

**Legally Privileged and Confidential**

**Attorney Work Product**

**Report provided to  
the Hoffmann Committee**

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## **Abbreviations**

Descriptions of terms and abbreviations relevant to this report are listed below. These descriptions serve to clarify our report and are not intended to be authoritative.

<b>€</b>	EURO
<b>accounting records</b>	Accounting records refer to extracts of MANCO and MTN International Africa general ledgers; and available MTN Mauritius and MTN Iran branch accounting records for the period 2004 to 2007
<b>AFS</b>	Annual financial statements
<b>Aristo Oil</b>	Aristo Oil International Limited, a company allegedly registered to Hosseinzadeh, Darani (Iranians) and Alkhaja (Emirati)
<b>Basadien</b>	Mahdi Basadien, South African Consul to Jeddah based in Iran at the SA Embassy
<b>Bonyad</b>	Bonyad Mostazafen, a shareholder of IEDC
<b>Charnley</b>	Irene Charnley, erstwhile MTN Group Commercial Director (resigned in 2007)
<b>De Villiers</b>	Bronwyn de Villiers, erstwhile MTN personal assistant to Nhleko
<b>Dezfouli</b>	Alireza Ghalambor Dezfouli, Chief Executive Officer of MTN Irancell and Sairan representative
<b>Dr Riahi</b>	Dr Beyhar Riahi Mahabadi
<b>Fakie</b>	Shauket Fakie, MTN Head of Business Risk Management, joined MTN in July 2006
<b>FIPPA</b>	Foreign Investment Promotion and Protection Act of the Islamic Republic of Iran
<b>Forunzadeh</b>	Dr Forunzadeh, president of Bonyad

<b>Ghorbanoghli</b>	Javid Ghorbanoghli, Director General of African Department in the Iranian Ministry of Foreign Affairs during the relevant period
<b>Gildenhuis</b>	Gildenhuis Lessing Malaji Inc, attorneys responsible for the transfer relating to the property purchased for Ambassador Saloojee
<b>GSM</b>	Global System for Mobile Communications
<b>Hosseinzadeh</b>	Mousa Abolfazl Hosseinzadeh, who allegedly owned Aristo Oil
<b>IAEA</b>	International Atomic Energy Agency
<b>IEDC</b>	Iranian Electronic Development Company, owned primarily by Sairan and Bonyad
<b>MTN Iran</b>	MTN Mauritius Iran branch
<b>Iran</b>	Islamic Republic of Iran
<b>Irancell</b>	Irancell Telecommunications Services Company, also referred to as MTN Irancell
<b>IRR</b>	Iranian Rials
<b>Kilowan</b>	Chris Kilowan, erstwhile MTN Iran branch country manager (resigned in November 2007)
<b>Minister Lekota</b>	Mosiua Gerard Patrick Lekota, former South African Minister of Defence from 1999 to 2008
<b>Libor</b>	London Interbank offered rate
<b>Mahmoudzadeh</b>	Dr Ebrahim Mahmoudzadeh, Chairman of Irancell since 2005 and official of Iranian Ministry of Defense
<b>MANCO</b>	MTN Management Services Company (Pty) Limited
<b>MCIT</b>	Ministry of Communications and Information Technology

<b>Millar</b>	Debbie Millar, erstwhile MTN Group Executive, Group Treasury
<b>Minty</b>	Abdul Minty, South African ambassador to the Board of Governors of the International Atomic Energy Agency
<b>Mokhber</b>	Mohammed Mokhber, Chairman of the IEDC in 2005
<b>MTN Dubai</b>	MTN Dubai Limited
<b>MTN Group</b>	MTN Group Limited
<b>MTN Holdings</b>	MTN Holdings (Pty) Limited
<b>MTN Mauritius</b>	MTN International (Mauritius) Limited
<b>MTN</b>	General reference to the MTN group of companies
<b>Nhleko</b>	Phuthuma Nhleko, MTN Group Chief Executive Officer from 2004 to March 2011
<b>Nisbet</b>	Rob Nisbet, MTN Group Chief Financial Officer before Patel
<b>Patel</b>	Nazir Patel, MTN Group Chief Financial Officer since 2009
<b>President Mbeki</b>	President Thabo Mbeki, President of South Africa from 1999 to 2008
<b>Rowhani</b>	Hassan Rowhani, Iranian politician and Secretary of the Supreme National Security Council up to 2005 (also known as the Iranian National Security Advisor and Nuclear Negotiations Chief)
<b>SA</b>	South Africa
<b>Sairan</b>	Iranian Ministry of Defence subsidiary. Also known as a Iran Electronics Industries
<b>Saloojee</b>	Yusuf Saloojee, former South African Ambassador to Iran, from around May 2004 to around May 2007

<b>travel records</b>	Travel database from Lesedi. Lesedi was MTN's travel agent in South Africa during period 2004 to 2007
<b>Turkcell</b>	Turkcell İletişim Hizmetleri A.Ş
<b>US</b>	United States of America
<b>USD</b>	United States Dollar
<b>Vafaei</b>	A Vafaei, Vice president of Sairan in 2004
<b>Van Doorene</b>	Dirk van Doorene, MTN Group Finance
<b>Webber Wentzel</b>	Webber Wentzel, a South African firm of attorneys
<b>ZAR</b>	South African Rand



## **Exhibits**

Copies of all documentation referred to in the footnotes to this report have been collated into exhibit files and should be read in conjunction with the contents of this report.

# **1 Background to the accounting investigation**

## **1.1 Mandate of our investigation**

We were instructed by Freshfields Bruckhaus Deringer and Webber Wentzel to assist with the investigation of certain aspects of the Turkcell allegations.

This report was prepared in contemplation of presenting our findings to Freshfields Bruckhaus Deringer, Webber Wentzel, and MTN, for the purposes of the U.S litigation between Turkcell and MTN, as well as to the Hoffmann Committee (a special committee established by the Board of MTN). This report is therefore privileged and confidential and has been prepared under the direction of counsel.

## **1.2 Aspects addressed in this report**

We were requested to report on the following:

- Cash flows flowing from and the accounting for the following specific transactions alleged by Turkcell:
  - Alleged payment of USD400 000 to Aristo Oil under a sham consultancy agreement, for the benefit of Ghorbanoghli;
  - Alleged payment to Saloojee in the amount of USD200 000; and
  - MTN's alleged financing of the Irancell consortium's license fee, capital cost and other related costs, on a non commercial basis.
- Meetings alleged to have been attended or facilitated by MTN, as evident from cash flows and travel and accounting records. These alleged meetings relate to meetings attended by:
  - South African government officials;
  - Iranian government officials; and
  - South African military equipment providers.
- Investigate cash flows and accounting for gifts and entertainment expenses relevant to MTN's bid for the second GSM license in Iran.

### **1.3 Period**

Our investigation focussed on the period 2004 to 2007, unless stated otherwise.

### **1.4 Procedures performed**

The procedures that led to the compilation of this report included those that were deemed necessary, based on the available documents. Further to this, where more specific analyses and considerations were required, those will be evident in our findings.

Due to the volume of available documents, it was not practical to manually consider all such information. Consequently, an electronic review process which is generally accepted in the investigation environment was applied, which helped to identify and consider relevant documents through the application of search terms.

### **1.5 Sources of documents and information considered**

In performing our investigation, we mainly considered the following documents and/or information:

- Documents and information identified through the document review process; and
- Specific requests for accounting related documents.

We mainly obtained extracts of the accounting records from MANCO and MTN Africa International for the period 2004 to 2007 and also had access to MTN Mauritius and MTN Iran branch accounting records.

### **1.6 Limitations**

We have attempted to include available documentation and information relevant to the specific allegations. However, it is possible that documentation and information exists, which was not available to us, or which we were unable to locate.

We did not have full access to all the accounting records and documents of MTN, as it was not practical due to the volume thereof. In some respects we were guided by representatives of MTN through Freshfields Bruckhaus Deringer. Furthermore, the state of the accounting records for MTN Mauritius and MTN Iran branch were incomplete. Accordingly, our findings may be affected should additional documents or information become available subsequent to the date of the report.

This engagement was not performed by us in the capacity as a Registered Auditor and does not constitute an audit. The scope of our work was limited to an inspection and analysis of the documentation and information obtained during the course of our investigation. We have not verified the validity or authenticity of the relevant records and documentation.

We were not requested to investigate the culpability of the individuals involved in the allegations or the veracity of Turkcell's allegations. Apart from interviewing finance related individuals employed by MTN for purposes of understanding the underlying financial principles, we did not interview any other individuals who could provide context to the documents and information at our disposal.

## **1.7 Restriction on distribution of report and legal advice**

This report was prepared solely for the purposes of reporting our findings to Freshfields Bruckhaus Deringer, Webber Wentzel, MTN and the Hoffmann Committee and should therefore not be utilised for any other purpose.

Although our report may contain references to relevant laws and legislation, we do not provide a legal opinion on the compliance with such laws and our findings in this report are not to be construed as providing legal advice.

## **2 Alleged bribe of the Iranian Deputy Foreign Minister, Ghorbanoghli**

### **2.1 The Turkcell allegation and our focus**

According to paragraph 9C of the Turkcell complaint:

*“MTN promised in May 2005 and later paid through a sham consultancy agreement [with Aristo Oil], Iranian Deputy Foreign Minister, Javid Ghorbanoghli, \$400, 000 in U.S. dollars for his efforts to politically undermine and destroy Turkcell’s position as the license-holder and to deliver the License to MTN<sup>1</sup>”.*

We investigated MTN’s cash flows and/or accounting records relating to the alleged payment to Ghorbanoghli through Aristo Oil. In doing so, we specifically focused on:

- Whether Charnley and Kilowan were in Tehran in or around May 2005 and whether Charnley met with Ghorbanoghli in Tehran (paragraph 2.2 below);
- Whether MTN made a payment of USD400 000 in April 2007 and if so (section 2.3 below):
  - The entities/individuals involved in the transfer of and receipt of the funds and the date when the transfer was made and received;
  - The persons involved in authorising the payment; and
  - The MTN cost centre and/or general ledger accounts to which the payment was allocated to.
- Whether Kilowan and Ghorbanoghli met on a monthly basis for several lunch or dinner meetings during the period May 2005 to December 2005 (paragraph 2.4 below); and
- The nature of the relationship between MTN and Aristo Oil (paragraph 2.5 below).

### **2.2 Whereabouts of Charnley and Kilowan in May 2005 and the alleged meeting with Ghorbanoghli**

It is alleged that a meeting occurred during May 2005 in Tehran, where Charnley offered Ghorbanoghli a payment for his assistance in securing the 2<sup>nd</sup> GSM license for MTN.

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<sup>1</sup> Refer to the Turkcell complaint paragraph 9 C

E-mail correspondence indicates that Charnley and Nhleko may have been in Iran during the period 23 May 2005 to 24 May 2005, to attend a meeting with “*the Bonyads*”<sup>2</sup>. We did not identify accounting transactions or travel records indicating that Charnley visited Iran during May 2005. We did not identify documents indicating that Charnley and/or Nhleko met with Ghorbanoghli in Iran at this time.

A passenger receipt indicates that Kilowan travelled from Iran to Dubai on 27 April 2005 and that he returned to Iran on 11 May 2005<sup>3</sup>. We did not identify documents indicating that Kilowan left Iran during the period 11 May to 31 May 2005.

## **2.3 Payment of USD400 000 in April 2007**

### **2.3.1 Contracting parties: MTN Mauritius and Aristo Oil**

A consultancy agreement between MTN Mauritius and Aristo Oil was annexed to the Turkcell complaint<sup>4</sup>. The consultancy agreement was not signed on behalf of MTN Mauritius, however Kilowan signed as a witness to the MTN Mauritius signature. “*Mousa Hosseinzadeh*”, in his capacity as the “*managing director*” of Aristo Oil, purportedly signed the agreement on behalf of Aristo Oil, with a “*Haddadi*” as a witness to Hosseinzadeh’s signature. “2006” is reflected next to the space provided for signatures. However, no specific dates of signature appear in manuscript. Furthermore, we did not identify any version of the Aristo Oil consultancy agreement that had been signed on behalf of MTN.

The responsibility of the consultant was to “*(p)rovide consulting services, introduce MTNI to key roleplayers, arrange meetings and generally provide support and assistance during the negotiations and conclusion of the necessary agreements that will provide for MTNI’s entry into the Iranian Mobile Market.*”

MTN Mauritius was required to pay a once-off fee, in the amount of USD400 000, one year after MTN Mauritius entered into agreements to establish its presence in Iran and no later than the first quarter of 2007.

We did not identify other documents indicating the nature and specifications of the consulting services provided by Aristo Oil.

