

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

CASE NUMBER: 41772/2018

In the matter between:

UNITED DEMOCRATIC MOVEMENT

Applicant

and

DR DAN MATJILA

First Respondent

PUBLIC INVESTMENT CORPORATION

Second Respondent

MINISTER OF FINANCE

Third Respondent

**CHAIRPERSON OF THE BOARD OF THE
PUBLIC INVESTMENT CORPORATION**

Fourth Respondent

FILING NOTICE

DOCUMENT FILED:

- 1. Fourth Respondent's Explanatory Affidavit**

SIGNED AT SANDTON ON THIS THE 10TH DAY OF JULY 2018



POSWA INCORPORATED
Fourth Respondent's Attorneys
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**TO: THE REGISTRAR OF THE HIGH COURT
PRETORIA**

AND TO MABUZA ATTORNEYS
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Copy hereof received on this the
day of 2018

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Copy hereof received on this the
day of 2018

Second Respondent's Attorneys

AND TO **STATE ATTORNEY PRETORIA**
Third Respondent's Attorneys
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Ref: Ms Thembelihle Nhlanzi

Copy hereof received on this the
day of 2018

Third Respondent's Attorneys

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 41772/18

In the matter between:

UNITED DEMOCRATIC MOVEMENT

Applicant

and

DR DAN MATJILA

First Respondent

PUBLIC INVESTMENT CORPORATION

Second Respondent

MINISTER OF FINANCE

Thlrd Respondent

CHAIRPERSON OF THE BOARD OF THE

Fourth Respondent

PUBLIC INVESTMENT CORPORATION

EXPLANATORY AFFIDAVIT

I, the undersigned

MONDLI GUNGUBELE

 **SRD**

hereby declare under oath as follows:

1. I am an adult male Deputy Minister of Finance in the Republic of South Africa and the Chairperson of the Board of the Public Investment Corporation (SOC) Ltd, a juristic person established in terms of section 2 of the Public Investment Corporation Act No. 23 of 2004 situated at Menlyn Maine Central Square, Corner Aramist Avenue & Corobay Avenue, Waterkloof Glen Extension 2, Pretoria.
2. I am the Fourth Respondent in this matter and duly authorised to depose to this affidavit.
3. Save where otherwise indicated, the facts to which I depose are based on my personal knowledge and are true and correct. To the extent that I rely on the facts which are not within my personal knowledge, I verily believe them to be true and correct. To the extent that I make submissions in respect of law, I am guided by the advice of my attorneys and Counsel in this matter and make submissions in reliance on such advice.



4. PURPOSE OF THE AFFIDAVIT

4.1 The purpose of this affidavit is to provide clarity to the above Honourable Court and set out my role, involvement, participation and views, as the Fourth Respondent on matters that are the subject of this application.

4.2 I do not intend to oppose the application and will therefore abide by the court's decision and I have been advised by my legal representatives that a Notice to Abide has accordingly been filed.

5. MY ROLE IN THE SUBJECT MATTER OF THE APPLICATION

5.1 On 26 February 2018 I was appointed as the Deputy Minister of Finance by President of the Republic of South Africa, President Cyril Ramaphosa. Prior to that I had been a member of the national assembly since 2016, having served in the Public Enterprises and Communications Portfolio Committees. I am the former Mayor of Ekurhuleni Municipality and have served as a Member of the Executive in the Gauteng Province.

5.2 As already alluded to by the Applicant in paragraph 6 of his Founding Affidavit, as Deputy Minister of Finance, I am *ipso facto* the Chairperson of the Board of the Second Respondent.

5.3 I, however, did not immediately assume the position of the Chairperson of the Board of the Second Respondent as this required the confirmation of cabinet as per the Second Respondent's Memorandum of Incorporation.

5.4 The Deputy Chairperson of the Board of the Second Respondent acted as Chairperson prior to my appointment, as per the Memorandum of Incorporation. My appointment as the Second Respondent's Chairperson was confirmed by cabinet in May 2018.

5.5 On or about 4 May 2018, before I had even attended my first meeting of the Second Respondent, I was served with a subpoena obtained in the Pretoria Magistrate's Court. This subpoena required me to appear before the prosecutor to testify about what I know about allegations of corruption at the Second Respondent. Furthermore, I was required to provide amongst others, the following information:

5.5.1 Minutes of the Second Respondent Board meetings held on 15 September 2017, 29 September 2017, 6 October 2017 and 26 March 2018;

5.5.2 Voice recording of the abovementioned meetings; and

- 5.5.3 Explain fully the process followed in providing a loan to a company called Mobile Satellite Technology (MST) and attach a copy of the contract entered into between PIC and MST. Annexed hereto please find a copy of this subpoena and marked "MG 1".
- 5.6 It is worth mentioning that at the time of the Second Respondent Board held meetings held on 15 September 2017, 29 September 2017, 6 October 2017 and 26 March 2018 I was not yet the chairperson of the Board of the Second Respondent.
- 5.7 On 14 May 2018, after being served with the subpoena, I also received a letter from the Minister of Finance, Mr Nhlanhla Nene, who had written to me as the Chairperson of the Board of the Second Respondent. He raised concerns about the negative media reports and expressed a view that they should be urgently attended to. The Minister then asked that the Board of the Second Respondent provides him with responses to these allegations and all relevant documentation.
- 5.8 The Minister further requested the Board to advise whether disciplinary steps, including precautionary suspension against the First Respondent herein, and other executives, were warranted. He also advised the Board of the Second Respondent to avoid

conflict of interest when dealing with matters where executives are conflicted. A copy of the letter is marked as annexure "FA18" of the Applicant's founding affidavit.

