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Proclamations • Proklamasies

PROCLAMATION NO. 30 OF 2018

by the

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

COMMISSION OF INQUIRY INTO ALLEGATIONS OF IMPROPRIETY REGARDING PUBLIC INVESTMENT CORPORATION

In terms of section 84(2)*(f)* of the Constitution of the Republic of South Africa, 1996, I hereby appoint a Commission of Inquiry into allegations of impropriety regarding the Public Investment Corporation (PIC) with the terms of reference attached in the Schedule hereto and appoint Honourable Mr Justice Lex Mpati, the former President of the Supreme Court of Appeal who has been discharged from active service as Commissioner, assisted by Ms Gill Marcus and Mr Emmanuel Lediga.

Given under my Hand and the Seal of the Republic of South Africa at Johannesburg on this the 4th day of October Two Thousand and Eighteen.

PRESIDENT

By Order of the President in Cabinet

MINISTER OF THE CABINET

SCHEDULE

TERMS OF REFERENCE OF THE COMMISSION OF INQUIRY INTO ALLEGATIONS OF IMPROPRIETY REGARDING THE PUBLIC INVESTMENT CORPORATION

WHEREAS the Public Investment Corporation SOC Limited (herein called the PIC) was established by the Public Investment Corporation Act, 2004 (herein called the PIC Act), is a state owned company under the Companies Act, 2008, and a government business enterprise under the Public Finance Management Act, 1999 and licensed under the Financial Advisory and Intermediary Services Act, 2002 as a financial services provider;

AND WHEREAS the PIC is the investment manager for the Government Employees Pension Fund (herein called the GEPF), the pension fund for public service employees, as well as for certain other government institutions and private persons, and given the size of investments it manages, which play a significant role in socio-economic development in South Africa;

AND WHEREAS the Government is the guarantor of last resort for the obligations of the GEPF, a failure of the PIC or a failure of any significant investments for the GEPF, exposes the Government to substantial financial vulnerability;

AND WHEREAS the PIC must be managed in accordance with the highest standard of ethics, integrity and efficiency, so that its governance and investment decisions are beyond reproach and the investment of funds on behalf of members of the GEPF, in particular, are adequately safeguarded;

AND WHEREAS there are persistent and continued negative reports about alleged improprieties regarding investments by the PIC and the conduct of certain former and current office bearers and employees of the PIC, as well as about the effective functioning of its Board which have given rise to negative perceptions of the PIC;

AND WHEREAS the veracity of alleged improprieties must be investigated properly and possible corrective measures may be required in order to stabilise and restore confidence in the PIC and to ensure its sound financial management,

THEREFORE a Commission of Inquiry is hereby appointed in terms of section 84(2)(f) of the Constitution of the Republic of South Africa, 1996.

1. The Commission must enquire into, make findings, report on and make recommendations on the following:

1.1. Whether any alleged impropriety regarding investment decisions by the PIC in media reports in 2017 and 2018 contravened any legislation, PIC policy or contractual obligations and resulted in any undue benefit for any PIC director, or employee or any associate or family member of any PIC director or employee at the time;

1.2. Whether any findings of impropriety following the investigation in terms of paragraph 1.1 resulted from ineffective governance and/or functioning by the PIC Board;

1.3. Whether any PIC director or employee used his or her position or privileges, or confidential information for personal gain or to improperly benefit another person;

1.4. Whether any legislation or PIC policies concerning the reporting of alleged corrupt activities and the protection of whistle-blowers were not complied with in respect of any alleged impropriety referred to in paragraph 1.1;

1.5. Whether the approved minutes of the PIC Board regarding discussions of any alleged impropriety referred to in paragraph 1.1 are an accurate reflection of the discussions and the Board's resolution regarding the matters and whether the minutes were altered to unduly protect persons implicated and, if so, to make a finding on the person/s responsible for the alterations;

1.6. Whether all the investigations into the leakage of information and the source of emails containing allegations against senior executives of the

PIC in media reports in 2017 and 2018, while not thoroughly investigating the substance of these allegations, were justified;

1.7. Whether any employees of the PIC obtained access to emails and other information of the PIC, contrary to the internal policies of the PIC or legislation;

