RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

SOUTH AFRICAN REVENUE SERVICE

BEFORE COMMISSIONER

THE HONOURABLE MR JUSTICE NUGENT (RETIRED)

ASSISTED BY

PROF M KATZ
MR V KAHLA
MS M MASILO

HELD ON

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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@mweb.co.za
Web Address: http://www.realtimesa.co.za

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[PROCEEDINGS ON 19 OCTOBER 2018]

[09:03] COMMISSIONER: Yes morning.

MS STEINBERG: Morning Judge and panel. We call Mr Mark Kingon.

COMMISSIONER: Mr Kingon, may I just say in advance that we really want to thank you for the support you've given to this Commission and thank you very deeply because you've been absolutely supportive. Not only in assisting us with facilities and so forth but, you know your response to our, I wouldn't say request, our demands all the time. I know you've got very, very heavy responsibilities at the moment and all of your, our requests have been instantly dealt with and it is so gratifying to see the head of an institution under inquiry being so open and we really want to thank you very much for that.

MR KINGON: I appreciate that, Judge.

COMMISSIONER: Do you affirm the evidence you give will be the truth, the whole truth and nothing but the truth. Say I do.

MR KINGON: I do.

EVIDENCE OF MR KINGON

COMMISSIONER: Thank you.

MS STEINBERG: Morning, Mr Kingon. I'd like to repeat the thanks from the side of the advocates

and just to add to what the Judge has said. The liaison team that you've given us has been indispensable to our work. We wouldn't have able to do it, at speed and at all in fact without their help so thank you.

MR KINGON: Thank you, Advocate.

MS STEINBERG: Why don't you kick off, Mr Kingon.

MR KINGON: Firstly, Judge, to the panellists, the evidence leaders, thank you for the privilege of being here today. Nervous privilege I may say, Judge and obviously in preparation one doesn't know what to anticipate in terms of this. But thank you very much and I will say a bit later in terms of thanks to you with regards to the work that has been done in terms of the thing. You said it's been, we've been instantaneous in responding, I've attempted to do that, Judge. I think not always have I been, it's put me under pressure. Let's put it that way but it's for the good of the country and for the good of the organisation and for us that's the most important, as we kick off here. But thank you, Judge.

If I may kick off. I was obviously appointed to the post of acting Commissioner on the 19th of March, exactly seven months today. In the evening of the 19th of March I was appointed to a 90 day tenure by the Minister of Finance and it's been repeated twice subsequently and my

next acting tenure ends on the, if I've got it right, on the 13th of December 2018. Obviously I was parachuted into this position and I think it's important that on the 14th of March that I had been appointed as the acting head of business and individual tax on the resignation of Mr Jonas Makwakwa. That was a Wednesday. On the evening of the 19th which was a Monday I got the call am I prepared to act, and I might say I didn't say yes immediately, Judge, but I, it was five days that I was in that position and obviously then I was asked to serve in this.

I think you would acknowledge that that propelled me into a very awkward situation having people who were senior to me reporting to me. It does make it difficult. In addition I had to cooperate with your Commission which was kicking off at that point in time and ensure that the organisation continues with its operations and revenue. We had to balance these two things. Whether we've got it right is a debatable issue and we can get to that. We also face the issue that we've got severe cuts in terms of our budget and that gave other aspects that we need to deal with and we may touch on those a little later.

To top it all SARS was involved in a number of non-core litigation as I would call it. Non-core disputes that really were distracting to our organisation. The so called alleged rogue unit had really taken a lot of time in

terms of the management of the organisation. Just prior to my appointment, the budget in February and really we were being blamed with regards to the VAT increase that we were 50 billion short in terms of the printed estimate that was published in the prior budget. We obviously did not reach the, at the end of March, just after I was appointed, we did not reach the revenue target as you are aware. We were fighting with the Auditor-General amongst others which I'll touch on a bit later and there was many disputes about certain crimes or alleged crimes that had been committed whether there was cover-up or not and I'm not going to go and dwell on that now but these, this is the context into which we came.

Judge, we were previously in the media for the right reasons. We would be in the media for operations, operational issues and I'm happy to be in the media when refunds don't flow or something like that. Obviously we don't want service failures. But that's our business. It's about service. But to be in the media for non-issues, non-core issues that was the huge challenge and I think it's very important to say rarely if ever had SARS had to contend with weak leadership, a blemished integrity, total public distrust of our organisation, serious operational lapses and breaches of the higher purpose. I don't think we've ever experienced in my history of being in this

Page 3699

organisation a moment like we are in today and I hope in my tenure here whatever capacity that might be I will remain to serve, I hope we never have to face this again. It is a first for us.

Having our credibility and our effectiveness under question in the public domain is severely damaging not only to the country but to our organisation, our staff, many of who are represented here. I was obviously daunted by all of this coming in and I had to find the strength to keep SARS going for the sake of this beloved country of ours. That meant that I had no option but to work with SARS to ensure that we had stability in terms of the organisation. I think it would be true to say that the situation continues to be uncertain, tumultuous and I think you've seen many things. The suspension of the Commissioner, Mr Tom Moyane, it has capped a period since 2014 where all these different narratives have played out in the media. It's extremely tumultuous. It's the four years that, I think have aged me the most, in terms of who I am.

Many, and there's many people here if I may say, both current and past SARS people who have had to contend with job displacements, retrenchments, resignations and dismissals triggered by findings and recommendations of various investigations such as this Sikhakhane report and

Page 3700

the KPMG report and I want to pause a while there if I may, Judge. And just to say for an organisation to allow a release of the Sikhakhane report into the public domain which ultimately damaged people to the extent that I have seen damage in people, to release taxpayer details on this Sikhakhane report and issue a press release without thinking twice that this is in conflict with the principles of confidentiality it's a shame and I'm deeply perturbed by it. The damage it's caused is huge.

Obviously the implementation of the new operating model on top of that compounded things and I don't want to elaborate on that today, necessarily in absolute detail because you've heard much evidence in the last few months with regards to that. These things combined to have damaged SARS's reputation and wreck personal lives and there's people's personal lives that have been wrecked here. Careers, reputations have been directly impacted on of our staff and it's not Judge that it's only the people who were displaced from jobs who were impacted. There are many people sitting in this room and I know there are, who got posts, who got positions in terms of the operating model, they also felt the hurt and the pain and there's many examples of that, that I could share with the Commission, but this had the result of sowing uncertainty and division and creating a serious climate of fear and

Page 3701

distrust in our organisation.

I've mentioned the litigation a little earlier that we were embroiled, this is on top of all of this and you know for me to be litigating against the Auditor-General on the one side and then my boss, the Minister of Finance. It's unheard of and it really goes contrary to the flow of what we would like to be about and these things are just not acceptable. I've resolved all of the cases that are out there that were non-core, they have been resolved, there's some aspects just cleaning up in terms of that but that will continue. We have to get into our focus of restoration of our organisation and resume our place as a tax authority that is robust, it is trusted, in some cases feared, I think one would have to say, but for the most place trusted because if we trust it revenue collection will flow and I believe that we have to do this for the sake of our country.

I do remain even as I sit here today very concerned about the overall health of our organisation and it's a thing that for many nights has kept me worried, how do we fix this, how do we fix this, this key issue and just some of the concerns that I just wanted to touch on. When I came in we were faced that we had three chief officers' positions vacant. So we got the chief officer of business and individual tax, we've got the chief officer of customs

Page 3702

who had recently resigned, we had an acting chief officer within the Finance space where the chief officer of Finance had resigned in August of last year. To have three key positions vacant in that way is serious for the organisation. I have filled obviously the positions of business and individual tax and customs with acting positions now and we're waiting just to see how we proceed in that regard and I have appointed the chief officer of Finance who testified earlier this week, I did that with the concurrence of the Minister who I am accountable to for such matters.

It would be true that our executive leadership is broken and unstable and wracked by division and distrust. We need visionary leadership at this time and I don't think at this time we have such visionary leadership to take the organisation to the next step in our, going forward we have to fix this place and for me it's so critical, we need vision and just in thinking about and in preparation for here there's a statement and forgive me I don't know who said it but an organisation that has no vision dies. We need vision to take this place forward.

I need to also acknowledge Judge, that there are cases that we've been in denial that there's a problem and that, the first part of healing is accept that there's a problem and then we can move forward in terms of going

Page 3703

forward. Very importantly and it's been a fascinating journey for me as I've come into the office and I've had the opportunity to go through lots of documents and I've made many of them available to you. But management has been disempowered in terms of the availability of information. A lot of information was kept in an inner clique within the organisation and I'll give an example. The Bain report and the diagnostics was not openly shared with everybody. So you couldn't make judgment calls, you get told this is the direction. You get the Gartner report which is so fundamental to the organisation, that is not shared as openly as it should. We then say in the Gartner report no there's a can of worms that's been uncovered in terms of the Gartner report. I'm not sure, I haven't seen that. I have not seen that evidence that shows there's a can of worms, and I think it may even have been stated in this very room. We then go on an escapade and we appoint Grant Thornton which, the chief officer of Finance alluded to. But the report of Grant Thornton comes back to us in a PowerPoint presentation which for me is not a forensic audit with due respect and if I look at that it's all ifs and buts and disclaimers. But that report is also not shared with management to empower them and you've got to wonder if I do a report why am I getting a report. Is it for, to keep in the closet and I just suspect, if I may, I

Page 3704

think there was a lot of maliciousness in it because it was targeted at certain individuals let's find evidence that can sink people and, there's a lesson I've learnt and I'm jumping away from my script that I have. There's a lesson in this, dwell more in the future then in the past because the past, yes it's happened but let's look to the future. We know the things that are broken, let's fix them. I think just an example of the withholding of information that the evidence leaders led evidence a few weeks ago when Minister Gigaba was here was the aspect of the so called Russian trip that took place in November or December I can't remember the exact date now for a second. My mind went blank there but that, no one in our leadership team knew about that trip. I sent a letter to the Commission on the 21st of August, I sent a reminder on the 28th of August. I'm still none the wiser. As I sit here I do not know. So that's just some of the information. Normally if I was to go for instance, I hate travelling, but I went to Ghana, I don't hide it from my people, my people know where I am. I've got to appoint an acting person, they need to know where I am, what I'm going there for. I need to be accountable. The point of Commissioner and I'll get to that at the end, Judge, has to be accountable and we have to be accountable for doing the right thing.

Very importantly these aspects, these disturbing

Page 3705

aspects at the top permeated to all levels in the organisation and obviously created a fertile breeding ground for destructive gossip, fear and distrust which even continues today. I need to say that this was compounded by certain arbitrary and unsympathetic HR processes. Cases of frivolous and mischievous internal investigations and it's an area I'll came back to a little later. Employee morale has been impacted very negatively. Even yesterday afternoon I sat with the IT team, the impact on the staff morale is severe and we need to rebuild that and that's what I'm trying to do and it's one step at a time. We need to fix these things.

MS STEINBERG: Mr Kingon, can I pause for a moment. The role of HR and employer relations I just have a couple of specific questions for you there.

MR KINGON: Sure.

MS STEINBERG: You brought to our attention, not long ago an application from Mr Lebelo, whose the group executive of employer relations to Ms Refiloe Mokoena who is now the suspended CO legal, an application made on the 9th of July this year for external legal services and that resulted in work being done by Mr Maphakela of Mashiane Moodley Monama to the tune of in excess of R759 000 in one month and that work was to prepare Mr Lebelo just to give evidence before this

Page 3706

Commission. I want to know if you authorised that?

MR KINGON: I did not authorise that. I think, maybe if I could, Judge, just highlight how the process works. So I would not normally get involved in the approval of legal costs. That is the domain of the chief legal officer insofar as it relates to matters outside the labour relations space. In other words there was a delegation in place up to a point and I, forgive me with regards to the dates, that would have allowed employee relations, say if they're entering a CCMA matter or labour court matter they would be able to employ lawyers in terms of that. But there's two things I want to say, if I may Judge. That, it followed the proper governance processes to get approval. The chief legal officer did have the authority to approve that. Do I approve it personally, no. We had a specific process in place with regards to the approval of legal support to people who have appeared before you. They went through our corporate legal team. Ms Mcungu Mathebula and I specifically put that in place. If anybody need it they need to get approval and go through that, that was not done in this case. And I was not aware of these costs being incurred.

MS STEINBERG: Do you think it's appropriate?

[09:23] MR KINGON: No.

MS STEINBERG: Is it worthy of a disciplinary?

MR KINGON: I have not engaged Mr Lebelo on this specific matter and I think I would owe it to him to do that first. If I look at the extent of the costs involved and where I am in my current climate of my organisation, our organisation, maybe I should be saying, I can't afford costs like this. And to be charged 750 000 including VAT, actually a bit more than that, for one month's work and not full time work, there's something wrong.

MS STEINBERG: Well if –

COMMISSIONER: Do you know the nature of the work that was done?

MR KINGON: I have not seen the brief, I've only read the invoice and I have to assume from that that the work related to preparation of the evidence that he led here with regards to Mr Pillay and I think I saw Mr Richer's matter there, Mr Lackay's matter, I think Johan van Loggerenberg's matter, there might have been one or two others. Forgive me, I've got the matters here, but ja.

MS STEINBERG: It seems to be, the instruction seems to be Mr Lebelo asking Mr Maphakela to gather documents around the Rogue Unit saga and to prepare files which he did. I must say Mr Kingon, that we are

particularly disturbed because Mr Lebelo repeatedly said in his evidence that the reason he wanted to give evidence was to clear his own name. So it seems to us that an amount of R759 000 of taxpayer money was spent in an attempt to help him clear his own name. This Commission – as the Judge has said repeatedly we accept that there was legal advice before him which justified the disciplinary action that he took. And it really does baffle us why this amount of money had to be spent.

MR KINGON: I think it's unnecessary and it warrants a further investigation to lead to a conclusion whatever that conclusion might be in terms of our due process. It's unacceptable, Judge.

MS STEINBERG: I have a second question.

MR KAHLA: Maybe before you move on the first one, I just need clarity.

MS STEINBERG: Go ahead, Mr Kahla.

MR KAHLA: I understood you, Mr Kingon, to suggest that the Chief Officer Legal had authority to approve the application. Did I understand you right?

MR KINGON: Correct.

MR KAHLA: So there's no question around authority having been given by the right person.

MR KINGON: No question.

MR KAHLA: The question around this, the

point as I understand it, is around the wisdom exercise, if any, by the one granting the request, the authority always lay with Ms Mokoena whether or not she exercised that authority rightly that's a different matter.

MR KINGON: Correct. The key thing, Sir, is that in any briefing to legal teams you need a brief, I haven't seen that brief. So I'm not sure what was put before them to say this is the advice that we're needing or not needing. I haven't seen that, I have only seen – so before any approval is granted you need to understand the scope of the approval that you're going to grant surely because it can't be a blank cheque to say I can incur millions of rand just to go in a certain direction. And again it's backward looking, instead of looking to the future.

MR KAHLA: Could you also then clarify to – you've indicated that you approved a process for individuals within SARS seeking legal advice for coming before the Commission to be cleared through corporate legal services.

MR KINGON: Correct.

MR KAHLA: What was envisaged by that?

MR KINGON: Well what happened is there were certain people who were approached by the Commission to lead evidence and they just sought some legal advice in

terms of how to present it, etcetera. It was just if they needed it. And there were two or three people that specifically asked and we felt it right to do so.

MR KAHLA: Why would the matter in relation to Mr Lebelo not fall under that category of approval?

MR KINGON: That I can't answer before I do further investigation.

MR KAHLA: That's where I've sort of noted you to suggest you think that one was improper and I'm just trying to see how would you distinguish that from the sanction that's given in relation to the others.

MR KINGON: I don't know quite how to answer you because I don't know the facts as to how it happened that they gave the approval for the 750 000 to be incurred. And I need to go into that in a bit lot more detail which I haven't been able to do as yet. But the process of getting that approval was known, in fact Mr Lebelo, prior to appearing at the one stage, actually approached and he sought advice. I said well have you got legal help. And he said no which I assumed was the correct position and he actually did seek by writing to the head of corporate legal to get such approval. He didn't utilise it as such at that point in time.

COMMISSIONER: Well there are two very

separate things and that is you hire an attorney or counsel to come and sit here and to assist you if you get into any difficulty as you're giving evidence. Maybe there's a question asked that would incriminate you and your counsel would say he shouldn't answer that question or whatever. That's that, it doesn't cost R750 000 for someone to sit and do that. Do you have the letter that was written, I remember a letter that was written to me. It was a very different case here. This was a matter and I'll tell you now because I received the letter, they CCd, as they were talking to each other, they kept CC-ing me and I would like to know why they felt it was necessary to do so. But be that as it may, in which exercise was go and gather all the evidence we had against Mr Pillay, Mr Richer, Loggerenberg, etcetera at that time four years ago when we were about to discipline them. Gather all the evidence we have to show what we had, to show what evidence we had. There's a long letter from Mr Maphakela there analysing that and showing why he said they were all guilty. Now that's a very different matter from having someone to sit here to protect you as a witness.

MR KINGON: We agree.

COMMISSIONER: That might cost, well I don't know if it costs R750 000, particularly as your brief is only to gather the documents you had. It would seem to

me it would take a day to do that, but be that as it may, Mr Maphakela and Mr Lebelo are coming next week, they've been summoned to come and explain that. But just to assist you they are two very different briefs you're talking about here.

PROF KATZ: Could I just add to that, Judge? Counsel is that one for the past or for his appearance on Monday, that account?

COMMISSIONER: I'll tell you if I may say so, if I may intervene. It is to prepare him, to prepare the evidence he should give to us. I.e. prepare, gather together the evidence he should give to us on the whole Rogue Unit and why it was justified to pursue these people. That was the purpose according to the letter. Have you got that letter?

MS STEINBERG: I was going to turn to that next if you don't mind.

COMMISSIONER: Anyway, Mr Kingon, if I may say so, you can investigate as much as you like, but spending three quarters of a million rand of taxpayers' money for that purpose, to resurrect the Rogue Unit and to resurrect evidence against these people of four years ago is to my mind outrageous.

MR KINGON: I would concur, Judge.

MS STEINBERG: Mr Kingon, I sent you this

letter a couple of days ago and the reason I sent it to you was I wanted to ask you whether this was a letter that represented the views of SARS. And I'd like to point to a couple of paragraphs which are disturbing to the Commission. It's an 11 page letter, it was written on the 22nd of August 2018, so if I may say the cost – whatever this letter cost Mr Maphakela to write is not included in the R759 000 because it's from another month. So 759 000 is the minimum. I've seen another invoice for 65 000 from another month. So frankly we're approaching on a R1 million for Mr Lebelo's appearance here in order to re-awake the Rogue Unit issue. Now this letter, as the Judge said, is actually a letter from Mr Maphakela to Mr Lebelo, but it CCd the Judge. And it followed a meeting or two that the Judge and Mr Lebelo had had discussing the so called Rogue Unit evidence.

COMMISSIONER: Well if you don't mind my saying, not discussing the Rogue Unit, discussing what Mr Lebelo wanted to come and say to this Commission and he wanted to come and say to the Commission. He said I want to go and justify why we pursued these people and that's where it –

MS STEINBERG: Yes.

COMMISSIONER: - if I may say so it was those –

MS STEINBERG: They were your meetings yes.

COMMISSIONER: - these were my conversations.

MS STEINBERG: Now most of the –

COMMISSIONER: By the way I said you're welcome to come and appear before the Commission. It's been said at that time particularly that this Commission was blocking things and so forth. I said, Mr Lebelo, if you want to come and talk to the Commission you do so. It doesn't mean that he's going to have a platform here and that's not what this Commission is about. And we will see what it is he wishes to tell the Commission. If it is of value to the Commission we will hear it and if it is of no value to the Commission we will not hear it.

MS STEINBERG: Now the first nine pages of the letter set out why, in Mr Maphakela's opinion how Mr Pillay, Mr Richer etcetera, etcetera were all guilty at the time. The last page or two, paragraph 24, is headed The Importance of a Public Rebuttal by the SARS, that's by the SARS. And this is why I put the questions that are coming to you, Mr Acting Commissioner. And Mr Maphakela says "Mr Pillay has been granted an opportunity by the Commission to tell South Africans and the entire global community that he had been purged out of the SARS. And that the unit was

Page 3715

lawfully established and that this unit did not engage in any unlawful activities. In this regard it's critical that the SARS Human Resource is given an opportunity to provide the SARS's version of events around 2014, particularly what as to what led to the initiation of disciplinary proceedings against Mr Pillay including his suspension. There is no reason why the SARS HR should not be given a platform. It is important that the Commission does not only allege to be fair, but that it is seen to be fair especially after it's given Mr Pillay an opportunity to state his version of events."

It goes on to say "same with Mr Ravele." The next paragraph is "The new, but yet puzzling position adopted by the Commission not to deal with the allegations surrounding the unit are disappointing given that other people such as Mr Pillay were granted an opportunity to state their version of events in respect of this unit. And there is no indication that their evidence is to be ignored given the Commission's change in direction." And he concludes by saying, almost concludes. "In my view if the SARS HR is not given the opportunity to be heard in an open and public forum like the one afforded to Mr Pillay, it would confirm my reasonable suspicion that the Commission has already made up its mind in finding that Mr Pillay was purged out of the SARS, particularly that the Commission

Page 3716

has now decided to avoid the allegations around the unit.

My reasonable suspicion is based on the ongoing lobbying to bring Mr Pillay back into the SARS. And this would be possible if the Commission was to make a finding that Mr Pillay was purged from the SARS and that there was no prima facie case against him prior to his resignation from the SARS. It appears that this is likely to be the conclusion given by the Commission's glaring outlook to ignore existing prima facie evidence against Mr Pillay as submitted to the Commission by Mr Lebelo. In my humble observation the Commission is reluctant to accept any evidentially material that goes against its preconceived finding which is motivated by the dominant but incorrect narrative that Mr Pillay was purged." And he says he remains available to the Commission. We have summoned him and we appreciate that he's available. Now you'll appreciate, Mr Kingon, that Mr Maphakela is accusing this Commission of bias and I ask you is that SARS's position about this Commission?

MR KINGON: Not at all and if anything I – firstly this does not represent and I've got highlighted those exact paragraphs you've read. This is contrary to reflecting anything of SARS. This is definitely not my view, it is not SARS's view. There's no way that I believe that this Commission is biased in any way. I wouldn't have

Page 3717

supported it otherwise. We've got to put all the evidence before you, you will make up your mind, I trust this Commission whole heartedly and I believe that you will make your minds up after you've heard all the evidence. This letter saddens me because it purports to represent me ultimately because I'm the accounting officer. And to do that is unacceptable and I distance myself from this letter.

MS STEINBERG: And then a follow up question. This so called Rogue Unit probably about six people, it was disbanded years ago, is it a priority of yours to continue to investigate what happened?

MR KINGON: Not at all. The Rogue Unit is history, Judge. The Rogue Unit, there's a whole narrative, there's information that has been provided, yes there may have been elements in it that operated in a way that I wouldn't feel comfortable with today, but we need to move on. We can't be dwelling in the past, this is now four years on, we can't keep on dredging this up and dredging this up. How are we ever going to get to a place that we can move forward? So it is not my intention to go dig into the Rogue Unit. And you know in the way it was dug in and I want to pause there a while. The way we dug into that Rogue Unit there's a person sitting in the audience here who will remain nameless, the one thing he

Page 3718

asked of me, one thing, just give my parents a letter, I get emotional, forgive me, that I wasn't involved in a brothel. This is not how we treat people, we can't.

COMMISSIONER: Don't worry, Mr Kingon, I've been driven to tears at times about what I hear here.

MR KAHLA: A follow up.

COMMISSIONER: Sure.

MR KAHLA: Was there ever an impression within SARS, I'm talking now since the Commission had started its work, that there were matters that were considered relevant to the terms of reference of the Commission that the Commission was not willing to hear?

MR KINGON: I've had no such view no.

MR KAHLA: Was it ever raised with you that there may be an impression at least from HR that –

MR KINGON: No.

MR KAHLA: - the Commission may not be open to hearing any other side of the story in relation to the termination of those individuals?

MR KINGON: No. Nothing prevented any evidence from being provided to the Commission and you've shown you to be open in every way to anything that we've brought. So, no.

COMMISSIONER: Yes well I can just say on that that counsel will correct me, I don't know of one

person who has come and said I want to give evidence who has not been permitted that including Mr Lebelo. Has anyone approached us and said I want to give evidence and we've said no you can't? There was the one man who wanted to come and give defamatory evidence and we said well what is the basis and he said he didn't have a basis.

MS STEINBERG: Well he didn't want to give the evidence, he wanted me to give the evidence.

COMMISSIONER: Oh yes ja.

MS STEINBERG: Please go on.

COMMISSIONER: Anyway I just wanted to just clear that up. You know are asked in one our terms of reference were people, I think the word was coerced out of the organisation. We'll look at that and decide that and decide that. And I think that it does start at the beginning of – end of 2014 when people started to be resigning, etcetera and one wants to know why they resigned. So to that extent. Do you know anything about – you read in that letter a campaign of some kind, there's lobbying of some kind for Mr Pillay to come back here. Have you ever heard anything of this?

MR KINGON: There's always been rumours, Judge, of many things. So you've got to just sift out what's true and what's not true, but that's not the focus at the moment.

COMMISSIONER: No I understand that, I'm just getting a bit, not concerned, I'm just getting fascinated by this obsession with Mr Pillay. Do you know why there's such an obsession with Mr Pillay?

MR KINGON: I have got no idea. You know I worked for Mr Pillay and I've got nothing but respect for the man and I've got no idea what the obsession is about. But, Judge, these obsessions must move off the –

COMMISSIONER: Well if you say so, Mr Kingon, and maybe you're right, but I've also got to decide whether we should move on or whether we should have Rogue Unit hearings.

MR KINGON: Ja sure.

[09:43] COMMISSIONER: But I am just fascinated, I have never met Mr Pillay, I don't know him, I don't know any of these people. But I am just hearing of three quarters of a million rand. You know, I live a very modest life if I may say so. To me three quarters of a million rand is a lot of money and what is that to pursue Mr Pillay, pursue Mr Richer, pursue Mr van Loggerenberg or whatever? Can you, I'm quite serious. Can you tell me, can you give me some insight into what on earth is going on.

MR KINGON: I don't know Judge, but you know what scares me Judge? Is that that money and my chief

officer of Finance is here, could have been used to employ two people on my front lines.

COMMISSIONER: Ja, you know if you just look back again, I'm just trying to calculate. How much money was spent at the beginning? 24 million to trawl through papers to see if you can find something on them, on Mr Pillay or even Mr Kasrils' name gets put up there without even knowing and we know very well, I've seen the records. Mr Kasrils' affairs were being dealt with in the ordinary cause by his tax advisor. Three quarters of a million, I don't know how much in legal fees went into that. Enquiry after enquiry. How much did that cost? It must be up to 40 million rand that is being spent there, to investigate? I mean it may be true, it may well be that the, amongst these six men that they were doing things that are illegal. Perhaps, how long? Does it cost 40 million rand to find that?

MR KINGON: Well, some of it's been refunded by one of the firms.

COMMISSIONER: Yes.

MR KINGON: So it is less now, but it goes in also to the IT contracts and forgive me, I haven't got the figures at my fingertips with regards to what we spent on Grant Thornton.

MS STEINBERG: 12 million.

MR KINGON: 12 million. It's another 12 million, so it all adds up.

COMMISSIONER: People are spending money here like water. Sorry Mr Kingon, and I'm about to put in my tax return by the way.

PROF KATZ: Mr Kingon, are any of these matters discussed at EXCO?

MR KINGON: We have had discussions with regards to some of the matters. Ja, some of them.

COMMISSIONER: Anyway, we can move of that. We can see if, if anyone, I've said it how many times I've said here, if anybody wants to give evidence in contradiction to any evidence you've heard, please come forward. It is now four, six weeks away from having to finalise this matter and I've said it so many times. 14th of August was the date for, you've got to have a set cut-off date some time. 14th of August was the date. We've had nothing to contradict any of the evidence we have heard here. I received two affidavits yesterday in relation to one point about what Mr Scheepers said. I will see them, I've arranged to see them this afternoon to see if they want to give evidence. If anyone has got any evidence that they want to produce on anything that is relevant to this Commission, this is your last chance.

MS STEINBERG: Please go on Mr Kingon.

MR KINGON: I'll pick up where I was.
COMMISSIONER: Sorry Mr Kingon, I just thought that you might, you're an insider here. I come from the outside and I just hear these things.
MR KINGON: No, sure.
COMMISSIONER: Thank you very much. Will you carry on it's much more -
MR KINGON: Thank you.
COMMISSIONER: Much more inspiring to hearing what you say.
MS MASILO: I just have one question counsel on, with regard to the legal costs. Was Ms Mokoena aware of the instruction that we issued in respect of -
MR KINGON: I'm not too sure of the dates, Advocate.
MS MASILO: Okay.
MR KINGON: So I'm not too sure, I would have to check. I wouldn't, it would be remiss of me to say something. I don't know as I sit here. It might have been post, I'm not sure. Okay, just picking up. I was dealing with regards to the permeation into the broader organisation of this peer doubt, etcetera, and I think you are aware of our employee connection survey which we have conducted for 2017, which for the first time that in my, in the history of doing it that we found a drop. Now that is

indicative of something. You -
MS STEINBERG: A drop of?
MR KINGON: The drop of what we call employee engagement, and it measures multiple different, it's a separate and I think the chief officer of Finance alluded to it. It's a drop off from previous years. So there's different criteria that are measured, staff fill in various surveys that they, we do annually. So that was indicative of something, but the one thing I just wanted to highlight and it comes down to peer and distrust. If you go into our environments, yes in this day and age we've got to have good security. It's a fact, but you go into our environment at Lahai. You'll find cameras wherever you look and Judge, someday I'll take you there and point them out. I've got two cameras I can see from my desk outside my office, and that peer and distrust that we, that was instilled in terms of all these cameras that were all over the place, in addition at the entrance to A block, in at Lahai which is our main campus, the building that we own, we had an additional scanner put in and an additional baggage scanner put in which was the only block that had it. I removed those, because it gives a perception that leadership is disengaged from the staff, and I'll never forget Judge, on the day that I removed it, there was a staff member. I don't know who it was, I was told about

it. Who basically did a dance in front of that thing being removed, and it's all, it's all perspectives that we try and create that we are different. We are part of it. I'm part of this team and we are playing on the same field. We need to be part of that team. In addition -
PROF KATZ: Sorry Mr Kingon, I don't want to, whose instructions were those cameras installed by?
MR KINGON: Well, obviously security probably, but you know it's a question of peer and distrust. Another example, now just two examples -
COMMISSIONER: I suppose security act on instructions as well.
MR KINGON: Instructions, and I haven't gone into all the details of it. I'm trying to get on the business of revenue collecting and these are side issues. On my actual office door, I've got a fingerprint scanner to open the door. Is that normal? I -
COMMISSIONER: We've heard the evidence from a man, he can't even have a smoke here with someone listening to him.
MR KINGON: Well -
MS STEINBERG: He said Mr Kingon, it's worth some light relief, that the staff used to put sticky tape over the cameras when they had a smoke.
MR KINGON: And I probably know the

person that probably said it to you, but look security is needed in this day and age. But the fact that we have more security entering our A block, which is where our executive sits, compared to our E&F block where our IT infrastructure sits, worries me. Just think about it. What is our business? Our business here is serving the client and I'll get to that just now, but our key underlying, that undergirds everything we do is our ICT infrastructure. But I've got less security there than to come see me. Something wrong, and it's a matter of perspective.
COMMISSIONER: I'm sure there are bigger things as well that you want to tell us about.
MR KINGON: Yes, no sure.
COMMISSIONER: Perhaps let's get to those -
MR KINGON: Obviously one of the other areas was the IT environment that we had created over a number of years, and I had the pleasure of being part of and working with Mr Hore, for him. Sometimes not always agreeing with him, but that's a separate matter. We're allowed to disagree, but the IT infrastructure has deteriorated through neglect over four and a half years. Much evidence has been led here, but I do think I need to pause and Judge, you did emphasise to the public yesterday and I did issue a press statement as well. Our e-filing

Page 3727

system is not about to collapse tomorrow, but if we don't do something, we're going to get there and I don't want to get into all the technicalities, but the IT infrastructure is important that it be maintained, refreshed, maybe 20% per year, maybe 25. We're about 40% behind, depending who you take the actual figures from, and we are going to do that. In fact the key steps we've already approved as an executive with regards to and I'm not going to get into the technicalities. HTML5 and lots of other things in terms of the IT space, and I'm so looking forward to moving forward in this environment. Next year Judge, we're going to auto assess 1.6 million taxpayers that they don't even have to come to our branch. Now that's a fundamental shift in the way we're doing our business, and those are the things that we need to be doing and it again comes and our IT people need to be passionate again about doing the right things in terms of this. The ill-considered decision to stop at the end of 2014, the modernisation journey, was a sad moment and in fact has put us back four and a half years, and it might be more because we've got to catch up now. It might have put us back further, and that is deeply worrisome and something we need to deal with. An area that has been of concern to me Judge, has been the issue of confidentiality of information. Leaks within our organisation were very rare. It wasn't something that we grew up, knowing that

Page 3728

taxpayer information would be leaking or a SARS confidential information, you know the Tax Administration has got the two, a Tax administration has got the two types of information. The leaks is a total departure from the culture and values that we hold dear to, over many years. Scarily I'm not surprised anymore to find details of my discussions with top management in the media the next day, and it is so sad that we've got to that point, and I've been asking that question of myself why? What is causing people to want to leak? Now some of it could be malicious. In other words I want to undermine the leadership. Some of it might be just simple distrust in leadership, over the period that we've had the hurt and pain. Those questions I'm asking myself, but very importantly we have to restore integrity and trust amongst ourselves. Judge, if you would allow me to read the next piece because it, I don't want to deviate from what I've written in terms of this. All of these things that I've highlighted may be overwhelming. However the Commission of inquiry is a watershed moment in SARS's history. It has the possibility of opening a new chapter for SARS. The upheavals of the past four years and the ramifications thereof, will take time to heal and be fixed. As a first step leadership must stand up and take accountability both individually, which I'm doing here, and collectively for the damage done, and I'd like to read this

Page 3729

which is an unreserved apology.

