). The data room is continuously updated as new information and documentation is being provided.
- 3.11 Special reference is made to the different versions of the report from Analysis Group on the liquidation comparator and valuation principles and the report received from EY.
- 3.12 On behalf of SIHNV, Analysis Group has performed an analysis of a hypothetical liquidation of SIHNV as of 31 August 2021 and to estimate the expected recoveries of the various liability claims at SIHNV and its subsidiaries. The Committee has received different versions of their analysis both prior and after the interview with Analysis Group. The final version of the Analysis Group report has been provided to the Committee on 29 August 2021. Analysis Group has been available for discussions along the entire period up to the Voting Hearing.
- 3.13 EY has been engaged by the Administrators to analyse certain financial aspects of the Composition Plan, including the valuation principles and the liquidation comparator in order to submit the Administrators with relevant financial information which can be used in the assessment of the Composition Plan and to use their advisory report in the suspension of payment proceedings of SIHNV. EY finalized its report on 30 August 2021 (the **EY Report**). The EY Report has been shared as of that date with those Committee Members who signed a release letter with EY. Consequently, not all Committee Members have received the EY Report. The EY Report was discussed with representatives of EY on 1 September 2021. As mentioned above, only the Committee Members who had signed a release letter prior to that meeting were allowed by EY to attend the discussions on the EY Report.
- 3.14 Furthermore, the Committee and more in particular the Independent Members have had various ad hoc and/or informal discussions with the Administrators, the Company and creditors that do not have their own (direct) representative in the Committee. This also includes a meeting of the Independent Members with the Administrators and the Company on 3 September 2021.

*Position non-represented creditors*

- 3.15 Of all creditors that are not (directly) represented in the Committee, Lancaster has been the only individual creditor that has reached out to the Committee to express their views on and concerns with the Composition.
- 3.16 Lancaster was invited to present its views to the Committee during its interview on 12 July 2021. Subsequently, Lancaster's financial advisors presented their findings in a separate meeting with the Independent Members on 16 July 2021. Furthermore, counsel to Lancaster has approached the Independent Members at multiple occasions. Consequently, Lancaster has been provided additional opportunities to present its views and critiques with regard to the Composition to the Independent Members. Any materials provided by Lancaster, including but not limited to different versions of the Farber/B.Riley report, have been shared with the entire Committee as soon as they had been received.
- 3.17 On 7 September 2021 the Committee also received a letter from counsel to five South African companies, in the Composition referred to as the 'Tekkie Town Claimants' (**Tekkie Town**). This was the only time that Tekkie Town addressed the Committee directly to share its views on the Composition. No further correspondence has been exchanged.

**4 CONCLUSION**

- 4.1 The meetings and interviews prior to the Voting Hearing have taken place in good harmony. All parties, whether or not directly represented in the Committee, have been provided the opportunity to present their views on the Composition. In addition, any creditor in the Suspension of Payments of SIHNV will still have the opportunity to present its views to the Committee at the Voting Hearing prior to the actual voting.

ANNEX 1

Rules of Procedure

Rules for the committee of representation (*commissie van vertegenwoordiging*) pursuant to section 281e Dutch Bankruptcy Act

Dated 25 June 2021

In the suspension of payments of:

STEINHOFF INTERNATIONAL HOLDINGS N.V.

## Rules for the committee of representation (*commissie van vertegenwoordiging*) in the suspension of payments of:

STEINHOFF INTERNATIONAL HOLDINGS N.V., a public company (*naamloze vennootschap*) under the laws of the Netherlands, having its official seat in Amsterdam, the Netherlands, with its address at Building B2, Vineyard Office Park, Cnr Adam Tas & Devon Valley Road, Stellenbosch 7600, the Republic of South Africa, registered with the Dutch Trade Register under number 63570173 ("SIHNV").

### Preamble

- (A) On 15 February 2021, the Court granted a suspension of payments (*surseance van betaling*) in respect of SIHNV (the "SoP"). On the same date, SIHNV proposed a draft composition plan (*ontwerp van akkoord*) dated 15 February 2021 (as may be amended from time to time) (the "SIHNV Composition Plan").
- (B) The Court appointed Mr F. Verhoeven and Mr C.R. Zijdeveld as administrators (*bewindvoerders*, together: the "SoP Administrators") and Ms K.M. van Hassel and Ms C.H. Rombouts as supervisory judges (*rechters-commissaris*).
- (C) The SIHNV Composition Plan is proposed to the SoP Creditors as part of the Steinhoff Group's proposal to implement a global settlement to conclude the legal claims and litigation proceedings arising from legacy accounting issues as first announced in December 2017 (the "Steinhoff Group Settlement").
- (D) The most significant groups of SoP Creditors are the following (each: a "Creditor Group"):
- (i) The SIHNV Financial Creditors, jointly representing an approximate value of EUR 9.179 billion as at 31 December 2020 in contractual claims under certain contingent payment undertakings entered into by SIHNV.
  - (ii) The SIHNV MPC Claimants, jointly representing an approximate value of EUR 2.8 billion as at December 2017 in alleged SIHNV MPC Relevant Claims (as defined in the SIHNV Composition Plan).<sup>1</sup> Approximately 50.8% of this total claim value of the SIHNV MPC Claimants is estimated to be represented by the ACGs.
  - (iii) The SIHNV Contractual Claimants, jointly representing an approximate value of EUR 1.869 billion as at December 2017 in alleged SIHNV Contractual Claims (as defined in the SIHNV Composition Plan).<sup>2</sup>
- (E) On 28 May 2021, at the request of the SoP Administrators and as supported by SIHNV, the Court has appointed a committee of representation (*commissie van vertegenwoordiging*) in the SoP pursuant to Section 281e DBA (the "Committee"), consisting of the individuals set out in **Schedule 1** as its Members (the "Initial Members").
- (F) Pursuant to Sections 281e in conjunction with 268 DBA, the Committee shall vote at the Voting Meeting on the SIHNV Composition Plan instead of individual SoP Creditors.
- (G) On 25 June 2021, the Committee has established the following rules and procedures (the "Rules"). The Rules are intended to supplement the provision of Section 281e DBA and

<sup>1</sup> This is an *estimated* approximation based on, among other things, the valuation methodologies set out in the Valuation Principles (Schedule 7 of the SIHNV Composition Plan).

<sup>2</sup> This is an *estimated* approximation based on, among other things, the valuation methodologies set out in the Valuation Principles (Schedule 7 of the SIHNV Composition Plan).

provides for several procedural safeguards and rules in relation to the operation and procedures to be adhered to by the Committee.

## Definitions

**"Affiliate"** means in relation to any person, a subsidiary of that person or a holding company of that person or any other subsidiary of that holding company and, in relation to any person which is a fund, that fund's investment managers and investment advisers and that fund's Related Funds' investment managers and investment advisers.

**"ACGs"** means each of the following parties:

- (i) Burford Capital LLC;
- (ii) Deminor, meaning jointly
  - (a) Deminor Recovery Services (Luxembourg) S.A.; and
  - (b) DRS Belgium SRL;
- (iii) Hamilton, meaning jointly:
  - (a) Hamilton B.V.;
  - (b) Hamilton 2 B.V.; and
  - (c) Claims Funding Europe Limited;
- (iv) Innsworth, meaning jointly:
  - (a) Innsworth Steinhoff Claim B.V.;
  - (d) Innsworth Advisors Limited; and
  - (e) Innsworth Capital Limited.
- (v) ISLG, meaning jointly:
  - (a) Stichting Steinhoff International Compensation Claims;
  - (f) Alexander Reus, P.A. dba DRRT;
  - (g) DRRT Limited;
  - (h) TILP Rechtsanwalts-gesellschaft mbH; and
  - (i) LHL Attorneys INC; and
- (vi) Grant & Eisenhofer P.A. and Kessler Topaz Meltzer & Check, LLP.

**"Chairperson"** has the meaning given to it in Clause 3.1.

**"Committee"** has the meaning given to it in Recital (E).

**"Confidential Information"** means:

- (i) information Members and their advisors receive in their capacity of Member and which is not otherwise publicly available;
- (ii) communications, both oral and written, to and among Members and their advisors in conjunction with activities of the Committee;

- (iii) any other summaries, analyses, reports, memoranda, briefing papers or other work products Members and their advisors receive in their capacity of Member; and
- (iv) all other information designated as such by the Chairperson;  
exclusive of any information that is already known or will become known to a Member or Members in any other capacity.

**"Court"** means the District Court of Amsterdam.

**"DBA"** means the Dutch Bankruptcy Act.

**"Deputy Chairperson"** has the meaning given to it in Clause 3.2.1.

**"G4"** means each of the following parties:

- (i) Silver Point Capital Partners, LP;
- (ii) Sculptor Investments IV S.á r.l.;
- (iii) The Baupost Group, LLC; and
- (iv) Farallon Capital Europe LLP.

**"Independent Member"** has the meaning given to it in Clause 1.3.

**"Members"** has the meaning given to it in Clause 1.1 and includes the Independent Members.

**"Related Fund"** means, in relation to any person (the "first person"), a fund which is managed or advised by the same investment manager or investment adviser as the first person, or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first person.

**"Rules"** has the meaning given to it in Recital (G).

**"Secretary"** has the meaning given to it in Clause 3.3.1.

**"SIHNV"** has the meaning given to it in the heading the Rules.

**"SIHNV Composition Plan"** has the meaning given to it in Recital (A).

**"SIHNV Contractual Claimants"** has the meaning given to it in the SIHNV Composition Plan.

**"SIHNV Financial Creditors"** has the meaning given to it in the SIHNV Composition Plan.

**"SIHNV MPC Claimants"** has the meaning given to it in the SIHNV Composition Plan.

**"SoP"** has the meaning given to it in Recital (A).

**"SoP Administrators"** has the meaning given to it in Recital (B).

**"SoP Creditors"** means all unsecured non-preferred creditors of SIHNV which are subject to the SoP in accordance with Section 232 DBA.

**"Steinhoff Group"** means SIHNV and each of its direct and indirect subsidiaries from time to time.

**"Underlying Creditor"** means a creditor of SIHNV, in each case along with such creditor's Affiliates and Related Funds.

**"Voting Meeting"** means the voting meeting scheduled pursuant to Section 255(1)(2<sup>o</sup>) DBA to be held at the Court.



"Website" means the following website: [www.steinhoffsettlement.com](http://www.steinhoffsettlement.com).

## Rules

### 1 Composition

- 1.1 The Committee consists of 15 members appointed by the Court (the "**Members**").
- 1.2 The Committee consists as of 8 June 2021 of the following members:
  - 1.2.1 4 Members representing the SIHNV Financial Creditors.
  - 1.2.2 4 Members representing the ACGs.
  - 1.2.3 2 Members representing the SIHNV MPC Claimants that are not represented by the ACGs.
  - 1.2.4 1 Member representing the SIHNV Contractual Claimants.
- 1.3 The Committee also includes 4 Members who shall act as independent Members (the "**Independent Members**"). The Independent Members do not represent, and are not affiliated with, any Creditor Group.

