

**REPORT TO
THE BOARD OF THE PUBLIC INVESTMENT CORPORATION**

on

**ALLEGATIONS CONTAINED IN ANONYMOUS EMAILS
DISTRIBUTED TO THE PIC EMAIL ADDRESS LIST
IN SEPTEMBER 2017**

GEOFF BUDLENDER SC

12 October 2018

Instructed by Ms D Tshepe
Cheadle Thompson & Haysom

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CHAPTER 1

INTRODUCTION

1. From 5 September 2017, a number of e-mails were widely distributed to the staff of the Public Investment Corporation, and to members of its Board. The e-mails purported to have been sent by, amongst others, “*James Nogu*” and “*leihlola Leihlola*”. No such persons are known to the PIC. I therefore refer to them as the anonymous emails. The e-mails made serious allegations of misconduct against the PIC, and in particular the Chief Executive Officer, Dr Daniel Matjila, and to a lesser extent, the Chief Financial Officer, Ms Matshepo More.
2. The Board and management investigated this matter. I refer below to the steps which the Board and management took in this regard.
3. On 29 September 2017, a media release was issued on behalf of the Board, stating:

“On the 29th September 2017, the Board of the Public Investment Corporation (PIC) met to receive feedback from Internal Audit division with regard to the allegations against the CEO, Dr Daniel Matjila. The Board fully applied its mind to the report presented by

Internal Audit and confirms its satisfaction with the report. The Board has concluded that the allegations were baseless and that Dr Matjila is cleared of any wrongdoing”.

4. This did not however put an end to the controversy, which continued.
5. Ultimately, after having a meeting with the Board, the Minister of Finance (Mr Nhlanhla Nene) wrote on 25 July 2018 to the Chairperson of the PIC as follows:

“I would like to thank members of the board for the constructive discussion and their recommitment to ensuring that we do restore public confidence in the Public Investment Corporation (PIC), that the institution is stabilised and that staff morale is returned.

As indicated at the meeting I hereby, in terms of section 6(4)(a) and (b) of the PIC Act,¹ request the board to commission a forensic investigation into allegations that have been made against the Chief Executive Office(r) and Chief Financial Officer of the PIC in e-mails sent to the PIC e-mail address list from an unknown source. I want to appeal that this be initiated as a matter of urgency and that the

¹ Section 6 of the PIC Act provides as follows:

(4) The Minister may issue directives to the board regarding the management of the corporation if-

- (a) it is in the public interest; or
- (b) it is reasonably necessary to do so.

final report of the investigation be submitted to me by 31 September 2018.

I am convinced that the report that will be prepared will assist us in dealing with the challenges at the PIC in a decisive manner”.

6. On 6 August 2018, the Board resolved to appoint me as the lead for the forensic investigation required by the Minister. I accepted the appointment, after which the terms of reference for the investigation were settled, and attorney Doris Tshepe of attorneys Cheadle Thompson and Haysom was appointed as my instructing attorney.
7. The steps which Ms Tshepe and I took in order to conduct the investigation included the following:
 - 7.1 We arranged for the establishment of a secure e-mail address for the investigation, to which only she and I would have access.
 - 7.2 We sent an e-mail to the entire PIC e-mail address list, informing recipients that we had been appointed. We set out the enquiry’s terms of reference, and stated that all communications with us would be treated as confidential. We provided the secure e-mail address, and invited people with relevant information to come forward with it, by providing documents and/or attending an interview. We stated that all interviews would be conducted at an off-site venue.

- 7.3 We also sent the email to the email addresses of the “senders” on the emails which had been sent to the PIC mailing list during September.
- 7.4 Subsequently, we sent a further e-mail to all persons on the PIC e-mail address list stating that we were continuing to receive and would welcome further information, and also advising that if there were any persons who preferred to be interviewed after normal working hours, we would accommodate that request.
- 7.5 We appointed an IT specialist to assist us with the analysis of electronic information.
- 7.6 We appointed a financial analyst to assist us with analysis of the financial information which we expected to receive, and did receive.
8. We conducted face-to-face or telephonic interviews with twenty-two people (a number of them on more than one occasion). We examined a large volume of documents provided to us by the PIC, and by people who appeared before us for an interview.
9. The IT analyst conducted an analysis of the company laptop, company mobile phone, company mobile device, company file share folder and personal Gmail account of the CEO, Dr Matjila, who co-operated in making them available for this purpose.

10. As a result of this investigation, I now make this report. I wish to express my great appreciation for the considerable assistance which Ms Tshepe gave me. This report is the product of the work which both of us undertook. However, as I was the person appointed as the lead investigator, the report is in my name.

Terms of reference

11. At the outset it is necessary to clarify my terms of reference, as there may be some confusion in that regard. My brief was limited in its scope. I was not appointed to investigate all of the allegations that have been made about the PIC in the recent past.
12. The letter from the Minister of Finance to the Board of the PIC set out matters which the Minister required to be investigated. They are the allegations that were made against the Chief Executive Officer and Chief Financial Officer of the PIC in e-mails sent to the PIC e-mail address list from an unknown source (the anonymous emails).
13. My terms of reference are set out in Annexure A to this report.
14. In recent times a number of allegations have been raised in the media about investments which the PIC has made. Issues have been raised with regard to investments in or loans to companies such as Ayo, VBS, Sagamartha, Steinhoff, S&S Refinery, and Tosaco Energy. The question

which has been raised is whether those investments or loans were prudent, and whether they were influenced by political considerations, pressure or favouritism. These matters do not fall within my terms of reference.

15. The President has announced that he will appoint a commission of inquiry to look into a wide range of matters concerning the structure and functioning of the PIC. Public commentators have suggested that matters such as those to which I have just referred will be included within the mandate of that commission.
16. Consistent with the mandate given to me by the Board (which flowed from the mandate of the Minister), I have not investigated this broader range of issues relating to the PIC's investment decisions, as it was not within my authority to do so.
17. During my investigation I have however received information containing allegations of improper or inappropriate or politically influenced investment. Most of this material is already in the public domain. If and when the contemplated commission or another enquiry is appointed, I shall make that information available to it.
18. In this Report, I deal with the following matters:

- 18.1 Allegations of favourable treatment of the company Mobile Satellite Technology (Pty) Ltd as a result of an alleged romantic relationship between Dr Matjila and Ms Pretty Louw.
 - 18.2 The role of then Minister Mr David Mahlobo.
 - 18.3 Allegations that Dr Matjila instructed or induced a beneficiary of a PIC investment, Mr Lawrence Mulaudzi, to make a payment to Ms Louw.
 - 18.4 The Board's investigation of and response to these matters.
 - 18.5 A number of the other allegations which were made in the emails.
 - 18.6 Conclusions and recommendations.
19. I note at the outset that the allegations in the emails were wide-ranging and disparate. Some of them were very generalised. A substantial number related to employee grievances, and would require a much more extensive investigation than was possible in the limited time available to me for this purpose.²

² The original mandate from the PIC Board, reflecting the request by the Minister, was that the investigation should be concluded by the end of September 2018. In the event, at my request this was extended to 12 October 2018.

CHAPTER 2

THE PIC, MST AND MS PRETTY LOUW

20. MST operates, staffs and maintains “Mobile units” (adapted buses) which are used to provide medical and educational services in rural areas.
21. During 2016 and 2017, the PIC made funds available to MST through two mechanisms:
 - 21.1 MST sought and ultimately obtained a loan from the PIC as an investment in its business; and
 - 21.2 MST sought and ultimately obtained a Corporate Social Investment (CSI) contribution from the PIC towards its work in providing services in rural areas.³
22. I describe each of these transactions below.
23. At the heart of the allegations in the anonymous emails was the question of the relationship between Dr Matjila and Ms Pretty Louw, who had a business relationship with MST.

³ The proposed CSI funding is sometimes described as the lease of a bus or buses. In substance, however, it was a grant to MST in support of its work. PIC did not take possession of the bus for which it provided funding to enable the provision of educational services in rural areas.

The alleged relationship between Dr Matjila and Ms Louw

24. The anonymous e-mails alleged that MST received the loan and CSI contribution from the PIC because Ms Pretty Louw is the girlfriend of the CEO, Dr Matjila, and has a corrupt relationship with him. It was alleged that Dr Matjila *“funded his girlfriend an amount of R21 million through Maison Holdings”*, Ms Louw’s company.
25. The first question which arises is whether Ms Louw is or was the girlfriend of Dr Matjila, as alleged. Both of them deny the allegation. The investigations which have been conducted have not provided any support for the allegation. They suggest that the allegation is not true.
26. In the *“James Nogu”* e-mail of 19 September 2017, the author said the following:
- “Does Dr Daniel Matjila have a love relationship with Ms Pretty Louw? The answer is yes. As a whistle blower I have tangible evidence that proves this assumption and given an independent opportunity under oath I can provide this evidence. I have pictures of the two, SMS between Dr Daniel Matjila and Ms Pretty Louw, including WhatsApp messages”.*
27. No such evidence has been produced. As I have noted, I sent two e-mails to the entire PIC mailing list, inviting people with evidence and information

to come forward. I also sent the email to the “senders” of the anonymous emails. Only one of those emails bounced back.