1.8. Whether any confidential information of the PIC was disclosed to third parties without the requisite authority or in accordance with the Protected Disclosures Act, 2000, and, if so, to advise whether such disclosure impacted negatively on the integrity and effective functioning of the PIC;

1.9. Whether the PIC has adequate measures in place to ensure that confidential information is not disclosed and, if not, to advise on measures that should be introduced;

1.10. Whether measures that the PIC has in place are adequate to ensure that investments do not unduly favour or discriminate against -

1.10.1. a domestic prominent influential person (as defined in section 1 of the Financial Intelligence Centre Act, 2001);

1.10.2. an immediate family member (as contemplated in section 21H(2) of the Financial Intelligence Centre Act, 2001) of a domestic prominent influential person; and

1.10.3. known close associates of a domestic prominent influential person;

1.11. Whether there are discriminatory practices with regard to remuneration and performance awards of PIC employees;

1.12. Whether any senior executive of the PIC victimised any PIC employees;

1.13. Whether mutual separation agreements concluded in 2017 and 2018 with senior executives of the PIC complied with internal policies of the PIC and whether pay-outs made for this purpose were prudent;

1.14. Whether the PIC followed due and proper process in 2017 and 2018 in the appointment of senior executive heads and senior managers, whether on permanent or fixed-term contracts;

1.15. Whether the current governance and operating model of the PIC, including the composition of the Board, is the most effective and efficient model and, if not, to make recommendations on the most suitable governance and operational model for the PIC for the future;

1.16. Whether, considering its findings, it is necessary to make changes to the PIC Act, the PIC Memorandum of Incorporation in terms of the Companies Act, 2008, and the investment decision-making framework of the PIC, as well as the delegation of authority for the framework (if any) and, if so, to advise on the possible changes.

2. The Commission must, in its enquiry for the purpose of its findings, report and recommendations, consider the period 1 January 2015 to 31 August 2018.

3. The Commission must submit-

3.1. an interim report to the President by not later than 15 February 2019; and

3.2. a final report by not later than 15 April 2019.

4. The Commission may, if necessary, investigate and make findings and recommendations on, any other matter regarding the PIC, regardless of when it is alleged to have occurred, on condition that such other investigations, findings and recommendations do not cause any delay in the submission of the reports on the applicable dates referred to in paragraph 3.

5. The Commission may request the advice or views of any organ of state or any other person or organisation that the Commission is of the opinion may be able to assist.

6. In order to-

6.1. enable the Commission to conduct its work meaningfully and effectively; and

6.2. facilitate the gathering of evidence, by conferring on the Commission such powers as are necessary to secure the attendance of witnesses and to compel the production of documents and any other required information, including the power to enter and search premises,

regulations must be made under the Commissions Act, 1947, which will apply to the Commission.

PROKLAMASIE NO. 30 VAN 2018

deur die

PRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA

KOMMISSIE VAN ONDERSOEK NA BEWERINGS VAN ONBEHOORLIKHEID RAKENDE DIE "PUBLIC INVESTMENT CORPORATION"

Ingevolge artikel 84(2)(*f*) van die Grondwet van die Republiek van Suid-Arika, 1996, stel ek hierby 'n Kommissie van Ondersoek aan na bewerings van onbehoorlikheid rakende die "Public Investment Corporation" (PIC) met die opdrag in die aangehegde Bylae en stel Sy Agbare Regter Lex Mpati, die voormalige President van die Hoogste Hof van Appèl wat van aktiewe diens onthef is, as Kommissaris aan, bygestaan deur Me Gill Marcus en Mnr Emmanuel Lediga.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te ____________ op hede die ________ dag van ____________ Tweeduisend-en-agttien.