### 2 Termination of membership

#### 2.1 Grounds for termination of membership

At the request of the SoP Administrators to the Court and after consultation with the Chairperson a Member's membership of the Committee terminates upon a subsequent order of the Court in the following circumstances:

- 2.1.1 upon the appointment of a custodian to administer such Member's affairs or upon a court decision pursuant to which one or more of the assets of the Member are placed under curatorship as a result of such Member's physical or mental condition;
- 2.1.2 upon such Member's death;
- 2.1.3 upon such Member being declared bankrupt, applying for a suspension of payments or petitioning for application of the debt restructuring provision referred to in the DBA;
- 2.1.4 upon such Member being disqualified to act as a director within the meaning of Section 106a DBA;
- 2.1.5 upon such Member's sequestration or any similar action or proceeding, whether provisional or final;
- 2.1.6 if a Member violates the confidentiality provisions of Clause 10 and the Committee resolves in a meeting that such Member is removed from the Committee; and
- 2.1.7 if a Member materially violates the Rules or acts in such a way that the Committee cannot reasonably perform its tasks as a Committee and the Committee resolves with a two-third majority including 3 Independent Members in a meeting that such Member is removed from the Committee. In such case, the order sought from the Court shall include the nomination of a replacement Member put forward by the Underlying Creditor represented by the removed Member.

#### 2.2 Notifications

2.2.1 A Member (not being an Independent Member) shall promptly notify the Chairperson if that Member, or the creditor or holder of security rights whom that Member represents, ceases to hold a claim against SIHNV (i.e. that Member's or creditor's claim is transferred, paid in full, assigned or fully and finally disallowed by a binding determination of a competent court) or ceases to hold security rights that entitle it to institute a claim against SIHNV. Upon receipt, the Chairperson shall provide notice thereof to the remaining Members.

2.2.2 Upon termination of a Member's membership of the Committee, the Chairperson shall provide notice thereof to the remaining Members.

### **2.3 Suspension of Membership**

In the event that the Committee resolves to remove a Member in accordance with clause 2.1.7, the Member is being suspended with immediate effect until a decision of the Court upon the terminations has been rendered. The suspended Member will, for the duration of the suspension, be replaced by another person representing the same Underlying Creditor.

### **2.4 Voluntary resignation or replacement**

Any Member that is not an Independent Member may resign or be replaced if:

2.4.1 the Member ceases to be a director, officer, partner, employee or Affiliate of the Underlying Creditor or ACG (as applicable) the Member represents, howsoever arising, in which event the relevant Underlying Creditor or ACG may propose the Member's replacement to the Court;

2.4.2 the relevant Underlying Creditor ceases to be a SoP Creditor; or

2.4.3 the relevant ACG (or VEB) no longer represents any Underlying Creditor.

### **2.5 Surviving rights and obligations**

Termination of a Member's membership of the Committee does not affect that Member's rights and obligations under Clauses 8 and 10.

## **3 Chairperson, Deputy Chairperson and Secretary**

### **3.1 Chairperson**

3.1.1 The Chairperson must be an Independent Member.

3.1.2 The initial chairperson (the "Chairperson") shall be Wouter Jongepier.

3.1.3 Subject to the supervisory judges chairing the Voting Meeting, the Chairperson shall chair all other meetings of the Committee. In the Chairperson's absence during a meeting of the Committee, the Chairperson of the meeting shall be the Deputy Chairperson.

3.1.4 The role of the Chairperson is to manage the organization of the Committee to make the Committee operate efficiently. The Chairperson shall also be the primary point of contact for any questions addressed to the Committee by the SoP Administrators, the supervisory judges in the SoP, the Court and SIHNV and vice-versa. The role of the Chairperson does not entail any fiduciary obligation or other obligation to any other Members, creditor, SIHNV, the SoP Administrators or third party.

### **3.2 Deputy Chairperson**

- 3.2.1 The Deputy Chairperson must be an Independent Member.
- 3.2.2 The Chairperson may delegate any of its tasks to the Deputy Chairperson. With respect to such tasks, the Deputy Chairperson shall act in the name of the Chairperson and any reference in these Rules to the rights and duties of the Chairperson with respect to such tasks shall be construed as references to the Deputy Chairperson.
- 3.2.3 In the event that the Deputy Chairperson resigns or for any other reason is unable to serve, the Committee may resolve to appoint a successor, subject to the same considerations listed above.
- 3.2.4 The initial Deputy Chairperson (the "**Deputy Chairperson**") shall be prof. dr. Ben Schuijling.

### **3.3 Secretary**

- 3.3.1 The Committee may resolve to appoint a secretary, either or not from among its midst (the "**Secretary**"). The Secretary shall:
  - (i) provide the Members with an agenda before each meeting of the Committee; and
  - (ii) take minutes of each meeting of the Committee (see Clause 7.9).
- 3.3.2 In the event that the Secretary resigns or for any other reason is unable to serve, the Committee may resolve to appoint a (temporary) successor.
- 3.3.3 The initial Secretary shall be Frans Crul.

## **4 Duties and powers**

### **4.1 General duties and powers**

The rights and duties of the Committee and the Members shall be exclusively determined by Section 281e DBA and these Rules, including the meeting rights conferred upon any Member to attend any meetings of the Committee at which the SIHNV Composition Plan is discussed and the right and duty to vote on the SIHNV Composition Plan.

### **4.2 No fiduciary duty**

- 4.2.1 No Member, in its capacity as a Chairperson, Deputy Chairperson or Secretary, nor any other Member, shall have, by reason of these Rules, a fiduciary relationship in respect of, or any duty of care vis-à-vis any SoP Creditor, Creditor Group, Underlying Creditor, other Member or any other person or entity holding or representing an economic interest in the Steinhoff Group, and nothing in these Rules, expressed or implied, is intended to or shall be so construed as to impose upon any Member any obligations except as expressly set forth herein.
- 4.2.2 Although the Chairperson or Deputy Chairperson may at times convey to SIHNV and the SoP Administrators the views of the Committee on issues or points of relevance, the Chairperson and Deputy Chairperson will not be "acting for" the Committee in any official representative capacity and will have no fiduciary duties to the Committee.

- 4.2.3 For the avoidance of doubt, none of the Members, the Committee, the Chairperson, the Deputy Chairperson nor the Secretary shall be deemed to be a trustee or fiduciary of the Committee or any Member.

## **5 Consideration of the SIHNV Composition Plan**

- 5.1 The Committee shall deliberate on the SIHNV Composition Plan in order to be able to exercise its voting rights at the Voting Meeting. For that purpose, meetings of the Committee shall be held as often as the Chairperson deems necessary or if so requested by at least a simple majority of the Committee.

The Chairperson shall call a meeting of the Committee at a specified date, if the Committee has previously resolved that a meeting be held on that date.

- 5.2 To assist the Committee's consideration of the SIHNV Composition Plan, only the Chairperson may do any of the following, either at its own initiative or at the non-binding suggestion of a Member:

- 5.2.1 request directors and officers of SIHNV to provide explanations regarding the SIHNV Composition Plan and attend meetings of the Committee to provide (further) explanation or answer questions regarding the SIHNV Composition Plan;
- 5.2.2 request summaries, analyses, reports, memoranda, briefing papers or other work products regarding the SIHNV Composition Plan to be prepared by advisors of SIHNV;
- 5.2.3 invite any other party to whom the Steinhoff Group Settlement relates, including current and former D&Os and Audit Firms (each as defined in the SIHNV Composition Plan), to attend any meetings of the Committee in order to provide their views on the SIHNV Composition Plan, it being understood that such parties cannot be held to accept such invitation and that any views so provided would be for information purposes only and cannot be relied upon by the Committee; and
- 5.2.4 with the approval of at least a simple majority of the Independent Members engage (and invite to attend meetings of the Committee) legal or financial advisors to be retained by the Committee to advise on specific aspects of the SIHNV Composition Plan.

## **6 Meetings**

### **6.1 Notice**

Notice of a meeting of the Committee shall be given by the Chairperson, no later than on the fifth Business Day prior to the day of the meeting. Such notice shall specify the time and place of the meeting, the agenda of the meeting (to the extent possible) and include any written documentation that is to be discussed at that meeting.

### **6.2 Agenda**

To the extent possible, matters shall be presented to the Committee by written agenda (including by email) prepared by Chairperson and circulated to each Member in accordance with Clause 6.1, in any event no less than 24 hours prior to the relevant meeting of the Committee. Members may suggest items to be included in the proposed agenda and should inform the Chairperson of such items in writing at least 36 hours (or as soon as reasonably

practicable) prior to the relevant meeting or such item may be carried by the Chairperson to the next meeting.

### **6.3 Place of meetings**

Meetings of the Committee shall be held at such place as designated by the Chairperson. All meetings can also be attended by (video) conference call.

### **6.4 Attendance**

6.4.1 A Member may authorize a representative to attend meetings of the Committee (other than the Voting Meeting) instead of such Member. The Member should inform the Chairperson and the Secretary that the Member will authorize a representative to attend the meeting and disclose the identity and capacity of its representative ultimately two business days prior to a scheduled meeting.

6.4.2 Attendance at meetings of the Committee shall be limited to Members (in person or by authorized representative) and any of the parties invited by the Chairperson to attend a meeting pursuant to Clause 5.2, unless the Chairperson or the Court determines otherwise.

6.4.3 Members are allowed to be accompanied by one advisor in a meeting. Such advisor will only act as observer and cannot participate in the meeting. The Member should inform the Chairperson and the Secretary that the Member will be accompanied by an advisor and disclose the identity and capacity of its advisor prior to a scheduled meeting.

6.4.4 Any parties who attend meetings of the Committee, whether in person, by (video) conference or by any other means of electronic communication, shall be bound for all purposes by the same confidentiality provisions as the Members as set forth in these Rules.

### **6.5 Language**

The meetings of the Committee will be held in English and the minutes of such meeting will be written in English. The Voting Meeting will be held in English if so allowed by the Court.

### **6.6 Voting**

The voting requirements and procedures regarding the exercise of voting rights by the Committee in respect of the SIHNV Composition Plan at the Voting Meeting are governed by Section 281e in conjunction with Section 268 DBA. For all other resolutions and decisions, such as the adoption of the minutes, the following shall apply:

6.6.1 resolutions and decisions of the Committee are taken by simple majority;

6.6.2 each Member shall have one vote;

6.6.3 in the event of a tie in voting, the vote of the Chairperson shall be decisive; and

6.6.4 in the case of abstention by one or more Members, resolutions can nonetheless validly be adopted by the other Members.

### **6.7 Minutes**

6.7.1 The Secretary shall distribute the minutes to the Members in draft form. Minutes are not deemed final until adopted by the Committee. If the Chairperson elects third parties to provide explanations pursuant to Clause 5.2 of these Rules the

Chairperson may distribute minutes of any such explanations to such parties if those were set out in meetings of the Committee by such parties.

- 6.7.2 The minutes of meetings of the Committee shall be adopted by the Committee at the next meeting. If comments to any minutes are received by the Chairperson during such meeting, revised minutes reflecting such comments shall be distributed by the Secretary and shall be deemed final and adopted in the time specified by the Chairperson unless additional comments are received to such revised portions.
- 6.7.3 Evidencing the adoption, the minutes shall be signed by the Chairperson and (if appointed) the Secretary.

## **7 Conflict of interest**

If an Independent Member (or its authorised representative) has, or expects to have, a conflict of interest regarding a matter regarding the SIHNV Composition Plan, the Steinhoff Group Settlement, any (direct or indirect) subsidiary of SIHNV or any other matter which is under review or consideration by the Committee, that Independent Member shall forthwith disclose to the other Members and the SoP Administrators such (potential) conflict.

