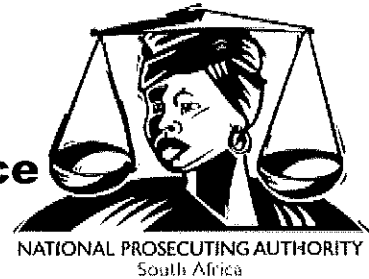


# National Prosecution Service



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Dear Adv. Nel

## RE: SHAREMAX – ALLEGATIONS OF FRAUD AND MONEY LAUNDERING

Thank you for your email of 22 June 2020, together with the attached letter. The contents of same have been noted.

I set out below the background to our own investigations conducted in the matter so far, which might overlap with the facts of your own investigations:

### SHAREMAX

Sharemax was started in 1999 by Willie Botha. Sharemax sold its first property to investors for R9.7-million. Over the next decade it would sell properties of ever-increasing value.

It collapsed during 2010 while raising funds for The Villa, an enormous, incomplete shopping centre east of Pretoria that had an estimated syndication value of R3.5-billion. In total, investors poured R4.6-billion into Sharemax-promoted syndications.

Following an investigation by the Reserve Bank, through two appointed managers, into the affairs of Sharemax, the Registrar of Banks found that the funding models used to obtain funds were in contravention of the Bank's Act and Directives were issued to Sharemax in September 2010 to repay the funds obtained from the general public.

This resulted in the collapse of Sharemax.

## **NOVA**

After the collapse of Sharemax, Nova was set up as the "rescue vehicle" to protect the interests of investors and to repay them their investments.

All of Sharemax's underlying property assets were transferred to Nova to manage in terms of a section 311 Scheme of Arrangement. The investment scheme involved around 18 700 investors who invested approximately R4.6 billion.

On 8 February 2012 the Reserve Bank confirmed that it had carried out its mandate to ensure the compliance of Sharemax with the Bank's Act and also confirmed that the directives issued to Sharemax to repay investors had been withdrawn. This follows the approval of Schemes of Arrangement by the High Court in January 2012.

When Nova was formed in 2012, it inherited 28 properties valued at R1.9 billion from Sharemax.

## **CRIMINAL CHARGES & PROSECUTION**

The registrar of banks laid criminal charges against Sharemax for alleged contraventions of the Banks Act in March 2012.

A number of investors who lost their investments also laid criminal charges.

The Hawks are investigating Sharemax, but to date no charges have been brought against anyone associated with the failed investment scheme.

It appears that all the complaints were consolidated in one docket namely Brooklyn CAS 697/10/2010.

The docket has since been presented to DPP: Gauteng Division, Pretoria for a decision and I am awaiting this decision.

#### **REPRESENTATIONS RECEIVED FROM FABER GOERTZ ELLIS AUSTIN INC**

On 24 June 2020, the NDPP received representations from the above attorney firm representing Nova. The representations are attached as Annexure B.

These representations were made in relation to the remarks made by Afriforum.

#### **CURRENT POSITION OF THE NPA**

It is not disputed that the creation of Nova as a rescue vehicle was done in terms of section 311, of the then Companies Act and made an order of Court.

The Reserve Bank appears to have supported this scheme of arrangement.

As a result of this there appears to be no "illegality" as the companies and their underlying assets taken over by Nova complied with the Banks' Act and can therefore not be regarded as assets acquired from the proceeds of crime.

The sale of the properties by Nova is an ongoing process and they have already sold a large number of the properties.

The purpose of Nova is to compensate the investors who lost their money. The purpose of any possible asset forfeiture intervention, at this stage, will be exactly the same. The NPA/ AFU will therefore be assuming the functions of Nova at great expense to itself.

Please bear in mind that nearly 10 years has lapsed since the creation of Nova which inevitably complicates matters further.

