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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

NOTICE 1143 OF 1999

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Business Practices Committee on the result of an investigation made by the Committee pursuant to General Notice 2424 of 1998 as published in Government Gazette No. 19369 dated 16 October 1998 and General Notice 434 in Government Gazette 19836, dated 19 March 1999, as set out in the Schedule.

A ERWIN
MINISTER OF TRADE AND INDUSTRY

KENNISGEWING 1143 VAN 1999

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP VERBRUIKERSAKE (ONBILLIKE SAKEPRAKTYKE), 1988

Ek, Alexander Erwin, Minister van Handel en Nywerheid, publiseer hiermee, kragtens artikel 10(3) van die Wet op Verbruikersake (Onbillike Sakepraktyke), 1988 (Wet No. 71 van 1988), die verslag van die Sakepraktykekomitee oor die uitslag van die ondersoek deur die Komitee gedoen kragtens Algemene Kennisgewing 2424 van 1998 soos gepubliseer in Staatskoerant No. 19369, gedateer 16 Oktober 1998 en Algemene Kennisgewing 434 in Staatskoerant 19836, gedateer 19 Maart 1999, soos in die Bylae uiteengesit.

A ERWIN
MINISTER VAN HANDEL EN NYWERHEID

SCHEDULE • BYLAE

BUSINESS PRACTICES COMMITTEE

REPORT
IN TERMS OF SECTION 10(1) OF THE
HARMFUL BUSINESS PRACTICES ACT, 1988
(ACT No. 71 OF 1988)

Report No. 68

GAUTENG CORPORATE INVESTMENTS

1. INTRODUCTION

Various Level Marketing (Pty) Ltd was incorporated on 19 November 1991 with Jan Andries (Jay) Burger and Republic Nominees (Pty) Ltd as the shareholders. The main object of the company was to "... carry on the sale of general merchandise". Burger was the only director as from 19 November 1991. On 22 September 1997 Various Level Marketing (Pty) Ltd lodged a special resolution with the Registrar of Companies. The contents of the resolution were *inter alia* that: the company be changed from a proprietary limited company to a public limited company; the main object be changed to the "... purchase and sale of company shares, business ventures and companies using the services of numerous brokers"; and that the name of the company be changed to Gauteng Corporate Investments Ltd.

On 2 October 1997 the Registrar of Companies issued a "Certificate of change of name of company" to certify that Various Level Marketing Ltd (91/06577/06) had changed its name to Gauteng Corporate Investments Ltd (GCI). Adolphe Botha, PJ Sadie, TJ Bruyns, SMT Mahlangu and GJ Van Oudtshoorn become directors on 17 October 1997.

At some stage between October 1997 and October 1998, the following persons were directors of GCI: H Bosch, Adolphe Botha, Bruyns, Burger, PJ Els, OL Erasmus, J Fennie, F Jonker, Mahlangu, Sadie, Van Oudtshoorn, GEC Van Wyk and J White. It later appeared that Bosch and White were appointed as "Regional Directors". It was resolved during a GCI board meeting on 2 February 1998 that Erasmus, van Oudtshoorn and Bosch were "acting directors" and that they would be appointed as area managers because or certain problems that they had in the past (Afrikaans: "pyne in hulle verlede"). It was minuted that they would be appointed to the board once their names were "clean".

Botha said that he was managing director as from 18 October 1997[1] and JF De Beer was the financial manager/company secretary of GCI as from 18 January 1998. Also on 18 January 1998 Fennie and Van Wyk became non-executive directors.

When undertaking any investigation, it is obvious that new information and facts would come to light as the investigation progresses. To make for easier reading it will at times be necessary in the report to refer to relevant statements that were made at a later stage during the investigation or to facts that were later uncovered. These state will be printed in *ITALICS AND SMALL CAPITAL LETTERS*.

SADIE SAID THAT BURGER INITIALLY APPOINTED HIM AS MANAGING DIRECTOR OF VARIOUS LEVEL MARKETING LTD AND TOLD HIM (SADIE) THAT THEY, BURGER AND SADIE, WOULD EACH HOLD 50 PER CENT IN THE COMPANY. THIS WAS BEFORE THE NAME OF VARIOUS LEVEL MARKETING LTD WAS CHANGED TO GCI. SADIE LATER BECAME CHAIRMAN OF GCI. SADIE

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1. According to the minutes of a board meeting Botha was appointed as managing director on 11 October 1997.

STILL LATER TOLD OFFICIALS THAT TOWARDS THE END OF JUNE 1998 "... THINGS STARTED TO CHANGE AT GCI". BURGER TOLD HIM TO RESIGN AS CHAIRMAN OF GCI. HIS LETTER OF RESIGNATION, DATED 15 JUNE 1998, WAS PRESENTED TO HIM BY BURGER AND HE HAD NO CHOICE BUT TO SIGN THE DOCUMENT.

The directors and some other shareholders of so-called "Class D[2] deferred ordinary shares" did not immediately pay for their shares on allocation thereof but did so only on 17 July 1998. This was after the investigation into the business practices by the Business Practices Committee (the Committee) commenced. Deposit slips at the disposal of the Committee show that the following persons paid cash into account 1006515658 held with Mercantile Lisbon Bank for the number of "Class D deferred ordinary shares" as indicated.

Shareholder	Paid on 17 July 1998	Number of shares allotted
Bosch and Bruyns	R50 each	5 million each
Botha and Sadie	R800 each	80 million each
Burger	R1 600	160 million
De Beer	R300	30 million
Erasmus	R40	4 million
Fennie and Van Wyk	R70 each	7 million each
Mahlangu and White	R10 each	1 million each
Van Oudtshoorn	R200	20 million
TOTAL	R4 000	400 million

Although it would appear from documents that Els and Jonker were at some stage directors of GCI, there is no evidence to suggest that any shares were allotted to them. The majority "Class D" shareholder was Burger, who held 40 percent of these shares. Other major shareholders were Botha and Sadie whom each held 20 percent of the "Class D" shares. Burger, Botha and Sadie thus held 80 percent of the "Class D" shares. Another major shareholder was de Beer, the financial manager/company secretary, who held 30 million shares or 7.5 per cent of the total of 400 million shares. On 17 July 1998 Burger, Botha, de Beer and Sadie thus held 87.5 per cent of the total "Class D deferred ordinary shares".

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2. The class "D" deferred ordinary shareholders were not entitled to participate in the profits of the company until 30 June 2000, whereafter they would have had all the rights attached to ordinary shares. The idea was that the shares would have been valued by the company's auditors on 30 June 2000.

ON 20 OCTOBER 1998 BOTHA APPLIED FOR THE VOLUNTARY LIQUIDATION OF GCI. GCI started doing "business" in October 1997 and no annual general meeting of the shareholders took place between October 1997 and October 1998. There was no opportunity for the shareholders to elect a board of directors. Since the inception of GCI the directors thereof were hired and fired by Burger. FOR EXAMPLE: AT THE FIRST MEETING OF THE BOARD HELD ON 11 OCTOBER 1997 AT THE PROTEA HOTEL, MIDRAND, IT WAS MINUTED THAT BUGER SAID THAT THE "DIRECTORSHIP" (OF GCI) WOULD BE AS FOLLOWS: BURGER (PRESIDENT), SADIE (CHAIRMAN), BOTHA (MD). ERASMUS WANTED TO KNOW WHETHER A PUBLIC COMPANY COULD APPOINT A PRESIDENT. BURGER SAID YES. LATER BRUYNS TOLD AN OFFICIAL THAT HE, MAHLANGU AND VAN OUDTSHOORN WERE TOLD BY BURGER AT SOME STAGE THAT THEY WERE NO LONGER DIRECTORS OF GCI. Burger called himself "President" of GCI. This incidence of this designation amongst South African companies is quite uncommon. Burger is or was also the "President" of other companies. The board of directors of GCI thus had an oligarchical appearance, with Burger as the head of the family.

2. DOCUMENTS RECEIVED BY THE BUSINESS PRACTICES COMMITTEE

GCI was first brought to the attention of the Committee[3] by the Financial Services Board (FSB) in a letter dated 6 February 1998. Sales material in the form of loose A4 pages and two GCI circulars were attached to the FSB letter. On 17 February 1998 the Committee received a letter with some documents attached from the Registrar of Companies (the Registrar). The Registrar stated *inter alia* that:

> **"No prospectus of the company has been registered with this Office. The matter has been referred to the Commercial Crime Unit of the South African Police."**

Some of the documents that were sent to the Committee by the Registrar were also sent to the Committee by the FSB. On 16 March 1998 the Committee received a submission from GCI. It contained a "mission statement", "vision statement", "company focus" and "salient features".

In its letter of 6 February 1998 the FSB stated *inter alia*:

> **"The rate at which this company is expanding is phenomenal and various queries regarding their business have been received from a large number of members of the public.**
>
> **Although the returns and comments set out in the documentation seem very unrealistic, the sales material contain misrepresentations with regard**

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3. The Business Practices Committee is a statutory committee within the Department of Trade and Industry and administers the Harmful Business Practices Act, 71 of 1988.

to auditors and companies in which shares are held.

This case will also be referred to the Registrar of Companies".

On 12 February 1998 the Committee resolved to undertake a section 4(1)(c)[4] investigation in terms of the Harmful Business Practices Act, 71 of 1988 (the Act), into the business practices of GCI. On 23 February 1998 and 20 April 1998 officials of the Committee held discussions with Botha and de Beer about statements made in the letters and annexures which the Committee received from the FSB and the Registrar. The following were discussed with Botha and de Beer, namely:

1. **The allegation about the misrepresentations with regard to auditors.**
2. **Four pages of the sales material.**
3. **The undated circular with the heading Gauteng Corporate Investments.**
4. **The circular dated 13 January 1998, signed by TJ Bruyns.**
5. **GCI document with the title "Company Profile".**
6. **GCI documents with the titles "mission statement", "vision statement", "company focus" and "salient features".**
7. **Draft financial statements.**

Some questions raised during these discussions were further elucidated by Botha and de Beer in a letter dated 29 April 1998 addressed to the Committee.

2.1 The allegation about the misrepresentations with regard to auditors

With regard to the "... misrepresentations with regard to the auditors", the FSB attached a copy of a letter dated 4 February 1998 written to Botha of GCI by Deneys Reitz, attorneys of Ernst & Young. It was *inter alia* said in this letter:

"In the course of the "company overview" the following representation is made:

"During 1995 and 1996 GCI produced more than 62% return per

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4. A section 4(1)(c) investigation enables the Committee to make such preliminary investigation as it may consider necessary into, or confer with any interested party in connection with, any harmful business practice which allegedly exists or may come into existence. Notice of section 4(1)(c) investigations is not published in the Government Gazette as opposed to section 8(1)(a) investigations. The purpose of section 4(1)(c) investigations is to enable the Committee to make a more informed decision as to whether a section 8(1)(a) investigation is called for. The Minister of Trade and Industry is not empowered to make any decisions on the strength of a section 4(1)(c) investigation. He may do so in terms of a section 8 investigation.

annum, and has maintained this in 1997. The total revenue and assets to be acquired in 1997 are expected to be in excess of R50 000 000. Assets already acquired and verified by Ernst & Young are currently valued at more than R25 000 000. Annual return on investment is expected to be above 76% for the year ending 1998".