## **8 No prejudice**

- 8.1 Each Creditor Group retains the right to appear in the SoP proceedings in respect of its interests, provided, however, that no such Creditor Group or its Member shall:
  - 8.1.1 purport to represent or speak for the Committee; or
  - 8.1.2 use its position or representation on the Committee to enforce or protect any of its rights as an individual creditor or holder of security rights or other party-in-interest.
- 8.2 Nothing contained in these Rules shall:
  - 8.2.1 prevent any Creditor Group from exercising or seeking to enforce or protect any of its rights as an individual creditor or other party-in-interest;
  - 8.2.2 prevent any Member from exercising rights available to it pursuant to Section 281e(5) DBA; or
  - 8.2.3 otherwise affect the ability of any Member to act in its capacity as an individual creditor or holder of security rights or other party-in-interest as it may deem appropriate, whether or not such actions are opposed by the Committee.

## **9 Right and use of information**

- 9.1 An electronic data room will be made accessible to the Members where all such information shall remain available until the termination of the SoP pursuant to Sections 272(4), 276 or 277 DBA (or any other ground) or the withdrawal of the SoP pursuant to Sections 242 through 247 DBA inclusive. Members whose membership is terminated or who are replaced shall, effective immediately, no longer have access to such electronic data room.
- 9.2 Members shall only use Confidential Information for the purpose of exercising the Committee's rights and duties under the DBA and these Rules. The Confidential Information shall only be used by a Member in its capacity as Member and not in any other capacity.

**9.3** To the extent that any Member is about to receive any material non-public information from the administrators or any other members during a meeting, it should be informed accordingly beforehand insofar reasonably possible. The Members or any other attendee of the meeting will then be able to (temporarily) stop or step out of the meeting in which the material non-public information is shared.”

## **10 Confidentiality**

**10.1** Each Member declares and undertakes that such Member shall at all times keep confidential any and all Confidential Information. The deliberations of the Committee are of confidential nature and shall at all times be kept confidential.

**10.2** The Members may provide part or all of the Confidential Information for information purposes (and on a need to know basis) only to their employers, their employers' Affiliates, the Underlying Creditors the Members' employers' represent and the officers, employees, insurers and professional advisers thereof (collectively, the “**Receiving Parties**”), provided the Receiving Parties undertake not to use any Confidential Information for any other purpose than to let the Members exercise their rights and duties as Member under the DBA and these Rules. The Members shall take reasonable steps to require that the Receiving Parties shall keep the Confidential Information confidential.

**10.3** Confidential Information may also be governed by a separate confidentiality agreement governed by Dutch law among SIHNV, the SoP Administrators and the (relevant) Members.

**10.4** Members who are, from time to time, contacted by constituent SoP Creditors may impart to such SoP Creditors only public, non-confidential information regarding SIHNV and/or the SIHNV Composition Plan. If there is a question as to whether the information sought by the inquiring SoP Creditor may be revealed, the Member shall refer the SoP Creditor to the Chairperson.

## **11 Notices**

**11.1** Any notice in connection with these Rules must be:

**11.1.1** in writing;

**11.1.2** in English; and

**11.1.3** delivered by email, registered post or courier.

**11.2** A notice in connection with these Rules must be sent to the following addresses:

**11.2.1** in the case of the initial Chairperson, by email to: [wouter.jongepier@newamsterdamlegal.com](mailto:wouter.jongepier@newamsterdamlegal.com) with copy to [frans.crul@dentons.com](mailto:frans.crul@dentons.com);

**11.2.2** in the case of the initial Deputy Chairperson, by email to: [ben.schuijling@ru.nl](mailto:ben.schuijling@ru.nl) ; and

**11.2.3** in the case of the Members, by email to such email address as each Member may give written notice of to the other Members.

**11.3** Any notice in connection with these Rules shall be subject to the confidentiality restrictions set forth in Clause 10.

## **12 Effectiveness**

These Rules are effective as of the establishment of these Rules by the Committee as referred to in Recital (G).

## **13 Termination of the SoP**

### **13.1 Dissolution of the Committee; Termination of the Rules**

Subject to Clause 13.2, the rights and duties of the Committee shall end, the Committee shall be automatically dissolved and these Rules shall terminate on the day of the termination of the SoP pursuant to Sections 272(4), 276 or 277 DBA (or any other ground) or the withdrawal of the SoP pursuant to Sections 242 through 247 DBA inclusive.

### **13.2 Surviving rights and obligations**

The Committee and the Members shall remain entitled to benefit from Clauses 11 and this Clause 13 in respect of any actions taken or omitted to be taken by them or any event occurring prior to the termination or withdrawal of the SoP as referred to in Clause 13.1. Furthermore, the termination or withdrawal of the SoP shall not affect the Member's obligations under Clauses 10.

## **14 Counterparts**

These Rules may be executed in any number of counterparts, and this has the same effect as if the signature on the counterparts were on a single copy of these Rules.

## **15 Governing law and dispute resolution**

**15.1** These Rules and any contractual and non-contractual obligation arising out of or in connection with it shall be governed and construed exclusively in accordance with Dutch law.

**15.2** All disputes arising out of or in connection with these Rules, or further agreements resulting therefrom, shall be exclusively submitted to the Court.



## ANNEX 2

Interview overview

	Date	Interview	Interviewees
1	Friday 9 July 2021	Peter Wakkie in his capacity as member of SIHNV's Litigation Committee	Peter Wakkie, Paul Kuipers (Linklaters)
2	Monday 12 July 2021	Lancaster 101 (RF) (Pty) Ltd	Jayendra Naidoo (Lancaster), Camilo Schutte, Lise Heide-Jørgensen, Roelien van den Berg (all SSHJ), Rob Biehler, Ian Ratner, Allen Nackan, Craig Jacobsen (all Farber/B.Riley)
3	Tuesday 13 July 2021	Financial Creditors	Dylan Szymanski, Kris Bjorn Jeppesen, Wissam Charbel, David Reganato
4	Friday 16 July 2021	MPC Claimants (without VEB, Hamilton and PIC)	Michael Sternhell, Christian Wefers, Joeri Klein
5	Monday 19 July 2021	Contractual Claimants	Tim Denari
6	Wednesday 21 July 2021	Hamilton (MPC Claimant)	Oscar McLaren
7	Friday 30 July 2021	Analysis Group	Chris Feige
8	Monday 23 August 2021	Board SIHNV	Louis du Preez, Theodore de Klerk
9	Friday 27 August 2021	Administrators	Frederic Verhoeven, Christiaan Zijderveld
10	Wednesday 1 September 2021	Administrators and EY	Frederic Verhoeven, Christiaan Zijderveld, Dolf Bruins Slot (EY)

**ANNEX 3**

Letter to the Administrators dated 6 August 2021

**PER E-MAIL EN PER POST**

Bewindvoeders Steinhoff International Holdings N.V.  
Mrs. F. Verhoeven en C.R. Zijdeveld  
Postbus 75505  
1070AM AMSTERDAM

Datum: 6 augustus 2021  
Referentie: 0287794.0001/3849372

**Voorlopig verslag onafhankelijke leden Commissie van Vertegenwoordiging**

Geachte bewindvoeders,

In uw hoedanigheid van bewindvoeders in de voorlopige surseance van betaling van Steinhoff International Holdings N.V. (**SIHNV**) hebt u de rechtbank Amsterdam verzocht een Commissie van Vertegenwoordiging (de **Commissie**) als bedoeld in art. 281e Fw te benoemen. De rechtbank Amsterdam heeft uw verzoek bij beschikking van 28 mei 2021 toegewezen en de Commissie als zodanig benoemd. De Commissie bestaat uit vijftien leden. Elf leden zijn vertegenwoordigers van (groepen) schuldeisers van SIHNV (de **Gebonden Leden**) en vier leden zijn onafhankelijk en op basis van hun specifieke expertise benoemd (de **Onafhankelijke Leden**).<sup>1</sup> De leden van de Commissie zullen op 3 september 2021 beraadslagen en stemmen over het in onderhavige surseance door SIHNV aangeboden akkoord (het **Akkoord**).

In de constitutieve vergadering van 24 juni 2021 heeft de Commissie ondergetekende, Frans Crul, als secretaris van de Commissie aangewezen. In die hoedanigheid breng ik u hierbij beknopt verslag uit van de werkzaamheden van de Commissie tot nu toe. Daarnaast breng ik op verzoek van de Onafhankelijke Leden enkele door hen geïdentificeerde onderwerpen onder uw aandacht, waarvan zij menen dat die onderdeel zouden moeten zijn van uw verslag over het Akkoord als bedoeld in art. 265 lid 1 Fw.

Verslag van de werkzaamheden

De uitgangspositie van de Onafhankelijke Leden wijkt in bijzondere mate af van die van de Gebonden Leden. De Onafhankelijke Leden zijn tot hun benoeming door de rechtbank Amsterdam op geen enkele wijze betrokken geweest bij SIHNV of één van haar schuldeisers. De Gebonden Leden daarentegen zijn vertegenwoordigers van (groepen) schuldeisers van SIHNV en zijn in die hoedanigheid al geruime tijd tot in detail bij de totstandkoming van het Akkoord betrokken. De Onafhankelijke Leden hebben bij aanvang van

---

<sup>1</sup> Bij separate beschikkingen van 8 juni 2021 en 6 juli 2021 zijn twee individuen benoemd. Op 8 juni 2021 is een nog niet ingevulde positie vervuld. Op 6 juli 2021 is één lid op eigen verzoek vervangen.

hun werkzaamheden begrijpelijkerwijs een aanzienlijke informatieachterstand ten opzichte van de Gebonden Leden.

De werkzaamheden van de Commissie zijn erop gericht dat alle Leden op de vergadering van 3 september 2021 in staat zijn voldoende geïnformeerd hun stem ten aanzien van het Akkoord uit te brengen. Bij de start van de werkzaamheden van de Commissie hebben Paul Kuipers en Marc Noldus van Linklaters namens SIHNV een presentatie gegeven over de hoofdlijnen van het Akkoord. Daarna heeft de Commissie onder leiding van haar voorzitter meerdere interviews afgenomen, waarin de geïnterviewden werden uitgenodigd hun visie op het Akkoord en de totstandkoming daarvan te geven. Zonder uitzondering hebben de bijeenkomsten en interviews in goede harmonie plaatsgevonden, waarin verschillende standpunten werden belicht en bediscussieerd.

De volgende individuen of groepen zijn door de Commissie geïnterviewd:

- Peter Wakkie in zijn hoedanigheid van lid van de *Litigation Committee* van SIHNV;
- Lancaster 101 (RF) (Pty) Ltd (**Lancaster**);
- (de Gebonden Leden die) de Financial Creditors (vertegenwoordigen);
- (de Gebonden Leden die) de MPC Claimants (vertegenwoordigen) met uitzondering van Hamilton;
- (het Gebonden Lid dat) de Contractual Claimants (vertegenwoordigt);
- (het Gebonden Lid dat) Hamilton (vertegenwoordigt);
- Analysis Group.

Op 23 augustus 2021 zal nog een interview met het bestuur van SIHNV plaatsvinden. Ook zal er nog een interview met u beiden ingepland worden.

De Onafhankelijke Leden hebben de geïnterviewden verzocht voorafgaand aan hun interview een zogenaamd *position paper* op te stellen waarin in elk geval de volgende drie vragen beantwoord konden worden:

- bent u van mening dat het Akkoord in balans is en redelijk ten opzichte van alle crediteuren van SIHNV?;
- zijn er specifieke onderdelen van het Akkoord die bijzondere aandacht van de (Onafhankelijke) Leden behoeven in hun besluitvorming?; en
- wat zijn in uw visie de vooruitzichten voor SIHN in het geval het Akkoord niet wordt aangenomen of gehomologeerd?

De *position papers* fungeerden steeds als uitgangspunt voor de af te nemen interviews. De *position papers* zijn door de Commissie als zeer nuttig ervaren.