"I would therefore like to unreservedly say sorry on behalf of the SARS leadership to our taxpayers, our many stakeholders including the President of the country, the Minister of Finance as well as the deputy Minister of Finance, government as a whole, our former and current staff members and their families and the citizens of our country."

COMMISSIONER: Just take a breath.

MS STEINBEG: Take your time Mr Kingon.

MR KINGON: "For falling short of the high standards of performance we have always set for ourselves, for not living up to the SARS values and higher purpose. The poor communication, the unfair treatment and the fear and pain in which staff members may have been subjected." Judge, I give that apology unreservedly.

MS STEINBERG: Thank you Mr Kingon. Take your time, Mr Kingon.

MR KINGON: "One is passionate for the organisation", forgive me.

MS STEINBERG: We so appreciate it. As a citizen I appreciate it.

MR KINGON: "Restoring ethical leadership. The success of SARS was built on quality and stability of leadership." If you look back, and huge

Page 3730

stability. For instance we had the same Minister of Finance over 11 years of the 21 years of existence. Now it's an interesting thing Judge. Just sitting here last night in preparation. 21, we've come to being an adult. 21 years in October and it's probably significant that today is seven months since I was appointed, 21 years this month since SARS came into existence, and the issue that we need to look at, is both the quality and stability of leadership. Many past SARS leaders have demonstrated unwavering, ethical leadership and commitment to the higher purpose of effectively and efficiently administering and collecting taxes in order to provide the funds needed for government, and we speak of this higher purpose and people frown on us, but I truly believe and I know my colleagues truly believe that in collecting money and dealing with service, it's not about the money in the bank. It is about the orphan who can have a foster care on the table. It's about the person who has been impacted by the scourge of HIV and aids who can have anti-retrovirals provided monthly. It's about the school children who can be provided an education. It's not about the money. It's about that. It's about the ability to take the country forward.

This quality and stability of leadership enables SARS to plan for long term changes and very importantly, I

Page 3731

think we've seen in the IT space and we have discussed, even by the chief officer of Finance, you have to have long term planning in the organisation to enable us to plan and develop properly. It allows us to implement system changes. It allows us to encourage and imbed a credible culture. Above all, it allows SARS to make mistakes and yes, we do make mistakes. I'll be the first to acknowledge I have made mistakes, but at least we can grow out of those mistakes. Much emphasis in our organisation has been placed on formal qualifications as being the main or the only aspect of successful leadership. For me, and maybe I'm defending myself, I do believe that technical mastery derived by experience in the organisation is paramount to ensure that we can properly manage taxes, and it's an important aspect for me. But the most important and it comes down to everything we've been hearing before the Commission, is the issue of integrity. That is the most important aspect that we need in leadership. We need leadership of absolute integrity, uprightness, honesty. We're going to make mistakes, but if your purpose is to get there, that's what we want and the job of SARS's leadership is primarily about creating a culture, setting the tone from the top. In other words live it and people will follow it. Imbedding and living the values, and very importantly just as I've done a moment ago, leadership

Page 3732

needs to acknowledge when they make mistakes, and we all make mistakes Judge. It's a fact but be man enough to stand up and take accountability for the mistakes. Be humble enough to learn from those mistakes and move on. People make mistakes, and it's a question of how we deal with it. SARS leadership needs to take accountability both individually and collectively. Obviously we need to imbed governance and maintain open and honest communication in order to build confidence. Communication with our staff, communication with the public. If we don't do it, it can become a destructive, it is not proper governance. If there is not proper communication, it becomes destructive and it can damage an organisation as we have seen. Moreover, SARS needs strong and capable leaders at the top who are able to provide guidance, experience and wisdom, needed to mould and grow the new generation of SARS' managers and prepare them effectively to take over the mantle of leadership, and if I may pause there a while just to touch on this. I start thinking I can go on early retirement next year and it scares the heck out of me. What are we laying down for the next generation? Who are the people we're growing to put in place, to take this organisation forward and we're going to be measured as a leadership as to who we put in place, how we empower them. How we train them, how we imbed the culture, the values,

Page 3733

etcetera into the next generation to be able to take this organisation forward, and just on a scarier side, I just asked for the figures with regards to the IT environment, and it why this is so important, in the three year retirement forecast, in the current years, in the next two years over 90 people can retire. Now that's a significant number that can go. Are we preparing for the future? That's why I don't want to dwell in the past. I want to dwell in the future and move on, and ensure that we mould and grow this new generation. In this difficult time, as a first step though it is necessary for the SARS leadership to commit in investing and nurturing people. We have to ensure our training of people is in place. Judge, I have been fascinated, I haven't been exposed in certain areas in the last while, my life here engaging with the Indians, the Chinese, the Brazilians and Russians recently in the BRICS process, where people go for six months training and then are only put on the front line. We take one week, two weeks. Basic induction and then the poor customs officer needs to sit at the border post and know that this is a plastic of a such and such a type that deserves tariff code X and Y and Z that carries such and such a duty. [10:03] We're not doing our staff a favour. We need to nurture our people. We have to offer - and this is going to be a theme that I'm going to come back - we've got to

Page 3734

offer our taxpayers the best service possible and it's important because on service everything is built. It's not on the whip that everything is built. It is on service that everything is build. The whip is only for the minority. The service is for the majority and it's on that that we need to build. We need to ensure that the treatment of all or taxpayers and I've engaged with the Commission in this, needs to be impartial and the application of law needs to be fair in every respect. So, when I do an audit on the evidence leader I need to apply the same rules when I apply to somebody else. I need to be fair. Case selection must be fair. The audits must be fair, must be just ad properly set out in law. Obviously and we've got a target for this year of R1.345 trillion, we have to do everything in our power to meet that target. It comes down to giving government the ability to be able to do what they need to do. We need to commit to doing that.

We obviously need to regain the cutting edge as a modernising organisation. Modernisation is not a once off event. Modernisation is an ongoing journey. As long as I live we're going to have to modernise. We're never going to reach the end of modernisation. Probably over emphasising it but we need to be committed to continually learning and improving and constantly raising the bar. It's not the e-filing in 2008 that we brought in, is not

Page 3735

acceptable in 2018. We've got to say and we'll see it, every website that you go to in the world you'll see they modernise their look and feel to look fresh, to serve their client to find things easier, to do things easier. That's an ongoing thing. We have to be exactly the same. We need to be constantly raising the bar, not being satisfied of where we are and I think we fell back in that regard. We obviously need to commit to the safeguarding of the confidentiality of tax payer information but at the same stage SARS must not hide behind the confidentiality to protect wrongdoing. How we get there I'm not sure. We need some wisdom, some guidance as to how we get there but while your tax affairs need to be kept confidential, if I treat you in a certain way SARS must not be protected and for me that's the most crucial thing, how do we balance those two aspects? I'm not sure.

COMMISSIONER: Well, I'll tell you now. Integrity, that's all it requires. Sorry to interrupt you. I just thought I'd answer your question.

MR KINGON: Thank you, Judge. Obviously, the issue of public interest in this space and I know that there are many journalists sitting here and I've written back in saying public interest does not trump Chapter 6 of the Tax Administration Act. I've written many of those letters but I don't want to hide behind Chapter 6 of the

Page 3736

Tax Administration Act. So yes, integrity, Judge, very important. We must obviously commit to being politically conscious as an organisation but we must never ever be partisan in any way. Now I'd like to read this, "it is said that great character is built in times of adversity and how well we rise above these events will be a true test for us as individuals and as an organisation. Resilient institutions weather difficulties and are able to learn, grow and mature through these adverse experience." This is our hope, my hope and belief for SARS going forward and for me it's most important that we look ahead.

I, maybe, some people here are saying sketch quite a negative view of the SARS environment that has existed. It gives me great joy as I go around that this situation is not totally bleak. I go and I bump into people, many people who're here, many other people and they've got a hope. They've got a intent to do what is right and I'll touch on something that so encouraged me a little later. So, it's not totally bleak. SARS is a functioning organisation as we sit here today and I think we've seen, I think you've seen, I think you've seen test me, Judge, from many of my colleagues which just elaborate that there is a working ethic and integrity amongst many, many of our people and we need to harvest that in order to move forward.

Page 3737

MS STEINBERG: Mr Kingon, I must say in layman's terms that this Commission has been blown away by the quality of most of the people that we've come across and interviewed. The quality and the talent is extraordinary in this organisation and it's what gives us hope as we do this work.

MR KINGON: Advocate, they're a unique crew. They are so unique, committed. You know, you go into the - and I'm going to go back a few years - you'd go into the test environment and you find people at 11 o'clock at night testing software to ensure that the taxpayer can submit the return. Testing fixes over the weekend, ensuring they're there long hours to do the rollouts. People on Saturdays at the moment at our branch offices, people at Beitbridge working in heat of 40 degrees, and I've been up there, difficult circumstances but being committed to do the right thing. We've got committed employees and that I fully concur and I encourage them.

There are specific areas that need action. We obviously, and one of the key areas and it comes back to the revenue which the country looks to us to be able to provide, we have to restore confidence and that's part of the process of this Commission, restore confidence in the organisation of SARS. We have to have confidence in the tax system in our country in order to take ourselves

Page 3738

forward and there are many things that are on the table in that regard. Just recently at the tax indaba we spoke of cooperative compliance and the willingness of tax practitioners who've been messaging me even privately saying we want to help; we want to come alongside you and take this forward. Let's design a cooperative compliance model. But there are certain actions that we have taken and are taking and I'd like to just inform and just convey to the Commission in certain of these and I'm just going to elaborate as I go, Judge, because I need to fill in gaps to give you the understanding of the things.

In terms of the Davis tax committee we are in the process of analysing, in fact, we had given some submissions through of the many papers that the Davis tax Commission has made. They've performed a huge amount of work in this space and I'd like to just say and pause a while and say that SARS has not given full cooperation to the Davis tax Commission at all times in these last few years that they've existed and I can't recall if Judge Dennis Davis gave any evidence in that regard but there was this reticence to provide information. I remember him even asking me for figures on trust compliance and with regards to public benefit organisation and there was a bit of a - I don't know why - it's just a bit of fear in providing it that was created and I don't think we did justice to this

Page 3739

process but we are doing justice in terms of the recommendations. We don't agree with all of them but that's part of the process going forward but we're doing the analysis and we are hoping to make a way ahead.

In terms of our information and communication technology ICT space and such we do recognise the challenge of rebuilding this. There're many things, steps that we've already taken. I was very encouraged that in the last two weeks we've approved significant changes for the next year's filing season. There are other significant changes that are on the go. We have to be GRAP and I don't want to bore people with technicalities but it is just the way that we account for monies. We have to be GRAP compliant. There's a lot to do in the IT infrastructure space but we need to come back, as per my discussion with the team yesterday, we need to highlight one of the top areas we need to fix there, let's go run with that and we are in the process of that. I believe the groundwork has been laid for filing season next year that is fundamentally going to change the landscape of tax in our country forever and for me that gives me great hope.

I do believe that we can reverse the trajectory of the neglect of the IT space that we've seen in the last four odd years. In terms of the service charter in our APP for last year we did commit to release the service charter.

Page 3740

We finally got to release it on the 2nd of July; 1st of July was a Sunday. 2nd of July was a Monday where we launched the filing season at Alberton with the Minister of Finance but we launched the charter which basically gives aspirations for service delivery and it's an important building block and undertaking by us to the public of service and I want to just pause, Judge, and people, how do we balance service and compliance? The carrot and the stick as I put it in layman's terms. Primarily our driver for compliance in our country must be service, not the stick. Yes, you need the stick, you need the threat, you need to know that jail awaits maybe. But if we can offer a better service I think that we're going to encourage compliance. If it's easy for me to make my PAYE submission, claim my ETI, pay my VAT, lodge a dispute, submit my tax return, whatever it might be if I can just make it that one little bit easier people will do it willingly. I know even for myself if a form on the Internet is difficult from some company - and by the way all companies face this, not just SARS - but if a form is difficult you park it. You don't get it done. It it's easy you quickly do it and it's done. Simplicity is one of the key things that we need to move and I think Mr Hore yesterday did elaborate on where we came with the journey from the so called big buff form ad he drove me mad in

Page 3741

shrinking it down to two pages, he'll remember those discussions. But that's important. Service drives compliance and we need to do that. That's why we've released the service charter. That's why we built in fact, and I'm going to bore people with things they don't know, what we call a pulse dashboard. It basically gives the pulse of our business that enables us to measure any aspect of our business.

Judge, on my iPad here now I can pull up how many people are queuing in which branch. That's the type of data we need to know where are our people queuing, where are they not queuing, how many disputes, what's my debt, etcetera, etcetera. So that's the service charter. Linked to service obviously is the issue of refunds and refunds in general will be an ongoing issue. As long as I've been at SARS complaints of refunds taking too long have been there and the issue comes down to balancing risk and service. I don't think we got it quite right yet and we need to find a way - and I'll give you an example, there's certain clientele whose tax returns whatever, whether it be VAT, income tax, gets stopped either every year or every month or every second month, etcetera yet they are huge clients who're not going to run away overnight. Should we be stopping them every month? Shouldn't we be putting that money back in the economy quicker and allowing those to

Page 3742

flow without the burden of compliance with the audit processes? That would deal volumes in my team. It will deal with getting money effectively back into the economy and I am in the process of looking at that and there's certain announcements which I can't go into as yet in terms of this space. But we have to look at this because people need the money back to run their businesses and we need to make sure that that happens. But at the same stage, Judge, I cannot believe the amount of fraud that we are facing in personal income tax daily. If I was in a public forum I would have asked my colleague who is sitting here from business and individual tax, we stop hundreds of people who simply trying to claim fictitious amounts for tax deductions. I had one person in our office he even came to see me with bodyguards and all. He'd claimed a R160 million fictitiously for VAT and he thought it was right, it was 100%. Now if this thing is an ongoing thig how do you balance risk, service.

COMMISSIONER: May I ask you about - sorry?

MS STEINBERG: Mr Kingon, two questions about the refunds that have come up in the course of this inquiry. There is a perception that there was deliberate delay and deliberate withholding of VAT refunds in order to artificially boost SARS's revenue at the moment that the

Page 3743

target is measured. Have you found any evidence to that effect?

MR KINGON: Direct evidence, no. Concern in areas, yes and obviously we would obviously have to look at whatever that might be. The issue though, and it's - refunds can be held back for multiplicity of reasons. It could be held back because of an audit gets delayed or whatever. Now is it intentional or not? I'm not going to comment and I haven't got evidence to that effect.

COMMISSIONER: Well, you say you're not going to comment. I'd like you to comment. Is it something that one must take up further? Is there someone that we must ask whether there'd been instructions to hold them back? So, in that regard I think I must interrupt you and your very positive outlook and say we need to know.

MR KINGON: Ja, Judge, I haven't got evidence that an instruction in order to make the March target or anything like that, that here's an instruction stop now; we're not going to refund because we must make the target. I haven't got evidence of that.

COMMISSIONER: Do you have suspicion of that?

MR KINGON: I've got concerns about that, Judge, yes, with regards to -

COMMISSIONER: Is concern different to a

Page 3744

suspicion?

MR KINGON: Well, it is the same I suppose, Judge.

COMMISSIONER: Ja, anyway whether we have got time to look further and what we've got already we'll have to deal with. I just wanted your assistance there.

MR KAHLA: But who would give such a requirement that there must be a withholding?

MR KINGON: You must remember -

MR KAHLA: In the posit that you have just -

MR KINGON: There're a couple of aspects and much can be said about this and even - I mustn't pre-empt matters of the next week which we've got the medium term budget policies statement coming forward. There are various ways that you can stop refunds. So obviously we stop refunds for audit and investigation, etcetera. We stop refunds for bank detail changes that are incorrectly done. Is there a way, is there a process whereby a person goes into the system and saying we need to meet this target tomorrow? Yes, it's possible. Where would that decision come from? I think that we would have to go and investigate.

MS STEINBERG: Mr Kingon, the other issue around VAT refunds there's been quite a bit of media

Page 3745

reporting around the Oakbay refunds and we'd like to understand what you know about this. The -

COMMISSIONER: Sorry, can I interrupt? Because we have had a conversation about that which you probably perhaps are not privy to and that we've looked, with your assistance, looked at these refunds and there are in fact a number, I'm not sure it's necessary to work out exactly how many but lots of refunds that have gone into an attorney's trust account for example and refunds that had gone to a non-associated company as well. I haven't gone into that a lot because I think you were yourself concerned about that and you had yourself ordered an investigation?

MR KINGON: Correct.

COMMISSIONER: Could you just tell me what the outcome was of that?

MR KINGON: Okay, so there're a couple of aspects. The one issue relates to section 44 (3)d and forgive me, I might get the sections wrong, of the VAT Act and its application as well as section 72 of the VAT Act. We've taken counsel view on that and we feel very comfortable that in order to be VAT vendor in our country with the exceptions as set out in 44 (3)d you require to have a bank account in your own name.

MS STEINBERG: So, what does that mean in the case of what happened with Oakbay?

Page 3746

MR KINGON: It means that would not be permitted to refund to a third party bank account. So, I launched an investigation and I don't necessarily, because it's still in the process, the concern is twofold. The first aspect is the decision to allow a third party bank account. The second aspect relates to are the refunds actually valid and I've asked that both be looked at and there's a long line of aspects with regards to the decision on the banking details and the evidence that has been given to me by the team that did the preliminary review for me which I've made available to you is that further audits - and I'm going to use the word audit because it actually used forensic - but because we're doing an investigative audit space needs to be done on the validity, the actual substance of the refunds in question. That is in process.

COMMISSIONER: Sorry, carry on?

MS STEINBERG: Are you suggesting that the refunds were paid without that process being done, without knowing if they were valid?

MR KINGON: So, let me explain how the process works because I think it's important, Judge. [10:23] All these things go through our risk engine and get identified for normally what we call a verification audit and it's basically a documentary review. So if you put before me documents and they look in order I would sign

off. They went through that process. Does that mean the documents behind that, so I've got a VAT invoice from Advocate Steinberg that was given to me, I'm claiming it as an input for VAT, is that invoice valid. Is the VAT number on it actually yours, did you actually pay over the money to SARS for me in order for me to claim it as an input. Those are the questions one needs to check. So yes the documentary reviews were done. I've checked it and in fact the person is in the audience who heads up that unit. On the face of it the refunds look legitimate. There are concerns that have been expressed to me and hence we've moved on and we're doing further investigation.

COMMISSIONER: Can I just follow that up because this one does concern taxpayer affairs but it's been so much around and it's so controversial that I have no difficulty dealing with it here rather than in confidence. But I confirm with you, I looked at those affairs, it went through a verification audit but that's just a paper -

MR KINGON: Correct.

COMMISSIONER: There's a, we'll come back to that in another respect but then it comes to being paid to third party accounts. Now as I looked at that and I can't, I don't have the detailed knowledge you have, it seemed to have gone through a regular process, in other

words I did not see any fingerprint of interference in the process, is that correct?

MR KINGON: There's two aspects, Judge, so there would, there were certain changes in the bank detail as I have the evidence that is been put and looked at. In December 2016, early December 2016 where it went through a standard process inside SARS which resulted in an attorney's trust account being utilised to pay refunds into. That went through a standard process. There was no interference or otherwise with it. Should it have been approved, no. Is it unique, no unfortunately. In fact the part of the process was, I asked that we look what other vendors out there, remember, and maybe just to backup two seconds. VAT vendors there's a specific restriction in 44.3.D with regards to third party bank accounts. The income tax act does not have similar restrictions. So I can pay my refund to a third party. The law doesn't prevent it as the same as the VAT law, VAT law prevents it. So the standard process was followed in December 2016 for those attorney trust accounts and it was approved by the teams, incorrectly in terms of the standard operating procedure but I don't believe it was malicious, Judge and you get things. People allowed deduction incorrectly, mistakes are made just like at the bank. It, mistakes are made. That's a fact. We then get a request in May of 2017

where there's a formal request to change to another third party. That went through the process which has been in the public domain which I prefer not to elaborate because there's other processes underway pertaining to that at the moment.

COMMISSIONER: Yes.

MR KINGON: We then get a further request later on in 2017 where 72 ruling was granted and further changes were made to another company and that has also been in the public domain. People have quoted that.

COMMISSIONER: Well you say, sorry can I just, you say there's been a 72 approval, you're talking about section 72?

MR KINGON: Of the VAT act.

COMMISSIONER: But I mean that didn't permit that either.

MR KINGON: Correct.

COMMISSIONER: So that was also incorrectly done though?

MR KINGON: In my view, yes.

COMMISSIONER: And that was just, that was a payment not to an attorney's trust account but to another company account but the company wasn't a subsidiary and therefore it shouldn't have been -

MR KINGON: Correct.

COMMISSIONER: And you would have ended up in the situation there though that the act does not enable you to repay VAT or even on the assumption it was repayable. So you've got a bit of a catch 22.

MR KINGON: Correct.

COMMISSIONER: But nonetheless the law should be applied which is you can't pay it to the that account.

MR KINGON: Correct.

MR KAHLA: Just clarity exactly on that point. You're saying the people who processed it did in good faith but in error, there was an error of law.

MR KINGON: December 16.

MR KAHLA: Are you -

MR KINGON: I'm talking the December 16 one. But I want to just emphasise and we, a part of the review that we did, I asked them to pick up what other cases, sorry I was going down that road, now I got side-tracked. Forgive me. We have found a number of other instances, nothing to do with the company we are talking about now where attorney's trust account and other accounts have been utilised as third party and that's gone through normal approval processes but incorrectly. We have to see how we're going to tighten this up because Judge if you go back to pre-2009 the legislation had a certain wording and

Page 3751

then in 2009 you go and have a look at the explanatory memorandum that brought about the amendment in 2009 and it was specifically there to prevent fraud and that was the purpose for which the amendment was put in place which is the wording of 44.3.D today.

COMMISSIONER: Anyway you know I just wanted to clarify that because I did look at it myself and a number of other taxpayer issues. Some with you, some without you but it's difficult to interpret some of them without assistance and my interpretation there was correct, is it, that it went through the normal process, it shouldn't have gone through the normal process.

MR KINGON: Correct.

COMMISSIONER: But it happens at time and there was no fingerprint of -

MR KINGON: Correct.

COMMISSIONER: Interference.

MR KAHLA: What do you have to say about the information of that taxpayer having ended up in the public domain, bearing in mind the point that you've emphasised around the sacrosancty of confidentiality. Has that ever been inquired on as to how that taxpayer's information got put into the public domain?

MR KINGON: Ja, one must be very careful. When I was overseas in May, June, early June of 2017 and

Page 3752

where this happened and it leaked a short while later, there was and I'm going to put it bluntly there was a witch-hunt as to who had leaked and people were made to feel guilty who have got no reason to feel guilty, some of them in this very room. I had to give an affidavit that I didn't leak that information. I wasn't even here but it doesn't matter and one must be careful going on little witch hunts because ultimately the innocent are the ones who get victimised in the process. I have no evidence as to how it got out into the public domain, I don't know. Whether, it comes back to the issue we're needing to restore SARS to have integrity and trust, etcetera because the heart of confidentiality is an important principle.

MR KAHLA: But do you have measures for staff to raise issues where they believe there's been conduct which doesn't accord with your rules, with your standards, with the law, with the values of the institution where they could raise them up and have them dealt with to minimise the risk of information being then leaked out because it's not been properly dealt with, because you don't want to set up these leaks as a standard. That cannot be consistent with the promotion of the law.

MR KINGON: No, 100% and I will, if you don't mind Sir, I'm going to get to a proposal which I'd like to put. It comes down to, we do have what we call a

Page 3753

whistle-blower's policy. We, I'll get to that just now as well just to touch on it. But we're needing to find a way and this comes down to the heart of what I said earlier. You don't want misconduct in an organisation to be protected by secrecy. It's an important issue. But at the same stage we're needing to find a way that staff have got the ability to come forward and be protected in disclosing things they believe to be incorrect.

COMMISSIONER: Well I know you said I'll come back to but I would like to just follow up at the moment on -

MR KINGON: Sure.

COMMISSIONER: What my colleague Mr Kahla said. You know it seems to me there are leaks and there are leaks. There are some leaks that are used in order to, in the course of intrigues, etcetera to discredit people and so forth. There are other leaks, they're not really leaks, they're whistle-blowers who will go to the press because nothing happens inside and that's what, you know this is, I don't think this Commission would have been established but for people having gone to the press because things would not have been known and I mean you know people went to the press and you're quite right to talk about the litigation and what happened was to try and close the press down, not because the taxpayer was complaining but because

Page 3754

there was a criticism of internally. That was what was happening. So there are leaks, and leaks as it were and my colleague is, you know he raises that and I think it's quite correct. Now you've got, you can't, that happens because you can't deal with them inside.

MR KINGON: Yes.

COMMISSIONER: Because you don't trust inside.

MR KINGON: We couldn't deal with it, I think Sir to be perfectly honest, the ability to raise things that were wrong we didn't have the, I'm going to be blunt and say I didn't have the courage maybe to raise some of the things. We need to have that to be able to flow freely to an independent body in my view that would be able to investigate this and I'll get to this in a moment. But we, you have to have it because if it wasn't, I'm a bit schizophrenic here, Judge.

COMMISSIONER: No.

MR KINGON: Because on the one side leaks sadden me.

COMMISSIONER: No absolutely I -

MR KINGON: But on the other side if it wasn't for leaks we wouldn't be here today.

COMMISSIONER: Exactly, ja.

MR KINGON: So I'm a bit -

COMMISSIONER: You see the point is we shouldn't be here today at all.

MR KINGON: Correct. But, Judge, that comes back to what you said earlier, integrity.

COMMISSIONER: Ja and I know you're coming to it and I'm sorry to press you but I would like to just follow up on it. I think my colleague has raised something very important because as I say but for that we wouldn't have been here at all.

MR KINGON: I know.

COMMISSIONER: But at the same time we shouldn't be here at all. Now how does one, how does one stop that, in other words you say oh well it's a matter of integrity we leave it behind, the Commission says well you must have better integrity, people with greater integrity, that's not enough.

MR KINGON: Ja.

COMMISSIONER: We know now that something must be done that people do have an outlet.

MR KINGON: Ja.

COMMISSIONER: That they don't have to go to the press because the problem with going to the press it's seems to me a lot of what the press has said is correct. But they don't get the full information, they can't inquire further.

MR KINGON: Correct.

COMMISSIONER: And so it creates even more difficulty, not because of the press but because of their limited ability to investigate.

MR KINGON: Judge, I'd like to respond on two -

COMMISSIONER: So what does one do about that?

MR KINGON: So my proposal which I'll get to is an inspector general of type that has got powers that can get this information to be able to receive this, act on it with integrity to be able to investigate it, have access to the SARS systems and to make a determination and an instruction.

COMMISSIONER: Well that's what I'm thinking because that's what's happened here. Some of the things that we've looked at have come from the press. Sometimes they're ahead of us because people are not, they're afraid to talk to us but they'll talk under cover to the press and you read it. Now it's been advantageous because we then have the power to go and look at it. Now you need the two to be combined as it were.

MR KINGON: Chair, Judge I've learnt far more from the press sometimes then I knew internally.

COMMISSIONER: Well I'll tell you

something. We've learnt something from the press.

MR KINGON: And I must be honest and, to the media colleagues here, I dread getting their queries sometimes because it's one of those things but it's good, it's part of a good democracy that we be held to account. But Judge, what is, the inspector general for me is the solution to everything.

COMMISSIONER: Ja.

MR KINGON: And I'm going to speak to that. But what it is not and to my IT colleagues, you know what happened, we had all the cameras put up, that was party to the thing. We've got cameras on the Photostat machines that people are not copying things. We have got our USB ports that I cannot copy things to a memory stick. Even on my laptop. I cannot copy things to a memory stick because we're thinking those are the ways. We've got, I had my own private iPad where I had my SARS email so at night I could just sit in my bed and, yes watch a movie and get my email done, in between. That was taken away, then they give me a SARS iPad that I can just do that on. But those security measures are not going to stay, take place because I can't take a photo shot of a thing with a camera and send it off. They're so artificial it's, the back of it we're needing staff with integrity uprightness, honesty, lead with a higher purpose.

COMMISSIONER: It depends with your camera, who are you spying on, are you spying on your own staff or are you protecting your staff from other people? So it can be used for two purposes. I'd like to hear you on the inspector general idea because it's become in my mind more and more conscious of the fact that there ought to be someone who has got for example the powers of this Commission but at the same time the Commission doesn't close off and go away, that someone remains here with these powers to do exactly what's been happening.

MR KINGON: I fully support that view Judge.

COMMISSIONER: We talk about it when you get to the appropriate time.

MR KINGON: I will. Can I?

MS STEINBERG: Please go on.

