

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 63115 / 2020

In the matter between: -

NATIONAL LOTTERIES COMMISSION

Applicant

And

**THE MINISTER OF TRADE, INDUSTRY AND
COMPETITION**

Respondent

FOUNDING AFFIDAVIT

I, the undersigned

Professor Ntshengedzeni Alfred Nevhutanda

do hereby make oath and state that:

1. I am an adult male Chairperson of the National Lotteries Commission ("the NLC") established in terms of section 2 of the National Lottery Act of 1997 as amended, with its principal place of business situated at 333 Grosvenor Street, Hatfield Gardens, Block D, Hatfield Pretoria, 0028.

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2. I am as such duly authorized to depose to this affidavit in support of the relief prayed for in the Notice of Motion and to bring this application on behalf of the applicant. Attached hereto marked annexure "NL1" is a resolution in confirmation of the above.
3. The facts deposed to herein fall within my personal knowledge, unless the context state otherwise, and are to the best of my belief both true and correct. I should state that my term as the Chairperson of the applicant and as member of the Board of the applicant expires with effect from 30 November 2020. I depose to this affidavit on my last day in office.
4. In those instances, where I make legal submissions, I do so based on the advice that I have received from the applicant's legal representatives, which advise the applicant accept.

PARTIES

5. The applicant is National Lotteries Commission established in terms of the Lotteries Act 57 of 1997, as amended to regulate the national lottery as well as other lotteries, including the society lotteries to raise funds and promotional competition, with its principal place of business

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situated at 333 Grosvenor Street, Hatfield Gardens, Block D, Hatfield Pretoria, 0028.

6. The respondent is the Minister of Trade, Industry and Competition appointed as such by the President of the Republic of South Africa with his principal place of business situated at 77 Meintjies Street, Sunnyside, Pretoria, 0002.

THE PURPOSE OF THIS APPLICATION

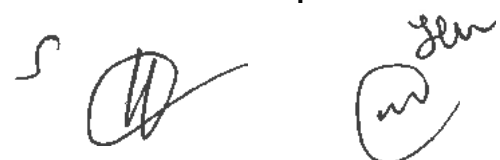
7. The applicant approaches this court for the relief sought in the notice of motion. In essence the relief sought is declaratory and directory in nature. The applicant seeks an order that the investigation that was commissioned by the respondent into the affairs of the applicant was not authorised by statute and or any empowering and or enabling legislation. The investigation was thus ultra vires, unlawful and unconstitutional. The investigation was also procedurally irrational given that it was conducted without affording the applicant, its Board, and officials an opportunity to state their side of the story.
8. An investigation that breaches the principle of natural justice is unlawful. It has been reported negatively in the media about the

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applicant and its Board based on the investigation report that the applicant and its Board and or officials have never seen. It seems as if the media is in possession of the report that the applicant does not have despite that the investigation was conducted solely based on allegations against the applicant and or its officials. It goes without saying that the applicant under such circumstances is not only entitled to know about the investigation, but it is entitled to be provided with the investigation report once the investigation has been concluded. Currently, the applicant is in the dark about the actual investigation, who conducted it on behalf of the Minister, and when was the report submitted to the Minister, and what does the report say, its findings and recommendations. The Minister is obliged to release the report to the applicant whether or not he intends to act on the report. The applicant is entitled to the report whether the report implicates the officials in wrong doing and most importantly if the report exonerates the officials of the applicant in any wrong doing.

9. It is also not correct that the Minister did not act on the report, therefore the applicant is not entitled to it. The Minister has already acted on the report because in his response to a member of the Portfolio Committee, Mr Macpherson, the DG of **The Department of Trade, Industry and**

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Competition ("the department") stated that *"the case had been given to the SAPS on 28 August 2020 by means of an affidavit which had included the forensic report. No case number had been received"*. The Minister had also approached the President to issue a proclamation authorising the SIU to investigate the affairs of the applicant. The SIU is currently authorised to do so on the strength of the representations that the Minister made to the President on the basis of the investigation report that the Minister has decided to keep under wraps. As such, the order the applicant seeks is that the Minister's refusal to provide the report to the applicant is unlawful and unconstitutional.

10. The Minister should be directed to provide the investigation report to the applicant within 5 days of the order or within a period of time the court deems appropriate.
11. The applicant has requested to be provided with the report, and the Minister through his attorneys refused. As a result of the refusal by the Minister based on the grounds set out in the letter from the Minister's attorneys, it follows that the Minister has waived the requirements of PAIA, thus making it unnecessary for the applicant to invoke the



provisions of PAIA. The contemplated internal appeal process in PAIA also does not come into play, given that the refusal was not made by the information officer, instead, the refusal was made by the most senior person in the Department, which is the Minister himself, and therefore there is nobody above the Minister within the Department to appeal to. As a result, PAIA does not come into play, however, to the extent necessary, and only in the event it is found that PAIA applies, the applicant has on the facts of this case demonstrated it should be exempted from compliance with the provisions of PAIA.

12. Accordingly, the applicant should be exempted from any obligation to exhaust the requirement to comply with the provisions of Promotion of Access to Information Act 2 of 2000("PAIA").

BACKGROUND FACTS

13. I should first start by making it clear that the applicant as an organ of state is enjoined to be transparent, fair and competitive in its dealings with the public and other organs of state. The applicant has a duty to assist other organs of state in the performance of their duties including law enforcement authorities when allegations of corruption, nepotism and the like are levelled against the applicant's officials. The applicant

therefore supports any investigation that is lawful, and instituted in accordance with the provisions of the law.

14. The relationship between the applicant and the Minister has not been a smooth one since the current Minister took office, let alone the contemptuous manner by which the Director-General treats the Board and its members. We have been battling to understand the source of hostility meted on us by the Minister and his Director-General, particularly given the fact that the applicant is one of the few organs of state which consistently obtains clean audits from the Auditor-General.
15. The Minister to date since his appointment never met with the Board. The impression we got is that the Minister is not interested in meeting with this Board. There were even rumours that the Minister is afoot in plans to remove this Board for no apparent reason. It is not clear why this Board is so disliked by this Minister.
16. Consistent attempts to have meetings with the Minister have failed. Instead of meeting with the Board to discuss matters of mutual interest, or raise whatever concerns he has, the Minister clandestinely commissioned an investigation into the affairs of the applicant, with the hope that he would find something to stick against the Board. When he

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found nothing, he alleges that the investigation is not complete simply because he does not like the outcome of the investigation. It seems as if the Minister will commission one investigation after the other until such time that he finds something against the Board, which he would use as the basis to remove the Board. It is astounding that the Minister would refuse to provide the Board with a report that according to the Minister is inconclusive. It still baffles us as to what precisely is it that the Minister does not want the Board to see from this mysterious report.

17. The Board became aware, albeit under extraordinarily strange circumstances about the fact that there was an investigation during a Portfolio Committee meeting on 2 September 2020, through the presentation made by the DG. The Board became aware for the first time in that meeting that there was an investigation report that has been furnished to the Minister and the DG, but the DG refused to disclose its contents and to release it either to the Portfolio Committee or the applicant. To date the Minister has refused to release the report or make it available to the applicant or to the Portfolio Committee. It was in my view utterly disrespectful of the DG to conceal to the Board the existence of the report and disclose its existence to the portfolio committee which was similarly attended by myself in my capacity as

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Chairperson and the Commissioner, in her capacity as the CEO of the applicant. It would have been expected that the Minister or the DG, whose involvement in lotteries affairs and policing of the Board is not prescribed in legislation, to have first spoken to the Board or myself so that I am not caught off guard by the announcement of this nature. I have no doubt that the announcement made by the DG in that portfolio committee meeting, was meant to embarrass me, the Board and the Commissioner in front of the members of the portfolio committee. The conduct of the DG is certainly not consistent with his obligations under section 195 of the constitution.


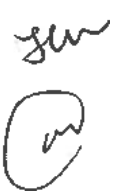
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On 4 December 2018 there was newspaper article that was published. A copy of the article is attached **marked "NL2"**. The article reported about allegations of corruption and maladministration within the applicant. At the centre of the allegations was the funding provided to Denzhe Primary Care .

19. Due to the allegations of corruption and maladministration levelled against NLC ,the NLC conducted an investigation into these allegations. Following ongoing investigations initiated by the board of the NLC, the respondent also appointed a service provider of his own

to conduct a forensic investigation into the NLC. In this regard, we refer the above Honourable Court to the DG's response to the Portfolio Committee wherein the DG reported that the Minister had the power to conduct such an investigation and he had delegated that power to the DG. I have been advised, which advice I accept that the Minister is not empowered in terms of the law to delegate such authority to the DG. On this basis alone, the entire investigation, together with any report attendant thereto are a nullity.

20. The NLC was never informed as to what were the terms of reference and scope of such investigation, and such it is still unknown to the NLC. The applicant have on numerous occasions attempted to engage with the respondent and his office to discuss this matter but were unsuccessful. The public interest demands that this matter be resolved as soon as possible, lest it damages the reputation of the applicant as an important institution that regulates lotteries and distributes funding for worthy causes. Distributions to worthy causes play an important part in alleviating hardships in communities and support important social projects. The stand off between the Minister and the applicant which does not auger well for the applicant and the Minister was published as late as this past Sunday, in the City Press of 29 November 2020. A

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copy of the article is attached **marked NL 3**

21. On the occasion of the sitting of the Portfolio Committee on Trade and Industry, which I have referred to above, DG gave a presentation on the status of the investigation. This paragraph should be read in addition to the averments that I have already alluded to in the paragraphs above. 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 and that we should limit the amount of information that is available to the public. We should allow law enforcement to complete their investigation".

22. As I have stated above, I and the Commissioner were present in the meeting when the presentation was made. We were shocked by the DG's presentation, not for its content but for the manner in which the information that pertains to the applicant was made for the first time in circumstances where the Board has not been previously appraised. What was even startling is that there was already an investigation


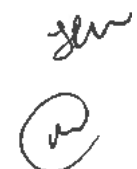


report submitted according to the DG, to the law enforcement authorities. The DG informed the Portfolio Committee that the Minister was already acting on it (i.e. having already handed it over to the law enforcement authorities).

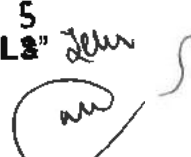

23. I need to state that the NLC has not been afforded any opportunity whatsoever to engage with and respond to the allegations and findings of the report presented to the Minister prior to it being handed over to the law enforcement authorities. We also do not know what the report found except what is being reported in the media.




24. The applicant has recently learnt through the media that the President 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 6th of November 2020. The gazetted proclamation is attached as annexure "NL⁴~~2~~". 

25. The applicant has no difficulty with the President appointing the SIU to investigate because that is the prerogative of the President. The applicant takes issue with the unlawful investigation commissioned by

the Minister (ie. Delegating the power to appoint investigators to the DG) and the unlawful report that was issued and submitted to the law enforcement authorities, despite the denials by the respondent through his attorneys.

26. The respondent is obliged as a matter of law to make available the report to the applicant. His refusal is without legal basis and therefore unlawful and unconstitutional. None of the senior officials of the applicant and the members of the Board were interviewed before the report was finalised or submitted to the Minister. The investigation was conducted in breach of the principle of *audi*.
27. The respondent's decision to withhold the report from applicant and instead take action based on its findings is unlawful and unconstitutional.
28. On 11 November 2020 our attorneys of record addressed a letter to the respondent requesting the report. The letter is attached as annexure
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 "NL3"  
29. In the letter the respondent was to respond by 12 November 2020. In the response the respondent's attorneys indicated that they would seek


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instruction from their client. The letter is attached as annexure "NL4". 6 30

30. On 17 November 2020, a detailed response to the applicant's letter dated 11 November 2020 was received. In that letter the respondent refused to provide the report as requested, instead attempted to provide an assurance that he would not take any action until those affected were given the right to be heard. The letter from the respondent's attorneys is attached as annexure "NL5" 7 30 I submit that this response was nothing but cold comfort, because the basis of requesting to be furnished with the report was not because of fear of being implicated, but a right that has accrued to the applicant by virtue of the investigation commissioned against its affairs, its officials and all others.

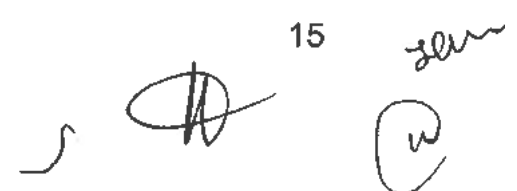
31. The applicant's attorneys responded to the letter on 19 of November 2020. A copy is attached as annexure "NL6" 8 30. The contents thereof should be read as if herein specifically incorporated.

32. It was recorded that the respondent's assurances that the report would be provided to the affected persons and provided with an opportunity before any action is taken is of no moment and that same does not exonerate the Minister from providing the applicant with the report. It

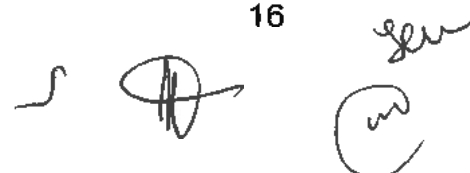
is immaterial whether the NLC, its board or employees are implicated in the report or not. It is the constitutional right of the NLC, its board and employees to have access to the report. Any refusal is irrational, unlawful and unconstitutional.

33. When it became apparent to the Minister that the applicant was determined to assert its right in law, the DG, employed intimidatory tactics which should be censured. The DG addressed a letter to Commissioner Mampane dated 18 November 2020. In this letter the DG was in essence interfering with the powers of the NLC and the board members to appoint the legal representatives to represent the NLC. The letter is attached as annexure "NLC". 
34. Given the attitude of the respondent and the DG, the applicant had no other alternative but to approach the above Honourable Court for the relief sought in the notice of Motion.
35. The applicant cannot be expected under the circumstances to be satisfied with the dubious conduct of the respondent or the lip service assurance from the respondent.

THE PROVISIONS OF PAIA



36. The applicant did not approach the respondent in the form of PAIA when requesting this report since the process is a fore gone conclusion.
37. I'm advised that the purpose of PAIA is to give effect to the provisions of section 32 of the Constitution which provides constitutional right of access to any information held by the state and any information held by another person; and that is required for the exercise or protection of any right.
38. I submit that the requirements of PAIA being an Act provided for access to information (to the extent that it does amount to internal and /or domestic remedy that has to be exhausted first) has not been fully implemented, nor in my view is there any prospect of yielding any different result to the decision already taken by the Minister, and communicated to the applicant's attorneys by the Minister's attorneys on 17 November 2020, which has been attached as "NL7".
39. The PAIA is not peremptory and must not be read to mean that it supersedes the constitution on the right to approach court at any time.
40. I state that there is simply no prospects that the "PAIA" may yield any

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different result to the decision already taken by the respondent. In any event the PAIA compliance has been waived by the respondent when he entertained the request for the report and rejected it on merits rather than technical grounds. It is the rejection that is unlawful and unconstitutional. The investigation was also not authorised by the enabling legislation and it was therefore unlawful. The Minister also did not have authority to delegate his powers to the DG.

41. It is submitted that exceptional circumstances have been demonstrated justifying adjudication of this matter and the granting of the orders sought.

CONCLUSION

42. Accompanying this affidavit is the confirmatory affidavit of Ms Thabang Charlotte Christine Mampane, the Commissioner, as well as the confirmatory affidavit of Molokomme Joseph Maluleke, the attorney of record of the applicant. They are attached as annexure "NLS" and "NLS" respectively.

43. In the premise, I submit that a case has been made out for the relief sought in the notice motion.

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WHEREFORE, the applicant prays that the orders sought in the notice of motion to which this affidavit is attached be granted.



DEPONENT

THUS SIGNED AND SWORN TO before me
at Pretoria on this the 30th day of
November **2020** by the deponent who acknowledges that he knows and
understands the contents of this affidavit; that it is the truth to the best of his
knowledge and belief and that he has no objection to taking the prescribed oath
and regards the same as binding on his conscience and the administration of
the oath complied with the Regulations contained in Government Gazette No.
R1258 of 21 July 1972, as amended.



COMMISSIONER OF OATHS

SANELE NGXONGO
EX OFFICIO COMMISSIONER OF OATHS
PRACTISING ATTORNEY OF RSA
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TEL: 012 346 6710 • FAX: 012 346 6689

18





NATIONAL LOTTERIES COMMISSION
a member of the dti group

EXTRACT MINUTES OF THE SPECIALBOARD MEETING

DATE: 10 NOVEMBER 2020

TIME: 14:00

VENUE: NLC HEAD OFFICE | FIRST FLOOR BOARDROOM

No	Item	Resolution(s)	Responsibility	Time Frame
	In Attendance Ms N Nene Company Secretary			
1.3	Quorum It was noted that the requisite quorum was present, and the meeting was duly constituted.	Noted	Company Secretary	
1.4	Declaration of Interest There were no interests declared at the meeting.	Noted	All	
1.5	Adoption of Agenda The Agenda was adopted with no amendments.	Noted	All	
SECTION 2: MATTERS FOR DISCUSSION / APPROVAL				
2.1	INVESTIGATION REPORTS It was RESOLVED that the NLC appoint a service provider as its attorneys of record to act on its behalf in connection with investigations conducted by the Minister of the Department of Trade and Industry pertaining to allegations of maladministration at the NLC: 1. To obtain a copy of the report of such investigation;			

Signed by the Chairperson: _____

Date: 10 November 2020



NATIONAL LOTTERIES COMMISSION

a member of the dti group

EXTRACT MINUTES OF THE SPECIALBOARD MEETING

DATE: 10 NOVEMBER 2020

TIME: 14:00

VENUE: NLC HEAD OFFICE | FIRST FLOOR BOARDROOM

No	Item	Resolution(s)	Responsibility	Time Frame
	<p>2. To institute and/defend any and/or all legal proceedings on behalf of the NLC in connection with the vindication of the rights of the NLC and/or the Board and/or its prescribed officers</p> <p>3. To appoint other experts such as Junior or Senior counsel in connection with the above matters;</p> <p>4. The Chairperson of the Board (Prof NA Nkomo) and/or the Commissioner (Ms Thabang Mampane) and/or the Company Secretary (Ms Nompumelelo Nene) and/or Executive Manager: Legal (Acting) (Ms Nompumelelo Nene) and/or COO (Acting) (Mr TS Maselwa) are hereby authorised to act on behalf of the NLC and/or the Board to sign and all documents as may be necessary, including depositing to an affidavit if and when required by our said attorneys for purposes of all litigation and/or other legal steps necessary to enforce and protect the rights of the NLC and/or the Board; and</p>			

Signed by the Chairperson:

Date: 10 November 2020

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NATIONAL LOTTERIES COMMISSION
a member of **the dti** group

EXTRACT MINUTES OF THE SPECIALBOARD MEETING

DATE: 10 NOVEMBER 2020



TIME: 14:00

VENUE: NLC HEAD OFFICE | FIRST FLOOR BOARDROOM

No	Item	Resolution(s)	Responsibility	Time Frame
	5. The above named persons are authorised to do all such things as may be necessary to give effect to the above resolutions			
	6. To review and provide legal opinion on investigation reports conducted by the NLC for presentation to the Board.			
SECTION 4 : CLOSURE				
4.1	Closure			
	Proceedings concluded at 20:30.	Noted	Chairperson	

Signed by the Chairperson: 

Date: 10 November 2020

 
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The Lawyer, the Lottery and millions in dodgy grants

National Lotteries Commission launches investigation into multi-million rand grants



Lesley Ramulifho allegedly used a hijacked NPO to get Lottery grants totalling R27.5 million to develop a drug rehabilitation centre near Pretoria. Photo: Roxanne Joseph

By Raymond Joseph

14 December 2018

The National Lotteries Commission (NLC) has launched an investigation into a multimillion rand grant made to a dormant and non-compliant, non-profit organisation.

GroundUp recently [reported](#) how Lesley Ramulifho allegedly used a hijacked NPO, Denzhe Primary Care, to get grants totalling R27.5 million to develop a drug rehabilitation centre near Pretoria.

Ramulifho used a second NPO, I Am 4 God's Glory, to obtain a further R11.9 million in funding from the Lottery for another project.

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Our investigation into Denzhe also uncovered two payments (totalling R535,240) paid from Denzhe's bank account towards two Ocean Basket franchises Ramulifho owns ([see page 13](#)) at Carnival City and Carnival Mall in Gauteng. The only substantial money paid into the bank accounts came from the Lottery.

In response to questions about whether the matter had been reported to SAPS or any other official body to investigate, the NLC's head of communications, Ndivhuho Mafela said: "With regards to Denzhe, the NLC has instituted an investigation to determine whether there was any ... breach of the grant agreement." NPOs could be "blacklisted" and be prevented from receiving further Lottery funding in line with the NLC's "delinquent policy" if they were found to be in breach of the conditions of their grants.

"The policy also addresses punitive measures to be taken against any organisation that fails to protect NLC funds and/or refuses or fails to take action against those who have abused and/or fraudulently misdirected and/or misused NLC funding," Mafela said.

The [website of Ramulifho Inc](#) carries claims of extensive work for government, including drafting legislation for different departments. Significantly, it boasts that Ramulifho has done work for the Department of Trade and Industry, under which the National Lotteries Commission falls. It also claims that Ramulifho has done work for the National Lotteries Board (NLB), the predecessor to the NLC.

Ramulifho is no stranger to controversy. He has previously been [linked](#) to a dodgy bid for an SAA tender in 2015. And in 2012, a forensic audit [found evidence](#) of fraud and corruption after Ramulifho allegedly overcharged the Pan African South African Language Board (PanSALB) by R1-million for work he did for it.

But on his firm's website and Facebook pages, [a letter](#) (on a PanSALB letterhead and purportedly signed by then acting CEO M Zwane) exonerates him of any wrongdoing. It says: "after a ... thorough investigation by Resolve Group, it appears that the allegations of overbilling were incorrect and I wish to confirm that it would appear the fault was systematic and internal."

But attorney Peter Harris, who conducted the investigation for Resolve, said: "We could not exonerate Mr. Ramulifho because we never investigated him. Our mandate was simply to investigate PanSALB. We certainly never issued any letter clearing Mr. Ramulifho."

The Gauteng Law Society (GLS) has confirmed that Ramulifho is in good standing and his law firm has a valid 2018 licence to practice.

An attorney acting for Ramulifho, KR Elliott, said in an email: "We take note that Mr. Joseph stated that he intends to publish a follow-up article tomorrow without providing our clients any chance to comment or to have insight into any allegations. Should this article repeat the allegations of the previous article and be published, then our clients will take steps against your publications to protect their Constitutional rights. Any damages will then be punitive."

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SETUPO STORY

by [illegible] 27 June 2012

The struggle for control of the National Lotteries Commission (NLC) between Trade, Industry and Competition Minister Khutheni Fani and the board of the entity has intensified as the regulator kick-starts the process to award a licence to operate the lottery, an operation said to be worth R300 million.

The elaborate process to name the new operator, who will take over in 2020 and run the lotto for eight years, has already become as politically charged as previous rounds.

There have already been e-mails sent to Fani's chosen behind the scenes, aimed clearly at Fani, who insists that his sole mission is to eradicate corruption within the regulator. The minister has also been accused of distasteful interference and "apartheid-style" bullying in correspondence.

STANDOFF OVER CHAIRPERSON POSITION

Unless a drastic intervention happens by the end of tomorrow, the position of board chairperson will be in limbo after the process preferred by Fani in all the past years gave a panel he appointed full control of the shortlisting process - was rejected by parliament last.

Outgoing board chairperson Alfred Nkomo's term ends tomorrow and the search for his successor has been held in political limbo.

The selection process has always been handled by the portfolio committee on trade and industry, which shortlisted prospective candidates and recommended the top preference to the minister to formalise the appointment.

City Press has learnt that an ANC study group, which guides MPs and government departments on decisions, rejected former deputy finance minister Michael Jonas as a potential replacement.

The ANC members in the portfolio committee on Tuesday recommended that Nkomo's term be extended by another three months while Parliament concludes the process to identify his replacement. This proposal was shut down by the DA, which cited ongoing investigations by law enforcement agencies and trustees of the regulator during Nkomo's tenure.

CLEAN AUDIT DISPUTED

The lottery regulator, which also disburses up to R1.5 billion annually to grants to nonprofit organisations, is highly concerned political terrain. There have been a number of allegations of malfeasance, nepotism and favouritism levelled at those who manage these delicate matters.

City Press this week saw correspondence suggesting that the department was not happy that the NLC received a clean audit report from the Auditor-General for the 2011/12 financial year.

After a week, spokesperson for the Auditor-General, yesterday declined to comment on allegations that the department or officials in the department may have tried to get the Auditor-General to withdraw or review the findings.

He said that Auditor-General could confirm that the 2011/12 audit report of the NLC had been finalised and signed off, but because it had not been tabled in Parliament, it was not a public document.

It appeared from records that Fani had failed to make the submissions required from his office in relation to the NLC audit process. However, department spokesperson Siboniso Shabane said that "no one in the department has contacted the Auditor-General asking for a review".

NLC spokesperson Nkomo Moko said the commission "respects the office of the Auditor-General as a supreme audit institution and its independence as a chapter 9 institution".

"The NLC complies with all applicable laws and would therefore respect the institution of chapter 9 institutions, and cooperate fully with them," Moko said.

DOCUMENTS SENT BY UBER

City Press has heard that the rocky relations between Fani and the commission's board started when he took over from former minister Sibusiso Nkomo, and both parties were yet to be shown by a formal introduction, even though he took over in May last year.

The request for proposal documents opening up the next round of bidding for the lucrative lottery operation contract were allegedly sent through an unknown commission employee via a mailing service Uber to Fani's office, something that did not sit well with the board.

The process to grant the lottery contract always starts some years before the current contract expires and the last award is almost always plagued by litigation.

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Battle for control of R130BN LOTTO

The run-up to the renewal of the lotteries licence has seen **fierce** disputes erupt between Minister Ebrahim Patel and the regulator

At least three prospective bidders have been mentioned as having an interest. They include a mainstream player in the broadcast and gaming industries, another player in the print media industry and the incumbent, Blakes.

'APARTHEID-STYLE' THREATS

Last week, a row of words erupted between the board and Patel over a departmental investigative report into the affairs of the commission. Parliament was told in September that the report had been handed over to law enforcement agencies.

In the briefing to Parliament, director general Lameel October said: "We have received legal advice to not distribute the report and that we should limit the amount of information that is made available to the public. We should allow law enforcement to complete their investigation."

October said the investigations focused on four projects "allegedly linked to the chief operating officer, his friends and relatives", namely non-profit organisations Life for Impact, I am Made for God's Glory, Zibimazi and Denzhe Primary Care. The total amount involved was a little more than R50 million.

The investigative report, whose status seems to be up in the air according to records, heightened speculation that Patel could use its findings to remove the entire board.

On November 18, the NLC board wrote to Patel through lawyers Mahabadi Attorneys & Corporate Law Advisors demanding to be furnished with "a complete forensic investigation report, together with the parol of any evidence and/or documents in support of the findings made therein".

Patel was requested to confirm that he shall "use due diligence" against the board in relation to the report until the board had considered its options, including a court review of the findings.

"We also record that the investigation that was commissioned by the minister is not authorised by the enabling legislation, and therefore ultra vires (beyond the legal power), unlawful and invalid. Our client is entitled to be furnished with the investigation report so that they can take legal advice on whether to take it on review and have it set aside by the high court," the lawyers wrote.

Patel said through lawyers Chendle Thompson & Hayman Inc that he had every right to investigate allegations of corruption and maladministration.

"However, before he makes a decision, for example on the future of the board based on the information before him, he will, as is the norm, seek the representations of the affected parties," Patel's lawyers wrote.

The minister said the NLC repeatedly ignored the invitation to provide clarity on matters that came up during the investigation.

However, the letter also said "the final report is still awaited and a number of allegations are still under consideration", which, according to the NLC, contradicted the brief before Parliament earlier in September that the investigation had been concluded.

Patel also warned against "inappropriate use of the NLC's resources" for litigation purposes.

But the NLC lawyers hit back, saying it was "unbecoming of a minister of a constitutional democracy like ours to bully our client and threaten the board with legal costs in their personal capacities in order to deter them from asserting their rights".

"Such apartheid-style threats and declaratory undertakings have no place in this country."

October pushed back in a follow-up letter to commissioner Thabang Masekane saying that the appointment of attorneys and the expense incurred in the litigation process against Patel was "not in line with the principle of efficient and effective use of financial

resources as it is not to the protection or promotion of the NLC's interest, but that of individuals who might be implicated in wrongdoing".

The NLC also questioned why Patel used private attorneys and not the office of the State Attorney.

"It is therefore unclear to our client why it is only the minister who is entitled to engage private attorneys and pay them from the public coffers, but not the NLC."

The NLC gave Patel until last Friday to comply with its demands, but the matter has seemingly reached a deadlock due to lack of clarity whether the investigative report was finalised or not, which has left the NLC's hands to legal recourse before court.

CONCERNS NOT ADDRESSED

Machape said yesterday that the NLC had initially reported to the department on an investigation it had instituted and then the report was due at the end of February last year.

"In the event, it was resolved that the department would review the final investigation report from the NLC and provide a copy forward on its content and satisfaction with the report."

Subsequently, he said, when the report was reviewed, the department identified numerous shortcomings and communicated these shortcomings and concerns to the NLC through a letter dated April 9 2019, addressed to the chairperson of the NLC board.

He said the NLC undertook to address the shortcomings, but when the department received and reviewed the revised report, "it was noted that several of the shortcomings it had requested be addressed had in fact not been addressed".

In addition, said Machape, numerous other allegations came to the attention of the department and Patel authorised a probe into the allegations, and the department wanted to "allow law enforcement authorities to complete their investigations".



Trade, Industry and Competition Minister Ebrahim Patel

Handwritten notes and signatures at the bottom of the page, including a large '2' and the signature 'scm'.

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"NL 4"



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Regulation Gazette

No. 11193

Regulasiekoerant

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Contents

No.		Gazette No.	Page No.
PROCLAMATIONS • PROKLAMASIES			
R. 32	Special Investigating Units and Special Tribunals Act (74/1996): Referral of matters to existing Special Investigating Unit: National Lotteries Commission, previously known as the National Lotteries Board.....	43885	3
R. 32	Wet op Spesiale Ondersoekenhede en Spesiale Tribunale (74/1996): Verwysing van aangeleenthede na bestaande Spesiale Ondersoekenhede: Aangeleenthede van die Nasionale Loteryekommissie, voorheen bekend as die Nasionale Loterye Raad.....	43885	6

PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 32 OF 2020**by the****PRESIDENT of the REPUBLIC of SOUTH AFRICA****SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT**

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (hereinafter referred to as "the Act"), have been made in respect of the affairs of the National Lotteries Commission, previously known as the National Lotteries Board, (hereinafter referred to as "the NLC");

AND WHEREAS the State or the NLC suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and civil proceedings emanating from such investigation should be adjudicated upon;

NOW, THEREFORE, I hereby, under section 2(1) of the Act, refer the matters mentioned in the Schedule in respect of the NLC, for investigation to the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001 and determine that, for the purposes of the investigation of the matters, the terms of reference of the Special Investigating Unit are to investigate as contemplated in the Act, any alleged—

- (a) serious maladministration in connection with the affairs of the NLC;
- (b) improper or unlawful conduct by employees or officials of the NLC;
- (c) unlawful appropriation or expenditure of public money or property;
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;

- (e) intentional or negligent loss of public money or damage to public property;
- (f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the NLC; or
- (g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

which took place between 1 January 2014 and the date of publication of this Proclamation or which took place prior to 1 January 2014 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the State or the NLC, in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Johannesburg this 20 day of October Two thousand and twenty.

CM Ramaphosa

President

By Order of the President-in-Cabinet:

RO Lamola

Minister of the Cabinet



SCHEDULE

1. Maladministration in the affairs of the NLC in relation to the—
 - (a) investment of funds in the National Lottery Distribution Trust Fund, established in terms of section 21 of the Lotteries Act, 1997 (Act No. 57 of 1997), contrary to the provisions of the said Act; and
 - (b) allocation of money in the Fund referred to in paragraph (a) to beneficiaries who were not entitled thereto in terms of the Lotteries Act, 1997, including the causes of such maladministration.

2. Any improper or unlawful conduct by the officials or employees of the NLC, or any other person or entity, in relation to the allegations set out in paragraph 1 of this Schedule, including the causes of such improper or unlawful conduct and any losses, damage or actual or potential prejudice suffered by the NLC or the State.

PROKLAMASIE NO. R. 32 VAN 2020
van die
PRESIDENT van die REPUBLIEK van SUID-AFRIKA

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996
(WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA
BESTAANDE SPESIALE ONDERSOEKEENHEID

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekkeenheide en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as "die Wet"), gemaak is in verband met die aangeleenthede van die Nasionale Loteryekommissie, voorheen bekend as die Nasionale Loterye Raad (hierna na verwys as "die NLK");

EN AANGESIEN die Staat of die NLK verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele geskille voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae vermeld ten opsigte van die NLK, vir ondersoek na die Spesiale Ondersoekkeenheid ingestel by Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van die aangeleenthede, die opdrag van die Spesiale Ondersoekkeenheid is om soos beoog in gemelde Wet, ondersoek te doen na enige beweerde—

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die NLK;
- (b) onbehoorlike of onregmatige optrede deur werknemers of beamptes van die NLK;

- (c) onregmatige bewilliging of besteding van publieke geld of eiendom;
- (d) onwettige, onreëlmatige of nie-goedgekeurde verkrygende handeling, transaksie, maatreël of praktyk wat op Staatseiendom betrekking het;
- (e) opsetlike of nalatige verlies van publieke geld of skade aan publieke eiendom;
- (f) misdryf bedoel in Dele 1 tot 4, of artikel 17, 20 of 21 (vir sover dit op voornoemde misdrywe betrekking het) van Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet No. 12 van 2004), en welke misdrywe gepleeg is in verband met die sake van die NLK; of
- (g) onwettige of onbehoorlike optrede deur enige persoon wat ernstige benadeling vir die belange van die publiek of enige kategorie daarvan veroorsaak het of kan veroorsaak,

wat plaasgevind het tussen 1 Januarie 2014 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2014 of na die datum van publikasie van hierdie Proklamasie, wat relevant is tot, verband hou met, insidenteel of bykomstig is tot, die aangeleenthede vermeld in die Bylae of wat dieselfde persone, entiteite of kontrakte betrek wat ondersoek word kragtens die volmag verleen deur hierdie Proklamasie, en om al die werksaamhede en bevoegdhede wat deur die Wet aan die gemelde Spesiale Ondersoekeenheid toegewys of opgedra is, uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae, insluitend die verhaal van enige verliese wat deur die NLK of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die 20 dag van Oktober Twee duisend-en-twintig.

CM Ramaphosa

President

Op las van die President-in-Kabinet:

RO Lamola

Minister van die Kabinet

BYLAE

1. Wanadministrasie van die aangeleenthede van die NLK met betrekking to die—
 - (a) belegging van fondse in die Nasionale Lotery Distribusie Trustfonds, ingestel deur artikel 21 van die Wet op Loterye, 1997 (Wet No. 57 van 1997), strydig met die bepalings van die gemelde Wet; en
 - (b) toekenning van geld in die Fonds na verwys in paragraaf (a) aan begustigdes wat nie ingevolge die Wet op Loterye, 1997, daarop geregtig was nie, insluitend die oorsake van sodanige wanadministrasie.

2. Enige onbehoorlike of onwettige optrede deur die beamptes of werknemers van die NLK of enige ander persoon of entiteit, ten opsigte van die bewerings uiteengesit in paragraaf 1 van hierdie Bylae, met inbegrip van die oorsake van sodanige onbehoorlike of onwettige gedrag en enige verliese, skade of werklike of potensiële nadeel wat deur die NLK of die Staat gely is.

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THE MINISTER: HON. EBRAHIM PATEL MP
DEPARTMENT OF TRADE OF INDUSTRY
THE DTI CAMPUS
77 MEINTJIES STREET, TREVENNA
SUNNYSIDE, PRETORIA
0002

EXTREMELY URGENT

By email: MEbrahim@thedti.gov.za; KMotlhabi@thedti.gov.za; MErnest@thedti.gov.za;
LOctober@thedti.gov.za;

Your Ref:	Our Ref:	Date
NATIONAL LOTTERIES COMMISSION	MJ Maluleke joseph@maluks.com	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:
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Senior Associates:

Offices:

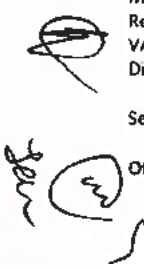
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Chief Executive: P.C. Malemone CA (SA)

V.C. Williams BSC ENG (Mech) (HC), BProc (UNISA); B. Khwelemthini LLB (UNISA); H Shivamba LLB (UWC)

List of Directors available at the registered office or national website

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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 6th 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.

your
(3)

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 12th 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

"NL 6" 45

Your ref : MJ Maluleke
Our ref : P Masilo/STA11003



CHEADLE THOMPSON
& HAYSOM INC.
ATTORNEYS

12 November 2020

Maluks Attorneys
61 Katherine Street
Sandton

By email: joseph@maluks.com
Pages: 1

Dear Sir,

Investigation report into the National Lotteries Commission

- 1 We refer to the above matter and your letter dated 11 November 2020 sent to the Minister of the Department of Trade & Industry.
- 2 We confirm that we act for the Minister and the Department in this matter. We are in a process of obtaining instructions from our client to be able to respond to the contents of your letter. As a result, we request your indulgence to respond by Monday, 16 November 2020.
- 3 We await to hear from you.

Yours faithfully

Phillip Masilo
Cheadle Thompson & Haysom Inc.

Cheadle Thompson & Haysom Inc. | Reg. No. 2000/003713/21 | Johannesburg | Cape Town

Directors: NRL Haysom; PS Benjamin; BM Barry; TN Raditapole; GJ Doble; S Galbie; RN Daniels; PS Masilo; HC Norval; K Naidoo; TC Gandidze; R Kalua; MR Makhura; PM Msimanga; NM Gage | Consultant: D Ganzen | Senior Associate: P Naidoo | Associates: NSS Shazi; NI Moleya; YB Mti; A Makuwa; NI Maphosa; TE van Wyk

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Your ref : MJ Maluleke
Our ref : P Masilo/STA11003



CHEADLE THOMPSON
& HAYSOM INC.
ATTORNEYS

17 November 2020

Maluks Attorneys
61 Katherine Street
Sandton

By email: joseph@maluks.com
Pages: 2

Dear Sir,

Investigation report into the National Lotteries Commission

- 1 We refer to the above matter and your letter dated 11 November 2020 sent to the Minister of Trade, Industry & Competition (the Minister) and the Department of Trade, Industry and Competition (the Department)
- 2 We confirm that we act for the Minister and the Department. We do not intend to respond to every allegation made in your letter and failure to respond thereto should not be construed as an admission thereof by our clients. Our clients reserve the right to respond more fully in future should circumstances so require it.
- 3 We confirm that the Minister has appointed a service provider to investigate allegations of corruption into funding of certain projects by the National Lotteries Commission ("NLC"). The investigators provided the Minister with a report which has been forwarded to the Special Investigations Unit ("SIU") for investigations as some of the investigations lie beyond the service providers competence. The Minister did this as he has every right to investigate allegations of corruption and maladministration as the Executive Authority to whom the administration of the Lotteries Act has been assigned. In terms of Section 3(5) of the Lotteries Act, the Minister is entitled to be informed of the status of governance of the NLC. However, before he makes a decision, for example, on the future of the Board based on the information before him, he will as is the norm, seek the representations of affected parties.
- 4 We advise that on 4 March 2020, the Minister wrote to the chairperson of the Board where he advised the Board that an independent forensic investigation was warranted on matters relating to pro-active funding, in order to restore public confidence in the Board of the NLC, and that the Director General of the Department should appoint the independent forensic investigators. The decision of the Minister was based on your client's failure to adequately

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Directors: NRL Haysom; PS Benjamin; BM Barry; TN Radiupole; GJ Doble; S Gaibie; RN Daniels; PS Masilo; HC Norval; K Naidoo; TC Gandidze; R Kalua; MR Makhura; PM Msimanga; NM Gage | Consultant: D Gansen | Senior Associate: P Naidoo | Associates: NSS Shazi; NI Moleya; YB Mti; A Makuwa; N Maphosa; TE van Wyk

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and properly address several complaints and allegations about corruption made against the NLC and restore public confidence in the institution.

- 5 We point out that the Minister further invited your clients' views that would have assisted in expediting the investigation process to which no response was received. Your clients knew about the investigation some nine (9) months ago and failed to respond to the Minister's invitation to send their views on how to expedite the investigation. In the circumstances your client's intention to approach the court on an urgent basis is misconceived. The letter dated 4 March 2020 is attached marked "A" and any approach to the courts on an urgent basis will be through self-created urgency, and will be firmly opposed, with a punitive cost order sought against your clients in their individual capacities, together with recovery of all wasted costs incurred by the NLC through such course of action. Our client is of the view that the threatened litigation is an inappropriate use of the NLC's resources on behalf of the individuals referred to in your letter.
- 6 We confirm our client's instructions that the final report is still awaited and that a number of allegations are still under investigation. Our client has decided not to make the report public until same is finalised. As indicated above, before any executive action is taken - if warranted by the outcome of the process - the affected parties will be afforded the right to be heard. Therefore, your client's apprehension that the investigation is prejudicial and in violation of their constitutional rights is devoid of any merit.
- 7 In the circumstances our client cannot give an undertaking to give your client the report at this stage. Once the final report is presented to our client then he will decide as indicated above.

Yours faithfully



Phillip Masilo
Cheadle Thompson & Haysom Inc.

"A" 48



MINISTER
TRADE AND INDUSTRY
REPUBLIC OF SOUTH AFRICA
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04 March 2020

Prof. N A Nevhutanda
Chairperson: National Lotteries Commission
Block B, Hatfield Gardens
333 Grosvenor Street, Hatfield
Pretoria
0083

Dear Prof. Nevhutanda,

ALLEGATIONS RELATED TO PRO- ACTIVE FUNDING

Reference is made to correspondence forwarded to the National Lotteries Commission by the then Minister of Trade and Industry on 5 December 2018 and 9 April 2019. Further correspondence by myself was forwarded on 14 August 2019 and 22 August 2019. My office sent a letter, dated 04 November 2019, requesting a response to my letters. This office has no record of a response to the latter three letters.

All the correspondence relates exclusively to allegations of fraud and irregularities in the allocation of Pro-Active Funding by the National Lotteries Commission (NLC).

In light of the above, the DTIC afforded the NLC ample time to look into this matter and the response has been inadequate.

I am of the view that the restoration of public confidence and credibility of the NLCs' Board with respect to addressing the NLC Pro-active Funding allegations is extremely urgent.

I am of the view that the most effective way of restoring confidence in the Board in respect of these issues is to appoint independent forensic investigators to conduct an

Handwritten marks: a circle with 'm' inside, a signature, and the word 'Jen' written vertically.

investigation of the matters set out in the Annexure, and any other matters related to pro-active funding.

I am further of the view that the most appropriate method of instituting this process is for me to direct the Director-General, Mr Lionel October to appoint independent forensic investigators.

Should you have any views that will expedite the investigation process I ask that that you communicate with the DG in this regard.

Finally, I recommend that the NLC Board ensure that the NLC's COO remain on special leave until the conclusion of the draft report by independent investigators, at which point the matter will be reconsidered by DTIC.

I look forward to your full co-operation in this matter.

Yours sincerely



Ebrahim Patel
Minister of Trade and Industry



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CHEADLE THOMPSON & HAYSOM

5th Floor, Libridge
25 Ameshoff Street, Braamfontein
Johannesburg

BY EMAIL: tasneem@cth.co.za

ATT: Phillip Masilo

Your Ref:	Our Ref:	Date
P MASILO/	MJ Maluleke / MAT joseph@maluks.com	19 NOVEMBER 2020

Dear Sir / Madam,

RE: NATIONAL LOTTERIES COMMISSION // MINISTER OF THE DTI

1. Our most recent letters to your client have reference. As you are aware, we act on behalf of NLC, duly represented by the Board. The Board is a legal persona and an accounting authority of NLC, with its powers clearly spelt out in the Act.
2. We refer to the previous letter from yourselves, addressed to us on behalf of your client (the Minister), in which our client's request to be furnished with an investigation report in possession of the Minister was rebuffed. We have been instructed to repeat the demand, that your client must furnish our client with the copy of the investigation report that your client, through the Director-General of the Department of Trade and Industry, informed the portfolio committee about its existence, and that same had been handed over to the law enforcement authorities.
3. Our client has noted your client's attempt to provide an assurance that he will not take any action until those who are affected are given the right to be heard. We place on record that such assurances are of no moment and do not exonerate the Minister from providing our

Maluleke Incorporated
Registration Number:
VAT Registration Number:
Directors:

Senior Associates:

Offices:

Attorneys | Notaries | Conveyancers | Forensic | Trademarks & Patents | Tax

2019/304925/21

4760289076

Executive Chairman: M.J. Maluleke LLB (UP), HDIP TAX (UJ)

Chief Executive: P.C. Malemone CA (SA)

V.C. Williams BSC ENG (Mech) (HC), BProc (UNISA); H Shivamba LLB (UWC), B. Khwelemthini LLB (UNISA),

TG Matji LLB (UNISA)

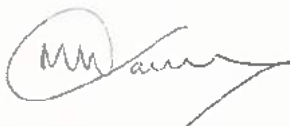
List of Directors available at the registered office or national website

Johannesburg (Sandton), Polokwane (+27 (0) 15 101 0545), Mauritius (+230 210 0507), Mpumalanga

client with that report. It is immaterial whether our client, its board or employees are implicated in that report or not.

4. Your client cannot take away their rights based on the above reasoning. It is for our clients to take legal advice on the findings if any in the report and the recommendations, if any, irrespective of whether the findings are adverse or not. It matters not whether they are implicated or not, they are entitled to the report by virtue of the legal position they are in as the Board, and by necessary implications, they are the NLC. Your client's refusal to provide our client with the report which pertains to the investigation into the affairs of the NLC is unlawful and unconstitutional.
5. In light of the above we have been once again instructed to demand that your client furnish us with that report before close of business tomorrow, Friday the 20th of November 2020, failing which our client will without further communication institute legal proceedings against your client forthwith, with a costs order attendant against your client. We hope this will not be necessary, and we will accordingly be furnished with the report on the stipulated date and time.
6. Our client's rights are reserved.

Yours faithfully



MALULEKE INC.

Per:



the dtic

Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

"NL9"⁵²

Private Bag X84, PRETORIA, 0001, the dtic Campus, 77 Meintjies Street, Sunnyside, 0002, Tel: (012) 394 0000
the dtic Customer Contact Centre local: 0861 843 384 International: +27 12 394 9500, www.thedtic.gov.za

Ms Thabang Mampane

Commissioner

National Lotteries Commission

By email: Thabang@nlcsa.org.za

Dear Commissioner Mampane

National Lotteries Commission and Minister of Trade, Industry & Competition

- 1 We refer to the above matter and the letter dated 11 November 2020 from Maluks Attorneys sent to the Minister of the Department of Trade, Industry & Competition.
- 2 We note that the above-mentioned attorneys claim to be acting on behalf of the National Lotteries Commission represented by the board. In the letter, the attorneys are purportedly instructed to demand several undertakings from the Minister failing which they threaten to approach the court to interdict the Minister.
- 3 Your attention is brought to the letter dated 4 March 2020 wherein the Minister informed the board of his intention to appoint an independent forensic investigation to investigate any matter relating to pro-active funding to which no positive response was received.
- 4 You are advised that in terms of section 35 of the Lotteries Act, read together with section 195 of the Constitution and the Public Finance Management Act, you are required to strictly ensure efficient, economic and effective use of resources of the public entity not to protect and promote personal interests.
- 5 We view the appointment of attorneys and expense incurred in the litigation process against the Minister as the Executive Authority assigned by law to oversee the Commission as not in line with the principle of efficient and effective use of financial resources as it is not to the protection or promotion of

Lefapha la Dikgwebisano, Dintasetari le Tiholisano • Lefapha la Kgwebo Indasteri le Phadikholo • UmNyango wezokhweba neZimbini kunye noMincintiswano • Mkhawulo wa zwa Mbambedzo, Melkweho na Mupajisano • Die Departement van Handel, Nywerheid en Mededinging • Kgoro ya Kgwebo Indasteri le Kgaisano • Ndzawulo ya Vuxevisi, Mabindzu na Mphikizano • Litiko leTokuhweba tihboni neKuncintiswano • ISebe lezokhweba neShishino kunye noKhuphiswano • UmNyango wezokuRhwebelana, amaBubulo nama Phaliso

Batho Pele - putting people first



Handwritten signatures and initials.



the dtic

Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

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the dtic Customer Contact Centre local: 0861 843 384 International: +27 12 394 9500, www.thedtic.gov.za

the NLC's interest but that of individuals who might be implicated in wrongdoing. Therefore, the resources of the NLC may not be used to pay legal costs to protect individuals' personal interests.

- 6 In the circumstances, you are requested to provide my office with the minutes of the board meeting and resolution where a decision to appoint attorneys to institute legal proceedings against the Minister was taken. Secondly, ensure that individuals who instructed attorneys to litigate against the Minister pay legal costs but not the NLC.

- 7 We wait for your urgent response.

Yours faithfully

Lionel October

Director-General

18 November 2020

Lefapha la Dikgwabisano, Dintaseteli le Tihloisano • Lefapha la Kgwebo Indasteri le Phadishano • umNyango wezokhwebo neZimboni kanye noMincintiswano • Muhesho wa zwa Mbembedzo, Makwetho na Muphasano • Die Departement van Handel, Nywerheid en Mededinging • Kgoro ya Kgwebo Indasteri le Kgaisano • Ndzwulo ya Vuxavisi, Mabindzu na Mphikizano • Likko leTokuwebe tlimboni neKuncintiswano • ISebe lezokhwebo noShishino kanye noKhuphiswano • UmNyango wezokuRhwebelana, amaBubulo nama Phalishwano

Batho Pele - putting people first



"NL10" 54

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:

In the matter between: -

NATIONAL LOTTERIES COMMISSION

Applicant

and

**THE MINISTER OF TRADE, INDUSTRY AND
COMPETITION**

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

THABANG CHARLOTTE CHRISTINE MAMPANE

do hereby make oath and say that:

1. I am an adult female person, the Commissioner of the National Lotteries Commission and I execute my duties as such.
2. By virtue of the position in which I am holding and being appointed







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there, I am the appropriate person to depose to this confirmatory affidavit on behalf of the applicant.