Door SIHNV is een groot aantal (vertrouwelijke) documenten aan de Commissie ter beschikking gesteld, waaronder financieringsdocumentatie, juridische analyses en processtukken. Deze documenten zijn voor de gehele Commissie toegankelijk in een door mij beheerde en beveiligde online dataroom. Uiteraard heeft de Commissie ook de publiekelijk beschikbare informatie, waaronder niet in de laatste plaats het Akkoord, via [www.steinhoffsettlement.com](http://www.steinhoffsettlement.com) tot zich kunnen nemen.

#### Verslag over het Akkoord

Zoals reeds hierboven genoemd zullen de Leden van de Commissie op 3 september 2021 beraadslagen en stemmen over het Akkoord. Op grond van art. 265 lid 1 Fw brengt u ter vergadering verslag uit over het Akkoord. Gelet op de enorme belangen die gemoeid zijn bij het Akkoord en de bijzondere omstandigheid dat niet de schuldeisers van SIHNV maar de Leden van de Commissie op het Akkoord zullen stemmen, ligt het in de rede dat uw verslag reeds enige tijd, bij voorkeur minstens twee weken, voorafgaand aan de vergadering beschikbaar is. Op die manier wordt verzekerd dat de Commissie uw verslag kan hebben doorgrond op het moment dat zij dient te stemmen.

Bij de bepaling van hun stem houden de Onafhankelijke Leden met name de vraag voor ogen of het Akkoord in het belang is van de gezamenlijke crediteuren, mede met het oog op de belangen van de crediteuren die

niet vertegenwoordigd worden door de Gebonden Leden. Daarbij stellen de Onafhankelijke Leden zich onder meer de vraag of het Akkoord redelijk en evenwichtig is en in lijn met het Nederlands faillissementsrecht. Tegen die achtergrond hebben de Onafhankelijke Leden op basis van hetgeen hen ter kennis is gekomen in de interviews en de bijbehorende *position papers*, de door SIHNV ter beschikking gestelde informatie en de publiekelijk beschikbare informatie, een aantal onderdelen van het Akkoord geïdentificeerd die nadere duiding behoeven. De Onafhankelijke Leden menen dat het voor de hand ligt dat deze onderwerpen in uw advies over het Akkoord zullen worden opgenomen.

#### *Kostenvergoeding Active Claimant Groups*

In paragraaf 2.3.1 van het *Explanatory Memorandum* bij het Akkoord is vermeld dat aan bepaalde vertegenwoordigers van de *MPC Claimants* (zogenoemde *Active Claimant Groups*, **ACGs**) een kostenvergoeding zal worden betaald door Steinhoff Africa Holdings Proprietary Limited (**SAHPL**). SAHPL is een aan SIHNV gelieerde onderneming.

Tijdens de interviews is de indruk ontstaan dat enkel de vertegenwoordigers van de *MPC Claimants* die reeds kenbaar hebben gemaakt vóór het Akkoord te zullen stemmen een kostenvergoeding zullen ontvangen. De Onafhankelijke Leden vernemen graag uw visie ten aanzien van de kostenvergoeding voor (bepaalde) ACGs mede in het licht van het bepaalde in art. 272 lid 2 onder 3 Fw.

#### *Bar Date*

Artikel 15.3 van het Akkoord bepaalt dat elke vordering tot betaling onder Akkoord vervalt op de *Bar Date*. De *Bar Date* is in het Akkoord gedefinieerd als "*the date falling three months after the Settlement Effective Date*". De Onafhankelijke Leden begrijpen deze bepaling zo dat op vorderingen die meer dan drie maanden na het verbindend worden van het Akkoord worden ingediend geen uitkering zal plaatsvinden en dat bovendien moet worden geacht dat die vorderingen niet meer bestaan.

Anders dan in faillissement kent de Nederlandse Faillissementswet geen wettelijke *bar date* in de (voorlopige) surseance van betaling. De Onafhankelijke Leden vernemen graag uw visie ten aanzien van de *Bar Date*.

#### *Governance en structuur SRF*

De uitvoering van het Akkoord, in het bijzonder de vaststelling van de vorderingen en het doen van uitkeringen in de vorm van contanten of aandelen PPH, zal worden overgelaten aan de Stichting Steinhoff Recovery Fund (**SRF**). Op grond van artikel 6.3 van het Akkoord verbindt SIHNV zich ertoe de voor de uitvoering noodzakelijke middelen uiterlijk twee dagen voor de *Settlement Effective Date* te deponeren bij SRF.

Paragraaf 8.4 van het *Explanatory Memorandum* bij het Akkoord maakt melding van een zogeheten *Funds Flow Process* en een "*umbrella implementation agreement*" om SIHNV en SRF in staat te stellen aan hun verplichtingen onder het Akkoord te voldoen. Daarnaast vermeldt artikel 6.2.2 dat de aandelen ter beschikking worden gesteld door Ainsley "*by way of establishment of a security arrangement*" tussen Ainsley en SBG Securities Proprietary Limited. De genoemde arrangementen worden niet verder toegelicht.

Tegen deze achtergrond vernemen de Onafhankelijke Leden graag of de nakoming van het akkoord voldoende is gewaarborgd, zoals bedoeld in art. 272 lid 2 onder 2 Fw.

#### *Verbondenheid met en afhankelijkheid van Zuid-Afrikaanse S 155-procedure*

Het Akkoord is onderdeel van een *Global Settlement*. In dat verband is ook in Zuid-Afrika een akkoord (het **Zuid-Afrikaanse Akkoord**) aangeboden aan de crediteuren van Steinhoff International Holdings Proprietary Limited (**SIHPL**). Het Akkoord en het Zuid-Afrikaanse Akkoord zijn afhankelijk van elkaar in die zin dat beide Akkoorden dienen te worden aangenomen en gehomologeerd om effect te kunnen hebben.

Op dit moment vinden in Zuid-Afrika enkele procedures plaats die er mogelijk toe leiden dat onzeker is wanneer over het welslagen van het Zuid-Afrikaanse Akkoord duidelijkheid zal ontstaan. De Onafhankelijke Leden vernemen graag hoe u tegen voornoemde onzekerheid en mogelijke vertragingen aankijkt.

### *De positie van de Financial Creditors*

Tijdens de interviews is door bepaalde partijen benoemd dat de rechten en plichten van de *Financial Creditors*, zoals gedefinieerd in het Akkoord, niet door het Akkoord worden geraakt. De Onafhankelijke Leden vernemen graag of dat in lijn is met uw begrip van het Akkoord. Indien dat het geval is, rijst de vraag of er dan sprake is van een partieel akkoord dat alleen betrekking heeft op *Contractual Claimants* en *MPC Claimants*, zoals gedefinieerd in het Akkoord. De Onafhankelijke Leden vernemen graag uw visie daarop mede in het licht van de omstandigheid dat vier van de elf Gebonden Leden vertegenwoordigers van *Financial Creditors* zijn.

### *Vergelijking Akkoord met een liquidatiescenario*

Tijdens de interviews is door bepaalde partijen betoogd dat de gezamenlijke schuldeisers onder het Akkoord niet beter af zijn dan in een liquidatiescenario. Er is in dat kader kritiek geuit op de door Analysis Group opgestelde *liquidation comparator*. Daaruit zou onder meer volgen dat aan de gezamenlijke crediteuren van SIHNV en SIHPL een bedrag van EUR 613 miljoen ter beschikking wordt gesteld (exclusief de bedragen die beschikbaar komen in het kader van de *Steinhoff Settlement Support Agreement*), terwijl de liquidatieopbrengst van beide vennootschappen EUR 844 miljoen zou bedragen, waarvan EUR 379 miljoen aan SIHNV wordt toegerekend.

Daarnaast heeft één van de *Contractual Claimants* een eigen liquidatiescenario laten doorrekenen, waarvan de uitkomsten ook door haar adviseur (Farber/B.Riley) met u zijn gedeeld. Uit die analyse lijkt te volgen dat de opbrengsten in een liquidatiescenario significant hoger zijn dan onder het Akkoord.

Graag vernemen de Onafhankelijke Leden of u meent dat de gezamenlijke crediteuren beter af zijn onder het Akkoord dan in een liquidatiescenario.

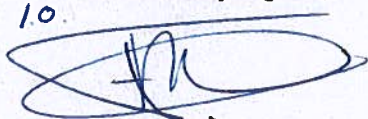
### *Valuation Principles en Steinhoff Allocation Plan*

Onder de *Valuation Principles* en het *Steinhoff Allocation Plan* (als onderdeel van het Akkoord) worden de vorderingen van de *Contractual Claimants* op een andere wijze gewaardeerd dan de vorderingen van de *MPC Claimants*. In de interviews is naar voren gebracht dat de verschillende waarderingen leiden tot ver uiteenlopende bodemprijzen per aandeel (EUR 0,80 tegenover EUR 0,157). Door dit verschil wordt er significant meer geleden schade toegekend aan *Contractual Claimants* dan aan *MPC Claimants*. De Onafhankelijk leden vernemen graag uw visie op deze constatering en het toepassen van verschillende grondslagen op de Claim Values van deze crediteuren.

In verband met de gestelde vragen die betrekking hebben op de vergelijking met het liquidatiescenario en de wijze waarop de vorderingen worden gewaardeerd neemt de Commissie overigens ook graag kennis van het door EY opgestelde advies.

Voor nader overleg met betrekking tot het bovenstaande zijn de Onafhankelijke Leden graag beschikbaar. Een kopie van deze brief zal aan SIHNV en de Leden van de Commissie verstuurd worden.

Met vriendelijke groet,

10.  


Frans Crul  
Secretaris van de Commissie

# decision

## AMSTERDAM DISTRICT COURT

Private Law Division

suspension of payments proceedings number: C/13/21/4-S

pronounced on: 23 September 2021

### Court approval of composition

In view of the Composition Plan filed with the Court Registry of this District Court on 15 February 2021, which was amended on 23 March 2021, 15 June 2021, 11 August 2021 and 8 September 2021 and refiled each time with the Court Registry, offered by:

the public limited liability company  
**STEINHOFF INTERNATIONAL HOLDINGS N.V.**  
with its registered office in Amsterdam  
registered with the Chamber of Commerce under number 63570173  
business address: Building B2, Vineyard Office Park, Cnr Adam Tas & Devon Valley Road,  
Stellenbosch 7600, South Africa  
- hereinafter referred to as: SIHNV

which was granted provisional suspension of payments by decision of this District Court of 15 February 2021, appointing the attorneys F. Verhoeven and C.R. Zijderveld as Administrator and the attorneys K.M. van Hassel and C.H. Rombouts as Supervisory Judges.

### 1. The proceedings

1.1. SIHNV has offered a composition to its collective unsecured creditors. A version of the Composition Plan of 8 September 2021 authenticated by the Supervisory Judge is attached to the official record of the consultation and vote on the composition of 8 September 2021. The contents are deemed inserted here.

1.2. The District Court has taken cognisance of the official reports of 3 September 2021 and 8 September 2021. The actual consultation and vote on the composition offered took place on the latter date, the result of which vote was that the composition was adopted.