Our clients record that Gauteng Corporate Investments is not, and has never been, a client of Ernst & Young. Ernst & Young have never verified any information relating to your company.

Telephonic enquiries addressed to your Chairman P J Sadie elicited the response that your company had "intended" to change its auditors and appoint Ernst & Young, but had later decided not to do so.

We are instructed to require your urgent confirmation that:

1. **You will desist from misrepresenting to third parties that Ernst & Young have any relationship with your company or have undertaken any work for it.**

2. **We require your immediate written confirmation that a communication will be addressed to all parties to whom the above named circular was addressed informing them that Ernst & Young are not the auditors of Gauteng Corporate Investments Limited and that they have not undertaken any audit or verification process as suggested in the extract quoted above. A copy of such communication should be provided to us".**

On 5 February 1998, in a letter from GCI to Deneys Reitz, Botha said "Please accept my apologies to Ernst & Young with regard to the above". The reference to Ernst & Young as the auditors of GCI, acording to Botha, was based on a misunderstanding. It is not known how many shareholders bought shares in GCI in believing that Ernst & Young were the auditors of the company.

2.2 Four pages of the sales material

The first page read:

"Gauteng Corporate Investments
- **Head office in Gallagher Estate, Midrand**
- **International Offices: Brussels and London**
- **Advised by three top JSE Specialists**
- **Over 40 years of experience in investments".**

There was no head office in Midrand and there were no offices in Brussels and London.

According to the minutes of the first meeting of the board of directors of GCI held on 11 October 1997 Burger said that (translated from the Afrikaans)

> **"... the office in London is not yet in operation and the office in Brussels is there with 'auditors and everything'. ("met ouditeure en als"). It is known as Ega Accent Ltd".**

Botha could not name the three top JSE specialists and the company certainly did not have more than 40 years' experience in investments because it started doing business in October 1997 only. On 23 February 1998 and again on 20 April 1998 Botha said that the statements did not apply and that the information was wrong. Botha said that the document was circulated among friends and family of the directors of GCI before he (Botha) joined GCI.

The second and third pages respectively read:

> **"Short Term Income Projection**
>
> - **Invite 2 investors per month for three months**
> - **People introduce others**
> - **See your income grow**
> - **People may invest again - you earn a second time**
> - **Some investors invest huge amount regularly**
>
> **GCI Income Potential**
>
> - **Share this investment opportunity with two people to become a Sponsoring Broker**
> - **SB's receive 10% of any investment placed with GCI when personally introducing the investor**
> - **Receive a lifetime bonus override of 3% on any investment placed by your downline".**

The statements on these two pages were reminiscent of schemes investigated by the Committee and subsequently closed down by the Minister of Trade and Industry, namely Newport Business Club and Rainbow Business Club. Again Botha said that these statements were never implemented.

On the fourth page it was said:

> **"Secure your Retirement**

- **Invest R15 000 once-off with GCI today**
- **Receive a share certificate in your name**
- **Retire in ten years on a salary R100 000 pm**
- **Invest R250/month for the next ten years and retire on a salary of R50 000 per month**
- **Calculations based on a 50% return only**
- **Based on our current growth, retire in 5 years, or receive five times the income!".**

These statements are so ridiculous that it does not warrant any comment. Botha said that these statements also never came to fruition. The business of GCI only started in September 1997 and up to that stage GCI did not even had a bank account. ***SADIE LATER TOLD OFFICIALS OF THE COMMITTEE THAT BURGER INSTRUCTED HIM TO OPEN AN ORDINARY SAVINGS ACCOUNT IN THE NAME OF GAUTENG CORPORATE INVESTMENTS. BURGER, ACCORDING TO SADIE, OFFERED SEVERAL EXCUSES WHY HE (BURGER) WAS UNABLE TO PERSONALLY OPEN THE SAVINGS ACCOUNT).***

The management and directors were at a loss as to who was responsible for the ludicrous statements made in these four pages. The origins of the four pages were a mystery, even to Burger, the founder of the company. ***SADIE TOLD AN OFFICIAL TOWARDS THE END OF 1998 THAT HE WAS A COMPUTER SPECIALIST AND THAT HE DEVISED THE ORIGINAL FOUR PAGES ON HIS COMPUTER. THE CONTENTS OF THE PAGES WERE PRESENTED TO HIM BY BURGER . HE, SADIE, COULD NOT HAVE DEVISED THE FOUR PAGES HIMSELF. HE SAID THAT HE KNEW COMPUTERS, BUT THAT HE KNEW ABSOLUTELY NOTHING ABOUT COMPANY SHARES OR THE ECONOMY.***

2.3 The undated circular with the heading Gauteng Corporate Investments Ltd

The following are excerpts are from this circular

> **"... 1990 saw the birth of a company - Various Level Marketing (Pty) Ltd" (VLM) This company was registered in 1991 as a (Pty) Ltd with registration number 91/06577/07 and incorporated on 19 November 1991". The director was Jay .**
>
> **"From 1994 to 1996 the company firmly established itself in the financial markets and outstanding results were achieved, yielding high returns and growth to its investors. Growth, however, was restricted by limited funds and the decision was made in June 1997 to change the name to Gauteng Corporate Investments Ltd and register it as a public company".**

These statements contained a number of misrepresentations. There was no evidence that the company "... firmly established itself in the financial markets and outstanding results were achieved". The name VLM was unknown and Botha suggested that be asked about this statement.

"The legal format of Gauteng Corporate Investment Ltd is a Limited Liability Company"

"During 1995 and 1996 GCI produced more than 62% return"

This statement was devoid of all truth . The name Gauteng Corporate Investments was only registered on 2 October 1997. No proof of the 62 percent return could, obviously, be furnished. Again Botha suggested that Burger be questioned on this aspect.

"Extensive research over the past 6 years"

Again the business started in October 1997 and Botha could not produce the results of the "extensive research". He again suggested that Burger be questioned on this aspect.

"Gauteng Corporate Investments Ltd's shares are sold in US Dollar denomination, further increasing growth as the Rand depreciates against the Dollar".

The following was the wording of Certificate Number PR10111

"Gauteng Corporate Investments Ltd. This is to certify that (NAME OF THE SHAREHOLDER) is the registered holder of 85558 fully paid ordinary GCI Shares, Purchased at a price equal to US$ 0.12 per share on this day, 30 December 1997 at the current exchange rate of 4.87 per Dollar".

This share certificate was signed by Botha and Sadie, the chairman of GCI at that time. Again Botha said that Burger must be asked about the rationale of this somewhat strange wording on the share certificate. *SADIE SAID IT WAS BURGER'S IDEA TO ISSUE SHARES THAT WERE LINKED TO THE US$ TO THE PUBLIC.* It is unknown how many shareholders bought shares in GCI believing that its share price was in some way linked to the US$. Those that did so were obviously misled.

2.4 The circular dated 13 January 1998, signed by TJ Bruyns

This circular was signed by TJ Bruyns. *On 20 April 1998 Botha said that this circular was sent to shareholders without his knowledge. He was on holiday in Cape Town on 13 January 1998 and only came to know about the circular when he returned from holiday on 19 January 1998.* In this circular the following was *inter alia* stated:

"GCI shares have risen to a trading equivalent to US $0.18 and there is no indication of the shares decreasing in price, in fact there is a very strong indication of the shares rising even further due to the fact that we have

obtained large percentages in various companies of shareholding".

It was stated that GCI acquired 39 per cent in Reeva Foreman's Holding Group of companies, four per cent of Wesco (Wind Energy Supply Corp) and 40 per cent of the share capital of Princess Diana European Land Trust Memorial Limited. It was said that the holding in the "Princess Diana European Land Trust Memorial Limited" held in a great potential for GCI. On 20 April Botha said that the Reeva Foreman deal never realised and that he would put in writing the mechanics and potential of the "Princess Diana European Land Trust Memorial Limited" and Wesco.

Botha *inter alia* stated on 29 April 1998 in a letter to the Committee (directly translated from the Afrikaans):

> **"The idea of the Princess Diana project was conceived by a Mr Malcolm Middleton. He approached GCI through Mr Pieter Sadie. The name reservation was done for the Princess Diana European Land Trust Memorial Ltd and the name was awarded by the Registrar of Companies. (*This was confirmed by the Registrar*). It was however, necessary to do a lot of footwork around this project and the reservation of the name was extended. GCI received 40 per cent of the shares in lieu of the marketing that would have been done by GCI for the Princess Diana project. Finalisation of this project was delayed because permission had to be obtained from the Princess Diana Trust in the British Isles. This project will build a holiday complex next to the Kruger Park for members of this trust. Monies obtained will be used for procuring aardvarke (*a mechanical device*) for destroying land mines in Mozambique and surrounding areas. Some of the money will also be allocated for the fight against aids. Lady Diana did valuable work in this regard. ... I am still very positive about this project because this will be a profitable project for GCI with a huge income potential".**

The idea of a public company being involved in the destroying of land mines is, to put it mildly, rather unique. At a meeting held on 8 May 1998[5] between the directors of GCI and officials of the Committee, the "Lady Diana Project" was laughed at and it was said that this "project" was rejected at a previous board meeting.

BRUYNS SAID THAT THIS LETTER WAS DRAFTED BY VAN WYK. HE (BRUYNS) EDITED THE LETTER AND WAS INSTRUCTED BY BURGER TO SIGN THE LETTER.

2.5 GCI document with the title "Company Profile"

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5. See section 4 of this report.

Botha could not indicate on which date the "Profile" was written and to whom it was sent. He vaguely said that "... it was given to a few people who wanted to know something about the company, such as friends and family of employees".

> **"During 1995 and 1996 GCI produced more than 62% growth in its selection of shares per annum, and has operated on this basis ever since. The total assets in private and public companies to be acquired throughout the rest of 1998 is estimated to be in excess of R25 000 000. Assets already acquired by GCI is estimated to be valued at around R5 000 000. The annual growth on GCI's selection of shares will exceed 76% for the current year".**

The 62 per cent growth was confirmed by Botha on 20 April 1998. He said all the figures in the paragraph was based on "... a hypothetical basis". There was no trading during 1995 and 1996.

> **".. for even wider Global Expansion ..."**

Wider global expansion gave the impression that GCI was already involved in offshore investments. There were none and this statement was simply misleading.

> **"In all comparisons, Gauteng Corporate Investments Ltd's provide a higher yield than traditional investments. In most cases, the differences are substantial"**

This statement could not be substantiated. As Botha said it was a '... hypothetical assumption". In a letter dated 29 April 1998 de Beer wrote to the Committee:

> **"... mr Burger's personal experience and hypothasis (sic) was used as a base line indication for to project the company's potential growth and yield. Mr Burger with the help of professional friends and aquitances (sic) from companies such as BOE Natwest and Nedcor was able to accurately manage a substantial share portfolio on the JSE, but lack of funds prohibited. This enabled GCI to produce acceptable profit margins, which could be realised, until investment opportunities and viable projects could be identified. Documentation also contained certain expectations, concerning assets that the company would acquire with the funding of the sale of shares and the yield on these assets, as envisaged. Certain projects i.e. Reeva Forman transaction, Princess Diana European Trust Memorial Limited and Westco were initialised. At this point in time the Board of Directors valued the present value of these contracts and used those figures as asset values in documentation. This information was never verified by any auditor and unfortunately no person with enough**

expertise or knowledge helped them do the calculations on viability and valuations. Based on these calculations the Board of Directors determined value of shares to be sold to the public, by means of anticipated yield on capital investment as well as anticipated asset capitalization. Mr Burger's personal results in the financial fields was used extensively in the documentation as proof of what was expected to be achieved in this corporate structure."

