

IN THE HIGH COURT OF SOUTH AFRICA

(Gauteng Local Division, Johannesburg)

The Director of Public Prosecutions for the Gauteng Local Division, Johannesburg, of the High Court of South Africa, who prosecutes for and on behalf of the State, hereby informs the Honourable Court that:

1 TSHIFHIWA CALVIN MATODZI

A forty two year old male, a South-African citizen, residing at Plot 96 Vlakplaats, Tarlton;

2 ANDILE MALUSI ATTWELL RAMAVHUNGA

A forty year old male, a South-African citizen, residing at 35 Libra Ave, Sundowner, Randburg;

3 PHILIPPUS NICHOLAS TRUTER

A forty one year old male, a South-African citizen, residing at 51 Lou Charl, 13 Randkant Singel, Swartkop, Centurion;

4 PHOPHI LONDOLANI MUKHODOBWANE

A thirty one year old male, a South-African citizen, residing at 3 Petuna Street, Sandton, Bryanston;

5 NHLANHLA KELVIN SIPHO MALABA

A forty six year old male, a South-African citizen, residing at 222 Black Eagle Drive, Cedar Lakes, Cedar Boulevard, Fourways;

6 PHALAPHALA AVASHONI RAMIKOSI

A forty six year old male, a South-African citizen, residing at 11A Henry Road, Edenburg, Rivonia;

7 THIFHELIMBILU ERNEST NESANE

A forty one year old male, a South-African citizen, residing at 373 Cuckoo Crescent, Willow Acres Estate, Silver Lakes, Pretoria; and

8 PAUL MAGULA

A forty three year old male, a South-African citizen, residing at Unit 12 Potters Green, 2 Meyer Street, Albertsville, Johannesburg,

(hereinafter referred to as the accused)

are guilty of the crimes of:

INDICTMENT

1 CONTRAVENING SECTION 2(1)(e) READ WITH SECTIONS 1, 2(2), 2(3) AND 2(4) OF THE PREVENTION OF ORGANISED CRIME ACT, NO. 121 OF 1998 (Count 1)

2 CONTRAVENING SECTION 2(1)(f) READ WITH SECTIONS 1, 2(2), 2(3), 2(4) AND 3 OF THE PREVENTION OF ORGANISED CRIME ACT, NO. 121 OF 1998 (Count 2)

3 CONTRAVENING SECTION 2(1)(b) READ WITH SECTIONS 1, 2(2), 2(3) AND 2(4) OF THE PREVENTION OF ORGANISED CRIME ACT, NO. 121 OF 1998 (Count 3)

- 4 **CONTRAVENING SECTION 2(1)(d) READ WITH SECTIONS 1, 2(2), 2(3) AND 2(4) OF THE PREVENTION OF ORGANISED CRIME ACT, NO. 121 OF 1998 (Count 4)**
- 5 **CONTRAVENING SECTION 2(1)(g) READ WITH SECTIONS 1, 2(2), 2(3), 2(4) AND 3 OF THE PREVENTION OF ORGANISED CRIME ACT, NO. 121 OF 1998 (Count 5)**
- 6 **THEFT READ WITH THE PROVISIONS OF SECTION 51(2) OF THE CRIMINAL LAW AMENDMENT ACT, NO. 105 OF 1997 (Counts 6 to 16)**
- 7 **THEFT (GENERAL DEFICIENCY) READ WITH THE PROVISIONS OF SECTION 100 OF THE CRIMINAL PROCEDURE ACTM NO. 51 OF 1977, AND SECTION 51(2) OF THE CRIMINAL LAW AMENDMENT ACT, NO. 105 OF 1997 (Count 17 and alternative to Counts 6 to 16)**
- 8 **FRAUD READ WITH THE PROVISIONS OF SECTION 51(2) OF THE CRIMINAL LAW AMENDMENT ACT, NO. 105 OF 1997 (Counts 18 to 24)**
- 9 **CONTRAVENING SECTION 3(b) READ WITH SECTIONS 1, 2, 24, 25 AND 26 OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT, NO. 12 OF 2004 (Counts 25, 27, 29, 31, 33, 35, 37 and 39)**
- 10 **CONTRAVENING SECTION 3(a) READ WITH SECTIONS 1, 2, 24, 25 AND 26 OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT, NO. 12 OF 2004 (Counts 26, 28, 30, 32, 34, 36, 38 and 40)**
- 11 **CONTRAVENING SECTION 4 READ WITH SECTIONS 1 AND 8 OF THE PREVENTION OF ORGANISED CRIME ACT, NO. 121 OF 1998 – MONEY LAUNDERING (Counts 41 to 47)**

GENERAL PREAMBLE

WHEREAS

- 1 The **Prevention of Organised Crime Act, No.121 of 1998** ("**POCA**") creates various criminal offences in respect of racketeering.
- 2 POCA defines an "**enterprise**" as "*...including any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity*".
- 3 POCA defines "**pattern of racketeering activity**" as "*the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 and includes at least two offences referred to in Schedule 1, of which one of the offences occurred after the commencement of this Act and the last offence occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to in Schedule 1*".
- 4 POCA defines "**unlawful activity**" as "*any conduct which constitutes a crime or which contravenes any law whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere*".
- 5 POCA defines "**proceeds of unlawful activities**" as "*any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived*".
- 6 POCA defines "**property**" as "*money or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any*

interest therein and all proceeds thereof".

- 7 Section 2(1)(e) of POCA provides that any person(s) whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity is guilty of an offence.
- 8 Section 2(1)(f) further provides that a person who manages and or operates an enterprise and who knows or ought reasonably to have known, that a person employed by or associated with that enterprise, conducts or participates directly or indirectly in the conduct of the enterprise's affairs through a pattern of racketeering activity, shall be guilty of an offence.
- 9 Section 2(1)(b) further provides that any person who receives or retains property, directly or indirectly, on behalf of an enterprise; and/or knows or ought reasonably to have known that such property derived or was derived from or through a pattern of racketeering activity, is guilty of an offence.
- 10 Section 2(1)(d) further provides that any person who acquires or maintains, any interest in or control of any enterprise, directly or indirectly, through a pattern of racketeering activity, is guilty of an offence.
- 11 Section 2(1)(g) of POCA determines that any person who conspires or attempts to violate any of the provisions of sections 2(1) (a), (b), (c), (d), (e) or (f) shall be guilty of an offence .

AND WHEREAS

- 12 VBS Mutual Bank ("**VBS**") was a mutual bank as defined in the Mutual Banks Act, Act 124 of 1993 ("**the Mutual Banks Act**").VBS was subject to supervision by the Registrar

of Banks ("**the Registrar**").

- 13 Accused 1 was a director of VBS and held the position of Chairman of the Board of Directors.
- 14 Accused 2 was an employee and director of VBS and held the position of Chief Executive Officer.
- 15 Accused 3 was an employee and director of VBS and held the position of Chief Financial Officer.
- 16 Accused 4 was an employee of VBS and held the position of Head of Treasury and Capital Management.
- 17 Accused 5 was a director of KMPG Inc which was the duly appointed auditor of VBS. Accused 5 was the Audit Engagement Partner responsible for:
 - 17.1 The audit of the annual financial statements of VBS for the year ending 31 March 2017 ("**the annual financial statements**"); and
 - 17.2 The regulatory audit contemplated in Regulation 6(1) read with Regulations 6(2) and 6(5) of the Regulations to the Mutual Banks Act ("**the Regulations**"), made by the Minister of Finance under Section 91 of the Mutual Banks Act on 28 December 1993 as set out in Government Notice number R.2508, published in Regulation Gazette number 5227 ("**the Regulatory Audit**").
- 18 Accused 6 was a Non-Executive Director of VBS and held the position of Chairman of the Audit Committee.
- 19 Accused 7 was the Executive Head: Legal Counsel, Governance and Compliance for the Public Investment Corporation ("**PIC**"). He was a Non-Executive Director of VBS,

who was appointed as such on the nomination of the PIC, which held approximately 26% of the issued shares in VBS.

20 Accused 8 held the post of Executive Head: Risk Management at the PIC. He was a Non-Executive Director of VBS, who was also appointed as such on the nomination of the PIC.

21 Section 53 of the Mutual Banks Act provides as follows:

"(1) A mutual bank shall, in order to enable the Registrar to determine –

(a) whether the mutual bank is complying with the provisions of section 48 and 50 of this Act or of section 10A of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), as applied by section 49 of this Act; or

(b) the nature and amounts of the mutual bank's assets, liabilities and contingent liabilities,

furnish the Registrar, subject to the provisions of subsection (3A), with returns.

(2) ...

(3) A mutual bank shall, in addition to the returns referred to in subsection (1), furnish the Registrar, subject to subsection (3A), with the prescribed returns, including returns relating to the extent and management of risk exposures in the conduct of its business.

(3A) The returns referred to in subsections (1) and (3) shall be prepared in conformity with generally accepted accounting practice and shall be furnished to the Registrar in respect of such period, at such times and on such a form as may be prescribed.

(4) A mutual bank shall furnish the Registrar, in respect of those of the respective returns referred to in subsections (1) and (3) which most nearly coincide with the end of the financial year of the mutual bank,

with a report by the auditor of the mutual bank in which is stated whether or not those returns fairly and in conformity with generally accepted accounting practice, present those affairs of the mutual bank to which the returns relate and the Registrar may, if he or she deems it necessary, require the mutual bank so to furnish him or her with such a report in respect of any other of those forms furnished during the financial year.

(5) A mutual bank shall, at such times as may be prescribed, furnish the Registrar with such further prescribed information as the Registrar may require."

22 Regulation 5 of the Regulations provides that a mutual bank shall, within 120 days of the end of its financial year, furnish the Registrar with consolidated annual financial statements, which, in accordance with Regulation 4, shall be compiled in accordance with generally accepted accounting practice.

23 Regulation 6(1) requires that the auditor of a mutual bank shall annually report on the mutual bank's financial position and the result of its operations as reflected in all the returns, submitted in terms of Section 53 of the Mutual Banks Act, referred to in Regulation 6(5) that had been submitted to the Registrar as at the end of the financial year end of the reporting mutual bank.

24 Regulation 6(2) requires the auditor to report whether in his opinion the information contained in the returns at year end, in all material respects:

24.1 Reasonably reflects the information of the management accounts;

24.2 Is complete in so far as all relevant information contained in the accounting and other records at the reporting date has been extracted therefrom and recorded in the returns;

- 24.3 Is accurate in so far as it correctly reflects information contained in, and extracted from, the accounting and other records at the reporting date; and
- 24.4 Was prepared using the same accounting policies as those contained in the management and statutory accounts.
- 25 Regulation 6(5) requires that the audit report contemplated in Regulation 6(1) shall be rendered in accordance with the wording and practices recommended from time to time by the South African Institute of Chartered Accountants and shall be in respect of Forms DI 100, DI 110, DI 200, DI 300, DI 310, DI 400, DI 401, DI 402, DI 403, DI 410, DI 420, DI 430, DI 500, DI 510, DI 520, DI 600, DI 700, DI 701, DI 702 and DI 704 submitted in respect of the reporting bank's operations.
- 26 Regulation 17(2) provides that in setting out amounts in the respective DI Returns that such "*amounts shall be shown to the nearest thousand units of currency, for example, R4 107 498 and R4 107 540 shall be reported as R4 107 and R4 108, respectively*".
- 27 On 4 July 2017 Accused 6, in his capacity as Chairman of the Audit Committee, signed the Audit Committee Report as part of the Annual Report of VBS for the year ending 31 March 2017. The Audit Committee Report stated, *inter alia*, the following:

"External audit

The committee

- *Nominated KPMG as auditors and Siphon Malaba as the independent auditor and designated audit partner, respectively to the shareholders for appointment for the financial year ended 31 March 2017, of the Bank, and ensured that the appointments complied with legal and regulatory requirements for the appointment of an auditor;*

- *Approved the external audit engagement letter, the audit plan and the budgeted audit fees payable to the external auditors;*
- *Determined the nature and extent of all non-audit services provided by the independent auditors and pre-approved all non-audit services undertaken;*
- *Obtained assurances from the independent auditors that adequate accounting records were being maintained;*
- *Confirmed that no reportable irregularities had been identified or reported by the independent auditors under the Auditing Profession Act;*
- *The committee is satisfied that KPMG is independent of the Bank after taking the following factors into account:*
 - *Representations made by KPMG to the committee;*
 - *The auditors do not, except as external auditors or in rendering permitted non-audit services, receive any remuneration or other benefit from the Bank;*
 - *That the auditors' independence was not impaired by any consultancy, advisory or other work undertaken;*
 - *That the auditors' independence was not prejudiced as a result of any previous appointment as auditors; and*
 - *The criteria specified for independence by the Independent Regulatory Board for Auditors and international regulatory bodies.*

Annual Financial Statements

The committee has reviewed the annual financial statements of the Bank and is satisfied that they comply in all material respects with International Financial Reporting Standards and the requirements of the Mutual Banks Act.