MR KINGON: Thank you. Thank you, just moving to disputes as a whole. I think it's important to note that in respect of disputes the Ombud has launched a systemic investigation with the concurrence of the Minister of Finance into the administration by SARS of objections and appeals. I want to say publically that I welcome this review as it is realised that a number of disputes that are found in favour of SARS is far lower than the international norms. Now it's an interesting thing, Judge. If you go to

Page 3759

the international norms, in the dispute process normally in a proper, a tax administration more than 60% of all disputes will be found in favour of the taxman, of the tax administration. In SARS that is below 40%. Now that's a significant risk. It's a risk because my staff are wasting their time. It's wasting taxpayer's time, tax practitioner's time. We need to get on top of that and I need to also say that, that we've got to acknowledge that there are many areas where our timelines for disputes are falling short of the standard as set out in the law. There are specific timelines for this whole process. We need to adhere them, we need to adhere to all the steps that are there in the process and it's interesting to note that even in the TADAT assessment this is the one area where we felt short of in, in 2014 was in terms of disputes. Now I have appointed a senior person within our legal space whose doing this work for us and had already had meetings with the Ombud and I believe a very constructive meeting has been held. We must see these systemic investigations as strengthening our hand not criticising us. It's part of building the organisation. There's another one which I don't have in my notes, the Pay as you earn, pay as you earn account which there's another systemic investigation into that where we applied certain rules, historically that is confusing the taxpayers and us, I may say sometimes with

Page 3760

regards to the reallocation journals that take place on our pay as you earn account.

Our chief officer of Finance is engaging with the Ombud, already had an engagement on that one. So there's two systemic investigations that are happening at the present, one on disputes and one on accounts. On the elicit economy, just moving on. We're looking forward now and we've already approved that we're re-establishing this and this week I had the privilege of signing off the structure for the unit and we've already got 58 cases that are being identified in terms of this unit and in fact the person who is acting in that unit head is in the room with us today. We're looking forward to the reestablishment of this unit, the capacity that was destroyed in this whole process for whatever reason it was destroyed and we believe in so doing we can do it with proper governance and we can do it in a transparent way. There's no need for cloak and dagger. This, this needs to happen in terms of our mandate, in terms of law, in terms of the framework hat is set out in the tax administration act.

MS STEINBERG: Can I assume Tobacco will be back on the radar screen?

MR KINGON: Yes. So very importantly, it's good that you raise that Advocate Steinberg, and Judge, just to say that interventions that we're focusing

Page 3761

on at the moment, we speak of illicit financial flows and there's large volumes, it depends who you believe in terms of illicit financial flows. There's a number of cases that we've been busy with there. Tobacco we're all aware of the give back, the money, the 7 billion programme that is being run where they're putting pressure on us to get the money back to do this, to do that and to do the other thing. Tobacco is very much on the thing. The fuel industry which is a major risk for us in terms of our economy, the last one which I'd like to highlight is clothing and textiles which is a serious risk and the risk there is slightly different. Yes, there's tariff and VAT that is incorrectly paid. But it goes down to jobs in our country.

Our role as a tax, as the tax authority is the protection of our economy as well and we had an engagement with one of the main unions involved in the clothing and textile industry and we've identified two product types that we got specific focus with regards to the illicit bringing in of goods and Judge, it's been a fascinating journey for me to see the under valuation that is taking place in an open fashion. We had a debate between two people that was brought to our attention on email from a supplier in a country which I won't name, where they said no under valuation is still possible, it's possible this is how you do it, laid out the ground work to do it. So those

Page 3762

are the four areas. You are aware in the last week we had arrest of SARS staff as well as police officers with regards to stamping of documents.

[10:43] That had to do with the fuel being taking out, so called taken out but it is actually being siphoned into the domestic supply chain. That's got a huge impact in terms of my revenue. It's got an impact on the stability of the Road Accident Fund and these things we need to get on top of. So on tobacco the teams had a few raids on Thursday and Friday last week, we were looking at sellers in a number of areas and we were quite successful in terms of what we picked up. So we've started, the work is in progress and I'm gratified that we've been able to get this on the go. In terms of the Large Business unit, if I may move along, what we're going to call it I'll make that announcement in due course. Yesterday we had a discussion with regards to this and we've agreed that we are proceeding with the interim structure, by hopefully the middle of December it will be in place with the interim and the final structure, obviously with the appropriate head, will be in place by the 1st of April 2019. But I want that interim structure and staff being deployed. We do have an accommodation issue in terms of Large Business, we will be moving out in due course of where they're currently located and my procurement office will be dealing with that with

Page 3763

the corporate real estate to ensure they're properly located and obviously in the best place to service the clientele which we have.

MS STEINBERG: Just a question there, Mr Kingon. You are aware that there is concern within SARS that the success of the Large Business Centre, as we understood the evidence, was that it was an end to end centre. And it had that 360 view of a taxpayer's affairs. Now there's concern that the new Large Business Centre does not have all the components of the value chain. Can you talk to that?

MR KINGON: Yes I can and we intend to have the end to end, it won't be in place immediately.

MS STEINBERG: Right.

MR KINGON: But in the end you must have an end to end value chain in terms of this. Now we're not talking, for instance the Finance office might be – we're not talking those, you're talking of the tax value chain and I won't bore you because I could go into the tax value chain and identify many things there. But the value chain for LB will be in place end to end, that's our intention. It's going to be a journey, Judge, we're probably going to make a few mistakes, but I do believe we are strengthening on what we had prior to it going, being closed in terms of its format. The unit we had at the time was too isolated

Page 3764

from the rest of the organisation. So it was operating on its own – it needs to operate within the framework of SARS, it needs to be on service manager, it needs to operate within that framework and we're putting that in place. I've got an excellent team that have been working on that day and night and making proposals in that regard.

PROF KATZ: Sorry, by tax value chain you're talking legal enforcement, all the support services.

MR KINGON: Correct. Well the support services I think is part of the area which I'm not 100% clear, for instance yes they'll have Finance direct support. But the CFO, they won't have their own CFO, if you understand what I mean in terms of that process. The High Court litigation unit is the next one I'd like to talk to. Litigation it can be split into various parts, but you're needing a specialist litigation unit that can deal with the more complex litigation within the organisation. It is for twofold, obviously you want to save on legal costs which we've gone into a little earlier, but you want to use the skills that you have. This unit, as part of the process, was disbanded and a decision has been taken, it's in process, but it's early days, to reconstitute this unit. I can't afford and I sat with the tax advocate last week who had been perusing legal cost things and she had managed to find time to do her masters and something else in the

Page 3765

meantime, but I've got an admitted advocate who's got years of experience in tax work basically twiddling her thumbs. That's unacceptable. This unit will be reconstituted and it will deliver and provide the exceptional support that it used to do insofar as impact for litigation.

The Compliance Strategy unit a decision has been taken to re-establish it and to actively, obviously monitor tax compliance across the SARS business. We'll therefore again activate the compliance evaluation monitoring information system to measure taxpayer compliance levels using compliance indicators. This is – I think some evidence was led in this regard and we are – that decision was taken which lay on ice, I don't know, it was taken under Commissioner Moyane in June last year to reconstitute it, but nothing happened. And we are just making sure it happens.

MS STEINBERG: I have a question here, Mr Kingon.

MR KINGON: Yes.

MS STEINBERG: It concerns lifestyle audits as part of the compliance chain. Two elements to my question, we have sat with you during our in camera evidence sessions and we've seen that individuals, who we know from the media live very extravagant lives, declare very little income. On the other hand we've heard evidence

Page 3766

here that SARS's auditors are hamstrung in investigating this kind of problem because their KPIs are concerned with the number of cases that they get through. And there's no space made for those long, difficult, complex cases. Now putting those two things together there seems to be no lifestyle audit. So if someone who drives a Rolls Royce says I actually – I don't even reach to tax thresholds here, nothing happens. We have sat together and seen that, Mr Kingon and on the other hand we have auditors saying well we are just trying to meet our KPIs every day. Are you looking at this?

MR KINGON: Let me, I want to tackle the answer if I may, Judge, just with a few angles in terms of this. KPIs drive certain behaviour and that by the way is true in the debt space, it's true in the audit space. I've seen it true in - even a telephone call you're pushed to a certain time period, you cut it shorter, you could have been serving a client, so KPIs drive behaviour and I think we need to re-evaluate that in every area of our business. The ultimate thing is, obviously it needs in the service space, it needs to drive service, in the compliance space it needs to drive compliance. And if my KPI is driving a performance that I don't look at everything there must be something wrong and I would concur with that.

COMMISSIONER: May I interrupt you there

Page 3767

just to get facts correct? I am told and I haven't investigated it in great detail, but the audit KPIs are at least weighted towards numbers rather than quality. Would that be correct?

MR KINGON: That is and I'm not an expert in this, Judge, but that is what I'm told yes.

COMMISSIONER: And that's why you get for example huge VAT refunds that are paid on no more than a documentary, what do you call it again?

MR KINGON: Verification.

COMMISSIONER: Verification, but no one's looking at whether the documents are genuine or not. Because the KPI is get though as many as possible.

MR KINGON: I think, Judge, there's far more complexity to that aspect of the business. But yes the KPI does drive that I get through it as quickly as possible because I've got so many to do. It does drive that behaviour, but I think there needs to be a balance, there has to be KPIs. We cannot have an investigation where a person sits on a case for months on end and nothing happens which I've also seen on the other side. So there's a line somewhere in between. Are we right at the moment, Judge? No.

COMMISSIONER: I agree with you -

MR KINGON: We have to evaluate that.

Page 3768

COMMISSIONER: - taxpayer affairs and I say emphatically that you're not right at the moment.

MR KINGON: 100% and I would concur with that.

COMMISSIONER: So what does one do about that, how do you then cater for volume and at the same time have people that are able to sit for six months and ask questions about people's affairs. Have you got anything in mind as far as that's concerned?

MR KINGON: Well –

COMMISSIONER: Sorry if I may interrupt. I would have thought that the one thing that taxpayers – would make taxpayers reluctant to pay their tax is if they're a middle bracket and they watch very rich people not paying tax. It seems to me a very major thing towards tax morality.

MR KINGON: Agreed and that goes down to are we applying the law fairly in every respect. Judge, I grew up in – and I'm coming to the questions that the evidence leader was asking, I grew up in a thing that and maybe it was wrong, today we take a photo, but in those days I used to have a pack of paper in cubby hole that if I saw a car that looked beyond the means of people I wrote it down, the number plate. That was my context to – then you would go check and it would lead then obviously through

Page 3769

process to an audit or investigation. The fact of the matter is that we've probably moved to a point that we don't look at that enough and as a result cases where a person is driving a three and a half million car, but declaring 200 000 per annum is not looked at. And we need to get that right because it's unfair to you and I who get paid a salary maybe and we're having to pay, pay as you earn. We have to get that right if we're going to restore confidence in our tax system.

COMMISSIONER: Well the question I'm asking is are – have to get it right is one thing.

MR KINGON: Ja.

COMMISSIONER: Are you aware of it and dealing with it or is it something that is just really -

MR KINGON: It is something that I must deal with. I have not started specifically on this journey.

COMMISSIONER: Ja okay. Well if the Commission says to you, you should start on that journey will you start on that journey?

MR KINGON: Yes, Judge.

COMMISSIONER: I mean it's not an impractical thing –

MR KINGON: No it's not impractical, but, Judge, it does premise that we are properly financed and

Page 3770

have the sufficient resources to be able to do it.

COMMISSIONER: Yes.

MS MASILO: Mr Kingon, we've heard evidence, you know, about the frustrations and the facts of the disbandment of the High Court Litigation unit. And you've said you are on the – you know, it's in the pipeline of being re-established. Do you have a date?

MR KINGON: Not as yet, not as yet.

MS MASILO: But it's been prioritised.

MR KINGON: It is on and I've got the HR teams working on that at the moment. I haven't got a date for you as yet.

MS MASILO: Okay.

MR KINGON: Can I just come back to the lifestyle audit issue, if you may?

MS STEINBERG: Please, please.

MR KINGON: I think there's a couple if aspects that I'd like to do. We used to call it a capital reconciliation, basically taking a person's capital at the point in time and at another point in time, looking at their lifestyle, looking at their income and if there's a net deficit it must come from somewhere. That's what a lifestyle audit is. We need to be able to do that quicker to identify cases. In other words somehow in the case selection process it would be my dream that we could do

Page 3771

that far more effectively using technology. In other words IT because we've got date from ENatis on cars, we've got data of companies, I've got data of properties. I've got data of yachts by the way. I've got data that we're going to get even of service of vehicles ultimately. I've got data of all your income, I've got data of all the government grants and income that you're getting from government, I've got a full picture of you. Why can't I do this electronically and come up with a risk identify that has done that lifestyle audit in a flash to identify the case?

COMMISSIONER: Well let me tell you that you don't need to go the electronic systems yet. If you want a starting point Advocate Steinberg and I can tell you of a few.

MR KINGON: Judge, I can tell you of a few as well.

MS STEINBERG: Mr Kingon, there are many rumours in the corridors here that certain SARS executive, leadership in SARS themselves there's that disparity between what they earn and their lifestyles. Now Mr Makhubu suggested in his evidence that if you're a chief officer or above in this organisation you should be required to subject yourself to lifestyle audits. What do you think of that proposal?

Page 3772

MR KINGON: He and I had spoken before he gave evidence and he was the one who raised it in the context and I forget where it was, I cannot remember. But I fully endorse that. In fact I would go one step further, if I may. Is there not a place that senior public officials tax affairs become public? It's a question I've been asking myself and I don't know the answer to that. Just to say that obviously you are aware that the President has made certain pronouncements with regards to lifestyle audits.

MS STEINBERG: Yes.

MR KINGON: We are involved in that process and our teams from investigative audit space, etcetera have been supporting in terms of what can and can't be done. We've obviously got the confidentiality criteria that is there that needs to be adhered which does bind us a little bit. But with taxpayers' approval you can do it. My ultimate aim is obviously to collect tax. But in terms of the President's way of things we are supporting that process. I would support that from a senior SARS official point of view personally, but I would go one step further in terms of exposing my tax records.

MS STEINBERG: Thank you. Will you go on?

MR KINGON: Ja.

Page 3773

COMMISSIONER: Do you want a little break, Mr Kingon?

MR KINGON: No I'd prefer to get this done, Judge, unless you want a break.

COMMISSIONER: No, no you carry on.

MR KINGON: I would like to get this done. And it goes on, Judge, I'll get there, I will get there. I printed my sheets in extra spacing that I could just have it at a glance of an eye. The next issue, Judge, much evidence has been led, I believe and obviously you hear of the disciplinary processes that have been utilised in the organisation whether it be from an investigative or the discipline, the actual disciplinary processes. So I will be instructing and I haven't done it yet, I started typing this week, but I got so caught up in terms of the process to instruct our Human Resources to do an audit of all the disciplinary cases that have taken place and are taking place. This is to ensure that there is no spurious or malicious reasons for the processes that have been followed. We can't allow our internal investigative space and the disciplinary processes to be utilised for anything but pure purposes of preventing fraud and corruption. And it's an important issue for me that we have to put in place this review. I will be instructing this and it is my intention that this be done in order to prevent future

Page 3774

abuse because my worry is what happens in future, when I'm not here. What are the processes that should be in place? And I'll be making a proposal in that regard with regards to the Inspector General. But in the short term I want to set up an oversight committee of people who will basically advise before a case is started and before a case is prosecuted or not prosecuted because maliciousness can happen both ways. You can decide not to investigate or to investigate, you can decide to charge or not charge. I want an oversight governance committee that will decide this, not individuals. And that is what I intend to put in place.

MS STEINBERG: Mr Kingon, a question to you. It seems anomalous that the very individuals who perpetrated this regime of fear and unfairness would now be the ones to carry forward into the future. Is it not perhaps appropriate to bring an outsider in to do this in the meantime?

COMMISSIONER: May I just add to that? My concern really is processes that are in place at the moment, we can talk about a process for the future, but to get some, you know to get some of the stuff out of the way now that people are afraid of –

MR KINGON: That's what I'm wanting to do.

Page 3775

COMMISSIONER: But I mean should – Advocate Steinberg has asked the question, should the people who actually instigated be the ones that audit it?

MR KINGON: No.

COMMISSIONER: Should one not get an outsider in to look at all your processes in place at the moment and say look this is spurious and this is vindicatory and –

MR KINGON: Judge, I do believe within my teams I can find independently minded people. I really, Judge, my money is so tight I don't want to go out again and again and again.

COMMISSIONER: Yes.

MR KINGON: My chief officer of Finance is going to give me a bit of a clip I think if I continue to just spend money like this. I don't think it's necessary to go out. I have got people of integrity. I am not saying in what I've said that I'm going to use the people who've been involved to review. They obviously have to be involved to give evidence in terms of what they've got or haven't got, but I need to find the independent. I think you're right, Judge, I need to make sure that it's an independently minded review and I'll put that in place and make sure that that is – I just don't want to go and spend more money –

Page 3776

COMMISSIONER: No I understand. But if I may just make a suggestion. I think it would be a good idea to satisfy people that they're not being pursued for ulterior purposes.

MR KINGON: Yes.

COMMISSIONER: Sorry carry on.

MR KINGON: Just moving onto project management governance, I think evidence was led, Ms Sue Burger, earlier this week, I think it was this week, the weeks seem to -

MS STEINBERG: Yes.

MR KINGON: - to join each other and she highlighted the delays from – and I call it the light bulb moment, we need this until delivery. And there are numerous governance processes in between. Business requirements, specifications and we love using acronyms of BRS etcetera, etcetera. But from that point and the governance processes in my view is too long. We need to find a way that we can be agile in this environment. [11:03] We need to be able to decide on something and deliver on something within months, not years and so we need to a fundamental review how we are going to do that. I haven't started this yet, but this is my intention. The other aspect that I just wanted to touch on, currently our end back approval is a rotating chairmanship, and a bid

Page 3777

adjudication committee. It is my view that the chief officer of Finance needs to Chair this committee. He is the accountable person, he needs to Chair this committee and take accountability for it and it is my intention to change the rotating Chair of this committee. I was going to address some of the governance on the whole issue of compromises, but governance in general needs to be there to ensure that there is no maliciousness obviously, but that we are abiding by the law and applying it fairly and equitably, but if you have a look at the scope of compromises, write offs, temporary write offs in the last few years, my business is collecting money. Not writing it off and we need to just make sure. I'm not saying there's anything, but we just need to review it. It's a thing I just wanted to put on the table.

MS STEINBERG: Well, Mr Kingon we're aware of debt that's been written off while there's still a live dispute around that debt. Surely that can't be right.

MR KINGON: I am aware of that case and that will be part of the review. International peer reviews, and I just wanted to touch on this. I did reference earlier the TADAT and for those of you who don't know what TADAT is, it's tax administration diagnostic assessment tool, and in fact we've got a person in our organisation trained on this. He won't be doing what I

Page 3778

want to say in a moment, but SARS does not act in isolation. We're part of a world community. In fact the tax community is quite a tight knit group, and we work together in many, many aspects as you are aware. Whether it be FATCO the common reporting standard, etcetera, but accordingly we have requested that a TADAT assessment be performed on SARS to determine its current status, and that is I'm not sure of the exact, where it is today, but that decision's been taken. Similarly in the customs environment, the world customs organisation will be requested to conduct a peer review on the SARS customs, and we believe in so doing we can help strengthen. So we've got the ombuds, we've got the Commission, we've got other peer reviews. We must see that's all these building blocks which will hopefully lead to a solid structure going forward.

PROF KATZ: Sorry Mr Kingon, on those international peer reviews, historically weren't they performed?

MR KINGON: I am not sure Professor in terms of the custom space, but as I indicated earlier the TADAT one was done in 2014.

PROF KATZ: OECD?

MR KINGON: I'm not sure if there's an OECD, I speak under correction. I don't know, but maybe

Page 3779

just while I'm on the OECD. I've had excellent engagements with the OECD since I came to office and we've restored the relationship with them to the extent that if I've got any area, they'll even get people to be seconded and to come help train our people. So we need to use these organisations. They've got expertise that we need.

MS STEINBERG: With regard to the world customs organisation, we had evidence that shortly before Bain came and restructured customs, the WCO had reviewed customs and said it was doing well, it was on the up and up, and there are a series of reviews before that. So it seems there previously was that kind of relationship and peer review going on in customs.

MR KINGON: I don't know as I sit here. I couldn't say, but yes let's accept that. The question is, is then why change it and that's a question which I will leave to the Commission. The fact though is what we have seen happening and my acting chief officer of customs can attest to this, and I'll get to this in a moment, but in the customs space we've seen service deteriorate in terms of how long it takes to clear goods, etcetera.

PROF KATZ: But while you're on that, you were talking earlier Mr Kingon about in some of the BRICS countries, they train for six months and that before and you need it, I would suggest that a lot of these

Page 3780

international organisations OECD and that, would gladly help on training.

MR KINGON: 100% and what has been interesting Professor, is that even in the BRICS countries on the customs space, there's a move towards having even utilising each other's training facilities on certain topics and there's a development in that regard that I won't go into today, but yes. There is synergies to be had. Even with our SADC countries. In terms of ATAP which operates in Africa. We need to utilise all of these things. We do not know it all.

PROF KATZ: And that's cost effective, you don't have to pay for it.

MR KINGON: It's hugely cost effective, and it benefits us as an organisation. Just touching on protected disclosure and whistle-blower's policy, just to say that we have re-written the policy. Obviously the Commission, people have been fearful in coming here Judge that they'll be victimised.

COMMISSIONER: I know.

MR KINGON: In terms of coming here. We need to protect them. We do have a whistle-blower's policy. We've re-written it to be a protected disclosure policy with certain checks and balances. We need to implement it. I haven't as yet, it's awaiting my

Page 3781

signature. Moving to displace staff. This is where we get emotional again.

COMMISSIONER: You know Mr Kingon, let me just disclose one thing about the inner workings of this Commission. Ms Steinberg has had I don't know how many boxes of tissues in her office for people she has seen. Yes, so -

MS STEINBERG: I need a VAT refund for the amount of tissues.

MR KINGON: If I may on a lighter note, my chief officer Mr Fabian Murray can stand up. You can go see him afterwards. Around 200 experienced employees were displaced in the operating model review. Many of them were highly skilled, hugely experienced people. Who had accumulated years of experience and institutional knowledge that is exceptional. I was thinking last night and in preparation, how many years of experience. It runs into thousands Judge, years of experience. Their expertise and contributions have been sorely missed as the inefficiencies and problems of the new operating model have become apparent. We miss them. We have started a process of recognising each person's particular skill, to match it to a position and it is tendered where possible, and this is something that we're considering. Can we reinstate them and that is something that we are dealing with. This

Page 3782

process is unprecedented for us, and I invite my colleagues, many of them are here, work with me, work with us to achieve the outcome that is beneficial to everyone, to SARS and most importantly to our country.

MS STEINBERG: Just a question Mr Kingon. Your CO for DIST expressed the view that -

MR KINGON: Sorry, who?

MS STEINBERG: Your CO for DIST expressed the view that in that space people with, who'd been in SARS for many years were less useful. Is that your view too?

MR KINGON: Not at all. Totally the contrary, they're extremely useful. We need to utilise their skills to the full and it comes back to what I said earlier. We've got a new generation coming through. They can be used to empower them as well as deliver in terms of the current mandate. You know, I engaged and the hurt of the last week is exceptional. I engaged the IT team yesterday and the pain in the room was tangible. They've got vision, vision that I can only dream of. We need to harvest that and it's how we do that that's going to be the judge of where we are. When people look back, how are we going to harvest those skills of these 200 resources and others? That's what we're going to be judged on and in my view we need to make a success of it. They are not beyond their sell by date in the very least. In fact, to the

contrary their sell by date is many years hence. I think my sell by date is closer than all of them in that room that are there and I feel very confident in that regard.

MS STEINBERG: Yes. I don't know if you heard, but Mr Hore said that the only reason that business doesn't poach those resources, is because they don't want to disempower SARS, but they are the best in the country he said.

MR KINGON: I would concur with that. The trouble that you sit with, is when demotivating, things take place and it affects your psyche. It affects the very person you are. I've felt it. It's a fact. So I respect Mr Hore, he is setting up a new bank and I respect that the staff have not been poached. I need every single one of those people. I need them and I need them to be doing everything possible to rebuild this organisation.

COMMISSIONER: You know, I've just made a note here what you said earlier about succession. We've seen some very, very good people here. Young people who obviously have a future if they're allowed to use it. I don't know how you get a succession without someone just exceed as it were. In other words to pass down something that you move on with. So it struck me as rather odd from management to saying get rid of the old fellows and just put in new people. You've got to go through the process of

succeeding as it were. If you want succession you must succeed to do something.

MR KINGON: Judge, the key to success is balancing old with new.

COMMISSIONER: Yes, ja -

MR KINGON: It is not only new.

COMMISSIONER: Ja.

MR KINGON: Or only old. We have to transform. Transformation has to be on our agenda as an organisation. We're in a, we have to. We could not have stayed where we were at in 97 when we came into being 21 years ago and not transform from there. You have to transform, but you don't do it by just putting in new and throwing out the old, because in so doing, you are failing to reap the wealth, the thousands of years that I say knowledge that we have. So we, I don't believe I've got a model yet, Judge that deals with this, but we have to put our minds to it, to ensure that proper succession takes place. That when person A leaves, person B just automatically steps into the shoes and can succeed in terms of that, and ja.

COMMISSIONER: You've got some extraordinary good young people here. Do you know that?

MR KINGON: I do know that Judge and they put me to, I'm just astounded and let me just say also.

I'm astounded by their loyalty to the organisation. Many of them could have left. I'm astounded.

PROF KATZ: But there's huge institutional knowledge here.

MR KINGON: Very much so. We have lost. We've lost institutional knowledge. There are many people who have left, that I look and I say I wish so and so was here to help with that or that or the other thing. But to say we haven't, no. That's a fallacy. Just in terms of people. The one area I wanted to touch on, and it's work in progress at the moment. We had a process whereby office administrative support staff were being placed in different grades all over the place. In other words there was no standards being applied that you've got a standard grading process for office support staff. So it was very important for us as an organisation to standardise that for going forward, but there were a lot of people who were affected in grades which were higher, and the process that was undergone or that went out that was put in place, was keeping the salaries of those people, but to downgrade them in terms of grades. I'm reversing that. I'm in the process of reversing that. It's amazing the amount of hurt not touching a person's pocket, because that's not it. But to downgrade a person, it's a hurtful thing.

MS STEINBERG: It's about dignity I

think.

MR KINGON: And we're putting in place the steps to reverse that. It costs us nothing in the organisation. In future, the new grading model must be followed. You can't have one office having a level 6 and another office another level 4B as office support. That's not fair to anybody, because they're expected to do similar work. So that is work in progress, but I just wanted, those are the two areas that I just wanted to touch on. A very important part of our business is customs, and my acting chief officer says he often feels like an orphan, but and I do want and I am speaking also to my staff here Judge. I'm probably abusing you a little bit in speaking to my staff.

COMMISSIONER: No, you're not doing that at all. I assure you.

MR KINGON: But customs -

COMMISSIONER: I think it's quite appropriate.

MR KINGON: Customs is an important aspect, an equal aspect of my business and it's important that customs be given the recognition that they need. We are fundamentally changing the way we view and carry on our mandate in this regard. In addition to simply being an administrative authority that extends control over the

Page 3787

cross boarder movement of goods, we will be enhancing our customs service, and just to say when a container is stopped, there are various things that play out in terms of a container stopped.

There are costs involved in a container being stopped to the person who is buying those goods, and it's a huge cost. I speak under correction, but they call it demurrage costs and they have got their own language, customs. I think it's around R18 000 a day for that container to be stopped. If you're bringing in goods and we stop it for longer than necessary, that's impacting the cost to the economy. We cannot afford it and we should be closer to two days to releasing those containers, but I believe we were getting closer to the 23 day mark. Now that's unacceptable and we need to fix that and we're in the process of fixing that and I'm excited about this. What was also very interesting Judge, is that often the container stopped, the duty that is levied by the process correctly is far lower than the demurrage cost, the extra costs in stopping that container. The other issue we need to understand in our business, is that in our country the automotive industry is a major aspect of our economy and they work a lot on the just in time principle. In other words goods come just in time for their factory lines. We can't afford delays in those processes. We need to make

Page 3788

sure that we are not costing the economy in terms of this. We need a mind shift change that requires cost, customs officers to have a better appreciation of the impact of their actions or lack thereof in the economy. The unwarranted delay of legitimate trade is unacceptable, and it's a cost to the current, to the economy and specifically in the current economic climate we can ill afford.

I have mentioned that we're overhauling training, and I don't think I'm speaking out of turn that our acting chief officer of customs wants to introduce a new induction course for customs officers by year end, to ensure that we start this process of the proper training and equipping our staff to deal with what is out there. Equipping our staff and let them understand that the values, our core values that we as an organisation hold dear to. So that is work in progress, but a skill level across tax and customs, is a fundamental building block in order to be a successful revenue service. We have also enhanced our engagements with trade so that we can respond to the needs that are out there. I've had meetings and I think you've had evidence led by the South African Association of Freight Forwarders, who is a representative body. We've had engagements and we've had very constructive engagements and the feedback I'm already getting is that things have turned around in the custom space and I want to compliment my staff for the

Page 3789

work that they're doing in that regard. We are going to change this business. We're going to make it a success and I believe we're going to see a new SARS arising, as a phoenix out of the ashes and we're going to make a thing.

COMMISSIONER: Well you've only got 30 days left to do all of this.

MR KINGON: I've got a little longer than 30 days.

COMMISSIONER: 60, no how many of your 90 have gone?

MR KINGON: I've got another 60 Judge.

COMMISSIONER: Okay. Can we have a little break? It's -

MR KINGON: You may, Judge.

COMMISSIONER: Thank you.

MS STEINBERG: Sure.

[INQUIRY ADJOURNS INQUIRY RESUMES]

[11:44] COMMISSIONER: Okay could we settle down a bit. Thanks.

MS STEINBERG: Can you settle down please.

COMMISSIONER: By the way while we're settling down. Norman I want to compliment you, you know you produce these transcripts so rapidly. We had a seven hour day and at 11:30 that night you sent me a whole

Page 3790

transcript. Extraordinary. Thank you.

MS STEINBERG: Can you carry on, Mr Kingon.

MR KINGON: Maybe Judge, forgive me I'm not very sympathetic to people who might smoke or otherwise. I tend to carry on with meetings without thinking that people, so I just carry on. It's my nature forgive me.

COMMISSIONER: No, no don't worry about that.

MR KINGON: Judge, just to, somebody at the break just informed me and it's with regards to the international assessments. We have had had four done in the customs space. So I wasn't aware of that and I'm not sure of the content I don't know, I can't speak to it. But it's important that we understand that. I was dealing just with trade and the issue with trade, you know it's actually very few people who deal with the majority of the trade. We must make sure that we service them properly. That's why it's important that we engage with entities like staff to ensure that they, that we understand their pains and it's exactly like with the recognised controlling bodies. You must engage your clientele at all times and be open to criticism to hear what they are saying because then you can be far more responsive. So in the customs spaces it's

equally so.

We will also be enhancing our international engagements at a bilateral regional and multilateral level to ensure that South Africa is able to influence global customs developments and reap practical benefits for local companies in foreign markets. This is important to us. So just recently my colleagues and I were in Beitbridge, we had a bilateral with the Commissioner, the Commissioner general from Zimbabwe. We've had meetings with Lesotho. We've had meetings with Swaziland. These are part of the things that we have to do and we've got to be, I don't know, I just need more hours in a day, but we've got to do it far more to build up these relations because ultimately a lot of our trade goes through these neighbouring countries and we need to ensure that we've got good relations because ultimately you want to lead to an exchange of information, Judge, automatically flowing that you, you really don't have to wonder what's crossing the border. You've actually got advance information and I believe that you are aware of that.

