

A The Investigation

1 In 2001 the rand depreciated by 10.7% or an average of 1.3% per month during the first eight months, and from 1 September to 31 December, the rand weakened by 42%, an average of 10.5% per month. The low point was a value of R13.84 to the US dollar on 21 December 2001.<sup>1</sup>

2 The rapid depreciation of the rand in the last four months of 2001 was a concern for all South Africans. One such South African, Mr Wakeford, called for a formal inquiry in to the depreciation of the rand in late December 2001 and early January 2002. Having been furnished with a written report by Mr Wakeford on 8 January 2002, the President appointed this Commission on the same day.<sup>2</sup> The Terms of Reference of the Commission are attached to Part A as Annexure “A”.

3 The first leg of the enquiry in terms of the Terms of Reference was to enquire into and report on transactions which contributed or gave rise to the rapid depreciation of the rand in 2001. That task was a daunting one in view of the size of the foreign exchange (“forex”) market. Millions of transactions measured in billions of US dollars were transacted in 2001:-

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<sup>1</sup> See generally Part B

<sup>2</sup> See generally Part E

3.1 In April 2001 it was established that global trading in the rand was USD11.3 billion, made up as follows:

- USD3.3 billion was traded between two off-shore parties (off-shore/off-shore);
- USD3.5 billion was traded on-shore/on-shore, ie between institutions in South Africa; and
- USD4.5 billion was traded on-shore/off-shore, ie between institutions in South Africa and those outside South Africa (off-shore). About 75% of those transactions were swap transactions, which did not affect the rand.<sup>3</sup> It follows that about 25% (USD2.8 billion) of the transactions had to be investigated.

3.2 The number of forex transactions reported to the Reserve Bank in 2001 was 5.6 million, which did not include either any of the off-shore/off-shore transactions or all the on-shore/on-shore transactions.<sup>4</sup> It follows that the number of forex transactions was substantially in excess of 5.6 million in 2001.

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<sup>3</sup> See generally Part C

<sup>4</sup> Record 1762

4 Besides trying to find a practical way of investigating so many forex transactions, the Commission was concerned about the costs and the duration of the enquiry. Time was of the essence. The Commission was not called upon to investigate an event which had occurred in the past and which was frozen in time, such as a mining disaster. The rand continues to be traded. If any lessons were to be learnt from the events of 2001, the sooner they were learnt the better. And yet the enquiry had to be thorough, given the practical difficulties. A superficial enquiry would have served no purpose.

5 A major concern was the public nature of the enquiry.<sup>5</sup> By calling on public institutions such as the National Treasury and the South African Reserve Bank (“Reserve Bank”) and authorised dealers, whose numbers include the major banks in South Africa and local offices of major foreign banks, to give evidence in public, the danger was that the process itself could be damaging to those public institutions, the banking industry, South Africa and ultimately the rand. And how ironic that would have been.

At the same time, the Commission had to be sensitive to the fact that it would be dealing, in the words of the Minister of Finance “...with issues close to the hearts of all South Africans who are concerned about building an

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<sup>5</sup> In terms of s4 of the Commissions Act, 8 of 1947.

economy that is as strong and resilient as it can be, but also one that is equitable, in which the wrongdoings of the few should not be at the expense of the many.”<sup>6</sup>

6 Within days of being appointed, the Commission took a number of decisions which it was hoped would meet those difficulties and address those concerns:-

- (1) Assistants to the Commission were to be appointed who had the necessary experience, skill and expertise in banking, treasury, exchange control, forensic auditing, the law, computer science, structured finance, finance, and so on.
- (2) The co-operation of financial market participants would be sought. If the enquiry was to take place in public in a confrontational way, the risk was that the process would be costly, slow and potentially damaging in the manner described earlier.
- (3) Experts, local and foreign, would be consulted, initially to advise on how one investigates a currency and ultimately with a view to giving evidence.

7 Those decisions were implemented within weeks:-

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<sup>6</sup> Closing statement of Minister of Finance on final day of hearings, Record 1760.