This rather garbled explanation contributed nothing towards a better understanding of events.

2.6 GCI documents with the titles "mission statement", "vision statement", "company focus" and "salient features".

On 16 March 1998 the Committee received a further submission from GCI. It contained a "mission statement", "vision statement", "company focus" and "salient features". Botha said on 20 April 1998 that the document was not made available for the general public but that it was complied for the information of the BPC only.

The "Corporate Profile" as set out in these submissions contained a number of statements, such as:

"Not quite anticipating the market which created an enormous demand for GCI Ltd shares, further restructuring as necessary within a very short period of time"

"3. Participating in, and directing investors into high-yielding international business and project activities around the world"

"Taking the unique GCI Ltd way of doing business into consideration, it should be noted that an exceptional growth is achievable when purchasing GCI Ltd shares (see graph)".

"The period from 1st of October 1997 until 31st of January 1998 has been very rewarding for GCI Ltd as well as all its shareholders. Taking into account that GCI Ltd shares started selling at a value of R0,50 per share, and that the trading value was R0,89 per share as at 31 January 1998, it is evident that in less than four months, the GCI Ltd share value has increased by 78% due to the increase in nett asset value of the company".

"... intensive research during the previous years resulted in our investment specialists being able to successfully predict and anticipate the worldwide stockmarket crash. Substantial profits were thus realised by GCI Ltd for its shareholders where the markets in general suffered tremendous losses".

It was put to Botha and de Beer on 20 April 1998 that these statements could not be substantiated. On 23 February 1998 they agreed that the price of 50 cents per share dropped from the sky. There were no calculations done to arrive at this price. It was further put to them that the value of the shares did not increase. The "demand" for the shares was artificially created (the "enormous demand") by their "marketers" (a private placement applied) and the "calculation" of the share price using the net asset value had severe shortcomings. There was no international business and there was no "exceptional growth". The "... intensive research during the previous years" could not be produced and the "investment specialists" turned out to be Burger. Botha said that Burger could be regarded as the "portfolio manager" of GCI. There was no evidence of the "... substantial profits were thus realised by GCI Ltd for its shareholders where the markets in general suffered tremendous losses".

It is clear that consumers who bought shares in GCI on the strength of the statements made in the documents discussed in sections 2.1 to 2.6 above were grossly misled. ***THE INDIVIDUAL MEMBERS OF THE BOARD OF DIRECTORS THAT COULD BE CONTACTED ALL CLAIMED IGNORANCE OF THESE DOCUMENTS. IT IS UNLIKELY THAT NONE OF THEM KNEW ABOUT THE DOCUMENTS.*** **It is, however, likely that Fennie and Van Wyk were unaware of these documents. They were appointed as non-executive directors in February 1998.**

In the "Corporate Profile", as could be expected, flattering remarks were made about the board of directors and management. The remarks that were *inter alia* stated about the directors are followed in square brackets by what was not revealed to the shareholders.

Jan A (Jay) Burger: "An entrepreneur with a phenomenally successful track record spanning over 35 years. Mr Burger has developed the reputation of being the power behind some of the most amazing projects that may be attributed to a single individual in one life time". [*BURGER TOLD OFFICIALS THAT HE WAS A REHABILITATED INSOLVENT.*

Pieter J Sadie: "Mr Sadie is most definitely one of the new generation of rising stars in the South African market place today. He launched his first computer company at the tender age of 25, and quickly became one of the leaders in the field of computer Network Support, Network Engineering and Intranet Structuring."

Adolphe Botha: "He careered on into the investment markets where he certainly made his mark in the industry, distinguishing himself as significant innovator and highly sophisticated strategic player. His leadership in the company is most definitely the single biggest contributing factor towards the fast and sharp rise of the GCI Ltd in the market place". [*BOTHA INFORMED OFFICIALS THAT HE WAS REHABILITATED AS AN INSOLVENT ON 8 JULY 1997*].

Tobie Bruyns: "His insights into consumer needs with regard to banking has made him an important link in the role GCI Ltd is to play in supplying a world class financial service to its shareholders". [*BRUYNS TOLD AN OFFICIAL THAT HE WAS A REHABILITED INSOLVENT*].

Jacobus G van Rheede Van Oudtshoorn: "Mr van Oudtshoorn is a veteran of 35 years standing in marketing, covering a wide spectrum of sectoral involvement ranging from the services sectors to heavy industrials, and not in a single instance as a bad or average performer". [*VAN OUDTSHOORN REHABILITATION APPLICATION WAS SUBMITTED ON 23 MAY 1995. HE WAS AGAIN SEQUESTRATED 25 JUNE 1998 AND WAS (NOVEMBER 1998) SERVING A JAIL SENTENCE FOR A FELONY IN THE PRETORIA PRISON*].

Stanley Mahlangu: "A much decorated executive in the past, great things are expected from his association with GCI Ltd in the future".

Gerhard C E van Wyk: "Advocate Gerhard van Wyk is no ordinary legal professional. His intimate knowledge of all aspects of mercantile law, coupled by his formidable expertence in economic development, has certainly produced *the* surprise package in the GCI Ltd boardroom. Advocate van Wyk holds the position of non-executive Director (Legal and Administration) with the company".

Jacob (Jakes) Fennie: "As a black South African born in Distric Six, Cape Town, Mr Fennie went on to qualify himslef and attained the following degrees: BSocSc (Hons) - Cape Town, RSA, Mphil (Economics) - London, YK, MBA - New York, USA, Doctorate in Business Administration (DBA) - California, USA. He has lectured (and Published) widely on afirmative action, corporate strategy, change management, productivity and quality, franchising, management and leadership developmnet, innovation and entrepreneurship, economic restructuring and development and business process re-engineering".

Jac F de Beer: De Beer was the "Company Secretary and Financial Manager". He held the following qualifications: "B Comm (Law), AIAC, FICB, ROA". [*JACOBUS FREDERIK DE BEER WAS AN UNREHABILITATED INSOLVENT WHO WAS FINALLY SEQUESTRATED ON 3 JUNE 1997*].

"Regional Managers" were Henry Bosch (Pretoria Central), Ockert (Ockie) Erasmus (Mpumalanga) and Jeremy White (Western Cape).

IT WOULD SEEM FROM THE ABOVE THAT BURGER SURROUNDED HIMSELF IN HIS OLIGARCHICAL EMPIRE WITH SOME PEOPLE THAT WERE CLEARLY NOT ADEPT IN MANAGING THEIR OWN PRIVATE FINANCIAL AFFAIRS. YET, THEY AND HE APPARENTLY BELIEVED THAT THEY COULD MANAGE THE MONEYS, AND LOTS OF IT, OF OTHERS BETTER THAN THEIR OWN. THE EVIDENCE SUGGESTS THAT THEY WERE UNABLE TO DO SO.

2.7 Draft financial statements

At 09h25 on 20 April 1998 GCI furnished the Committee with Financial Statements as at 31 January 1998.. This draft was marked "Draft For Discussion Purposes Only". Botha said the "... for discussion purposes only" meant discussion with the Committee only.

The auditors stated on page 1 of this draft *inter alia*: "The financial statements ... have been prepared from the books and records of the company, and from information supplied by the directors. No audit has been conducted and accordingly no opinion is expressed".

On page 2 of the statements it was stated: "Dividends in the amount of R12 266 were paid during the period" and 404 117 339 ordinary shares were allotted at a premium of R3 062 962 during the period".

It was put to Botha and de Beer that there could have been no talk of dividends[6] as the company traded from October 1997 only and the company suffered a loss R1 058 385 for the period to 31 January 1998. GCI responded in writing and stated:

> **"From the initial interim report from the company's auditors it appeared that an amount of dividends had been paid out to share holders due to the fact that management was under the impression that profits on the share portfolio on the JSE was seen as actual profits. The auditors of the company pointed out that the profits on the portfolio was unrealised until the portfolio was actually realised".**

The Committee found it difficult to understand the statement that "... 404 117 339 ordinary shares were allotted at a premium of R3 062 962 during the period". The authorised share capital of GCI was:

> **200 million class "A" *monthly* ordinary shares of R0.00001 each R2 000**
> **200 million class "B" *yearly* ordinary shares of R0.00001 each R2 000**
> **400 million class "D" deferred ordinary shares of R0.00001 each R4 000.**

The 400 million "D" class shares were issued to the directors and the R4 000 was

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6. It appeared that GCI also offered a so-called income option ("inkomste-opsie"). The minimum investment required was R15 000. It appeared from the application form that shareholders who wished to exercise this "option" could receive their "dividends" monthly, quarterly, half yearly or annually. "Dividends" were to be paid on the first day of the month following on the date of the initial investment. It was also stated in the application form that "shares bought will not be redeemed for a period of at leat 36 months. A two months notice was required to redeem the shares".

paid by them on 17 July 1998[7]. Approximately 4.1 million shares were issued as at 31 January 1998, ostensibly to "friends and family"[8] for a total of ±R3 058 962 (R3 062 962 less R4 000). Thus, the directors bought 400 million shares at R0.00001 each and 4.1 million shares were bought by the public at between 50 cents and 89 cents by the end of January 1998. It would have been more correct to state in the financial statements that during the accounting period 404 117 339 ordinary shares were issued at a premium of R0.007579 cents per share. (404 117 339 times R0.007579 = ±R3 062 962). As stated, 400 million shares were issued to the directors at .001 cents each. The shareholders paid, at various stages, 49 cents, 59 cents, 64 cents and R0.89 per share.

Under "Capital Employed" in the balance sheet was an entry "Directors' Loan R296 000". The notes stated that the loan was "... unsecured and interest free, with no fixed terms of repayment, but is by intent of a long term nature". The loan was to Burger. ***IT LATER APPEARED THAT THIS LOAN WAS NOT GRANTED.*** **The accumulated deficit of GCI at 31 January 1998 was R1 072 406.**

3. THE SHARE PRICE

GCI started issuing shares to "friends and families" at 49 cents each. This price was subsequently increased to:

59 cents on 4 November 1997,
64 cents on 5 January 1998,
89 cents on 12 January 1998 and
LATER AT 95 CENTS.

During the meeting on 23 February 1998 Botha and de Beer stated that the share price was arrived at by using the net asset value. What GCI allegedly did was to calculate the net asset value by simply taking the total assets and dividing it by the number of shares, but excluding the 400 million shares held by the directors. They argued that the class "D" deferred ordinary shareholders (the directors) were not entitled to participate in the profits of the company until 30 June 2000,

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7. See page 2.
8. There is evidence to suggest that GCI not only sold shares to "friends and family". If so, GCI and its directors contravened the Companies Act. See "Document 11:" under section 7 of this report. Also, at a meeting of the board during december 1997 Bruyns said: "... we are seeing the public and we do need a prospectus". At a meeting of the board on a8 October 1998 "It was decided that a bord (sic) will be put up, containing the consultants name and the telegirl will write all the appointments on this bord (sic), until we have reached a stage where we can install a computer network on which they will work".

where after they would have had all the rights attached to ordinary shares. At that stage the shares would have been valued by the company's auditors.