3. I have read the founding affidavit of the applicant deposed to by Professor Ntshengedzeni Alfred Nevhutanda I confirm the contents of these affidavits as far as they relate to me personally and as well as to the NLC.


DEPONENT

SIGNED AND SWORN TO BEFORE ME AT JOHANNESBURG ON THIS
 THE 30th DAY OF NOVEMBER 2020, THE DEPONENT HAVING
 ACKNOWLEDGED THAT HE/SHE KNOWS AND UNDERSTANDS THE
 CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION TO TAKING THE
 PRESCRIBED OATH AND CONSIDERS THE OATH BINDING ON HIS/HER
 CONSCIENCE



COMMISSIONER OF OATHS

NAME:

SANELE NGXONGO

CAPACITY

EX OFFICIO COMMISSIONER OF OATHS

ADDRESS:

PRACTISING ATTORNEY OF RSA

972 JUSTICE MAHOMED STREET

BROOKLYN, PRETORIA, 0181

TEL: 012 346 6710 - FAX: 012 346 6689





"NLH" Sp

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:

In the matter between: -

NATIONAL LOTTERIES COMMISSION

Applicant

and

**THE MINISTER OF TRADE, INDUSTRY AND
COMPETITION**

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MOLOKOMME JOSEPH MALULEKE

do hereby make oath and say that:


1. I am an adult male attorney and the founder of Maluleke Incorporated (T/A Maluks Attorneys) , practicing as such at Maluks attorneys ,61 Katherine street, , Gauteng Province







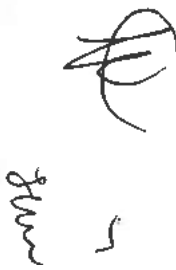
2. The facts contained in this founding affidavit are true and correct save where otherwise stated or where the converse appears from the context. All the facts contained herein are within my own personal knowledge.
3. I am the attorney of record in this matter. By virtue of the position which I am currently occupying, I am the appropriate person to depose to this confirmatory affidavit on behalf of the applicant.
4. I have read the founding affidavit of the applicant deposed to by Professor Ntshengedzeni Alfred Nevhutanda, I confirm the contents of these affidavits as far as they relate to me personally on my professional level.



DEPONENT

SIGNED AND SWORN TO BEFORE ME AT JOHANNESBURG ON THIS
THE 30th DAY OF NOVEMBER 2020, THE DEPONENT HAVING
ACKNOWLEDGED THAT HE/SHE KNOWS AND UNDERSTANDS THE
CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION TO TAKING THE
PRESCRIBED OATH AND CONSIDERS THE OATH BINDING ON HIS/HER
CONSCIENCE



COMMISSIONER OF OATHS**NAME:****SANELE NGXONGO****CAPACITY****EX OFFICIO COMMISSIONER OF OATHS****PRACTISING ATTORNEY OF RSA****ADDRESS:****972 JUSTICE MAHOMED STREET****BROOKLYN. PRETORIA. 0181****TEL: 012 346 6710 - FAX: 012 346 6689**

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 63115 / 2020

In the matter between:

NATIONAL LOTTERIES COMMISSION

Applicant

And

**THE MINISTER OF TRADE, INDUSTRY AND
COMPETITION**

Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned

EBRAHIM PATEL

do hereby state under oath as follows:

- 1 I currently serve as the Minister of Trade, Industry and Competition, having been appointed in that capacity on 29 May 2019. I previously held the position of Minister of Economic Development from 2009 to 2019.
- 2 In my position as Minister of Trade, Industry and Competition, I am responsible for the administration of the Lotteries Act 57 of 1997 ("the

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Lotteries Act") and for the oversight of the National Lotteries Commission (**"the NLC" or "the Commission"**), the applicant in these proceedings.

- 3 I am cited as the sole respondent in this application. By virtue of my position, I am duly authorised to depose to this affidavit and to oppose the application.
- 4 The facts in this affidavit are, unless otherwise stated or the contrary appears from the context, within my personal knowledge, and are both true and correct. Where I make legal submissions, I do so on the strength of legal advice obtained from my legal representatives, whose advice I accept to be correct.
- 5 I have read the applicant's Notice of Motion, the Founding Affidavit and the annexures thereto. I oppose the relief sought by the applicant for the reasons which are set out below.
- 6 Before responding *seriatim* to the allegations contained in the founding affidavit, it is essential that I set out the legislative provisions and regulations which govern the NLC, the background to the matter and the correspondence exchanged between the parties regarding the subject matter of the application. I also raise certain preliminary matters.

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STATUTORY FRAMEWORK

The Lotteries Act

- 7 Section 2 of the Lotteries Act establishes the National Lotteries Commission (“NLC” or “Commission”) as a juristic person. Section 2A of the Lotteries Act requires the NLC to apply the principles of openness and transparency in exercising the functions assigned to it in terms of the Act by the Minister, board or any other law.
- 8 There is accordingly an express statutory obligation on the NLC to uphold the principles of openness and transparency in the exercise of all of its functions. This is further emphasised in section 10(1)(o) of the Lotteries Act, which, amongst the functions of the board of the NLC, includes the obligation to:

“ensure that the Commission exercises its powers in accordance with the principles of transparency and accountability”

- 9 One of the Commission’s functions, as set out in section 2A(3) of the Lotteries Act, is to fund identified worthy good causes. The section provides that:

“(3) The Commission may, upon request by the Minister, board or on its own initiative in consultation with the board, conduct research on worthy good causes that may be funded without lodging an application prescribed in terms of this Act.”

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The Public Finance Management Act

10 The applicant is a national public entity listed as such in schedule 3A to the Public Finance Management Act 1 of 1999 (**"the PFMA"**). I am the *"executive authority"* of the applicant as provided for in section 1 the PFMA, which provides that *"the Cabinet member accountable to Parliament for that public entity or in whose portfolio it falls"* is the executive authority.

11 The provisions of the PFMA accordingly apply to the NLC. Importantly, section 50(1)(c) of the PFMA places an obligation on the accounting authority of the NLC, which is the board of the NLC, to:

"(c) ...disclose to the executive authority responsible for that public entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature".

12 Furthermore, section 63(2) of the PFMA confers wide powers of ownership and control on an executive authority responsible for a public entity. It provides that:

"(2) The executive authority responsible for a public entity under the ownership control of the national or a provincial executive must

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exercise that executive's ownership control powers to ensure that that public entity complies with this Act and the financial policies of that executive." (emphasis added)

- 13 In my submission, the powers conferred by section 63(2) of the PFMA on the executive authority are sufficiently broad to encompass the institution of an investigation into the governance and affairs of the Commission, to ensure that the Commission complies with the PFMA. As I will expand on shortly, the decision to do so was necessitated by allegations of corruption and maladministration in the Commission.

Shareholder's Performance Compacts

- 14 On 5 April 2019, the Government of the Republic of South Africa entered into a Shareholder's Performance Compact with the Commission ("**the 2019/20 Compact**"). The Government was represented by Dr Rob Davies in his capacity as the then Minister in the Department of Trade and Industry ("**the Department**"), and the Commission was represented by Prof. Nevhutanda. Prof. Nevhutanda is the deponent to the NLC's founding affidavit. The 2019/20 Compact was applicable from 1 April 2019 until 31 March 2020. A copy of the 2019/20 Compact is attached, marked "**EP1**".
- 15 The 2019/20 Compact expired on 30 March 2020. The NLC has provided my office with the 2020/21 Shareholder's Performance Contract ("**the 2020/21 Compact**"), duly signed by the then Chairperson of the Board. A copy of the 2020/21 Compact is attached, marked "**EP2**". I am yet to sign the 2020/21

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Compact, as there have been significant amendments to the Compact, in respect of which I still require clarity from the Board. Nevertheless, the NLC has agreed to all the terms of the Compact, including the provisionS that deal with dispute resolution.

- 16 The 2019/20 Compact contained the following recordal, under its preamble:

"3.4 The NLC is established in terms of the Act, under the executive authority of the Minister, in an effort to enable the dti to achieve its objective and ultimately meet its mandate. The NLC's mandate is to monitor and enforce the implementation of the national lottery and the establishment of private lotteries and promotional competitions as well as to distribute the National Lottery Distribution Trust Fund (NLDTF) monies to good causes in line with the Act"

- 17 Furthermore, clause 3.6 recorded the Department's and NLC's commitment to good governance:

*"3.6 **the dti and NLC** subscribe to good corporate governance in order to improve transparency, accountability and sound management."*

- 18 The roles and responsibilities of the Department, as recorded in the 2019/20 Compact, included the responsibility to:

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"6.1.1 monitor adherence by NLC to the PFMA, Treasury Regulations, King IV report and the Act".

19 The 2020/21 Compact also refers to this as one of the roles and responsibilities of the Department in relation to the NLC.

20 My decision to commission an investigation into the allegations of impropriety, fraud and irregularity in the allocation of pro-active funding by the Commission also fell squarely within my powers in term of the Shareholder's Compacts entered into by the Department and the Commission. Clause 6.1.10 of the 2019/20 Compact provides that one of the roles and responsibilities of the Department pursuant to the Compact is to:

"6.1.10 intervene, in line with legislative and corporate governance principles adopted in [the Compact]..."
(emphasis added)

21 It is in line with this obligation as prescribed in the 2019/20 Compact, that the Director-General of the Department appointed independent forensic investigators on my instruction, to conduct an investigation into the allegations of fraud made against the NLC, its staff and Board members. For this additional reason, my decision to institute the investigation complained of was authorised by law.

22 I communicated the decision to commission the forensic investigation to the chairperson of the NLC on 4 March 2020. In doing so, I stressed the

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importance of urgently restoring public confidence and credibility in the NLC Board. And as it should be expected, I requested that the chairperson, the Board and the NLC co-operate with the forensic investigators in carrying out their mandate.

- 23 This request was consistent with the roles and responsibilities of the Board as the accounting authority of the NLC. One of the responsibilities, stipulated in both the 2019/20 and 2020/21 Compacts, is to:

"6.2.1 ensure that NLC endeavours to carry out its objectives and functions as outlined in the PFMA, Treasury Regulations, King IV Report and the Act..."

- 24 In terms of clause 6.2.9 of the 2020/21 Compact, which deals with the roles and responsibilities of the Accounting Authority, the Board is mandated to:

"6.2.9 ensure that third-party information requested by the Executive Authority is furnished in line with relevant legislative requirements (Protection of Personal Information Act, No 4 of 2013, Promotion of Access to Information Act, No 2 of 2000, Lotteries Act and its regulations.)..."

- 25 As is the norm, this provision also applied in, and was a term of, the 2019/20 Compact, as clause 6.2.8. This clause places a positive obligation on the NLC to provide my office with third-party information, provided that this disclosure complies with the relevant applicable legislation referred to in the clause.

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Third-party information in this regard would, in my submission, extend to information relating to the beneficiaries of the NLC, who receive funds in accordance with the Lotteries Act.

- 26 Clause 14.2 of the 2020/21 Compact makes provision for the NLC's undertakings for the duration of the Compact. These include undertakings to:

"14.2.1 maintain effective governance and the highest standards of ethics and [to] continue to subscribe to the broad principles set out in the PFMA, the Act, and King IV Report;

14.2.2 subscribe to the principles of good governance, and reassess its systems of governance on an ongoing basis;

...

14.2.4 ensure that it has a code of ethics and a code of conduct in place; and

14.2.5 ensure that in determining the composition and function of the sub-committee, NLC will follow the guidelines of the King IV Report on Corporate Governance as well as the prescripts of the PFMA and the Act".

- 27 The Commission has further made negative undertakings recorded in the Compact, which include the undertaking not to:

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"14.3.5 contravene the provisions out-lined in the PFMA, National Treasury Regulations, NLC's mandate and the Strategic Plan which serve as the relevant guidelines of what is regarded as normal business".

**FIRST PRELIMINARY POINT: FAILURE TO INVOKE DISPUTE-RESOLUTION
CLAUSE OF THE SHAREHOLDER'S PERFORMANCE COMPACT**

28 Clause 16 of the 2019/20 and 2020/21 Compacts provide for a dispute-resolution mechanism in the event of a dispute between the NLC and the Department. The clause provides as follows, in its entirety:

"16 DISPUTES

16.1 Should any difference or dispute at any time arise between the Parties, the duly authorized Senior Officials of the dtic and the NLC shall meet within fourteen (14) days, or such period as the Parties may agree, from the date on which the dispute arose to resolve the dispute amicably.

16.2 If the dispute is not resolved at such a meeting, or extended meeting as the Parties may agree to in writing, then the dispute shall be escalated to the Director-General of the dtic and the Non-Executive Chairperson of the NLC for resolution.

16.3 In the event that the Parties under sub-clause 16.2 above are unable to resolve the dispute, such dispute shall then be

referred to an independent representative appointed by the Minister for resolution. The decision of the Minister shall be the full and final settlement of the dispute and shall be binding on all Parties.

16.4 The provisions of this clause are severable from the rest of the agreement and shall remain in effect even if this agreement is terminated for any reason.

*16.5 The Parties are bound by the provisions of the Protocol Guidelines to resolve disputes between **the dtic** and its agencies and the disputes amongst the agencies”.*

29 Any difference or dispute between the NLC and the Department must, in terms of the Compacts, be resolved amicably. In light of the institutional relationship between the Department and the NLC, this injunction is not insignificant. The dispute-resolution mechanism is, in my submission, underpinned by the values of co-operative governance, and its objective is similar to that of the Intergovernmental Relations Framework Act 13 of 2005 (**“the Intergovernmental Relations Act”**). The dispute-resolution mechanism is aimed at the settlement of disputes between the Department and the NLC, and avoiding litigation without serious attempts being made to resolve disputes amicably.

30 This dispute-resolution mechanism, which is peremptory, was not invoked in this instance, and no reasons were provided for the applicant’s failure to do

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so. The applicant was required to invoke this process at the very least in March 2020, when I invited it to engage the department on ways to expedite the investigation.

- 31 The applicant does not provide an explanation for not invoking the process in March 2020 or at all, to justify its non-compliance with the procedure. In addition, no explanation is provided for the applicant's decision to institute a litigious process, in non-compliance with the currently applicable Compact. As there is no pleaded basis on which the applicant may resile from the provisions of the 2019/20 and 2020/21 Compacts in relation to dispute resolution, the application falls to be dismissed on this ground alone.

SECOND PRELIMINARY POINT: NON-COMPLIANCE WITH THE PROVISIONS OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 ("PAIA or "the Act")

- 32 The applicant seeks an order, amongst other relief, directing my office to provide it with *"the investigation report within five (5) days from the date of the order"*. It also seeks an order that it is exempted from complying with the provisions of PAIA, should the Court find that it is applicable to these proceedings.
- 33 The applicant expressly invokes the provisions of section 32 of the Constitution of the Republic of South Africa, 1996. PAIA gives effect to section 32 and is therefore applicable.

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34 The PAIA has, as its main object, the purpose of giving effect to the constitutional right of access to information held by the State, and access to information held by any other person, which is required for the exercise or protection of rights. To this end, the Act sets out the procedure to be followed by a party requesting access to information, from either a public or private body. Section 1 of the Act defines a "public body" as:

"(a) any department of state or administration in the national or provincial sphere of government..."

35 In respect of a request for access to information held by a public body, section 8(2)(a) of the Act prescribes that such a request be brought in terms of section 11 of the Act:

"(2) A request for access to a record held for the purpose or with regard to the exercise of a power or the performance of a function –

(a) as a public body, must be made in terms of section 11;"
(emphasis added)

36 In turn, section 11 of the Act provides that:

"(1) A requester must be given access to a record of a public body if –

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(a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record... (emphasis added)

37 PAIA is constitutionally mandated, as provided for in section 32(2) of the Constitution. I am advised that, for this reason, the legal principle of subsidiarity obliges a party to comply with the applicable legislation, before resorting to any direct reliance on the provisions of the Constitution and its principles.

38 The applicant has not complied with the procedural requirements set out in the PAIA, and has not provided any reasons for its non-compliance. It has not approached the information officer of the Department, which is the Director-General, with the request. Instead, the applicant appointed attorneys, who in turn instituted a legal process by issuing a letter of demand addressed to me, in terms of which the disclosure of the report was demanded. In doing so, the applicant invoked section 32(1) of the Constitution, and asserted that it has a constitutional right to access to information:

"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".

39 A copy of the letter of demand is attached to the Founding Affidavit as "NL5".

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- 40 In adopting this approach, the applicant failed to comply with the principle of subsidiarity, and sought to rely directly on the provisions of the Constitution, for a disclosure of the investigation report. This, I am advised, is impermissible. Access to records of a public body is granted upon compliance with the provisions of PAIA.
- 41 Furthermore, the applicant seeks to be exempted from the application of PAIA in circumstances where it has not launched an urgent application for the urgent disclosure of the report. There is therefore no pressing need for the applicant to be exempted from the procedures set out in PAIA. The application is to be set down on the ordinary opposed motion roll, to be heard on a date yet to be determined. The PAIA makes provision for more effective relief. It sets out the timelines within which a request for access to a record must be decided by the prescribed information officer. In terms of PAIA, the Director-General, in his capacity as the Department's information officer, must decide whether to grant the request within thirty (30) days of his receipt of the request. Should the Director-General refuse to grant access, and the requester launches an appeal to the decision, the decision on appeal must be made within thirty (30) days of receipt of the internal appeal.
- 42 The Minister is authorised, in terms of section 1 read with section 77 of PAIA, to designate another person to act as the "*relevant authority*" for purposes of deciding an internal appeal. Therefore, the contention that I have already determined the matter, and that a PAIA application would be futile for that reason, is misguided.



- 43 The application falls to be dismissed on the ground of non-compliance with the PAIA. In my respectful submission, the Commission has not made out a cogent case for exemption from the provisions of PAIA. Such an exemption would, in any event, be impermissible as compliance with PAIA for access to information is the default route to accessing information held by the State, to which the applicant may be entitled to, as asserted in the letter of demand. What is more, however, is that barring the limited instances where the Minister of Justice and Constitutional Development may, of his own accord or on request, exempt a public body or a category of public bodies from particular provisions of PAIA by notice in the Government Gazette, PAIA does not make provision for wholesale exemption from its application. In this regard, I am advised that in relation to public bodies, PAIA only provides for exemption from section 5 of the Act, and for exemption from the payment of fees for requests of access to information in terms of section 22 of the Act.
- 44 The applicant has failed to exhaust internal remedies which are specifically designed to provide cost-effective relief and to give the executive authority the opportunity to utilise its own mechanisms before the aggrieved party resorts to litigation. The applicant's conduct in approaching the Court before it approached the designated Information Officer undermines the autonomy of the administrative process, thus rendering the judicial process premature.
- 45 In the event that the Court does not find that the application should be dismissed on either of the preliminary points set out above, the substance of the application lacks merit in any event, as is illustrated below.



46 I first deal with the factual background to the application.

FACTUAL BACKGROUND

47 On 27 November 2018, the NLC appeared before the Portfolio Committee on Trade and Industry (**"the Portfolio Committee"**) for a briefing on its Second Quarterly Report for that year. In the course of the session, members of the committee raised a number of concerns regarding reports in the media about the Commission's work and its disbursement of funds. In particular, members of the committee raised the reported issue of the disbursement of funds to Denzhe Primary Care ("Denzhe"). Its objective was to assist persons living with HIV. When funds were allocated to the same organisation a number of years later, it was reported that these funds were in fact disbursed to a drug rehabilitation centre bearing the name "Denzhe". The minutes of the portfolio committee meeting record that the reported allegations were that family members of a senior employee of the Commission had received monies from Denzhe.

48 Members of the portfolio committee are reported to have posed the following questions to the representatives of the Commission:

"Members asked about the conflict of interest and how the Commission could pay the wrong centre. Why, when the media had made an application for information under the Promotion of Access to Information Act, had that information been denied? Was it a cover-up? ... How had it happened under the noses of the Commission that

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such a scheme operated under the noses of the Commission? Was the proactive funding actually a slush fund?

- 49 In another instance during the same meeting, the deliberations at the portfolio committee meeting went as follows:

"[A member of parliament] agreed that the first thing to do was to accept that there was a problem. He agreed that there were some good projects but, equally, there were some very bad projects. There were problems with the proactive fund, which was being used as a "slush fund" to enrich very few people. Everyone knew that there were shady characters that existed in the murkiness of proactive funding.

[He also] stated that the Southern African Youth Movement had been given millions in lottery funding but they had nothing to show for the money received. The NLC said pro-active funding was carefully monitored. If so, the NLC was failing in a system that they themselves had set up. It was not a coincidence that Mr Letwaba's brother was the sole director of the company in the Denzhe saga. Mr Letwaba denied, and continued to deny, that he knew that his brother was the director. It was in the public domain. How could he not have known? The scheme also involved Mr Lesley Ramulifho, a shady character who had previously got NLC funding and who tried to facilitate the Airbus contract. The proactive funding model was vrot (bad)."

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- 50 The minutes of the Portfolio Committee meeting are attached, marked "EP3".
- 51 The "*proactive funding model*" referred to is the statutory mechanism in terms of which the Commission, the Board or the Minister may fund good causes identified, without there being an application for funding. It is provided for in section 2A(3) of the Lotteries Act.
- 52 After the NLC's briefing to the Portfolio Committee, the Commissioner of the NLC, Ms Thabang Mampane ("*the Commissioner*") submitted a report to the Committee addressing some of the concerns raised by members of the committee. In this report, she indicated, amongst others, that the NLC had commissioned an investigation into the Denzhe Primary Care matter, and that the terms of reference of the investigation were extended when GroundUp published the article referred to, on 22 November 2018. However, the Commission absolved itself from any responsibility in the matter, indicating that:

"...the relationship between Denzhe and House Generation or any other entity employed by the beneficiary remains independent from the relationship of the NLC and the funded organization".

- 53 A copy of the report submitted by the Commission to the Portfolio Committee is attached, marked "EP4".
- 54 On 5 December 2018, my predecessor, Dr Rob Davies, wrote to the Commissioner of the NLC, and referred to a recent article and the

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deliberations during the Portfolio Committee briefing held on 27 November 2018. In the letter, he recorded that:

"The various allegations and concerns raised points to a perceived lack of governance in relation to the Proactive Funding projects in terms of section 2A (3) of the Lotteries Act, 1997 as amended, which I will hereinafter refer to as Discretionary Funding..."

- 55 Dr Davies indicated that, as a result of the allegations reported, and in light of the concern raised by members of the Portfolio Committee, he requested the Department to conduct an independent investigation into the Fund, because:

"...it is important to ensure that resources are optimally employed and that good governance is not compromised..."

- 56 A copy of the letter from Dr Davies to the Commissioner, dated 5 December 2018, is attached, marked "EP5".
- 57 On 5 March 2019, Dr Davies received an investigation report from the Commission, which dealt with the Denzhe Primary Care matter.
- 58 On 19 March 2019, an article by GroundUp on projects funded by the Commission was yet again published, and recorded how an attorney's practice's physical and registered post address were used in three different applications for funding lodged with the Commission, by three different applicants. A fourth applicant which also received funding from the

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Commission had a different link to the attorney in question. This was an entity registered as Dinosys:

"Dinosys signed a R10-million contract with the Lottery in November 2018 for the 'construction of sanitation facilities' at 15 schools. Both the Lotteries Commission and Liesl Moses, the 'chairperson' and a director of the company and an employee of Ramulifho, refused to say where the schools were, whether Dinosys had any experience in construction projects, or who would build the facilities."

- 59 All three directors of Dinosys were found to be employed by the attorney in question.
- 60 It was further reported that the entity had stipulated its physical address as being located in Beaconsfield, East London. But when a GroundUp journalist attended at the address, the offices of Dinosys could not be located, and when residents were asked whether they were aware of the entity and where it could be located, none of them knew of Dinosys at the time. The article further reported on the Dhenze Primary Care and the "I AM MADE FOR GOD'S GLORY" projects. The first was reported to have been dormant when it received R28 500 000 from the Commission, and the funds meant to support athletes from disadvantaged backgrounds and the second project was used for the purchase of two Ocean Basket Franchises in Gauteng. A copy of the article is attached, marked "EP6".

- 61 On 20 March 2019, the chairperson of the Commission wrote to Dr. Davies in an effort to rebut the allegations contained in the GroundUp Report. In doing so, he simply indicated the following in relation to the "*I AM MADE FOR GOD'S GLORY*" project:

"In fulfilling the NLC's promise to take ownership of our responsibilities, to work effectively, efficiently and professionally in ensuring a positive and sustainable impact on communities we serve, the NLC's Monitoring & Evaluation team continues to ensure due compliance with NLC Grant Agreement pending finalization of the project".

- 62 In respect of Dinosys, the Commission's response similarly failed to address and/or refute the allegations contained in the GroundUp Report. No indication was given as to whether the NLC would institute an investigation in order to determine the veracity of the contentions advanced in the GroundUp Report. A copy of the letter from Prof. Nevhutanda to Dr Davies is attached, marked "EP7".

- 63 On 9 April 2019, and after considering the report on Denzhe submitted by the NLC, Dr Davies identified a number of shortcomings in the investigation report. These were detailed in a letter to the chairperson, and included the concern that:

"...an amount of R 27.5 million was allocated to Denzhe, however the expenditure cost breakdown in respect of the allocated funds was

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not provided or analysed accordingly with exception to a mere R535 240.34 paid to two Ocean Basket franchises”.

- 64 Dr. Davies also instructed that the scope of the investigation be extended to include an investigation into misappropriation of funds in relation to the re-building of the Vhafamadi High School, and an investigation into alleged fraudulent activities in relation to funding disbursed to the Buyelekhaya Annual Music Festival, based on further reports and a letter he received from an employee of the Commission. A copy of the letter from Dr Davies to Prof Nevhutanda is attached, marked “EP8”.
- 65 On 10 April 2019, the chairperson of the NLC reverted to the Minister by confirming that the investigators’ mandate would be extended in line with the Minister’s instructions, and indicated that in respect of the Buyelekhaya Annual Musical Festival, a report of an investigation on the issue had been delivered and the NLC considered the matter to be closed. A copy of this letter is attached, marked “EP9”. On 9 May 2019, the Commission submitted a report on pro-Active funding to the Department.
- 66 I assumed office as Minister in the newly amalgamated Department of Trade, Industry and Competition on 29 May 2019 and took over the matter from Dr Davies. On 14 August 2019, I wrote to the chairperson of the Commission, alluded to the concerns I had regarding the investigation conducted by the NLC’s forensic investigators into the shortcomings identified by the Department relating to the administration of monies under the Commission’s

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administration. I recommended that the funds paid to Denzhe be recovered in terms of the PFMA. In this regard, I indicated that:

"In view of the two forensic investigation reports from your independent investigators, and in light of the investigation outcome, it is evident that the Proactive Funding allocated to Denzhe was not used for its intended purpose... . The NLC signed a grant agreement with Denzhe and an amount of R 27, 585, 625.29 was paid to Denzhe. The outcome of the investigation is without evidence that the drug rehabilitation centre was completed.

Given the above, and in the spirit of good governance, I thus recommend recovery of the funds paid to Denzhe and the pursuit of a criminal case in line with section 76(1)(f) of the PFMA..."

67 Furthermore, I recommended that the Commission, amongst others, ensures that no actual or perceived conflict of interest with friends and family members of employees of the Commission exists in grant fund applications. I requested, in the interests of promoting public confidence in the pro-active funding model provided for in the Lotteries Act, that the NLC provide the Department's Internal Audit unit with a list of all the approved Pro-Active Funding Projects from 2016 – 2018. A copy of this letter is attached, marked "EP10".

68 On 22 August 2019, I wrote a further letter to Prof Nevhutanda, and requested that the Commission provide a list of all the Proactive Funding Projects




approved by the NLC, including: (i) the name of the independent service provider appointed by the NLC to investigate allegations of conflict of interest against its Chief Operating Officer; (ii) the process followed to appoint the service provider; (iii) the terms of reference of the investigation; and (iv) the expected date for the finalization of the investigation and forensic report. A copy of this letter is attached, marked "EP11".

69 In the interim, and on my instruction, the Department's internal audit unit visited Denzhe Drug Rehabilitation Centre to conduct an on-site inspection, in September 2019. At the same time, I requested the NLC to place any of its employees implicated in wrong-doing relating to pro-active funding on immediate leave of absence pending the investigation into certain pro-active funded projects.

70 On 8 October 2019, and instead of substantively addressing my letter dated 22 August 2019, Prof Nevhutanda sent me a letter setting out the Commission's legal obligations in respect of the publication of beneficiary information. He indicated that:

"...the NLC is comfortable that the non-publishing of the details relating to grants allocated is...not unlawful and the NLC's integrated report is fully compliant with legislative and governance requirements".

71 A copy of the letter from Prof Nevhutanda dated 8 October 2019 is attached, marked "EP12".

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72 On 4 November 2019, a further letter was sent from my office to Prof Nevhutanda, in terms of which he was requested to respond to my letters dated 14 August 2019 and 22 August 2019. A copy of this letter is attached, marked "EP13".

73 On the same day, I received a letter from Prof Nevhutanda, in terms of which he indicated that:

"The NLC has requested engagement with relevant officials from the dti Internal Audit Division on certain matters.

The NLC is in the process of implementing the proposed remedial actions detailed in your correspondence dated 14 August 2019 and a report on the implementable actions will be submitted to the Minister in due course"

74 A copy of the letter from Prof Nevhutanda, dated 4 November 2019, is attached, marked "EP14".

75 I then instructed the Director-General of the Department and officials in my office to meet with the leadership of the NLC to expedite the NLC forensic investigation and to impress upon the NLC the urgency of recovering funds where any investigations have determined that such funds must be recovered.

76 On 18 November 2019, the Director-General of the Department and I met Prof Nevhutanda. Amongst the issues we discussed were the requests I

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made to the NLC in the letters dated 14 and 22 August 2019. Prof Nevhutanda provided written responses to the queries I raised in the two letters, after consultation with the Commissioner. These were sent to my office on 18 November 2019. In response to my simple request for a disclosure of all approved Proactive Funding Projects, the following response was provided:

"...the AGSA conducted an independent assessment during the 2018/19 audit of all project files and site visit verification of pro-actively funded projects. The NLC has requested from internal audit of the dti a meeting relating to the Minister's correspondence and to discuss the terms of reference of the independent assessment. The meeting was subsequently denied by the dt's Chief Audit Executive..."

- 77 A copy of the letter from Prof. Nevhutanda is attached, marked "EP15."
- 78 The Commission, in its refusal to disclose the list of pro-active funding beneficiaries on my request as the State's shareholder representative and as the Cabinet minister responsible for the Commission, proved to be obstructive. The refusal was similarly at odds with clause 6.2.8 of the 2019/20 Compact, which made express provision for the disclosure of third-party information to the Executive Authority on his request. In terms of the Compact, this was one of the responsibilities of the NLC Board – to ensure that the information is furnished should the Executive Authority make such a

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request. This is over and above the principles of transparency and accountability which the NLC is required to apply in the administration of the Commission's funds, as set out in the Lotteries Act. As early as 18 November 2019, this refusal had been without good reason, and was unlawful, hence the decision by the Commission to eventually disclose the list of beneficiaries on 31 January 2020.

- 79 On 20 February 2020, I received a letter from the NLC, which recorded the following, amongst other issues:

"GroundUp has been relentless in publishing misleading information on the NLC, despite numerous advice on the unlawfulness of such action. As such the Commission was left with no option but to pursue legal remedies pursuant to its obligation to protect applicant and beneficiary information which continues to compromise the duty of the NLC to protect its applicants and beneficiaries against contravention of applicable provisions in the Lotteries Amendment Act as well as POPI and PAIA provisions."

- 80 A copy of the letter dated 20 February 2020 is attached, marked "EP16".
- 81 On 2 March 2020, after the indication from the NLC that it would continue to protect applicants for and beneficiaries of funds from the Commission, I received a letter of demand from Popela Maake Attorneys, acting on behalf of a lobby group, United Civil Society in Action ("UCSA"). UCSA represents

a number of non-governmental organisations which are beneficiaries of the NLC. The material aspects of the letter record that:

"It has come to the attention of our client that reports of [allegations of nepotism, mismanagement and corruption in the NLC] have been used by certain media houses to attack the integrity of individuals and the commission, to the extent that the Minister has been called to suspend the NLC Board and put the commission into administration, if the commission does not release the full details of the beneficiaries on its database.

...

Our client has learnt that the Office of the Minister of Trade and Industry Ministry is being pressured to put the National Lotteries Commission under administration in the event where the National Lotteries Commission does not disclose publicly the full details of its beneficiaries including the value of the grant received by them, and our client and/or constituent members thereof are indeed beneficiaries of the National Lotteries Commission. Any publication of our client's personal information will be in contravention of the Act and our client is prepared to invoke it to protect its personal information.

...due process and the rule of law should be adhered to at all times whereas nefarious methods must not be entertained at all. Our client

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has taken a stern stance against this; hence they will be marching to the Office of the Minister of Trade and Industry this coming Thursday the 05th March 2020 to hand over a memorandum at 11h00am.

It is concerning that the Minister is amenable to act in this manner from allegations of certain media houses who have shown to have an interest and a different agenda without proper investigation of these alleged corrupt activities, nepotism and mismanagement and in the process putting private information of our client in the public without their consent, which is in direct contravention of our client's rights in terms of the Protection of Personal Information Act 4 of 2013.

...

It is therefore our instructions to the Minister to refrain from threatening the National Lotteries Commission to disclose our client's personal and private information to the public, failing which, we are instructed to launch an urgent court action to interdict the Minister from these acts in order to protect the interest of our client"

- 82 A copy of the letter from Popela Maake Attorneys, dated 2 March 2020 is attached, marked "EP17".
- 83 On 4 March 2020, I wrote to the chairperson of the Commission, Prof Nevhutanda and indicated that the NLC had not responded to my letters from

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August and November 2019, as well as correspondence from my predecessor, Dr. Rob Davies, which had been sent to the NLC in December 2018 and April 2019. All the unanswered correspondence to the NLC related to allegations of fraud and irregularities in the allocation of Pro-active Funding by the NLC, and it had been afforded ample opportunity to investigate the allegations.

84 I therefore directed that:

"...the restoration of public confidence and credibility of the NLC's Board with respect to addressing the NLC Pro-Active Funding allegations is extremely urgent.

...the most effective way of restoring confidence in the Board in respect of these issues is to appoint independent forensic investigators to conduct an investigation of these matters... and any other matters related to pro-active funding".

85 I indicated that the contemplated investigation would be commissioned by the Department, and that I instructed the Director-General to procure the services of forensic investigators for this purpose. I also advised that the Chief Operating Officer of the Commission ought to remain on special leave pending the finalisation of the investigation. A copy of the letter is attached to the applicant's founding affidavit as part of "NL7".

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- 86 On 5 March 2020, officials from my office received a memorandum from representatives of UCSA, during the march referred to in the letter from Popela Maahe Attorneys dated 2 March 2020. The memorandum listed several demands to the effect that the details of beneficiaries should not be released. The march was reported in the media, and the journalist concerned reported that one of the participants had been contacted by the NLC to join the march. A copy of the relevant report is attached, marked "EP18".
- 87 Nexia SAB & T was ultimately appointed to conduct a forensic investigation into the allegations of corruption, including the reported allegations of impropriety and fraud in respect of pro-active funding by the Commission. The NLC was duly informed of the appointment.
- 88 In May 2020, I was approached by the Special Investigating Unit ("SIU"), and was requested to support a request to the President, that consideration be given to a further separate investigation by the SIU into allegations of maladministration at the NLC. I duly supported the request, but I expand on this issue later.
- 89 On 9 June 2020, I received a letter from Prof. Nevhutanda, indicating that the NLC was considering a request for beneficiary information to be released emanating from a parliamentary question submitted that month and that the request would be considered in terms of Section 67 of the Lotteries Act and a number of other laws. The import of the letter was that the NLC regarded



the release of such information to be unlawful. A copy of the letter is attached, marked "EP19".

- 90 On 22 June 2020, I wrote a letter to the NLC, recording that I disagreed with its position that the law prohibits the disclosure and publication of beneficiary information. Fundamentally, the NLC had interpreted Regulation 8 of the Regulations Relating to Distribution Agencies made in terms of section 60 of the Lotteries Act in February 2001 as prohibiting disclosure. I pointed out to the NLC in the following terms that its interpretation of the regulation was incorrect in law:

90.1 the NLCs' approach was in clear conflict with the emphasis that the Lotteries Act places on the importance of the principles of openness and transparency in the administration of the National Lottery;

90.2 the prohibition on disclosure in Regulation 8 is drafted in similar terms to section 67 of the Lotteries Act. Section 67 applies to the disclosure of any information in connection with an application for any license, certificate or appointment under this Act. Regulation 8 was enacted to extend the approach of section 67 to the disclosure of information concerning grants and grant applications;

90.3 the rationale given for the interpretation of Regulation 8 is that the names of beneficiaries should not be disclosed to protect beneficiaries from the prospects of extortion or other criminal activities. In addition, the opinion received by the NLC refers to the

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publication of defamatory statements concerning the NLC and beneficiaries of grants in relation to the Pro-active funding activities of the NLC;

90.4 in my view, neither the possibility of certain beneficiaries being exposed to criminal threats nor press reporting, whether defamatory or not, justified a prohibition on the naming of beneficiaries and there were numerous other legal remedies available to deal with such eventualities;

90.5 a list of beneficiaries was previously included in the NLC's Annual Reports. However, with effect from the 2018/19 financial year, the NLC stopped including beneficiary information in its Annual Report on the basis that this would amount to a breach of Regulation 8. I indicated that it was perturbing that the NLC had altered its interpretation of Regulation 8. The names of beneficiaries do not constitute a part of a grant application or a grant. What is more, had the Minister who published the regulations intended for Regulation 8 to prohibit the disclosure of the identity of beneficiaries of public funds, one would have expected such a prohibition to be explicit in the Regulation.

91 Interestingly, a similar approach to the interpretation of the Regulations was adopted in the memorandum submitted by UCSA during their march to my

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- office on 5 March 2020, and this is also pointed out in the letter I addressed to the Chairperson. A copy of the letter is attached, marked "EP20".
- 92 On 24 June 2020, the NLC responded to the afore-mentioned letter. Prof. Nevhutanda advised that at the time of writing to the NLC on 22 June 2020, it appeared that I was not aware of an urgent application brought by UCSA against Groundup and the NLC in the High Court, seeking an order regarding the interpretation of Regulation 8. Prof Nevhutanda further indicated that the issue of the publication of beneficiary information be deferred until the conclusion of the court proceedings, which at that stage were due to be heard on 7 July 2020. A copy of this letter is attached, marked "EP21".
- 93 On 25 June 2020, the Chief Parliamentary Legal Adviser, Adv. Adhikarie, submitted a legal opinion to the chairperson of the Portfolio Committee, rendering advice on whether, amongst other related issues, the public may access information detailing the names of beneficiaries of funds from the Commission. Adv. Adhikarie advised the Portfolio Committee, correctly in my view, that the NLC's financial statements must disclose the information, and that the information must be made available to the Auditor-General. The legal opinion was consistent with the letter I addressed to the Board on the correct legal interpretation of Regulation 8, dated 22 June 2020. A copy the legal opinion is attached, marked "EP22".
- 94 In a further letter addressed to me on 3 July 2020, the NLC indicated that -
(i) it was not possible to quickly access the names of beneficiaries as it

entailed physical extraction from the offices during the national state of disaster; (ii) that this caused a delay in obtaining the information; and (iii) that the NLC was attempting to complete the work of extracting the information by Friday 10 July 2020. A copy of this letter is attached, marked "EP23".

- 95 On 9 July 2020, I received a letter from attorneys acting on behalf of the NGO, Zakheni Ma Africa ("Zakheni"). The letter alleged that I instructed the NLC to release a list of beneficiaries of the 2018 NLC "Pro-active" funding, 2019-2020 "Pro-active" funding and the 2020 Covid-19 Relief fund. The letter demanded that the information not be released in "terms of Regulation 8" and threatened legal action to interdict the publication of beneficiary details if I did not undertake that the names of the beneficiaries would not be disclosed.
- 96 On 13 July 2020, I wrote to the NLC Chairperson referring to the letter of 24 June 2020 from the NLC. In the letter, I:

96.1 advised the NLC that neither I nor my office was not party to the UCSA application and awaited legal advice on its implications;

96.2 recorded that I would not agree to defer the issue pending the litigation, which may take many years to resolve;

96.3 recorded and re-iterated the concern that the NLC interprets Regulation 8 as prohibiting the disclosure of beneficiary names and other details of recipients of NLC funds;



96.4 advised that I had taken note of the NLC's statement that it would seek to place before the court all the relevant facts and other considerations pertaining to Regulation 8 to assist the court and enable it to arrive at a decision on the interpretation of Regulation 8;

96.5 requested that the NLC advise me of - (i) the steps it had taken to assist the court; (ii) the information provided to the court; and (iii) further steps it intended to take before the matter is heard in court, in order for me to understand the import of the statement made and so that the Department's legal team may take the information into consideration;

96.6 pointed out that it is not desirable that there should be such a fundamental disagreement between the NLC and myself on such a key issue especially as I have executive accountability on the subject-matter of the litigation;

96.7 pointed out that the Portfolio Committee had sought a legal opinion from Parliament's Legal Advisors, and that should the opinion confirm the earlier advice that the disclosure of beneficiary information to the committee is not prohibited by the law, this would make the case for the release of the information even more compelling, and I would in that event expect the NLC to make disclosure of the requested information. At this point in time, the

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legal opinion from Adv Adhikarie had not been brought to my attention.

- 97 In the same month, I advised the Chairperson of Portfolio Committee on Trade, Industry and Competition that the NLC is expected to make beneficiary information available to Parliament.
- 98 Notwithstanding the stance adopted by the NLC, I continued to provide replies to parliamentary questions relating to beneficiaries, including providing lists obtained from the NLC of beneficiaries who received R10 million or more in the past 10 financial years.
- 99 In a letter dated 16 July 2020 to Prof Nevhutanda, the Director-General expressed a concern that after the NLC provided the Ministry with beneficiaries' information in response to the Minister's request which was based on the request for information by Parliament, a letter of demand was received from Zakheni that the same information should not be released. The Director-General further sought confirmation from the NLC that Zakheni was a beneficiary. The letter also made a request on the NLC as follows:

"... we ask that you advise us of the NLC's attitude in respect of the litigation threatened in the letter and, if any decision has been taken in this regard, what the decision is".

- 100 A copy of this letter is attached, marked "EP24".



101 The Chairperson of the NLC responded to the Director-General in a letter of 16 July 2020 confirming that Zakheni was a funded beneficiary. On the same day, the Chairperson of the NLC also wrote to me, and indicated that - (i) the NLC had decided to release the information requested by Parliament; (ii) the Board agreed to abide by the decision of the court in the UCSA application; and (iii) a notice of motion from attorneys acting for Zakheni had been received. The letter did not state what the attitude of the NLC was to the Zakheni application.

102 The urgent application launched by Zakheni, which sought to interdict the publication of a list of beneficiaries of funds from the NLC was eventually withdrawn on the eve of the hearing date, before I could deliver an answering affidavit.

103 On 20 July 2020, in reply to a question posed by a member of the National Assembly, regarding projects and institutions funded by the NLC to the value of R 10 000 000 or greater, the Commissioner responded by indicating, in relevant part, that:

"The NLC Board appointed an audit firm, Sekela Xabiso to investigate the alleged corruption and the investigation is on-going. In addition to that, the Honourable Minister of Trade, Industry and Competition has also appointed an audit firm Nexia, SAB & T to investigate the same allegations and the investigation is on-going as well. All findings from the relevant assurance bodies ...are / will be

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analysed and reviewed in order to ensure that proper remedial actions are implemented.” (emphasis added)

104 The Commissioner also provided an annexure to the response, setting out the entities which had been granted funding in the amount of R 10 000 000 or in amounts exceeding that figure. The annexure showed that:

104.1 Dinosys NPC received R 10 000 000 from the NLC in 2018;

104.2 Zibsifusion NPC received R 10 000 000 from the NLC in 2018;

104.3 I AM MADE FOR GOD’S GLORY received R 11 375 000.00 from the NLC in 2018; and

104.4 Denzhe Primary Care received R 17 000 000 from the NLC in 2016. A copy of the question, the written reply and the annexure thereto is attached, marked “EP25”.

105 On 21 July 2020, Prof Nevhutanda addressed a letter to me, making reference to a letter received from the Portfolio Committee requesting beneficiary information. The letter from Prof Nevhutanda provided the information requested by the Portfolio Committee.

106 Despite this, there were further attempts to bar the disclosure of information relating to beneficiaries, to the public. On 30 October 2020, a recently registered entity, African Liberty Movement (“ALM”), launched an urgent application in this Honourable Court, seeking to interdict the publication of

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names of beneficiaries in the Commission's 2019/20 Annual Report. ALM also sought an order interdicting the Portfolio Committee from "ordering the [NLC] to publish such list of beneficiaries in any public platform". The NLC did not oppose the application. I intervened in the application, and opposed the relief sought by ALM. The application was heard on 12 November 2020, and judgment was delivered on 15 November 2020, dismissing the application with costs.

107 It is in this context that the investigation complained of by the applicant, was initiated. I was not satisfied that the allegations as reported, and as escalated to me as the Minister responsible for oversight over the Commission, had been diligently investigated. In addition, the NLC had vigorously attempted to hinder the disclosure of information relating to organisations which benefitted from the grants of the Commission, notwithstanding the requests by Parliament and the members of the Portfolio Committee. In order to ensure good governance, and to ensure that the NLC performs in terms of its mandate as provided for in the Lotteries Act, it was imperative that I commission a forensic investigation into the affairs of the Commission.

108 Given the amounts disbursed to the entities set out above, the allegations of maladministration levelled against the management and Board of the Commission, and as a matter of good governance, I deemed it to be important that the investigation be undertaken.

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109 I now deal with the averments made in the founding affidavit, one after the other.

AD Paragraphs 1 – 4

110 The contents of these paragraphs are admitted.

AD Paragraphs 5 – 6

111 The contents of these paragraphs are noted. It is crucial to record at this point that the Commission as a juristic person has no legal interest in the relief sought. In fact, since the Commission is a public entity, it is imperative that any allegations of impropriety are comprehensively investigated. In truth, therefore, the application has been brought improperly in the name of the Commission. In light of the nature of the allegations currently under investigation, which as a matter of public record implicate one or more senior officials of the NLC, it is not unreasonable to conclude that the application has been brought to protect individual interest.

AD Paragraph 7

112 I note that this is the relief sought in the notice of motion, but I deny the contents of the paragraph. As indicated above, I derived the power to commission the investigation from the provisions of both the PFMA and the Shareholder' Compact. In the alternative, the decision to commission an investigation into the allegations of corruption and fraud in the Commission qualifies as executive action. The Commission is a creature of the Lotteries

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Act, the oversight of which falls within the functions assigned to my office. In line with the powers of ownership and control conferred on my office in terms of section 63(2) of the PFMA, as well as the executive authority vested in my office by section 85(2)(e) of the Constitution, the decision qualifies as executive action, subject to the principle of legality.

113 It was indicated to the applicant's attorneys, in the letter attached to the founding affidavit as "NL7", that the investigation has not been completed, and that a final report is awaited. As the investigation is pending, there is a real danger in the dissemination of the preliminary report, as no conclusive findings have been made. I am also aware that as a matter of fact, the investigators made contact with officials from the NLC for purposes of the investigation. Instead of co-operating with the investigators, the matter was referred to the Commission's legal representatives, who in turn sent a letter to the investigators, recording that the Commission may not have any obligation to co-operate with them, as the matter is "sub judice". A copy of this letter is attached, marked "EP26".

114 A forensic investigation team was subsequently appointed, and has conducted extensive work in this regard, culminating in a preliminary investigation report. It is only after the team has conducted extensive work in relation to the assigned task and has commenced its engagements with the NLC to obtain employees' versions, that the Commission now seeks to declare the investigation unlawful and unconstitutional. This is belated, and in truth, is meant to obstruct the continuation and completion of the

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Investigation. The Commission was aware as early as March 2020 that I have decided to commission the investigation. Any reservations about the propriety of my decision, if genuine, ought to have been raised then.

- 115 It is now a matter of public knowledge that the preliminary report was sent to the SIU, which has been authorised by the President through a proclamation to investigate the NLC. Due to the NLC's failure to co-operate with the investigation, the SIU, on 8 December 2020, obtained a court order to attach and seize documents from the NLC's offices. This separate investigation is ongoing and there is no final report that may be disclosed publicly or to the NLC.

AD Paragraph 8

- 116 The allegation that the principle of natural justice has not been adhered to in the course of the investigation, is misleading and premature. The investigation has not yet been concluded, and the allegation that the principles of natural justice has not been observed cannot be made at this point. Furthermore, and as indicated above, the investigation team has sought to engage officials of the Commission for purposes of the investigation, without success.
- 117 In any event, I am advised that an investigation is not subject to the requirements of procedural fairness under the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA"). There is no automatic right to be heard during an investigation.

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118 I deal with the further averments made in the paragraph as follows:

118.1 I commissioned the investigation, in the exercise of my powers in terms of the Constitution, the PFMA and the Shareholder's Compact. In the event that officials of the Commission and/or its board members require access to the report in order to assert their rights, such a request should be made to the Department in accordance with the provisions of PAIA and may be refused on the grounds permitted by PAIA. The question whether any official of the NLC is entitled to the final report, whenever it is issued, will be determined on the basis of the request made in terms of section 11 of PAIA. Besides invoking this process, the Commission is not – as a matter of right – entitled to the report and would have to lay a factual and legal basis for that alleged entitlement.