1.3. The discussion of the court's approval of the aforementioned composition took place in a public hearing of this District Court at 10:00 on 16 September 2021. Those appearing at that hearing, either physically or by means of a video connection, were:

(on behalf of) the Administrators:  
attorney F. Verhoeven, aforementioned;  
attorney C.R. Zijderveld, aforementioned;



suspension of payments proceedings number: C/13/21/4-S  
pronounced on: 23 September 2021

2

- attorney D. Smit, co-member of the Administrators' firm;
- attorney D.V.J.S. van der Heijden, co-member of the Administrators' firm;
- attorney G.J. Meester, co-member of the Administrators' firm;
- Ms. F. van der Beek, employee of the Administrators;
- Mr J. Nadels, financial adviser, affiliated with Ernst & Young;
- Mr. D. Bruins Slot, financial adviser, affiliated with Ernst & Young;

on behalf of SIHNV:

- Mr. L. du Preez, director of SIHNV;
- Mr. T. De Klerk, director of SIHNV;
- Mr. C. Feige, financial adviser, affiliated with Analysis Group;
- attorney P. Kuipers, counsel;
- attorney D.A.M.H.W. Strik, counsel;
- attorney M.L.J. Noldus, counsel;
- attorney B.F. Meijer, counsel;

members of the Committee of Representatives:

- attorney W.J.P. Jongepier (chair);
- Prof. B. Schuiling;
- Ms K. van der Linde;
- Mr G.M. Warringa (representative of Public Investment Corporation, The Government Employees Pension Fund, The Compensation Fund and The Unemployment Insurance Fund, hereinafter jointly referred to as: PIC);
- Mr. C. Wefers (representative of ISLG);
- Mr. J. Klein (representative of Deminor);
- Mr O. McLaren (representative of Hamilton);

advisers/representatives of the Committee and/or its members:

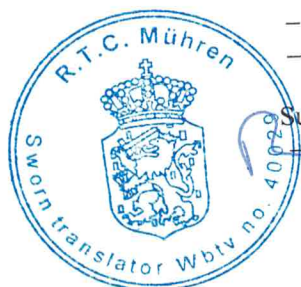
- attorney F.D. Crul, secretary of the Committee;
- attorney Q.L.C.M. Bongaerts, on behalf of ISLG;
- attorney F.M. Peters, on behalf of PIC;
- attorney J.W. de Jong, on behalf of Hamilton;
- attorney R.D. Vriesendrop, on behalf of Conservatorium Centerbridge;
- attorney K. Rutten, on behalf of Deminor;
- attorney J. de Rooij, on behalf of Burford;
- attorney V.R. Vroom, on behalf of the G4;
- attorney A.J. Kunki Jacobs, on behalf of the G4;
- attorney R.M.T.M. Tielens, on behalf of the G4;
- attorney P.E. Hendriksen, on behalf of the G4;

on behalf of Steinhoff Recovery Foundation (SRF):

- Mr R. Abeln;
- Mr M. Windt;
- Mr Z. Abrahams;
- Mr N. Lewis;

Supervisory Judge:

- attorney C.H. Rombouts;





interpreters:

- Ms K. van de Berg;
- Mr T. Gevaert.

1.4. The District Court's file of the proceedings contains the following documents:

- decision of this District Court of 15 February 2021, in which SIHNV was granted provisional suspension of payments and attorney F. Verhoeven was appointed as Administrator;
- decision of this District Court of 18 February 2021, appointing attorney C.R. Zijdeveld as second Administrator;
- decision of this District Court of 5 March 2021, entailing provisions to secure the interests of creditors (manner in which creditors are to be informed);
- decision of this District court of 28 May 2021, entailing additional provisions to secure the interests of creditors (application of the *Brandaris* scheme, also appointing a Committee of Representatives);
- decisions of this District Court of 8 June 2021 and 6 July 2021, entailing changes to the membership of the Committee of Representatives;
- a Composition Plan of 8 September 2021;
- a summary in Dutch of the Composition Plan of 8 September 2021; the official record of the stay of the consultation and vote on the composition of 3 September 2021;
- the official record of the consultation and vote on the composition of 8 September 2021, with annexes;
- the opinion of the Supervisory Judges of 15 September 2021;
- an email from attorney F.M. Peters on behalf of (among others) PIC of 15 September 2021, with attachments.

## 2. Comments prior to the hearing and documents received

2.1. The President noted that the attorneys Schutte and Van den Bert, on behalf of Lancaster 101 (RF) (PTY) Ltd. (hereinafter referred to as: Lancaster), by email of 9 September 2021, asked the Supervisory Judges (among others) to send the report by Ernest & Young of 30 August 2021, to which the Administrators responded by email of 9 September 2021 and the Supervisory Judges by letter of 10 September 2021. Moreover, by letter of 14 September 2021, with enclosures, and 15 September 2021, with enclosures, Lancaster made several requests of this District Court and set out grounds on which it wishes to oppose the court's approval.

2.2. Attorneys Schutte and Van den Berg informed the District Court by email of 16 September 2021, 09:47, that Lancaster had finished negotiating an agreement with representatives of PIC, which, if it takes effect, will result in the sale and transfer to PIC of the claims and rights of Lancaster in respect of SIHNV. However, PIC's consent is still subject to approval from its internal corporate body. In the aforementioned email Lancaster gave notice that it will not appear at the hearing, but explicitly maintained its objections against the court's approval of the composition, submitting a document entailing grounds as referred to in Article 271(1) of the *Faillissementswet* (Bankruptcy Act).

2.3. Pursuant to Article 269b(1) Bankruptcy Act, prior to closing the meeting, the Supervisory Judge determines the hearing at which the District Court will discuss the composition, if the composition is adopted. Until that hearing, creditors may submit to the



Supervisory Judge the reasons why they believe the court's approval should be refused (Article 269b(4) Bankruptcy Act). During that time, Lancaster did not give the Supervisory Judges any reasons in writing why it believes the court's approval should be refused. Lancaster did request the Supervisory Judges to rule that the report by Ernst & Young should be issued to them, but the Supervisory Judges denied this request. This decision was repeated in the official report of the discussions of 3 September 2021. Lancaster did not appeal that decision, as a result of which it is final.

2.4. Pursuant to Article 271(1) Bankruptcy Act, on the specified day of the discussion of the court's approval of the composition, every creditor may set out the grounds on which they wish to oppose the court's approval. The argumentation may be supported by documents submitted to the District Court (in advance). The letters of 14 and 15 September and the email of 16 September 2021, with enclosures/attachments (see 2.1 and 2.2 above), were sent to the District Court prior to the specified discussion in the hearing at 10:00 on 16 September 2021. However, no one appeared at the hearing on behalf of Lancaster to explain the documents sent to the District Court in advance. As Lancaster did not appear at the discussion hearing, the District Court will disregard the documents sent in advance. These documents therefore do not comprise part of the case file and will not be taken into consideration.

### **3. Positions**

3.1. At the hearing, the Administrators maintained the opinion they issued earlier. Based on an explanation, they argued in favour of the court approving the composition.

3.2. None of the attendees made any objection against the court's approval of the composition. Attorney Jongepier stated that the entire Committee of Representatives, which is deemed to represent the most important groups of creditors, unanimously voted in favour of adopting the composition. Mr Warringa, attorney Vriesendorp and attorney Vroom requested that the adopted composition be approved by the court.

3.3. Attorneys Kuipers and Strik requested the District Court on behalf of SIHNV, based on speaking notes, to approve the adopted composition as there are no grounds for refusal. In so far as relevant, this is discussed further below.

### **4. The opinion of the Supervisory Judges**

4.1. The Supervisory Judges issued a written report for the purpose of the hearing of 16 September 2021. Briefly put, they advised the court to approve the composition. The opinion was sent to all of the parties involved before the discussion at the hearing, by email. In so far as relevant, this is discussed further below.

### **5. The assessment**

5.1. The District Court puts first and foremost that the composition offered on behalf of SIHNV was adopted unanimously. In view of the large international and financial interests in this case, it may be assumed that this was done after thorough investigation. None of the creditors made any objections to the Supervisory Judges or during the discussion at the hearing before the District Court against the court approving the composition.



5.2. The District Court must nevertheless refuse the court's approval if one of the grounds for refusal included in Article 272(2) Bankruptcies Act occurs.

5.3. In respect of the grounds for refusal mentioned in that article at (1) and (2), to wit (1) that the income of the estate exceeds the sum stipulated with the composition and (2) that performance of the composition is insufficiently safeguarded, the following applies.

5.4. These grounds for refusal start from the situation of a composition being offered, in which the debtor cannot pay its debts in full but only in part, and a sum of money is available for a lump-sum payment in part of the claims of all creditors (a percentage composition). This is not at hand in the present case. No direct, partial payment of all claims takes place. In the composition, a distinction is made between various categories of creditors. In essence, the proposal boils down to buying out four categories of creditors, in which the claims in the categories SIHNV MPV Claimants and SIHNV Contractual Claimants are contested and therefore have not been established. Moreover, not all potential creditors in those categories are known. According to the composition, a percentage of their claims will be paid out to them, in respect of which their claim will be acknowledged to that extent exclusively for the purpose of the composition. The two other categories will only receive a percentage of the value of their claim in so far as their claim has been established with binding effect in a decision or in a settlement between the relevant parties. The three last categories of creditors, the claims of which are largely uncontested, retain their right of action but have already agreed to deferred payment. With the composition, SIHNV intends to avoid bankruptcy and to continue its activities as a going concern, while the value of its enterprise is retained in so far as possible. The composition is part of a worldwide settlement proposal, also referred to as the Global Settlement. The reason behind the Global Settlement was the announcement of accounting irregularities on 5 December 2017. Since that time, SIHNV and other group companies have become embroiled in legal proceedings in various jurisdictions initiated by investors and their representatives. SIHNV expects that it will be incapable of paying its debts if these claims are awarded. SIHNV has already undergone various financial restructuring operations so that it can continue its activities.

5.5. The Bankruptcies Act does not rule out such arrangements being made between creditors and the debtor. As the grounds for refusal in the aforementioned article were written for the situation in which a lump sum is available for direct, partial payment of all creditors and the present composition has a different purport, the assessment of the court's approval in this case concerns the application of the purport of these provisions.

5.6. The purport of Article 272(2) at 1 Bankruptcies Act in this case is that whether the composition offered is a realistic offer must be assessed.

5.7. According to the Administrators and the Supervisory Judges, SIHNV demonstrated sufficiently plausibly that in the performance of the composition, the net revenue to which the SIHNV MPC Claimants and the SIHNV Contractual Claimants will be entitled will be higher in that scenario (approximately 9.2%) than in the event of liquidation under a bankruptcy (approximately 7.8%). This is also a result of the contribution from Deloitte and D&O insurers. The unsecured creditor categories SIHNV Financial Creditors, Intra-Group Creditors and Other Unsecured Creditors are not entitled to distribution of composition income. Instead, they retain their rights of action, with due observance of postponement of payment for SIHNV Financial Creditors and Intra-Group Creditors, while they relinquish their extra-contractual claims against SIHNV. The offer to these creditors is actually a change in their position for



recovery against the future value of SIHNV's enterprise, in exchange for tolerating satisfaction of the other creditors first and in advance. SIHNV explained this with reasons at the hearing, and explaining it in more detail based on the speaking notes it submitted. SIHNV expects that being cleansed of its litigious debts will stabilise the group's financial position, and that it will be able to maintain the value of its enterprise. Therefore, the offer significantly improves the position of this group of creditors (as well) as compared to a bankruptcy scenario. The fact that it is a realistic composition is also evident from the fact that all creditors have unanimously approved the composition.

5.8. Therefore, the District Court has arrived at the conclusion that it was sufficiently plausibly demonstrated at the hearing that the composition is more advantageous to all creditors than liquidation of the assets within a bankruptcy, and that the offer made is a realistic offer.