PRESIDENT

Op las van die President-in-Kabinet:

MINISTER VAN DIE KABINET

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BYLAE

OPDRAG AAN KOMMISSIE VAN ONDERSOEK NA BEWERINGS VAN ONBEHOORLIKHEID RAKENDE DIE "PUBLIC INVESTMENT CORPORATION"

AANGESIEN die "Public Investment Corporation" SOC Beperk (hierna na verwys as die PIC) ingestel is deur die Wet op die Openbare Beleggingskorporasie, 2004 (hierna na verwys as die PIC Wet), as 'n maatskappy in staatsbesit ingevolge die Maatskappywet, 2008, en 'n regeringsbesigheidsonderneming ingevolge die Wet op Openbare Finansiële Bestuur, 1999 en ingevolge die Wet op Finansiële Advies- en Tussengangerdienste, 2002 as 'n finansiële diensteverskaffer gelisensieër is;

EN AANGESIEN die PIC die beleggingsbestuurder vir die "Government Employees Pension Fund" (hierna na verwys as die GEPF) is, die pensioenfonds vir werknemers in die staatsdiens, sowel as vir sekere ander regeringsinstansies en privaat persone, en gegewe die grootte van beleggings wat dit bestuur, wat 'n beduidende rol in sosio-ekonomiese ontwikkeling in Suid-Afrika speel;

EN AANGESIEN die Regering die waarborger van laaste instansie vir die verpligtinge van die GEPF is, stel 'n mislukking van die PIC of 'n mislukking van enige beduidende beleggings vir die GEPF die Regering bloot aan wesenlike finansiële kwesbaarheid;

EN AANGESIEN die PIC bestuur moet word in ooreenstemming met die hoogste standaard van etiek, integriteit en doeltreffendheid, sodat sy bestuurs- en beleggingsbesluite onberispelik is en die beleggings van fondse namens lede van die GEPF, spesifiek, voldoende beveilig is;

EN AANGESIEN daar hardnekkige en voortdurende negatiewe berigte is oor beweerde onbehoorlikhede rakende beleggings deur die PIC en die optrede van sekere voormalige en huidige ampsdraers en werknemers van die PIC, sowel as rakende die effektiewe funksionering van sy Raad wat tot negatiewe persepsies van die PIC aanleiding gegee het;

EN AANGESIEN die waarheid van beweerde onbehoorlikhede behoorlik ondersoek moet word en moontlike regstellende maatreëls nodig mag wees ten einde die PIC te stabiliseer en vertroue daarin te herstel en gesonde finansiële bestuur te verseker,

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DERHALWE word 'n Kommissie van Ondersoek hierby aangestel ingevolge artikel 84(2)(*f*) van die Grondwet van die Republiek van Suid-Arika, 1996.

1. Die Kommissie moet ondersoek instel na, bevindings maak, verslag doen en aanbevelings maak oor die volgende:

   1.1. Of enige beweerde onbehoorlikheid rakende beleggingsbesluite deur die PIC in mediaberigte in 2017 en 2018 enige wetgewing, PIC beleid of kontraktuele verpligtinge oortree het en in 'n onbehoorlike voordeel vir 'n PIC direkteur, of werknemer of 'n metgesel of familielid van enige PIC direkteur of werknemer op daardie tydstip tot gevolg gehad het;

   1.2. Of enige bevindings van onbehoorlikheid voorspruitend uit die ondersoek ingevolge paragraaf 1.1 die gevolg was van oneffektiewe bestuur deur en/of funksionering van die PIC Raad;

   1.3. Of enige PIC direkteur of werknemer sy of haar posisie of voordele, of vertroulike inligting vir persoonlike gewin gebruik het of om 'n ander persoon onbehoorlik te bevoordeel;

   1.4. Of enige wetgewing of PIC beleid rakende die aanmeld van beweerde korrupte bedrywighede en die beskerming van fluitjieblasers nie aan voldoen is nie met betrekking tot enige beweerde onbehoorlikheid na verwys in paragraaf 1.1;

   1.5. Of die goedgekeurde notules van die PIC Raad rakende besprekings van enige beweerde onbehoorlikheid in paragraaf 1.1 na verwys, 'n akurate weerspieëling van die besprekings en die Raad se besluit ten opsigte van die aangeleenthede is en of die notules gewysig is om persone wat geïmpliseer is ten onregte te beskerm en, indien wel, om 'n bevinding te maak oor die persoon of persone verantwoordelik vir die wysigings;

   1.6. Of al die ondersoeke na die lek van inligting en die bron van eposse met aantygings teen senior uitvoerende beamptes van die PIC in mediaberigte in

2017 en 2018, alhoewel die wese van die bewerings nie behoorlik ondersoek is nie, regverdigbaar was;

