

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

NOTICE OF MOTION

TAKE NOTICE THAT the intervening applicant (*Deloitte SA*) intends to make application at the hearing of the main application on **30 September 2021 at 10h00** or so soon thereafter as Deloitte SA's counsel may be heard for an order in the following terms:

- 1 The forms and service provided for in the Rules of Court are dispensed with and the matter is heard as an urgent application in terms of Rule 6(12) of the Rules of this Court.

- 2 Deloitte SA is granted leave to intervene in the main application as a co-applicant in order to support the relief sought.
- 3 Any litigant electing to oppose this application is ordered to pay Deloitte SA's costs, jointly and severally, the one paying the other to be absolved.
- 4 Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the accompanying affidavit of **CHRISTOFFEL JOHANNES KOTZE** (together with the annexures thereto) will be used in support of the application.

TAKE NOTICE FURTHER THAT should any litigant intend opposing the relief sought in this application they are required **by 12h00 on 29 September 2021** to:

- 1 notify Deloitte SA's attorneys in writing that they intend to oppose this application and to appoint an address within eight kilometres of the office of the registrar at which they will accept notice and service of all process in such proceedings; and
- 2 file their answering affidavits, if any, together with any relevant documents in answer to the allegations made by Deloitte SA.

TAKE NOTICE FURTHER THAT Deloitte has appointed the address of **WEBBER WENTZEL** as the address at which they will accept notice and service of all process in these proceedings c/o kathryn.gawith@webberwentzel.com and michael.straeuli@webberwentzel.com

DATED AT JOHANNESBURG ON 28 SEPTEMBER 2021



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TO: **THE REGISTRAR OF THE HIGH COURT
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AND TO: **WERKSMANS ATTORNEYS**

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(Ref: B. Olivier / STEI3570)

SERVICE BY EMAIL

AND TO: **THE RESPONDENTS**

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
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Applicant

and

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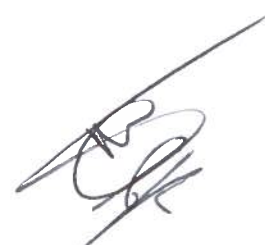
FOUNDING AFFIDAVIT

I, the undersigned,

CHRISTOFFEL JOHANNES KOTZE

hereby state under oath as follows:

- 1 I am the deputy general counsel of the intervening applicant (*Deloitte SA*).
Deloitte SA has resolved to institute this application and I am duly authorised to
depose to this affidavit on its behalf.



- 2 The facts set out in this affidavit are true to the best of my belief and fall within my personal knowledge, unless the contrary is clear from the context. Where I make legal submissions, I do so on advice received from Deloitte SA's lawyers.
- 3 In this affidavit I use the following terms:
- 3.1 "1973 Act" means the Companies Act, 61 of 1973;
- 3.2 "2008 Act" means the Companies Act, 71 of 2008;
- 3.3 "Deloitte SA" means the intervening applicant, Deloitte & Touche, a professional partnership and a firm of registered auditors and accountants registered as such in South Africa;
- 3.4 "Deloitte NL" means Deloitte Accountants B.V., a firm of accountants and auditors based in the Netherlands;
- 3.5 "Deloitte firms" means Deloitte SA and Deloitte NL;
- 3.6 "s155 Proposal" means the proposal published by SIHPL in terms of s155(2) of the 2008 Act on 11 August 2021;
- 3.7 "SIHL" or "SIHPL" means Steinhoff International Holdings Proprietary Limited, a company incorporated in accordance with the company laws of the Republic of South Africa;
- 3.8 "SIHNV" means the respondent, Steinhoff International Holdings N.V., a company incorporated in accordance with the company laws of the Kingdom of the Netherlands; and

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3.9 "SoP" means the suspension of payments (*surseance van betaling*), including a provisional suspension of payments (*voorlopige surseance van betaling*), under the Dutch Bankruptcy Act (*Faillissementswet*) requested by SIHNV.

THE PARTIES

- 4 The intervening applicant is **DELOITTE & TOUCHE**, a professional partnership and a firm of registered auditors and accountants established and registered in accordance with the laws of South Africa with its registered head office at 5 Magwa Crescent, Waterfall City, Waterfall, Johannesburg, Gauteng.
- 5 The applicant is **STEINHOFF INTERNATIONAL HOLDINGS (PTY) LTD**, a private company:
- 5.1 incorporated and registered in accordance with the laws of South Africa in terms of the 2008 Act, with registration number 1998/003951/07; and
- 5.2 with its registered address at Building B2, Vineyard Office Park, Corner Adam Tas and Devon Valley Road, Stellenbosch.
- 6 The respondents are the Scheme Creditors as defined in the s155 Proposal and detailed more fully in paragraphs 6 and 66 of SIHPL's founding affidavit in the main application dated 12 September 2021.
- 7 The respondents consist of SIHPL's creditors whose claims have been verified and are recognised as falling within one of the following three classes:



- 7.1 the Financial Creditors class;
- 7.2 the Contractual Claimants class; and
- 7.3 the SIHPL Market Purchase Claimants (*MPC*) class.
- 8 SIHPL is legally represented. Due to the urgency of the matter and in the interests of affording it as much time as possible to consider this application, it will be served by email on SIHPL and its legal representatives.
- 9 As regards, the scheme creditors, Deloitte SA does not itself have the means of effecting service on each and every scheme creditor. It will thus require that SIHPL upload an electronic copy of its intervention application onto the dedicated site that SIHPL has used to upload pleadings in this matter in accordance with the directives of this Court. Deloitte SA will also effect electronic service of this application on the legal representatives of all parties who had indicated, by the time of service, that they would likewise seek to intervene in this application.

THE DIRECT AND SUBSTANTIAL INTEREST OF DELOITTE IN THIS APPLICATION

- 10 On 13 September 2021, SIHPL instituted an urgent application in this Court in terms of s 155(7)(a) and (b) of the 2008 Act to sanction the s155 Proposal.
- 11 Deloitte SA has a direct and substantial interest in the main application. It is a beneficiary of rights and a participant in the Steinhoff global settlement comprising the SoP in the Netherlands and the s155 Proposal in South Africa.

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These processes are inter-conditional. Each one must be implemented to ensure the implementation of the other, and the global settlement as a whole.

- 12 The Deloitte firms support the Steinhoff global settlement. Their support includes a financial contribution of approximately R1.2 billion to be distributed to SIHNV's creditors in accordance with the s155 Proposal. It also includes the grant of releases and waivers from claims and liabilities, including potential recourse claims if the SoP and the s155 Proposal were approved and confirmed. They also make a contribution of approximately R17 million to the costs of the Steinhoff Recovery Foundation (*SRF*). In exchange for this support, the Deloitte firms are granted releases, waivers and indemnities in their favour.
- 13 The Deloitte firms support the global settlement to achieve finality and avoid the real prospect of decades of litigation, despite their sound defences against and contribution claims in respect of any claim that may be made against them.
- 14 This Court's sanction of the s155 Proposal is the final step to consummating the Steinhoff global settlement, following years of complex efforts and negotiation. The s155 Proposal was adopted near-unanimously by SIHPL's creditors. The SoP was similarly approved unanimously by SIHNV's creditors and has since been sanctioned by the Amsterdam District Court.
- 15 The consummation of the global settlement will result in the compromise and settlement of numerous litigious claims made against SIHNV and SIHPL. This achieves finality and avoids the real prospect of decades of litigation. The Deloitte firms have sound defences and contribution claims in respect of any claim that



may be made against them. However, they recognise the benefit of finality for all stakeholders and thus support the global settlement.

- 16 The global settlement also avoids the prospect of winding-up which, by contrast, would be expensive and protracted. There is also no evidence that it will result in a superior dividend to creditors.
- 17 Deloitte SA thus urgently seeks to intervene in, and support, the main application. The urgency arises from the main application being set down for hearing on 30 September 2021. Deloitte SA's intervention application must be heard by this time to ensure that it is able to participate in those proceedings on a matter that directly and substantially affects it.

FACTUAL BACKGROUND

- 18 Deloitte SA conducted the external audit and issued the audit reports for SIHL, then the South African parent company of the Steinhoff group, until the 2015 financial year.
- 19 On 7 December 2015, SIHNV, pursuant to a scheme of arrangement, became the ultimate holding company of the Steinhoff group. SIHL became a subsidiary of SIHNV and underwent a name change to SIHPL. Deloitte NL was then appointed as the auditor of SIHNV for the financial period ended on September 2016 and ensuing financial periods.
- 20 Deloitte SA remained the auditor of SIHL, which was renamed SIHPL.

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- 21 On 5 December 2017, SIHNV issued an announcement on the stock exchange news service (*SENS*) that Deloitte NL was not prepared to sign off on SIHNV's 2017 financial statements. SIHNV further announced the resignation of its then chief executive officer, Mr Markus Jooste. A copy is attached as **DSA1**.
- 22 On 15 March 2019, SIHNV publicly released the overview of the PwC report stating that a small group of former Steinhoff executives and other non-Steinhoff executives, led by senior management, structured and implemented various transactions which had the result of inflating profit and asset values of the group over an extended period.
- 23 On 19 March 2019, SIHNV's CEO, Mr Louis du Preez, appeared before Parliament's Standing Committee on Finance. During the session, Mr du Preez stated to members of Parliament that Messrs Markus Jooste, Ben la Grange, Dirk Schreiber, Stehan Grobler, Siegmar Schmidt, Alan Evans, Jean-Noel Pasquier and Davide Romano were identified in the PwC forensic report as being involved in the fraud. Mr du Preez's presentation garnered widespread coverage.
- 24 On 27 July 2020, SIHNV and SIHPL published an announcement entitled "Proposed Settlement of Litigation Claims Arising from Legacy Accounting Issues". A copy is attached as **DSA2**.
- 25 The announcement concerned a proposed settlement to conclude the complex legal claims, and ongoing and pending litigation proceedings, arising from the legacy accounting issues first announced in December 2017. It stated that

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SIHNV's board was of the view that resolution of the litigation proceedings and legal claims was in the best interests of all stakeholders.

26 The announcement set out the following objectives of the Steinhoff settlement process:

- 26.1 to achieve a settlement of litigation claims that allocates the available value and assets of SIHNV and SIHPL fairly and equitably among the parties who have claims against SIHNV and SIHPL;
- 26.2 to achieve a settlement that fairly reflects the compromise of legal issues, priorities of payment, availability of alternative recoveries and other issues faced by the litigants on their own account and in relation to others;
- 26.3 to further stabilise the Steinhoff group to maximize the value available to be distributed to its stakeholders by marshalling cash, preserving the going concern value of the Steinhoff group's businesses and avoiding further litigation costs;
- 26.4 to ensure the continuity of the Steinhoff group's operations in order to safeguard the jobs of the thousands of employees of Steinhoff's underlying businesses and, by preserving the value of those underlying businesses, to protect the broader universe of stakeholders; and
- 26.5 to conclude and to implement the settlement of the legacy claims on the proposed terms as soon as possible.

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- 27 The proposed settlement reflected the necessary balance of competing interests and the financial limitations on the Steinhoff group, including the negative outlook and implications for all stakeholders if the proposed restructure should fail and assuming the claimants succeeded in establishing their disputed claims.
- 28 On 15 February 2021, SIHNV and SIHPL published a SENS announcement entitled "Steinhoff Global Settlement – Agreement With Deloitte And Conservatorium". A copy is attached as **DSA3**. The SENS announcement confirmed that "*Deloitte supports Steinhoff Global Settlement*". It stated that:
- 28.1 Deloitte will make additional compensation available to certain Steinhoff claimants, including the market purchase claimants (*MPC*), in exchange for certain waivers and releases, provided that Steinhoff successfully completes the contemplated SoP and s155 Proposal.
- 28.2 Deloitte does not in any way admit liability for the losses incurred by Steinhoff and its stakeholders as a result of the accounting irregularities at Steinhoff.
- 28.3 Deloitte has agreed to offer an amount of up to EUR 55.34 million for distribution to the MPC claimants in exchange for certain waivers and releases, provided that Steinhoff successfully completes the SoP and s155 Proposal and meets certain other conditions.
- 28.4 Deloitte has also agreed to offer an amount of EUR 15 million for distribution to certain contractual claimants provided that Steinhoff successfully completes the SoP and s155 Proposal and fulfils certain other conditions.



- 29 On 16 February 2021, SIHNV and SIHPL published a SENS announcement entitled “Steinhoff Global Settlement – Implementation Commenced”. A copy is attached as **DSA4**. The announcement stated that the Amsterdam District Court opened the SoP in respect of SIHNV on 15 February 2021. Following the opening of the SoP, SIHPL has launched the s155 Proposal as part of the implementation of the Steinhoff Group global settlement.
- 30 The SoP relates to SIHNV and the s155 Proposal relates to SIHPL. These processes are inter-conditional. The purpose of the SoP and the s155 Proposal is to implement the proposal to settle certain multi-jurisdictional legacy litigation and various (alleged) other claims against SIHNV and SIHPL.
- 31 Implementation of the Steinhoff global settlement would require the requisite support of claimants and approvals by the Dutch and South African courts, and the process of obtaining such approvals was expected to take several months.
- 32 The announcement recorded that the boards of SIHNV and SIHPL believe that the proposed global settlement and the proposed implementation process, through the SoP and s155 Proposal, are in the best interests of SIHNV and SIHPL, respectively. In particular, the proposed settlement would:
- 32.1 provide participating claimants with certainty of outcome and recovery relative to the cost and uncertainty associated with protracted, expensive and unpredictable court processes in pursuing their claims;
- 32.2 provide consistent treatment of recovery to similar claimants to the extent possible;



- 32.3 offer a more favourable and more certain recovery on their claims as compared to a liquidation of SIHNV or SIHPL;
- 32.4 resolve a very substantial proportion of the material contingent liabilities faced by SIHNV and SIHPL as a result of the ongoing litigation;
- 32.5 offer a framework for delivery of additional value in the form of contributions to the settlement by third parties if any such contributions can be agreed;
- 32.6 include a debt repayment term extension from the Steinhoff group's financial creditors under the SIHNV and SIHPL contingent payment undertakings which will be matched by the intra-group creditors;
- 32.7 not affect the rights of current trade creditors;
- 32.8 assist the continuing efforts to support the operating businesses in the Steinhoff group to preserve and realise business value for the Steinhoff group's stakeholders and employees;
- 32.9 reduce the current burden on the Steinhoff group of the very material costs spent on litigating numerous legal proceedings across multiple jurisdictions; and
- 32.10 reduce the proportion of Steinhoff group management time committed to the supervision and conduct of the various legal proceedings, allowing management to concentrate on the continued improvement of the underlying businesses and development of plans to realise value and de-leverage the Steinhoff group's balance sheet.

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33 In the ensuing months, SIHPL proceeded to publish the original s155 Proposal and two amendments thereto. The earlier iterations of the s155 Proposal are publicly available and accessible online. I do not attach them to avoid prolixity.

The s155 Proposal

34 The latest s155 Proposal was published by SIHPL on 11 August 2021. A copy is attached to SIHPL's founding affidavit marked "A".

35 The s155 Proposal records *inter alia* that since the departure and resignation of SIHNV's erstwhile CEO, Mr Jooste, and in light of the ensuing litigation against the Steinhoff Group (including against SIHNV and SIHPL) and others based on various events and allegations stated in the litigation, the Steinhoff Group has worked hard to restore confidence by protecting the Steinhoff Group's underlying businesses, commissioning and undertaking an investigation into the causes and effects of the events and allegations asserted in the litigation, and stabilising its financial position (Record p 86, para 1.15).

36 The Steinhoff Group's strategy has been, pursuant to concluding a financial restructuring, to: (i) continue to protect and promote the underlying businesses of the Steinhoff Group; (ii) seek to resolve the litigation and associated potential recourse claims faced by the Steinhoff Group by means of a global settlement supported by the vast majority of the Steinhoff Group's creditors, Deloitte SA and Deloitte NL and the insurers of the Steinhoff Group's directors and officers; and (iii) reduce the financial indebtedness of the Steinhoff Group (Record p 86, para



1.17). Moreover, these three objectives are inter-related and inter-dependent (Record pp 86-87, para 1.18).

- 37 One of the “potential recourse claims faced by the Steinhoff Group” is identified as those that may be brought by Deloitte SA and Deloitte NL which “can negatively affect the valuations of the Steinhoff Group’s assets at a time when the Steinhoff Group needs to repay significant amounts of debt over a relatively short timeframe, and the most realistic way to achieve that is by realising businesses and assets at the maximum achievable value” (Record pp 86-87, para 1.18).
- 38 The s155 Proposal specifically records that the terms of certain of the Deloitte SA engagement letters with SIHPL and other Steinhoff Group Companies stipulate limitations of liability on the part of Deloitte SA (Record pp 85-86, para 1.14). They provide for a right of Deloitte SA to be indemnified by SIHPL and other Steinhoff Group Companies and their directors and officers and managers: (i) against claims by third parties relating to reports of Deloitte SA received by third parties, including claims by third parties relying on such reports; and (ii) for all losses, liabilities, damages, costs or expenses incurred by Deloitte SA as a result of SIHPL and other Steinhoff Group Companies and their directors and officers and managers failing to comply with their obligations under the engagement letters, including their obligations to provide accurate information and to disclose all relevant information to Deloitte SA.



- 39 The s155 Proposal states that “a key outstanding issue has been the need to resolve the contingent liabilities arising from the Litigation and to limit any future litigation” (Record p 87, para 1.19).
- 40 The s155 Proposal records that various entities – including the Deloitte firms – would grant each other releases and waivers from claims and liabilities relating to the events and allegations, including potential recourse claims if the SoP and the s155 Proposal were approved and confirmed (Record pp 87-88, para 1.23).
- 41 To this end, the s155 Proposal records that the Deloitte Firms have agreed to support the Steinhoff settlement by:
- 41.1 supporting “the Steinhoff Group Settlement to compensate for losses suffered by SIHPL, SIHNV, other Steinhoff Group Companies, Market Purchase Claimants, some Contractual Claimants and some SIHNV Contractual Claimants in relation to the Allegations and the Events by, among other things, the Deloitte Firms offering an aggregate amount of up to EUR 55.34 million” to be distributed by a Dutch foundation (*stichting*) established by SIHNV called the Stichting Steinhoff Recovery Foundation (*SRF*) to the Market Purchase Claimants as well as an aggregate amount of EUR 15 million for distribution by the SRF to certain Contractual Claimants and certain SIHNV Contractual Claimants (Record p 171, para 23.11.1); and
- 41.2 providing “additional support to the Steinhoff Group Settlement” by among other things:



- 41.2.1 releasing any claims, including potential recourse claims, each of them might have in relation to the Allegations and the Events against SIHPL and SIHNV and other Steinhoff Group Companies, as well as the Settling directors and officers (D&Os); and
- 41.2.2 making a contribution in connection with the costs of the SRF (Record p 172, para 23.11.2). The s155 Proposal records that the Deloitte firms will contribute an amount of EUR 1.1 million to the SRF for this purpose (Record p 362, para 2.1.3).
- 42 At the current Rand/Euro exchange rate of around R17.50, the contribution of approximately EUR 72.4 million amounts to over R1.2 billion. The s155 Proposal records that the Deloitte firms were only prepared to provide the Joint Steinhoff Settlement Support “in exchange for releases in respect of claims in respect of all matters relating (directly or indirectly) to the Events and/or the Allegations” from SIHPL, SIHNV, certain other Steinhoff Group Companies and the Scheme Creditors (Record p 172, para 23.12).
- 43 The Directors and Officers (D&Os) in turn have made a very similar offer, offering a similar amount of approximately R1.2 billion to a large extent on the same conditions.
- 44 Against this backdrop, the s155 Proposal records (Record p 172, para 23.13) that:

“SIHPL and SIHNV, having considered the Joint Steinhoff Settlement Support and the alternative options available to SIHPL, SIHNV and other Steinhoff Group Companies and the Scheme Creditors, including, amongst others, instituting or pursuing claims against the



Steinhoff D&O Beneficiaries or Audit Firms or other Deloitte Beneficiaries in relation to the Events and/or Allegations and having concluded that the Joint Steinhoff Settlement Support (i) constitutes a sufficient contribution to the Steinhoff Group Settlement and an incremental contribution to the Market Purchase Claimants, to the Contractual Claimants and to the SIHNV Contractual Claimants and (ii) is in the best interests of SIHPL, SIHNV, other Steinhoff Group Companies and the Scheme Creditors believe that the release of the Steinhoff D&O Beneficiaries and the Audit Firms and other Deloitte Beneficiaries from their respective claims from SIHPL, SIHNV, other Steinhoff Group Companies, the Scheme Creditors and each other in respect of all matters relating (directly or indirectly) to the Events and the Allegations ... in exchange for the Joint Steinhoff Settlement Support is beneficial to SIHPL, SIHNV, other Steinhoff Group Companies and the Scheme Creditors." (My emphasis.)

- 45 Likewise, the s155 Proposal states that all creditors that participate in the s155 Proposal will "fully, finally and irrevocably release on a several basis and waive any and all of their rights in connection with" any and all actual and/or potential direct and/or indirect, contractual and non-contractual (including statutory) claims against the Deloitte Firms related to or in connection with the events and/or the allegations defined in the s155 Proposal (Record p 174, para 23.16.3). And, that each of the Scheme Creditors that are entitled to payment from the Deloitte Firms "confirms that the Deloitte Market Purchase Claimants Offer or the Deloitte Steinhoff Additional Support Offer adequately compensate it for its respective claims, as the case may be" (Record p 175, para 23.18.2).
- 46 SIHPL has similarly agreed to "fully, finally and irrevocably release on a several basis and waive ... any and all of its rights against the [Deloitte Firms] for any liability stemming from any known or unknown alleged non-performance of and/or failure to perform by the [Deloitte Firms] of any contractual, non-contractual, common law, equitable and statutory obligations and in respect of any tortious or negligent act or omission related to or in connection with, whether

directly or indirectly, the Events and the Allegations" (as defined in the s155 Proposal (Record p 176, para 23.19.1).

The SoP

- 47 It is also necessary to deal with the SoP process for this Court to appreciate the manner in which the Steinhoff global settlement is being implemented, the extent to which the SoP and the s155 Proposal are interrelated and the protections afforded to SoP Creditors under Dutch law.
- 48 Various aspects of the SoP process raise issues of Dutch law. I therefore rely on advice provided by Mr Jan Garvelink to Deloitte SA's South African attorneys contained in a letter attached as **DSA5**. Mr Garvelink is a Dutch advocate and a member of the Amsterdam bar of 25 years standing. He is appropriately qualified to express the opinions he does in **DSA5** on the principles of Dutch law regarding the SoP process in general, and specifically, with regard to SIHNV. Mr Garvelink will depose to a confirmatory affidavit in relation to his letter, which will be filed with the court as soon as it has been appropriately authenticated, bearing in mind current constraints due to the COVID-19 epidemic. In the interests of time, an unsigned version of the confirmatory affidavit is filed with this affidavit.
- 49 What I state here is a summary of the content of Mr Garvelink's letter. I ask that the letter be read as if incorporated herein.
- 50 Dutch suspension of payments proceedings (*surseance van betaling*) are court-supervised reorganisation proceedings laid down in the Dutch Bankruptcy Act.



These are automatically recognised in the countries that are party to the EU Insolvency Regulation (Recast). This happens automatically: no additional formalities are needed.

51 The main characteristics of SoP proceedings are:

51.1 court supervision throughout;

51.2 reorganisation proceedings, as opposed to liquidation proceedings (*faillissement*);

51.3 a temporary suspension (*moratorium*) of unsecured, non-preferential creditors (the "SoP Creditors"); and

51.4 the ability to restructure SoP Creditors 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).

52 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 SoP 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 reorganise its debts.

53 The main aim of a SoP is to prevent liquidation. The SoP will facilitate that the debtor – once the composition plan is adopted and sanctioned – can continue its business and the value of the business is preserved for the benefit of its stakeholders (employees, shareholders, suppliers, customers etc.).



- 54 A debtor can apply for an SoP if the debtor foresees that it will no longer be 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.
- 55 The main reason for the debtor to request the SoP is to put a composition plan to a vote by its creditors. If the composition plan is adopted by the SoP Creditors, and sanctioned by the Court, the debtor will then (again) be able to pay all its (long-term) debts. This has the benefit of providing certainty in that the debtor can continue its operations in the long term. The composition plan is adopted if a majority of the SoP Creditors votes in favour. 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 to sanction the plan.
- 56 An overriding principle of the Dutch Bankruptcy Act (*DBA*) is the *pari passu* treatment of SoP Creditors. The *DBA* also recognises that fair and equitable treatment of creditors as a group is a necessity so that differentiation between SoP Creditors – without justification – is not allowed.
- 57 In this case, SIHNV between 2018 and 2021 negotiated settlements with various creditor groups for certain (in some cases alleged damages) claims. The offering of a composition plan through the opening of SoP proceedings then allows the



company to assure that all creditors get a fair deal and allows the company to achieve a full and final resolution to contingent claims or potential recourse claims.

- 58 Mr Garvelink further sets out the various steps of the SoP process both as a matter of general Dutch law as well as on the facts of this case.
- 59 SIHNV filed its request to open SoP proceedings with the Dutch Court on 15 February 2021 including the filing of a draft composition plan to its creditors. The creditors were aware of the filing of the SoP proceedings and the filing of the draft composition plan.
- 60 The Court usually grants the request provisionally on the same date. In normal cases it appoints one supervisory judge and one administrator. 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 all stakeholders affected by the suspension of payments. The supervisory judge supervises the work of the administrator, who needs prior approval from the supervisory judge for important decisions. In this case the Court appointed two experienced supervisory judges and two seasoned administrators.
- 61 If there are many creditors, the administrators can apply for a committee of representation (the "*Committee*") to be appointed. The Committee consisted of 15 members. Four of them are independent members of known experience in the field. The other eleven represent the various creditors.



