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**THE MINISTER: HON. EBRAHIM PATEL MP**  
DEPARTMENT OF TRADE OF INDUSTRY  
THE DTI CAMPUS  
77 MEINTJIES STREET, TREVENNA  
SUNNYSIDE, PRETORIA  
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**EXTREMELY URGENT**

**By email: [MEbrahim@thedti.gov.za](mailto:MEbrahim@thedti.gov.za); [KMotlhabi@thedti.gov.za](mailto:KMotlhabi@thedti.gov.za); [MErnest@thedti.gov.za](mailto:MErnest@thedti.gov.za);  
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Your Ref:	Our Ref:	Date
NATIONAL LOTTERIES COMMISSION	MJ Maluleke <a href="mailto:joseph@maluks.com">joseph@maluks.com</a>	11 NOVEMBER 2020

Dear Sir / Madam,

**RE: INVESTIGATION REPORT INTO THE NATIONAL LOTTERIES COMMISSION**

1. We act for the National Lotteries Commission, represented herein by its Board ("the NLC") our client in this matter.
2. Our instructions are that, following ongoing investigations initiated by the board of the NLC, you have also appointed a service provider of your own to conduct a forensic investigation into the NLC. As at the date hereof the terms of reference and scope of such investigation are unknown to our client. Our client has on numerous occasions attempted to engage with you and your office to discuss this matter but were unsuccessful. We are instructed further that, on the occasion of the sitting of the portfolio committee of the Department of Trade and Industry ("the DTI") held on 02 September 2020, the Director General ("DG") of the DTI gave a presentation on the status of the investigation. We are instructed that the DG's presentation had the following Disclaimer:

*"Because the Denzhe forensic report has been handed over to the law enforcement authorities we have received legal advice not to disclose the report*

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VAT Registration Number: 4760289076  
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Senior Associates: V.C. Williams BSC ENG (Mech) (HC), BProc (UNISA); B. Khwelemthini LLB (UNISA); H Shivamba LLB (UWC)  
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*and that we should limit the amount of information that is available to the public. We should allow law enforcement to complete their investigation”.*

3. The Chairperson of the NLC and the Commissioner who were both in that meeting were shocked about the DG’s presentation as it was the first time they came across that information. In particular the fact that a report had been produced and that the Minister was already acting on it (i.e. having already handed it over to the law enforcement authorities). We are instructed to place on record that our client has not been afforded any opportunity whatsoever to engage with and respond to the allegations and findings of the report presented to the Minister prior to it being handed over to the law enforcement authorities.
4. Our client is therefore concerned that the said report could be accusing or condemning members of the board and the executives of the NLC. This has given rise to a reasonable apprehension that our client may be exposed to criminal or civil proceedings. Our client once again learnt through the media that President Cyril Ramaphosa has signed a proclamation authorizing the Special Investigation Unit to investigate allegations of corruption in the NLC. According to the said media reports the President signed that proclamation on 20 October 2020 and it came into effect when it was published in the Government Gazette on Friday the 6<sup>th</sup> of November 2020. Their apprehension has been fortified by the above media reports.
5. We are further instructed that as set out herein above, it was reasonably foreseeable that during the course of the investigation by the service providers you have appointed, our client may be implicated by the investigation and that such implications may be to their detriment or adverse findings may be made against them. You therefore had a duty to inform them of the implication, to the extent that they are indeed so implicated, and afford them opportunity to respond in accordance with their rights to *Audi Alteram Partem* rule. Your decision to withhold the report from our client and instead take action based on its findings with the veil of secrecy that you seem to have put around the investigation is unlawful and amounts to an infringement of our client’s constitutional rights.
6. You have a duty to act fairly towards those implicated by the information received during the course of the forensic investigation conducted under your instruction and direction. It is our client’s view that the whole process of the investigation may have been potentially prejudicial to them and their constitutional rights. However, since you withheld the report from them, they have been deprived of their rights to *audi*. It is a basic tenement of our law and constitutional democracy that our client ought to be treated fairly. Fairness demands that persons who will be affected by an act or a decision of the administration or authority (which you are) shall be granted a hearing before they suffer detriment. Our client have a right to be informed of the substance of the allegations against them, with sufficient detail to know what case they are to meet. At the moment our client are left to speculate what information served before the President which he relied upon to exercise his powers in terms of section 2 of the Special Investigations Unit and Special Tribunals Act 74 of 1996 ( the “SIU Act”) to make a proclamation for the investigation of our client.

In essence you have condemned our client to sitting ducks awaiting the arrival of the law enforcement authorities to subject them to a probe based on a report that they have never seen nor engaged with. This arbitrary conduct by yourself is detrimental to the constitutional rights of our client.

7. In terms of section 32(1) of the Constitution our client have the right of access to (a) any information held by the state; and (b) any information that is held by another person and that is required for the exercise or protection of any rights. Our client is entitled to the forensic investigation report of the investigation that you sanctioned. Your deprivation of our client from accessing and engaging with that report is once more unlawful and unconstitutional.
8. In all of the above circumstances we have been instructed to demand, as we hereby do, that you forthwith provide us with a complete forensic investigation report together with the portfolio of any evidence and/or documents in support of the findings made therein; provide us with a written undertaking that you shall not take any action (including to remove the current board of the NLC) based on that report until such time that our client has been afforded the opportunity to study the same, if necessary obtain legal advice on how to vindicate their constitutional rights including the right to subject the findings in the report to judicial review in the High Court if they are advised to do so. You are to comply with the above demands by no later than close of business the 12<sup>th</sup> November 2020, failing which our client shall have no alternative but to approach the High court for, *inter alia*, a mandatory injunction in terms of which you are directed to furnish our client with that report; are prohibited from making the said forensic investigation report known to any third parties (inclusive of the media and law enforcement authorities); submitting the aforementioned report to the President for purposes of proclamations in terms of the SIU Act; and to the extent that you may have already started acting on it and have made it known to third parties, our client shall request the court to grant an order declaring that your conduct in withholding the forensic report from our client and to publish it to third parties before our client had *audi* in respect thereof is unlawful, invalid and of no force and effect; falls to be reviewed and set aside in terms of PAJA and/or in terms of Rule 53 of the Uniform Rules of Court.
9. We also record that the investigation that was commissioned by the Minister is not authorized by the enabling legislation, and therefore *ultra vires*, unlawful and invalid. Our client is entitled to be furnished with the investigation report so that it can take legal advice on whether to take it on review and have it set aside by the High Court.
10. Our client's rights remain strictly and expressly reserved.

Yours faithfully



**MALULEKE INC.**  
Per: MJ Maluleke