Please rest assured that the matter is currently receiving attention and I have also requested that the content of your correspondence and draft affidavit be

shared with the DPP: Gauteng Division, Pretoria, the AFU, SA Reserve Bank and the Hawks in order to assist them with their investigation and further possible decisions.

Yours sincerely

A handwritten signature in black ink, appearing to be 'R. de Kock', is written over a horizontal line. The signature is enclosed within a hand-drawn, irregular rectangular box.

**ADV. R DE KOCK**

**DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

**DATE: 29/5/2020**

# National Prosecution Service



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Mr D Ellis  
c/o Faber Goërtz Ellis Austen Inc

Per email: [diaan@fgea.co.za](mailto:diaan@fgea.co.za)

Dear Mr Ellis

## RE: NOVA GROUP OF COMPANIES – POSSIBLE PROCEEDINGS IN TERMS OF THE PREVENTION OF ORGANISED CRIME ACT, 1998

Thank you for your letter, under reference: [Diaan Ellis/NOV1/0018](#), dated 24 June 2020. I have taken note of the content of this letter as well as the concerns raised therein by yourselves.

In respect of the concerns raised by yourselves, I can confirm that my office did receive an email communication from AfriForm, relating to the Sharemax investment matter. However, please note that the NPA will not act on such information by complainants exclusively, without first verifying the factual correctness thereof, if at all.

Your attention is further respectfully directed to the following considerations, with regards to your request to be served with any anticipated freezing/preservation application of the NPA, relating to the Sharemax/Nova investment matter:

- 1) In terms of the provisions of the Prevention of Organised Crime Act, 121 of 1998 (**the Act**), an application for the freezing of property order may be sought ex parte in terms of s 38 of the Act.
- 2) It is not an abuse of s 38 of the Act should the NPA decide to approach a Court, in terms of this section, by way of an ex parte application. In this regard I would like to direct your attention to the recent judgment of the

Justice in our society, so that people can live in freedom and security

Supreme Court of Appeal in: The National Director of Public Prosecution (Ex Parte Application) 2018 (2) SACR 176 (SCA) at paragraphs 19 – 24 thereof, wherein the following was held, and I paraphrase:

- In order to obtain a preservation order in terms of s 38 of the Act, I as National Director of Public Prosecutions, or such an official delegated by myself (herein after referred to as the **NPA**), must comply with the requirements of s 38.
- The section does however not require the NPA to show a real possibility that the property in question will be lost if the owner thereof comes to know about the application for a preservation order.
- It is further not an abuse to launch any preservation proceedings without notice as s 38 of the Act allows the NPA, if so desired, to proceed by way of ex parte application.
- For the same reasoning it is not open to a Court to require justification from the NPA for bringing such an ex parte application.
- It is clear that the intention of the Legislature was that such applications may be brought ex parte
- Section 39 of the Act makes provision for giving notice of the preservation order to affected persons. In terms of s 47, the high court which made a preservation of property order may on application by a person affected by that order vary or rescind the preservation of property order or an order authorising the seizure of the property concerned.
- The preservation order precedes the launching of a forfeiture application. Prior to the granting of a forfeiture order, people with an interest in the relevant property would have been given sufficient opportunity to protect their interest if they so wish.

As you are aware, the NPA is furthermore legally obliged, in terms of the full disclosure requirement principle in ex parte applications, to inform a Court hearing such an ex parte application of any such requests for notice and the reasons for the refusal thereof.

For reasons stated above, I will therefore refrain from confirming that any preservation or restraint proceedings are being considered in any particular case. This type of engagement would undermine the objectives of the asset forfeiture legislation as developed by case law.

Note that the NPA will however consider proceeding on notice in such freezing applications where the facts of the matter demand the need to do so. In this regard each case is consider on its own merits.

Yours sincerely

A handwritten signature in black ink, enclosed in a hand-drawn rectangular box. The signature is stylized and appears to read 'R. de Kock'.

**ADV. R DE KOCK**

**DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

**DATE:** 29/7/2020