28. In those emails, I undertook to deal with information on a confidential basis. I provided a secure e-mail address to which information could be sent. I undertook and arranged that the interviews would be off-site (in other words, not at the PIC), and offered to hold interviews after working hours if those with information would prefer this.
29. It is clear from the content of the e-mails that “*James Nogu*” is either employed at the PIC, or has contacts and sources of information within the PIC. The email was sent to the “*authors*” of the anonymous emails. The fact of this enquiry has been reported in the media. It is reasonable to assume that the true author or authors of the anonymous e-mails became aware of the enquiry. They have not come forward.
30. In particular, I have not been provided with the alleged photographs, SMS and WhatsApp messages, which were said to be evidence of the alleged relationship.
31. Under the circumstances, the most reasonable conclusion is that this evidence does not exist. The author or authors undertook to provide it to an independent enquiry, but did not do so when such an enquiry was established.

32. I therefore conclude that there is no evidence that Ms Louw is Dr Matjila's girlfriend. In the light of their denial that this is the case, and the absence of any evidence which contradicts their denial, I must conclude that on the evidence before me, Ms Louw is not and was not Dr Matjila's girlfriend.

The relationship between MST and Ms Louw

33. Ms Louw is not a shareholder or director or employee of MST.
34. Ms Louw did have a commercial and financial relationship with MST, from which she has derived financial benefit. She and Ms Annette Dlamini run a company Maisan Holdings (Pty) Ltd, which is the vehicle for a number of current or intended businesses. Maisan Holdings entered into a Joint Venture agreement with MST, in terms of which it would act as MST's agent in seeking partnerships with state entities or businesses. This came about as follow:
- 34.1 Maisan Holdings was introduced to MST by Mr Wiseman Khumalo, when it was seeking a partner for submitting a tender to the KwaZulu-Natal education department
- 34.2 On about 22 April 2016 Ms Louw and Ms Dlamini had a meeting with MST about the KZN tender. During the course of that meeting, they learnt of MST's work in providing mobile health and education facilities. They expressed interest in working with MST on these

projects. It was agreed that Maisan would act as MST's agent in sourcing state entities and corporations to fund these activities. Ms Louw expressed the view that an approach should be made to the PIC, which might be willing to approach its investee companies.

34.3 Thereafter, MST and Maisan co-operated in the submission of proposals to a number of corporations, including the PIC.

35. Subsequently, on 22 July 2016, MST and Maisan entered into a formal Joint Venture agreement. which was termed a "*consultancy and joint venture agreement*". It provides, *inter alia*, as follows:

35.1 MST is the owner of mobile units which it seeks to supply to various Government Departments in South Africa.

35.2 MST was approached by Maisan with a proposal of sourcing clients on behalf of MST in order to supply mobile units to them.

35.3 Maisan has identified a number of potential clients to supply the mobile units.

35.4 Maisan "*has the experience and skills to facilitate a sale and supply of the mobile units to the various clients*".

- 35.5 MST has engaged the services of Maison to procure suitable clients to which the mobile units will be supplied.
- 35.6 Maison will also be responsible for *“the business development and account management of the projects brought on by them”*.
- 35.7 Maison is appointed as *“consultant and facilitator”*.
- 35.8 *“The primary objective of Maison will be to facilitate, negotiate and procure the conclusion of an agreement in terms of which the client will either purchase or rent the mobile units from MST”*.
- 35.9 Maison will be paid a *“facilitation fee”* which will be negotiated on a deal-by-deal basis.
36. On 1 April 2017, MST paid Maison Holdings R438 000 plus VAT for *“work done to date”* (the reason stated in an email from MST to the PIC). That email also stated that *“the payment was made to look at improving BEE status and motivate and stimulate our partnership to create further sales”*.
37. Ms Louw undertook to provide us a copy of her invoice in that amount. However, she did not provide this invoice, or any of the other documents which she had promised to provide.⁴

⁴ After her interview with us, she did not respond to any messages sent to her.

38. MST stated that they were not able to locate the invoice. The MST ledger reflects this as a payment for “*consulting fees*”. I discuss below what the purpose of the payment was.
39. I now deal with MST’s contacts and engagement with the PIC

The loan by PIC to MST

40. MST’s first contact with the PIC appears to have taken place in June 2015, when Ms Matshepo More, the Chief Financial Officer of the PIC, met a person connected with MST on a social occasion, and learnt of the work of MST. She said that the PIC might be interested in MST, and said that any relevant material in that regard could be submitted to the PIC through her.
41. Mr Gareth Watkins of MST thereafter sent an application for loan funding to the PIC through Ms More. She forwarded it to Mr Roy Rajdhar of the PIC.
42. MST’s application was for a loan of R45 million. It was processed in the usual manner.
43. On 23 November 2015, the PIC’s Portfolio Management Committee approved a debt facility of R30 million with 25% equity for the PIC.
44. This proposal was not acceptable to MST. Further discussions took place. Ultimately, on 8 June 2016 the PIC revised the approval of 23 November

2015, to a debt facility of R21 million, with 5% profit sharing. This was accepted by MST.

45. It took an extended period before the payment of this R21 million was made. The reasons for the extended delay have not been fully explained, but I have been informed that the reason was the delay in the signing of legal agreements and the performance of suspensive conditions.

46. On 6 July 2017, the sum of R21 million was disbursed to MST.

47. It may be said that the PIC's analysis of the financial projections of MST was unduly optimistic. However, I have not found any evidence of impropriety in the loan of R21 million made by the PIC to MST.

48. There is no evidence to support a conclusion that Ms Louw played any role in the MST's securing of loan financing of R21 million from the PIC. The PIC made its first offer to MST on 23 November 2015. As I explain below:

48.1 Ms Louw's first contact with Dr Matjila and the PIC was on 4 April 2016.

48.2 At that stage, Ms Louw had no connection with MST. Her first contact with MST was on about 22 April 2016.

48.3 The PIC's decision-making process (which included a second appraisal report on 30 May 2016⁵ because of the delay in granting the loan finance) and the PIC's flow of documentation do not support any theory that Ms Louw played a role in the PIC's approval of a revised loan facility on 8 June 2016.

Three MST proposals to the PIC for CSI funding

49. During the presentation of the MST application for loan funding to the PMC on 23 November 2015, Dr Matjila had requested that Corporate Affairs should consider the MST product offering for a CSI investment. The CSI programme falls under the Corporate Affairs section of the PCI.
50. Ultimately, three different proposals were made to the PIC for financial support which could be regarded as CSI funding. They were submitted through different routes.

The proposal facilitated by Maisan Holdings

51. On 2 May 2016, MST sent Ms Louw a draft proposal to the PIC for the lease of two buses by MST to the PIC. Ms Louw advised MST to submit the proposal to Dr Matjila and Mr Roy Rajdhar at the PIC.

⁵ The second appraisal report revised the loan to a value of R21 million with no equity, but for the most part was a cut-and-paste of the initial appraisal report for the November 2015 approval.

52. That same day, MST sent a Mobile Schools Health Vehicle Proposal to Dr Matjila. This was a proposal for CSI funding. On 9 June 2016 Dr Matjila, apparently that unaware that the proposal had also been sent to Mr Rajdhar, forwarded it to Mr Rajdhar with the comment "*Please assist*".
53. The proposal which MST submitted to the PIC contemplated the PIC leasing buses from MST over a period of three to five years. MST would then deploy the buses for health and education purposes in rural areas. The cost of the project would be between R23 million and R37 million, depending mainly on the term of the contract.
54. A meeting between MST/Maisan and the PIC took place on 30 June 2016. Ms Louw and Ms Dlamini represented Maisan/MST. The PIC was represented by Mr Rajdhar, Mr Wellington Masekesa (PIC Executive Assistant to the CEO), and Mr Paul Magula (PIC Executive Head: Risk). The meeting discussed three matters raised by Ms Louw and Ms Dlamini: a request by Maisan for funding for a manufacturing plant; a request by Maisan for funding for a chromite plant; and CSI investment in MST for the purchase of a bus.⁶
55. The MST proposal for the leasing of buses at a cost of between R23 million and R37 million received support from PIC staff, and was submitted to the

⁶ This is how the CSI proposal is referred to in a note of the meeting.

PIC Exco on 5 December 2016. Exco declined the proposal on the ground of affordability.