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<sup>2</sup> Refer to Exhibit B.12.2\_DOC ID 0.7.9.765410\_E-mail from Charnley to Basadien dated 3 May 2005

<sup>3</sup> Refer to Exhibit B.12.3\_DOC ID 0.7.43.973101\_Passenger receipt for Kilowan

<sup>4</sup> Refer to Exhibit 1.02\_DOC ID 0.7.9.778450\_signed Aristo Oil agreement

### **2.3.2 Invoicing parties: MANCO and Aristo Oil**

Aristo Oil issued an invoice, dated 1 March 2007, in the amount of USD400 000 to MANCO for “*consulting and support services during the period 2005 and 2006 in accordance with the signed agreement between MTN International (Mauritius) and Aristo*”<sup>5</sup>.

We also obtained two other identical Aristo Oil invoices, one dated 2 March 2007 and the other dated 3 April 2007, addressed to MTN Mauritius<sup>6</sup>. The other details of this invoice are the same as the details on the invoice dated 1 March 2007. However, as discussed below, only the invoice dated 1 March 2007 was paid by MANCO.

The banking details reflected on the Aristo Oil invoice are that of “*Mousa Hosseinzadeh*”, with account number 1000546125 at the Commercial Bank of Dubai.

In an undated memorandum from Kilowan to Charnley, Kilowan provides Charnley with the banking details of a “*MOUSA ABOLFAZL HOSSEINZADEH*”<sup>7</sup>. The banking details in this confidential memorandum are the same as the banking details reflected on the Aristo Oil invoices discussed above.

The memorandum also states: “*I have e-mailed you the agreement for Long J and the money should be paid into the following bank account...*”. (The banking details for Hosseinzadeh then follow). According to the Turkcell complaint, “*Long J*” was the code name used for Ghorbanoghli<sup>8</sup>. We did not identify documents corroborating the allegation that “*Long J*” refers to Ghorbanoghli.

### **2.3.3 Parties to the payment: MTN Holdings and Hosseinzadeh**

As discussed in paragraph 2.3.5 below, MTN Holdings paid “*Mousa Hosseinzadeh*” an amount of USD400 000<sup>9</sup>.

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<sup>5</sup> Refer to Exhibit 1.04\_DOC ID 0.7.43.2500200\_Aristo Oil invoice dated 1 March 2007

<sup>6</sup> Refer to Exhibit 1.07\_DOC ID 0.7.43.2499808\_Aristo Oil invoice dated 2 March 2007 and exhibit 1.17\_DOC ID 0.7.9.778381\_Aristo Oil invoice dated 3 April 2007

<sup>7</sup> Refer to Exhibit 1.03\_DOC ID 0.7.9.778968\_Memo from Kilowan to Charnley: Hosseinzadeh’s banking details

<sup>8</sup> Refer to paragraph 172 in the Turkcell complaint

<sup>9</sup> Refer to Exhibit 1.08\_DOC ID 0.7.9.1180667\_MTN letter to Standard Bank regarding Aristo Oil

## **2.3.4 Authorising the payment**

### **2.3.4.1 Memorandum authorising the finalisation of agreements and effecting of payments to consultants**

Attached to the Turkcell complaint is a memorandum dated 11 December 2006, in which Nhleko purportedly authorised Charnley to “*finalise all agreements with the consultants that assisted the Company during the run up to and actual negotiating period [with reference to MTN’s equity interest in Irancell], and to effect the necessary payments*”<sup>10</sup>.

The Turkcell complaint alleges that the agreement and the payment to Aristo Oil/Ghorbanoghli was authorised through this memorandum. The memorandum does not specifically refer to either Ghorbanoghli or Aristo Oil.

### **2.3.4.2 Authorising the Aristo Oil invoice**

MTN Group Finance informed us that the signature on the Aristo Oil invoice is that of Nhleko. A note in manuscript on the invoice states “*(c)harge to PFN’s cost centre*”<sup>11</sup>.

We identified e-mail correspondence over the period 3 April 2007 to 4 April 2007, regarding the payment of the Aristo Oil invoice. This e-mail correspondence indicates that Kilowan requested Rubysen Rambocus (erstwhile director of MTN Mauritius) to pay the Aristo Oil invoice from the MTN Iran branch cost centre. The e-mail also states that “*by copy of this email I confirm that the payment has been authorised by Mr P Nhleko and Mrs Charnley*”<sup>12</sup>. Charnley and De Villiers were copied on the e-mail.

De Villiers responded to this e-mail, indicating that the “*signed invoice*” had been handed to Patel to “*process*”. Patel then informed Rubysen Rambocus and De Villiers that he had notified Kilowan that the invoice would be paid from South Africa and not Mauritius.

## **2.3.5 Instruction to pay Mousa Hosseinzadeh**

On 4 April 2007, MTN Holdings instructed Standard Bank to pay “*Mousa Hosseinzadeh*” an amount of USD400 000<sup>13</sup>. The Aristo Oil invoice is attached to the instruction. A spot contract<sup>14</sup>

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<sup>10</sup> Refer to Exhibit 1.01\_DOC ID 0.7.43.1004275\_Memorandum regarding agreements with consultants

<sup>11</sup> Refer to Exhibit 1.04\_DOC ID 0.7.43.2500200\_Aristo Oil invoice

<sup>12</sup> Refer to Exhibit 1.05\_DOC ID 0.7043.2500164; Exhibit 1.06\_DOC ID 0.7.8.341579 and Exhibit 1.07\_DOC ID 0.7.43.2499808\_Emails regarding payment of Aristo Oil invoice

<sup>13</sup> Refer to Exhibit 1.08\_DOC ID 0.7.9.1180667\_MTN letter to Standard Bank re Aristo Oil

<sup>14</sup> A spot contract refers to a contract to purchase foreign currency at a specific date and foreign exchange rate



and an application to purchase foreign currency (also attached to the instruction) reflect that the USD400 000 was converted at an exchange rate of ZAR7.19/USD, totalling R2 876 000. MTN Group Finance informed us that the signatures on the letter of instruction to Standard Bank to transfer the USD400 000, as well as the application to purchase foreign currency, are that of Patel and Van Doorene<sup>15</sup>.

The same banking details for “*Mousa Hosseinzadeh*”, as reflected on the Aristo Oil invoices, appear on the application to purchase foreign currency<sup>16</sup>. The payment is reflected on the bank statement of MTN Holdings on 5 April 2007<sup>17</sup>.

## **2.3.6 MTN cost centre and/or general ledger accounts to which the payment was allocated to**

### **2.3.6.1 *The accounting records of MTN Holdings***

On 30 April 2007, an amount of ZAR2 876 000 was debited to the intercompany loan account between MTN Holdings and MANCO (with account number 520 234) and credited to MTN Holdings’ bank general ledger account (with account number 842 301)<sup>18</sup>.

The description for the journal is “*(i)ntercompany manco – payment to Aristo Oil inter*”.

The effect of this entry was an increase in the amount owing by MANCO to MTN Holdings by ZAR2 876 000 and a reduction in MTN Holdings’ cash (the bank account) by ZAR2 876 000.

### **2.3.6.2 *The accounting records of MANCO***

On 26 June 2007, an amount of ZAR2 876 000 was debited to the Professional Fees (expense) general ledger (with account number 307 105) and credited to the intercompany loan account between MTN Holdings and MANCO (with account number 520 234)<sup>19</sup>.

The journal description is “*Aristo Oil International Services – Consulting & Support Iran Licence*”.

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<sup>15</sup> Refer to Exhibit 1.08\_DOC ID 0.7.9.1180667\_MTN letter to Standard Bank re Aristo Oil

<sup>16</sup> Refer to Exhibit 1.08\_DOC ID 0.7.9.1180667\_MTN letter to Standard Bank regarding Aristo Oil

<sup>17</sup> Refer to Exhibit 1.09\_DOC ID 0.7.9.1633228\_Aristo Oil Transaction Bank statement

<sup>18</sup> Refer to Exhibit 1.09\_DOC ID 0.7.9.1633228\_Aristo Oil Transaction Oracle screen shot

Refer to Exhibit 1.09\_DOC ID 0.7.9.1633228\_Aristo Oil Transaction MANCO Journal

Refer to Exhibit 1.09\_DOC ID 0.7.9.1633228\_Aristo Oil Transaction Intercompany Holdings

Refer to Exhibit 1.09\_DOC ID 0.7.9.1633228\_Aristo Oil Transaction Bank account General Ledger

<sup>19</sup> Refer to Exhibit 1.09\_DOC ID 0.7.9.1633228\_Aristo Oil Transaction Intercompany MANCO and Oil MANCO accounting record

The transaction was allocated to cost centre “*Group Chief Executive Off*”<sup>20</sup>. According to MTN Group Finance, Nhleko was responsible for this cost centre at the time. However MTN Group finance could not identify who authorised the allocation of this payment to Nhleko’

The effect of this entry was an increase in the amount owing to MTN Holdings by MANCO and a Professional Fees expense being recognised in the income statement of MANCO.

### **2.3.6.3 Settlement of the balance owed on the intercompany loan account between MTN Holdings and MANCO**

The intercompany loan accounts between MTN Holdings and MANCO had a zero balance prior to processing the Aristo Oil transaction (this means that no amount was owed between the two entities before the Aristo Oil payment)<sup>21</sup>.

Between April 2007 and November 2007, various transactions were recorded in the intercompany loan account ledgers, which amounted to R26 139 204.46 being owed by MANCO to MTN Holdings. This included the payment to Aristo Oil.

MANCO’s outstanding balance was reduced to zero when MANCO settled its intercompany loan account with MTN Holdings on 30 November 2007<sup>22</sup>.

## **2.4 Alleged monthly lunch or dinner meetings between Kilowan and Ghorbanoghli during the period May 2005 to December 2005**

The Turkcell complaint alleges that after Charnley met with Ghorbanoghli in May 2005, MTN met several times a month with Ghorbanoghli for lunch or dinner.

We did not identify documents or accounting entries indicating expenses relating to lunch or dinner meetings between Kilowan and Ghorbanoghli during the period May 2005 to December 2005.

## **2.5 Documents indicating an ongoing relationship with Aristo Oil, including previous or future transactions**

We obtained two unsigned copies of consultancy agreements between MTN Mauritius and Aristo Oil, which provides for the payment of a monthly retainer of USD5 000 by MTN

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<sup>20</sup> Refer to Exhibit B.2\_MANCO accounting records\_21076

<sup>21</sup> Refer to Exhibit 1.09\_DOC ID 0.7.9.1633228\_Aristo Oil MANCO accounting record

<sup>22</sup> Refer to Exhibit 1.09\_DOC ID 0.7.9.1633228\_Aristo Oil MANCO accounting record

Mauritius to a consultant<sup>23</sup>. One unsigned agreement was to commence on 1 January 2005 and the other unsigned agreement on 1 January 2006, each for a period of three years. However, we did not identify transactions in the accounting records, indicating that a monthly retainer was ever paid to Aristo Oil.

We did not identify other documents that may indicate an ongoing relationship with Aristo Oil.

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<sup>23</sup> Refer to Exhibit 1.10\_DOC ID 0.7.9.778705 and Exhibit 1.16 DOC ID 0.7.9.778504\_Two unsigned consultancy agreements relating to a monthly retainer

### **3 Alleged bribe of South African Ambassador to Iran, Saloojee**

#### **3.1 The Turkcell allegation and our focus**

Paragraph 9D of the Turkcell complaint alleges that:

*“In June 2005, MTN promised, and later paid, the South African Ambassador to Iran, Yusuf Saloojee, the equivalent of U.S. \$200,000 to help MTN deliver on the nuclear vote and the weapons trafficking and to support MTN within the Iranian government. Ambassador Saloojee was integral to MTN’s ultimate success in securing the license.”*

We investigated MTN’s cash flows and/or accounting records regarding the alleged payment to Saloojee. In doing so, we specifically focused on:

- Whether Nhleko, Charnley and/or Kilowan were in Tehran in or around June and/or early July 2005 (see paragraph 3.2 below);
- Whether either MTN or Kilowan paid ZAR1.4 million to Saloojee on or around 26 April 2007 and if so, to report on (see paragraph 3.3 below):
  - The entities/individuals involved in the transfer of and receipt of the funds and the date the funds were transferred and received;
  - The persons involved in authorising the payment; and
  - Whether MTN paid/reimbursed Kilowan an amount of ZAR1.4 million.

#### **3.2 Whereabouts of Nhleko, Charnley and Kilowan in June/early July 2005**

According to the Turkcell complaint, Saloojee invited Nhleko and Charnley for dinner at his house in Iran, in or around June 2005 and that during this dinner, Nhleko and Charnley offered Saloojee a bribe for his assistance<sup>24</sup>.