- 62 The Committee then considers the composition plan and votes on it. Creditors can oppose the installation of such committee before the District Court. The administrators filed a request with the Court to appoint the Committee on 23 April 2021. Opposition was unsuccessfully raised by two parties and the Dutch Court appointed the Committee in a decision of 28 May 2021. The Court of Appeal of Amsterdam declined an appeal by one of the dissatisfied parties on 29 June 2021.
- 63 Prior to deciding 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. Other interested parties can also share views with the administrators, Court and Committee or ask to be heard by the Committee. The composition plan is then discussed in the Committee.
- 64 The administrators gave their advice on 30 August 2021. They engaged independent financial advisors from EY to assist them in doing so. Their advice was in favour of adopting the composition plan. The Committee heard various parties, including creditors opposing the composition plan at the time.
- 65 The Committee's vote takes place in a court session, chaired by the supervisory judges, where the vote is first deliberated. Parties can file papers or be heard during creditors' meeting and prior to the vote.
- 66 Mr Garvelink further sets out the safeguards inherent in the SoP process and the rights that accrue to affected persons as part of that process. He also points out the numerous stages where an affected person may voice their dissatisfaction.



67 I therefore respectfully submit that the SoP, both as a matter of Dutch law, and on the facts of this case, followed a just and equitable process whereby all affected persons were afforded an adequate opportunity to participate and to make their views known. The objective of that process is, like the s155 Proposal or business rescue proceedings, to offer a superior alternative where a company is financially distressed.

Approval of the settlement process

68 On 8 September 2021, SIHNV published a SENS announcement announcing the positive decision supporting the SoP with all fifteen members of the Committee of representation voting in favour. A copy is attached as **DSA6**. The SoP was considered by the District Court of Amsterdam in a subsequent sanctioning hearing scheduled on 16 September 2021. The announcement recorded that if the SoP is sanctioned, this will lead to a binding court order that will compel SIHNV to execute the offer made to creditors, pursuant to an SoP cram down.

69 At 15h00 on 10 September 2021, SIHNV published a further SENS announcement. A copy is attached as **DSA7**. It states that the s155 Proposal obtained "overwhelming sufficient support to pass the applicable statutory thresholds for approval from SIHPL Contractual Claimants". Thus, "[a]ll three classes of SIHPL claimants have now voted in favour of the s155 Proposal". As a result, SIHPL would now apply to this Court for an order approving and sanctioning the s155 Proposal.



- 70 As appears from a further SENS announcement by SIHNV dated 13 September 2021, attached as **DSA8**, the reference to overwhelming support is somewhat of an understatement. The s155 Proposal has, in fact, received almost unanimous support. In this regard:
- 70.1 100% of the Financial Creditors present have voted in its favour;
- 70.2 100% in number of the Contractual Claimants present voted in favour of the Proposal. Of the 16 Contractual Claimants present at the meeting, 1 Contractual Claimant abstained from voting; and 100% in value of the Contractual Claimants representing 95.42% in value of the claims of all Contractual Claimants voted in its favour; and
- 70.3 100% in number of the SIHPL Market Purchase Claimants present voted in favour of the Proposal. Of the 8,481 SIHPL Market Purchase Claimants present, 1 SIHPL Market Purchase Claimant abstained from voting and 100% in value of the SIHPL Market Purchase Claimants present representing 99.9999398054% in value of the claims of all SIHPL Market Purchase Claimants present voted in favour of the Proposal.
- 71 On 13 September 2021, SIHPL instituted the main application in this Court in terms of s 155(7)(a) and (b) of the 2008 Act. The notice of motion provided for the urgent enrolment of the application for hearing on 30 September 2021.
- 72 On 16 September 2021, SIHNV and SIHPL published a SENS announcement entitled "*Update on Dutch SoP Confirmation Hearing*". A copy is attached as



DSA9. The announcement stated that the sanctioning hearing in relation to SIHNV's SoP took place in the District Court of Amsterdam on that day.

- 73 The District Court of Amsterdam heard the Dutch Administrators, the members of the Committee and SIHNV on the sanctioning of the composition plan. The sanctioning of the composition plan was recommended by the supervisory judges and the Dutch Administrators and was supported by SIHNV and the attending members of the Committee. The District Court of Amsterdam indicated that it would issue a sanctioning order on the SoP on 23 September 2021.
- 74 On 23 September 2021, SIHNV published a SENS announcement stating that the District Court of Amsterdam had issued an order that day confirming SIHNV's composition plan in the SoP. A copy is attached as **DSA10**. The announcement recorded that the Court's order would become final, SIHNV's suspension of payments procedure would terminate and SIHNV's composition plan would become binding (*verbindendverklaard*) following an eight-day period if no appeal is lodged within that period.
- 75 A copy of the official English translation of the decision of the District Court of Amsterdam dated 23 September 2021 confirming SIHNV's composition plan in the SoP is attached as **DSA11**.
- 76 The decision summarises the procedural history. It then notes that:
- 76.1 the court appointed administrators argued in favour of the court approving the composition;



76.2 none of the attendees made any objection against the Court's approval of the composition and the Committee had unanimously voted in favour of adopting the composition; and

76.3 the supervisory judges advised the court to approve the composition.

77 The Court proceeded to hold that:

"The District Court puts first and foremost that the composition plan 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 hearing before the District Court against the court approving the composition."

78 The Court noted that the composition would result in creditors receiving a higher dividend than in liquidation and that this was a result of the contribution from the Deloitte firms and the D&O insurers. The Court thus concluded that:

"[T]he 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."

79 The Court considered the measures SIHNV put in place to perform in terms of the composition plan, and concluded that "performance of the composition is sufficiently safeguarded in so far as possible".

80 The Court agreed that the composition plan and the process adopted by SIHNV were "transparent". And, that "SIHNV has involved all categories of creditors in the negotiations and has always informed them of the progress made in the process". On this basis, it concluded that "the composition plan was not created

through deceit, through benefit to one or more creditors or through any other dishonest means”.

81 The Court thus concluded that none of the grounds for refusal stated in Article 272(2) of the DBA arose. The plan, likewise, enjoyed unanimous support. The Court thus held that it would approve the composition.

82 As has been indicated in the SIHNV circular, the Dutch Court’s decision will become final if no appeal is lodged within an eight-day period. However, Mr Garvelink points out that the prospect of an appeal is limited. This is because the persons that enjoy that right of appeal are the very Committee members that unanimously approved the composition plan.

IT IS JUST AND EQUITABLE TO SANCTION THE S155 PROPOSAL

The overwhelming support of creditors

83 Sanctioning the s155 Proposal and, thus, the global settlement is in the obvious interest of all stakeholders, including Deloitte SA. Among many other reasons for this conclusion is the following: SIHNV’s and SIHPL’s decision not to pursue claims against the Deloitte firms (in consideration for the Deloitte contribution and the waiver by the Deloitte firms of their contractual and other claims (including recourse claims) against SIHNV and SHIPL, as embodied in the s155 Proposal), is in the best interests of the Steinhoff group and the multiple affected persons.



- 84 The only factor prescribed in the 2008 Act that the Court must consider in determining if the s155 Proposal is just and equitable is the number of SIHPL's creditors that voted in its favour in terms of s155(7)(b)(i) of the 2008 Act. The overwhelming support of creditors, in number and in value, is a factor that will loom large in a court's decision to sanction the s155 Proposal. It will be argued at the hearing of this matter that the overwhelming support of the creditors of each class for the global settlement indicates that it is just and equitable to sanction the proposal, as this is necessary to consummate the global settlement, to the benefit of all stakeholders.
- 85 The overwhelming votes in favour of both the SoP and the s155 Proposal, and the Dutch Court's subsequent endorsement of the composition plan, leaves only this Court's sanction as the final step in a global settlement in their terms, including those relevant to Deloitte SA.

The benefits of settling with the Deloitte firms and the D&O

- 86 The global settlement will result in the benefits flowing from settling with the Deloitte firms (and the similar benefits to be received from the insurers of the Steinhoff Group's Settling D&O's) as is embodied in the s155 Proposal.
- 87 Both the SoP and the s155 Proposal record that the Deloitte firms' contribution to the global settlement constitutes a sufficient contribution to the Steinhoff Group Settlement and is in the best interests of SIHPL, SIHNV, other Steinhoff Group Companies and the Scheme Creditors. Creditors' near-unanimous support of the SoP and the s155 Proposal demonstrate their agreement with this.



- 88 SIHNV's board, having considered its rights and acting on legal advice, thus took the considered view that settling with the Deloitte firms was in the best interests of the Steinhoff group and all of its affected persons. The reasons for this are recorded in the s155 Proposal and the SoP and include the settling of any claims between SIHNV and the Deloitte firms, as well as the contributions made available by the Deloitte firms to the SRF for distribution pursuant to the SoP and the s155 Proposal.
- 89 The Amsterdam District Court's decision specifically recognised the value of the contribution from the Deloitte firms and the D&O insurers.

Finality

- 90 The settlement has the benefit of finality, in that it puts to an end the possibility of endless litigation by or against Steinhoff and other parties. The Deloitte firms deny that they are liable to any Steinhoff entity, or to any other persons. But, if the Deloitte firms were to be sued, they would rely on the fact that certain senior Steinhoff officials engaged in wrongful, fraudulent acts – both as a defence against any claim from SIHNV and SIHPL, and as a basis to join both those entities for a contribution in any other claim brought against the Deloitte firms.
- 91 The global settlement contemplated by the SoP and the s155 Proposal puts an end to this potential of endless litigation. The benefit and the utility of that finality for all affected persons, including Deloitte SA, is demonstrated by the overwhelming voting in favour of both processes, and the subsequent endorsement by the Dutch court.



- 92 Once the s155 Proposal is sanctioned by this Court, the relevant claims by or against SIHNV and SIHPL, including any that the Deloitte firms may have against them, will be compromised. In light of the creditors having voted in favour of the compromise, the benefits flowing therefrom, and the democratic nature of the process, it is just and equitable that the s155 Proposal be sanctioned by this Court.
- 93 Sanctioning the s155 Proposal would, moreover, result in the implementation of the SoP. The SoP and the s155 Proposal together comprise the Steinhoff Group Settlement and are inter-conditional. The s155 Proposal expressly records this at Record p 119 para 4.42. The success of the one is dependent upon the success of the other, and success of the entire global settlement.
- 94 Once sanctioned, the s155 Proposal and SoP will be binding on all of SIHPL's and SIHNV's creditors respectively. By operation of law, the cram down leads to the universal nature of the settlement, instead of limiting its effect to only certain groups of creditors with similar types of claims. Furthermore, creditors cannot evade the statutory cram down (to the extent that their claims are damages claims and not claims *in rem*) by opting out of the compromise. This is necessary to ensure finality and put an end to disaffected minority creditors' claims which, if not crammed down, would leave open the very uncertainty in the form of endless litigation and contribution claims that the global settlement aims to put an end to.
- 95 The settlement contained in the composition plan would then be final and expunge or render unenforceable any residual part of an ordinary unsecured



claim which remains unpaid under the terms of the composition plan. From a Dutch law perspective, a party whose claim has been crammed down may not take any recourse against assets of SIHNV (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. I am advised that the position would be similar under South African law upon the sanction of the s155 Proposal.

A properly regulated distribution of assets

96 The s155 Proposal sets out the assets that will be made available to implement the s155 Proposal. The s155 Proposal states at Record p 109, para 4.21 that the material assets owned by SIHPL, as at the date of the s155 Proposal, are set out in Annexure B thereto. SIHPL would procure that:

96.1 assets worth approximately R8.756 billion are made available for the purpose of paying the settlement consideration under this Proposal for the benefit of Contractual Claimants, save for BVI and Cronje et al (Record p 109, para 4.22.1; Record p 124 para 5.1.1);

96.2 61 million PPH Shares are made available for the purpose of the settlement of the Contractual Claims of BVI and Cronje et al, as summarised in more detail below (Record p 109, para 4.22.2; Record p 124 para 5.1.2); and

96.3 assets worth approximately R3.214 billion are made available for the purpose of paying the settlement consideration under this Proposal for the



benefit of SIHPL Market Purchase Claimants, and that SIHNV will, in addition to the aforementioned amounts and PPH Shares, make available certain of its (rather than SIHPL's) assets (approximately R7.546 billion worth) for the purpose of paying, among other things, further settlement consideration under this Proposal to SIHPL Market Purchase Claimants (Record p 109, para 4.22.3; Record p 124 paras 5.1.3, 5.2).

- 97 Sanctioning the s155 Proposal would result in these assets flowing to creditors. This will be done in accordance with a structured process with the necessary approvals having been obtained to facilitate this. The South African Reserve Bank (*SARB*) would be required to provide regulatory approval for the use of SIHNV's South African based assets in the global settlement. The Dutch Court has similarly approved SIHNV's composition plan which specifies the manner in which SIHNV must deal with the creditors. SIHNV must strictly comply with the terms of this plan which is binding on it.
- 98 The implementation of the global settlement would accord with the approvals to be granted by the relevant bodies in South Africa (being this Court and the *SARB*) and the Netherlands (being the Dutch court).
- 99 It should also be noted that almost all Contractual Claimants as well as most MPCs (both at SIHNV and SIHPL) are South African residents. The benefits of the global settlement will, therefore, overwhelmingly favour South African residents. The benefits of the global settlement that are due to South African resident claimants and creditors of SIHNV and SIHPL will flow directly to them. To the extent that the Financial Creditors benefit from the preservation of their



claims under the global settlement, the funds initially advanced to the relevant Steinhoff entities did not originate in South Africa.

100 There can be no suggestion that the global settlement disadvantages South African creditors (nor South African interests more broadly, which are safeguarded by the SARB). Indeed, any suggestion that South African assets should be preserved exclusively for South African creditors amounts to an assertion that SIHNV's South African creditors must be unfairly favoured above its foreign creditors. This is inequitable and there is no basis in fact or law for it.

Sanction avoids the prospect of a disorderly and expensive winding-up

101 The SoP and the s155 Proposal are statutory mechanisms designed to ensure that a company in financial distress is able to rearrange its liabilities through a democratic process in a manner that is in the best interests of all stakeholders.

102 A refusal to sanction the s155 Proposal would result in many deleterious consequences. The first is that the failure of the s155 Proposal would result in the failure of the SoP and thus the entire Steinhoff global settlement. This is due to the inter-conditionality of these two processes.

103 In all probability, creditors would resume aggressively pursuing their claims based on their subjective interests and without regard for the broader set of interests that the s155 Proposal, in line with the objectives of Chapter 6 of the 2008 Act, seeks to serve. Given the magnitude of some of these claims, it appears that – if successful – liquidation would probably ensue. Indeed, already



one intervening respondent in these proceedings, AJVH Holdings and its associated companies (*the AJVH parties*), has brought an application to wind-up SIHNV which is pending in this Court under case number 7978/21.

104 Liquidation would also entail significant further delay arising from the appointment of liquidators, the proof of claims by thousands of creditors, meetings of creditors and the preparation of a liquidation and distribution account. This would result in great additional costs to creditors in circumstances where the s155 Proposal and SoP demonstrate that there is no evidence of a quicker or better outcome to the compromise or that liquidation would manage to yield a better dividend to creditors than what is contemplated in the s155 Proposal or the SoP.

105 Endless litigation, in multiple jurisdictions, is likely to start, causing widespread and avoidable prejudice to all affected persons. Given the nature of SIHNV's and SIHPL's business and structure, the litigation would be protracted and give rise to complex issues of conflict of laws and numerous contributory claims. There would likely also be numerous appeals and the separation of certain issues. The result is that the litigation would probably take decades to resolve, if it is resolved at all. In addition to the prejudice to affected persons, it would also place undue pressure on numerous courts across various jurisdictions that are seized with these disputes. This is aside from the claims that may be brought against SIHNV by the various creditors that have supported the SoP and against SIHPL by the various creditors that have supported the s155 Proposal, as a result of the failure of these processes.



- 106 Furthermore, if SIHNV or SIHPL were to be liquidated the impact on employees is, at best, uncertain. A liquidator would seek to dispose of SIHNV's and SIHPL's shareholdings, including those in the Steinhoff Group Companies. It is uncertain what a new purchaser of those shares would do, in turn, to realise maximum value. Such a purchaser may wish to retain the business as is, or it may wish to break it up, close certain business and dispose of others. All of this creates uncertainty and the heightened risk of job losses.
- 107 The liquidators would also have to cover the costs associated with a liquidation, including potential further investigations, enquiries and litigation. Over and above these costs, the liquidators' fees alone (i.e. not taking into account the costs of administration) which are charged as a percentage of assets realised, would substantially reduce the value of the assets available for distribution to creditors.
- 108 In addition:
- 108.1 the contributions by the Deloitte Firms and the insurers of the D&Os will not be available to creditors in liquidations; and
- 108.2 the Deloitte Firms and the D&Os will retain the recourse claims they have against SIHNV, SIHPL and other Steinhoff entities, which will potentially result in a further decrease of any dividends to creditors in liquidation.
- 109 It is apparent from the SIHNV "*Liquidation Scenario Valuation and Analysis of Claim Recoveries*" report dated 27 August 2021 attached hereto marked **DSA12**, that SIHNV's liquidation will result in extensive and avoidable destruction of value, leaving little value for creditors. The report estimates a recovery in



liquidation (as of 31 August 2021) of between 6.2c/Euro and 9.6c/Euro depending on the PPH share price, but that recovery is subject to numerous contingencies and heavily dependent on the uncertain outcome of liquidation.

- 110 A similar conclusion is reached in the comprehensive report delivered by the joint administrators in terms of s 265(1) of the Dutch Bankruptcy Act dated 30 August 2021, attached to Mr Garvelink's letter marked "A". That report estimates the recovery for creditors in liquidation to be 7.8% of their claim value (again, subject to numerous grave uncertainties). Settlement, by contrast, would result in an expected recovery of 8.6% that is much less uncertain. In addition, settlement would result in the Deloitte firms' contribution of EUR 70.34 million and the D&O Insurers contribution of EUR 70.5 million being made available to creditors (and the concomitant disappearance of their recourse claims).
- 111 The joint administrators' report concludes that the SoP, rather than liquidation, is in the best interests of creditors *inter alia* because:
- 111.1 The settlement of claims bringing the element of finality for both sides (i.e. debtor and creditors).
- 111.2 The value in settling with the Deloitte firms and the D&O Insurers. This value is made accessible to creditors eligible for it in connection with the SIHNV composition plan through the SRF. In case the SIHNV composition plan does not become effective, unlocking this (or any such value) would also require costly and protracted litigation by creditors, possibly on an individual basis.



- 111.3 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 counterparty for the SIHNV Financial Creditors.
- 111.4 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.
- 112 The Amsterdam District Court agreed with these findings in its decision and held 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”.
- 113 I have already shown, with reference to Mr Garvelink’s letter, that the SoP and s155 Proposal are statutory mechanisms that have been designed to offer a superior alternative to liquidation, for the benefit of affected persons. Both contain numerous safeguards to address any potential prejudice. In the case of the SoP, SIHNV was placed under the control of independent administrators who are supervised by two experienced supervisory judges and assisted by independent experts, while all important decisions (such as sanctioning) are taken by a further three-judge panel. The SoP was voted on and, received unanimous support from the Committee, the administrators and supervisory judges. It has since been approved by the Dutch Court.



- 114 Mr Garvelink's letter further details the numerous rights that inhere in SIHNV's creditors during the SoP process. It is a democratic process that contains various safeguards to address prejudice to affected persons.
- 115 The s155 Proposal is – like the SoP – the result of a democratic process, having been adopted unanimously by SIHPL's creditors. It – like the SoP – seeks to offer a superior alternative to affected persons to liquidation recognising that liquidation is inherently uncertain, delayed and costly.
- 116 The s155 Proposal arrives at the same conclusion as the SoP; namely, that compromise is better than liquidation. It notes that settlement would result in a "very material improvement" for creditors. It states – at Record pp 198-199 paras 26.23-26.24 with reference to Annexure D (a) – as follows:
- "Analysis Group has assisted SIHPL in assessing the likely range of outcomes for Market Purchase Claimants under this Proposal, as well as in the event of a liquidation of SIHPL, the details of which are set out in Annexure D. In summary, the baseline estimated settlement recovery under this Proposal for SIHPL MPC Relevant Claims of SIHPL Market Purchase Claimants is 15.1 cents in the Rand, calculated as at 31 August 2021, and depending on variations in Claim Values, Analysis Group conclude that settlement recovery for SIHPL MPC Relevant Claims should in any event fall between 15.1 and 23.7 cents in the Rand.*
- Again, any such recovery for SIHPL Market Purchase Claimants will represent a recovery close to the Universal Comparator and a very material improvement on the outcome under the Limited Comparator."*
- 117 There is thus no reason, it is submitted, why this Court ought to differ from the stance adopted by the Dutch Court in its decision approving the SoP.
- 118 As I have indicated, the effect of successfully implementing the SoP and the s155 Proposal is that the claims against SIHNV and SIHPL would be compromised or



settled. The pending claims against SIHNV and SIHPL would be resolved and these claims could not be used as a basis for liquidation.

The differentiation between classes of creditors is justifiable

119 The SoP and s155 Proposal provided for the differentiation between various classes of creditors.

120 This differentiation has already been found by the Dutch court to be justifiable. The Court considered the different classing of SIHNV's creditors and held that this was not a basis to refuse the composition. It held that:

"The fact that 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 clearly defined categories of creditors [to be treated] 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. ..."

121 This conclusion was foreshadowed by the content of the report of SIHNV's court appointed joint administrators dated 30 August 2021. In that report, the joint administrators note that the SIHNV composition plan applies different valuation methodologies per type of claims. This is due to the "*different legal bases for these claims*". This is summarised as follows:

"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."

122 On this basis, the joint administrators' report concludes that the SoP offers an *"equitable consideration and outcome to all creditors concerned"*

123 Given the different legal nature of each class of creditors' claims, it is submitted that it is entirely justifiable for creditors to be distinguished in various classes reflecting the distinct nature of their claims. It is similarly justifiable for creditors who do not meet the criteria in any of the classes to be classified as non-qualifying claimants and for their claims to be preserved for later resolution.

Conclusion

124 In summary then, Deloitte SA contends that the SoP and s155 Proposal seek to achieve finality and avoids the prospect of endless litigation between affected persons. If implemented, they would result in affected persons gaining the benefit of the significant settlement contribution made by the Deloitte firms (and the D&O's insurers). Liquidation by contrast is expensive and protracted. There is no evidence that it will result in a superior dividend to creditors. It is just and equitable for the global settlement (which is supported by the vast majority of SIHNV's and SIHPL's creditors) to be sanctioned to avoid the prospect of the liquidation.

125 Deloitte SA derives rights and obligations from the s155 Proposal. It will make a significant settlement contribution when the settlement takes effect. Both Steinhoff and its creditors have recognised the benefits of that contribution. That contribution would be available if the SoP and the s155 Proposal were implemented. As a result, Deloitte SA has a direct and substantial interest in the



main application – and, in particular, in supporting the sanction of the s155 Proposal. It is accordingly entitled to intervene on the grounds set out above.

URGENCY

126 The main application was instituted urgently on 13 September 2021. This followed SIHPL's SENS announcement of 10 September 2021 confirming that its creditors had adopted the s155 Proposal. The notice of motion provided for the enrolment of the application on 30 September 2021.

127 Pursuant to SIHPL announcing that its creditors had adopted the s155 Proposal, Deloitte SA immediately began to take steps to advance the interest it asserts in this application. Deloitte SA:

127.1 instituted an urgent application on 13 September 2021 to intervene in the AJVH parties' application to wind-up SIHNV pending before this Court under case number 7978/21;

127.2 attended the hearing of the winding-up proceedings on 14 and 15 September 2021 at which the AJVH parties agreed to not oppose Deloitte SA's intervention application on the basis that it delivered its answering affidavit in the winding-up application within five court days;

127.3 duly delivered a substantive answering affidavit in the winding-up application within the five-day period on 22 September 2021;

127.4 prepared and finalise the present application immediately thereafter over the course of the long weekend commencing 24 September 2021; and

Handwritten signature and initials in the bottom right corner of the page.

127.5 instituted the present application on 28 September 2021.

- 128 It is submitted that Deloitte SA has prepared and instituted this application with dispatch despite the volume of, and the complexity and novelty of the issues raised in the papers in the main application. This included obtaining the expert advice of Dutch counsel to assist this Court on matters relevant to its decision. SIHPL's notice of motion contemplates the filing of papers by 12h00 on 29 September 2021. Deloitte SA's application is made within this time-frame despite Deloitte SA having to take urgent steps in related proceedings to protect its direct and substantial interest in the Steinhoff global settlement.
- 129 Deloitte SA's application must be heard urgently to permit it to participate in the sanction hearing. If this application is not heard urgently, this Court may grant an order refusing to sanction the s155 Proposal without hearing Deloitte SA and thereby divesting it of the benefits from the global settlement it obtained through the successful SoP and s155 Proposal processes. If this application were brought in the ordinary course, Deloitte SA would be deprived of the opportunity to be heard on a matter that directly and substantially affects it.
- 130 Although the timeframes provided to respond are urgent, this application raises important issues that are necessary for the Court to properly exercise its discretion under s155(7) of the 2008 Act. Deloitte SA supports the relief sought and thus, it is unlikely that the parties to the main application; being SIHPL (the applicant) and the scheme creditors (which voted unanimously in favour of the s155 Proposal) will oppose this intervention application.



WHEREFORE Deloitte SA prays for relief as set out in the notice of motion.


 CHRISTOFFEL JOHANNES KOTZE

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Linden on this the 28th day of SEPTEMBER 2021, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
2021 -09- 28
LINDEN
SUID-AFRIKAANSE POLISIEDIENS


 COMMISSIONER OF OATHS

Full names:

M.E. MALESA

Address: 30 Boundary Rd, ROBINDALE 7037915-7

Capacity: SERAFOUN

STEINHOFF INTERNATIONAL HOLDINGS N.V. - STEINHOFF ANNOUNCES INVESTIGATION INTO ACCOUNTING IRREGULARITIES AND RESIGNATION OF CEO

6 December 2017 7:05

SNH 201712060001A

Steinhoff Announces Investigation Into Accounting Irregularities And Resignation Of CEO

Steinhoff International Holdings N.V.

Incorporated in the Netherlands

Registration number: 63570173

Share Code: SNH

ISIN: NL0011375019

("Steinhoff" or the "Company")

Disclosure of inside information in accordance with Article 17 MAR, transmitted by DGAP, a service of EQS Group AG

Steinhoff announces investigation into accounting irregularities and resignation of CEO

The Supervisory Board of Steinhoff wishes to advise shareholders that new information has come to light today which relates to accounting irregularities requiring further investigation. The Supervisory Board, in consultation with the statutory auditors of the Company, has approached PWC to perform an independent investigation.

Markus Jooste, CEO of Steinhoff has today tendered his resignation with immediate effect and the Board has accepted the resignation.

