



**NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 1097 [NW1236E]
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1097. Ms N W A Mazzone (DA) to ask the Minister of Finance:

- (1) What is the Treasury's position with regard to the fact that Denel approached the High Court for clarity on the Denel Asia and VR Laser Asia joint venture on 24 March 2017;
- (2) whether the Treasury has already approached the courts as alleged in August 2016 regarding this venture;
- (3) given that Denel formed the VR Laser Asia partnership in December 2016 without Treasury's permission as required by the Public Finance Management Act, Act 1 of 1999, (a) what correspondence has occurred between Denel and the Treasury on this issue, (b) what were the contents of such correspondence and (c) on which dates were the correspondences issued?

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REPLY:

- (1) The National Treasury encourages constructive dialogue on PFMA related matters between Executive authorities, State Owned Companies and the National Treasury to avoid a situation where the matters are to be resolved with the intervention of the court. It is therefore regrettable that Denel has resorted to approaching the High Court for clarity on the Denel Asia and VR Laser Asia joint venture. Section 41(1)(h) of the Constitution states that

"All spheres of government and all organs of state within each sphere must---- co-operate with one another in mutual trust and good faith by

(i) fostering friendly relations;

(ii) assisting and supporting one another;

- (iii) informing one another of, and consulting one another on, matters of common interest;*
- (iv) co-ordinating their actions and legislation with one another;*
- (v) adhering to agreed procedures; and*
- (vi) avoiding legal proceedings against one another.”*

(2) No, the National Treasury has not approached the courts.

(3) Response to a, b and c is discussed below

30 October 2015: Submission by Denel SOC Ltd. to the National Treasury (NT) with the title “PFMA Section 54 (2) pre notification: Proposed formation of Denel Asia”.

The intention of the letter was to inform the Department of Public Enterprises (DPE) of Denel’s intention to establish an incorporated joint venture company in Hong Kong for purposes of exploiting opportunities in the Asia Defense market.

11 December 2015: Submission by Denel SOC Ltd. to the NT with the title “FORMAL APPLICATION FOR APPROVAL IN TERMS OF SECTION 51(1)(G) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999- PROPOSED ESTABLISHMENT OF DENEL ASIA SOC LIMITED” addressed to Minister D Van Rooyen.

05 February 2016: The NT - Office of the Chief Procurement Officer (OCPO) writes to Denel on the information they have received that Denel has established a JV agreement with VR laser in order to find a market for world class products in Asia. The purpose of the letter was to seek clarity on whether government prescripts were complied with when finalizing the JV agreement.

10 February 2016: Denel responds to the OCPO letter indicating that they will revert back by the 19 February 2016 with the requested information.

13 April 2016: Denel responds to the letter from OCPO dated 05 February 2016, indicating that Section 51(g) of the PFMA requires that the National Treasury be allowed a reasonable time to submit its decision prior to formal establishment of the joint venture. The further indicated that section 51 (g) read together with 51 (2) defines a reasonable time as 30 days from the date of submission which in the case of Denel Asia was 11 December 2015, 30 days thus expiring on 11 January 2016. This lead TO Denel assuming approval by both the Executive Authority as well as National Treasury which lead to the establishment of the joint venture.

18 April 2016: Letter from NT requesting additional information from Denel, which would assist in comprehensively assessing the application.

- 21 April 2016:** Denel responded to NT's letter and requested further clarity with regards to the information required.
- 26 April 2016:** NT responded to Denel, providing the necessary clarity as requested by Denel.
- 11 May 2016:** Denel still had not provided NT with the requested information; the Director-General (DG) wrote to Denel enquiring about the delay and offered his assistance in resolving any unanticipated obstacles. The DG further stated NT's commitment to fast-tracking consideration of the application and the importance of Denel submitting the additional information in order for NT to be in a position to comprehensively assess all aspects of the application before reaching a decision was underlined. However, there was no response from Denel and the information was still not forthcoming.
- 10 June 2016:** The Minister of Finance wrote to the Chairperson of Denel as well as the MPE requiring that the Board of Denel submit all the information that had been requested by 31 May 2016, as per the provisions of Section 54(1) of the PFMA. In addition, the letter highlighted that, in the event that the Board fails to submit the information, the Board, as the accounting authority of Denel, would be in breach of its fiduciary duties under the PFMA and must report its inability together with the reasons for failing to comply by no later than 28 June 2016.
- 28 June 2016:** The Acting CEO (ACEO) of Denel, Mr Zwelakhe Ntshepe, sent a letter to the DG requesting that the deadline of 28 June 2016 be extended to 4 July 2016 citing that the extension will ensure that they provide a more comprehensive response to the request made by NT.
- 28 June 2016:** The Chairperson of Denel sent a letter to the Minister of Finance and the MPE reiterating their position with regards to the Denel Asia transaction that all the relevant approvals were received. Denel further indicated that they would provide NT with the required information soon and underlined that it should be noted that the requested information would not be provided for the purpose of approval of the transaction but merely to comply with NT request as it is their view that the necessary approval(s) were obtained.
- 29 June 2016:** NT grants Denel the requested extension to the 4th July 2016.
- 14 July 2016:** The Acting CEO of Denel wrote to the DG responding to the request for information that had originally been sent on 18 April

2016. The letter stated that “in Denel’s view the approval process has been concluded as allowed for by the PFMA and thus provision of any information on the establishment of Denel Asia is purely for informational purposes”.

01 September 2016: NT sends a letter to Denel on the Sunday Time’s media statement asking Denel to share the letter with NT which was supposedly sent to them and made them react the way they did on the 31 August on the media.

05 September 2016: Denel responds to the NT letter dated 01 September 2016 to NT indicating that they also do not have the letter or the information quoted on the 28 August Sunday Times article.

24 November 2016: Denel writes to NT indicating that Denel Asia is dormant until such time two that the Ministers have reached consensus and Denel received an instruction to proceed from DPE.