According to the travel records and the accounting records, Charnley and Nhleko were in Iran during the period 23 June 2005 to 27 June 2005<sup>25</sup>. Based on a copy of Kilowan’s passport,

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<sup>24</sup> Refer to paragraph 118 and 119 of the Turkcell complaint

<sup>25</sup> Refer to Exhibit B.1\_Lesedi database\_2937 and B.2\_MANCO accounting records\_ 151, 186, 195, 359, 357, 8174, 2504, 7646, 8583, 8614, 4624, 4625, 16692, 16370, 12226, 12227, 3764, 3765 and B.1\_Lesedi database\_2244 and B.2\_MANCO accounting records\_4584, 5745, 5746, 12192, 14357, 14358, 16690, 3727, 4616

Kilowan entered Iran on 12 June 2005 and again on 2 July 2005<sup>26</sup>. We could not establish when Kilowan left Iran during the period 12 June 2005 to 2 July 2005.

To the extent that the meeting may have taken place in early July 2005, we did not identify documents indicating that Charnley and Nhleko travelled to Iran at that time.

We did not identify documents referring to meetings between Nhleko, Charnley and Saloojee during June 2005 and/or early July 2005.

### **3.3 Payment of ZAR1.4 million**

#### **3.3.1 Consideration of MTN accounting records for payment to Saloojee**

We did not identify payments by MTN to Saloojee and/or an entity associated with him in the accounting records.

#### **3.3.2 Payment made by Kilowan**

In a letter of demand from Kilowan to Saloojee, Kilowan claims to have advanced ZAR1 400 000 on behalf of Saloojee, that enabled Saloojee to purchase a property<sup>27</sup>.

A copy of an ABSA money market bank statement, with account name “*MR CA Kilowan*” (account number 9175112531) reflects an entry on 26 April 2007, with description “*TELLER TRANSFER DEBIT*” and a debit amount of ZAR1 400 000<sup>28</sup>. The recipient of the funds is not evident from the bank statement.

On 30 April 2007, Annegret Otto (“*Otto*”) from Gildenhuis Lessing Malatji Incorporated, a firm of attorneys, sent an e-mail to “*Latacha, Roy, me*”<sup>29</sup>. (We ascertained that Roy is an individual at Lew Geffen Sotheby’s International Realty. We did not identify who “*Latacha*” or “*me*” relates to). The subject of the e-mail is “*FW: ERF 1657 FAERIE GLEN*”. In the e-mail, Otto confirms receipt of ZAR270 000 on 19 April 2007 and the balance of the purchase price of ZAR1 400 000 on 26 April 2007. The latter date coincides with the transfer date reflected on Kilowan’s bank statement.

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<sup>26</sup> Refer to Exhibit B.13.16\_DOC ID: 0.7.43.975626 (09-03-IRAN-JENKINS-60-0016-0013)\_Kilowan’s passport

<sup>27</sup> Refer to Exhibit 2.04\_DOC ID 0.7.8.337510\_Kilowan letter of demand 27 October 2010

<sup>28</sup> Refer to Exhibit 2.02\_DOC ID 0.7.9.778779\_Kilowan ABSA money market bank statement

<sup>29</sup> Refer to Exhibit 2.03\_DOC ID 0.7.9.778782\_E-mail from transferring attorneys for Saloojee property confirming receipt of funds

Erf 1657 Faerie Glen was registered in the name of Saloojee and Loefemia Saloojee on 21 May 2007<sup>30</sup>.

### **3.3.3 Consideration of MTN records for reimbursement of Kilowan**

We considered the available MANCO accounting records, Kilowan's personnel file and certain bank accounts of MTN Mauritius during the period 2004 to 2007 and did not identify a repayment to Kilowan, or to his known local or foreign companies for the ZAR1 400 000 Kilowan claims to have paid for the benefit of Saloojee.

### **3.3.4 Persons involved in the alleged authorisation of the Saloojee payment**

We did not identify independent evidence that corroborates Kilowan's claim that the payment was authorised by Nhleko or Charnley. The only evidence we found was a memorandum purportedly prepared by Kilowan on behalf of Nhleko and Charnley authorising payments to consultants (see paragraph 2.3.4.1 above) and correspondence with Fakie, over the period December 2010 to January 2011, in which Kilowan claims authorisation from Nhleko for the alleged payment to Saloojee.<sup>31</sup>

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<sup>30</sup> Refer to Exhibit 2.03\_DOC ID 0.7.9.778782\_E-mail from transferring attorneys for Saloojee property confirming receipt of funds

<sup>31</sup> Refer to Exhibit 2.04\_DOC ID 0.7.8.337510\_Kilowan letter of demand 27 October 2011 Refer to Exhibit 2.05\_DOC ID 0.7.43.333730\_E-mail from Kilowan to Fakie dated 16 Dec 2010 and Refer to Exhibit 2.06\_DOC ID 0.7.43.277030\_18 Jan 2011 e-mail from Kilowan to Fakie on the Saloojee payment

## **4 MTN loans to fund the IEDC's share capital contribution and Irancell's license fee**

### **4.1 Background to the allegation**

The Turkcell complaint records the following in paragraph 9E:

*"MTN promised the Iranian Ministry of Defense through its state owned defense company Sairan ... and the "Bonyad" ... that MTN would pay all of Sairan and the Bonyad's 51% share of the €300 million license fee, plus its entire capitalization cost and a share transfer tax, in exchange for their assistance within the Ministry of Defense and with the Supreme Leader. MTN later paid these amounts. These promises and payments, made through sham loans MTN knew at the time would not be repaid, were essential to MTN's takeover of Turkcell's License."*

### **4.2 MTN Mauritius board resolution dated 22 June 2005**

According to the MTN Mauritius board resolution dated 22 June 2005, the directors of the board of MTN Mauritius resolved that Nhleko, Charnley or Nisbet were authorised to negotiate, finalise and sign the shareholders agreement in respect of Irancell<sup>32</sup>.

### **4.3 Shareholders agreement**

On 15 November 2005, the following parties entered into a shareholders' agreement<sup>33</sup>:

- The IEDC, as the Iranian shareholder (we understand that Sairan and the Bonyad were shareholders of the IEDC);
- MTN Mauritius, as the non-Iranian shareholder; and
- Irancell, as the company.

In terms of clause 2.03(a) of the shareholders agreement, 35% of the registered share capital of Irancell had already been paid. The table below sets out the paid and unpaid portions of the share capital of Irancell as of 15 November 2005:

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<sup>32</sup> Refer to Exhibit 3.01\_DOC ID 0.7.9.1175173\_MTN Mauritius Board resolution dated 22 June 2005

<sup>33</sup> Refer to Exhibit 3.02\_DOC ID 0.7.43.2634046\_Shareholders agreement dated 15 November 2005

Figure 1

Share capital	Percentage share capital	Value of share capital IRR billions	Entity	Percentage share capital per entity	Value of share capital portion IRR billions
Paid portion	35%	552.300	IEDC	51%	281.673
			MTN	49%	270.627
Unpaid portion	65%	1 025.700	IEDC	51%	523.107
			MTN	49%	502.593
<b>Total</b>	<b>100%</b>	<b>IRR1 578.000</b>	<b>IRR1 578.000</b>		

Source: Shareholders agreement dated 15 November 2005

In terms of the Shareholders agreement, the subscribed share capital of Irancell is IRR1.578 trillion (approximately USD173 900 000), which is divided into 157.8 million registered shares. The registered shares are classified in two groups:

- 49% of non-Iranian shares (MTN Mauritius), which amounts to IRR773.22 billion (USD85.2 million); and
- 51% Iranian shares (IEDC), which amounts to IRR804.78 billion (USD88.7 million).

#### 4.4 MTN Mauritius board resolution dated 16 November 2005

According to the MTN Mauritius board resolution dated 16 November 2005, the directors of the board of MTN Mauritius resolved that Nhleko, Charnley or Nisbet were authorised to sign all agreements relating to the funding that MTN would provide to Irancell and the IEDC<sup>34</sup>.

#### 4.5 Loan 1A and Loan 1B – IEDC’s share capital contribution to Irancell

##### 4.5.1 Loan 1A

On 15 November 2005, the IEDC, Irancell and MTN Mauritius entered into loan agreement 1A (Loan 1A). The following individuals represented the contracting parties to Loan 1A:

- MTN Mauritius (Lender) – Charnley;

<sup>34</sup> Refer to Exhibit 3.03\_ DOC ID 0.7.43.709139\_MTN Mauritius Board resolution dated 16 November 2005



- Irancell (Borrower) – Mahmoudzadeh and Dezfouli; and
- IEDC (Guarantor) – Mokhber and Ranjibar.

In terms of Loan 1A, MTN Mauritius disbursed an amount of IRR804.780 billion (approximately USD88.7 million) to Irancell. In terms of Loan 1B (discussed in paragraph 4.5.2 below), Irancell would disburse these funds to the IEDC to provide it with funds to enable it to pay its share capital contribution of 51%, which amounted to IRR523.107 billion (65% of IEDC's unpaid portion of the share capital) and to repay a previous loan of IRR281.673 billion (35% of IEDC's paid portion of the share capital) to Irancell.

The salient terms of Loan 1A were<sup>35</sup>:

- The interest payable to MTN was Libor (rate for deposits in USD for a period of six months) plus 4% per annum, compounded bi-annually;
- The repayment period is each successive period of six calendar months, commencing on the date on which the loan has been disbursed;
- Repayments would first be allocated to cover interest and the remaining amounts would be allocated to the repayment of the principal;
- Loan 3 (discussed in paragraph 4.6 below) was required to be repaid prior to Loan 1A;
- Loan 1A was secured by a pledge of IEDC's shares (80 477 996 Irancell shares) to MTN Mauritius; and
- In the event that Loan 1A was not repaid by the final maturity date, default compensation of 2% per annum was payable on the outstanding amounts. The final maturity date of Loan 1A is implied as 10 July 2009, being the third anniversary date of commencement date of the license agreement. A six month grace period, subsequent to final maturity date was allowed in terms of the loan agreement and therefore it appears that Loan 1A was due and payable on 10 January 2010.

#### **4.5.2 Loan 1B**

On 15 November 2005 the IEDC, Irancell and MTN Mauritius entered into loan agreement 1B (Loan 1B). The following individuals represented the contracting parties to Loan 1B:

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<sup>35</sup> Refer to Exhibit 3.04\_DOC ID 0.7.43.2116328\_Loan 1A dated 15 November 2005

- Irancell (Lender) – Mahmoudzadeh and Dezfouli.
- IEDC (Borrower)– Mokhber and Ranjibar; and
- MTN Mauritius (capacity not specified) – Charnley;

The salient terms of Loan 1B were similar to those of Loan 1A, with an amount equal to that of Loan 1A, save for the inclusion of the following additional terms<sup>36</sup>:

- In the event that Irancell distributed a dividend to its shareholders, the IEDC's portion would automatically be distributed to MTN Mauritius to be set off against any amounts outstanding under Loan 1B; and
- In the event of a public offer of Irancell shares, the proceeds relating to the IEDC's portion would be applied to the repayment of Loan 1B (Irancell loan to the IEDC), which would result in the repayment of Loan 1A (MTN Mauritius loan to Irancell).

According to clause 2 of the Loan 1B agreement, Loan 1B was only a book entry in Irancell's records once the funds had been disbursed by MTN Mauritius, and there was no flow of funds for Loan 1B between Irancell and the IEDC.

The purpose of Loans 1A and 1B was to provide the IEDC with funds, to enable the IEDC to pay its share capital contribution of 51% to Irancell. This included a repayment of a loan by IEDC to Irancell that Irancell had previously advanced to the IEDC to purchase the 35% shareholding in Irancell.

#### **4.6 Loan 3 – Irancell license fee**

In terms of Loan 3, MTN Mauritius disbursed an amount of €300 million (approximately USD351.9 million) to Irancell to enable Irancell to pay the upfront license fee due to the MCIT.

The following individuals represented the contracting parties to the loan agreement:

- MTN Mauritius – Charnley; and
- Irancell – Mahmoudzadeh and Dezfouli.

The salient terms of Loan 3 are<sup>37</sup>:

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<sup>36</sup> Refer to Exhibit 3.05\_DOC ID 0.7.43.2116328\_Loan 1B dated 15 November 2005

<sup>37</sup> Refer to Exhibit 3.06\_DOC ID 0.7.43.2116328\_Loan 3 dated 15 November 2005

- The interest payable to MTN Mauritius is Libor (rate for deposits in USD for a period of six months) plus 4% per annum, which is compounded bi-annually;
- The repayment period is each successive period of six calendar months, commencing on the date on which the loan was disbursed;
- Repayments will first be allocated to cover interest and the remaining amounts will be allocated to the repayment of the principal;
- Irancell is required to repay Loan 3 to the extent that it has available resources, as determined by its Board;
- Loan 3 is required to be repaid prior to the repayment of Loan 1A; and
- In the event that Loan 3 is not repaid by the final maturity date, default compensation of 2% per annum is payable on the outstanding amounts. The final maturity date of Loan 3 is implied as 21 November 2009, being the fourth anniversary on which the loan was disbursed.