The Mpumalanga proposal

56. Meanwhile, the Corporate Affairs section of the PIC was independently following up the request which Dr Matjila had made on 23 November 2015 that Corporate Affairs should consider the MST product offering for a CSI investment.
57. On 12 February 2016, Xolani Matthews of Corporate Affairs wrote to Sekgoela Sekgoela. He referred to the CEO's request of 23 November 2016, and asked for a resumption of that process. He also asked for an update on the process so that this could be incorporated into the pending MST application for a loan facility.
58. Mr Kwabena Boateng of Corporate Affairs thereafter engaged with Mr Sandile Mzonyane, a director of MST, in this regard. From those discussions, a proposal emerged that the PIC provide funding for a bus to provide services to the elderly in Mpumalanga for a period of one month. The cost would be a little less than R500 000.
59. The proposal was submitted to Dr Matjila. In November 2016, acting under delegated authority to deal with funding at this level, he approved it.

60. However, when the matter was submitted to the Chief Financial Officer, Ms More, who was required to certify that funds were available for this purpose, she pointed out that another proposal from MST had recently been declined by Exco. This was the proposal which had been facilitated by Maisan. Ms More stated that the Corporate Affairs team should discuss the matter with Mr Rajdhar's team, who had put forward the Maisan-facilitated proposal.
61. The two teams discussed the matter. They concluded that by now, there were no longer funds available for the Mpumalanga project. The Mpumalanga project was therefore declined. The two teams however agreed that a new proposal should be put forward for CSI funding for a one-year education project in the new financial year.

The one-year project

62. In 2017 a one-year CSI project was accordingly proposed by MST, at a cost of R5 million. The proposal was submitted to the PIC's CSI team by Mr Mzonyane on behalf of MST. Mr Mzonyane had extensive engagement with the PIC in progressing the proposal.
63. On 20 February 2017 Exco approved an allocation of R5 million for this purpose. This was approximately 1% of the PIC's profit, which was the target for CSI spending.

64. On 28 March 2017 the CEO authorised the payment of R 5 million, which was then made.

The role of Ms Pretty Louw

65. Witnesses gave conflicting accounts of the role of Ms Louw in this process. It is necessary first to address the question of how Ms Louw came into contact with the PIC.

66. When she gave evidence, Ms Louw's account of her dealings with Dr Matjila was the following:

66.1 She and Ms Dlamini were at the OR Tambo Airport. They saw Dr Matjila, who had arrived from somewhere on a plane. They recognised him because they are in business and they had seen him on the television.

66.2 They approached Dr Matjila, introduced themselves, and asked for his business card. They told him that they had some projects that they wanted to bring to the PIC. They said that Dr Matjila was responsive to this.

66.3 Thereafter, they contacted him and set up a meeting with him at the PIC offices. They told him that they were looking for funding for spa products and a mining venture. They also introduced the subject of

MST at the meeting, and raised the question of the possible funding of buses. Dr Matjila did not mention that the PIC was already in the process of providing loan funding to MST, and that it was also already interested in possible CSI funding of MST.

67. It is common cause that Ms Louw had several meetings with Dr Matjila. Ms Louw put two requests to him for support for Maisan:

67.1 In response to a request for support for a plant for manufacturing spa products (cosmetics), Dr Matjila suggested that they approach other government funding agencies which would be more appropriate than the PIC for a proposal of this nature. He also put her in touch with Mr Lawrence Mulaudzi. He was part of a BBBEE consortium which had recently with the assistance of the PIC acquired a substantial share in Ascendis, which is involved in the pharmaceutical industry. Dr Matjila asked Mr Mulaudzi to consider providing a suitable opportunity. Nothing came of this.

67.2 In response to a request for support for a chromite mining venture, Dr Matjila put her in touch with the PIC staff who deal with mining, and asked them to deal with the matter. Thus, on 9 June 2016 Ms Louw and Ms Dlamini had a meeting with Heidi Sternberg of the PIC, who was responsible for mining beneficiation. Nothing came of this.

- 67.3 Dr Matjila also suggested alternative funding sources which Maisan might approach.
68. I asked Ms Louw how it was possible that she had such easy and extended access to the CEO of a large public entity, simply on the basis of having bumped into him at the airport and introducing herself. She insisted that this was nothing out of the ordinary, and that there was nothing surprising about it.
69. However, when she was further questioned on this, she admitted that the facts were not as she had presented them. When it was put to her that Dr Matjila had said that this has not a chance meeting, she admitted that the truth was the following:
- 69.1 She is friendly with Mr David Mahlobo, who at the time was the Minister of State Security.
- 69.2 What actually happened is that Minister Mahlobo called Dr Matjila to a meeting at the OR Tambo Airport, without disclosing the purpose of the meeting. His purpose was to introduce Dr Matjila to Ms Louw, and to ask Dr Matjila to arrange for the PIC to assist her in her venture with Ms Dlamini, which he did.
70. She could not explain why she had lied in claiming that this had been a chance encounter. When asked why Minister Mahlobo had set up this

meeting for her and Ms Dlamini with Dr Matjila, the exchange was as follows:

Question: Why did Minister Mahlobo do that for you?

Answer: Like I say, I know him from varsity.

Question: So sufficiently well that he will just phone up the head of the PIC and say come to the airport to meet some people?

Answer: Well, no, he is also a client of mine at the spa and I have known him since back in the day. And we were talking about how business is going and I said to him you know we want to do spa treatments, and in spa products and then he said Oh okay maybe try PIC.

71. Ms Louw's attempt to conceal the truth as to her first meeting with Dr Matjila clearly indicates that she recognised that this was something which she should try to hide, because it was out of the ordinary, in fact extraordinary, and called for an explanation and further enquiry. Her relationship with Minister Mahlobo was sufficiently close that he would put himself out to advance her personal business interests, and summon the head of a major public entity to the airport for this purpose – and, as I point out in the next chapter, to continue to do so after the meeting with Dr Matjila at OR Tambo.

Ms Louw's role in the CSI funding of MST

72. In considering Ms Louw's role in relation to the CSI funding of MST, it is necessary to consider each of the three proposals which emerged.
73. As I have noted, the suggestion that the PIC provide CSI funding to MST was made within the PIC when Dr Matjila requested, at the PMC meeting of 23 November 2015, that MST be considered for CSI funding. This was more than four months before Ms Louw came on the scene, when she met Dr Matjila at OR Tambo International Airport. That meeting took place on 4 April 2016.
74. Steps were taken to implement Dr Matjila's request of 23 November 2015. They culminated in the first proposal, the proposed one-month Mpumalanga project for approximately R500 000, which was ultimately not proceeded with. Ms Louw played no role in relation to this proposal.
75. The second proposal was the proposal facilitated by Maisan, for a three- to five-year project costing between R23 million and R37 million. Ms Louw played an active role in this regard. The proposal was recommended by PIC staff, but rejected by Exco.,
76. The third proposal was the one-year proposal which Mr Mzonyane submitted to the CSI team at the PIC. It was approved by Exco, and the

proposed amount of R5 million was paid to MST. Ms Louw played no role in relation to this proposal.

77. The obvious question which arises is what Ms Louw did for MST, such that they paid her R438 000, at a time when they were under some financial pressure? The various role-players gave different explanations.
78. MST stated that this was for the consultancy services which Maison Holdings had provided, particularly with regard to the PIC. They stated that during their initial meeting with Maison Holdings, Ms Louw had said that she would like to take this to various companies to obtain support for the business. She had said that she could take it to many companies, and specifically mentioned the PIC, saying that the PIC should be approached to gain access to PIC investees which need to undertake social investment. MST said that they did not have the capacity to deal with the PIC with regard to CSI, and Ms Louw had "*invigorated*" the CSI discussion with the PIC. She had worked hard in relation to other possible partners. She was "*clearly well connected*": they had been told by others that she was close to the Minister of State Security. They did not want to demotivate her. While the initial CSI proposal to the PIC (for between R23 million and R37 million) was turned down, the subsequent proposal for R5 million was approved. They appeared to attribute this, at least in part, to the work of Ms Louw. That this was their view is supported by the fact the payment of R438 000 was 10% of the PIC contribution of R5 million excluding VAT.

79. However, Mr Mzonyane said that in fact MST recognised that the R5 million project was the result of his work, and not the work of Ms Louw. He said that for this reason, the decision to pay her R438 000 initially caused some friction within MST. He said that ultimately the intention was that the payment to Ms Louw was an advance in respect of future projects to be delivered by Ms Louw.
80. Ms Louw distanced herself from any suggestion that she was responsible for the R5 million CSI contribution. She said that MST did not need her to open the door to the PIC, because that door was already open to them. She agreed with the propositions that she “*produced nothing for MST*”, and “*produced no new business for them*”. When asked why she had been paid the R438 000, She said that she had incurred expenses travelling to Cape Town to meet MST.
81. Dr Matjila confirmed that because of his original intervention in November 2015, the PIC was already considering a CSI investment in MST before Ms Louw came on the scene. He said that Ms Louw’s involvement was not necessary in order to secure the PIC investment. He was under the impression that the approved R5 million project was a revised version of the unsuccessful R23 million to R37 million proposal which had been presented by Ms Louw. It seems that he misunderstood what had happened in this regard: the R5 million project was the result of a proposal submitted by Mr Mzinyane, not the proposal submitted by Ms Louw. The Mzinyane proposal

was submitted to (and facilitated through) the CSI team, whereas the Maisan proposal was submitted to Mr Radjhar's team.