Steinhoff will update the market as the aforesaid investigation proceeds. The Company will publish the audited 2017 consolidated financial statements when it is in a position to do so. In addition, the Company will determine whether any prior years' financial statements will need to be restated.

The Supervisory Board has today appointed its Chairman, Dr. Christo Wiese, as Executive Chairman (Delegated Supervisory Chairman) on an interim basis. In addition, Pieter Erasmus, the previous CEO of Pepkor Group, has agreed to join Dr. Wiese in an executive advisory capacity to assist with managing the group's various retail interests around the world. Dr Wiese and the Board will supplement the management team and will embark on a detailed review of all aspects of the Company's business with a view to maximising shareholder value.

The Supervisory Board wishes to reassure shareholders that Steinhoff has a number of high quality profitable businesses around the world.

Shareholders and other investors in Steinhoff are advised to exercise caution when dealing in the securities of the Group.

5 December 2017

Sponsor

PSG Capital

Date: 06/12/2017 07:05:00 Produced by the JSE SENS Department. The SENS service is an information dissemination service administered by the JSE Limited ('JSE'). The JSE does not, whether expressly, tacitly or implicitly, represent, warrant or in any way guarantee the truth, accuracy or completeness of the information published on SENS. The JSE, their officers, employees and agents accept no liability for (or in respect of) any direct, indirect, incidental or consequential loss or damage of any kind or nature, howsoever arising, from the use of SENS or the use of, or reliance on, information disseminated through SENS.

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STEINHOFF INTERNATIONAL HOLDINGS N.V. - PROPOSED SETTLEMENT OF LITIGATION CLAIMS ARISING FROM LEGACY ACCOUNTING ISSUES

27 July 2020 8:05

Proposed Settlement Of Litigation Claims Arising From Legacy Accounting Issues

Steinhoff International Holdings N.V.
 (Incorporated in the Netherlands)
 (Registration number: 63570173)
 Share Code: SNH
 ISIN: NL0011375019

Steinhoff Investment Holdings Limited
 (Incorporated in the Republic of South Africa)
 (Registration number: 1954/001893/06)
 JSE Code: SHFF
 ISIN: ZAE000068367

Proposed Settlement of Litigation Claims Arising from Legacy Accounting Issues

Steinhoff International Holdings N.V. (“SIHNV” or the “Company” and with its subsidiaries, the “Group”) and the former South African holding company for such subsidiaries, Steinhoff International Holdings Proprietary Limited (“SIHPL”), announce a proposed settlement to conclude the complex legal claims, and ongoing and pending litigation proceedings, arising from the legacy accounting issues first announced in December 2017.

In the Company’s presentation to shareholders at the general meeting on 30 August 2019, the Company’s Management Board expressed its view that resolution of the litigation proceedings and legal claims was in the best interests of all stakeholders. The possibility of such a settlement had been agreed with the Company’s financial creditors as part of the financial restructuring concluded in August 2019. While the Group continues to make tangible progress with its business restructuring efforts, most recently reaching agreement to dispose of the Conforama businesses in France, providing compensation to those shareholders at December 2017 who suffered financial loss represents the next phase of the Group’s restructure.

Any settlement needs to be considered against the background of the financial position of Steinhoff and its significant levels of financial indebtedness. In addition, as previously reported, the Group’s underlying businesses have been impacted by Covid-19 which, together with the effect of adverse currency movements, is likely to negatively impact current valuations. Notwithstanding those issues, the proposed terms represent an increase in the amount contemplated under the 2019 restructured financings and therefore will require financial creditors’ consent.

The Group has been working hard for many months to manage the competing interests of its stakeholders and at the same time protect the Group’s businesses and their employees. These competing interests and the Group’s financial limitations constrain what is achievable in balancing the interests of all stakeholders. It is an extremely challenging task, but it is the Steinhoff Board’s intention to resolve the outstanding claims on a fair basis, to provide closure for the claimants, and to deliver stability to the underlying businesses and their employees.

The Company’s development of a settlement proposal has progressed sufficiently to a point where the Group is today announcing the terms of a proposed settlement to resolve substantially all of the relevant claims and proceedings.

Louis du Preez, Chief Executive Officer and Management Board member, said:

“Settlement of the outstanding litigation was identified as being the second step in our plan. Compensating shareholders who suffered losses in December 2017 has been one of our key objectives together with protecting the livelihoods of our employees and recovering value for creditors. The proposed settlement terms being announced today are the culmination of 12 months of intensive effort. Although there is no certainty yet that we will be able to conclude this settlement, in our view these terms are firmly in the best interests of all stakeholders. We urge all claimants to engage positively with us and support our proposal to resolve the outstanding legacy claims.”

The Group’s Approach to a Global Settlement of Legacy Claims

The Group faces complex, multi-jurisdictional claims initiated by multiple parties relating to the alleged accounting irregularities announced in December 2017. Approximately 90 separate legal proceedings have been commenced against the Company and SIHPL in the Netherlands, Germany and South Africa. Not all claimants have yet sought to quantify their alleged damages, but the combined claims of those that have sought to do so are in excess of ZAR136 billion (EUR7 billion at a ZAR/euro rate of 19.5). In addition to proceedings against Group entities, claims have also been made against, amongst others, former directors and officers of Group entities.

All claims against the Company and SIHPL are being disputed in ongoing litigation proceedings and there remains material uncertainty as to the outcome of all of these legal proceedings. If all such claims were ultimately established in the amounts asserted, it is clear that the net asset value of the Group would fall far short of the amount required to satisfy them in full. In such circumstances, liquidation proceedings would ensue which would, in the Company’s view, materially impair the value of assets available for distribution and adversely affect the timing and amount of the claimants’ recoveries relative to the proposed settlement.

During the last 12 months, the Company and SIHPL, assisted by the Litigation Working Group, have been engaged with a number of stakeholders with differing claims pending across multiple jurisdictions. The Company's objective throughout has been to achieve a comprehensive global settlement.

The Group has formulated proposed settlement amounts for various claimant groups in light of the characteristics of, and risks affecting, their claims, the Group's ability to continue trading and to maximise the asset values available to it, and the likely outcomes for claimants if the Group was unable to do so, assuming the claimants succeeded in establishing their disputed claims, and liquidation ensued. The proposed settlement terms also have regard to the adverse impact of the Covid-19 pandemic on the value of the Group's underlying businesses and the effect of currency movements.

A global settlement of litigation claims was contemplated when the Group's financings (which as at 30 September 2019 and excluding operating company financings, stood at EUR 9.24 billion and which continue to accrue interest) were restructured and extended by agreement of its financial creditors in August 2019. The proposed terms of the settlement provide for payments materially in excess of the permission granted by financial creditors in 2019 and will require fresh consent from financial creditors. The financial creditors are being asked to make additional concessions including the extension to the maturity of their loans to the Group.

Against this background, the primary objectives of the Company's Management and Supervisory Boards and the SIHPL Board in formulating the proposed settlement have been:

- to achieve a settlement of litigation claims that allocates the available value and assets of the Company and SIHPL fairly and equitably among the parties who have claims against the Company and SIHPL;
- to achieve a settlement that fairly reflects the compromise of legal issues, priorities of payment, availability of alternative recoveries and other issues faced by the litigants on their own account and in relation to others;
- to further stabilise the Group to maximize the value available to be distributed to its stakeholders by marshalling cash, preserving the going concern value of the Group's businesses and avoiding further litigation costs;
- to ensure the continuity of the Group's operations in order to safeguard the jobs of the thousands of employees of Steinhoff's underlying businesses and, by preserving the value of those underlying businesses, to protect the broader universe of stakeholders; and
- to conclude and to implement the settlement of the legacy claims on the proposed terms as soon as possible.

The proposed settlement reflects the necessary balance of competing interests and the financial limitations on the Group, including the negative outlook and implications for all stakeholders if the proposed restructure fails and assuming the claimants succeeded in establishing their disputed claims.

Benefits of the proposed settlement

The proposed settlement will, if successful, offer significant benefits to the Group and its stakeholders, including the litigation claimants. Notably:

- it will provide litigation claimants with certainty of outcome relative to the cost and uncertainty associated with protracted, expensive and unpredictable court processes in pursuing their claims;
- it will largely resolve the material contingent liabilities faced by SIHNV and SIHPL as a result of the ongoing litigation;
- it will thereby help the ongoing work to stabilise and support the continued operations of the Group aimed at preserving business value for its stakeholders and employees;
- it will save the Group (and other parties) the very material costs of litigating the numerous legal proceedings across multiple jurisdictions;
- it will avoid the need for Steinhoff management (and litigants) to commit material time to the supervision of the conduct of the legal proceedings; and
- Steinhoff management will be able to devote their full attention to the continued improvement of the underlying businesses and the development of plans to realise value and de-leverage the Group's balance sheet.

Nature of Legacy Claims

The litigation claimants can be categorised into three broad groups: (i) "market purchase claimants" - being those parties that acquired Steinhoff securities on the market; (ii) "contractual claimants" - being those parties who sold their businesses to Steinhoff in consideration for shares in Steinhoff or otherwise acquired shares in Steinhoff pursuant to agreements with Steinhoff; and (iii) "non-qualifying claimants" - being those parties who have brought claims that are neither market purchase claims nor contractual claims and are not proposed to be included in this settlement. In summary:

- Market purchase claimants: Market purchase claims ("MPCs") arise in respect of market traded securities. In respect of the period prior to the Company's Frankfurt Stock Exchange listing becoming effective on 7 December 2015, any such claims are in respect of shares of SIHPL (the former holding company of the Group) ("SIHPL MPCs") and, following such event, any such claims are in respect of shares of the Company ("SIHNV MPCs").

There are a large number of potential MPCs many of whom are represented by, or have vested their interests to, active claimant groups ("ACGs"). The Company currently estimates that in excess of half of the total MPC claimants are South African residents or entities.



- Contractual claimants: There are a limited number of contractual claimants with alleged claims against the Company and a greater number of contractual claimants with alleged claims against SIHPL, but at both the Company and SIHPL the claim values are material, albeit disputed.
- Non-qualifying claimants: Certain claims have been brought against the Company and/or SIHPL that do not fall into either of the two categories detailed above as these claimants did not purchase shares in the Company or SIHPL on the market or by way of a contract with either the Company or SIHPL.

Settlement Proposal Details

The detailed terms of the proposal ("Settlement Term Sheet") can be found on the Company's website at the following web-address:
<https://www.steinhoffinternational.com/settlement-litigation-claims.php>.

The terms of the proposal reflect key features of the parties' respective claims, including:

- the legal basis for the claim;
- the laws of the jurisdiction in which the claim is brought;
- the nature and extent of the loss claimed;
- legal uncertainties affecting the claim and recoverability of loss; and
- the financial position of the Steinhoff entity against which the claim is asserted.

The terms of the settlement proposal are, in summary, as follows:

- Market purchase claimants: The Company will settle eligible SIHNV MPCs and SIHPL MPCs for a total settlement consideration amount of EUR266 million. This settlement consideration will be paid 50 per cent in cash funded from the South African sub-group and 50 per cent in shares of Pepkor Holdings Limited (the Group's South African retail subsidiary, "PPH"), settled at a deemed price per share of ZAR15. No lock up restriction on future sale of the PPH shares is required in respect of PPH shares transferred to the MPC claimants. SIHNV estimates that approximately 173 million PPH shares (or 4.6 per cent of the total PPH issued share capital) will be transferred to MPC claimants as a result of the settlement.

Allocation of the settlement consideration as between the MPC claimants, including the treatment of any unclaimed amounts allocated to MPCs, will be determined in accordance with an allocation methodology proposed by the Company and set out in the Settlement Term Sheet.

In addition, in order to facilitate recoveries to market purchase claimants the Group is considering making available an amount of up to EUR 30 million to pay in respect of certain fees, costs and work undertaken by the ACGs on the terms to be specified in the settlement documents. The specific terms of the proposal remain under consideration.

- SIHNV contractual claims: Contractual claims against the Company will be settled at the same relative recovery rate as the MPCs against the Company. The Company estimates the total amount required to settle such contractual claimants to be in the region of EUR104 million. Such settlement consideration will also be paid 50 per cent in cash and 50 per cent in PPH shares settled at a deemed price per share of ZAR15. Consistent with the proposal in relation to the market purchase claimants settled by SIHNV, no lock up restriction on sales of allocated PPH shares is required from the Company's contractual claimants.

The Company estimates that approximately 67 million PPH shares (or 1.8 per cent of the total PPH issued share capital) will be transferred to Company contractual claimants.

- SIHPL contractual claims: SIHPL will settle the claims made against it by contractual claimants from its own resources. SIHPL contractual claims (other than claims by Thibault and Wiesfam) will be settled for a total amount of approximately ZAR1.5 billion (EUR76 million at a ZAR/euro rate of 19.5). The claims of Thibault and Wiesfam will be settled for a proportionally lower recovery rate in the total nominal amount of approximately ZAR7.9 billion (EUR406 million at a ZAR/euro rate of 19.5). The settlement consideration will also be paid 50 per cent in cash and 50 per cent in PPH shares at a deemed price per share of ZAR15. Subject as follows, SIHPL contractual claimants will be required to agree to lock up PPH shares allocated to them for 180 days from the effective date of settlement.

In respect of the SIHPL contractual claimants BVI and Cronje & others who are current employees and managers of PPH, SIHPL proposes that their settlement consideration be entirely in the form of PPH shares at a deemed settlement price of ZAR13.5 per share, provided that they agree to a three year lock up restriction on the sale of those PPH shares from the effective date of the settlement.

The Company estimates that approximately 345 million PPH shares (or 9.3 per cent of the total PPH issued share capital) will be transferred to SIHPL contractual claimants assuming BVI and Cronje & others take up their option to be paid entirely in PPH shares.

- Non-qualifying claims: No specific proposal is being made for the settlement of other claims, and the Company or SIHPL will continue to defend them on the basis that any liability in respect of the same is denied. If any such claim against the Company ultimately succeeds, it will be entitled to settlement consideration at the same rate as MPC and contractual claims against the Company. If any such claim against SIHPL ultimately succeeds, it will be entitled to payment in full.

- **Claim verification & disputes:** The Company is contemplating establishing a new Dutch stichting foundation together with supporting arrangements in South Africa (for South African claimants) to act as the Steinhoff Recovery Foundation ("SRF"). The purpose of the SRF will be to administer and distribute the settlement consideration paid by, or on behalf of, the Company. It will be governed by a board of newly appointed directors with majority independence from the Steinhoff Group. Claimants will be required to submit their claims for verification prior to receiving settlement payments. SRF intend to retain Computershare to assist it to administer and verify claims prior to payment of the settlement consideration.
- **Recoveries independent from other sources:** The settlement consideration provided by Steinhoff is independent from recoveries that claimants may make from other sources and any such recoveries (if any) will be incremental to the settlement consideration proposed by Steinhoff.
- **Financial creditors:** The SIHNV and SIHPL financial creditors holding contingent payment undertakings ("CPUs") (other than creditors holding Hemisphere International Properties B.V. CPUs), will not be eligible to receive any distribution as part of the proposed settlement in respect of their claims under the SIHNV CPUs and the SIHPL CPUs. Instead, they will be asked to provide their consent for the proposed global settlement and to waive any tortious (delictual) claims they may have against the Group, D&O insurers and auditors. In addition, the financial creditors will be asked for a consent to extend the maturity date of the CPUs and the underlying debt obligations by 18 months to 30 June 2023 with an option for a further 6 month extension on the approval of a lower CPU creditor voting threshold. As part of these arrangements, effective from implementation of the proposed settlement the Company will provide security to its CPU creditors over its shares in Steinhoff Investments Holdings Limited ("SIHL") and over any outstanding loan claim payable by SIHL to SIHNV. This extension is an important component of the overall settlement and of the continuation of the stable platform for the Steinhoff Group. To the extent necessary, the Group will consider English law schemes of arrangement to implement the consents required. Otherwise, the SIHNV financial creditors will retain their contractual rights against SIHNV and SIHPL under the terms of the CPUs.
- **Post settlement PPH Holding & SIHPL balance sheet:**

PPH: The Company estimates that the settlement will result in Steinhoff continuing to hold in excess of 50 per cent of PPH shares.

SIHPL: SIHPL is the former South African listed entity prior to the 2015 scheme of arrangement and share exchange and has no current trading activity. The proposed terms of the SIHPL settlement include measures aimed at winding up the affairs of SIHPL over time on a solvent basis. In addition to the proposed settlement of relevant MPC and contractual claims it is proposed that with effect from the effective date of the settlement:

- following implementation, SIHPL will receive the rights under the legacy loan owed by Titan Premier Investment Pty Ltd ("Titan") to Steenbok NewCo 2A (formerly owed to Steinhoff Finance Holding GmbH) ("Titan Loan") for deferred cash consideration;
- the term for repayment of the Titan Loan to SIHPL will be extended by 5 years at a PIK coupon of 5.04 per cent per annum compounding semi-annually and Titan will provide security for the Titan Loan obligations in favour of SIHPL;
- as part of the consideration for the Company settling all MPCs, including those against SIHPL, SIHPL will issue a loan note in favour of SIHNV in the amount of up to EUR100 million ("SIHNV Loan Note"); and
- SIHPL CPU claimants are requested to agree terms to assist SIHPL to conclude its affairs on a solvent basis in due course.

Further details in relation to the post settlement SIHPL balance sheet are set out in the Settlement Term Sheet.

Implementation and conditionality

The competing stakeholder interests, the financial position of Steinhoff and the complex multi-jurisdictional nature of the litigation make implementation of the proposed settlement uniquely challenging. The Company has therefore been considering a number of options to achieve the necessary certainty and finality required by the Company and stakeholders.

One of the options currently available to Steinhoff to implement the global settlement is by a composition plan which will be submitted in draft form (ontwerp van akkoord) immediately on the filing of the request for a Suspension of Payments (surseance van betaling) procedure in the Netherlands by the Company and a pre-prepared compromise plan pursuant to section 155 of the Companies Act 71 of 2008 in South Africa by SIHPL. The Company and SIHPL continue to consider whether there may be appropriate settlement mechanisms to supplement and/or replace such implementation procedures.

In addition to achievement of the necessary levels of support by claimants to the Group's proposal, the settlement will be conditional on, among other things:

- consent of the Group's financial creditors under the terms of the Group's restructured debt financings. A request for consent from the Group's financial creditors will be launched shortly; and
- consent of the South African Reserve Bank in respect of certain elements of the

proposal and to facilitate the funding of the settlement proposal.

There is no assurance as to whether those consents will be forthcoming.

Timetable and Next Steps

The Company will provide updates on the progress and the outcome of the consent requests.

Shareholders and any other claimants are advised to seek independent legal, financial and tax advice in respect of the Steinhoff settlement proposal. Financial creditors can contact Kirkland & Ellis (London) in respect of any questions arising in relation to the proposals as they relate to the financial creditors.

Documentation to be completed by any claimant for the purposes of supporting the proposed settlement will be available shortly at the Steinhoff website set out below.

Further information

Further information on the proposed settlement, including the Settlement Term Sheet and a Frequently Asked Questions document, is available at: <https://www.steinhoffinternational.com/settlement-litigation-claims.php>.

Alternatively, Steinhoff's investor relations team can be contacted at settlement@steinhoff.co.za.

Important Note

The Group's settlement proposal is made on the basis that it does not represent an admission of any liability in respect of any of the various claims made against any member of the Group or any directors, officers, or employees, past or present.

Caution

Efforts to conclude and implement the proposed global settlement on terms acceptable to the Company and SIHPL will continue and Steinhoff will update the market on progress. There is no certainty that the proposed settlement will be finally concluded. Shareholders and other investors in the Company are advised to exercise caution when dealing in the securities of the Group.

JSE Sponsor: PSG Capital
Stellenbosch, 27 July 2020

Date: 27-07-2020 08:05:00

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STEINHOFF INTERNATIONAL HOLDINGS N.V. - STEINHOFF GLOBAL SETTLEMENT – AGREEMENT WITH DELOITTE AND CONSERVATORIUM

15 February 2021 7:05

Steinhoff Global Settlement – Agreement With Deloitte And Conservatorium

Steinhoff International Holdings N.V.
 (Incorporated in the Netherlands)
 (Registration number: 63570173)
 Share Code: SNH
 ISIN: NL0011375019

Steinhoff Investment Holdings Limited
 (Incorporated in the Republic of South Africa)
 (Registration number: 1954/001893/06)
 JSE Code: SHFF
 ISIN: ZAE00068367

STEINHOFF GLOBAL SETTLEMENT – AGREEMENT WITH DELOITTE AND CONSERVATORIUM

Steinhoff International Holdings N.V. (“SIHNV” or the “Company”, together with its subsidiaries, “Steinhoff” or the “Steinhoff Group”) announces the following update on implementation of its proposal to resolve the various multi-jurisdictional legacy litigation and claims against the Steinhoff Group, including those against former South African holding company Steinhoff International Holdings Proprietary Limited (“SIHPL”).

Conservatorium

SIHNV previously announced that a hearing, scheduled for 8 February 2021 in the Amsterdam District Court following a request by Conservatorium Holdings LLC (“Conservatorium”) to appoint a restructuring expert to SIHNV pursuant to Article 371 of the Dutch Bankruptcy Act (enacting elements of the recently enacted pre-insolvency proceedings, Wet Homologatie Onderhands Akkoord ter voorkoming van faillissement) (“Application”), had been postponed until 15 February 2021. SIHNV also informed the market that it intended to challenge that Application.

Following a number of constructive engagements between the parties an agreement has been reached, in principle, between, among others, SIHNV, SIHPL, Conservatorium and certain entities linked to Christo Wiese. This agreement is subject to a number of conditions. The result of agreement reached among the parties is that Conservatorium will withdraw the Application.

Deloitte supports Steinhoff Global Settlement

SIHNV also announces that together with SIHPL it has reached an agreement with Deloitte Accountants B.V. and Deloitte & Touche South Africa (together: “Deloitte”) pursuant to which Deloitte will support the proposed Steinhoff global settlement proposal announced on 27 July 2020. This means that Deloitte will make additional compensation available to certain Steinhoff claimants, including the market purchase claimants (the “MPC Claimants”) in exchange for certain waivers and releases, provided that Steinhoff successfully completes the contemplated Dutch “suspension of payments” (the “Dutch SoP”) and the statutory compromise process under South African law (“S155 Scheme”). Deloitte is still in discussions with certain representatives of the MPC Claimants on the details of this offer, which envisages that such claimant representatives will be entitled to receive a certain incremental cost compensation. A settlement between Deloitte and the Dutch Vereniging van Effectenbezitters (“VEB”) was previously announced in October 2020.

Deloitte does not in any way admit liability for the losses incurred by Steinhoff and its stakeholders as a result of the accounting irregularities at Steinhoff.

Provided that Steinhoff successfully completes the contemplated Dutch SoP and the S155 Scheme and certain other conditions are fulfilled, **Deloitte has agreed** to offer an amount of up to EUR 55.34 million for distribution to MPC Claimants in exchange for certain waivers and releases (the “Deloitte MPC Settlement Fund”). Steinhoff and Deloitte have agreed that MPC Claimants or their representatives who in due course wish to apply to receive a part of the Deloitte MPC Settlement Fund must use the same claim form as the form which they in due course shall use for submitting their claims in the Dutch SoP and the S155 Scheme. In that form, MPC Claimants or their representatives who in due course wish to apply to receive a part of the Deloitte MPC Settlement Fund must (i) expressly state this wish in the to be published claim form by ticking the relevant box and (ii) must expressly provide the waivers and releases for the benefit of Deloitte relating to the ‘Events’ and the ‘Allegations’ as set out in the form. If one or both of these boxes has not been ticked in the claim form, the applicant is not entitled to receive any distribution from the Deloitte MPC Settlement Fund. In due course, further information and claim forms will be published on www.steinhoffsettlement.com.

In addition to the offer to the MPC Claimants above, provided that Steinhoff successfully completes the Dutch SoP and the South African S155 Scheme and certain other conditions are met, Deloitte has further agreed to offer an amount of EUR 15 million for distribution to certain contractual claimants. Eligible contractual claimants will receive individual notice from Steinhoff on the manner in which they can apply to receive a share of the offered amount.

Further Information

The Steinhoff Group will provide updates in respect of implementation of the global settlement in due course.

Claimants will be able to review additional information and, in due course, submit their claim details on the following website: www.SteinhoffSettlement.com.

The Company has a primary listing on the Frankfurt Stock Exchange and a secondary listing on the JSE Limited.

JSE Sponsor: PSG Capital

Stellenbosch, South Africa

14 February 2021

Date: 15-02-2021 07:05:00

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STEINHOFF INTERNATIONAL HOLDINGS N.V. - STEINHOFF GLOBAL SETTLEMENT – IMPLEMENTATION COMMENCED

16 February 2021 7:45

Steinhoff Global Settlement – Implementation Commenced

Steinhoff International Holdings N.V.
 (Incorporated in the Netherlands)
 (Registration number: 63570173)
 Share Code: SNH
 ISIN: NL0011375019

Steinhoff Investment Holdings Limited
 (Incorporated in the Republic of South Africa)
 (Registration number: 1954/001893/06)
 JSE Code: SHFF
 ISIN: ZAE00068367

STEINHOFF GLOBAL SETTLEMENT – IMPLEMENTATION COMMENCED

Steinhoff International Holdings N.V. (“SIHNV” or the “Company”, and together with its subsidiaries “Steinhoff” or the “Steinhoff Group”) announces that following its application to the Amsterdam District Court on 15 February 2021 for a “suspension of payments” procedure (surseance van betaling) (“Dutch SoP”), the Amsterdam District Court opened the Dutch SoP in respect of SIHNV on Monday, 15 February 2021.

Following the opening of the Dutch SoP, Steinhoff International Holdings Proprietary Limited (“SIHPL”) has launched a statutory compromise process under South African law (“S155 Scheme”) also as part of the implementation of the Steinhoff Group global settlement.

The Dutch SoP relates only to SIHNV and the S155 Scheme relates only to SIHPL. These processes, which are inter-conditional, do not directly affect any of the other entities in the Steinhoff Group nor any of its operating businesses.

The purpose of the Dutch SoP process and the S155 Scheme is to implement the proposal to settle certain multi-jurisdictional legacy litigation and various claims against SIHNV and SIHPL. Implementation of the Steinhoff global settlement will require the requisite support of claimants and approvals by the Dutch and South African courts, and the process of obtaining such approvals is expected to take several months. Commencement of these processes follows the separate agreements reached with Deloitte Accountants B.V. and Deloitte & Touche South Africa (together “Deloitte”) and Conservatorium Holdings LLC (“Conservatorium”) announced on 14 February 2021.