118.2 The allegation that the Commission "*is in the dark about the actual investigation*" is untrue. The Commissioner knew as early as June 2020 that Nexia SAB & T had been appointed to conduct the forensic investigation. The Commissioner confirmed this in the reply attached as "EP25".

AD Paragraph 9

119 The applicant does not set out when the Director-General made the comment quoted in this paragraph, and does not attach an extract of the minutes of this Portfolio Committee meeting. However, be that as it may, there is a separation of functions in the Department between the office of the Director-



General and the office of the Minister. In terms of section 3(5) of the Lotteries Act, it is the Minister who may take action against board members. Not the Director-General. Furthermore, the referral of the matter to the SIU for investigation does not entitle the Commission access to the report. The SIU determines its own procedures for conducting an investigation in terms of section 5 of the Special Investigating Units and Special Tribunals Act 74 of 1996 ("the SIU Act"). The mere referral of the matter to the SIU does not constitute an adverse action taken against the Commission and/or any of its officials. If any action is taken by my office as result of any decision taken by the SIU, the relevant personnel will be afforded their rights to a hearing before such action is taken.

- 120 The assertion that the SIU is authorised to conduct its investigation "*on the strength of the representations that [I] made to the President on the basis of the investigation report that [I have] decided to keep under wraps*" is similarly mistaken. In fact, I was approached by the SIU, which was conducting a separate investigation into the affairs of the Commission, and was requested to support this investigation. To this end, I was invited to consider a draft memorandum prepared by the SIU in support of the Proclamation referred to, arising from information it had independently obtained. In turn, and in response to the request by the SIU, I wrote to the President and indicated that I fully support the commissioning of the SIU investigation. This letter is dated 19 May 2020 and precedes the date on which Nexia SAB & T furnished my office with its preliminary report, which was in July 2020. A copy of the

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letter I addressed to the President is attached, marked "EP27". The SIU investigation was not, therefore, prompted in any way by the Nexia SAB & T investigation, or the preliminary findings made by the firm.

121 Importantly, however, it is not unlawful and/or unconstitutional to refer the matter to the President to invoke his powers in terms of section 2(1) of the SIU Act.

122 Furthermore, neither the NLC, its board members nor its employees are entitled to access any representations made to the President before his invocation of the powers set out in section 2 of the SIU Act. It is only if and when adverse action is taken against an implicated person, that such a person is entitled to be heard, and if necessary, be provided with the information s/he requires to assert her/his rights. No adverse action has been taken against any official employed by the NLC pursuant to the investigations commissioned by my office and that conducted by the SIU.

AD Paragraph 10

123 In light of the fact that the investigation is incomplete, and barring the irregularity of the process invoked by the applicant, it would not be possible to comply with an order of this nature, as the forensic investigation has not been concluded.

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AD Paragraphs 11 – 12

124 The contents of these paragraphs are denied. The assertions are also irreconcilable with the provisions of the PAIA. I am not authorised, in my capacity as the Minister, to make an initial determination as to whether to grant access to a record or not. That function is assigned to the Director-General, and his office was not approached in terms of PAIA to gain access to the information required. Furthermore, in its letter of demand to my office, the Commission does not invoke the provisions of PAIA at all. Instead, it was simply asserted that the NLC is entitled, as a matter of right, to the report. The PAIA sets out the process to be followed in these circumstances, and the applicant did not follow that process. The letter sent by the Department's attorneys of record in response to the letter of demand addressed to me by the applicant is therefore not a refusal in terms of the PAIA, and does not absolve the Commission from compliance with the requirements set out in the Act.

125 The assertion that an internal appeal is not available to the applicant since I occupy the most senior position in the Department, and I have already "refused" to grant access, is also flawed. It proceeds on the basis that the Director-General will simply comply with my dictates, notwithstanding the fact that the Act assigns the Minister as the appeal authority. It also proceeds on the presumptuous basis that the Director-General will deny the applicant access to the information sought. There is no basis for any of these conclusions.



126 Accordingly, as the applicant did not invoke PAIA before instituting this process, its conduct in attempting to bypass the requirements of the Act should not be countenanced. It should not be held to be exempted from its provisions, as it has not advanced any exceptional circumstances for approaching the Court before the administrative body is given an opportunity to exhaust its own existing mechanisms.

AD Paragraph 13

127 The contents of this paragraph are noted.

AD Paragraphs 14 – 15

128 The contents of these paragraphs lack an evidentiary basis, and are denied for that reason. In addition, to the extent that the applicant relies on "*rumours*" to sustain the contention that I apparently "*dislike*" the applicant's Board, the assertion does not warrant a response as it is not supported by a single fact, is scandalous and must be struck out.

129 In any event, the necessity of meeting the Board is irrelevant to the subject matter of the application, and the relief sought by the Commission.

AD Paragraph 16

130 I have engaged the Board on a number of occasions, via correspondence as set out above. In this regard, Prof Nevhutanda was always the conduit through which I communicated with the Board, and it communicated with me.

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In fact, before the appointment of a forensic investigation team to investigate the reported allegation of maladministration and corruption, I wrote to the Board on 4 March 2020 and invited it to make suggestions on ways to expedite the process. The allegation that the investigation was commissioned clandestinely is therefore false and scandalous, unsupported by fact, and similarly falls to be struck out.

131 The allegation that I *"will commission one investigation after the other until such time that [I find] something against the Board, which [I] would use as the basis to remove the Board"* is similarly scandalous, vexatious and unwarranted. No factual basis for this allegation has been established, and the allegation is obviously prejudicial to me and should be struck out.

132 The reasons for the non-disclosure of the report at this stage of the investigation were set out in the letter from the Department's attorneys, attached to the founding affidavit as "NL7", and I have sought to further set out those reasons above. To allay any concerns on whether the report is final or not, I attach the first two pages extracted from the report furnished by Nexia SAB & T, confirming that:

"This investigation report is subject to change based on the additional investigation still to be completed."

133 The relevant extract of the preliminary report is attached as "EP28".

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AD Paragraph 17

134 The contents of this paragraph are obviously fabricated and are denied for that reason. I informed the Board through Prof Nevhutanda on 4 March 2020 that I have decided to commission the investigation, and in the parliamentary response prepared and submitted by the Commissioner on 22 June 2020, she clearly stipulates that the Commission is aware of the investigation conducted by Nexia SAB & T, and further undertakes to ensure that the recommendations made by Nexia SAB & T are implemented. The allegation that the Board only became aware of the investigation on 2 September 2020 is therefore simply untrue. The response prepared by the Commissioner, submitted to Parliament, is already attached as "EP25".

135 I take note of the scandalous, vexatious and irrelevant allegations contained in the remainder of the paragraph, insofar as they relate to me and the Director-General. In particular, I take note of the assertions that:

135.1 the Director-General was "utterly disrespectful" in "concealing" the existence of the report;

135.2 the Director-General and I have been "policing" the Board in circumstances where this is not prescribed in legislation; and

135.3 the Director-General intended "to embarrass [Prof Nevhutanda], the Board and the Commissioner" in the Portfolio Committee meeting held on 2 September 2020.



- 136 An application will be made for these averments to also be struck out, with a special order of costs in Prof Nevhutanda's, the Board members' and the Commissioner's personal capacities.

AD Paragraphs 18 – 19

- 137 The allegations in this paragraph are contradictory, and inconsistent with the evidence adduced. On the one hand, it is alleged that I "appointed a service provider of [my] own to conduct a forensic investigation into the NLC". On the other, it is averred that I delegated that power to the Director-General. In the letter dated 4 March 2020, I made it clear that I intended to direct the Director-General to appoint a service provider to provide forensic investigation services. The power to commission the investigation fell within my powers, as alluded to earlier, and the Director-General is ultimately responsible for ensuring that the Department complies with its procurement policies in appointing all service providers including forensic investigators.
- 138 Insofar as the applicant contends that the investigation is a nullity because of an apparently unlawful delegation, its prayer for an order for the disclosure of a nullified investigation is nonsensical. The two propositions are inconsistent with each other.

AD Paragraph 20

- 139 The Board did not express any reservations about the decision to initiate the forensic investigation referred to in my letter dated 4 March 2020. It also did

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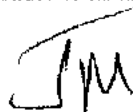
not request the terms of reference of the investigation at that relevant time. It is important to indicate, in addition, that although I have not met the Board, the channels of communication between the Commission and my office have always been open, and I have been able to engage the Board at that level. In addition to my responsibilities, I am responsible for overseeing a total of seventeen (17) agencies, and meetings with the Board on Issues that may be addressed using alternative means would not be practical, given my commitments and responsibilities.

140 I accept that the Commission is an important institution, which carries out an important function. However, I expected that in the event that there is a different between the NLC and my office, the dispute resolution clause of the Shareholder's Compact would be involved before the Commission resorts to the launch of a litigious process against the Executive Authority to which it reports.

141 I am also advised to caution against the use of expressions more appropriate for a newspaper report than an affidavit. I do not consider there to be a "stand-off" between the Commission and my office and will apply for this assertion to be struck out, with costs.

AD Paragraphs 21 – 23

142 The contents of these paragraphs are noted. The applicant has not attached the presentation from which the quoted contents are extracted and does not therefore establish a factual basis for the assertion. I reiterate that there is



nothing untoward about referring the matter to the SIU, and neither the Commission, its Board or officials were entitled to the preliminary report, as the investigation is still pending. Furthermore, the applicant is not entitled to any notice before any referral is made to the SIU and is not entitled to a disclosure of the report prior to the conclusion of the investigation. There are no conclusive findings in the report, as it is preliminary in nature.

AD Paragraph 24 - 25

143 The decision to commission an investigation was made by me, as indicated in the letter I addressed to Prof Nevhutanda and the Board on 4 March 2020. I simply directed the Director-General to procure the services of a service provider to conduct the forensic investigation. This is the norm, because the Director-General is the accounting officer of the Department, and is assigned the function to ensure that the procurement of services complies with the Treasury Regulations, Treasury Instructions and departmental procurement policies in terms of regulation 16A of the Treasury Regulations. The investigation was therefore not unlawful, and in directing the Director-General to procure the services of forensic investigators, I did not act outside of my powers.

AD Paragraphs 26 and 27

144 The contents of these paragraphs are denied. The applicant deliberately proceeds on the mistaken assertion that the investigation has been concluded. The applicant was informed on 17 November 2020, by the

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Department's attorneys, that the investigation has not been concluded. Even if it had been concluded, any party's rights to access the report would only come into play when the process prescribed in PAIA is followed, or any adverse action is taken against that party on the basis of the report.

145 Officials of the NLC have been approached to obtain their version for purposes of the investigation, but have elected not to co-operate with the investigators.

AD Paragraphs 28 – 29

146 The contents of these paragraphs are admitted.

AD Paragraph 30

147 I take note of the submission made by the applicant. Again, the assertion that the applicant is entitled to the report as a matter of right is at odds with the assertion that "the entire investigation, together with any report attendant thereto are a nullity". The applicant cannot assert a right to an allegedly null process and report.

AD Paragraph 31

148 It is noteworthy that the applicant, in the letter addressed to the Department's attorneys of record on 19 November 2020, repeated its demand for access to the preliminary report. What the applicant contemplated in this regard was

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a litigious process and did not seek to comply with the process prescribed in the PAIA. It cannot, therefore, be exempted from the provisions of PAIA.

AD Paragraph 32

149 In order to assert its constitutional rights for access to the preliminary report, the NLC is required to invoke the process in PAIA. To challenge any decision made by the information officer, which cannot be determined at this premature stage, an appellate process is provided for in the Act. The Minister may designate another person to determine such an appeal. Instead of complying with this process, the applicant seeks to rely directly on the Constitution. This is impermissible, when national legislation has been passed to give effect to the constitutional right sought to be protected.

AD Paragraphs 33 – 34

150 The conclusion that the Director-General "employed intimidatory tactics" is unwarranted, unsupported by fact, and is scandalous. It must be struck out on that basis, and an application in that regard will be brought at the hearing of this matter, with a request for a special order of costs in Prof Nevhutanda's, the Board members' and the Commissioner's personal capacities. The Director-General, in the letter annexed as "NL9" to the founding affidavit, reminded the Commissioner of the NLC's statutory obligations, in the face of the imminent application. As a matter of fact, and as indicated in the Director-General's letter to the Commissioner, the Commission is required to use its resources efficiently, economically and effectively. This litigious process,

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which in my humble submission lacks any merit, is at odds with this injunction. The Commission failed to engage the Director-General and I when I invited it to do so in March 2020. It failed to institute the dispute resolution process provided for in the Shareholder's Compact, and seeks to bypass the available inexpensive PAIA process to gain access to information in pursuance of the right enshrined in section 32 of the Constitution.

151 It is also factually correct that it is not in the Commission's interest to institute this process. As a Commission, the entity is not prejudiced by the institution of the investigation. It is only individual board members and/or officials in the Commission, who may have an apprehension about the nature of the investigation and the results that it may yield. It is their interests which are sought to be protected, improperly utilising the resources of the Commission in the process.

152 I deny that the applicant did not have any alternative but to approach this Court, as it could have invoked the dispute resolution mechanism provided for in clause 16 of the Shareholder's Compact, and should have invoked the PAIA process.

AD Paragraph 35

153 The allegation that I have conducted myself in a "dubious" manner and that I have given "lip service" assurances is unsupported by fact, and an application to struck out the contents of this paragraph in their entirety will be made at the hearing of this application.

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AD Paragraph 36

154 For reasons already provided, the assertion that the PAIA process is a foregone conclusion is mistaken. I am not the information officer vested with the responsibility of deciding a request for information. That is the function of the Director-General, and his decision on the request cannot be assumed prematurely.

AD Paragraph 37

155 I agree with the contents of this paragraph.

AD Paragraph 38

156 It is improper to presume and pre-empt the decision of the Director-General in determining the application for a request for access to a record brought in terms of section 11 of the Act. In terms of section 25 of the PAIA, the Director-General must decide the request "in accordance with this Act", and in the event that he decides to refuse access, "adequate reasons for the refusal" must be provided. With respect, these cannot be pre-empted in the absence of a request.

AD Paragraph 39

157 The PAIA is the constitutionally mandated legislation to give effect to the right enshrined in section 32 of the Constitution. It prescribes the default procedure to be followed in order to assert the right of access to information held, in this

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case, by the State. It cannot be bypassed. It would make a mockery of the Act to allow parties to bypass the procedure set out in the Act, by relying directly on the constitutional right. The constitutional principle of subsidiarity seeks to address this exact mischief.

- 158 The primary right sought to be asserted in this application is the right to access to information, as set out in section 32. The applicant is seeking to rely on the right of access to courts in an attempt to avoid compliance with PAIA, as is expected of it by the principle of subsidiarity.

AD Paragraph 40

- 159 The contents of this paragraph are denied. There has been no waiver of compliance with PAIA. Inasmuch as there has been no "request" as contemplated in the Act, there has been no "rejection" of such a request. The "request" that the applicant is referring to is the letter of demand sent by the NLC's attorneys to the Department and my office on 11 November 2020. This demand was repeated on 19 November 2020, in the letter of demand attached as "NL8". The letters of demand do not constitute a "request for access" as defined in PAIA. For that reason, logic dictates that there has been no rejection of a "request for access" in terms of the Act. The remainder of the assertions in this paragraph have already been addressed above.

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AD Paragraph 41

160 No exceptional circumstances exist for the Court to determine this application, in the absence of a PAIA request. The application should be dismissed.

AD Paragraphs 42 – 43

161 I note the contents of the confirmatory affidavits attached to the founding affidavit, but deny that the applicant has made out a case for the relief sought in the notice of motion.

162 The applicant has acted outside of its mandate in lodging the application. Furthermore, it failed to exhaust internal remedies, which would have been far more effective than the manner in which this application was brought. In addition, had the applicant exhausted the internal remedies provided for in the Act or invoked the dispute resolution mechanisms in the Compact, that process would have been inexpensive. The likelihood is that, in light of the fact that the parties are yet to exchange all pleadings before the application may be set down for hearing, by the time the application is heard, the investigation will have been concluded. The application will, at that point, not serve any purpose. This means that public resources will have been wasted unnecessarily.

163 In the circumstances, I pray for an order dismissing the application, with costs against Prof. Nevhutanda, members of the Board and the Commissioner, in

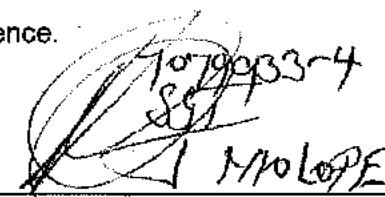


their personal capacities. In this regard, Prof. Nevhutanda, members of the Board and the Commissioner may be called to give reasons why an order as to costs should not be made against them in their personal capacities.

WHEREFORE the respondent respectfully prays that the application be dismissed along with an order of costs against the members of the Board and the Commissioner in their personal capacities, including the costs of counsel.


EBRAHIM PATEL

THUS SIGNED AND SWORN TO before me at PRETORIA on the 5th of FEBRUARY 2021, the deponent having acknowledged that he knows and understands the contents of this affidavit, has no objection to taking the prescribed oath and considers the oath binding on his conscience.


COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
BRYNTIRION STATIC GUARD SERVICES
2021 -02- 05
PROTECTION AND SECURITY SERVICES PRETORIA
SOUTH AFRICAN POLICE SERVICE



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

SHAREHOLDER'S PERFORMANCE COMPACT

(Entered into by and between)

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, through
its DEPARTMENT OF TRADE AND INDUSTRY**

Herein represented by Dr Rob Davies, MP in his capacity as the Minister
of Trade and Industry,

(Herein referred to as "the dti")

and

THE NATIONAL LOTTERIES COMMISSION

Herein represented by Prof. Alfred Nevhutanda in his capacity as
the Non-Executive Chairperson of the Board of the National
Lotteries Commission, he being duly authorised thereto

(Herein referred to as the "NLC")

(Herein referred to as "the parties")

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WHEREBY IT IS AGREED AS FOLLOWS:

PART I – DEFINITIONS, INTERPRETATION, PREAMBLE AND NATURE OF THE AGREEMENT

1 DEFINITIONS

For the purpose of this agreement, unless the context indicates otherwise, the following definitions are set out for the terms indicated:-

- | | | |
|------|------------------------------------|--|
| 1.1 | "Accounting Authority" | means the Board of the National Lotteries Commission; |
| 1.2 | "Annual Performance Plan" or "APP" | means a three-year rolling plan produced annually and submitted to Parliament which sets out what NLC intends doing in the upcoming financial year and during the Medium Term Expenditure Framework (MTEF) to implement its Strategic Plan; |
| 1.3 | "Annual Report" | means the annual report on the NLC activities of 2018/19 prepared in terms of the PFMA and section 12 of the Lotteries Act 57 of 1997 as amended; |
| 1.4 | "Chairperson" | means the representative of the Accounting Authority of the NLC; |
| 1.5 | "Director-General" | means the Accounting Officer of the dti; |
| 1.6 | "DDG" | means the Deputy Director-General |
| 1.7 | "DPME" | means the Department of Planning, Monitoring and Evaluation, an organ of state in the national sphere of government as defined in section 239 of the Constitution of the Republic of South Africa Act, 1996 (|
| 1.8 | "Effective Date" | means 01 April 2019; |
| 1.89 | "Executive Authority" | means the Minister of Trade and Industry; |
| 1.10 | "Key Performance Area" | means the area identified as important or crucial where a result will assist in the achievement of the set objectives or goal; |
| 1.11 | "Minister" | means the Minister of Trade and Industry and his successor in title; |
| 1.12 | "MTSF" | means the Medium Term Strategic Framework (MTSF is Government's strategic plan for the 2019-2024 electoral term. It reflects the commitments made in the election manifesto of the governing party, including the commitment to implement the NDP. The MTSF sets out the actions Government will take and targets to be achieved. It also provides a framework for the other plans of national, provincial and local government. |



1.13	"NLC"	means the National Lotteries Commission established in terms of the Lotteries Amendment Act, 2013 (Act. No 32 of 2013), which commenced on 14 April 2015;
1.14	"National Treasury"	means the National Treasury department, established in terms of the Public Finance Management Act, 1999 (Act 1 of 1999) as amended;
1.15	"NDP"	means the National Development Plan
1.16	"ODG"	means the Office of the Director-General within the dti;
1.17	"Parties"	means the Parties to this agreement, and "Party" shall have a corresponding meaning;
1.18	"PFMA"	means the Public Finance Management Act, 1999 (Act No. 1 of 1999), as amended;
1.19	"Shareholder"	means the government of the Republic of South Africa, as represented by the Minister;
1.20	"Shareholder's Compact"	means this agreement between the Executive Authority and the Accounting Authority;
1.21	"Standard"	means a level of quality/achievement that is considered acceptable or desirable;
1.22	"the Act"	means the Lotteries Act, 1997 (Act. No. 57 of 1997), as amended, which provides for the establishment of the NLC;
1.23	"the dti"	means the Department of Trade and Industry, an organ of state in the national sphere of government as defined in section 239 of the Constitution of the Republic of South Africa Act, 1996 ;
1.24	"the King IV Report"	means the King IV Report on Corporate Governance published by the King Committee on Corporate Governance in 2016, or its predecessor; and
1.25	"Treasury Regulations"	means the National Treasury Regulations issued in terms of the PFMA.

2. INTERPRETATION OF THIS AGREEMENT

In this agreement, unless the context otherwise indicates:

- 2.1 all words and expressions to any one gender shall be capable of being construed as a reference to other gender;
- 2.2 the words signifying the singular shall include the plural and vice versa;

- 2.3 a reference to a natural person shall be capable of being construed as a reference to a juristic person and vice versa;
- 2.4 words and phrases defined in this agreement shall bear the meaning assigned to them throughout this agreement;
- 2.5 words and phrases used in this agreement, which are defined or used in any statute, which applies to the subject matter, professional person, goods, or services provided for in this agreement shall be construed in accordance with the applicable statute or regulations;
- 2.6 heading of clauses are for convenience only and shall not aid in the interpretation or modification of clauses within the agreement;
- 2.7 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 2.8 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only provided in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 2.9 when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.10 where figures are referred to in numerals and in words, if there is any conflict between the two (2), the words shall prevail;
- 2.11 expressions defined in this agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own definitions;
- 2.12 reference to day(s), month(s) or year(s) shall be construed as calendar day(s), month(s) or year(s);
- 2.13 the use of any expression in this agreement covering a process available under South African law such as a winding-up (without limitation *eiusdem generis*) shall, if any of the Parties to this agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 2.14 in the event of a conflict between the terms of this agreement and the annexures attached hereto, the provisions of this agreement will apply;
- 2.15 where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that term has not been defined in this interpretation clause; and
- 2.16 the rule of construction that an agreement will be interpreted against the party responsible for the drafting thereof, shall not apply.

3. PREAMBLE

It is recorded that:-

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- 3.1 the vision of the dti is to create:-
- 3.1.1 a dynamic industrial, globally competitive South African economy, characterised by inclusive growth and development, decent employment and equity, built on the full potential of all citizens.
- 3.2 the mission of the dti is to:-
- 3.2.1 promote structural transformation towards a dynamic industrial and globally competitive economy;
- 3.2.2 provide a predictable, competitive, equitable and socially responsible environment for investment, trade and enterprise development;
- 3.2.3 broaden participation in the economy to strengthen economic development; and
- 3.2.4 continually improve the skills and capabilities of the dti to effectively deliver on its mandate and respond to the needs of South Africa's economic citizens.
- 3.3 the dti's Strategic Goals are to-
- 3.3.1 facilitate transformation of the economy to promote industrial development, investment, competitiveness and employment creation;
- 3.3.2 build mutually beneficial regional and global relations to advance South Africa's trade, industrial policy and economic development objectives;
- 3.3.3 facilitate broad-based economic participation through targeted interventions to achieve more inclusive growth;
- 3.3.4 create a fair regulatory environment that enables investment, trade and enterprise development in an equitable and socially responsible manner; and
- 3.3.5 promote a professional, ethical, dynamic, competitive and customer-focused working environment that ensures effective and efficient service delivery.
- 3.4 The NLC is established in terms of the Act, under the executive authority of the Minister, in an effort to enable the dti to achieve its objective and ultimately meet its mandate. The NLC's mandate is to monitor and enforce the implementation of the national lottery and the establishment of private lotteries and promotional competitions as well as to distribute the National Lottery Distribution Trust Fund (NLDTF) monies to good causes in line with the Act.
- 3.5 The Parties agree to enter into this agreement which shall-
- 3.5.1 define and regulate the mandate from the dti to NLC;
- 3.5.2 document and clearly state the parameters of the relationship between the dti and NLC; and
- 3.5.3 outline the roles and responsibilities of the Parties to this agreement.

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- 3.6 **the dti** and **NLC** subscribe to good corporate governance in order to improve transparency, accountability and sound management.
- 3.7 This agreement is based on the underlying principles that require sufficient autonomy of the **NLC** to manage the affairs of **NLC** balanced against the responsibility to exercise such freedom within the agreed mandate as outlined in the relevant legislation and the framework of effective accountability.
- 3.8 **the dti** and **NLC** subscribe to the principles set out above and in endeavouring to further enhance effective performance under its mandate and to maintain good corporate governance within the **NLC**, the parties hereby agree on the terms and conditions set out below.

4. NATURE OF THE AGREEMENT

- 4.1 This agreement has been designed to enhance the governance of **NLC** through an effective relationship between **NLC** and **the dti**. It intends to define the mandate from **the dti** to **NLC** in respect of corporate governance issues as outlined in the PFMA, Treasury Regulations, the Act, King IV Report as well as the roles and responsibilities of both parties in respect thereof. Each Party also requires certain undertakings from the other party, which are also set out herein. The broad mandate and objectives of **NLC** are also supported by the Strategic Plan that provides more detail.
- 4.2 This agreement is therefore **not** intended to:-
- 4.2.1 interfere in any way with general principles of law, and the normal relationship between **the dti** and the **NLC** must at all times be preserved;
 - 4.2.2 create rights and expectations that third parties could rely upon. It is hereby specifically recorded that this agreement does not create, confer and/or afford any third party rights or expectations in terms hereof. The agreement is designed solely to regulate the relationship between **the dti** and the **NLC**; and
 - 4.2.3 regulate or replace the contract entered into between **the dti** and the Non-Executive Chairperson of the **NLC**.

5. COMMENCEMENT AND DURATION

This agreement shall commence on 01 April 2019 and terminate on 31 March 2020.

6. ROLES AND RESPONSIBILITIES

6.1 The roles and responsibilities of **the dti** is to:

- 6.1.1 monitor adherence by **NLC** to the PFMA, Treasury Regulations, King IV report and the Act;
- 6.1.2 monitor compliance of the APP with applicable requirements as determined by the DPME and ensure that same is submitted within the dates specified by the DPME;
- 6.1.3 review quarterly reports from and provide feedback to the **NLC**;

- 6.1.4 review the shareholder's compact annually;
- 6.1.5 attend to correspondence to and from the NLC;
- 6.1.6 recommend to the Minister the approval of the budget and APP of the NLC;
- 6.1.7 annually review the Board's performance against an agreed set of key performance indicators;
- 6.1.8 facilitate annual Board's remuneration and cost of living adjustments;
- 6.1.9 recommend NLC's annual report to be tabled in Parliament by the Minister; and
- 6.1.10 intervene, in line with legislative prescripts and corporate governance principles adopted in this agreement and
- 6.1.11 ensure that the Minister's intentions which may have an adverse impact on the audit outcomes of the NLC are made known to the Accounting Authority in writing before 31 March.

6.2 The roles and responsibilities of the Accounting Authority (AA) are to:-

- 6.2.1 ensure that NLC endeavors to carry out its objectives and functions as outlined in the PFMA, Treasury Regulations, King IV Report and the Act;
- 6.2.2 recognise the importance of speedy decision-making and shall use its best endeavors to prevent undue delays in critical decision making;
- 6.2.3 develop an APP (2020/21-2022/23) financial years) linked to the Medium Term Expenditure Framework (MTEF), National Development Plan (NDP), Industrial Policy Action Plan (IPAP) and the Nine Point Plan for review and approval by the Executive Authority;
- 6.2.4 ensure that all payments due to creditors are settled within thirty (30) days from receipt of invoice or, in the case of civil claims, from the date of settlement or court judgment, unless determined otherwise in a contract, other agreement or by any legislative requirement.;
- 6.2.5 ensure that the NLC participates in and promotes the Black Industrial Policy, other government priorities and policies to ensure the effective implementation thereof within the NLC;
- 6.2.6 arrange quarterly consultation meetings between NLC and the dti to identify provisions of the legislation that pose challenges of interpretation, hinders implementation processes for proper clarification and to discuss a way forward;
- 6.2.7 monitor the implementation of all policy objectives and provide feedback to the relevant stakeholders.

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- 6.2.8 ensure that third-party information requested by the Executive Authority is furnished in line with relevant legislative requirements (Protection of Personal Information Act, No 4 OF 2013, Promotion of Access to Information Act, No 2 of 2000 Lotteries Act and its regulations.) The requestor of third party information shall complete relevant disclosure forms prior to the release of requested information.

7. ANNUAL PERFORMANCE PLAN (APP)

- 7.1 NLC shall develop an APP for the 2020/21-2022/23 financial years linked to the Medium Term Expenditure Framework (MTEF) period and aligned to the Government's Nine-Point Plan, National Development Plan (NDP) and Industrial Participation Action Plan (IPAP) or any other government priority, as per the template issued by the dti and submit to the Executive Authority for review and approval. First draft due by 31 August 2019, second draft due by 31 October 2019 and final draft by 31 January 2020 or any other time determined by the Executive Authority.

8. KEY PRIORITY PERFORMANCE AREAS FOR THE 2019/20 FINANCIAL YEAR

- 8.1 In the execution of its oversight mandate, the dti in terms of PFMA has identified the following seven (7) key priority areas:-
- 8.1.1 education and awareness by developing informational measures to educate the public about lotteries and provisions of the Lotteries Act, and by explaining the process, requirements and qualifications for grants in terms of the Lotteries Act;
 - 8.1.2 managing the integration of full time Distribution Agency (DA) members to improve the application process;
 - 8.1.3 monitoring and enforcement against illegal lotteries operations;
 - 8.1.4 proactive funding based on informed research for worthy good causes that may be funded without lodging an application prescribed in terms of the Lotteries Act;
 - 8.1.5 monitoring of the Lotteries Operator to ensure that it complies with government priorities e.g. Broad-Based Black Economic Empowerment Act, No 53 of 2003 (BBBEE), Local Procurement and Skills Transfer; and
 - 8.1.6 enter into a Memorandum of Understanding with other regulatory agencies and provincial counterparts in clamping down on illegal lotteries and gambling.
- 8.2 The NLC must report on these key priority areas, in terms of this agreement on a quarterly and annual basis.

9. NLC BUDGET

- 9.1 The NLC shall-
- 9.1.1 by 30 September 2019, provide the dti with a budget of estimated revenue and expenditure for the financial year 2020/2021 for approval;

- 9.1.2 ensure that the expenditure of **NLC** is in accordance with the approved budget; and
- 9.2 **Roll-Over**
 - 9.2.1 request for roll-overs must be submitted no later than 31 May of each financial year and the financial statements for a particular financial year may be changed within thirty (30) days after the audit. The request must include a disbursement schedule indicating in which months the expenditure is expected to be incurred.

10. MONTHLY AND QUARTERLY REPORTS

- 10.1 The **NLC** shall, within thirty (30) days of the end of each month, submit to the **dti** a monthly income and expenditure statement with projections for the remaining months, explanations for material variances as well as any possible remedies to be applied to ensure that the income and expenditure is within the approved budget.
- 10.2 The **NLC** shall within thirty (30) days of the end of each quarter submit to the **dti** the **quarterly performance report** including an executive summary in the prescribed template signed by the Commissioner, Non-Executive Chairperson of the Board of the **NLC** and Chairperson of the Audit Committee.
- 10.3 The **NLC** shall within thirty (30) days after the audit committee have met, after each quarter submit to the **dti** the copy of the **audit committee report**.
- 10.4 The **NLC** shall within thirty (30) days after the end of each quarter, submit to the **dti** the quarterly progress report relating to the achievement of a clean audit by reporting against matters raised by the Auditor-General South Africa (AGSA) and Internal Audit, signed by the Non-Executive Chairperson.
- 10.5 The **NLC** must report on key priority areas quarterly and annually in terms of this agreement.

11. ANNUAL REPORT

- 11.1 The **NLC** shall submit to the **dti**, AGSA and National Treasury the Performance Information by 31 May 2019 of the 2018/19 financial year.
- 11.2 The **NLC** shall by 31 August 2019 submit to the **dti** an **annual report** on the activities of the National Lotteries Commission for the 2018/2019 financial year.

12. FINANCIAL STATEMENTS

- 12.1 The **NLC** shall by 31 May 2019 submit to the **dti**, AGSA and National Treasury the **draft financial statements** for the 2018/2019 financial year.
- 12.2 The **NLC** shall on 31 July 2019 submit to the **dti** a copy of the **audited annual financial statements** including the audit committee report.
- 12.3 The **NLC** shall on 31 August 2019 submit to the **dti** the **management letters** received from the AGSA and/or the Independent Auditors.

13. OTHER REPORTS

- 13.1 **The NLC** shall by 28 February 2020, submit to **the dti** a schedule of the outcome of any disciplinary hearings and/ or criminal charges, the names and ranks of employees involved, the sanctions and any further actions taken against these employees.
- 13.2 **the dti** may request a report on a specific topic or extraordinary reports from time to time provided that reasonable notice has been given to **NLC**. The topics covered by these extraordinary reports can *inter alia* refer to but are not limited to Supply Chain Management and/or media statements released or any such topic that impacts on the mandate of the **NLC**.
- 13.3 **NLC** shall, by 31 May 2019, submit to National Treasury a list of all its banking accounts.
- 13.4 **NLC** shall, by 30 April 2019, submit to **the dti**, an Annual Audit Plan which shall at least contain the development and implementation of indicators that will achieve a clean audit.

14. UNDERTAKINGS

14.1 **the dti** undertakes for the duration of this agreement, not to-

- 14.1.1 introduce new or additional requirements during the validity of this agreement other than through a process of consultation with the **NLC**. Seven (7) days' notice shall be provided before the introduction of any new requirements; and
- 14.1.2 impede or in any way unreasonably restrict the discretion of the **NLC** regarding matters falling within their respective authority, as provided for in this agreement and the Act.

14.2 The **NLC** undertakes for the duration of this agreement to:

- 14.2.1 maintain effective governance and the highest standards of ethics and will continue to subscribe to the broad principles set out in the PFMA, the Act, and King IV Report;
- 14.2.2 subscribe to the principles of good governance, and reassess its systems of governance on an ongoing basis;
- 14.2.3 ensure that it maintains appropriate participative structures with representatives of its staff to ensure that its staff has an opportunity to meaningfully contribute to decision-making with respect to its administrative and managerial functions. The process shall include, but not limited to, mechanisms for consultation and information sharing;
- 14.2.4 ensure that it has a code of ethics and a code of conduct in place; and
- 14.2.5 ensure that in determining the composition and functions of the sub-committees, **NLC** will follow the guidelines of the King IV Report on Corporate Governance as well as the prescripts of the PFMA and the Act.

14.3 **NLC** undertakes for the duration of this agreement not to:-

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14.3.1 enter into any transactions other than:-

14.3.1.1 in the ordinary, regular and normal course of activities; or

14.3.1.1 specific projects in compliance with the Supply Chain Management Policy of the NLC and Procurement delegations;

14.3.2 purchase or dispose of any asset other than in the ordinary, regular and normal course of activity or as approved in accordance with the provisions of the PFMA and/or any other applicable legislation;

14.3.3 be liable, whether contingently or otherwise and not to stand in as surety, co-principal debtor, guarantor, for the liabilities of any third party other than in the ordinary, regular and normal course of activity, or

14.3.4 make decisions falling outside the scope of the mandate and authority granted in terms of this agreement and the Act without the approval of the dti; and

14.3.5 contravene the provisions out-lined in the PFMA, National Treasury Regulations, NLC's mandate and the Strategic Plan which serve as the relevant guidelines of what is regarded as normal business.

15. CO-ORDINATION AND CO-OPERATION BETWEEN THE PARTIES

15.1 Each Party hereby agrees to appoint such duly authorised representative to be responsible for liaising and facilitating any communication and/or exchange of information between the Parties in order to fulfill their respective obligations in terms of the provisions of this shareholder compact. The Parties agree that the initial representatives as aforesaid are as follows:

15.1.1 the dti – the Group Chief Operating Officer at the dti, as the main contact person (not excluding the DG and DDG's); and

15.1.2 NLC - the Commissioner of the NLC, responsible for the day-to-day running of the NLC.

15.2 It is agreed that the Parties shall timeously execute their respective obligations in terms of the provisions of this agreement.

15.3 The Parties further agree that they have entered into this agreement based on mutual co-operation and good faith.

16. DISPUTES

16.1 Should any difference or dispute at any time arise between the parties, the duly authorised Senior Officials of the dti and the NLC shall meet within fourteen (14) days, or such period as the parties may agree, from the date on which the dispute arose to resolve the dispute amicably.

16.2 If the dispute is not resolved at such a meeting, or extended meeting as the Parties may agree to in writing, then the dispute shall be escalated to the Director-General of the dti and the Non-Executive Chairperson of NLC for resolution.

16.3 In the event that the parties under sub-clause 16.2 above are unable to resolve the dispute, such dispute shall then be referred to an independent representative appointed by the Minister for resolution. The decision of the Minister shall be the full and final settlement of the dispute and shall be binding on all parties.

16.4 The provisions of this clause are severable from the rest of the agreement and shall remain in effect even if this agreement is terminated for any reason.

16.5 The parties are bound by the provisions of the Protocol Guideline to resolve disputes between the dti and its agencies and the disputes amongst the agencies.

17. DOMICILIUM CITANDI ET EXECUTANDI

17.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

17.1.1 the dti-

Physical: Block A
Utangamiri Building
77 Meintjies Street
Sunnyside
Pretoria

Postal: Private Bag X84
Pretoria
0001

Telephone: (012) 394 1494
Fax: (012) 394 2494
Cell: 071 689 9988
Email: NMatomela@thedti.gov.za

17.1.2 NLC-

Physical: Block B
Hatfield Gardens
Cnr Hilda & Arcadia Streets
Hatfield
0001

Postal: P O Box 1556
Brooklyn Square 0075

Telephone: (012) 432-1322
Fax: (012) 432-1402
Email: profnevu@nlcsa.org.za

17.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by electronic communication.

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- 17.3 Any Party may by notice to any other Party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address or its postal address or its electronic communication, provided that the change shall become effective *vis-à-vis* that addressee on the fifth (5) business day from the receipt of the notice by the addressee.
- 17.4 Any notice to a Party –
- 17.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 5 (fifth) business day after posting (unless the contrary is proved);
 - 17.4.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
 - 17.4.3 sent by electronic communication to the address stipulated in clause 10.1, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 17.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

18. GENERAL PROVISIONS

18.1 Confidentiality

The Parties agree to maintain the provisions of this agreement and the details of their negotiations leading up to the conclusion of this agreement to which it is Party as confidential and shall not, save as required by law, disclose any of such details or information to any third party whomsoever, other than to its professional advisers under similar confidentiality undertakings. The provisions of this clause shall not apply to any information, which is in the public domain other than through a breach of the provisions of this clause.

18.2 Whole agreement

This agreement, and any other addendums hereto constitute the whole agreement, regarding the subject matter hereof, between the Parties and no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in this agreement.

18.3 Amendment

No amendment or any consensual cancellation of this agreement or any part hereof shall be binding on the Parties unless recorded in writing and signed by both Parties.

18.4 Waiver

No extension of time or waiver or relaxation of any of the provisions of this agreement shall operate as an estoppel against any Party in respect of its rights under this agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this agreement.

18.5 Availability of Remedies

No remedy granted by this agreement shall exclude any other remedy available in law.

18.6 No Warranty

To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

18.7 Cession and Delegation

No Party shall cede any of its rights or delegate any of its obligations under this agreement without the prior written consent of the other Party.

18.8 Non Compliance

In the event that any of the Parties do not comply with the terms and conditions of this agreement, the other Party shall in writing request that Party to comply with the terms and provisions hereof within fourteen (14) days of the date of receipt of the letter, or in the event that that Party fails to comply as requested, the other Party shall declare a dispute in terms of clause 16 of this agreement.

18.9 Legal System to be applied

This agreement is entered into in the Republic of South Africa and interpretation, validity and compliance therewith is governed in all aspects by the law of the Republic of South Africa and the Parties therefore submit to the jurisdiction of the North Gauteng High Court of the Republic of South Africa.

18.10 Anti-corruption and good faith

In implementing this agreement and in all dealings with each other, the Parties undertake to observe utmost good faith and to give effect to the intent and purpose of this agreement.

18.11 Conflict of Interest

Unless agreed in writing between the Parties, both Parties officials shall not have interests or receive remuneration outside of the provisions outlined in this agreement or their respective policies on conflict of interest.

18.12 Attestation

The Parties hereby acknowledge having read the contents of this agreement that are understood and accepted by both Parties.

19. PART III —COMMISSION'S PERFORMANCE MANAGEMENT SYSTEM

19.1 The performance of the Commissioner of the NLC shall be assessed bi-annually, which is due to the dti by 30 June 2019.

19.2 The performance of the Board will be assessed based on the performance assessment tool for the entire entity which is due to the dti by 30 June 2019.

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20. SIGNING OF THE SHAREHOLDER'S COMPACT BY THE PARTIES

Signed for and on behalf of the **NATIONAL LOTTERIES COMMISSION**



Prof. Alfred Nevhutanda
Non-Executive Chairperson of the Board of NLC

Date: _____

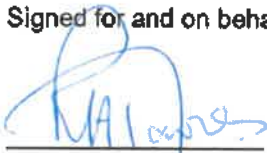
Place: _____

Witnesses

1. _____

2. _____

Signed for and on behalf of the **Department of Trade and Industry:**



Dr. Rob Davies, MP
Minister: Trade and Industry

Date: 5/4/19

Place: Cape Town

Witnesses

1. _____

2. _____





the dti

Department
Trade and Industry
REPUBLIC OF SOUTH AFRICA

EP2

SHAREHOLDER COMPACT

(Entered into by and between)

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, through
its DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

**Herein represented by Mr Ebrahim Patel in his capacity as the Minister
of Trade, Industry and Competition**

(Herein referred to as "the dtic");

and

THE NATIONAL LOTTERIES COMMISSION

(Herein referred to as the "NLC")

**Herein represented by Prof. Alfred Nevhutanda in his capacity as
the Non-Executive Chairperson of the Board of the National
Lotteries Commission, duly authorised hereto**

(Herein referred to as "the Parties")

(For the period 2020/2021).

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WHEREBY IT IS AGREED AS FOLLOWS:

PART I – DEFINITIONS, INTERPRETATION, PREAMBLE AND NATURE OF THE AGREEMENT

1 DEFINITIONS

For the purpose of this agreement, unless the context indicates otherwise, the following definitions are set out for the terms indicated:-

- | | | |
|------|---|---|
| 1.1 | "Accounting Authority or AA" | means the Board of the National Lotteries Commission; |
| 1.2 | "Annual Performance Plan" or "APP" | means a three-year rolling plan produced annually and submitted to Parliament which sets out what NLC intends doing in the upcoming financial year and during the Medium Term Expenditure Framework (MTEF) to implement its Strategic Plan; |
| 1.3 | "Annual Report" | means the annual report on the NLC activities of 2019/20 prepared in terms of the PFMA and section 12 of the Lotteries Act 57 of 1997 as amended; |
| 1.4 | "Chairperson" | means the representative of the Accounting Authority of the NLC; |
| 1.5 | "Director-General" | means the Accounting Officer of the dtlc; |
| 1.6 | "DDG" | means the Deputy Director-General: Consumer and Corporate Regulation Division (CCRD); |
| 1.7 | "DPME" | means the Department of Planning, Monitoring and Evaluation, an organ of state in the national sphere of government as defined in section 239 of the Constitution of the Republic of South Africa Act, 1996; |
| 1.8 | "Effective Date" | means 01 April 2020 irrespective of the date of signature; |
| 1.9 | "Executive Authority" | means the Minister of Trade and Industry; |
| 1.10 | "Key Performance Area" | means the area identified as important or crucial where a result will assist in the achievement of the set objectives or goal; |
| 1.11 | "Minister" | means the Minister of Trade, Industry and Competition and his successor in title; |



1.12	"MTSF"	means the Medium Term Strategic Framework (MTSF) is Government's strategic plan for the 2019-2024 electoral term. It reflects the commitments made in the election manifesto of the governing party, including the commitment to implement the NDP. The MTSF sets out the actions Government will take and targets to be achieved. It also provides a framework for the other plans of national, provincial and local government.
1.13	"NLC"	means the National Lotteries Commission established in terms of the Lotteries Act 57 of 1997, as amended;
1.14	"National Treasury"	means the National Treasury department, established in terms of the Public Finance Management Act, 1999 (Act 1 of 1999) as amended;
1.15	"NDP"	means the National Development Plan;
1.16	"ODG"	means the Office of the Director-General within the dtic;
1.17	"Parties"	means the Parties to this agreement, and "Party" shall have a corresponding meaning;
1.18	"PFMA"	means the Public Finance Management Act, 1999 (Act No. 1 of 1999), as amended;
1.19	"Shareholder"	means the government of the Republic of South Africa, as represented by the Minister;
1.20	"Shareholder's Compact"	means this agreement between the Executive Authority and the Accounting Authority;
1.21	"Standard"	means a level of quality/achievement that is considered acceptable or desirable;
1.22	"the Act"	means the Lotteries Act, 1997 (Act. No. 57 of 1997), as amended, which provides for the establishment of the NLC;
1.23	"the dtic"	means the Department of Trade, Industry and Competition, an organ of state in the national sphere of government as defined in section 239 of the Constitution of the Republic of South Africa Act, 1996;
1.24	"the King IV Report"	means the King IV Report on Corporate Governance published by the King Committee on Corporate Governance in 2016, or its predecessor; and
1.25	"Treasury Regulations"	means the National Treasury Regulations issued in terms of the PFMA.





2. INTERPRETATION OF THIS AGREEMENT

In this agreement, unless the context otherwise indicates:-

- 2.1 all words and expressions to any one gender shall be capable of being construed as a reference to other gender;
- 2.2 the words signifying the singular shall include the plural and vice versa;
- 2.3 a reference to a natural person shall be capable of being construed as a reference to a juristic person and vice versa;
- 2.4 words and phrases defined in this agreement shall bear the meaning assigned to them throughout this agreement;
- 2.5 words and phrases used in this agreement, which are defined or used in any statute, which applies to the subject matter, professional person, goods, or services provided for in this agreement shall be construed in accordance with the applicable statute or regulations;
- 2.6 heading of clauses are for convenience only and shall not aid in the interpretation or modification of clauses within the agreement;
- 2.7 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 2.8 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only provided in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 2.9 when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.10 where figures are referred to in numerals and in words, if there is any conflict between the two (2), the words shall prevail;
- 2.11 expressions defined in this agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own definitions;
- 2.12 reference to day(s), month(s) or year(s) shall be construed as calendar day(s), month(s) or year(s);
- 2.13 the use of any expression in this agreement covering a process available under South African law such as a winding-up (without limitation *eiusdem generis*) shall, if any of the Parties to this agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 2.14 in the event of a conflict between the terms of this agreement and the annexures attached hereto, the provisions of this agreement will apply;

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- 2.15 where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that term has not been defined in this interpretation clause; and
- 2.16 the rule of construction that an agreement will be interpreted against the party responsible for the drafting thereof, shall not apply.

3. PREAMBLE

The Shareholder Compact is a corporate governance management agreement designed to enhance the governance of NLC through an effective relationship between the NLC and the dtic. The Shareholder's Compact defines the mandate of NLC with regard to the relationship with the Executive Authority as provided and supported by the APP and further defines the roles, responsibilities and undertaking by the dtic and NLC. It is founded on the public goal of promoting integrity and good governance in the conduct of the work and decision-making of the NLC whilst subjecting the NLC to proper policy oversight and policy direction by the Shareholder.

It is recorded that:-

- 3.1 The NLC is established in terms of the Act, under the executive authority of the Minister, in an effort to enable the dtic to achieve its objective and ultimately meet its mandate. The NLC's mandate is to ensure that the National Lottery and sports pools are conducted with all due propriety and strictly in accordance with the Constitution, the Act, all other applicable law and the licence for the National Lottery, together with any agreement pertaining to that licence; and that the interests of every participant in the National Lottery are adequately protected.
- 3.2 The Parties agree to enter into this agreement which shall:-
- 3.2.1 define and regulate the mandate from the dtic to NLC;
 - 3.2.2 document and clearly state the parameters of the relationship between the dtic and NLC; and
 - 3.2.3 outline the roles and responsibilities of the Parties to this agreement.
- 3.3 the dtic and NLC subscribe to good corporate governance in order to improve transparency, accountability and sound management.
- 3.4 This agreement is based on the underlying principles that require sufficient autonomy of the NLC to manage the affairs of NLC balanced against the responsibility to exercise such freedom within the agreed mandate as outlined in the relevant legislation and the framework of effective accountability.



3. the dtic and NLC subscribe to the principles set out above and in endeavouring to further enhance effective performance under its mandate and to maintain good corporate governance within the NLC, the Parties hereby agree on the terms and conditions set out below.

4. NATURE OF THE AGREEMENT

- 4.1 This agreement has been designed to enhance the governance of NLC through an effective relationship between NLC and the dtic. It intends to define the mandate from the dtic to NLC in respect of corporate governance issues as outlined in the PFMA, Treasury Regulations, the Act, King IV Report as well as the roles and responsibilities of both Parties in respect thereof. Each Party also requires certain undertakings from the other party, which are also set out herein. The broad mandate and objectives of NLC are also supported by the Strategic Plan that provides more detail.
- 4.2 This agreement is therefore not intended to:-
- 4.2.1 interfere in any way with general principles of law, and the normal relationship between the dtic and the NLC must at all times be preserved;
 - 4.2.2 create rights and expectations that third Parties could rely upon. It is hereby specifically recorded that this agreement does not create, confer and/or afford any third party rights or expectations in terms hereof. The agreement is designed solely to regulate the relationship between the dtic and the NLC; and
 - 4.2.3 regulate or replace the contract entered into between the dtic and the Non-Executive Chairperson of the NLC.