When asked how the original issue price of 49 cents per share was calculated, Botha and de Beer conceded that no calculations were made and that the 49 cents per share was a "hit-or-miss" figure. There were obviously no assets when the company started doing business and a business plan was non-existent.

It was put to Botha and de Beer that the period from 1 October 1997 until 31 January 1998 was not as rewarding for GCI Ltd as well as all its shareholders. It was already stated that the accumulated deficit of GCI at 31 January 1998 was R1 072 406. The share prices were figuratively and literally "fixed" by GCI, *AND MOST PROBABLY BY BURGER, BOTHA AND DE BEER*. The GCI shares did not increase by 78 per cent due to "... the increase in nett asset value of the company".

GCI was asked to furnish the Committee with a written motivation as to why the shares of the directors were excluded from the calculation of the net asset value of the GCI shares. On 29 April 1998 de Beer wrote the following to the Committee about the share prices.

> **"The share price per GCI share is not the nett asset value of the company per share. The nett asset value of the company is extensively used as safe calculation in order to determine a reasonable and acceptable selling price for GCI shares. The 400 000 000 shares of the directors (Class D deferred ordinary shares) is (sic) excluded from this calculation, as this calculation was never intended to be the nett asset value of GCI shares, per but only a reasonable determination of the capital per private equity partner Class A and Class B ordinary shares sold. The 400 000 000 shares of the directors was planned to be used in share-swopping with other companies in order to exchange share holding with other companies, and only on completion of a profitable project succeed in accumulating value. Thus the special resolution was passed that Class D deferred ordinary shares be issued to the directors of the company, not entitled to participate in the profits of the company till 30th June 2000 whereafter the company's auditors will valuate these shares according to the profitability of the relating project where it is in holding. It is planned that by these dates, these shares will be held by other companies at a reasonable value, projected by various profitable projects".**

On 23 February 1998 GCI said that the share price was calculated using the net asset value. Now it appeared that "The share price per GCI share is not the nett asset value of the company per share". This garbled explanation deserves no further comment.

4. THE MEETING WITH BURGER, FENNIE, SADIE AND VAN WYK ON 8 MAY 1998

After receiving the letter from de Beer an official called Van Wyk and requested that a meeting be arranged between officials of the Committee and the board of directors of GCI. This meeting was arranged to take place on 8 May 1998 at the offices of GCI. Van Wyk, apparently in preparation for this meeting, on 6 May 1998 wrote to the directors of GCI. In this letter he stated that the board of directors should cooperate with the Department of Trade and Industry (as was mentioned earlier, the Committee is a stautory committee within this department) and he warned Botha that a formal investigation in terms of the Act could hold in grave consequences for GCI.

Van Wyk put a wide range of questions to his colleagues. These questions related to the misleading statements referred to in section 2 of this report and who was or were responsible for these statements. It was obvious from these questions that Van Wyk did not know or was not informed about many aspects of GCI's previous conduct.

The Committee's file on GCI was made available to Botha during the morning of 7 May 1998 and he was at liberty to make photocopies of any or all of the documents contained in the file. On 8 May 1998 (the meeting of 8 May 1998) officials held discussions with Burger ("President"), Sadie (Chairman), Van Wyk (Non-executive director) and Fennie (Non-executive director). After briefly explaining the Act to those present, investigating officers started the discussion by referring to the letter dated 6 February 1998 which the Committee received from the FSB. The non-executive directors, Fennie and Van Wyk, did most of the talking and Burger and Sadie had very little to say.

Van Wyk and Fennie stated that they were unawere of the existence of the documents discussed under 2.1 to 2.7 above. They were appointed as non-executive directors on 18 January 1998. It was not possible to determine whether the documents were deliberately withheld from them. It would appear so.[9] Van

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9. The minutes of a GCI board meeting held on 9 March 1998 indicate that Fennie said that he will not sign the prospectus because it was not done "correctly". At this meeting Van Wyk handed in an affidavit dated 8 March 1998. In this affidavit he *inter alia* stated: "I was appointed by the President of the company, Mr Jay Burger. I have accepted the position on the basis that it would be an appointment as non-executive director, that is with no executive responsibilities. I believe that the prospectus is in an advaced stage. My input has not been requested and I was furthermore not invited to partake in any activity leading to the issue of a poorly drafted document, as well as an ill considered body of contents of the draft prsopectus. I was never given the opportunity to inspect the books of the company or to investigate any source documentation, the pillars of a prospectus. In fact, my attempts to permit Deloitte &

Wyk and Fennie were certainly amazed at some of the statements in the documents. The directors conceded that the procedure whereby the shares prices of GCI was "determined", could have prejudiced or misled GCI shareholders.

Fennie said that the activities of GCI could be split in two phases. The second phase started in February 1998 and this phase was characterised by serious efforts on the part of the board of directors, and especially the non-executive directors, to bring GCI on the right track.

A number of concerns were put to those present, such as:

(a) By 31 January 1998 just more than 3 million shares were issued to "friends" and "family". The question that begged to be answered was: What were these shareholders told at the time they bought the shares and were they influenced by some of the glaring misrepresentations contained in the documents on the GCI file?

(b) The Committee had reason to believe that shares were offered to the public and not to "friends" and "families" only.

(c) The "calculation" of the share prices could have mislead and prejudiced shareholders. This was conceded by Fennie and Van Wyk.

(d) The 400 million shares of the directors could be sold to the public at a profit of 8 899 900 per cent, assuming that they sold their shares at 89 cents each.

It was suggested to the directors of GCI that they address the Committee at its next meeting. Following from the meeting the Committee received a letter from Van Wyk,

then non-executive legal director of GCI. He said that following the meeting on 8 May 1998 the board of directors of GCI met on an urgent basis on 11 May 1998.

The result of this meeting was that *inter alia*:

> **Burger stepped down as "President" of GCI and Van Wyk appointed as "Acting President". The idea was that the title of "President" would fall away as soon as practical possible because it has no real meaning in the South African company law context.**

Touche to inspect the books were shelved as a waste of time.

Sadie stepped down as chairman of the board and Fennie was elected as non-executive chairman. Botha and de Beer were re-elected in their positions. It was also said that the executive staff would "... commence to attend Business School".

5. THE MEETING WITH THE COMMITTEE ON 28 MAY 1998

Botha, de Beer, Fennie and Van Wyk attended a meeting with the Committee on 28 May 1998. The representatives of GCI requested the Committee not to undertake a section 8(1)(a) investigation into the business practices of GCI and required a "compromise" in terms of section 9 of the Act. They submitted that "... it has become common cause that a harmful business practice came into existence".

The following statements were *inter alia* made in GCI's "Heads of Argument":

> "Since the non-executive Directors' appointments, the company has begun to sail on a new course. Many processes were initiated to discontinue the harmful business practice. The following examples serve the purpose: (a) A new board was elected (b) Share trading were terminated and D-class shares were allocated (c) Mr de Beer will submit financial developments, which have taken place during the past week. The absence to entertain it in this paper is thus explained".
>
> " It is submitted with respect that the non-executive directors have been changing the company for the better. The other Directors and Company Secretary has followed suit. Firm leadership and informed leadership was needed, though, to enforce change.
>
> (a) Mr Sadie was suspended as a Director.
>
> (b) An investment policy was formulated and an investment committee is functioning.
>
> (c) Marketing has been placed on the correct footing. The marketing plan contained (in an annexure) was adopted during the Executive meeting held on Tuesday 26 May 1998 at 16:45. Dr Fennie has played a major role in the formulation of this policy.
>
> (d) A proper legal task group is in the becoming. Directors have also signed undertakings. The directors are all at present busy to submit their input concerning a Director's Code.
>
> (e) Excess personnel were retrenched.

It is submitted that these reports were implemented in less than a month. The will clearly exists to discontinue old practices".

"The phenomena of, and value underlining transparency and accountability have forced certain issues to the front. That did not happen in the past. For instance Mr Sadie has become the prey of his own backdoor ways to do business. Other Directors have taken note. The company's past behaviour is not defendable, to say the least. It is, however, curable. It should be permitted to be given a chance. The evaluation of that chance, and the specific conditions to be met by the company and/or individual Directors/Officers are in the hands of the Committee. I submit that the circumstances have changed so much that a section 9 procedure should be implemented".

Section 9 of the Act makes provision for negotiations with any person or body, corporate or unincorporate, with a view to making an arrangement which in the opinion of the committee will ensure the discontinuance of a harmful business practice which exists or may come into existence and which is the subject to the investigation. The Committee accepted the explanations and arguments put forward by the representatives of GCI that the circumstances have changed and that a further investigation into the business practices of GCI was not called for. The Committee, however, resolved that the audited financial statements be made available to the Committee as soon as possible and that the issue of the 400 million shares of the directors be resolved to the satisfaction of the Committee. Botha said that the audited annual financial statements would be made available in two weeks tome.

6. SUBSEQUENT EVENTS

6.1 The section 4(1)(c) investigation resumed

On 14 July 1998 the Committee resolved that the section 4(1)(c) investigation into the business practices of GCI be resumed. The reason for this resolution was that GCI failed to comply with the requirements set by the Committee on 28 May 1998. The following serves to illustrate the apparent reluctance of GCI to cooperate with the Committee.

***3 July 1998*:**
The Committee wrote to Van Wyk, by that time non-executive chairman of GCI, and reminded him about the resolution taken by the Committee at its meeting on 28 May 1998. The outstanding issues were the non-availability of the latest audited financial statements and the unresolved issue about the 400 million shares held by the directors. This letter was also delivered by hand at the offices of GCI. GCI did not respond to this letter. It was later learned that Van Wyk was preparing for examinations and was absent from office.

***15 July 1998*:**
The Committee wrote to Botha. He was informed about the resolution of the Committee at its meeting on 14 July 1998 that the section 4(1)(c) investigation into the business practices of GCI be resumed.

***20 July 1998*:**
The Committee received a letter from de Beer. Included in this letter were unaudited management accounts and not the audited financial statements. The question of the 400 million shares was not properly addressed.

***31 July 1998*:**
The Committee again wrote to Botha and stated that the two issues were still unresolved. He was asked to call an official urgently to arrange for a meeting. This letter was faxed to GCI at 08h31 on 31 July 1998 and delivered by hand to GCI at 12h00 on the same day. The official, when delivering the letter, was told by the secretary of Botha that he was in the office but was having discussions with "people".

***3 August 1998*:**
The Committee received a letter from Botha stating *inter alia*:

> **"Your letter has been delivered at our offices on Friday morning 31st July 1998 and I really did not have the time to attend to it during the day since I was not at the office. Mr JF de Beer, the financial manager and myself will not be available until the 18th August 1998. I wish to advise that on our return my office will call (the name of an official if the Committee) of the Business Practices Committee to arrange a meeting as soon as possible".**

Botha said in his letter that he was not at the office, but his secretary told an official that he was having discussions with "people".