Customs is important, we need to focus on that but we have turned the corner I do believe and I want to commend all the custom staff, Judge, who sit in areas and conditions that are unacceptable and difficult. I mean some of the border posts are far from things that you and I

would regard to be the things you'd like to have close to you. We need to remember that and just take cognisance of that. I come to certain recommendations to the Commission and I'm going to read a little bit more because I want to be more specific here.

COMMISSIONER: No, indeed.

MR KINGON: We are at a historic milestone in our development. Although we are not proud of why we are here, we recognise that this is an opportunity to make amends and to ensure that these mistakes are not made again in future and that is my prayer, that we will never see this again. We are mature enough to recognise that SARS's conduct has opened us up to criticism and censure and we are humble enough to accept whatever corrective action our principals may recommend. In my view if SARS leadership is mature, if SARS leadership has integrity and the required technical expertise any governance model will work. However we are not perfect and we have to seek a more appropriate and robust practical governance framework that enables us to do our job and as I've indicated earlier that monitors us far more effectively and no offence to the media but we shouldn't be monitored by the media or wait for the media to respond. We should have already dealt with these matters upfront.

I would like to request, Judge, the Commission to

make recommendations on such a governance framework. Having listened to the evidence before this Commission and especially on 31 August by the Honourable Judge Dennis Davis it is clear to me that it is essential to maintain SARS's autonomy and I, knowing the Professor's view in his reports he would concur with that because that's what led to where we were. So we need to maintain SARS's autonomy with regards to the administration of tax and customs. It's important. SARS must have independence within the framework of tax policy that is determined by National Treasury. It needs to determine its own strategy, its own enterprise, it's operational policies and processes and to set its own budget and to appoint and allocate it's human resources. We need those abilities in order to take ourselves forward. The challenge for the Commission, Judge, is how to balance this autonomy with effective oversight. Some of the proposals that have been made include the appointment of a board, or the setting up of a body such as the Inspectorate of Taxes and Customs. In my view a board has challenges and we did have a board in the early days of our organisation. It is periodic, in other words it only meets from time to time. It probably will not have dedicated resources allocated to it unless that is part of the framework. It will not have the required infrastructure or permanency to act as a constant presence

overseeing SARS and that's what worries me about a board. Personally I would prefer a body similar to the statutory permanent inspectorate of tax and customs. That has the legal authority to -

PROF KATZ: Sorry, can you go a little slower.

MR KINGON: Sure. Forgive me, Professor. No, no let me start that again.

PROF KATZ: No, no Norman's got it all down.

MR KINGON: To reiterate.

PROF KATZ: Norman is better than me, okay.

MR KINGON: To reiterate -

MS STEINBERG: And we'll publish, we will publish your final version too, Mr Kingon.

MR KINGON: Ja, there are some changes I do need to make.

COMMISSIONER: No we'll make them but in fact we're going to put that on the website.

MR KINGON: That's fine. Let me repeat. That personally I would prefer a body similar to the statutory permanent inspectorate of tax and customs that has the legal authority and the supporting infrastructure and very importantly to access SARS's confidential and

taxpayer information in order to execute its performance monitoring role and impose itself on SARS when necessary. In this way the integrity of taxpayer information can remain intact at all times.

In addition to the traditional powers of oversight over the performance of SARS such an inspectorate and I'm changing my view of saying could, to say it should have the power to oversee internal investigations of staff. It could also have the power to act as a nominations committee for the appointment by the Minister of Finance of the Commissioner and deputy Commissioners. In my view the inspectorate would report to the Minister of Finance. In the coming weeks it is my intention that SARS will step up to the plate and do some research on the options that may be available in this regard and we, I intend that we make some submission, I was getting somebody to start that process last night as to who can do it, to make submissions to you Judge and the Commission with regards to this proposal. It's important that we put this in place, we cannot be where we are today again and I would appeal, Judge, if I may that you consider this matter and we will support your recommendations in this regard.

COMMISSIONER: Mr Kingon, let me just, do you want to put all your recommendations and then come back to some?

MR KINGON: That concludes my major recommendation. I'm going to conclude with some comments then in conclusion.

COMMISSIONER: Yes.

PROF KATZ: Just on the timing on that?

MR KINGON: I intend to do the research very quickly, have that done very quickly. I don't know how long they expect, because it requires a legislative mandate. That would probably only happen in the next year or two. I'm not sure when that will be.

PROF KATZ: Sorry the timing of your submissions?

MR KINGON: No we will -

PROF KATZ: The Judge asked me to get on with it.

MR KINGON: Professor I have not told the staff who may be watching online as we speak, but I'm telling them now that I'd like it two weeks to give to the Commission.

COMMISSIONER: Ja, please, if you would because you know we have to report and I don't like delay myself, I, we're supposed to report final finally to the President at the end of November. That's not long and there's a huge amount.

MR KINGON: 100%.

COMMISSIONER: To report. So if you could just urge them on. We would like to see what you have to say on that.

MR KINGON: I will do that, Judge. I'm putting them on the spot and but it is my intention. We want to support you in this process.

COMMISSIONER: I just want to talk to you about that Inspector General because I think that it's vital myself. They have one in America, they have one in Australia, I think I've read some of that. I would have thought that you want, your inspector general is here to, as a backstop as it were for what happens internally, nothing to do with taxpayers.

MR KINGON: Correct.

COMMISSIONER: It's about internal things. Shouldn't be interfering with the Commissioner, but he should be a place that you can go to.

MR KINGON: Correct.

COMMISSIONER: If there are problems.

MR KINGON: Correct.

COMMISSIONER: And let me just, give me a moment.

MR KINGON: Forgive me.

COMMISSIONER: There are two questions that arise, thirdly it seems to me that inspector general

should have as it were the powers that this Commission has to say Mr Kingon I want this tomorrow and Mr Kingon has done so even though he's been annoyed and I want to look at the taxpayer affairs, and I want to summons someone if necessary, that they will come and talk to me. Do you have any difficulty with any of that?

MR KINGON: Not at all. As long, you know in any framework that you put in it's got to be in support of your management of your organisation. Not as a distraction of your management of your organisation.

COMMISSIONER: That's right.

MR KINGON: And I think in terms of even, obviously things need to be reasonable in terms of the management, you can't be running at every second to the, you've got to run the organisation. Ultimately whoever the Commissioner may be, has to run the organisation but we, he needs the power as you've elaborated on, he needs those powers and we need to assist in order to deliver on his mandate.

COMMISSIONER: Ja, hopefully the Commissioner would have nothing to do, the investigator director or whatever would have nothing to do, hopefully.

MR KINGON: That would be the dream.

COMMISSIONER: Yes and as I say I think it's very important that he's not, he doesn't, he doesn't

interfere with management.

MR KINGON: Correct.

COMMISSIONER: He should be the last resort as it were.

MR KINGON: Correct.

COMMISSIONER: But when he is called upon he should have powers to act decisively.

MR KINGON: Correct and I liked your statement because very important that we differentiate between the process of the tax Ombud.

COMMISSIONER: Yes.

MR KINGON: Which is service and taxpayer driven.

COMMISSIONER: Ja.

MR KINGON: And what we are saying the inspectorate being internally focused as to the SARS, the things that we want to be held accountable on, where we're putting secrecy as a bar for instance today. That's what we want them to take ownership of.

COMMISSIONER: The other thing that arises and maybe it's just something you want to look at in making your recommendation. To whom should the inspector general be accountable, I have difficulty, you said the Minister, well the Minister is a political appointment at the end of the day. Is it Parliament, I don't know, will

you think about that, where does, who controls the controller as it were?

MR KINGON: Ja.

COMMISSIONER: Just think about that.

MR KINGON: Let us give it some thought. My proposal which I did put in my submission is to the Minister of Finance, it could be to Parliament. I need to take a call on that. I'm not in a position to say one or the other. It needs to be accountable to somebody -

COMMISSIONER: Correct.

MR KINGON: And we need to determine who that somebody is.

PROF KATZ: While you're thinking about it, I think with respect obviously I've been thinking about this one. I don't think it's either or. On some matters that the inspector general picks up it would talk to the Minister, on other matters if it involved the minister as well he would go to another avenue but I don't think it's an either or, it's both.

COMMISSIONER: Anyway think about it.

MR KINGON: We will consider that in the research that we do. Let's look at other jurisdictions. Let's not go and reinvent the wheel.

COMMISSIONER: Yes.

MR KINGON: Ultimately in my position as

acting Commissioner and I believe whoever is the Commissioner we need to be accountable for our actions and that is the fundamental aspect that needs to be addressed. The how we need to get to.

COMMISSIONER: Exactly, what I have in mind is that the investigator, what do you call them, inspector general, inspector general is the ultimate whistle-blower as it were.

MR KINGON: Yes.

COMMISSIONER: Ja.

MR KINGON: And for me he could be the one for instance the protected disclosure policy, he must administer that type of thing.

COMMISSIONER: Yes.

MR KINGON: We need to put those checks and balances in place.

COMMISSIONER: Give it some very serious thought it you will.

MR KINGON: We will.

PROF KATZ: Whilst he's doing that. Can I raise another issue on governance. So what we're talking about is oversight. Now the kind of oversight we've been talking about now is almost an integrity oversight. But then there's also a competence or an administration, the decision that the Commissioner takes where the statute says

in a discretion of the opinion of the Commissioner. On that, that's not an integrity, do you think it's useful on that one to have a deputy Commissioner who in certain matters would assist the Commissioner where he exercises a tax discretion.

MR KINGON: Professor, I think I'd like to do some more research before I make a submission in that regard. There's various models that could work in that regard. I think it would be remiss of me to go further at this point in time without doing the proper research.

COMMISSIONER: Well I think that, if I may just follow up on that. You've mentioned a board and I have your reservations about a board as well. I don't think it can be of any great assistance. But the question does arise ought there to be one or more deputy Commissioners who, while having no power over the Commissioner, at least are there as number 1 support of the Commissioner and the other one is push back against the Commissioner, if he's making the wrong decisions.

MR KINGON: Correct and, and -

COMMISSIONER: Will you think about that, whether there should be that level.

MR KINGON: The push back that needs to happen in that management structure needs to be able to happen with absolute integrity without any risk of a person

being side-lined.
COMMISSIONER: Yes.
MR KINGON: Or pushed down.
COMMISSIONER: Well that's where the inspector general comes into it.
MR KINGON: Correct.
COMMISSIONER: But the question I'm asking and I think the Professor is also interested in and I'm sure my colleagues. Do you have a level of deputy directors one or more as been suggested, or doesn't that just, isn't that just an unnecessary step before your EXCO? In other words EXCO should be performing that role.
MR KINGON: Ja, there's various models there, Judge, and I think for me to comment what would be the best approach, I really would prefer not to at this point in time.
COMMISSIONER: I'm just, all I'm doing at the moment is raising things I'd like you to think about.
MR KINGON: No -
COMMISSIONER: I'm not looking for answers, I'm just giving some suggestions of what you should you look at.
MR KINGON: Correct.
COMMISSIONER: And the other thing that comes from that, should there be a formal EXCO, in other

words not one you can disband overnight.
MR KINGON: Those were the issues, ultimately the EXCO is an advisory body to the Commissioner.
COMMISSIONER: Yes.
MR KINGON: It has not statutory form as such. The accounting officer is the Commissioner, full stop.
COMMISSIONER: Yes. Yes exactly.
MR KINGON: Would we need something beyond that, I'm going to give it some thought and I'm going, we're going to do some research so the areas that we're going to look at, Judge, is the structures with regards to that top structure, what is good practice.
COMMISSIONER: Yes.
MR KINGON: Because this is where, the OECD I think even has got some details on this which we could probably go and pull out and see what is best practice.
COMMISSIONER: Okay.
MR KINGON: And then the inspectorate general of taxes and customs, we need to do some research.
COMMISSIONER: Just to be clear on that. I would like you in due course give us your view on whether a formalised EXCO -

MR KINGON: I would have -
COMMISSIONER: Number 1 greater accountability because it is a formalised body and number 2 greater confidence to be able to deal with the Commissioner and make sure that you are on the right track.
PROF KATZ: Sorry Judge, just two more things there, to think about, is the deputy Commissioner good from a succession point of view, if something happens to a Commissioner, unfortunate death, illness, is that a good idea that you have a deputy who would fill in forthwith, no answer now.
MR KINGON: Ja.
PROF KATZ: And secondly in your governance thinking what decisions should the Commissioner have to get from an administrative point of view the minister's concurrence. For example bonuses, salaries that kind of thing, expenditure, etcetera.
MR KINGON: 100%. I take note of those.
COMMISSIONER: Anything you want to raise? Mabongi, do you want to raise any other governance? Anyway we'll hear from you hopefully soon.
MS STEINBERG: Mr Kingon, before you begin with your concluding remarks I just have a final question for you.
[12:04] SARS spent just shy of R400 million on Bain and

Gartner. Now Bain has said in the media that there's some form of offer to pay back the money that was spent on them. They've also said that they will wait for this Commission to make a recommendation in that regard, and my question to you is if the Commission recommends that all the money is paid back to SARS, what would you do with it?
MR KINGON: I will invest it in my IT infrastructure as a starting point. I would like to invest in terms of my empowering of my staff through training, proper training happening. There are certain key areas that we need to look at. If we got all of that money tomorrow, I'm not going to waste it. We've got to refresh. We've got to fix and redo the e-filing platform to be totally user friendly. My dream, my dream is that I don't have clients in the branch. I don't want tax practitioners coming into a branch. If I can give them a self-service option for end to end, it takes a huge burden off my staff. Ultimately I'd like to get self-service options as being the principal, just like ATM's became for the banks, took the people away from the tellers and online banking, that's what I'm wanting to do. So I would like to invest into that aspect. I need to look at consolidating buildings. For instance we're wasting with multiple buildings. There's staff, I mentioned earlier I've got customs staff living in conditions that are not ideal. We need to fix

Page 3807

those things. Now I've got to look at which is the priority obviously, but IT infrastructure for me and we've seen it this week. There's some critical things we have to do there to make sure that we take the organisation forward in that regard. What I want to assure you, I'm not going to go put down a new carpet. I'm just being factitious here, but tomorrow, just when I get the money. We're going to invest it in things that serve our clients better and that's what I'll do.

COMMISSIONER: I want to just make one thing very clear. You say what you would like to do. I think we're talking in a bit of a vacuum here.

MR KINGON: Ja.

COMMISSIONER: Number one, I read a press release from Bain. No one has asked this Commission to make any decision about anything, and we will not be making a decision about what should happen to money that we haven't been asked to make. I don't know if the money is available or not. We spoke to Mr Min there. I am still unclear as to what he has in mind, but we have not been asked to do anything. So don't spend the money just yet if you don't mind.

MR KINGON: No, no, no.

COMMISSIONER: And I'm not going to, we're not going to make any recommendations at all about

Page 3808

what they should do with money if they haven't offered to do anything with money.

MR KINGON: Maybe Judge, to emphasise. Everything's got to be done with prudence in the form of governance, I don't spend money I don't have obviously.

COMMISSIONER: No, that was said lightly.

MR KINGON: Ja.

COMMISSIONER: I just, we don't have to discuss it, I just want to make sure we all understand. This Commission has not been offered any opportunity to do anything, and until it happens we won't and I don't believe that until I hear Bain saying anything about this, well I don't believe that the money is available.

PROF KATZ: But this is a matter inherently between SARS and Bain.

MR KINGON: Exactly.

PROF KATZ: And SARS and Gartner. If people have let you down or people have caused harm, it's a civil matter.

COMMISSIONER: Well, I'll tell you now that if a letter came tomorrow and said make a recommendation, I'll say pay it back to where you got it from.

MR KINGON: Judge, if I may comment, if you don't mind on this matter. I've been shocked by what

Page 3809

I've heard in evidence with regards to both these contracts. Shocked with regards to pre-discussions, shocked with regards to using outside people who ultimately benefit to prepare frameworks for how the work should be done, to the extent look it's just unacceptable. It's not the behaviour that we want to, it's not good governance and we cannot allow that to happen. The chief officer of Finance has already engaged with Bain and we've had engagements, I think he's alluded to that. I'll be honest with you Judge. I wasn't clear from the press releases that I heard as to what was going on. I have not been clear and I haven't been clear subsequent. We have also asked for an engagement with Gartner, which engagement will happen in due course. But that's work in progress and I concur with Professor Katz, that that is a matter between me as the accounting officer and those respective firms, and I intend to deal with that, but if the money is to come back, it's got to come back to SARS and I will utilise it for the best of, the benefit of our taxpayers ultimately.

MS STEINBERG: Thank you. Do you want to go on?

MR KINGON: Yes, thank you. I'm close to finished, Judge.

COMMISSIONER: No, it's very interesting, I assure you. Everything you're saying. So don't feel

Page 3810

that you're taking up our time.

MR KINGON: No Judge, you did give me till one, but -

PROF KATZ: Advocate Steinberg did, not me.

MR KINGON: This has been an extremely challenging time for me. I didn't think prior to the 19th of March that I would be sitting here today, testifying before you. It's been hugely busy, but there's one thing and it's a question I'm not going to answer. You have obviously got a lot of introspection and the key question that I believe both myself and my colleagues must be asking ourselves, is why did we not stop this destruction, and it's a question I don't want to, I'm not going to answer Judge. But it is a question that I've been asking myself repeatedly. Should I have had more courage? Should I have taken a firmer stand? Would I have been without a job? I'll be honest, you had that fear, but it's a question I think each of my colleagues whether on EXCO, whether it be within my group executive structure, whether it be in any other area within our organisation, all areas. We need to ask that question. Could I have done more, because the success of the organisation is built upon what we do and it's a scary question? One that keep me awake.

But we must not be paralysed by guilt or self-

Page 3811

doubt. The time is to move on. We have a higher duty. We actually don't have a choice. We must rebuild this organisation. Before closing, I wish to send a message to each and every one of my colleagues in SARS. Since I've been acting Commissioner, I see your hardships. I see the challenges that you have in a very different light. I've learnt a lot. I've never thought there was so much out there. Across the board I see the loss of pride which I've shared that we all used to have in working for SARS. I used to walk, and I'm involved in my community extensively, with my head held high. It's a battle. I want that to be restored. We're going to do it together. I also see the vast potential and commitment to do the right thing and realise that all is not lost. Together we can rebuild SARS, once again to be a proud organisation, seeking to serve our clients to the best of our abilities. I've been extremely heartened to hear a number of former and retired SARS employees and people who've left our organisation. I'm going to call them the SARS alumina, and there's many of them. Who've contacted me because they subscribed to the higher purpose? They want to offer their skills and services to SARS, interestingly not for position, but to rebuild the organisation. I welcome that. How that would happen? I don't know. It's, you know those are things we've got to think about. But it was just wonderful for me

Page 3812

to see people so passionate about a brand that I'm prepared to say I want to come back and start building this wall again that needs to be rebuilt. I also want to appeal to the nation as a whole, to support us in the process, a very difficult process, a difficult time in our history of our country and our organisation. I appeal to them to be good fiscal citizens and many were not, but many are and many people are seeking to do the right thing. But I want to appeal to the people to be good fiscal citizens, to work with us so that we can begin a process of rebuilding SARS and restoring trust in this vital institution. It is critical and I'm appealing to every single person whether it is a person paying excise duties, only pay as you earn from salaries to the big vendors that are out there. Join us in the process. We are prepared to engage. We are prepared to listen to you. We're prepared to work with you to rebuild. As long as you're behaving yourself, I'm happy to work with you, but please help us rebuild this organisation. I've got a small line to end with, but before I do it would be remiss of me not to thank you Judge. You look surprised Judge.

COMMISSIONER: Well, it's the first compliment I've had for the last six -

MR KINGON: Judge, Professor Katz, Mr Kahla, Advocate Masilo. Your time is important to us.

Page 3813

That you're investing into this, it's a pleasure and we welcome it. We welcome it as an organisation and I think I would be speaking on behalf of the country. We welcome it as the country and I want to thank you for the spirit in which we could engage with you, the spirit of constructive forward looking engagements that I've had. It is wonderful. Yes, we've shed tears but ultimately we've been looking to the future of a better organisation and Judge, from my first engagement till today, that has been what you've said and we appreciate that, and we will continue to work with you and support you to the best of our ability. We may fail sometimes, you say we're not quick enough or something. It has been sometimes a pain, but it is good and we need to welcome everything that is good. I would like to convey to the evidence leaders, the spirit in which the engagements have happened with staff has been superb and we want to thank you. You're part of the healing process of this organisation, and we welcome that. I've got a team of people who've been working as liaison and I do want to thank them as you did Judge earlier. Good people who've been doing their best to try and help in this process. A process we didn't know what we were entering into, but I did want to just say that publically. Our appreciation to you Judge. Thank you. I would like to conclude with a simple line that SARS has not seen its best

Page 3814

it. Thank you very much Judge.

MS STEINBERG: Thank you.

COMMISSIONER: You know Mr Kingon, I want to just exchange a few things with you. But first let me let you down. You're talking about an unreal world. You've talked about the past, you've talked about the future, you haven't talked about the present. You're not the Commissioner.

MR KINGON: I'm not.

COMMISSIONER: And there is a Commissioner.

MR KINGON: Correct.

COMMISSIONER: So you're talking about, I think they talk about a virtual world. I don't know. Now what is concerning me and it does concern me, and this is not said lightly at all. A lot of what I've heard you talking about, was what I heard in evidence existed in the beginning of 2014 and you had a situation, it was changed radically. You're talking about perhaps not a quick change, but going back there and you're getting a see-saw here. Now so what happens with all the stuff you're going to do? I mean you've got 60 days as I said. That's a bit light, but what's going to happen? You're going to put it all back and then what? It's going to be dismantled again. Are we going to go on with this see-saw? So that's

Page 3815

another, just don't just, give me a moment. I gave you until one. It concerns me and I, you know there are court proceedings at the moment. In which you know said perhaps rightly, perhaps wrongly I don't know, that this is an unlawful Commission.

Now I've looked at those allegations and I've said I'm perfectly happy, it's lawful, but one may be wrong. Maybe it has all been unlawful. So it gets set aside. Where do we go from there? So I am a bit concerned about the present. Now it's not for me to decide those things, it's for the President to decide, that's for the Constitutional Court to decide where all this has been going, etcetera. But I'm almost tempted to say please don't put those things in place at the moment, because you will have more disruption, or put it in place, you'll come back, it will all be dismantled again. So it's a bit of a quandary.

Now you know, I'm not going to talk about the Constitutional Court and what it will do. It's, that's its job and I'm not going to pre-judge anything they do. We've still got to go through that process, but quite seriously. Should you be putting these things in place if they're just going to be dismantled again? It's a serious question. You've spoken about a great vision etcetera. Well, you can only have that vision if the person in charge has got that

Page 3816

vision, and with respect you're not in charge yet. So what does one do? Do you have any suggestions?

MR KINGON: Judge, maybe you're going to the heart of the issue. This organisation needs certainty and it needs to resolve this matter urgently, with regards to the Commissioner and the Commissioner's position, because it is in so doing that we can get final stability. Yes, I am acting but I do have every authority and I'm going to act at the moment, in the way that I believe fit for our country's sake and for our organisation's sake. Yes, I am acting. I've had, this is my third 90 day cycle as you've stated, and I'm in that 90 day cycle. But the minister and the deputy minister have confirmed I've got full authority to do what I need to do to make a success, and I want to repeat and I might be paraphrasing what the minister said on Tuesday in parliament. We cannot afford a mess at SARS as a country. We cannot and we are in a very difficult position, we're needing certainty. The matter of the Commissioner needs to be wrapped up extremely urgently. It cannot delay but I have to proceed. I can't sit on my laurels Judge. I understand what you're saying about the see-saw, that a Commissioner will come in and maybe have a totally different vision and a totally different view of what I've expressed here today. I am basing my decision on my engagements with my staff and colleagues, that this is

Page 3817

the right approach for us. It's also based on what's best practice and we believe that there is no other alternative, yes there might be tweaks here and there, but there is no other alternative. To go back to where we were would be a disaster, and I believe even in the, and I'll be the last person to blow my horn because I'm not about that. The fact of the matter is we cannot afford to go back to where we were and I think I've done a bit to try and bring back from the brink where we were in March of this year and I will continue to do that, but I also want to say categorically, publically here, whoever is the Commissioner, I will support that person. I would go all out to make sure that SARS is a success.

COMMISSIONER: Well, I will just caution you about that. You've got a Commissioner. If you want to say you're going to support the Commissioner, make sure you include the current Commissioner. Anyway, I just caution you about -

MR KINGON: No, I understand -

COMMISSIONER: Saying you support any Commissioner. Sorry, anyway. But let me go to another thing. As I say that concerns me a bit, but that's not in my hands. The President has got lots of difficult decisions at the moment that he's making, I'm sure. This is one he'll have to make. He'll make it as he sees best

Page 3818

and it's not my business. Apparently there are court proceedings. They will get on with that in the normal course and I'll accept any decision a court will make obviously. I don't think courts can change the facts myself, but there it is.

There's another thing I just want to say as well that, I made one or two notes here. When this Commission started I had the pleasure to spend a Saturday morning with you. You recall your wife makes very good shortbread and thank her again. But I knew nothing about SARS at all and that's why I saw you and you gave me some briefing on it, and thank you very much. It was very useful. In fact the discussions before this Commission settled formally were extremely important, because otherwise how do you know which direction to take, but since then you know, you knew about the inside. Since then I've heard so much evidence and you fortify me in the conclusions I've reached on the evidence, because I was the outsider listening to what people say and I was listening to what you say as the insider looking in, and quite frankly the two coincide very closely. I'm very gratified that perhaps we're on the right track. So I found that interesting.

[12:24] As far as your – what you said in detail, it's about management issues which are not – you know we're not here to manage SARS as it were. So I'm not sure that we

Page 3819

would make recommendations on a lot of the things you've talked about. Those are your issues and I'm very gratified to hear of the things you're going to do because it seemed to me from an outsider's point of view all of them needed looking at. But our terms of reference are not how to manage the process, how to govern it.

MR KINGON: Correct.

COMMISSIONER: And that's what we'll be looking at, so I think it's very important that you give us that memorandum and then there are a lot of individual issues we've got to make findings on. As I look at them now quite frankly I think that some of them are rather trivial in comparison to what we've heard. But thank you very much for that. I appreciate it very much.

MS STEINBERG: Thank you, Mr Kingon.

MR KINGON: Thank you very much.

COMMISSIONER: Is that it for the day?

MS STEINBERG: Yes we're back on Monday at 9am.

COMMISSIONER: Let me just say once and final time. Everything in life comes to an end including the Commission and you know I used to sit in the courts and I thought to myself you know if someone had a litigation in front of me and I had to wait forever to see if anyone's going to say anything. Well none of the litigation would

Page 3820

ever have been completed. There comes a time when you say enough is enough. You've got two days left, Monday and Tuesday is that right? And then I'm getting on with the work of writing a report. If anyone wants to say anything they'd better come forward very quickly.

MS STEINBERG: And Judge, there will be a couple of more days in early November.

COMMISSIONER: Well there may be, ja. Thank you.

[INQUIRY ADJOURNED]

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abiding 3777:9
abilities 3793:14 3811:16
ability 3730:22 3734:16 3753:7 3754:10 3756:4 3813:11
able 3696:3 3706:11 3710:17 3732:15 3733:1 3734:16 3736:8 3737:21 3754:13,14 3756:11 3756:12 3762:13 3768:7 3770:1,23 3776:20 3791:4 3802:24 3805:4
absolute 3700:12 3731:19 3802:25
absolutely 3695:8 3754:21
abuse 3774:1
abusing 3786:13
accept 3702:24 3708:6 3716:11 3779:15 3792:14 3818:3
acceptable 3701:8 3735:1
access 3756:12 3794:25
Accident 3762:8
accommodation 3762:23
accord 3752:16
account 3712:8 3739:13 3745:9,23 3746:2,6 3748:8 3749:22,23 3750:8,21 3757:5 3759:23 3760:2
accountability 3728:24 3732:3,6 3777:4 3805:3
accountable 3702:10 3704:22,23,24 3777:3 3799:17,23 3800:9 3801:2
accounting 3717:6 3804:7 3809:16
accounts 3747:23 3748:15,20 3750:21 3760:6
accumulated 3781:15
accusing 3716:17
achieve 3782:3
acknowledge 3697:11 3702:22 3731:7 3732:1 3759:8
acronyms 3776:16
act 3697:7 3725:11 3735:24 3736:1 3745:18,19 3748:16 3749:14 3750:2 3756:11 3760:20 3778:1 3793:25 3795:9 3799:7 3816:9
acting 3696:22 3697:1 3697:4 3702:1,6 3704:20 3714:22 3760:12 3779:18 3786:11 3788:9 3801:1 3811:5 3816:8 3816:11
action 3708:8 3737:19 3792:15
actions 3738:7 3788:4 3801:2
activate 3765:9
actively 3765:7
activities 3715:2
actual 3725:16 3727:6 3746:14 3773:13
ad 3734:13 3740:25
add 3696:1 3712:6 3774:19
addition 3697:14 3724:18 3725:5 3786:24 3795:5
additional 3724:20,20
address 3777:6
addressed 3801:3
adds 3722:2
adhere 3759:12,12
adhered 3772:16
ADJOURNED 3820:10
ADJOURNS 3789:17
adjudication 3777:1
administer 3801:13
administering 3730:11
administration 3728:2 3728:3 3735:24 3736:1 3758:21 3759:2,4 3760:20 3777:23 3793:8 3801:24
administrative 3785:12 3786:25 3805:15
admitted 3765:1
adopted 3715:14
adult 3730:4
advance 3695:6 3791:19
advantageous 3756:20
adverse 3736:9
adversity 3736:5
advice 3708:7 3709:8 3709:18,25 3710:20
advise 3774:6
advisor 3721:10
advisory 3804:3
advocate 3696:5 3723:15 3737:7 3747:3 3760:24 3764:23 3765:1 3771:14 3775:2 3810:4 3812:25
advocates 3695:25
affairs 3721:9 3735:13 3747:14,18 3763:8 3768:1,8 3772:6 3798:4
affidavit 3752:5
affidavits 3722:19
affirm 3695:18
afford 3707:8 3764:23 3787:12,25 3788:7 3816:16 3817:7
afforded 3715:22
afraid 3756:19 3774:23
Africa 3780:10 3791:4
African 3788:21
Africans 3714:24
afternoon 3705:9 3722:21
age 3724:11 3726:2
aged 3699:19
agenda 3784:9
agile 3776:19
ago 3704:9 3705:18 3711:15 3712:22 3713:1 3717:11 3731:25 3784:12
agree 3711:22 3739:2 3767:24
agreed 3762:17 3768:17
agreeing 3726:20
ahead 3708:17 3736:11 3739:4 3756:18
aids 3730:19
aim 3772:18
Alberton 3740:3
allegations 3715:14 3716:1 3815:6
allege 3715:9
alleged 3697:25 3698:10
allocate 3793:13
allocated 3793:23
allow 3700:2 3728:16 3746:5 3773:20 3809:7
allowed 3706:9 3726:21 3748:23 3783:20
allowing 3741:25
allows 3731:4,5,6
alluded 3703:18 3724:6 3809:9
alongside 3738:5
alternative 3817:2,4
alumina 3811:19
amazing 3785:22
amendment 3751:2,4
amends 3792:10
America 3797:9
amount 3708:4,9 3738:15 3742:9 3781:9 3785:22 3796:24
amounts 3742:13
analysing 3711:18 3738:13
analysis 3739:4
angles 3766:13
announcement 3762:16
announcements 3742:5
annoyed 3798:3
annually 3724:8
annum 3769:5
anomalous 3774:14
answer 3710:7,14 3711:5 3735:19 3766:13 3772:7 3805:11 3810:10,14
answers 3803:21
anticipate 3696:12
anti-retrovirals 3730:19
anybody 3706:20 3722:12 3786:7
anymore 3728:6
anyone's 3819:24
anyway 3712:18 3719:11 3722:10 3744:4 3751:6 3800:20 3805:21 3817:17,21
apology 3729:1,16
APP 3739:24
apparent 3781:21
Apparently 3818:1
appeal 3795:20 3812:3 3812:6,9
appealing 3812:12
appeals 3758:22
appear 3714:7
appearance 3712:8 3713:11
appeared 3706:17
appearing 3710:19
appears 3716:7
application 3705:18,21 3708:20 3734:9 3745:19
applied 3750:7 3759:24 3785:14
apply 3734:10,11
applying 3768:18 3777:9
appoint 3703:17 3704:20 3793:13
appointed 3696:21,24 3697:4 3698:6 3702:8 3730:6 3759:16
appointment 3698:2 3793:18 3795:10 3799:24
appreciate 3695:17 3716:16,17 3729:21 3729:22 3813:10 3819:14
appreciation 3788:3 3813:24
approach 3803:15 3817:1
approached 3709:24 3710:20 3719:3
approaching 3713:10
appropriate 3706:24 3758:14 3762:20 3774:17 3786:19 3792:19
approval 3706:5,14,17 3706:20 3709:10,11 3710:6,15,18,23 3749:12 3750:23 3772:17 3776:25
approve 3706:15,15 3708:20
approved 3709:17 3727:7 3739:9 3748:11,20 3760:8
April 3762:21
arbitrary 3705:5
area 3705:7 3727:22 3759:14 3764:10 3766:19 3779:4 3785:10 3810:21
areas 3726:17 3733:14 3737:19,20 3739:16 3743:4 3759:9 3762:1 3762:11 3786:9 3791:23 3804:12 3806:10 3810:21
arises 3799:21
arising 3789:3
arranged 3722:21
arrest 3762:2
artificial 3757:23
artificially 3742:25
ashes 3789:4
aside 3815:9
asked 3697:10 3710:3 3711:4 3718:1 3719:12 3733:3 3742:11 3746:7 3748:12 3750:17 3775:2 3796:14 3807:15,18,21 3809:13
asking 3707:23 3728:9 3728:14 3738:22 3768:20 3769:11 3772:7 3803:8 3810:12,15
aspect 3704:10 3731:11 3731:15,18 3741:7 3746:5,6 3767:15 3776:24 3786:21,21 3787:22 3801:3 3806:22
aspects 3697:20 3701:10 3704:25 3705:1 3735:16 3744:12 3745:17 3746:8 3748:3 3770:18 3778:4
aspirations 3740:5
assess 3727:12
assessment 3759:14 3777:24 3778:6
assessments 3790:13
assist 3711:2 3712:3 3798:18 3802:4
assistance 3744:6 3745:6 3751:10 3802:14
assisting 3695:9
Association 3788:21
assume 3707:16