## **4.7 Transfer of funds to Irancell for Loan 1 A/B and Loan 3**

### **4.7.1 Loan 1 A/B**

On 15 December 2005, MTN Mauritius instructed Standard Bank Mauritius to transfer USD173 900 000 to Melli Bank Plc, for the benefit of Irancell<sup>38</sup>. The USD173.9 million consists of USD88.7 million (IEDC's capital contribution of 51% in Irancell) and USD85.2m (MTN Mauritius capital contribution of 49 % shareholding). This payment was authorised by Nisbet<sup>39</sup>. On 25 December 2005, Bank Melli Iran confirmed receipt of USD173 900 000 (with a value date of 16 December 2005) from MTN Mauritius and transfer thereof to an Irancell US Dollar account held at Bank Melli Iran<sup>40</sup>.

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<sup>38</sup> Refer to Exhibit 3.07\_DOC ID 0.7.9.1175824 and DOC ID 0.7.9.1180459 \_Letter dated 15 December 2005, from MTN Mauritius, addressed to Standard Bank Mauritius, regarding transfer of USD173.9 million to Irancell and Standard Bank Mauritius statement for MTN Mauritius general account 014/00/150003/05 reflecting a transfer of USD 173 900 105

<sup>39</sup> Refer to Exhibit 3.08\_DOC ID 0.7.9.1181491\_MTN Mauritius authorisation for payment letter dated 15 December 2005, authorizing payment of USD 173 900 000 in respect of the investment in Iran

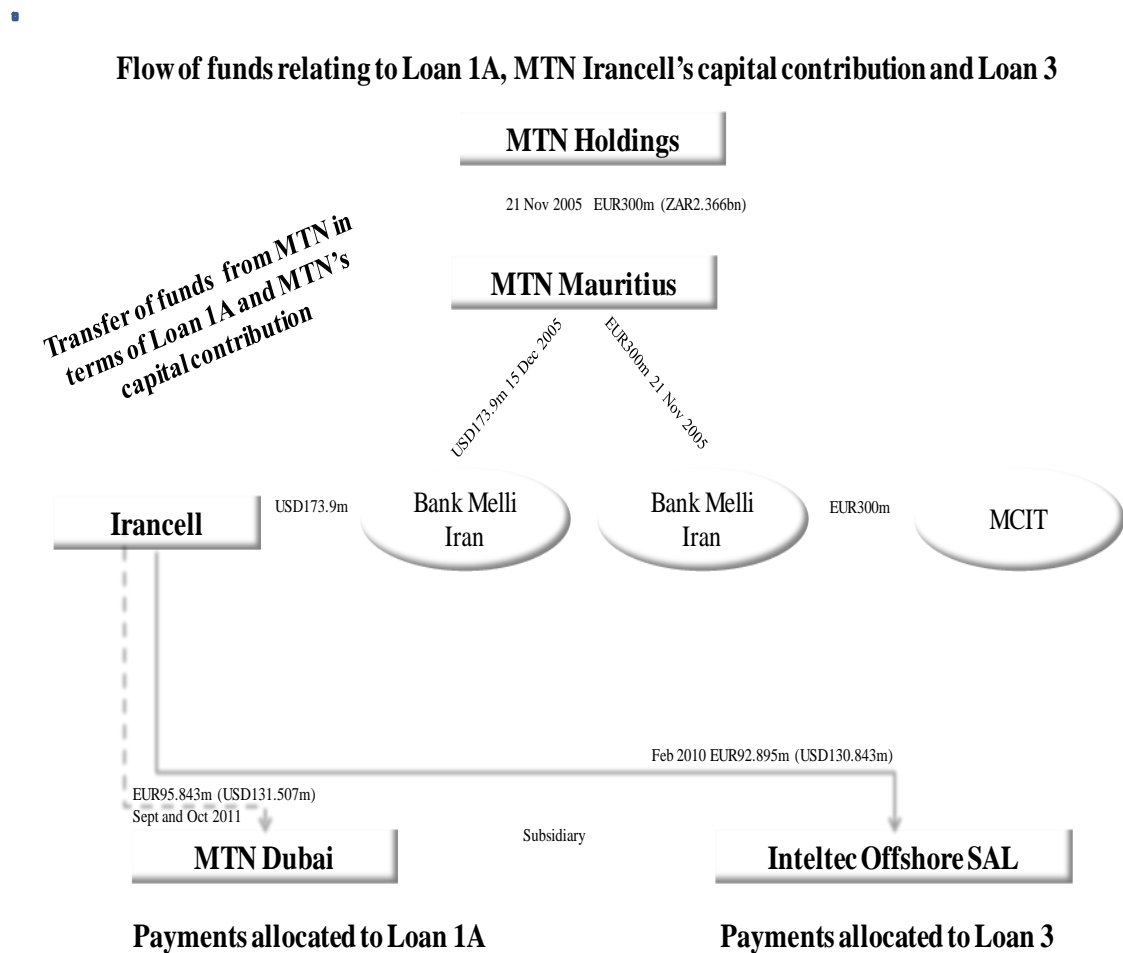
<sup>40</sup> Refer to Exhibit 3.09\_DOC ID 0.7.43.740808\_Certificate number 2610 dated 25 December 2005 from Bank Melli regarding USD173 900 000 payment in respect of the investment in Irancell

**4.7.2 Loan 3**

On 21 November 2005, MTN Holdings transferred ZAR2 365 530 000 (€300 000 000) to Bank Melli *via* MTN Mauritius for further credit to the MCIT of Iran<sup>41</sup>. On 6 December 2005, Bank Melli confirmed receipt of the €300 000 000 (with a value date of 21 November 2005), from MTN Mauritius for the upfront license fee and indicated that it will transfer the amount to the account of the MCIT<sup>42</sup>.

The diagram below sets out the transfer of funds to Irancell as explained above and the payments allocated to Loan 1A and Loan 3 as discussed in paragraph 4.15 below.

*Figure 2*



*Source: Prepared by KPMG*

<sup>41</sup> Refer to Exhibit 3.10\_DOC ID 0.7.9.1633149\_E-mail dated 30 May 2012 from Potgieter to KPMG regarding the transfer of the EUR300 000 000 in respect of Loan 3

<sup>42</sup> Refer to Exhibit 3.11\_DOC ID 0.7.43.575395\_Bank Melli certificate number 33446 confirming transfer of the EUR300 000 000 in respect of Loan 3, 21 November 2005

#### **4.8 Loan cession and assignment agreement dated 9 November 2009**

MTN Mauritius ceded all its rights and obligations in terms of Loan 1A and Loan 3 to MTN Dubai on 9 November 2009. The cession agreement indicates that the outstanding balances (principal and interest) of Loan 1A, and Loan 3 as at 9 November 2009, were USD121 127 445 and USD481 953 372 respectively<sup>43</sup>.

#### **4.9 Extension of the repayment of Loan 1A and Loan 3**

According to paragraph 4.5.1 above, the implied final maturity date for Loan 1A was 10 January 2010. It appears that the final maturity date was amended, as according to a MTN Dubai proposed resolution, the repayment process in respect of Loan 1A was only approved by the Board of Directors of MTN Irancell on 2 October 2010<sup>44</sup>. In terms of this MTN Irancell approval, the repayment process was to commence immediately and Loan 1A was to be settled by 21 March 2011, by allocating a pro rata portion of the dividend due to the IEDC, sufficient to repay Loan 1A. According to MTN Group Finance, Loan 1A was settled during October 2011.

According to paragraph 4.6 above, the implied final maturity date for Loan 3 was 21 November 2009. It appears that the final maturity date was amended, according to a MTN Dubai proposed resolution the repayment process in respect of Loan 3 was only approved by the Board of Directors of MTN Irancell on 2 October 2010. The MTN Dubai proposed resolution resolved that, upon receiving the full repayment of Loan 1A and the two bridge facilities plus accrued facility charges, MTN Dubai will extend Loan 3 under the same terms and conditions for a three year period from 2011, when it is signed, to 2013. It was further resolved that the option to extend for an additional two years will be dependent on regular interest repayments and FIPPA registration. According to the MTN Group AFS for 2011, Loan 3 is repayable in 2014<sup>45</sup>.

#### **4.10 Penalty interest on Loan 1 A and Loan 3**

As discussed in paragraphs 4.5 and 4.6 above, the implied final maturity dates for Loan 1A and Loan 3 were 10 January 2010 and 21 November 2009, respectively. These loan agreements

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<sup>43</sup> Refer to Exhibit 3.17\_Doc ID 0.7.9.1205388\_Loan cession and assignment agreement dated 9 November 2009

<sup>44</sup> Refer to Exhibit 3.18\_DOC ID 0.7.8.2015084 and 0.7.43.324359 (extract only)\_MTN Dubai proposed board resolution (and attached loan repayment schedule - two copies on file as each copy of the MTN Dubai proposed board resolution is signed by different individuals)

<sup>45</sup> Refer to Exhibit 3.19\_DOC ID 0.7.9.1633240\_Extract from the 2011 MTN Group AFS

indicated that in the event that the loans are not repaid by the final maturity date, MTN Mauritius/Dubai was entitled to penalty interest of an additional 2% per annum on the outstanding amounts. Based on our recalculations of the outstanding balance and the MTN Group AFS (2009 to 2011), it is apparent that MTN did not charge penalty interest on Loan 1A and Loan 3.

#### **4.11 The disclosure of Loans 1 A/B and Loan 3 in the MTN Group AFS**

The MTN Group AFS disclosed MTN's interest in Irancell as a joint venture, using the proportionate consolidation method of accounting, as follows:

- Loan 1B (recorded in the MTN Group AFS as Loan to the IEDC), which represents 51% of Loan 1B to the IEDC; and
- Loans to the Irancell:
  - Loan 1A (recorded in the MTN Group AFS as Loan 1) which represents 49% of Loan 1A; and
  - Loan 3 (recorded in the MTN Group AFS as Loan 2) which represents 51% of Loan 3 for the license fees.

The table below reflects the outstanding balances for Loan 1 A/B and Loan 3, as disclosed in the notes to the MTN Group AFS, as well as our recalculated balances<sup>46</sup>:

*Figure 3*

<b>Financial year</b>	<b>Loan 1A (Loan 1 to Irancell)  USDm</b>	<b>Loan 1B (Loan to IEDC)  USDm</b>	<b>Total Loan 1 (calculated by KPMG)  USDm</b>	<b>Loan 3 (Loan 2- 51% in AFS)  USDm</b>	<b>Loan 3 (100% calculated by KPMG)  USDm</b>
2005	43.6	43.6	87.2	174.4	342.0
2006	49.7	58.6	108.3	198.1	388.5
2007	54.4	58.8	113.2	217.0	425.5

<sup>46</sup> Refer to Exhibit 3.20\_DOC ID 0.7.9.1633209 (2005), DOC ID 0.7.8.2219519 (2006), DOC ID\_0.7.9.1633120 (2007), DOC ID 0.7.43.770339 (2008), DOC ID 0.7.9.1633127 (2009), DOC ID 0.7.9.1633273 (2010) and DOC ID 0.7.9.1633240 (2011)\_Extracts from MTN Group AFS for the period 2005 to 2011

<b>Financial year</b>	<b>Loan 1A (Loan 1 to Irancell)  USDm</b>	<b>Loan 1B (Loan to IEDC)  USDm</b>	<b>Total Loan 1 (calculated by KPMG)  USDm</b>	<b>Loan 3 (Loan 2- 51% in AFS)  USDm</b>	<b>Loan 3 (100% calculated by KPMG)  USDm</b>
2008	115.3 <sup>47</sup>	58.8	115.3	458.4 <sup>48</sup>	458.4
2009	62.0	62.4	124.4	248.0	486.3
2010	61.5 <sup>49</sup>	64.0	125.5	194.0	380.4
2011	-	-	-	191.5 <sup>50</sup>	375.5

Source: MTN Group AFS and KPMG

#### 4.12 Payments of Loan 1A and Loan 3

MTN Group Finance provided loan schedules (“*schedules*”) reflecting repayments allocated to Loan 1A and Loan 3<sup>51</sup>. The payments were received in Euro. The table below sets out MTN’s allocations, according to the schedules, of these repayments to Loan 1A and Loan 3:

Figure 4

<b>Month</b>	<b>Loan 1 A €</b>	<b>Loan 1 A USD</b>	<b>Loan 3 €</b>	<b>Loan 3 USD</b>
February 2010	-	-	92 895 217	130 843 232
September 2011	55 556 703	76 662 694	-	-
October 2011	26 875 171	36 445 741	-	-
October 2011	13 411 382	18 398 934	-	-
<b>Total</b>	<b>€5 843 256</b>	<b>USD131 507 369</b>	<b>€2 895 217</b>	<b>USD130 843 232</b>

Source: MTN Group Finance loan schedules

<sup>47</sup> The notes to the MTN Group AFS reflects the full amount and not the proportionate amount

<sup>48</sup> The notes to the MTN Group AFS reflects the full amount and not the proportionate amount

<sup>49</sup> The notes to the MTN Group AFS did not reflect an amount and we recalculated the amount based on the proportionate accounting principles

<sup>50</sup> The notes to the MTN Group AFS only reflects the ZAR amount, which we used to recalculate the USD amount

<sup>51</sup> Refer to Exhibit 3.21\_DOC ID 0.7.9.1633263, 0.79.1633147 and 0.7.9.1633150 MTN Group Finance schedules for Loan 1A and Loan 3

We discuss the payments allocated to Loan 1A and Loan 3 in the paragraphs below.

