
Release of the Report of the Judicial Commission of Inquiry into Public Investment Corporation

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President Cyril Ramaphosa is today releasing to the public the report of the Judicial Commission of Inquiry into the allegations of impropriety at the Public Investment Corporation, which he received in December last year.

“I wish to express my gratitude to retired Judge Lex Mpati, ably supported by Mr Emmanuel Lediga and Ms Gill Marcus, and the entire team for their detailed and voluminous report,” President Ramaphosa said.

“One of the priorities of this administration is to build a capable, ethical and developmental state. All public institutions need to be held to the highest standards of integrity and accountability, and must effectively and efficiently fulfil their mandates. It was for this reason that I established the Judicial Commission of Inquiry into the allegations of impropriety at the Public Investment Corporation (PIC).

“The Commission has made detailed findings against some current and former members of the PIC Senior Management and Board members.

“The Commission largely attributes improprieties to the PIC Senior Management for failure to manage decision-making in a professional and honest manner, and failure to abide by due processes and relevant prescripts.

“The Commission shows that the impropriety was worsened by the fact that the PIC Board was not functioning well, and Board involvement in investment decisions compromised their ability to exercise oversight over the PIC.

“The Commission makes recommendations which require urgent attention and action by different state institutions, including the criminal justice system, National Treasury and the reconstituted PIC Board.

“To this end and in keeping with the recommendations in the report we will be forwarding it to the National Prosecuting Authority and all relevant regulatory authorities for their consideration.

“I am releasing this report to the public together with this high level roadmap on the way forward. Different state institutions, including the Board, will further communicate the details of the implementation plans.

“National Treasury has been tasked with developing a detailed plan of action for itself and the Board of the PIC, and with monitoring the implementation of this plan. It will report to my office on progress in implementation steps at regular intervals.

“The Commission implicates a number of individuals in wrongdoing. The Commission gave relevant persons the opportunity to be heard at the hearings it held. Any follow-up investigations,

based on the recommendations made, will follow due process and therefore give them further opportunity to be heard before any steps are taken against them.”

President Ramaphosa appointed the Mpati Commission to inquire into (a) whether there was any impropriety in the investment decisions at the PIC and associated improper personal gain by parties; (b) the governance and operational model of the PIC; (c) the allegations contained in information on the PIC by “James Nogu” (and others) and the ramifications thereof; (d) human resources-related matters such as victimisation and remuneration including performance awards; (e) possible political interference in the operations of the PIC; and (f) the manner in which the PIC handled regulatory aspects with regards to key legislation such as the Financial Advisory and Intermediary Services (FAIS) Act and other legislation.

Impropriety in investment decisions and personal gain

In the Report, the Commission of Inquiry has made adverse findings on numerous transactions and on actions of various individuals in investment decisions. The Commission highlights widespread disregard of PIC policies and processes on the transactions by PIC Management and certain Board members. Involvement of employees and non-executive Board members in investee companies must be reviewed. The Commission recommends that the relevant Delegations of Authority be reviewed by no later than June 2020.

The management of conflicts of interest also require review.

Potential criminal behaviour has also been highlighted, which should followed up by law enforcement agencies. These practices have led to situations in which the PIC lost a lot of funds, which must be urgently recovered. Civil actions will be instituted in this regard.

It is also worrying that the Inquiry shows that the PIC has not shown the urgency to salvage whatever money it can recover.

The PIC must recover all the monies utilised in irregular transactions or unlawfully paid out. The National Treasury will be tracking developments in this regard.

Where relevant, the PIC and GEPF should jointly investigate whether monies were paid and properly accounted for, and whether any of these monies should be recovered – the Commission recommends this be done within 6 months of the Report’s publication.

The Commission recommends that certain steps be taken at the GEPF to secure its own position such as a review of the role, relationships, nature and frequency of meetings between the GEPF and PIC, and ensuring appropriate interaction at the required level actually takes place.

Additionally, the Report shows that there are a large number of assets that are in distress and the PIC should urgently devise a stronger mechanism to deal with this and recover whatever it can.

The report has also found that it is highly likely that some sections of the FAIS Act have been contravened. The Commission suggests that parties or former parties could have contravened laws dealing with issues such as corruption and bribery, protected disclosures, electronic interceptions and sections of the Companies Act. Criminal matters will be referred to the relevant

authorities.

The Commission also recommended that the PIC ensure that all pre and post conditions for all investments made have been fully met and implemented and that effective processes and systems are in place to properly monitor the investment post disbursement. In this regard those responsible for failing to implement conditions precedent to investments ought to be held to account.

The Commission recommends that a forensic audit on some transactions be undertaken and, if necessary thereafter, the matter be referred to regulatory and law enforcement agencies.

The criminal justice system should urgently act, including forensic investigation and possible prosecutions. Civil cases will have to be instituted as well where relevant.

The National Prosecuting Authority (NPA) has been working with the Commission to determine any matters that may be investigated further.

Management needs to monitor the performance of investments held by the PIC. The capacity and role of post investment monitoring and valuation needs to be strengthened.

Another issue that looms large in the Report is the fees paid by the PIC on transactions. Some appeared to be excessive, others not deserved and at times without proper invoicing. The Commission has recommended that numerous payments should be further investigated and any malfeasance that may have arisen to be penalised.

The Report further recommended that the work and appointment of advisors to investees for potential transactions also requires review, including a review of all advisor contracts over the past 5 years.

Specific transactions are highlighted in the Report for further investigation and review, including reporting matters to the relevant authorities.

Governance, operating model and PIC legislation

The PIC is governed through the PIC Act of 2004 (the Act), its Shareholder Compact, its Memorandum of Incorporation (Mol) and internal corporate governance processes.

