



# OUT OF SIGHT, BUT TOP OF MIND AN UPDATE ON STEINHOFF

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## ABOUT THE AUTHOR

Hywel is responsible for the investment performance delivered by Old Mutual Investment Group's listed asset management cluster. He has worked at leading global institutional and private client asset management companies across the globe. His experience spans 25 years in asset management in Europe and the Middle East.

Following the alarming revelations of accounting irregularities in December last year, I would like to update you on the situation at Steinhoff and the steps we have been taking over the past months to engage effectively with Steinhoff management and recover whatever value remains for shareholders.

Here is a brief update on the most material developments regarding Steinhoff:

**Supervisory board.** This has been reconstituted with appropriately experienced candidates to examine the various matters as they emerge, and to take appropriate decisions.

**Executive directors.** Danie van der Merwe remains the acting Chief Executive Officer (he was previously the company's Chief Operating Officer). A dedicated restructuring officer has been appointed.

**Financial position.** This remains unclear and will remain so until the following information is released:

- June 2018. The publication of unaudited interim financial statements for the six-month period to end of March 2018, and an unaudited balance sheet as at 30 September 2017. An announcement of additional impairments of intangible and other assets needed will also be made.
- Late 2018. The anticipated publication of the PwC forensic investigation.
- December 2018. The anticipated publication by Deloitte of revised audited financial statements for the year to the end of 30 September 2017.

The financial update that management provided at the annual general meeting on the 20th of April was lacking in specific

financial detail. It was also stated that the firm's position remains "very challenged". Some progress continues to be made through asset realisations, debt programme repayments, operating cost and capital expenditure reductions and re-financing of existing debt terms.

**Outstanding legal matters.** The dispute with the previous joint venture partner in one of the German businesses has been resolved. The tax dispute in Germany remains outstanding.

**Christo Wiese claim.** The previous chairman of the company has filed notice of a claim contending that the sale of his interest in Pepkor Europe should be unwound. In our view, this is an unfortunate action as it is a fact that the acquisition of Pepkor Europe, his appointment as chairman of Steinhoff and his decision to maintain his proportional interest through financial leverage in Steinhoff equity (to avoid dilution following the Mattress Firm acquisition) were all driven and motivated by Christo Wiese himself. In fact, he remained, at all times, a close insider to the process. Although the losses Christo Wiese suffered are severe, in our opinion, it is unlikely that his personal interests will enjoy preferential treatment over those of the remaining minority shareholders. Steinhoff has indicated that the firm will vigorously defend the company against this legal action. This claim forms one of many actions that Steinhoff will be facing.

**Additional claims.** Banker and cofounder of FirstRand, GT Ferreira, and the founders of Tekkie Town have also lodged claims against Steinhoff. We expect further claims to emerge.

**Class action claims.** We continue to evaluate the various options available regarding joining a class action lawsuit to recover losses suffered as a result of alleged fraudulent and/or negligent

actions committed by the firm, its directors, auditors and advisers. The priority is not to compromise the financial viability of the firm, nor to burden the firm with undue costs and demands on management time.

Shareholders are faced with various legal options, including joining the Dutch Shareholders Association (VEB) claim or launching a privately funded legal claim through a special purpose vehicle. As is evident from media reports, VEB, who follows a special Dutch legal route, has already launched its legal process and which shareholders may still join. The alternatives would result in a myriad of outcomes that would need to be considered, each with its own advantages and disadvantages. In some cases, client mandates do not allow us to undertake a claim of this nature on their behalf. In addition, we have been advised that the legal process itself could take many years to conclude. We had a follow-up meeting with all of the relevant parties in early June and hope to soon make a decision as to which legal route we recommend clients follow.

**Criminal pursuit of directors.** We fully support and continue to insist that the firm share all relevant data and records with the appropriate authorities, which could potentially result in the criminal prosecution of directors and officers of the firm who may have committed criminal offences.

## JOINING FORCES

In light of these ongoing matters, a group of institutional shareholders have formed a loose and voluntary association with the purpose of:

1. Working constructively and expeditiously to protect our clients' remaining interests in the firm.

2. Engaging constructively and on an ongoing basis as a shareholder group with the supervisory board of the firm to understand the financial position of the organisation, assist with the reconstitution of the supervisory board, curtail activity we do not believe to be in shareholders' interests, and to ensure the annual general meeting be conducted effectively – with all proposed resolutions receiving the necessary shareholder attention.
3. Examining the various legal options that remain open for shareholders to pursue damages for losses suffered as a result of alleged fraudulent and/or negligent conduct by the firm and its directors and officers, as well as by the firm's auditors and advisers.

The decision to act collectively is motivated by the following considerations:

- Our collective holdings will give us more say in addressing outstanding matters than if we were to act individually.
- A better outcome for our clients is possible given our shared client relationships.
- We are motivated to act collectively in terms of responsible ownership commitments as per King IV and the Code for Responsible Investing in South Africa.
- We will send a clear collective signal to the market that unethical behaviour and poor governance practices will not be tolerated.

I hope that this update provides you with some clarity regarding Steinhoff and the ongoing efforts being made to fulfil our fiduciary responsibilities to our clients. ■