5.9. It is difficult to determine with a composition like the present that performance of the composition is sufficiently safeguarded (Article 272(2) at 2 Bankruptcy Act). This is because the composition inherently means that at this time, not all creditors in the categories SIHNV MPC Claimants and SIHNV Contractual Claimants are known. However, the amount that is being made available on behalf of these creditors has been established. Creditors must have made themselves known prior to the Bar Date (three months after the composition has taken effect). Therefore, this is possible after the court's approval of the composition, but also finite with forfeiture of rights. Moreover, for the performance of the composition a separate foundation – SRF – has been created that is charged with performance of the composition. SIHNV has since requested the South African Reserve Bank (SARB) for consent to pay settlement funds to SRF in order to perform its obligations under the composition. SIHNV expects to receive this consent within a foreseeable period. This consent is a condition precedent in the composition. The subsidiaries of SIHNV that are relevant to and involved in performance of the composition have entered into contractual obligations with SRF with which they have undertaken to provide SRF with the means necessary for performing the composition. Supplementary to the contractual obligations, the relevant subsidiaries have attached security to (I) the liquid assets present and (II) the listed shares in Pepkor Holdings Ltd. (PPH), which still may be possibly issued to the benefit of SRF. These security rights entitle SRF to seize control of the necessary liquid assets and shares in PPH if the Steinhoff companies were to fail to satisfy their contractual obligation to transfer the composition income.

5.10. In view of the foregoing, the District Court deems it plausible that performance of the composition is sufficiently safeguarded in so far as possible.

5.11. The composition may not have been created through deceit, through benefit to one or more creditors or through other dishonest means (Article 272(2) at 3 Bankruptcies Act) SIHNV put forward to that end that after the announcement of the accounting irregularities on 5 December 2017, it entered into consultation with its creditors in order to secure the continuation of its group. The process has been transparent. SIHNV has involved all categories of creditors in the negotiations and has always informed them of the progress being made in the process. This ultimately resulted in the creditors' unanimous approval of the composition. The Cost Compensation of EUR 30 million, the contribution in the costs of the Active Claimants Groups (ACGs) for their efforts and assistance, is not a dishonest means either that contributed to the creation of the composition. The Cost Compensation is being paid not by SIHNV but by Steinhoff Africa Holdings Proprietary Ltd. (SAHPL). SAHPL is



not insolvent and is not included in the suspension of payments. The Compensation is not a consideration for agreeing to the composition, and the realisation of the composition does not lie within the control of the ACGs as recipients of the Compensation. The contribution was not made "secretively"; it was announced in the composition and in the settlement term sheet that was published for the first time in 2020. Nor is it an excessive amount as compared to other settlements of mass claims. The Compensation goes directly to the ACGs, who, in principle, are exclusively representing the interprets of MPC Claimants; the ACGs are not SIHNV creditors (other than to the extent that they have obtained claims against SIHNV from claimants, for example through assignment). The ACGs also continue to be responsible for the central submission of claims, for example, and for the correction of errors in data that are needed to verify claims. The ACGs have played a constructive role in the preparation of the composition – efforts that ultimately benefit the MPC Claimants, including those not represented by an ACGs. Without the efforts of the ACGs, the composition probably would not have been created. Creditors not represented by the ACGs have also benefited from the ACGs' efforts. It has been agreed with the ACGs that the compensation they are to receive is to be settled against the amounts that their constituents – the respective MPC Claimants – might owe them by virtue of agreements between an ACG and its constituents for the representation of their interests. In principle, this prevents the free-rider effect known from mass claim situations. By appointing a Committee of Representatives, the ACGs who were entitled to vote in their capacity as SIHNV creditors did not vote in the meeting of creditors. There is no causal connection between the votes cast by the representatives of the ACGs in the Committee of Representatives and the adopted composition, considering that the composition also would have been adopted without those votes.

5.12. In light of all of the foregoing, the District Court finds it sufficiently plausible that the composition was not created through deceit, through benefit to one or more creditors or through any other dishonest means.

5.13. The Administrators stated at the hearing that sufficient security has been provided by a third party affiliated with SIHNV in respect of the Administrators' salary. The Administrators have sent an adequate advance invoice, which amount has been paid. This advance is sufficient for the outstanding costs of salaries and any subsequent costs. The Administrators have requested that the final salary be set in a separate decision in connection with work still to be performed within the context of the settlement of the composition. The District Court therewith establishes that there is also no ground for refusal as referred to in Article 272(2) at 4 Bankruptcy Act.

5.14. The District Court has found no other grounds for refusal (Article 272(3) Bankruptcy Act). The fact that the creditors are not treated equally in the composition does not result in a ground for refusing the court's approval. The District Court has determined, in part based on what SIHNV put forward at the hearing, that there are justified reasons for treating clearly defined categories of creditors differently. The fact that virtually all creditors who receive less under the composition than the creditors that retain the right to payment of their entire claim have supported the composition also speaks volumes. The District Court is aware of only two creditors who opposed the composition at some point in time: Hamilton and Lancaster. Hamilton has since changed its position and supports the composition. In respect of Lancaster, even though it formally qualifies as a creditor, it has not been refuted that it has no material interest whatsoever in the question of the extent to which the litigious creditors can recover under the composition. The fact that SIHNV has elected suspension of payments proceedings rather proceedings under the *Wet collectieve afwikkeling massaschade* (Class



Actions (Settlement of Large-scale Losses or Damage) Act) or the *Wet homologatie onderhands akkoord* (Court Approval of a Private Composition (Prevention of Insolvency) Act) gives no cause to refuse the approval either. There has been no abuse of rights, as the law provides for the possibility of offering a composition during a provisional suspension of payments. The Class Actions (Settlement of Large-scale Losses or Damage) Act is not an option, because SIHNV has sufficiently explained that it would not have been able to finance any opt-out possibility for creditors. The Court Approval of a Private Composition (Prevention of Insolvency) Act proceedings would not have provided a solution, either, as those proceedings have not been included in Annex A of the European Insolvency Regulation and are not yet recognised in other countries. At the hearing, the Administrators demonstrated sufficiently plausibly that if no composition is agreed, in time this would lead to a bankruptcy situation.

5.15. All things considered, the existence of one of the grounds for refusal as stated in Article 272(2) Bankruptcies Act has not appeared to the District Court. Neither the Administrators nor any of the creditors have contested the court's approval. Of its own initiative, the District Court also found no terms for refusal of the court's approval of the composition. Therefore, the District Court will give court approve to the composition.

5.16. As requested, the salary of the Administrators will be determined in a separate decision. The District Court will determine the court registry fee before the composition is made available for inspection. This amount is at the expense of SIHNV.

## 6. The decision

The District Court

- grants court approval of the aforementioned composition;
- determines that the salary of the Administrators will be determined in a separate decision;
- sets the court registry fee for making the composition available for inspection at EUR 657.00 and charges this amount to SIHNV.

Thus rendered by attorneys L. van Berkum, N.A.J. Purcell and T.H. van Voorst Vader, in the presence of J.M. Steur as Court Clerk, and pronounced in public on 23 September 2021.

[signature]

[signature]

[signature]

ISSUED AS A TRUE COPY IN ACCORDANCE WITH THE COURT CLERK OF THE  
AMSTERDAM DISTRICT COURT



I, Roy Theodorus Cornelis Mühren, sworn translator for the Dutch and English languages, Volendam, the Netherlands, listed in the Register of Sworn Translators and Interpreters (Wbtv) under number 40029, do solemnly and sincerely declare that the attached text is a full, true and faithful translation made by me of the Dutch document hereunto annexed, submitted to me for translation, in testimony whereof I have hereunto set my hand, this 24th day of September two thousand and twenty-one.



A handwritten signature in blue ink, appearing to read "R.T.C. Mühren", written over the right side of the official seal.

## RECHTBANK AMSTERDAM

Afdeling privaatrecht

surséancenummer: C/13/21/4-S

uitspraak: 23 september 2021

### homologatie akkoord

Gezien het op 15 februari 2021 ter griffie van deze rechtbank neergelegde ontwerp van akkoord, dat op 23 maart 2021, 15 juni 2021, 11 augustus 2021 en 8 september 2021 is aangepast en (telkens opnieuw) ter griffie is neergelegd, aangeboden door:

de naamloze vennootschap

**STEINHOFF INTERNATIONAL HOLDINGS N.V.**

statutair gevestigd te Amsterdam

ingeschreven bij de Kamer van Koophandel onder nummer 63570173

vestigingsadres: Building B2, Vineyard Office Park, Cnr Adam Tas & Devon Valley Road, Stellenbosch 7600, Zuid-Afrika

- hierna te noemen: SIHNV

aan wie bij beschikking van deze rechtbank van 15 februari 2021 voorlopige surseance van betaling werd verleend, met benoeming van mrs. F. Verhoeven en C.R. Zijdeveld tot bewindvoerders en mrs. K.M. van Hassel en C.H. Rombouts tot rechters-commissarissen.

### 1. De procedure

1.1. SIHNV heeft een akkoord aangeboden aan haar gezamenlijke concurrente schuldeisers. Een door de rechter-commissaris gewaarmerkte versie van het ontwerp akkoord van 8 september 2021 is gehecht aan het proces-verbaal van de raadpleging en stemming akkoord van 8 september 2021. De inhoud geldt als hier ingevoegd.

1.2. De rechtbank heeft kennisgenomen van de processen-verbaal van 3 september 2021 en 8 september 2021. De daadwerkelijke raadpleging en stemming over het aangeboden akkoord heeft op laatstgenoemde datum plaatsgevonden, van welke stemming het resultaat was dat het akkoord werd aangenomen.

1.3. De behandeling van de homologatie van voormeld akkoord heeft plaatsgevonden ter openbare zitting van deze rechtbank op 16 september 2021 om 10.00 uur. Ter zitting zijn - fysiek dan wel via een videoverbinding - verschenen:

(namens) de bewindvoerders:

- mr. F. Verhoeven, voornoemd;
- mr. C.R. Zijdeveld, voornoemd;
- mr. D. Smit, kantoorgenoot van bewindvoerders;
- mr. D.V.J.S. van der Heijden, kantoorgenoot van bewindvoerders;



- 
- mr. G.J. Meester, kantoorgenoot van bewindvoerders;
  - mevrouw F. van der Beek, medewerkster van bewindvoerders;
  - de heer J. Nadels, financieel adviseur, verbonden aan Ernst & Young;
  - de heer D. Bruins Slot, financieel adviseur, verbonden aan Ernst & Young;

namens SIHNV:

- de heer L. du Preez, bestuurder van SIHNV;
- de heer T. De Klerk, bestuurder van SIHNV;
- de heer C. Feige, financieel adviseur, verbonden aan Analysis Group;
- mr. P. Kuipers, advocaat;
- mr. D.A.M.H.W. Strik, advocaat;
- mr. M.L.J. Noldus, advocaat;
- mr. B.F. Meijer, advocaat;

leden van de commissie van vertegenwoordiging:

- mr. W.J.P. Jongepier (voorzitter);
- prof. B. Schuiling;
- mevrouw K. van der Linde;
- de heer G.M. Warringa (vertegenwoordiger van Public Investment Corporation, The Government Employees Pension Fund, The Compensation Fund en The Unemployment Insurance Fund (hierna gezamenlijk te noemen: PIC));
- de heer C. Wefers (vertegenwoordiger van ISLG);
- de heer J. Klein (vertegenwoordiger van Deminor);
- de heer O. McLaren (vertegenwoordiger van Hamilton);

adviseurs/vertegenwoordigers van de commissie en/of haar leden:

- mr. F.D. Crul, secretaris van de commissie;
- mr. Q.L.C.M. Bongaerts, namens ISLG;
- mr. F.M. Peters, namens PIC;
- mr. J. de Jong, namens Hamilton;
- mr. R.D. Vriesendorp, namens Conservatorium Centerbridge;
- mr. K. Rutten, namens Deminor;
- mr. J. de Rooij, namens Burford;
- mr. V.R. Vroom, namens de G4;
- mr. A.J. Dunki Jacobs, namens de G4;
- mr. R.M.T.M. Tielens, namens de G4;
- mr. P.E. Hendriksen, namens de G4;

namens Steinhoff Recovery Foundation (SRF):

- de heer R. Abeln;
- de heer M. Windt;
- de heer Z. Abrahams;
- de heer N. Lewis;

rechter-commissaris:

- mr. C.H. Rombouts;

tolken:

- mevrouw K. van den Berg;
- de heer T. Gevaert.