3760:21
assumed 3710:21
assumption 3750:3
assure 3786:16 3807:5 3809:25
astounded 3784:25 3785:1,2
ATAP 3780:9
ATM's 3806:19
attempt 3708:5
attempted 3696:16
attention 3705:18 3761:22
attest 3779:19
attorney 3711:1 3748:20
attorney's 3745:9
attorney's 3748:8 3749:22 3750:21
audience 3717:25 3747:9
audit 3703:21 3734:10 3742:1 3743:7 3744:17 3746:12,14 3746:24 3747:18 3766:6,15 3767:2 3769:1 3770:15,23 3771:10 3772:13 3773:16 3775:3
Auditor 3701:4
auditors 3766:1,9
Auditor-General 3698:8
audits 3734:12 3746:11 3765:21 3771:24 3772:10
August 3702:3 3704:15 3704:15 3713:6 3722:16,17 3793:3
Australia 3797:10
authorise 3706:2
authorised 3706:1
authority 3701:13 3706:15 3708:19,23 3709:2,4 3761:14 3786:25 3794:4,24 3816:8,14
auto 3727:11
automatically 3784:20 3791:17
automotive 3787:22
autonomy 3793:5,7,16
availability 3703:5
available 3703:4 3716:15,16 3746:11 3795:15 3807:19 3808:13
avenue 3800:18
avoid 3716:1
awaiting 3780:25
awaits 3740:12
awake 3713:12 3810:24
aware 3698:7 3706:21 3723:13,23 3761:4 3762:1 3763:5 3769:13 3772:8 3777:17,19 3778:4 3790:14 3791:20
awkward 3697:12

B

B 3784:19
back 3703:19 3705:7 3716:3 3719:20 3721:4 3727:19,21 3729:25 3733:25 3735:7,23 3737:9,20 3739:15 3741:25 3742:3,7 3743:6,7,14 3747:21 3750:25 3752:11 3753:10 3755:4 3757:23 3760:22 3761:5,7 3770:14 3776:25 3782:13,21 3795:24 3802:18,23 3806:2,6 3808:22 3809:18,18 3812:2 3814:20,24 3815:16 3817:4,7,8 3819:18
backstop 3797:12
backup 3748:13
backward 3709:14
baffle 3708:8
baggage 3724:21
Bain 3703:8 3779:9 3805:25 3806:1 3807:15 3808:12,15 3809:8
balance 3697:17 3735:15 3740:8 3742:18 3767:18 3793:16
balances 3780:24 3801:16
balancing 3741:17 3784:4
bank 3730:16 3744:18 3745:23 3746:2,5 3748:4,15,24 3783:13
banking 3746:9 3806:20
banks 3806:19
bar 3734:24 3735:6 3799:18
based 3716:2 3817:1
Basic 3733:19
basically 3725:1 3740:4 3741:6 3746:24 3765:2 3770:19 3774:5
basing 3816:24
basis 3719:6,6
battle 3811:11
bearing 3751:20
bed 3757:18
beginning 3719:16 3721:5 3814:18
behalf 3729:3 3813:3
behaving 3812:17
behaviour 3766:14,18 3767:18 3809:6
Beitbridge 3737:15 3791:7
belief 3736:10
believe 3701:16 3716:24 3717:3 3730:14,15 3731:12 3739:18,22 3742:9 3748:22 3752:15 3753:8 3759:18 3760:15 3761:2 3763:23 3773:10 3775:9 3778:12 3784:16 3787:14 3789:3 3791:20,22 3801:1 3808:11,13 3810:12 3816:9 3817:2,5
beloved 3699:10
beneficial 3782:3
benefit 3738:23 3809:4 3809:19
benefits 3780:15 3791:5
best 3734:1 3763:2 3783:7 3803:15 3804:18 3809:19 3811:16 3813:11,21 3813:25 3817:1,25
better 3740:13 3755:15 3788:3 3794:12 3807:8 3813:8 3820:5
beyond 3768:23 3782:24 3804:11
bias 3716:18
biased 3716:25
bid 3776:25
big 3740:25 3812:14
bigger 3726:11
bilateral 3791:3,8
billion 3698:4 3761:5
bind 3772:17
bit 3696:13 3698:9 3707:9 3710:16 3720:2 3738:23,24 3740:17 3744:25 3750:4 3754:16,25 3772:17 3775:15 3786:13 3789:19 3792:4 3807:12 3814:22 3815:9,16 3817:8,22
blamed 3698:3
blank 3704:13 3709:12
bleak 3736:15,19
blemished 3698:22
block 3724:18,21 3726:3,4 3740:6 3788:17
blocking 3714:9
blocks 3778:14
blow 3817:6
blown 3737:2
blunt 3754:12
bluntly 3752:2
board 3793:18,20,20 3794:1 3802:12,13 3811:8
boarder 3787:1
bodies 3790:22
body 3754:14 3788:22 3793:19 3794:2,22 3804:3 3805:3
bodyguards 3742:15
bonuses 3805:16
boost 3742:25
border 3733:20 3791:19,25
bore 3739:12 3741:5 3763:19
boss 3701:5
boxes 3781:6
bracket 3768:14
branch 3727:13 3737:14 3741:10 3806:15,16
brand 3812:1
Brazilians 3733:16
breaches 3698:24
break 3773:2,4 3789:13 3790:12
breath 3729:9
breeding 3705:2
BRICS 3733:16 3779:23 3780:4
brief 3707:15 3709:6,7 3711:24
briefing 3709:6 3818:11
briefs 3712:4
bring 3716:3 3774:17 3817:8
bringing 3761:19 3787:10
brink 3817:9
broader 3723:21
broken 3702:13 3704:7
brothel 3718:3
brought 3705:17 3718:23 3734:25 3751:2 3761:22
BRS 3776:17
budget 3697:20 3698:2 3698:5 3744:15 3793:13
buff 3740:25
build 3732:9 3734:4,6 3791:13
building 3724:19 3740:6 3759:21 3778:14 3788:17 3812:2
buildings 3806:22,23
built 3729:24 3734:2,3 3736:5 3741:4 3810:23
bulb 3776:13
bump 3736:15
burden 3742:1 3806:17
Burger 3776:9
business 3697:5 3698:18 3701:24 3702:6 3725:15 3726:6,6 3727:14 3741:7,8 3742:12 3762:14,23 3763:6,9 3765:8 3766:19 3767:15 3776:15 3777:12 3783:5 3786:10,21 3787:21 3789:2 3818:1
businesses 3742:7
busy 3761:4 3810:9
buts 3703:22
buying 3787:6

C

calculate 3721:4
call 3695:4 3697:7,23 3724:3 3741:6 3746:23 3752:25 3762:15 3766:16 3767:9 3770:18 3776:13 3787:7 3800:8 3801:6 3811:19
called 3697:25 3704:10 3713:16 3717:10 3740:25 3762:5 3799:6
calls 3703:9
camera 3757:22 3758:2 3765:22
cameras 3724:13,15,17 3725:7,24 3757:11,12
campaign 3719:19
campus 3724:19
can't 3725:19 3738:19 3742:5 3777:18 3786:5 3787:25 3816:20
capable 3732:14
capacity 3699:2 3760:14
capital 3770:18,19
capped 3699:16
car 3768:23 3769:4
care 3730:17
Careers 3700:17
careful 3751:24 3752:7
carpet 3807:6
carries 3733:22
carrot 3740:8
carry 3723:7 3746:16 3773:5 3774:16 3776:6 3786:23 3790:2,6,7
cars 3771:2
case 3706:21 3711:9 3716:6 3734:12 3745:25 3767:20 3770:24 3771:11 3774:6,6 3777:19
cases 3701:8,14 3702:23 3705:5 3750:18 3760:10 3761:3 3766:3,4 3769:3 3770:24 3773:17

catch 3727:20 3750:4
categorically 3817:11
category 3710:5
cater 3768:6
caught 3773:15
cause 3721:10
caused 3700:9 3808:18
causing 3728:9
caution 3817:14,17
CCd 3711:10 3713:14
CCMA 3706:10
CC-ing 3711:11
censure 3792:14
centre 3763:6,8,9
certain 3698:10 3704:2 3705:5 3709:13,24 3733:14 3735:14 3738:7,9 3741:19 3742:5 3748:4 3750:25 3759:24 3766:14,17 3771:19 3772:9 3780:6,24 3792:3 3802:3 3806:10
certainty 3816:4,18
CFO 3764:12,12
chain 3762:6 3763:10 3763:16,18,20,20 3764:7 3765:21
Chair 3756:23 3777:2,3 3777:5
chairmanship 3776:25
challenge 3698:20 3739:6 3793:15
challenges 3793:20 3811:6
challenging 3810:7
chance 3722:24
change 3715:19 3739:20 3749:1 3777:5 3779:16 3788:2 3789:2 3814:20 3818:4
changed 3814:18
changes 3730:25 3731:5 3739:9,10 3744:18 3748:4 3749:9 3794:17
changing 3786:23 3795:7
chapter 3728:21 3735:23,25
character 3736:5
charge 3774:9,9 3815:25 3816:1
charged 3707:8
charter 3739:24,25 3740:4 3741:4,13
check 3723:18 3747:7 3768:25
checked 3747:8
checks 3780:24 3801:15
cheque 3709:12
chief 3701:23,24,25 3702:1,2,8 3703:18 3706:5,14 3708:19 3720:25 3724:5 3731:2 3760:3 3771:22 3775:14 3777:1 3779:18 3781:11 3786:11 3788:10 3809:7
children 3730:20
Chinese 3733:16
choice 3811:2
circumstances 3737:16
citizen 3729:22
citizens 3729:7 3812:7 3812:9
civil 3808:19
claim 3740:15 3742:13 3747:6
claimed 3742:15
claiming 3747:3
clarify 3709:16 3751:7
clarity 3708:16 3750:10
cleaning 3701:10
clear 3708:3,5 3719:12 3764:11 3779:21 3793:4 3804:23 3807:11 3809:10,12 3809:12
cleared 3709:19
client 3726:6 3735:4 3766:18
clientele 3741:20 3763:3 3790:23
clients 3741:22 3806:15 3807:8 3811:16
climate 3700:25 3707:6 3788:7
clip 3775:15
clique 3703:7
cloak 3760:17
close 3753:24 3758:9 3792:1 3809:22
closed 3763:24
closely 3818:21
closer 3783:2 3787:13 3787:14
closet 3703:25
closing 3811:3
clothing 3761:10,16
code 3733:21
coerced 3719:13
cognisance 3792:2
coincide 3818:20
collapse 3727:1
colleague 3742:11 3753:13 3754:3 3755:7
colleagues 3730:14 3736:22 3757:3,10 3782:2 3791:7 3803:9 3810:12,19 3811:4 3816:25
collect 3772:18
collecting 3725:15 3730:12,15 3777:12
collection 3701:16
collectively 3728:25 3732:7
combined 3700:14 3756:22
come 3703:2 3711:2 3712:3 3713:19,20 3714:7,10 3719:1,5 3719:20 3722:13 3723:3 3726:9 3727:13 3730:4 3733:25 3737:3 3738:5 3739:15 3742:22 3744:22 3747:21 3753:7,10 3756:17 3770:14,22 3771:9 3779:4 3787:24 3792:3 3795:24 3798:5 3809:17,18 3812:2 3815:15 3816:22 3820:5
comes 3703:19 3724:10 3727:15 3731:16 3734:16 3737:20 3741:17 3747:22 3752:11,25 3753:3 3755:4 3782:13 3803:5,25 3819:21 3820:1
comfortable 3717:17 3745:21
coming 3699:9 3709:18 3712:2 3714:21 3744:15 3755:6 3768:19 3780:18,21 3782:14 3795:13 3806:16
commend 3791:23
comment 3743:9,11,11 3803:14 3808:24
comments 3796:2
Commission 3695:7 3697:14 3700:24 3704:14 3706:1 3708:5 3709:19,24 3713:5,19,20 3714:7 3714:8,10,12,13,14 3714:15,23 3715:8,14 3715:23,25 3716:4,10 3716:11,15,18,19,25 3717:3 3718:9,12,12 3718:17,21 3722:24 3728:19 3731:17 3734:8 3737:2,23 3738:9,15,18 3753:20 3755:14 3758:8,8 3769:19 3778:13 3779:17 3780:18 3781:5 3792:3,25 3793:2,15 3795:18 3796:19 3798:1 3806:3,5 3807:15 3808:10 3815:5 3818:7,13 3819:22
Commissioners 3795:11 3802:16
Commissioner's 3816:6
Commission's 3715:19 3716:8
commit 3733:12 3734:17 3735:8 3736:2 3739:25
commitment 3730:10 3811:13
committed 3698:10 3734:23 3737:8,17,17
committee 3738:12 3774:5,10 3777:1,2,3 3777:5 3795:10
common 3778:5
communication 3729:14 3732:8,9,10 3732:12 3739:5
community 3714:24 3778:2,3 3811:10
companies 3740:20 3771:3 3791:6
company 3740:19 3745:10 3749:9,23,23 3750:20
compared 3726:4
comparison 3819:13
competence 3801:24
complaining 3753:25
complaints 3741:16
completed 3820:1
complex 3764:17 3766:4
complexity 3767:15
compliance 3738:3,6 3738:22 3740:8,10,14 3741:3 3742:1 3765:6 3765:8,9,10,11,21 3766:21,22
compliant 3739:13
compliment 3788:25 3789:23 3812:23
components 3763:10
compounded 3700:11 3705:4
compromises 3777:7 3777:11
concern 3727:23 3743:3,25 3746:4 3747:14 3763:5,9 3774:20 3814:15
concerned 3701:19 3720:2 3745:11 3766:2 3768:9 3815:9
concerning 3814:15
concerns 3701:22 3743:23 3747:11 3765:20 3815:2 3817:22
conclude 3796:2 3813:25
concludes 3715:20,20 3796:1
concluding 3805:23
conclusion 3708:11,12 3716:8 3796:3
conclusions 3818:17
concur 3712:24 3737:18 3766:24 3768:3 3783:9 3793:6 3809:15
concurrence 3702:10 3758:20 3805:16
conditions 3791:24 3806:25
conduct 3752:16 3778:11 3792:13
conducted 3723:24
confidence 3732:9 3737:22,23,24 3747:17 3769:9 3805:4
confident 3783:3
confidential 3728:2 3735:13 3794:25
confidentiality 3700:8 3727:23 3735:9,10 3751:21 3752:13 3772:15
confirm 3715:23 3747:17
confirmed 3816:13
conflict 3700:7
confusing 3759:25
connection 3723:23
conscious 3736:3 3758:6
consider 3795:21 3800:21
considered 3718:11
considering 3781:24
consistent 3752:22
consolidating 3806:22
constant 3793:25
constantly 3734:24 3735:6
Constitutional 3815:12 3815:19
constructive 3759:18 3788:23 3813:5
contacted 3811:20
container 3787:2,4,5 3787:10,18,20
containers 3787:13
contend 3698:22 3699:22
content 3790:15
context 3698:12 3768:24 3772:3
continually 3734:23
continue 3701:11 3717:12 3775:15 3813:10 3817:10
continues 3697:16 3699:14 3705:4
contracts 3721:22 3809:2
contradict 3722:18
contradiction 3722:13
contrary 3701:6 3716:22 3782:12 3783:1

contributions 3781:19
control 3786:25
controller 3800:2
controlling 3790:22
controls 3800:1
controversial 3747:15
conversation 3745:4
conversations 3714:4
convey 3738:8 3813:15
cooperate 3697:14
cooperation 3738:17
cooperative 3738:3,6
copy 3757:14,15
copying 3757:13
core 3788:14
corner 3791:22
corporate 3706:18 3709:19 3710:23 3763:1
correct 3708:21 3709:5 3709:21 3710:21 3718:25 3745:13 3747:20 3748:2 3749:17,25 3750:5,9 3751:10,13,16 3754:4 3755:3,24 3756:1 3764:9 3767:1,4 3797:14,18,20 3799:2 3799:5,8 3800:10 3802:20 3803:6,23 3814:12 3819:7
correction 3778:25 3787:7
corrective 3792:15
correctly 3787:19
corridors 3771:19
corruption 3773:22
cost 3711:6,23 3713:6,7 3721:12,16 3764:24 3780:12,14 3787:7,12 3787:19 3788:2,6
costing 3788:1
costs 3706:5,22 3707:5 3707:8 3711:24 3723:12 3764:19 3786:3 3787:5,8,20
couldn't 3779:15
counsel 3711:1,4 3712:7 3718:25 3723:12 3745:20
countries 3779:24 3780:4,9 3791:15
country 3696:18 3699:7,10 3701:17 3729:4,8 3730:22 3737:21,25 3739:20 3740:10 3745:21 3761:13,23 3782:4 3783:7 3787:21 3812:6 3813:3,4 3816:17
country's 3816:10
couple 3705:15 3713:1 3713:4 3744:12 3745:16 3770:17 3820:7
courage 3754:12 3810:16
course 3742:22 3753:16 3762:16,24 3788:11 3804:24 3809:14 3818:3
court 3706:11 3764:14 3770:5 3815:2,12,19 3818:1,3
courts 3818:4 3819:22
cover 3756:19
cover-up 3698:11
create 3725:3
created 3705:2 3726:17 3738:25
creates 3756:2
creating 3700:25 3731:22
credibility 3699:5
credible 3731:5
crew 3737:8
crimes 3698:10,10
criteria 3724:7 3772:16
critical 3702:17 3715:2 3807:3 3812:12
criticising 3759:20
criticism 3754:1 3790:24 3792:13
cross 3787:1
crossing 3791:18
crucial 3735:15
cubby 3768:22
culture 3728:5 3731:6 3731:22 3732:25
current 3699:22 3707:6 3729:6 3733:5 3778:7 3782:16 3788:6,7 3817:17
currently 3762:24 3776:24
custom 3778:21 3788:25 3791:23
customs 3701:25 3702:6 3733:19 3778:9,10,11 3779:8 3779:9,10,13,18,20 3780:5 3786:10,17,20 3786:22 3787:2,9 3788:2,10,11,16 3790:14,25 3791:5,21 3793:8,19 3794:3,23 3804:22 3806:24
cut 3722:16 3766:17
cuts 3697:19
cutting 3734:18
cycle 3816:11,12

D

dagger 3760:18
daily 3742:10
damage 3700:5,9 3728:25 3732:13
damaged 3700:4,15
damaging 3699:6
dance 3725:1
dashboard 3741:6
data 3741:11 3771:3,3 3771:4,4,6,6
date 3704:12 3722:16 3722:17,17 3770:7,11 3771:2 3782:25 3783:1,2
dates 3706:9 3723:15
daunted 3699:8
Davis 3738:12,14,18,20 3793:4
day 3696:24 3712:1 3724:11,24 3726:2 3728:7 3764:6 3766:10 3787:9,14 3789:25 3791:12 3799:25 3816:11,12 3819:17
days 3697:9 3713:1 3764:22 3768:22 3787:13 3789:6,8 3793:21 3814:22 3820:2,7
deal 3697:20 3715:14 3727:22 3732:5 3742:2,3 3744:6 3754:5,9 3764:16 3769:16 3788:13 3790:18 3805:4 3809:17
dealing 3723:20 3730:15 3747:16 3762:25 3769:14 3781:25 3790:16
deals 3784:17
dealt 3695:13 3721:9 3752:18,20 3792:24
dear 3728:5 3788:15
death 3805:9
debatable 3697:18
debate 3761:21
debt 3741:12 3766:15 3777:17,18
December 3697:2 3704:11 3748:6,6,19 3750:13,15 3762:19
decide 3719:14,15 3720:10 3774:8,9,10 3776:20 3815:10,11 3815:12
decided 3716:1
decision 3727:17 3744:21 3746:5,8 3764:21 3765:6,12 3801:25 3807:16,17 3816:24 3818:3
decisions 3802:19 3805:14 3817:24
decision's 3778:9
decisively 3799:7
declare 3765:24
declaring 3769:5
dedicated 3793:23
deduction 3748:23
deductions 3742:14
deeply 3695:7 3700:8 3727:21
defamatory 3719:5
defending 3731:12
deficit 3770:22
definitely 3716:23
degrees 3737:15
delay 3742:24 3788:5 3796:21 3816:20
delayed 3743:7
delays 3776:13 3787:25
delegation 3706:8
deliberate 3742:23,24
deliver 3765:4 3776:21 3782:15 3798:18
delivery 3740:5 3776:14
demands 3695:10
democracy 3757:5
demonstrated 3730:9
demotivating 3783:10
demurrage 3787:8,19
denial 3702:23
Dennis 3738:20 3793:3
departure 3728:4
depending 3727:5
depends 3758:1 3761:2
deployed 3762:22
deputy 3729:5 3795:11 3802:3,15 3803:9 3805:7,10 3816:13
derived 3731:13
deserves 3733:21
design 3738:6
desk 3724:15
destroyed 3760:14,15
destruction 3810:13
destructive 3705:3 3732:11,12
detail 3700:12 3710:17 3744:18 3748:5 3767:2 3818:23
detailed 3747:24
details 3700:5 3725:14 3728:6 3746:9 3804:17
deteriorate 3779:20
deteriorated 3726:22
determination 3756:13
determine 3778:7 3793:11 3800:11
determined 3793:10
develop 3731:4
development 3780:7 3792:8
developments 3791:5
deviate 3728:17
diagnostic 3777:23
diagnostics 3703:8
didn't 3710:23 3810:7 3813:22
dies 3702:20
different 3699:17 3709:4 3711:9,20 3712:4 3724:4,7 3725:3 3743:25 3761:12 3785:12 3811:6 3816:23,23
differentiate 3799:9
difficult 3697:13 3733:10 3737:16 3740:19,21 3751:9 3766:4 3791:24 3812:5,5 3816:18 3817:23
difficulties 3736:8
difficulty 3711:3 3747:16 3756:3 3798:6 3799:23
dig 3717:22
dignity 3785:25
direct 3743:3 3764:11
direction 3703:10 3709:13 3715:19 3818:15
directly 3700:17
director 3798:22
directors 3803:10
disagree 3726:21
disappointing 3715:15
disaster 3817:5
disband 3804:1
disbanded 3717:11 3764:21
disbandment 3770:5
disciplinary 3707:2 3708:7 3715:5 3773:11,13,17,21
discipline 3711:16 3773:13
disclaimers 3703:22
disclose 3781:4
disclosing 3753:7
disclosure 3780:16,23 3801:12
discredit 3753:16
discretion 3802:1,5
discuss 3808:9
discussed 3722:7 3731:1
discussing 3713:15,18 3713:18
discussion 3739:15 3762:16
discussions 3722:8 3728:7 3741:2 3818:13
disempower 3783:7
disempowered 3703:5
disengaged 3724:23
dismantled 3814:24 3815:16,23
dismissals 3699:24
disparity 3771:20
displace 3781:1
displaced 3700:19 3781:13
displacements 3699:23
dispute 3740:15 3759:1 3777:18
disputes 3697:23 3698:9 3741:12 3758:18,19,23 3759:3 3759:9,15 3760:6

disruption 3815:15
DIST 3782:6,8
distance 3717:7
distinguish 3710:11
distracting 3697:24
distraction 3798:10
distrust 3698:23 3701:1 3702:13 3705:3 3724:10,16 3725:10 3728:12
disturbed 3708:1
disturbing 3704:25 3713:4
division 3700:25 3702:13
documentary 3746:24 3747:8 3767:9
documents 3703:3 3707:24 3711:25 3746:25 3747:2 3762:3 3767:12
doesn't 3783:6
doing 3704:24 3721:15 3723:25 3727:14,15 3727:16 3728:24 3733:23 3734:17 3739:1,3 3746:13 3747:12 3759:17 3760:16 3777:25 3778:12 3779:10 3783:15 3784:14 3786:15 3789:1 3801:20 3802:10 3803:17 3813:21 3816:7
domain 3699:6 3700:3 3706:5 3749:3,10 3751:20,23 3752:10
domestic 3762:6
dominant 3716:13
don't 3720:15,15,24 3721:11 3723:19 3724:25 3725:6 3727:1,2,12 3728:16 3732:10 3733:8 3735:25 3738:24,25 3739:2,11 3740:21 3741:5,18 3746:3 3777:22 3778:25 3779:14 3780:13 3781:5 3783:4,6,21 3784:13,16 3788:9 3806:14,15 3807:18 3807:21,22 3808:5,5 3808:8,11,13,25 3809:25 3810:14 3811:2,24 3814:14 3815:1,4,14 3818:4
door 3725:16,17
doubt 3723:22 3811:1
downgrade 3785:20,24
dread 3757:3
dream 3770:25 3782:19 3798:23 3806:14,14
dredging 3717:19,20
drive 3766:14,18,21,22 3767:16,17
driven 3718:5 3799:13
driver 3740:9
drives 3741:2 3766:6
driving 3766:22 3769:4
drop 3723:25 3724:2,3 3724:6
drove 3740:25
due 3703:21 3708:12 3762:16,24 3804:24 3809:14
dug 3717:23,23
duties 3812:13
duty 3733:22 3787:18 3811:1
dwell 3698:12 3704:5 3733:8,9
dwelling 3717:18

E

earlier 3701:2 3702:9 3753:3 3755:4 3764:19 3776:9 3777:22 3778:21 3779:23 3782:14 3783:18 3792:21 3806:24 3813:20
early 3732:19 3748:6 3751:25 3764:22 3793:21 3820:7
earn 3759:22,23 3760:2 3769:8 3771:21 3812:13
earth 3720:22
easier 3735:4,4 3740:17
easy 3740:14,22
economic 3788:7
economy 3741:25 3742:3 3760:7 3761:9 3761:15 3787:12,22 3788:1,4,6
edge 3734:18
education 3730:21
effect 3743:2,9
effective 3780:12,14 3793:16
effectively 3730:11 3732:17 3742:3 3771:1 3792:22
effectiveness 3699:5
efficiently 3730:11
either 3741:21 3749:16 3800:15,19
elaborate 3700:12 3736:22 3738:10 3740:24 3749:3
elaborated 3798:17
electronic 3771:13
electronically 3771:9
elements 3717:16 3765:21
elicit 3760:7
email 3757:17,19 3761:22
embroiled 3701:3
emotional 3718:2 3781:2
emphasis 3731:9
emphasise 3726:24 3750:16 3808:3
emphasised 3751:21
emphasising 3734:23
emphatically 3768:2
employ 3706:11 3721:1
employee 3705:7 3706:9 3723:23 3724:4
employees 3737:18 3781:12 3811:18
employer 3705:14,19
empower 3703:23 3732:24 3782:15
empowering 3806:9
empt 3744:14
enable 3731:3 3750:3
enables 3730:24 3741:7 3792:20
ENatis 3771:2
encourage 3731:5 3737:18 3740:13
encouraged 3736:18 3739:8
ended 3750:1 3751:19
endorse 3772:4
ends 3697:1
enforcement 3764:8
engage 3715:1 3790:20 3790:23 3812:15 3813:5
engaged 3707:3 3734:7 3782:16,17 3809:8
engagement 3724:4 3760:4 3761:15 3809:13,13 3813:9
engagements 3779:1 3788:18,22,23 3791:3 3809:9 3813:6,16 3816:25
engaging 3733:15 3760:3
engine 3746:22
enhanced 3788:18
enhancing 3787:1 3791:2
enquiry 3721:12,12
ensure 3697:15 3699:12 3731:14 3733:9,13 3734:6 3737:11 3763:1 3773:18 3777:8 3784:18 3788:11 3790:21 3791:4,15 3792:10
ensuring 3737:13
entering 3706:10 3726:3 3813:22
enterprise 3793:12
entire 3714:24
entities 3790:20
entrance 3724:18
environment 3724:13 3726:17 3727:11 3733:3 3736:13 3737:10 3776:19 3778:10
environments 3724:11
envisaged 3709:22
equal 3786:21
equally 3791:1
equipping 3788:12,13
equitably 3777:10
error 3750:12,12
escapade 3703:17
especially 3715:10 3793:3
essential 3793:4
established 3715:1 3753:21
estate 3763:1
estimate 3698:4
etcetera 3710:1 3711:15 3714:18,18 3719:17 3723:22 3733:1 3741:13,13,22 3744:17 3752:12 3753:16 3772:14 3776:17,17 3778:5 3779:21 3805:17 3815:13,24
ethic 3736:23
ethical 3729:23 3730:10
ETI 3740:15
evaluate 3767:25
evaluation 3765:9
evening 3696:23 3697:6
event 3734:20
events 3715:4,11,17 3736:6
everybody 3703:9
Everything's 3808:4
evidence 3695:18,22 3696:9 3700:13 3703:15 3704:2,9,9 3705:25 3707:17 3708:2,2 3709:25 3711:3,14,16,17 3712:11,12,22 3713:16 3715:18 3716:9 3717:1,4 3718:21 3719:1,3,5,8 3719:8 3722:12,13,18 3722:22,22 3725:18 3726:23 3734:10 3738:20 3743:1,3,9 3743:17,20 3746:9 3748:5 3752:9 3763:7 3765:12,23,25 3768:20 3770:4 3771:22 3772:2 3773:10 3775:20 3776:8 3779:8 3788:20 3793:2 3809:1 3813:15 3814:17 3818:16,18
evidentially 3716:12
exact 3704:12 3716:22 3778:8
exactly 3696:23 3735:5 3745:8 3750:10 3754:24 3758:10 3790:22 3801:5 3804:9 3808:16
example 3703:7 3704:8 3725:10 3741:19 3745:9 3758:7 3767:8 3805:16
examples 3700:23 3725:10
exceed 3783:22
excellent 3764:5 3779:1
exceptional 3765:4 3781:16 3782:17
exceptions 3745:22
excess 3705:24
exchange 3791:17 3814:4
excise 3812:13
excited 3787:16
EXCO 3722:7 3803:11 3803:12,25 3804:3,25 3810:19
execute 3795:1
executive 3702:12 3705:19 3726:3 3727:8 3771:19 3810:20
exercise 3709:1 3711:13
exercised 3709:3
exercises 3802:4
existed 3736:14 3738:19 3814:17
existence 3730:2,7
existing 3716:9
expect 3796:8
expected 3786:7
expenditure 3805:17
experience 3731:13 3732:15 3736:9 3765:2 3781:15,17,18
experienced 3698:25 3781:12,14
expert 3767:5
expertise 3779:6 3781:18 3792:17
explain 3712:3 3746:20
explanatory 3751:1
exposed 3733:14
exposing 3772:22
expressed 3747:11 3782:6,8 3816:24
extends 3786:25
extensively 3811:10
extent 3700:4 3707:5 3719:18 3779:3 3809:5
external 3705:21
extra 3773:8 3787:19
extraordinary 3737:5 3784:23 3790:1

extravagant 3765:24
extremely 3699:18 3782:12 3810:6 3811:17 3816:19 3818:14
eye 3773:9
E&F 3726:4
e-filing 3726:25 3734:25 3806:13