The committee:

- *Confirmed, based on management's review, that the interim and annual financial statements were prepared on the going concern basis;*
- *Examined the annual financial statements and other financial information made public, prior to their approval by the board;*
- *Considered accounting treatments, significant or unusual transactions and accounting judgements; - considered the appropriateness of accounting policies and any changes made;*
- *Reviewed the representation letter relating to the annual financial statements;*
- *Considered any problems identified as well as any legal and tax matters that could materially affect the financial statements; and*
- *Met separately with management, external audit and internal audit and satisfied themselves that no material control weakness exists.*

Recommendation of the annual financial statements for approval by the board

Following the review by the committee of the annual financial statements of VBS Mutual Bank for the year ended 31 March 2017, the committee is of the view that, in all material respects, it complies with the relevant provisions of the Mutual Banks Act and IFRS and fairly presents the financial position at that date and the results of its operations and cash flows for the year then ended. The committee has also satisfied itself as to the integrity of the remainder of the annual report.

Having achieved its objectives for the financial year, the committee recommended the annual financial statements and annual integrated report for the year ended 31 March 2017 for approval to the board."

("the Audit Committee Report")

- 28 On 4 July 2017 the Board of Directors of VBS approved the annual financial statements.
- 29 On 4 July 2017 Accused 1 and Accused 2, in their respective capacities as the Chairman of VBS and the Chief Executive Officer of VBS, signed the Directors' Responsibility Statement in respect of the annual financial statements in the following terms:

"The Directors are responsible for the preparation and fair presentation of the annual financial statements of VBS Mutual Bank ("the Bank"), which comprise the statement of financial position as at 31 March 2017, and the statement of profit or loss and other comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, and the notes to the financial statements including a summary of significant accounting policies and other explanatory notes, in accordance with International Financial Reporting Standard and the requirements of the Mutual Bank's Act of South Africa. In addition, the Directors are responsible for preparing the Directors' report.

The Directors are also responsible for such internal control as the Directors determine is necessary to enable the preparation of annual financial statements that are free from material misstatement, whether due to fraud or error, and for maintaining adequate accounting records and an effective system of risk management as well as the preparation of the supplementary schedules included in these annual financial statements.

The Directors had made an assessment of the ability of the Bank to continue as a going concern and have no reason to believe that the business will not be a going concern in the year ahead.

The Auditor is responsible for reporting on whether the financial statements are fairly presented in accordance with the applicable financial reporting framework."

("the Directors' Responsibility Statement")

30 On 17 July 2017 Accused 5 signed the Independent Auditor's Report on the Audit of the Financial Statements in which he gave the following Audit Opinion in respect of the annual financial statements:

"We have audited the financial statements of VBS Mutual Bank ("the Bank") set out on page 64 to 123, which comprise the statement of financial position as at 31 March 2017, and the statement of profit or loss and other comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, and notes to the financial statements, including a summary of significant accounting policies.

In our opinion, the financial statements fairly present, in all material respects, the financial position of VBS Mutual Bank as at 31 March 2017, and its financial performance and cash flows for the year then ended in accordance with International Financial Reporting Standards (IFRS) and the requirements of the Mutual Bank's Act."

("the Audit Opinion")

31 On 11 October 2017, Accused 5, on behalf of KPMG, addressed a report to the Registrar in terms of Regulation 6(1) in which he stated the following:

"In accordance with Regulation 6(1), we have audited the DI 100, DI 110, DI 200 and DI 400 returns (the "returns") as at 31 March 2017. We have stamped the returns for identification purposes.

The preparation of the returns in terms of the Regulations is the responsibility of management of the Bank. Our responsibility is to report on the returns listed above.

We conducted our audit in accordance with International Standards on Auditing. An audit includes an evaluation of the appropriateness of the accounting policies, an examination, on a test basis, of evidence supporting the amounts and disclosures included in the returns, an assessment of the reasonableness of significant estimates and a consideration of the overall presentation of the returns. We consider that

our audit procedures were appropriate in the circumstances to express our opinion presented below.

Opinion

In our opinion the abovementioned returns:

- *fairly present the financial position of the Bank at 31 March 2017 and the result of its operations for the year then ended in the manner required by the Regulations;*
- *reasonably reflect the information of the management accounts;*
- *are complete in so far as all relevant information contained in the accounting and other records at the reporting date has been extracted there from and recorded in the returns;*
- *are accurate in so far as it does correctly reflect the information contained in, and extracted from, the accounting and other records at the reporting date; and are prepared using the same accounting policies as those applied in the management and statutory accounts.*

Emphasis of matter

Without modifying our conclusion above, we draw your attention to the matters noted in Annexure A which affect the DI 100, DI 110, DI 200 and DI 400 returns."

("the Regulation 6(1) report")

- 32 Accused 1 in his capacity as the Chairman of VBS:
- 32.1 Controlled and operated the banking systems of VBS; and/or
- 32.2 Controlled the financial records of VBS; and/or
- 32.3 Signed the Directors' Responsibility Statement.

33 Accused 2 in his capacity as the Chief Executive Officer of VBS:

33.1 Controlled and operated the banking systems of VBS; and/or

33.2 Controlled the financial records of VBS; and/or

33.3 Signed the Directors' Responsibility Statement.

34 Accused 3 in his capacity as Chief Financial Officer of VBS:

34.1 Controlled and operated the banking systems of VBS; and/or

34.2 Controlled the financial records of VBS; and/or

34.3 Prepared and/or caused to be prepared the annual financial statements; and/or

34.4 Prepared and/or caused to be prepared the returns referred to in Sections 53(1) and 53(3) of the Mutual Banks Act as read with the Regulations.

35 Accused 4 in his capacity as Head of Treasury and Capital Management of VBS:

35.1 Controlled and operated the banking systems of VBS; and/or

35.2 Controlled the financial records of VBS; and/or

35.3 Prepared and/or caused to be prepared the returns referred to in Sections 53(1) and 53(3) of the Mutual Banks Act as read with the Regulations.

36 Accused 5 in his capacity as the Audit Engagement Partner was responsible for:

36.1 The audit of the annual financial statements; and

36.2 The Regulatory Audit.

- 37 By virtue of his position as a director of VBS and, in particular, by virtue of his position as the Chairman of the Audit Committee of VBS, Accused 6 was entrusted with the oversight of the system of internal financial control of VBS and thus with the oversight over the receipt and custody of monies on behalf of VBS.
- 38 By virtue of their position as a directors of VBS, Accused 7 and 8 were entrusted with the oversight of the system of internal financial control of VBS and thus with the oversight over the receipt and custody of monies on behalf of VBS.
- 39 A banking account at VBS with account number 10040299001 was held in the name of Vele Investments (Pty) Ltd ("**the Vele account**").
- 40 Accused 1 had control over the Vele account.
- 41 A banking account at VBS with account number 10038197001 was held in the name of Vele Petroport Holdings SA (Pty) Ltd ("**the Vele Petroport account**").
- 42 Accused 1 had control over the Vele Petroport account.
- 43 A banking account at VBS with account number 10010209001 was held in the name of Venmont Holdings (Pty) Ltd ("**the Venmont account**").
- 44 Accused 1 had control over the Venmont account.
- 45 A banking account at VBS with account number 010032997001 was held in the name of Robvet (Pty) Ltd ("**the Robvet account**").
- 46 Accused 1 had control over the Robvet account.
- 47 A banking account at VBS with account number 010075467001 was held in the name of Khavo Enterprice (Pty) Ltd ("**the Khavo account**").
- 48 Accused 1 had control over the Khavo account.

- 49 A banking account at VBS with account number 010028620001 was held in the name of Scorpion Business Solutions ("**the Scorpion account**").
- 50 Accused 1 had control over the Scorpion account.
- 51 A banking account at VBS with account number 000638668001 was held in the name of Tiisang Risk and Assurance Consulting ("**the Tiisang account**").
- 52 Accused 1 had control over the Tiisang account.
- 53 Dambale Holdings (Pty) Limited, with registration number 2015/026841/07 ("**Dambale**"), being a company duly incorporated and registered in accordance with the company laws of the Republic of South Africa, held a banking account with account number 10021405001 at VBS ("**the Dambale account**").
- 54 Accused 2 was the sole director and shareholder of Dambale and was the beneficiary of all amounts standing to the credit of Dambale in the Dambale account.
- 55 Amounts totalling R19 000 000 were paid into the Dambale account for the benefit of Accused 2, made up as follows:
- 55.1 R1 000 000 paid from the Vele account on 21 December 2016;
- 55.2 R300 000 paid from the Vele account on 13 January 2017;
- 55.3 R300 000 paid from the Vele account on 25 January 2017;
- 55.4 R300 000 paid from the Vele account on 24 February 2017;
- 55.5 R300 000 paid from the Vele account on 31 July 2017;
- 55.6 R300 000 paid from the Vele account on 31 August 2017;
- 55.7 R300 000 paid from the Vele account on 2 October 2017;

- 55.8 R15 000 000 paid from the Vele account on 5 October 2017;
- 55.9 R300 000 paid from the Vele account on 31 October 2017;
- 55.10 R300 000 paid from the Vele account on 30 November 2017;
- 55.11 R300 000 paid from the Vele account on 22 December 2017; and
- 55.12 R300 000 paid from the Vele account on 2 February 2018.
- 56 Munyai Investments (Pty) Limited, with registration number 2016/262046/07 ("**Munyai**"), being a company duly incorporated and registered in accordance with the company laws of the Republic of South Africa, held a banking account with account number 62631226653 at First National Bank ("**the Munyai account**").
- 57 Accused 2 was the sole director and shareholder of Munyai and was the beneficiary of all amounts standing to the credit of Munyai in the Munyai account.
- 58 Amounts totalling R3 700 000 were paid into the Munyai account for the benefit of Accused 2, made up as follows:
- 58.1 R300 000 paid from the Vele Petroport account on 25 August 2016;
- 58.2 R300 000 paid from the Vele Petroport account on 23 September 2016;
- 58.3 R300 000 paid from the Vele Petroport account on 27 October 2016;
- 58.4 R180 000 paid from the Vele Petroport account on 1 December 2016;
- 58.5 R120 000 paid from the Vele Petroport account on 1 December 2016;
- 58.6 R300 000 paid from the Vele Petroport account on 20 December 2016;
- 58.7 R1 000 000 paid from the Vele account on 10 March 2017;

- 58.8 R300 000 paid from the Vele account on 30 March 2017;
- 58.9 R300 000 paid from the Vele account on 25 April 2017;
- 58.10 R300 000 paid from the Vele account on 29 May 2017; and
- 58.11 R300 000 paid from the Vele account on 3 July 2017.
- 59 Accused 2 held a banking account with account number 4052150629 at ABSA ("**the Ramavhunga account**").
- 60 Amounts totalling R795 000 were paid into the Ramavhunga account for the benefit of Accused 2, made up as follows:
- 60.1 R50 000 paid from the Venmont account on 9 February 2016;
- 60.2 R50 000 paid from the Venmont account on 1 March 2016;
- 60.3 R50 000 paid from the Venmont account on 29 March 2016;
- 60.4 R50 000 paid from the Venmont account on 30 April 2016;
- 60.5 R50 000 paid from the Venmont account on 31 May 2016;
- 60.6 R50 000 paid from the Venmont account on 1 July 2016;
- 60.7 R95 000 paid from the Vele Petroport account on 1 July 2016;
- 60.8 R300 000 paid from the Vele account on 30 July 2016;
- 60.9 R50 000 paid from the Venmont account on 4 August 2016; and
- 60.10 R50 000 paid from the Venmont account on 20 December 2016.

- 61 In the circumstances, the cumulative amount of R23 495 000 was paid for the benefit of Accused 2 during the period 9 February 2016 to 2 February 2018.
- 62 Shangri La Investments (Pty) Limited, with registration number 2017/480331/07 ("**Shangri La**"), being a company duly incorporated and registered in accordance with the company laws of the Republic of South Africa, held a banking account with account number 62735437594 at First National Bank ("**the Shangri La account**").
- 63 Accused 3 was the sole director and shareholder of Shangri La and was the beneficiary of all amounts standing to the credit of Shangri La in the Shangri La account.
- 64 The cumulative amount of R2 000 000 was paid into the Shangri La account for the benefit of Accused 3, made up as follows:
- 64.1 R1 000 000 paid from the Vele account on 20 November 2017; and
- 64.2 R1 000 000 paid from the Vele account on 15 December 2017.
- 65 Lemawave (Pty) Limited, with registration number 2016/394388/07 ("**Lemawave**"), being a company duly incorporated and registered in accordance with the company laws of the Republic of South Africa, held a banking account with account number 010070988001 at VBS ("**the Lemawave account**").
- 66 The ostensible sole director and shareholder of Lemawave was Ranwedzi Peter Mukhodobwane. However, in truth, Ranwedzi Peter Mukhodobwane was a front for Accused 4 and Accused 4 was the beneficiary of all amounts standing to the credit of Lemawave in the Lemawave account.
- 67 On the instruction of Accused 1, an amount of R5 600 000 was credited to the Lemawave account for the benefit of Accused 4 on 30 March 2017.