Louis du Preez, Steinhoff Group CEO said: “Settlement of legacy litigation is a critical priority for the Steinhoff Group. Implementation of these processes is an important step forward, giving participating claimants the opportunity to approve the proposals and open the pathway to realise some value from their claims. A successful approval would also offer the Steinhoff Group, and all its stakeholders, the chance to move ahead and address the remaining challenges. We encourage claimants to engage with the process and back the proposals. We look forward to receiving their support.”

Background to Settlement

On 27 July 2020, the Steinhoff Group released a detailed update on its efforts to resolve the ongoing complex legal claims and litigation proceedings, including details of a proposed global settlement in respect of certain of these claims (“July Announcement”). The Steinhoff Group has formulated proposed settlement amounts for various claimant groups in light of the characteristics of, and risks associated with, their claims, the Steinhoff Group’s ability to continue trading and to maximise the asset values available to it, and the likely outcomes for participating claimants if the Steinhoff Group was unable to do so and liquidation ensued. The proposed global settlement terms also take into account the adverse impact of the COVID-19 pandemic on the value of the Steinhoff Group’s underlying businesses and the effect of currency movements. The global settlement proposal is made on the basis that it does not represent an admission of any liability in respect of any of the various claims made against any member of the Steinhoff Group or any directors, officers, employees or advisors, past or present. The terms of the proposed global settlement were attached to the July Announcement and updated in October 2020 (“October Settlement Term Sheet”).

SIHNV’s proposed composition plan submitted in the Dutch SoP (“Dutch SoP Scheme Proposal”) and SIHPL’s proposal in terms of the S155 Scheme (“S155 Scheme Proposal”) (together the “Schemes”) are inter-conditional in that each needs to be approved for the global settlement to be implemented. Their respective terms will be available shortly at www.SteinhoffSettlement.com.

Benefits of the global settlement

The boards of SIHNV and SIHPL believe that the proposed global settlement and the proposed implementation process, through the Schemes, are in the best interests of SIHNV and SIHPL, respectively. In particular, the proposed settlement will:

- provide participating claimants with certainty of outcome and recovery relative to the cost and uncertainty associated with protracted, expensive and unpredictable court processes in pursuing their claims;
- provide consistent treatment of recovery to similar claimants to the extent possible;

- offer a more favourable and more certain recovery on their claims as compared to a liquidation of SIHNV or SIHPL;
- resolve a very substantial proportion of the material contingent liabilities faced by the Company and SIHPL as a result of the ongoing litigation;
- offer a framework for delivery of additional value in the form of contributions to the settlement by third parties if any such contributions can be agreed;
- include a debt repayment term extension from the Steinhoff Group's financial creditors under the SIHNV and SIHPL contingent payment undertakings which will be matched by the intra-group creditors;
- not affect the rights of current trade creditors;
- assist the continuing efforts to support the operating businesses in the Steinhoff Group to preserve and realise business value for the Steinhoff Group's stakeholders and employees;
- reduce the current burden on the Steinhoff Group of the very material costs spent litigating numerous legal proceedings across multiple jurisdictions; and
- reduce the proportion of Steinhoff Group management time committed to the supervision and conduct of the various legal proceedings, allowing management to concentrate on the continued improvement of the underlying businesses and development of plans to realise value and de-leverage the Steinhoff Group's balance sheet.

The prospects for SIHNV and SIHPL to continue as a going concern if the settlement is not approved remain uncertain, given the Steinhoff Group's debt maturities on 31 December 2021 and the risk of adverse judgments in certain of the various litigation claims during the course of 2021.

As noted below, the implementation of the proposed global settlement requires the requisite support of participating claimants and the implementation process is expected to take several months to be approved and completed. If and when the Schemes are approved, SIHNV will make payment of the settlement amounts to a newly incorporated foundation, named Stichting Steinhoff Recovery Foundation ("SRF"), following which there will be a further period of claims administration before eligible market purchase claimants ("MPCs") will start receiving their settlement payments in respect of the agreed claims.

Required approvals obtained

Approval from financial creditors: The October Settlement Term Sheet required the approval of SIHNV's financial creditors. A consent request was launched on 9 October 2020 to obtain the formal support of the financial creditors for the terms and proposed implementation of the settlement. During November 2020 the Company announced that it had received overwhelming support from the financial creditors and that, in particular, the Steinhoff Group had obtained the requisite consent from its creditors in respect of all relevant financial instruments, with the exception of the Company's "SEAG Contingent Payment Undertaking", in respect of which "all-lender support" was required but two financial institutions had voted against. As a result, SIHNV then undertook an English law scheme of arrangement ("SIHNV Scheme") to obtain the necessary unanimous approval under the SEAG Contingent Payment Undertaking. The necessary majorities of lenders approved the proposal in the scheme meetings that took place on 15 December 2020 in London and the High Court of England heard the Company's application to sanction the SIHNV Scheme on 26 and 27 January 2021. The High Court granted the sanction order in the terms sought by the Company in a judgment delivered on 5 February 2021 and, following the satisfaction of various conditions, the 9 October 2020 consent request became effective on that date.

Incremental consents will be sought from SIHNV's financial creditors in connection with further long form documents and other matters relating to the implementation of the Steinhoff settlement in accordance with the terms of the 9 October 2020 consent request.

FINSURV approval: In addition, the Steinhoff Group required approval from the South African Reserve Bank ("Finsurv") for the terms of the Steinhoff Group settlement proposal. SIHNV accordingly applied to Finsurv for consent to the cross-border payments to be made as part of the proposed settlement and received such approval on 25 November 2020. The approval is valid for 12 months. Further approvals will be sought if and to the extent required in respect of the terms to be submitted under the Schemes.

The Steinhoff Group settlement proposal

The Schemes are broadly consistent with the Steinhoff Group settlement proposal as initially outlined in the July Announcement and as amended in the October Settlement Term Sheet. The terms of the Schemes will be available shortly at www.SteinhoffSettlement.com. The main features of the proposed global settlement remains as follows:

- Participating claimants are categorised into MPCs, contractual claimants and financial creditors. The Steinhoff Group will make available a total settlement consideration to MPCs of SIHNV and SIHPL and contractual claimants of SIHNV of EUR370million, of which the estimated share of MPCs will be EUR266million. MPCs at both SIHNV and SIHPL will both be settled by SIHNV through the SRF. The settlement consideration will be allocated in accordance with the details set out in the 'Allocation Plan' attached to the Schemes.
- The settlement consideration will be paid by SIHNV through SRF 50 per cent in cash and 50 per cent in shares indirectly owned by SIHNV in the South African entity Pepkor Holdings Limited ("PPH") at a deemed share price of ZAR15 per share, provided that SIHNV reserves the option to settle a higher proportion of the consideration in cash.
- In addition, a member of the Steinhoff Group will make a contribution to the costs of

the ACGs (representatives of MPCs) of up to EUR30million, contingent on certain terms and conditions, and under the express condition that each such ACG undertakes that it will, for each of its constituents, credit the cost compensation received by it to amounts due from its constituents under the terms originally agreed between that ACG and its constituents. SIHNV will also make a contribution to the costs of SRF estimated to be up to EUR16.5million (an increase of EUR1.5million from the October Settlement Term Sheet).

- SIHNV contractual claimants will be settled at the same recovery rate as the SIHNV MPCs.
- SIHPL contractual claimants will be settled at the recovery rates and in the amounts as set out in the S155 Scheme Proposal. By way of variation to the October Settlement Term Sheet, BVI No 1499 (Pty) Limited ("BVI") will receive PPH shares at a deemed price per share of ZAR13 (as opposed to ZAR13.5) and the lock up period applicable to BVI and Cronje claimants will be reduced.
- The financial creditors have been asked to extend the debt maturity on the Steinhoff Group facilities to 30 June 2023, extendable with an incremental consent by a further six months. In addition, the financial creditors have been asked to waive any tort (delict) claims against the Steinhoff Group. SIHNV has agreed to grant security over its shares in Steinhoff Investment Holdings Limited in return for the debt extension.
- Intra-group creditors and trade creditors do not have their principal claims compromised.
- In consideration for payment of the settlement consideration, participating claimants will be required to grant full and final releases and waivers of claims against the Steinhoff Group and other parties on the terms set out in the Schemes.
- Not all claims against SIHNV or SIHPL are compromised under the Schemes. Certain disputed claims against SIHNV will continue to be defended on the basis that any finally adjudicated claim or agreed settlement amount will be subject to the same SIHNV recovery rate payable to MPCs and contractual claimants of SIHNV. Similarly, one disputed contractual claim against SIHPL will continue to be defended on the basis that any finally adjudicated claim or agreed settlement amount will be subject to the same recovery rate payable to contractual claimants of SIHPL. Certain other claims against SIHPL that do not qualify as either MPCs or contractual claims are not subject to the S155 Scheme Proposal at all. SIHPL will continue to dispute such claims, which will be payable in full to the extent that they are ultimately upheld by way of final adjudication or agreed settlement.
- Conservatorium has brought significant claims arising out of its ownership of certain margin loans which financed Upington Investment Holdings B.V.'s acquisition of shares in SIHNV which represent non qualifying claims in the October Settlement Term Sheet. As announced on 14 February 2021, SIHNV and SIHPL have entered into an agreement with Conservatorium and other margin lenders to settle such claims. Titan Premier Investment Proprietary Limited ("Titan") related entities are also party to that agreement. Under the terms of the agreement, on the Settlement Effective Date (as defined below) and in exchange for mutual releases and support for the global settlement proposal, Conservatorium and the other margin lenders will be entitled to the settlement recovery at SIHNV attributable to the "Upington 1" claim and Steinhoff Africa Holdings Proprietary Limited will pay on behalf of SIHPL an additional amount of EUR 61m in settlement of the remaining claims. Titan will receive the recovery at SIHPL previously announced in the October Settlement Term Sheet, subject to further agreements to be concluded between the Company, SIHPL and Titan entities.
- The July Announcement and the October Settlement Term Sheet excluded recoveries in respect of contingent assets representing potential settlement contributions by third parties. As announced on 14 February 2021 Deloitte has indicated it is willing to make an offer to MPCs of up to EUR 55.34million and to certain contractual claimants of EUR15million. Discussions are ongoing with other third parties regarding possible additional contributions. The Dutch SoP Scheme Proposal and the S155 Scheme Proposal provide an implementation framework to deliver such recoveries to creditors. In the event additional contributions are agreed by other parties, and if required, the Dutch SoP Scheme Proposal and S155 Scheme Proposal will be amended to accommodate the relevant terms on which related recoveries will be delivered by such third parties.

Dutch SoP process

Following its opening of the Dutch SoP the Amsterdam District Court has appointed an administrator (bewindvoerder), who will work with SIHNV's management team. The court has also set the following key dates for submission of claims and for a creditors' meeting to vote on the Dutch SoP Scheme Proposal:

- 15 June 2021: voting record date; and
- 30 June 2021 at 10am (CET): creditor's meeting.

If the Dutch SoP Scheme Proposal is adopted at the creditors' meeting, the Dutch court will also need to confirm the Dutch SoP Scheme Proposal. The Dutch SoP Scheme Proposal will become effective if, among other conditions, the Dutch SoP Scheme Proposal becomes final and unappealable and the S155 Scheme Proposal becomes effective in accordance with its terms (i.e. the Settlement Effective Date, as to which see below).

The final date on which the Dutch SoP claimants may submit a claim to the claims administrator for purposes of receiving, if eligible and verified, a distribution under the Dutch SoP Scheme Proposal will be three months after the Settlement Effective Date (i.e. the Bar Date, as to which see below).

It is expected that (i) SIHNV contractual claimants and (ii) SIHNV MPCs (and SIHPL MPCs under the S155 Scheme Proposal) who do not dispute their claim determination will receive their settlement distribution as soon as reasonably practicable after the Bar Date (as defined within the Schemes) and notification of their claim determination. SIHNV MPCs (and SIHPL MPCs under the S155 Scheme Proposal) with disputed claim determinations will receive their



settlement distributions as soon as reasonably practicable after a binding determination in respect of their claim determination has been made.

Claimants will be able to access a copy of the Dutch SoP Scheme Proposal at the docket of the Amsterdam District Court or at www.SteinhoffSettlement.com. Any updates or amendments to the Dutch SoP Scheme Proposal will be published at www.SteinhoffSettlement.com.

S155 Scheme process

A "notice of the availability" of the S155 Scheme Proposal will shortly be published on SENS, and the FSE-equivalent service, SIHNV's website (www.steinhoffinternational.com), the Steinhoff settlement website (www.SteinhoffSettlement.com) and elsewhere, including in various publications. The notice will provide, amongst other things, a link to the S155 Scheme Proposal. Any addenda or other amendments to the S155 Scheme Proposal will also be published and notified, including on the Steinhoff settlement website.

Following the notice of availability, eligible S155 Scheme claimants wishing to participate in the S155 Scheme meeting, at which such claimants will consider and vote on the S155 Scheme Proposal, must submit their claims to the claims administrator in accordance with the terms of the S155 Scheme Proposal by the date which will in due course be published and notified on www.SteinhoffSettlement.com.

It is anticipated that the claims administrator will complete the claim verification process for claimants who have submitted their claims (with the requisite supporting documentation) for the purpose of voting at the S155 Scheme meeting, around the end of April 2021, following which claimants will be notified of their claim values. The final dates will be published on www.SteinhoffSettlement.com.

SIHPL anticipates that notice of the S155 Scheme meeting will be published (in the same manner as the notice of the availability of the S155 Scheme Proposal) towards the end of May 2021, which notice will invite verified S155 Scheme claimants to participate in and vote at the S155 Scheme meeting. The S155 Scheme meeting (which will be held virtually if COVID-19 restrictions require it) is expected to take place at the end of June 2021 or beginning of July 2021. The date of the S155 Scheme meeting will be specified in the meeting notice.

Following the creditors' meetings, SIHPL will then apply to the High Court of South Africa for an Order sanctioning the approved S155 Scheme Proposal as soon as possible. If sanction is given and other conditions are met, the date on which the Schemes become effective in accordance with their terms ("Settlement Effective Date") will follow shortly thereafter.

The final date on which S155 Scheme claimants may submit a claim to the claims administrator for purposes of receiving, if eligible and verified, a distribution under the S155 Scheme will be three months after the Settlement Effective Date (the "Bar Date").

It is expected that (i) SIHPL contractual claimants will receive their settlement distributions as soon as possible after the Settlement Effective Date and (ii) SIHPL MPCs (and SIHNV MPCs and SIHNV contractual claimants under the Dutch SoP Scheme proposal) who do not dispute their claim determination will receive their settlement distribution as soon as reasonably practicable after the Bar Date (as defined within the Schemes) and notification of their claim determination. SIHPL MPCs (and SIHNV MPCs and SIHNV contractual claimants under the Dutch SoP Scheme proposal) with disputed claim determinations will receive their settlement distributions as soon as reasonably practicable after a binding determination in respect of their claim determination has been made.

Next Steps for Claimants

In addition to the information provided below, claimants are encouraged to keep up to date on key dates and steps required for both the Dutch SoP Scheme Proposal and the S155 Scheme Proposal by regularly referring to www.SteinhoffSettlement.com.

The Dutch SoP Scheme Proposal and S155 Scheme Proposal are complex documents and claimants should obtain independent legal, financial and tax advice in relation to the proposals and the claim administration. None of the Steinhoff entities nor their advisers are providing any advice to the claimants or any other party.

SIHNV Dutch SoP Claims

Claimants will be notified of further key dates in the Dutch SoP process once they have been determined by the Company and the administrator. A claimant in the Dutch SoP Scheme who wishes to attend and vote at any creditors' meeting will need to provide the administrator with the necessary supporting documentation evidencing their status as a Dutch SoP scheme claimant and provide evidence of the value of their claim.

SIHNV claimants will be able to submit their claims, in due course, by completing the relevant claim form on www.SteinhoffSettlement.com (further details in this regard are contained in the Dutch SoP Scheme Proposal).

SIHPL S155 Scheme Claims

SIHPL claimants will be able to access a copy of the S155 Scheme Proposal in the manner set out in the notice of availability of the S155 Scheme Proposal.

A SIHPL claimant who wishes to attend and vote at the S155 Scheme meeting will need to provide the claims administrator with the necessary supporting documentation evidencing their status as an eligible S155 Scheme claimant and provide evidence of the value of their claim within the stipulated timelines.



SIHPL claimants will be able to submit their claims, in due course, by completing the relevant claim form on www.SteinhoffSettlement.com (further details in this regard are contained in the S155 Proposal).

Claims Administration

Computershare will act as claims administrator to assist with the administration of claims for the purpose of the creditors' meetings and, following approval of the Schemes, to assist the SRF with the further administration of claims and the settlement and payment process. As part of these arrangements, facilities are being made available to assist claimants with the process including the use of call centres and online assistance.

Update on Hamilton Application

As previously announced on 14 January 2021, Hamilton B.V. and Hamilton 2 B.V. (together "Hamilton") have brought an application in the Western Cape High Court, seeking an order declaring that claimants who are envisaged to fall within both the contractual class and the MPC class in terms of a S155 Scheme proposal, fail to constitute a 'class' within the meaning of the South African Companies Act. SIHPL has opposed the application, and has filed answering papers. Hamilton has filed replying papers, but has indicated that it wishes to file supplementary papers. No date has been set for the hearing of Hamilton's declaratory application.

Trevo Capital Ltd ("Trevo") has brought an application in the Western Cape High Court, seeking to intervene, as a respondent, in Hamilton's declaratory application, on the basis that it has a direct and substantial interest in the outcome of Hamilton's declaratory application. Trevo's application is supported by BVI, and the Cronje claimants. SIHPL has opposed the intervention application, but no further papers have yet been filed, and no date has been set for the hearing of Trevo's intervention application.

Hamilton and Trevo hold alleged claims that, by the terms of SIHPL's S155 Scheme proposal, will be treated as MPCs. The BVI and the Cronje claimants hold alleged claims that, by the terms of SIHPL's S155 Scheme Proposal, will be treated as contractual claims.

Trevo Application

Separately, Trevo has brought an application in the Western Cape High Court, seeking an Order (1) declaring that (a) a guarantee provided by SIHPL on 30 January 2014, in respect of a convertible bond issued by Steinhoff Finance Holding GmbH (a member of the Steinhoff Group), and which was subsequently amended or replaced on 12 August 2019 by the SIHPL contingent payment undertaking ("SIHPL CPU") between SIHPL and Global Loan Agency Services Limited, is void in terms of section 45 of the South African Companies Act, (b) both the SIHPL board's resolution authorising the conclusion of the guarantee, and the SIHPL board's resolution authorising the conclusion of the SIHPL CPU, are void, and (c) the SIHPL CPU is void, and (2) interdicting SIHPL from making any payments in terms of the guarantee, the SIHPL CPU and / or a compromise in terms of section 155 of the South African Companies Act and from providing any security in terms thereof. SIHPL intends to oppose this application. No further papers have been filed. Trevo seeks a hearing date of 16 March 2021 for the hearing of its declaratory application / interdict, but this date has not yet been confirmed by the Court.

SIHPL strongly disputes the legal merits of the pending applications brought by Hamilton and Trevo, and will oppose those applications and the Trevo intervention application on that basis.

Further Information

The Steinhoff Group will provide updates on key dates in due course.

Claimants will be able to review additional information and, in due course, submit their claim details on the **following** website: www.SteinhoffSettlement.com.

Further updates will be provided **following** the various processes and court hearings identified above.

The Company has a primary listing on the Frankfurt Stock Exchange and a secondary listing on the JSE Limited.

JSE Sponsor: PSG Capital

Stellenbosch, South Africa

16 February 2021

Date: 16-02-2021 07:45:00

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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

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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

Our reference
18020916

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).¹ This happens automatically; no additional formalities are needed.² The Dutch courts have exclusive (main) jurisdiction over SIHNV as SIHNV is a Dutch company with its statutory seat in The Netherlands.³
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

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

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

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

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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.⁴ 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.⁵ 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

⁴ 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".

⁵ 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.



Blaisse

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,⁶ 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).

⁶ 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.⁷
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 Hamilton⁸ 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

⁷ 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)

⁸ The Hamilton member was appointed later, as Hamilton had opposed the Committee.



Blaisse

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 2021.⁹ 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".
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".

Our reference
18020916

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

⁹https://www.steinhoffsettlement.com/media/3565094/2021.08.30_report_section_265__1__dba.pdf



Blaisse

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


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).

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



Blaisse

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.¹¹ 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

¹¹ That is, if there is no appeal. See below.



Blaisse

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)



Blaisse

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

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;

¹² 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.

Date
27 September 2021
Your reference

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.

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.



Blaisse

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

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).¹⁴

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)

¹³ Ms. Van Hassel was appointed as judge in 2011 and Ms. Rombouts was appointed as judge in 1995.

¹⁴ 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/).
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;¹⁵

¹⁵ "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.¹⁶

Date
27 September 2021
Your reference

Our reference
18020916

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.

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."

¹⁶ 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.



Blaisse

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 8th 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,¹⁷ revolve around one central pin: the Settlement Effective Date,¹⁸ 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.

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

¹⁸ See below.



Blaisse

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 appealable¹⁹ and becomes immediately final and binding. As discussed above, both SIHNV and its SoP creditors are then bound by the composition plan.²⁰
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.²¹

¹⁹ 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.

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

²¹ 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.



Blaisse

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.²²

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

²² 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. Zijdeveld
Supervisory Judges: K.M. van Hassel and C.H. Rombouts

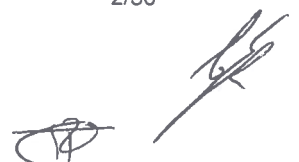
Handwritten signatures in black ink, located at the bottom right of the page. There are two distinct signatures, one appearing to be a circular mark and the other a more complex scribble.

HOUTHOFF

S. 265 DBA report SoP Administrators

30 August 2021

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 Group¹, 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 requisite majority of creditors present at a creditors' meetings and were subsequently implemented through several credit agreements, Contingent Payment Undertakings

¹ 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).²
- 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

² 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**")

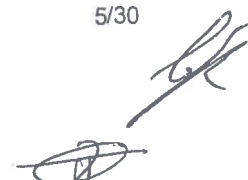
- 1.1.11. The SoP Administrators, in consultation with SIHNV, and in accordance with the relevant provisions in the Dutch Bankruptcy Act ("**DBA**"), requested the Amsterdam District Court to appoint a committee of representation (*commissie van vertegenwoordiging*) (the "**SoP Committee of Representation**"), 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 creditor³ 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.⁴
- 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

³ 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.

⁴ 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 Allegations⁵, 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.

⁵ 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:

HOUTHOFF

S. 265 DBA report SoP Administrators

30 August 2021

- 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.

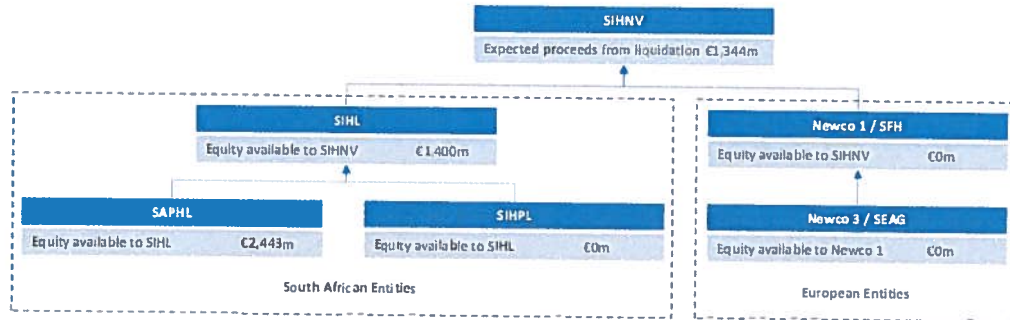
- 3.1.5. AG has assessed the liquidation value of the two main holding companies, as well as their four major subsidiaries (six entities in total). This entails a significant simplification of the full legal structure of the Steinhoff Group of companies which consist of over 500 legal entities. The analysis 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).⁶

⁶ 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.

HOUTHOFF

S. 265 DBA report SoP Administrators

30 August 2021



Source: Simplified Summary of AG's Liquidation Analysis - reference is made to AG's 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
Total SIHNV Litigant Claims A	5,036	7,591	3,577
CPU Creditor claims B	9,182	9,182	9,182
Intercompany claim C	695	695	695
Total SIHNV Claims	14,912	17,468	13,453

Total Recovery in Liquidation

	Baseline Scenario	High Case Scenario	Low Case Scenario
Mean expected liquidation proceeds available to SIHNV liabilities as of August 2021 D	1,344	1,344	1,344
SIHNV Litigant claims recovery August 2021 E = $D \times [A / (A + B + C)]$	454	584	357
Present value SIHNV litigant claims recovery August 2021 F = $E / 1.015^{90}$	391	503	308
Recovery in liquidation			
Including statutory interest on claims G = F / A	7.8%	6.6%	8.6%
Excluding statutory interest on claims H = $F / [A / 1.077]$	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.⁷
- 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

⁷ 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 2021, 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?)⁸;
 - 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

⁸ 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). 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.⁹ 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

⁹ 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 (*Brevast*).

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 secretively 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. Zijdeveld,

SoP Administrators



HOUTHOFF

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
Frans Crul
Deputie-Commissaris

CHR
A

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 Zijdeveld (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 present¹:
- 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).²
- 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:

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

² 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. 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.

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ANNEX 1

Rules of Procedure

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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.

A handwritten signature in black ink, consisting of a stylized, cursive script, located in the bottom right corner of the page.

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).¹ 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).²
- (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

¹ 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).

² 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 Rechtsanwaltsgesellschaft 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^o) DBA to be held at the Court.

"Website" means the following website: 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 authorise 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 authorise 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 with copy to frans.crul@dentons.com;

11.2.2 in the case of the initial Deputy Chairperson, by email to: 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

Handwritten initials and a signature in the bottom right corner of the page.

PER E-MAIL EN PER POST

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

Datum: 6 augustus 2021
Referentie: 0287794.0001/3849372

Voorlopig verslag onafhankelijke leden Commissie van Vertegenwoordiging

Geachte bewindvoerders,

In uw hoedanigheid van bewindvoerders 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**).¹ 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

¹ 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.