#### **4.12.1 Loan 1A**

MTN Group Finance allocated payments as per the schedules, to deposits reflected on the MTN Dubai bank statements. We confirmed that the amounts allocated by MTN Group Finance to Loan 1A on the schedules, reconciled to the MTN Dubai bank statements provided by MTN<sup>52</sup>. The details of the depositors on the MTN Dubai bank statements do not relate to Irancell or the IEDC. Therefore, we could not confirm if Irancell or the IEDC made these payments to MTN Dubai, which were allocated to Loan 1A by MTN Group Finance, to MTN Dubai.

Our calculations of the outstanding balance of Loan 1A, which includes the payments allocated by MTN Group Finance, suggest a possible over payment of USD384 363 (€276 242) in respect of Loan 1A.

MTN Group Finance states that Loan 1A has been repaid and we identified the following information that supports this statement:

- MTN Mauritius passed a board resolution on 3 November 2011, to release the pledge of shares from the IEDC that related to Loan 1A. In terms of this resolution, this pledge was to be released because Loan 1A had been settled in full<sup>53</sup>;
- According MTN Group Finance schedules, Loan 1A was fully settled in November 2011<sup>54,55</sup>; and
- According to the audited MTN Group AFS for 2011, Loan 1A was fully repaid in 2011<sup>56</sup>.

Loan 1A stipulated that Loan 3 should be repaid before the repayment of Loan 1A. However, according to MTN's schedules, Loan 1A was settled prior to Loan 3.

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<sup>52</sup> Refer to Exhibit 3.22\_DOC ID 0.7.9.1633150\_MTN Dubai Standard Chartered bank statements

<sup>53</sup> Refer to Exhibit 3.23\_DOC ID 0.7.43.203728\_MTN Mauritius written resolution of the Directors, dated 3 November 2011 (refers to Irancell release of pledge in respect of Loan 1A)

<sup>54</sup> Refer to Exhibit 3.24\_DOC ID 0.7.9.1633150 "*Iran Loan inflows Summary as at 300412 with referencing to bank statements*", document received from Sibiya, identifying receipt of funds from Iran and allocation thereof

<sup>55</sup> Refer to Exhibit 3.25\_DOC ID 0.7.9.16633147\_Document titled "*MTN Iran Loans Reconciliations*" (received from Risiba of MTN) which includes a schedule in respect of Loan 1A detailing accrued interest and payments allocated to Loan 1A

<sup>56</sup> Refer to Exhibit 3.19\_DOC ID 0.7.9.1633240\_Extract from 2011 the MTN Group AFS



#### **4.12.2 Loan 3**

We obtained a letter from MTN Mauritius dated 18 February 2010, addressed to MTN Irancell, which confirms receipt of €143 081 041 (this receipt consisted of four tranches of payments)<sup>57</sup>. The amount of €143 081 041 includes €92 895 217 that MTN Group Finance allocated to Loan 3. According to this letter, these payments were in respect of the settlement of interest on Loan 3 and the first and second bridge credit facility agreements.

In support of the four tranches of payments, we obtained four swift messages confirming the transfer from MTN Irancell's Bank Mellat bank account, to Inteltec Offshore SAL's ("*Inteltec*") Byblos bank account in Beirut<sup>58</sup>. Based on the MTN Group AFS, Inteltec was listed as a subsidiary of the MTN Group in 2010<sup>59</sup>. We do not know if Inteltec transferred the funds it received in respect of Loan 3 to MTN Dubai and therefore we could not confirm the repayment of this interest to MTN Dubai.

MTN claims this payment was an interest payment for Loan 3. In support of this claim we identified an e-mail dated 17 September 2010, from a Carel Gericke (MTN) to Millar which states that USD130 843 128 32 (paid in Euro) was in respect of interest payments<sup>60</sup>.

According to the schedule provided by MTN Group Finance, the outstanding balance of Loan 3 as at 31 May 2012, was USD395 445 852<sup>61</sup>. According to our calculations, which includes the repayment allocated by MTN Group Finance, the outstanding balance of Loan 3 as at 31 May 2012 was USD395 083 488 (USD362 364 difference).

#### **4.13 Payment of share transfer duties and other costs**

We identified the following costs that were relevant to the loan funding:

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<sup>57</sup> Refer to Exhibit 3.26\_ DOC ID 0.7.43.1727643\_Letter from MTN Mauritius regarding receipt of funds dated 18 February 2010

<sup>58</sup> Refer to Exhibit 3.27\_ DOC ID 0.7.9.1633357 and DOC ID 0.7.9.1633150\_Swift messages for transfers from Irancell to Inteltec and Byblos Bank online statement

<sup>59</sup> Refer to Exhibit 3.20\_ DOC ID 0.7.9.1633273\_2010 MTN Group AFS

<sup>60</sup> Refer to Exhibit 3.28\_ DOC ID 0.7.9.1633260\_An e-mail dated 17 September 2010 from a Carel Gericke (of MTN) to Debbie Millar regarding payment of Loan 3

<sup>61</sup> Refer to Exhibit 3.25\_ DOC ID 0.7.9.16633147\_Document titled "*MTN Iran Loans Reconciliations*" (received from Risiba of MTN) which includes a schedule in respect of Loan 1A detailing accrued interest and payments allocated to Loan 1A

#### 4.13.1 Payment of share transfer duties

According to a share transfer agreement dated 13 October 2005, Mazaffar Pour Ranjbar, Hosseinali Farzad and Mahmoudzadeh had to transfer their shareholding in Irancell, which equated to 49%, to MTN Mauritius<sup>62</sup>. According to an amendment to the share transfer agreement dated 13 October 2005, MTN had to compensate the Iranian shareholders for any cost and expenses incurred due to the transfer of Irancell shares to MTN<sup>63</sup>.

On 7 November 2005, MTN Mauritius transferred USD3 600 000 to MTN’s Iran Branch account held at SAMAN Bank Corporation<sup>64</sup>. The transfer was for the payment of share transfer duties of IRR 30 929 800 800 to the State Taxation Affairs Organisation in respect of the following parties<sup>65</sup>:

*Figure 5*

<b>Irancell shares transferred from</b>	<b>Transferred to</b>	<b>Amount IRR</b>
Mozafar Pour Ranjbar	Nhleko	400
Mahmoudzadeh	Charnley	400
Mahmoudzadeh	MTN	30 928 798 800
Asgharzadeh Zaferani – Gholamhussein	Unknown	400
Morteza Zahraei	Unknown	400
Hussein Ali Farzad	Kilowan	400
<b>Total</b>		<b>IRR30 928 800 800</b>

*Source: State Taxation Affairs Organisation receipts and Kilowan’s emails dated 28 May 2006 and 11 July 2006*

<sup>62</sup> Refer to Exhibit 3.12 \_DOC ID 0.7.43.975094\_Share transfer agreement dated 13 October 2005

<sup>63</sup> Refer to Exhibit 3.13 \_DOC ID 0.7.43.975094\_Amendment to share transfer agreement dated 13 October 2005

<sup>64</sup> Refer to Exhibit 3.14 \_DOC ID 0.7.9.1173681\_ Documents recording the transfer of USD3 600 000 to MTN Iran

<sup>65</sup> Refer to Exhibit 3.15\_ DOC ID 0.7.9.1296126 and DOC ID 0.7.9.325403 and \_E-mail s from Kilowan dated 28 May 2006 and 11 July 2006 (including receipts from State Taxation Affairs Organisation)

#### **4.13.2 Potential payment of other IEDC fees**

We identified a letter dated 26 June 2006 from the IEDC addressed to Kilowan requesting payment of expenses incurred by the IEDC, prior to the registration of Irancell, pursuant to exhibit 1 of the Share Transfer Agreement dated 13 October 2005<sup>66</sup>.

A bill of costs attached to the letter indicates that the pre-registration expenses amounted to IRR26 003 207 491 (approximately USD2.6 million)<sup>67</sup>. We did not identify accounting entries indicating that MTN refunded the IEDC for the pre-registration expenses

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<sup>66</sup> Refer to Exhibit 3.16\_Doc ID 0.7.43.973024\_IEDC letter dated 26 June 2006 regarding the payment of pre-registration expenses

<sup>67</sup> Converted at a rate of IRR 10 000 per USD 1

## **5 Alleged meetings, gifts and entertainment**

### **5.1 Introduction**

We were requested by Freshfields Bruckhaus Deringer to address specific questions around certain of the alleged meetings and our findings are structured to provide answers to those specific questions. This request required us to focus on the transactions and/or meetings that relate to Nhleko, Charnley and Kilowan. We also included other MTN officials that travelled with Nhleko, Charnley and/or Kilowan.

The meetings are alleged to have taken place over a period of 12 different months, during 2004 to 2007. In the paragraphs below we summarise our findings to these questions, based on available documents and information.

Our procedures were focused on identifying transactions relevant to meetings, gifts and entertainment.

This section is based on our analysis of three categories of documents:

- Accounting records – extracts for the period 2004 to 2007 of MANCO and MTN International Africa accounting records relating to travel, gifts and entertainment transactions;
- Travel records – travel data base from Lesedi (MTN’s in-house travel agent) during 2004 to 2007, which indicates flight reservations for MTN employees. However, a flight reservation noted in the travel records does not confirm that the passenger travelled to the relevant destination; and
- Documents identified through the document review system that includes, *inter alia*, correspondence and itineraries.

Our findings in this section are therefore in many respects not conclusive, unless there is direct evidence confirming the events or transactions.

### **5.2 Alleged meeting between Charnley and Ghorbanoghli**

The Turkcell complaint alleges that Charnley visited Ghorbanoghli during the initial bid process in late 2003 or early 2004, where she learned that the MTN Group was unlikely to receive the

License because Turkcell had underbid MTN, and MTN lacked any serious connections within the Iranian government and business community.

The Turkcell complaint furthermore alleges that Charnley met with Ghorbanoghli in March 2004, where Ghorbanoghli allegedly impressed upon MTN that its only chance to “beat out” Turkcell’s License bid that it had won on commercial terms was to display its political connections and use its influence to favour the Iranian government.

### **5.2.1 Alleged meeting between Charnley and Ghorbanoghli in late 2003/early 2004 and prior to 18 February 2004**

Travel records, correspondence and other relevant documents indicate that:

- Charnley and Nhleko may have been in Iran during the period 25 January 2004 to 30 January 2004<sup>68</sup>, as part of Minister Mlambo-Ngcuka’s delegation. Charnley again travelled to Iran during the period 3 February 2004 to 5 February 2004<sup>69</sup>; and
- Nisbet also travelled to Iran during the periods 12 January to 14 January 2004 and 26 January to 29 January 2004 (correspondence indicates that this visit relates to a meeting with the local Iranian shareholders) and again during the period 2 February 2004 to 5 February 2004<sup>70</sup>.

The Turkcell complaint does not allege that Nisbet attended the alleged meetings with Ghorbanoghli. However, indications are that he and Charnley were in Iran at the same time.

Based on correspondence, the key objective of the visit (25 January 2004 to 30 January 2004) was to meet with Iranian Government officials, with the right level of South African government support and to meet with the local partners. Minister Mlambo-Ngcuka’s provisional timetable indicates meetings with *inter alia* Rowhani, a Mr Zahed, Head of Atomic Energy Organisation and a dinner function hosted by the then South African Ambassador. The provisional timetable does not make any direct reference to a meeting with Ghorbanoghli, but it

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<sup>68</sup> Refer to Exhibit B.4.1\_DOC ID: 0.7.8.2603035\_Email regarding Mlambo-Ngcuka’s visit to Iran and B.1\_Lesedi database\_2709 and 1828

<sup>69</sup> Refer to Exhibit B.5.2\_DOC ID: 0.7.9.1615746\_Summary of Overseas travel for Charnley and refer to Exhibit B.1\_Lesedi database\_2710

<sup>70</sup> Refer to Exhibit B.1\_Lesedi database\_450 and B.4.1\_DOC ID: 0.7.8.2603035\_Email regarding Mlambo-Ngcuka’s visit to Iran and also refer to Exhibit B.1\_Lesedi database\_448 and 449

does make reference to a meeting with the Iranian Deputy Minister of Foreign Affairs, Dr Adele.