82. The absence of the key invoice (Ms Louw claimed that there were two invoices) does not assist in resolving the matter. MST stated in an e-mail to the PIC that *"the payment was made to look at improving BEE status and motivate and stimulate our partnership to create further sales"*. That appears to confirm Mr Mzinyane's explanation. However, that same email also described the payment as for *"work done to date"*.
83. As I have noted, the Joint Venture Agreement states that Maisan will be paid a *"facilitation fee"* which will be negotiated on a deal-by-deal basis, and will be attached as an Addendum. We requested copies of all such Addenda, but were informed that there were none. At our initial interview with MST, we were told that the agreement was that Maisan would be paid on a commission basis, which we understood to be a reference to a success fee. There was no such success.
84. Having regard to all of the evidence, I conclude that in substance, despite its form, the payment of R438 000 to Maisan was to reward the (unsuccessful) efforts Ms Louw had made with the PIC, and to encourage her to continue her further efforts.

CHAPTER 3

THE ROLE OF MINISTER MAHLOBO

85. When we interviewed former Minister Mahlobo, he acknowledged that he had called Dr Matjila to a meeting at the airport in order to introduce him to Ms Louw and to ask him to get the PIC to assist Ms Louw with her business interests.
86. When we asked what his relationship was with Ms Louw, Mr Mahlobo's answer was "*I don't have a relationship with her*". He said that he used to go to her Spa for treatment. He said that while they had been at university at the same time, they were not friends at university, and in fact he did not know her at university. His first contact with her was when he went to her Spa for treatment.
87. Mr Mahlobo said that when he was at the Spa, Ms Louw told him that she was experiencing "*challenges*" in dealing with the PIC, and that he then arranged the meeting with Dr Matjila. There are two difficulties with this:
- 87.1 Ms Louw did not suggest to us that she had previously approached the PIC or attempted to do so, or that she had experienced

“challenges” in this regard. Her explanation of why Mr Mahlobo approached the PIC was quite different - she said that approaching the PIC was his suggestion:

“... we were talking about how business is going and I said to him you know we want to do spa treatments, I mean spa products, and then he said oh okay, maybe try PIC.”

87.2 Dr Matjila said that when he met Minister Mahlobo and Ms Louw, neither of them said that she had previously made any attempt to approach the PIC and had experienced “challenges” in this regard.

88. Mr Mahlobo denied Dr Matjila’s evidence that when they subsequently had other meetings, he asked Dr Matjila for a follow-up on what had happened with regard to Ms Louw’s attempt to obtain assistance from the PIC. It seems to me that there are two difficulties in this regard:

88.1 It seems only natural and probable that Mr Mahlobo, having gone to the extent of setting up and attending a meeting at OR Tambo specifically to request Dr Matjila to enable Ms Louw to obtain assistance from the PIC, would at subsequent meetings have enquired what had happened in that regard.

88.2 If he did not make such follow-up enquiries, the most likely explanation would be that he had asked Ms Louw what had

happened, and that she had informed him that her attempts to raise funding through PIC for her business ventures had not been successful. However, he did not proffer this explanation.

89. When we asked Mr Mahlobo why he had called Dr Matila to a meeting at OR Tambo in order to introduce her to Dr Matijila and request his assistance, he vigorously asserted that it was commonplace for people in high positions in government to help people who were experiencing problems with other parts of government, by putting them in touch with the appropriate people. We suggested to him that this, however, was something different. It was not just that he had given Ms Louw Dr Matijila's phone number, or even that he had telephoned Dr Matijila and asked him to meet Ms Louw and assist her. In order to advance Ms Louw's personal business interests, he had gone to the extent of summoning the head of a major public entity to the airport for this purpose, had attended the meeting himself, and had asked Dr Matijila to assist her. This suggested a closer relationship than simply having attended at her Spa as a client.
90. Mr Mahlobo's response was to say that there is nothing unlawful about arranging meetings if people need help, and that there is no standard that says that it is wrong to arrange such meetings. He said there was no harm caused by arranging such meetings. We said that we were not suggesting that there was anything unlawful in what he had done, but that it seemed out of the ordinary, and that it was difficult to explain it simply on the basis

that he had attended the Spa. His response, again, was that there is no law that says you cannot arrange for people to meet.

91. We asked Mr Mahlobo whether he had ever made any similar arrangement for the benefit of any other person. His answer was that he had “*referred many people*”, and that he could not give details because he did not want to “*speculate*”.

92. In my opinion, the probabilities are the following:

92.1 It is probable that Ms Louw was telling the truth when she said that she had known him (and implicitly had been on friendly terms with him) since “*back in the day*”. If I am correct in that regard, it raises the question why Mr Mahlobo attempted to conceal the true nature of his relationship with Ms Louw.

92.2 It is probable that Ms Louw had not previously approached the PIC and experienced “*challenges*”, and that she did not say this to Mr Mahlobo.

92.3 It is overwhelmingly probable that it was out of the ordinary for Mr Mahlobo, a Cabinet Minister, to go to the extent of summoning the CEO of a major public entity to a meeting at the airport with someone with whom he did not have a personal relationship (I take it that this is what he meant when he said that he did not have a relationship

with Ms Louw), and himself attending that meeting and making the request. This cannot be explained away simply on the basis that he had been her client at her Spa. There must be more to it than that.

92.4 It is probable that when Mr Mahlobo and Dr Matjila subsequently met, Mr Mahlobo did ask Dr Matjila to inform him what had happened with regard to the attempt to obtain assistance for Ms Louw from the PIC.

93. It follows that in my opinion, the probability is that what Mr Mahlobo told us was untrue in a number of respects. The obvious questions which arise are why he would deny or understate the true nature of his relationship with Ms Louw; why he would assert that Ms Louw had said that she had previously had dealings with the PIC and had experienced "*challenges*" in that regard; and why he would deny that when he subsequently met Dr Matjila, he asked what had happened with regard to the provision of assistance to Ms Louw by the PIC. His repeated resort to the assertion that there is nothing unlawful about arranging meetings was in my opinion an attempt to avoid dealing with the obvious questions which arise from his role in this matter. His inability or unwillingness to identify any other occasion on which he had ever acted in this manner speaks for itself.

CHAPTER 4

DR MATJILA, MS LOUW AND MR LAWRENCE MULAUDZI

94. The “*James Nogu*” e-mail of 13 September 2017 to the PIC address list made the following allegations:

“... Dr Matjila had instructed one of the PIC funded companies, through its director, to assist in settling Ms Pretty Louw’s legal challenges, where her Maisan Spa in Benmore was closed and the Sheriff of the Court was about to attach her assets. Dr Matjila sent a message for the instruction to settle Ms Louw’s debt, which was paid for by the PIC funded entity”.

95. The events which gave rise to this allegation are the following.
96. When Ms Louw first approached Dr Matjila for assistance from the PIC, she told him that her business was interested in undertaking a manufacturing product in relation to cosmetics, and a mining project. At that time, the PIC had recently provided funding to a BBBEE consortium headed by Mr Lawrence Mulaudzi, in order to enable it to take a stake in Ascendis. Dr Matjila put Ms Louw in contact with Mr Mulaudzi, and asked Mr Mulaudzi whether there were opportunities in his business as far as the cosmetics

proposal was concerned, given that Ascendis is involved in pharmaceuticals. In the event, nothing came of that.

97. Part of the activities of Maisan Holdings was running a Spa in Benmore. In That business ran into financial difficulties, and they were not able to pay the rent. The landlord sued for the rent, and must have obtained a judgment for payment of the rent, because the Sheriff of the Court was going to evict Maisan. The amount owing was in excess of R300 000.
98. Ms Louw telephoned Dr Matjila and asked him for urgent assistance. She sent him, on WhatsApp, a copy of the Sheriff's writ of execution. Remarkably, Ms Louw claims not to remember whether she telephoned Dr Matjila, told him that they were in financial trouble, asked him to help them, and sent him the document from the Sheriff by WhatsApp.
99. Dr Matjila then telephoned Mr Mulaudzi. He informed Mr Mulaudzi that Ms Louw (whom he had previously referred to Mr Mulaudzi as described above) was in financial trouble. Her business had been attached by the Sheriff of the Court, as she owed money. He asked Mr Mulaudzi urgently to come to her rescue by settling her debt. He said that he would send Mr Mulaudzi the legal documents that Ms Louw had sent to him.
100. Mr Mulaudzi agreed to assist. Dr Matjila then sent him the Sheriff's documents via a WhatsApp application. Mr Mulaudzi saw that the amount

owing was some R330 000. On that same day, Ms Louw contacted him and informed him that Dr Matjila had told her that he would assist her.