- 68 An amount of R10 000 000 was paid from the Vele account into the Lemawave account for the benefit of Accused 4 on 5 October 2017.
- 69 An amount of R1 000 000 was paid from the Robvet account into the Lemawave account for the benefit of Accused 4 on 21 February 2018.
- 70 Accused 4 held a banking account with account number 62613521196 at First National Bank ("**the Mukhodobwane account**").
- 71 Amounts totalling R500 000 were paid into the Mukhodobwane account for the benefit of Accused 4, made up as follows:
- 71.1 R350 000 paid from the Vele account on 13 April 2017; and
- 71.2 R150 000 paid from the Vele account on 13 May 2017.
- 72 In the circumstances, the cumulative amount of R17 100 000 was paid and credited for the benefit of Accused 4 during the period 30 March 2017 to 5 October 2017.
- 73 During the period 27 January 2016 to 11 March 2018 Ihaawu Lesizwe Trading CC, with registration number 2007/073419/23 ("**Ihaawu Lesizwe**"), being a close corporation duly incorporated and registered in accordance with the company laws of the Republic of South Africa, held the following banking accounts at VBS ("**the Ihaawu Lesizwe accounts**"):
- 73.1 Classic Business Account numbered 10011973002;
- 73.2 Vehicle Finance Account numbered 10003458002;
- 73.3 Vehicle Finance Account numbered 10003458004; and
- 73.4 Mortgage Bond Account numbered 10003458005.

74 The ostensible directors and shareholders of Ihaawu Lesizwe were Jacqueline Jasemen Malaba and Bafana Mulindelwa Malaba. However, in truth, Jacqueline Jasemen Malaba and Bafana Mulindelwa Malaba were fronts for Accused 5 and Accused 5 was the beneficiary of all amounts standing to the credit of Ihaawu Lesizwe in the Ihaawu Lesizwe accounts and/or was the beneficiary of all amounts made available for the use of Ihaawu Lesizwe in the Ihaawu Lesizwe accounts.

75 During the period 22 March 2016 to 11 March 2018 Betanologix (Pty) Limited, with registration number 2015/299083/07 ("**Betanologix**"), being a company duly incorporated and registered in accordance with the company laws of the Republic of South Africa, held a banking account at VBS with account number 10024196001 ("**the Betanologix account**").

76 The ostensible directors and shareholders of Betanologix were Jacqueline Jasemen Malaba and Mwise Mapepo. However, in truth, Jacqueline Jasemen Malaba and Mwise Mapepo were fronts for Accused 5 and Accused 5 was the beneficiary of all amounts standing to the credit of Betanologix in the Betanologix account and/or was the beneficiary of all amounts made available for the use of Betanologix in the Betanologix account.

77 As at 11 March 2018 Accused 5 was the beneficiary of the cumulative sum of R29 242 863 made up as follows:

77.1 R11 462 188 in respect of the Ihaawu Lesizwe account numbered 10011973002;

77.2 R445 755 in respect of the Ihaawu Lesizwe account numbered 10003458004;

77.3 R7 652 226 in respect of the Ihaawu Lesizwe account numbered 10003458005; and

- 77.4 R9 682 694 in respect of the Betanologix account numbered 10024196001.
- 78 The following amounts, totalling R654 579, were paid from the Tiisang account, on the instructions of Accused 1, for the benefit of Accused 5, into the trust banking accounts of certain attorneys on the dates set out below:
- 78.1 R236 259.04 to the trust banking account of Makaula Zilwa Inc on 18 April 2016;
- 78.2 R228 538.04 to the trust banking account of Makaula Zilwa Inc on 18 April 2016; and
- 78.3 R189 789.94 to the trust banking account of NGL Attorneys on 18 April 2016.
- 79 An amount of R98 000 was paid from the Scorpion account into the Ihaawu Lesizwe account numbered 010003458002 on the instructions of Accused 1 on 22 April 2017.
- 80 An amount of R250 000 was paid from the Khavo account into the Ihaawu Lesizwe account numbered 10003458005 on the instructions of Accused 1 on 7 June 2017.
- 81 An amount of R90 000 was paid from the Robvet account into the Ihaawu Lesizwe account numbered 10003458005 on the instructions of Accused 1 on 14 September 2017.
- 82 In the circumstances, a further cumulative amount of R1 092 579 was paid and credited for the benefit of Accused 5 during the period 18 April 2016 to 14 September 2017.
- 83 Zanoware (Pty) Ltd, with registration number 2016/088114/07 ("**Zanoware**"), being a company duly incorporated and registered in accordance with the company laws of the Republic of South Africa, held a banking account at VBS with account number 10070724001 ("**the Zanoware account**").

84 The ostensible sole director and shareholder of Zanoware was Alice Manye. However, in truth, Alice Manye was a front for Accused 6 and Accused 6 was the beneficiary of all amounts standing to the credit of Zanoware in the Zanoware account.

85 Amounts totalling R750 000 were paid from the Venmont account into the Zanoware account, upon the instructions of Accused 1, on the dates set out below:

85.1 R250 000 on 13 March 2017;

85.2 R200 000 on 29 July 2017; and

85.3 R300 000 on 29 October 2017.

86 Parallel Property Holdings (Pty) Limited, with registration number 2015/328314/07 ("**Parallel**"), being a company duly incorporated and registered in accordance with the company laws of the Republic of South Africa, held a banking account at VBS with account number 010005981001 ("**the Parallel account**").

87 The ostensible sole director and shareholder of Parallel was Rudzani Morris Ndwammbi. However, in truth, Rudzani Morris Ndwammbi was a front for Accused 7 and Accused 7 was the beneficiary of all amounts standing to the credit of Parallel in the Parallel account.

88 Amounts totalling R1 100 000 were paid from the Venmont account into the Parallel account, upon the instructions of Accused 1, for the benefit of Accused 7, on the dates set out below:

88.1 R100 000 on 1 March 2016;

88.2 R50 000 on 29 March 2016;

88.3 R50 000 on 30 April 2016;

88.4 R50 000 on 31 May 2016;

88.5 R50 000 on 2 July 2016;

88.6 R50 000 on 4 August 2016; and

88.7 R750 000 on 2 September 2016.

89 Amounts totalling R750 000 were paid from the Vele Petroport account into the Parallel account, upon the instructions of Accused 1, for the benefit of Accused 7, on the dates set out below:

89.1 R150 000 on 25 August 2016;

89.2 R150 000 on 3 October 2016;

89.3 R150 000 on 26 October 2016; and

89.4 R150 000 on 1 December 2016;

89.5 R150 000 on 20 December 2016.

90 Amounts totalling R5 600 000 were paid from the Vele account into the Parallel account, upon the instructions of Accused 1, for the benefit of Accused 7, on the dates set out below:

90.1 R1 000 000 on 21 December 2016;

90.2 R150 000 on 13 January 2017;

90.3 R150 000 on 25 January 2017;

90.4 R150 000 on 24 February 2017;

90.5 R150 000 on 30 March 2017;

- 90.6 R300 000 on 25 April 2017;
- 90.7 R300 000 on 29 May 2017;
- 90.8 R300 000 on 3 July 2017;
- 90.9 R1 000 000 on 21 July 2017;
- 90.10 R300 000 on 31 July 2017;
- 90.11 R300 000 on 31 August 2017;
- 90.12 R300 000 on 29 September 2017;
- 90.13 R300 000 on 31 October 2017;
- 90.14 R300 000 on 30 November 2017;
- 90.15 R300 000 on 22 December 2017; and
- 90.16 R300 000 on 2 February 2018.

91 In the circumstances, the cumulative amount of R7 450 000 was paid and credited for the benefit of Accused 7 during the period 1 March 2016 to 2 February 2018

92 Investar Connect Holdings, with registration number 2014/276521/07 ("**Investar**"), being a company duly incorporated and registered in accordance with the company laws of the Republic of South Africa, held a banking account at VBS with account number 010026466001 ("**the Investar account**").

93 The ostensible sole director and shareholder of Investar was Lot Magosha. However, in truth, Lot Magosha was a front for Accused 8 and Accused 8 was the beneficiary of all amounts standing to the credit of Investar in the Investar account.

94 Amounts totalling R900 000 were paid from the Vele Petroport account into the Investar account, upon the instructions of Accused 1, for the benefit of Accused 8, on the dates set out below:

94.1 R150 000 on 25 August 2016; and

94.2 R750 000 on 30 August 2016.

95 Amounts totalling R2 800 000 were paid from the Vele account into the Investar account, upon the instructions of Accused 1, for the benefit of Accused 8, on the dates set out below:

95.1 R1 000 000 on 21 December 2016;

95.2 R150 000 on 13 January 2017;

95.3 R150 000 on 25 January 2017;

95.4 R150 000 on 24 February 2017;

95.5 R150 000 on 30 March 2017;

95.6 R300 000 on 25 April 2017;

95.7 R300 000 on 29 May 2017;

95.8 R300 000 on 3 July 2017; and

95.9 R300 000 on 31 July 2017.

96 Hekima Capital (Pty) Limited, with registration number 2015/276242/07 ("**Hekima**"), being a company duly incorporated and registered in accordance with the company laws of the Republic of South Africa, held a banking account at VBS with account number 010086949001 ("**the Hekima account**").

97 The ostensible sole director and shareholder of Hekima was Lot Magosha. However, in truth, Lot Magosha was a front for Accused 8 and Accused 8 was the beneficiary of all amounts standing to the credit of Hekima in the Hekima account.

98 Amounts totalling R3 300 000 were paid from the Vele account into the Hekima account, upon the instructions of Accused 1, for the benefit of Accused 8, on the dates set out below:

98.1 R1 000 000 on 21 July 2017;

98.2 R300 000 on 31 August 2017;

98.3 R300 000 on 29 September 2017;

98.4 R500 000 on 11 October 2017;

98.5 R300 000 on 31 October 2017;

98.6 R300 000 on 30 November 2017;

98.7 R300 000 on 22 December 2017; and

98.8 R300 000 on 2 February 2018.

99 In the circumstances, the cumulative amount of R7 000 000 was paid and credited for the benefit of Accused 8 during the period 25 August 2016 to 2 February 2018.

NOW THEREFORE the State in respect of the "*enterprise*" alleges that:

100 At all times relevant to the indictment, Accused 1 to 8 were associated in fact and thus formed an enterprise as defined in section 1 of the Act and as envisaged in sections 2(1)(a) to 2(1)(f). The accused amongst other made use of the following legally registered entities to wit VBS Mutual Bank, Vele Investments (Pty) Ltd, Vele

Petroport Holdings SA (Pty) Ltd, Venmont Holdings (Pty) Ltd and Robvet (Pty) Ltd to provide continuity of structure for the unlawful activities of the enterprise.

101 The accused all associated with the enterprise.

102 Members of the enterprise gained overall control of the financial systems of VBS. The primary purpose of the enterprise was to enrich the members and associates through the theft of money from the general pool of funds in VBS.

103 The theft of the money was covered up through various acts of fraud and money laundering. Members of the enterprise also received and made corrupt payments as indicative of their and/or other persons, known and unknown to the State, participation in the theft, or at the very least, in the acts of fraud that covered up the theft.

104 Accused 1 to 4 managed the affairs of the enterprise.

NOW THEREFORE the State in respect of the "*pattern of racketeering activities*" alleges that one or more of the accused, individually or together, committed the following racketeering acts in the conduct of the enterprise, which are those offences set forth below in Counts 6 to 47.

NOW THEREFORE the State alleges that the accused are guilty of the following crimes:

COUNT 1:

Contravening Section 2(1)(e) read with Sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, No. 121 of 1998.

IN THAT in and during the period 1 April 2016 up to 10 March 2018 and at or near the places as set out in Counts 6 to 47, the accused managed and/or were employed by and/or were associated with the enterprise as defined above, and did directly or indirectly, conduct and/or

participate in the affairs of the enterprise through a pattern of racketeering activities as set out in Counts 6 to 47 below.