- (1) Assistants to the Commission were appointed who had the necessary attributes. A list of the assistants is contained in Annexure "D" to Part A.
- (2) Meetings were held at the highest level with representatives of National Treasury, Reserve Bank, authorised dealers (local and foreign) and corporates. Their co-operation was solicited, promised then and given later, unequivocally.
- (3) A range of experts was consulted.

8 On the basis of the input of a wide range of knowledgeable persons consulted by the Commission, the next series of decisions taken was to conduct the investigation in the following way:-

- (1) Experts would be requested to give evidence. The experts would be local and foreign (if possible). The experts would cover different aspects of the enquiry, such as exchange control, forex trading, macroeconomics, and so on.
- (2) National Treasury and the Reserve Bank would be requested to give evidence.
- (3) All 32 authorised dealers would be requested to furnish information to the assistants to the Commission and to give evidence.

All the other forex market participants, the Reserve Bank, Bond Exchange of South Africa (“BESA”), Johannesburg Securities Exchange of South Africa (“JSE”), South African Futures Exchange (“SAFEX”), South African corporates and representative offices of foreign banks (“rep offices”), would be requested to furnish information to the assistants to the Commission and, if necessary, to give evidence.

- (4) The allegations made by Mr Wakeford in his written report to the President would be investigated by one team of assistants (“Wakeford team”).
- (5) A team from KPMG would identify transactions that gave rise or contributed to the rapid depreciation of the rand (“KPMG team”).
- (6) A team from Deloitte & Touche would investigate the activities of the financial market participants (“DT team”).
- (7) A team from KPMG would investigate the effectiveness of the current administration of the exchange control system (“KPMG team”).
- (8) Two tip-off lines were to be opened on which whistle blowers who wished to remain anonymous could furnish information to the Commission.
- (9) The Reserve Bank would be asked to request the Bank of England to supply it with information on off-shore/off-shore

transactions (the daily turnover of which in April 2001 was USD3.3 billion).

9 Those decisions were implemented over the course of the next few months:-

- (1) Without difficulty, local experts were persuaded to give evidence. With difficulty, and with much effort, three foreign experts agreed to give evidence. A list of the experts is attached to Part A as Annexure "E". The evidence of the experts is referred to by subject matter throughout the Final Report.
- (2) Mr Manuel, the Minister of Finance; Ms Ramos, the Director-General, National Treasury; Mr Mboweni, the Governor of the Reserve Bank; Mr Cross, the former Senior Deputy Governor of the Reserve bank; Mr van Zyl, the Advisor to the Governor; Mr Bruce-Brand, the General Manager, Exchange Control, and Mr Grove, Assistant General Manager, Exchange control gave evidence.
- (3) Authorised dealers provided information to the DT team in reply to a questionnaire. The replies were analysed and included in the

DT report, which formed the subject matter of oral evidence by the leader of the team.<sup>7</sup>

All thirty-two authorised dealers gave evidence, the major authorised dealers by way of oral evidence and the other authorised dealers in the form of affidavits. A list of the witnesses who gave oral evidence on the part of the major authorised dealers is attached to Part A as Annexure “F”. A list of the witnesses who provided affidavits on behalf of the other authorised dealers is attached to Part A as Annexure “G”.

All the other forex market participants referred to in §8(3) above, provided information to either the KPMG team or the DT team or both, which was analysed by those teams and included in their reports to the Commission.

Mr Tucker, chief executive officer of the Banking Council, and Mr Gibbs, President of ACI (SA) testified.

- (4) The Wakeford allegations were investigated by the Wakeford team. Mr Wakeford, the bank and corporates mentioned in Mr Wakeford’s report to the President, Exchange Control and the leader of the Wakeford team gave evidence.<sup>8</sup>

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<sup>7</sup> See Part K

<sup>8</sup> See Part E

- (5) The KPMG team prepared a report on transactions that gave rise or contributed to the rapid depreciation of the rand and the leader of the team gave oral evidence.<sup>9</sup>
- (6) The DT team prepared a report on the activities of the financial market participants and the leader of the team gave oral evidence.<sup>10</sup>
- (7) The KPMG team prepared a report on the effectiveness of the current administration of the exchange control system and the leader of the team gave oral evidence.<sup>11</sup>
- (8) Two tip-off lines were made available by KPMG and Deloitte & Touche at no cost to the Commission and at no cost to the user of the service. KPMG and Deloitte & Touche donated their services and the costs of the lines to the Commission. The Wakeford team received eighty-five reports from the tip-off lines. Ten reports were worthy of investigation. The team found no evidence of material transactions which were relevant to the Commission.
- (9) At the request of the Commission, the Reserve Bank requested the Bank of England to provide information on the local gross average daily turnover (purchases and sales) in US dollars of spot, outright forwards and swaps in the forex market in the rand.