***5 August 1998*:**
An official called a's secretary and left a message for Van Wyk to call him back. He called the official at 12h50 and a meeting at 11h00 on 7 August 1998 at the offices of GCI was arranged.

***7 August 1998*:**
The official held discussions with Van Wyk and again reminded him of the two outstanding issues. Van Wyk said that that audited financial statements were not available because of a change in the company's financial year end. The official also explained the Committee's subsequent concerns to him about the investments in some companies made by GCI as reflected in the "management accounts". The official told Van Wyk that the Committee would want to know more about these investments, such as the names of the others shareholders and the directors.

***13 August 1998*:**
The Committee received a letter from Van Wyk. He stated *inter alia* that he learned with regret about the experience of the Committee in communicating with the management of GCI. Van Wyk requested that all correspondence be directed to him *via* the secretary of Botha. He further stated that Burger did not have all the information about the investments in the companies and Botha and de Beer were overseas. He therefore awaited the return of Botha. He also stated that he was communicating with the auditors regarding the allocation and values of the shares. He ended the letter by saying: "I have conveyed your concerns to Mr Burger. Mr Burger has expressed a sincere desire to set things right and do it the correct way".

***20 August 1998*:**
The official called the secretary of Botha at 09h45. He referred her to the letter of Botha dated 3 August 1998 in which Botha stated: "I wish to advise that on our return to my office I will call (the name of an official of the Committee) of the Business Practices Committee to arrange a meeting as soon as possible". She confirmed that he had returned from overseas.

***24 August 1998*:**
The secretary called the official at 11h35 and said that Botha would writea letter to the Committee addressing the concerns discussed with Van Wyk. The official told her that he wanted to discuss the matter with Botha personally. She said that she would get back to the official. By 30 August 1998 Botha had not called the official.

6.2 The possibility of a section 8(1)(a) investigation

On 2 September 1998 Botha was informed that, depending on the developments between then and 9 September 1998, that the Committee would resolve at its meeting on 10 September 1998 whether to undertake a section 8(1)(a) investigation. It was put to Botha that the management of GCI apparently avoided officials of the Committee and/or were unable to answer certain questions. Botha was also informed that Van Wyk was advised by telephone at 09h38 on 2 September 1998 of these developments.

On 9 September 1998 Van Wyk wrote to Burger. Van Wyk informed Burger that the Committee required information and that this information was not forthcoming. Burger was requested, as majority shareholder, to remove these obstacles ("gebreke uit die weg ruim").

On the same day the Committee received a six page letter from an apparently annoyed Botha. He *inter alia* said that GCI not necessarily conceded that it was involved in a harmful business practice, expressed his dismay and irritation about the Committee's concerns about the 400 million shares, and he expressed his dismay about the Committee's concern about the companies in which GCI

invested, and that officials of the Committee contacted Van Wyk. The official was requested not to talk to Van Wyk, but that all communications with GCI should be directed to Botha or de Beer. Botha was asked to put this request in writing.

7. DISCUSSIONS WITH BOTHA AND DE BEER ON 21 SEPTEMBER 1998

On 15 September 1998 officials of the Committee received a number of documents from a GCI shareholder. On 21 September 1998 officials of the Committee again met with Botha and de Beer to discuss the contents of the documents obtained from the shareholder as well as other issues. ***THIS SHAREHOLDER SOLD HER HOME IN DECEMBER 1998 BECAUSE OF THE FINANCIAL PROBLEMS SHE EXPERIENCED AFTER BUYING THE GCI SHARES.***

Document 1: Letter or circular: "Dear Investor" dated 25 March 1998

The shareholder received this document from a GCI "broker". Excerpts from this letter were:

> **"GCI was registered in 1991. During October 1997 the first shares were offered to the public at a price of 46.8 cents per share. The shares currently trade at 89 cents per share, a return of 90.17% on investment in a matter of months!!**
>
> **The share price is determined by the auditors and is based on the intrinsic value of the company. It is therefore based on the asset value of the company and NOT on the whims and perceptions of brokers and traders on the JSE. The main reason why GCI Limited is not listed and will not list on the JSE is the protection of our investors against the above manipulation of the share price.**
>
> **For this reason we can guarantee that you will NEVER receive less for GCI shares than what you paid for them.**
>
> **The income plan investments, with a minimum invesment of R15 000, are fixed for three years and one day, and attract a monthly dividend of 1,25% of the value of the investment. This income is tax-free and amounts to 15% of the invested amount per annum."**

The involvement if the Committee with GCI started on 23 February 1998. By 25 March 1998, the date of this circular, the board of directors already knew how a harmful business practice in terms of the Act was defined. The letter went out under the name of "JF de Beer, FINANCIAL MANAGER" but it was apparently signed by Bosch.

During the 21 September meeting de Beer and Botha expressed their surprise about the existence of the letter. They denied any knowledge of the letter and they made a photocopy for themselves. It would appear that the office administration of GCI must have been in a disarray.

Document 2: Letter "To Whom It May Concern" dated 28 April 1998

This letter went out under the name of de Beer but was also signed by Bosch.

> **"GCI was registered in 1991. During October 1997 the first shares were offered to friends family and acquaintances at a price of 46.8 cents per share. The shares currently trade at 95 cents per share, a return of 103% on investment in a matter of 7 months!!**
>
> **The share price is determined by the auditors and is based on the intrinsic value of the company. It is therefore based on the asset value of the company and NOT on the whims and perceptions of brokers and traders on the JSE. The main reason why GCI Limited is not listed and will not list on the JSE is the protection of our investors against the above manipulation of the share price".**

This letter also contained a number of illustrations about the so-called "income plan" mentioned in the letter dated 25 March 1998. For example, an "investment" (shares) would have secured a monthly income of R6 250. Again Botha and de Beer expressed their surprise about the existence of the letter and again they made a photocopy for themselves. Botha and de Beer either really did not know about the existence of the letter or they did not admit the truth. If Botha did not know about the latter, one can only speculate as to his management capabilities.

Document 3: Receipt No 0114 dated 29 April 1998

This receipt was issued to the shareholder. She bought 500 000 shares in GCI at 95 cents each, or a total of R490 000. She apparently bought the shares on the strength of the ridiculous statements contained in documents 1 and 2 mentioned above. She bought the 500 000 shares because she was under the impression that she would receive a monthly income of R6 250. The shareholder was apparently told by the broker that she could "... get the money back whenever she wished to do so".

Document 4: Letter to the shareholder dated 10 June 1998

On 10 June 1998 GCI advised the shareholder that 15 789 of her shares had been sold for R15 000 and that the amount was paid into her account. The shares were sold by "AZ" Brokers. The owner of "AZ" Brokers CC was Mrs "AZ". She is the

wife of "AZ", a friend of Botha. Botha explained that GCI referred potential buyers and sellers to "AZ" Brokers.

Document 5: Prospectus 98, date of issue 23 July 1998

This "prospectus" contained some glaring misleading statements that were also made to prospective shareholders during the beginning of 1998. This "propectus" was registered with the Registrar of Companies. Botha said that this prospectus was not issued to the public because GCI gave an undertaking to the Committee at the meeting on 28 May 1998 that it would not issue more GCI shares. According to Botha the "prospectus" was registered with the Registrar to get the Financial Services Board and the South African Police Services of their backs.

When asked how the shareholder came into possession of the "propectus" Botha said that the document was available on a stiffy and that his secretary probably printed the propectus for a "consultant". The "consultants" sold GCI shares. Botha could not say how many other shareholders were in possession of this "phantom" prospectus.

Document 6: Letter dated 24 July 1998 from Putter Van Zyl Ingelyf, attorneys of GCI to shareholders

This circular stated *inter alia* that:

> **"Some shareholders did not understand the effect and implications of buying shares in a public company" and**
>
> **"The value of a share in a public company is determined by various factors, such as the amount of the expected dividend, the value of the assets of the company, the trust of the public in the board of directors, the expected short, medium or long terms growth of the company, etc".**

Botha said he had a "few" enquiries about shareholders that probably did not understand the marketability of unlisted shares and he then decided that this circular should be sent to all shareholders.

Document 7: Circular dated 24 July 1998, from Botha to all shareholders

This circular stated *inter alia* the following:

> **"Furthermore, I wish to advise that the Company started negotiations with Lowenthal & Co, who is a member of the Johannesburg Stock Exchane (sic) to open an Over the Counter (OTC) trading facility with their company for the trading of GCI Limited shares"**

> **"It should however be noted that a new prospectus has to be registered with the Registrar of Companies in Pretoria. This prospectus will then be made available to Lowenthal & Company and a more open trading of GCI Limited shares will take place."**
>
> **"The purpose of this circular is to inform you that you should be careful in the trading of any shares of GCI Limited"**

An official called Lowenthal and spoke to an official of the company. He said that he knew nothing about GCI. Botha said that the particular official would not know anything because he (Botha) negotiated with another official and that the negotiations were continuing.

Document 8: Circular dated 24 July 1998 from de Beer to all shareholders

De Beer informed the shareholders about acquisitions made by GCI in various companies. It was stated in the letter that:

> **"The discounted nett present value (NPV) project value of the companies and projects that GCI will be a shareholder in, is estimated to be around R60 million with a current nett asset value (NAV) of around R12 million and an expected nett profit yield in the next twelve months of approxiamately R10 million. This represents an earnings per share ration (sic) of not less than 100 cents, per 95 cent share (105% yield).**

No underlying assumptions to support these claims were given.

Document 9: Letter dated 11 August 1998 from F Jonker

Jonker was as some stage the administration manager of GCI. The following is a direct translation from the Afrikaans of this letter:

> **"We are pleased to confirm that (name of the shareholder) holds 473 684 shares in this company.**
>
> **An amount of R30 000 will shortly ("eersdaags" in the Afrikaans) be deposited in their account".**

It was pointed out to Botha that this letter from Jonker poses serious problems. The word "eersdaags" in Afrikaans implies an unknown date. It appeared that GCI promised the shareholder R30 000, irrespective of what price the shares were to be sold on the "open" market.

Document 10: Business Presentation dated 25 August 1998

This document, obtained from the shareholder, was, according to Botha, an internal document. It was not used at presentations and "certainly" not made available to shareholders. It was also available on stiffy and somebody, allegedly and wrongfully, printed the document and handed it to the shareholder.

Document 11: Letter dated 7 September 1998 from Botha to the shareholder

In this Afrikaans letter, signed by Botha, it was stated that the shareholder held 448 685 shares in GCI and that the shares currently trade at R1.20. "The value of your shares is R538 422". Botha was told that the shares were only worth the amount mentioned if it were sold at that price. He said that after he signed the letter he realised that he made a mistake. He said that the letter was subsequently changed to: "... that if the shares were to be sold at R1.20 each, it would be worth R538 422". He left the office to get a copy of the amended letter. He later returned to the discussions without the "amended" letter.

Other issues: An official received an anonymous call from a consumer who wanted to know if it was "safe" to buy GCI shares. The caller said that he had received a telephone call from a telemarketer. The telemarketer wanted to arrange an appointment for a GCI "consultant" to meet with the caller in order to discuss the offer for GCI shares. The caller was told that members of the Committee or its officials do not not give advice to prospective investors. At the meeting on 28 May 1998 GCI undertook not to issue more shares. The official called GCI and said that he wanted to speak to a telemarketer. He was told that none of the telemarketers were available because they were on a training course. Botha and de Beer said they knew nothing about the selling of shares by the telemarketers but that they would investigate the matter.