### **5.2.2 Charnley's whereabouts in March 2004 and the alleged meeting with Ghorbanoghli**

The travel records and relevant documents indicate that Charnley was in Iran during the period 7 March to 10 March 2004<sup>71</sup>. We did not identify documents or accounting records which indicate that Charnley met with Ghorbanoghli during this visit to Iran.

## **5.3 Alleged meeting between MTN and Vafaie in March 2004**

The Turkcell complaint alleges that in early 2004, MTN (no individuals specified) learned that Sairan was seeking opportunities to procure certain military equipment from South Africa, a purchase that had previously been blocked by the South African Conventional Arms Control Committee. MTN allegedly promptly arranged a meeting in March 2004 with the Vice President of Sairan, Vafaie, to discuss how MTN could assist in procuring the defense items.

### **5.3.1 Whereabouts of Nhleko and Charnley in March 2004**

The travel records and relevant documents indicate that Charnley was in Iran during the period 7 March 2004 to 10 March 2004. We did not identify documents regarding meetings Charnley attended during March 2004.

We did not identify documents or accounting records indicating that Nhleko was in Iran during March 2004. Additionally, we did not identify documents indicating the whereabouts of Kilowan during March 2004.

## **5.4 Alleged meeting between MTN and Hamed Aref in June/July 2004**

The Turkcell complaint alleges that in June or July 2004, Hamad Aref ("Aref"), son of the then-presiding Vice President of Iran, invited MTN (no individuals identified) to a meeting near the Office of the President.

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<sup>71</sup> Refer to Exhibit B.6.1\_DOC ID: 0.7.9.1615977, B.6.2\_DOC ID: 0.7.9.1615746\_International expense claim form and summary of overseas travel expenses for Charnley and Exhibit B.1\_Lesedi database\_2712

#### **5.4.1 Whereabouts of Nhleko, Charnley, Nisbet and Kilowan in June/July 2004**

We did not obtain documents indicating that MTN officials (other than Kilowan) were in Iran during June 2004. According to a note on an e-mail, signed by “IC”, Kilowan was going to travel to Iran shortly after 3 June 2004<sup>72</sup>.

Correspondence indicates that Charnley travelled to Iran during the period 19 July 2004 to 23 July 2004, although no flight details appear in the travel records<sup>73</sup>.

The travel records and the relevant documents indicate that Nhleko and Nisbet also travelled to Iran during the period 19 July 2004 to 22 July 2004<sup>74</sup>.

Correspondence indicates that Kilowan was in Iran on 3 July 2004 to 4 July 2004 and 13 July 2004<sup>75</sup>.

#### **5.4.2 Alleged meeting between MTN and Aref**

In a memorandum dated 4 July 2004, Kilowan stated that during the period 3 July 2004 to 4 July 2004, he attended meetings with Mokhber, accompanied by Aref and Sarraf<sup>76</sup>. We did not identify other documents corroborating that these meetings occurred.

### **5.5 Minister Lekota’s visit to Iran in August 2004**

The Turkcell complaint alleges that in August 2004, MTN organised and paid for a trip to Iran by Minister Lekota. The complaint alleges that “*MTN executives*” (individuals not identified) accompanied Minister Lekota during the entirety of his trip to Iran.

#### **5.5.1 Whereabouts of Nhleko, Charnley and Kilowan in August 2004**

Correspondence and an expense claim indicate that Nhleko and Charnley travelled to Iran during the period 15 August 2004 to 17 August 2004, as part of Minister Lekota’s delegation<sup>77</sup>.

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<sup>72</sup> Refer to Exhibit B.7.1\_DOC ID: 0.7.43.2604225\_E-mail sent from Pischevar

<sup>73</sup> Refer to Exhibit B.8.3\_DOC ID: 0.7.43.2604566\_email from Pischevar confirming that he secured a follow up meeting with the good partners and Exhibit B.8.1\_DOC ID: 0.7.9.806282\_Letter from Charnley to Basadien dated 9 July 2004

<sup>74</sup> Refer to Exhibit B.1\_Lesedi database\_612, 1844, B.8.1\_DOC ID: 0.7.9.806282\_Letter from Charnley to Basadien and B.8.3\_DOC ID: 0.7.43.2604566\_email from Pischevar confirming that he secured a follow up meeting with the good partners.

<sup>75</sup> Refer to Exhibit B.8.4\_DOC ID: 0.7.9.1033668\_E-mail regarding Kilowan’s whereabouts

<sup>76</sup> Refer to Exhibit B.8.2\_DOC ID: 0.7.9.778979\_confidential memo from Kilowan regarding visit from 3-4 July 2004.

The MTN International Africa accounting records indicate that Kilowan travelled to Iran on 23 August 2004<sup>78</sup>. This is supported by a letter dated 18 August 2004, which states that Kilowan will be arriving in Iran on 24 August 2004. We did not identify additional documents or accounting records indicating Kilowan's whereabouts during August 2004.

### **5.5.2 Alleged MTN funding of a visit by Lekota to Iran in mid 2004 (possibly August 2004)**

We did not identify documents or accounting records indicating that MTN funded Minister Lekota's visit to Iran during the period 15 August 2004 to 17 August 2004. However, we identified a document that indicates on 23 August 2004, various Ericsson P900 handsets were issued to amongst others "*Lekota*". The document further indicates that an account limit of ZAR1 000 was applicable to the handset issued to "*Lekota*"<sup>79</sup>.

### **5.5.3 Alleged MTN sponsorship for Lekota dinner and official dinner at the Ministry of Defence**

We did not identify documents or accounting records indicating that MTN funded:

- A dinner at the hotel where Minister Lekota resided during his visit to Iran during the period 15 August 2004 to 17 August 2004; or
- An official dinner at the Minister of Defence or that the dinner was attended by Nhleko or Charnley.

### **5.6 Alleged meetings in July 2004 between Nhleko, Charnley, Saloojee, Mahmoudzadeh and Minister Shamkhani**

With regards to meetings in July 2004, the Turkcell complaint alleges that Charnley met with Saloojee in his office. Saloojee is also alleged to have had dinner in July 2004 with Mahmoudzadeh, Minister Shamkhani, and MTN representatives Charnley and Nhleko.

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<sup>77</sup> Refer to Exhibit B.9.8\_DOC ID: 0.7.9.993208\_thanking letter from Nhleko to Lekota, B.9.10\_DOC ID: 0.7.9.1614387\_expense claim for Charnley and B.9.1\_DOC ID: 0.7.43.2604534\_letter from Charnley to Lekota, requesting to form part of his delegation

<sup>78</sup> Refer to Exhibit B.9.13\_DOC ID: 0.7.43.2604498\_Letter from Nhleko thanking Mahmoudzadeh and B.3\_International Africa accounting records\_3430\_

<sup>79</sup> Refer to Exhibit B.9.12\_DOC ID: 0.7.9.856442\_Simcelldatabase word document regarding phone gifts



### **5.6.1 Whereabouts of Charnley and Nhleko in July 2004**

Correspondence indicates that Charnley travelled to Iran during the period 19 July 2004 to 23 July 2004, although no flight details appear in the travel records<sup>80</sup>.

The travel records and the relevant documents indicate that Nhleko and Nisbet travelled to Iran during the period 19 July 2004 to 22 July 2004<sup>81</sup>.

### **5.6.2 Alleged MTN funding of the dinner attended by Nhleko, Charnley, Mahmoudzadeh and Minister Shamkhani in July 2004**

A draft letter from Charnley dated 9 July 2004, indicates that Nhleko, Nisbet and Charnley would have travelled to Iran during the period 19 July 2004 to 23 July 2004, and were scheduled to meet with officials from both the Ministry of Defence and the Ministry of Information Technology and Communications. The draft letter indicates that the arrangements were made by the South African Embassy and that Saloojee was scheduled to accompany them to the meetings<sup>82</sup>.

We did not identify transactions in the accounting records, indicating that MTN funded a dinner with Minister Shamkhani in July 2004.

### **5.6.3 Other alleged meetings with Saloojee in July 2004**

“*Shervin*” (possibly Shervin Pishevar) indicated in an e-mail dated 19 July 2004, that he had arranged meetings in Iran with “*the good partners*” and a Dr Alaghband on behalf of MTN. He furthermore indicated that he was attempting to arrange a meeting with the “*MD of ICI*”. Nisbet indicated in the same e-mail string that they (Nhleko, Nisbet, and Charnley) were scheduled to meet with Dr Fardis (official of the Ministry of Post, Telegraph & Telephone responsible for the 2<sup>nd</sup> GSM bidding process) that same week in Iran. A draft letter indicates that Saloojee was scheduled to accompany the MTN delegation.<sup>83</sup> We could not establish the identity of “*the*

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<sup>80</sup> Refer to Exhibit B.8.3\_DOC ID: 0.7.43.2604566\_email from Pishevar confirming that he secured a follow up meeting with the good partners and Exhibit B.8.1\_DOC ID: 0.7.9.806282\_Letter from Charnley to Basadien dated 9 July 2004

<sup>81</sup> Refer to Exhibit B.1\_Lesedi database\_612, 1844, B.8.1\_DOC ID: 0.7.9.806282\_Letter from Charnley to Basadien and B.8.3\_DOC ID: 0.7.43.2604566\_email from Pishevar confirming that he secured a follow up meeting with the good partners.

<sup>82</sup> Refer to Exhibit B.8.1\_DOC ID: 0.7.9.806282\_Letter from Charnley to Basadien, dated 9 July 2004.

<sup>83</sup> Refer to Exhibit B.8.1\_DOC ID: 0.7.9.806282\_Letter from Charnley to Basadien, dated 9 July 2004 and Exhibit B.8.3\_DOC ID: 0.7.43.2604566\_email from Pishevar confirming that he secured a follow up meeting with the good partners

*good partners*". We did not identify transactions in the accounting records, relating to these meetings.

## **5.7 Iranian officials' visits to South Africa**

We were requested by Freshfields Bruckhaus Deringer to obtain documents relevant to the Iranian delegations that visited South Africa during December 2004 and May 2006.

### **5.7.1 Visit by Iranian officials to South Africa in December 2004**

Based on itineraries, an Iranian delegation, comprising of the Deputy Iranian Minister of Trade and Industry and six other unidentified delegates, visited South Africa from 6 December 2004 to 10 December 2004. A second itinerary for this Iranian delegation indicates that the delegation was scheduled to meet with MTN and to attend a dinner hosted by the Department of Defence, accompanied by Charnley, Nhleko, Cyril Ramaphosa, Yvonne Muthien and Nkateko Nyoka ("*Nyoka*")<sup>84</sup>.

We could not confirm whether Dezfouli was included in this delegation. As discussed in paragraph 5.7.2 below, we identified documents indicating that Dezfouli may have been in South Africa at the same time as this Iranian delegation for purposes of attending a MTN Irancell board meeting, but that he was scheduled to accompany the delegation to a meeting with Lekota.

The second itinerary for the Iranian delegation referred to above, indicates that the presidential suite and five executive suites at the Michelangelo Hotel (in Sandton) were reserved for the Iranian delegation. In addition, two E Class Mercedes and one Vito were hired, a private room booked at the Saxon for dinner, and gifts ordered from Jeff Pipe<sup>85</sup>.

Based on the MANCO accounting records, MTN paid ZAR37 945 (excluding VAT) to the Saxon. ZAR2 000 of this amount was paid towards the venue hire, ZAR1 200 towards flowers, and the balance of ZAR 43 746 was paid towards the cost of the dinner and beverages. According to the receipt, the event took place on 7 December 2004. According to MANCO accounting records, MTN paid ZAR26 950 (excluding VAT) for the gifts. The gifts were purpose made cufflinks, made of 9 carat gold and with 0.25 carat diamonds. The insurance

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<sup>84</sup> Refer to Exhibit B.11.1\_DOC ID: 0.7.9.876944\_ Itinerary for Iran delegation visiting Johannesburg and B.11.2\_DOC ID: 0.7.9.814850\_Itinerary for Iran delegation visiting Johannesburg

<sup>85</sup> Exhibit B.11.2\_DOC ID: 0.7.9.814850\_Itinerary for Iran delegation visiting Johannesburg

value for each pair of cufflinks was ZAR7 000. The transactions were allocated to the International Business Development Management Middle E cost centre. MTN Group Finance informed us that this cost centre was under the control of Charnley during 2004. The cost of the Saxon venue hire was recorded in the entertainment expense general ledger account and the cost of the purpose made cufflinks, in the “*professional fees*” general ledger account<sup>86</sup>.

The total costs identified for this Iranian delegation amounted to ZAR71 895 (USD12 546).

### **5.7.2 Visit by Iranian officials to South Africa in May 2006**

Correspondence and an itinerary indicate that an Iranian parliamentary delegation visited South Africa (including Cape Town) during the period 27 April 2006 to 4 May 2006, which included Kilowan, Mahmoudzadeh and his assistant, Talebi<sup>87</sup>.

