

# STICHTING FREQUENTLY ASKED QUESTIONS

STICHTING STEINHOFF INVESTOR LOSSES

The Stichting Steinhoff Investor Losses (the “SSIL Foundation”) provides an outstanding vehicle for harmed investors to easily and efficiently recover damages stemming from the international accounting scandal and fraud perpetrated by Steinhoff International Holdings N.V. The strength of the SSIL Foundation is its excellent Board comprised of the most prominent members of the Dutch legal community, the experience of its U.S. funders (Lief Cabraser Heimann & Bernstein, LLP, and Saxena White P.A.) and its 15% contingent fee, well below market practice.

## 1. WHAT IS A STICHTING?

A stichting, or “foundation,” is a Dutch legal entity. Stichtings are used as claims vehicles in Dutch litigation to protect the interests of aggrieved parties on an “absent plaintiff”-basis. In the context of a securities fraud litigation settlement, a stichting can secure a global resolution on behalf of damaged litigants across the globe, similar to U.S.-style class action litigation. Stichtings are governed by their management and supervisory boards, and can be defined broadly or narrowly to pursue various legal matters in the Netherlands.

## 2. WHY IS A DUTCH STICHTING RELEVANT?

It’s the best way to recover damages in international shareholder disputes. United States courts typically do not have jurisdiction over matters concerning securities that are traded on non-U.S. exchanges. Therefore, when a non-U.S. company commits fraud involving securities that are not traded on a U.S. exchange, shareholders will likely be unable to recover their losses through U.S. litigation, including class actions. In those cases, a Dutch stichting is the principal, easiest, and most efficient mechanism for obtaining recovery.

Besides the Netherlands, no other European

jurisdiction provides a global settlement mechanism that is similar to United States securities class actions. The Dutch Act on Collective Settlements (“WCAM”) is unique in this regard because it provides a collective settlement framework, including an international notice program and a global release with international binding effect.

A stichting is also an important tool to obtain relief for investors because the Dutch courts do not allow Dutch lawyers to work on a contingent basis—meaning that direct, individual investor litigation can prove exceedingly risky and costly. However, Dutch courts do allow non-Dutch lawyers to work on WCAM settlements on a contingent basis and to directly fund the Dutch litigation, thus eliminating any financial obligation and risk for investors who join a stichting.

## 3. DOES A STICHTING REQUIRE A “LEAD PLAINTIFF” TO BE APPOINTED?

No. A U.S. class action-style “lead plaintiff” is not appointed for a stichting. Accordingly, an investor who participates in a stichting will not be asked to serve as a “lead plaintiff” and will not face the type of discovery obligations that are required of a lead plaintiff under the U.S. securities litigation framework, such as document production, deposition, or trial testimony.

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## 4. WHAT IS REQUIRED TO PARTICIPATE IN A DUTCH STICHTING?

Very little. As opposed to direct litigation in other European Union countries—which often requires extensive and cumbersome documentary requirements for investors to demonstrate standing—the requirements to participate in a Dutch stichting are minimal. Investors only need to provide trading data and sign a participation agreement and a letter of support for the stichting. The participation agreement establishes the investor's inclusion in the stichting, and the letter of support can be used to demonstrate legal standing by showing investors' support for the stichting, its board, and its goals. Once a WCAM settlement is obtained, investors submit claim forms typical of traditional securities class action litigation and recover settlement proceeds.

## 5. WHAT ARE THE QUALITIES OF AN EFFECTIVE STICHTING?

Effective investment loss recovery requires making a series of strategic and tactical decisions. This is true in any litigation, but particularly here because stichtings are able to pursue a number of different litigation strategies. For example, one approach requires that participants assign their claims to the

stichting, but the stichting then passively waits for declaratory relief to be secured by others before seeking damages. While less costly to the funders, this approach essentially leaves much of the process and the outcome to others.

Alternatively, a stichting can take an active role in joining a pre-existing litigation or initiating its own litigation, either alone or with others. Each strategy demands different considerations and may result in different outcomes for the participants. As set forth below, the strength of the stichting Board—including its members' knowledge of, and prior relationships with, the key players in the case, the court and judges involved, counsel for defendants, and the amount and quality of its of prior experience—can all be instrumental in the investment loss recovery outcome. In short, a strong Board can help steer the stichting through the strongest course of litigation and aid in securing a robust and timely settlement, such as one that defendants will accept because it secures global peace without sacrificing the legitimacy of the plaintiffs' claims or compromising its damages recovery.

## 6. WHAT MAKES A STRONG BOARD?

A strong stichting board should have experience with WCAM procedures, the Dutch judicial system, and securities law. As the board will steer the stichting towards resolution, the more qualified and experienced its members, the more likely the stichting will secure the best and most comprehensive relief for investors. The SSIL Foundation has such a board.

## 7. SHOULD INVESTORS WAIT TO JOIN A STICHTING UNTIL A WCAM SETTLEMENT IS ANNOUNCED?

No. There is no advantage to waiting. Indeed, an important element for an effective stichting is the extent of investor support that it can demonstrate. That support, demonstrated by investors' letters, reinforces the stichting's litigation standing and



provides it with more leverage to negotiate an eventual global settlement on favorable terms for shareholders.

#### 8. CAN AN INVESTOR PURSUE A DIRECT ACTION INSTEAD OF PARTICIPATING IN A STICHTING?

Yes. However, as noted above, Dutch law does not permit Dutch lawyers to pursue litigation on a contingent basis. Therefore, if an investor chooses to pursue a direct action, the investor will have to pay for all litigation costs and expenses, including the hourly attorneys' fees for the investor's Dutch lawyers.