5. COMMENCEMENT AND DURATION

- 5.1 Notwithstanding the date of signature this agreement shall commence on 01 April 2020 and terminate on 31 March 2021.

6. ROLES AND RESPONSIBILITIES

- 6.1 The roles and responsibilities of the dtic are to:
- 6.1.1 monitor adherence by NLC to the PFMA, Treasury Regulations, King IV report and the Act;
 - 6.1.2 monitor compliance of the APP with applicable requirements as determined by the DPME and ensure that same is submitted within the dates specified by the DPME;

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- 6.1.3 review quarterly reports from and provide feedback to the NLC; wherein matters not included in the Minister's letter can be communicated directly to the entity in line with Clause 15.1.1 hereunder.
- 6.1.4 review the shareholder's compact annually;
- 6.1.5 recognise the importance of speedy decision-making and shall use its best endeavours to prevent undue delays in critical decision making by attending to correspondence from the NLC within 14 working days;
- 6.1.6 recommend to the Minister the approval of the budget and APP of the NLC;
- 6.1.7 annually review the Board's performance against an agreed set of key performance indicators;
- 6.1.8 facilitate annual Board's remuneration and cost of living adjustments;
- 6.1.9 recommend NLC's annual report to be tabled in Parliament by the Minister; and
- 6.1.10 intervene, in line with legislative prescripts and corporate governance principles adopted in this agreement and
- 6.1.11 ensure that the Minister's intentions which may have an adverse impact on the audit outcomes of the NLC are made known to the Accounting Authority in writing before 30 June 2020.
- 6.1.12 Engage with the NLC through the Consumer and Corporate Regulation on matters related to their mandate and other policy related matters.
- 6.2 The roles and responsibilities of the Accounting Authority (AA) are to:-
 - 6.2.1 ensure that NLC endeavors to carry out its objectives and functions as outlined in the PFMA, Treasury Regulations, King IV Report and the Act;
 - 6.2.2 recognise the importance of speedy decision-making and shall use its best endeavors to prevent undue delays in critical decision making;
 - 6.2.3 develop an APP (2021/22-2023/24) financial years) linked to the Medium Term Expenditure Framework (MTEF), National Development Plan (NDP), Reimagined Industrial Policy and the Nine Point Plan for review and approval by the Executive Authority;
 - 6.2.4 ensure that all payments due to creditors are settled within thirty (30) days from receipt of invoice or, in the case of civil claims, from the date of settlement or court judgment, unless determined otherwise in a contract, other agreement or by any legislative requirement;
 - 6.2.5 ensure that the NLC participates in and promotes the Black Industrial Policy, other government priorities and policies to ensure the effective implementation thereof within the NLC;
 - 6.2.6 arrange quarterly consultation meetings between NLC and the dtic to identify provisions of the legislation that pose challenges of interpretation, hinders implementation processes for proper clarification and to discuss a way forward;





- 6.2.7 implement the Policy on Service Standards Requirements for the Regulatory Public Entities of the dtic.
- 6.2.8 monitor the implementation of all policy objectives and provide feedback to the relevant stakeholders.
- 6.2.9 ensure that third-party information requested by the Executive Authority is furnished in line with relevant legislative requirements (Protection of Personal Information Act, No 4 of 2013, Promotion of Access to Information Act, No 2 of 2000, The Act and its regulations.) The requestor of third party information shall complete relevant disclosure forms prior to the release of requested information.

7. ANNUAL PERFORMANCE PLAN (APP)

- 7.1 NLC shall develop an APP for the 2021/22-2023/24 financial years linked to the Medium Term Expenditure Framework (MTEF) period and aligned to the Government's Nine-Point Plan, National Development Plan (NDP) and Reimagined Industrial Policy or any other government priority, as per the template issued by the dtic and submit to the Executive Authority for review and approval. First draft due by 31 October 2020 and final draft by 31 January 2021 or any other time determined by the Executive Authority.

8. KEY PRIORITY PERFORMANCE AREAS FOR THE 2020/21 FINANCIAL YEAR

- 8.1 In the execution of its oversight mandate, the dtic in terms of PFMA has identified the following six key priority areas:-
 - 8.1.1 education and awareness by developing informational measures to educate the public about lotteries and provisions of the Lotteries Act, and by explaining the process, requirements and qualifications for grants in terms of the Lotteries Act;
 - 8.1.2 monitoring and enforcement against illegal lotteries operations;
 - 8.1.3 proactive funding based on informed research for worthy good causes that may be funded without lodging an application prescribed in terms of the Lotteries Act;
 - 8.1.4 monitoring of the Lotteries Operator to ensure that it complies with government priorities e.g. Broad-Based Black Economic Empowerment Act, No 53 of 2003 (BBBEE), Local Procurement and Skills Transfer; and
 - 8.1.5 enter into a Memorandum of Understanding with other regulatory agencies and provincial counterparts in clamping down on illegal lotteries and gambling.

9. NLC BUDGET

- 9.1 The NLC shall:-
 - 9.1.1 by 30 September 2020, provide the dtic with a budget of estimated revenue and expenditure for the financial year 2021/2022 for approval;
 - 9.1.2 ensure that the expenditure of NLC is in accordance with the approved budget; and
- 9.2 Budget Process





- 9.2.1 ensure that budget inputs are submitted on or before the deadline communicated by the Department (Line Division) through Line Division for consolidation and;
- 9.2.2 request for roll-overs must be submitted no later than 31 May of each financial year and the financial statements for a particular financial year may be changed within thirty (30) days after the audit. The request must include a disbursement schedule indicating in which months the expenditure is expected to be incurred.

10. MONTHLY AND QUARTERLY REPORTS

- 10.1 The NLC shall, within thirty (30) days of the end of each month, submit to the dtic a monthly income and expenditure statement with projections for the remaining months, explanations for material variances as well as any possible remedies to be applied to ensure that the income and expenditure is within the approved budget.
- 10.2 The NLC shall within thirty (30) days of the end of each quarter submit to the dtic the quarterly performance report including an executive summary in the prescribed template signed by the Commissioner, Non-Executive Chairperson of the Board of the NLC and Chairperson of the Audit Committee.
- 10.3 The NLC shall within thirty (30) days after the audit committee have met, after each quarter submit to the dtic the copy of the audit committee report.
- 10.4 The NLC shall within thirty (30) days after the end of each quarter, submit to the dtic the quarterly progress report relating to the achievement of a clean audit by reporting against matters raised by the Auditor-General South Africa (AGSA) and Internal Audit, signed by the Non-Executive Chairperson.
- 10.5 The NLC must report on key priority areas quarterly and annually in terms of this agreement.

11. ANNUAL REPORT

- 11.1 The NLC shall submit to the dtic, AGSA and National Treasury the Performance Information by 31 May 2020 of the 2019/20 financial year.
- 11.2 The NLC shall by 31 August 2020 submit to the dtic an annual report on the activities of the National Lotteries Commission for the 2019/2020 financial year.

12. FINANCIAL STATEMENTS

- 12.1 The NLC shall by 31 May 2020 submit to the dtic, AGSA and National Treasury the draft financial statements for the 2019/2020 financial year.
- 12.2 The NLC shall on 31 July 2020 submit to the dtic a copy of the audited annual financial statements including the audit committee report.
- 12.3 The NLC shall on 31 August 2020 submit to the dtic the management letters received from the AGSA and/or the Independent Auditors.

JM

[Signature]

[Signature]

13. OTHER REPORTS

- 13.1 The NLC shall by 28 February 2021, submit to the dtic a schedule of the outcome of any disciplinary hearings and/ or criminal charges, the names and ranks of employees involved, the sanctions and any further actions taken against these employees.
- 13.2 the dtic may request a report on a specific topic or extraordinary reports from time to time provided that reasonable notice has been given to NLC. The topics covered by these extraordinary reports can *inter alia* refer to but are not limited to Supply Chain Management and/or media statements released or any such topic that impacts on the mandate of the NLC.
- 13.3 NLC shall, by 31 May 2020, submit to National Treasury a list of all its banking accounts.
- 13.4 NLC shall, by 30 April 2020, submit to the dtic, an Annual Audit Plan which shall at least contain the development and implementation of indicators that will achieve a clean audit.

14. UNDERTAKINGS

- 14.1 the dtic undertakes for the duration of this agreement, not to-
 - 14.1.1 introduce new or additional requirements during the validity of this agreement other than through a process of consultation with the NLC. Seven (7) days' notice shall be provided before the introduction of any new requirements; and
 - 14.1.2 impede or in any way unreasonably restrict the discretion of the NLC regarding matters falling within their respective authority, as provided for in this agreement and the Act.
- 14.2 The NLC undertakes for the duration of this agreement to:
 - 14.2.1 maintain effective governance and the highest standards of ethics and will continue to subscribe to the broad principles set out in the PFMA, the Act, and King IV Report;
 - 14.2.2 subscribe to the principles of good governance, and reassess its systems of governance on an ongoing basis;
 - 14.2.3 ensure that it maintains appropriate participative structures with representatives of its staff to ensure that its staff has an opportunity to meaningfully contribute to decision-making with respect to its administrative and managerial functions. The process shall include, but not limited to, mechanisms for consultation and information sharing;
 - 14.2.4 ensure that it has a code of ethics and a code of conduct in place; and
 - 14.2.5 ensure that in determining the composition and functions of the sub-committees, NLC will follow the guidelines of the King IV Report on Corporate Governance as well as the prescripts of the PFMA and the Act.
- 14.3 NLC undertakes for the duration of this agreement not to:-



14.3.1 enter into any transactions other than: -

14.3.1.1 in the ordinary, regular and normal course of activities; or

14.3.1.2 specific projects in compliance with the Supply Chain Management Policy of the NLC and Procurement delegations;

14.3.2 purchase or dispose of any asset other than in the ordinary, regular and normal course of activity or as approved in accordance with the provisions of the PFMA and/or any other applicable legislation;

14.3.3 be liable, whether contingently or otherwise and not to stand in as surety, co-principal debtor, guarantor, for the liabilities of any third party other than in the ordinary, regular and normal course of activity, or

14.3.4 make decisions falling outside the scope of the mandate and authority granted in terms of this agreement and the Act without the approval of the dtic; and

14.3.5 contravene the provisions out-lined in the PFMA, National Treasury Regulations, NLC's mandate and the Strategic Plan which serve as the relevant guidelines of what is regarded as normal business.

15. CO-ORDINATION AND CO-OPERATION BETWEEN THE PARTIES

15.1 Each Party hereby agrees to appoint such duly authorised representative to be responsible for liaising and facilitating any communication and/or exchange of information between the Parties in order to fulfill their respective obligations in terms of the provisions of this shareholder compact. The Parties agree that the initial representatives as aforesaid are as follows:

15.1.1 the dtic – the Group Chief Operating Officer at the dtic, not excluding the DG and DDG of CCRD; as the main contact persons depending on the mandate issues for consideration. Each one to be copied in the communication to ensure a coordinated approach and

15.1.2 NLC - the Commissioner of the NLC, responsible for the day-to-day running of the NLC.

15.2 It is agreed that the Parties shall timeously execute their respective obligations in terms of the provisions of this agreement.

15.3 The Parties further agree that they have entered into this agreement based on mutual co-operation and good faith.

16. DISPUTES

16.1 Should any difference or dispute at any time arise between the Parties, the duly authorised Senior Officials of the dtic and the NLC shall meet within fourteen (14) days, or such period as the Parties may agree, from the date on which the dispute arose to resolve the dispute amicably.

16.2 If the dispute is not resolved at such a meeting, or extended meeting as the Parties may agree to in writing, then the dispute shall be escalated to the Director-General of the dtic and the Non-Executive Chairperson of NLC for resolution.



- 16.3 In the event that the Parties under sub-clause 16.2 above are unable to resolve the dispute, such dispute shall then be referred to an independent representative appointed by the Minister for resolution. The decision of the Minister shall be the full and final settlement of the dispute and shall be binding on all Parties.
- 16.4 The provisions of this clause are severable from the rest of the agreement and shall remain in effect even if this agreement is terminated for any reason.
- 16.5 The Parties are bound by the provisions of the Protocol Guideline to resolve disputes between the dtic and its agencies and the disputes amongst the agencies.

17. DOMICILIUM CITANDI ET EXECUTANDI

- 17.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

17.1.1 the dtic-

Physical: Block A
Utangamiri Building
77 McIntosh Street
Sunnyside
Pretoria

Postal: Private Bag X84
Pretoria
0001

Telephone: (012) 394 3076
Fax: (012) 394 4076
Cell: 082 628 7995
Email: JScholtz@thedtic.gov.za

17.1.2 NLC-

Physical: Block B
Hatfield Gardens
Cnr Hilda & Arcadia Streets
Hatfield

Postal: Hatfield
0001

P O Box 1556
Brooklyn Square 0075

Telephone: (012) 432-1322
Fax: (012) 432-1402
Email: profnevhu@nlcaa.org.za

- 17.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by electronic communication.

JM





- 17.3 Any Party may by notice to any other Party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address or its postal address or its electronic communication, provided that the change shall become effective *vis-à-vis* that addressee on the fifth (5) business day from the receipt of the notice by the addressee.
- 17.4 Any notice to a Party –
- 17.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 5 (fifth) business day after posting (unless the contrary is proved);
 - 17.4.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
 - 17.4.3 sent by electronic communication to the address stipulated in clause 10.1, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 17.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

18. GENERAL PROVISIONS

18.1 Confidentiality

The Parties agree to maintain the provisions of this agreement and the details of their negotiations leading up to the conclusion of this agreement to which it is Party as confidential and shall not, save as required by law, disclose any of such details or information to any third party whomsoever, other than to its professional advisers under similar confidentiality undertakings. The provisions of this clause shall not apply to any information, which is in the public domain other than through a breach of the provisions of this clause. Confidentiality in this regard shall extend to matters arising from Section of the Act and matters related to Regulation 8 of the 2001 Regulations to the Lotteries Act as amended.

18.2 Whole agreement

This agreement, and any other addendums hereto constitute the whole agreement, regarding the subject matter hereof, between the Parties and no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in this agreement.

18.3 Amendment

No amendment or any consensual cancellation of this agreement or any part hereof shall be binding on the Parties unless recorded in writing and signed by both Parties.

18.4 Waiver

No extension of time or waiver or relaxation of any of the provisions of this agreement shall operate as an estoppel against any Party in respect of its rights under this agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this agreement.

18.5 Availability of Remedies

No remedy granted by this agreement shall exclude any other remedy available in law.

18.6 No Warranty

To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

18.7 Cession and Delegation

No Party shall cede any of its rights or delegate any of its obligations under this agreement without the prior written consent of the other Party.

18.8 Non Compliance

In the event that any of the Parties do not comply with the terms and conditions of this agreement, the other Party shall in writing request that Party to comply with the terms and provisions hereof within fourteen (14) days of the date of receipt of the letter, or in the event that that Party fails to comply as requested, the other Party shall declare a dispute in terms of clause 16 of this agreement.

18.9 Legal System to be applied

This agreement is entered into in the Republic of South Africa and interpretation, validity and compliance therewith is governed in all aspects by the law of the Republic of South Africa and the Parties therefore submit to the jurisdiction of the North Gauteng High Court of the Republic of South Africa.

18.10 Anti-corruption and good faith

In implementing this agreement and in all dealings with each other, the Parties undertake to observe utmost good faith and to give effect to the intent and purpose of this agreement.

18.11 Conflict of Interest

Unless agreed in writing between the Parties, both Parties officials shall not have interests or receive remuneration outside of the provisions outlined in this agreement or their respective policies on conflict of interest.

18.12 Attestation

The Parties hereby acknowledge having read and signed this, the contents of which are understood and accepted by both undersigned Parties.

19. SIGNING OF THE SHAREHOLDER'S COMPACT BY THE PARTIES

Signed for and on behalf of the National Lotteries Commission



Prof. Alfred Ntshutanda
Non-Executive Chairperson of the Board of NLC

Date: _____

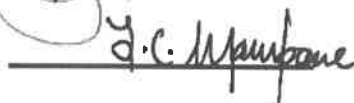
Place: HATFIELD

Witnesses

1.



2.



Signed for and on behalf of the Department of Trade, Industry and Competition:

Mr Ebrahim Patel
Minister: the dtic

Date: _____

Place: _____

Witnesses

1.

2.



National Lotteries Commission Quarter 2 performance; NRCS LOAs & ICT modernisation

EP 3

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Trade and Industry

27 November 2018

Chairperson: Ms J Fubbs (ANC) and Ms P Mantashe (ANC)

Meeting Summary

The Committee met with the National Lottery Commission for a briefing on its Second Quarterly Report and for a briefing by the National Regulator for Compulsory Specifications.

The National Lottery Commission informed the Committee that technology was a problem as the Lottery Commission was 15 years behind in technology used worldwide in the gaming industry. The Commission raised the question of online gaming as, if online gambling was not allowed, there would be no lottery in South Africa in five to ten years to come and, if the National Lottery Commission had no money, there was nothing that it could do.

The National Lottery Operator was revitalising the lottery in the country. However, the proceeds of the lottery going to the state were not growing, although the operator's business was doing very well. In terms of getting money for the State to distribute to beneficiaries, the graph was stagnant. The National Lottery Commission had undertaken a study tour to Europe to gain an understanding of the lottery industry in other countries.

Out of 14 targets set by the Commission for the Second Quarter, 13 had been achieved, giving a 93% achievement rate. The target of provincial impact evaluation studies had not been achieved because a service provider agreement had not been signed until 3 October 2018. 739 site visits had been conducted to by the end of the Quarter. Revenue from share of ticket sales as at the Second Quarter was R738 million against a budget of R731 million. There was an improvement in revenue during the month of July with the share of ticket sales reaching R55 million in the first week of August 2018.

The Commission was involved in two litigation matters. The first was with Lotto Star, a matter initiated by the Commission to enforce provisions of the Amended Lotteries Act. The second was with Bongani Community Development Centre that had submitted only one set of financial statements instead of the required two sets. The motion to set aside the administrative decision of the Commission would be going to trial.

The Committee was informed that the proactive funding programme enabled the Commission to identify communities in need of schools, ECD centres and so on around the country. The Commission referred to a recent media report that alleged that R1.2-million had been awarded for building a creche for Snyazama Daycare in East London the previous year, but the centre had not received a single cent. Concerns were raised over "agents" who acted as "middlemen" and duped unsuspecting Lottery funding applicants. The Commission explained that there were two organisations with the same name that had applied for funding and the funds had gone to the other Snyazamas.

Another media story was about the Denzhe project. The Commission was facing troubling questions after dispensing funding to a rehabilitation facility that was not a not-for-profit organisation. Denzhe Primary Care, a centre intended to help people with HIV, had applied for funding but years later funds were allocated to the same organisation but the funds went to a drug rehabilitation centre called Denzhe that was using the non-profit organisation number of the HIV organisation. The issue was complicated by a conflict of interest as a family member of the Commission had been the sole director of the drug rehabilitation facility. The Commission had a policy for dealing with such conflicts of interest.

Members asked about the conflict of interest and how the Commission could pay the wrong centre. Why, when the media had made an application for information under the Promotion of Access to Information Act, had that information had been denied? Was it a cover-up? What happened to the additional millions paid out by European jackpots that could not accrue to South African citizens? How had it happened under the noses of the Commission that such a scheme operated under the noses of the Commission? Was the proactive funding actually a slush fund?

Members asked about the small, medium and large sporting fund model. Why were no national sports funded? Was the Commission monitoring those who had received funding to ensure that those organisations met the transformation requirements? Had the SPCA's application for funding been resolved?

The National Regulator for Compulsory Specifications briefed the Committee on Letters of Authority and the ICT Modernisation Project. Senior staff had been appointed to assist both in the programme and to ensure the smooth management of the Regulator.

The Commission was taking a risk-based approach to certification which had allowed the entity to divide applications into high, medium and low risks with the application turnaround times being 75, 90 and 120 days respectively. The presentation focussed on the Electro-technical Approvals because of the high number of applications on hand and the backlog in that domain. The Commission would be accepting certification by the International Electrical Commission System of Conformity Assessment Schemes for Electro-technical Equipment and Components and the approximately 1 500 applications were annum with such certification would, in future, be classified as low risk. Other interventions included the appointment of six Candidate Inspectors who were scheduled to complete their training by the end of March 2019, bringing the staff complement within Electro-technical approvals to 13. The new cancellation policy gave applicants 30 days to rectify both technical and administrative findings.

The ICT modernisation programme was running behind and the Commission had consequently moved away from the big bang approach and was dividing the project into manageable projects that would show immediate improvement in systems. National Treasury had approved R 52 million for the project.

Members asked if there was a potential for a dispute between the CEO and staff regarding the ICT modernisation project. Were there 3 095 applications or was there a backlog of 3 095 applications? When would the historical backlog come down to zero and when would NRCS operate in real time? Was the CEO happy with the pace of the ICT modernisation project?

The e-toll system had been imported into the country without any checks against standards. One of the Members wanted to know how such a thing had happened. How was it that even the government, i.e. SANRAL, was not complying with regulations? How was the Commission going to deal with that? Was there currently a standard for e-toll systems and had the systems on the gantries been tested against those standards?

The National Lottery Commission would be returning to the Committee in February to discuss issues relating to funding, conflict of interests, theft of data and media reports.

Meeting report

Opening remarks

The Chairperson welcomed everyone and recognised the various officials present.

The Chairperson explained that she would have to leave before the second presentation as she had been summoned to a meeting with Mr Frolick, the Chairperson of the Chairpersons' Forum. She would hand over the Chair at that point so that the meeting could continue.

The adoption of the agenda was proposed by Ms P Mantashe (ANC) and seconded by Mr D Macpherson (DA).

National Lottery Commission (NLC) Second Quarter Performance Report 2018/18

Prof Alfred Nxhutanda, Chairperson, NLC, stated that the Second Quarter Performance Report had been sent to the Committee. Before getting to the report, he wished to raise a couple of issues. He noted that technology was a problem for the NLC as it was 15 years behind in relation to the technology used worldwide in the gaming industry. The NLC needed to know if online gaming was allowed or not. If online gambling was not allowed, he warned that there would be no lottery in South Africa in five to ten years to come.

The National Lottery Operator was invigorating the lottery in the country but the proceeds of the lottery were not growing; they were going down. The operation was very good for business-making for the Operator, but in terms of getting money for the state to distribute to beneficiaries, the graph was stagnant. The NLC had undertaken a study tour to Europe to understand the lottery industry and had gained a lot of information. The report of the study tour had been presented to Members and he hoped that Members would find the time to read the report. If the recommendations contained in the report were implemented, it could assist in a lot of the problems that the government was trying to address. The lottery would be able to assist a lot of programmes. Lottery South Africa was number 15 in terms of lotteries in the world. He presented some of the amounts accruing to the National Lottery Distribution Trust Fund (NLDTF) for disbursement and the amount made by the Lottery Operator since the start of the contract with the current operator:

-2015/16 NLDTF R825 million; Operator R2.6 billion.

-2016/17 NLDTF R1.3 billion; Operator R5.9 billion.

-2017/18 NLDTF R1.3 billion; Operator R6.0 billion.

-2018 NLDTF R1.4 billion; Operator R6.4 billion.

The business was growing but the funds going to the state were stagnant.




30/12/2020

National Lotteries Commission Quarter 2 performance; NRCS LOAs & ICT modernisation | PMG

The Chairperson informed Prof Nevhutanda that the Committee was expecting the 2nd Quarterly Report. The Management Committee of the Portfolio Committee had decided that, due to a number of meetings being overtaken by a fresh parliamentary programme, the NLC was to come back to the Committee in February 2019 to discuss those issues.

Prof Nevhutanda stated that he wanted to inform the Committee that if the NLC had no money, there was nothing that it could do. He asked his colleague to present the report.

Ms Thabang Mampame, Commissioner, NLC, began with the highlights for the quarter. The strategic funding priorities for 2019/2020 had been compiled in consultation with the members of the Distributing Agencies (DA's) after taking into consideration the provincial dynamics, the findings of the impact evaluation study and relevant research. The final priority areas would be tabled to the Board for approval. In line with the Board's directive to promote awareness and understanding of the NLC's regulatory mandate, a communication campaign had been initiated across all media. On 20 August 2018, 30 NLC employees belonging to National Health Education & Allied Workers Union (Nehawu) and National Union of Public Service and Allied Workers (Nupsawu) embarked on strike action demanding a salary increase of 8.5% after internal negotiations had deadlocked and the CCMA had issued a non-resolution certificate. The strike action lasted for two days, ending with a lower than demanded salary increase.

Out of 14 targets for the quarter, 13 were achieved, giving a 93% achievement rate. The target of provincial impact evaluation studies not achieved had been achieved because a service provider agreement had not been signed until 3 October 2018, just missing the quarter deadline.

The NLC was involved in two litigation matters. The first was with Lotto Star, a matter initiated by the Commission enforcing provisions of the Amended Lotteries Act. The second was with Dongani Community Development Centre. The application was declined as the organisation submitted only one set of financial statements instead of the required two sets. The motion to set aside the administrative decision of the NLC would be going to trial.

Mr Phillemon Letwaba, COO, NLC, told the Committee that a total of 739 site visits had been conducted during the quarter under review. Provincial requests had increased during the period as the provinces were implementing the revised Site Visit Policy on infrastructure projects, as well as the Grants Financial Management Policy. Revenue from the NLC share of ticket sales as at Quarter 2 was R738 million against a budget of R731 million. There was an improvement in revenue during the month of July with the share of ticket sales reaching R55 million in the first week of August due to the Powerball matrix change and the roll-over of the Powerball jackpot, which was subsequently won in the first week of August.

The online platform was activated during the reporting period but was undergoing a post implementation quality assurance process. The online platform would facilitate flexibility and enhance efficiencies between NLC and its external stakeholders. The Geographic Information System would be utilised to assist with grant applications by identifying possible duplication of funded infrastructure, and as an ongoing strategic tool to monitor and evaluate funded projects.

Mr Tsietisi Maselwa, Executive Manager: Legal, NLC, explained that the proactive funding programme enabled the NLC to identify communities in need of schools, ECD centres and so on around the country. The Commission went to a community and rolled-out infrastructure and created jobs, etc. It had to deal with the conflicts in the communities, especially between councils, traditional leaders and the community. The mode of operation was very important.

Mr Maselwa then referred to a recent report in the Daily Dispatch newspaper that had found that a National Lottery Commission financial record showed that R1.2-million had been awarded for building a creche for Siyazama Daycare in East London the previous year, but the centre had not received a single cent. Concerns were raised over "agents" who acted as "middlemen" and duped unsuspecting Lottery funding applicants. Mr Maselwa explained that there were two organisations with the same name that had applied for funding and the funds had gone to the other Siyazama. He added that there had been another media story about the Denzhe project. The media articles stated that the National Lottery Commission was facing troubling questions after dispensing funding to a rehabilitation facility that was not a not-for-profit organisation. Denzhe Primary Care was intended to help people with HIV but Takalani Tshikalange's non-profit organisation in rural Limpopo had failed to take off when she could not raise funding. In October 2016, Tshikalange received an SMS alert from her bank informing her that R7.5 million had been deposited into Denzhe's bank account by the NLC, but she did not get the money because it had gone to fund a drug rehabilitation centre called Denzhe that was using her NPO number.

Mr Maselwa said that the NLC had been working since June to resolve the issue which was complicated by a conflict of interest as a family member of the NLC was involved. NLC had engaged the investigators and expanded investigations. He stated that the NLC had a policy for dealing with such conflicts of interest.

Ms Mampame introduced the Provincial Manager for the Western Cape, Ms Marcelle Musson.

The Chairperson indicated to Members that they could engage the NLC on the second quarter report as well as the information provided on the media reports.

Discussion

Mr G Cachalia (DA) addressed the issue of the proactive funding which allowed the Minister and NLC to identify worthy projects that they would support. Some worthy projects had been identified but also some unworthy projects that had been identified and it was the latter that interested Members of the Committee. He stated that Fin24 had published an article on the Denzhe situation and a detailed analysis of NLC. It was the first in a series of exposures to follow and had showed a clear conflict when Mr Letwaba of the NLC had handed over monies to an organisation of which his brother was the sole director. That was a clear conflict of interest. In addition, when the media had made an application for information under the Promotion of Access to Information Act, that information had been denied. It sounded to him like a cover-up.

Ms P Mantashe (ANC) appreciated the presentation and the work done. However, she wanted the additional explanation about the media reports in writing so that Committee could follow up on them and assess progress on the report.

The Chairperson requested the NLC to provide the information in writing.

Mr B Radebe (ANC) welcomed the report and appreciated the willingness of the NLC to discuss problems.

He disagreed that it was a conflict of interest because South Africans no longer lived in the apartheid era and under the Internal Security Act of 1982 where the families of activists were found guilty by association. It did not mean that if one worked for the NLC that one's relatives could not apply for funding. They were adults and so were their families. If it was a worthy cause and complied with all prescripts, anyone could apply for funding.

Mr Radebe was also concerned about Lotto Star. The operation of that outfit worried him. It was very clear that the outfit entered South Africans in the European and other lotteries. Money was taken out of SA and went to European countries. The maximum that could be paid to a SA citizen who won a lottery in Europe was R100 million. One lottery paid out R800 million. What happened to the additional millions because jackpots in those lotteries were worth hundreds of millions of Rand? How did it come to happen under the noses of NLC? Local lotteries had to be protected.

Mr Radebe added that he supported the proactive funding projects as he had seen the many worthy projects completed in the Free State. The NLC had put up wonderful infrastructure that was out of the world in various areas and in various schools. The 2005 Amendment to the National Lottery Act had enabled the NLC to undertake proactive funding because those people did not know how to fill out application forms. It was wonderful and he supported proactive funding fully.

Mr Macpherson agreed that the first thing to do was to accept that there was a problem. He agreed that there were some good projects but, equally, there were some very bad projects. There were problems with the proactive fund, which was being used as a "slush fund" to enrich very few people. Everyone knew that there were shady characters that existed in the murkyness of proactive funding. Mr Macpherson stated that the Southern African Youth Movement had been given millions in lottery funding but they had nothing to show for the money received. The NLC said pro-active funding was carefully monitored. If so, the NLC was failing in a system that they themselves had set up. It was not a coincidence that Mr Letwaba's brother was the sole director of the company in the Denzhe saga. Mr Letwaba denied, and continued to deny, that he knew he knew that his brother was the director. It was in the public domain. How could he not have known? The scheme also involved Mr Lesley Ramulifho, a shady character who had previously got NLC funding and who tried to facilitate the Airbus contract. The proactive funding model was wrong (bad).

The Denzhe Rehabilitation Centre had very little to show for R120 million. There had been no monitoring, and no implementation reports. It appeared that the only beneficiary was Mr Ramulifho who had spent money on Ocean Basket food in Limpopo.

Mr Macpherson stated that he would not eat fish in a place so far from the sea but Mr Ramulifho had had no problem in spending plenty of money on fish. He warned the Committee that the recent media report was the first in a series of investigations being released so there was more to come. The NLC had tried to hide behind secrecy laws. It had dodged, ducked and dived. That was not how to conduct an organisation that was in control of public money.

Mr Macpherson suggested to the Chairperson of the Portfolio Committee that there were serious questions about the proactive funding as there seemed to be evidence of more and more corruption. There were some serious questions that existed within the proactive funding model. The only way to deal with that was to institute a forensic audit into all transactions that had taken place through the proactive funding model. The Minister or the Committee needed to conduct a forensic audit into where the funding was going.

Mr J Esterhuizen (DPP) referred to the consideration of the allocation of funds for the next financial year. He asked about the small, medium and large sporting fund model. Why were no national sports funded? Was the NLC monitoring those who had received funding to ensure that those organisations met the transformation requirements? Was the sanction of 50% of the funding for grants above R5 million being paid back if organisations had not transformed? How did monitoring take place? Should the Committee be monitoring? How did the NLC prevent double funding? Everyone had seen how bad the national rugby and soccer teams had been that weekend. Why were they not being funded?

Adv A Alberts (FF+) asked about rescue shelters for animals and the problems that the SPCA had had with funding. Had that matter been cleared up? It was very important as it led to sickness and social problems as well as animal welfare issues.

Mr D Mahlobo (ANC) thought that the Committee was dealing with the Quarterly Report and it was problematic that Members were not looking at the Quarterly Report but were focused on other issues that were important, but not the focus of the meeting. He assured the NLC that the performance looked good. He also noted the improved access to some rural provinces. He was glad that the Western Cape Provincial Manager was there as provincial offices needed to popularise the work done by the national office. Those offices should also promote the demand for the lottery.

Mr Mahlobo understood that currently the NLC was playing more of a regulatory role. That role was important because there were many stakeholders in the industry, but how could the Committee be sure that things were not falling through the cracks? The Lottery Study Review was one issue. The regulatory capacity should be enhanced, and not only through warm bodies. There was a time when the Commission was not around because it was travelling all over the world. He asked for a copy of the study report on the visit to European Lottery entities because, although there had been an amendment to the Gambling Act, the Committee was going to tackle major issues in the next Amendment.

Proactive funding was a new thing, and for a worthy cause, but where things were wrong, they had to be dealt with. If the NLC increased its work with worthy causes but was not involved in the implementation, and something went wrong in the implementation, or there was a dispute between the person who had the funding and the person who undertook the implementation, what empowering instrument did the NLC have to allow it to intervene in the project? He knew about the challenges in SA construction. The bigger infrastructure required in a project, the more challenges there would be in funding and quality and so on.

Mr Mahlobo commended the Professor for being upfront and transparent. He added that when it came to conflicts of interest, the Auditor General would have to ask for a disclosure of people doing business with the State in the interest of good governance and accountability. People were people, so extra eyes and ears were always needed.

He informed the Chairperson that he was very pleased with the presentation and suggested that, in respect of proactive funding, the Committee should ask the NLC to come back with a full report on the matter, including investigations, so that the Committee could engage with issue. He congratulated the NLC as it had done well in the quarter, although he saw that funding was being reduced.

The Chairperson stated that all Members had had time to express themselves. There were a lot of issues around proactive funding and the NLC had raised the issue itself, but there was a need to come back, in writing, about certain areas. She asked the NLC to respond succinctly but added that she was impressed with the report on the Second Quarter. She appreciated that the NLC had seen the need for sharing issues with the Committee.

Prof Nevhutanda stated that there was a wish list for dealing with the lottery. The NLC was dealing with people who received grants and all sorts of shenanigans would happen, and the NLC would have to find ways to cope with those shenanigans. He was going to speak to the Minister as he had learnt recently that all the data about all projects since 2001 was in the USA and that the background was an organisation in the Western Cape. All the projects were coming from a site in America and he had reported it so they would be doing a forensic investigation into the NLC computer system and would catch the culprits. There were two culprits in the Western Cape. One had established a website. They had paid a journalist R300 to write a fake story. A paper in one of the provinces was going to retract a picture showing that the NLC had paid R1.2 million to an organisation but nothing had been done with the money. It was a fake picture. The NLC did not deny that there were unscrupulous people outside but an organisation could not be targeted for taking down. The NLC guys had found the website and the backup, and he would give that information to Members as it was still sensitive.

Prof Nevhutanda promised to give the Committee details of proactive funding as adjudicated by an independent panel. The funding was monitored by the NLC. He would not allow the destruction of an institution created by a democratic government to give money to people who needed money. His daughter had once worked in an NPO that had received funding and so she had had to resign. The NLC conflict of interest policy indicated quite clearly that it was forbidden for family members to apply for lottery money. But if the people involved in the current case had declared that interest, he should let the investigation take its course.

In the so-called Denzhe project, or hijacked project, the applicant had written an affidavit saying that she had been paid money to make the statements about the funding going to the rehabilitation centre. Those people had said that they would protect her. The NLC would present that affidavit.

Mr Mahlobo intervened, suggesting that the Professor should not give details because some people might be endangered. He could simply state that the matter was being dealt with. There might be elements of the campaign that would be interested in knowing what the NLC knew and was going to do. Unless the affidavit was in the public domain, the Professor should not say more in respect of the details. The Committee could be informed about the legal details.

Mr Macpherson told the Committee Chairperson that he was concerned about a couple of things. What was going on was the equivalent of shooting up flares in the air hoping that no one could see what was going on over there. The matter could not be sub judice as there was no court case. He asked that the speakers desist from the idea of a Western conspiracy. The conspiracy theory was just a lot of baloney. The Committee was there to ask questions, and the NLC should respond to those questions. Soon the Committee would be told that Dr Evil was behind all of it.

The Chairperson reminded Mr Macpherson that there was once a so-called conspiracy theory by a journalist in the UK so not everything was in the imagination. She had already said to the Professor that she would appreciate some responses in writing, especially as she was leaving the meeting soon. There was no suggestion of sub judice but she advised that if any cases were in the offing, the NLC should leave those alone.

The Chairperson asked the NLC for answers on the Second Quarter report, which was the focus for the day. She had already pointed out that the Committee did not have the luxury of time to be able to invite them back for a second meeting that quarter, but that they would be invited to return in February 2019.

Prof Nevhutanda stated that, on the matter of proactive funding raised by Mr Macpherson, the NLC would give a full report on the conflict of interest and the steps to be taken. Once the NLC had investigated the media articles, it would furnish a report. He would provide details of the process of proactive funding as the board was not involved in proactive funding, except for setting a strategic goal or sector.

In response to the issue of the organisation that had received proactive funding in Mpumalanga, the NLC had tried to find the person in the article but could not find him. He stated that a person could come back and engage with the NLC after a cooling off period. He had read the article with concern but the things mentioned there had nothing to do with the board, which would only investigate the amount and the equipment requested. Nevertheless, the policy of conflict of interest would apply, regardless of who was conflicted.

Regarding the Lotto Star situation, the NLC did not want to take a gambling authority to court as they had the same Minister, but in that case it was confusing about what was happening to the millions and there was no payback to the state. The NLC would be following up that case.

Concerning the cats, the dogs and whatever, the SPCA had been invited to the NLC office and it had reached an agreement with the SPCA. What the organisation had applied for was not in the focus area determined by the NLC, but the Commission had reached an agreement about how much could be given to the applicant. The SPCA had been given proactive funding.

The Chairperson noted what NLC had done for the cats and dogs. She stated that Mr Williams had had a similar concern about the life saving people (National Sea Rescue Institute).

Prof Nevhutanda replied that the NLC had bought four helicopters to assist in the rescue of the people. He stated that the concerns of the Members were welcomed and the NLC would look at things to make sure the NLC looked at the whole perspective.

Mr Letwaba responded to Mr Esterhuizen's question about transformation. The NLC aligned with the Department of Sport and what it was prioritising that year. He confirmed that the NLC did ask for a transformation plan and followed up on it. The NLC was funding the National Federation, including SASCO. Concerning the SPCA which had 39 offices across the country, he informed the Committee that the offices applied individually. The issues about funding had been related to the national office only and those had now been resolved, but he assured Members that millions of Rand had gone into SPCA at the provincial level.

The NLC had addressed issues regarding the quality of work done using NLC money. Mr Letwaba informed the Committee that in 2016, the NLC had appointed a panel of engineers to assist in matters of construction because many of the construction firms employed by those allocated funding lacked experience. The NLC now required quality assurance reports and was able to ensure good construction.

Mr Maselwa explained that in response to requests in terms of the PAIA, the NLC had followed the processes in the legislation. Regarding access to information, the 2001 Lotteries Amendment Act No 46 of 2001, section 67 stated that no person, including the Minister, a member or employee of the board or the Department, or a former member or employee of the board or the Department, may disclose any information submitted by any person in connection with any application for any licence, certificate or appointment under the Act. Every decision in response to an application for information was recorded according to the requirements of PAIA.

Mr Maselwa agreed that the information about the Denzhe project was not sub judice. He thought that there was consensus in the room that proactive funding worked, but was not perfect. The investigation into the Denzhe case had started some months ago, but new information had recently come to light.

The Chairperson explained that as a result of the new parliamentary programme, the Committee could not meet again until February. She thanked Members for pointing out that the Committee needed to be cautious.

Mr Macpherson stated that his questions had not been answered. How were organisations given money when those organisations did not meet the NLC standards? He had also suggested that there should be a forensic audit of all beneficiaries. The Committee needed to resolve how that was to take place.

Mr Cachalia noted that the Chairperson and Mr Mahlobo had told Members to look at the Quarterly Report, but the issues they were discussing should have been part of the Quarterly Report. There was no risk analysis in the report and that should be there. He supported the call for a forensic report. He reminded the Committee that the DA had always warned about the need to take extreme caution when giving Ministers too much discretion. The shenanigans meant that an independent audit was required. He also asked whether Fin24 was likely to be a source of fake reports.

Mr Radebe said that proactive funding was a very important programme. It fulfilled a real need in provinces where kids could not go to school and the communities did not have skills to make an application. Proactive funding supported the poorest and most vulnerable people. The ANC would never support the DA request for a forensic report as the ANC was always on side of the poor. Thorough research could be done for the five-year review. In respect of the cases that were out there in the media, he suggested that the Committee requested a report from the NLC. A forensic report would intimidate the staff working at

30/12/2020

National Lotteries Commission Quarter 2 performance; NRCS LOAs & ICT modernisation | PMG

NLC. Those undermining proactive funding should go to jail.

After a brief private exchange, Mr Radebe complained about what Mr Cachalia had said.

Mr Mahlobo confirmed that he had heard the word. He stated that there was no need to stoop so low as Mr Radebe had always respected other parties. Mr Mahlobo requested the Committee to look into the incident with Mr Cachalia. The Committee had to be honest and stick to the agreed upon agenda.

Mr Mahlobo suggested that the Committee should ask for a spreadsheet report on proactive funding. How many cases were there? What was the information about each case? He wanted that information in February 2019. Also, in February, the NLC should give ideas regarding due diligence. In certain instances, the cases had come about because people or organisations shared names. Organisations were not allowed to have the same name. How could that be resolved?

He added that the data that had been compromised was a serious matter and NLC might need to approach the police. The data in NLC database concerned the most vulnerable people and others could not have their data. Lastly, he addressed the report of the NLC visit to Europe. Could the NLC present the report because that information could be included as part of the Committee's legacy report on what still needed to be done in respect of gambling.

Mr Mahlobo proposed that the Committee accept the Second Quarter Report. He also advised Members that the quarterly report was grounded in the Annual Performance Plan and presented financial statements. One could not say that it was wrong unless it did not cover those aspects.

The Chairperson appealed to all Members to respect each other. She had tried hard and earnestly to respect the Constitution that made it clear that many people had suffered because their dignity had been taken away. She requested that Members treat each other with dignity and respect, regardless of the political parties they belonged to. She sincerely hoped that members of her family had not died for nothing.

The Chairperson stated that she would communicate with the NLC and asked the Commission to respond as soon as possible and not to wait for the next meeting to provide answers.

The Chairperson addressed the question of a forensic audit. She stated that in a similar matter relating to the South African Bureau of Standards, the Committee had asked the Minister to conduct an enquiry and that process had stood the Committee in good stead as the Minister had taken the matter forward. She wanted to refer the current matter to the Minister. He would look into the issue. Other outstanding matters had been addressed but the Committee would need a much longer meeting with NLC in February.

The Chairperson handed over to Ms Mantashe as she had to attend a meeting with the Chairpersons of the Chairpersons' Forum.

Ms Mantashe welcomed the NRCS and invited the CEO to address the Committee.

Presentation by the National Regulator for Compulsory Specifications (NRCS) on LOAs and the ICT Modernisation Project

Mr Edward Mamadise, CEO, NRCS, began with the good news. The NRCS had appointed a Chief Information Officer who would start in January 2019. The NRCS had a newly appointed Chief Operating Officer (COO), Ms Abigail Thulane. A Modernisation Programme Manager, Mr Bongani Khanyile, had been seconded to the CEO's office, effective from 1 November 2018 and would be responsible for the implementation of the modernisation programme. The post of Human Resources Administration Manager had been filled by Ms Ndlovuho Phosa who had joined the NRCS on 1 November 2018.

Mr Mamadise said that he would be relieved of some of his burden as he had had many sections reporting directly to him, but most of those sections would now be reporting to the new managers.

Letters of Authority (LOAs)

The presentation focused on the Electro-technical Approvals due to the relatively high number of applications on hand and the backlog that had been experienced within the Electro-technical Domain.

The NRCS had implemented a number of measures aimed at ensuring that all applications were processed within 120 days (including a 30-day appeal period), or processed within the identified turn-around times as per the risk classification of the product and company.

The NRCS would be accepting certification by the International Electrical Commission System of Conformity Assessment Schemes for Electro-technical Equipment and Components (IECEE Certification Body Scheme). That meant that NRCS could separate Certification Body Scheme applications as they would, in future, be classified as low risk. NRCS received 1500 applications on average per year that would fall into that category.

Other interventions included the appointment of six Candidate Inspectors on 1 April 2017, who were scheduled to complete their training by the end of March 2019, bringing the staff complement within Electro-technical approvals from seven to 13.

The NRCS had adopted a new cancellation policy. Applicants were given 30 days to rectify both technical and administrative findings. 1 520 applications were rejected from 1 April to 30 October 2018 because the applicants had failed to address the findings within 30 days. In 2017/18, 1 545 applications were rejected for the whole financial year.

NRCS was taking a risk-based approach to certification which allowed the entity to divide applications into high, medium and low risks with the application turnaround times being 75, 90 and 120 days, respectively. Thus far, only medium risk applications had not met the targeted timeframes. That approach had reduced the number of applications on hand from 5 236 on 1 April 2018 to 3 095 at the end of October 2018.

Modernisation Programme

The key to improving efficiencies and addressing modernisation was the ICT plan. The Modernisation Programme was a suite of interdependent strategies that NRCS planned to deploy to address system challenges and improve efficiencies. An Integrated Enterprise Resource Planning system for Human Resources, Financial Warehousing and Project Management was being developed. It included the automation of the operational environment which comprised inspections and approvals and would be integrated with the support systems. The program was running behind and so NRCS had moved away from the big bang approach and was dividing the project into manageable projects that would show immediate improvement in systems. National Treasury had approved R 52 million for the project.

Discussion

Ms Mantashe thanked Mr Mamadise for providing timeframes as requested at the last meeting in June 2018.

Mr Macpherson told Mr Mamadise that it was difficult to assess whether things were good or the same. The report was two years late and he and Mr Mamadise knew that the NRCS was one of the most significant but undervalued cogs in the economy, especially in the retail sector. It was no surprise that the German delegation was concerned about regulators like NRCS. NRCS was specifically mentioned by the delegation. That was a concern, and the entity was still providing a poor service. The contribution to the economy was important which was why the Committee took NRCS so seriously.

He noted that under the risk-based assessment, buy-in by management and staff was highlighted. One would assume that it was a given that management and staff would be committed, but it had been a cause of dispute between the former CEO and the staff. Was there a potential for a dispute between current CEO and staff? Was that why the CEO was bringing the matter to the attention of the Committee?

Mr Macpherson stated that looking at the current backlog, the numbers seemed to be consistent with the backlog in the past. No matter what the NRCS did, it could not eradicate the backlog. Was the number given, the number of applications or the backlog? Did the 3 095 refer to the applications or the backlog?

Mr Esterhuizen said that bodies like NRCS and SABS had to regulate standards of products and prevent substandard products being introduced into the market, but there was serious doubt about the effectiveness of the bodies and so there was a reduced impact from NRCS and SABS. The SABS mark was not even used on plastic pipes and other things from the pipe industry. The public had lost complete confidence in regulatory organisations.

Mr Cachalia asked when the historical backlog would come to zero and when NRCS would operate in real time. That area had to be addressed. Concerning the IT project, he asked whether the CEO was happy with the pace of the project, and when was he going to appoint a CIO.

Ms Mantashe asked the CEO to inform the Committee about the programme on Carte Blanche.

Adv Alberts said that the NRCS played a very important role in the economy by setting standards which were very important for safety, as well as optimal delivery. He was concerned that there was a rush of products into the country and either the goods did not comply with existing standards or they were new articles for which SABS did not have standards against which to check.

An example of what was really shocking was the electronic systems. The e-toll system in use in Gauteng had been imported into the country without any checks that it adhered to any standards at all. How did such a thing happen? How was it that even the government, i.e. SANRAIL, was not complying with regulations? How was the NRCS going to deal with that? There were no standards for the e-toll system at that

Was there now a standard and had the systems on the gantries been tested against those standards?

Mr Mahlobo suggested that the Committee accept the report and note that there it was a work in progress. There were delays, which was unfortunate, especially in the IT modernisation project that was needed to be able to do the work, but he was pleased that a project manager had been appointed. NRCS should consider coordinating with CSIR and even with SITA. SABS could also assist. The NRCS needed those bodies to assist. There would also be risks associated with the service providers so NRCS should work with others when going out on procurement. He was happy that there was a relationship with National Treasury. Treasury should do more than providing money. It should also provide a sounding board.

Mr Mahlobo noted that there was a dedicated team, but reminded the NRCS that the checks and balances could not be neglected.

<https://pmg.org.za/committee-meeting/27658/>

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Mr Radebe welcomed the report. He liked the modular approach to implementing the IT modernisation programme. It was not only the Germans, but also Members of Parliament who complained about the long delays. The online process would make a big difference. How could the time be shortened? What were the risk processes in the NRCS so that the entity did not get to the end of the project and find that things were not right?

Mr Radebe also informed the NRCS that he was concerned about fires in township houses. There were faults with plugs, electricity and other building equipment that came straight from the warehouse. Electrical faults meant that houses were razed to the ground until there were only ashes as a result of the fires, and people lost everything. The NRCS had a job to do as a regulator.

Ms Mantashe asked for a written report on the Carte Blanche programme on the previous Sunday. She added that anything that the NRCS sent, had to be sent to the Committee Secretary and not directly to the individual. She appreciated that people had been appointed to key positions. She wanted the NRCS to wipe out backlogs but not to err.

