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14/7/11/1(246)

INFORMATION NOTE

To: The Head: Directorate for Priority Crime Investigation

PROJECT BAE & GFC: BROOKLYN CAS 914 & 916/11/2009

1. The purpose of this information note is to submit reasons for your consideration in closing the above investigation.

2. **Background**

2.1 The initial investigation into the Arms deal started in November 2000 and was conducted by the former Directorate of Special Operations (hereafter referred to as DSO). A substantial part of the evidence that needed to be obtained dated back to the ninetens. The investigation dealt with irregularities and possible offences committed during the course of the strategic arms acquisition programme by the South African Government.

2.2 The arms deal investigation had numerous different legs of which the British Eurospace (hereafter referred to as BAE) leg was investigated by the DSO from 2000 to 2003, when the investigation was stopped. No direct evidence of corrupt payments could be identified in respect of the BAE leg.

2.3 In October 2007, the British Serious-Fraud Office (hereafter-referred to as SFO) requested the DSO to assist them (the SFO) with their investigation of corruption allegedly committed by certain companies and individuals in the United Kingdom. In a nutshell, it revealed that BAE had paid huge "commissions" to "agents" based both in South Africa and elsewhere to assist in securing contracts. These commissions were paid into offshore bank accounts. BAE was unable to provide satisfactory details of the work done in return for these payments.

- 2.4 The SFO also requested that a joint investigation be conducted between them and the DSO. The two parties were co-operating through the informal sharing of information and did not make use of the formal MLA processes.
- 2.5 The former Director-General and the previous Minister of Justice and Constitutional Development became aware of this informal sharing of information arrangement and expressed the opinion that the information received by the DSO might be unlawful because the information was not sanctioned by ICCMA. They are of the opinion that by receiving the evidence by means of such informal cooperation and "bypassing" the provisions of ICCMA, the admissibility of such evidence might be challenged as it might be unlawful, hence the legality of the DSO investigation. To date no MLA was provided by the Department of Justice and Constitutional Development.
- 2.6 In the time that has lapsed, the three suspects in the BAE leg in South Africa have all passed away. They have played a very important role in the arms deal and without their evidence it will be difficult to prove a case against the other suspects.
- 2.7 The main investigators in the broad arms deal investigations left the DSO as far back as 2003 which also included a forensic accountant.
- 2.8 In 2009, the case was transferred to the South African Police Service for investigation. The case was allocated to Colonel Du Plooy. He was not the investigator of this specific case, but bear knowledge of the broader arms deal allegations.
- 2.9 The case was referred to the NPA for a decision based on the following:
 - 2.9.1 Due to the fact such a long time has lapsed;

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2.9.2 An MLA request was not issued;

2.9.3 The investigation was also in a beginning stage;

2.9.4 The three main suspects were deceased; and

2.9.5 The fact that the SAPS are not in a possession of a formal Mutual Legal Assistance Request and that the majority of the investigation is abroad

2.10 The NPA held the view that the investigation was at an extremely incomplete stage of the investigation not due to the fault of anyone in particular. It is apparent that the investigation did not receive attention for a lengthy period of time due to the investigators being occupied of what can loosely be determined as the main arms deal investigation. Furthermore, they are of the opinion that it will take a long time to finalise the investigation and that the State would have to content with a speedy trial.

3. We refer this report to you with a recommendation to close the investigation based on the following reasons:

3.1 The arms deal investigation was declared in November 2000. The transactions relating to this investigation refer back to the mid nineteens and it is, therefore, envisaged that the investigation will not be finalized in the next five years. If the investigation would lead to a trial, it will take even longer to finalise. If the above is taking into consideration then the constitutional rights of the accused to a speedy trial will be severely jeopardised. There is then the possibility that the accused can still opt to challenge the State that can even delay the trial further. The NPA is unsure at this stage of the investigation as to what the success factor of such an argument of a speedy trial might be, due to the time that has lapsed.

3.2. Several companies involved in this matter do not exist anymore and this will cause even further problems regarding the obtaining of evidential material.

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- 3.3. Some of the witnesses are not employed at the companies and institutions involved and it will be very difficult to obtain the necessary information from these companies and/or institutions. It will also be difficult for witnesses to have access to databases and files in order to identify applicable records for evidence.
- 3.4. Many of the witnesses are in countries abroad and needs to be interviewed to determine whether they can provide information to substantiate the allegations.
- 3.5. It will be very difficult to obtain bank documents especially in the countries where offshore accounts are held and some of the witnesses can only be traced/located through these records.
- 3.6. Bank and company records are only kept for five years in terms of the legal provisions.
- 3.7. Although the issue of cost implications to conduct an investigation cannot be a consideration to close the investigation, it should not be ignored.
- 3.8. There is currently no *prima facie* evidence against any person.
- 3.9. Little investigation was conducted in South Africa and a team of dedicate investigators and prosecutors will have to be assigned to conduct the investigation.
- 3.10. Some of the suspects are now residing in other countries and extraditions will have to be applied for.
- 3.11. The offshore accounts will have to be traced. It is not known whether we will be able to get information from those countries where the offshore accounts are kept.
- 3.12. Some of the main suspects are already deceased and to institute a successful

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investigation against the secondary suspects will be a major challenge taking all the factors mentioned into consideration.

- 3.13. Auditors will have to be appointed in order to investigate the flow of funds and the validity thereof. This can only be done once access has been obtained to the offshore bank accounts. Due to the time lapse we are also not sure whether this evidence will be available. Taking into consideration that forensic accounting investigations take some time to finalise, it will further impact on this case.
- 3.14. The fact that the SFO has finalised their investigations with plea agreements with the directors of BAE will have an impact on our investigations. The agreements also did not include the South African part of the investigation and it would be very difficult to convince the directors to testify in South Africa. The same argument applies to witnesses that immigrated or are living abroad. South Africa also does not have the jurisdiction to compel them to testify in South Africa. Needless to say they do not have to cooperate with the SAPS.
- 3.16. The evidence now to be sought is old and stale and there will be some difficulty in collecting and collating such evidence. Taking into consideration the time lapse and the fact that the law requires that company and/or bank records be kept for 5 years. Several companies do not exist anymore and the books and records will be difficult to trace and obtain.
- 3.17. A variety of reports written by the various working groups will have to be converted into admissible evidence. The evidence lead in the Shaik matter will have to be carefully studied individually, and the evidence of the relevant individuals will have to be evaluated in as much as it is relevant to this matter.
- 3.18. Approximately 460 boxes of documents and 4.7 million pages of documents must be perused and analysed.

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4. The reason mentioned in the BAE case is also applicable to the German Frigate Consortium case - Brooklyn 914/11/2009.
5. The investigator was involved in the main arms deal for the past nine years. His experience was that some of the decisions that impact on the investigation/allegations were not documented in respect of Government departments.
6. According to the investigator, Colonel Du Picoy, some of the witnesses that can assist or explain the reasons behind certain decisions are deceased and therefore makes it an impossible task to counter defence strategies of the accused.

MAJOR-GENERAL
act/DIVISIONAL COMMISSIONER
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
JW MEIRING