Slrota > Adepetun Caxton-Martins Agbor & Segun > Davis Brown > East African Law Chambers > Eric Siliwamba, Jalasi and Linyama > Durham Jones & Pinegar > LEAD Advogados > Rattagan Macchiavello Arocena > Jiménez de Aréchaga, Viana & Brause > Lees International > Kensington Swan > Bingham Greenebaum > Cohen & Grigsby > Sayarh & Menjra > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

Dentons Europe LLP is een wereldwijde aanbieder van juridische diensten aan cliënten over de hele wereld door middel van aangesloten kantoren en deelnemingen. Dentons Europe LLP is een limited liability partnership geregistreerd in Engeland en Wales met als doel de uitoefening van de rechtspraak, daaronder begrepen de advocatuur, het notariaat en de fiscale praktijk, en is gevestigd te Amsterdam en ingeschreven in het Handelsregister van de Kamer van Koophandel onder nummer 73505323. De Dentons Europe Region Terms of Business, waarin een beperking van aansprakelijkheid is opgenomen, zijn van toepassing en zijn op verzoek beschikbaar. Kijk op [dentons.com](https://www.dentons.com) onder Legal Notices.

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 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 wetslagen 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.

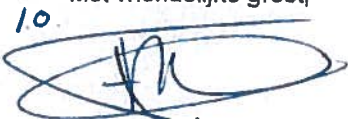
Valuation Principles en Steinhoff Allocation Plan

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



"C"

COPY

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;



Two handwritten signatures in black ink, one above the other, located at the bottom right of the page.

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* (Bankruptcies Act).

2.3. Pursuant to Article 269b(1) Bankruptcies 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



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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.

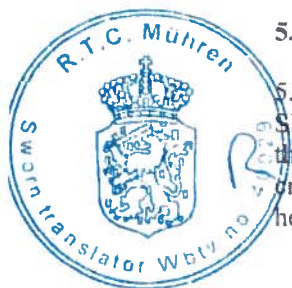
3.3. Attorneys Kuipers and Strik requested the District Court on behalf of SIHNV, based on speaking notes, to approve the adopted composition as there are no grounds for refusal. In so far as relevant, this is discussed further below.

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.



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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



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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 Bankruptcies Act.

5.14. The District Court has found no other grounds for refusal (Article 272(3) Bankruptcies 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) Bankruptcy 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



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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 (Wbiv) 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 be "R.T.C. Mühren", written over the right side of the official seal.

A handwritten signature in black ink, appearing to be "R.T.C. Mühren", located at the bottom right of the page.

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. Zijderveld 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. Zijderveld, 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. Zijdeveld 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 procesverbaal 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 herstructureringen 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



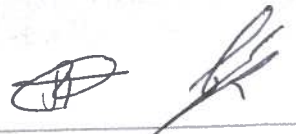
faillissement (circa 7,8%). Dit komt ook door de bijdrage van Deloitte en D&O verzekeraars. De concurrente schuldeiser categorieën SIHNV Financial Creditors, Intra-Group Creditors en Other Unsecured Creditors hebben geen recht op uitkering van akkoordpenningen. In plaats daarvan behouden zij hun vorderingsrechten, 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

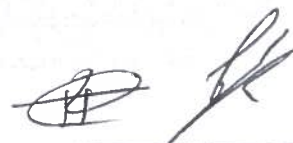


voortgang van haar groep veilig te stellen. Er is sprake van een transparant proces. SIHNV heeft alle categorieën schuldeisers betrokken bij de onderhandelingen en hen steeds geïnformeerd over de voortgang van het proces. Dit heeft uiteindelijk erin geresulteerd dat de schuldeisers unaniem met het aangeboden 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 faillissementssituatie.

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

STEINHOFF INTERNATIONAL HOLDINGS N.V. - RESULTS OF DUTCH SOP COMMITTEE MEETING

8 September 2021 16:40

Results Of Dutch SOP Committee Meeting

Steinhoff International Holdings N.V.
 (Incorporated in the Netherlands)
 (Registration number: 63570173)
 Share Code: SNH
 ISIN: NL0011375019

Steinhoff Investment Holdings Limited
 (Incorporated in the Republic of South Africa)
 (Registration number: 1954/001893/06)
 JSE Code: SHFF
 ISIN: ZAE000068367

DISCLOSURE OF INSIDE INFORMATION PURSUANT TO ART. 17 OF THE EU MARKET ABUSE
 REGULATIONS (EU 596/2014, MAR)

RESULTS OF DUTCH SoP COMMITTEE MEETING

Steinhoff International Holdings N.V. ("SIHNV" or the "Company" and together with its other subsidiaries, "Steinhoff" or the "Steinhoff Group") announces that today, the supervisory judges (rechters-commissarissen) in the Dutch suspension of payments (the "Dutch SoP") proceedings opened the creditors' meeting to discuss the claims as submitted in the procedure and to consider the Composition Plan. Following these discussions, the members of the Committee of Representation were asked to cast their votes on the Composition Plan. The supervisory judges confirmed that there was a positive decision supporting the Composition Plan with all fifteen members voting in favour. The outcome will now need to be considered by the District Court of Amsterdam in a subsequent confirmation hearing, which has been scheduled at 10.00 am (CET) on 16 September 2021 at the District Court of Amsterdam.

The Company has a primary listing on the Frankfurt Stock Exchange and a secondary listing on the JSE Limited.

Stellenbosch, South Africa

Contact:
 Steinhoff International Holdings N.V.
 Investor Relations
 Phone: +27 21 808 0700
 E-mail: investors@steinhoffinternational.com

8 September 2021

JSE Sponsor: PSG Capital

Date: 08-09-2021 04:40:00

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STEINHOFF INTERNATIONAL HOLDINGS N.V. - RESULT OF SIHPL S155 CONTRACTUAL CLAIMANTS MEETING

10 September 2021 15:00

Result Of SIHPL S155 Contractual Claimants Meeting

Steinhoff International Holdings N.V.
 (Incorporated in the Netherlands)
 (Registration number: 63570173)
 Share Code: SNH
 ISIN: NL0011375019

Steinhoff Investment Holdings Limited
 (Incorporated in the Republic of South Africa)
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 ISIN: ZAE000068367

DISCLOSURE OF INSIDE INFORMATION PURSUANT TO ART. 17 OF THE EU MARKET ABUSE REGULATION (EU 596/2014, MAR)

RESULT OF SIHPL S155 CONTRACTUAL CLAIMANTS MEETING

Steinhoff International Holdings N.V. ("SIHNV" or the "Company" and together with its other subsidiaries, "Steinhoff" or the "Steinhoff Group") and Steinhoff International Holdings Proprietary Limited ("SIHPL") report that at the meeting of the SIHPL Contractual Claimants held today the S155 Proposal obtained sufficient support to pass the applicable statutory thresholds for approval (a majority in number representing at least 75% by value) from the SIHPL Contractual Claimants.

As previously explained, SIHPL's proposal in terms of section 155 of the South African Companies Act, 71 of 2008 (the "S155 Proposal") proposed three classes of claimants for voting: the SIHPL Financial Creditors; the SIHPL Market Purchase Claimants ("MPCs"); and the SIHPL Contractual Claimants.

On 6 September 2021, two of the three creditors' class meetings were concluded. Steinhoff reported the same day that both meetings obtained sufficient support to pass the applicable statutory thresholds for approval from the SIHPL Financial Creditors and the SIHPL MPCs at their respective meetings.

The meeting of the SIHPL Contractual Claimants to vote on the S155 Proposal resumed today at 14:00 (SAST) and it obtained **overwhelming** sufficient support to pass the applicable statutory thresholds for approval from the SIHPL Contractual Claimants.

All three classes of SIHPL claimants have now voted in favour of the S155 Proposal, without a single vote being cast against the approval of the S155 Proposal. SIHPL will forthwith apply to the Cape High Court for an Order approving and sanctioning the proposal.

In addition, as announced on 8 September 2021, the Committee of Representatives has also voted unanimously in favour of the Composition Plan in terms of SIHNV's Dutch suspension of payments proceedings. This outcome will now also need to be considered by the District Court of Amsterdam in a subsequent confirmation hearing, which has been scheduled at 10.00 am (CET) on 16 September 2021 at the District Court of Amsterdam.

The Company has a primary listing on the Frankfurt Stock Exchange and a secondary listing on the JSE Limited.

Stellenbosch, South Africa

Contact:
 Steinhoff International Holdings N.V.
 Investor Relations
 Phone: +27 21 808 0700
 E-mail: investors@steinhoffinternational.com

10 September 2021

JSE Sponsor: PSG Capital

Date: 10-09-2021 03:00:00

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STEINHOFF INTERNATIONAL HOLDINGS N.V. - NOTICES IN TERMS OF SECTION 155 OF THE COMPANIES ACT 71 OF 2008

13 September 2021 12:00

Notices In Terms Of Section 155 Of The Companies Act 71 Of 2008

Steinhoff International Holdings N.V.
(Incorporated in the Netherlands)
(Registration number: 63570173)
Share Code: SNH
ISIN: NL0011375019

Steinhoff Investment Holdings Limited
(Incorporated in the Republic of South Africa)
(Registration number: 1954/001893/06)
JSE Code: SHFF
ISIN: ZAE000068367

NOTICES IN TERMS OF SECTION 155 OF THE COMPANIES ACT 71 OF 2008
RELATING TO
STEINHOFF INTERNATIONAL HOLDINGS PROPRIETARY LIMITED ("the Company")

Capitalised terms used herein and not otherwise defined shall have the meaning ascribed thereto in the compromise that has been proposed by the Company to Scheme Creditors (the "Proposal") in accordance with section 155 of the Companies Act 71 of 2008, as amended ("Companies Act"), available at www.SteinhoffSettlement.com.

Part A – NOTICE OF RESULTS OF MEETINGS

1. Notice is hereby given to Scheme Creditors that the results of the virtual meetings (collectively "Meetings" and individually "Meeting") held in terms of section 155(6) of the Companies Act for the purposes of considering and voting on the Proposal are as set out below.
2. At the Meeting of the Financial Creditors held on 6 September 2021, the Financial Creditors voted as follows:
 - 2.1 100% in number of the Financial Creditors present and voting (all by proxy) voted in favour of the Proposal; and
 - 2.2 100% in value of the Financial Creditors present and voting (all by proxy) voted in favour of the Proposal,and accordingly the Proposal was adopted by the Financial Creditors.
3. At the Meeting of the Contractual Claimants held on 10 September 2021, the Contractual Claimants voted as follows:
 - 3.1 100% in number of the Contractual Claimants present and voting in person or by proxy voted in favour of the Proposal. Of the 16 Contractual Claimants present (in person or by proxy) at the Meeting, 1 Contractual Claimant abstained from voting on the Proposal; and
 - 3.2 100% in value of the Contractual Claimants present and voting in person or by proxy representing 95.42% in value of the claims of all Contractual Claimants voted in favour of the Proposal,and accordingly the Proposal was adopted by the Contractual Claimants.
4. At the Meeting of the SIHPL Market Purchase Claimants held on 6 September 2021, the SIHPL Market Purchase Claimants voted as follows:
 - 4.1 100% in number of the SIHPL Market Purchase Claimants present and voting in person or by proxy voted in favour of the Proposal. Of the 8,481 SIHPL Market Purchase Claimants present in person or by proxy at the Meeting, 1 SIHPL Market Purchase Claimant abstained from voting on the Proposal; and
 - 4.2 100% in value of the SIHPL Market Purchase Claimants present and voting in person or by proxy representing 99.9999398054% in value of the claims of all SIHPL Market Purchase Claimants present at the Meeting voted in favour of the Proposal,

and accordingly the Proposal was adopted by the SIHPL Market Purchase Claimants.



- 5 A proposal as contemplated in section 155 of the Companies Act will have been adopted by the creditors, or the members of a relevant class of creditors, if it is supported by a majority in number representing at least 75% in value of the creditors or class, as the case may be, present and voting in person or by proxy at a meeting called for that purpose.
- 6 As each Class of Scheme Creditors has adopted the Proposal by a majority in number representing not less than 75% in value of each Class of Scheme Creditors, present and voting in person or by proxy at the Meetings, the Proposal has been Adopted as defined in the Proposal and as contemplated by section 155 of the Companies Act.

Part B - NOTICE OF THE COMPANY'S SANCTION APPLICATION

- 1 Notice is hereby given that, in light of the fact that the Proposal was Adopted at the Meetings, SIHPL has issued its application to the Western Cape Division of the High Court of South Africa for an Order approving and sanctioning the Proposal in accordance with section 155 of the Companies Act (the "Sanction Application").
- 2 Electronic copies of the papers filed by SIHPL in the Sanction Application are available at www.SteinhoffSettlement.com under the 'Case Documents' tab and on www.steinhoffinternational.com.

Part C - TRANSLATIONS OF THIS NOTICE

In addition to the languages below, a translated version of this notice will be made available in Arabic, Bulgarian, Czech, Greek, Hebrew, Hungarian, Latvian, Lithuanian, Mandarin, Polish, Romanian, Slovak, Slovene and/or Turkish on request (e-mail: info@SteinhoffSettlement.com).

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Þýdd útgáfa af þessari tilkynningu verður fánæg samkvæmt beiðni á Íslensku
(e-mail: info@SteinhoffSettlement.com).
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(e-mail: info@SteinhoffSettlement.com).
En oversatt versjon av denne merknaden vil bli gjort tilgjengelig på forespørsel på Norsk
(e-mail: info@SteinhoffSettlement.com).
Mediante pedido, será disponibilizada uma versão traduzida do presente Aviso em Português
(e-mail: info@SteinhoffSettlement.com).
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(e-mail: info@SteinhoffSettlement.com).
Vid behov kommer en översatt version av detta meddelande att göras tillgänglig på svensk
(e-mail: info@SteinhoffSettlement.com).
Se pondrá a disposición de los interesados una versión de este Aviso traducida al español
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Steinhoff International Holdings N.V. has a primary listing on the Frankfurt Stock Exchange and a secondary listing on the JSE Limited.

JSE Sponsor: PSG Capital
Stellenbosch, South Africa
13 September 2021

Date: 13-09-2021 12:00:00

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STEINHOFF INTERNATIONAL HOLDINGS N.V. - UPDATE ON DUTCH SOP CONFIRMATION HEARING

16 September 2021 15:45

Update On Dutch SoP Confirmation Hearing

Steinhoff International Holdings N.V.
 (Incorporated in the Netherlands)
 (Registration number: 63570173)
 Share Code: SNH
 ISIN: NL0011375019

Steinhoff Investment Holdings Limited
 (Incorporated in the Republic of South Africa)
 (Registration number: 1954/001893/06)
 JSE Code: SHFF
 ISIN: ZAE00068367

UPDATE ON DUTCH SoP CONFIRMATION HEARING

Steinhoff International Holdings N.V. ("SIHNV" or the "Company" and together with its other subsidiaries, "Steinhoff" or the "Steinhoff Group") announces that during the confirmation hearing in relation to SIHNV's Dutch suspension of payments in the District Court of Amsterdam today, the Court heard the Dutch Administrators, the attending SoP creditors and the Company on the confirmation of the Composition Plan. The confirmation of the Composition Plan was recommended by the supervisory judges and the Dutch Administrators and was supported by the Company and the attending SoP creditors. The District Court of Amsterdam has indicated that it will issue a judgment on 23 September 2021.

Update on SIHPL's s155 Proposal

Steinhoff International Holdings Proprietary Limited ("SIHPL") has issued its application to the Western Cape Division of the High Court of South Africa for an order to sanction its s155 proposal adopted at the meetings of scheme creditors held on 6 and 10 September 2021. The application has been set down for hearing on 30 September 2021.

The application, including related relevant dates, is available at www.SteinhoffSettlement.com.

Further updates will be provided as and when appropriate.

The Company has a primary listing on the Frankfurt Stock Exchange and a secondary listing on the JSE Limited.

Stellenbosch, South Africa
 16 September 2021
 JSE Sponsor: PSG Capital

Date: 16-09-2021 03:45:00

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STEINHOFF INTERNATIONAL HOLDINGS N.V. - DUTCH SOP - CONFIRMATION OF THE COMPOSITION PLAN BY THE COURT

23 September 2021 16:00

Dutch SoP - Confirmation Of The Composition Plan By The Court

Steinhoff International Holdings N.V.
 (Incorporated in the Netherlands)
 (Registration number: 63570173)
 Share Code: SMH
 ISIN: NL0011375019

Steinhoff Investment Holdings Limited
 (Incorporated in the Republic of South Africa)
 (Registration number: 1954/001893/06)
 JSE Code: SHFF
 ISIN: ZAE000068367

DUTCH SoP - CONFIRMATION OF THE COMPOSITION PLAN BY THE COURT

Steinhoff International Holdings N.V. ("SIHNV" or the "Company") announces that the District Court of Amsterdam (the "Court") has today issued an order confirming (homologeren) SIHNV's composition plan (akkoord).

The Court's order will become final, SIHNV's suspension of payments procedure will terminate and SIHNV's composition plan will become binding (verbindendverklaard) following an eight-day period if no appeal is lodged within that period. The decision of the Court follows the unanimous approval of the SIHNV composition plan by the 15 member committee of representation on 8 September 2021.

Louis du Preez, Chief Executive Officer and Management Board member, said:
 "While our task is not yet complete, this judgment is a further significant milestone in concluding the global litigation settlement. With the decision of the Dutch committee of representation and the Court, together with the positive voting in all of the recent claimant meetings in South Africa, we have seen overwhelming support for our global settlement proposal. We will continue to work on the final approvals required that will allow us to deliver the financial compensation detailed in the settlement proposal."

The Company has a primary listing on the Frankfurt Stock Exchange and a secondary listing on the JSE Limited.

Stellenbosch, South Africa

23 September 2021

JSE Sponsor: PSG Capital

Date: 23-09-2021 04:00:00

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COPY

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;



[Handwritten signatures]

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:

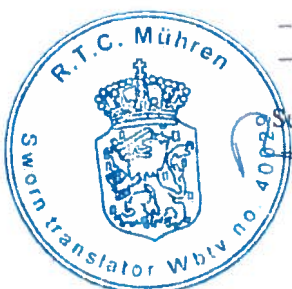
- attorney F.D. Crul, secretary of the Committee;
- attorney Q.L.C.M. Bongaerts, on behalf of ISLG;
- attorney F.M. Peters, on behalf of PIC;
- attorney J.W. de Jong, on behalf of Hamilton;
- attorney R.D. Vriesendorp, on behalf of Conservatorium Centerbridge;
- attorney K. Rutten, on behalf of Deminor;
- 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;



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

3

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. Zijderveld 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.



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



[Handwritten signature]

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



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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 Bankruptcies Act.

5.14. The District Court has found no other grounds for refusal (Article 272(3) Bankruptcies 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



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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) Bankruptcy 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 be "R.T.C. Mühren", written over the right side of the official seal.

Handwritten marks in black ink at the bottom right of the page, including a signature and some initials.

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. Zijderveld 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. Zijderveld, 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. Cruil, 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):

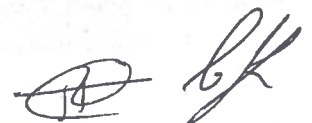
- de heer R. Abeln;
- de heer M. Windt;
- de heer Z. Abrahams;
- de heer N. Lewis;

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. Zijdeveld 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);
 - beschikking 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 procesverbaal 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 ~~dr.~~ Vroom, hebben verzocht het aangenomen akkoord te homologeren.

3.3. Mrs. Kuipers en Strik hebben namens SIHNV, aan de hand van spreek aantekeningen, 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 herstructureringen 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 afwickelen 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 faillissementssituatie.

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

Steinhoff International Holdings, N.V.

Liquidation Scenario Valuation and Analysis of Claim Recoveries

Analysis Group

27 August 2021



Contents

I.	Executive Summary	1
A.	Liquidation Analysis of Steinhoff NV as of 31 August 2021.....	3
B.	Expected Recovery of NV Litigant Claims.....	4
II.	Background Information.....	4
A.	Steinhoff Business Overview.....	4
B.	Accounting Misstatements and Shareholder Litigation	7
III.	Valuation Methodology	9
A.	Standard of Value	9
B.	Costs of Liquidation and Holding Company Liabilities	10
C.	NV Liquidation Value: Simplified Monte Carlo Approach.....	11
IV.	Liquidation Value of the Steinhoff NV Assets.....	13
A.	Pepkor Holdings (“PPH”).....	13
1.	Liquidation of PPH Stock	14
2.	Estimation of the PPH Stock Price as of 31 August 2021	16
3.	Liquidation Discount.....	17
B.	South Africa Properties (“SAPS”).....	26
C.	IEP Group.....	27
D.	SAHPL Cash-on-Hand.....	29
E.	European Assets.....	30
1.	Pepco Group.....	30
2.	Other European Assets	31
V.	Liquidator Fees and Other Professional Fees	32
VI.	Estimation of Steinhoff NV Litigant Claims	34
A.	Description of Steinhoff NV Litigants	34
B.	Steinhoff NV Contractual Claims	36
C.	Steinhoff NV Market Purchase Claims	37
1.	Relevant Period.....	38
2.	Inflation Estimates.....	38
3.	Inflation Estimate Throughout Relevant Period	40
4.	Shareholder Purchases and Sales	41
5.	Calculation of NV Inflation Claims.....	42
D.	Total Steinhoff NV Litigant Claims	45
VII.	Estimation of Recovery by NV Litigant Claimants	45
A.	Baseline.....	45
B.	PPH Sensitivity.....	47
C.	Claims Sensitivity.....	48



I. EXECUTIVE SUMMARY

Analysis Group, Ltd (“AG”) has been engaged by Linklaters LLP (“Counsel”) on behalf of Steinhoff International Holdings, N.V. (“Steinhoff,” “Steinhoff NV,” or “NV”), to perform an analysis of a hypothetical liquidation of Steinhoff NV beginning on 31 August 2021 and to estimate the expected recoveries of the various liability claims at Steinhoff NV and its subsidiaries. In particular, AG has been asked to quantify the expected recovery of NV shareholder litigant claims (“NV Litigants” and “NV Litigant Claims”).¹

AG has made the following general assumptions about a hypothetical liquidation of Steinhoff NV, based on discussions with Counsel.² Additional assumptions and inputs are further summarized in **Exhibit 1**.

- A liquidation of Steinhoff NV will commence on 31 August 2021 and its assets will be sold over an 18-month period. On average, the proceeds from liquidation will be recovered on 31 August 2022, one year after the start of liquidation;³
- The liquidation will give rise to legal, professional, and liquidator fees, and other costs which will reduce the proceeds available for distribution to NV Litigants and other creditors;
- Proceeds from the liquidation of assets in each Steinhoff holding company will first satisfy each holding company's liability claims and costs of liquidation, and remaining proceeds (equity), if any, will be up-streamed to Steinhoff NV.

¹ AG was instructed to prepare the analysis on the basis of a 31 August 2021 liquidation start date.

² Discussions with Counsel have included discussions with Werksmans attorneys.

³ Proceeds from liquidation include both cash-on-hand and proceeds from selling assets.

- Proceeds from the asset liquidations will be up-streamed to Steinhoff NV approximately five years after the start of the liquidation, on 31 August 2026.
- NV creditors, including the NV Litigants, will receive a distribution from the NV proceeds on 31 August 2031, approximately five years after receipt of proceeds at Steinhoff NV.
- NV liquidation proceeds will be distributed proportionally (“*pari passu*”) between NV Litigant Claims and other NV creditor claims based on the face value plus accrued interest of liabilities outstanding as of 31 August 2021.

To conduct the analysis, AG reviewed the following categories of information and materials:

- Documents prepared by Steinhoff, including but not limited to, presentations to lenders and financial statements of Steinhoff’s operating subsidiaries;
- Restructuring documents, including but not limited to, documents pertaining to the proposed Company Voluntary Arrangement and Contingent Payment Undertaking;
- Publicly available data and information, including but not limited to, news articles and market data;
- Data received from Steinhoff, including Computershare and Orient shareholding records; and
- Discussions with Steinhoff representatives and Counsel.

A. Liquidation Analysis of Steinhoff NV as of 31 August 2021

Steinhoff NV owns assets under two major holding companies: Steinhoff Investment Holdings Limited (“SIHL”) in South Africa and Newco 1, formerly known as Steinhoff Finance Holdings GmbH (“SFH”) in Austria. AG assessed the liquidation value of the two holding companies, as well as their subsidiaries, Steinhoff International Holdings Proprietary Limited (“SIHPL”), Steinhoff Africa Holdings Proprietary Limited (“SAHPL”), and Newco 3, formerly known as Steinhoff Europe AG (“SEAG”). The following is a general summary of the results of AG’s liquidation analysis. Steinhoff NV’s corporate structure and value in a liquidation scenario are summarized in **Exhibit 2**. In summary:

- In a liquidation scenario, the liabilities of Newco 1 and Newco 3 exceed the liquidation value of their assets, leaving no equity value. Therefore, no liquidation proceeds would be up-streamed to Steinhoff NV from Newco 1.
- AG estimated €2,443M of positive equity value in SAHPL and no positive equity value in SIHPL in a liquidation scenario. The largest and key contributing asset to the positive equity value in SAHPL is its 68% equity stake in Pepkor Holdings (“PPH”).
- After up-streaming cash from SAHPL to SIHL in August 2024, and satisfying the liabilities at SIHL, an estimated €1,400M of equity value would be left at SIHL as of 31 August 2026 and be available to up-stream to NV.
- After adding additional cash and subtracting liquidation fees at NV, NV would have €1,344M of asset value as of 31 August 2031. (See **Exhibit 2**.)
- In addition to this baseline recovery estimate, AG also evaluates a low and high recovery case, based on the 10th (low) and 90th (high) percentile Monte Carlo



outcomes of the liquidation of the 68% equity stake in PPH. In the low case, NV would have approximately €1,078M of asset value as of 31 August 2031, and in the high case, NV would have approximately €1,664M of asset value as of 31 August 2031.

B. Expected Recovery of NV Litigant Claims

The expected recovery of NV Litigant Claims was calculated based on their *pro rata* share of the liability claims against Steinhoff NV based on the value of those claims as of 31 August 2021. AG estimates that total NV Litigant Claims, plus interest, would be €5.04B as of 31 August 2021, and the total other claims, including CPU Claims and intercompany Claims, would be €9.88B. Using this baseline claim estimate, AG estimates that the Steinhoff NV liquidation proceeds distributed to NV Litigants on 31 August 2031, and adjusted for inflation to be equivalent to Euro value as of 31 August 2021, would be €391M. Therefore, the present value of the expected recovery of NV Litigant Claims as of 31 August 2021 would be 7.8c/Euro (see Exhibit 3). This is equal to the expected recovery of other NV claims, as they are treated on a *pari passu* basis. AG further estimates that in the low PPH case, the present value of expected recoveries declines to 6.2c/Euro, and in the high PPH case, the present value of expected recoveries rises to 9.6c/Euro.