Mr Mamadise replied to Mr Macpherson. He agreed that the work done by the Regulator was critically important. The NRCS had to ensure that there was fair trade, but, at the same time, NRCS could not allow substandard goods into the country. Concerning the point about the buy-in of management and staff, he noted that there was always a fear that an IT project would encounter resistance, so it was a question of change management that to be implemented. Some things that had been done by humans would no longer be done by humans, such as data capturing of what the inspectors had done as they would capture it directly on the system. Changes like that could concern staff. People were naturally uncomfortable with change.

3 095 was the number of applications on hand by the end of October 2018, but there might be some within that number that had that exceeded the planned timeframes. When trying to manage the backlog, it was important to understand the context. The NRCS received applications in January and some were in the process until March but at the same time, applications were being received on a daily basis. In 2016, the backlog had been 7 000 and the entity had been gradually targeting the backlog. A full complement of inspectors in 2019 would allow the NRCS to start with clean sheet.

Mr Mamadise was not happy with the delays in the IT modernisation programme but he was happy that there was a plan. Management had made an assessment of processes and determined that, in order to be efficient, the entity had to have system that would help with processes and would also collect data. He reminded Mr Cachalia that he had explained at the beginning of the programme that NRCS had appointed a CIO who would start on 2 January 2019.

Regarding the relationship with SABS, Mr Mamadise said that he was pleased to say that the NRCS was beginning to have a solid relationship with SABS. NRCS had met with SABS and they were identifying the roles of each organisation for them to work best in the space within the Ministry of Trade and Industry. The NRCS was still working on standards for e-tolls. He noted the advice of Mr Mahlobo and Mr Radebe.

Mr Macpherson asked for details of the 3 095 applications and how many were past the 120-day cut-off. Change management was important and that had not happened under the previous CEO, which was why Mr Mamadise was sitting in that position. The Committee would be able to support him, if necessary, as it did not want to see another CEO leave.

Ms Mantashe reminded the NRCS to send all information to the Committee Secretary and not to individuals.

Programme Changes

Ms Mantashe noted that the meeting on 4 December 2018 would start at 9:00 and not at 11:00. The meeting of 5 December 2018 would start at 8:30 and not at 9:00.

Ms Mantashe thanked the Members and the Department and invited everyone upstairs for lunch.

The meeting was adjourned.

JM

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NATIONAL LOTTERIES COMMISSION
a member of the sbl group

National Lotteries Commission (NLC)
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The Chairperson
Portfolio Committee on Trade & Industry
Parliament of the Republic of South Africa
Cape Town

04 December 2018

Dear Chairperson

**SUBJECT: INTERIM INVESTIGATION REPORT ON THE MATTERS AROUND DENZHE
PRIMARY CARE NPO**

The above matter refers,

The National Lotteries Commission attended to parliament on 27 November 2018 to present the second quarter performance report for the financial year 2018/19 respectively. As part of its presentation the Commission shared information with the committee on newspaper articles that would have carried negative reports about the NLC and its funding; particularly proactively funded projects. The newspaper publication (dated 17 November - by The Daily Dispatch) around Siyazama Day Care was highlighted where a brief explanation was provided.



CHANGING LIVES

Board Members: Ms A. Brown (Whitehead's Representative) Ms. DLT Dandor Mr. YN Gordon Adv. WE Huma
Ms TB Kekana Dr. MA Modzhande Prof. NA Nkomo (Chairperson) Ms Nompumelele Nene (Company Secretary)

Established in terms of the Lotteries Act 57
of 1997, as amended

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The daily dispatch newspaper had incorrectly published an article depicting a corrugated iron structure as a funded project which have not received funds that were allocated as published in the annual report.

A brief explanation was provided to the committee and the same was also done with the newspaper and the commission requested a retraction of the story. The explanation was simply that there were two organizations with the same name. The Siyazama that was reflected on the annual report was for the Early Childhood Development Centre that was part of the proactive roll-out of the NLC where state of the art ECD's were built throughout the country for over R500 000 000.00 (five hundred million). The incorrect ECD that was published is a different entity that has also applied to the NLC outside of the proactive roll out. This Siyazama was funded for just over R300 000.00 (R371 000.00 to be specific). These funds are yet to be paid and this will be done in line with the NLC's prescribed timeframes. The story therefore provided the public with incorrect information. The newspaper has since published what they promised to be a retraction (Retraction dated 28 Number 2018 – by the Daily Dispatch) of the story even though the commission remains unsatisfied with how the said retraction was couched.

INTERIM REPORT AND CONFIDENTIALITY TO PROTECT THE INTERGRITY OF THE INVESTIGATION

This report is provided with full understanding that it is interim and matters discussed should be considered confidential as materials submitted for the purposes of the investigation should be protected until the full investigation is completed and findings submitted.

Part of the information submitted also relates to court proceedings between Denzhe and House Regeneration and the *sub judice* rules should not be compromised.



HOW A HIGHJACKED ORGANISATION SCORED MILLIONS FROM THE LOTTERY

The second newspaper report that was discussed by the NLC related to a newspaper article dated 22 November 2018 published by GroundUp, an online publication authored by Raymond Joseph and Anton Van Zyl respectively. The article depicted a story of the NLC funded drug rehabilitation centre where one of the members of the organization allegedly made claims of her organization being highjacked, the sour relationship between members of Denzhe (funded NPO) and House Regeneration (the service provider of the funded organization).

The details of the article pointed at two individuals, Mr. Lesley Ramulifho (Danzhe) and Dr. Ado Krige (House Regeneration) with various accusations and counter accusations relating to the breakdown of relationship between the two parties including alleged misuse of funds by Denzhe – with specific reference to Mr. Ramulifho having used some of the money dedicated to the project for his business purposes.

PROCUREMENT BY FUNDED ORGANISATIONS

In terms of the funding process (whether proactive or application based), the commission does not prescribe and/or assist the funded organizations in the procurement of service providers during the implementation of the projects. The commission only requires full reporting of the projects by the funded organizations. Therefore, in this case, the relationship between Denzhe and House Generation or any other entity employed by the beneficiary remains independent from the relationship of the NLC and the funded organization.

CONFLICT OF INTEREST

The allegations went further to point out a potential conflict of interest issue where it was alleged that the company that built and/or renovated the drug rehabilitation facility belongs to a relative of an NLC employee Mr. Phillemon Letwaba. The allegation is that the brother of the NLC COO was the director of the company that was contracted to do construction of the rehabilitation center.

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Whilst it was admitted in the newspaper article that this relative has since resigned, the insinuation was that he was a director by the time of signature of the agreement. This allegation necessitated further probing to determine the veracity thereof.

WHAT THE NLC HAS DONE SO FAR

Sometime in 2018 the NLC received complaints and allegations from Dr. Ado Krige who claimed to be a service provider working with Denzhe; specifically claiming that Denzhe is not making payments due to him in terms of the agreement reached between the parties. Ordinarily, the NLC deals directly with the funded organization and does not get involved in matters of third party relations created by beneficiaries when implementing their projects. However, due to the commission's open-door policy – the NLC strives to be beneficiary centric and assist in and continually mediate where issues are raised whether by funded beneficiaries and/or members of the public. Dr. Krige was given an ear and the commission engaged with Denzhe to understand the problem with the view of mediating to ensure that the project is smoothly implemented. Denzhe also came with counter allegations against House Regeneration, particularly Dr. Ado Krige who they regarded as uncooperative and only interested in getting funds and using it for unapproved items. They related stories of him refusing entry to contractors and suppliers and demanding to do most of the work himself. The issue of ownership of land where the structure is build was also highlighted as a matter of conflict.

INVESTIGATION BY THE NLC

On or about 10 August 2018, the NLC appointed independent investigators to look at the Denzhe matter and to provide the NLC with a comprehensive report and advice on the way forward. In this respect the investigators have done their initial work and provided as interim report.

While the investigation was going on, new information in the form of an article dated 22 November 2018 (How a hijacked organization scored millions from the lottery) appeared and made new allegations which included the issue of the possible conflict of interest by an official of the NLC.

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28



Updated terms of reference were immediately given to the investigators to follow up on this new information which was not at their disposal when the initial investigation was done.

Without going into the merits of the matter and/or compromising the current investigation, the interim report by the investigation provides the following information:

- A sworn affidavit by Takalani Tshikalange (now the chairperson of Denzhe) which reveals importantly that:
 - there is currently a matter before court between Denzhe and House Regeneration,
 - the deponent refutes allegations by the journalists in the article dated 22 November 2018 and calls it a fabrication.
 - the deponent explains payment exchanges between the parties and records that there were loans advanced to Mr. Ramullho by their organization in 2016 and these payments were fully repaid within 10(ten) days by Mr. Ramullho. This was over two years ago. Proof of these payments were provided to the investigators.
 - the deponent also deals with the issue of Upbrand Properties which she indicated as having been appointed by her organization after securing three quotations and having had no prior knowledge of its directorship.
 - Denzhe also provided a signed agreement between itself and Upbrand Properties to the amount of R8.1 million and not the 15 million as was reported in the article.
- Denzhe have also provided further affidavits and court documents relating to the current matter before court to the investigators.



SWORN STATEMENT BY THE COO

The COO was also requested to submit a sworn statement explaining his position and understanding of the matter, if any. A sworn statement was made in this regard and it is part of the information being assessed by investigators. The investigators will be providing everyone the opportunity to state their side in a fair and unbiased manner and the totality of the information will be analyzed and parties concerned will be interviewed where necessary and a full report will be provided on this matter.

The NLC assures that this matter will be dealt with accordingly and the committee will be appraised once a final report has been submitted.

Yours faithfully

Ms. Thabang Mampane

COMMISSIONER

NATIONAL LOTTERIES COMMISSION



**MINISTER
TRADE AND INDUSTRY
REPUBLIC OF SOUTH AFRICA**

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Ms Thabang Charlotte Mampene
Commissioner of the National Lotteries Commission
Block D, Hatfield Gardens
333 Grosvenor Street
Hatfield
Pretoria
0083

Dear Commissioner

MEDIA ALLEGATIONS RELATED TO PROACTIVE FUNDING

Reference is made to the recent media article in the Citizen and Fin24 titled "How a Hijacked Organisation Scored Millions from the Lottery", and the various media allegations relating to the Commission's dissemination of the fund commonly known as Proactive Funding. Further reference is made to the concerns discussed regarding the same funds in the meeting of the Portfolio Committee on Trade and Industry held on 27 November 2018.

The various allegations and concerns raised points to a perceived lack of governance in relation to the Proactive Funding projects in terms of section 2A(3) of the Lotteries Act, 1997 as amended, which I will hereinafter refer to as Discretionary Funding. This includes not only insufficient due diligence but also the absence of any quantifiable controls when it comes to the funding of projects from the Discretionary Funds.

While there is clearly a need to fund certain projects in this manner, the existing policy processes and discretionary nature indicates some gaps as it does not follow a clear due diligence process, as well as the usual oversight similar to the other good cause funds by the Commission.

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In view of the above, I have requested the department to conduct an independent investigation into the Fund. It is important to ensure that resources are optimally employed and that good governance is not compromised. I kindly request that you provide the department with all the necessary assistance and resources to enable it to conduct the investigation as speedily as possible.

In addition, as part of its mandate on policy and legislation, I recommend the department to develop a tightened governance framework for the implementation of this funding going forward.

Our duty as the custodians of tax-payers funds compel us to act diligently and swiftly when serious allegations are made in relation to the possible misappropriation of funds. I am sure that you are aware of the various media reports which suggest that the Commission's Chief Operating Officer ("the COO") may have had a conflict of interest in relation to the Denzhe NPO funding as well as other related allegations against him in funded projects. In this regard, it is incumbent on all employees, especially senior executive staff, to inform leadership of any conflict or perceived conflict of interest which may compromise their impartiality in relation to the execution of their duties.

In order for an independent investigation to take place and to highlight our stance of zero tolerance towards fraud and corruption, I recommend that the COO be suspended by the Commission and that the serious allegations concerning his conflict of interest be fully probed. I take cognisance of the fact that these are allegations, however, as custodians of the Lotteries legislation, we must lead and take decisive action in these circumstances.

I trust you will ensure that the necessary action is taken to restore the public's confidence in the Commission.

Yours sincerely



Dr Rob Davies, MP
Minister of Trade and Industry
05 December 2018

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How a hijacked organisation scored millions from the Lottery

EP 6

Troubling questions for the COO of the National Lotteries Commission



These two buildings, part of a rehab centre, were built with Lottery funding. The roofs leak and doors and windows do not fit properly and will need to be repaired.

By Raymond Joseph and Anton van Zyl

22 November 2018

When Takalani Tshikalange set up a non-profit organisation in rural Limpopo in 2012 to help people with HIV she hoped to make a real difference.

But despite her best intentions, Denzhe Primary Care failed to take off. The organisation lay dormant for four years.

Then, out of the blue, Tshikalange received an SMS alert from her bank in October 2016 informing her that R7.5-million had been deposited into Denzhe's bank account by the National Lotteries

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Commission (NLC).

But when Tshikalange visited the bank and asked for printouts of statements, she was refused because, according to the bank's records, she was no longer a signatory on the NPO's account. The bank froze the account while it conducted an investigation.

Tshikalange laid a complaint of fraud with the Midrand Police in November 2016, saying she was "the owner" of Denzhe and "someone took my NPO documents and changed the details at FNB".

What followed has left Tshikalange terrified.

"People have been threatening me ... about my NPO," Tshikalange said when contacted by phone. "They keep calling me on my phone. I have kids; I do not need this stress anymore. I saw the money going into the account on my phone ... and I saw it going out. I did not get anything."

An investigation into Denzhe has revealed a colourful cast of characters. They include controversial Pretoria-based lawyer Lesley Ramulifho; Melanie du Plessis, his girlfriend; and Ado Krige, a former biker who spent time in jail where he found religion and who now runs an unregistered drug rehabilitation facility near Pretoria that uses religion and prayer to try cure addicts.

Ramulifho has been in the news several times over the past decade, including being accused of [defrauding](#) government departments and parastatals. He was also [linked](#) to a dodgy deal to supply aircraft to SAA.

Despite Denzhe receiving a total of R27.5 million in Lottery funding to build a new drug rehabilitation and sports centre, the facility is still incomplete. It is shoddily built, roofs leak, there are cracks in walls, and doors and windows do not fit properly. An existing lapa was converted into a "sports centre" at a cost of about R5 million. An independent quantity surveyor later found that the total value of work done was R4.8 million.

Our investigation uncovered two payments totalling R535,240 from Denzhe's bank account towards two Ocean Basket franchises.

It also revealed how a company — of which the brother of the Chief Operating Officer of the NLC was sole director — signed a R15-million contract to build the "new" Denzhe rehabilitation centre. He subsequently resigned although he was a director at the time of the signing of the contract.

So what had happened to Denzhe?

By the time Tshikalange became aware that her NPO was no longer under her control, it had already secured a R22 million grant from the NLC.

The application to the NLC for funding a drug rehabilitation centre was submitted on 9 September 2016. The three directors of Denzhe Primary Care were Nkhumbuleni Lesley Ramulifho, Karabo Charles Sithole and Liesl Joy Moses, according to the application. The "new" directors initially asked for more than R31.36 million. But this was trimmed down, although an additional R5.58 million was approved in early 2017 to complete outstanding work.

The application did not go through the normal channels where it would have been considered by one of the NLC's three Distribution Agencies. Instead, it was handled via a "proactive funding" process which was introduced in 2015 when amendments were made to the National Lotteries Act. The amendments allowed the Minister of Trade and Industry, the Lotteries Board or the Commission to identify "worthy" projects and fast-track these applications.

"The introduction of proactive funding has enabled us to assist in areas with limited access to resources," the NLC said in a statement earlier this year.

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In the case of Denzhe, basic checking would have raised red flags. But the NLC has previously confirmed that it only checks whether an NPO is registered on the official Department of Social Development database. It does not check whether the NPO is compliant and whether the names of the people applying for funding on behalf of an NPO match the office bearers registered with the DSD.

A little more than a month after Denzhe's funding application was submitted, the first tranche of R7.5 million was paid into the NPO's FNB account, which had been dormant for many years and only had a balance of R68. A month later a second tranche of R7.5 million was paid into the account by the NLC.

When Tshikalange became suspicious and reported the matter to the police, FNB immediately froze the bank account. But Ramulifho obtained a court order to unblock it. A day later the account was emptied and on 8 December Denzhe opened a new account with Nedbank. The NLC was notified of this change the following day.

How was the money spent?

Instead of constructing a new rehab centre, Ramulifho found a much easier way; he used an existing one and gave it a bit of a facelift. This was [House Regeneration](#) north of Pretoria. It has been in existence since 2009 and is run by former biker-turned-saviour, Dr Ado Krige, who claims on the organisation's website that they have been involved in drug rehabilitation projects for over 30 years.

House Regeneration is privately owned and for-profit. It is also not registered with the Department of Social Development, and both these facts should disqualify it from receiving NLC funding.

Krige's centre spurns conventional treatments. Instead it uses religion and prayer as a cure for addiction.

Krige says he met Ramulifho in July 2016 through mutual friends at the church they attend. "At our first meeting about this project Mr Ramulifho told us that he had a mandate from the NLC to set up a national network of rehabilitation centres in SA and that R300 million had been earmarked for this." Ramulifho was accompanied by his girlfriend, Melanie du Plessis, and both gave the impression that they were representing the NLC, says Krige.

Ramulifho and du Plessis impressed Krige and they discussed plans to upgrade the existing rehab facility. But when Ramulifho told Krige that Denzhe Primary Care wanted to buy the property, he and his family refused, stating that "we were acting on a mandate from Jesus Christ and the ministry was not for sale".

During a follow-up meeting, Ramulifho and Du Plessis said that the NLC might be willing to provide R6 million for the renovation and upgrading of the facilities, according to Krige. At that stage House Regeneration catered for about 70 male patients.

"It was then proposed that an entire new complex be built and Ramulifho mentioned an amount of R18 million to be funded by Lotto with Denzhe Primary Care as the project manager," says Krige.

Out with the old - in with the old

Documents were drawn up by Ramulifho's office and signed on 14 October 2016. The project was to be completed at the latest by the end of May 2017.

But disruptions with the construction work took their toll and tension began mounting between Denzhe and the Krige family, particularly after demands were made for references to Christianity to



be removed from sign boards at the rehab.

Things got worse when the NLC realised that House Regeneration was not registered as a rehabilitation centre, even though Krige said he had declared this "upfront" to Ramulifho.

Over the next few months there were numerous promises about when work would be completed. Krige became so frustrated that he visited the NLC's offices in Pretoria early in January to complain to the Commissioner, Thabang Mampane. He also reported his concerns about Ramulifho to her.

By March 2018 the relationship had broken down completely. Ramulifho wrote to Krige stating that Denzhe had decided to terminate the operational partnership "due to the ongoing slandering of Denzhe Primary Care name and myself as a chairman." Ramulifho also informed Krige that Denzhe would have his organisation evicted from the premises and a new operating partner would be appointed to complete the project.

The Denzhe project is now mired in controversy and Ramulifho has sent a lawyer's letter demanding R17 million, claiming he was misled that the rehab was registered with DSD.

Krige said: "I was upfront about the fact that we were faith-based and not registered with DSD, but that I was working hard to get the facility registered. We were running a successful rehabilitation centre that was profitable. It supported me and my three sons, who were all involved in the business. The business suffered and we have lost a fortune because of this."

Who is the real builder?

When the NLC was requested to provide details of the project earlier this year, the emails were forwarded to the COO, Phillemon Letwaba. He was very reluctant to make any information available and after a lot of pressure gave the name of Denzhe's "chairman", Lesley Ramulifho.

An application was made under the Promotion of Access to Information Act (PAIA) to force the NLC to provide information, but without success. Even an appeal was turned down, with the NLC reverting to a "secrecy clause" in the regulations and the protection of the privacy of NPOs. Documents were, however, leaked to us which helped provide the missing pieces of the puzzle.

It transpired that a R15 million building contract was signed in October 2016 with Upbrand Properties. The first payment of R7,165,000 was made the same day, according to NLC records we have seen. Upbrand Properties was registered in January 2016 with Johannes Kgomotso Letwaba, the older brother of the NLC's COO, Phillemon Letwaba, as the sole director. Asked whether this did not constitute a conflict of interest, Phillemon Letwaba initially denied that any of his family members were involved.

"I have checked with all my family members and none of them is a director of Upbrand Properties and this information you can check it with CIPC directly. Additionally they have no knowledge of any contract signed between Denzhe and Upbrand Properties," Letwaba said via email.

A company search, however, showed that Johannes Letwaba was a director of Upbrand Properties in December 2016, but resigned in March 2017. When this was pointed out to the NLC's COO, he denied that a contract had been signed between Upbrand Properties and Denzhe.

In a press release posted on its website last week in response to our questions, the NLC said it "follows strict prescribed processes and continually encourages its employees to disclose matters of conflict of interests where applicable. It has since engaged individuals who may have been highlighted in some of the issues raised around the implementation and funding of the project (Dhenze) and is satisfied with explanations provided."

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Further investigation also showed that this is not the only NLC-funded project Lesley Ramulifho is involved with. He played a key role in applying for funding for I am made 4 God's Glory (IM4GG), which was also dormant and non-compliant. Like Denzhe it had never submitted annual financial statements and other legally required documentation to DSD and should not have been eligible for Lottery funding.

IM4GG's registered address in Garsfontein, Pretoria, is the same as that of the law offices of Ramulifho, who applied for the funding as "chairman" of the NPO. DSD officials became suspicious when they discovered that the supporting documentation was not included when an application was submitted to replace the original IM4GG board with Ramulifho, his stepdaughter Liesl Moses and Karabo Charles Sithole, Ramulifho's co-trustee in the Denzhe Primary Care Trust, which was set up in 2016. (We were unable to track down Moses or Sithole.)

The same three were inserted as directors when the details of Denzhe were changed, although the original 2012 Denzhe directors are still listed with DSD.

The details of the original IM4GG directors were reinstated by DSD on its NPO register. But the document reflecting the initial changes was used to get an R11.9 million grant from the Lottery, which was less than the R15 million originally applied for.

In the application for funding, Ramulifho said the aim of the project was to "provide appropriate infrastructure in order to advance sport, recreation and physical activity in communities across the country while addressing government's transformation agenda".

Ramulifho failed to answer a series of questions about the rehab, or how Lottery money was used for Ocean Basket franchises.

His lawyer, Victor Mabe, responded on his behalf, merely to state that the matter is before the High Court and as such his client may not respond. He said his client had been "defrauded by serious and criminal misrepresentations". Asked to explain, he did not respond.

In a follow-up email he praised the merits of the project to curb addiction to drugs such as nyaope. He also said that the NLC had given a clean audit of the rehab centre during construction, and that it had given positive feedback about the centre once it was completed.

This is the first of a series of articles on the lottery.

CORRECTION: The article originally gave the incorrect name for the NLC.

Timeline

- 1 February 2012 - Denzhe Primary Care registered as NPO, but it never takes off.
- March to September 2016 - Lesley Ramulifho takes over Denzhe, apparently without the knowledge of the founder Takalani Tshikalange.
- July 2016 - Ado Krige and Ramulifho meet.
- 19 October 2016 - NLC deposits R7.5 million into Denzhe's bank account.
- 20 October 2016 - Contract between Denzhe and the contractor, Upbrand Properties, in which NLC COO Phillemon Letwaba's family has a stake.
- 4 November 2016 - Construction work starts at House Generation. This is followed by numerous problems and delays, and escalating tension between Krige and Ramulifho.
- March 2018 - Krige and Ramulifho's relationship completely breaks down.



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Dr. Rob Davies, MP
Minister of Trade and Industry
The dti Campus
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Sunnyside
Pretoria
0001

20 March 2019

Dear Dr Davies

ALLEGATIONS LEVELLED AGAINST THE NATIONAL LOTTERIES COMMISSION IN THE EDITORIAL AND ARTICLE PUBLISHED ON GROUNDUP ONLINE PUBLICATION

Reference is made to the recent article and editorial relating to the pro-actively funded projects published on 19 and 20 March 2019.

In its commitment to achieving sustainable growth through practicing good corporate governance, the NLC has funded duly registered organisations in line with legislative requirements. With respect to the allegations against the NLC and funded organisations, we wish to appraise the Minister as follows:

Dhenze Primary Care

The allegations in the media report dated 19 March 2019 relating to Dhenze Primary Care have been independently investigated and the report was delivered to the Minister on Monday, 4 March 2019. The NLC has adopted and in the process of implementing recommendations of the independent investigation report.



Board Members: Ms A. Brown (Minister's Representative) Ms D.T. Dander Mr. Y.N. Goshin Adv. W.E. Huma
Ms T.B. Kokuze Dr. G.A. Madzhenhe Prof. N.A. Nkomo (Chairperson) Ms N. Nkomo (Company Secretary)

Established in terms of the Lotteries Act 57 of 1997, as amended

JM

EP



I AM MADE 4 GOD'S GLORY

The project was an application-based project which followed due process and consideration by the Sport & Recreation Distributing Agency. In fulfilling the NLC's promise to take ownership of our responsibilities, to work effectively, efficiently and professionally in ensuring a positive and sustainable impact on communities we serve, the NLC's Monitoring & Evaluation team continues to ensure due compliance with NLC Grant Agreement pending finalization of the project.

DINOSYS NPC AND ZIBSIFUSION NPC

The NLC confirms that it has funded the afore-mentioned organisations, whom according to our records, Mr Ramulifho is not part or associated with the funded organisations. In our endeavor to be sensitive to the needs of the community, in order to initiate social upliftment, the NLC conducted research in response to the scourge of a lack of ablution facilities in rural schools. The NLC deemed it necessary to intervene in restoring the dignity of many underprivileged black children who are victims of the inhumane demise of being swallowed by "pit toilets" and eventual fatality by pro-actively funding the aforementioned organisations to implement this much needed and worthy good cause. In order to ensure sustainable impact in the communities we serve, the NLC has introduced additional quality assurance processes for pro-actively funded infrastructure projects that entails weekly monitoring by independent engineers. The projects are underway and progressing seamlessly, with the NLC looking forward to handing over these ablution facilities to deserving communities by end of May 2019.

I assure the Minister that the NLC remains committed to clean governance and all allegations of misuse of funds by the beneficiaries are taken seriously and investigated thoroughly. In our quest for honest, open, accessible and fair dealings, decisions and actions, we undertake to keep the Minister and relevant stakeholders apprised of further developments.

I trust you find the above in order.

Prof NA Nevhutanda

Chairperson of the National Lotteries Commission



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Prof. N A Nevhutanda
Chairperson: National Lotteries Commission
 Block B, Hatfield Gardens
 333 Grosvenor Street
 Hatfield
 0083

Dear Prof. Nevhutanda

ALLEGATIONS RELATED TO PRO-ACTIVE FUNDING

Your letter dated 15 February 2019 refers.

On 5 March 2019, my office received a forensic investigation report in respect of alleged irregularities relating to the Proactive Funding allocated to the Denzhe Primary Healthcare NPO. The dti, Internal Audit unit reviewed the report and the following shortcomings were identified:

- a) Interviews were not conducted with the officials mentioned in the report.
- b) There is no evidence that a site visit to Denzhe was conducted.
- c) Mr Ramullaho's affidavit is not conclusive, he is only confirming the statements in Ms Tshikalange's affidavit.
- d) Ms Tshikalange's affidavit is not conclusive, there is a section in the affidavit that makes reference to "we", the dti is unable to ascertain whether the affidavit was prepared by her or by someone else on her behalf. Also, Ms Tshikalange's affidavit makes reference to several annexures and such information has not been attached to the report.
- e) The latest status update in respect of a case that was allegedly reported by Ms Tshikalange was not obtained from the SAPS.
- f) The report makes reference to various requests for additional funding that was made to the NLC, yet the said requests were not provided to us. As part of annexures, the report does not further state the custodian of the said requests.

JM

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- g) The report does not indicate when "Upbrand Properties" was appointed to build the new rehabilitation centre, nor the current and previous Directors of Upbrand, as well as the procurement process that was followed in their appointment process.
- h) The report is silent on the role played by the COO in respect of the approval process of Denzhe's application.
- i) The report does not further indicate the date on which the brother of the COO resigned as the Director of Upbrand.
- j) The report does not indicate the failure by the grantee to conduct proper due diligence in line with section 7.1.10 of the Grant Agreement which states that *"the Grantee must conduct proper due diligence investigation on the appointed contractor in the event of the grant being utilised to construct a building"*.
- k) An amount of R27.5 million was allocated to Denzhe, however the expenditure cost breakdown in respect of the allocated funds was not provided or analysed accordingly with exception to a mere R535 240.34 paid to two Ocean Basket franchises.
- l) The report does not make reference to the submission of progress reports by Denzhe, contract to section 10.1.1.2 which indicates that *"Progress reports must be submitted once (75%) of each tranche payment has been utilised or six (6) months after each tranche payment, whichever comes first"*; and
- m) The COO's laptop was not imaged so to ascertain if there was no communication between himself and his brother that could have been crucial for the investigation.

In view of the above shortcomings, I thus recommend that the allegations in respect of Denzhe Primary Healthcare be re-investigated, and the scope of the investigation be extended to include the following additional allegations received relating to Proactive funding:

- Misappropriation of funds in respect of the rebuild of the Vhafamadi High School.
- Alleged fraudulent activities relating to Proactive Funding paid to the Buyelekhaya Annual Music Festival.

Yours sincerely



Dr Rob Davies, MP
Minister of Department of Trade and Industry

9 April 2019

CC: Ms. Thabang Mampane (Commissioner: NLC)






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NATIONAL LOTTERIES COMMISSION
a member of the dti group

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The dti Campus
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10 April 2019

Dear Dr. Davies

ALLEGATIONS RELATED TO PRO-ACTIVE FUNDING

Reference is made to your correspondence dated 9 April 2019 relating to allegations related Pro-Active Funding.

Dhenze Primary Care and Vhafamadi Secondary School

The Minister's assessment of the Dhenze independent investigation report is duly noted. Subsequent to your correspondence, the NLC has instructed the independent investigators to include findings on the work done including any further work to address the shortcomings identified by your respective office. The NLC has further expanded the scope of the investigators to include Vhafamadi Secondary School, notwithstanding the NLC's assessment report (enclosed hereto) submitted to your office on 10 October 2018. The NLC will take this opportunity to ensure that these matters are fully ventilated in a comprehensive report and all shortcomings identified will be addressed.

Buyelekhaya Project

Reference is made to the enclosed report submitted to the Minister on 26 March 2018 and subsequent Minister's correspondence dated 14 May 2018. The NLC considers the to be formally closed after



Endorsed in terms of the Lotteries Act 57
of 1997 as amended

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submission of the investigation report and receipt of enclosed correspondence from the Minister acknowledging the report and its contents. The NLC was advised to implement the recommendations of the investigation report and has complied with all recommendations of the report. Should there any further concerns beyond this report, the NLC will appreciate if this can be indicated so that appropriate measures can be taken.

The NLC will allow the independent investigators time to deal with matters raised above and comprehensive reports will be submitted on or about 5 May 2019.

I assure the Minister that the NLC remains committed to clean governance and all allegations of misuse of funds by the beneficiaries are taken serious and investigated thoroughly.

I trust you find the above in order.

A handwritten signature in black ink, appearing to read 'NA Nevhutanda', is written over the printed name.

Prof NA Nevhutanda

Commissioner of the National Lotteries Commission

Handwritten initials 'JM' in black ink.

Handwritten initials 'EP' in black ink.



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Prof. N A Nevhutanda
Chairperson: National Lotteries Commission
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0083

Dear Prof. Nevhutanda

**ALLEGATIONS RELATED TO PRO-ACTIVE FUNDING ALLOCATED TO DENZHE
PRIMARY HEALTHCARE NPO**

Your letter dated 10 April 2019 refers.

In your letter you advise that the NLC instructed the Independent Investigators to include the findings of the previous report and of further work completed to address the shortcomings identified by the dti. Additionally that the NLC has expanded the scope of the investigation to include the Vhafamadi Secondary School. the dti Internal Audit has also noted the outcome of the Buyelekhaya investigation and that the allegations have not been confirmed.

the dti reviewed the revised forensic report received on 09 May 2019, and note that certain shortcomings were not addressed. Given the seriousness of the allegations the following concerns which have been raised must be addressed:

- a) Mr Ado Krige should be interviewed to obtain his version of events as failure to do so is contrary to the principle of "audi alteram partem (hear the other party).
- b) Investigators did not engage with the CIPC to obtain evidence relating to the resignation of Mr Johannes Ledwaba as a Director of Upbrand.

JM

EP

In view of the two forensic investigation reports from your independent investigators, and in light of the investigation outcome, it is evident that the Proactive Funding allocated to Denzhe was not used for its intended purpose. I have also noted that there is an ongoing court process between the two external parties as stated in your forensic report. The NLC signed a grant agreement with Denzhe and an amount of R27,685,625.29 was paid to Denzhe. The outcome of the investigation is without evidence that the drug rehabilitation centre was completed.

Given the above, and in the spirit of good governance, I thus recommend recovery of the funds paid to Denzhe and the pursuit of a criminal case in line with section 76(1) (f) of the PFMA which states that "12.5.1 When it appears that the state has suffered losses or damages through criminal acts or possible criminal acts or omissions, the matter must be reported, in writing, to the accounting officer and the South African Police Service. If liability can be determined, the accounting officer must recover the value of the loss or damage from the person responsible. 12.5.2 The accounting officer may write off losses or damages arising from criminal acts or omissions if, after a thorough investigation, it is found that the loss or damage is irrecoverable."

Although the investigation did not find any evidence of conflict of interest concerning the brother of the Chief Operating Officer, the Department is concerned with potential issues of conflict of interest and discourages grant funding to family members and friends. Moving forward, this matter must be closely monitored to ensure that no actual or perceived conflict of interest with friends and family exists in grant funding applications. In addition, I am referring to the Department, consideration of policy guidelines on conflict of interest relating to public entities, for advice to the Ministry.

the dti is of the view that public confidence should be promoted with respect to Proactive Funding and I therefore request that you provide the dti Internal Audit with a list of all approved Proactive Funding Projects for the past three years (2016 -2018), to enable the unit to conduct an independent assessment on the funding granted for the period.

I kindly request feedback with timelines on the recommended remedial action within 30 days from the date of this letter. Additionally please provide my office with monthly progress reports thereafter.

Yours sincerely



Ebrahim Patel

Minister of Trade and Industry

14 August 2019

Cc: Ms. Thabang Mampane (Commissioner: NLC)





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22 August 2019

Prof NA Nevhutanda
Chairperson: National Lotteries Commission
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0083

Dear Prof Nevhutanda

GROUNDUP ALLEGATIONS RELATED TO CONFLICT OF INTEREST AND INCOMPLETE PROJECTS

Your letter dated 15 August 2019 refers.

I have noted the content of your letter and await your response to my letter dated 14 August 2019 emailed to you on 15 August 2019.

I note your assurance that the allegations of conflict of interest against the Chief Operating Officer are being investigated and request the following information:

- The name of the Independent Service Provider,
- The process undertaken to appoint the service provider,
- A copy of the Terms of Reference, and the
- Expected date for finalisation of the report.

I advise that I have requested the dti Internal Audit Team to conduct a site visit to the Denzhe Primary Healthcare NPO in order to provide additional information in relation to the concerns expressed.

Finally, please provide me with a list of all the Proactive Funding Projects approved by the NLC to date, within 10 days from the date of this letter.

Yours sincerely

EBRAHIM PATEL
MINISTER OF TRADE AND INDUSTRY

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NATIONAL LOTTERIES COMMISSION
a member of the group

National Lotteries Commission (P.L.C.)
P.O. Box 1936
Brooklyn Square 0033, Pretoria

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The Shareholder Compact concluded with the Minister requires the Commission to align its reporting activities to the King code, as published by the Institute of Directors South Africa. In implementing this alignment, during the financial year ended 31 March 2018, the NLC Board adopted the King code approach and continued to prepare and publish two integrated reports to date. In preparation of these reports, the NLC engaged extensively with experts accredited by the Integrated Report Council of South Africa to ensure the NLC meets the corporate governance standards of reporting but also ensures that legislative prescripts are met.

To this end, the NLC is comfortable that the non-publishing of the details relating to grants allocated is therefore not unlawful and the NLC's integrated report is fully compliant with legislative and governance requirements. The annual report is further quality assured by the Auditor General before submission to the Cll and Parliament.

Information Security

In the spirit of openness and transparency and owing to the fact that grants allocated to non-profit organisations, non-profit companies and public benefit trusts are ultimately public funds which need to be fully accounted for, the National Lotteries Commission has always in all preceding years published information about grants allocated in different sectors. This information included the names of organisations, amounts allocated and dates that these amounts were paid.

The reality with the stance taken by the Commission is that there was always a possibility that this information or the release thereof to the public could be a contravention of the legal framework dealing with the release or non-release of grant related information. There is a specific piece of legislation governing security of grant related information which is stated hereunder.

The regulations states as follows: -

Regulations Relating to Distributing Agencies (Government Gazette 7013, 22 February 2001)

Regulation 8 "Security of Information"

Subject to the Constitution, the Promotion of Access to Information Act, 2000 (Act No.2 of 2000), the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) and the Protected Disclosures Act, 2000 (Act No 28 of 2000), no person may in any way-

- Disclose any information in connection with any grant application or a grant itself;***
- Disclose the contents of report contemplated in regulation 8(1); or***
- Publish any information obtained in contravention of paragraph (a) or (b); unless-***
- Ordered to do so by a court of law;***

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- Making a bona fide confidential disclosure or publication to the Minister, the Public Protector, Parliament or a committee designated by Parliament, a member of the South African Police Service or the National Prosecuting Authority;
- The juristic person who made the grant application and the board consent thereto in writing prior to that disclosure or publication; or
- provided for in these regulations.

An agency, a person appointed to an agency or any person rendering services to an agency in whatever capacity may not in any way disclose any information in respect of or comment upon a grant application or a grant itself unless authorized thereto in writing by the Minister or the chairperson of the board.

Any person who contravenes sub regulation (1) or (2) shall be guilty of an offence and liable to a fine or to imprisonment or to both a fine and imprisonment.

The Commission carefully considered whether publishing of the information in question owing to these regulations and a number of events in the past two years where we have seen concerted efforts by some journalists who seem to be focused on negative reporting about grant allocations without understanding NLC processes which are technically strictly prescribed. Some of these journalists have even gone on record to state that, where they were unsuccessful with 'information request' through the Promotion of Access to Information Act (PAIA Act No 2 of 2000), this information was subsequently leaked to them. On the strict reading of the regulations above, both these journalists and the persons 'unlawfully disseminating information' are actually committing a crime.

A passage of the article Groudup article (dated 22 November 2018) reads as follows:

"An application was made under the Promotion of Access to Information Act (PAIA) to force the NLC to provide information, but without success. Even an appeal was turned down, with the NLC reverting to a "secrecy clause" in the regulations and the protection of the privacy of NPCs. Documents were, however, leaked to us which helped provide the missing pieces of the puzzle".

This matter was also referred to the office of the Information Regulator on or about 12 March 2019 after the continuation of unlawful dissemination of beneficiary information and demands from civil society organisations who wrote to parliament as well around issues of the unlawful dissemination of their information.

The NLC had to explain itself and its processes as information normally released and/or published by journalists will inevitably contain personal information as defined by the Protection of Personal Information Act 4 of 2013 (POPI Act 4 of 2013) [See letter from Sangonot dated 10 December 2018 and letter from CASCA dated 06 December 2018].

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Given the situation, the NLC had to ensure that it adopts measures that ensure full compliance with the requirements of the Lotteries Act 67 of 1997 (as amended), the Treasury Regulations (Annual Report Guide for Schedule 3A and 3C Public Entities) while protecting its beneficiaries as dictated by the law.

Furthermore, in the first quarter of the current financial year, the Commission received complaints from beneficiaries with claims of extortion and fake warrant of arrests with a clear calculated purpose of inducing beneficiaries to pay over their grants to these 'faceless and calculating' crooks. Some NLC officials were also targeted and statements have been made with the police in this regard. The dangers of unlawful dissemination of information is therefore real and the NLC has had to deal with and advise many beneficiaries to open criminal cases.

The NLC has alerted the erstwhile Minister and the previous parliament about information of NLC beneficiaries which the purported journalist stored on a computer system outside the NLC's control, prompting the Commission to approach the State Security Agency for investigation. The investigation by the State Security Agency is still ongoing. The NLC remains committed to transparency within the prescripts of the law while balancing the rights and interests of its beneficiaries, hence the insistence that information dissemination be managed within the processes of the Promotion of Access to Information Act (PAIA Act 2 of 2000).

Conclusion

The King IV code principles state that the governing body should in its execution of its governance role and responsibilities, the governing body should adopt stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interest of the organisation over time. In view of the the above requirements of balancing stakeholder needs, complying with the NLC's regulatory universe in terms of information handling and commitment to delivering the NLC mandate in an open and transparent manner, the NLC its fiduciary responsibility to ensure that legislative prescripts are ashered to and the interest of the NLC and its stakeholders are preserved.

I trust you find the enclosed in order.

Prof NA Nevhutanda

Chairperson of the National Lotteries Commission

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**MINISTRY
TRADE AND INDUSTRY
REPUBLIC OF SOUTH AFRICA**

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Prof NA Nevhutanda
The Chairperson: National Lotteries Commission
Block B, Hatfield Gardens
333 Grosvenor Street
Hatfield
Pretoria
0083

Dear Prof Nevhutanda

OUTSTANDING MATTERS

The Ministers letters dated 14 and 22 August 2019 attached herewith refers.

I write to advise you that the Minister has not received responses to the matters raised in the above-mentioned letters. The specific issues raised were as follows:

Letter dated 14 August 2019:

- (i) Mr Ado Krige be interviewed to obtain his version of events as failure to do so is contrary to the principle of "audi alteram partem" (hear the other party);
- (ii) NLC investigators to engage with the CIPC to obtain evidence relating to the resignation of Mr Johannes Letwaba as a Director of Upbrand;
- (iii) The NLC to ensure that no actual or perceived conflict of interest with friends and family exists in grant fund applications;
- (iv) Recovery of funds paid to Denzhe and pursuit of a criminal case in line with Section 76(1)(f) of the PFMA;
- (v) Feedback with timelines on the recommended remedial actions within 30 days from the date of the letter; and
- (vi) A list of all approved Proactive Funding Projects for the past three years (2016-2018).

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Letter dated 22 August 2019:

- (i) The name of the Independent Service Provider investigating the allegations of conflict of interest against the COO of the NLC;
- (ii) The process undertaken to appoint the Service Provider;
- (iii) A copy of the Terms of Reference for the investigation;
- (iv) Expected date for the finalisation of the report; and
- (v) A list of all the Proactive Funding Projects approved by the NLC

As the response is long overdue your urgent feedback on the above-mentioned issues should reach the Minister no later than Thursday 7 November 2019.

Yours sincerely



Mr Moosa Ebrahim
Chief of Staff: Office of the Minister
04 November 2019

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48



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Minister Ebrahim Patel
Minister of Trade and Industry
The dti Campus
77 Meintjies Street
Sunnyside
Pretoria
0001

4 November 2019

Dear Mr E Patel,

ALLEGATIONS RELATED TO PRO-ACTIVE FUNDING ALLOCATED DENZHE PRIMARY HEALTHCARE NPO

Reference is made to my correspondence to the Minister dated 14 August 2019.

The NLC has requested engagement with relevant officials from the dti Internal Audit Division on certain matters.

The NLC is in the process of implementing the proposed remedial actions detailed in your correspondence dated 14 August 2019 and a report on the implementable actions will be submitted to the Minister in due course.

I trust you find the above in order.

Yours Faithfully

Prof NA Nevhutanda
Chairperson of the National Lotteries Commission



CHANGING LIVES
Board Members: Ms A Brown (Minister's Representative), Ms D Conder, Prof YH Gordon, Adv WJ Jansen
Dr MA Madzvamanda, Prof NA Nevhutanda (Chairperson), Adv Mampurele Nene (Company Secretary)

Established in terms of the Lotteries Act 57 of 2007, as amended

JM

42



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NATIONAL LOTTERIES COMMISSION
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18 November 2019

Dear Minister E Patel,

ALLEGATIONS RELATED TO THE PRO-ACTIVE FUNDING ALLOCATED TO DENZHE PRIMARY HEALTHCARE NPO

The meeting held with the Minister and Director General of the Department of Trade and Industry on 18 November 2019 bears reference.

I wish to thank you for the opportunity to discuss my term of office as Chairperson of the Board of the National Lotteries Commission (NLC), as well as your understanding and guidance provided during the session. I trust that the clarification provided on the matter will add value to the Minister and the Department's consideration.

On the NLC's internal issues raised by the Minister, I have taken note and provided the Commissioner with an overview of the concerns raised by the Minister.

The Commissioner has reminded me that the Commission received correspondence from the Minister dated 14 August 2019, wherein the following were highlighted:

- 1. Extract from Minister's Correspondence: The NLC instructed independent investigators to include the findings of the previous report and of further work completed to address the short comings identified by the dti.**

NLC response: The NLC Board commissioned and tabled to the Minister the following three independent investigation reports in line with sections (10)L and 10(O) of the Lotteries Act, the

CHANGING LIVES

Board Members: Ms A Brown (Minister's Representative), Ms D Dondor, Prof YN Gordon, Adv WE Hums
Dr MA Madhavananda, Prof MA Mkhutshana (Chairperson), Adv Nompamelo Nene (Company Secretary)

Established in terms of the Lotteries Act 97 of 1997, as amended

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PFMA, Treasury Regulations and NLC policies relating to matters of fraud. The NLC is of the considered view that all allegations brought to the NLC's attention through media articles were comprehensively addressed in the below-mentioned reports.

INVESTIGATION REPORTS	INVESTIGATION STATUS
<i>Buyelekhaya</i>	Concluded and closed with recommendations implemented.
<i>Denzhe</i> <ul style="list-style-type: none"> <i>Denzhe Initial report dated 3 March 2019</i> <i>Expanded Scope report dated 9 May 2019</i> <i>Further expanded scope 30 September 2019</i> 	Concluded and closed with recommendations of the investigation accepted and implemented. See below for status of the Minister's recommendations
<i>Vhafamadi</i>	Concluded and closed with recommendations of the investigation accepted and implemented.

- 2. Extract from Minister's Correspondence:** Additionally, that the NLC has expanded the scope of investigation to include Vhafamadi Secondary School.

NLC response: The independent investigation found no misappropriation of NLC funds in terms of Vhafamadi. The recommendations of the investigation were implemented, with one of the recommendations instructing the NLC to release the outstanding tranche payment of approximately R2 million for conclusion of the project. Please see enclosed annexed: Vhafamadi report – Annexure A

The NLC awaits feedback from the Minister in this regard.

- 3. Extract from Minister's Correspondence:** The dti Internal Audit has also noted the outcome of the Buyelekhaya Investigation and that the allegations have not been confirmed.

NLC response: The outcome of NLC's independent investigation into Buyelekhaya categorically states that there was no misappropriation of funds and that the non-financial related allegations were baseless. The then Minister of Trade and Industry (Mr Rob Davies) accepted the outcome

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of the investigations and NLC has implemented all recommendations from the report. Please see enclosed annexed: Buyelekhaya report and Minister's correspondence – Annexure B

- 4. Extract from Minister's Correspondence:** The dti reviewed the revised forensic report received on 9 May 2019 and note that certain shortcomings were not addressed. Given the seriousness of the allegations the following concerns which have been raised must be addressed: Mr Ado Krige should be interviewed to obtain his version of events as failure to do so is contrary to the principle of "audi alteram partem" (hear the other party).

NLC response: The NLC has provided Mr Krige ample opportunity to satisfy the audi alteram partem rule. Enclosed is a detailed report on extensive engagement with numerous individuals within NLC and NLC mediators. In the report submitted on 9 May 2019, Mr Krige refused to meet with the NLC's investigators during the investigation, thereby refusing the right to be heard for purposes of the investigation report. The investigators made several telephonic attempts to meet with Mr Krige and visit the site. Mr Krige advised he was only prepared to meet with NLC investigators only if the investigators would be negotiating settlement. Mr Krige further advised NLC investigators that he had already met with representatives from the dti and therefore saw not point of meeting with NLC investigators. (See annexure 25 of Further Extended Scope). This statement is corroborated by confirmation received from a representative of the dti that an engagement was held with Mr Ado Krige as mandated by Minister Patel to conduct a site visit. The NLC is yet to receive notification of this engagement or related report. The investigators have relied on previously recorded engagements (annexed as Annexure C) to arrive at their findings. The NLC has requested from internal audit of the dti an engagement (annexed as Annexure D) relating to the Minister's correspondence and to discuss their meeting with Mr Ado Krige together with the terms of reference of the independent assessment. The meeting was subsequently declined by the dti's Chief Audit Executive; we await further engagement on this matter.

- b. Extract from Minister's Correspondence:** Investigators did not engage with CIPC to obtain evidence relating to the resignation of Mr Johannes Ledwaba as a Director of UpBrand

NLC response: The independent investigation was comprehensive and the said CIPC document was provided as follows:

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INVESTIGATION REPORTS	ANNEXURE
Denzhe <ul style="list-style-type: none"> <i>Expanded Scope report dated 3 May 2019</i> <i>Further expanded scope 30 September 2019</i> 	<p>Annexure 25, page 314 of the Investigation report</p> <p>Annexure 22, page 131 of the Investigation report</p>

5. **Extract from Minister's Correspondence:** In view of the two forensic investigation reports from your independent investigators and in light of the investigation outcome, it is evident that the Proactive Funding allocated to Denzhe was not used for its intended purpose. I have also noted that there is an ongoing court process between the two external parties as stated in your forensic report. The NLC has signed a grant agreement with Denzhe and an amount of R27 585 625 was paid to Denzhe. The outcome of investigation is without evidence that the drug rehabilitation centre was completed.

NLC response:

Finding of misappropriation of R27 585 625.00 was not confirmed through the investigation report. The summary of findings is detailed below: The NLC will pursue recovery of the last tranche payment of R5 585 625.29, where a satisfactory progress report has not been submitted in order to close the project.