101. They met the following day, at the offices of the attorneys who were involved in the matter. Mr Mulaudzi made an EFT payment of R150 000. Mr Mulaudzi's bank records show that this payment was made on 14 October 2016.

102. Ms Louw contacted him again the following day, stating that the attorneys required the balance of the arrears before Maisan would be allowed to go back to their business. She said that Dr Matjila had informed her that Mr Mulaudzi would settle the debt in full.

103. Mr Mulaudzi delayed for a few days in making this payment, as he hoped that she would obtain alternative assistance. When it became apparent that there was an expectation for him to settle the whole debt, he made a second payment of R150 000. He confirmed telephonically with Dr Matjila that he had made the payment as per his request.

104. Mr Mulaudzi says that Ms Louw thereafter asked him to make payment of the balance of approximately R30 000. He declined to do so.

105. Mr Mulaudzi and Ms Louw both state that no part of this money has ever been repaid. Both of them say that they did not have any expectation that it would be repaid. Dr Matjila says that he told Mr Mulaudzi that he should

deal with this as a loan, and that he should record the terms of the loan in an agreement. Mr Mulaudzi says that this was some time after the events.

106. Mr Mulaudzi and Dr Matjila do not have any personal relationship. Mr Mulaudzi knows Dr Matjila only in his capacity as the CEO of the PIC. He said that when Dr Matjila made this request to him,

“it was only natural for me to comply with this request as I have been funded by PIC in my business ventures. Although he did not force me to give the money to Ms Louw, there is no way I would have said no to the CEO of PIC. And it is also for this reason why I didn’t even question why he had chosen me to give money to Ms Louw.”

107. He explained it further as follows:

“... just imagine for instance, for example you receive a call from the CEO of Standard Bank and after Standard Bank has funded your transaction, I think it would be difficult to just say no because you know that if you need assistance you can still go to the very same institution. So when Dr Dan made the request I couldn’t say no to the CEO of the PIC.”

108. Mr Mulaudzi stated that the telephone call from Dr Matjila was not an instruction: it was a request. He felt however that he could not say no to

that request. He stressed that he made the payments from his personal funds, and not from the funds of any company with which he is involved.

109. If one asks why Dr Matjila responded to the telephone call from Ms Louw by requesting Mr Mulaudzi to pay her what was necessary to get her out of her financial difficulties, three possibilities arise:

109.1 First, the explanation could be that Dr Matjila and Ms Louw were involved in a romantic relationship, as alleged by "*James Nogu*". I have found no evidence of this.

109.2 Second, it could be that Dr Matjila would make such a request on behalf of any person whom he has met in the course of his work as CEO of the PIC, whose application to the PIC has been unsuccessful, and who then telephones him and says that he or she is in financial distress. This seems improbable in the extreme. As Dr Matjila acknowledged, Ms Louw was one of very many unsuccessful applicants to the PIC for funding.

109.3 Third, it could be that Dr Matjila felt under pressure in this regard, because Minister Mahlobo had called him to a meeting at the airport to introduce him to Ms Louw, and to ask him to assist Ms Louw. When we put that possible explanation to Dr Matjila, after some hesitation, he said that this was in fact the reason. What

distinguished Ms Louw from the many other disappointed PIC applicants was that she had been brought to him by a Cabinet Minister, and he felt a need to respond to that.

110. Dr Matjila said that in fact he had not met Minister Mahlobo on just one occasion, but *“probably three, four times”* to *“report back”* on *“various matters”*, including this one. He said *“I unfortunately have to respect the Ministers. When they call I come to listen you know, to what they have to say.”*
111. Dr Matjila subsequently said that he had four or five meetings with Minister Mahlobo, at the following venues: at the Minister’s home in Pretoria, at the OR Tambo international Airport, and at the Sheraton Hotel in Pretoria.
112. For present purposes, the most significant of these was the meeting on 4 April 2016 at OR Tambo International Airport.
113. In addition, a meeting was scheduled for the Minister’s home in Pretoria on 22 January 2018. The meeting did not take place. This was shortly before Minister Mahlobo ceased, on 26 February 2018, to be a member of the Cabinet.⁷

⁷ At this time, he was the Minister of Energy.

Dr Matjila's explanation to the Board

114. Dr Matjila's request to Mr Mulaudzi to make payments for the benefit of Ms Louw was discussed at the PIC Special Board Meeting on 29 September 2017. I deal with this more fully below. The Board resolved as follows:

"While the Board trusted the bona fides of the CEO in his actions with regard to helping the distressed company, such actions could be misconstrued, and the Board requested the CEO to not act on his own in taking such actions in future.

"In order to avoid a situation where management can be accused of acting improperly, it would be advisable that management do not engage with clients alone. The Board instructed the Social and Ethics Committee to look into whether a policy can be developed to guide management in this regard".

115. What is missing from this resolution, and from the discussion which preceded it, is that the CEO had been prompted or pressured into taking this action by the role played by the Minister of State Security, who had called him to a meeting and requested him to enable Ms Louw to obtain the assistance which she required, and who had thereafter pursued the matter by asking for follow-up reports. This was not disclosed to the Board, which

made no enquiry as to how Dr Matjila had come into contact with Ms Louw, and how it was that she had such ready access to him.

116. In my opinion, Dr Matjila should have disclosed this to the Board. It would have thrown the entire episode in quite a different light. The Board should have been told that its CEO had been under pressure from a Cabinet Minister to provide assistance to a person who was a friend of his. The Board was entitled to know that its CEO had been in this position, and that this was the reason why he had requested Mr Mulaudzi to assist Ms Louw.
117. One would hope that if this had been disclosed to the Board, the Board would have pursued the matter – perhaps by taking up the matter with the Minister of Finance, and requesting him to raise it in an appropriate manner and prevent a recurrence.

CHAPTER 5

THE RESPONSE OF THE PIC BOARD TO THE ALLEGATIONS

The Special Board Meeting of 15 September 2017

118. On 15 September 2017 the Board held a “*Special in camera Board meeting*”. I was informed that unlike regular Board meetings, the “*in camera*” meetings are not recorded, in order to enable a free exchange of views. While I understand the motive for this, it seems to be a doubtful practice: I would have thought that it is precisely when controversial matters are discussed, that it is necessary to have an unchallengeable record of precisely what was said – and, as I note below, what was actually decided – in order to avoid subsequent disputes in this regard.
119. The following account is drawn from what is recorded in the approved minutes and in the affidavit of Dr Matjila in answer to the UDM application to the High Court.
120. The Board noted the allegations made with respect to the loan granted to MST, and the e-mail to Board members which implicated the CEO, the CFO and other Executives. The Board:

“RESOLVED to mandate the Head of Internal Audit to conduct a review of the allegations and that for the integrity of the process, Management is prohibited from engaging with the Head of Internal Audit except for purposes of providing documents or clarity on specific questions raised by the Head of Internal Audit.”

121. The Head of Internal Audit, Mr Lufuno Nemagovhani was then called into the Board meeting for him to be briefed him on the resolution of the Board. Mr Nemagovhani expressed the view that the allegations were complex and that neither he nor his subordinates had the requisite forensic expertise to deal with the allegations as requested by the Board. He recommended that the Board appoint a company with forensic investigation expertise to conduct the investigation process. He then left the meeting.
122. Dr Matjila and Ms More were then called into the Board Meeting and advised of the Resolution. Dr Matjila expressed his dissatisfaction that the Board had failed to engage with the report which he had provided, and had not given him and the CFO an opportunity to respond to the allegations. He was then given an opportunity to address the responses raised in his report and by the Board.
123. Dr Matjila and Ms More were then excused from the meeting, and the Board reconsidered the matter. In arriving at its final Resolution, the Board considered, *inter alia*, *“the need to procure a legal opinion on a suitable way*

forward to resolve (i.e. is an external investigation required concerning the allegations implicating the CEO)”.

124. After extensive discussion, the Board resolved that the Company Secretary should draft a memo containing the Scope of Work for the review process to be conducted by the Head of Internal Audit. The review process by the Head of Internal Audit should be treated with extreme urgency and confidentiality. The Board further resolved as follows:

“With specific reference to the allegations on MST

5.13.2.4 *The Head of Internal Audit should verify the information submitted to support responses by Executive Management.*

5.13.2.5 *The verification should only⁸ entail the following:*

(a) *the validity of the documentation provided by the CEO and CFO to the Board as part of their response;*

(b) *the accuracy of the responses provided by the CEO to the PIC Board;*

(c) *whether applicable policies and procedures were complied with in approving funding to the MST;*

⁸ My emphasis.

