

**Parliamentary Committees on Finance, Public Accounts, Public
Service & Administration, and Trade & Industry**

Draft Framework for a Strategy and Programme on Steinhoff Issues

27 February 2018

1. Aims of this Brief Document

- 1.1. The aim is to facilitate a discussion on an overall approach and programme on Steinhoff issues.
- 1.2. This document deals with issues in a condensed way. It will be developed further through discussions.

2. Initial Briefing of 31 January

- 2.1. Essentially, the initial 31 January briefing was aimed to get a sense of:
 - 2.1.1 What happened at Steinhoff to the extent possible, including through hearing from Steinhoff itself and the regulators.
 - 2.1.2 What each of the regulators has been doing, intends to do, by when, how they are cooperating with each other, how they are cooperating with regulators in other countries, and their tentative deadlines to finish their investigations and report to parliament and the public.
 - 2.1.3 The role of parliamentary committees in exercising oversight over Steinhoff directly without supplanting the role of the regulators legally mandated to investigate Steinhoff and without pre-empting the outcome of the investigation and leading to legal challenges by Steinhoff.
 - 2.1.4 What the roles of our respective committees are on Steinhoff matters, what we do jointly and what we do in our separate committees through our routine oversight work.

3. Legal parameters of our oversight role

- 3.1. Clearly, parliament needs to be far more effective in its oversight role, including over the private sector. However, except in very specific circumstances, we need to avoid converting parliamentary committees into courts of law or commissions of inquiry or full-scale investigative

bodies where there are already structures legally mandated to carry out these functions.

- 3.2. In the case of Steinhoff, the Financial Services Board (FSB), South African Reserve Bank (SARB), Companies and Intellectual Property Commission (CIPC), Independent Regulatory Board for Auditors (IRBA), Johannesburg Stock Exchange (JSE), South African Police Service (SAPS), National Prosecuting Authority (NPA) and other statutory bodies have investigative and other roles. Steinhoff has no choice but to cooperate with them, and with similar bodies in Germany, the Netherlands and elsewhere. Steinhoff has committed to doing this, including at the 31 January parliamentary briefing.
- 3.3. Our primary responsibility as parliamentary committees are to hold the relevant bodies to vigorous, rigorous and regular account on Steinhoff matters – and this we will most certainly do!
- 3.4. We cannot take over the role of these bodies and carry out the investigations they are legally mandated to. Do we have the forensic, technical and other capacity and the time to do this? For example, it would mean analyzing possibly hundreds of thousands of documents across South Africa, Germany, the Netherlands and possibly up to 27 other countries in which Steinhoff operates, if we are to fully investigate the Steinhoff matter and “cross-examine” witnesses. If we are to pursue this route, we could approach the Speaker’s Office to have a commission of inquiry into the Steinhoff debacle. This will mean allocating the necessary time and effecting a fundamental change to our programme; securing the necessary legal support, including an evidence leader; allowing each member of the committee to cross-examine witnesses; and the like. There will also need to be legal clarity about the relationship between the evidence given at such a commission of inquiry and that given to regulators and other investigative bodies and the use of such evidence in a court of law. (See the advice from Parliament’s Legal Services Unit.)
- 3.5. Yet we do have an oversight responsibility over Steinhoff directly. Not just because of the implications of the collapse of Steinhoff shares on the pensions of public servants, but because of its impact on a wide range of classes and strata in the country. Moreover, as emerged in the 31 January briefing, the regulators are not being as effective as they should be.
- 3.6. Our basic challenge: How can we find an oversight space between only holding the regulatory and other relevant statutory bodies to account and carrying out a full scale investigation into Steinhoff as parliamentary committees ourselves? How do we exercise greater direct oversight of Steinhoff without becoming substitutes for the relevant regulatory and other statutory bodies?

- 3.7. We need clear legal guidance on this. Not just because of the Steinhoff issues we are dealing with, but as a guide to parliamentary committees generally.
- 3.8. We have received advice from Parliament's Legal Services Unit. This is attached with this document.
- 3.9. We have engaged with the House Chair on Committees on this and have also requested SC opinion on this. This needs to be finalized as soon as possible!

4. On aspects of a programme

- 4.1. By the nature of these corporate scandals, the investigations take very long. These irregularities are usually elusive, highly complex and global in nature, requiring considerable work before investigations can be finalized. Some of the work done so far by the SA regulators suggests that the irregularities by Steinhoff occurred mainly in Germany and the Netherlands, but this may turn out to be different after further investigation. Of course, as Committees we want to see immediate action, but we have to acknowledge there's no immediate finalization of issues. However, we need to act within the law and in terms of our oversight role to help to expedite matters as far as possible.
- 4.2. We should have a follow-up joint briefing on Steinhoff matters by the end of March. To ensure a focused, productive briefing we should have a clear agenda with specific focus areas and not cover ground covered already. We need to build on what emerged at the 31 January briefing.
- 4.3. The follow-up meeting should include the Portfolio Committee on Trade and Industry and consider a progress report from the Companies and Intellectual Properties Commission.
- 4.4. We need to consider inviting the South African Revenue Service but be clear about what their contribution should be on.
- 4.5. We have been engaging with Steinhoff about deadlines for their internal PWC investigation.
- 4.6. We have engaged with the Chair of the Portfolio Committee on the need to check on progress by Hawks on the case opened against Mr Jooste.
- 4.7. SCOF needs to expedite PIC Bills to ensure worker representation on Board, create greater transparency and provide for more effective oversight by parliament, among other issues.
- 4.8. SCOF has written to the Minister of Finance to expedite legislative amendments to strengthen IRBA's role.

- 4.9. SCOf also needs to follow up on the regulations to implement the Financial Sector Regulation Act.
- 4.10. The research team has been mandated to do constant research on Steinhoff and provide updates for the Committees every 10 days.
- 4.11. There is a need to take a decision on Mr Markus Jooste's decision not to appear before the Committees, including on the option of a subpoena. (See attached advice from Parliament's Legal Services Unit).

5. Actions taken already

- 5.1. Meeting held between Chairs and House Chair of Committees to take issues forward.
- 5.2. Meeting of Chairs to process this document.
- 5.3. Letter sent to Minister of Finance to introduce legislative amendments to strengthen IRBA.
- 5.4. Chair of Portfolio Committee on Police approached about follow up on case against Jooste.
- 5.5. FSB and IRBA engaged with to stress need to move faster on their investigations.
- 5.6. Parliament's Legal Services Unit has done a brief on the Committees' oversight role on Steinhoff matters.
- 5.7. SC opinion being sought, as explained above.