COUNT 2: (ONLY IN RESPECT OF ACCUSED 1 TO 4)

Contravening Section 2(1)(f) read with Sections 1, 2(2), 2(3) and 2(4) of the Prevention of Organised Crime Act, No. 121 of 1998.

IN THAT during or about the period 1 April 2016 up to 10 March 2018 and at or near the places as set out in counts 6 to 47, the accused managed the operation or activities of the enterprise as defined above, and knew or ought reasonably to have known that a person or persons, whilst employed by or associated with the enterprise, did conduct and/or participate in the conduct, directly or indirectly, of the enterprise's affairs through a pattern of racketeering activities as set out in Counts 6 to 47 below.

COUNT 3:

Contravening Section 2(1)(b) read with Sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, No. 121 of 1998.

IN THAT in and during the period 1 April 2016 up to 10 March 2018 and at or near the places as set out in Counts 6 to 47, the accused received or retained property, directly or indirectly, on behalf of the enterprise; and/or knew or ought reasonably to have known that such property derived or was derived from or through a pattern of racketeering activities as set out in Counts 6 to 47 below.

COUNT 4:

Contravening Section 2(1)(d) read with Sections 1, 2(2), 2(3), 2(4) and 3 of the Prevention of Organised Crime Act, No. 121 of 1998.

IN THAT in and during the period 1 April 2016 up to 10 March 2018 and at or near the places as set out in Counts 6 to 47, the accused acquired or maintained, directly or indirectly, any interest in or control of any enterprise through a pattern of racketeering activities as set out in Counts 6 to 47 below.

COUNT 5:

Contravening Section 2(1)(g) read with Sections 1, 2(2), 2(3) and 2(4) of the Prevention of Organised Crime Act, No. 121 of 1998.

IN THAT in and during the period 1 April 2016 up to 10 March 2018 and at or near the places as set out in Counts 6 to 47, the accused conspired and/or attempted to violate the provisions of Section 2(1)(b) and/or Section 2(1)(d) and/or Section 2(1)(e) and/or Section 2(1)(f) of the Prevention of Organised Crime Act, No. 121 of 1998 as set out in Counts 1 to 4 above.

COUNT 6 (ONLY IN RESPECT OF ACCUSED 1, 2, 3 AND 4):

THEFT, read with Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT on or about 7 March 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1, Accused 2, Accused 3 and Accused 4 wrongfully and intentionally stole the sum of R250 000 000 being the property of or in the lawful possession of VBS by creating a fictitious credit of R250 000 000 in an account numbered 010067650003 held at VBS in the name of Insure Group Managers Ltd, thereby unlawfully

enabling the depletion of the general pool of funds of VBS.

COUNT 7 (ONLY IN RESPECT OF ACCUSED 1, 2, 3 AND 4):

THEFT, read with Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT in and during the period 19 March 2017 to 30 March 2017 and at or near Honeydew in the Johannesburg West Magisterial District and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1, Accused 2, Accused 3 and Accused 4 wrongfully and intentionally stole the sum of R262 000 000 being the property of or in the lawful possession of VBS by creating fictitious credits in the following accounts held at VBS, in the amounts and on the dates set out below, thereby unlawfully enabling the depletion of the general pool of funds of VBS:

- (1) account numbered 000632767001 in the name of Africasana Trading Enterprise in the amount of R4 500 000 on 29 March 2017;
- (2) account numbered 010037808001 in the name of Allcare Administrators in the amount of R6 000 000 on 30 March 2017;
- (3) account numbered 000653306002 in the name of Belton Park Trading 134 in the amount of R3 500 000 on 29 March 2017;
- (4) account numbered 010027802001 in the name of Black Label Telecoms (Pty) Ltd in the amount of R5 500 000 on 29 March 2017;
- (5) account numbered 010054915001 in the name of Bonulog (Pty) Ltd in the amount of R5 500 000 on 30 March 2017;

- (6) account numbered 010054923001 in the name of Bonusec (Pty) Ltd in the amounts of R50 000 and R5 100 000 on 29 March 2017;
- (7) account numbered 010054931001 in the name of Bonuset (Pty) Ltd in the amount of R8 000 000 on 30 March 2017;
- (8) account numbered 010054958001 in the name of Bonuspace (Pty) Ltd in the amount of R4 000 000 on 30 March 2017;
- (9) account numbered 010054869001 in the name of Cards-Ezi in the amounts of R1 400 000 and R3 100 000 on 29 March 2017;
- (10) account numbered 010004306001 in the name of Dzata Trust in the amount of R9 000 000 on 29 March 2017;
- (11) account numbered 010027381001 in the name of Firmanox (Pty) Ltd in the amount of R15 500 000 on 29 March 2017;
- (12) account numbered 000655023001 in the name of Hlomphanang Logistics in the amount of R450 000 on 29 March 2017 and the amount of R13 500 000 on 30 March 2017;
- (13) account numbered 010070988001 in the name of Lemawave in the amount of R5 600 000 on 30 March 2017;
- (14) account numbered 010003288003 in the name of Mr L Mafunzwaini in the amount of R500 000 on 29 March 2017;
- (15) account numbered 000647411002 in the name of Mr LNR Makuya in the amount of R1 000 000 on 29 March 2017;
- (16) account numbered 000519340005 in the name of Mr T Matodzi in the amount of

R3 000 000 on 29 March 2017;

(17) account numbered 000613118001 in the name of Mmampilo Petroleum (Pty) Ltd in the amount of R8 000 000 on 30 March 2017;

(18) account numbered 000613118002 in the name of Mmampilo Petroleum (Pty) Ltd in the amount of R3 500 000 on 30 March 2017;

(19) account numbered 010012473001 in the name of MML Food Services (Pty) Ltd in the amount of R19 000 000 on 30 March 2017;

(20) account numbered 010054850001 in the name of Nhluvuko Automation System CC in the amount of R7 100 000 on 29 March 2017;

(21) account numbered 010032997001 in the name of Robvet (Pty) Ltd in the amounts of R50 000 and R9 950 000 on 30 March 2017;

(22) account numbered 010027810001 in the name of Sabicorp (Pty) Ltd in the amount of R6 500 000 on 30 March 2017;

(23) account numbered 010055458002 in the name of Shimba La Ndou Family Trust in the amount of R7 500 000 on 30 March 2017;

(24) account numbered 000638668001 in the name of Tiisang Risk and Assurance Consulting in the amount of R7 000 000 on 30 March 2017;

(25) account numbered 010054885001 in the name of Vanticode (Pty) Ltd in the amount of R5 100 000 on 29 March 2017;

(26) account numbered 010054907001 in the name of Vantifusion (Pty) Ltd in the amount of R6 700 000 on 30 March 2017;

(27) account numbered 010054877001 in the name of Vantpix (Pty) Ltd in the amount of

R4 200 000 on 29 March 2017;

- (28) account numbered 010040299001 in the name of Vele Investments (Pty) Ltd in the amount of R22 000 000 on 29 March 2017;
- (29) account numbered 010040299003 in the name of Vele Investments (Pty) Ltd in the amount of R3 000 000 on 29 March 2017;
- (30) account numbered 000635464003 in the name of Venmont Built Environment (Pty) Ltd in the amount of R5 000 000 on 30 March 2017;
- (31) account numbered 010010209001 in the name of Venmont Holdings (Pty) Ltd in the amounts of R300 000 and R15 700 000 on 30 March 2017;
- (32) account numbered 010004470003 in the name of Vhavenda Heritage Trust in the amount of R1 000 000 on 29 March 2017;
- (33) account numbered 010054966001 in the name of Viridesol (Pty) Ltd in the amounts of R5 450 000 and R6 550 000 on 30 March 2017;
- (34) account numbered 010055288001 in the name of Wegezi Power Holdings (Pty) Ltd in the amount of R15 000 000 on 29 March 2017; and
- (35) account numbered 010054893001 in the name of Zanocube (Pty) Ltd in the amounts of R1 150 000 and R7 050 000 on 30 March 2017.

COUNT 8 (ONLY IN RESPECT OF ACCUSED 1, 2, 3 AND 4):

THEFT, read with Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT on or about 20 April 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1, Accused 2, Accused 3 and Accused 4 wrongfully and

intentionally stole the sum of R40 000 000 being the property of or in the lawful possession of VBS by creating a fictitious credit of R40 000 000 in an account numbered 010070139002 held at VBS in the name of Malibongwe Petroleum (Pty) Ltd, thereby unlawfully enabling the depletion of the general pool of funds of VBS.

COUNT 9 (ONLY IN RESPECT OF ACCUSED 1, 2, 3 AND 4):

THEFT, read with Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT in and during the period 5 May 2017 to 13 February 2018 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1, Accused 2, Accused 3 and Accused 4 wrongfully and intentionally stole the sum of R135 000 000 being the property of or in the lawful possession of VBS by creating fictitious credits in an account numbered 010040299004 held at VBS in the name of Vele Investments (Pty) Ltd as follows, thereby unlawfully enabling the depletion of the general pool of funds of VBS:

- (1) R63 000 000 on 5 May 2017;
- (2) R7 000 000 on 5 May 2017;
- (3) R5 000 000 on 5 May 2017; and
- (4) R60 000 000 on 13 February 2018.

COUNT 10 (ONLY IN RESPECT OF ACCUSED 1, 2, 3 AND 4):

THEFT, read with Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT on or about 5 May 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1, Accused 2, Accused 3 and Accused 4 wrongfully and

intentionally stole the sum of R22 000 000 being the property of or in the lawful possession of VBS by creating fictitious credits in an account numbered 000519340005 held at VBS in the name of Mr T Matodzi as follows, thereby unlawfully enabling the depletion of the general pool of funds of VBS:

- (1) R12 000 000 on 5 May 2017; and
- (2) R10 000 000 on 5 May 2017.

COUNT 11 (ONLY IN RESPECT OF ACCUSED 1, 2, 3 AND 4):

THEFT, read with Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT on or about 5 May 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1, Accused 2, Accused 3 and Accused 4 wrongfully and intentionally stole the sum of R30 000 000 being the property of or in the lawful possession of VBS by creating fictitious credits in an account numbered 010010209004 held at VBS in the name of Venmont Holdings (Pty) Ltd as follows, thereby unlawfully enabling the depletion of the general pool of funds of VBS:

- (1) R27 000 000 on 5 May 2017; and
- (2) R3 000 000 on 5 May 2017.

COUNT 12 (ONLY IN RESPECT OF ACCUSED 1, 2, 3 AND 4):

THEFT, read with Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT in or during the period 2 June 2017 to 5 December 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1, Accused 2, Accused 3 and

Accused 4 wrongfully and intentionally stole the sum of R37 000 000 being the property of or in the lawful possession of VBS by creating fictitious credits into an account numbered 010032997001 held at VBS in the name of Robvet (Pty) Ltd as follows, thereby unlawfully enabling the depletion of the general pool of funds of VBS:

- (1) R2 000 000 on 2 June 2017;
- (2) R15 000 000 on 28 July 2017;
- (3) R10 000 000 on 7 September 2017; and
- (4) R10 000 000 on 5 December 2017.

COUNT 13 (ONLY IN RESPECT OF ACCUSED 1, 2, 3 AND 4):

THEFT, read with Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT in and during the period 7 August 2017 to 31 August 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1, Accused 2, Accused 3 and Accused 4 wrongfully and intentionally stole the sum of R300 000 000 being the property of or in the lawful possession of VBS by making payments to an account numbered 62710478456 held at First National Bank in the name of Mvunonala Holdings (Pty) Ltd as follows, thereby unlawfully enabling the depletion of the general pool of funds of VBS:

- (1) R80 000 000 on 7 August 2017;
- (2) R35 000 000 on 22 August 2017;
- (3) R35 000 000 on 22 August 2017;
- (4) R100 000 000 on 24 August 2017; and

(5) R50 000 000 on 25 August 2017.

COUNT 14 (ONLY IN RESPECT OF ACCUSED 1, 2, 3 AND 4):

THEFT, read with Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT on or about 31 August 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1, Accused 2, Accused 3 and Accused 4 wrongfully and intentionally stole the sum of R80 000 000 being the property of or in the lawful possession of VBS by creating a fictitious credit of R80 000 000 in an account numbered 010014239001 held at VBS in the name of VBS Rights Issue Suspense Account for the benefit of Vele Investments (Pty) Ltd, thereby unlawfully enabling the depletion of the general pool of funds of VBS.