(d) the completeness of the responses and adequacy of documentary evidence provided by the CEO in supporting those responses.

5.13.2.6 The verification process was not⁹ a forensic investigation. The verification process should be conducted internally in its entirety and therefore no external service provider should be appointed for the verification process.

5.13.2.7 The relationship between the PIC CEO and an alleged girlfriend was excluded from the scope.

5.13.2.8 The Head of Internal Audit should report to the Board at its meeting scheduled for 29 September 2017 ...

With specific reference to the email allegations received on 13 September 2017¹⁰

5.13.2.9 Responses should be provided to the Head: Internal Audit within a week, i.e. 22 September 2017.

⁹ Emphasis in original.

¹⁰ This appears to refer to the email sent by "leihlola Leihlola" to the members of the Board. It contained wide-ranging allegations of internal irregularities at the PIC. It did not include the allegation about the relationship between Dr Matjila and Ms Louw, and it also did not refer to Dr Matjila's role in arranging that Mr Mulaudzi would provide financial assistance to Ms Louw or Maisan.

5.13.2.10 The Head of Internal Audit should conduct the same review process mandated in respect of the MST allegations; and a report should be submitted to the Board within 4 weeks (22 October 2017) following receipt of responses from participating parties.”

125. I was informed that the Board was divided on this issue. The minutes record that Ms Zulu, a member of the Board, specifically requested that her dissenting views be recorded.

126. The following aspects of this are striking in the light of the present enquiry:

126.1 The Board considered the need (perhaps more correctly, whether there was a need) to procure a legal opinion on whether an external investigation was required concerning the allegations implicating the CEO. In the event, it appears that no such opinion was obtained.

126.2 The Board explicitly stated, and in fact emphasised, that the verification process was not a forensic investigation. It was, in essence, an internal review of whether the applicable policies and procedures had been complied with in approving funding to MST, and the completeness of the information provided.

126.3 The relationship between Dr Matjila and Ms Louw was explicitly excluded from the scope of the process to be undertaken by the Head of Internal Audit.

The media release of 15 September 2017

127. After the meeting of 15 September 2017, a media release was issued on behalf of the Board, headed *“PIC Board Expresses Confidence in the CEO”*.

“The Board of the Public Investment Corporation (PIC) has taken a decision to communicate the outcome of its special meeting held in Pretoria today. Ordinarily, the Board would not publicly disclose the outcomes of its deliberations. However, the Board deems it necessary to break from this tradition, given the heightened interest from the media and other stakeholders.

Following the meeting, the Board expressed its confidence in the ability and integrity of the CEO, Dr Daniel Matjila, management and staff of the PIC. The Board wishes to state that it will continue to exercise its fiduciary duties without fear or favour, including accountability to all stakeholders. The Board also noted media allegations prior to the meeting about its intention to remove the CEO. The Board wishes to reiterate that it rejects these allegations with the contempt they deserve.

The CEO made representations to the Board responding to the allegations levelled against him through the media. The CEO

provided detailed documentary evidence of the decisions made by the PIC and that the process followed was in accordance with all policies, procedures and delegation of authority of the PIC.

Following the deliberation by the Board on the allegations and representations, the Board accepted the representations of the CEO. For completeness of the process and for its final assurance, the Board mandated the Internal Audit division of the PIC to independently review the representations made by the CEO”.

128. Three observations may be made in this regard:

128.1 The Board had by this time already accepted the representations made by the CEO. The investigation by Internal Audit was merely *“for completeness of the process and for its final assurance”*.

128.2 The allegations which had received the most attention in the media, namely the alleged misuse of PIC funds and influence to favour the girlfriend of Dr Matjila, were not addressed at all.

128.3 The media release did not disclose that the allegation that Dr Matjila had used the resources and the influence of the PIC to benefit his girl-friend had not been considered by the Board, and would also not be part of the *“verification process”* to be undertaken by Internal Audit.

The Special Board meeting of 29 September 2017

129. On Friday 29 September 2017, a further special “*special in camera*” meeting of the PIC Board took place. It was not recorded.
130. The Board had before it a report prepared by the Head of Internal Audit, Mr Nemagovhani. He presented his report.
131. His report described as “*exclusions*” from his mandate, the allegation that Ms Louw was Dr Matjila’s girlfriend, and the allegation that Dr Matjila instructed an investee company to make payments to Ms Louw when she was in financial difficulty. There is some disagreement as to whether these were correctly described as “*exclusions*”. It seems to me that the description is in fact correct, having regard to the minutes of the meeting of 15 September. In any event, what is undisputed is that Mr Nemagovhani told the Board that he did not have the resources and capacity to investigate those matters, and that he was uncomfortable about carrying out an investigation into the conduct of the CEO, who was the person to whom he reported. He told the Board that he had not investigated those matters. He stated that an independent investigation would be necessary in order to deal with them.
132. Mr Nemagovhani presented the results of his enquiry, including the enquiries he had addressed to Dr Matjila. He noted that Dr Matjila had not

responded to the allegations that he had instructed the director of an investee company to pay the debt of an alleged girlfriend, and the allegation that Ms Louw was his girlfriend. Mr Nemagovhani had undertaken a verification of the information which had been provided to him. He reported that:

132.1 all of the documents submitted by the CEO and CFO as evidence of the loan to MST were valid;

132.2 the loan of R21 million was provided to MST and not Maisan Holdings;

132.3 there was an agent/principal agreement between MST and Maison, and he had not been able to obtain copy of an annexure to that contract;

132.4 the allocation of R5 million to MST as Corporate Social Investment was in line with the PIC's CSI strategy which had been approved by the Board in November 2016;

132.5 Company and Intellectual Property Commission reports confirmed that Ms Louw was not a shareholder or a director of MST.

133. Mr Nemagovhani stated that he had not engaged with Dr Matjila during the investigation process.

134. He was then excused from the meeting to allow the Board to deliberate on his report.
135. The Board was satisfied that the PIC's internal processes had been followed in respect of both the R21 million investment and the R5 million CSI transaction with MST.
136. There was extensive discussion on how the Board could verify the response by Dr Matjila as to whether he gave instructions to a director of an investee company to pay the debt of an alleged girlfriend. The Board agreed to request Internal Audit to interview both the CEO and the director of the investee company (Mr Mulaudzi).
137. Mr Namagovhani was called back into the meeting. The Board requested him to verify directly with Dr Matjila whether he had instructed a director of a PIC investee company to pay the debt of an alleged girlfriend, and also requested him to contact Mr Mulaudzi.
138. Mr Nemogovahani left the meeting at 14h00. He returned at 14h50, having made his enquiries. He reported that he had interviewed Dr Matjila in person, and that he had spoken on the telephone to Mr Mulaudzi. He reported as follows.
- 138.1 Dr Matjila told him that he was introduced to the two women. Thereafter, they submitted a cosmetic manufacturing proposal. Dr

Matjila referred them to the IDC, NEF and DTI because the proposals did not fit the mandate of the PIC. Subsequently, they presented a mining transaction to the PIC, which was not accepted because they did not have experience, the proposal was shallow, and the deadline was too short. Thereafter, the PIC concluded the Ascendis deal, in which one of the promoters was Mr Mulaudzi. Dr Matjila introduced the women to Mr Mulaudzi to see whether he could assist them through the enterprise development of Ascendis in relation to their cosmetic business. That process took too long, and their business was about to collapse. They contacted him again to assist them to save their business. He said that the PIC could not rescue them, and he asked Mr Mulaudzi to assist. This was a loan as far as Dr Matjila was concerned. He did not instruct Mr Mulaudzi to provide the assistance. He was mostly communicating with the women through telephone or cell phone messages, and had deleted most of the messages.

138.2 Mr Mulaudzi informed him that he did not know the lady in question, and had been introduced to her by Dr Matjila, who asked him to assist her with opportunities. He could not find any opportunities. Thereafter, he received a call from Dr Matjila to assist as their company was collapsing. Dr Matjila forwarded the letter of the Sheriff to him through WhatsApp. The ladies were running a Spa

shop and were locked outside. The Sheriff was waiting for payment of the outstanding amount. He paid R150 000 on the first day, and sent proof of payment to the ladies. The following day he paid R150 000. This was not a loan, he was just assisting. He could not say no, for the reason that PIC had funded two of his companies. He did not ask why he was asked to assist. This was a request, and not an instruction. He made the payments in his personal capacity. He was not expecting any payment for what he had done.