F

Fabian 3781:11
face 3697:19 3699:3 3740:20 3747:10
faced 3701:23
facie 3716:6,9
facilities 3695:9 3780:6
facing 3742:9
fact 3696:4 3710:18 3724:12 3726:2 3727:7,19 3732:2 3738:13 3741:4 3745:7 3747:8 3748:11,25 3758:6 3760:11 3769:1 3772:4 3777:24 3778:2 3779:17 3782:25 3783:12 3794:20 3817:7 3818:12
factitious 3807:6
factory 3787:24
facts 3710:14 3767:1 3770:4 3818:4
fail 3813:12
failing 3784:14
failures 3698:18
fair 3715:9,9 3734:9,12 3734:12,13 3786:7
fairly 3768:18 3777:9
faith 3750:12
fall 3710:5
fallacy 3785:9
falling 3729:11 3759:10
families 3729:7
far 3756:23 3758:24 3767:14 3768:9 3771:1 3787:19 3790:25 3791:13,25 3792:21 3818:23
fascinated 3720:3,14 3733:14
fascinating 3703:1 3761:19
fashion 3761:21
FATCO 3778:5
favour 3733:23 3758:24 3759:3
fear 3700:25 3705:3 3729:15 3738:24 3774:15 3810:18
feared 3701:14
fearful 3780:18
February 3698:2
feedback 3788:23
feel 3717:17 3735:3 3745:20 3752:4,4 3783:3 3809:25
feels 3786:11
fees 3721:11
fell 3735:7
fellows 3783:24
felt 3700:22 3710:3 3711:12 3759:14 3783:12
fertile 3705:2
fictitious 3742:13
fictitiously 3742:16
field 3725:4
fighting 3698:8
figures 3721:23 3727:6 3733:3 3738:22
files 3707:25
filing 3739:10,19 3740:3
fill 3724:7 3738:10 3805:10
filled 3702:5
final 3762:20 3794:16 3796:22 3805:23 3816:7 3819:21
finalise 3722:15
finally 3740:1 3796:22
Finance 3696:25 3701:6 3702:2,2,9 3703:18 3721:1 3724:5 3729:5,6 3730:2 3731:2 3740:3 3758:21 3760:3 3763:17 3764:11 3775:14 3777:2 3795:10,12 3800:7 3809:8
financed 3769:25
financial 3761:1,3
find 3699:9 3704:2 3721:6,17 3724:13 3728:6 3735:4 3737:10 3741:18 3753:2,6 3764:25 3775:10,21 3776:19
finding 3715:24 3716:4 3716:13
findings 3699:24 3819:11
fine 3794:21
fingerprint 3725:16 3748:1 3751:15
fingertips 3721:23
finished 3809:23
firmer 3810:17
firms 3721:19 3809:16
first 3699:4 3702:24 3707:5 3708:16 3714:16 3723:24 3728:23 3731:7 3733:11 3746:5 3812:22 3813:9 3814:4
firstly 3696:8 3716:21
fiscal 3812:7,9
fit 3816:9
five 3697:9
fix 3701:21,21 3702:17 3704:7 3705:12 3739:17 3787:15 3806:13,25
fixed 3728:23
fixes 3737:12
fixing 3787:16
flash 3771:10
flow 3698:17 3701:7,16 3742:1 3754:13
flowing 3791:17
flows 3761:1,3
focus 3701:11 3719:24 3761:18 3791:21
focused 3799:16
focusing 3760:25
follow 3717:9 3718:6 3731:24 3747:13 3753:10 3755:7 3802:12
followed 3706:13 3713:14 3748:19 3773:20 3786:5
forecast 3733:5
foreign 3791:6
forensic 3703:20 3746:13
forever 3739:20 3819:24
forget 3724:24 3772:3
forgive 3702:19 3706:8 3707:21 3718:2 3721:22 3729:20 3745:18 3750:19 3790:4,8 3794:7 3797:23
form 3740:18,20,25 3804:6 3806:2 3808:4
formal 3731:10 3749:1 3803:25
formalised 3804:25 3805:3
formally 3818:13
format 3763:25
former 3729:6 3811:17
forth 3695:9 3714:9 3753:17
forthwith 3805:11
fortify 3818:17
forum 3715:22 3742:10
forward 3702:16,21,25 3703:1 3717:21 3722:14 3727:10,10 3730:23 3732:23 3733:2 3736:10,25 3738:1,6 3739:3 3744:15 3753:7 3760:7,13 3774:16 3778:16 3785:17 3793:15 3807:4 3813:6 3820:5
Forwarders 3788:21
foster 3730:17
found 3723:25 3743:1 3750:19 3758:24 3759:3 3818:22
four 3699:18 3711:15 3712:22 3717:19 3722:14 3726:22 3727:19 3728:21 3739:24 3762:1 3790:13
framework 3760:19 3764:2,4 3792:20 3793:1,10,24 3798:8
frameworks 3809:4
frankly 3713:10 3818:20 3819:12
fraud 3742:9 3751:3 3773:22
freely 3754:14
Freight 3788:21
fresh 3735:3
Friday 3762:10
friendly 3806:14
frivolous 3705:6
front 3721:2 3725:1 3733:18 3819:24
frown 3730:14
frustrations 3770:4
fuel 3761:8 3762:4
full 3707:10 3738:17 3755:24 3771:8 3782:13 3804:7 3816:14
fully 3737:18 3758:11 3772:4
functioning 3736:20
Fund 3762:8
fundamental 3703:11 3727:13 3776:22 3788:17 3801:3
fundamentally 3739:19 3786:23
funds 3730:12
further 3708:11 3710:8 3727:21 3743:12 3744:5 3746:11 3747:12 3749:7,8 3755:25 3772:4,22 3802:9
future 3704:5,6 3709:15 3733:7,9 3773:25 3774:1,16,21 3783:20 3786:4 3792:11 3813:8 3814:7

G

gaps 3738:10
Gartner 3703:10,12,14 3806:1 3808:17 3809:13
gather 3707:24 3711:13,16,25 3712:11
general 3701:5 3741:15 3756:10 3757:6 3758:5 3774:4 3777:7 3791:9 3797:8,11,25 3799:23 3800:16 3801:7,7 3803:5 3804:22
generation 3732:16,21 3733:1,10 3782:14
genuine 3767:12
getting 3703:24 3710:18 3720:2,2 3742:3 3757:3 3771:7 3787:14 3788:24 3795:16 3814:20 3820:3
Ghana 3704:18
Gigaba 3704:10
give 3695:19 3703:7 3705:25 3708:2 3712:11,12 3718:1 3719:1,3,5,8,8 3720:22 3722:12,22 3729:16 3738:11 3741:19 3744:7 3752:5 3757:20 3761:5 3775:15,20 3796:18 3797:21 3800:5 3801:17 3804:11,24 3806:16 3810:2 3815:1 3819:9
given 3695:7 3696:2 3708:23 3710:12 3715:3,7,10,15,19,21 3716:8 3738:13,17 3746:9 3747:3 3786:22
gives 3724:22 3736:14 3737:5 3739:21 3740:4 3741:6
giving 3711:3 3734:16 3803:21
gladly 3780:1
glance 3773:9
glaring 3716:8
global 3714:24 3791:4
go 3698:11 3703:3,17 3704:18 3706:20 3708:17 3709:13 3710:16 3711:13 3713:21 3717:21 3719:10 3722:25 3724:11,12 3732:19 3733:7,17 3735:2 3736:14,15 3737:8,9 3737:9 3738:10 3739:11,17 3742:5 3744:22 3746:22 3750:24 3751:1 3753:18 3755:21 3756:21 3758:9,16,25 3762:14 3763:19 3768:25 3771:13 3772:4,21,23 3775:11 3775:17,24 3780:8 3781:11 3783:25 3794:5 3797:17 3800:18,23 3802:9 3804:18 3807:6 3809:21 3814:25 3815:9,21 3817:4,7

3817:12,21
goes 3701:6 3715:12 3716:12 3721:22 3744:20 3761:13 3768:17 3773:7 3791:14
good 3696:18,19 3724:12 3750:12 3757:4,5 3760:24 3776:2 3783:19 3784:23 3791:15 3804:14 3805:8,10 3809:6 3812:6,9 3813:13,14,20 3818:9
goods 3761:19 3779:21 3787:1,6,10,24
gossip 3705:3
govern 3819:6
governance 3706:13 3732:8,11 3760:16 3774:10 3776:8,15,18 3777:6,7 3792:18,20 3793:1 3801:21 3805:14,20 3808:5 3809:6
government 3729:6 3730:13 3734:16 3771:7,8
grades 3785:13,18,21
grading 3785:14 3786:4
grant 3703:18,19 3709:11 3721:24
granted 3709:10 3714:23 3715:16 3749:8
granting 3709:2
grants 3771:7
GRAP 3739:11,13
gratified 3762:13 3818:21 3819:2
gratifying 3695:14
great 3736:5,14 3739:21 3767:2 3802:14 3815:24
greater 3755:15 3805:2 3805:4
grew 3727:25 3768:19 3768:20
ground 3705:3 3761:25
groundwork 3739:18
group 3705:19 3778:3 3810:20
grow 3731:8 3732:16 3733:10 3736:9
growing 3732:22
guidance 3732:15 3735:12
guilt 3810:25
guilty 3711:19 3714:18 3752:4,4

H

half 3726:22 3727:19 3769:4
hamstrung 3766:1
hand 3759:20 3765:25 3766:9
hands 3817:23
happen 3760:18 3774:8 3796:9 3802:24,25 3807:17 3809:7,14 3811:24 3814:23
happened 3704:6 3709:23 3710:15 3717:12 3745:25 3752:1 3753:24 3756:16 3757:11 3765:15 3813:16
happening 3754:2 3758:10 3760:5 3779:18 3806:10
happens 3742:8 3751:14 3753:19 3754:4 3765:16 3766:8 3767:21 3774:1 3797:12 3805:8 3808:11 3814:21
happy 3698:16 3812:17 3815:7
hardships 3811:5
harm 3808:18
harvest 3736:24 3782:20,22
hat 3760:19
hate 3704:18
haven't 3721:22 3725:13 3733:14 3743:9,16,20 3745:10 3776:23 3780:25 3785:9 3807:18 3808:1 3809:12 3814:7
head 3695:14 3697:4 3710:22 3760:12 3762:20 3811:11
headed 3714:19
heads 3747:9
heal 3728:22
healing 3702:24 3813:17
health 3701:19
hear 3714:14,15 3718:5 3718:12 3723:4 3758:4 3773:11 3790:24 3805:21 3808:12 3811:17 3819:3
heard 3700:13 3715:21 3717:4 3719:21 3722:13,18 3725:18 3765:25 3770:3 3783:5 3809:1,11 3814:16,17 3818:16 3819:13
hearing 3718:18 3720:16 3723:10 3731:16
hearings 3720:12
heart 3752:13 3753:3 3816:4
heartedly 3717:3
heartened 3811:17
heat 3737:15
heavy 3695:11
heck 3732:20
held 3743:6,7 3757:5 3759:19 3799:17 3811:11
help 3696:4 3708:5 3710:21 3738:5 3778:12 3779:5 3780:2 3785:8 3812:18 3813:21
here's 3743:18
He'd 3742:15
he'll 3741:1 3817:25,25
he's 3809:9 3817:24
hide 3704:19 3735:10 3735:25
high 3729:12 3764:14 3770:5 3811:11
higher 3698:24 3729:13 3730:10,13 3757:25 3785:18 3811:1,21
highlight 3706:3 3724:10 3739:16 3761:10
highlighted 3716:21 3728:18 3776:13
highly 3781:14
hire 3711:1
historic 3792:7
historically 3759:24 3778:18
history 3698:25 3717:14 3723:25 3728:20 3812:5
HIV 3730:19
hold 3728:5 3743:13 3788:15
hole 3768:22
honest 3732:8 3754:10 3757:2 3809:9 3810:18
honesty 3731:19 3757:24
Honourable 3793:3
hope 3699:1,3 3736:10 3736:10,17 3737:6 3739:21
hopefully 3762:18 3778:15 3798:20,22 3805:21
hoping 3739:4
Hore 3726:19 3740:23 3783:5,13
horn 3817:6
hour 3789:25
hours 3737:13 3791:12
HR 3705:5,14 3715:7 3715:21 3718:15 3770:10
HTML5 3727:9
huge 3698:20 3700:9 3729:25 3738:15 3741:22 3762:6 3767:8 3785:3 3787:7 3796:24 3806:17
hugely 3780:14 3781:14 3810:9
human 3715:3 3773:16 3793:13
humble 3716:10 3732:4 3792:14
hundreds 3742:12
hunts 3752:8
hurt 3700:22 3728:13 3782:16 3785:22
hurtful 3785:24

I

ice 3765:13
ICT 3726:8 3739:6
idea 3720:5,7 3758:5 3776:3 3805:10
ideal 3806:25
identified 3746:23 3760:11 3761:17
identify 3763:20 3770:24 3771:9,10
ifs 3703:21
ignore 3716:9
ignored 3715:18
ill 3788:7
illegal 3721:16
illicit 3761:1,3,18
illness 3805:9
ill-considered 3727:17
imbed 3731:5 3732:7 3732:25
Imbedding 3731:24
immediately 3697:8 3763:13
impact 3705:9 3762:6,7 3765:5 3788:3
impacted 3700:17,19 3705:8 3730:18
impacting 3787:11
impartial 3734:8
implement 3731:4 3780:25
implementation 3700:10
Importance 3714:20
important 3696:20 3697:3 3698:21 3715:8 3727:4 3731:15,15,18 3733:4 3734:2 3736:2,11 3740:5 3741:2 3746:21 3752:13 3753:5 3755:8 3758:18 3773:23 3785:15 3786:10,20 3786:21 3790:16,20 3791:6,21 3793:9 3795:19 3798:25 3799:9 3812:25 3818:14 3819:9
importantly 3703:1 3704:25 3728:14 3730:25 3731:25 3760:23 3782:4 3794:25
impose 3795:2
impractical 3769:23,24
impression 3718:8,15
improper 3710:10
improving 3734:24
include 3793:18 3817:17
included 3713:7
including 3707:9 3715:6 3719:2 3729:4 3819:21
income 3741:21 3742:10 3748:16 3765:25 3770:21 3771:6,7
incorrect 3716:13 3753:8
incorrectly 3744:18 3748:21,23 3749:19 3750:23 3761:12
increase 3698:3
incriminate 3711:4
incur 3709:12
incurred 3706:22 3710:16
indaba 3738:2
independence 3793:9
independent 3754:14 3775:21
independently 3775:10 3775:23
Indians 3733:15
indicated 3709:17 3778:21 3792:21
indication 3715:18
indicative 3724:1,9
indicators 3765:11
indispensable 3696:2
individual 3697:5 3701:25 3702:6 3742:12 3819:10
individually 3728:24 3732:7
individuals 3704:2 3709:18 3718:19 3736:7 3765:23 3774:11,14
induction 3733:19 3788:10
industry 3761:8,17 3787:22
inefficiencies 3781:19
influence 3791:4
inform 3738:8
information 3703:6,6 3704:8,17 3717:15 3727:24 3728:1,2,4 3735:9 3738:21 3739:5 3751:19,23 3752:6,19 3755:24 3756:11 3765:10 3791:17,19 3795:1,3
informed 3790:12

infrastructure 3726:4 3726:8,21 3727:3 3739:14 3793:25 3794:24 3806:8 3807:2
inherently 3808:15
initiation 3715:5
inner 3703:6 3781:4
innocent 3752:8
input 3747:4,6
inquire 3755:25
inquired 3751:22
inquiry 3695:14 3728:19 3742:23 3789:17,17 3820:10
inside 3748:7 3753:19 3754:5,8 3818:16
insider 3723:3 3818:20
insight 3720:22
insofar 3706:6 3765:5
inspector 3756:10 3757:6 3758:5 3774:4 3797:8,11,25 3799:22 3800:16 3801:7,7 3803:5
inspectorate 3793:19 3794:3,23 3795:6,12 3799:16 3804:21
inspiring 3723:9
installed 3725:7
instance 3704:18 3730:1 3763:17 3764:11 3799:18 3801:12 3806:23
instances 3750:20
instantaneous 3696:15
instantly 3695:13
instigated 3775:3
instilled 3724:17
institution 3695:14 3752:17 3812:11
institutional 3781:15 3785:4,6
institutions 3736:8
instruct 3773:16
instructing 3773:14,24
instruction 3707:23 3723:13 3743:17,18 3756:14
instructions 3725:7,12 3725:13 3743:13
intact 3795:4
integrity 3698:22 3728:15 3731:17,19 3735:18 3736:1,23 3752:12 3755:4,14,15 3755:15 3756:12 3757:24 3775:17 3792:17 3795:3 3801:23 3802:2,25
intend 3763:12 3774:11 3795:15 3796:6 3809:17
intent 3736:17
intention 3717:21 3763:21 3773:25 3776:23 3777:4 3795:13 3797:5
intentional 3743:8
interest 3735:21,23
interested 3803:8
interesting 3730:3 3758:25 3759:13 3780:4 3787:17 3809:24 3818:22
interestingly 3811:22
interfere 3799:1
interference 3748:1,10 3751:17
interfering 3797:16
interim 3762:18,19,22
internal 3705:6 3773:20 3795:8 3797:15
internally 3754:1 3756:24 3797:12 3799:16
international 3758:24 3759:1 3777:20 3778:18 3780:1 3790:13 3791:2
Internet 3740:19
interpret 3751:9
interpretation 3751:10
interrupt 3735:18 3743:14 3745:3 3766:25 3768:11
intervene 3712:10
interventions 3760:25
interviewed 3737:4
intrigues 3753:16
introduce 3788:10
introspection 3810:11
invest 3806:7,8,21 3807:8
investigate 3712:19 3717:12 3721:14 3744:23 3754:15 3756:4,12 3774:8,9
investigated 3767:2
investigating 3766:1
investigation 3708:11 3710:8 3744:17 3745:12 3746:3 3747:12 3758:20 3759:23 3767:19 3769:1
investigations 3699:25 3705:6 3759:19 3760:5 3795:8
investigative 3746:13 3772:13 3773:12,20
investigator 3798:21 3801:6
investing 3733:12 3813:1
invite 3782:1
invoice 3707:16 3713:9 3747:2,4
involved 3697:22 3706:4 3707:6 3718:2 3761:16 3772:12 3775:19,20 3787:5 3800:17 3811:10
iPad 3741:9 3757:17,20
isolated 3763:25
isolation 3778:2
issue 3697:18,19 3700:6 3701:21 3713:12 3726:25 3727:23 3730:7 3731:17 3735:21 3741:14,15,17 3743:5 3744:24 3745:17 3752:11 3753:5 3762:23 3770:15 3773:9,23 3777:6 3787:20 3790:17 3801:21 3816:4
issued 3723:13
issues 3698:16,20 3725:15 3751:8 3752:15 3804:2 3818:24 3819:2,11
I'd 3728:25 3735:19 3736:4 3738:8,16 3743:11 3806:18
I'll 3723:1 3724:14,23 3726:6 3731:7 3735:17 3736:18 3741:19 3779:19 3807:9 3808:20,22 3809:9 3810:18 3817:5 3818:3
I'm 3720:21 3721:4 3722:4 3723:14,17,20 3725:3,14 3726:11 3727:8,10 3728:6,14 3728:24 3731:12 3733:25 3735:11,16 3737:9 3738:9 3741:5 3743:8 3745:7 3746:12 3777:13 3778:8,24 3779:1 3784:25 3785:1,2,21 3785:21 3786:13 3787:16 3788:9,24 3806:12,21 3807:5,6 3807:24 3809:22 3810:10,14 3811:10 3811:19 3812:1,12,17 3814:9 3815:7,13,18 3815:20 3816:8,12 3817:6,24 3818:21
I've 3721:8 3722:11,12 3722:15,21 3724:15 3725:16 3726:9 3728:8,17,18 3731:25 3734:7 3735:22,24 3737:16 3741:15 3743:23 3746:7,11 3779:1,3 3783:12,17 3784:16 3788:20 3789:7,11 3806:24 3807:1 3808:25 3809:1 3810:15 3811:4,6,7,8,16 3812:19,23 3813:6,18 3814:16 3815:6,6 3816:11,13,24 3817:8 3818:16,17
I.e 3712:11

J

ja 3707:21 3719:9 3720:13 3721:3 3722:9 3743:16 3744:4 3751:24 3754:24 3755:5,17,20 3757:8 3769:12,18 3772:25 3784:5,7,21 3794:17 3796:20 3798:20 3799:14 3800:3 3801:10 3803:13 3805:12 3807:13 3808:7 3820:8
jail 3740:12
job 3699:23 3731:21 3792:20 3810:17 3815:20
jobs 3700:19 3761:13
Johan 3707:19
join 3776:12 3812:14
Jonas 3697:5
journalists 3735:22
journals 3760:1
journey 3703:2 3727:18 3734:20 3740:24 3761:20 3763:22 3769:17,19 3769:20
joy 3736:14
judged 3782:23
judgment 3703:9
July 3705:21 3740:1,1 3740:2
jumping 3704:4
June 3751:25,25 3765:14
jurisdictions 3800:22
justice 3738:25 3739:1
justified 3708:7 3712:13
justify 3713:21

K

Kahla 3708:15,17,18 3708:22,25 3709:16 3709:22 3710:4,9 3718:6,8,14,17 3744:7,10 3750:10,14 3751:18 3752:14 3753:13 3812:25
Kasrils 3721:7,9
Katz 3712:6 3722:6 3725:6 3764:7 3778:17,23 3779:22 3780:12 3785:3 3794:5,9,12 3796:5 3796:11,14 3800:13 3801:20 3805:6,13 3808:14,17 3809:15 3810:4 3812:24
keep 3699:10 3703:25 3717:19 3810:24
keeping 3785:20
kept 3701:20 3703:6 3711:11 3735:13
key 3701:21 3702:3 3709:5 3726:7 3727:7 3737:20 3740:23 3784:3 3806:10 3810:11
kick 3696:6,20,21
kicking 3697:15
kind 3719:19,20 3766:2 3779:12 3801:22 3805:17
knew 3704:14 3756:24 3818:10,15
knit 3778:3
knowing 3721:8 3727:25 3746:19 3793:5
knowledge 3747:24 3781:15 3784:16 3785:4,6
known 3710:18 3753:22
KPI 3766:22 3767:13 3767:16
KPIs 3766:2,10,14,18 3767:2,19
KPMG 3700:1

L

labour 3706:7,10
lack 3788:4
Lackay's 3707:19
Lahai 3724:13,19
laid 3739:18 3761:25
landscape 3739:20
language 3787:8
lapses 3698:24
laptop 3757:15
large 3761:2 3762:14 3762:23 3763:6,9
launched 3740:2,4 3746:3 3758:19
laurels 3816:21
law 3734:9,13 3748:17 3748:18,18 3750:6,12 3752:17,22 3759:10 3760:19 3768:18 3777:9
lawful 3815:7
lawfully 3715:1
lawyers 3706:11
lay 3709:3 3765:13
laying 3732:21
layman's 3737:2 3740:9
LB 3763:21
lead 3708:11 3709:25 3757:25 3768:25 3778:15 3791:16
leader 3734:10 3768:20
leaders 3696:9 3704:9 3730:9 3732:14

3813:15
leadership 3698:22 3702:12,14,15 3704:13 3724:23 3728:11,12,23 3729:3 3729:24,25 3730:9,10 3730:24 3731:11,18 3731:19,21,25 3732:6 3732:18,24 3733:11 3771:20 3792:16,16
leak 3728:10 3752:6
leaked 3752:1,3,19
leaking 3728:1
leaks 3727:24 3728:4 3752:21 3753:14,15 3753:15,17,18 3754:2 3754:2,19,23
learn 3732:4 3736:8
learning 3734:24
learnt 3704:3 3756:23 3757:1 3811:7
leave 3755:14 3779:17
leaves 3784:19
Lebelo 3705:18,25 3707:3,23 3708:1 3710:5,19 3712:2 3713:13,15,19 3714:9 3716:10 3719:2
Lebelo's 3713:11
led 3704:9 3707:18 3715:5 3726:23 3765:12 3773:10 3776:8 3788:21 3793:6
left 3785:2,7 3789:6 3811:18 3820:2
legal 3705:20,22 3706:5 3706:6,14,17,18 3708:7,19 3709:6,18 3709:19,25 3710:21 3710:23 3721:11 3723:12 3759:16 3764:8,18,24 3794:4 3794:24
legislation 3750:25
legislative 3796:8
legitimate 3747:10 3788:5
Lesotho 3791:9
lesson 3704:3,4
letter 3704:14 3711:7,8 3711:10,18 3712:14 3712:15 3713:1,2,5,7 3713:12,13 3714:17 3717:5,8 3718:1 3719:19 3808:21
letters 3735:25
let's 3726:14 3738:6 3739:17 3779:15 3800:23
let's 3696:17 3704:2,6,7 3800:22
level 3786:5,6 3788:16 3791:3 3802:22 3803:9
levels 3705:1 3765:10
levied 3787:18
liaison 3696:1 3813:19
life 3720:18 3733:15 3819:21
lifestyle 3765:20 3766:6 3770:15,21,23 3771:10,24 3772:9
lifestyles 3771:21
light 3725:23 3776:13 3811:6 3814:23
lighter 3781:10
lightly 3808:6 3814:16
liked 3799:8
limited 3756:4
line 3733:18 3746:8 3767:22 3812:19 3813:25
lines 3721:2 3787:24
Linked 3741:13
listen 3812:16
listened 3793:2
listening 3725:20 3818:18,19
litigating 3701:4
litigation 3697:23 3701:2 3753:24 3764:14,15,16,17 3765:5 3770:5 3819:23,25
little 3697:21 3701:2 3705:7 3736:19 3740:17 3752:7 3764:19 3765:25 3772:17 3773:1 3786:13 3789:7,13 3792:4 3794:5
live 3720:17 3731:23 3734:21 3765:24 3777:18
lives 3700:15,16 3765:24
living 3729:13 3731:24 3806:25
lobbying 3716:3 3719:20
local 3791:5
located 3762:24 3763:2
lodge 3740:15
Loggerenberg 3711:14 3720:20
Loggerenberg's 3707:20
long 3705:18 3711:17 3721:16 3730:25 3731:2 3734:20 3737:13 3741:15,16 3746:8 3766:4 3776:18 3779:21 3796:8,23 3798:7 3812:17
longer 3787:11 3789:7
look 3703:21 3704:6 3707:5 3719:14 3721:4 3724:14 3726:1 3729:25 3730:8 3735:3,3 3736:11 3742:6 3743:4 3744:5 3746:25 3747:10 3748:12 3751:1,7 3756:21 3766:23 3769:3 3775:6,7 3777:10 3782:21 3785:7 3798:3 3799:21 3800:22 3803:22 3804:13 3806:11,22 3807:1 3809:5 3812:21 3819:11
looked 3745:5,6 3746:7 3747:17,23 3748:5 3756:17 3768:23 3769:5 3815:6
looking 3709:14,14 3727:10 3742:4 3760:7,13 3762:10 3766:11 3767:12 3770:20,21 3803:20 3813:6,8 3818:20 3819:5,9
looks 3737:21
loss 3811:8
lost 3785:5,6 3811:14
lot 3697:25 3703:6 3704:1 3710:16 3720:19 3739:14 3745:11 3755:23 3779:25 3785:17 3787:23 3791:14 3810:11 3811:7 3814:16 3819:1,10
lots 3703:3 3727:9 3745:8 3817:23
love 3776:16
lower 3758:24 3787:19
loyalty 3785:1

M

Mabongi 3805:20
machines 3757:13
mad 3740:25
main 3724:19 3731:10 3761:16
maintain 3732:8 3793:4,7
maintained 3727:4
major 3761:9 3768:15 3787:22 3796:1
majority 3734:5 3790:18
Makhubu 3771:22
making 3764:6 3765:15 3774:3 3799:22 3802:19 3807:16 3817:24
Makwakwa 3697:6
malicious 3728:10 3748:22 3773:19
maliciousness 3704:1 3774:7 3777:8
man 3719:4 3720:7 3725:19 3732:2
manage 3731:14 3818:25 3819:6
managed 3764:24
management 3698:1 3703:4,23 3728:7 3776:8 3783:24 3798:9,10,14 3799:1 3802:24 3818:24
manager 3764:3
managers 3732:17
mandate 3760:19 3782:16 3786:24 3796:9 3798:19
mantle 3732:18
Maphakela 3705:23 3707:23 3711:18 3712:2 3713:7,13 3714:22 3716:17
Maphakela's 3714:17
March 3696:22,24 3697:4 3698:6 3743:17 3810:8 3817:9
mark 3695:4 3787:14
markets 3791:6
Mashiane 3705:23
Masilo 3723:11,16 3770:3,9,13 3812:25
masters 3764:25
mastery 3731:12
match 3781:22
material 3716:12
Mathebula 3706:19
matter 3706:10,11 3707:4,19,19,20 3709:4 3710:4 3711:9 3711:20 3722:15 3726:10,20 3752:7 3755:13 3769:2 3795:21 3808:14,19 3808:25 3809:15 3816:5,18 3817:7
matters 3702:11 3706:6 3707:21 3718:10 3722:7,9 3744:14 3792:24 3800:15,17 3802:4
mature 3736:9 3792:12 3792:16
Mcungu 3706:19
mean 3714:11 3721:14 3745:24 3747:1 3749:15 3753:22 3764:13 3769:22 3775:1 3791:24 3814:22
means 3746:1 3768:23
meant 3699:11
measure 3741:7 3765:10
measured 3724:7 3732:23 3743:1
measures 3724:4 3752:14 3757:21
media 3698:14,15,16 3698:19 3699:18 3728:7 3744:25 3757:3 3765:24 3792:22,23,23 3806:1
medium 3744:14
meet 3734:15 3744:20 3766:10
meeting 3713:14 3759:18
meetings 3714:1 3759:17 3788:20 3790:6 3791:9,10
meets 3793:22
member 3724:25
members 3729:7,15
memorandum 3751:2 3819:10
memory 3757:14,15
men 3721:15
mentioned 3701:2 3788:8 3802:12 3806:24
mess 3816:17
message 3811:3
messaging 3738:4
met 3720:15
middle 3762:19 3768:14
milestone 3792:8
million 3712:20 3713:11 3720:17,18 3721:5,11,13,16,25 3722:1,2 3727:12 3742:16 3769:4 3805:25
millions 3709:13
Min 3807:19
mind 3704:12 3712:17 3712:23 3713:17 3715:24 3717:2 3751:20 3752:24 3758:6 3768:9 3788:2 3801:6 3807:20,22 3808:25
minded 3775:10,23
minds 3717:4 3784:18
minimise 3752:19
minimum 3713:9
minister 3696:24 3701:5 3702:10 3704:10 3729:5,5 3730:1 3740:3 3758:20 3795:10,12 3799:24,24 3800:7,17 3800:17 3816:13,13 3816:16
minister's 3805:16
minority 3734:5
mischievous 3705:6
misconduct 3753:4
missed 3781:19
mistakes 3731:6,7,8,9 3731:20 3732:1,2,3,4 3732:5 3748:24,24 3763:23 3792:10
model 3700:11,22 3738:7 3781:13,20