COUNT 15 (ONLY IN RESPECT OF ACCUSED 1, 2, 3 AND 4):

THEFT, read with Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT in and during the period 7 September 2017 to 4 December 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1, Accused 2, Accused 3 and Accused 4 wrongfully and intentionally stole the sum of R740 000 000 being the property of or in the lawful possession of VBS by creating fictitious credits in an account numbered 010040299001 held at VBS in the name of Vele Investments (Pty) Ltd as follows, thereby unlawfully enabling the depletion of the general pool of funds of VBS:

(1) R40 000 000 on 7 September 2017;

(2) R350 000 000 on 5 October 2017;

(3) R130 000 000 on 2 November 2017; and

(4) R220 000 000 on 4 December 2017.

COUNT 16 (ONLY IN RESPECT OF ACCUSED 1, 2, 3 AND 4):

THEFT, read with Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT in and during the period 26 September 2017 up to 13 February 2018 and at or near Rivonia, in the Johannesburg North Magisterial District, Accused 1, Accused 2, Accused 3 and Accused 4 wrongfully and intentionally stole the sum of R57 000 000 being the property of or in the lawful possession of VBS by creating fictitious credits in an account numbered 010010209001 held at VBS in the name of Venmont Holdings (Pty) Ltd as follows, thereby unlawfully enabling the depletion of the general pool of funds of VBS:

(1) R7 000 000 on 26 September 2017; and

(2) R50 000 000 on 13 February 2018.

ALTERNATIVE TO COUNTS 6 TO 16 (ONLY IN RESPECT OF ACCUSED 1, 2, 3 AND 4):

THEFT (GENERAL DEFICIENCY), read with the provisions of section 100 of the Criminal Procedure Act, No.51 of 1977, and section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT Accused 1, Accused 2, Accused 3 and Accused 4 were at all relevant times in the service of VBS and were as such entrusted with the receipt and custody of certain sums of money on behalf of VBS, and that during the period 1 April 2016 to 10 March 2018 and at or near Rivonia in the Johannesburg North Magisterial District, a general deficiency in such monies received and held by Accused 1, Accused 2, Accused 3 and Accused 4 on behalf of

VBS arose in the amount of R2 296 599 008 and therefore Accused 1, Accused 2, Accused 3 and Accused 4 wrongfully and intentionally stole the said sum, being the property of or in the lawful possession of VBS.

COUNT 17 (ONLY IN RESPECT OF ACCUSED 5 TO 8):

THEFT (GENERAL DEFICIENCY), read with the provisions of section 100 of the Criminal Procedure Act, No.51 of 1977, and section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT Accused 5, Accused 6, Accused 7 and Accused 8 were at all relevant times entrusted with the oversight of the system of internal financial control of VBS and thus with the oversight over the receipt and custody of monies on behalf of VBS, and that during the period 1 April 2016 to 10 March 2018 and at or near Rivonia in the Johannesburg North Magisterial District, a general deficiency in such monies received by and held on behalf of VBS arose in the amount of R2 296 599 008 and therefore Accused 5, Accused 6, Accused 7 and Accused 8 wrongfully and intentionally stole the said sum, being the property of or in the lawful possession of VBS.

COUNT 18:

FRAUD read with Sections 103 and 246 of the Criminal Procedure Act, No. 51 of 1977, and the provisions of Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT in and during the period 1 April 2017 up to 17 July 2017 at or near Rivonia in the Johannesburg North Magisterial District, Accused 3 unlawfully, falsely and with the intention to defraud, prepared and/or caused to be prepared the annual financial statements, giving out and pretending to VBS, its shareholders, its creditors and the Registrar, to the prejudice of VBS, its shareholders, its creditors and the Registrar, that the annual financial statements

were a fair presentation, in all material respects, of the financial position of VBS as at 31 March 2017.

FURTHER THAT on or about 4 July 2017 at or near Rivonia in the Johannesburg North Magisterial District, Accused 6 unlawfully, falsely and with the intention to defraud, signed the Audit Committee Report in respect of the annual financial statements, giving out and pretending to VBS, its board of directors, its shareholders, its creditors and the Registrar, to the prejudice of VBS, its shareholders, its creditors and the Registrar, that the annual financial statements were a fair presentation, in all material respects, of the financial position of VBS as at 31 March 2017.

FURTHER THAT on or about 4 July 2017 at or near Rivonia in the Johannesburg North Magisterial District, Accused 1, Accused 2, Accused 3, Accused 6, Accused 7 and Accused 8 unlawfully, falsely and with the intention to defraud, as Directors of VBS approved the annual financial statements, giving out and pretending to VBS, its shareholders, its creditors and the Registrar, to the prejudice of VBS, its shareholders, its creditors and the Registrar, that the annual financial statements were a fair presentation, in all material respects, of the financial position of VBS as at 31 March 2017.

FURTHER THAT on or about 4 July 2017 at or near Rivonia in the Johannesburg North Magisterial District, Accused 1 and Accused 2 signed the Directors' Responsibility Statement in respect of the annual financial statements, giving out and pretending to VBS, its shareholders, its creditors and the Registrar, to the prejudice of VBS, its shareholders, its creditors and the Registrar, that the annual financial statements were a fair presentation, in all material respects, of the financial position of VBS as at 31 March 2017.

FURTHER THAT on or about 17 July 2017 at or near Parktown in the Johannesburg Central Magisterial District alternatively at or near Rivonia in the Johannesburg North Magisterial District, Accused 5 unlawfully, falsely and with the intention to defraud, signed the Audit

Opinion in respect of the annual financial statements, giving out and pretending to VBS, its shareholders, its creditors and the Registrar, to the prejudice of VBS, its shareholders, its creditors and the Registrar, that the annual financial statements were a fair presentation, in all material respects, of the financial position of VBS as at 31 March 2017.

WHEREAS when Accused 1, Accused 2, Accused 3, Accused 5, Accused, 6, Accused 7 and Accused 8 gave out and pretended as aforesaid they well knew that in truth and in fact:

The statement of the financial position in the annual financial statements was false in the following material respects:

- the asset described as "*Cash and cash equivalents*" in the sum of R802 427 245 was falsely inflated by an amount of R690 326 847; and/or
- the asset described as "*Loans and advances*" in the sum of R1 081 831 081 was falsely inflated by an amount of R351 956 095; and/or
- the liability described as "*Amounts owed to depositors*" in the sum of R1 553 659 282 was falsely inflated by an amount of R261 308 970; and/or
- the equity described as "*Permanent interest bearing shares*" in the sum of R150 473 996 was falsely inflated by an amount of R89 044 352.

The true financial position of VBS as at 31 March 2017 was as follows:

- the total assets amounted to R1 037 194 164, whereas the annual financial statements reflected its total assets as R2 102 039 406; and/or
- the total liabilities amounted to R1 556 494 122, whereas the annual financial statements reflected its total liabilities as R1 863 460 154; and/or
- the total equity amounted to the negative amount of R519 299 958, whereas the annual

financial statements reflected its total equity as R238 579 252; and/or

- VBS was in actual fact insolvent.

COUNT 19: (ONLY IN RESPECT OF ACCUSED 3 AND 4)

FRAUD, read with Sections 103 and 246 of the Criminal Procedure Act, No. 51 of 1977, and the provisions of Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT in and during the period 1 April 2017 to 27 July 2017 at or near Rivonia in the Johannesburg North Magisterial District, Accused 3 and Accused 4 unlawfully, falsely and with the intention to defraud, prepared and/or caused to be prepared and submitted to the Registrar the Form DI 100 Return, setting out VBS' monthly balance sheet as at 31 March 2017 in the manner required by Regulation 19 ("**the DI 100 Return**"), giving out and pretending to the Registrar, to the prejudice of the Registrar, VBS, its shareholders and its creditors, that the DI 100 Return was a fair presentation, in all material respects, of VBS' monthly balance sheet as at 31 March 2017 in the manner required by Regulation 19.

WHEREAS when Accused 3 and Accused 4 gave out and pretended as aforesaid they well knew that in truth and in fact the DI 100 Return was false in the following material respects:

- the item recorded as being "*Non-Bank funding – repayable in SA Rand*", in the amount of "1,553,650" was false. The item ought to have been recorded as "1,292,350"; and/or
- the item recorded as being "*Interbank (including intragroup)*", in the amount of "770,866" was false. The item ought to have been recorded as "64,089"; and/or
- the item recorded in the DI 100 Return as "*Other assets, including remittances in transit and properties in possession*" in the amount of "70,413" was false. The item ought to have been recorded as "63,263".

COUNT 20: (ONLY IN RESPECT OF ACCUSED 5)

FRAUD, read with Sections 103 and 246 of the Criminal Procedure Act, No. 51 of 1977, and the provisions of Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT on or about 11 October 2017 at or near Parktown in the Johannesburg Central Magisterial District, Accused 5 unlawfully, falsely and with the intention to defraud, signed the Regulation 6(1) report giving out and pretending to the Registrar, to the prejudice of the Registrar, VBS, its shareholders and its creditors, that the DI 100 Return was a fair presentation, in all material respects, of VBS' monthly balance sheet as at 31 March 2017 in the manner required by Regulation 19.

WHEREAS when Accused 5 gave out and pretended as aforesaid he well knew that in truth and in fact the DI 100 Return was false in the following material respects:

- the item recorded as being "*Non-Bank funding – repayable in SA Rand*", in the amount of "1,553,650" was false. The item ought to have been recorded as "1,292,350"; and/or
- the item recorded as being "*Interbank (including intragroup)*", in the amount of "770,866" was false. The item ought to have been recorded as "64,089".

COUNT 21: (ONLY IN RESPECT OF ACCUSED 1 AND 3)

FRAUD, read with Sections 103 and 246 of the Criminal Procedure Act, No. 51 of 1977, and the provisions of Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT in and during the period of May 2017 to August 2017 at or near Rivonia, in the Johannesburg North Magisterial District, Accused 1 and 3 unlawfully, falsely and with the intention to defraud, to the prejudice of the shareholders of VBS gave out and pretended to

the shareholders of VBS that Vele was the lawful holder of 5 110 shares in VBS from 1 April 2016 and as such qualified to participate in the so-called second rights issue where existing shareholders would be entitled to take up two shares for every one share held in VBS.

WHEREAS when Accused 1 and 3 gave out and pretended as aforesaid they well knew that in truth and in fact Vele was not a lawful holder of the said shares in VBS on 1 April 2016 as the transfer of the 5 110 shares in VBS from Accused 1 to Vele had been backdated to 1 April 2016 in order to falsely represent that Vele was an existing shareholder of VBS and thereby qualified to participate in the so-called second rights issue where existing shareholders would be entitled to take up two shares for every one share held in VBS.

COUNT 22: (ONLY IN RESPECT OF ACCUSED 7 AND 8)

FRAUD, read with Sections 103 and 246 of the Criminal Procedure Act, No. 51 of 1977, and the provisions of Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT in and during the period of July 2016 to August 2017 at or near Pretoria, in the Tshwane Central Magisterial District, Accused 7 and 8 did unlawfully, falsely and with the intention to defraud, to the prejudice of the PIC, in circumstances where there was a fiduciary duty on Accused 7 and 8 to act in the best interest of the PIC, failed to disclose to the PIC and or employees of the PIC that:

- VBS offered existing VBS shareholders, such as the PIC, participation in the so-called second rights issue where existing shareholders would be entitled to take up two shares for every one share held in VBS; and
- Of the existing VBS shareholders, only Vele participated in the said second rights issue resulting in a dilution of the PIC's shareholding from approximately 26% to approximately 12% due to the non-participation of the PIC in the said second rights

issue in which Vele ostensibly became an approximate 53% shareholder in VBS.

COUNT 23: (ONLY IN RESPECT OF ACCUSED 1 AND 3)

FRAUD, read with Sections 103 and 246 of the Criminal Procedure Act, No. 51 of 1977, and the provisions of Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT in and during the period October 2017 to December 2017 at or near Rivonia in the Johannesburg North Magisterial District, Accused 1 and 3 unlawfully, falsely and with the intention to defraud and to the prejudice of the PIC, prepared and/or caused to be prepared the Proposal to the PIC in support of Rights Issues, giving out and pretending to the PIC and/ or employees of the PIC that figures contained in the management accounts of VBS as at 30 September 2017 were a fair presentation, in all material respects, of the financial position of VBS as at 30 September 2017.

WHEREAS when Accused 1 and Accused 3 gave out and pretended as aforesaid they well knew that in truth and in fact:

The statement of the financial position in the management accounts of VBS as at 30 September 2017 was false in, *inter alia*, the following material respects:

- the amount disclosed in respect of Permanent Interest Bearing Shares was the sum of R167 727 536; and
- the total equity disclosed was the sum of R244 063 068.

WHEREAS, in truth:

- the true amount in respect of Permanent Interest Bearing Shares was R69 776 660; and

- VBS was in actual fact insolvent.