139. After further extensive discussion, the Board resolved to accept the report of Mr Nemagovhani. The Board resolved that while it trusted the *bona fides* of Dr Matjila in his actions with regard to helping the distressed company, such actions could be misconstrued, and the Board requested him not to act on his own in taking such actions in future. It resolved that in order to avoid a situation where management can be accused of acting improperly, it would be advisable that management do not engage with clients alone. The Board instructed the Social and Ethics Committee to look into whether a policy could be developed to guide management in this regard.
140. A number of members of the Board have emphasised to me that there were divisions on the Board with regard to this matter.
141. The Board also resolved that a media statement be issued stating that the Board was satisfied with the responses from the Executive Directors and

the outcome of the Internal Audit review. Later that day, a media statement was issued on behalf of the Board. I have quoted the most important part of it in Chapter 1:

“On the 29th September 2017, the Board of the Public Investment Corporation (PIC) met to receive feedback from Internal Audit division with regard to the allegations against the CEO, Dr Daniel Matjila. The Board fully applied its mind to the report presented by Internal Audit and confirms its satisfaction with the report. The Board has concluded that the allegations were baseless and that Dr Matjila is cleared of any wrongdoing”.

Assessment

142. I do not think it would be unfair to describe the Board’s investigation of the content of the emails as somewhat perfunctory. It consisted of two elements:

142.1 The major part of the investigation was an internal “*validation*” exercise undertaken by the Head of Internal Audit, to establish whether the steps taken by the PIC in making the loan and the CSI contribution were taken by the appropriate bodies, exercising authority which had been conferred upon them, and in accordance with agreed procedures and policies. The review confirmed that this

was the case. Mr Nemagovhani was not instructed to investigate the underlying allegation of undue influence in the process, and he did not do so. The enquiry was therefore very formal in its nature. Mr Nemogovahani carried out the mandate which was given to him, and did so properly and effectively. The problem lay in the mandate. He reported that he had not investigated the allegations with regard to the provision of funding to an alleged girlfriend of Dr Matjila.

142.2 The further enquiry consisted of a fairly brief interview with Dr Matjila and a telephone call to Mr Mulaudzi. The Board clearly recognised that the scope of Mr Nemagovhani's initial enquiry had not been adequate with regard to the allegations against Dr Matjila. However, its attempt to supplement that enquiry was in my opinion also inadequate. It did not involve any testing of the accuracy of the information provided by Dr Matjila or Mr Mulaudzi, or any investigation of what lay behind the events in question. The Board simply accepted the correctness of what they had said, and did not press for any further details.

143. The present enquiry demonstrates that additional highly relevant information could have been obtained through a proper enquiry.

144. The Board could not, on the information before it, have validly reached any conclusion as to whether Ms Louw was Dr Matjila's girlfriend. All it had

before it was his denial, which could not be an adequate basis for resolving the matter: it invites the famous riposte "*Well he would say that, wouldn't he?*"

145. The somewhat perfunctory investigation of the allegations in the emails contrasts sharply with the investigation which was undertaken in an attempt to find out who had sent the emails, and who had "leaked" PIC documents (in particular, the MST transaction documents and the draft minutes). Three IT companies were involved in this investigation, which was intensive and extensive. (I note that the IT companies were ultimately reporting to Dr Matjila, which appears inappropriate in light of the fact that the allegations were made about him.)
146. A further matter which calls for comment is the media statement which was issued after the Board meeting on 29 September. It consisted of a bland and unqualified endorsement of the conduct of the Executive Directors. It did not reflect the Board's discomfort or disquiet in relation to the CEO's approach to Mr Mulaudzi to provide financial support to Ms Louw. And it again did not address the aspect of the emails which had received most attention in the media, namely the allegation that Dr Matjila had used the resources and the influence of the PIC to benefit his girlfriend.
147. Under the circumstances, it is not surprising that the media statement did not lay matters to rest. The public controversy continued, and in fact

deepened. This was to the disadvantage of the PIC, which at around the same time was also coming under increased scrutiny in relation to investments which were controversial for financial or political reasons. With the benefit of hindsight, one can see that the manner in which the matter was dealt with, also did Dr Matjila no favour. In the public mind, he continued to be under suspicion of having used his position and influence as CEO of the PIC to benefit his girlfriend.

Were the Board minutes doctored or sanitised?

148. In June 2018 the United Democratic Movement instituted an application to the Pretoria High Court against Dr Matjila, the PIC, the Minister of Finance, and the Chairperson of the Board of the PIC. The UDM sought orders declaring that the Minister of Finance would be responsible for taking decisions regarding the suspension of and/or disciplinary action against Dr Matjila, directing the Minister to place Dr Matjila on suspension with immediate effect, and directing the Minister to institute disciplinary proceedings against Dr Matjila with immediate effect. The application was opposed.
149. In that application, it was alleged that the minutes of the Special Board Meeting of 29 September 2017 had been “doctored” or “sanitised”. In support of this allegation, the applicant attached draft Minutes which had been considered, revised and then approved by the Board.

150. The various respondents filed answering affidavits. None of them said that the draft minutes contained information which was not correct. It was explained that it is normal procedure for the Company Secretary to prepare a draft of the minutes, which is then circulated to the Board, revised and refined by the Board to ensure that it accurately reflects the important features of the meeting, and then approved by the Board and signed. It was denied that there had been any manipulation of the minutes, which it was said had been revised and then adopted by the Board in the ordinary course.
151. In answer to the allegation of “doctoring” or “sanitisation”, I was told that the draft minutes were revised because they went into too much detail. I was also told that there was a concern that if the minutes were too detailed and fell into the hands of third parties, this could be embarrassing to the PIC. In the event, what happened was that both the draft minutes and the approved fell into the hands of a third party, and were then made public.
152. I do not think any practical purpose would be served by a detailed analysis of the differences between the draft minutes and the minutes as approved. It is sufficient to record that the draft version was more sharply critical of Dr Matjila’s conduct than the final version – for example, the draft version stated *“The CEO’s conduct placed the reputation of the PIC at risk, as such the CEO needed to be warned”* and *“The Board could not condone the conduct of the CEO”*.

153. The obvious answer to the allegation of “doctoring” is that the final minutes were approved by the Board, and the Board can be taken to know what it decided at an earlier meeting. However, where there is a lengthy meeting and the body concerned is divided, it is possible that some members may agree to (or not explicitly oppose) something which has been proposed, and thereafter regret this and attempt to re-write the events when the minutes are to be confirmed. I am not able to say whether this happened. This does however underline the advantage of having a voice recording of the discussions and the decisions.

CHAPTER 6

OTHER ALLEGATIONS WHICH HAVE BEEN MADE

154. The e-mails (and in particular the e-mail of 13 September 2017 addressed to members of the Board) contain wide-ranging allegations of internal irregularities at the PIC:

154.1 Some of them are very generalised, and would require extensive investigation in order to be able to deal with them. I have not undertaken such investigations.

154.2 Some of the complaints are the subject of disciplinary enquiries which have either been concluded or are still in process. I have not investigated such matters. I did not understand it to be within my brief to conduct my own investigation into the disciplinary matters.

155. I have obtained some information in relation to a limited number of specific allegations which have been made. I address them briefly here.

156. These allegations are the following:

156.1 It was alleged that Dr Matjila paid money to a senior journalist of the *Sunday Times* to stop publication of allegations against the PIC or

him. No evidence was submitted in support of this allegation. Dr Matjila denied it. He informed me that he did have an interview with a journalist at the *Sunday Times*, who put to him allegations which had been made. When Dr Matjila provided his response to those allegations, the journalist did not pursue the matter further.

156.2 It was alleged that Mr Katleho Lebata, the son of the CEO, is employed by the PIC. Dr Matjila stated that while has a son named Katleho, that is not Katleho Lebata, who is employed at the PIC.

156.3 It was alleged that Dr Matjila granted a contract to a relative to run the staff canteen at the old PIC offices. Dr Matjila stated that the person who was given the contract to run the staff canteen was indeed a Mr Matjila. He stated that this person is no relative of his, and that he was not involved in the procurement process.

156.4 It was alleged that Dr Matjila had asked beneficiaries on WhatsApp to make certain payments on his behalf as a way of thanking him for approving a transaction with the PIC. No evidence was provided in support of this allegation, and Dr Matjila denied it.

156.5 It was alleged that Mr Adrian Lackay was illegally employed at the PIC on the instructions of Dr Matjila, without the proper Human Resources procedures having been followed. Mr Lackay was hired

at the PIC after his departure from the SA Revenue Service, to assist the PIC with communications. I was provided with an extensive file of documents which reflected the procedures which were followed in this regard. No-one came forward to explain or contend why the appointment was irregular. I have not investigated the matter further.

156.6 There was a series of generalised complaints against the CFO, Ms More, about the manner in which she performs her duties at the PIC. We interviewed Ms More, who denied the allegations. She said that in her capacity as CFO, she has to sign off on a wide range of procurement decisions and other decisions with financial implications. She is regularly required, she says, to refuse to approve the proposals which are submitted to her. She said that this will inevitably will make her unpopular with some people.