A copy of Kilowan’s passport indicates that he entered South Africa on 27 April 2006<sup>88</sup>. The travel records indicate that Kilowan travelled to Cape Town during the period 28 April 2006 to 1 May 2006 (MANCO accounting records place Kilowan in Cape Town on 28 April 2006)<sup>89</sup>.

Based on an itinerary and a draft letter of invite from Charnley to Lekota, there are indications that the Iranian delegation was scheduled to meet with Minister Lekota on either 2 May 2006 or 3 May 2006<sup>90</sup>. Based on the draft letter of invite from Charnley, Dezfouli (who was in South Africa for a MTN Irancell board meeting) was scheduled to accompany the delegation to the meeting with Lekota.

Based on available documents and the MANCO accounting records, the Iranian delegation may have received Nokia 9300i handsets and sim cards. The purchase order relating to this transaction indicates that the phones were ordered for Charnley<sup>91</sup>. The delegation also received baskets of fruit, chocolates, nuts etcetera, as welcome gifts from MTN. Based on the MANCO

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<sup>86</sup> Refer to Exhibit B.2\_MANCO accounting records\_469, 412 and B.11.12\_DOC ID: 0.7.9.815234\_email dated 5 December 2004 for 7 pairs of cufflinks, B.2\_MANCO accounting records\_450 and Refer to Exhibit B.11.14\_DOC ID: 0.7.9.1649832

<sup>87</sup> Refer to Exhibit B.15.3\_DOC ID: 0.7.43.1099206, B.15.4\_DOC ID: 0.7.43.2604610, B.15.5\_DOC ID: 0.7.43.2604279\_Itinerary for the Iranian Parliamentarian visit to South Africa in April/May 2006 and B.15.6\_DOC ID: 0.7.9.863401\_email from Kilowan regarding gifts

<sup>88</sup> Refer to Exhibit B.15.8\_DOC ID: 0.7.43.975626\_09-03-IRAN-JENKINS-60-0016-0007\_Kilowan’s passport

<sup>89</sup> Refer to Exhibit B.1\_Lesedi database\_2964 and B.2\_MANCO accounting records\_18544, 40067

<sup>90</sup> Refer Exhibit B.15.7\_DOC ID: 0.7.9.869344\_draft letter dated 26 April 2006 from Charnley to Lekota

<sup>91</sup> Refer to Exhibit B.15.16\_DOC ID: 0.7.9.1649828\_purchase order for Nokia phones

accounting records, the cost associated with gifts for the Iranian delegation, is ZAR31 974 (excluding VAT)<sup>92</sup>.

The MANCO accounting records reflect a payment to Keyside conferencing and events CC, in the amount of R3 470, with a transaction description “IRANIAN PARLIAMENTARIANS PRIVATE TOUR APRIL 2006”<sup>93</sup>. The Keyside invoice was marked for attention Debbie Abrahams<sup>94</sup>. The cost was allocated to the “IBD Country F” cost centre and recorded in the “Pro Fees – Other” general ledger account. MTN Group Finance indicated that it was controlled by Charnley during that time.

We identified an entry in the MANCO accounting records indicating that an amount of ZAR21 745 was paid to Angie Tours CC, with transaction description “IRAN DELEGATION”. The amount was allocated to the “IBD Country F” cost centre and recorded in the “Pro Fees – Other” general ledger account<sup>95</sup>. The vendor’s invoice indicates that the costs related to transport between the Johannesburg airport and Sandton Towers, as well as various car rentals<sup>96</sup>.

Based on correspondence, MTN booked the hotel accommodation on behalf of the delegation. We did not identify transactions in the MANCO accounting records indicating MTN paid for the hotel accommodation.

## **5.8 Rowhani’s visit to South Africa**

### **5.8.1 Rowhani visit to South Africa in or around 25 July 2005**

#### **5.8.1.1 Turkcell allegation**

According to the Turkcell complaint, on or about 25 July 2005, Charnley arranged and attended a meeting between Rowhani and President Mbeki, at his Cape Town residence<sup>9798</sup>.

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<sup>92</sup> Refer to Exhibit B.15.6\_DOC ID: 0.7.9.863401\_gifts to parliamentarians and B.2\_MANCO accounting records\_12329

<sup>93</sup> Refer to Exhibit B.2\_MANCO accounting records\_10845

<sup>94</sup> Refer to Exhibit B.15.17\_DOC ID: 0.7.9.1649827\_Keyside invoice

<sup>95</sup> Refer to Exhibit B.2 MANCO Accounting records\_32723

<sup>96</sup> Refer to Exhibit B.15.18\_DOC ID: 0.7.9.1649813

<sup>97</sup> Refer to paragraphs 140 to 144 of the complaint document

<sup>98</sup> Based on a newspaper article published on 10 August 2005, Rowhani met President Mbeki two weeks before the date of the article, which is approximately on 27 July 2005

### **5.8.1.2 *Whereabouts of Charnley, Nhleko and Kilowan in late July 2005***

Based on available documents, it is unlikely that Charnley was in Cape Town during the period 25 July 2005 to 27 July 2005 as:

- The travel records indicate that Charnley travelled to Nigeria on 22 July 2005 (MANCO accounting records place Charnley in Nigeria for the period 21 July 2005 to 22 July 2005)<sup>99</sup>;
- The accounting records indicate that Charnley travelled to Iran for the period 23 July 2005 to 27 July 2005<sup>100</sup>. We did not identify travel records reflecting that this trip took place.
- We did not identify documents indicating that Charnley travelled again in July 2005 after 27 July 2005;
- We did not identify other corroborative documents that indicate that Charnley attended a meeting with President Mbeki in Cape Town during July 2005;

Kilowan's whereabouts during the time of the alleged meeting with Rowhani are unclear as a copy of Kilowan's passport indicates that Kilowan left Iran on 14 July 2005 and returned to Iran on 26 July 2005<sup>101</sup>. We could not establish his whereabouts during the period 14 July 2005 to 26 July 2005.

Based on the travel records and the MANCO accounting records, Nhleko was in Cape Town on 28 July 2005 and 29 July 2005<sup>102</sup>.

### **5.8.1.3 *Alleged MTN funding of dinner with the Premier of the Western Cape***

The Turkcell complaint alleges that MTN orchestrated a pretext to the meeting with President Mbeki in the form of an extravagant dinner with the Premier of Western Cape Province, Ebrahim Rasool. We did not identify documents or accounting records indicating that MTN funded a July 2005 Rowhani visit to Cape Town, including a dinner hosted by the Premier of the Western Cape.

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<sup>99</sup> Refer to Exhibit B.1\_Lesedi database\_2769 and B.2\_MANCO accounting records\_171, 174, 180, 189, 7697, 8550, 8551, 3118, 3179, 3228, 8103, 17028, 17029

<sup>100</sup> Refer to Exhibit B.2\_MANCO accounting records\_ 402, 452, 453, 454, 455

<sup>101</sup> Refer to Exhibit B.14.3\_DOC ID: 0.7.43.975626\_09-03-IRAN-JENKINS-60-0016-0013\_Kilowan's passport

<sup>102</sup> Refer to Exhibit B.1\_Lesedi database\_1725, 1976, 1987, 1726, B.2\_MANCO accounting records\_ 5695, 5696, 5737, 5738, 5739, 5740, 14307, 14308, 14349, 14350, 14351, 14352 4035, 4036, 8611, 8612 and B.14.6\_DOC ID: 0.7.9.1097556\_meeting confirmation that Nhleko would attend and B.14.9\_Amex credit card statement: Statement period: 05 July 2005- 04 August 2005

As discussed below in paragraph 5.8.2, we obtained additional documents on a September 2004 Rowhani visit to South Africa.

## **5.8.2 Rowhani visit to South Africa September 2004**

### **5.8.2.1 Overview of the visit of the Iranian delegation**

In a letter dated 17 September 2004, from Charnley to Dr Mohammed Ali Ghanezadeh (“*Ghanezadeh*”) the Iranian Ambassador to South Africa, Charnley confirms that Rowhani will lead a delegation of 10 senior Iranian Government officials who will be visiting South Africa during the period 27 September 2004 to 30 September 2004<sup>103</sup>.

An itinerary for the visit by the Iranian delegation indicates that Rowhani was to be accompanied by a nine-member delegation (including Ghanezadeh and Ghorbanoghli). Linda Jaquet (“*Jaquet*”) from the South African Department of Foreign Affairs was scheduled to accompany the delegation as well<sup>104</sup>.

Based on the itinerary, an official dinner was to be hosted by the Iranian Embassy in South Africa on 27 September 2004. Charnley, Nhleko and the South African Minister of Communication, Ivy Matsepe-Cassaburri, were scheduled to attend the dinner, where after the delegation was scheduled to leave for the Table Bay Hotel in Cape Town until 30 September 2004.

Based on the itinerary, the delegation, accompanied by Nyoka and Kilowan, were scheduled to meet with President Mbeki, on 29 September 2004, where after the delegation, “*MTN*” and Jaquet were scheduled to have lunch together<sup>105</sup>.

### **5.8.2.2 Whereabouts of Kilowan, Nyoka, Nhleko and Charnley during the September 2004 Rowhani visit to Cape Town**

According to the travel records and the MANCO accounting records, Kilowan and Nyoka travelled to Cape Town during the period 29 September 2004 to 30 September 2004 (however the MANCO accounting records place Kilowan in Cape Town during the period 28 September

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<sup>103</sup> Refer to Exhibit B.10.1\_DOC ID:: 0.7.43.2604388\_letter to Ghanezadeh requesting to sponsor Rowhani’s trip

<sup>104</sup> Refer to Exhibit B.10.8\_DOC ID: 0.7.9.855117\_Iranian delegation visit plan

<sup>105</sup> Refer to Exhibit B.10.7\_DOC ID: 0.7.9.881947\_ the itinerary for the Iranian delegation in September 2004

2004 to 30 September 2004)<sup>106</sup>. The second version of the Iranian delegation itinerary visit indicates that Kilowan and Nyoka accompanied the Iranian delegation to Cape Town<sup>107</sup>.

According to the travel records and the MANCO accounting records, Nhleko and Charnley were in Cairo during the period 28 September 2004 to 1 October 2004<sup>108</sup>.

### **5.8.2.3 *Costs associated with the September 2004 Rowhani visit to South Africa***

In a letter dated 17 September 2004 from Charnley to Ghanezadeh, Charnley states that MTN has requested permission from the South African Government to allow MTN to sponsor all the costs of hosting Rowhani and his delegation on his planned visit to Cape Town, including flights, accommodation, lunches, dinners and a guided tour<sup>109</sup>.

Based on this letter, MTN was waiting for approval from Jaquet regarding its request to sponsor the expenses associated with the Iranian delegation's visit. Khosravi (which we infer from the document works for the Iranian Embassy in South Africa) requested that MTN hosts a luncheon in Cape Town on behalf of Minister Cassaburi. The itinerary also indicates that Khosravi has paid all expenses in the meantime and when "*confirmation*" is received from the South African Department of Foreign Affairs and the Iran Embassy, MTN can proceed to pay the Embassy.

Except for the items listed below, we did not identify expenses in the accounting records, evidencing payments made to the Iranian Embassy in South Africa or other payments made by MTN in relation to the Rowhani delegation.

MTN purchased 10 "*units*", with a cost of ZAR4 000 (excluding VAT) per "*unit*", as gifts for the Iranian delegation. Each "*unit*" was fitted with a 0.35 carat diamond and five of the "*units*" were personalised with the names of five of the Iranian delegation members<sup>110</sup>.

MTN was also considering giving leather bags (value of ZAR1 100 per bag) to certain members of the Iranian delegation and Jaquet received a briefcase<sup>111</sup>.

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<sup>106</sup> Refer to B.1\_Lesedi database\_2972 and 163, B.2\_MANCO accounting records\_1597,1598,1990,1991,1992,1993,1305,3057,4108,4109,3454,3455,4110 and 4111

<sup>107</sup> Refer to Exhibit B.10.8\_DOC ID: 0.7.9.855117\_Iranian delegation visit plan

<sup>108</sup> Refer to Exhibit B.10.20\_DOC ID: 0.7.9.808359 and B.10.21\_DOC ID: 0.7.9.808362\_Lesedi booking confirmation, B.1\_Lesedi database\_2002, 2726 and B.2\_MANCO accounting records\_12,37,491,492,638,1677,1190,1192,1193,1194,1282,26532,1275,1351,2919,2921,2922,2923,3027,3625, 4030,4038,4069,4076, 4077, 1715,1716,2240,3567,3568 and 4117

<sup>109</sup> Refer to Exhibit B.10.1\_DOC ID:: 0.7.43.2604388\_letter to Ghanezadeh requesting to sponsor Rowhani's trip

<sup>110</sup> Refer to Exhibit B.10.22\_DOC ID: 0.7.9.807827\_Gifts for the delegates

We identified a MTN International Africa accounting entry referring to “*Gifts for the Iranian delegates*”. The vendor is also reflected as LogiMan. The Gifts (expense) general ledger account was debited with ZAR14 412 (excluding VAT). The VAT portion (ZAR2 017.68) was allocated to the Head Office cost centre and the balance of ZAR14 412 was allocated to the African Countries cost centre. We did not obtain supporting documentation for this entry to identify the nature of the gifts<sup>112</sup>.