DENZHE	INVESTIGATORS FINDINGS	INVESTIGATORS RECOMMENDATION	IMPLEMENTATION STATUS
Findings : 3 March 2019 Report	Denzhe was found to have contravened the provisions of Clause 2.2.3 of the Grant Agreement by using grant monies for purposes that they were not intended for in relation to two payments totaling R535 240 from Denzhe's bank account	It is recommended that the NLC deals with the above matter in terms of its delinquency policy.	<p>The amount of R535 240.00 was paid back to beneficiary's account. The beneficiary was listed on the delinquency panel.</p> <p>Recovery of R5 585 625.29 for last tranche where progress report was not</p>

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40

DENZHE	INVESTIGATORS FINDINGS	INVESTIGATORS RECOMMENDATION	IMPLEMENTATION STATUS
	towards two Ocean Basket franchises.		submitted is underway
Findings : 3 March 2019 Report	It was found that Denzhe was not hijacked as alleged by the newspaper article(s) and Mr. Ramulitho was appointed as Chairperson in terms of a valid resolution taken by the Board of Denzhe and Ms. Tshikalenge has been reinstated to her position as chairperson by a further resolution.	It is recommend that Denzhe exercise their rights in so far as the remedies for seeking a retraction by the newspaper(s) of the above allegation as it is injurious to the name of Denzhe and the NLC as a funder.	Not applicable to the NLC
Findings : 3 March 2019 Report	It is found that the article in question and other articles published subsequent thereto contain confidential beneficiary information and therefore are in contravention of Regulation 8.	It is recommended that the NLC conduct a GMS audit trail on all employees who accessed the Denzhe project and further conduct an investigation into the leaking of confidential beneficiary information.	An internal investigation in this regard is in progress.
Findings : 3 March 2019 Report	<p>The facts in relation to the allegations levelled against the COO regarding conflict of interest or perceived conflict of interest on his part did not pass the jurisprudence on the principles relating to conflict of interest and thus no finding of conflict of interest could be made.</p> <p>The principle is essentially that: "Where one man stands to another in a position of confidence involving a duty to protect the interest of that other, he is not allowed to</p>	It is recommended that the NLC considers writing to the newspapers and demand a retraction of the above allegation.	<p>The NLC is considering its options.</p> <p>Mr Letwaba has instituted legal action against the author of the report.</p>

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DENZHE	INVESTIGATORS FINDINGS	INVESTIGATORS RECOMMENDATION	IMPLEMENTATION STATUS
	make a secret profit at the other's expense or place himself in a position where his interests conflict with his duty..."		
Findings : 3 March 2019 Report	Denzhe was found to have failed to conduct a proper due diligence investigation before entering into a contract with House Regeneration (HR). The above is a violation of the directive set out in Clause 7.1.10 of the Grant Agreement.	It is recommended that where a beneficiary is funded in respect of a project that involves the construction of any immovable structure, such beneficiary ought to satisfy the NLC with either of the following before the first tranche is paid: 5.5.1.1 Proof of ownership of land (title deed); 5.5.1.2 A signed offer to purchase; or 5.5.1.3 Permission to occupy in respect of tribal land.	Incorporation into Grant Funding Policy and SOP underway.
Findings : 3 March 2019 Report	It is found that Ms. Anna Aletta Johanna Krige (Spouse of Mr Krige) is the title deed holder over the land upon which the drug rehabilitation centre is being built, and as a result Denzhe does not have any real rights over the property. It is found that HR is not registered with the DSD and has been instructed to abort its operations by the DSD. Taking into account that there is an ongoing legal dispute between the parties,	It is recommended that the NLC monitors the court case and if the court finds in favour of Denzhe, the NLC must intervene to ensure that monies are used for the intended purpose. Should the court find in favour of the Defendants, the NLC must take the necessary steps provided for in the Delinquency policy.	NLC has proceeded to list beneficiary on the delinquency committee and recover the last tranche payment of R5 585 625.29, which progress report remains outstanding

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DENZHE	INVESTIGATORS FINDINGS	INVESTIGATORS RECOMMENDATION	IMPLEMENTATION STATUS
	the investigators found it difficult to make other recommendations as there are clear 'dispute of facts' as some issues of consideration in the attached report also form part of the dispute that has now been referred to court and is considered to be sub-judice.		
Findings : 3 May 2019 Report	We found that Denzhe submitted progress reports in line with clause 7.1.1.1.2. of the Grant Agreement for the period between October 2019 and June 2017		NLC has proceeded to list beneficiary on the delinquency committee and recover the last tranche payment of R5 585 625.29, which progress report remains outstanding
Findings : 3 May 2019 Report	We found that although the Grant Agreement imposes a duty on beneficiaries to follow a competitive process in the appointment of service providers, direct appointment is still possible and beneficiaries are not required to report on procurement aspect	We recommend NLC impose a condition in the grant agreement that beneficiaries must report on procurement of contractors and provide proof that an open and competitive process was followed in appointment of service providers.	Incorporation into Grant Funding Policy and SOP underway.
Findings : 3 May 2019 Report	We imaged the COO's laptop with Lwezi Technologies and found no correspondence between COO and his brother. Accordingly there was no conflict of interest or perceived conflict of interest on the part of the COO in relation to Denzhe project	No further recommendation	No action required
Findings : 3 May 2019 Report	We found that Denzhe failed to conduct proper due	No further recommendation	Incorporation into Grant Funding Policy and SOP

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38

DENZHE	INVESTIGATORS FINDINGS	INVESTIGATORS RECOMMENDATION	IMPLEMENTATION STATUS
	diligence in appointment of HR		underway on procurement of service provider.
Findings : 3 May 2019 Report	We found Denzhe failed to conduct proper due diligence in line with 7.1.10 in the appointment of a contractor. We further found that the NLC has since appointed a panel of engineers to assist beneficiaries with <i>inter alia</i> conducting due diligence on the contractors in related projects.	No further recommendation	Incorporation into Grant Funding Policy and SOP underway on procurement of service provider.

6. **Extract from Minister's Correspondence:** Given the above, and in the spirit of good governance, I thus recommend recovery of the funds paid to Denzhe and pursuit of a criminal case in line with section 76(1)(f) of the PFMA which states that ***"12.5.1 When it appears that the state has suffered losses or damages through criminal acts or possible criminal acts, the matter must be reported, in writing, to the accounting officer and the South African Police Service. In the case of omissions, the matter must be reported, in writing, to the accounting officer. Whether or not the person is still in the employ of the state, the accounting officer must recover the value of the loss or damage from the person responsible. 12.5.2 The accounting officer may write off and disclose losses or damages arising from criminal acts or omissions if, after a thorough investigation, it is found that the loss or damage is irrecoverable."***

NLC response: In line with NLC records and investigation report the beneficiary failed to comply in relation with submission of progress report of the last tranche of R5 585 625.29 due to the on-going litigation between the parties. The NLC Grant Agreement states that NLC may recover grant in instances of non-compliance with the Grant Agreement. The NLC has implemented the Policy on Delinquent beneficiaries for the outstanding amount and recovery underway in line with PFMA aligned NLC policy debt strategy.

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- 7. Extract from Minister's Correspondence:** Although the Investigation did not find any evidence of conflict of interest concerning the brother of Chief Operating Officer, the Department is concerned with potential issues of conflict of interest and discourages grant funding to family members and friends. Moving forward, this matter must be closely monitored to ensure that no actual or perceived conflict of interest with family and friends exists in grant funding applications. In addition, I am referring the Department, consideration of policy guidelines on conflict of interest relating to public entities for advise to the Ministry

NLC response: Investigators tested for conflict of interest and found that there was no conflict of interest identified in respect of Mr Johannes Letwaba and Mr Phillemon Letwaba, as also assessed and expressed in the Minister's correspondence. The NLC continues to monitor and enhance its internal processes on management of conflict of interest.

- 8. Extract from Minister's Correspondence:** The dti is of the view that public confidence should be promoted with respect to Proactive Funding and I therefore request you provide the dti Internal Audit with a list of approved Proactive Funding Projects for the past three years (2016-2018) to enable the unit to conduct an independent assessment of the funding granted for the period.

NLC response: The AGSA conducted an independent assessment during the 2018/19 audit of all project files and site visit verification of pro-actively funded projects. The NLC has requested from internal audit of the dti a meeting relating to the Minister's correspondence and to discuss the terms of reference of the independent assessment. The meeting was subsequently declined by the dti's Chief Audit Executive; we await further engagement on this matter.

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I trust you find the above in order.

Yours Faithfully

A handwritten signature in black ink, appearing to read 'Nevhutanda', is written over a horizontal line.

Prof NA Nevhutanda

Chairperson of the Board of the National Lotteries Commission

A handwritten signature in black ink, appearing to be the initials 'Jm'.

A handwritten signature in black ink, appearing to be the initials 'ef'.



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EP16

Minister Ebrahim Patel
Minister of Trade, Industry and Competition
The dti Campus
77 Meintjies Street
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20 February 2020

Dear Mr E Patel,

DOCUMENT REQUEST FOR MEETING TO BE HELD ON 20 FEBRUARY 2020

The purpose of this correspondence is to provide the Minister brief on the information provided.

Pro-Active Funding Policy

The policy is provided for the Chairperson of the Board and the Commissioner to provide members with an overview of the Pro-Active Funding process.

Appointment of Independent Audit Firm

the Board has offered any member of the public an unrestricted platform to report any acts of wrongdoing, corruption or fraud through the appointed independent audit firm, Sekela Xabiso to provide all evidence, without limitation and including evidence on independent investigations already concluded and submitted to the Minister and Ministry.

Contravention of Regulation 8 of the 2001 Regulations to the Lotteries Act 57 of 1997, as amended.

GroundUp has been relentless in publishing misleading information on the NLC, despite numerous advice on the unlawfulness of such action. As such the Commission was left with no option but to pursue legal remedies pursuant to its obligation to protect applicant and beneficiary information which continues to compromise the duty of the NLC to protect its applicants and beneficiaries against contravention of applicable provisions in the Lotteries Amendment Act as well as POPI and PAIA provisions.

CHANGING LIVES

Board Members: Ms A Broom (Minister's Representative), Ms O Dondur, Prof YH Goshen, Adv WE Huma
Dr MA Maphahlele, Prof NA Nkomo (Chairperson), Adv Nampumetse Nene (Company Secretary)

Established in terms of the Lotteries Act 57
of 1997, as amended

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PRO-ACTIVE FUNDING POLICY


2019

Internal Use



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	PRO-ACTIVE FUNDING POLICY	COMPANY SECRETARIAT DOCUMENT NUMBER: DOC-POL-OP-GF-0 REVISION NUMBER: 5 EFFECTIVE DATE: 1 April 2019 DOCUMENT CLASSIFICATION: Internal Use
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1. POLICY STATEMENT

- 1.1 THE GOVERNING BODY – Governing Compliance with laws and ensuring consideration of adherence to non-binding rules, codes and standards
- 1.2 The Board of the NLC is committed to integrity based performance that protects and enhances the value and reputation of the National Lotteries Commission. The Board understands not only the obligations created by legislation but the rights and protections legislation affords the Commission. The Board adopts a holistic view of how applicable laws, non-binding rules, codes and standards relate to one another.

The Board recognises the role of compliance with applicable regulatory requirements plays in the governance and sustainability of the Commission and undertakes to subscribe to fundamental principles to ensure compliance with relevant legislation.

In discharging its duties of ensuring that the NLC complies with all prescripts of the law, the NLC Board commits that the NLC shall conduct its business in accordance with the letter and spirit of applicable regulatory requirements and ensure that appropriate policies, frameworks and relevant resources are committed to promote a culture of compliance within the Commission.

2. CORE VALUES

- 2.1 The NLC is committed to achieving sustainable growth through the practice of good corporate governance, provision of excellent service and sound regulatory practice.



3. LEGISLATIVE FRAMEWORK

- 3.1 This Policy is guided by the primary legislative framework as indicated on Policy Manager

AUTHORISED FOR IMPLEMENTATION		APPROVER	
Ms. TCC Mampene Commissioner		Prof NA Nevhutanda Chairperson of Board	
Date of Approval	12 March 2019	Date of Approval	12 March 2019

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PRO-ACTIVE FUNDING POLICY

COMPANY SECRETARIAT

DOCUMENT NUMBER DOC-POL-OP-GF-0

REVISION NUMBER 5

EFFECTIVE DATE 1 April 2019

DOCUMENT CLASSIFICATION Internal Use

5. PURPOSE

- 5.1 The National Lotteries Commission (NLC) was established in 1998 to regulate the National Lottery and to oversee the distribution of funds to good causes. The NLC reports to Parliament through the Department of Trade and Industry (dti). The Amended Lotteries Act Number 32 of 2013 makes provision for pro-active funding. It states that "the Commission may, upon request by the Minister, Board or its initiative in consultation with the Board, conduct research on worthy good causes that may be funded without lodging an application prescribed in terms of the Act". The Act provides an opportunity for the Commission, Board and the Minister to pro-actively fund worthy good causes that are aligned to broader developmental agenda of the country such as National Development Plan (NDP), Government Nine (9) Point Plan etc.
- 5.2 In this model, the broad project idea originates with, and is developed strategically and pro-actively by the NLC, based on research conducted. Pro-active funding may also be made available for emergency support following natural or other disasters.

6. SCOPE

- 6.1 This policy shall apply throughout the NLC including its provincial offices.

7. PILLARS OF THE POLICY

7.1 NLC FUNDING MODEL

- 7.1.1 The NLC Funding Model principles espoused in this policy are informed by Section 2A paragraph 3 and 4 dealing with the functions of the Commission:
- 7.1.2 Paragraph 3 states that: "The Commission may, upon request by the Minister, Board or its own initiative in consultation with the Board, conduct research on worthy good causes that may be funded without lodging application prescribed by the act. (Pro-Active Funding)
- 7.1.3 Paragraph 4 states that: "The Commission may, upon request by the Minister, Board or on its initiative in consultation with the Board, invite applications for grants from worthy good causes in the prescribed manner" (Application based)

AUTHORISED FOR IMPLEMENTATION		APPROVER	
Ms. TCC Mampane Commissioner		Prof NA Nevhutanda Chairperson of Board	
Date of Approval	12 March 2019	Date of Approval	12 March 2019

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PRO-ACTIVE FUNDING POLICY

COMPANY SECRETARIAT

DOCUMENT NUMBER DOC-POL-OP-GF-0

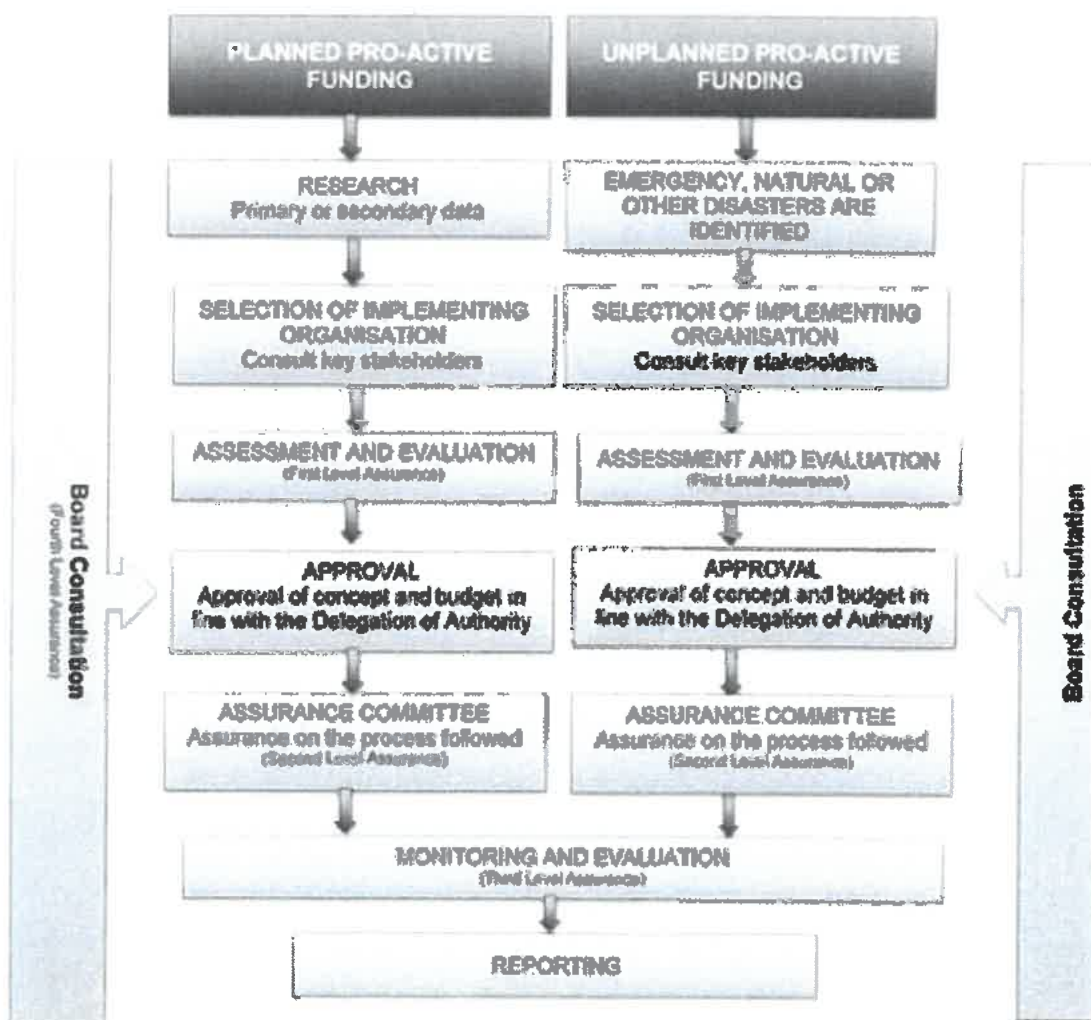
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7.1.4

High Level Overview of Pro-Active Funding Process



AUTHORISED FOR IMPLEMENTATION

Ms. TCC Mampane
Commissioner

Date of Approval

12 March 2019

APPROVER

Prof NA Nevhutanda
Chairperson of Board

Date of Approval

12 March 2019

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PRO-ACTIVE FUNDING POLICY

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7.1.5 Two modes of funding constitute the model, namely:

- i. Application-based funding; and
- ii. Proactive Funding

The application-based funding mode will follow the normal application process as outlined in the Grant Funding Policy, while pro-active funding mode will follow the process outlined on the process flow above. Both modes involve thorough monitoring and impact evaluation as a basis for assessing the return in NLC Investment.

7.2 PRO-ACTIVE FUNDING

7.2.1 Planned pro-active funding

7.2.1.1 Research

7.2.1.2 The Business Development Department (BDD) will conduct a research to identify strategic areas that should be considered for funding through pro-active funding. The research can be conducted through the collection of primary data or analysis of secondary data (desktop study).

7.2.1.3 Selection of implementing organisation

7.2.1.3.1 The Grant Funding Department will consult key stakeholders in selecting the most appropriate organisation to implement the project. Capacity and ability to implement the project will serve as the key factor in selecting the implementing organisation.

7.2.1.3.2 Organisations implementing the project will be selected in accordance with the relevant sector within which the proactive funding project resides, i.e.; a charity organisation in case of a charity project.

7.2.1.3.3 Unless otherwise, organisations implementing proactive funding projects must reside within the area and/or province within which the project is being implemented. In cases where there are no registered organisations within the identified/affected community, the NLC will assist the community in registering an organisation.

7.2.2 Assessment and Evaluation

7.2.2.1 The Grant Funding Department will assess, evaluate and recommend funding for approval in line with the approved Delegation of Authority.

7.2.3 Approval

7.2.3.1 The pro-active funding will be approved in line with the approved Delegation of Authority.

7.2.4 Assurance Committee

7.2.4.1 The NLC will establish assurance committee that consist of three members of the DA. The role of the committee is to conduct quality assurance on the process followed above. The Committee ensures that allocations are appropriate and adequate.

7.2.5 Monitoring and Evaluations

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EFFECTIVE DATE 1 April 2019

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- 7.2.5.1 Monitoring and evaluations (M&E) site visits will be conducted to establish compliance to the agreed terms and the impact of the funding.
- 7.2.6 Reporting**
- 7.2.6.1 The funded organisation will be required to submit interim and final reports as outlined in the Grant Agreement and Implementation Plan.
- 7.2.7 Board Consultation**
- 7.2.7.1 In line with the approved Delegation of Authority, the NLC will consult the Board on approved pro-active funding projects. Consultation refers to advising, keeping abreast, or notifying the Board about pro-active funding projects. Board consultation might take place at any stage of the process ranging from project identification to implementation.
- 7.3 Unplanned pro-active funding**
- 7.3.1 Emergency, natural and other disasters
- 7.3.1.1 Emergency or disasters are events that have adverse effect to the wellbeing of the society and require urgent intervention. Emergency, natural or other disasters can be identified internally or externally.
- 7.4 Selection of Implementing Organisation**
- 7.4.1 The Grant Funding Department will consult key stakeholders in selecting the most appropriate organisation to implement the project. Capacity and ability to implement the project will serve as the key factor in selecting the implementing organisation.
- 7.4.2 Organisations implementing the project will be selected in accordance with the relevant sector within which the proactive funding project resides, i.e.; a charity organisation in case of a charity project. Unless otherwise, organisations implementing proactive funding projects must reside within the area and/or province within which the project is being implemented. In cases where there are no registered organisations within the identified/affected community, the NLC will assist the community in registering an organisation.
- 7.5 Assessment and Evaluation**
- 7.5.1 The Grant Funding Department will assess, evaluate and recommend funding for approval in line with the approved Delegation of Authority.
- 7.6 Approval**
- 7.6.1 The pro-active funding will be approved in line with the approved Delegation of Authority.
- 7.7 Assurance committee
- 7.7.1 The NLC will establish assurance committee that consist of three members of the DA. The role of the committee is to conduct quality assurance on the process followed above.
- 7.8 Monitoring and evaluations
- 7.8.1 Monitoring and evaluations (M&E) site visits will be conducted to establish compliance to the agreed terms and the impact of the funding.

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Ms. TCC Mampane Commissioner		Prof NA Nevhutanda Chairperson of Board	
Date of Approval	12 March 2019	Date of Approval	12 March 2019

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PRO-ACTIVE FUNDING POLICY

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REVISION NUMBER	5
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7.9 Reporting

7.9.1 The funded organisation will be required to submit interim and final reports as outlined in the Grant Agreement and Implementation Plan. The NLC will take corrective actions against organisations that fails to submit reports within the agreed time frames.

7.10 Board consultation

7.10.1 In line with the approved Delegation of Authority, the NLC will consult the Board on approved pro-active funding projects. Consultation refers to advising, keeping abreast, or notifying the Board about pro-active funding projects. Board consultation might take place at any stage of the process ranging from project identification to implementation.

7.11 CREATION OF LIABILITY

7.11.1 When the Quality Assurance Committee makes a decision to allocate funding for pro-active funding projects, a grant liability will be created. This will be done in line with the Grants Financial Management Policy.

7.12 CANCELLATION AND RECOVERY OF GRANTS

7.12.1 Cancellation of a grant refers to annul or invalidation of the Grant Agreement entered into between the NLC and the grantee. The Commission shall have the right to cancel a Grant Agreement under the following scenarios: breach of Grant Agreement; voluntary cancellation of the Grant Agreement by the beneficiary due to various reasons; cancellation due to identification and/or determination of irregularities from the beneficiary organisation; or any other reasons that the Minister considers enough to warrant cancellation as set out in Section 31 of the Act.

8. DISPUTE RESOLUTION

8.1 Complaints and grievances will be dealt with in terms of approved NLC Grievance Procedures

9. DEVIATION

9.1 The Board delegates authority to consider written requests for deviations from this policy to the Commissioner.

10. SANCTIONS

10.1 Employees who do not adhere to this policy shall be subjected to disciplinary measures in terms of the Disciplinary Procedures of the NLC.

11. POLICY REVIEW

11.1 This policy shall be reviewed annually or as and when required by the Board

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Ms. TCC Mampane Commissioner		Prof NA Nevhutanda Chairperson of Board	
Date of Approval	12 March 2019	Date of Approval	12 March 2019

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EP17



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DATE: 02 March 2020

OUR REF: REF: 244/PCM1042020

YOUR REF:

TO:

The Minister of Trade and Industry Departments

Honourable Mr Ebrahim Patel

Per E-mail: mebrahim@thedti.gov.za

AND TO:

The Director-General of Trade and Industry Department

Mr Lionel October

Per E-mail: loctober@thedti.gov.za

RE: CIVIL SOCIETY CONCERNS WITH PROTECTION OF NLC BENEFICIARIES'
INFORMATION

We refer to above matter.

Attorneys/Conveyancers/Notaries/Administrators of Estates & Labour Law Practitioners

Director: Popela Coffat Maahe (LLB/LLM Unilim)

Polokwane Branch: 152A Marshall Street, 0700. Tel: 015 295 7682, 015 291 3593, Fax: 015 291 3848

Though Heavens Might Fall- We ensure that Justice Prevails

We confirm that we act on behalf of the United Civil Society in Action, our client in above matter and at whose specific instance and request we direct this correspondence to you.

Our client is a lobby group campaign representing various Non-Government Organisations in South Africa inclusive of #NotInMyName, SANGOCO, Independent Beneficiaries Forum and SANGONeT.

It is our instructions that continuous media reporting has been heightened about alleged widespread corrupt activities, nepotism and mismanagement within the National Lotteries Commission over the past months, and our client has been in the forefront calling for engagement on the matter through several communiques written to your office with no response.

It has however come to the attention of our client that reporters of these allegations have been used by certain media houses to attack the integrity of individuals and the commission, to the extent that the Minister of Trade and Industry has been called upon to suspend the NLC board and put the commission into administration, if the commission does not release the full details of the beneficiaries on its database.

The National Lotteries Commission is constituted by the Lotteries Act 57 of 1997 and is under the authority of the board. In terms of Section 67 of this Act, it is provided that:

" (1) Subject to the Constitution, any legislation which may be enacted in pursuance of sections 32(2) or 33(3) of the Constitution or any other relevant law, no person, including the Minister, a member or employee of the board or the Department, or a former member or employee of the board or the Department, may-

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- (a) In any way disclose any information submitted by any person in connection with any application for any license, certificate or appointment under this Act; or*
- (b) Publish any information obtained in contravention of paragraph (a), unless ordered to do so by a court of law or unless the person who made such application consents thereto in writing.*
- (c) Any person who contravenes subsection (1) shall be guilty of an offence".*

Our client has learnt that the Office of the Minister of Trade and Industry is being pressured to put the National Lotteries Commission under administration in the event where the National Lotteries Commission does not disclose publicly the full details of its beneficiaries including the value of the grant received by them, and our client and/or the constituent members thereof are indeed beneficiaries of the National Lotteries Commission. Any publication of our client's personal information will be in contravention of this Act and our client is prepared to invoke it to protect its personal information.

It must be noted that our client and its constituent members welcome and supports all the efforts to root out corrupt activities but maintain that due process and the rule of law should be adhered to at all times whereas nefarious methods must not be entertained at all. Our client has taken a stern stance against this; hence they will be marching to the Office of the Minister of Trade and Industry this coming Thursday the 05th March 2020 to hand over a memorandum at 11h00am.

It is concerning that the Minister is amenable to act in this manner from allegations of certain media houses who have shown to have an interest and a different agenda without proper investigation of these alleged corrupt activities, nepotism, and mismanagement, and in the process putting private information of our client in the

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public without their consent, which is in direct contravention of our client's rights in terms of the Protection of Personal Information Act 4 of 2013.

The personal information of our client is protected by this Act, and the National Lotteries Commission and the Minister of Trade and Industry have to comply with the requisite of this Act in full, in order to render the personal information of our client to be in the public interest for it to be disclosed publicly and only after following the prescribed procedure as per the Act, which unfortunately have not been followed.

It is our further instructions that in the event that the Office of the Minister of Trade and Industry is on a path of ridding the National Lotteries Commission of the alleged corrupt activities, we are more than able to assist and cooperate in the investigation thereof when that ultimately gets to be set up, but that splashing of our personal information in the media without due regard to our client's right to privacy as enshrined in the Constitution would be exceeding the authority of the Office of the Minister.

In retrospect to the NLC put under administration, our client feels that the activities of the commission shall be interrupted, thus affect the beneficiaries – being the civil society organizations depending on the funding disbursed by the NLC.

It is therefore our instructions to the Minister to refrain from threatening the National Lotteries Commission to disclose our client's personal and private information to the public, failing which, we are instructed to launch an urgent court action to interdict the Minister from these acts in order to protect the interest of our client.

Our client's rights are reserved, and we hope that above is in order.

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Though Heavens Might Fall- We ensure that Justice Prevails



Yours Sincerely

Popela Maake Attorneys

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Lottery supporters march against journalists who exposed corruption

Hosted By: Elna Schütz on: March 10, 2020 In: News



Hundreds of people marched to the Department of Trade and Industry in Pretoria/Elna Schütz

Under the umbrella of United Civil Society in Action, hundreds of people marched to the Department of Trade and Industry (DTI) in Pretoria on Thursday. They handed over a memorandum calling for action to be taken that protect NGOs and beneficiaries who receive funding from the National Lotteries Commission (NLC).

The march was aimed at GroundUp and freelance reporter Raymond Joseph who have since 2018 been running reports exposing unfinished projects and mispending of Lottery funds. At one point the protesters chanted: "Voetsek Raymond Joseph".

The march was organised by the Independent Beneficiaries Forum, South Africa National NGO Coalition (SANGOCO), Southern Africa NGO Network (SANGONeT) and #NotInMyName.

The organiser's claimed there were over 3 500 people. But police officers at the march and this reporter estimate that at no time were there more than 1 000 marchers. Attendees came in buses from Gauteng as well as the Western Cape, Eastern Cape, and North West.

The memo calls for the minister, Ebrahim Patel, not to publish civil society information, such as the NLC beneficiaries list, which has been issued to Parliament for the past 18 years.

Recently, the NLC decided not to publish its list of beneficiaries for its latest reporting year. This is the first time this list has not been made public.

The issue of consent

A resident of a group calling itself #NotInMyName, Siyabulela Jentile, said that "one of the conditions [to publish] in fact is that consent must be given" by the organisation. He said that some of the beneficiaries present at the march were saying that they are not giving this consent.

The memorandum also says it will "welcome and support all the efforts to root out corrupt activities" but calls on the minister to follow due processes and "neither suspend the board of the commission nor put the commission under administration".

Of particular concern is that actions against the NLC will result in "disruptions in civil society's developmental activities", disadvantaging workers in the sector and beneficiaries.

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98

Tabiseng Vilakazi works at Sechaba Community Care centre in Ekurhuleni. She said she was marching because she wants the NLC to give NGOs more money, especially those that are run by black people.

"We want to fight the corruption that is happening because you'll find most of the white organisations do get a lot of funds," she said.

Further demand in the memorandum is an amendment to the Lotteries Act to make funding more "favourable to previously disadvantaged communities" and to change the requirement of a year's break in funding after an organisation has received short term funding.

Several dozen school children were at the march, many wearing United Civil Society In Action T-shirts over their school clothes.

Entile said that these were concerned student representatives attending and that when he had queried whether they should be in school he was told that their principals had been informed.

Angellien Lindi came from Worcester in the Western Cape to march. She runs a creche. She said she had not heard anything about corruption but she is looking for funding from the NLC. Speaking in Afrikaans, she said: "There is no help for us, that is why we are here today."

Told to come

Dolga Maleho from Kimberley runs a soup kitchen with funding from the NLC. She said she was invited to the march by someone at the NLC.

Several people attending the march did not want to be interviewed by GroundUp, but said that they were not sure what the march was about but were told to come.

Chief of Staff in the Ministry of Trade and Industry Moosa Ebrahim received the memo. He said: "The Lotteries is a child of the Department of Trade and Industry and so we are also very concerned." He assured the crowds that he would make sure the minister responds and apologised that the groups may not have received responses in the past.

The memo said the group will seek legal action if the minister does not take positive action towards its demands within three weeks.

Reaction to the march has been critical. Right2Know issued a statement on Thursday night saying it was "deeply disturbed by the stance taken by the self-proclaimed, 'UNITED CIVIL SOCIETY IN ACTION' which is led by the South Africa National NGO Coalition (SANGOCO) and various other unnamed organisations".

So-called civil society movement

"[T]his so-called 'civil society movement', ... appeared out of nowhere in the last couple of weeks. The stated purpose of the march - contained in a media statement issued by SANGOCO on Monday - was to raise concerns related to 'attackers of the NLC'"

Right2Know further said: "What this refers to are the extensive allegations against the NLC related to the improper and fraudulent disbursement and use of funds as well as conflicts of interest surrounding monies meant for the upgrading of sanitation facilities at poor schools in Limpopo and the Eastern Cape. Further, there are serious questions that have been raised related to the subsequent silence around an NLC-initiated investigation into these allegations by an audit firm. The evidence for these allegations has been provided by in-depth investigative journalism carried out by freelance journalist Raymond Joseph through a series of reports published by GroundUp."

Democratic Alliance shadow minister of trade and industry, Dean Macpherson, said he doubts that the publishing of the beneficiaries list will negatively affect beneficiaries, because this has not been met with great concern in the past and that it would be in everyone's interest to understand where NLC money is going.

He said the civil society groups calling for action were "nothing other than fronts being pushed by those implicated in wrongdoing at the NLC to cover up for their wrongdoing".

CORRECTION: The original wording on the NLC's decision not to publish its list of beneficiaries was slightly inaccurate. We have reworded it.

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Elina Schütz is a freelance journalist based in Pretoria and Johannesburg, South Africa, is the founder of Podmeet, a networking and support project for the podcasting industry in Cape Town and Johannesburg.

GroundUp is being sued after we exposed dodgy Lottery deals involving millions of rands. Please help fund our defence. You can support us via Givengain, Snapscan, EFT, PayPal or PayFast.

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- Adam and Eve, a snake apple salesman and a cautionary media and marketing tale

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Minister Ebrahim Patel
Minister of Trade, Industry and Competition
The dti Campus
77 Meintjies Street
Sunnyside
Pretoria
0001

EP19

9 June 2020

Dear Mr E Patel,

Parliamentary Question: NA PQ 1039 – BENEFICIARY LIST

The National Lotteries Commission (NLC), as an entity established in terms of section 3 of the Lotteries Act no 32 of 2013, as amended, a schedule 3A entity in terms of the Public Finance Management Act (PFMA), which is compliant with principles contained in the Companies Act and King code, has adopted a corporate governance framework that enables the NLC to meet corporate governance expectations as well as provide direction, control and accountability by the Commission.

Access to Information and Information Security

The NLC has taken note of the questions raised and the amount of information to be collated and prepared to be able to fully respond to these questions. On the face of it, the information requested is vast and goes back to 2009/10 making the collation thereof an overwhelming task. The NLC information is managed through the Grant Management System (GMS) and most of the records have been sent through for archiving. The Commission has also migrated from the GMS system to the new Fusion Platform and there







is need for time and resources to be deployed for the purposes of retrieval of record; particularly old records.

Given the limitations relating to availability of staff due to COVID - 19, the retrieval and processing of information, records retrieval from the old and new platform; the NLC would like to afforded time to retrieve the records, verify and process the information to be able to properly attend to the questions asked.

We would therefore like to request the indulgence of the requester of information for more time to respond to the questions. The information requested is classified as grant information as defined in the Regulations of the Lotteries Act, No. 57 of 1997(Lotteries Act), as amended. Once information becomes available, the request will be assessed and dealt with in strict accordance with Section 87 of the Lotteries Act, Regulation 8 and relevant legislation governing access to private information.

Section 87 of the Lotteries Act deals with access to information. It provides as follows:

“(1)Subject to the Constitution, any legislation which may be enacted in pursuance of sections 32(2) or 33(3) of the Constitution or any other relevant law, no person, including the Minister, a member or employee of the board or the Department, or a former member or employee of the board or the Department, may –

- (a) in any way disclose any information submitted by any person in connection with any application for any licence, certificate or appointment under this Act; or
- (b) publish any information obtained in contravention of paragraph (a), unless ordered to do so by a court of law or unless the person who made such application consents thereto in writing.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.”

The legislation enacted in pursuance of sections 32(2) and 33(3) of the Constitution are PAIA and PAJA. The PDA and POPI are any other relevant law because they deal with the disclosure of information.

Regulation 8 of the Regulations recognises rights of access to information and to publish information as envisaged in the Constitution, PAIA, the Promotion of Administrative Justice Act, 3 of 2000 (“PAJA”) and the Protected Disclosures Act, 26 of 2000 (“the PDA”) and any other law, which would include POPI. This takes into account the rights in section 16 of the Constitution, subject to the limitations under PAIA, PAJA, PDA and POPI. It is clear from section 2 of POPI that one of its purposes is to give effect to the constitutional right to privacy in section 14 of the Constitution.

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68

It must be noted that this matter has been referred to the office of the Information Regulator on or about 12 March 2019 after the continuation of unlawful dissemination of beneficiary information and demands from civil society organisations who wrote to parliament as well around issues of the unlawful dissemination of their information.

The NLC has alerted the erstwhile Minister, the previous and current parliament about information of NLC beneficiaries which the purported journalist stored on a computer system outside the NLC's control, prompting the Commission to approach the State Security Agency for investigation. The investigation by the State Security Agency is still ongoing. The NLC remains committed to transparency within the prescripts of the law while balancing the rights and interests of its beneficiaries, hence the insistence that information dissemination be managed within the processes of applicable legislative prescripts

In conclusion, the King IV code principles state that the governing body should in its execution of its governance role and responsibilities, the governing body should adopt stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interest of the organisation over time. In view of the the above requirements of balancing stakeholder needs, complying with the NLC's regulatory universe in terms of information handling and commitment to delivering the NLC mandate in an open and transparent manner, the NLC its fiduciary responsibility to ensure that legislative prescripts are ashered to and the interest of the NLC and its stakeholders are preserved.

I trust you find the enclosed in order.



Prof NA Nevhutanda

Chairperson of the National Lotteries Commission





MINISTER
TRADE, INDUSTRY AND COMPETITION
REPUBLIC OF SOUTH AFRICA

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22 June 2020

Prof NA Nevhutanda
The Chairperson: National Lotteries Commission
Block B, Hatfield Gardens
333 Grosvenor Street
Hatfield
0083

Dear Prof Nevhutanda

Publication of beneficiary information

I refer to the various requests by Members of Parliament for information relating to the beneficiaries of various monies administered by the National Lotteries Commission, and to the NLC's view on confidentiality of information.

The purpose of this letter is to record my disagreement with the approach adopted by the National Lotteries Commission to the publication of beneficiary information by the Commission and to request to have a change effected in the current practice of the NLC.

This issue arises out of the interpretation of Regulation 8 of the Regulations Relating to Distribution Agencies made in terms of section 60 of the Lotteries Act 57 of 1997 ("the Act") in February 2001.

Regulation 8 provides that –

"8. Security Information –

(1) Subject to the Constitution, the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the Promotion of Administration Justice Act, 2000 (Act No. 3 of 2000) and the Protected Disclosure Act, 2000 (Act No. 26 of 2000), no person may in any way-

(a) disclose any information in connection with any grant application or a grant itself;

Letapha la Diligentsano, Dintsaetari le Tholisoano • Letapha le Kgwebo Indastari le Phatlalano • UmNyango wasekhweni neZimbani kunye noMandlwanano • Mubesho wa zwa Mbambadzo, Melawetho ne Mafajano • Die Departement van Handel, Nywerheid en Mededinging • Kgore ya Kgwebo Indastari le Kgaisano • Ndawulo ye Vuxavisi, Mabindzu na Mphikizano • Lithe leTelu/Inwebe eMboni neKuncinlanano • ISaba lezoRhenzo neSizalane kunye noKwaphelano • UmNyango wasekhweni neZimbani, amaSubulo nama Phatlalano

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(b) disclose the contents of a report contemplated in regulation 6(1); or

(c) publish any information obtained in contravention of paragraph (a) or (b); unless-

(i) ordered to do so by a court of law;

(ii) making a bona fide confidential disclosure or publication to the Minister, the Public Protector, Parliament or a committee designated by Parliament, a member of the South African Police Service or the national prosecuting authority;

(iii) the juristic person who made a grant application and the board consent thereto in writing prior to that disclosure or publication; or

(iv) provided for in these regulations.

(2) An agency, a person appointed to an agency or any person rendering services to an agency in whatever capacity may not in any way disclose any information in respect of or comment upon a grant application or a grant itself unless authorised thereto in writing by the Minister or the chairperson of the board.

(3) Any person who contravened subregulation (1) or (2) shall be guilty of an offence and liable to a fine or to imprisonment or to both a fine and imprisonment."

The NLC has adopted the view that Regulation 8 prohibits the sharing of information relating to beneficiaries including their names, NPO numbers, grant amounts allocated to them including the dates when tranches in which respect of these amounts are paid. It advised the Parliamentary Portfolio Committee that it had received a legal opinion from its attorneys adopting this approach and circulated a copy of this opinion to the Committee in February 2020.

I have taken legal advice on this issue and disagree with this conclusion.

Lefapha la Digwebeleano, Dintsesetd le Tiholelano • Lefapha la Kgwebo Indasteri le Phadilano • Umyango wazokhweba noZaneni kanye noMincintwano • Muenho wa zwa Mbankodzo, Makweho na Muphiso • Die Departement van Handel, Nywerheid en Mededinging • Kgoro ya Kgwebo Indasteri le Kgaleano • Ndzwalo ya Vuzwisi, Mbindzu na Saphidzane • Litsko leTsekutwabe thibeni neKundintwano • ISebe lezoRhuwebo noShahino kanye neKuphileswano • Umyango wazokhweba, amaBubulo nama Phatlhwano

Firstly, this approach is in clear conflict with the emphasis that the Act places on the importance of the principles of openness and transparency in the administration of the National Lottery.

Section 2A(1) of the Act provides –

"(1) The Commission shall, applying the principles of openness and transparency, exercise the functions assigned to it in terms of this Act by the Minister, Board or any other law."

Similarly, Section 10 deals with the functions of the Board stating that the Board must ensure that the Commission applies the principles of openness and transparency when performing its functions.

The prohibition on disclosure in Regulation 8 is drafted in similar terms to section 67 of the Act. Section 67 applies to the disclosure of any information in connection with an application for any license, certificate or appointment under this Act. It is evident that Regulation 8 was enacted to extend the approach of section 67 to the disclosure of information concerning grants and grant applications.

The rationale given for the interpretation of Regulation 8 is that the names of beneficiaries should not be disclosed to protect beneficiaries from the prospects of extortion or other criminal activities. In addition, the opinion received by the NLC refers to the publication of defamatory statements concerning the NLC and beneficiaries of grants in relation to the pro-active funding activities of the NLC.

In my view, neither the possibility of certain beneficiaries being exposed to criminal threats nor press reporting, whether defamatory or not, justifies a prohibition on the naming of beneficiaries. There are numerous other legal remedies available to deal with these eventualities.

A similar approach to the Regulations is adopted in memorandum to me by the United Civil Society in Action received, 5 March 2020, who suggest that the naming of NLC beneficiaries is illegal. They write as follows –

"Our personal information is protected by this Act, and the National Lotteries Commission and the Minister of Trade and Industry have to comply with the requisite of this Act in full, that for private information to be disclosed publicly should be done so only after following the Act, which unfortunately have not been followed."

Lefapha la Diligwabesano, Dikutselisi le Tholano • Lefapha la Kgwebo Indasteri le Phedišano • Ukhanyo wezokutwaba naZwibanj kanye noMndirišwano • Mutsho wa zwa Nibambazo, Makwetho na Mafajano • Dto Departament van Handel, Nywerheid en Mededinging • Kgoro ya Kgwebo Indasteri le Kgaisano • Ndawulo ya Vuvul, Mahindzu na Mphikizano • Likhle leTokuweba @Nboni naKundirišwano • (Sebe lezofihwebo noShishino kanye noKuphišwano • Ukhanyo wezokutwabaolana, amaButele nama Phelwano

The effect of this argument is that the identity of a beneficiary under the Act cannot be publicly disclosed, unless the beneficiary consents thereto or a court has ordered disclosure.

A list of beneficiaries was previously included in the NLC's Annual Reports. However, with effect from the 2018/19 financial year, the NLC stopped including beneficiary information in its Annual Report on the basis that this would amount to a breach of Regulation 8. It is perturbing the NLC has altered its interpretation of Regulation 8.

In my view, Regulation 8 does not prohibit the disclosure of the identity of the beneficiaries. The names of beneficiaries do not constitute a part of a grant application or a grant. Had the Minister who published the regulations intended for Regulation 8 to prohibit the disclosure of the identity of beneficiaries of public funds, one would have certainly expected that such a prohibition would have been explicit in the Regulation.

While I accept that the practice of listing beneficiaries were named in Annual Reports for many years does not amount to a legal precedent, the fact that this interpretation was assumed by all stake-holders to be correct for almost 20 years is an indication of how tortured the revised interpretation of Regulation 8 adopted by the NLC is.

The absurdity of this construction is also revealed when it is applied to the language of section 67. Section 67 would have to be interpreted as meaning that the name of an applicant for a licence, certificate or appointment in terms of the Act could only be named with its consent.

In response to a request by the Director-General to receive a list of pro-actively funded projects for 2016-2018, the Commissioner disclosed the list to the Minister in terms of Regulation 8. However, in the letter dated 31 January 2020, the Commissioner stated

"It is noteworthy that the information provided is classified as SECRET in line with the NLC's Information Classification and Management Policy. The contents of the information provided are deemed to be beneficiary information and the NLC, as the custodian of this information, are obliged to ensure that information shall not be reproduced, used or disclosed in any manner in accordance with applicable legislation".

The letter goes on to quote the text of Regulation 8 of the Distribution Agencies Regulations as the basis for this approach.

Lefapha la Dikgwebalano, Olinisoteli le Tlholisano • Lefapha la Kgweba Indasteri le Phadlholano • uMnyango wezokhweba neZimboni kargo
naMochelwano • Muhafo waZwa Mambodze, Makwano ne Mufesano • Die Departement van Handel, Nywerheid en Nododiging •
Kgoro ya Kgweba Indasteri le Kgaleano • Ntswale ya Vasevsi, Mabindzu na Mphikizano • Utho laTshwaba eMboni naKwadiwano •
ISebe lazoRiwebo noShikino kunye noMphikizano • Umtshamo wezokhwebolana, amaBubulo nama Phaswano

To the extent that the NLC is also seeking to rely on the Protection of Personal Information Act 4 of 2013 ("the POPI") as a basis for not disclosing the names of beneficiaries, I am advised that POPI is not yet in effect and, in any event, would not prevent the publication of this information.

The classification of the list of pro-actively funded projects as "SECRET" is not warranted by any legislation and is in clear breach of the obligation of the NLC.

It is my considered view that the NLC has adopted an interpretation of Regulation 8 that is incorrect. The names of beneficiaries are not information about a grant or grant application as contemplated by Regulation 8. Regulation 8 does not justify altering the long-held practice of publishing the names of beneficiaries in the Annual Report. The publication of such a list is consistent with the clear requirements of the Act for open and transparent governance as referred to above.

I therefore, call upon the NLC to resume the practice of publishing the names of beneficiaries and that such information include those who receive funds for pro-actively funded projects.

Yours faithfully



EBRAHIM PATEL

MINISTER OF TRADE, INDUSTRY AND COMPETITION



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National Lotteries Commission (NLC)
P O Box 1556
Brooklyn Square 0083, Pretoria

Minister Ebrahim Patel
Minister of Trade, Industry and Competition
The dti Campus
77 Meintjies Street
Sunnyside
Pretoria
0001

Dear Minister E Patel,

24 June 2020

Dear Honourable Minister,

PUBLICATION OF BENEFICIARY INFORMATION

The Board of the NLC acknowledges receipt of your letter of 22 June 2020.

The letter was considered by the Board at its prior scheduled meeting of today during which the Board members deliberated on your letter. On the reading of the letter, it does not seem that the Minister has taken note of the fact that United Civil Society in Action ("UCSA") has launched an urgent court application in the High Court, Gauteng Division, Pretoria under case no: 24775/20. In this application, Groundup and the National Lotteries Commission are cited as the first and second respondents respectively. An order is sought in the aforesaid court application which has a direct bearing on the interpretation of Regulation 8 in as far as publication of beneficiary details are concerned.

The UCSA court application is premised on an interpretation of Regulation 8 that prohibits publication of the names of beneficiaries, amounts of grants as well as other details of beneficiaries which is proscribed by the provisions of Regulation 8(1)(c) of the Regulation promulgated under the National Lotteries Act, 57 of 1997.

In light thereof, the Board is of the considered view that now that the interpretation of Regulation 8 is the subject matter of a court application, a judgment by the court on the meaning of Regulation 8 will provide clarity to both the Board, the Minister, and other stakeholders as regards whether beneficiary details ought to be published or not. Accordingly, the Board proposes that both the Minister and the



NLC should defer the issue to the outcome of the pending court application which will invariably determine whether it is lawful or not to publish beneficiary details.

In this application in which the NLC is cited as a respondent, very serious and damaging allegations are made against NLC. The NLC will seek to place before the court all of the relevant facts and other considerations pertaining to Regulation 8 to assist the court and enable it to arrive at a decision on the interpretation of Regulation 8.

The NLC will keep the Minister advised as regards to the proceedings in regard to the case. As presently advised, the matter is due to be argued in the urgent court in Pretoria on 7 July 2020.

Yours Faithfully,

Prof NA Nevhutanda

Chairperson - National Lotteries Commission

T M

GP



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

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LEGAL OPINION
[Confidential]

MEMORANDUM

TO: Hon Dr D Nkosi, MP [Chairperson, Portfolio Committee on Trade and Industry]

COPY: Acting Secretary to Parliament [Ms P N Tyawa]

FROM: Constitutional and Legal Services Office
[Adv Z Adhikari, Chief Parliamentary Legal Adviser]

DATE: 25 June 2020

REF. NO.: 66 / 2020

RE: Opinion - Access to Information on Allocation of Funding by National Lotteries Commission

Introduction

1. Our Office was requested to advise the Chairperson of the Portfolio Committee on Trade and Industry ("the Committee") whether the assertion by the National Lotteries Commission (NLC), that previous publications of lists of beneficiaries, had been done erroneously, is correct.