3784:17 3786:4 3792:18
models 3802:8 3803:13
modernisation 3727:18 3734:19,20,22
modernise 3734:21 3735:3
modernising 3734:19
modest 3720:17
Mokoena 3705:20 3709:3 3723:12
moment 3695:12 3699:1 3705:14 3719:25 3727:18 3728:19 3731:25 3737:14 3742:25 3749:5 3753:11 3754:15 3761:1 3767:22 3768:2 3770:11 3774:21 3775:7 3776:14 3778:1 3779:19 3785:11 3797:22 3803:18 3815:1,3,14 3816:9 3817:24
Monama 3705:23
Monday 3697:7 3712:8 3740:2 3819:18 3820:2
money 3708:4,9 3712:21 3720:19,25 3721:5 3722:3 3730:15,16,21 3741:25 3742:3,7 3747:5 3761:5,6 3775:11,16,25 3777:12 3806:2,5,11 3807:7,17,18,21 3808:1,2,5,13 3809:17
monies 3739:13
monitor 3765:7
monitored 3792:23
monitoring 3765:9 3795:2
monitors 3792:21
month 3705:24 3713:8 3713:10 3730:7 3741:21,22,24
monthly 3730:20
months 3696:23 3700:13 3730:6 3733:17 3767:20 3768:7 3776:21 3779:24
month's 3707:10
Moodley 3705:23
morale 3705:7,10
morality 3768:16
morning 3695:2,3,24 3818:8
motivated 3716:13
mould 3732:16 3733:9
move 3702:25 3708:15 3717:18,21 3720:8,11 3722:10 3732:4 3733:9 3736:25 3740:23 3762:15 3780:5 3783:23 3811:1
moved 3747:12 3769:2
movement 3787:1
movie 3757:18
moving 3727:10 3758:18 3760:7 3762:24 3776:7 3781:1
Moyane 3699:16 3765:14
multilateral 3791:3
multiple 3724:4 3806:23
multiplicity 3743:6
Murray 3781:11
mustn't 3744:13

N

name 3708:3,5 3721:7 3745:23 3761:23
nameless 3717:25
narrative 3716:14 3717:15
narratives 3699:17
nation 3812:4
National 3793:10
nature 3707:13 3790:7
necessarily 3700:12 3746:3
necessary 3711:12 3733:11 3745:7 3775:17 3787:11 3795:2 3798:5
needed 3710:2 3726:2 3730:12 3732:16 3819:4
needing 3709:8,9 3752:11 3753:2,6 3757:24 3764:16 3816:18
needs 3732:1,6,14 3733:20 3734:8,9 3746:14 3747:7 3760:18 3764:2,3,3 3766:20,21,22 3767:18 3772:16 3777:2,3,7 3788:19 3793:11 3798:17,17 3800:9 3801:3 3802:23,24 3812:3 3816:4,5,19
negative 3736:13
negatively 3705:8
neglect 3726:22 3739:23
neighbouring 3791:14
Nervous 3696:10
net 3770:22
never 3699:3 3720:15 3724:23 3734:21 3736:3 3792:12 3811:7
new 3700:10 3715:13 3728:20 3732:16 3733:10 3763:9 3781:20 3782:14 3783:13,25 3784:4,6 3784:13 3786:4 3788:10 3789:3 3807:6
night 3730:4 3737:11 3757:18 3764:6 3781:16 3789:25 3795:17
nights 3701:20
nine 3714:16
nominations 3795:9
non-associated 3745:10
non-core 3697:23,23 3698:20 3701:9
non-issues 3698:19
normal 3725:17 3750:23 3751:11,12 3818:2
normally 3704:17 3706:4 3746:23 3759:1
Norman 3789:23 3794:12
Norman's 3794:9
norms 3758:25 3759:1
note 3758:19 3759:13 3781:10 3783:18 3805:18
noted 3710:10
notes 3759:22 3818:7
November 3704:11 3796:23 3820:7
number 3697:22 3726:18 3733:7 3745:7 3747:4 3750:19 3751:8 3758:23 3761:3 3762:11 3766:3 3768:24 3802:17 3805:2,3 3807:14 3811:17
numbers 3767:3
numerous 3776:15
nurture 3733:24
nurturing 3733:12

O

Oakbay 3745:1,25
objections 3758:21
observation 3716:11
obsession 3720:3,4,7
obsessions 3720:8
obviously 3696:11,21 3697:2,9 3698:5,17 3699:8 3700:10 3702:5 3705:2 3725:8 3726:16 3732:7 3734:13,18 3735:8,20 3736:2 3737:20 3741:14 3743:4,4 3744:16 3762:20 3763:2 3764:18 3765:7 3766:20 3768:25 3772:8,15,18 3773:10 3775:19 3777:8 3780:17 3783:20 3798:13 3800:14 3807:2 3808:5 3810:11 3818:4
October 3695:1 3730:5
odd 3739:24 3783:23
OECD 3778:23,25 3779:1,2 3780:1 3804:17
offence 3792:22
offer 3733:24 3734:1 3740:12 3806:2 3811:21
offered 3808:1,10
office 3703:2 3724:16 3725:16 3742:14 3762:25 3763:17 3779:2 3781:6 3785:11,15 3786:5,6 3786:6
officer 3701:24,25 3702:1,2,8 3703:18 3706:6,14 3708:19 3717:6 3721:1 3724:5 3731:2 3733:19 3760:3 3771:23 3775:14 3777:2 3779:18 3781:11 3786:11 3788:10 3804:7 3809:7,16
officers 3701:23 3762:2 3788:3,11
offices 3737:14
official 3772:21
officials 3772:6
offs 3777:11,11
oh 3719:9 3755:13
okay 3723:16,20 3745:16 3769:18 3770:13 3789:12,18 3794:13 3804:20
old 3783:24 3784:4,8 3784:14
Ombud 3758:19 3759:18 3760:4 3799:10
ombuds 3778:13
once 3734:19 3811:15 3819:20
ones 3752:8 3774:16 3775:3
one's 3767:11
ongoing 3716:2 3734:20 3735:5 3741:15 3742:17
online 3796:17 3806:20
open 3695:15 3715:21 3718:18,22 3725:17 3732:8 3761:21 3790:23
opened 3792:13
opening 3728:20
openly 3703:8,12
operate 3764:2,3
operated 3717:16
operates 3780:10
operating 3700:10,21 3748:21 3764:1 3781:13,20
operational 3698:16,23 3793:12
operations 3697:16 3698:15
opinion 3714:17 3802:1
opportunity 3703:3 3714:23 3715:3,10,16 3715:21 3792:9 3808:10
option 3699:11 3806:17
options 3795:14 3806:18
order 3713:11 3730:12 3732:9 3736:24 3737:25 3742:24 3743:17 3745:21 3746:25 3747:6 3753:15 3773:25 3788:17 3793:14 3795:1 3798:18
ordered 3745:12
ordinary 3721:10
organisation 3696:19 3697:16,24 3698:1,23 3699:1,7,13 3700:2 3701:1,12,19 3702:5 3702:16,20 3703:7,11 3705:2 3707:7,7 3719:14 3723:22 3727:24 3729:20 3731:3,9,13 3732:13 3732:23 3733:2 3734:19 3736:3,7,20 3737:5,24 3738:23 3753:4 3759:21 3764:1,17 3771:23 3773:12 3777:25 3778:10 3779:8 3780:15 3783:16 3784:10 3785:1,16 3786:4 3788:15 3793:21 3798:9,10,15 3798:16 3807:4 3810:21,23 3811:3,15 3811:18,23 3812:6,19 3813:2,8,18 3816:4
organisations 3779:6 3780:1
organisation's 3816:10
orphan 3730:17 3786:11
other's 3780:6
ought 3758:6 3802:15
outcome 3745:15 3782:3
outlet 3755:19
outlook 3716:8 3743:15
outrageous 3712:23
outside 3706:6 3723:4 3724:15 3809:3

outsider 3774:17 3775:6 3818:18
outsider's 3819:4
overall 3701:19
overhauling 3788:8
overnight 3741:23 3804:1
overseas 3751:25
oversee 3795:8
overseeing 3794:1
oversight 3774:5,10 3793:17 3795:6 3801:22,22,23
overwhelming 3728:18
owe 3707:4
ownership 3799:19
o'clock 3737:10

P

pack 3768:22
page 3713:5 3714:19
pages 3714:16 3741:1
paid 3746:18 3747:22 3761:13 3767:8 3769:7 3806:6
pain 3700:22 3728:13 3729:15 3782:18 3813:13
pains 3790:21
panel 3695:3
panellists 3696:9
paper 3747:19 3768:22
papers 3721:6 3738:14
parachuted 3697:2
paragraph 3714:19 3715:13
paragraphs 3713:4 3716:22
paralysed 3810:25
paramount 3731:13
paraphrasing 3816:15
parents 3718:1
park 3740:21
parliament 3799:25 3800:7 3816:16
part 3702:24 3725:3,4 3725:5 3726:18 3737:22 3739:3 3748:12 3750:16 3757:5 3759:20 3764:10,20 3765:21 3777:20 3778:2 3786:10 3791:10 3793:24 3813:17
particular 3781:22
particularly 3708:1 3711:24 3714:8 3715:4,25
partisan 3736:4
parts 3764:15
party 3746:2,5 3747:23 3748:15,17 3749:2 3750:22 3757:12
pass 3783:22
passionate 3727:16 3729:19 3812:1
pause 3700:1 3705:13 3717:23 3726:24 3732:18 3738:16 3740:7
pay 3740:15 3747:5 3748:8,17 3750:7 3759:22,22 3760:2 3768:13 3769:7,7 3780:13 3806:2 3808:22 3812:13
PAYE 3740:14
payer 3735:9
paying 3768:15 3812:13
payment 3749:22
peer 3723:22 3724:10 3724:16 3725:9 3777:20 3778:11,14 3778:18 3779:13
people's 3700:16 3768:8
perception 3724:22 3742:23
perfect 3792:18
perfectly 3754:10 3815:7
performance 3729:12 3766:23 3795:1,6
performed 3738:15 3778:7,19
performing 3803:12
period 3699:16 3728:13 3766:17
periodic 3793:21
permanency 3793:25
permanent 3794:3,23
permeated 3705:1
permeation 3723:21
permit 3749:16
permitted 3719:2 3746:2
perpetrated 3774:15
person 3704:20 3708:23 3717:24 3719:1 3726:1 3730:18 3742:14 3744:19 3747:9 3759:16 3760:12 3767:20 3769:4 3777:3,24 3783:12 3784:19,19 3785:24 3787:6 3802:25 3812:12,13 3815:25 3817:6,12
personal 3700:15,16 3742:10
personally 3706:15 3772:21 3794:2,22
person's 3781:22 3785:23
person's 3770:19
perspective 3726:10
perspectives 3725:2
pertaining 3749:4
perturbed 3700:8
perusing 3764:24
phoenix 3789:4
photo 3757:22 3768:21
Photostat 3757:12
pick 3723:1 3750:17
picked 3762:12
picking 3723:20
picks 3800:16
picture 3771:8
piece 3728:16
Pillay 3707:18 3711:14 3714:18,23 3715:6,10 3715:16,22,24 3716:3 3716:5,9,14 3719:20 3720:3,4,6,15,20 3721:7
pipeline 3770:6
place 3701:12,15 3702:17,21 3704:11 3706:8,16,19 3717:20 3724:18 3732:22,24 3733:13 3751:4 3757:21 3760:1 3761:21 3762:19,21 3763:2,13,21 3764:4 3772:5 3773:17,18,23 3774:2,12,20 3775:6 3775:23 3783:11 3784:19 3785:13,19 3786:2 3795:19 3797:17 3801:16 3815:14,15,22
placed 3731:10 3785:12
plan 3730:25 3731:3
planning 3731:3
plastic 3733:21
plate 3768:24 3795:14
platform 3714:11 3715:8 3806:13
play 3787:3
played 3699:17
playing 3725:4
please 3719:10 3722:13 3722:25 3758:16 3770:16,16 3789:21 3796:20 3812:18 3815:13
pleasure 3726:18 3813:1 3818:8
poach 3783:6
poached 3783:14
pocket 3785:23
point 3697:15 3704:22 3706:8 3709:1 3710:24 3713:3 3722:20 3724:14 3728:8 3750:11 3751:20 3755:1 3769:2 3770:20,20 3771:14 3772:21 3776:17 3802:10 3803:16 3805:8,15 3806:8 3819:4
police 3762:2
policies 3744:15 3793:12
policy 3753:1 3780:16 3780:17,23,24 3793:10 3801:12
political 3799:24
politically 3736:2
poor 3729:14 3733:19
ports 3757:14
posit 3744:10
position 3697:3,9 3710:22 3715:13 3716:18 3781:23 3800:8,25 3811:22 3816:6,18
positions 3700:21 3701:24 3702:4,5,7
positive 3743:15
possibility 3728:20
possible 3716:4 3734:1 3744:21 3761:24,24 3767:13,17 3781:23 3783:16
post 3696:22 3723:20 3733:20
posts 3700:21 3791:25
potential 3811:13
power 3734:15 3756:21 3795:8,9 3798:17 3802:16
PowerPoint 3703:20
powers 3756:10 3758:7 3758:10 3795:5 3798:1,18 3799:7
practical 3791:5 3792:19
practice 3804:14,19 3817:2
practitioners 3738:4 3806:15
practitioner's 3759:7
prayer 3792:11
pre 3744:13
preconceived 3716:12
prefer 3749:3 3773:3 3794:2,22 3803:15
preliminary 3746:10
premise 3769:25
preparation 3696:11 3702:18 3707:17 3730:4 3781:17
prepare 3705:25 3707:24 3712:10,10 3712:11 3732:17 3809:4
prepared 3697:7 3812:1,15,16,16
preparing 3733:7
presence 3793:25
present 3710:1 3760:6 3814:7 3815:10
presentation 3703:20
President 3729:4 3772:8 3796:23 3815:11 3817:23
President's 3772:19
press 3700:6 3726:25 3753:18,21,23,24 3755:6,22,22,23 3756:3,17,20,24 3757:1 3807:14 3809:10
pressure 3696:17 3761:6
prevent 3748:18 3751:3 3773:25
prevented 3718:20
preventing 3773:22
prevents 3748:18
previous 3724:6
previously 3698:14 3779:12
pre-discussions 3809:2
pre-judge 3815:20
pre-2009 3750:25
pride 3811:8
prima 3716:6,9
primarily 3731:22 3740:9
principal 3806:19
principals 3792:15
principle 3752:13 3787:23
principles 3700:7
printed 3698:4 3773:8
prior 3698:1,5 3710:19 3716:6 3763:24 3810:7
prioritised 3770:9
priority 3717:11 3807:2
private 3757:17
privately 3738:4
privilege 3696:10,10 3760:9
privy 3745:5
probably 3717:10 3725:9,25 3726:1 3730:5 3734:22 3745:5 3763:22 3769:2 3786:13 3793:22 3796:9 3804:18
problem 3702:23,25 3755:22 3766:2
problems 3781:20 3797:19
procedure 3748:22
proceed 3702:7 3816:20
proceeding 3762:18
proceedings 3695:1 3715:6 3815:3 3818:2
process 3706:4,16 3708:13 3709:17 3710:18 3733:17 3737:23 3738:13 3739:1,3,18 3742:4 3744:19 3746:4,15,18 3746:21 3747:1,25 3748:2,7,9,12,19 3749:2 3751:11,12 3752:9 3759:1,11,13 3760:15 3764:13,21

3764:22 3769:1 3770:25 3772:13,20 3773:16 3774:21 3781:21 3782:1 3783:25 3785:11,15 3785:18,22 3787:16 3787:18 3788:12 3795:17 3797:6 3799:10 3812:4,5,10 3812:15 3813:18,22 3813:22 3815:21 3819:6
processed 3750:11
processes 3705:5 3706:13 3742:2 3749:4 3750:23 3773:11,13,19,21 3774:2,20 3775:6 3776:15,18 3787:25 3793:12
procurement 3762:25
produce 3722:23 3789:24
product 3761:17
PROF 3712:6 3722:6 3725:6 3764:7 3778:17,23 3779:22 3780:12 3785:3 3794:5,9,12 3796:5 3796:11,14 3800:13 3801:20 3805:6,13 3808:14,17 3810:4
Professor 3778:20 3780:4 3794:7 3796:16 3802:6 3803:8 3809:15 3812:24
Professor's 3793:5
programme 3761:5
progress 3762:13 3785:11 3786:8 3788:16 3809:14
project 3776:7
promotion 3752:22
pronouncements 3772:9
propelled 3697:11
proper 3706:13 3732:11,12 3759:2 3760:16 3784:18 3788:12 3802:10 3806:10
properly 3731:4,14 3734:13 3752:20 3763:1 3769:25 3790:19
properties 3771:3
proposal 3752:24 3756:9 3771:25 3774:3 3795:19 3800:6
proposals 3764:6 3793:17
prosecuted 3774:7,7
protect 3711:20 3735:11 3780:22
protected 3735:14 3753:5,7 3780:16,23 3801:12
protecting 3758:3
protection 3761:15
proud 3792:8 3811:15
provide 3715:3 3730:12 3732:15 3737:22 3738:21 3765:4
provided 3717:15 3718:21 3730:19,21
providing 3738:24
prudence 3808:4
psyche 3783:11
public 3698:23 3699:6 3700:3 3714:20 3715:22 3726:24 3732:10 3735:21,23 3738:23 3740:6 3742:10 3749:3,10 3751:20,23 3752:10 3772:5,6
publically 3758:22 3813:23 3817:11
publish 3794:15,16
published 3698:5
pull 3741:9 3804:18
pulse 3741:6,7
pure 3773:22
purged 3714:25 3715:25 3716:5,14
purports 3717:5
purpose 3698:24 3712:14,21 3729:14 3730:11,13 3731:20 3751:4 3757:25 3811:21
purposes 3758:4 3773:22 3776:4
pursue 3712:13 3720:19,20,20
pursued 3713:21 3776:3
push 3802:18,23
pushed 3766:16 3803:3
put 3696:17,17 3706:19 3709:7 3714:21 3717:1 3721:7 3722:4 3724:20,21 3725:23 3727:19,21 3732:22 3732:24 3733:18 3740:9 3746:25 3748:5 3751:4,23 3752:2,25 3757:11 3773:23 3774:11 3775:23 3777:15 3783:25 3784:17,25 3785:19 3794:20 3795:19,24 3798:8 3800:6 3801:15 3807:6 3814:23 3815:14,15
putting 3741:24 3761:6 3764:4 3766:5 3784:13 3786:2 3797:5 3799:18 3815:22
puzzling 3715:13

Q

qualifications 3731:10
quality 3729:24 3730:8 3730:24 3737:3,4 3767:3
quandary 3815:17
quarters 3712:20 3720:17,18 3721:10
queries 3757:3
question 3699:6 3708:14,22,24,25 3711:4,5 3717:10 3723:11 3725:9 3728:9 3732:5 3735:19 3746:15 3763:4 3765:17,22 3769:10 3772:6 3774:13 3775:2 3779:15,16 3782:5 3802:14 3803:7 3805:24 3806:4 3810:10,11,14,15,18 3810:22,24 3815:23
questions 3705:15 3714:21 3728:13 3742:21 3747:7 3768:8,19 3797:24
queuing 3741:10,11,12
quick 3813:12 3814:19
quicker 3741:25 3770:23
quickly 3740:22 3767:16 3796:7,7 3820:5
quite 3710:13 3720:21 3736:13 3741:18 3744:25 3753:23 3754:4 3762:11 3778:3 3786:18 3815:21 3818:20 3819:12
quoted 3749:10

R

radar 3760:22
radically 3814:19
raids 3762:9
raise 3752:15,18 3754:10,12 3760:24 3801:21 3805:20,20
raised 3718:14 3755:7 3772:2
raises 3754:3
raising 3734:24 3735:6 3803:18
ramifications 3728:22
rand 3709:13 3712:20 3720:17,19 3721:13 3721:17
rapidly 3789:24
rare 3727:25
rarely 3698:21
Ravele 3715:12
reach 3698:5,7 3734:22 3766:7
reached 3818:17
read 3707:16 3716:22 3719:19 3728:16,25 3736:4 3756:20 3792:4 3797:10 3807:14
real 3763:1
realise 3811:14
realised 3758:23
reallocation 3760:1
really 3695:6,15 3697:24,25 3698:2 3701:6 3708:8 3753:17 3769:14 3774:20 3775:10 3791:18 3803:15
reap 3784:15 3791:5
reason 3708:2 3713:1 3715:7 3752:4 3760:15 3783:5
reasonable 3715:23 3716:2 3798:13
reasons 3698:15 3743:6 3773:19
rebuild 3705:10 3783:16 3811:2,14,23 3812:17,18
rebuilding 3739:7 3812:10
rebuilt 3812:3
Rebuttal 3714:20
recall 3738:19 3818:9
receive 3756:11
received 3711:10 3722:19
recognise 3739:6 3792:9,12
recognised 3790:22
recognising 3781:22
recognition 3786:22
recommend 3792:15
recommendation 3796:2 3799:22 3806:4 3808:22
recommendations 3699:24 3739:2 3792:3 3793:1 3795:22,24 3807:25 3819:1
recommends 3806:5
reconciliation 3770:19
reconstitute 3764:22 3765:14
reconstituted 3765:3
records 3721:9 3772:22
redo 3806:13
reestablishment 3760:13
reference 3718:11 3719:13 3777:22 3819:5
Refiloe 3705:20
reflecting 3716:23
refresh 3806:12
refreshed 3727:4
refund 3743:19 3746:2 3748:17 3781:8
refunded 3721:19
refunds 3698:17 3741:14,14,16 3742:22,24 3743:6 3744:16,17,18,25 3745:1,6,8,9 3746:6 3746:15,18 3747:10 3748:8 3767:8
regain 3734:18
regard 3702:8 3715:2 3723:12 3735:7 3738:2,20 3743:14 3764:6 3765:12 3774:3 3779:7 3780:7 3783:3 3786:24 3789:1 3792:1 3795:15,22 3802:8,9 3806:4 3807:5
regards 3696:14 3698:3 3700:14 3706:9,16 3707:18 3721:23 3722:9 3723:21 3727:8 3733:3 3738:22 3743:24 3746:8 3748:15 3760:1 3761:18 3762:3,17 3772:9 3774:3 3790:12 3793:8 3795:18 3804:14 3809:1,2,3 3816:5
regime 3774:15
regional 3791:3
regular 3747:25
reinstate 3781:24
reinvent 3800:23
reiterate 3794:11,14
related 3707:17
relates 3706:6 3745:17 3746:6
relation 3710:5,12 3718:18 3722:19
relations 3705:14,19 3706:7,10 3791:13,16
relationship 3779:3,12
release 3700:3,5,6 3739:25 3740:1 3807:15
released 3741:4
releases 3809:10
releasing 3787:13
relevant 3718:11 3722:23
relief 3725:23
reluctant 3716:11 3768:13
remain 3699:2 3701:18 3717:25 3795:4
remains 3716:15 3758:9
remarks 3805:23
remember 3704:12

3711:8 3738:21 3741:1 3744:9 3748:13 3772:3 3792:2
reminder 3704:15
remiss 3723:18 3802:9 3812:20
removed 3724:22,24 3725:2
repay 3750:3
repayable 3750:4
repeat 3695:25 3794:21 3816:15
repeated 3696:25
repeatedly 3708:1,6 3810:16
report 3699:25 3700:1 3700:3,6 3703:8,10 3703:13,14,19,22,24 3703:24 3795:12 3796:21,22 3797:1 3820:4
reporting 3697:13 3745:1 3778:5
reports 3793:6
represent 3716:21 3717:5
representative 3788:22
represented 3699:8 3713:3
reputation 3700:15
reputations 3700:17
request 3695:10 3709:2 3748:25 3749:1,7 3792:25
requested 3778:6,11
requests 3695:13
require 3745:22
required 3771:24 3792:17 3793:24
requirement 3744:8
requirements 3776:16
requires 3735:18 3788:2 3796:8
research 3795:14 3796:6 3800:22 3802:7,10 3804:12,22
reservations 3802:13
resignation 3697:5 3716:6
resignations 3699:23
resigned 3702:1,3 3719:18
resigning 3719:17
Resilient 3736:7
resolve 3816:5
resolved 3701:8,10
resort 3799:4
Resource 3715:3
resources 3770:1 3773:16 3782:22 3783:6 3793:14,23
respect 3703:21 3715:17 3720:6 3723:13 3734:9 3747:22 3758:19 3768:18 3783:12,13 3800:14 3816:1
respective 3809:16
respond 3756:5 3788:19 3792:23
responding 3696:16
response 3695:10
responsibilities 3695:12
responsive 3790:25
rest 3764:1
restoration 3701:12
restore 3728:14 3737:22,23 3752:12 3769:8
restored 3779:2 3811:12
restoring 3729:23 3812:11
restriction 3748:14
restrictions 3748:16
restructured 3779:9
result 3700:24 3769:3
resulted 3705:22 3748:7
resume 3701:12
RESUMES 3789:17
resurrect 3712:21,22
reticence 3738:21
retire 3733:6
retired 3811:17
retirement 3732:20 3733:5
retrenchments 3699:23
return 3722:5 3737:12 3740:16
returns 3741:20
revenue 3697:16 3698:7 3701:15 3725:15 3737:21 3742:25 3762:7 3788:18
reverse 3739:22 3786:3
reversing 3785:21,22
review 3746:10,24 3750:17 3758:23 3773:24 3775:19,23 3776:22 3777:14,20 3778:11 3779:13 3781:13
reviewed 3779:9
reviews 3747:8 3777:21 3778:14,18 3779:11
re-establish 3765:7
re-established 3770:7
re-establishing 3760:8
re-evaluate 3766:19
re-written 3780:17,23
rich 3768:14
Richer 3711:14 3714:18 3720:20
Richer's 3707:19
rid 3783:24
right 3697:1,18 3698:15 3704:24 3708:20,23 3710:3 3720:10 3727:16 3736:18 3737:17 3741:18 3742:16 3753:23 3763:14 3767:22 3768:2 3769:6,8,11 3775:22 3777:18 3798:11 3805:5 3811:13 3812:8 3817:1 3818:22 3820:3
rightly 3709:4 3815:4
rise 3736:6
risk 3741:17 3742:18 3746:22 3752:19 3759:5,5 3761:9,11 3761:11 3771:9 3802:25
road 3750:18 3762:8
robust 3701:13 3792:19
rogue 3697:25 3707:24 3712:13,21 3713:12 3713:16,18 3717:10 3717:13,14,22,24 3720:11
role 3705:14 3761:14 3795:2 3803:12
rollouts 3737:13
Rolls 3766:6
room 3700:20 3703:17 3752:5 3760:12 3782:18 3783:2
rotating 3776:25 3777:5
Royce 3766:6
rules 3734:11 3752:16 3759:24
ruling 3749:8
rumours 3719:22 3771:19
run 3739:17 3741:23 3742:7 3761:6 3798:15,16
running 3798:14
runs 3781:17
Russian 3704:11
Russians 3733:16
R1 3713:10
R1.345 3734:14
R160 3742:15
R18 3787:9
R400 3805:25
R750 3711:6,24
R759 3705:24 3708:4 3713:8

S

sacrosancty 3751:21
sad 3727:18 3728:8
SADC 3780:9
sadden 3754:20
saddens 3717:5
safeguarding 3735:8
saga 3707:24
sake 3699:10 3701:17 3816:10,10
salaries 3785:20 3805:16 3812:14
salary 3769:7
sanction 3710:12
SARS's 3728:20 3731:21 3742:25
SARS's 3700:15 3715:4 3716:18,24 3766:1 3792:13 3793:5,7 3794:25
sat 3705:9 3764:23 3765:22 3766:8
satisfied 3735:6
satisfy 3776:3
Saturday 3818:8
Saturdays 3737:14
save 3764:18
saw 3707:18 3768:23 3818:11
saying 3707:7 3713:18 3715:20 3735:23 3736:12 3738:5 3744:20 3750:11 3766:9 3775:18 3777:13 3783:24 3790:24 3795:7 3799:15 3808:12 3809:25 3816:21 3817:20
says 3714:22 3716:14 3755:14 3766:7 3769:19 3786:11 3801:25
scanner 3724:20,21 3725:16
scares 3720:25 3732:20
scarier 3733:2
Scarily 3728:6
scary 3810:24
Scheepers 3722:20
schizophrenic 3754:17
school 3730:20
scope 3709:11 3777:10
scourge 3730:18
screen 3760:22
script 3704:4
season 3739:10,19 3740:3
second 3704:12 3708:14 3741:22 3746:6 3798:14
seconded 3779:4
secondly 3805:13
seconds 3748:14
secrecy 3753:5 3799:18
section 3745:17,19 3749:13
sections 3745:18
security 3724:12 3725:8,11 3726:1,3,9 3757:21
see 3695:14 3702:7 3710:11 3714:12 3721:6 3722:11,20,21 3722:21 3724:15 3726:9 3735:1,2 3742:15 3748:1 3750:23 3755:1 3759:19 3761:20 3778:14 3781:12 3789:3 3792:12 3797:2 3804:18 3811:5,5,8,12 3812:1 3819:24
seek 3710:22 3792:19
seeking 3709:18 3811:15 3812:8
seen 3699:15 3700:5 3703:14,15 3707:15 3709:7,9,9 3713:9 3715:9 3721:8 3731:1 3732:13 3736:21,21 3736:21 3739:23 3765:23 3766:8,16 3767:21 3779:18,20 3781:6 3783:19 3807:3 3813:25
sees 3817:25
see-saw 3814:20,25 3816:22
selection 3734:12 3770:25
self 3810:25
self-service 3806:16,18
sell 3782:25 3783:1,2
sellers 3762:10
send 3757:23 3811:3
senior 3697:13 3759:16 3772:5,20
sent 3704:14,15 3712:25 3713:1 3789:25
separate 3711:1 3724:5 3726:20
series 3779:11
serious 3698:23 3700:25 3702:4 3720:21 3761:11 3801:17 3815:23
seriously 3815:21
serve 3697:10 3699:3 3735:3 3807:8 3811:16
service 3698:18,19 3730:16 3734:1,2,3,5 3739:24,25 3740:5,7 3740:8,10,13 3741:2 3741:4,13,14,17 3742:18 3763:2 3764:3 3766:20,21 3771:5 3779:20 3787:2 3788:18 3790:19 3799:12
services 3705:22 3709:20 3764:8,10 3811:22
serving 3726:6 3766:18
sessions 3765:23
set 3714:17 3722:16 3729:12 3734:13 3745:22 3752:21 3759:10 3760:20