We identified an accounting entry relating to “*Gifts for Iran Deligates D Abrahams*” (who was Charnley’s assistant) for the amount of R64 000, on 17 September 2004. The vendor is also reflected as LogiMan. The entry was allocated to the African Countries cost centre and debited to the Gifts general ledger account<sup>113</sup>.

## **5.9 Alleged meeting between Charnley, Kilowan and Abdul Minty late 2004**

The Turkcell complaint alleges that in late 2004, Abdul Minty (“*Minty*”) made an official visit to Iran and that during this visit, Minty had dinner with Saloojee and MTN representatives.

### **5.9.1.1 Whereabouts of Kilowan, Nyoka, Nhleko and Charnley in late 2004**

Based on the MANCO accounting records and correspondence, Charnley travelled to Iran during the period 13 December to 16 December 2004 and Kilowan travelled to Iran during the period 30 November to 15 December 2004<sup>114</sup>. We did not obtain information pertaining to a meeting that allegedly occurred between Charnley, Kilowan and Minty.

Based on correspondence, MTN participated in the visit by the South African Department of Trade and Industry to Iran scheduled for 14 December 2004 and 15 December 2004<sup>115</sup>. MTN was represented by Nyoka, Charnley, Kilowan and an unknown fourth person.

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<sup>111</sup> Refer to Exhibit B.10.9\_DOC ID: 0.7.43.2604359\_Letter from Jaquet and B.10.8\_DOC ID: 0.7.9.855117\_Iranian delegation visit plan

<sup>112</sup> Refer to Exhibit B.3\_MTN International Africa accounting records\_ 1958, 2087, 4356, 4463

<sup>113</sup> Refer to Exhibit B.3\_MTN International Africa accounting records\_V1.329

<sup>114</sup> Refer to Exhibit B.11.3\_DOC ID: 0.7.43.255281\_ Invitation to Participate in visit to Iran and Exhibit B.2\_MANCO accounting records\_ 152, 159, 235, 3415 and B.1\_Lesedi database\_2733 and 2734 and B.11.5\_DOC ID: 0.7.43.255328\_email from Abrahams to Kilowan dated 3 December 2004, B.11.6\_DOC ID: 0.7.9.778393\_fax from Kilowan to Sarlie dated 5 November 2004, B.11.7\_DOC ID: 0.7.43.264736\_email from Dearman to Kilowan dated 23 September 2005.

<sup>115</sup> Refer to Exhibit B.11.3\_DOC ID: 0.7.43.255281\_ Invitation to Participate in visit to Iran



## **5.10 Alleged meeting between Nhleko, Mahmoudzadeh and Dezfouli in July 2005**

The Turkcell complaint alleges that MTN and Mahmoudzadeh had several negotiations over the terms of the bribe payments to Sairan. On 5 July 2005, Nhleko allegedly sent a formal invitation to Mahmoudzadeh and Forunzadeh, to visit MTN in South Africa. Nhleko allegedly stated in the invitation that he wished to discuss with Mahmoudzadeh, the nature and extent of the financial assistance that the MTN Group could provide to the Iranian partners in the Second Mobile licence in Iran<sup>116</sup>.

We identified a letter dated 5 July 2005, in which Nhleko invited Mahmoudzadeh and Forunzadeh to visit MTN in South Africa<sup>117</sup>. The letter states that the key discussion points for the visit are:

1. *“The nature and extent of financial assistance that the MTN Group could provide to the Iranian partners in the Second Mobile licence in Iran.*
2. *The nature and extent of the co-operation between your esteemed organizations and the MTN Group in current and future telecommunications projects in Iran.”*

We did not identify documents or accounting records indicating that Mahmoudzadeh and Forunzadeh travelled to South Africa during July 2005 to meet with Nhleko.

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<sup>116</sup> Refer to paragraph 126 of the Turkcell complaint

<sup>117</sup> Refer to Exhibit B.14.10\_DOC ID: 0.7.43.976494\_invitation from Nhleko to Mahmoudzadeh and Forunzadeh to visit South Africa

## 6 Other matters identified

### 6.1 Introduction

We were required to identify whether there are additional payments made by MTN or benefits provided by MTN for the benefit of Ghorbanoghli, Saloojee, Minty and Mahmoudzadeh.

We did not identify records or other indications of benefits or payments to Minty or Mahmoudzadeh. However, in the paragraphs below, we deal with what was identified from the various records and documents at our disposal. For purposes of this section of the report, we also included associated entities and persons such as family members and the South African Embassy and its personnel.

### 6.2 Other gifts, payments, promotional expenses incurred on behalf of Ghorbanoghli

#### 6.2.1 Promotional cell phone accounts possibly related to Ghorbanoghli

Different sources of information for the period 2005 to 2012, indicating payment of promotional cell phone accounts, albeit not complete, are available.

We identified two cell phone accounts (A1385412 and A0670756) that appear to relate to Ghorbanoghli. The account name linked to account A1385412 is “*S Gorbonochli*”.

The account A0670756 is linked to three cell phone numbers, one of which is allocated to Sajjad Ghorbanoghli, which we understand is the son of Ghorbanoghli. As a result, we also included costs incurred on the other two numbers linked to this account, as it may relate to Ghorbanoghli.

The table below sets out the costs incurred on the two accounts based on the available supporting documents for the period 2005 to 2012:

*Figure 6*

<b>Account number</b>	<b>SIM number</b>	<b>Account name</b>	<b>Value ZAR</b>	<b>Cost centre</b>	<b>Available information</b>
A1385412	083 212 9504	S Gorbonochli (sic)	7 240	000001/0 90483	12 Months

<b>Account number</b>	<b>SIM number</b>	<b>Account name</b>	<b>Value ZAR</b>	<b>Cost centre</b>	<b>Available information</b>
A0670756	083 200 1712 (Iranian Ambassador)	Iraniam (sic) Ambassador	306 981	000001	53 Months
A0670756	083 212 2765 (Iranian Ambassador – Assistant Rezayazdi)	Iraniam (sic) Ambassador	52 915	000001	53 Months
A0670756	083 212 5548 (Sajjad Ghorbanoghli)	Iraniam (sic) Ambassador	28 550	000001/0 90483	53 Months
<b>Total</b>			<b>ZAR395 686</b>		

*Source: Lists of Charnley’s promotional accounts*

The above total of ZAR395 686, converted at the USD rate of exchange of ZAR 8.43/USD, amounts to USD46 938.

The cost centres referred to in the table above are Head Office (000001) and VP MENE (090483).

## **6.2.2 Gifts for members of an Iranian delegation during September 2004**

As discussed above in paragraph 5.8.2.3, MTN purchased 10 “units”, with a cost of ZAR4 000 (excluding VAT) per “unit” as gifts for the Iranian delegation. Each “unit” was fitted with a 0.35 carat diamond and five of the “units” were personalised with the names of five of the Iranian delegation members<sup>118</sup>. Based on available information, Ghorbanoghli was part of the Iranian delegation and his “unit” was personalised with his name.

<sup>118</sup> Refer to Exhibit B.10.22\_DOC ID: 0.7.9.807827\_Gifts for the delegates

## **6.3 Other gifts, payments, promotional expenses incurred on behalf of Saloojee and/or the South African Embassy**

### **6.3.1 Ericsson P900 cell phone for Saloojee**

On 30 May 2004, Basadien sent an e-mail to Kilowan, stating that Saloojee requested Kilowan to bring Saloojee a phone “*like ours*” when Kilowan comes to Iran again<sup>119</sup>.

Based on available correspondence and other supporting documents, a phone was then sourced for Saloojee. Rachel Hayworth and Lynette Witbooi (erstwhile personal assistants to Charnley) were involved in ordering the phone<sup>120</sup>. A faxed letter indicates that the requisition report for the phone was signed by Nyoka (bid manager of Charnley in Iran). The description of the requisition reads: “*Ericsson P900 for Ambassador Yusuf Saloojee 1070*”.

Extracts of the MANCO accounting records, indicate that on 20 July 2004, an amount of ZAR5 888.46 was recorded in the Gifts general ledger account (account number 307 200). The amount was allocated to the African Countries cost centre, with cost centre code 120 213. The description in the ledger is “*ERIKSON (sic) FOR AMBASSADOR Y SALOGEE (sic)*”<sup>121</sup>.

A note in manuscript on the related invoice, indicates that a “*Chris*” collected the phone on 20 July 2004<sup>122</sup>. We were unable to obtain documents evidencing flights for Kilowan on or after 20 July 2004. However, based on a letter from Nhleko dated 23 August 2004, Kilowan was scheduled to arrive in Iran on 24 August 2004<sup>123</sup>.

### **6.3.2 Promotional cell phone accounts for Saloojee and the SA Embassy in Iran**

Different sources of information for the period 2005 to 2012 indicating payment of promotional cell phone accounts for Saloojee and the South African Embassy in Iran, albeit incomplete, are available.

The table below sets out the expenses that appear to relate to Saloojee or other employees of the South African Embassy in Iran during the period 2005 to 2012:

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<sup>119</sup> Refer to Exhibit 2.08\_DOC ID 0.7.43.260.4695\_E-mail from Basadien to Kilowan requesting a cellphone

<sup>120</sup> Refer to Exhibit 2.09\_DOC ID 0.7.9.804164\_Fax from Hayworth to Hasmitha requesting an order number for Saloojee phone

<sup>121</sup> Refer to Exhibit B.3\_MTN International Africa\_4409 and V1.1244

<sup>122</sup> Refer to Refer to Exhibit 2.09\_DOC ID 0.7.9.804164\_E-mail and invoice for Saloojee cell phone

<sup>123</sup> Refer to Exhibit B.9.13\_DOC ID: 0.7.43.2604498\_Letter from Nhleko thanking Mahmoudzadeh, B.3\_International Africa accounting records\_3430\_

Figure 7

Account number	SIM number	Account name	Value ZAR	Cost centre	Available information
A1452588	083 212 9421	Yusuf Saloojee	28 976	000001/ 090483	17 Months
A1376286	083 212 9503	Martin Slabbert	7 446	000001	12 Months
A1376286	083 212 9500	Douw Vermaak	4 519	000001	12 Months
A1225647	083 200 1846	Dr Ambassador Saloujee	11 443	000001	21 Months
<b>Total</b>			<b>ZAR52 384</b>		

Source: Lists of Charnley's promotional accounts

The cost centres referred to in the table above are Head Office (000001) and VP MENE (090483). The above total of ZAR52 384, converted at the USD rate of exchange of ZAR8.43/USD, amounts to USD6 214.

We obtained an e-mail dated 17 August 2006, indicating that Saloojee had requested Charnley to activate his international roaming for cell phone 083 557 3249. This cell phone does not appear in the promotional accounts we have identified in the table above. Based on correspondence, the international roaming was subsequently activated<sup>124</sup>.

### 6.3.3 Sponsorships of the South African Embassy by MTN during 2004 to 2007

We identified sponsorships by MTN for events hosted by the South African Embassy in Iran, during the period 2004 to 2007, which are set out in the table below:

<sup>124</sup> Refer to Exhibit 2.11\_DOC ID 0.7.9.93305\_E-mail from Kilowan asking to activate international roaming

Figure 8

<b>Year</b>	<b>Sponsorship</b>	<b>USD</b>
December 2004	South African Embassy's business dinner	4 500
27 April 2005	National/Independence day celebrations	20 000
April 2006	Freedom Day celebrations	30 882
August 2006	South African Women's Day Celebration	12 000
November 2006	South African Film Festival	10 000
April 2007	South African Freedom Day Celebration	10 000
<b>Total</b>		<b>USD87 382</b>

*Source: Various corroborative documents and Tehran 2008 Internal Audit Report*

#### **6.3.4 Free sim cards issued to the SA Embassy in Iran**

According to an Expenditure Statement attached to the Draft MTN Tehran Branch Review Group Internal Audit report for April 2008, IRR 42 million (approximately USD4 200) was paid in respect of mobile sim cards for the South African Embassy during 2006 and IRR 18 million (approximately USD1 800) was paid in respect of mobile sim cards for the South African Embassy during 2007<sup>125</sup>.

<sup>125</sup> Refer to Exhibit 2.07\_DOC ID 0.7.43.1004275\_Internal audit report. A conversion rate of IRR10 000 to 1 USD was used