At a meeting of the GCI board on 2 February 1998, however, it was minuted that Botha said (directly transalted from the Afrikaans):

> **"I am going to use Lemmer and Partners to do telesales for us. It does not help that we pay people to do telesales for us and they only bring in R1 000 worth of investments".**

At the end of the meeting it was agreed that the Committee would be furnished with a number of documents and information, such as:

(a) GCI's proposals to allay the concerns of the Committee concerning the 400 million shares held by the directors. The directors paid 0.0001 cents per share and at the time GCI stopped issuing shares to the public, the shares were sold at 95 cents each. This is a ratio of 950 000:1. In other words, the shareholders that paid 95 cents per share paid 950 000 times more for their shares than the price paid by the directors.

(b) **The names of the shareholders who sold shares, the prices at which the shares were sold, the names of the buyers of these shares and the prices paid by them.**

(c) **The names of the shareholders who sold all or part of their shares and at what price and again bought shares and at what price they bought the new shares.**

(d) **The interest of any present or past directors in any of the companies in which GCI acquired shares.**

(e) **The apparent selling of shares by the telemarketers.**

8. GCI's RESPONSE TO THE MEETING OF 21 SEPTEMBER 1998

GCI addressed a letter to the Committee dated 25 September 1998. The letter was signed by Dr Fred de Beer, the "Assistant Financial Manager". This person apparently was the father of de Beer. It was *inter alia* stated in the letter that the directors' shares were to be consolidated into 4 000 shares and that all future correspondence should be addressed to Botha or de Beer

The letter also contained a rather lame excuse about the telemarketers. It was stated that Botha came to know about the telemarkers during the meeting with the official on 21 September 1998 and he immediately put a stop to it. The writer of the letter stated that a marketing company was contracted to market the products of two subsidiaries of GCI, namely VAC 2001 and Cell-Clip. The marketers "...knew about the registered prospectus" of GCI and they thought that "... they could help the broker". The incidence was due to a "misunderstanding".

Also attached to the letter was a list of "subsidiary companies" of GCI. The subsidiaries are listed below and the percentage shareholding of GCI in the subsidiary is indicated in brackets.

Beamress (Pty) Ltd (100%). Botha was the designated managing director of this non-operational company.

Bigfoot Holdings (Pty) Ltd (90%). Burger was the managing director of this company. *BOTHA SAID THAT GCI PAID ±R300 000 FOR ITS SHARES IN THIS COMPANY. BOTHAT AND BURGER SAID THAT SHEEP WERE BOUGHT BY GCI FOR BIGFOOT HOLDINGS. THESE SHEEP, ACCORDING TO BURGER, WERE LATER SOLD AT A LOSS. BURGER PROMISED TO HAND OVER THE ACCOUNTING BOOKS OF THIS COMPANY TO OFFICIALS OF THE COMMITTEE BY 11 NOVEMBER 1998. HE FAILED TO DO SO.*

Bottom Line Holdings (Pty) Ltd (51%). Other shareholders in this comany were Erasmus (10%), Burger (20%) and Bosch (9%). *BOTHA SAID THAT GCI*

PAID ±R20 000 TOWARDS THE ESTABLISHMENT COSTS OF THIS COMPANY AND IN TURN RECEIVED 51 PERCENT OF THE SHARES.

Cell-Clip (Pty) Ltd (51%). *ACCORDING TO BOTHA GCI OBTAINED 51 PERCENT OF THIS COMPANY BY PAYING THE ESTABLISHMENT COSTS. GCI ALSO ADVANCED A LOAN OF R150 000 TO THE COMPANY. GCI'S INVOLVEMENT WITH THE COMPANY WAS INITIATED BY BRUYNS.*

Colour Me In Copy Shop (100%). *THIS COMPANY DID NOT TRADE AT ALL.*

Corpro (Pty) Ltd (51%). This company acts as project consultants. Bruyns holds 9 percent of the shares in Corpro. On 8 October 1998 Corpro wrote to the directors of GCI claiming substantial amounts from GCI. It was alleged in the letter that Corpro was appointed by GCI to manage the projects involving Cell-Clip, VAC 2001 and Meritas. It was alleged that GCI was guilty of malpractice ("wanprestasie"). Also on 8 October 1998 Bruyns wrote a letter in his personal capacity to the board of directors of GCI. In this letter he stated *inter alia*:

> **"1. I was totally dismayed upon reading the report submitted by (auditor of GCI) about the material irregularities that have taken place in the Company and which is likely to cost financial loss to the Company or it's Shareholders as well as Creditors.**
>
> **2. The fact that information was withheld from most of the ex-directors, even when they were sitting on the Board of Directors, is a major concern of myself and the reason fior this is now very clear to me.**
>
> **Therefore I have no alternative but to serve this written notice on the Company calling on the Company to institute such proceedings witin 1 (one) month from the date of service of this notice, to recover damages, loss or benefit that was sufferred by the Company and I wish to initiate this proceedings on behalf of the Company against the current Board of Directors as well as Mr P Sadie, previous executive chairman and Director of the Company and Mr J F de Beer, Company Secretary and Financial Manager.**
>
> **Failing to do so an application to the Court, according to paragraph B of Section 266 of the Companies Act, No 61 of 1973, will be made".**

GCI Beef Ltd (90%). This company never traded.

GCI Information Technologies (Pty) Ltd (51%). Other shareholders were Corpro (49%). Sadie was apparently involved with this company and Botha said that ±R160 000 worth of electronic equipment was given to Sadie.

Grootfontein Game Estate (51%). ***BOTHA SAID THAT NOTHING CAME OF THIS VENTURE.***

Market Place Holdings (Pty) Ltd (78%). The other shareholder was Mr X, a friend of Burger. ***BOTHA SAID THAT THIS COMPANY NEVER GOT OFF THE GROUND.***

Market Place Investments (Pty) Ltd (76%). Other shareholders were Mahlangu (6%), Van Oudtshoorn (6%), Erasmus (6%) and Bosch (6%). ***BOTHA SAID THAT GCI SPENT ± R140 000 ON THIS COMPANY WHICH NEVER CAME OF THE GROUND.*** **Botha was the managing director of this company.**

Meritas (51%). This company also never traded.

Shimmy Shine (R) TM Auto Care (51%). This company also never traded.

Tellnelle Investments (Pty) Ltd (100%). Botha was the designated managing director of this non-operational company.

Vac 2001 Manufacturing (Pty) Ltd (51%). ***BOTHA SAID THAT IN TURN FOR THE 51 PERCENT SHARES IN THIS COMPANY, GCI PAID ±R500 000 TOWARDS THE ESTABLISHMENT COSTS OF THE COMPANY. GCI ALSO ADVANCED A LOAN OF R50 000 TO VAC 2001. THIS INVESTMENT WAS INITIATED BY BRUYNS.***

9. THE REPORT OF THE AUDITOR

On 29 September 1998 the GCI's auditor (the auditor) wrote a letter to Botha. The auditor said:

> **"We advise that we have completed our preliminay assessment of the internal control for the period ended 30 September 1998. We have established a severe lack of financial internal control control in operation. Our observations and *fundamental* concerns established to date are detailed below".**

The following is a selection of points raised by the auditor under the various headings which are indicated in bold letters.

Purchases/Payments Cycle (14 points raised)

9. **There is no formal policy for the approval of staff loans**

10. **Fringe benefit tax is not applied to the interest free staff loans.**

12. **Monthly managment information is insufficient to review expenditure.**

Payroll costs and formalities (12 point raised)

6. **Certain PAYE payments to the Receiver of Revenue have not been made.**

9. **Certain managers who were working as permanent employees are now consulting to the company. No formal contract has been drawn up nor is a labour broking exemption certificate (IRP30) on file authorising the non deduction of PAYE.**

10. **Permanent consultants have invoiced the company for motor vehicles, the cost of which has been expensed.**

Fixed assets (5 points raised)

2. **It posed problematic to locate the original invoices for certain fixed assets**

4. **Motor vehicles are not registered in the name of the company. Registration papers of the motor vehicles are not kept.**

5. **Land and buildings that are in the books of account are not registered in the name of the company and should be reversed out accordingly.**

Subsidiaries (3 points raised)

3. **Inter-company loan accounts are not reconciled on a monthly basis**

Secretarial

1. **Numerous secretarial information on the subsidiaries is still outstanding.**

Share portfolio held on Stock Exchange

1. **Scripts with brokers are not reconciled on a monthly basis**

2. **Losses and gains are not accounted for in the books of account.**

Share capital of the Company

1. **The share register and premium is not reconciled to the general ledger on a regular basis.**

2. **Certain CM42 transfer documents have not been signed.**

3. **Certain stamp duty has not been paid on allotments.**

The auditor concluded the letter by stating:

"In terms or our statutory duties as auditor of the company, we have no alternative but to report to you that we have reason to believe that a material irregularity has and/or is likely to take place. Our reasons for this belief are as follows:

the capital base has been severely eroded and there is a risk of technical insolvency in the near future;

there is a possibility of reckless trading relating to the review of the conduct of subsidiaries and the related safeguarding of the subsidiary assets;

statutory returns are in arrears which can give rise of the imposition of penalties and interest and

amounts have been paid and expensed for professional consultants to acquire motor vehicles".

De Beer received the letter on behalf of Botha who was at that time on holiday.

10. THE MEETING OF 8 OCTOBER 1998 WITH THE AUDITOR

On 8 October 1998 a meeting was held in the offices of the auditor and the available present and past directors of GCI. Present at this meeting were the auditor, Bosch, Bruyns, Burger, de Beer, Sadie, Van Wyk and Botha's attorney. Unavailable were Botha, Erasmus, Fennie, Mahlangu and van Oudtshoorn. The auditor told those present that GCI lost ±R8 million in one year because *inter alia* the subsidiaries were not trading and have lost substantial funds and that certain deal have fallen through. The R8 million would be difficult to restore. The

directors, past and present, were told that that they will probably be faced with a section 424 reckless trading suit relating to the period of their dutues served.

11. EVENTS AFTER 8 OCTOBER 1998

11.1 Van Wyk and Fennie resign

Van Wyk and Fennie informed GCI on 13 October 1998 of their resignation as directors with immediate effect.

11.2 Botha advised about the section 8(1)(a) investigation

On the following day, 14 October 1998, Botha was advised per fax by the Committee about the publication on 16 October 1998 of the notice of the section 8(1)(a) investigation into the business practices of GCI.

11.3 Application for the voluntary liquidation of GCI

On the same day Botha gave notice in the High Court of South Africva (Transvaal Provincial Division) that he would approach the Court on 20 October 1998 to apply for the voluntary liquidation of GCI. In his affidavit Botha said that GCI was factually insolvent and unable to pay its debts. In paragraph 9 of his affidavit Botha said GCI made severe losses over the last few months because of the "... poor investment climate in the Republic of South Africa" and that the company was unable to pay its creditors, salaries, water and lights anad monthly rental.

11.4 Notice No 2424 dated 16 October 1998

The following appeared as Notice No 2424 in Government Gazette No 19369 dated 16 October 1998.