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<sup>9</sup> See [Part J](#)

<sup>10</sup> See [Part K](#)

<sup>11</sup> See [§17 Part I](#)

The Bank of England was also requested to state, in its opinion, what specific transactions, actions, events, factors or omissions played a part in the rapid depreciation of the rand in 2001. The Bank of England was unable to furnish the information requested, save for the profile of the rand trading month by month through 2001, benchmarked to total BIS-reported rand turnover for April 2001. A copy of the letter from the Bank of England to the Reserve Bank is attached to Part A as Annexure “H”.

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- 10.1 The authorised dealers were required to conduct their own internal investigations in furnishing information to the Commission on a wide variety of topics, for example, group structure; role in financial markets; risk management; compliance with exchange control; ethical standard in forex activities; CFC and vostro accounts.<sup>12</sup> Some of the information was subsequently confirmed under oath in evidence.
- 10.2 The authorised dealers assumed the responsibility of ensuring that the information was accurate. The Commission has no reason to believe that the facts placed before the assistants to the Commission or the Commission itself were not accurate: the

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<sup>12</sup> See Annexure “A” to Part K

authorised dealers are subject to external audit and supervision by the Reserve Bank; there was the potential of a verification exercised by either the KPMG or DT teams and the risk of reputational damage if any authorised dealer knowingly misrepresented the facts to the Commission was not worth taking.

11 As it was impossible to investigate more than 5.6 million forex transactions in a limited time in a cost effective way, some judgement calls had to be made:

- the *first* was to concentrate on the activities of the ten major authorised dealers who were responsible for at least 95% of transactions in the rand market;<sup>13</sup>
- the *second* was to concentrate on the period 1 September to 31 December 2001, the period of greatest volatility and depreciation, although the first eight months of 2001 were not ignored;<sup>14</sup>
- the *third* was to analyse “hot” days” in 2001 when the most rapid depreciation occurred or when there were large movements in the US dollar/rand exchange rate;<sup>15</sup>

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<sup>13</sup> See §9.4 Part K

<sup>14</sup> See §8 Part K

<sup>15</sup> See §5 Part J; §9.3 Part K

- the *fourth* was to identify, analyse and investigate applications *exceeding R100 million* by residents to invest off-shore.

12 The authorised dealers were deeply concerned about confidentiality. Some of the information that would be supplied to the assistants to the Commission and some of the evidence of the authorised dealers, would be confidential, for example, as between bank and client, as between bank and competitor and as between bank and Reserve Bank. That concern had to be met, if possible, while respecting the Commission's right to investigate, and procure evidence of transactions, even if the transactions were confidential. In the result:

- detailed arrangements, to the satisfaction of the authorised dealers, were made to ensure that confidential information in the possession of the assistants to the Commission did not leak;
- evidence was given in such a way that very little confidential information was placed before the Commission;
- that confidential information was disclosed only to the Commissioners (and not to the public).

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13.1 All potential witnesses were requested to prepare written statements in consultation with the lawyers who had been appointed as assistants to the Commission in order to ensure:

- a speedy investigation;
- short public hearings;
- carefully considered and coherent evidence;
- accurate reporting of the evidence by the media.

13.2 Except in the case of some experts who provided the Commission with a slide presentation, all the witnesses did make statements, which formed the basis of their evidence. The procedure worked well.

14 It was clear early on that the investigations by the three teams of assistants to the Commission would take months rather than weeks to complete. Rather than wait for all the investigations and preparatory work to be completed before commencing the public hearings, it was decided that as and when evidence became available, the Commission would hear evidence. Consequently, as early as the first week of March 2002, the Commission commenced public hearings and adjourned from time to time as evidence became available.