COUNT 24: (ONLY IN RESPECT OF ACCUSED 7)

FRAUD, read with Sections 103 and 246 of the Criminal Procedure Act, No. 51 of 1977, and the provisions of Section 51 of the Criminal Law Amendment Act, No. 105 of 1997 prescribing certain minimum sentences.

IN THAT in and during April 2015 at or near Pretoria in the Tshwane Central Magisterial District, Accused 7 did unlawfully, falsely and with the intention to defraud, to the prejudice of the PIC, in circumstances where there was a fiduciary duty on Accused 7 to act in the best interest of the PIC, cause and permit certain amendments to be made to the terms and conditions of the Facility Agreement between VBS and the PIC.

IN THAT:

- As approved by the PIC, Clause 3.5, of the said Agreement read that "*The facility shall be ring fenced for its purpose as defined in this agreement*".

WHEREAS, in truth:

- Clause 3.5 was altered by the insertion of the further words "*as such shall be subordinated as against other borrower creditors*".

COUNT 25: (ONLY IN RESPECT OF ACCUSED 1)

Contravening Section 3(b) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 9 February 2016 to 2 February 2018 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1 unlawfully and intentionally, directly or indirectly, gave or agreed or offered to give to Accused 2 a gratification in the

cumulative amount of R23 495 000, whether for the benefit of Accused 2 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being employed by VBS as its Chief Executive Officer, more particularly with regard to his powers, duties or functions in respect of:

- the control and operation of the banking system of VBS; and/or
- the control of the financial records of VBS; and/or
- the signing of the Directors' Responsibility Statement to the annual financial statements,

by facilitating the theft of monies from VBS and by fraudulently concealing the theft of such monies.

COUNT 26: (ONLY IN RESPECT OF ACCUSED 2)

Contravening Section 3(a) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 9 February 2016 to 2 February 2018 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 2 unlawfully and intentionally, directly or indirectly, accepted or agreed or offered to accept a gratification, to wit the cumulative amount of R23 495 000, from another person, to wit Accused 1, whether for the benefit of Accused 2 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit

being employed by VBS as its Chief Executive Officer, more particularly with regard to his powers, duties or functions in respect of:

- the control and operation of the banking system of VBS; and/or
- the control of the financial records of VBS; and/or
- the signing of the Directors' Responsibility Statement to the annual financial statements,

by facilitating the theft of monies from VBS and by fraudulently concealing the theft of such monies.

COUNT 27: (ONLY IN RESPECT OF ACCUSED 1)

Contravening Section 3(b) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT on or about 5 October 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1 unlawfully and intentionally, directly or indirectly, gave or agreed or offered to give to Accused 3 a gratification in the amount of R5 000 000, whether for the benefit of Accused 3 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being employed by VBS as its Chief Financial Officer, more particularly with regard to his powers, duties or functions in respect of:

- the control and operation of the banking system of VBS; and/or
- the control of the financial records of VBS; and/or

- the preparation and/or the causing of the preparation of the annual financial statements of VBS; and/or
 - the preparation and/or the causing of the preparation of the returns referred to in Sections 53(1) and 53(3) of the Mutual Banks Act, as read with the Regulations,
- by facilitating the theft of monies from VBS and by fraudulently concealing the theft of such monies.

COUNT 28: (ONLY IN RESPECT OF ACCUSED 3)

Contravening Section 3(a) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT on or about 5 October 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 3 unlawfully and intentionally, directly or indirectly, accepted or agreed or offered to accept a gratification, to wit the amount of R5 000 000, from another person, to wit Accused 1, whether for the benefit of Accused 3 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being employed by VBS as its Chief Financial Officer, more particularly with regard to his powers, duties or functions in respect of:

- the control and operation of the banking system of VBS; and/or
- the control of the financial records of VBS; and/or
- the preparation and/or the causing of the preparation of the annual financial statements of VBS; and/or

- the preparation and/or the causing of the preparation of the returns referred to in Sections 53(1) and 53(3) of the Mutual Banks Act, as read with the Regulations, by facilitating the theft of monies from VBS and by fraudulently concealing the theft of such monies.

COUNT 29: (ONLY IN RESPECT OF ACCUSED 1)

Contravening Section 3(b) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 30 March 2017 to 5 October 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1 unlawfully and intentionally, directly or indirectly, gave or agreed or offered to give to Accused 4 a gratification in the cumulative amount of R17 100 000, whether for the benefit of Accused 4 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being employed by VBS as its Head of Treasury and Capital Management, more particularly with regard to his powers, duties or functions in respect of:

- the control and operation of the banking system of VBS; and/or
- the control of the financial records of VBS; and/or
- the preparation and/or the causing of the preparation of the returns referred to in Sections 53(1) and 53(3) of the Mutual Banks Act, as read with the Regulations,

by facilitating the theft of monies from VBS and by fraudulently concealing the theft of such monies.

COUNT 30: (ONLY IN RESPECT OF ACCUSED 4)

Contravening Section 3(a) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 30 March 2017 to 5 October 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 4 unlawfully and intentionally, directly or indirectly, accepted or agreed or offered to accept a gratification, to wit the cumulative amount of R17 100 000, from another person, to wit Accused 1, whether for the benefit of Accused 4 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being employed by VBS as its Head of Treasury and Capital Management, more particularly with regard to his powers, duties or functions in respect of:

- the control and operation of the banking system of VBS; and/or
- the control of the financial records of VBS; and/or
- the preparation and/or the causing of the preparation of the returns referred to in Sections 53(1) and 53(3) of the Mutual Banks Act, as read with the Regulations,

by facilitating the theft of monies from VBS and by fraudulently concealing the theft of such monies.

COUNT 31: (ONLY IN RESPECT OF ACCUSED 1, 2 AND 4)

Contravening Section 3(b) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 27 January 2016 to 11 March 2018 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1 and Accused 2 and Accused 4, unlawfully and intentionally, directly or indirectly, gave or agreed or offered to give to Accused 5 a gratification in the amount of R29 242 863, whether for the benefit of Accused 5 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being the Audit Engagement Partner, more particularly with regard to his powers, duties or functions in respect of:

- the audit of the annual financial statements; and
- the Regulatory Audit,

by fraudulently concealing the theft of monies from VBS.

COUNT 32: (ONLY IN RESPECT OF ACCUSED 5)

Contravening Section 3(a) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 27 January 2016 to 11 March 2018 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 5 unlawfully and intentionally, directly or indirectly, accepted or agreed or offered to accept a gratification, to wit the cumulative amount of R29 242 863, from another person or persons, to wit Accused 1 and

Accused 2 and Accused 4, whether for the benefit of Accused 5 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being the Audit Engagement Partner, more particularly with regard to his powers, duties or functions in respect of:

- the audit of the annual financial statements; and
- the Regulatory Audit,

by fraudulently concealing the theft of monies from VBS.

COUNT 33: (ONLY IN RESPECT OF ACCUSED 1)

Contravening Section 3(b) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 18 April 2016 to 14 September 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1 unlawfully and intentionally, directly or indirectly, gave or agreed or offered to give to Accused 5 a gratification in the cumulative amount of R1 092 579, whether for the benefit of Accused 5 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being the Audit Engagement Partner, more particularly with regard to his powers, duties or functions in respect of:

- the audit of the annual financial statements; and
- the Regulatory Audit,

by fraudulently concealing the theft of monies from VBS.

COUNT 34: (ONLY IN RESPECT OF ACCUSED 5)

Contravening Section 3(a) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 18 April 2016 to 14 September 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 5 unlawfully and intentionally, directly or indirectly, accepted or agreed or offered to accept a gratification, to wit the cumulative amount of R1 092 579, from another person or persons, to wit Accused 1, whether for the benefit of Accused 5 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being the Audit Engagement Partner, more particularly with regard to his powers, duties or functions in respect of:

- the audit of the annual financial statements; and
- the Regulatory Audit,

by fraudulently concealing the theft of monies from VBS.

COUNT 35: (ONLY IN RESPECT OF ACCUSED 1)

Contravening Section 3(b) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 30 March 2017 to 5 October 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1 unlawfully and intentionally,

directly or indirectly, gave or agreed or offered to give to Accused 6 a gratification in the cumulative amount of R750 000, whether for the benefit of Accused 6 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being in the service of VBS as a director and being the Chairman of the Audit Committee of the Board of Directors of VBS, more particularly with regard to his powers, duties or functions in respect of:

- overseeing the control and operation of the banking system of VBS; and/or
- the signing of the Audit Committee Report,

by facilitating the theft of monies from VBS and by fraudulently concealing the theft of such monies.

COUNT 36: (ONLY IN RESPECT OF ACCUSED 6)

Contravening Section 3(a) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 13 March 2017 to 29 October 2017 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 6 unlawfully and intentionally, directly or indirectly accepted or agreed or offered to accept a gratification, to wit the cumulative amount of R750 000, from another person, to wit Accused 1, who gave or agreed or offered to give to Accused 6 a gratification in the cumulative amount of R750 000, whether for the benefit of Accused 6 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit

being in the service of VBS as a director and being the Chairman of the Audit Committee of the Board of Directors of VBS, more particularly with regard to his powers, duties or functions in respect of:

- 1 overseeing the control and operation of the banking system of VBS; and/or
- 2 the signing of the Audit Committee Report.

by facilitating the theft of monies from VBS and by fraudulently concealing the theft of such monies.

COUNT 37: (ONLY IN RESPECT OF ACCUSED 1)

Contravening Section 3(b) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 1 March 2016 to 2 February 2018 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1 unlawfully and intentionally, directly or indirectly, gave or agreed or offered to give to Accused 7 a gratification in the cumulative amount of R7 450 000, whether for the benefit of Accused 7 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being in the service of VBS as a director and representative of the PIC, more particularly with regard to his powers, duties or functions in respect of:

- overseeing the control and operation of the banking system of VBS; and/or
- the receipt and custody of monies on behalf of VBS,

by facilitating the theft of monies from VBS and by fraudulently concealing the theft of such monies.

COUNT 38: (ONLY IN RESPECT OF ACCUSED 7)

Contravening Section 3(a) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 1 March 2016 to 2 February 2018 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 6 unlawfully and intentionally, directly or indirectly accepted or agreed or offered to accept a gratification, to wit the cumulative amount of R7 450 000, from another person, to wit Accused 1, who gave or agreed or offered to give to Accused 7 a gratification in the cumulative amount of R7 450 000, whether for the benefit of Accused 7 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being in the service of VBS as a director and representative of the PIC, more particularly with regard to his powers, duties or functions in respect of:

- overseeing the control and operation of the banking system of VBS; and/or
- the receipt and custody of monies on behalf of VBS,

by facilitating the theft of monies from VBS and by fraudulently concealing the theft of such monies.

COUNT 39: (ONLY IN RESPECT OF ACCUSED 1)

Contravening Section 3(b) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 25 August 2016 to 2 February 2018 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 1 unlawfully and intentionally, directly or indirectly, gave or agreed or offered to give to Accused 8 a gratification in the cumulative amount of R7 000 000, whether for the benefit of Accused 8 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being in the service of VBS as a director and representative of the PIC, more particularly with regard to his powers, duties or functions in respect of:

- overseeing the control and operation of the banking system of VBS; and/or
- the receipt and custody of monies on behalf of VBS,

by facilitating the theft of monies from VBS and by fraudulently concealing the theft of such monies.

COUNT 40: (ONLY IN RESPECT OF ACCUSED 8)

Contravening Section 3(a) read with Sections 1, 2, 24, 25 and 26 of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004, as amended.

IN THAT in and during the period 25 August 2016 to 2 February 2018 and at or near Rivonia in the Johannesburg North Magisterial District, Accused 8 unlawfully and intentionally, directly or indirectly accepted or agreed or offered to accept a gratification, to wit the

cumulative amount of R7 000 000, from another person, to wit Accused 1, who gave or agreed or offered to give to Accused 8 a gratification in the cumulative amount of R7 000 000, whether for the benefit of Accused 8 or for the benefit of another person in order to act, personally or by influencing another person so to act in a manner that amounts to the illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a statutory, contractual or any other legal obligation, to wit being in the service of VBS as a director and representative of the PIC, more particularly with regard to his powers, duties or functions in respect of:

- overseeing the control and operation of the banking system of VBS; and/or
- the receipt and custody of monies on behalf of VBS,

by facilitating the theft of monies from VBS and by fraudulently concealing the theft of such monies.

COUNT 41: (ONLY IN RESPECT OF ACCUSED 2)

MONEY LAUNDERING in contravention of Section 4 read with Sections 1 and 8 of the Prevention of Organised Crime Act, No. 121 of 1998 ("POCA"), as amended.