The Commission has made substantial findings and recommendations in this regard. The PIC's internal corporate governance must be urgently improved.

The Commission has recommended that the skills set of the PIC Board should ensure that Board members and senior management have the requisite knowledge of expertise in relevant fields. Appointment processes will have to be reviewed to ensure this is the case throughout the organisation.

The Inquiry has also strongly recommended that the delegations of authority be comprehensively reviewed.

Significantly, the Commission found that the Board has been improperly involved in operational and investment decisions. It ought not to do so in future, and instead focus on exercising an oversight role.

The Commission also recommends changes to laws governing the PIC, taking into account the PIC Amendment Bill of 2017 and their recommendations.

This will be the task of National Treasury and will be finalised soon. The National Treasury, the PIC and its board will ensure that all the above changes are effected in terms of legislation, the shareholder compact, MOI and corporate governance processes.

Careful consideration will need to be given to recommendations made on composition of the Board and selection of Board members.

PIC's operating model

The Commission has also recommended far-reaching changes in the PIC's operating model. It says the model is no longer fit-for-purpose and needs restructuring.

The operating model, which developed organically over the years, is too centralised and no longer fit for a R2 trillion asset manager and not in keeping with international best practice.

In this regard, the Commission has recommended a much more decentralised model to accelerate decision-making and to improve efficiency and transparency.

The new organisational design will be undertaken by the PIC and its Board of Directors with the concurrence of and oversight from the National Treasury.

It will include changes to Board composition, including for example development of risk management capacity as well as investment valuation and monitoring capacity. The PIC should also keep its customers and other stakeholders informed of the restructuring.

Recommended changes include revising the way in which Board meetings are recorded and decisions taken at Board level.

The Commission recommends that a compliance coordinator must be established by no later than June 2020, including development of a compliance charter.

Lastly the Commission touched on process optimisation and use of technology. The Commission also recommends measures to ensure that the information technology environment is appropriate for the scale and sophistication of the PIC.

Leakage of PIC information and its ramifications

In the past few years, especially from 2017, the PIC suffered debilitating leakage of its internal confidential information.

Confidential investment and operating information was leaked to the public, mainly by a person

with the name of “James Nogu”.

This threw the PIC into turmoil, and resulted in serious reputational harm to the corporation and precipitated major changes to its executive ranks and the Board.

Disputes arose on whether those who leaked the information were genuine whistle-blowers or not, with the Commission holding that they did not follow laid out processes, and thus could not be regarded as such. In this regard the Commission recommended that whistle-blower policies need to be in line with the Protected Disclosure Act.

The PIC’s technology and information security systems were unable to adequately deal with the leaks and there were gaps that made it vulnerable. These therefore need to be drastically overhauled. The PIC should strengthen its systems to ensure such breaches do not occur in the future.

Human Resource and remuneration issues

There were widespread reports in the media about the victimisation and dismissal of employees by top management and extensive testimonies.

In terms of implementation actions the Board of the PIC will have to investigate these further and bring disciplinary action against executives that victimised employees or did not follow PIC policies in the appointment of senior employees.

With regards to remuneration there were concerns about performance awards (bonuses) that were to be paid by the PIC to employees. The policies governing remuneration decisions, including bonuses and disciplinary processes, need to be reviewed.

The Commission expressly stated that greater transparency, fairness and inclusiveness with regard to salaries, grading, performance criteria and balanced scorecard assessment were required.

It is recommended that an independent professional body be commissioned to review the regrading process and its outcomes, to be appointed by the Board and to finalise its report by end April 2020.

Political interference at the PIC

The Commission investigated the allegations related to political interference in the PIC.

The PIC has a Politically Exposed Person (PEP) policy (this can also mean a domestic prominent influential person) which in some instances acted as a bulwark against PEPs and their associated parties. In some instances the policy was totally disregarded by employees in the PIC.

The Commission recommended that weaknesses were found in the PEP policy and it needs to be strengthened. The Board should undertake a comprehensive review of the policy incorporating deliberations arising at the Commission.

Conduct of the PIC with regards to FAIS and other legislation

The PIC is, amongst others, regulated under the Financial Advisory and Intermediary Services Act, which mainly governs the relationship between the PIC and its customers, such as the GEPF. A key requirement of the Act is for investment professionals at the PIC to be “fit and proper” by acting with honesty and integrity at all times.

The investment mandate agreement between the PIC and its main client, the GEPF, emphasises that the PIC must make “prudent” investment decisions.

In the light of the above-mentioned improprieties and questionable investments decisions taken the PIC has, in some instances, not acted in compliance with FAIS Act and legal agreements with the GEPF.

The Commission found that the relationship between the GEPF and the PIC is strained and that efforts should be made by both parties to restore trust and a good working relationship.

There should be a review by the PIC and its customer on the various investment strategies adopted by the PIC in meeting the clients’ requirements, including the non-domestic and unlisted investments strategies, which are areas that have sustained massive losses.

The PIC and GEPF, and its other clients, should support maximum transparency on transactions and disclose as much as possible. This will lessen potential improprieties.

In conclusion, President Ramaphosa said:

“I trust that the implementation of the actions above and the detailed steps set out in the Report shall put the PIC in a much stronger position to face the future and be an institution we can all be proud of.

“Given the substantial work accomplished, I would like, once more, to thank those who participated in this important work of the Commission, including the Commissioners, the Secretary, staff and the relevant government departments.

“This also includes the City of Tshwane for the venue and security services provided. We would also like to thank those who came forward to offer their testimonies and thus immensely enhanced the work of the Commission.

“Finally the media is thanked for keeping our people informed on a regular basis.”

The report can be accessed from the home page of the The Presidency's website: www.thepresidency.gov.za

Media enquiries: Khusela Diko, Spokesperson to the President – 072 854 5707

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