II. BACKGROUND INFORMATION

A. Steinhoff Business Overview

Steinhoff NV is a “global retail and furniture manufacturing conglomerate” that is comprised of more than 10 operating companies consisting of businesses in the “retail brands, equity investments, manufacturing units and support functions (including sourcing and

logistics).”⁴ Steinhoff NV was initially incorporated in 1998 as SIHL and listed on the Johannesburg Stock Exchange (“JSE”);⁵ in late 2015, the company entered a scheme of arrangement through which SIHL shareholders swapped their shares in SIHL for shares in a new holding company that Steinhoff NV incorporated in the Netherlands, the shares of which were listed on both the JSE and the Frankfurt Stock Exchange (“FSE”). SIHL became a subsidiary of Steinhoff NV at the time of the scheme of arrangement.^{6,7} For the twelve months ending 30 September 2017, Steinhoff earned approximately €18.8 billion in total revenue from its assets located in the United States, Europe, Africa, and Australasia.⁸

SIHL is comprised of two subsidiary holding companies, SIHPL and SAHPL.⁹ While SIHPL is a financial shell company,¹⁰ SAHPL holds Steinhoff NV’s South African operating companies, the most important of which is PPH, in which SAHPL holds a 68% stake.¹¹ PPH is a

⁴ FTI Consulting, “Project Orange Phase I - Independent Business Review Volume I - Group Overview,” 25 May 2018, p. 20.

⁵ Morgan Stanley, Steinhoff NV Report, “Steinhoff International Holdings Ltd: An Introductory Guide,” 2 December 2015, pp. 1-2.

⁶ Note that in a restructuring that occurred since December 2017, the existing SIHL referenced here was renamed SIHPL, and a new parent company, SIHL, was created, which is the parent to SIHPL and SAHPL. The SIHL discussed in context of the liquidation analysis in this report refers to the current entity, i.e. the parent company.

⁷ Steinhoff NV, Prospectus, 7 August 2015, pp. 34-37. Steinhoff NV, Prospectus, 19 November 2015, pp. 1, 70.

⁸ Steinhoff NV, Audited Results for the Year Ended 30 September 2017, p. 46.

⁹ FTI Consulting, “Project Orange Phase I - Independent Business Review Volume IX - Africa,” 25 May 2018, p. 20.

¹⁰ Steinhoff NV, “Presentation,” 19 December 2017, available at <http://www.steinhoffinternational.com/downloads/2017/20171219-bank-presentation.pdf>, p. 18.

¹¹ Steinhoff NV held a 71% stake in PPH as of 2017, which has since been reduced to the current stake of 68%. Steinhoff NV, Audited Results for the Year Ended 30 September 2017, pp. 44-45, 260-261. Bloomberg, L.P.

“South African headquartered discount and value retail conglomerate listed on the JSE.”¹²

Exhibit 4 describes the businesses of the South African assets.

Steinhoff NV’s other primary holding company, Newco 1, is comprised of two “clusters”—Hemisphere International Properties B.V. (“Hemisphere”), a European real estate portfolio, and Newco 3, which holds many of the company’s operating companies in the United States, Europe, and Australasia.¹³ Hemisphere is a “property holding company... that include[s] offices, warehouses, factories, retail units and vacant land spread across 12 countries in Europe.”¹⁴ Hemisphere is in the process of winding down its portfolio. Newco 3’s assets include Pepco Group, a publicly traded discount retailer in Europe, Stripes US Holding Inc., which owns Mattress Firm,¹⁵ and other companies such as Greenlit, which consists of a portfolio of Household goods and manufacturers and retailers.¹⁶ Since Newco 1 is an Austrian entity,


¹² Several of PPH’s key brands include PEP, the “[l]argest single-brand retailer in southern Africa, offering affordable... clothing, footwear, textiles, homeware and cellular products at the lowest possible price” and Ackermans, a “[v]alue retailer selling everyday contemporary casual wear at affordable prices.” For the year ending 30 September 2017, PPH earned €3.9 billion in revenue; *See* FTI Consulting, “Project Orange Phase I - Independent Business Review Volume IX - Africa,” 25 May 2018, p. 30; Steinhoff NV, “Presentation,” 19 December 2017, available at <http://www.steinhoffinternational.com/downloads/2017/20171219-bank-presentation.pdf>, pp. 23-24; Steinhoff NV, Audited Results for the Year Ended 30 September 2017, p. 46.

¹³ Steinhoff NV, Audited Results for the Year Ended 30 September 2017, pp. 12-13; Steinhoff NV, “Presentation,” 19 December 2017, available at <http://www.steinhoffinternational.com/downloads/2017/20171219-bank-presentation.pdf>, p. 12.

¹⁴ As of 30 September 2017, the net book value of the Hemisphere portfolio was €2.2 billion. *See* FTI Consulting, “Project Orange Phase I - Independent Business Review Volume XI - Hemisphere,” 25 May 2018, p. 11. The value of Hemisphere has since decreased due to disposals, and no equity value is expected to flow back to Steinhoff due to external debt held by the company.

¹⁵ Steinhoff NV, “Presentation,” 19 December 2017, p. 16; Steinhoff International Holdings N.V., Audited Results for the Year Ended 30 September 2017, pp. 12-13. Mattress Firm entered a chapter 11 bankruptcy process in late 2018. Following this, Newco 3 owned 50% of Stripes, the holding company of Mattress Firm, subject to future dilution by the new management incentive plan. *See* 2020 Steinhoff Annual Report, p. 13.

¹⁶ Steinhoff Annual Report 2020, p. 33.



these assets under Newco 1 are collectively referred to as “European assets.” **Exhibit 4** describes the businesses of the European assets.

B. Accounting Misstatements and Shareholder Litigation

On 4 December 2017, Steinhoff NV announced that it would delay the release of its audited 2017 financial statements, as the auditors were still reviewing issues related to a previously reported tax investigation in Germany.¹⁷ Steinhoff’s shares declined €0.62 during the course of 4 and 5 December 2017 relative to its closing price of €3.42 on 1 December 2017,¹⁸ closing at €2.80 on 5 December 2017.¹⁹ After the market closed on 5 December 2017, Steinhoff NV announced that it had requested an independent investigation by PricewaterhouseCoopers (“PwC”)²⁰ into accounting irregularities identified by the Board and that Steinhoff NV’s CEO, Markus Jooste, had tendered his resignation with immediate effect.²¹ The stock price declined 60 percent from its closing price of €2.80 on 5 December 2017 to a closing price of €1.11 on 6 December 2017.²² After the market closed on 6 December 2017, Steinhoff released another press release in which it elaborated that the issues identified involved the “validity and

¹⁷ Steinhoff NV Press Release, “Announcement of 2017 Results and update on the 2017 audit process,” 4 December 2017.

¹⁸ 1 December 2017 was a Friday and the last trading day before 4 December 2017.

¹⁹ Bloomberg, L.P.

²⁰ PwC has been instructed by Werksmans Attorneys, as counsel to Steinhoff, to conduct this work.

²¹ Steinhoff NV Press Release, “Steinhoff announces investigation into accounting irregularities and resignation of CEO,” 5 December 2017.

²² Bloomberg, L.P.



recoverability” of “circa €6bn” in assets.²³ From the closing price of €1.11 on 6 December 2017, Steinhoff’s price declined another 43 percent to €0.63 at the closing of 7 December 2017.²⁴

PwC began its investigation in December 2017²⁵ and Steinhoff has made a number of incremental disclosures related to the misstatements subsequent to the previously mentioned initial disclosures. Steinhoff announced on 13 December 2017 that it would restate its 2016 financial statements, which could “no longer be relied upon,”²⁶ and, on 2 January 2018, announced that it would also restate its 2015 financial statements.²⁷ On 29 June 2018, Steinhoff released its unaudited half-year 2018 financial statements, which included unaudited, restated half-year 2017 financial statements, and also included a write-off of approximately €10 billion of assets.²⁸ On 15 March 2019, Steinhoff issued a summary of PwC’s work titled “Overview of Forensic Investigation.”²⁹ That summary disclosed that Steinhoff NV recorded “fictitious and/or irregular transactions” that were implemented by “[a] small group of Steinhoff Group former executives and other non Steinhoff executives ... [which] substantially inflat[ed] the profit and asset values of the Steinhoff Group over an extended period”³⁰ PwC found that fictitious or

²³ Steinhoff NV Press Release, “Ad Hoc: Steinhoff Update On Market Concerns Following Delay In Audited Results Due To Further Investigations Required,” 6 December 2017.

²⁴ Bloomberg, L.P.

²⁵ Steinhoff NV, Audited Results for the Year Ended 30 September 2017, p. 7.

²⁶ “UPDATE 1-Steinhoff to restate 2016 financial results,” *Reuters*, 13 December 2017.

²⁷ Steinhoff NV Press Release, “Steinhoff - Restatement of financial statements of subsidiary companies,” 2 January 2018.

²⁸ Steinhoff NV, Unaudited Half-Year Results for the Six Months Ended 31 March 2018, p. 49; Motsoeneng, Thomas, “Steinhoff takes \$12 billion writedown after accounting scandal,” *Reuters*, 29 June 2018.

²⁹ Steinhoff NV, “Overview of Forensic Investigation,” 15 March 2019, available at <http://www.steinhoffinternational.com/downloads/2019/overview-of-forensic-investigation.pdf>, pp. 2-4.

³⁰ Steinhoff NV, “Overview of Forensic Investigation,” 15 March 2019, available at



irregular transactions were included in Steinhoff's financial statements as early as 2009.³¹ On 9 May 2019, Steinhoff released its audited 2017 financial statements, and restated 2016 financial statements.³² Litigation has commenced against the company in multiple jurisdictions, however, much of the litigation has not progressed to the point of a judgment on the merits.

III. VALUATION METHODOLOGY

A. Standard of Value

For purposes of this analysis, AG estimated the liquidation value of Steinhoff NV, assuming an 18-month liquidation period beginning on 31 August 2021. The sale of assets in a liquidation typically results in a lower value than in a standard fair market transaction. To estimate the liquidation values of assets held in Steinhoff's South African and European holding companies, we first determine their fair market value, and estimate the likely discount required to dispose of those assets in a liquidation. The fair market standard of value reflects the price at which an asset would change hands between a willing buyer and a willing seller, both being adequately informed of the relevant facts and neither being compelled to buy or to sell.³³ A liquidation value, in contrast, reflects the discounted price at which an asset would change hands in a circumstance where the seller is forced to sell the asset over a certain timeframe in an

<http://www.steinhoffinternational.com/downloads/2019/overview-of-forensic-investigation.pdf>, pp. 2-4.

³¹ Steinhoff NV, "Overview of Forensic Investigation," 15 March 2019, available at <http://www.steinhoffinternational.com/downloads/2019/overview-of-forensic-investigation.pdf>, p. 5.

³² Steinhoff NV Press Release, "Steinhoff - Publication of 2017 Annual Results," 9 May 2019; Steinhoff NV, Audited Results for the Year Ended 30 September 2017.

³³ Holthausen, Robert W., and Mark E. Zmijewski, *Corporate Valuation: Theory, Evidence & Practice*, 1st Ed., Cambridge Business Publishers, LLC, 2014, p. 4.



insolvency scenario. Due to the potential lack of bidders and relative negotiating power of potential buyers in an expedited liquidation sale, a discount is often necessary to induce market demand and complete liquidation sales.³⁴

For each asset, AG determined the fair market value of the asset by reference to a stock price, carrying value, value implied by the traded price of comparable companies, or other relevant valuation methodology.³⁵ For some assets, the fair market value included an adjustment for lack of marketability.³⁶ Then, AG determined the liquidation value for Steinhoff NV's assets by applying a reasonable liquidation discount to reflect the cost necessary to facilitate the sale of a large quantity of assets within a limited period of time.³⁷

B. Costs of Liquidation and Holding Company Liabilities

After estimating the liquidation values of Steinhoff's assets, the analysis traces the asset proceeds as they move up-stream to the various holding companies and ultimately to Steinhoff NV. The proceeds from liquidating the assets of the holding companies are first allocated to pay

³⁴ See Holthausen, Robert W., and Mark E. Zmijewski, *Corporate Valuation: Theory, Evidence & Practice*, 1st Ed., Cambridge Business Publishers, LLC, 2014, p. 5; Albuquerque, Rui and Enrique Schroth, "The Value of Control and the Costs of Illiquidity," *The Journal of Finance*, Vol. 70, No. 4, August 2015, pp. 1405-1455.

³⁵ See Exhibits 8, 9, and 10.

³⁶ The valuation discount for lack of marketability is applicable regardless of whether the asset is sold in a liquidation context or not.

³⁷ An examination of 71 companies undergoing reorganizations reports an average expected liquidation discount of 32%, with a maximum of 82%. See Alderson, Michael J., and Brian L. Betker, "Liquidation Costs and Accounting Data," *Financial Management*, Vol. 25, No. 2, Summer 1996, pp. 25-36. The authors examined filings by companies undergoing Chapter 11 bankruptcy. The liquidation discounts are calculated as the difference between the companies' disclosed going-concern value and the liquidation values of the companies' assets. Other studies of asset liquidations show discounts as high as 50%, (See the case of Trump Shuttle), 68% (See the case of retailer Campeau), and even 70%. See Shleifer, Andrei, and Robert W. Vishny, "Liquidation Values and Debt Capacity: A Market Equilibrium Approach," *The Journal of Finance*, Vol. 47, No. 4, September 1992, pp. 1343-1366.

the costs associated with liquidating the assets and to pay liabilities at the holding company levels. Each Steinhoff holding company has liabilities and agreements that describe the ranking of each liability and the process for calculating the amount (including interest) to be paid in a liquidation scenario.³⁸ Exhibit 2 reports the liabilities at each level of the Steinhoff structure, as well as the remaining equity in the holding companies after liquidating the assets, paying the costs of liquidation, and satisfying debt obligations. Proceeds after satisfying liabilities at the holding company levels are distributed up to any parent company, which uses these funds as well as any proceeds from the sale of its own assets to pay its liabilities and liquidation costs. This process continues until remaining funds from SIHL and Newco 1 are up-streamed to NV.

C. NV Liquidation Value: Simplified Monte Carlo Approach

To estimate the liquidation value of each Steinhoff asset, AG considered three primary inputs—the observed or calculated pre-discount value of the asset, a discount for lack of marketability, and a liquidation discount—all of which can take on a range of values. Instead of choosing precise point estimates from the ranges of values, AG used a Monte Carlo model to estimate a distribution of outcomes from the liquidation by randomly sampling from the range of values for each input.³⁹ Specifically, in each round of simulation, the model draws one pre-discount asset value, one marketability discount (if applicable), and one liquidation discount

³⁸ As part of our review, we have looked at organizational charts, CVA proposals, loan facility agreements, intercreditor agreements, intercompany loan agreements, summons, contingent payment undertakings, and umbrella agreements, among others.

³⁹ Monte Carlo models are a generally accepted tool for incorporating uncertainty into an analysis. See Weil, Roman L., Daniel G. Lentz, and Elizabeth A. Evans, *Litigation Services Handbook: The Role of the Financial Expert*, 6th Edition, John Wiley & Sons, Inc., 2017, Chapter 4, p. 26.



from the respective range of inputs for each asset.⁴⁰ The model estimates one liquidation value for each of the assets (based on the selected inputs).⁴¹

In this report, we present results based on a simplified Monte Carlo approach, in which the simulation is conducted only on PPH liquidation value, and the mean liquidation values for all other assets are used. As discussed in more detail in Section IV, asset value at NV in liquidation depends almost entirely on liquidation proceeds from PPH. Specifically, in Europe, the proceeds from liquidating the European assets would not be enough to satisfy the liabilities at Newco 3 and Newco 1. As such, no liquidation proceeds flow up-stream to NV as equity value and therefore, liquidation values of the European assets have very limited impact on NV Litigant recovery. In South Africa, the vast majority of equity value up-streamed to NV results from PPH proceeds and cash-on-hand. While there is some uncertainty in IEP liquidation proceeds,⁴² the 10th to 90th percentile recoveries for IEP are only €108m to €128m.

The simplified Monte Carlo simulation was repeated 1,000 times, which produced 1,000 realizations of liquidation value for PPH, 1,000 estimates of equity available to NV, and 1,000 estimates of the present discounted value of the expected recovery of NV Litigant Claims.

Exhibit 2 reports the mean values of the liquidation⁴³ that result in expected proceeds from liquidation to NV of €1,344M, after the payment of liquidator fees. Asset values shown

⁴⁰ For some assets, there is just one type of discount, or no discounts at all. See **Exhibits 8, 9, and 10**.

⁴¹ Liquidation value = pre-discount value x (1 - marketability discount) x (1 - liquidation discount).

⁴² IEP is a South African investment holding company partially owned by SAHPL. See Section IV.C.

⁴³ The mean liquidation outcome is calculated based on the mean proceeds of each liquidated asset, including PPH.



include interest earned on liquidation proceeds,⁴⁴ if any, and are converted from ZAR to euros at the appropriate forward rates. The 10th and 90th percentile values of the proceeds at NV based on the 1,000 Monte Carlo simulations are €1,078M and €1,664M respectively.⁴⁵

IV. LIQUIDATION VALUE OF THE STEINHOFF NV ASSETS

In this section, we describe the valuation of the Steinhoff NV assets on a liquidation basis. We start with Steinhoff's South African assets: PPH, SA Properties, IEP, and cash at SAHPL. As the liabilities of the Steinhoff European holding companies greatly exceeded the expected liquidation value of the assets, we describe the valuation of the Steinhoff's European assets only briefly.

A. Pepkor Holdings ("PPH")

PPH is a holding company based in South Africa with diversified retail subsidiaries. Pepkor was acquired by Steinhoff NV in November 2014 for ZAR 62.8 billion (€4.6 billion as of November 2014).⁴⁶ On 20 September 2017, PPH was listed by Steinhoff NV on the JSE under

⁴⁴ AG has been instructed to assume that the cash proceeds for liquidating SAHPL would earn interest at an applicable risk-free South African interest rate until the proceeds are up-streamed to NV in 2026. AG assumes that any proceeds would be invested in South African treasury bills, which yielded around 7% from 2016-2020. The rate has dropped due to the COVID-19 pandemic, but AG assumes this will recover around 5% on average for the period between August 2022 and August 2026, when liquidation proceeds at SAHPL are assumed to earn interest. See International Monetary Fund, Interest Rates, Government Securities, Treasury Bills for South Africa [INTGSTZAM193N], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/INTGSTZAM193N>, 21 July 2021.

⁴⁵ Alternatively, we can run the full Monte Carlo simulation that captures uncertainties in proceeds of all liquidated assets. For reasons discussed in this section, the results based on the full Monte Carlo model are very similar to those based on the simplified Monte Carlo model, given that the liquidation value of PPH is the key driver of the liquidation outcome. In the full model, the 10th and 90th percentile values of the proceeds at NV are €1,076M and €1,655M respectively.

⁴⁶ See Stevis, Matina, and Ian Walker, "Steinhoff to Buy Pepkor for \$5.7 Billion," *The Wall Street Journal*, 25 November 2014.

the name Steinhoff Retail Africa (STAR).⁴⁷ In 2018, the name was changed back to Pepkor Holdings.⁴⁸ Steinhoff NV, through its subsidiary, SAHPL, currently owns approximately 68% of PPH, the most valuable of Steinhoff NV's South African assets.⁴⁹

1. Liquidation of PPH Stock

PPH is a publicly traded security on the JSE, and therefore has an observable market price. As of 30 June 2021, PPH stock traded at an average price of ZAR 20.15 over the prior 30 trading days. See **Exhibit 5** for PPH stock price throughout 2020 and 2021, showing the price declining from just under ZAR 20 in early 2020, to under ZAR 10 during 2020, and back up to ZAR 20 recently. As such, the share price has been volatile over the past year and a half, and it is uncertain where the price will be at the outset of a hypothetical liquidation. In addition, Steinhoff would be selling its stake in PPH in a liquidation, therefore, the fair market, traded price of the PPH shares at the start of the liquidation is not an appropriate estimate of the value Steinhoff would receive in a liquidation of its PPH holdings. Rather, the value received by Steinhoff in the liquidation would be expected to be lower, as described below.

In a liquidation scenario in which a liquidator would be required to complete the liquidation within 18-months, it is unlikely that PPH could be sold in a private transaction to an individual buyer who might be willing to pay the current share price (or potentially pay a control premium). There are a number of reasons why such a sale is highly unlikely. PPH is a very large

⁴⁷ See JSE, "Steinhoff Africa Retail to List on the JSE," 20 September 2017, accessed 24 May 2019, available at <https://www.jse.co.za/articles/Pages/Steinhoff-Africa-Retail-lists-on-the-JSE.aspx>

⁴⁸ See JSE SENS, "Finalisation Announcement Relating to the Change of Name," 3 August 2018, accessed 30 May 2019, available at www.sharedata.co.za/v2/Scripts/SENS.aspx?id=315938.

⁴⁹ See Section II.A.



asset, and there is limited set of other South African retail companies, and none are large enough to be reasonable purchasers of PPH and each would face significant antitrust hurdles. A non-South African retail company could potentially execute a purchase of the size of PPH, but there are numerous additional complexities that make such a purchase highly unlikely. First, a private purchaser would be required to receive competition clearance from the South African competition authority, if they operated in the same markets as PPH, and such competition clearance often includes general regulatory scrutiny, and can take months, if not years to complete.⁵⁰ Such a process would be potentially prohibitive in a 18-month liquidation, and would require extensive due diligence for a purchaser to ensure that they could achieve clearance. Second, South Africa has black economic empowerment (BEE) regulations that require certain levels of black ownership and funding ratios in the BEE codes, which create additional complexity, due diligence time, and potential cost for a foreign purchaser unfamiliar with such regulations.⁵¹ Third, a purchaser buying more than 35 percent of a public company in South Africa is required to make an offer to purchase the remaining shareholdings at either the current purchase price or the highest share price over the prior six months.⁵² In the case of PPH, this would be a requirement to offer to purchase the remaining 32 percent of the company, and a purchaser would also be required by regulators to have the cash ready to make such a purchase. Finally, there are significant capital controls in South Africa, which while they would allow

⁵⁰ For example, PPH's attempted to sell its Building Material Retail division, however the South African competition authorities did not clear the merger after a nearly 2-year investigation.

⁵¹ See, e.g., <https://www.nortonrosefulbright.com/en-za/knowledge/publications/fe87cd48/broad-based-black-economic-empowerment--basic-principles>.

⁵² See e.g., <https://www.bowmanslaw.com/wp-content/uploads/2016/10/The-Chambers-Global-Practice-Guide-on-Corporate-MandA.pdf>, p. 13-14.



investment in the country, could make taking value out of the country difficult. This would potentially make a private foreign buyer wary of investing in a large South African asset, or at very least add time to the due diligence process.

Taken together, these requirements impose a significant potential cost on any private purchaser of PPH. In addition, given these complexities, we expect that a reasonable liquidator would not attempt to negotiate a private sale, given the 18-month period in which PPH would need to be liquidated. Such a liquidator would face a severe risk that significant time would be spent in due diligence on the various issues outlined above, and spent attempting to negotiate a private transaction. If such a negotiation fell through due to the aforementioned issues, the liquidator could be left with 68 percent of a public company and no purchaser, which would be an untenable position for the liquidator to risk leaving themselves in. As such, while a private sale of PPH cannot be completely ruled out, even at a steeply reduced price, the probability such a path would (1) be taken by a liquidator and (2) result in a completed sale, is very low. Therefore, we assume that a liquidator would sell PPH in block sales into the market in the liquidation to be more confident that they could achieve liquidation in the allotted timeframe.

2. Estimation of the PPH Stock Price as of 31 August 2021

As shown in **Exhibit 5**, the 30-day volume-weighted average price (VWAP) for PPH as of 30 June 2021 was ZAR 20.15. The PPH price is projected to grow to ZAR 20.28 as of 31 August 2021 based on the price of future contracts on PPH stock expiring in September 2021. We used this projected price as the market value of PPH stock just before the assumed liquidation is announced.



Exhibit 5 also shows the price of PPH stock has fluctuated between ZAR 16.55 and ZAR 20.90 within the two months before 30 June 2021.⁵³ Due to inherent volatilities in the stock price, the value of Steinhoff NV's PPH holdings may fluctuate between the time this analysis was prepared and the beginning of the assumed liquidation on 31 August 2021. As noted above, the PPH share price has been below ZAR 10 and over ZAR 20 over the past year and a half, so there is a significant uncertainty in where the PPH share price will be at the start of the hypothetical liquidation.

Starting from the PPH's 30-day VWAP of ZAR 20.15 as of 30 June 2021, we forecasted possible price paths of the PPH stock from 30 June 2021 to 31 August 2021 using a Geometric Brownian Motion, a standard model for forecasting stock price paths.⁵⁴ To capture the uncertainty of future stock movements at the time of the analysis, we approximated the distribution of PPH price by simulating 100,000 price paths.⁵⁵ The 10th and 90th percentile of the projected PPH price as of 31 August 2021 is ZAR 17.16 to ZAR 23.48.

3. Liquidation Discount

We estimate a wide range of potential total discount to current share price in the liquidation, with a range of 25 percent to 50 percent, and a mean discount of 38 percent. This

⁵³ Bloomberg, L.P.

⁵⁴ The Geometric Brownian Motion model projects a stock path by simulating random and independent daily changes in stock price. In our model, we set a risk-free rate of 3.70%, based on the ratio between current PPH stock price and the price of future contracts on PPH stock expiring in June 2021. We also set the volatility of PPH stock to be approximately 35%, based on the 60-trading-day volatility of PPH stock as of 30 June 2021. Bloomberg, L.P.