#### 9. DO INVESTORS HAVE TO PAY FOR ANY COSTS OR EXPENSES IF THEY PARTICIPATE IN A STICHTING?

No. The funders of a stichting are responsible for paying all costs and expenses associated with the litigation and settlement efforts of the stichting. In this instance, Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") and Saxena White P.A. ("Saxena White") are the funders of the SSIL Foundation, and are responsible for all of the SSIL Foundation's costs and expenses, including the hourly attorneys' fees for the SSIL Foundation's Dutch lawyers and the fees of the SSIL Foundation's Board members.

#### 10. ARE THERE ANY ADVERSE OR LOSER-PAYS COSTS FOR INVESTORS?

No. If the stichting is unsuccessful in obtaining a settlement or loses a lawsuit, there are no costs whatsoever to the investor.

#### 11. HOW ARE THE FUNDERS OF A STICHTING COMPENSATED?

Dutch law allows the non-Dutch lawyers who fund a stichting to be compensated on a contingent basis. In this instance, Lieff Cabraser



and Saxena White, as the funders of the SSIL Foundation, will only be compensated if a WCAM settlement or other recovery is achieved. Pursuant to the participation agreement for the SSIL Foundation, Lieff Cabraser and Saxena White will receive 15% of any recovery obtained, as well as the right to seek reimbursement of the costs and expenses incurred in furtherance of the SSIL Foundation's litigation and settlement efforts.

#### 12. WHY SHOULD INVESTORS JOIN THE SSIL FOUNDATION?

Three key reasons: (1) the SSIL Foundation provides the easiest process for resolving Steinhoff shareholders' claims; (2) an exceptional Board of influential Dutch jurists leads the SSIL Foundation; and (3) the SSIL Foundation's funding (a 15% contingent fee) is well below market practice.

The SSIL Foundation provides a vehicle not only to litigate in the interests of Steinhoff investors, but also to pursue a binding, collective settlement that provides for a global resolution for the claims of all Steinhoff investors, which provides significant leverage in any settlement discussions with Steinhoff.

Moreover, the SSIL Foundation is led by a Board of Directors that includes some of the

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most prominent members of the Dutch legal community, including several former Justices of the Dutch Supreme Court, the Amsterdam Court of Appeals and the Court of Amsterdam; a former Minister of Justice and member of the Dutch House of Representatives; a lecturer and expert forensic accountant specializing in fraud and financial loss investigations; and a law professor and attorney specializing in corporate and securities issues. The Board members of the SSIL Foundation are thus very well-positioned to lead litigation efforts against Steinhoff and to secure comprehensive relief on beneficial terms on behalf of investors who participate in a global settlement obtained by the SSIL Foundation.

The SSIL Foundation is also represented and advised by a coalition of international law firms with extensive experience in obtaining favorable resolutions of complex securities litigation, including the preeminent Dutch law firm specializing in WCAM settlements and other Dutch complex corporate and commercial litigation.

Lastly, the contingent fee for the SSIL Foundation's funders is just 15%, which is well-below the typical 20-25% fee of other Steinhoff-related stichtings and law firm initiatives.

## 13. WHAT IS THE COLLECTIVE ACTION PROCEDURE IN THE NETHERLANDS?

Dutch collective action settlement systems are based on the WCAM, and section 3:305a of the Dutch Code of Civil Procedure. Under section 3:305a, a stichting, representing the interests of aggrieved parties, can seek a declaratory judgment that a defendant breached its duties or committed a tort. If a settlement agreement is concluded by the litigating parties (the stichting and the defendant), they may jointly request the Amsterdam Court of Appeal declare the collective settlement binding. If no settlement is agreed either prior to or after a judgment on declaratory

relief, investors may request the stichting to sue for damages.

## 14. WHAT IS THE JURISDICTIONAL REACH OF THE WCAM?

The threshold for a Dutch court in accepting jurisdiction regarding a WCAM-based settlement agreement is very low. Since Steinhoff is based in the Netherlands, the jurisdictional nexus is satisfied for a WCAM-based settlement for the SSIL Foundation.

## 15. WHAT IS THE INTERNATIONAL RECOGNITION AND ENFORCEABILITY OF A WCAM DECISION ABROAD?

Recent cases in Dutch courts have implied that WCAM decisions should normally be recognized by the courts in other Member States of the European Union. In countries outside the European Union, the criteria for recognition will differ from country to country. Previous cases show that the WCAM can function as an international complement to a U.S.-only settlement, thereby producing global peace for all parties involved. With regard to Steinhoff, because Steinhoff has no shares that are traded in the U.S.—not even American Depositary Receipts—a WCAM settlement will likely be the only global collective settlement for Steinhoff investors.

## 16. HOW DO I LEARN MORE?

To learn more, please contact Lester Hooker at [lhooker@saxenawhite.com](mailto:lhooker@saxenawhite.com) or (561) 206-6708, Nicholas Diamand at [ndiamand@lchb.com](mailto:ndiamand@lchb.com) or (212) 355-9500, Bruce Leppla at [bleppla@lchb.com](mailto:bleppla@lchb.com) or 415-309-3535, Flip Wijers at [f.wijers@lvdk.com](mailto:f.wijers@lvdk.com) or +31 (0)20-205-0567, or Kim Robinson at [kim.robinson@renaissance-ss.com](mailto:kim.robinson@renaissance-ss.com) or +27-10-590-3079.