- 1.4. Het procesdossier van de rechtbank bevat de navolgende stukken:
- beschikking van deze rechtbank van 15 februari 2021, waarbij aan SIHNV voorlopige surseance van betaling is verleend met benoeming van mr. F. Verhoeven als bewindvoerder;
  - beschikking van deze rechtbank van 18 februari 2021, waarbij mr. C.R. Zijderveld is benoemd tot tweede bewindvoerder;
  - beschikking van deze rechtbank van 5 maart 2021, houdende bepalingen ter beveiliging van de belangen van schuldeisers (wijze van informeren schuldeisers);
  - beschikking van deze rechtbank van 28 mei 2021, houdende aanvullende bepalingen ter beveiliging van de belangen van schuldeisers (gebruik van de 'Brandaris' regeling, met benoeming van een commissie van vertegenwoordiging);
  - beschikkingen van deze rechtbank van 8 juni 2021 en 6 juli 2021, houdende wijzigingen in de samenstelling van de commissie van vertegenwoordiging;
  - een ontwerp akkoord ('Composition Plan') van 8 september 2021;
  - een Nederlandse samenvatting van het ontwerp akkoord van 8 september 2021;
  - het proces-verbaal van aanhouding van de raadpleging en stemming akkoord van 3 september 2021;
  - het proces-verbaal van de raadpleging en stemming akkoord van 8 september 2021, met bijlagen;
  - het advies van de rechter-commissarissen van 15 september 2021;
  - een e-mail van mr. F.M. Peters namens (onder meer) PIC van 15 september 2021, met bijlagen.

## 2. Opmerkingen voorafgaande aan de zitting en ingekomen stukken

2.1. De voorzitter constateert dat mrs. Schutte en Van den Berg namens Lancaster 101 (RF) (PTY) Ltd. (hierna te noemen: Lancaster) bij e-mail van 9 september 2021, waarop is gereageerd door de bewindvoerders bij e-mail van 9 september 2021 en door de rechters-commissarissen bij brief van 10 september 2021, aan de rechters-commissarissen (onder meer) heeft verzocht om toezending van het rapport van Ernst & Young van 30 augustus 2021. Voorts zijn door Lancaster bij brief van 14 september 2021, met bijlagen, en 15 september 2021, met bijlagen, aan de rechtbank meerdere verzoeken gedaan en gronden uiteengezet, waarop zij de homologatie wenst te bestrijden.

2.2. Mrs. Schutte en Van den Berg hebben namens Lancaster bij e-mail van 16 september 2021 te 09:47 uur de rechtbank bericht dat Lancaster een overeenkomst heeft uitonderhandeld met vertegenwoordigers van PIC, die, als zij in werking treedt, zal resulteren in de verkoop en overdracht van de claims en rechten van Lancaster jegens SIHNV aan PIC. Echter, de instemming van PIC is nog onderworpen aan een voorbehoud van goedkeuring van haar interne bevoegde orgaan. Lancaster heeft in voornoemde e-mail meegedeeld dat zij niet ter zitting zal verschijnen, maar heeft haar bezwaren tegen de homologatie van het akkoord nadrukkelijk gehandhaafd onder overlegging van een schriftuur houdende gronden als bedoel in artikel 271 lid 1 Faillissementswet (Fw).

2.3. Ingevolge artikel 269b lid 1 Fw bepaalt de rechter-commissaris ter vergadering, indien het akkoord is aangenomen, vóór het sluiten van de vergadering de zitting, waarop de rechtbank de homologatie zal behandelen. Tot aan die zitting kunnen de schuldeisers aan de rechter-commissaris schriftelijk de redenen opgeven, waarom zij weigering van de homologatie wenselijk achten (artikel 269b lid 4 Fw). Lancaster heeft gedurende die tijd de

---

rechters-commissarissen geen schriftelijke redenen waarom zij weigering van de homologatie wenselijk achten opgegeven. Wel heeft Lancaster de rechters-commissarissen verzocht te bepalen dat het rapport van Ernst & Young aan hen dient te worden afgegeven, maar dit verzoek hebben de rechters-commissarissen afgewezen. Deze beslissing is in het proces-verbaal van de behandeling van 3 september 2021 herhaald. Lancaster heeft daartegen geen beroep ingesteld, zodat deze beslissing vaststaat.

2.4. Ingevolge artikel 271 lid 1 Fw kan elke schuldeiser verder op de bepaalde dag van de behandeling van de homologatie van het akkoord de gronden uiteenzetten, waarop zij de homologatie wenst te bestrijden. Daarbij kan het betoog ondersteund worden met (vooraf) aan de rechtbank overgelegde stukken. De brieven van 14 en 15 september en het e-mailbericht van 16 september 2021, met bijlagen, (zie hiervoor 2.1. en 2.2.) zijn vóór de bepaalde behandeling ter zitting van 16 september 2021 om 10.00 uur aan de rechtbank toegezonden. Ter zitting is echter namens Lancaster niemand verschenen om de vooraf aan de rechtbank toegestuurde stukken toe te lichten. Nu Lancaster niet ter behandeling is verschenen, zal de rechtbank geen acht slaan op de vooraf toegezonden stukken. Deze stukken maken dan ook geen onderdeel uit van het procesdossier en worden buiten beschouwing gelaten.

### 3. Standpunten

3.1. De bewindvoerders hebben ter zitting hun eerder uitgebrachte advies gehandhaafd. Aan de hand van een toelichting hebben zij gepleit voor homologatie van het akkoord.

3.2. Geen van de aanwezigen heeft bezwaar gemaakt tegen de homologatie van het akkoord. Mr. Jongepier heeft verklaard dat de voltallige commissie van vertegenwoordiging, die geacht wordt de belangrijkste groepen schuldeisers te vertegenwoordigen, unaniem vóór aanneming van het akkoord heeft gestemd. De heer Warringa, mr. Vriesendorp en mr. Vroom, hebben verzocht het aangenomen akkoord te homologeren.

3.3. Mrs. Kuipers en Strik hebben namens SIHNV, aan de hand van spreekanteekeningen, de rechtbank verzocht het aangenomen akkoord te homologeren, nu geen gronden voor weigering aanwezig zijn. Voor zover van belang, zal daar hieronder nader op worden ingegaan.

### 4. Het advies van de rechter-commissarissen

4.1. De rechters-commissarissen hebben ten behoeve van de zitting van 16 september 2021 schriftelijk verslag uitgebracht. Kort gezegd adviseren zij het akkoord te homologeren. Het advies is alle betrokken partijen vóór de behandeling ter zitting - per e-mail - toegezonden. Voor zover van belang, zal daar hieronder nader op worden ingegaan.

### 5. De beoordeling

5.1. De rechtbank stelt voorop dat het namens SIHNV aangeboden akkoord unaniem is aangenomen. Gezien de grote internationale en financiële belangen in deze zaak mag worden verondersteld dat dat is gebeurd na gedegen onderzoek. Geen van de schuldeisers

---

hebben bij de rechters-commissarissen of op de behandeling ter zitting bij de rechtbank bezwaar gemaakt tegen de homologatie van het akkoord.

5.2. De rechtbank dient desondanks de homologatie te weigeren indien zich één van de in artikel 272 lid 2 Fw opgenomen weigeringsgronden voordoet.

5.3. Ten aanzien van de in dit artikel onder 1 en 2 genoemde weigeringsgronden, te weten (1) dat de baten van de boedel de bij het akkoord bedongen som te boven gaan en (2) dat de nakoming van het akkoord niet voldoende is gewaarborgd, geldt het volgende.

5.4. Deze weigeringsgronden gaan uit van de situatie dat een akkoord wordt aangeboden, waarbij de schuldenaar zijn schulden niet geheel kan betalen, maar wel gedeeltelijk, en er een geldsom beschikbaar is voor gedeeltelijke betaling ineens van de vorderingen van alle schuldeisers (een percentageakkoord). Daarvan is in dit geval geen sprake. Er vindt geen directe, gedeeltelijke, betaling van alle vorderingen plaats. In het akkoord is onderscheid gemaakt tussen verschillende categorieën schuldeisers. In essentie komt het voorstel neer op afkoop van vier categorieën schuldeisers waarbij de vorderingen van de categorieën SIHNV MPV Claimants en SIHNV Contractual Claimants betwist zijn en dus niet vaststaan. Bovendien zijn in die categorieën niet alle potentiële schuldeisers bekend. Zij krijgen volgens het akkoord een percentage van hun vordering uitgekeerd, waarbij hun vordering in zoverre slechts voor het doel van het akkoord wordt erkend. De twee andere categorieën krijgen alleen een percentage van hun claimwaarde voor zover hun vordering bindend vaststaat in een uitspraak of in een schikking tussen de relevante partijen. De drie laatste categorieën schuldeisers, waarvan de vorderingen grotendeels onbetwist zijn, behouden hun vorderingsrecht, maar zij hebben reeds ingestemd met uitgestelde betaling. SIHNV beoogt met het akkoord een faillissement te voorkomen en haar activiteiten 'going concern' voort te zetten, terwijl haar ondernemingswaarde zo veel mogelijk wordt behouden. Het akkoord is onderdeel van een wereldwijd schikkingsvoorstel, ook genoemd de 'global settlement'. De aanleiding voor de 'global settlement' was de bekendmaking van boekhoudkundige onregelmatigheden op 5 december 2017. Sindsdien zijn SIHNV en andere groepsmaatschappijen verwickeld geraakt in juridische procedures in verschillende jurisdicties die aanhangig zijn gemaakt door beleggers, investeerders en hun vertegenwoordigers. Bij toewijzing van deze claims verwacht SIHNV niet in staat te zijn haar schulden te voldoen. SIHNV heeft reeds verschillende financiële herstructurerings doorlopen om haar activiteiten te kunnen voortzetten.

5.5. De Faillissementswet sluit het maken van dergelijke afspraken tussen schuldeisers en de schuldenaar niet uit. Nu de in eerdergenoemd artikel genoemde weigeringsgronden zijn geschreven voor de situatie dat een som ineens beschikbaar is voor directe gedeeltelijke betaling van alle schuldeisers en het onderhavige akkoord een andere strekking heeft, gaat het bij de beoordeling van de homologatie in dit geval om de toepassing van de strekking van deze bepalingen.

5.6. De strekking van artikel 272 lid 2 onder 1 Fw is in dit geval, dat moet worden beoordeeld of het aangeboden akkoord een reëel aanbod is.