⁵⁵ The simulations are made using a Monte Carlo model, a generally accepted method that calculates a range of possible outcomes for a random process, such as stock price movements, through repeated random sampling. The top and bottom 5% of the simulated prices are truncated, so the projected distribution of PPH price is based on 90,000 price paths.



wide range reflects the significant uncertainty of the outcome and the significant risks and complexities with executing such a liquidation. There are no comparable liquidations of very large stakes of public companies in South Africa with which to easily model the appropriate discount, and we are unaware of data that can be easily and reliably used to estimate the discount. Ultimately, it is difficult to project exactly how the market will react to the news of the insolvency and liquidation of PPH, and how large the discounts will need to be to induce demand for 68% of the shares of PPH in the market. As such, we come to our estimate of the appropriate total discount range based on evidence from prior block sales by Steinhoff outside of liquidation, academic research on liquidation discounts, and insight into the complexities of such a liquidation and views of reasonable liquidation discounts from South African bankers familiar with the PPH and the South African market.

An announcement that Steinhoff is in liquidation, and the understanding by market participants that Steinhoff's 68% PPH stake will need to be liquidated over a relatively short period of time, could potentially cause a selloff in the market that would cause a decline in the PPH share price. Such an announcement would create significant risk and uncertainty for the 32% minority shareholders. Existing PPH shareholders of the other 32% PPH stake would rationally be uncertain about the future value of their shares and the impact of the upcoming liquidation, and likely expect the market price of PPH shares to decline, which could trigger a sell-off, or "run," leading to a decline in the price of PPH stock from the current price.⁵⁶ In

⁵⁶ Such "runs" have been observed among distressed companies. For example, companies that filed for bankruptcy saw immediate post-announcement price declines with averages between 21.5% and 25%, while examination of distressed financial institutions reveals single day stock price declines as high as 90%. See Dawkins, Mark, and Linda Bamber, "Does the Medium Matter? The Relations among Bankruptcy Petition Filings, Broadtape



addition, there would also be uncertainty regarding the commercial impact on PPH from a Steinhoff liquidation. The market reaction to an announcement of Steinhoff's liquidation could be similar that in December 2017, when PPH's share price declined by 22.8% in one day, as trading volume increased to roughly 18 times the average daily trading volume.

In addition, the average daily trading volume of PPH stock in 2021 is approximately 4.0 million shares, and the PPH 68% block (2.48 billion shares) is roughly 621 times that daily trading volume. If Steinhoff's PPH shares were sold in equal increments each trading day for 18 months, its daily sales of PPH would be approximately 6.5 million shares. In other words, even the most gradual and steady liquidation process would require PPH's daily trading volume to more than *double* its usual volume every day for 18-months (an increase in volume from 4.0 million to 10.5 million per day). Put differently, the supply of PPH shares on the market would effectively double, and likely have a large negative impact on the share price of PPH, either immediately after announcement of the liquidation or over the course of the liquidation as the shares were placed into the market.

Disclosure, and the Timing of Price Reactions," *The Journal of Finance*, Vol. 53, No. 3, June 1998, p. 1151; see also Dawkins, M., et al., "Systematic Share Price Fluctuations after Bankruptcy Filings and the Investors Who Drive Them," *The Journal of Financial and Quantitative Analysis*, Vol. 42, No. 2, June 2007, p. 405; see also Helwege, Jean, and Gaiyan Zhang, "Financial Firm Bankruptcy and Contagion," *Review of Finance*, 2016, p. 1328. Enron, during its accounting fraud scandal, experienced a spike in trading volume that was 54 times its average daily volume on 28 November 2001, which led to an 85% price decline. Similarly, Bear Stearns, during the financial crisis, experienced a spike in trading volume that was 11 times its average daily volume on 17 March 2008, which led to an 84% price decline. While PPH on its own is neither distressed nor situated in a financial crisis, an announcement of a Steinhoff liquidation could put the company's stock under similar downward sell-side pressure. If only one-fifth of PPH's remaining shareholders decide to sell, the stock's trading volume would spike to over 50 times the average daily trading volume, comparable to the "run" from Enron stock. Furthermore, a "run" on a smaller scale can be observed in PPH's own stock price history. When Steinhoff's fraud was disclosed on 6 December 2017, PPH's share price declined by 22.8%, as trading volume increased to 82 million shares (roughly 18 times the average daily trading volume). On the next day, as negative news about Steinhoff continued to trickle out, PPH's stock price declined further, by 10.5%, as trading volume remained high at 80 million shares. These declines were largely sustained, as PPH never recovered to the 5 December 2017 closing price of ZAR 24.6 per share. Bloomberg, L.P.



In order to generate enough demand for blocks of shares in the market, the liquidator would also have to offer additional discounts to the prevailing share price, which, as noted above, is likely to have already declined from the initial price just before the outset of the liquidation. Block sales typically require discounts to the current share price to generate demand for the shares. **Exhibit 6** summarizes five block sales of shares in three Steinhoff companies—KAP Industrial, PSG Group, and PPH (previously under the name of STAR). All of these sales were conducted through accelerated book builds to private buyers at a discount to the traded stock prices, however were done *outside* of liquidation.

The largest of these five sales in terms of stake size, the 27 March 2019 sale of a 26% stake in KAP, required a 9.4% discount to the traded price.⁵⁷ The sales of the four other smaller stakes were also conducted at a discount to the traded price. Overall, the discounts range from 2.6% to 9.4%.

However, Steinhoff NV's 68% PPH stake represents a much larger block compared to the stake size in any of these prior Steinhoff sales. The liquidator could not simply use multiple small blocks to sell the 68% of PPH, and expect to be able to liquidate the second, third, or tenth block at the same discount as the first. This is because the block discount is largely driven by the demand in the market. As noted above, the total volume of shares to be sold in this liquidation is over 600 times the daily volume of PPH shares traded, as such, to generate demand, a steep

⁵⁷ The sale also caused a statistically significant abnormal KAP stock price decline of 7.87%. An abnormal decline refers to the portion of a stock price change that cannot be attributed to general market conditions. A decline is statistically significant when it cannot reasonably be attributed to random idiosyncratic movements of the stock price.

discount will likely be necessary, as demand for shares equal to 68% of PPH could only be found at much lower prices (i.e., larger discounts). As such, we extrapolate a potential discount for the PPH block from the five smaller block sales' stake sizes. For example, the 12 April 2018 sale of a 5.8% stake in PPH at a 2.6% discount implies a 27% discount for the sale of the 68% block of PPH stock.⁵⁸ Using the observed discounts from the other block sales, we infer a range of potential discounts (outside of liquidation) for the 68% block of PPH stock from 16% to 45% on **Exhibit 6**.

In addition, on 23 June 2020, PPH offered 172.5 million new shares at a discount of 6.2%,⁵⁹ which implies a 60% discount for Steinhoff's 2.48 billion stake.⁶⁰ While not a block sale of existing shares, but a placement of new shares, and outside of liquidation, the large extrapolated discount is evidence of the potential discount that could be incurred in the liquidation of PPH.

As noted, these are small block sales, so we extrapolate discounts to account for the much larger volume of PPH shares to be placed in the market. In addition, these small block sales were all done outside of a liquidation process, so were not forced or done on an accelerated timeline.⁶¹

⁵⁸ Calculated as $100\% - (100\% - 2.6\%)^{(68\% \div 5.8\%)} = 27\%$. This is equal to the compounded discount resulting from consecutive sales of 5.8% blocks at a 2.6% discount, until the full 68% block is sold.

⁵⁹ JSE SENS, "Results of Accelerated Bookbuild Offering of Pepkor Holdings Limited Ordinary Shares," 24 June 2020.

⁶⁰ Calculated as $1 - (1 - 6.2\%)^{(2.48 / 0.1725)} = 60\%$.

⁶¹ Note that we previously calculated a blockage discount based on generally accepted option models, to which we added a separate liquidation discount to account for the market reaction and risks associated with the liquidation. A blockage discount on a sale of 2.48 billion PPH shares over an 18-month period can be estimated using option models that calculate the cost to fully hedge against potential price declines during the 18-month sales period. Using standard valuation models, such as the Black-Scholes model, we estimated the ex-ante blockage discount to be 9% to 15% on a sale of a 68% block of PPH shares. However, the blockage discount is based on current market data, which does not encompass the actual impact of Steinhoff's insolvency or the actual constraints and



As such, they are indicative of a range of potential discounts, but given the differences between the small blocks sold outside of liquidation, and the need to extrapolate to represent much larger block sales in liquidation, this range is relied on as an indication of potentially appropriate liquidation discounts. This wide range and discount quantum captures the significant risks and uncertainties associated with executing such a liquidation on a compressed timeline using block sales given.

Academic research also supports a significant and wide range of potential liquidation discounts. An examination of 71 companies undergoing reorganizations reports an average expected liquidation discount of 32%, with a maximum of 82%, estimated as the difference between the going-concern value of the firms' assets and the liquidation value of those assets.⁶² Other studies of asset liquidations show discounts as high as 50%, (*see Trump Shuttle*), 68% (*see Campeau*), and even 70%.⁶³ The wide range of potential discounts, and widely varying liquidation scenarios included in the academic literature, including asset sales by distressed companies and sales of distressed companies themselves, outside of South Africa, mean that the

risks of a liquidation of PPH in South Africa. In addition, the way in which this blockage discount interacts with the liquidation discount is conceptually difficult. Taken alone, a blockage discount significantly understates the likely discount that would be needed to liquidate PPH in a Steinhoff insolvency in the illiquid South African market. As described herein, extrapolation of actual block sales, demand for large block sales, academic literature, and input from South African bankers provides the basis for a more straightforward and conceptually appropriate approach.

⁶² See Alderson, Michael J., and Brian L. Betker, "Liquidation Costs and Accounting Data," *Financial Management*, Vol. 25, No. 2, Summer 1996, p. 30. The authors examined filings by companies undergoing Chapter 11 bankruptcy. The liquidation discounts are calculated as the difference between the companies' disclosed going-concern value and the liquidation values of the companies' assets.

⁶³ See Shleifer, Andrei, and Robert W. Vishny, "Liquidation Values and Debt Capacity: A Market Equilibrium Approach," *The Journal of Finance*, Vol. 47, No. 4, September 1992, p. 1358. The authors describe the significant discounts taken by firms to sell assets in liquidation.



range of potential discounts is indicative of the range of potential PPH discounts, but not a definitive predictor of the appropriate range.

Finally, we rely on input provided by South African bankers, with experience in the relevant South African market, to inform our estimated discount range. In 2020, bankers engaged by Pepkor suggested that placing 1.15 billion new PPH shares (less than half of Steinhoff's 2.48 billion stake) would incur a 30% discount to the then traded price alone. Even without extrapolating, a 30% discount, outside of a liquidation is indicative of the potential discounts that would occur in liquidation for large blocks placed into the market. Extrapolating that discount to account for the full 68% block implies a 54% discount.⁶⁴

In addition, the company sought the views of two international investment banks' South African branches, which have been involved in the placement of PPH shares, to elicit their views on the potential discounts that might be incurred in an 18-month liquidation of PPH via block sales.

The bankers cited many complexities arising from attempting to execute block sales of such a large volume of shares in South African market, including the lack of institutional demand within the country and the limited current foreign interest in PPH. They noted that they saw no practical way in which to dispose of 68% of PPH in an accelerated, predictable, and orderly fashion. They suggested that the best available option would likely be a number of very large block sales, however, they noted that practically, it would still be very difficult and risky to execute such a liquidation.

⁶⁴ Calculated as $1 - (1 - 30\%)^{(2.48 / 1.15)} = 54\%$.



Their view is that in such a block sale liquidation, the liquidating bank would struggle to find subscribers for the first large block sale when it would be known to subscribers that additional large block sales would follow. Subscribers to the first block sale would expect that the latter block sales would further depress the market price, and that the latter block sales would be expected to be executed at a larger discount than the first block sale to generate additional demand. Therefore, potential subscribers to the first block sale would have incentive to delay and wait for the latter block sales, or to require a very large discount to take part in the first subscription. As such, the mechanics of such a liquidation, where it is known that there would be multiple large block sales, would result in significant difficulties executing the initial block sale without offering a very large discount.

As such, the bankers' view is that any approach to liquidation using block sales would likely "decimate" the market price. They expect that when the liquidation and first block sale was announced, the market would have a very negative reaction, and then likely further negative reactions as the additional block sales were negotiated and priced.

They also highlighted other concerns about whether any leading investment banks would take on the mandate to liquidate PPH, as it would be perceived as highly risk to the bank, likely to require significant indemnities from the liquidator to alleviate those risks, and would potentially alienate clients who had traded in PPH shares with the bank at higher prices in the past. They stated that such a liquidation would not be a mandate they would accept as leading banks in the South African market.

Ultimately, they suggested that given these constraints, and the risks that such a liquidation could be completed without decimating the market price, their best case indicative range of expected discounts in such a liquidation would be 30 to 50%.



As described in **Exhibit 7**, there are a number of other qualitative factors that point to a significant discount. For example, general uncertainty about economic and political conditions in South Africa, and low South African economic growth projections may dissuade potential buyers, especially foreign buyers, from investing in PPH stock. While PPH has performed well over the past year, it has underperformed the FTSE/JSE stock market index since the beginning of the pandemic in early 2020.

As such, based on the qualitative review, evidence from prior block sales, academic research, and the insights from South African bankers, as well as the significant execution risks associated with the liquidation, we estimate a range of 25% to 50% discount to current PPH share price, with a mean discount of 38%.

Exhibit 8 summarizes the calculation of PPH liquidation value. The mean liquidation value of PPH as of 31 August 2024 is estimated to be €1.63B.

As discussed above, there is uncertainty in both the price path of PPH stock and the total discount Steinhoff would eventually incur in a liquidation. Therefore, the actual proceeds from the PPH sale could be either lower or higher than €1.63B. Based on the Monte Carlo simulation, which takes into account the range of outcomes in both the PPH projected share price and the blockage and liquidation discounts, the liquidation value of PPH as of 31 August 2024 is estimated to be €1.36B at the 10th percentile and €1.97B at the 90th percentile. The relatively lower proceeds at the 10th percentile result from simulations with low PPH prices and/or high total discounts. To put the 10th percentile outcome in context, if we assume the mean total discount of 38% is fixed, the PPH price would be ZAR 16.83 (down from the mean value ZAR 20.28) as of the start of liquidation to result in PPH proceeds of €1.36B.



Alternatively, if we assume that the PPH price as of the start of liquidation is fixed at the mean projected value of ZAR 20.28, the total discount would be 49% (up from 38%) to result in the same €1.34B proceeds. In other words, to reach the 10th percentile outcome, the share price at the start of the liquidation would be ZAR 3.45 lower than our mean projection, or the average liquidation price of the shares would be 49% rather than the 38% in our mean projection.

Similarly, the relatively higher proceeds at the 90th percentile result from Monte Carlo simulations with high PPH prices and/or low total discounts. If we assume that total discount is fixed at the mean discount of 38%, the PPH share price would be ZAR 24.43 (i.e., ZAR 4.15 higher) as of the start of liquidation to result in PPH proceeds of €1.97B. Alternatively, if we fix the PPH price as of the start of liquidation at the mean projected value of ZAR 20.28, a total discount of 25% (i.e., a 13% smaller discount) would result in €1.97B proceeds.

B. South Africa Properties (“SAPS”)

Steinhoff Africa Property Services (Pty) Limited (“SAPS”) is a “Property Holding and Investment Company with a portfolio comprising 105 properties” across various commercial categories including dealerships, development, mixed groups, industrial units, offices, retail units, truck depots, vacant land, and warehouses. Of the 91 occupied properties, 61 were occupied by Steinhoff intercompany tenants such as PPH as of May 2018.⁶⁵

As of January 2020, Steinhoff began the process of selling off its entire SAPS portfolio and liquidating the company. As of 1 October 2020, there were 41 companies left in the portfolio. 21 of those were sold through 3 June 2021 for a total of ZAR 598M, of which ZAR

⁶⁵ FTI Consulting, “Project Orange Phase I - Independent Business Review Volume IX - Africa,” 25 May 2018, pp. 67-68.



252M of proceeds have not already been added in the SAHPL cash balance (i.e., the ZAR 252M are assumed as part of the liquidation proceeds, while proceeds included in cash balance are considered a part of SAHPL's cash already). Steinhoff expects that 8 more properties in the process of being sold or planning to be sold will generate an additional ZAR 499M. Finally, Steinhoff has entered into an agreement with the tenant of the remaining 12 properties, PPH, to sell the properties for an issuance of 70 million shares in PPH, which implies a value of 878M based on AG's projected liquidation sale price of PPH shares.⁶⁶ This results in total liquidation proceeds of ZAR 1,629M, or €95M as of 31 August 2021.⁶⁷

C. IEP Group

IEP Group ("IEP") is a South African investment holding company that has investments in finance, infrastructure, chemicals, industrial services and building material firms. Investec Bank Ltd and SAHPL are amongst its largest shareholders. SAHPL holds 26.0% of IEP.⁶⁸

The value of IEP is estimated using two methods. First, between 2019 and 2020 we observe that the market value of IEP decreased by approximately 8.1% to ZAR 10,882M as of 31 December 2020.⁶⁹ Assuming that IEP value changes at the same annualized rate in 2021, its value would be approximately ZAR 10,288M as of 31 August 2021. Alternatively, between 31

⁶⁶ "10.1.3 SAPS Property Status Memo 3 June 2021"; "MASTER Property Summary 30 March 2021". Value of PPH Shares calculated as $70,000,000 * ZAR 20.28 * (1 - 38\%)$, using the mean projected PPH share price and discount rate.

⁶⁷ Calculated using the forward exchange rate of 17.09 ZAR per EUR (the average of bid and ask price) for 31 August 2021 as of 30 June 2021. Bloomberg, L.P.

⁶⁸ "Attachment 4- IEP directors valuation.pdf."

⁶⁹ IEP Group Board, "IEP Covenant Valuation," p. 2; "Attachment 4- IEP directors valuation.pdf."



December 2020 and 4 June 2021, the FTSE/JSE Top40 Index⁷⁰ grew by 34.21% on an annualized basis.⁷¹ From 4 June 2021, the index is projected to decrease by 0.03% on an annualized basis through August 2021, based on futures contracts. Assuming that IEP value changes at an annualized rate of 34.21% between 31 December 2020 and 4 June 2021, and then at an annualized rate of -0.03% from 4 June 2021 to 31 August 2021, the value of IEP would grow approximately 13% from 31 December 2020, and be equal to ZAR 12,329M as of 31 August 2021. Therefore, we estimated the value of a 26.0% stake in IEP to be between ZAR 2,674M and ZAR 3,204M, or €156M to €187M, before adjusting for marketability and liquidation discounts.⁷²

To the above asset valuations, we apply a marketability discount of 13% to 21% and a liquidation discount of 5% to 10%. The marketability discount is estimated from “restricted stock” studies that compare the prices of restricted vs. non-restricted shares in public companies.⁷³ Academic studies support a marketability discount of between 13% and 21%.⁷⁴ The liquidation discount is based on studies of asset sales by distressed firms. The studies report that minority equity stakes in publicly traded non-financial firms experience fire sale discounts of approximately 8%, while block sales (holdings of over 5% of the firm) experience fire sale

⁷⁰ As described by Bloomberg, L.P, the index is “a capitalization weighted index. Companies included in this index are the 40 largest companies by market capitalization included in the FTSE/JSE All Shares Index.”

⁷¹ Bloomberg, L.P.

⁷² Calculated using the forward exchange rate of 17.09 ZAR per EUR (the average of bid and ask price) for 31 August 2021 as of 30 June 2021. Bloomberg, L.P.

⁷³ The IEP Shareholder Agreement indicates that there was a lock-up period prohibiting the sale of shares until 2020. FTI Consulting, “Project Orange Phase I - Independent Business Review Volume IX - Africa,” 25 May 2018, p. 76.

⁷⁴ Hitchner, James R., Financial Valuation, 4th Edition, John Wiley & Sons, Inc., 2017, pp. 460-461.



discounts of 13% to 14%.⁷⁵ Due to the nature of the assumed liquidation, we conservatively estimate a lower liquidation discount for IEP in the range of 5% to 10%.

Exhibit 9 summarizes our valuation of IEP. Based on our analysis, the mean expected proceeds from a liquidation of IEP is approximately €119M. Aside from PPH, IEP is the only other South African asset that we estimate to have a range of potential liquidation proceeds. Based on a Monte Carlo simulation, the 10th percentile and the 90th percentile of the proceeds are €108 million and €128 million, respectively. As discussed in Section III.C, while there is some uncertainty in IEP liquidation proceeds, the impact on NV assets is very small compared to the impact of uncertainty in PPH liquidation proceeds. For simplicity, we use the €119 million mean proceeds under the simplified Monte Carlo approach described in this report.

D. SAHPL Cash-on-Hand

As of 3 April 2021, Steinhoff management reported that SAHPL held ZAR 13,431 in cash on its balance sheet. Steinhoff expects that before liquidation commences SAHPL will pay off its intercompany loan to SIHPL, reducing balances by ZAR 6,699M (accounting for interest).⁷⁶ This results in a total balance of cash at SAHPL of ZAR 6,733M at liquidation start. The SAHPL cash-on-hand will be kept in ZAR through 31 August 2024, at which time distribution of liquidation proceeds will occur at SAHPL. Any remaining cash and other liquidation proceeds will be held in ZAR through 31 August 2026, when they are converted to

⁷⁵ Dinc, Serdar, Isil Erel, and Rose Liao, "Fire Sale Discount: Evidence from the Sale of Minority Equity Stakes," *Journal of Financial Economics*, Vol. 125, No. 3, 2017, p. 475.

⁷⁶ "SIHPL-SAH loan repayment".



EUR and up-streamed to SIHL (and then further to NV).⁷⁷ When the cash is up-streamed from SIHL to NV on 31 August 2026, it is also assumed to be converted at the projected August 2026 ZAR/EUR foreign exchange rate, as of 30 June 2021.

E. European Assets

Steinhoff's European assets include Pepco Group, Greenlit Brands (formerly known as Steinhoff APAC), Mattress Firm, Conforama, LIPO, and European Manufacturing.⁷⁸

1. Pepco Group

Pepco Group is a discount variety retailer based in Europe. It owns and operates the PEPCO and Dealz brands in Europe, and the Poundland brand in the United Kingdom.⁷⁹ On 26 May 2021 Pepco Group was listed on the Warsaw Stock Exchange at a listing price of PLN 40.00 per share, an approximate market capitalization of €5 billion.⁸⁰ Since the IPO the stock has risen to PLN 49.00 per share as of 30 June 2021.⁸¹ Following the IPO, Steinhoff has reduced its stake to 454 million shares, or 78.89% of the company.⁸²

⁷⁷ As described above, AG has been instructed to assume that the cash at SAHPL would earn interest at an applicable risk-free South African interest rate until the proceeds are up-streamed to NV in 2026, and AG estimates that the applicable South African rate based on treasury bills is equal to 5%.

⁷⁸ In addition, the European assets includes Hemisphere, but it is expected to generate any liquidation proceeds.

⁷⁹ 2020 Steinhoff Annual Report, p. 33.

⁸⁰ Steinhoff Press Release, "Pepco Group lists on the Warsaw Stock Exchange," 26 May 2021.

⁸¹ Bloomberg, L.P.

⁸² Steinhoff Press Release, "Pepco Group lists on the Warsaw Stock Exchange," 26 May 2021; Bloomberg, L.P. IPO proceeds of €1 billion are held in cash at Newco 3, and used to repay debt in liquidation.



The fair value of Steinhoff's stake is estimated based on the 30-day VWAP of Pepco Group as of 30 June 2021 of PLN 46.02. This value, multiplied by the number of shares held by Steinhoff, results in a valuation of Steinhoff's stake of PLN 20.9 billion, or €4.6 billion, as of August 2021.⁸³ AG estimates a 10 to 30% liquidation discount to this value based on evidence from Steinhoff's bankers from during the IPO process, in which they found a 20% discount would be required to place the entire company into the market. We view this as a conservative discount, as the bankers' analysis of the potential placement discount was outside of the context of liquidation and in an orderly sale. Alternatively, in liquidation, the company could place multiple smaller blocks into the market, however, as described above with respect to PPH, liquidation discounts are typically quite large. The 20% mean discount for Pepco is smaller than the 38% mean discount for PPH due to the relative liquidity of European capital markets, possibility of a private sale to an individual buyer, and relatively less onerous regulatory requirements, and relatively more stable economic and political environment. This 20% mean discount results in an average post-discount valuation of €3,514 million as of 31 August 2024.

2. Other European Assets

The valuation method and expected proceeds from a liquidation of the other European assets are summarized in **Exhibit 10**. Each asset was valued using comparable public company multiples, with the exception of Conforama, which was valued based on the expected proceeds

⁸³ Calculated using the forward exchange rate of 4.53 PLN per EUR (the average of bid and ask price) for 31 August 2021 as of 30 June 2021. Bloomberg, L.P.



from the sale of the rest of its business. Marketability⁸⁴ and liquidation discounts were then applied to obtain the liquidation value of these assets.

As shown in **Exhibit 2**, the proceeds from liquidating these assets would not be enough to satisfy the liabilities at Newco 3. The estimated liabilities are more than double the estimated assets at Newco 3 (€13.9 billion liabilities to €6.0 billion assets), so there does not appear to be any reasonable scenario in which there is equity value in Newco 3. Newco 1 similarly has liabilities that significantly exceed assets. Therefore, even if asset values at Newco 3 unexpectedly increased to such an extent that some value could flow up to Newco 1, there does not seem to be a possible scenario in which that value could also cover the liabilities at Newco 1, such that any value could flow up-stream from Newco 1 to NV.

V. LIQUIDATOR FEES AND OTHER PROFESSIONAL FEES

Based on discussions with Counsel, AG estimated and deducted various costs associated with the liquidation of the Steinhoff companies from the liquidation proceeds prior to the assumed distribution to claimholders. Specifically, we assume the following costs associated with the liquidation, which are also summarized in **Exhibit 1**.

- South Africa professional and liquidator fees at SAHPL equal to approximately ZAR 100M, or €5M to be paid in August 2024.⁸⁵ At SIHL and SIHPL, these

⁸⁴ A marketability discount of 20% to 30% is based on literature that compares a) financial multiples from private company acquisitions to b) multiples of publicly traded companies. Such “private company discounts” implicitly take into account the value of control received by the acquirers of the private companies. *See* Hitchner, James R., *Financial Valuation*, 4th Edition, John Wiley & Sons, Inc., 2017, p. 439.