3774:5 3793:13 3815:8
setting 3731:22 3783:13 3793:18
settle 3789:18,20
settled 3818:13
settling 3789:23
seven 3696:23 3730:6 3789:24
severe 3697:19 3705:10
severely 3699:6
shame 3700:8
share 3700:23
shared 3703:8,12,23 3811:9
shed 3813:7
sheets 3773:8
shift 3727:13 3788:2
shocked 3808:25 3809:2,3
shoes 3784:20
short 3698:4 3729:11 3752:1 3759:10,15 3774:4
shortbread 3818:9
shorter 3766:17
shortly 3779:8
shot 3757:22
Shouldn't 3741:24
show 3711:16,17
showing 3711:18
shown 3718:22
shows 3703:15
shrinking 3741:1
shy 3805:25
side 3695:25 3701:5 3718:18 3725:15 3733:2 3750:18 3754:19,22 3767:21
side-lined 3803:1
sift 3719:23
sign 3746:25
signature 3781:1
significant 3730:5 3733:6 3739:9,10 3759:5
signing 3760:9
Sikhakhane 3699:25 3700:3,6
similar 3748:16 3786:7 3794:2,22
Similarly 3778:9
simple 3728:12 3813:25
Simplicity 3740:22
simply 3742:13 3786:24
single 3783:14 3812:12
sink 3704:3
siphoned 3762:5
Sir 3709:5 3752:24 3754:10
sit 3701:18 3704:16 3711:2,6,20 3723:19 3733:20 3736:20 3757:18 3768:7 3779:14 3783:10 3791:23 3816:20 3819:22
sits 3726:4,5 3767:20
sitting 3700:20 3717:24 3730:3 3735:22 3742:11 3810:8
situation 3697:12 3699:14 3736:15 3750:2 3814:18
six 3717:10 3721:15 3722:14 3733:17 3768:7 3779:24 3812:23
sketch 3736:12
skill 3781:22 3788:16
skilled 3781:14
skills 3764:20 3782:13 3782:22 3811:21
slightly 3761:11
slower 3794:6
small 3812:19
smoke 3725:19,24 3790:5
software 3737:11
solid 3778:15
solution 3757:7
somebody 3734:11 3790:11 3795:16 3800:9,12
someday 3724:14
soon 3805:21
sorely 3781:19
sorry 3722:4 3723:2 3725:6 3729:2 3735:18 3742:20 3745:3 3746:16 3749:11 3750:18 3755:6 3764:7 3768:11 3776:6 3778:17 3782:7 3794:5 3796:11 3805:6 3817:21
sort 3710:9
sought 3709:25 3710:20
South 3714:24 3788:21 3791:4
sowing 3700:24
space 3702:2 3706:7 3727:10 3731:1 3735:21 3738:16 3739:6,14,23 3742:6 3746:14 3759:16 3766:4,15,15,21,21 3772:13 3773:20 3778:21 3779:20 3780:5 3782:9 3788:25 3790:14
spaces 3790:25
spacing 3773:8
speak 3730:13 3757:9 3761:1 3778:25 3787:7 3790:15 3796:17
speaking 3786:12,13 3788:9 3813:3
specialist 3764:16
specific 3705:15 3706:16 3707:4 3737:19 3748:14 3759:11 3761:18 3792:5
specifically 3706:19 3710:3 3751:3 3769:16 3788:6
specifications 3776:16
speed 3696:3
spend 3775:16,24 3807:21 3808:5 3818:8
spending 3712:20 3722:3
spent 3708:4,9 3721:5 3721:13,24 3805:25 3806:2
spirit 3813:4,5,15
split 3764:15
spoke 3738:2 3807:19
spoken 3772:1 3815:24
spot 3797:5
spurious 3773:18 3775:7
spying 3758:2,2
stability 3699:12 3729:25 3730:1,8,24 3762:7 3816:7
staff 3699:7 3700:18 3705:9 3724:7,23,25 3725:23 3729:7,15 3732:9 3733:23 3752:15 3753:6 3757:24 3758:3,3 3759:5 3762:2,22 3781:1 3783:14 3785:12,15 3786:12 3786:14 3788:13,13 3788:25 3790:20 3791:23 3795:8 3796:17 3806:9,17,24 3806:24 3813:16 3816:25
stage 3710:19 3735:10 3742:8 3753:6
stakeholders 3729:4
stamping 3762:3
stand 3728:23 3732:3 3781:11 3810:17
standard 3748:7,9,19 3748:21 3752:21 3759:10 3778:5 3785:14
standardise 3785:16
standards 3729:12 3752:17 3785:14
start 3719:15 3732:19 3769:19,20 3788:12 3794:8 3795:16 3812:2
started 3718:10 3719:16 3762:12 3769:16 3773:14 3774:6 3776:23 3781:21 3818:8
starting 3771:14 3806:8
state 3715:11,17
stated 3703:16 3816:12
statement 3702:19 3726:25 3744:15 3799:9
status 3778:7
statute 3801:25
statutory 3794:2,23 3804:6
stay 3757:21
stayed 3784:11
STEINBEG 3729:10
Steinberg 3695:3,24 3696:6 3705:13,17 3706:23 3707:1,12,22 3708:14,17 3712:16 3712:25 3713:23 3714:1,5,16 3717:9 3719:7,10 3721:25 3722:25 3724:2 3725:22 3729:17,21 3737:1 3742:21 3744:24 3745:24 3746:17 3747:3 3758:16 3760:21,24 3763:4,14 3765:17,20 3770:16 3771:14,18 3772:11,23 3774:13 3775:2 3776:11 3777:16 3779:7 3781:5,8 3782:5,8 3783:4 3785:25 3789:16,20 3790:2 3794:15 3805:22 3809:20 3810:4 3814:2 3819:15,18 3820:6
step 3702:16 3705:11 3728:23 3733:11 3772:4,21 3795:13 3803:11
steps 3727:7 3739:7 3759:12 3784:20 3786:3
stick 3740:9,11,11 3757:14,15
sticky 3725:23
stop 3727:17 3742:12 3743:19 3744:16,17 3744:18 3755:13 3787:11 3804:8 3810:13
stopped 3741:21 3787:3,4,6,10,18
stopping 3741:24 3787:20
story 3718:18
strategy 3765:6 3793:11
strength 3699:9
strengthen 3778:12
strengthening 3759:20 3763:23
strong 3732:14
struck 3783:23
structure 3760:10 3762:18,20,22 3778:15 3802:24 3804:14 3810:20
structures 3804:13
stuff 3774:22 3814:21
subject 3771:24
subjected 3729:16
submission 3740:15 3795:16 3800:6 3802:7
submissions 3738:14 3795:17 3796:12
submit 3737:12 3740:16
submitted 3716:10
subscribed 3811:20
subsequent 3809:12
subsequently 3696:25
subsidiary 3749:23
substance 3746:15
succeed 3784:2,20
succeeding 3784:1
success 3729:24 3763:6 3782:24 3784:3 3789:2 3810:23 3816:14 3817:13
successful 3731:11 3762:11 3788:17
succession 3783:18,21 3784:1,18 3805:8
Sue 3776:8
sufficient 3770:1
suggest 3708:19 3710:10 3779:25
suggested 3771:22 3803:10
suggesting 3746:17
suggestion 3776:2
suggestions 3803:21 3816:2
summoned 3712:3 3716:15
summons 3798:4
Sunday 3740:2
superb 3813:16
supplier 3761:23
supply 3762:6
support 3695:6 3706:17 3758:11 3764:8,9,12 3765:4 3772:20 3785:12,15 3786:6 3795:22 3797:6 3798:9 3802:17 3812:4 3813:11 3817:12,16 3817:20
supported 3717:1
supporting 3772:14,19 3794:24
supportive 3695:8
suppose 3725:11 3744:3

supposed 3796:22
sure 3703:14 3705:16 3709:7 3718:7 3720:13 3723:5,14,17 3723:20 3726:11,13 3735:11,16 3742:8 3745:7 3753:12 3765:15 3775:22,24 3777:13 3778:8,20,24 3788:1 3789:16 3790:15,19 3794:7 3796:10 3803:9 3805:5 3807:4 3808:9 3817:13,16,24 3818:25
surely 3709:11 3777:18
surprised 3728:6 3812:21
surrounding 3715:15
survey 3723:23
surveys 3724:8
suspect 3703:25
suspended 3705:20
suspension 3699:15 3715:6
suspicion 3715:23 3716:2 3743:21 3744:1
Swaziland 3791:10
sympathetic 3790:5
synergies 3780:8
system 3727:1 3731:4 3737:25 3744:20 3765:10 3769:9
systemic 3758:20 3759:19,23 3760:5
systems 3756:13 3771:13

T

table 3730:17 3738:1 3777:15
tackle 3766:12
TADAT 3759:14 3777:22,23 3778:6,22
take 3702:15,21 3712:1 3724:14 3727:6 3728:22,23 3729:9,10 3729:17 3730:22 3732:3,6,17,22 3733:1,18 3737:25 3738:6 3743:12 3757:21,22 3760:1 3768:21 3777:4 3783:11 3792:2 3793:14 3799:19 3800:8 3805:18 3807:4 3818:15
taken 3697:25 3738:7 3739:8 3745:20 3757:19 3762:5 3764:21 3765:7,13,13 3773:17 3778:9 3810:17
takes 3779:21 3784:18 3801:25 3806:17
talent 3737:4
talk 3714:10 3753:23 3756:19,19 3758:13 3763:11 3764:14 3774:21 3797:7 3798:5 3800:16 3814:14 3815:18
talked 3814:6,6,7 3819:2
talking 3711:11 3712:4 3718:9 3749:12 3750:15,20 3763:17 3763:18,18 3764:8 3779:23 3801:21,23 3807:12 3814:5,13,17 3814:19
tangible 3782:18
tape 3725:24
target 3698:7 3734:14 3734:15 3743:1,18,20 3744:20
targeted 3704:2
tariff 3733:21 3761:12
tax 3697:5 3701:13,25 3702:6 3721:10 3722:5 3728:2,3 3735:9,13,24 3736:1 3737:25 3738:2,3,12 3738:14,18 3739:20 3740:16 3741:20,21 3742:10,12,13 3748:16 3759:2,3,6 3760:20 3761:14,14 3763:18,19 3764:7,23 3765:2,8 3766:7 3768:13,15,16 3769:9 3772:6,18,22 3777:23 3778:3 3788:16 3793:8,10 3794:3,23 3799:10 3802:5 3806:15
taxes 3730:12 3731:14 3793:19 3804:22
taxman 3759:3
taxpayer 3700:5 3708:4 3728:1 3737:11 3747:14 3751:8,19 3753:25 3765:10 3768:1 3795:1,3 3798:4 3799:12
taxpayers 3712:20 3727:12 3729:3 3734:1,7 3759:25 3768:12,13 3772:17 3797:13 3809:19
taxpayer's 3751:22 3759:6 3763:8
team 3696:2 3704:13 3705:9 3706:18 3725:4,5 3739:15 3742:2 3746:10 3764:5 3782:17 3813:19
teams 3709:6 3748:21 3762:9 3770:11 3772:13 3775:10
tears 3718:5 3813:7
technical 3731:12 3792:17
technicalities 3727:3,9 3739:12
technology 3739:6 3771:1
telephone 3766:16
tell 3711:9 3712:9 3714:13,24 3720:21 3726:12 3735:17 3745:14 3756:25 3771:12,14,16 3808:20
tellers 3806:20
telling 3796:18
temporary 3777:11
tempted 3815:13
tend 3790:6
tendered 3781:23
tenure 3696:24 3697:1 3699:2
term 3730:25 3731:3 3744:15 3774:4
termination 3718:19
terms 3696:12,13,14 3697:19 3698:1,4 3699:12,19 3700:21 3701:10 3702:25 3703:5,14 3706:11 3708:12 3710:1 3718:11 3719:12 3724:17 3727:9,17 3728:17 3737:2 3738:12 3739:1,5,24 3740:9 3742:5 3748:21 3759:15 3760:11,18,19,19 3761:2,9 3762:6,11 3762:14,23 3763:16 3763:24 3764:13 3766:13 3772:14,19 3772:22 3773:15 3775:20 3778:21 3779:21 3780:9,21 3782:15 3784:20 3785:9,21 3787:3 3788:1 3798:12,13 3806:9 3819:5
test 3736:6,21 3737:10
testified 3702:9
testifying 3810:8
testing 3737:11,12
textile 3761:17
textiles 3761:10
thank 3695:6,7,15,23 3696:4,5,9,12,20 3723:6,8 3729:17 3735:20 3758:17,17 3772:23 3789:15 3790:1 3809:20,22 3812:20 3813:4,17,20 3813:24 3814:1,2 3818:10,12 3819:13 3819:15,16 3820:9
thanks 3695:25 3696:13 3789:19
that's 3726:20 3727:13 3731:21 3733:6,8 3735:4,15,18 3737:22 3739:3 3741:2,3,4,10 3741:13 3777:17 3778:14 3779:16 3780:12 3782:20,23 3785:9,23 3786:6 3787:11,15 3806:20 3807:9 3809:14 3814:22,25 3815:11 3815:19 3817:22 3818:11
theme 3733:25
thereof 3728:22 3788:4
there'd 3743:13
there're 3739:7 3744:12 3745:16
there's 3724:7 3739:14 3741:19 3742:4 3744:25 3746:8 3777:13,17 3778:24 3780:5,7 3785:3 3806:1,24 3807:3 3810:9 3811:19 3818:6
they'll 3779:4 3780:19
they're 3737:7,13 3782:12 3783:20 3786:7 3789:1 3815:22
they've 3736:17,17 3738:15,19 3779:6 3782:18 3806:3
they'd 3820:5
thig 3742:17
thing 3696:15 3701:20 3704:24 3709:5 3717:25 3718:1 3724:9 3725:1 3730:3 3735:5,15 3737:17 3742:17 3757:12,22 3758:25 3761:7,8 3766:20 3768:12,15 3768:20 3769:11,23 3777:14 3781:4 3785:8,24 3789:4 3799:20 3801:13 3803:24 3805:17 3807:11 3810:9 3811:13 3812:8 3817:22 3818:6
things 3697:17 3699:15 3700:11,14 3701:7 3704:7 3705:12 3706:12 3711:1 3714:9 3719:23 3721:15 3723:4 3726:12 3727:9,14,16 3728:18 3735:4,4 3738:1,11 3739:7 3740:23 3741:5 3746:22 3748:23 3753:8,22 3754:11,13 3756:17 3757:4,13,14 3757:15 3762:8 3763:20 3764:24 3766:5 3772:19 3780:11 3783:10 3787:3 3788:24 3791:11,25 3792:1 3797:16 3798:13 3799:17 3803:18 3805:7 3807:1,3,8 3811:24 3814:4 3815:11,14,22 3819:1 3819:3
thinking 3700:7 3702:18 3732:19 3756:16 3757:16 3781:16 3790:7 3800:13,14 3805:14
third 3746:2,5 3747:23 3748:15,17 3749:1 3750:22 3816:11
thirdly 3797:25
Thornton 3703:18,19 3721:24
thought 3723:3 3735:19 3742:16 3768:12 3797:11 3800:5 3801:18 3804:11 3811:7 3819:23
thousands 3781:18 3784:15
threat 3740:11
three 3701:23 3702:3 3710:2 3712:20 3720:16,18 3721:10 3733:4 3769:4
thresholds 3766:7
throwing 3784:14
thumbs 3765:2
Thursday 3762:9
tight 3775:11 3778:3
tighten 3750:24
till 3810:3 3813:9
time 3695:11 3697:15 3697:25 3702:14,15 3705:11 3707:10 3710:24 3711:15 3714:8,19 3722:17 3723:24 3728:22 3729:10,18 3733:10 3744:5 3751:14 3755:11 3758:8,14 3759:6,6,7 3763:25 3764:25 3766:17 3768:6 3770:20,20 3787:23,24 3793:22 3793:22 3802:10 3803:16 3810:1,7 3811:1 3812:5,25 3819:21 3820:1
timelines 3759:9,11
times 3718:5 3722:12 3722:15 3736:5 3738:18 3790:23 3795:4

timing 3796:5,11
tissues 3781:6,9
tobacco 3760:21 3761:4,8 3762:9
today 3696:10,23 3699:1 3700:12 3701:18 3705:4 3717:17 3730:6 3736:20 3751:5 3754:23 3755:2 3760:13 3768:21 3778:8 3780:8 3795:20 3799:18 3810:8 3813:9 3816:24
told 3703:10 3724:25 3767:1,6 3796:16
Tom 3699:16
tomorrow 3727:1 3744:21 3798:2 3806:12 3807:7 3808:21
tone 3731:22
tool 3777:24
top 3697:22 3700:11 3701:3 3705:1 3728:7 3731:23 3732:14 3739:16 3759:7 3762:8 3804:14
topics 3780:7
total 3698:22 3728:4
totally 3736:15,19 3782:11 3806:14 3816:23,23
touch 3697:21 3698:9 3701:22 3732:19 3736:18 3753:2 3776:24 3777:21 3785:10 3786:9
touching 3780:15 3785:23
track 3805:5 3818:22
tracked 3750:19
trade 3788:5,19 3790:17,17,18 3791:14
traditional 3795:5
train 3732:25 3779:5 3779:24
trained 3777:25
training 3733:13,17 3780:2,6 3788:8,12 3806:9,10
trajectory 3739:22
transcript 3790:1
transcripts 3789:24
transform 3784:9,12 3784:13
Transformation 3784:9
transparent 3760:17
travelling 3704:18
trawl 3721:5
Treasury 3793:11
treat 3718:3 3735:14
treatment 3729:14 3734:7
triggered 3699:24
trillion 3734:14
trip 3704:11,14
trivial 3819:13
trouble 3783:10
true 3699:13 3702:12 3719:24,24 3721:14 3736:6 3766:15,15,16
truly 3730:14,15
trump 3735:23
trust 3701:15 3717:2 3728:15 3738:22 3745:9 3748:8,20 3749:22 3750:21 3752:12 3754:7 3812:11
trusted 3701:13,15
truth 3695:19,19,20
try 3725:2 3753:24 3813:21 3817:8
trying 3705:11 3710:11 3721:4 3725:14 3742:13 3766:10
Tuesday 3816:16 3820:3
tumultuous 3699:14,18
tune 3705:23
turn 3712:16 3788:9
turned 3788:24 3791:22
tweaks 3817:3
twice 3696:25 3700:7
twiddling 3765:2
two 3697:17 3706:12 3707:20 3710:2,25 3712:4 3713:14 3714:19 3721:2 3722:19 3724:15 3725:10 3728:3,3 3733:5,18 3735:16 3739:8 3741:1 3742:21 3748:3,13 3756:6,22 3758:4 3760:5 3761:17,21 3765:21 3766:5 3786:9 3787:13 3796:10,18 3797:24 3805:6 3818:7,20 3820:2
twofold 3746:4 3764:18
type 3733:21 3741:10 3756:10 3801:13
types 3728:3 3761:17
typing 3773:15

U

ulterior 3776:4
ultimate 3766:20 3772:18 3801:7
ultimately 3700:4 3717:6 3752:8 3771:5 3791:13,16 3798:15 3800:25 3804:3 3806:18 3809:3,19 3813:7
unacceptable 3708:13 3717:7 3765:3 3787:15 3788:5 3791:24 3809:5
uncertain 3699:14
uncertainty 3700:24
unclear 3807:20
uncovered 3703:13
undergirds 3726:8
undergone 3785:19
underlying 3726:7
undermine 3728:11
understand 3708:20 3709:1,10 3720:1 3745:2 3764:13 3776:1 3787:21 3788:14 3790:16,21 3808:9 3816:21 3817:19
understanding 3738:11
understood 3708:18 3763:7
undertaking 3740:6
underway 3749:4
unfair 3729:14 3769:6
unfairness 3774:15
unfortunate 3805:9
unfortunately 3748:11
unheard 3701:6
unions 3761:16
unique 3737:7,8 3748:11
unit 3697:25 3707:24 3712:13,21 3713:12 3713:16,18 3714:25 3715:1,15,17 3716:1 3717:10,13,14,22,24 3720:12 3747:9 3760:10,11,12,14 3762:14 3763:25 3764:14,16,20,22 3765:3,6 3770:5
unlawful 3715:2 3815:5,8
unnecessary 3708:10 3803:11
unprecedented 3782:1
unreal 3814:5
unreserved 3729:1
unreservedly 3729:2 3729:16
unstable 3702:13
unsympathetic 3705:5
unwarranted 3788:5
unwavering 3730:10
upfront 3792:24
upheavals 3728:21
uprightness 3731:19 3757:24
urge 3797:2
urgently 3816:5,19
USB 3757:14
use 3746:12 3764:20 3775:18 3779:5 3783:20
useful 3782:10,12 3802:2 3818:12
user 3806:14
utilise 3710:23 3780:10 3782:12 3809:18
utilised 3748:8 3750:22 3773:11,21
utilising 3780:6

V

vacant 3701:24 3702:4
vacuum 3807:12
valid 3746:7,19 3747:4
validity 3746:14
valuation 3761:20,24
value 3714:14,15 3763:10,16,18,19,20 3764:7
values 3728:5 3729:13 3731:24 3732:25 3752:17 3788:14,14
van 3707:20 3720:20
various 3699:25 3724:8 3744:16 3764:15 3787:3 3802:8 3803:13
vast 3811:13
VAT 3698:3 3707:9 3740:15 3741:20 3742:16,24 3744:25 3745:18,19,21 3747:2 3747:4,4 3748:14,18 3748:18 3749:14 3750:3 3761:12 3767:8 3781:8
vehicles 3771:5
vendor 3745:21
vendors 3748:13,14 3812:14
verification 3746:23 3747:18 3767:10,11
version 3715:4,11,17 3794:16
victimised 3752:9 3780:19
view 3715:20 3716:24 3716:24 3718:13 3736:13 3745:20 3749:20 3754:14 3758:11 3763:8 3772:21 3776:18 3777:1 3782:6,9,10 3782:24 3786:23 3792:15 3793:5,20 3795:7,11 3804:24 3805:8,15 3816:23 3819:4
views 3713:3
vindicatory 3775:8
virtual 3814:14
vision 3702:18,20,21 3782:19,19 3815:24 3815:25 3816:1,23
visionary 3702:14,15
vital 3797:9 3812:11
volume 3768:6
volumes 3742:2 3761:2

W

wait 3792:23 3806:3 3819:24
waiting 3702:7
walk 3811:10
wall 3812:2
wanted 3701:22 3708:2 3713:2,19,20 3719:4 3719:8,11 3724:9 3744:6 3751:7 3776:24 3777:15,21 3785:10 3786:8,9
wanting 3774:24 3806:21
wants 3719:17 3722:12 3788:10 3820:4
warrants 3708:11
wasn't 3727:25 3809:10
wasn't 3718:2 3749:23 3752:6 3754:16,23 3790:14
waste 3806:12
wasting 3759:5,6 3806:23
watch 3757:18 3768:14
watching 3796:17
water 3722:4
watershed 3728:19
way 3696:18 3702:4 3714:6 3716:24,25 3717:16,22,23 3718:22 3722:5 3727:14 3735:14 3736:4 3739:4,12 3740:19 3741:19 3744:19 3753:2,6 3760:17 3766:14 3771:4 3772:19 3774:22 3776:19 3786:23 3789:22 3795:3 3816:9
ways 3744:16 3757:16 3774:8
WCO 3779:9
weak 3698:22
wealth 3784:15
weather 3736:8
website 3735:2 3794:20
Wednesday 3697:6
week 3702:9 3712:2 3733:18 3744:14 3760:9 3762:1,10 3764:23 3773:15 3776:9,9 3782:17 3807:3
weekend 3737:12
weeks 3704:9 3722:14 3733:19 3739:9 3776:10 3795:13 3796:18
weighted 3767:3
welcome 3714:7 3758:22 3811:23 3813:2,2,3,14,18

went 3704:13,18 3706:18 3721:11 3747:1,18 3748:6,9 3749:2 3751:11 3753:23 3785:19
weren't 3778:18
we'd 3745:1
we'll 3735:1 3744:5
we're 3726:20 3727:2,5 3727:11,14 3731:20 3732:22,23 3733:23 3734:21,21 3739:3 3740:13 3743:19 3746:13 3777:16 3778:2 3781:24 3782:23 3784:10 3786:2 3787:15 3788:8 3789:2,3,4 3806:23 3807:7,12,25 3811:12 3812:16 3813:12 3816:18 3818:21
we've 3722:17 3724:11 3725:18 3727:7,20 3728:8,13 3730:4 3731:1,16 3733:25 3734:14 3735:1 3736:21 3737:3,17 3739:7,9,23 3741:3 3744:5,14 3745:5,20 3777:24 3778:12,13 3778:13 3779:2,20 3780:23 3782:14 3783:18 3785:6 3788:22,23 3806:12 3806:13 3807:2 3809:8 3811:25 3813:7,7 3815:20
we'll 3719:14 3747:21 3765:8 3794:15,19 3805:21 3819:8
we're 3702:7 3709:8 3713:10 3747:12 3750:24 3752:11 3753:2,6 3757:16,24 3760:7,8,13,25 3761:4 3762:15 3763:16,17,22 3764:4 3769:7,8 3771:4 3789:22 3794:20 3796:22 3799:17 3801:21 3804:12,13 3818:24 3819:18
we've 3696:15 3697:17 3697:19 3698:25 3701:25 3702:23 3717:1 3718:22 3719:4 3747:11 3756:17 3757:1,12,16 3759:8 3760:8,10 3761:4,17 3762:12,13 3762:17 3764:19 3765:23,25 3769:2 3770:3 3771:2,2 3772:15 3791:9,10,11 3791:12,15 3801:22 3819:11,13
what's 3741:12 3814:23 3817:1
wheel 3800:23
Whilst 3801:20
whip 3734:3,4
whistle-blower 3801:8
whistle-blowers 3753:18
whistle-blower's 3753:1 3780:16,22
who'd 3782:9
who're 3736:16 3741:23
who've 3738:4 3811:18 3811:20 3813:19,21
who've 3775:19
wife 3818:9
willing 3718:12
willingly 3740:18
willingness 3738:3
wisdom 3709:1 3732:15 3735:12
wiser 3704:16
wish 3785:7 3811:3
wishes 3714:13
witch 3752:8
witch-hunt 3752:3
withholding 3704:8 3742:24 3744:8
witness 3711:21
wonder 3703:24 3791:18
wonderful 3811:25 3813:7
won't 3777:25 3780:8 3808:11
word 3719:13 3746:12
wording 3750:25 3751:5
words 3706:7 3728:11 3731:23 3748:1 3755:13 3770:24 3771:1 3783:22 3785:13 3787:24 3793:22 3803:12 3804:1
work 3696:3,14 3699:11 3705:22,24 3707:10,10,14,17 3718:10 3737:6 3738:16 3745:7 3759:17 3761:25 3762:12 3765:2 3778:3 3782:2,2 3785:10 3786:8,8 3787:23 3788:15 3789:1 3792:18 3802:8 3809:4,14 3812:9,16,18 3813:11 3820:4
worked 3720:6
working 3726:19 3736:23 3737:15 3764:5 3770:11 3811:9 3813:19
workings 3781:4
works 3706:4 3746:21
world 3735:2 3778:2,10 3779:7 3814:5,14
worms 3703:13,16
worried 3701:20
worries 3726:5 3794:1
worrisome 3727:21
worry 3718:4 3774:1 3790:9
worth 3725:23
worthy 3707:1
wouldn't 3723:18
wouldn't 3695:10 3696:3 3716:25 3717:17 3754:23 3755:9
wracked 3702:13
wrapped 3816:19
wreck 3700:15
wrecked 3700:16
write 3713:7 3777:11 3777:11
writing 3710:22 3777:12 3820:4
written 3711:7,8 3713:5 3728:17 3735:22,24 3777:17
wrong 3707:11 3726:10 3745:18 3754:11 3766:24 3768:21 3802:19 3815:8
wrongdoing 3735:11
wrongly 3815:4
wrote 3768:23

X

X 3733:22

Y

Y 3733:22
yachts 3771:4
year 3702:3 3705:21 3727:5,11 3732:20 3733:4 3734:14 3739:19,25 3741:21 3765:14 3788:11 3796:9 3817:9
years 3699:19 3711:15 3712:22 3717:11,19 3724:6 3726:18,22 3727:19 3728:5,21 3730:2,2,5,6 3733:5,6 3737:9 3738:19 3739:24 3765:1 3776:21 3777:12 3781:15,17,18 3782:10 3783:1 3784:12,15
year's 3739:10
yesterday 3705:8 3722:19 3726:24 3739:16 3740:24 3762:16 3782:18
young 3783:19 3784:23
you'd 3737:9
you'll 3724:13 3735:2 3815:15
you're 3723:3 3743:10 3779:22 3786:15 3787:10 3809:25 3810:1 3812:17 3813:1,17 3814:5,7 3814:13,19,20,21,23 3816:1,3,21 3817:16
you've 3722:13,16 3736:21,21 3783:25 3784:22 3785:14 3788:20 3789:5 3813:10 3814:6,6,22 3815:24 3816:12 3817:15

Z

Z 3733:22
Zimbabwe 3791:9

0

000 3705:24 3707:8 3708:4 3710:15 3711:6,24 3713:8,8,9 3769:5 3787:9
09:03 3695:2
09:23 3706:25
09:43 3720:14

1

1 3802:17 3805:2
1st 3740:1 3762:21
1.6 3727:12
10:03 3733:23
10:23 3746:22
10:43 3762:4
100% 3742:17 3752:23 3764:10 3768:3 3780:3 3796:25 3805:18
11 3713:5 3730:2 3737:10
11:03 3776:20
11:30 3789:25
11:44 3789:18
12 3721:25 3722:1,1
12:04 3805:25
12:24 3818:23
13th 3697:2
14th 3697:3 3722:15,17
16 3750:13,15
19 3695:1
19th 3696:22,23 3697:6 3810:7

2

2 3805:3
2nd 3740:1,2
20% 3727:4
200 3769:5 3781:12 3782:22
2008 3734:25
2009 3751:1,2
2014 3699:17 3715:4 3719:16 3727:18 3759:15 3778:22 3814:18
2016 3748:6,6,19
2017 3723:24 3748:25 3749:8 3751:25
2018 3695:1 3697:2 3713:6 3735:1
2019 3762:21
21 3730:2,4,5,6 3784:11
21st 3704:15
22 3750:4
22nd 3713:6
23 3787:14
24 3714:19 3721:5
25 3727:5
28th 3704:15

3

3)d 3745:17,22
30 3789:5,8
31 3793:3
360 3763:8

4

4B 3786:6
40 3721:13,16 3737:15
40% 3727:5 3759:4
44 3745:17,22
44.3.D 3748:15 3751:5

5

50 3698:4
58 3760:10

6

6 3735:23,25 3786:5
60 3789:9,11 3814:22
60% 3759:2
65 3713:9

7

7 3761:5
72 3745:19 3749:8,12 3749:13
750 3707:8 3710:15
759 3713:8

9

9am 3819:19
9th 3705:21
90 3696:24 3733:6 3789:9 3816:11,12
97 3784:11