> **"In terms of the provisions of section 8(4) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Business Practices Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of -**
>
> > **Gauteng Corporate Investments Limited (91/06577/06), JA (Jay) Burger, Adolphe Botha and any employee, agent and/or representative of any of the aforementioned in respect of the activities of Gauteng Corporate Investments Limited.**

Any person may within a period of fourteen (14) days from the date of this notice make written representations regarding the above-mentioned investigation to:

The Secretary, Business Practices Committee,
Private Bag X84, PRETORIA, 0001.
Tel: (012) 310 9562 Ms L van Zyl Ref. H101/20/10/9(98)".

11.5 Meetings with GCI directors and a GCI shareholder

Officials of the Committee held a number of meetings with present and past directors of GCI during the period 23 October 1998 until 10 November 1998.

On *23 October 1998* officials met briefly with Botha at the offices of the Committee. Botha reiterated a statement that he made previously about his position with GCI. He said that he was only a pawn and that Burger did with the company what he wanted to do. It would seem that Botha experienced his own problems within the board of directors of GCI. The following is a direct translation from the Afrikaans of an excerpt of the minutes of a board meeting held on 2 February 1998:

"Botha: What are the positions of Gerhard (Van Wyk) and Jakes (Fennie)? Are they directors? These days I do not know what is going on in my own board.

Burger: They are because they have the knowledge of structures and also qualifications that would look good in a prospectus.

Botha: Am I not competent? Although our people do not have degrees they do have the knowledge. We should be careful that our people do not get the message that I am not good enough".

Botha was pressed for time because he had another appointment with the liquidator appointed by the High Court. It was agreed that he would meet again with the officials on 2 November 1998.

At a meeting at the offices of the Committee on *27 October 1998* Burger was accompanied by a business acquaintance/advisor. The following are some of the statements made by Burger during this meeting:

He had very little to do with the management of GCI. His main task, as he saw it, was to act as "portfolio manager".

He seldom visited the offices of GCI in Pretoria and the company was effectively managed by Botha and de Beer. He allegedly visited the Pretoria office perhaps five times per month and conceded that the monthly salary of R30 000 that he received might have been excessive.

He did not know, or pretended not to know, about the fiduciary duties of directors.

Burger was given the opportunity to go through all the files and documents the Committee had on GCI. It was agreed that he would prepare a submission in response to Notice 2424. He wanted to meet the officials again on 2 November 1998. Burger called on 2 November 1998 to say that he was unfortunately delayed but would meet with oficials on 4 November 1998.

An official met with Bruyns at his offices in Pretoria on *29 October 1998*. Bruyns was the Director: Human Resources of GCI and said that he appointed Bosch as area manager.

Officials met with de Beer, Botha and Botha's attorney at the offices of the Committee on *2 November 1998*. Not much came of this meeting. Botha and de Beer again contended that Burger was the driving force behind GCI. The attorney was concerned that Botha might incriminate himself.

On *4 November 1998* officials again met with Burger and yet another business associate of him. Burger requested the officials to put all questions they wish to ask in writing. He was told that this was not possible as the answer to a particular question more often than not gave rise to further questions. Burger again agreed to submit his version of events in writing.

Officials of the Committee again met Burger on *9 November 1998*. This meeting took place at Burger's offices at 117 Webber Road, Germiston. Burger alleged that he only received the minutes of board meetings only on four or five occasions. When asked if he ever objected to this he said that he did. A study of 17 board meeting of GCI held between 11 October 1997 to 19 August 1998 revealed no evidence that Burger objected to this state of affairs. He also said that he never withheld nay inforamtion from Van Wyk and Fennie. He undertook to deliver his written submission and the accounting books of Bigfoot Holdings (Pty) Ltd at the offices of the Committee not alter than 11 November 1998. It was already stated above that he failed to do so.

On *10 November 1998* an official met with Sadie at a hotel in Midrand. Els (see section 1. Introduction) apparently introduced Sadie to Burger at a time when Various Level Marketing (VLM) still existed. Sadie said that he gained some experience in multi-level marketing during his involvement with Amway, Sportron, Herbal Life and as a member of Rainbow Business Club[10]. At some stage he attended a meeting of where 800 people waited in three halls to hear more about Amway. This "inspired" him to enter into multi-level marketing with Burger.

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10. The business practices of Rainbow Business Club was declared a harmful business practice in terms of the Harmful Business Practices Act, 71 of 1988 by the Minister of Trade and Industry. See the Commiittee's Report No ?

On *25 November 1998* an official of the Committee met with a young couple, Mr and Mrs Steenberg. They paid R40 000 for shares in GCI which they bought between 24 February 1998 and 14 September 1998. They said that they were neither related to nor were friends of any person working for GCI at that stage. They were, however, "friends of friends" who worked for GCI. This belies the allegation by Botha and de Beer that the "private placement" only involved "friends and family".

On 24 February 1998 the Steenbergs paid another R15 000 for 16 853 GCI shares or 89 cents per share. On 14 April 1998 they again bought another 10 526 shares form GCI at 95 cents each, a total of R10 000. On 14 September 1998 they paid "AZ" Brokers another R15 000 for an unknown number of shares. They never received a share certificate for the shares bought on 14 September 1998 and hence did not know how many shares were involved in the transaction.

When asked why they bought GCI shares on three occasions, they said that the "consultant", Amelia van Abo, who was married to Botha during the latter half of 1998, told them that the value of the shares increased considerably. On 6 August 1998 they wrote a letter to GCI requesting GCI to sell their shares and deposit the proceeds into their banking account. Amelia van Abo persuded them not to do so. It was previously stated that the share prices were "fixed", probably by Botha, Burger and de Beer. The Steenbergs said that they did not know much about shares and shares prices, but that they were impressed with the growth in the price of the shares as explaind to them by Amelia van Abo, now Botha. The Steenbergs increased the bond on their home to pay for the shares that they bought.

On *5 February 1999* an official met with a shareholder Mr "FB". "FB" accepted a retirement "package" from his employer towards the end of December 1997. During the same month Botha visited "FB" at his house and explained the virtues of investing in GCI to "FB". "FB" explained to Botha that he had not yet received the cash portion of his "package". On 19 December 1997 Botha wrote to "FB" thanking him for the opportunity to make a presentation about GCI. Botha also inter alia wrote the following (directly transalted from the Afrikaans):

> **"As discussed during our interview I would like to confirm that your capital is at all times guaranteed".**
>
> **"GCI Limited guarantees a growth of ten times the original capital investment after a period of ten years".**
>
> **"It is important to note that the monthly income to be paid out of the investment would not be taxable because it will be shown as dividends. This income is thus not regarded as interest income as in the case with other financial institutions".**

"The asset value that GCI acquired during the past year was approxiamately R53 million". (*THIS STATEMENT WAS A GLARING MISREPRESENTATION BY BOTHA. GCI ONLY STARTED DOING "BUSINESS" IN OCTOBER 1997*).

"Because GCI shares ares isued in the form of American Dollar linked certificates, you should take note that GCI shares showed a further growth of approximately 15 per cent, should the devaluation of the Rand against the Dollar is taken into consideration". (*THIS STATEMENT BY BOTHA COULD ONLY BE DESCRIBED AS RIDICULOUS*).

"FB" received the cash portion of his "package" in Jnauary 1998 and on 22 Janauary 1998 he paid R700 000 to GCI for shares. Towards the end of February 1998 GCI paid R271 000 into the account of "FB". "FB" alleged that Botha told him that he ("FB") bought his shares at the price that ruled at the time of their discussion in December 1997 and not at the price the shares were sold for on 22 January 1998. Since the share price increased between middle December 1997 and 22 January 1998, "FB" made a handsome profit of R271 000. There was no real increase in the price of GCI shares. It was already stated that the GIC share prices were figuratively and literally "fixed" by GCI, and most probably by Burger, Botha and de Beer. (see section 3).

12. THE GCI BOOKS OF ACCOUNT

In the course of the investigation into the business practices of GCI, officials of the Committee obviously perused the available books of account of GCI and other accountancy related documents such as paid cheques. It is not a function of the Committee to do forensic audits during any of its investigations. The Committee and its officials are only empowered in terms of the Act to do investigations in order to establish whether harmful business practices, as defined in the Act, exists or may come into existence.

Nevertheless, a number of interesting (alarming) facts emerged from the ledgers up to 30 June 1998, paid cheques and cheque counterfoils. The amounts quoted need not be correct in view of the auditor's remarks. The list is certainly not exhaustive.

(a) The telephone, fax and mobile phone costs up to 30 June 1998 amounted to R329 000.

(b) De Beer and his father were contracted as consultants. It would seem that PAYE was not deducted from their "professional fees".

(c) The counterfoil of cheque 79 dated 19 December 1997 to the amount of R1 380 and made out to Burger was marked "gifts".

(d) The directors fees (other than salaries) were R478 820.

(e) "Paid to staff" amounted to R2.429 million. This amount includes the salaries of directors.

(f) "Internal Commissions" were R481 932, icluding commissions paid to a number of directors. "External Commissions" amounted to R553 588.95.

(g) An alarming number of cheques was made out to cash.

(h) More than R300 000 was paid to Bigfoot Holdings (Pty) Ltd. Burger was managing director of this company.

(i) More than R1.1 million was paid to broker "AZ" (See section 13).

13. SHARES RESOLD BETWEEN APRIL 1998 AND JULY 1998

It was stated above (see section 7, document 6) that Botha said he had a "few" enquiries about shareholders that probably did not understand the marketability of unlisted shares and he then decided that a circular should be sent to all shareholders.
However, GCI actively assisted some shareholders in selling their shares. It would appear that when a shareholder "insisted" on getting his/her money back, GCI canvassed propective new shareholders for these shares and thus created an artificial market for GCI shares. The new shareholders paid GCI for their shares. The "selling" shareholders received their proceeds from "AZ" the "share broker".

"AZ Brokers" are insurance brokers. "AZ" said that Botha called him and asked him ("AZ") to help GCI with the "trading" of GCI shares. This was the first time that "AZ Brokers" got involved in the "trading " of shares. The procedure was that "AZ" would receive a call from Botha or a clerk, Francois Jonker, who worked for GCI. "AZ" would then visit the offices of GCI and he was then handed a GCI cheque made out in his favour of "AZ Brokers". "AZ" was then instructed to issue "AZ Brokers" cheques to the sellers. The names of the sellers and the amounts due to each was furnished by GCI. "AZ" never met any of the shareholders and he never acively sought buyers for GCI shares. On three occasions he received written instructions from GCI requesting him to pay certain amounts to certain "sellers". These instructions were not given in letters with the letterheads of GCI.

More than R1 million was paid to "AZ Brokers" who took three percent of the gross amount as "commission". This amount was paid by 16 cheques during the period 17 April 1998 to 17 July 1998. The biggest amounts of the cheques were R288 201.50 and R250 657.10 respectively and the smallest amounts were two

cheques of R1 000 each. "AZ Brokers" distributed the more than R1 million through 56 "AZ Brokers" cheques to the "sellers" of GCI shares. "AZ Brokers" this earned three percent in excess of R1 million, or R30 000+ to write out 56 cheques.

14. A FURTHER SECTION 8 (1)(A) NOTICE

The following appeared as Notice No 434 in Government Gazette No 19836 dated 19 March 1999.