2. The Committee further enquires:

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- a) What the processes and/or parameters are, within which Parliament may access this type of information?
 - b) Are there limitations in how Parliament may use this information / must this information be treated confidentially?
 - c) Under what circumstances, if at all, may the public access this type of information?
3. On 8 June 2020, the Committee received a response from the NLC, pursuant to a request from a Member of the Committee for the submission of a list of all the non-profit organisations that had received funding from the NLC.
 4. The response from the NLC cited pieces of legislation, which, it avers, prohibit it from continuing to furnish the information to the Committee and to the public. The response indicated that the information requested is "classified as grant information as defined in the Regulations of the Lotteries Act, No. 57 of 1997 (Lotteries Act), as amended." The NLC indicated in their response that the request has been assessed and "is dealt with in strict accordance with Section 67 of the Lotteries Act, Regulation 8 and relevant legislation governing access to private information."

Background

5. The South African National Lottery (SANL) was launched in 1999 in terms of the Lotteries Act. The purpose of the SANL is to provide an alternative fund-raising mechanism for "good causes" where state expenditure is insufficient.
6. The NLC has purportedly, for the first time in 18 years not disclosed the list of grant beneficiaries in its 2019 annual report.
7. The Chairperson of the Committee has indicated that there have been requests by both Members of the Committee and by members of the public for the publication of the lists of beneficiaries of the National Lotteries Distribution Trust Fund (NLDTF) over the year.
8. The NLC however has recently argued that whilst they have in the past published such lists, upon consideration of the laws governing private information, coupled with complaints by some beneficiaries of alleged extortion and harassment, it has determined that the publication of this information was done erroneously.

Regulatory framework

9. The NLC relies on section 67 of the Lotteries Act, as amended, to bolster their refusal to provide the Members of Portfolio Committee and members of the public with the information sought. Section 67 deals with access to information. Section 67 (1) states:
- "Subject to the Constitution, any legislation which may be enacted in pursuance of sections 32 (2) or 33 (3) of the Constitution or any other relevant law (our emphasis), no person, including the Minister, a member or employee of the board or the Department, or a former member or employee of the board or the Department, may—*
- (a) in any way disclose any information submitted by any person in connection with any application for any licence, certificate or appointment under this Act; or*
 - (b) publish any information obtained in contravention of paragraph (a), unless ordered to do so by a court of law or unless the person who made such application consents thereto in writing.*
- (2) Any person who contravenes subsection (1) shall be guilty of an offence."*
10. The NLC further relies on section 2 of the Protection of Personal Information Act, No. 4 of 2013 (POPI) stating that one of its purposes is to give effect to the constitutional right to privacy in keeping with section 14 of the Constitution.
11. Section 14 of the Constitution states that everyone has the right to privacy, which includes the right not to have: their person or home searched, their property searched, their possessions seized, and not to have their privacy of their communications infringed.
12. The NLC cites the Promotion of Access to Information Act, No. 2 of 2000 ("PAIA") and Promotion of Administrative Justice Act, No. 3 of 2000 ("PAJA"), the Protected Disclosures Act, No. 26 of 2000 ("PDA") and POPI as relevant legislation that deal with the disclosure of the information.
13. Section 32 of the Constitution enshrines the right of access to information held by both public and private bodies. Section 32 also states that legislation must be enacted to give effect to the right of access to information by detailing the ways in which information from public and private bodies can be accessed, and by providing grounds on which a public and private body could refuse access to information.
14. Section 195 of the Constitution sets out the basic values and principles governing public administration. It stipulates that:

"1. Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- a. A high standard of professional ethics must be promoted and maintained.*
- b. Efficient, economic and effective use of resources must be promoted.*
- c. Public administration must be development-oriented.*
- d. Services must be provided impartially, fairly, equitably and without bias.*
- e. People's needs must be responded to, and the public must be encouraged to participate in policy-making.*
- f. Public administration must be accountable.*
- g. Transparency must be fostered by providing the public with timely, accessible and accurate information.*
- h. Good human-resource management and career-development practices, to maximise human potential, must be cultivated.*
- i. Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.*

2. The above principles apply to

- a. administration in every sphere of government;*
- b. organs of state; and*
- c. public enterprises."*

15. Section 56 of the Constitution deals with evidence or information before the National Assembly.

It stipulates that the National Assembly or any of its committees may :

- a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
- b) require any person or institution to report to it;

- c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and
- d) receive petitions, representations or submissions from any interested persons or institutions.

16. In 2000, PAIA was enacted, fulfilling the provision of section 32 of the Constitution which requires the enactment of legislation relating to access to information.
17. PAIA allows access to any information held by the State, and any information held by private bodies that is required for the exercise and protection of any rights. Section 9 of PAIA recognises that the right of access to Information is subject to certain justifiable limitations aimed at, amongst others:
- (a) the reasonable protection of privacy;
 - (b) commercial confidentiality;
 - (c) effective, efficient and good governance.
18. In terms of rule 227 of the Rules of the National Assembly, the functions of a portfolio committee include maintaining oversight of the national executive within its portfolio. This includes oversight on the implementation of relevant legislation.
19. Rule 227(1)(c) also authorises portfolio committees to *"monitor, investigate, enquire into and make recommendations concerning any such executive organ of state, constitutional institution or other body or institution."*
20. Parliament exercises this oversight through mechanisms that are provided for in its rules and procedures. Rules that are applicable for oversight in the National Assembly include: (i) rule 132, which deals with statements by members; (ii) rule 85, which deals with reflections upon members, the President and Ministers or Deputy Ministers who are not members of the Assembly; (iii) rule 138, which deals with questions to Ministers; (iv) rule 139, which deals with questions to Deputy President; (v) rule 140, which deals with questions to President; (vi) rule 141, which deals with urgent questions; (vii) chapter 12, which deals with Parliamentary oversight within the oversight committees; and (viii) rule

360, which provides for summoning of witnesses - read with sections 14 to 17 of the Powers and Privileges Act.

21. Rule 167 of the National Assembly rules stipulates that for the purposes of performing its functions a committee may, subject to the Constitution, legislation, the other provisions of these rules and resolutions of the Assembly —

- (a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
- (b) receive petitions, representations or submissions from interested persons or institutions;
- (c) permit oral evidence on petitions, representations, submissions and any other matter before the committee.

22. In the *Certification of the Constitution of the Republic of South Africa, 1996* (10) BCLR 1253 (CC), the Constitutional Court of South Africa examined the position of the right of access to information and noted that 'freedom of information [was] 'not a universally accepted fundamental human right', but is directed at promoting good government'.

23. In the case of *Brümmer v Minister for Social Development and Others* Case CCT 25/09, [2009] ZACC, the Constitutional Court further illuminated its understanding of the significance of the right of access to information: The Court held that, "The importance of this right (...) in a country which is founded on values of accountability, responsiveness and openness, cannot be gainsaid. To give effect to these founding values, the public must have access to information held by the State. Indeed, one of the basic values and principles governing public administration is transparency. And the Constitution demands that transparency 'must be fostered by providing the public with timely, accessible and accurate information.' Apart from this, access to information is fundamental to the realisation of the rights guaranteed in the Bill of Rights. For example, access to information is crucial to the right to freedom of expression which includes freedom of the press and other media and freedom to receive or impart information or ideas. (...) Access to information is crucial to accurate reporting and thus to imparting accurate information to the public."

Discussion

24. PAIA aims to promote the free flow of information that should be public information whilst POPI aims to protect the flow of information that should not be in the public domain.
25. The purpose of PAIA is to promote transparency, accountability and governance both in the private and public sectors. In the Brummer judgement, Ngcobo CJ held that "the application of section 78 of PAIA (which dealt with a 30-day legislative time limit for parties who wish to challenge a denial of a request for information in court) meant that "many of the requestors whom it hits are not afforded an adequate and fair opportunity to seek judicial redress" (para. 56), and that it was therefore a limitation to the rights of access to court and of access to information (para. 57)."
26. The Constitutional Court held that a 30-day legislative time limit for parties who wish to challenge a denial of a request for information in court was an unjustifiable limitation to the rights to access to court and to access to information. Ngcobo CJ then examined whether the limitation was reasonable and justifiable in an open and democratic society, as required by section 36 of the Constitution. In this limitation analysis, he highlighted the importance of the right to access to information and explained that in order to give effect to the foundational values of accountability, responsiveness and openness "the public must have access to information held by the state" (para. 62). He added that access to information is "fundamental to the realisation of the rights guaranteed in the Bill of Rights" (para. 63), and linked it specifically to the right to freedom of expression. It is clear that the flow of information and any limitation thereof must be reasonable and justifiable in terms of section 36 of the Constitution.
27. The purpose of POPI is "to give effect to the constitutional right to privacy, by safeguarding personal information when processed by a responsible party, subject to justifiable limitations that are aimed at balancing the right to privacy against other rights, particularly the right of access to information and protecting important interests, including the free flow of information within the Republic and across international borders".
28. A purposeful interpretation of the Lotteries Act together with Section 195 (g) show that a culture of openness and transparency is required. The general requirement under Section 195(g) of the Constitution, being that that transparency must be fostered.

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29. The National Lotteries Commission is a public entity with the National Department of Trade and Industry as the overseeing governmental body.
30. Parliament has established mechanisms to achieve its oversight and accountability mandates in terms of the Constitution and under its own rules. Committees interact with the public, civil society organisations, businesses, experts and professional bodies as a way of augmenting accountability. Committees may call Ministers and departmental heads to account on any issue relating to any matter over which they are effecting accountability within the ambit of the provisions of sections 56 and 69 of the Constitution and legislation.
31. As envisaged in section 55 of the Constitution, which enables the National Assembly to maintain oversight over all organs of state, and section 92, which enables Parliament to hold the Cabinet accountable, organs of state at national level and Ministers and their departments are held to account by Parliament. At national level, there is direct accountability to Parliament by national departments, national public entities and national bodies such as commissions.

Advice

32. As to whether the assertion by the National Lotteries Commission (NLC) that previous publications of lists of beneficiaries, had been done erroneously, is correct, we submit that the assertion is incorrect and would not in our view withstand constitutional scrutiny. The NLC does not indicate whether the information concerning the beneficiaries fall within the information "submitted by any person in connection with any application for any licence, certificate or appointment under this Act" as envisaged in section 67 of the Lotteries Act. Furthermore, the NLC does not indicate whether any of the reasons for refusing access to information in PAIA applies to the information concerning beneficiaries.
33. The default position is that there should be disclosure of information unless prohibited. The legislation cited by the NLC does not provide a basis to refuse the said information. The NLC must clearly and precisely specify the grounds and the reasons for refusal of the information. The Committee must be directed to specific grounds of refusal together with the details which prevent its disclosure. The stance of the NLC seems to be that, there is a blanket prohibition on the provision of this information, which is untenable.

34. As to the processes and/or parameters within which Parliament may access this type of information, we submit that Parliament may through its committees, by virtue of its rules subpoena the information if the information is not forthcoming. Should there be a need for the information to be treated as confidential, NA rules 184 and 189 regulate the treatment of confidential information before a committee.
35. As to the question whether this information must be treated confidentially, and under what circumstances, the public may access this type of information, we submit that the financial statements of the NLC must disclose the information and that this information must be available to the Auditor General as the NLC is subject to the PFMA.
36. The constitutional right to privacy is not an absolute right but may be limited in terms of laws of general application and must be balanced with other rights entrenched in the Constitution.
37. In protecting a person's personal information, consideration should therefore also be given to competing interests such as the administering of national social programmes, governmental transparency and accountability, maintaining law and order, the need to root out corruption within government and protecting the rights, freedoms and interests of others, including the commercial interests.
38. Legislation affecting the access or flow of information should be purposively interpreted in line with Parliament's constitutional mandate of oversight in conjunction with constitutional principles of accountability and transparency.

SIGNED ELECTRONICALLY

Adv Z Adhikari

Chief Parliamentary Legal Adviser

Mr Ebrahim Patel
Minister of Trade, Industry and Competition
The dti Campus
77 Meintjies Street
Sunnyside
Pretoria
0001

03 July 2020

Dear Mr E Patel,

NAMES OF ORGANISATIONS THAT HAVE RECEIVED THE HIGHEST AMOUNT OF FUNDING IN THE PAST 10 FINANCIAL YEARS INCLUDING THE NUMBER OF PROJECTS FUNDED TO THE VALUE OF 10M

The NLC has been working on a request and had estimated to have completed the work by the 3rd of July 2020 accordingly. The information requested is clearly vast and goes back into 10 financial years creating challenges in terms of recovery, assembly and proper processing including metro-filing processes and protocols relating particularly to information going beyond 5 years. The process has taken more time than initially anticipated due to the extracting of information from different technology platforms as the Commission has in the recent past migrated from the old Grant Funding System (GMS) system to Fusion. The task has been going on in spite of the setbacks due to the current pandemic environment the world is facing.

To this extent, a team was assembled to work on the project of extracting and packaging the information but there were setbacks due to the challenges of the Covid 19 Pandemic where some of the officials within the team contracted the virus and had to be hospitalized resulting in temporary closure of the office and in some instances having to wait for officials to go through testing and self-quarantine processes. I must emphasise that the process of accessing information can only happen at the NLC offices.



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The NLC is still working on the matter within the current constraints while observing the necessary protocols in line with government regulations in terms of how the Covid cases needs to be handled.

As a result, work could not be completed in time and the NLC would like to request more time to complete the exercise. The NLC will attempt to speed up the process and complete the work by Friday, 10th July 2020.

The Honorable Minister's indulgence on the matter will be highly appreciated.

Regards



Ms Thabang Mampane
Commissioner: NLC
Date: 03 July 2020





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Prof NA Nevhutanda
Chairperson: National Lotteries Commission
Block B, Hatfield Gardens
333 Grosvenor Street
Hatfield
Pretoria
0083

Dear Prof Nevhutanda

DISCLOSURE OF BENEFICIARIES: ZAKHENI MA AFRICA [NPO REG NO: 191-334] (Our Client) // Min. Trade, Industry and Competition & National Lottery Commission

- 1 I have been requested to write to you regarding a letter of demand which the Ministry received from attorneys acting for an entity 'ZAKHENI MA AFRICA [NPO REG NO: 191-334]' on 10 July 2020. I presume that you have had sight of the letter of demand, as it is also addressed to you.
- 2 As you are aware, on 10 July 2020, the National Lotteries Commission (NLC) made a disclosure to the Ministry of certain information which had been requested from the Ministry by Parliament. This disclosure included information pertaining to the beneficiaries of the NLC.
- 3 To our great concern, the letter of demand was received shortly after the disclosure, and makes specific reference to the request to the NLC "to release a list of beneficiaries of the 2018 NLC proactive funding, 2019-2020 proactive funding and the 2020 Covid-19 Relief fund." It is unclear to the Ministry how the entity obtained this information and a further investigation of this may be warranted and is currently being considered.
- 4 We request your assistance with information required for the Ministry to formulate its response to the letter of demand. In particular, we request that you confirm whether 'ZAKHENI MA AFRICA [NPO REG NO: 191-334]' appears on the NLC's list of beneficiaries. To the best of our knowledge, and having searched the documents already provided, this does not appear to be the case.
- 5 In addition, we ask that you advise us of the NLC's attitude in respect of the litigation threatened in the letter and, if any decision has been taken in this regard, what that decision is.

Letaphe la Dikgwabesano, Dintsetati le Tholiso • Letaphe la Kgwebo Indastri le Phadibano • uminyango wozokufwebela naZimbini kunye noMincinwano • Mhesho wa zwa Nbenabadzo, Makweno na Mafajano • Die Departement van Handel, Nywerheid en Mededinging • Kgoro ya Kgwebo Indastri le Kgaisano • Nkzawulo ya Vukweli, Mafindzu na Mphahlele • Likho leSikhweba siZimbini neKundintwano • Isibe lezoPhweba noSikhisho kunye noKuphwebano • Uminyango wozokufwebelane, amaBule nama Phalelwano

Batho Pele - putting people first



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- 6 In light of the urgency and time periods imposed by the letter of demand, we request your response by 9am tomorrow. (17 July 2020).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lionel October', written over a horizontal line.

Lionel October
Director-General

Date: 16 July 2020

Handwritten initials 'JMM' in black ink, with a horizontal line above the letters.Handwritten initials 'GP' in black ink, with a horizontal line above the letters.



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Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

EP 25

THE NATIONAL ASSEMBLY

SUPPLEMENTARY REPLY

QUESTION NO. 1039

Mr M Waters (DA) to ask the Minister of Trade, Industry and Competition:

- (1) What (a) number of institutions and/or projects were funded to the value of R10 million or greater by the National Lottery, (b) was the funding intended for in each case and (c) are the names of the organisations that received such funding in each of the past 10 financial years;
- (2) whether any (a) audit and/or (b) inspection was conducted for each project in order to ensure that the money was spent on the actual purpose of the allocation; if not, what is the position in this regard; if so, what were the findings in each case? [NW1329E]

SUPPLEMENTARY REPLY:

Following an initial reply from the NLC setting out the reasons why they will not be able to provide the requested information within the available time before the Parliamentary Reply was due and requesting additional time, kindly find the supplementary reply submitted by Ms Thabang Mampane, Commissioner of the National Lotteries Commission, which is reproduced below.

Response from the National Lotteries Commission:

"A total of hundred and fifty (150) organisations were funded to the value of R 10 million or greater by the National Lotteries Commission (NLC) in the past 10 financial years. The names of funded organisations and the amounts are highlighted on the attached list (See Annexure A). The NLC has a fully-fledged Monitoring and Evaluation Department that monitors implementation and outcomes of funded projects. All funded

organisations signs a Grant Agreement with the NLC with terms and conditions relating to how the grants are to be used. The NLC follows up on these conditions and applies its internal policies in cases on non-compliance. The NLC has sourced the services of a panel of engineers responsible to assist in providing NLC with quality assurance reviews on funded infrastructure projects. The Office of the Auditor General South Africa (AGSA) also conducts in-depth audit into NLC's funding process. In recent years, the NLC received a negative media coverage from an on-line media publication (GroudUp) alleging a wide range of corruption in relation to certain projects that were funded by the organisation. The NLC Board appointed an audit firm, Sekela Xabiso to investigate the alleged corruption and the investigation is on-going. In addition to that, the Honorable Minister of Trade, Industry and Competition has also appointed an audit firm, Nexia, SAB&T to investigate the same allegations and the investigation is on-going as well. All findings from the relevant assurance bodies (audit/investigation) are/will be analysed and reviewed in order to ensure that proper remedial actions are implemented."

-END-

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info Centre: 086 90 65283
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NATIONAL LOTTERIES COMMISSION
a member of the eG group

National Lotteries Commission (NLC)
P O Box 1556
Secord Square 0003, Pretoria

ANNEXURE A				
Organisations that were funded R 10 Million or > in the last 10 years				
Province	Project Number	Project Name	Amount	Year Funded
GP	45761	South African Football Association	R 10 000 000,00	2 010
GP	48541	Cricknet South Africa	R 10 000 000,00	2 011
GP	66789	The Sports Trust	R 10 000 000,00	2 012
GP	72834	National Film & Video Foundation	R 10 000 000,00	2 014
KZN	81204	UMHLATHUZE MUNICIPALITY	R 10 000 000,00	2 015
EC	90867	NATIONAL ARTS FESTIVAL GRAHAMSTOWN	R 10 000 000,00	2 016
EC	113080	DINOSYS NPC	R 10 000 000,00	2 018



Endorsed by the...
of the...
of the...

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LP	113061	ZIBSFUSION NPC	R 10 000 000,00	2 016
GP	113733	SPORT FOR SOCIAL CHANGE NETWORK	R 16 000 000,00	2 016
GP	75313	South African Sports Confederation & Olympic Committee	R 10 005 500,00	2 014
KZN	88016	Heritage Development Trust	R 10 026 878,00	2 016
GP	103448	LIFE FOR IMPACT IN 21ST CENTURY NPC	R 10 106 800,00	2 017
LP	72843	Youth Channel Group	R 10 410 000,00	2 013
GP	55083	Ukwazi Institute For Young Social Entrepreneurs	R 10 435 525,00	2 013
GP	42041	Vuyani Dance Theatre Project	R 10 437 310,00	2 010
GP	91912	TINYUNGUBITSENI VATSONGA -MACHANGANA	R 10 630 000,00	2 015
LP	74133	Village Tourism Trust	R 10 867 649,35	2 015
FS	102592	Komani- Phunzo Learning Centre	R 11 000 000,00	2 016
KZN	78310	KZN ACADEMY OF SPORT	R 11 040 100,00	2 014
NW	102592	Komani- Phunzo Learning Centre	R 11 101 735,00	2 016
GP	45846	African Leadership Development Trust	R 11 148 400,00	2 010
KZN	54917	Stable Theatre	R 11 265 538,00	2 011
LP	109083	I AM MADE FOR GOD'S GLORY NPO	R 11 375 000,00	2 018
WC	41175	MICRO	R 11 503 580,00	2 010
EC	72553	National Arts Festival Grahamstown	R 11 610 260,00	2 013
GP	46587	South African Hockey Association	R 11 655 200,00	2 011
FS	42228	Provincial Management Youth Care Centres Free State	R 11 049 204,00	2 010

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GP	73919	Lamotional Entertainment Community Projects	R 11 776 882,01	2 013
GP	64863	Nelson Mandela Foundation	R 11 809 585,00	2 012
EC	35118	Walter Sisulu University African Music and Heritage Archive	R 11 838 473,89	2 010
GP	42834	Committed Artists for Cultural Advancement	R 11 850 689,85	2 010
GP	43979	Sparrow Ministries	R 11 886 308,00	2 010
GP	56245	Market Theatre Foundation	R 11 888 349,80	2 013
GP	77446	The Sport Trust	R 11 810 864,50	2 018
GP	74806	Kara Heritage Institute	R 12 000 600,00	2 013
NW	73381	Mosokopho Cultural Muli	R 12 000 000,00	2 014
GP	74736	National Delphi Council Of South Africa	R 12 000 000,00	2 014
NW	108185	TAUNG CULTURAL MUSIC AND ARTS EXPO	R 12 000 000,00	2 017
KZN	46198	Wildlife And Environment Society Of South Africa	R 12 010 182,00	2 011
NC	74298	Phakamani Women's Organisation	R 12 186 225,24	2 013
GP	42840	Child Welfare South Africa	R 12 430 180,00	2 010
GP	54886	Johannesburg Philharmonic Orchestra	R 12 478 561,00	2 013
KZN	88500	Kwa-Mashu Community Advancement Projects	R 12 500 011,00	2 013
GP	73108	Serill Institute	R 12 578 480,00	2 014
NW	114338	THUSANANG COMMUNITY DEVELOPMENT NPO	R 12 738 560,00	2 018
WC	65958	The Arts + Ubuntu Trust	R 12 831 560,00	2 013
KZN	73865	Kwamekhutha Community Resource Centre	R 12 896 116,80	2 014

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GP	104910	THE SOCIAL COHESION TRUST	R 12 886 872,00	2 017
KZN	74300	Arts and Culture Trust	R 12 911 514,00	2 015
KZN	113091	MALUSI WESIZWE NPC	R 13 000 000,00	2 018
EC	113092	SIMINGAYE COMMUNITY PROJECT	R 13 000 000,00	2 018
LP	113093	HANYANYANI COMMUNITY PROJECT	R 13 000 000,00	2 018
MP	113099	REITEMOGILE YOUTH DEVELOPMENT GROUP	R 13 000 000,00	2 018
GP	43501	SOS Children's Village Association of the Republic of SA	R 13 255 401,00	2 010
WC	69130	Badies	R 13 311 623,00	2 013
WC	69305	The Cape Town Minstrel Carnival Association	R 13 322 300,00	2 012
GP	00213	Hand In Hand Development	R 13 488 080,00	2 012
GP	68473	S.A Sports Confederation And Olympic Committee (SASCOC)	R 13 600 000,00	2 012
NC	74484	Kuruman Moffet Mission	R 13 725 006,20	2 013
GP	62412	South African Table Tennis Board	R 13 748 938,00	2 013
WC	73656	The Cape Town Minstrel Carnival Association	R 13 750 000,00	2 013
GP	74420	National Heritage Project	R 14 000 000,00	2 014
NW	109203	MADUMELANI COMMUNITY PROJECT	R 14 000 000,00	2 018
GP	58951	Cancer Association Of South Africa	R 14 272 635,00	2 012
KZN	60279	Umsinyathi District Municipality	R 14 635 325,94	2 013
FS	52219	National Museum Bloemfontein	R 14 930 000,00	2 011
NW	44262	Mankweng Tech & eorum High School	R 14 947 328,00	2 016

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GP	75128	Kagiso Charitable Trust	R 14 889 860,34	2 014
NW	49332	North West University	R 15 000 000,00	2 011
LP	59780	Polokwane Municipality	R 15 000 000,00	2 011
GP	73791	University Of South Africa	R 15 000 000,00	2 013
WC	55232	THE S A RED CROSS AIR MERCY SERVICE TRUST	R 15 000 000,00	2 014
WC	85942	The SA Red Cross Air Mercy Service Trust	R 15 000 000,00	2 016
MP	73938	SOUTHERN AFRICAN YOUTH MOVEMENT	R 15 000 000,00	2 016
NC	109204	INQABA YOKULINDA	R 15 000 000,00	2 018
NW	109211	REGODILE COMMUNITY DEVELOPMENT ORGANISATION	R 15 000 000,00	2 018
LP	72957	Limpopo Youth Orchestra	R 15 547 893,41	2 013
EC	41484	EC Philharmonic Society	R 15 857 088,89	2 010
GP	105347	MAVU	R 15 924 980,00	2 017
GP	92562	OLIPHANT INSTITUTE OF LEADERSHIP	R 15 989 800,00	2 018
FS	113717	NGANONO MUNTU FOUNDATION	R 16 000 000,00	2 019
GP	74438	ST. Joseph Mtsheng Campaign	R 16 048 453,10	2 016
KZN	42142	Durban Music School	R 16 073 086,00	2 010
GP	59479	The University Of The Witwatersrand Foundation	R 16 246 978,46	2 018
KZN	46053	African Conservation Trust	R 16 959 431,00	2 011
GP	75095	The Sports Trust	R 17 000 000,00	2 013
NC	109626	ABRINA 3641	R 17 000 000,00	2 016

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GP	103829	SOUTHERN AFRICAN YOUTH MOVEMENT	R 17 000 000,00	2 013
GP	103814	DENZHE PRIMARY CARE	R 17 000 000,00	2 016
GP	75200	South African Sports Confederation & Olympic Committee	R 17 700 000,00	2 013
GP	111212	MAKE ME MOVEMENT	R 17 782 000,00	2 016
MP	102692	Konani-Plunzo Learning Centre	R 18 000 000,00	2 018
WC	43186	Restoration of Historical Schools	R 18 487 483,00	2 010
NW	73383	Tshepo Training And Capacity Building	R 18 641 000,00	2 013
WC	75092	South African Institute For Drug-Free Sport	R 18 800 000,00	2 013
NC	72868	Phakameni Women's Organisation	R 19 594 270,00	2 013
KZN	74192	AMANDAWA COMMUNITY CARE CENTRE	R 19 645 072,82	2 016
NW	74044	Mmabana Arts, Culture And Sports Foundation	R 19 845 388,00	2 013
GP	74430	Pan South African Language Board (PAN SALB)	R 20 000 000,00	2 014
GP	105425	ATHLETICS SOUTH AFRICA	R 20 372 000,00	2 017
GP	44476	The Mollano Project	R 20 423 145,00	2 011
NC	75309	Specialist Agents For Youth	R 20 736 000,00	2 014
MP	43006	Tikani Sebenzani Support Group	R 21 308 000,00	2 011
GP	40560	Black Education Upgrading	R 21 418 100,00	2 011
GP	80768	South African Sports Confederation & Olympic Committee	R 21 508 822,21	2 015
NW	72831	Montshiso Cultural Village	R 22 355 628,00	2 013
LP	73676	Mabula Community Development Trust	R 22 600 000,00	2 014

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EC	45622	Afesi-Corplan	R 22 932 241,00	2 010
FS	108183	SA YOUTH MOVEMENT NPC	R 23 000 000,00	2 017
KZN	108184	UBUSU NPC	R 23 000 000,00	2 017
LP	106182	MUSHUMO USHAVHA ZWANDA	R 23 000 000,00	2 017
MP	108180	MATHEI COMMUNITY CENTRE	R 23 000 000,00	2 017
NC	108181	LETHABONG OLD AGE	R 23 000 000,00	2 017
NW	106179	WAR_RNA	R 23 000 000,00	2 017
GP	105348	NUNNOVATION AFRICA FOUNDATION	R 23 720 000,00	2 017
GP	104918	ZIBSILOR	R 23 877 838,00	2 017
KZN	34650	Centre for Creative Arts, University of KwaZulu Natal	R 24 528 000,00	2 010
GP	42592	Something Magic Theatre Organisation	R 24 935 220,00	2 010
GP	103498	SASCOC	R 24 980 000,00	2 018
GP	77445	The Sports Trust	R 25 000 000,00	2 016
LP	103514	SIMBA COMMUNITY DEVELOP FOUNDATION	R 25 089 738,00	2 016
NC	103236	SOL PLAATJE UNIVERSITY	R 25 911 243,00	2 016
EC	46681	Cycling South Africa	R 25 955 719,00	2 011
GP	103268	THE SPORTS TRUST	R 26 000 000,00	2 016
NW	74305	Thabang Adventures	R 26 315 176,27	2 013
MP	103396	UNIVERSITY OF MPUMALANGA	R 27 000 000,00	2 016
WC	73536	The Cape Town Minstrel Carnival Association	R 27 320 755,64	2 013
GP	72584	Zibrex 207	R 27 500 000,00	2 013

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NC	72527	Pietermaritzburg Women's Organisation	R 25 000 021,24	2 013
EC	75251	Border Cricket (Proprietary) Limited	R 30 000 000,00	2 014
LP	93808	SOUTH AFRICAN SPORTS ASSOCIATION FOR THE INTELLECTUALLY IMPAIRED	R 30 000 000,00	2 015
WC	41261	Cape Town Opera Company	R 31 600 000,00	2 010
GP	41961	Jazz Foundation of SA	R 32 272 400,25	2 010
WC	46715	South African Rugby Union	R 35 000 000,00	2 011
LP	80799	Limpopo Academy Of Sport	R 35 000 131,83	2 015
GP	103300	ATHLETICS SOUTH AFRICA	R 36 754 800,00	2 016
KZN	81637	Impucuzeko Skills And Training Development	R 38 095 892,50	2 015
GP	85759	The Sports Trust	R 39 000 000,00	2 014
GP	42992	National Youth Development Agency	R 40 000 000,00	2 010
GP	37632	New Lovell's Trust	R 46 161 861,88	2 010
GP	36454	The Es'kia Institute	R 46 678 125,00	2 010
WC	42229	Bodies	R 49 593 411,00	2 013
GP	49543	Flood Disaster Relief	R 50 000 000,00	2 014
GP	72798	S.A Sports Confederation And Olympic Committee (SASCOC)	R 50 000 000,00	2 013
GP	82093	SASCOC	R 50 000 000,00	2 016
GP	75079	South African College Principals Organisation	R 62 590 000,00	2 013
GP	88174	SASCOC	R 63 000 000,00	2 015
GP	98532	SASCOC	R 70 000 000,00	2 016

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GP	46723	South African Sports Confederation & Olympic Committee	R 73 894 000,00	2011
GP	61892	S.A Sports Confederation And Olympic Committee (SASCOC)	R 86 000 000,00	2013

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First Floor, 61 Katherine Street
Sandton, 2196, Johannesburg

3rd Floor Thabakgolo Building,
58-60 Landros Mare Street, Polokwane

Bheeroo Chambers, 507 Chancery House
Lislet Geoffroy Street, Port Louis, Mauritius

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Web: www.maluks.com

NEXIA SAB&T
119 WITCH-HAZEL AVENUE
HIGHVELD TECHNOPARK
CENTURION

URGENT!

BY EMAIL: piet.v@nexia-sabt.co.za

Your Ref:	Our Ref:	Date
MR Piet Van der Merwe	MJ Maluleke / H Shivamba joseph@maluks.com humphrey@maluks.com	07 December 2020

Dear Sir(s),

RE: MEETING REQUEST WITH THE NLC

1. We act on behalf of National Lotteries Commission ("our client").
2. We acknowledge receipt of the email of 4 December 2020 and subsequent correspondence sent to our client which have since been forwarded to us to attend to.
3. We have advised our client to co-operate with all and any lawful investigations that it may be subjected to by any authority.
4. However, in order to determine if this investigation is indeed lawful and whether our client is obliged to afford you its co-operation, we are instructed by our client to request the following information from you:

4.1 A copy of your letter of appointment; and

4.2 A copy of your terms of reference (scope and extent of your investigation).

Maluleke Incorporated
Registration Number:
VAT Registration Number:
Directors:

Senior Associates:

Offices:

Attorneys | Notaries | Conveyancers | Forensic | Trademarks & Patents | Tax
2019/304925/21
4760289076

Executive Chairman: M.J. Maluleke LLB (UP), HDIP TAX (UJ)

Chief Executive: P.C. Malemone CA (SA)

V.C. Williams BSC ENG (Mech) (HC), BProc (UNISA); H Shivamba LLB (UWC), B. Khwelemthini LLB (UNISA),
TG Matji LLB (UNISA)

List of Directors available at the registered office or national website

Johannesburg (Sandton), Polokwane (+27 (0) 15 101 0545), Mauritius (+230 210 0507), Mpumalanga

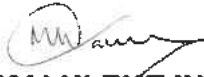
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5. The above requested information will assist our client to adopt a legal position and establish what its rights and duties are. It is also very interesting that you purport to also speak on behalf of the Hawks which is very unusual, irregular and somewhat confusing. If the Hawks wish to speak to our client, they can do so directly by themselves, they do not need you to facilitate that. Please confirm in terms of what authority/legislation are you writing to our client purportedly on behalf of the Hawks as your 4 December 2020 email suggests.
6. Upon receipt of the requested information, we shall advise our client how to deal with you going forward. Kindly also take note that the matter of your investigation into our client is before the High court. Last week our client issued a court application against the Minister of Trade, Industry and Competition for an order in the following terms:
 - 6.1 That the investigation commissioned by the Minister into the affairs of our client and the production of the investigation report pursuant to the said investigation by the Minister, which the Minister has kept under wraps, and refuses to release to our client, is invalid, unconstitutional and therefore set aside;
 - 6.2 That the decision of the Minister to refuse to provide our client with the investigation report that the Minister has commissioned into the affairs of our client, is unlawful and unconstitutional.
 - 6.3 That the Minister is directed to provide our client with the investigation report within five (5) days from the date of the order.
 - 6.4 That to the extent necessary, and only if the requirements of Promotion of Access to Information Act 2 of 2000 ("PAIA") are applicable, our client is hereby exempted from complying with such provisions; and
 - 6.5 Further and/or alternative relief.
7. Considering the above, we are on behalf of our client scrutinizing the legalities of your investigation into our client. It may very well be that our client does not have any obligation to co-operate with your investigation until the dispute between it and the Minister has been finally determined by the High Court. Accordingly, the matter is *sub-judice*.
8. Our client is also aware that someone acting on the instructions of the Minister of Trade, Industry and competition, or the Minister himself, has during August 2020 opened a criminal case against our client with the SAPS for investigation. This was confirmed by the DG of the Department of Trade, Industry and competition, Mr Lionel October, to Parliament's portfolio committee on 02 September 2020. Our client is addressing these matters in its court papers against the Minister. In this regard and in addition to the information requested above please provide us with the following:
 - 8.1 Confirmation that it is indeed yourselves that have opened the case against our client with SAPS, and if so, to advise of the Police station at which the case was reported and the relevant case number. Our client is entitled to this information.
 - 8.2 We also request the details of the Hawks official(s) that you are collaborating with in relation to this matter.

9. We look forward to hearing from you and to receive the requested information herein.
10. All rights remain strictly and specifically reserved, including your right to communicate with our client on behalf of the Hawks.

Yours faithfully



MALULEKE INC.

Per: M J Maluleke



MINISTER
TRADE, INDUSTRY AND COMPETITION
REPUBLIC OF SOUTH AFRICA

Private Bag X84, PRETORIA, 0001, the civic Campus, 77 Mainjies Street, Sunnyside, 0002, Tel: (012) 394 1480, Fax: +27 12 394 0337
www.thedtic.gov.za

19 May 2020

Mr Matamela Cyril Ramaphosa
President of the Republic of South Africa
Union Buildings
Private Bag X1000
Cape Town
8000

Dear Mr President

REFERRAL OF MATTERS FOR INVESTIGATION BY THE SPECIAL INVESTIGATING UNIT AND ADJUDICATION BY THE SPECIAL TRIBUNAL OR A COURT OF LAW: ALLEGATIONS OF SERIOUS MALADMINISTRATION IN THE AFFAIRS OF THE NATIONAL LOTTERIES COMMISSION (THE NLC)

I have been informed that the Special Investigating Unit (SIU) is preparing to initiate the process for the issuing of a Proclamation by the President, empowering the SIU to investigate certain allegations of serious maladministration in the affairs of the NLC.

The SIU has submitted its draft motivation in support of the Proclamation to me for scrutiny. I concur with the contents of the draft document insofar as it sets out the motivation why the SIU is the most appropriate body to address the allegations. I have separately requested that a forensic investigation be conducted into certain matters involving the NLC and would value the outcome of the SIU investigation, as it would complement this initiative.

Consequently, I appeal to you as a matter of urgency to favourably consider issuing a Proclamation authorising the SIU to investigate the matters concerned in order thereby, to determine the facts relating to the alleged impropriety and take the necessary steps to recover any losses suffered by the NLC or the State and to prevent further losses.

I record my full and unconditional support for such an investigation, which I submit would be in the public interest and is urgently required. I shall be pleased to discuss any concerns you may have regarding this matter.

I take this opportunity to thank you in advance for your kind and urgent cooperation.

Yours sincerely

Ebrahim Patel
Minister of Trade, Industry and Competition

Lesephha le Dikgwetseano, Olinasotoli le Thosano • Lesephha le Kgwebo Indasteri le Phetibano • umnyango wazokwabo naZimbobeli kunye noMincinane • Indawo ye zwa Mbarakadzo, Makwero na Majoliso • Die Departement van Handel, Nywerheid en Mededinging • Kgomo ya Kgwebo Indasteri le Kgaleano • Ndawo yu Vuvavisi, Mabindzu na Mphahano • Linto le Tshutshiso eMboni neKundinlwano • ISebe lezoPhwebo noShishino kunye noGuphilewano • UmNyango wazokwibela, amabiziso nama Phetibano

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22 July 2020

Department of Trade, Industry & Competition
77 Meintjies Street
Block B, Ground Floor
Reception, Sunnyside
Pretoria

Dear Sir/Madam,

Re: Investigation Report - Investigation into allegations at the National Lotteries Commission (NLC)

We have pleasure in submitting our investigation forensic report in respect of the above-mentioned assignment to the DTIC. This report should be read in conjunction with the annexures.

Please note that this report has been prepared for, and only for the DTIC in accordance with the terms of our mandate and for no other purpose. We do not accept or assume any liability or duty of care for any other purpose or to any other person to whom this report or any part thereof are shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

This investigation report is subject to change based on the additional investigation still to be completed.

Yours faithfully;

Nexia SAB&T

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28

**IN THE COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 63115/2020

In the matter between:

NATIONAL LOTTERIES COMMISSION

Applicant

and

**THE MINISTER OF TRADE, INDUSTRY
AND COMPETITION**

Respondent

REPLYING AFFIDAVIT

I, the undersigned;

THABANG CHARLOTTE CHRISTINE MAMPANE

do hereby make oath and say:

1. I am the Commissioner of the National Lotteries Commission ("NLC"). I am, by virtue of my position, authorised to depose to this affidavit on behalf of the NLC ("applicant"). I also do so by virtue of the personal knowledge I have of the facts set out and or allegations made by the Minister of Trade, Industry and Competition, in his answering affidavit.
2. Accordingly, the facts herein contained are save where the context indicates otherwise, within my personal knowledge and are true and correct. Legal submissions made in this affidavit have been solicited and obtained from the



applicant's legal representatives and the NLC accepts the legal advice as correct.

3. The founding affidavit was deposed to by Professor Ntshengedzeni Alfred Nevhutanda, the former Chairperson of the Broad of NLC. I deposed to the confirmatory affidavit to which I confirmed the allegations therein contained insofar as same related to me.
4. I have read the answering affidavit of the Minister, who is cited as respondent in the application brought by the applicant for the order sought in Prayers 1, 2, 3 and 4 of the notice of motion. Upon perusal of the answering affidavit aforesaid, the applicant persists with the relief sought in the notice of motion. The applicant does so on the following grounds. Firstly, the 61 page answering affidavit of the Minister does not address the issues that implicate this application. Secondly the Minister spent inordinate time dealing with matters that are irrelevant to the relief sought in the notice of motion. It will be argued at an appropriate time when the matter is heard by Counsel for the applicant that the facts that underpin this application have not been seriously contested by the Minister, and for the reasons aforesaid, the relief sought should be granted.
5. I proceed to reply to the answering affidavit to the extent necessary without elaborating in detail on those allegations which are not pertinent and relevant to this application.



20

Ad seriatim responses to the answering affidavit

6. AD PARAGRAPHS 1 – 6

- 6.1 I admit that the deponent to the answering affidavit is the Minister of Trade, Industry and Competition. I also admit that he was appointed by the President on 29 May 2019 and signed a performance agreement with the President in November 2020. A copy of the performance agreement that has been concluded between the Minister and the President is annexed hereto marked “**TCCM1**”. The performance agreement set out the responsibilities that the President has in terms of section 92(1) of the Constitution assigned to the Minister. I also admit that the Minister is also responsible for the administration of the Lotteries Act 57 of 1997 (“the Lotteries Act”) and also responsible for oversight of the NLC.
- 6.2 However, I should mention that in doing so, the Minister, as executive authority, and Member of Cabinet, is constrained by statute, the rule of law, and the empowering provisions which entail that he may not do anything or perform any function or act other than that which is provided for by law. Any act or function that he performs outside the empowering legislation, the Constitution, and the rule of law, is invalid, unconstitutional and ultra vires.
- 6.3 As the applicant demonstrated in the founding affidavit, to which no adequate or satisfactory responses have been provided, the Minister has acted ultra vires, when instituting an investigation which is impugned in this application and has failed to show in the answering affidavit which

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empowering provision entitled him to commission the investigation, and to keep the report without providing it to the NLC, being the subject matter of the purported investigation.

- 6.4 I do not agree that the facts and or allegations that the Minister has made in the answering affidavit are within his personal knowledge, and that they are true and correct. Some of the allegations, do not fall within his personal knowledge and could therefore not adequately and or properly be answered to by himself.

7. AD PARAGRAPHS 7 – 13

- 7.1 In these paragraphs the Minister is providing his understanding of the provisions of the Lotteries Act and the Public Finance Management Act. I take note of these sections that the Minister has reproduced in these paragraphs. The interpretation of the relevant sections of the Lotteries Act, and the PFMA, are for the Court. However, I dispute the interpretation that is given by the Minister to these sections, particularly the Minister's understanding of the powers conferred by section 63(2) of PFMA. Legal argument will be advanced at the hearing of this matter by Counsel on behalf of the applicant in order to demonstrate that the interpretation accorded to by the Minister of section 63(2) is incorrect. This section does not empower the Minister at all to institute an investigation and to do so in the manner in which the Minister purportedly instituted the current impugned investigation.

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7.2 Insofar as the obligations and responsibilities of NLC, I should state that same is provided for in the Lotteries Act, and PFMA, read with the relevant regulations. For instance, it is the duty of the Board of NLC, and the NLC as an institution to maintain principles of transparency and accountability. NLC has demonstrated and maintained its principles of transparency through its submission of the following reports; quarterly performance report submitted to the Minister and relevant statutory bodies; timeously meeting reporting requirements to relevant statutory bodies; integrated report tabling to Parliament and publishing on NLC website, as well as distribution to individual staff members and key stakeholders; timeous response to media enquiries within the confines of relevant legislation; timeous response to Parliamentary questions, and proactive and prompt appraisal of Minister of any material matters.

8. AD PARAGRAPHS 14 – 27

8.1 In these paragraphs, the Minister deals with shareholder's performance compacts. He refers to the 2019/20 shareholders compact which no longer applies because it terminated by effluxion of time. Realising that he cannot rely on a defunct compact of 2019/20, the Minister invokes a 2020/21 shareholder's performance compact, which on the Minister's own words, has not been signed by him, and he still wants to engage the Board on some of the provisions in it. The Minister can therefore not rely on a document which does not have any legal standing because it has not been signed by him, and he does not regard it as a compact yet because he still has queries that he wishes to pose to the Board.

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- 8.2 On the Minister's own version, the 2020/21 compact, although already signed by the Chairperson of the Board of NLC, he regards it as a draft because he has queries on some of its provisions. According to the Minister, this document already signed by the Chairperson of the Board may still change, and currently does not constitute a legal instrument.
- 8.3 The Minister is therefore in no position to rely on any of these two documents which he has attached as "EP1" and "EP2". They have no legal standing whatsoever and cannot be relied upon to hold the NLC accountable. It was the responsibility of the Minister to have proactively and on time ensured that the 2020/21 compact is duly signed by both parties in order to make it a legally binding instrument.
- 8.4 To the extent that the Minister wishes to rely on any of these two documents which have no legal standing to defend the DG's appointment of an independent forensic investigators, same simply demonstrates the illegality of that appointment. What the Minister cannot deny, is that the appointment of the independent forensic investigators was not done by him. He instructed the DG to do so. The Minister could not do so without issuing delegated authority to the DG. However, no written delegation has been produced by the Minister to this effect. Even if the Minister would have done so, I deny that such power is delegable. On this basis alone, the forensic investigation that was commissioned by

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the Minister, which resulted in the forensic investigation report which the Minister to date refuses to provide to the NLC, is unlawful and invalid.

8.5 Save as stated herein above, I deny the remainder of the allegations in these paragraphs to the extent that they conflict with what has already been stated in the founding affidavit of the applicant.

9. AD PARAGRAPHS 28 – 31

Again, the Minister seeks to rely on a defunct compact and the draft compact which have no legal standing to raise a preliminary point. Even if the Minister were correct that disputes ought to be dealt with in terms of clause 16 of the defunct compact, it still does not assist the Minister in his opposition of this application because Prayer 1 of the notice of motion is a declaratory order to the effect that the investigation that has been commissioned is unlawful, unconstitutional and invalid. The illegality of the conduct of the Minister or the unlawfulness of investigation, cannot be resolved through the dispute resolution provided for in clause 16 of the 2019/20 compact. Only the Court has the power to declare a conduct unlawful or to determine whether a conduct is unlawful or unconstitutional. It is not open to the Minister let alone the NLC, to determine whether the conduct is unlawful, invalid or unconstitutional. Accordingly, the nature of the issue raised in the application or the issues implicated in this application are not those which fall under clause 16 of the 2019/20 compact. For these reasons, this preliminary point cannot succeed.



10. AD PARAGRAPHS 32 – 46

10.1 The second preliminary point raised by the Minister is that the applicant ought to have invoked the provisions of PAIA. However, this objection by the Minister cannot be sustained because on the Minister's own version, he has already refused the request. The Minister did not say that the applicant should follow PAIA when the applicant through its attorneys requested the Minister to release the report to the NLC. The Minister simply said that he refuses to make the report available and provided the reasons why he was not willing to give the forensic investigation report to the NLC. In so doing, the Minister has himself waived any reliance on PAIA, but decided to deal with the request and made a decision there and there. The Minister has not retracted his decision. Accordingly, as things stand, the refusal decision stand and binding for all intents and purposes until set aside by Court.

10.2 The preliminary objection by the Minister that the applicant ought to have exhausted the internal remedies provided for by PAIA, has no merit. This objection can therefore not succeed. The applicant has also prayed to be exempted from the provisions of PAIA given the circumstances of this case.

11. AD PARAGRAPHS 47 – 86

11.1 In these paragraphs, the Minister inordinately deals with what he regards as background facts pertaining to why a forensic investigation was commissioned. These matters are irrelevant to the relief that is sought in

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the notice of motion. The applicant made it clear in the founding affidavit that it supports any investigation into the affairs of the NLC as long as that investigation is instituted and conducted lawfully. The applicant has submitted in the founding affidavit reasons why it contends that the investigation that has been instituted offend the principles of legality, and it is procedurally irrational among others. I have no doubt that the matters that have been raised in these paragraphs by the Minister pertaining to some of the beneficiaries of the lottery funds, have been dealt with by the very same forensic investigation to which the Minister is refusing to make the report available to the NLC.

- 11.2 If the Minister is confident that the forensic investigation has unearthed serious maladministration, fraud and corruption, perpetrated by either members of the Board or the management of NLC, there is no reason why the Minister should not release such a report because the NLC performs a public function and it is accountable not only to Parliament but to the citizens of the Republic. If there are allegations of maladministration, fraud and corruption within NLC, not only is the NLC entitled to know about them, but the public at large is entitled to know because the NLC performs its duties, responsibilities and functions in the public interest. The very reason that the Minister to date is refusing to release the report, fortifies the applicant's contention that the report does not support the Minister's contentions.

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11.3 The applicant has already dealt clearly in the founding affidavit with the allegation that the DG has no authority to institute an investigation, and the Minister has no power to delegate such authority to the DG, even if he has, that would be unlawful for absence of written delegation of authority. Accordingly, Nexia, SAB & T has been unlawfully appointed to conduct a forensic investigation which is not authorised by law. If Nexia, SAB & T was lawfully appointed, its report would have been embraced by the Minister, who would have released it to the NLC.