1.7. Of enige werknemers van die PIC toegang tot eposse en ander inligting van die PIC verkry het, strydig met die interne beleid van die PIC of wetgewing;

1.8. Of enige vertroulike inligting van die PIC aan derde partye openbaar gemaak is sonder die vereiste magtiging of ooreenkomstig die Wet op op Beskermde Bekendmakings, 2000, en, indien wel, om te bevind of sodanige bekendmaking negatief op die integriteit en effektiewe funksionering van die PIC ingewerk het;

1.9. Of die PIC voldoende maatreëls in plek het om te verseker dat vertroulike inligting nie bekend gemaak word nie en, indien nie, aanbevelings te maak ten opsigte van maatreëls wat ingestel moet word;

1.10. Of maatreëls wat die PIC in plek het voldoende is om te verseker dat beleggings nie diskrimineer teen -

1.10.1. 'n binnelandse vooraanstaande invloedryke persoon (soos omskryf in artikel 1 van die Wet op die Finansiële Intelligensiesentrum, 2001);

1.10.2. 'n gesinslid (soos bedoel in artikel 21H(2) van die Wet op die Finansiële Intelligensiesentrum, 2001) van 'n binnelandse vooraanstaande invloedryke persoon; en

1.10.3. bekende nabye metgeselle van 'n binnelandse vooraanstaande invloedryke persoon,

of hul onbehoorlik begunstig nie;

1.11. Of daar diskriminerende praktyke met betrekking tot vergoeding en prestasietoekennings van PIC werknemers is;

1.12. Of enige senior uitvoerende beampte van die PIC enige PIC werknemers geviktimiseer het;

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1.13. Of wedersydse skeidingsooreenkomste wat in 2017 en 2018 met senior uitvoerende beamptes van die PIC gesluit is aan interne beleid van die PIC voldoen het en of uitbetalings vir daardie doel gemaak omsigtig was;

1.14. Of die PIC in 2017 en 2018 korrekte en behoorlike prosesse met die aanstelling van senior uitvoerende hoofde en senior bestuurders gevolg het, hetsy op permanente of vaste-termyn kontrakte;

1.15. Of die huidige bestuurs- en bedryfsmodel van die PIC, insluitend die samestelling van die Raad, die effektiefste en doeltreffendste model is en, indien nie, om aanbevelings te maak rakende die mees geskikte bestuurs- en bedryfsmodel vir die PIC vir die toekoms;

1.16. Of, die bevindings in ag genome, dit nodig is om wysigings aan te bring aan die PIC Wet, die PIC Memorandum van Inlywing ingevolge die Maatskappywet, 2008, en die belegging besluitnemingsraamwerk van die PIC, asook die delegasie van die magtiging van die raamwerk (indien enige) en, indien wel, om advies te gee oor moontlike veranderings.

2. Die Kommissie moet, in sy ondersoek vir die doeleindes van sy bevindings, verslag en aanbevelings, die tydperk 1 Januarie 2015 tot 31 Augustus 2018 oorweeg.

3. Die Kommissie moet die volgende voorlê -

3.1. ‘n tussentydse verslag an die President teen nie later as 15 Februarie 2019 nie; en

3.2. ‘n finale verslag teen nie later as 15 April 2019 nie.

4. Die Kommissie kan, indien nodig, enige ander aangeleentheid rakende die PIC ondersoek en bevindings en aanbevelings maak, ongeag wanneer dit na bewering plaasgevind het, op voorwaarde dat sodanige ander ondersoeke, bevindings en aanbevelings nie ‘n vertraging veroorsaak in die voorlegging van die verslae op die toepaslike datums in paragraaf 3 na verwys nie.

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6. Ten einde-

6.1. die Kommissie in staat te stel om sy werk sinvol en effektief te verrig; en

6.2. die insameling van getuienis te fasiliteer, deur aan die Kommissie sodanige magte op te dra as wat nodig is om die bywoning van getuies te verseker en om die voorlegging van dokumente en enige ander vereiste inligting te verplig, insluitend die mag om 'n perseel te betree en inspekteer,

moet regulasies ingevolge die Kommissiewet, 1947, uitgevaardig word wat op die Kommissie van toepassing sal wees.

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