CHAPTER 7

CONCLUSIONS AND RECOMMENDATIONS

157. There is no evidence that Dr Matjila and Ms Louw have or had a romantic relationship. In the light of their denial that this is the case, and the absence of any evidence which contradicts their denial, I conclude that on the evidence before me, they do not and did not have a romantic relationship.
158. I have investigated the transactions in which the PIC made a loan of R21 million to MST, and made a Corporate Social Investment contribution of R5 million to MST. I have found no irregularity or impropriety in either of those transactions.
159. The involvement of Ms Louw with the PIC was brought about by the then Minister of State Security, David Mahlobo, who called Dr Matjila to a meeting at the airport without disclosing the reason for the meeting, when in fact the reason was to introduce Dr Matjila to Ms Louw and Ms Dlamini and to request Dr Matjila to assist them to obtain funding from the PIC for their business. Ms Louw initially gave a deliberately false explanation as to how this meeting came about.

160. It is overwhelmingly probable that it was out of the ordinary for Mr Mahlobo, a Cabinet Minister, to go to the extent of summoning the CEO of a major public entity to a meeting at the airport with someone who was (on his version) a virtual stranger to him, and himself attending that meeting. There must be more to it than that, but he has not disclosed what that was. In my opinion, it is probable that Mr Mahlobo's account of what happened was untrue in a number of respects.
161. When Ms Louw's business ran into financial difficulties, she telephoned Dr Matjila and asked him for assistance. He telephoned Mr Mulaudzi, to whose consortium the PIC had recently provided substantial funding, He asked Mr Mulaudzi to assist Ms Louw. Mr Mulaudzi understood this as a request, and not an instruction, but felt that under the circumstances he had no alternative but to agree, which he did. Dr Matjila then telephoned Ms Louw and told her that Mr Mulaudzi would assist her. He did so by providing the amount of R300 000 in order to prevent the eviction of Ms Louw's business from its premises for non-payment of rent. Mr Mulaudzi paid the money personally.
162. It was inappropriate for Dr Matjila to make this request to Mr Mulaudzi. This was recognised by the Board of the PIC.
163. The reason why Dr Matjila acted as he did was that he felt under pressure as a result of the interventions by then Minister Mahlobo.

164. Dr Matjila did not disclose Minister Mahlobo's role to the PIC Board, either at the time or later when these events came to light and he was asked for an explanation of what he had done. In my opinion, he was under a duty to inform his Board that a Cabinet Minister had placed him under inappropriate pressure. He should have done so. This was particularly so when his connection with Ms Louw had become a matter of public controversy and speculation.
165. When the anonymous e-mails were sent to persons on the PIC e-mail address list making serious allegations about particularly the CEO and to a lesser extent the CFO, the PIC Board did not properly investigate the matter. After receiving a report from Dr Matjila, it pronounced itself completely satisfied with his explanation of the transactions with MST, and requested the Head of Internal Audit to carry out an internal "*verification*" process which it stated was not to be a forensic investigation. Internal Audit reported, correctly in my opinion, that the policies and procedures had been complied with, and complete information had been provided in this regard.
166. The PIC Board did not properly investigate the public allegations with regard to Dr Matjila's relationship with Ms Louw, and Dr Matjila's request to Mr Mulaudzi to provide financial assistance to Ms Louw. It contented itself with an oral report by the Head of Internal Audit on a brief interview he had with Dr Matjila, and a telephonic interview which he had with Mr Mulaudzi.

167. After its meeting on 15 September 2017, the PIC Board issued a statement in which it expressed its confidence in the ability and integrity of Dr Matjila. It did not disclose that it had at that stage made no enquiry as to his relationship with Ms Louw, and the request to Mr Mulaudzi to provide her with financial assistance.
168. After its meeting on 29 September 2017, the Board of the PIC issued a press release which stated that it had received feedback from Internal Audit with regard to the allegations against Dr Matjila, and that it had concluded that the allegations were baseless, and that Dr Matjila was cleared of any wrongdoing. The Board did not disclose the limited nature of its investigation.
169. The Board did not institute a proper investigation of this matter until after Minister Nene, on 25 July 2018, requested it to do so.
170. The Board's perfunctory or limited investigations into the truth of the allegations in the emails contrast sharply with the intensive investigations which were carried out, with the assistance of three IT companies, in an attempt to find out who were the authors of the anonymous e-mails, and who had been responsible for "*leaks*" of PIC documents.
171. The initial draft of the Minutes of the Board Meeting of 29 September 2017 differed materially from the Minutes which were ultimately approved. The

draft Minutes reflected sharper criticism of Dr Matjila's conduct than was contained in the finally approved Minutes. It is not possible for me to make any finding as to whether this was because the Board wished to "sanitise" the Minutes. This is because the discussions at the Board Meeting were held at an "in camera" session which was not recorded, unlike other meetings of the board. I recommend that the Board reconsider the practice of holding "special in camera meetings" which are not recorded. This makes it difficult to resolve disputes which may arise (particularly in relation to controversial matters) as to precisely what was said at the meeting, and what was decided.

172. The Board resolved that while it trusted the *bona fides* of Dr Matjila in his actions with regard to helping Ms Louw's company, such actions could be misconstrued, and the Board requested him not to act on his own in taking such actions in future. It resolved that in order to avoid a situation where management can be accused of acting improperly, it would be advisable that management do not do not engage with clients alone. The Board instructed the Social and Ethics Committee to look into whether a policy could be developed to guide management in this regard.

173. In my opinion, this is not an adequate response to the problem which is identified by these events. The PIC is an organ of state which manages the funds of a very large number of South Africans, in an amount of R2 trillion. It exercises considerable power through the investment decisions which it

makes. There is a risk that the PIC function may be compromised if it exercises its financial muscle in a manner which favours selected people, or which is perceived as doing so. This goes to the heart of the PIC's functions and the need to ensure its probity and integrity. I recommend that the PIC adopt clear rules which prohibit members of its staff from approaching investees or would-be investees for favours, whether for themselves or for any other person.

174. I recommend further that the PIC should develop formal supplier development criteria for investees, where this is to be a relevant criterion for investment, or where the PIC will require a company in which it has invested to undertake supplier development. This issue was raised in a number of the documents which we examined. Our recent history teaches us that so-called "*supplier development*" can be used and abused as a means of achieving patronage or corruption.

175. Finally: Members of the PIC Board have told me that in responding to the allegations about the PIC and its senior staff as they did, they were concerned to preserve the integrity and reputation of the PIC. I accept that. However, I do not think it can be disputed that subsequent events have demonstrated that the attempt to lay the matter to rest through what was in fact a perfunctory enquiry was misguided. The rumours continued to circulate, in particular the core allegation that Dr Matjila had favoured his girlfriend by assisting her and her business to obtain benefits from the PIC.

This was a serious and damaging allegation, which needed to be properly investigated and dealt with. The enquiry which I have undertaken has revealed that material facts were concealed from or at least not disclosed to the Board. A proper investigation of these serious and damaging allegations would have enabled the Board to deal with them in a manner which better promoted public accountability and confidence in the integrity of the PIC.

GEOFF BUDLENDER SC

Cape Town

12 October 2018

ANNEXURE A**PUBLIC INVESTMENT CORPORATION****TERMS OF REFERENCE FOR FORENSIC INVESTIGATION INTO
ALLEGATIONS MADE AGAINST THE CHIEF EXECUTIVE AND CHIEF
FINANCIAL OFFICER OF THE PUBLIC INVESTMENT CORPORATION**

1. On 25 July 2018 the Minister of Finance directed the Board of the PIC to commission a forensic investigation into allegations that had been made against the Chief Executive Officer and the Chief Financial Officer of the PIC in e-mails sent to the PIC e-mail address list from an unknown source. The Minister requested that this be initiated as a matter of urgency and that the final report be submitted to him by 30 September 2018.
2. The Board has appointed Adv G Budlender SC as the lead for the forensic investigation. He will be instructed by Attorney Doris Tshepe of Cheadle Thompson and Haysom. She will be responsible for the overall management of the forensic investigation.
3. Adv Budlender SC and Ms Tshepe will appoint an independent forensic investigator and any other persons whose expertise and assistance are required in order for them to be able to conduct a proper forensic investigation.

4. Adv Budlender and Ms Tshepe will conduct the investigation in a manner that will ensure that those who provide it with information are not subjected to victimisation.
5. Adv Budlender will submit a report to the Board of the PIC, which will forthwith submit it to the Minister of Finance.
6. The report or its findings and recommendations will be made public not more than thirty days after the report has been submitted to the Minister.
7. Adv Budlender will have the liberty, if he considers this desirable and in the public interest, to respond in the public domain to questions which are raised with regard to the investigation and the report.