5.7. Volgens de bewindvoerders en de rechters-commissarissen heeft SIHNV voldoende aannemelijk gemaakt dat bij uitvoering van het akkoord de netto-opbrengsten waar de SIHNV MPC Claimants en SIHNV Contractual Claimants recht op zullen hebben in dat scenario hoger zullen uitvallen (circa 9,2%) dan in geval van liquidatie binnen een

faillissement (circa 7,8%). Dit komt ook door de bijdrage van Deloitte en D&O verzekeraars. De concurrente schuldeiser categorieën SIHNV Financial Creditors, Intra-Group Creditors en Other Unsecured Creditors hebben geen recht op uitkering van akkoordpenningen. In plaats daarvan behouden zij hun vorderingsrechten, met inachtneming van een betalingsuitstel in het geval van SIHNV Financial Creditors en Intra-Group Creditors, terwijl zij afstand doen van hun buitencontractuele vorderingen jegens SIHNV. Het aanbod aan deze schuldeisers is feitelijk een veranderde verhaalspositie op de toekomstige ondernemingswaarde van SIHNV, omdat zij dulden dat de overige schuldeisers eerst en vooraf worden voldaan. SIHNV heeft dit ter zitting gemotiveerd uiteen gezet en nader toegelicht aan de hand van door haar overgelegde spreekantekeningen. SIHNV verwacht dat door de sanering van haar litigieuze schulden de financiële positie van de groep zal stabiliseren en dat de ondernemingswaarde behouden kan blijven. Het aanbod is dus (ook) voor deze groep schuldeisers een aanzienlijke verbetering van hun positie ten opzichte van een faillissementsscenario. Dat het een reëel akkoord betreft, blijkt ook uit het feit dat alle schuldeisers unaniem hebben ingestemd met het akkoord.

5.8. De rechtbank komt dan ook tot de conclusie dat ter zitting voldoende aannemelijk is geworden dat het akkoord voor alle schuldeisers voordeliger is dan liquidatie van het vermogen binnen een faillissement en dat het gedane aanbod een reëel aanbod is.

5.9. Dat de nakoming van het akkoord voldoende is gewaarborgd (artikel 272 lid 2 onder 2 Fw) is bij een akkoord als het onderhavige lastig vast te stellen. In het akkoord ligt immers besloten dat op dit moment niet alle schuldeisers uit de categorieën SIHNV MPC Claimants en SIHNV Contractual Claimants bekend zijn. Vaststaat echter wel welk bedrag beschikbaar wordt gesteld ten behoeve van deze schuldeisers. Schuldeisers dienen zich gemeld te hebben voor de zogenaamde "Bar Date" (drie maanden nadat het akkoord van kracht is geworden). Dit is dus mogelijk na homologatie van het akkoord, maar wel eindig op straffe van verval van recht. Ter uitvoering van het akkoord is verder een afzonderlijke stichting - SRF - opgericht die is belast met de uitvoering van het akkoord. SIHNV heeft inmiddels aan de South African Reserve Bank (SARB) verzocht om goedkeuring om schikkingsgelden te betalen aan SRF teneinde haar verplichtingen onder het akkoord na te komen. SIHNV verwacht deze goedkeuring binnen afzienbare tijd te ontvangen. Deze goedkeuring is een opschortende voorwaarde in het akkoord. De voor de uitvoering van het akkoord relevante en betrokken dochterondernemingen van SIHNV zijn met SRF contractuele verplichtingen aangegaan waarmee zij zich hebben verplicht om SRF te voorzien van de middelen die nodig zijn om het akkoord uit te kunnen voeren. In aanvulling op de contractuele verplichtingen hebben de relevante dochterondernemingen zekerheden gevestigd op (I) de aanwezige liquide middelen en (II) de beursgenoteerde aandelen in Pepkor Holdings Ltd. (PPH) die eventueel nog ten gunste van SRF worden uitgedeeld. Deze zekerheidsrechten geven SRF het recht de benodigde liquide middelen en aandelen PPH naar zich toe te trekken, mochten de Steinhoff vennootschappen hun contractuele verplichting om de akkoordpenningen over te maken niet nakomen.

5.10. Gelet op al het voorgaande acht de rechtbank aannemelijk dat nakoming van het akkoord, voor zover mogelijk, voldoende is gewaarborgd.

5.11. Het akkoord mag niet door bedrog, door begunstiging van één of meer schuldeisers of met behulp van andere oneerlijke middelen tot stand zijn gekomen (artikel 272 lid 2 sub 3 Fw) SIHNV heeft daartoe aangevoerd dat zij na de bekendmaking van de boekhoudkundige onregelmatigheden op 5 december 2017 met haar schuldeisers in overleg is getreden om de

voortgang van haar groep veilig te stellen. Er is sprake van een transparant proces. SIHNV heeft alle categorieën schuldeisers betrokken bij de onderhandelingen en hen steeds geïnformeerd over de voortgang van het proces. Dit heeft uiteindelijk erin geresulteerd dat de schuldeisers unaniem met het aangeboden akkoord hebben ingestemd. Ook de Cost Compensation van EUR 30 miljoen, de bijdrage in de kosten van de Active Claimants Groups (ACG's) voor hun inspanningen en bijstand, is geen oneerlijk middel dat aan de totstandkoming van het akkoord heeft bijgedragen. De Cost Compensation wordt niet betaald door SIHNV maar door Steinhoff Africa Holdings Proprietary Ltd. (SAHPL). SAHPL is niet insolvent en maakt geen onderdeel uit van de surseance. De vergoeding geldt niet als tegenprestatie voor instemming met het akkoord en de totstandkoming van het akkoord ligt niet in de macht van de ACG's als ontvangers van de vergoeding. De bijdrage is niet 'heimelijk' geleverd; het is bekend gemaakt in het akkoord en in de settlement term sheet die voor het eerst in 2020 werd gepubliceerd. Het is ook geen excessief bedrag in vergelijking met andere afwikkelingen van massaschadeclaims. De vergoeding gaat rechtstreeks naar de ACG's, die in beginsel uitsluitend belangenbehartigers van MPC Claimants zijn; de ACG's zijn geen schuldeisers van SIHNV (anders dan voor zover zij vorderingen op SIHNV van claimanten hebben verkregen, bijvoorbeeld door cessie). De ACG's dragen nu ook zorg voor onder meer de centrale indiening van vorderingen en voor het corrigeren van fouten in data die nodig zijn voor het verifiëren van vorderingen. De ACG's hebben een constructieve rol gehad in de voorbereidingen van het akkoord, inspanningen die uiteindelijk ten goede komen aan de MPC Claimants, waaronder ook zij die niet door een ACG vertegenwoordigd zijn. Zonder de inspanningen van de ACG's was het akkoord waarschijnlijk niet tot stand gekomen. Ook de niet door de ACG's vertegenwoordigde schuldeisers zijn gebaat geweest bij de inspanningen van de ACG's. Met de ACG's is overeengekomen dat de door hen te ontvangen vergoeding dient te worden verrekend met de bedragen die hun achterban - de respectieve MPC Claimant - aan hen verschuldigd zouden zijn uit hoofde van afspraken tussen een ACG en haar achterban ter vertegenwoordiging van hun belangen. Hiermee wordt het bij massaclaim-situaties bekende 'free rider' effect in beginsel voorkomen. Door het instellen van een commissie van vertegenwoordiging hebben de ACG's die wel stemgerechtigd waren in hun hoedanigheid van crediteur van SIHNV niet gestemd in de crediteurenvergadering. Er is geen causaal verband tussen de door de vertegenwoordigers van de ACG's in de commissie van vertegenwoordiging uitgebrachte stemmen en het aangenomen akkoord, aangezien het akkoord ook zonder die stemmen zou zijn aangenomen.

5.12. Gelet op al het voorgaande acht de rechtbank voldoende aannemelijk dat het akkoord niet door bedrog, door begunstiging van één of meer schuldeisers of met behulp van andere oneerlijke middelen tot stand is gekomen.

5.13. De bewindvoerders hebben ter zitting verklaard dat voldoende zekerheid is gesteld door een derde aan SIHNV gelieerde partij ten aanzien van het salaris van de bewindvoerders. De bewindvoerders hebben een afdoende voorschotfactuur verstuurd, welk bedrag is betaald. Dit voorschot is voldoende voor het thans openstaande salariskosten en eventuele nakosten. De bewindvoerders hebben verzocht het eindsalaris vast te stellen in een separate beschikking in verband met nog uit te voeren werkzaamheden in het kader van het afwikkelen van het akkoord. De rechtbank stelt daarmee vast dat van een weigeringsgrond als bedoeld in artikel 272 lid 2 onder 4 Fw evenmin sprake is.

5.14. Van andere gronden om tot weigering over te gaan (artikel 272 lid 3 Fw) is de rechtbank niet gebleken. Het feit dat in het akkoord de schuldeisers niet gelijk worden behandeld levert geen grond op om de homologatie te weigeren. Het is de rechtbank,

onder meer op basis van hetgeen door SIHNV ter zitting is aangevoerd, gebleken dat er gerechtvaardigde redenen zijn om duidelijk gedefinieerde categorieën schuldeisers anders te behandelen. Het spreekt ook boekdelen dat nagenoeg alle schuldeisers, die onder het akkoord minder ontvangen dan de schuldeisers die het recht op betaling van hun gehele vordering behouden, zich achter het akkoord hebben geschaard. De rechtbank is slechts bekend met twee schuldeisers die zich op enig moment tegen het akkoord hebben verzet: Hamilton en Lancaster. Hamilton is inmiddels van positie veranderd en steunt het akkoord. Voor Lancaster geldt dat, ook als zij formeel als schuldeiser heeft te gelden, onweersproken is gebleven dat zij materieel geen enkel belang heeft bij de vraag in hoeverre de litigieuze schuldeisers verhaal krijgen onder het akkoord. Ook het feit dat SIHNV heeft gekozen voor een surseance procedure in plaats van een WCAM- of WHOA-procedure levert geen grond op om de homologatie te weigeren. Er is geen sprake van misbruik van recht, nu de wet voorziet in de mogelijkheid gedurende een voorlopige surseance van betaling een akkoord aan te bieden. De WCAM-procedure was geen optie, omdat SIHNV voldoende heeft toegelicht dat zij een eventuele opt-out mogelijkheid voor schuldeisers niet zou hebben kunnen financieren. De WHOA-procedure zou evenmin uitkomst hebben geboden, nu die procedure nog niet is opgenomen in bijlage A bij de herschikte Europese Insolventieverordening en in het buitenland nog niet wordt erkend. De bewindvoerders en SIHNV hebben ter zitting voldoende aannemelijk gemaakt dat, indien geen akkoord tot stand komt, dit op termijn zou leiden tot een faillissementsituatie.

5.15. Alles overziend is de rechtbank niet gebleken van één van de weigeringsgronden als vermeld in artikel 272 lid 2 Fw. De bewindvoerders noch enige andere schuldeiser hebben de homologatie bestreden. Ook ambtshalve acht de rechtbank geen termen tot weigering van de homologatie aanwezig. Het akkoord zal dan ook worden gehomologeerd.

5.16. Het salaris van de bewindvoerders zal, als verzocht, bij afzonderlijke beschikking worden vastgesteld. De rechtbank zal de voor het neerleggen van het akkoord verschuldigde griffierechten vaststellen. Dit bedrag komt ten laste van SIHNV.

## 6. De beslissing

De rechtbank:

- homologeert voormeld akkoord;
- bepaalt dat het salaris van de bewindvoerders bij afzonderlijke beschikking zal worden vastgesteld;
- stelt het voor het neerleggen van het akkoord verschuldigde griffierecht vast op € 657,= en brengt dit bedrag ten laste van SIHNV.

Aldus gegeven door mrs. L. van Berkum, N.A.J. Purcell en T.H. van Voorst Vader, in tegenwoordigheid van J.M. Steur als griffier, en in het openbaar uitgesproken op 23 september 2021.

VOOR AFSCRIFT CONFORM  
DE GRIFFIER VAN DE RECHTBANK TE AMSTERDAM