> **"In terms of the provisions of section 8(4) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Business Practices Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of -**
>
> > **Gauteng Corporate Investments Limited (91/06577/06) and Jacobus Frederik de Beer, also known as Jacques de Beer, in respect of the activities of Gauteng Corporate Investments Limited".**

15. CONCLUSION

The evidence at the disposal of the Committee show that consumers have been grossly misled by GCI over a number of months. The GCI shareholders were also prejudiced because it would seem (January 1999) that there are no meaningful assets left. In paragraph 9 of his affidavit supporting his application for voluntary sequestration, Botha stated that GCI made severe losses over the last few months because of the "... poor investment climate in the Republic of South Africa". In view of the report of the auditor (see section 9), it is unlikely that the "... poor investment climate in the Republic of South Africa" was the reason for the downfall of GCI .

It appeared that between October 1997 and October 1998, the following persons were directors of GCI: Bosch, Botha, Bruyns, Burger, PJ Els, OL Erasmus, J Fennie, F Jonker, Mahlangu, Sadie, Van Oudtshoorn, GEC Van Wyk and J White. However, during a GCI board meeting on 2 February 1998 it was resolved that Erasmus, van Oudtshoorn and Bosch were "acting directors" (see section 1) and that they would be appointed as "area managers". In this report the facts do not point to either Erasmus or Van Oudtshoorn doing anything untoward in their capacities as directors, "acting directors" or "area managers" of GCI. Van Oudtshoorn is in jail because of a felony that seems to be unrelated to GCI's activities. Bosch, however, signed two letters to GCI that contained misleading statements. These letters were signed on behalf of de Beer and the Committee has no conclusive evidence that Bosch acted on his own. No GCI shares were issued to Els and Jonker and there is no evidence to suggest that they had anything to do with the management of GCI. The Committee has no evidence to

suggest that Mahlangu and White were involved in the day to day activities of GCI. Bruyns signed a circular on behalf of GCI (see section 2.4) and alleged that he did so at the insistence of Burger. This leaves Botha, Burger, Fennie, Sadie and Van Wyk.

Fennie and Van Wyk were appointed as non-executive directors. They were unaware of the existence of the documents mentioned in sections 2.1 to 2.7 and refused to sign a prospectus (see footnote 9) that was in all probability compiled by Burger, Botha and de Beer. Fennie and Van Wyk readily conceded *inter alia* that the calculation of the share price constituted a harmful business practice. Sadie, although at some stage "chairman" of GCI, was effectively fired by Burger. By his own admission Sadie was rather naive regarding business. This is also evidenced through his involvement in the ludicrous "Princess Diana European Land Trust Memorial Limited" scheme (see section 2.4). This leaves Botha and Burger. De Beer, although not a director, obviously because he was an unrehabilitated insolvent, also played a major role in the management of GCI.

It is clear that Burger, Botha and de Beer were the decision makers within GCI. On 17 July 1998 they held 80 per cent (320 million) of the "Class D deferred ordinary shares" (400 million) of GCI. The ±3 million shares held by ordinary shareholders on 31 January 1998 were insignificant compared to the millions held by Burger, Botha and de Beer.

Burger, the "portfolio manager", majority shareholder, founder and self-appointed "President" of GCI appointed and fired those around him. He described himself as "An entrepreneur with a phenomenally successful track record spanning over 35 years" and having "... developed the reputation of being the power behind some of the most amazing projects that may be attributed to a single individual in one life time". Yet he alleged that he had nothing to do with the management of GCI. For this "non-involvement" in the management and "portfolio management" he recived a salary of R30 000 per month. The misleading information in the documents mentioned in sections 2.1 to 2.7 was supplied by him to Sadie. Although a director of GCI and other companies, he was surprised to learn about the fiduciary duties of a director from an official.

At the meeting on 8 May 1998 Burger, as "President" and majority shareholder of GCI, said absolutely nothing to exonerate his or GCI's actions. He merely stated that GCI would give its cooperation during the invesigation. It later appeared that this cooperation was sadly lacking (see section 8).

Botha and de Beer often absolved themselves from glaring misrepresentations made to shareholders or propective shareholders.

(a) Botha was on holiday in Cape Town on 13 January 1998 and came to know about the circular signed by Bruyns only when he returned. (see section 2.4).

(b) Botha and de Beer could not indicate on which date the "Profile" was written and to whom it was sent. Botha vaguely said that "... it was given to a few people who wanted to know something about the company, such as friends and family of employees". (see section 2.5).

(c) A GCI letter dated 28 April 1998 contained references to the so-called "income plan". Again Botha and de Beer expressed their surprise about the existence of the letter. (see section 8, document 2).

(d) Botha and de Beer expressed their surprise about and denied any knowledge of the existence of a GCI letter. (see section 7, document 1). .

Botha was actively involved in misleading shareholders. On 7 September 1998 , for example, he stated that GCI shares traded at R1.20 (see section 8, document 11). Botha and de Beer tried their utmost to justify the "calculation" of the share price fixed by Burger, de Beer and himself, but later conceded the "fixing" of the share price.

During September 1998 Botha and de Beer feigned not to have known about the GCI telemarketers (see section 8), yet during a board meeting in February 1998 Botha said that telemarketers need to be employed.

De Beer, as the financial manager/company secretary, was responsible for the management information and accounting system. The report of the auditor (see section 9) is a clear indication that de Beer was not equal to the task. The lack of a management information system and a hopelessly inadequate accounting system resulted in the management mostly being in the dark as to the real financial position of the company. This did not seem to bother anyone.

Botha, Burger and de Beer were incapable of managing a public company. This prejudiced all the ordinary shareholders of GCI who did not hold "Class D deferred ordinary shares". They also managed the issuing of shares to the public, and not only friends and family as suggested by them. Botha, Burger and de Beer should be prohibited from being employees or directors in companies or close corporations in which they are also shareholders or members.

16. RECOMMENDATION

The business practices of Adolphe Botha, Jan A (Jay) Burger and Jacobus Frederik (Jacques) de Beer constituted harmful business practices. There are no grounds justifying the practices in the public interest. It is accordingly recommended that the Minister under section 12(1)(b) of the Act, declares unlawful the business practice whereby of Adolphe Botha, Jan A (Jay) Burger and Jacobus Frederik (Jacques) de Beer, directly or indirectly:

(a) accept appointments as employees or directors in companies or close corporations in which they are shareholders or members and/or

(b) invite any persons to make investments in companies or close corporations in which they are shareholders or members

and

directs Adolphe Botha, Jan A (Jay) Burger and Jacobus Frederik (Jacques) de Beer to refrain from applying the harmful business practice.

LOUISE A TAGER
CHAIRMAN : BUSINESS PRACTICES COMMITTEE
23 March 1999

NOTICE 1144 OF 1999

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in General Notice 2424 of 1998 as published in Government Gazette No. 19369 dated 16 October 1998 and General Notice 434 in Government Gazette 19836, dated 19 March 1999, which report was published in Notice 1143 in Government Gazette No. 20184 of 14 June 1999, and being of the opinion that a harmful business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12(1) (b) and (c) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

A ERWIN
MINISTER OF TRADE AND INDUSTRY

SCHEDULE

In this notice, unless the context indicates otherwise -

"harmful business practice" means the business practice whereby the parties, directly or indirectly:

(a) accept appointments as employees or directors in companies or close corporations in which they are shareholders or members and/or

(b) invite any persons to make investments in companies or close corporations in which they are shareholders or members.

"the parties" means Adolphe Botha, Jan A (Jay) Burger and Jacobus Frederik (Jacques) de Beer

1. The harmful business practice is hereby declared unlawful in respect of the parties.

2. The parties are hereby directed to -

(a) refrain from applying the harmful business practice;

(b) cease to have any interest in a business or type of business which applies the harmful business practice or to derive any income there from;

(c) refrain from at any time applying the harmful business practice; and

(d) refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying the harmful business practice.

3. This notice shall come into operation upon the date of publication hereof.

KENNISGEWING 1144 VAN 1999

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP VERBRUIKERSAKE (ONBILLIKE SAKEPRAKTYKE), 1988

Ek, Alexander Erwin, Minister van Handel en Nywerheid, na oorweging van 'n verslag deur die Sakepraktykekomitee met betrekking tot 'n ondersoek waarvan in Algemene Kennisgewing 2424 van 1998 soos gepubliseer in Staatskoerant No. 19369, gedateer 16 Oktober 1998 en Algemene Kennisgewing 434 in Staatskoerant 19836, gedateer 19 Maart 1999 kennis gegee is, welke verslag gepubliseer is by Kennisgewing 1143 in Staatskoerant No. 20184 van 14 Junie 1999, is van oordeel dat 'n skadelike sakepraktyk bestaan wat nie in die openbare belang geregverdig is nie, en oefen hiermee my bevoegdheid uit kragtens artikel 12(1)(b) en (c) van die Wet op Verbruikersake (Onbillike Sakepraktyke), 1988 (Wet No. 71 van 1988), soos in die Bylae uiteengesit.

A ERWIN
MINISTER VAN HANDEL EN NYWERHEID

BYLAE

In hierdie kennisgewing, tensy uit die samehang anders blyk, beteken -

"die partye" Adolphe Botha, Jan A (Jay) Burger en Jacobus Frederik (Jacques) de Beer.

"skadelike sakepraktyk" die sakepraktyk waardeur die partye, regstreeks of onregstreeks -

(a) aanstellings aanvaar as werknemers of direkteure in maatskappye of beslote korporasies waarin hulle aandeelhouers of lede is en/of

(b) enige persone uitnooi om beleggings te maak in maatskappye of beslote korporaise waarin hulle aandeelhouers of lede is.

1. Die skadelike sakepraktyk word hiermee ten opsigte van die partye onwettig verklaar.

2. Die partye word hiermee gelas om -

(a) af te sien van die toepassing van die skadelike sakepraktyk;

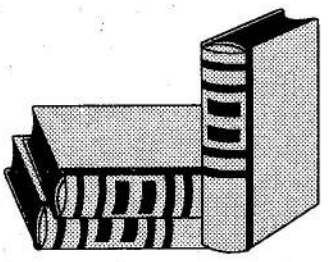
(b) op te hou om enige belang in 'n besigheid of tipe besigheid te hê wat die skadelike sakepraktyk bedryf, of om enige inkomste daaruit te verkry;

(c) te gener tyd die skadelike sakepraktyk te bedryf nie; en

(d) te gener tyd enige belang in 'n besigheid of tipe besigheid wat die skadelike sakepraktyk bedryf te bekom nie, of om enige inkomste daaruit te verkry nie.

3. Die kennisgewing tree in werking op die datum van publikasie hiervan.

Where is the largest amount of meteorological information in the whole of South Africa available?



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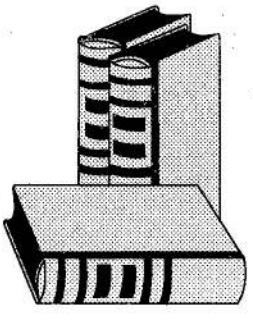

Waar is die meeste weerkundige inligting in die hele Suid-Afrika beskikbaar?

Department of Environmental Affairs and Tourism
Departement van Omgewingsake en Toerisme


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