WHEREAS the cumulative amount of R22 700 000 was paid to the Dambale account and the Munyai account (as set out in paragraphs 55 and 58 of the Preamble) during the period 25 August 2016 to 2 February 2018 which cumulative amount constituted or formed part of the proceeds of unlawful activities, to wit the theft of monies from VBS.

AND WHEREAS Accused 2 knew or ought reasonably to have known that the said cumulative amount was or formed part of the proceeds of unlawful activities, to wit the theft of monies from VBS.

NOW THEREFORE Accused 2 is guilty of the offence of contravening Section 4 read with Sections 1 and 8 of POCA, as amended.

IN THAT in and during the period 9 February 2016 to 2 February 2018 at or near Rivonia in the Johannesburg North Magisterial District, Accused 2 unlawfully entered into an agreement and/or engaged in an arrangement or a transaction and/or performed an act with the aforementioned amount of money which had or is likely to have had the effect of concealing or disguising the nature, source, location, disposition or movement of the said amount or ownership thereof or any interest which anybody may have or have had in respect thereof and/or enabling or assisting Accused 2:

- to avoid prosecution for the theft of monies from VBS; and/or
- to remove or diminish any property acquired directly as a result of the theft of monies from VBS; and/or
- to avoid prosecution for corruption; and/or
- to remove or diminish any property acquired directly as a result of the corruption.

COUNT 42: (ONLY IN RESPECT OF ACCUSED 3)

MONEY LAUNDERING in contravention of Section 4 read with Sections 1 and 8 of the Prevention of Organised Crime Act, No. 121 of 1998, as amended.

WHEREAS the cumulative amount of R2 000 000 was paid to the Shangri La account during the period 20 November 2017 to 15 December 2017 (as set out in paragraph 64 of the Preamble) which cumulative amount constituted or formed part of the proceeds of unlawful activities, to wit the theft of monies from VBS.

AND WHEREAS Accused 3 knew or ought reasonably to have known that the said cumulative amount was or formed part of the proceeds of unlawful activities, to wit the theft of monies from VBS.

NOW THEREFORE Accused 3 is guilty of the offence of contravening Section 4 read with Sections 1 and 8 of POCA, as amended.

IN THAT in and during the period 5 October 2017 to 15 December 2017 at or near Rivonia in the Johannesburg North Magisterial District, Accused 3 unlawfully entered into an agreement and/or engaged in an arrangement or a transaction and/or performed an act with the aforementioned amounts of money which had or is likely to have had the effect of concealing or disguising the nature, source, location, disposition or movement of the said amounts or ownership thereof or any interest which anybody may have or have had in respect thereof and/or enabling or assisting Accused 3:

- to avoid prosecution for the theft of monies from VBS; and/or
- to remove or diminish any property acquired directly as a result of the theft of monies from VBS; and/or
- to avoid prosecution for corruption; and/or
- to remove or diminish any property acquired directly as a result of the corruption.

COUNT 43: (ONLY IN RESPECT OF ACCUSED 4)

MONEY LAUNDERING in contravention of Section 4 read with Sections 1 and 8 of the Prevention of Organised Crime Act, No. 121 of 1998, as amended.

WHEREAS the cumulative amount of R16 600 000 was paid and credited to the Lemawave account during the period 30 March 2017 to 5 October 2017 (as set out in paragraphs 67,

68 and 69 of the Preamble) which cumulative amount constituted or formed part of the proceeds of unlawful activities, to wit the theft of monies from VBS.

AND WHEREAS Accused 4 knew or ought reasonably to have known that the said cumulative amount was or formed part of the proceeds of unlawful activities, to wit the theft of monies from VBS.

NOW THEREFORE Accused 4 is guilty of the offence of contravening Section 4 read with Sections 1 and 8 of POCA, as amended.

IN THAT in and during the period 30 March 2017 to 5 October 2017 at or near Rivonia in the Johannesburg North Magisterial District, Accused 4 unlawfully entered into an agreement and/or engaged in an arrangement or a transaction and/or performed an act with the aforementioned cumulative amount of money which had or is likely to have had the effect of concealing or disguising the nature, source, location, disposition or movement of the said amount or ownership thereof or any interest which anybody may have or have had in respect thereof and/or enabling or assisting Accused 4:

- to avoid prosecution for the theft of monies from VBS; and/or
- to remove or diminish any property acquired directly as a result of the theft of monies from VBS; and/or
- to avoid prosecution for corruption; and/or
- to remove or diminish any property acquired directly as a result of the corruption.

COUNT 44: (ONLY IN RESPECT OF ACCUSED 5)

MONEY LAUNDERING in contravention of Section 4 read with Sections 1 and 8 of the Prevention of Organised Crime Act, No. 121 of 1998, as amended.

WHEREAS during the period 27 January 2016 to 11 March 2018 a cumulative amount of R30 335 442 was given to Accused 5 (as set out in paragraphs 77, 78, 79, 80 and 81 of the Preamble), which cumulative amount constituted or formed part of the proceeds of unlawful activities, to wit the theft of monies from VBS.

AND WHEREAS Accused 5 knew or ought reasonably to have known that the said cumulative amount was or formed part of the proceeds of unlawful activities, to wit the theft of monies from VBS.

NOW THEREFORE Accused 5 is guilty of the offence of contravening Section 4 read with Sections 1 and 8 of POCA, as amended.

IN THAT in and during the period 27 January 2016 to 11 March 2017 at or near Rivonia in the Johannesburg North Magisterial District, Accused 5 unlawfully entered into an agreement and/or engaged in an arrangement or a transaction and/or performed an act with the aforementioned cumulative amount of money which had or is likely to have had the effect of concealing or disguising the nature, source, location, disposition or movement of the said amount or ownership thereof or any interest which anybody may have or have had in respect thereof and/or enabling or assisting Accused 5:

- to avoid prosecution for the fraudulent concealment of the theft of monies from VBS; and/or
- to remove or diminish any property acquired directly as a result of the fraudulent concealment of the theft of monies from VBS; and/or

- to avoid prosecution for corruption; and/or
- to remove or diminish any property acquired directly as a result of the corruption.

COUNT 45: (ONLY IN RESPECT OF ACCUSED 6)

MONEY LAUNDERING in contravention of Section 4 read with Sections 1 and 8 of the Prevention of Organised Crime Act, No. 121 of 1998, as amended.

WHEREAS the cumulative amount of R750 000 was paid and credited to the Zanoware account during the period 13 March 2017 to 29 October 2017 (as set out in paragraph 85 of the Preamble) which cumulative amount constituted or formed part of the proceeds of unlawful activities.

AND WHEREAS Accused 6 knew or ought reasonably to have known that the said cumulative amount of R750 000 was or formed part of the proceeds of unlawful activities.

NOW THEREFORE Accused 6 is guilty of the offence of contravening Section 4 read with Sections 1 and 8 of POCA.

IN THAT in and during the period 13 March 2017 to 29 October 2017 at or near Rivonia in the Johannesburg North Magisterial District, Accused 6 unlawfully entered into an agreement and/or engaged in an arrangement or a transaction and/or performed an act with the aforementioned amount of money which had or is likely to have had the effect of concealing or disguising the nature, source, location, disposition or movement of the said amount or ownership thereof or any interest which anybody may have or have had in respect thereof and/or enabling or assisting Accused 6:

- to avoid prosecution for the fraudulent concealment of the theft of monies from VBS;
and/or

- to remove or diminish any property acquired directly as a result of the fraudulent concealment of the theft of monies from VBS; and/or
- to avoid prosecution for corruption; and/or
- to remove or diminish any property acquired directly as a result of the corruption.

COUNT 46: (ONLY IN RESPECT OF ACCUSED 7)

MONEY LAUNDERING in contravention of Section 4 read with Sections 1 and 8 of the Prevention of Organised Crime Act, No. 121 of 1998, as amended.

WHEREAS the cumulative amount of R7 450 000 was paid and credited to the Parallel account during the period 1 March 2016 to 2 February 2018 (as set out in paragraphs 88, 89 and 90 of the Preamble) which cumulative amount constituted or formed part of the proceeds of unlawful activities.

AND WHEREAS Accused 7 knew or ought reasonably to have known that the said cumulative amount of R7 450 000 was or formed part of the proceeds of unlawful activities.

NOW THEREFORE Accused 7 is guilty of the offence of contravening Section 4 read with Sections 1 and 8 of POCA.

IN THAT in and during the period 1 March 2016 to 2 February 2018 at or near Rivonia in the Johannesburg North Magisterial District, Accused 7 unlawfully entered into an agreement and/or engaged in an arrangement or a transaction and/or performed an act with the aforementioned amount of money which had or is likely to have had the effect of concealing or disguising the nature, source, location, disposition or movement of the said amount or ownership thereof or any interest which anybody may have or have had in respect thereof and/or enabling or assisting Accused 7:

- to avoid prosecution for the fraudulent concealment of the theft of monies from VBS; and/or
- to remove or diminish any property acquired directly as a result of the fraudulent concealment of the theft of monies from VBS; and/or
- to avoid prosecution for corruption; and/or
- to remove or diminish any property acquired directly as a result of the corruption.

COUNT 47: (ONLY IN RESPECT OF ACCUSED 8)

MONEY LAUNDERING in contravention of Section 4 read with Sections 1 and 8 of the Prevention of Organised Crime Act, No. 121 of 1998, as amended.

WHEREAS the cumulative amount of R7 000 000 was paid and credited to the Investar account and the Hekima account during the period 25 August 2016 to 2 February 2018 (as set out in paragraphs 94, 95 and 98 of the Preamble) which cumulative amount constituted or formed part of the proceeds of unlawful activities.

AND WHEREAS Accused 8 knew or ought reasonably to have known that the said cumulative amount of R7 000 000 was or formed part of the proceeds of unlawful activities.

NOW THEREFORE Accused 8 is guilty of the offence of contravening Section 4 read with Sections 1 and 8 of POCA.

IN THAT in and during the period 25 August 2016 to 2 February 2018 at or near Rivonia in the Johannesburg North Magisterial District, Accused 8 unlawfully entered into an agreement and/or engaged in an arrangement or a transaction and/or performed an act with the aforementioned amount of money which had or is likely to have had the effect of concealing or disguising the nature, source, location, disposition or movement of the said

amount or ownership thereof or any interest which anybody may have or have had in respect thereof and/or enabling or assisting Accused 8:

- to avoid prosecution for the fraudulent concealment of the theft of monies from VBS; and/or
- to remove or diminish any property acquired directly as a result of the fraudulent concealment of the theft of monies from VBS; and/or
- to avoid prosecution for corruption; and/or
- to remove or diminish any property acquired directly as a result of the corruption.

WHEREFORE upon due proof and conviction, the said Director of Public Prosecutions prays for sentence against the accused according to law.

J H VAN DER MERWE
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
GAUTENG, PRETORIA

THE STATE versus TSHIFHIWA CALVIN MATODZI AND OTHERS
SUMMARY OF THE SUBSTANTIAL FACTS IN TERMS OF
SECTION 144(3)(a) OF ACT 51 OF 1977 (READ WITH THE GENERAL PREAMBLE)

AD COUNTS 1 TO 5 (RACKETEERING OFFENCES)

- 1 During the period referred to in Counts 1 to 5 of the indictment Accused 1 to 8 were associated in fact and thus formed an enterprise as defined in section 1 of POCA and as envisaged in sections 2(1)(a) to 2(1)(f). The accused amongst other made use of the following legally registered entities to wit VBS Mutual Bank, Vele Investments (Pty) Ltd, Vele Petroport Holdings SA (Pty) Ltd, Venmont Holdings (Pty) Ltd and Robvet (Pty) Ltd to provide continuity of structure for the unlawful activities of the enterprise.
- 2 All the accused participated in the enterprise through a pattern of racketeering activities as set out in the Preamble of this indictment.
- 3 Accused 1 to 4 managed the affairs the enterprise.
- 4 All the accused participated in the enterprise through a pattern of racketeering activities as set out in the Preamble of this indictment.
- 5 All the accused received or retained property, directly or indirectly, on behalf of the enterprise; and/or knew or ought reasonably to have known that such property derived or was derived from or through a pattern of racketeering activities as set out in Counts 6 to 47 of this indictment.
- 6 All the accused, whilst employed by and/or associated with the enterprise as defined above, conspired and/or attempted to participate in the affairs, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity as set out in Counts 6 to 47 of this indictment.