11.4 The allegation by the Minister that the investigation is incomplete, and the forensic report in his position is an interim report, should be rejected as far-fetched. I say so for the reasons already outlined in the founding affidavit which have not been contradicted by the Minister. The applicant has referred in the founding affidavit to the submissions made by the Director-General ("DG") to the Portfolio Committee of Parliament on Trade and Industry that a forensic investigation report has been provided to the South African Police Service ("SAPS"). At no stage did the DG inform the Parliamentary Portfolio Committee on Trade and Industry that the report from Nexia, SAB & T is an interim report. What is also disconcerting is that this report is already in the possession of the media, because the media has been reporting about it and selectively quoting from it. At no stage has it been reported in the media that the report is an interim report. It is therefore incumbent upon the Minister to make available this report to the NLC. His continued refusal is unlawful.

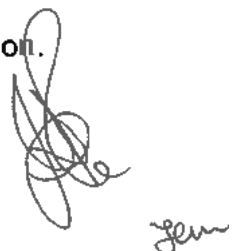



11.5 Save as stated hereinabove, the contents of these paragraphs are denied to the extent that they are inconsistent with the founding affidavit and what I have stated above.

12. AD PARAGRAPHS 87 – 108

12.1 Similarly, like I have pointed out above, the Minister dwell on irrelevant matters which have nothing to do with the relief sought in the notice of motion. Allegations of maladministration have already been referred by the Minister to a forensic investigation, which was concluded and the investigation report was submitted to the Minister. Both the Minister and the DG are in possession of the report, which they have given to the SAPS. The same report has now been given to the SIU and the President, but not to the NLC. On the strength of the motivation by the Minister, the President appointed the SIU to conduct an investigation in terms of the proclamation he issued. Otherwise it would not have made sense for the same Minister to encourage parallel investigations in respect of the same subject matter, given the fact that if it were to happen, same would constitute fruitless and wasteful expenditure.

12.2 I repeat that the NLC is not against any investigation on the NLC, its Board, management and staff, as long as the investigations is in compliance with the law. The investigation commissioned by the Minister is not in accordance with the law, it is unconstitutional and invalid. The allegations made by the Minister in these paragraphs, serious as they are do not authorise the Minister to institute an unlawful investigation.

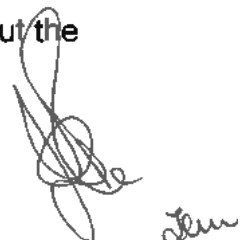
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12.3 I deny the contents of these paragraphs to the extent that they are inconsistent with what is set out herein above and what has already been set out in the founding affidavit.

13. AD PARAGRAPHS 108 – 114

13.1 I admit that NLC is a public entity, accountable not only to Parliament but to the public. It has to act transparently, and within the prescripts of the legislation that establishes it and the regulations that have been issued by the Minister. Significant in the regulations that were issued by the Minister, is regulation 8. The Minister has made issue about the NLCs understanding of regulation 8 pertaining to disclosure of third party information, including disclosure of all approved proactive funding projects. It is incorrect that NLC was simply refusing to provide the list of beneficiaries to the Minister or to have the list published in its annual financial statements. As the Minister has pointed out, there was a legal opinion that was solicited and obtained by the NLC which confirmed the NLCs apprehension of releasing or disclosing such information in the light of regulation 8. A copy of this opinion is attached hereto marked "TCCM2".

13.2 It makes it so plain in its conclusion that the disclosure of such information is prohibited by regulation 8. In any event, this application is not about disclosure or failure to disclose information or list of beneficiaries as requested by the Minister. This application is about the

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declaratory order on the unlawfulness of the forensic investigation that has been commissioned by the Minister, and the Minister's refusal to provide the NLC with the investigation report. It is evident that the investigation has been concluded by Nexia, SAB & T and that it has submitted a report to the Minister. There is no final report which will be produced by Nexia SAB & T because the investigation has now been taken over by the SIU as per the proclamation of the President.

13.3 The SIU is not continuing the investigation which was conducted by Nexia SAB & T, but it is conducting its own investigation in terms of the SIU Act, read with the proclamation issued by the President. Nexia SAB & T has concluded its investigation and submitted its report to the Minister. The Minister is therefore duty bound to produce that report. His refusal to produce the report, on the basis that the investigation is not completed, ongoing, and that he has a preliminary report, should be rejected by the Court.

14. AD PARAGRAPHS 124 – 163

14.1 I deny the contents of these paragraphs to the extent that they are inconsistent with what I have already stated above together with what has already been stated in the founding affidavit. I have pointed out what the relief that the applicant seeks is. The Minister has chosen to deal with irrelevant matters instead of focusing on the material facts alleged in the founding affidavit.



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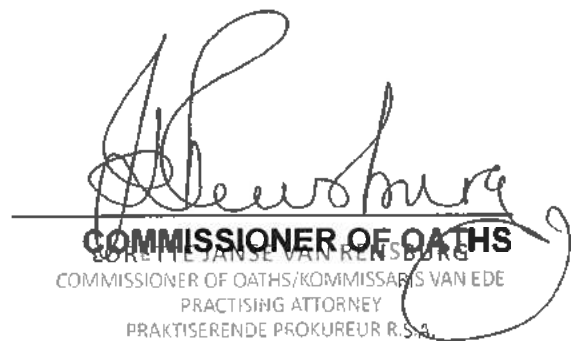
14.2 No legal basis has been laid by the Minister to conclude in paragraph 163 that the cost of the application should be paid by the members of the Board and the Commissioner. Legal argument will be presented to court at the hearing of this matter in this regard.

14.3 In any event, the Minister's answering affidavit has not seriously challenged the material facts underpinning this application.

14.4 Accordingly, the applicant persists with the relief sought in the notice of motion.


DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn before me at Pretoria on this the 22nd day of **FEBRUARY 2021**, the regulations contained in Government Notice N0. 1648 dated 19 August 1977 (as amended) having been complied with.


COMMISSIONER OF OATHS
BOREILLE JANSE VAN RENSBURG
COMMISSIONER OF OATHS/KOMMISSARIS VAN EDE
PRACTISING ATTORNEY
PRAKTISERENDE PROKUREUR R.S.M.
PDR ATTORNEYS
ATTORNEYS, NOTARIES AND CONVEYANCERS
(ESTABLISHED IN 2004 AS PETZER, DU TOIT & RAMULIFHO)
CNR RICHARD & STANZA BOPAPE STREET, HATFIELD, PRETORIA
PO BOX 11200, HATFIELD 0028
TEL: (012) 342 9895 & FAX: (012) 342 9933

"TCCM1"



PERFORMANCE AGREEMENT

BETWEEN

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE MINISTER OF TRADE, INDUSTRY AND COMPETITION

PERIOD OF AGREEMENT

JUNE 2019 TO APRIL 2024

[Handwritten signatures]

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CONSTITUTION AND LEGISLATION

The Constitution of the Republic of South Africa, 1996, stipulates in section 91 (2) that the President appoints the Deputy President and Ministers, assigns their powers and functions, and may dismiss them.

The Constitution of the Republic of South Africa, 1996, stipulates in section 92 (1) that the Deputy President and Ministers are responsible for the powers and functions of the executive assigned to them by the President.

Executive Members' Ethics Act (No. 82 of 1998) state that members of the Cabinet must act according to a code of ethics, created by the President pursuant to the principles and framework established by the Executive Members' Ethics Act of 1998.

The principles of natural justice applies.

MINISTERIAL KEY RESPONSIBILITY AREAS

The constitutional imperatives and obligations contained in Chapter 5 of the Constitutions including but not limited to sections 92, 93, 96, 97, 98, 99, are applicable.

The contents of this agreement set out the powers and functions assigned to you by the President in accordance with Section 91(2)



KEY RESPONSIBILITY AREA 1: POLITICAL LEADERSHIP CONTRIBUTING TO THE COUNTRY'S TRIPLE CHALLENGES, NDP PRIORITIES AND MEDIUM TERM STRATEGIC FRAMEWORK (MTSF) 2019 – 2024

As Minister in the Cabinet you will contribute individually and collectively to addressing the triple challenges of poverty, inequality and unemployment and the MTSF 2019 - 2024.

Priority 2: Economic transformation and job creation

Target: Unemployment reduced to 20-24% with 2 million new jobs especially for youth; economic growth of 2-3% and growth in levels of investment to 23% of GDP

INVESTING IN ACCELERATED INCLUSIVE GROWTH				
Outcome	Interventions	Indicators	Baseline	Targets
	Improve the ease of doing business	World Bank Ease of Doing Business Ranking	84 th in 2019	<p>Create a world-class business registration service, to contribute to improving overall ease of doing business</p> <p>1. Ensure a system to enable a person to register a company within one day, covering the following: company registration, B-BBEE certification, Domain Name Registration and Business Bank Accounts. Engage with relevant colleagues to include tax, UIF and Compensation Fund registration within the single portal.</p> <p>2. Ensure a simple electronic guide to assist persons by providing useful information on registration, set up and operating a business in SA in order to encourage more start-ups, SMME, youth and women business to register and start a business</p>

				3. Work with other Ministers to contribute to the overall ease of doing business in South Africa.
Ensure the macroeconomic policy alignment and coherence	Macroeconomic policy reviewed to support growth	Fiscal consolidation, inflation targeting 3-6%	Macroeconomic policy framework reviewed by 2022	<p>1. Contribute to the review of the macroeconomic policy to support growth and job creation</p> <p>2. Provide impact analysis of fiscal options on manufacturing and broader growth objectives</p>




Review B-BBEE to support worker empowerment and establish legislation for worker, community and HDI ownership	<p>New legislation on workers and company governance.</p> <p>Implementation and review of legislation on worker, community and HDI ownership</p>	New Indicators	Develop and/or implement legislation on worker ownership and participation in the economy; and equity for community and HDI ownership, by December 2021	<p>1. Prepare amendments to the Companies' Act to provide for worker participation in company governance structures; discuss these with social partners; prepare a Cabinet Memorandum on the proposals.</p> <p>2. Monitor large mergers under the Competition Act to ensure that the competition authorities take account of legal provisions on worker ownership</p> <p>3. Introduce draft legislation under the B-BBEE Act to address the recognition of ownership by broad-based vehicles that promote poor communities and workers as beneficiaries</p> <p>4. Prepare annual reports on worker, community and HDI ownership</p>
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RE-INDUSTRIALISATION OF THE ECONOMY AND EMERGENCE OF GLOBALLY COMPETITIVE SECTORS - National priority sectors grow contribution to GDP growth of 3% and exports increase by 4%				
Outcome	Interventions	Indicators	Baseline	Targets
	Create a conducive environment that enables national priority sectors to support industrialisation and localisation, leading to increased exports, employment, and youth- and women-owned SMME participation	Master Plans developed and Master Plan Implementation Reports	Automotive and CTLF Masterplans	Six Master Plans finalised and implemented during the period of the Administration
				1. Implement Auto Industry Master Plan for second phase of APDP and monitor the impact 2. Implement Retail, CTFL Master Plan and monitor the impact 3. Implement Poultry Industry Master Plan and monitor the impact 4. Implement Sugar Industry Master Plan and monitor the impact 5. Finalise Steel Industry Master Plan by March 2021, implement and monitor the impact 6. Finalise Furniture Industry Master Plan by March 2021, implement and monitor the impact 7. Support the development of Master Plans of other priority sectors and ensure alignment to the industrial strategy



	Special Economic Zones development and implementation	New Indicator	Development and implementation of Special Economic Zones, providing alignment with District Development Model	<p>1. Establish national support unit for SEZs and prepare annual Budget request to NT for SEZ support.</p> <p>2. Produce annual report on progress made with SEZs</p> <p>3. Promote SEZs among potential private sector investors</p> <p>4. Integrate and coordinate SEZ reporting within District Development Model</p>
	Complete the revitalisation of industrialisation parks	12	All targeted industrial parks revitalised	<p>1. Establish annual targets for revitalisation of Industrial parks and prepare annual Budget request to NT for Industrial Park support.</p> <p>2. Promote Industrial Parks among potential private sector investors</p> <p>3. Produce annual report on progress made with Industrial Parks</p> <p>4. Integrate and coordinate Industrial Park reporting within District Development Model</p>



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Support localisation and industrialisation	<p>Compliance of government spend on designated products and services</p> <p>Partnership with business community and organised labour on specific products</p>	New indicator	A minimum of 20 products for localisation	<p>1. Prepare detailed reports of new products that the DTIC proposes for designation under the relevant legislation and consider proposals for designation from broader economic cluster.</p> <p>2. Lead the economic cluster in engaging with private sector and Nedlac constituencies to identify and implement Nedlac Economic Recovery Plan localisation targets</p> <p>3. Work with the Minister of Finance on an effective system of monitoring adherence to localisation regulations.</p>
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Outcome	COMPETITIVE AND ACCESSIBLE MARKETS THROUGH REDUCED SHARE OF DOMINANT FIRMS IN PRIORITY SECTORS AND EXPANDED SMALL BUSINESS			
Interventions	Indicators	Baseline	Targets	Minister's responsibility
Reduce high levels of economic concentration through rigorous implementation of the Competition Act and other regulations	Number of market inquiries into historically concentrated priority sectors	New indicator	Initiate one new market inquiry and implementation of recommendations of one concluded market inquiry per annum	Ensure that the Inquiry is initiated and decisions are implemented
Strengthen development finance towards SMME development	Improved access to affordable finance for SMMEs and cooperatives	New indicator	Improved national and provincial DFI financing transactions to SMMEs, cooperatives and other developmental categories	1. Oversee work to ensure improved access to affordable financing for SMMEs by the NEF.

				2. Establish appropriate annual targets for the IDC for black industrialists, women and youth-empowered enterprises
Ensure inclusion of SMMEs in localisation and buy local campaigns	Provisions made in accords and interventions for SMMEs	New indicator	Localisation programmes on SMMEs developed and adopted by 31 March 2021.	Contribute to the development and implementation of localisation programmes on SMMEs
Explore the introduction of measures (such as tax breaks) to support the establishment of new, youth owned start-ups	Number of youth start-ups	New indicator	Increase the number of start-up youth business per annum	1. Establish baseline and set annual targets for number of new youth businesses to be supported by the Department and entities 2. Monitor progress with efforts to promote economic opportunities for youth businesses and help unblock challenges experienced within the Department and Entities.

Target: Increased economic participation, ownership and access to resources and opportunities by women, youth and persons with disabilities

TRANSFORMED, REPRESENTATIVE AND INCLUSIVE ECONOMY WHICH PRIORITISES WOMEN, YOUTH AND PERSONS WITH DISABILITIES				
Outcome	Indicators	Baseline	Targets	Minister's responsibility
Interventions Expand government spend on women, youth and persons with disabilities through preferential procurement	Percentage preferential procurement spend by sex/gender, age and disability	New indicator	Improvement on baseline of current procurement by the Department on enterprises with significant equity or management control by women, youth and persons with disabilities	1. Establish baseline performance on procurement for FY 2020/21 for the Department



				<p>2. Set targets for improvement over a 3-year period from FY 2021/22</p> <p>3. Prepare reports on the extent of efforts made to achieve the targets.</p>
Programmes to expand access to finance, incentives and opportunities for businesses with significant equity or management control by women, youth and persons with disabilities	Percentage funding by sex/gender, age and disability, industry/sector	New indicator	Minimum targets as for women, youth and persons with disabilities	<p>1. Establish baseline performance on incentives for FY 2020/21 for the Department and Entities</p> <p>2. Set targets for improvement over a 3-year period from FY 2021/22</p> <p>3. Motivate for budget allocations by NT for financing such targets</p> <p>4. Prepare reports on achievement of funded targets</p>





Priority 6: Social Cohesion and Safe Communities

Target: Equal opportunities, inclusion and redress

A DIVERSE SOCIALLY COHESIVE SOCIETY WITH A COMMON NATIONAL IDENTITY				
Outcome	Indicators	Baseline	Targets	Minister's Responsibility
Interventions Produce/support production of films and documentaries telling the South African story, including the history of liberation	Number of films and documentaries, including those telling the South African story	New indicator	Minimum target to support locally-made films and documentaries telling the SA story.	1. Identify targets in the portfolio to support the local production of films and documentaries telling the SA story. 2. Amend incentive guidelines to enable the achievement of the targets.

Priority 7: A better Africa and World

Target: Increased foreign direct investment into South Africa

A BETTER SOUTH AFRICA				
Outcome	Indicators	Baseline	Targets	Minister's Responsibility
Interventions Source investment for the identified sectors in the South African economy	Increased investment in SA	New indicator	R1,2 trillion overall investment commitments by end of Administration, subject to taking account of the impact of Covid-19	1. Provide support for annual Investment Conferences, including raising sponsorship, publicity and follow-ups on matters raised at the Conferences 2. Produce reports on implementation of pledges made by investors.



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				3.Ensure Invest-SA provides post-commitment support to investors, including coordinating unblocking efforts where required
Facilitate exports through the Export Marketing Investment Assistance (EMIA) Fund	Progress with expanding exports through EMIA		Stabilise exports following the challenges of Covid-19 and thereafter strengthen support based on budgetary support	1. Prepare reports on measures taken on stabilisation of exports 2. Take actions to assist increased exports through the EMIA fund and other measures, focusing on priority sectors
Implementation of the AfCFTA and other trade agreements in order to grow intra-Africa trade	Level of trade with other African countries	New Indicator	Finalise an implementation plan for the AfCFTA	1. Complete the work to enable implementation and administration of the AfCFTA 2. Hold bilateral meetings at SACU level on AfCFTA matters 3. Champion efforts to expand exports to Africa and rest of the world 4. Convene discussions on trade in services in priority sectors and develop proposals for South Africa to submit specific commitments on trade in services



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KEY RESPONSIBILITY AREA 2: PRIORITY 1: BUILDING A CAPABLE, ETHICAL AND DEVELOPMENTAL STATE

This MTSF priority has a few transversal interventions that apply to all Ministers as per the table below:

Targeted impact: Public value and trust; Active citizenry and partnerships in society

Outcome	FUNCTIONAL, EFFICIENT AND INTEGRATED GOVERNMENT			
Interventions	Indicators	Baseline	Targets	Minister's Responsibility
Measures taken to eliminate wasteful, fruitless and irregular expenditure in the public sector	Percentage elimination of wasteful and fruitless expenditure in public sector institutions	2018 Baseline	100% elimination of wasteful and fruitless expenditure incrementally from baseline of 2019 by 2024	Eliminate wasteful and fruitless expenditure
	Percentage reduction of irregular expenditure in public sector institutions	2018 Baseline	75% reduction of irregular expenditure incrementally from baseline of 2019 by 2024	Ensure irregular expenditure is reduced and where it occurs make sure action is taken
	Percentage reduction of qualified audits in the public sector	2018 Baseline	75 % reduction of qualified audits incrementally from baseline of 2019 by 2024	Support the achievement of an unqualified audit opinion in your department/s and entities through progressive improvements in governance and financial management systems
Programme to prevent and fight corruption in government	Percentage resolution of reported incidents of corruption in the government	Trends from the Anticorruption Hotline and Crime Statistics	95% resolution of reported incidents of corruption by 2024 via disciplinary and criminal interventions	Enforce consequences for corruption and misconduct
	Ensure functionality of ethics structures and adequate capacity	New	Establish ethics committees and adhere to terms of reference	Oversee the implementation of the ethics structures
Develop and implement district/metro joined-up plans	% joined-up plans	New	100% joined-up plans	Contribute to the development of the economic development component of the joined-up plan

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KEY RESPONSIBILITY AREA 3: INSTITUTIONAL OVERSIGHT OF THE HOD AND DEPARTMENT

Management Area	Key activities	Performance Indicators	Targets				
			2019/20	2020/21	2021/22	2022/23	2023/24
Executive Authority oversight over the Deputy Ministers							
Executive Authority oversight over the Deputy Minister	Delegation of powers and functions to the Deputy Minister	Annual updated delegations	Updated delegations	Updated delegations	Updated delegations	Updated delegations	Updated delegations
Executive Authority oversight over the Accounting Officer							
Executive Authority oversight over the Accounting Officer	Management of the performance of the Director General	Implementation of Head of Department Performance Management and Development System	Conclusion of the Performance Agreement, Implementations of the midterm review and Annual Assessment of the DG	Conclusion of the Performance Agreement, Implementations of the midterm review and Annual Assessment of the DG	Conclusion of the Performance Agreement, Implementations of the midterm review and Annual Assessment of the DG	Conclusion of the Performance Agreement, Implementations of the midterm review and Annual Assessment of the DG	Conclusion of the Performance Agreement, Implementations of the midterm review and Annual Assessment of the DG
	Delegation of Public Service Act powers of the Minister to DG	Annual updated delegations	Updated delegation register	Updated delegation register	Updated delegation register	Updated delegation register	Updated delegation register
	Monitor compliance to 30 day payments requirement	Monitoring report with corrective measures where applicable	Annual 30 day payment report with corrective measures implemented where applicable	Annual 30 day payment report with corrective measures implemented where applicable	Annual 30 day payment report with corrective measures implemented where applicable	Annual 30 day payment report with corrective measures implemented where applicable	Annual 30 day payment report with corrective measures implemented where applicable



The oversight and achievement of departmental strategic goals and annual performance plans and budget

Political oversight on strategic planning and reporting	Oversee the development of departmental Strategic and Annual Performance Plans and monitor the implementation thereof.	Approval of Strategic Plan, Annual Performance Plans	Approved Strategic Plan and Annual Performance Plan	Approved Annual Performance Plan	Approved Annual Performance Plan	Approved Annual Performance Plan	Approved Annual Performance Plan
		Consideration and approval of Quarterly Performance Reports and Annual report	4 Quarterly and Annual report reports approved	4 Quarterly and Annual report reports approved	4 Quarterly and Annual report reports approved	4 Quarterly and Annual report reports approved	4 Quarterly and Annual report reports approved

The oversight and achievement of gender responsive departmental strategic goals and annual performance plans and budget as per the Gender responsive planning, budgeting, monitoring, evaluation and auditing framework.

Political oversight on gender responsive strategic planning and reporting	Oversee the development of gender responsive departmental Strategic and Annual Performance Plans and monitor the implementation thereof.	Approval of gender responsive Strategic Plan, Annual Performance Plans	Approved gender responsive Strategic Plan and Annual Performance Plan	Approved Annual gender responsive Performance Plan	Approved Annual gender responsive Performance Plan	Approved Annual gender responsive Performance Plan	Approved Annual gender responsive Performance Plan
		Consideration and approval of gender responsive Quarterly Performance Reports and Annual report	4 Quarterly and Annual gender responsive report(s) approved	4 Quarterly and Annual gender responsive report(s) approved	4 Quarterly and Annual gender responsive report(s) approved	4 Quarterly and Annual gender responsive report(s) approved	4 Quarterly and Annual gender responsive report(s) approved



National Department facilitates public involvement, participation and service delivery improvement initiatives							
Support good governance through leading participatory governance and social compacts with stakeholders	Ensure optimal functioning of sectoral participatory governance mechanisms	Development and implementation of Public/ Stakeholder Participatory Strategies and Plan	80% implementation of Public/Stakeholder Participatory Plan	80% implementation of Public Participatory/ Stakeholder Plan	80% implementation of Public/ Stakeholder Participatory Plan	80% implementation of Public/ Stakeholder Participatory Plan	80% implementation of Public Participatory Plan
National Departments' and entities' involvement and contribution to the District Development Model							
Involvement and contribution to the District Development Model (DDM)	Participation in the DDM where applicable	Contribute to the development of the "One Plan" and monitor the implementation against the plan	80% achievement of own commitments in the "One Plan"	80% achievement of own commitments in the "One Plan"	80% achievement of own commitments in the "One Plan"	80% achievement of own commitments in the "One Plan"	80% achievement of own commitments in the "One Plan"

KEY RESPONSIBILITY AREA 4: POLITICAL LEADERSHIP AND OVERSIGHT

Management Area	Key activities	Performance indicators	Targets				
			2019/20	2020/21	2021/22	2022/23	2023/24
Government structures							
Active participation in Inter-Ministerial Committees, MINMEC's, Cabinet Clusters and other Executive Structures	Attendance of Executive structure meeting and performing the tasks related to the structures	Participation in Executive Structures	Attend and implement 80% of tasks associated to member	Attend and implement 80% of tasks associated to member	Attend and implement 80% of tasks associated to member	Attend and implement 80% of tasks associated to member	Attend and implement 80% of tasks associated to member


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Parliamentary Accountability								
Accountability to the Parliament	Responding to Parliamentary Questions and ensuring accountability of own departments and entities to Parliament	Timely response to Parliamentary Questions and tabling of Plans, Budget and Reports	100% accountability to the Parliament	100% accountability to the Parliament	100% accountability to the Parliament	100% accountability to the Parliament	100% accountability to the Parliament	100% accountability to the Parliament
Oversight on State Owned Companies and Public Entities/Agencies								
Oversight over Public Entities	Perform oversight over the governance and performance of entities	Enter into shareholder compacts and oversee the development of Annual Plans and regular governance and performance of the Entities	Shareholder compact updated, plans approved and performance monitored	Shareholder compact updated, plans approved and performance monitored	Shareholder compact updated, plans approved and performance monitored	Shareholder compact updated, plans approved and performance monitored	Shareholder compact updated, plans approved and performance monitored	Shareholder compact updated, plans approved and performance monitored



SIGNATURES

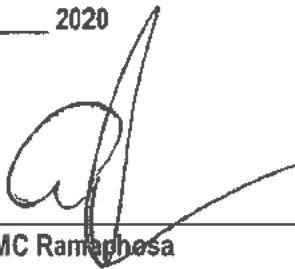
I, EBRAHIM PATEL hereby declare that the information provided in this performance agreement has been agreed upon by myself and the President of South Africa. This is a legal and binding performance agreement that will be used for assessment purposes.



Hon. Mr Ebrahim Patel

Minister of Trade, Industry and Competition

16. 11 2020



His Excellency Mr MC Ramaphosa

President of the Republic of South Africa

6. 10. 2020



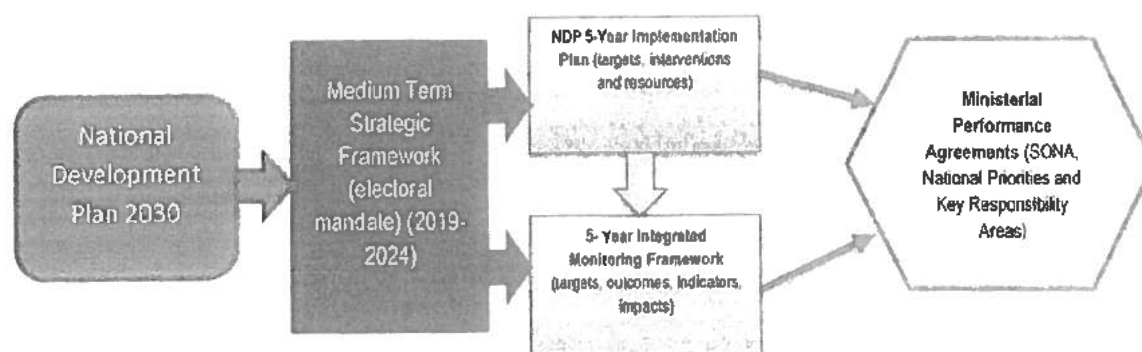
ANNEXURE 1: EXPLANATORY GUIDELINE

1. CONSTITUTION AND LEGISLATION

This aspect highlights constitutional imperatives, obligations, powers and functions of the President relating to the implementation of Ministerial Performance Agreements. It also points out key legislation in this regard.

2. BACKGROUND AND CONTEXT

In October 2019, Cabinet considered and approved the 2019 – 2024 Medium-Term Strategic Framework (MTSF). The MTSF translates the electoral mandate and the National Development Plan into a 5-year programme of government and comprises the 5-Year Implementation Plan and the Integrated Monitoring Framework, containing clear targets, interventions, resource implications and impacts.



In his State of the Nation Address (SONA) on 20 June 2019, the President confirmed the 7 national priorities, based on the electoral mandate, as follows:

- Priority 1:** Building a capable, ethical and developmental state
- Priority 2:** Economic transformation and job creation
- Priority 3:** Education, skills and health
- Priority 4:** Consolidating the social wage through reliable and quality basic services
- Priority 5:** Spatial integration, human settlements and local government
- Priority 6:** Social cohesion and safe communities
- Priority 7:** A better Africa and World

In his reply during the SONA debate, the President further elaborated on why the above 7 priorities are important and demonstrated that government has a clear plan for the road ahead. The key task is speedy

Handwritten signature of the President, followed by the word "Jew" written in a cursive script.

and effective implementation. The new Cabinet has a central role in ensuring that the commitments made in the SONA are implemented with the necessary urgency and vigour.

To this end the Ministerial Performance Agreements (MPAs) will be based on the commitments in the State of the Nation Address and selected priority actions from the 2019 - 24 MTSF. Each annual MPA contains a set of specific targets backed by measurable performance indicators to be achieved over the 5- year electoral period, the purpose of which is to put the country on a positive path towards our national development goals and objectives.

As you are aware, upon the announcement of the new Cabinet, the President made the following undertaking to the people of South Africa:

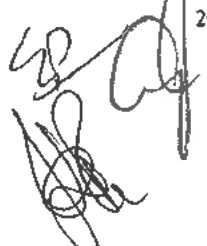
The people who I am appointing today must realise that the expectations of the South African people have never been greater and that they will shoulder a great responsibility. Their performance – individually and collectively – will be closely monitored against specific outcomes. Where implementation is unsatisfactory, action will be taken

It is the aim of this Performance Agreement to give effect to this undertaking.

2. KEY RESPONSIBILITY AREA 1: POLITICAL LEADERSHIP CONTRIBUTING TO THE COUNTRY'S TRIPLE CHALLENGES, NDP PRIORITIES AND MEDIUM TERM STRATEGIC FRAMEWORK (MTSF) 2019 – 2024

This aspect draws directly from the content of the MTSP and SONA and highlights specific responsibilities of the Minister in relation to a particular priority, indicator and target. This will help focus the work of the Minister concerned to the strategic agenda of government. As Minister in the Cabinet you will contribute **individually and collectively** to addressing the triple challenges of poverty, inequality and unemployment and the MTSP 2019 - 2024.

- **Priority:** indicates which of the 7 priorities are directly applicable to the Minister concerned. The Minister is still expected to contribute to the rest of the MTSP as part of the National Executive collective.
- **Target:** provides context to the medium to long-term impact we are seeking to achieve e.g. economic growth.
- **Outcome:** highlights the broad result area we want to make a difference within a year up to 5 years.
- **Indicators, baselines and targets:** are measures that are directly taken from the MTSP.
- **Minister's responsibility:** this column emphasizes the specific contribution that the Minister must make towards delivery of the intervention in the short to medium term. Where a Minister is mentioned as a lead, he or she must take responsibility to convene other relevant stakeholders towards the implementation of a particular intervention. Where a Minister is mentioned as contributing department, it indicates a need for the Minister to take initiatives towards working with Cabinet

20

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colleagues and stakeholders to deliver on the specific intervention. The Cluster system will help with further clarification of these roles and responsibilities.

3. KEY RESPONSIBILITY AREA 2: PRIORITY 1: BUILDING A CAPABLE, ETHICAL AND DEVELOPMENTAL STATE

This MTSF priority has a few transversal interventions that apply to all Ministers, hence it must be included in all Ministerial Performance Agreements. Its content also ties in closely with the next key responsibility areas.

4. KEY RESPONSIBILITY AREA 3: INSTITUTIONAL OVERSIGHT OF THE HOD AND DEPARTMENT

Shows how you will provide strategic leadership, direction and oversight to own departments through the DG in the following areas:

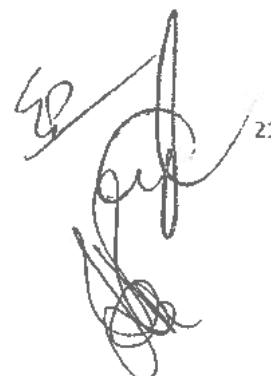
- *Show how you will manage the performance of Heads of Department and Department*
- *Describe how in executing your role and responsibility you will provide oversight in performing the functions below.*

5. KEY RESPONSIBILITY AREA 4: POLITICAL LEADERSHIP AND OVERSIGHT

- *Describe how in executing your role and responsibility you will provide oversight in performing the functions below.*
- *Show how you will actively participate and contribute to the different governance structures, for example, the Cluster/Committee/s system; to Inter-Ministerial Committees and MinMecs.*
- *Show how you will provide leadership and oversight to State Owned Entities/Agencies that you are responsible for*
- *The oversight and achievement of departmental strategic goals and annual performance plans and budget*
- *National Department facilitates public involvement, participation and Service Delivery Improvement Initiatives*
- *National Department involvement, participation in the District Planning Model*

6. IMPLEMENTATION

To improve the likelihood of achieving the targets above, you are advised to ensure that senior managers in your department translate the priority actions and targets in this agreement into a delivery plan with the following elements:



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- Formulating the aspiration: A clear statement of goals, outcomes and targets to be achieved for each priority arising out of a rigorous problem analysis, needs assessment and diagnosis;
- A coherent theory of change – articulating the best way to achieve the aspiration based on relevant theoretical literature and research on local and international cases as well an assessment of current policies and whether they are enablers or constraints. If the latter, then they should be revised and amended accordingly. To note is that in many instances policy development is not a problem, implementation is. However, in some cases revisions to policies may be required and in rare situations new policies may be required to enable the achievement of the priority;
- Setting specific milestones to be reached with leading indicators.
- Interventions (addressing inhibitors/constraints and identifying drivers of performance). Agreeing on who is involved and how those involved will go about contributing to the priority and
- A delivery trajectory mapping out the points from current performance (base line) and showing how implementation of initiatives will shift performance towards the set outcome and target. Points along the delivery trajectory will be used to conduct rapid impact assessments to establish whether real improvement is happening on the ground.

The delivery plan therefore essentially specifies what will be achieved (impact, outcome, target), where it will be achieved, who is involved and how those involved will go about achieving the priority.

Where cooperation from and or coordination with other parties (provincial MECs, National Ministers, Executive Mayors) is required to achieve the priority actions and targets, it is your responsibility to seek out this cooperation and bind the other party/parties to the commitments necessary to achieve the targets. In the event that cooperation was not forthcoming, details to this effect as well as how the non-cooperation and coordination failure affected the achievement of the target should be reported on at the bi-annual meeting with President.

Senior officials in your department/s are required to reflect the priority actions and targets in the Strategic Plans and Annual Performance Plans of the Department to ensure they are planned for and properly resourced. Moreover, I also expect that you will enter into a performance agreement with your Director-General that will reflect the priority actions and targets contained in this agreement, in addition to the other key performance areas of the Department.

I expect that you will formally delegate specific areas of responsibility to your Deputy Minister(s) to provide some support to you regarding the priority actions and targets in this agreement, in addition to the other key performance areas of the Department.

7. PERFORMANCE MONITORING AND REVIEW

The process of performance monitoring, evaluation and reporting against the targets will be as follows:

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- i. The DPME will prepare a report card on progress with the targets in the respective agreements for the benefit of the President
- ii. In preparation of the scorecard, DPME will obtain initial progress reports with supporting evidence from your department.
- iii. The progress report should provide a succinct summary of progress, current and emerging issues, key actions required or key actions taken, early warning of risks as well as decisions or recommendations to be taken forward and any other comment on progress.
- iv. The report and data will be analysed and validated and a draft scorecard will be produced by DPME. This will be discussed with your department to resolve queries before finalisation. Validation will also include random onsite visits by DPME to verify if delivery took place and within the specifications as set out in the agreement.

The DPME will prepare the scorecard which includes key issues affecting delivery, early warning risks and emerging policy issues for the President a copy of which will be sent to you prior.

In the instance where performance is sub-optimal, a meeting between the President and Minister will be convened. The outcome of the dialogue will be an agreement between the President and Minister on areas of improvement (the remedial actions). These will be incorporated in the performance score-card of the next performance review. It is only in the case of under-performance that the President may take any action he deems necessary.


Over and above this Cabinet will closely monitor the overall implementation of the 2019 - 24 MTSF. In this regard you are expected to table bi-annual progress reports to Cabinet on progress with regards to your commitments in the MTSF. It will not be sufficient to state in these reports that a particular action has been implemented. What must also be reported on is what the implementation of the action led to in terms of a result or the likely value it would create for society.

Your officials will need to collect administrative data that will allow oversight on progress and make these available to DPME when requested. DPME will triangulate this data with budget expenditure data and output level indicators, where available, and provide its own progress reports to Cabinet. The bi-annual progress reports will also form the basis of the meetings between the President and Ministers to identify and tackle obstacles to implementation.

8. POLITICAL OVERSIGHT OF THE DEPARTMENT

Beyond the priority actions and targets that you will be responsible for (which is the subject of this agreement), your Ministerial responsibilities also extend to:

1. Ensuring an optimal political – administrative interface;
2. Political leadership and oversight: providing strategic leadership to the department for the implementation of the relevant aspects of the electoral mandate/ oversee implementation of MTSF priorities relevant to the sector;



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3. Support international and regional integration programmes and commitments (where applicable); and
4. Support good governance in the department by providing institutional oversight of the HOD and Department

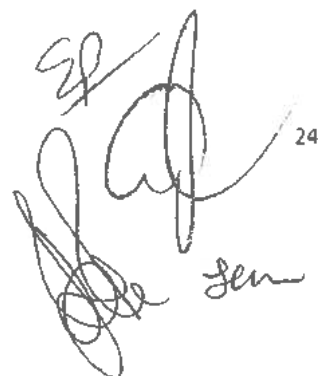
9. SPIRIT AND INTENT

There is no question that given the prevailing social, political and economic dynamics and environment, our actions require greater urgency and focus. While (and as I have stated before) there are no short-cuts and quick fixes, it is within our grasp to do the important things, to do them well and to do them without delay.

We have a duty to follow-through on our policy promises to the nation and make greater advances in terms of closing the gap between our development vision and the realities on the ground. The spirit and intent of the MPAs is to keep us focused on achieving our important targets.

10. PROFESSIONAL DEVELOPMENT

While the MPAs seek to promote results-oriented performance and accountability, the aim of the performance agreements is also to facilitate the professional development of all Ministers as leaders in government tasked with driving the development agenda of the country. In this regard you are encouraged to pursue programmes and initiatives that will provide you with the necessary competencies and tools to carry out your tasks and responsibilities. The Presidency and DPME will endeavour to provide Ministers with support and technical advice should the need exist.



24

"TCCM2"



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Date: 04 February 2020

MS MPUMI NENE

The Company Secretary
National Lotteries Commission
Block D: Hatfield Gardens
333 Grosvenor Street
Hatfield

BY EMAIL: mpumi@nlcsa.org.za

Dear Madam,

OPINION ON PUBLICATION OF BENEFICIARY LIST AND INFORMATION

1 INTRODUCTION

- 1.1 We refer to the above matter and your instructions that we assist the National Lotteries Commission with a legal opinion on the publication of beneficiary information.
- 1.2 We have structured this opinion by having regard to the applicable background facts, which have been gathered based on our assistance to yourselves on matters concerning publication of defamatory statements of and concerning the NLC in relation to its pro-active funding activities including beneficiaries of grants. The narration of the background facts is followed by an exposition of the applicable legal framework; which is then applied to the facts. The last segment of our opinion is our views and conclusion.

2 BACKGROUND FACTS

- 2.1 The NLC is an organ of state, established in terms of section 2 of the Lotteries Act 57 of 1997, as amended¹ ("the Lotteries Act"). The NLC was established to *inter alia* regulate the National Lottery; sports pools as well as other lotteries, including society lotteries and to raise funds and promotional competitions.

¹ Lotteries Amendment Act No. 32 of 2013.

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- 2.2 The NLC is further charged with the protection of the interests of every participant in the National Lottery. This is a mandate which is a constant refrain in the Lotteries Act, in relation to the NLC; its Board; and others.²
- 2.3 The Lotteries Act establishes the National Lottery Distribution Trust Fund ("the NLDTF") which in terms of sections 10(1)(c); 21 and 22 is managed and administered by the Board. The funds held by the NLDTF are then allocated for *inter alia* charitable expenditure; the development of sport and recreation; the arts, culture and the national historical, natural, cultural and architectural heritage; and any other matter and approved by the Minister for that purpose.³ The funds are disbursed for allocation of this expenditure by independent committees called Distribution Agencies, established in terms of section 26A read together with section 22(3); of the Lotteries Act. This part of the NLC's service is called "Grant funding".
- 2.4 In terms of the The Lottery Policy Review document published by the dti in August 2012 ("the Policy"), read together with the Memorandum on the Objects of the Lotteries Amendment Bill, 2013, the Lotteries Amendment Act, 2013 sought to address the challenges which were encountered with the application-based model such as the rigidity and inability to respond proactively to high impact national priority projects including natural disasters; poverty alleviation and other projects of national interest.⁴ One of the introductions of the Lotteries Amendment Act, 2013 was provisions relating to proactive funding. The Policy document on the Lotteries Amendment Act indicates that the rationale thereof was that *"The Act currently makes access to funding to be purely application-based thus undermining the objective to achieve good cause and making meaningful impact. For instance, where emergency funding is required in a sector such as charities, for example in a case where a school has been damaged by storms, the application-based process impedes speedy intervention."*⁵
- 2.5 The inclusion of section 2A(3) and (4) in the Lotteries Amendment Act accordingly opened an opportunity for the NLC, its Board and the Minister to pro-actively fund worthy good causes that are aligned to a broader development agenda of the country such as the National Development Plan (NDP), the Government Nine (9) Point Plan and others. These provisions provide for what is called the NLC's proactive grant funding model or system.
- 2.6 Through a prolonged and consistent period, articles have been published by the media relating to the NLC's pro-active funding projects. These articles are defamatory of the image and reputation of the NLC. The articles have a common running thread to the effect that the NLC's pro-active grants are being misused in a fraudulent and corrupt manner through the NLC's pro-active funding system. There are also allegations that the NLC's grant funding system is being maladministered by NLC officials and

² See sections 2A(1)(b); 10(1)(b)(ii); 13(3)(c); and 48(b).

³ Section 26(3)(b)- (c).

⁴ The Lottery Policy Review document published by the dti in August 2012 ("the Policy"), read together with the Memorandum on the Objects of the Lotteries Amendment Bill, 2013.

⁵ The Policy, Page 23, par 3.10.1.



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employees. The persons responsible for publishing the articles have published information of and concerning the recipients of the grants. The NLC further receives requests for access to information relating to *inter alia*, the details of beneficiaries through the Promotion of Access to Information Act 2 of 2000 ("PAIA").

- 2.7 The NLC has in recent times in fulfilment of its mandate, being the protection of every participant in the National Lottery, resolved not to publish the details relating to grants allocated to beneficiaries. This resolution has been questioned by stakeholders including the Portfolio Committee on Trade and Industry ("the Portfolio Committee").
- 2.8 We are accordingly required to opine on whether there is an obligation on the NLC to publish information relating to grant recipients.
- 2.9 We now proceed to consider the applicable legal framework, and then turn to set out the application of the law to the facts.

3 **APPLICABLE LEGAL FRAMEWORK**

- 3.1 The NLC's functions are set out in section 2A of the Lotteries Amendment Act as follows:

"(1) The Commission shall, applying the principles of openness and transparency, exercise the functions assigned to it in terms of this Act by the Minister, board or any other law.

(2) The Commission must ensure that—

(a) the National Lottery and sports pools are conducted with all due propriety and strictly in accordance with the Constitution, this Act, all other applicable law and the licence for the National Lottery, together with any agreement pertaining to that licence; and

(b) the interests of every participant in the National Lottery are adequately protected..."

- 3.2 Section 10(1)(b)(ii) has a similar provision for the Board. It provides that:

"The board shall in applying the principles of openness and transparency and in addition to its other functions in terms of this Act—

(a)...

(b) ensure that –

(i) the National Lottery and sports pools are conducted with all due propriety and strictly in accordance with the Constitution, this Act, all other applicable law and the licence for the National Lottery together with any agreement pertaining to that licence;

(ii) the interests of every participant in the National Lottery are adequately protected; and

(iii) subject to subparagraphs (i) and (ii), the net proceeds of the National Lottery are as large as possible;

(c) manage and administer the fund and hold it in trust;"



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- 3.3 Section 60 of the Lotteries Act empowers the Minister, after consultation with the Board, to make regulations regarding a number of matters, including the catch-all subregulation which provides for publication of Regulations regarding "*in general any other matter which may be necessary or expedient to prescribe in order to achieve or promote the objects of Part I of this Act.*"⁶
- 3.4 Notably, Part I of the Lotteries Act, includes sections 2A(1)(b); 10(1)(b)(ii); 13(3)(c); which charge the NLC and the Board with the mandate of protection of the interests of every participant in the National Lottery; as well as the establishment of Distributing Agencies; their functions, composition, appointment and conditions of service and other matters connected to Distributing Agencies, which are provided for in sections 26A-26H of the Lotteries Act. These sections were introduced by the Lotteries Amendment Act, 2013.
- 3.5 The Minister has, in fulfilment of his mandate under section 60, published Regulations relating to Distribution Agencies.⁷ Regulation 8 thereof prohibits the disclosure of information in connection with any grant application or a grant itself. Regulation 8 provides as follows:

"8. Security of information.—(1) Subject to the Constitution, the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) and the Protected Disclosures Act, 2000 (Act No. 26 of 2000), no person may in any way—

- (a) disclose any information in connection with any grant application or a grant itself;*
- (b) disclose the contents of a report contemplated in regulation 6 (1); or*
- (c) publish any information obtained in contravention of paragraph (a) or (b); unless—*
 - (i) ordered to do so by a court of law;*
 - (ii) making a bona fide confidential disclosure or publication to the Minister, the Public Protector, Parliament or a committee designated by Parliament, a member of the South African Police Service or the national prosecuting authority;*
 - (iii) the juristic person who made a grant application and the board consent thereto in writing prior to that disclosure or publication; or*
 - (iv) provided for in these regulations.*

⁶ Section 60(a)(ix).

⁷ GNR.182 of 22 February 2001, under GG No. 22092.



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(2) An agency, a person appointed to an agency or any person rendering services to an agency in whatever capacity may not in any way disclose any information in respect of or comment upon a grant application or a grant itself unless authorised thereto in writing by the Minister or the chairperson of the board.

(3) Any person who contravenes subregulation (1) or (2) shall be guilty of an offence and liable to a fine or to imprisonment or to both a fine and imprisonment."

(underlining added for emphasis)

4 **DISCUSSION**

- 4.1 Regulation 8 is central to the issue we have been instructed to opine on, viz, whether there is an obligation on the NLC to publish information regarding grant recipients.
- 4.2 It is important to note that the Regulation and the prohibition under sub-regulation 8(1) relates to all persons and not only the members of Distributing Agencies. The basis for this considered view is threefold:
- 4.2.1 First, this is clear from the express wording of Regulation 8(1), which says "no person" There cannot be any other sensible interpretation to the words, other than that it applies to all persons, including the NLC; the Board and members of the public as well as the media.
- 4.2.2 Second, there is a specific prohibition against disclosure of information, which applies strictly to members of Distributing Agencies contained in sub-regulation 8(2). Accordingly, it could not have been the intention of the Legislature to repeat the same prohibition twice.
- 4.2.3 Third, in our law, there are a number of accepted presumptions of statutory interpretation, and in this instance the trite presumption that the same words and phrases in a statute bear the same meaning. The presumption trusts the Legislature's propensity to use language consistently. As such, if the Legislature intended to place a limitation on members of Distributing Agencies only, and not the public at large, it would have used the words "Members of the distributing agencies", which is a constant reference in the Lotteries Act and the Regulations.
- 4.3 Regulation 8(1) places a general prohibition of publication of information by all persons, unless one or more of the exceptions listed under Regulation 8(1)(c) applies. These are:
- 4.3.1 where a party has obtained a court order to publish that information; or,
- 4.3.2 if required to make a *bona fide* confidential disclosure or publication to the Minister, the Public Protector, Parliament or a committee designated by Parliament, a member of the South African Police Service or the national prosecuting authority; or
- 4.3.3 if the juristic person who made a grant application and the board consents thereto in writing prior to that disclosure or publication; or
- 4.3.4 if such disclosure or publication is provided for in these regulations.
- 4.4 Regulation 8 prohibits the disclosure of information in connection with any grant application or a grant itself, this means that it prohibits the sharing of information relating to the beneficiary's confidential details, including the names of these organisations, their



NPO numbers, the grant amounts allocated to them, and the dates when the tranches in which these amounts are paid over time. As such, it is our considered view that there is no obligation on the NLC to publish beneficiary information in its annual report. In fact, the NLC would be in contravention of Regulation 8 if it did so. In terms of Regulation 8 (3), any person who contravenes sub-regulation (1) or (2) shall be guilty of an offence and liable to a fine or to imprisonment or to both a fine and imprisonment.

- 4.5 It is not difficult to understand why Regulations 8(1) and (2) exist. Unsuspecting grant recipients are vulnerable to exploitation, extortion and all sorts of possible abuse once information regarding their applications and grants is made public. As a matter of fact, and as reported by the NLC to the Parliamentary Portfolio Committee, the NLC has received complaints from grant recipients who were approached by unknown persons trying to extort money from them based on published information regarding the grants they received.

5 **CONCLUSION**

- 5.1 The NLC has resolved not to publish information pertaining to grants to beneficiaries in its annual report given the regulatory scheme of Regulation 8(1) which prohibits publication of information relating to the beneficiary's confidential details, including the names of these organisations, their NPO numbers, the grant amounts allocated to them, and the dates when the tranches in which these amounts are paid over time.
- 5.2 The NLC's resolution is understandable given the litany of media articles published about and concerning the NLC, which are more often than not, false, and/or contain factually inaccurate statements. More importantly, these articles contain information about beneficiaries in contravention of Regulation 8. Moreover, the publication of beneficiary details has exposed the said beneficiaries to harassment and extortion, which is the very mischief that Regulation 8 seeks to prevent.
- 5.3 We trust that the above is of assistance to you.

Yours faithfully,

MALATJI & CO

PER: T Malatji / B Masia

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