⁸⁵ AG assumed that liquidator fees are paid when the other liabilities are settled. Based on discussion with Counsel



amounts are estimated to be ZAR 100M and ZAR 225M, or €5M and €8M, respectively. Fees at SIHL will be paid in August 2024, and fees at SIHPL will be paid in August 2028.

- Liquidator fees at Newco 3 equal to approximately €50-55M over the liquidation period, and €20-25M at Newco 1 in August 2024.⁸⁶
- Professional fees (accounting, legal, advisory, and other) incurred to liquidate approximately €7B in assets and to resolve approximately €23B of debt⁸⁷ in the European operating companies are estimated to be €20-30M for Newco 3, and €10-15M for Newco 1.⁸⁸
- Dutch liquidator fees at NV equal to approximately €50-60M over the liquidation period.
- In South Africa, bonds of security are required by the liquidators and impose costs at SIHL, SIHPL, and SAHPL of ZAR 1,000M, ZAR 1,786M, and ZAR 949M respectively, based on the rate of 0.575% determined by the Master of the High Court in South Africa.

Total assumed fees for the liquidation of the entire Steinhoff corporate structure are approximately €354M.

⁸⁶ Based on discussion with Counsel.

⁸⁷ These figures include assets and liabilities at Newco 3 and Newco 1. See **Exhibit 2**.

⁸⁸ Based on discussion with Counsel.



VI. ESTIMATION OF STEINHOFF NV LITIGANT CLAIMS

In addition to the previously described analysis of the liquidation value of the Steinhoff assets and estimate of cash available for liquidation at NV, to estimate liquidation recoveries to NV Claimants, we estimate the value of the potential litigation claims against NV. These NV Litigants share in the remaining liquidation proceeds (after paying liquidation costs and satisfying liabilities in the Europe and South African operating companies) distributed by NV along with the other remaining claimants, *pari passu*, based on the size of their respective claims. Our estimates of the potential litigation claims are premised on the assumption that the numerous, complex claims will be successful. In fact, the validity and success of these claims is highly uncertain in a hypothetical liquidation, in contrast to a settlement where they would be accepted at their currently estimated value.

Steinhoff shareholders who purchased shares during the period in which Steinhoff allegedly made misstatements may have a litigation claim against SIHNV. While some NV Litigants have brought Claims, at present, the Claim methodologies and amounts that will be accepted by courts have not been decided, and therefore AG makes reasonable estimates of those claims using consistent and widely adopted approaches.

A. Description of Steinhoff NV Litigants

The potential NV Litigants can be divided into two groups, those who signed contracts with Steinhoff to purchase shares (“NV Contractual Claimants”) and those who purchased Steinhoff shares on the market (“NV Market Purchase Claimants” or “NV MPCs”). The NV Contractual Claims include claims made by the Tekkie Town Claimants, who received 43 million Steinhoff shares as part of Steinhoff’s acquisition of Tekkie Town in August 2016, and

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Lancaster 101 Proprietary Limited Claimants (“Lancaster 101”), who received 60 million shares in a subscription agreement with Steinhoff in September 2016. They also include Mr. Christo Wiese’s Upington claim, which is based on his receipt of 314 million shares in a subscription agreement in September 2016. The value of the NV Contractual Claims are included in AG’s estimate of the NV Litigant Claims, and are valued using a rescission method, described below.

The NV MPC Claims include shareholders who purchased shares on the open market between 7 December 2015 and 5 December 2017, and who held shares through 5 December 2017, and therefore were potentially damaged by any inflation in the Steinhoff share price arising from the alleged misstatements.

Purchasers of shares prior to 7 December 2015 have potential litigation claims against SIHPL, comprising both SIHPL Contractual Claims and SIHPL MPCs, but do not have claims against NV.^{89,90} In addition, there is a small set of insider shareholders and others, who are assumed to not have valid claims against NV. These include former directors and officers of Steinhoff who are deemed to have participated in the alleged wrong-doing as well as Steinhoff itself which held treasury shares that are not deemed eligible to participate in any liquidation distribution.

⁸⁹ Such purchasers are required to have held some shares as of 5 December 2017 to have a claim.

⁹⁰ Shareholders who purchased shares both prior to December 2015 and thereafter may have claims against both SIHPL and SIHNV. However, there is no duplication of claims; estimated claims related to share purchases prior to December 2015 give rise to claims against SIHPL while those related to share purchases after December 2015 give rise to claims against SIHNV.

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B. Steinhoff NV Contractual Claims

AG estimated the NV Contractual Claims as rescission claims for the shares purchased by Tekkie Town, Lancaster, and Upington.⁹¹ A rescission claim is premised on returning the Claimants to the identical position they would have been in, had they never purchased the shares after accounting for any benefits received from holding the shares. As such, AG estimated the rescission claim value for the Tekkie Town, Lancaster, and Upington claims as:

- The amount each party paid (or the monetary equivalent of company shares used) to purchase the Steinhoff shares;⁹²
- less the value received from any sales of the Steinhoff shares;
- less any dividends received;
- less a residual value of shares held through 5 December 2017, equal to the average share price at July 2018.⁹³

As a result, Tekkie Town has an estimated €109.3 million claim, Lancaster has an estimated €269.1 million claim, and Upington has an estimated €1,490.9 million claim.

⁹¹ AG applies the rescission methodology regardless of whether these Claimants assert rescission or only delictual damages.

⁹² For contractual transactions involving the exchange of another entity's shares for Steinhoff shares, the value of those exchanged shares at the time of the transaction was used.

⁹³ Specifically, the residual share price of €0.157 per share is used which corresponds to the SIHNV VWAP for the SIHNV shares listed on the Frankfurt Stock Exchange for the 30 days starting on the first trading day post the publication of SIHNV's 2018 half-year results on 29 June 2018.



Figure 1. Estimated Nominal SIHNV Contractual Claims⁹⁴

Claimant	Initial Shares	Estimated Claims (MM)
Tekkie Town	43,000,000	€ 109.3
Lancaster	60,000,000	€ 269.1
Upington	314,000,000	€ 1,490.9
Total	417,000,000	€ 1,869.2

C. Steinhoff NV Market Purchase Claims

Inflation claims are based on the premise that during the period in which a company, in this case Steinhoff, made misstatements about its financial condition, the share price was potentially artificially high, or inflated. Shareholders who purchased shares during the period in which the share price was inflated overpaid for those shares, by the amount of the inflation. Shareholders who sold shares during the period benefitted, as they were overcompensated for those shares, also by the amount of the inflation. Inflation claims for each shareholder are therefore estimated as the total amount of each shareholder's overpayments due to inflation in the share price at the time of purchase, less any amounts of overcompensation at the time of sale due to inflation. To calculate the NV Inflation Claims, AG identified the period over which the Steinhoff share price was allegedly inflated, estimated the share price inflation over that period, and applied those estimates to the purchases and sales made by the relevant shareholders, and identified the portion of those inflation claim estimates applicable to NV (rather than SIHPL).

⁹⁴ The Lancaster NV Contractual Claim includes the PIC/GEPP Contractual Claim.

1. Relevant Period

Based on Steinhoff's summary of PwC's investigation, the first known fictitious and/or irregular transactions were recorded by Steinhoff in its Financial Year (FY) 2009 financial report. Therefore, we defined the "relevant period" over which Steinhoff shares were potentially inflated, as 2 March 2009 (the date of the Mid-Year (MY) 2009 financial reports) to 5 December 2017 (the date after the first potential curative disclosure of the misstatements).^{95,96}

2. Inflation Estimates

To estimate inflation in the Steinhoff shares as a result of the alleged misstatements during the relevant period, AG first estimated the *maximum* inflation in the share price. Typically, when there are accounting misstatements, the size and impact of the misstatements inflating the stock price increases over time. While there is limited information about the alleged Steinhoff misstatements, the number and size of irregular transactions increased over the period and there were no clear curative disclosures prior to December 2017. Therefore, we assumed that inflation was largest at the end of the relevant period, and estimated the maximum inflation

⁹⁵ This period is based on the 15 March 2019 "Overview of Forensic Investigation," which indicates that the earliest known fictitious and/or irregular transactions were recorded by Steinhoff in its FY 2009 financial reports. As Steinhoff released unaudited mid-year financial results on 2 March 2009, we assume this date as the start of the relevant period as these statements may have included misstatements that were later incorporated in the *audited* full year financials for 2009. See, Steinhoff NV, "Overview of Forensic Investigation," 15 March 2019, available at <http://www.steinhoffinternational.com/downloads/2019/overview-of-forensic-investigation.pdf>; see also, Steinhoff NV, Unaudited Interim Results for the Six Months Ended 31 December 2008, available at https://irhosted.profiledata.co.za/steinhoff/2017_feeds/SensPopUp.aspx?id=133963.

⁹⁶ The inflation claim methodology requires that shareholders hold shares as of 5 December 2017 to have a NV MPC Claim. However, as detailed below, the analysis assumes the share price was still inflated on 6 December 2017 due to a further disclosure made after market close that day, so inflation is measured through 7 December.

in Steinhoff's share price based on the decline in the share price following Steinhoff's disclosure of the misstatements to the market in December 2017.⁹⁷

To estimate the impact of the disclosures, AG used a market model regression to predict the Steinhoff price based on the Johannesburg All Shares (JALSH) and the Stoxx 600 (SXXP) indices throughout the relevant period, and calculated the abnormal negative return in the Steinhoff share price on 6 and 7 December 2017, and between 4 and 7 December 2017.⁹⁸

During the trading day on 4 December 2017, Steinhoff announced that the release of its audited financial statements would be delayed due to issues related to a German tax investigation.⁹⁹ Steinhoff's share price declined €0.62 over 4 and 5 December following this news. As described below, AG included the abnormal stock price decline on these days in the "high" inflation sensitivity.

After the market closed on 5 December 2017, Steinhoff disclosed that it had identified accounting irregularities and that CEO Markus Jooste had tendered his resignation with

⁹⁷ We assume that the market for Steinhoff shares was efficient. Analysis Group has not performed tests of market efficiency on the shares, but Steinhoff had significant daily trading volume, and traded on two major stock exchanges, consistent with characteristics of efficient markets.

⁹⁸ The market model is designed to account for the impact of broader market movements on the Steinhoff share price to determine the component of the Steinhoff returns that are abnormal, i.e., unexplained by the model. Specifically, a log-log model specification was used where the daily returns are specified as $\frac{\text{close_price}_n}{\text{close_price}_{n-1}}$ using total return price series for Steinhoff (JSE) and the market indices that are adjusted for the applicable risk-free rates (3-month SA yield for Steinhoff and JALSH; German corresponding for SXXP). The model also includes flags for each quarter of the relevant period and separate flags for each of 4, 5, 6, and 7 December 2017. The estimated daily inflation on those four dates corresponds to the value of the respective coefficient converted back from natural log to normal values multiplied by the actual (not total return) Steinhoff closing price that day. The inflation per share value for each day is then converted to a Euro-denominated value using the prevailing EURZAR exchange rate for each day. As detailed below, the daily inflation per share values are then combined to arrive at overall maximum inflation values.

⁹⁹ The release has a time stamp of 08:25 on 4 December 2017 so we considered the entire day's trading activity when estimating inflation in the share price before this date. See, Steinhoff NV Press Release, "Announcement of 2017 Results and update on the 2017 audit process," 4 December 2017.



immediate effect. After the market closed on 6 December 2017, Steinhoff announced that it had identified issues with the “validity and recoverability” of “circa €6bn” in assets. As these announcements occurred after the market closed, the stock price would react to the news on the following day, and we observe that the share price declined €2.25 per share on 6 and 7 December, which was a two-day decline of more than 75 percent.¹⁰⁰

AG considered two alternative scenarios for estimating share price inflation based on the sequence of disclosures outlined above. To estimate a “low” inflation case, AG measured the abnormal negative return (the return net of market effects) in Steinhoff’s share price on December 6 and 7. The total abnormal negative return on these two days is €2.19 and is statistically significant at a 1 percent level. To create a “high” inflation case, AG measured the total abnormal negative return (the return net of market effects) in Steinhoff’s share price on 4, 5, 6 and 7 December. The total abnormal negative return on these four days is €2.81 and is statistically significant at a 1 percent level.¹⁰¹

3. Inflation Estimate Throughout Relevant Period

Two approaches are used to estimate the level of inflation in the share price throughout the period. First, AG assumed that the amount of inflation in the share price increased at a constant rate from €0.00 per share in March 2009 to €2.19 per share (or €2.81 per share) in December 2017 (the “Simple *Pro Rata*” approach). Second, due to the significant negative restatement of the asset values and profits in the restated FY 2016 and 2017 financial statements,

¹⁰⁰ This decline is the actual decline in the share price. The abnormal return of €2.19 per share is described below.

¹⁰¹ Note that the share price decline on 4 and 5 December was €0.62 per share, which was also the amount of the abnormal return on these days.

we assumed that share price inflation increased at a constant rate from €0.00 per share in March 2009 to the maximum inflation of €2.19 per share (or €2.81 per share) in December 2015, after which we assumed the maximum level of inflation was present through December 2017 (the “2016 Fixed Inflation” approach).

The two measures of maximum inflation and the two methods for estimating inflation levels in the share price throughout the relevant period result in four inflation scenarios. **Exhibit 11A** shows the inflation per share under the four scenarios. We take the simple average of the daily inflation values across the four scenarios to arrive at a single inflation estimate for each day as shown by the black line in **Exhibit 11A**. **Exhibit 11B** shows the estimated counterfactual Steinhoff price after deducting the estimated average inflation from the actual JSE share price. This daily inflation value is then used to calculate inflation claims based on share purchases and sales during the relevant period, as described below.

4. Shareholder Purchases and Sales

To identify the relevant purchases and sales of Steinhoff shares during the relevant period, AG relied on Steinhoff shareholder data prepared by a shareholder data analytics firm, Orient Capital.¹⁰² Orient Capital used publicly available sources and detailed data from Computershare (Steinhoff’s stock transfer company) containing Steinhoff shareholders and shares held, to create monthly reports of Steinhoff shareholdings for the Steinhoff board. To identify shareholder purchases and sales during the relevant period, AG used the 2009 to 2017 monthly or quarterly Orient Capital shareholding reports.¹⁰³ We assume that when a

¹⁰² “Orient Capital,” available at <https://www.orientcap.com/>.

¹⁰³ Prior to August 2014, the available reports from Orient were on a quarterly rather than monthly basis.

shareholder's shares increase from one monthly report to the next, the shareholder purchased shares during that month, and similarly when a shareholder's shares decrease between two consecutive reports, the shareholder sold shares during that month.¹⁰⁴ The last available report from Orient Capital during the relevant period is as of the end of day 5 December 2017 so we use the shareholdings from this report to determine which shares were damaged for the purposes of estimating inflation claims.¹⁰⁵ We exclude the aforementioned NV Contractual Claimants, SIHPL Contractual Claimants, and other aforementioned shareholders believed to not have a valid claim against Steinhoff. This leaves approximately 2,900 million shares with potential inflation claims against NV or SIHPL, i.e. shares with MPC claims.

5. Calculation of NV Inflation Claims

The purchases and sales made by each shareholder over the relevant period are matched with the inflation per share for the corresponding date of the transaction. Inflation Claims are calculated as the inflation per share multiplied by the number of shares purchased less offsets for

¹⁰⁴ AG performed additional data cleaning on the Orient Capital reports to ensure consistency of shareholder names over time because there appears to be data entry discrepancies in the shareholder name field where the same shareholder apparently was recorded with slightly different names across periods. For example, the beneficial owner "Old Mutual Life Assurance" is no longer in the data for certain periods but a new entry appears with the name "Old Mutual Life Assurance Co" (emphasis added). Left uncleaned, the calculations would assume a sale by one shareholder (e.g., Old Mutual Life Assurance) and a purchase by another (e.g., Old Mutual Life Assurance Co) at the time of the name change, thereby attributing higher damages to those shares. To address such instances, AG reviewed and cleaned the shareholder names for the top 200 shareholders corresponding to 86 percent of shareholdings as of December 2017 and corrected what appeared to be data entry discrepancies in coding of shareholder names. Separately, in August 2014, the Orient data changed format and a significant portion of the shareholders' names changed, so we reviewed the top 200 shareholders corresponding to 81 percent of the holdings at that point to standardize their names across time. To the extent that there are additional names that should be matched up, the estimate of NV Inflation Claims will be overstated.

¹⁰⁵ The report from Orient Capital is dated 8 December 2017 but is understood to reflect shareholdings as of 5 December 2017.



inflation inherent in shares sold multiplied by the number of shares sold. The logic of the calculation is that the shareholders who purchased inflated shares overpaid for the shares, and would have paid less (by the amount of inflation). In contrast, a shareholder who sold shares during the relevant period did so at an inflated price and therefore benefitted from the alleged misstatements.¹⁰⁶ Shares sold after 6 December 2017 are assumed to have been sold with no inflation and therefore those sales provide no offset against claims.

To estimate the NV portion of the Total Inflation Claims we identify the total estimated inflation on all purchases prior to 7 December 2015 (i.e., SIHPL purchase inflation) and the total inflation on purchases on or after 7 December 2015 (i.e., NV purchase inflation) for each shareholder. We then add up the total offsets from sales for each shareholder over the entire relevant period, allocate those offsets between SIHPL and NV based on the ratio of the SIHPL and NV purchase inflation, and subtract those offsets from the SIHPL and NV purchase inflation to calculate the SIHPL and NV Inflation Claims for each shareholder.¹⁰⁷ In the context of the analysis of SIHNV liquidation, the SIHPL Inflation Claims are not considered.

Applying the methodology described above, we estimate a baseline nominal total NV Market Purchase Claim value of approximately €2,810 million. AG then brings the value of the NV MPC Claims forward from December 2017 to August 2021, using an annual rate of interest

¹⁰⁶ Shareholders with negative damages (i.e., those who gained more from selling with inflation than they lost from purchasing with inflation) are excluded from the damages calculation and would not recover in liquidation.

¹⁰⁷ For example, if purchase inflation at NV is estimated at €100 while purchase inflation at SIHPL is at €50, for a total purchase inflation of €150, and total sale inflation offsets are €60, the NV Inflation Claim is calculated as follows: The portion of offsets attributed to NV is €40 ($€60 \text{ total offsets} \times (\frac{€100 \text{ NV purchase inflation}}{€150 \text{ total purchase inflation}}$) and NV Inflation Claims are €60 ($€100 \text{ purchase inflation less } €40 \text{ offset allocation}$).

of 2% per year.¹⁰⁸ Total NV MPC Claims, after interest, are estimated to be approximately €3,020 million.

Given the uncertainty around the true value of the NV Litigant Claims that may be accepted by the courts and how these claims may be valued, we also estimate “low” and “high” sensitivities on the NV MPC Claim estimates.¹⁰⁹

The “low” claims sensitivity scenario is premised on the fact that not all potential NV Market Purchase Claimants may pursue their claims. For this scenario, we assume that only MPC Claimants who have already come forth in settlement negotiations would likely make their claim in liquidation. We estimate a “low” nominal total NV MPC Claim value of approximately €1,450 million, which corresponds to approximately €1,560 million as of August 2021 after considering interest.

The “high” claims sensitivity scenario assumes that all potential NV Market Purchase Claimants come forth and bring claims in liquidation, and that the shares underlying those claims were actually purchased later than expected and therefore have higher associated purchase inflation than estimated in the baseline claims scenario. We estimate a “high” nominal total NV MPC Claim value of approximately €5,180 million, which corresponds to approximately €5,580 million as of August 2021 after considering interest.¹¹⁰

¹⁰⁸ The 2% interest is compounded annually and is based on the Dutch statutory interest rate on claims.

¹⁰⁹ Note that the “low” claims sensitivity corresponds to lower estimated claims, which results in *higher* recoveries for the NV Litigants. Conversely, the “high” claims sensitivity corresponds to higher estimated claims and therefore *lower* liquidation recoveries.

¹¹⁰ Note that the “high” claims are much higher than the baseline scenario for two related reasons. First, the assumption that the shares were purchased later than expected means that shares that have claims against SIHPL, as they were purchased before December 2015, have claims against NV in this scenario if they are now deemed purchased after December 2015. Second, the shares are now considered purchased later in time and therefore at higher purchase inflation as the inflation line is increasing over time, which results in higher claims.

D. Total Steinhoff NV Litigant Claims

Combining the NV Inflation Claims and NV Vendor Claims, we estimate the range of total Steinhoff NV Litigant Claims to be between €3,580 million and €7,590 million with a baseline estimate of €5,040 million, as summarized below. Note we do not estimate a range of potential Contractual Claims, as the nature and detail of these claims are relatively well established and understood.

Figure 2. Summary of NV Litigant Claim Estimates (August 2021 Values)

Scenario	NV Contractual Claims	NV MPC	Total
Baseline	€ 2,012.8	€ 3,022.9	€ 5,035.8
Low Claims	€ 2,012.8	€ 1,564.0	€ 3,576.9
High Claims	€ 2,012.8	€ 5,578.5	€ 7,591.3

All values in €, millions

VII. ESTIMATION OF RECOVERY BY NV LITIGANT CLAIMANTS

A. Baseline

Based on the liquidation analysis, NV would have €1,344M in assets as of 31 August 2031 to be distributed across all NV liabilities.

As there are insufficient funds at the NV level to pay all the claims and liabilities, each claimant would only receive a portion of the remaining proceeds from NV. In the liquidation scenario, AG assumes that the NV Litigant Claims would have the same level of priority as other NV liabilities -- that is, they rank *pari passu* with other claims. Therefore, the liquidation proceeds would be distributed *pro rata* based on claim amounts as of August 2021. The value of NV's other liabilities for purposes of the *pro rata* calculation, which includes guarantees for 2021/2022 debt, 2023 debt and Newco 3 debt, as well as the NV-Newco 1 intercompany loan, is





calculated based on the agreements governing those liabilities and equal their principal and interest values at the start of liquidation, 31 August 2021 (see **Exhibit 1**). AG determined that the NV Litigants would receive a baseline estimate of 34% of the liquidation proceeds at NV (based on their *pro rata* share) or €454M in the baseline scenario in August 2031 (see **Exhibit 3**).

After calculating the expected recovery for the NV Litigant Claims as of August 2031, we convert the value of that recovery to August 2021, for comparison with a settlement reached at that point. To do so, we rely upon the projected Eurozone inflation rate to estimate the relative value of one Euro in August 2031 compared with one Euro in August 2021. The European Central Bank reports a measure of inflation known as the Harmonised Index of Consumer Prices, a measure of consumer prices for all countries in the euro area.¹¹¹ As of Q2 2021, the European Central Bank estimates inflation to be 1.6% in 2021, 1.3% in 2022, and 1.7% per year over the next five years.¹¹² AG therefore discounted the 2031 proceeds by 1.5% per year, an overall discount of approximately 14% to account for this expected inflation. The expected present value of recoveries by NV Litigants as of 31 August 2021 is therefore €391M. This corresponds to a recovery rate of approximately 7.8cents/€ under the baseline scenario.

Below we provide sensitivities on the PPH liquidation value and the size of the market purchase claims. However, it is important to note that there are a number of inputs and

¹¹¹ European Central Bank, “Measuring inflation - the Harmonised Index of Consumer Prices (HICP),” accessed 28 April 2021, available at https://www.ecb.europa.eu/stats/macroeconomic_and_sectoral/hicp/html/index.en.html.

¹¹² European Central Bank, “HICP Inflation forecasts,” accessed 22 July 2021, available at https://www.ecb.europa.eu/stats/ecb_surveys/survey_of_professional_forecasters/html/table_hist_hicp.en.html.

assumptions that could have an impact on the outcome of the liquidation comparator relative to the baseline estimates.

For example, a delay in the liquidation timeline would have a negative impact on the current value of recoveries, while a faster liquidation timeline would increase the current value of recoveries. In addition, as much of the value at NV is derived from the South African entities, and those assets are held and liquidated in Rand, depreciation of the Rand relative to the Euro, in excess of the depreciation currently projected in the August 2026 forward exchange rate, would have a negative impact on the current value of recoveries. A strengthening of the Rand, relative to the current projections, would alternatively result in a positive impact on the current value of recoveries. Finally, if the South African risk-free interest rate does not recover to an average of 5% during the August 2021 to 2026 period, recoveries at NV would be reduced. Alternatively, if that risk-free interest rate rises above 5%, recoveries at NV would be increased. Our baseline estimates of all of these inputs are current best estimates, based on available data and reasonable assumptions, but over the course of the 10-year liquidation period, the ultimate values are likely to diverge from current best estimates.

B. PPH Sensitivity

AG also evaluates a low and high recovery case, based on estimated reasonable low and high recoveries on the 68% equity stake in PPH. In the low case, which relies on the 10th percentile Monte Carlo recovery for PPH, NV would have approximately €1,078M of asset value as of 31 August 2031, and in the high case, which relies on the 90th percentile Monte Carlo recovery for PPH, NV would have approximately €1,664 of asset value as of 31 August 2031. Assuming the baseline claims values, and using the same discount rate, this results in estimated



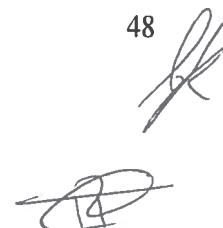
recoveries to the NV Litigant Claims of €314M under the low PPH sensitivity and €484M under the high PPH sensitivity scenario, which correspond with a recovery rate of 6.2 cents/€ under the low sensitivity and 9.6 cents/€ under the high sensitivity. (See Exhibits 12A and 12B.)

C. Claims Sensitivity

As described above, we estimate a high and low claims scenario. An important point to note is that these sensitivities would affect the recovery rate (i.e., higher claims result lower recovery per Euro claim) in liquidation, but they would have a similar impact in settlement, because the claims would also be expected to increase or decrease consistently in settlement. As such, in liquidation and in settlement, an increase in claims results in lower recovery per Euro of claim, and a decrease in claims results in a higher recovery per Euro of claim. Given this relationship, the claims sensitivities and ultimate size of the claims is not particularly important for a comparison between settlement and liquidation.

Nonetheless, using the low NV Litigant Claims estimate of €3,577 million, we estimate that, assuming the baseline estimated €1,344 million asset value available at NV as of 31 August 2031 and the same discount rate, the recoveries to the NV Litigant Claims would be €308 million. (See Exhibit 12C.)

Using the high NV Litigant Claims estimate of €7,591 million, we estimate that, assuming the baseline estimated €1,344 million asset value available at NV as of 31 August 2031 and the same discount rate, the recoveries to the NV Litigant Claims would be €503 million. (See Exhibit 12D.)

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