- 7 All the accused acquired or maintained, directly or indirectly, an interest in or control of the enterprise through a pattern of racketeering activities as set out in Counts 6 to 47 of this indictment.
- 8 The charges in this matter relate to the general deficiency caused by the pilferage of money from the general pool of funds in VBS by Accused 1 to 8. To hide the crime of theft, misrepresentations were made to the Registrar and/or shareholders by the accused as set out in the indictment on the annual financial statements dated 31 March 2017. Further to this Accused 1 made corrupt payments, from the stolen monies, to Accused 2, 3, 4, 5, 6, 7, and 8 for their part in concealing the theft. Accused 2 and 4 also participated in the corrupt payments made to Accused 5. A large portion of these corrupt payments were made to the specific accused through different entities in order to hide the origin of the gratifications and/or proceeds.
- 9 At all relevant times the accused and others acted in furtherance of a prior criminal agreement to commit the offences as set out in the indictment.

AD COUNTS 6 TO 17 (THEFT)

- 10 There was a general deficiency in the monies received by VBS amounting to R 2 296 599 008. The cash deficiency is constituted by the difference between the total amount standing to the credit of VBS' depositors together with the total amount advanced to VBS by the PIC, as at 11 March 2018, and the total amount advanced by VBS to borrowers (including overdrafts, vehicle finance facilities, mortgage loans, etc.) together with the total amount standing to the credit of VBS in its external bank accounts.
- 11 Accused 1 exercised overall control of the financial systems of VBS by instructing certain employees and functionaries of VBS to facilitate the theft of monies from VBS.

- 12 Accused 3, who had control over the financial system at VBS including the banking system and the accounting system, carried out Accused 1's bidding by designing and implementing a system of so-called suspense accounts and creating fictitious deposits in those suspense accounts in order to facilitate the theft of monies from VBS.
- 13 Accused 4 had control over the banking system. He also carried out Accused 1's bidding by directly intervening in the banking system to permit unlawful payments out of VBS.
- 14 Accused 2 was the person with overall executive control over the financial system of VBS.
- 15 The specific thefts from the VBS pool of funds are set out in Counts 6 to 16 of the indictment.
- 16 Accused 5, as the auditor of VBS, fraudulently covered up the theft of monies that had taken place during the period 1 April 2016 to 31 March 2017 and facilitated the further theft of monies during the period 1 April 2017 to 10 March 2018.
- 17 Accused 5 to 8 remained silent and covered up the theft of monies from the VBS pool of funds. Their silence made them complicit in the theft of monies from the VBS pool of funds and the general deficiency as set out in Count 17.

AD COUNTS 18 TO 24 (FRAUD)

- 18 There were several frauds perpetrated that served to cover up the ongoing theft of monies from VBS.
- 19 The audited annual financial statements of VBS for the year ended 31 March 2017 represent that VBS was in a solvent position having assets amounting to R2 102 039 406, liabilities amounting to R1 863 460 154 and a total equity of

R238 579 252.

- 20 Accused 3 prepared the annual financial statements well knowing that they contained the misrepresentations set out above.
- 21 Accused 6, as the Chairman of the Audit Committee, signed the Audit Committee Report on 4 July 2017 which recommended the approval of the annual financial statements, well knowing that the annual financial statements contained misrepresentations.
- 22 Accused 1 and 2 as the Chairman and Chief Executive Officer of VBS respectively, signed the Directors' Responsibility Statement to the annual financial statements on 4 July 2017, in which it was stated that the directors were responsible for the preparation and fair presentation of the annual financial statements and that the directors were responsible for such internal controls as they determined to be necessary to enable the preparation of annual financial statements that are free from material misstatement, whether due to fraud or error, and for maintaining adequate accounting records and an effective system of risk management as well as the preparation of the supplementary schedules included in the annual financial statements.
- 23 Accused 1, 2, 3, 6, 7 and 8 were members of the board of directors. They held out that the directors had assessed the ability of VBS to continue as a going concern and had no reason to believe that the business would not be a going concern in the year ahead whereas, to their knowledge, this was false.
- 24 Accused 5, as the auditor of VBS, signed the audit opinion on 17 July 2017. In this, he stated that, in his opinion, the financial statements fairly present, in all material respects, the financial position of VBS as at 31 March 2017, and its financial performance and

cash flows for the year then ended in accordance with International Financial Reporting Standards (IFRS) and the requirements of the Mutual Banks Act. At the very least, Accused 5 was aware that there was a substantial cash deficit as at 31 March 2017 and that it was impossible to reconcile the amounts standing to the credit of VBS in its banking accounts to the amount of R770 866 124 recorded in note 2 to the annual financial statements as "*money at call and at short notice*".

25 In respect of Count 19, VBS was required to submit the DI returns contemplated in the Regulations to the Registrar. In practical terms, the submission was to the Bank Supervision Department of the Reserve Bank. The most significant DI return was the DI 100, which sets out in expanded form the balance sheet of VBS. Most DI returns had to be submitted monthly. The DI returns for 31 March 2017 were initially submitted with wholly incorrect information (in fact, the amounts disclosed were in respect of the month ending 28 February 2017 and not 31 March 2017). The DI returns were later amended to reflect the information as at 31 March 2017 and were resubmitted on 27 July 2017. The DI 100 return records the financial position of VBS as at 31 March 2017 in the same amounts that appear in the fraudulent annual financial statements. Thus, the DI 100 return for 31 March 2017 amounts to a fraudulent misrepresentation of VBS' financial position as at that date. Accused 3 and 4 prepared the DI returns for the month ending 31 March 2017.

26 In respect of Count 20, Regulation 6(1) of the Regulations to the Mutual Banks Act made by the Minister of Finance under Section 91 of the Mutual Banks Act on 28 December 1993 as set out in Government Notice Number R.2508, published in Regulation Gazette No. 5227, requires that the auditor, accused 5, of a mutual bank shall annually report on the mutual bank's financial position and the result of its operations as reflected in all the returns, submitted in terms of Section 53 of the Mutual Banks Act, referred to in Regulation 6(5) that had been submitted to the Registrar as at

the end of the financial year end of the reporting mutual bank. Regulation 6(2) requires the auditor to report whether in his opinion the information contained in the returns at year end, in all material respects:

- Reasonably reflects the information of the management accounts;
- Is complete in so far as all relevant information contained in the accounting and other records at the reporting date has been extracted therefrom and recorded in the returns;
- Is accurate in so far as it correctly reflects information contained in, and extracted from, the accounting and other records at the reporting date; and
- Was prepared using the same accounting policies as those contained in the management and statutory accounts.

27 Regulation 6(5) requires that the audit report contemplated in Regulation 6(1) shall be rendered in accordance with the wording and practices recommended from time to time by the South African Institute of Chartered Accountants and shall be in respect of Forms DI 100, DI 110, DI 200, DI 300, DI 310, DI 400, DI 401, DI 402, DI 403, DI 410, DI 420, DI 430, DI 500, DI 510, DI 520, DI 600, DI 700, DI 701, DI 702 and DI 704 submitted in respect of the reporting bank's operations.

28 As Audit Engagement Partner, Accused 5 was responsible for the Regulatory Audit. On 11 October 2017, Accused 5 signed the Regulation 6(1) report, thereby giving out to the Registrar, VBS, its shareholders and creditors, that the DI 100 Return was a fair presentation, in all material respects, of VBS' monthly balance sheet as at 31 March 2017. Accused 5 well knew that the DI 100 return was false as the item recorded as being "*Non-Bank funding – repayable in SA Rand*", in the amount of "*1,553,650*" was false and the item ought to have been recorded as "*1,292,350*". The

item recorded as being "*Interbank (including intragroup)*", in the amount of "770,866" was false and ought to have been recorded as "64,089".

- 29 In respect of Count 21, Accused 1 and 3 unlawfully, falsely and with the intention to defraud, to the prejudice of the shareholders of VBS, caused the registration of the transfer of 5 110 shares in VBS from Accused 1 to Vele to be backdated to 1 April 2016 in order to falsely represent that Vele was an existing shareholder of VBS and thereby qualified to participate in the so-called second rights issue where existing shareholders would be entitled to take up two shares for every one share held in VBS.
- 30 In respect of Count 22, the PIC was a significant minority shareholder (of influence) in VBS. The PIC held shares in VBS (at varying percentage shareholdings) from at least 2012 to date, with its shareholding varying due to participating in multiple rights issues which occurred from time to time. In addition to this the PIC entered into an agreement, dated 23 June 2015, to provide a revolving credit facility to VBS for a maximum amount of R350 million. Accused 7 and 8 acted as representatives of the PIC on the Board of VBS. They did not carry out their fiduciary duties towards the PIC.
- 31 Count 23 pertains to the different rights issues which created a dilution of the shares held by the PIC in VBS. During the third rights issue PIC was invited by VBS to take up rights to restore their shareholding to 26%. During this process Accused 3 knowingly presented documentation to the PIC to confirm the financial position of VBS as recorded in its management accounts as at 30 September 2017 which Accused 3 knew to be false. The fraudulent amounts recorded in the management accounts followed on, and were based on, the fraudulent annual financial statements for the financial year ending March 2017. Accused 1 was part of the misrepresentation made to the PIC to induce them to make payment to VBS in the amount of R90 000 000 for the additional shares.

32 In respect of Count 24, Accused 7 unlawfully, falsely and with the intention to defraud, to the prejudice of the PIC, in circumstances where there was a fiduciary duty on Accused 7 to act in the best interest of the PIC, caused and permitted certain amendments to be made to the terms and conditions of the Facility Agreement between VBS and the PIC subsequent to the approval of the terms and conditions of the Facility Agreement by the PIC, which amendments were to the disadvantage and prejudice of the PIC.

AD COUNTS 25 TO 40 (CORRUPTION)

33 Accused 1 paid over gratifications to Accused 2 to 8 as set out in Counts 25, 27, 29, 31, 33, 35, 37 and 39.

34 Accused 2 and 4 assisted Accused 1 with the gratification payments to Accused 5 as set out in Count 31.

35 Accused 2 received gratifications totalling R23 495 000 from Accused 1 as set out in Count 26.

36 Accused 3 was offered, and he accepted, gratifications totalling R5 250 000 by Accused 1 but received gratifications totalling only R2 250 000 as set out in Count 28.

37 Accused 4 received gratifications totalling R17 100 000 from Accused 1 as set out in Count 30.

38 Accused 5 received gratifications totalling R29 242 863 from Accused 1, 2 and 4 as set out in Count 32.

39 Accused 5 received additional gratifications totalling R1 092 579 from Accused 1 as set out in Count 34.

40 Accused 6 received gratifications amounting to R 750 000 from Accused 1 as set out in Count 36.

41 Accused 7 received gratifications amounting to R 7 450 000 from Accused 1 as set out in Count 38.

42 Accused 8 received gratifications amounting to R 7 000 000 from Accused 1 as set out in Count 40.

AD COUNTS 41 TO 47 (MONEY LAUNDERING)

43 Accused 2, 3, 4, 5, 6, 7 and 8 on separate occasions as set out in Counts 41 to 47 received substantial amounts of money, into the bank accounts of different entities. The monies were not due to these entities by VBS. The money which was destined for Accused 2, 3, 4, 5, 6, 7 and 8 was proceeds from the criminal agreement between Accused 1, 2, 3, 4, 5, 6, 7 and 8 and the purpose thereof was to disguise the nexus between VBS and Accused 1 and Accused 2, 3, 4, 5, 6, 7 and 8.

THE STATE versus TSHIFHIWA CALVIN MATODZI AND OTHERS
LIST OF WITNESSES IN TERMS OF SECTION 144(3)(a) OF ACT 51 OF 1977

- 1 Kuben Naidoo
- 2 Anooshkumar Rooplal
- 3 Walter Stander
- 4 Stephanus Johannes Wernich
- 5 Esmi Kruger
- 6 Nadia Geemooi
- 7 Brigadier Basi
- 8 LT Col Schnelle
- 9 George Christoffel Coetzee
- 10 Adam Johannes Willemse
- 11 Paul Ian Weinberg
- 12 Andre Rossouw
- 13 Jacques Riel Malan
- 14 Jakobus Swartz
- 15 Bernard Hotz
- 16 Renier Kachelhoffer
- 17 Themba Ntsele

- 18 Tshepo Masipa
- 19 Ane du Preez
- 20 Margaret Lepule
- 21 James Grundlingh
- 22 Mpho Gama
- 23 Emmanuel Makata
- 24 Caswell Motumisi
- 25 Kagiso Monareng
- 26 Johan Scheepers
- 27 Elsie Ngwenya
- 28 David Broom
- 29 Kafuma Munalula
- 30 Mhlengi Nduli
- 31 Tertia Monare
- 32 Luan Nieuwoudt
- 33 Regina Erasmus
- 34 Petrus Cronje
- 35 Delarese van der Merwe
- 36 Regomoditswe Bertha Ntsie

- 37 Wilson Muvhalawa
- 38 Desmond Mahlangu
- 39 Ryan Sacks
- 40 Bheki Nyathi
- 41 Bongiwe Machakela
- 42 Lorraine Lalieu