5.9 I pause to mention that while this SAPS and Ministerial processes were unfolding, there were continuous media articles with allegations that, in my view, were damning against the First Respondent as an individual and the Second Respondent, as an institution.

5.10 By then, as the newly appointed Chairperson, I was being contacted by various media houses, wanting to solicit the Second Respondent's position and responses on allegations that had dominated the public space.

5.11 I immediately requested a meeting with the Second Respondent's Board representatives and executives in order to be given background on the allegations against the First Respondent and to receive the Second Respondent's statutory documents so I could induct myself on its business as it was apparent that I was required to hit the ground running. At this meeting the Deputy Chairperson, Dr Xolani Mkhwanazi, the CEO (the First Respondent), the Acting Company Secretary, Mr Deon Botha and

the Executive Head of Human Resources Mr Chris Pholwane, were present.

5.12 The executives prepared files with various documents for me and most of these documents had been approved by the Board of the second respondent. I then requested that we hold a Special Board meeting in order to at least allow the full board which had more knowledge of these matters to approve documents that would be submitted to the Minister, in response to his letter and the SAPS, in response to the subpoena.

5.13 A special board meeting was held on 18 May 2018. It was a brief meeting for two hours wherein the Head of Internal Audit presented the documents that he had prepared for the SAPS and we were also taken through the list of documents to be handed to the Minister. The meeting ended on that note.

5.14 As I had also received a copy of the files that were given to the Minister, I dedicated some time to go through the voluminous information. Having thoroughly read the documents contained, including minutes of the Board, I was left with no option but to convene another special board meeting. I was of the view that I required the Board of the second respondent, as my fellow directors, to take me into their confidence and provide me with

clarity about the decisions that they took, specifically at its meetings of 15 and 29 September 2017, and of 6 October 2017.

5.15 I had also considered that directors had recently gone through all these documents and refreshed their memories on the September and October 2017 meetings and all decisions taken. This was done in preparation of the meeting we had on 18 May 2018 when the Board approved documents to be sent to the third respondent.

5.16 In order to ensure that all the directors were aware of the reason for the request for the meeting, I circulated an email, a copy of which is annexed hereto and marked "MG 2", which explained that I had applied my mind to all the documents furnished to me including those dealing with the allegations against the First Respondent and that I was of the view that a basis for deliberation had arisen.

5.17 I also proposed that we deliberate on the way forward in light of the court application because by then we had been served with application papers of this matter. A copy of my second email is annexed hereto and marked "MG 3".

5.18 A special board meeting was held on 22 June 2018. All directors were present. The minutes of that meeting have not been adopted. However, an audio recording thereof is available and should this Honourable Court require a copy thereof, I will make it available.

5.19 At this meeting I asked for the executives to be excused, i.e. the First Respondent and the Chief Financial Officer, Ms Matshepo More. The reason I made this request is that the emails that had been received by the Second Respondent contained allegations not only against the First Respondent but also against the Chief Financial Officer.

5.20 I, therefore, did not think it would be appropriate for them to participate in deliberations where they were implicated. This was intended to avoid any conflict of interest. The Minister had also cautioned against this in his letter to the Board aforementioned.

5.21 I then requested to take the Board through all the queries I had sequentially, whereafter they would assist me with responses. I also indicated that I would inform them of my observations and views based on the information which was before us.

5.22 I then referred the Board to the minutes of 15 September 2017 where the Board in response to the allegations received against the Second Respondent convened a special meeting. The minutes of the meeting of 15 September 2017 are annexed to the First Respondent's Answering Affidavit and marked "M 5".

5.23 At that meeting, the Board initially resolved for the Head of Internal Audit to deal with this matter. When he was called in by the Board to be informed, he advised the Board differently. He informed the Board on the process that is always followed by the second respondent when dealing with allegations that are made against a Second Respondent's officials. He expressed a view that the allegations against the First Respondent were complex and that there was no capacity internally to investigate them. He recommended to the Board that it appoints a company with forensic investigation expertise to conduct this type of investigation. The Board then resolve to conduct a forensic investigation to the allegations against the second respondent. It is important to note that the Head of Internal Audit by then had seen the allegations, considered them and then offered professional and independent advice to the Board as someone who understands what the board was confronted with and the limitations that the second respondent had if this matter was to be dealt with internally.

5.24 The board then invited the First Respondent and the Chief Financial Officer (CFO) to inform them about the resolution that the Board had taken.

5.25 They were then given an opportunity to address the Board. They challenged the process through which the allegations were received and expressed their concerns about the credibility of such allegations. They argued that normal Second Respondent whistleblowing channels were not followed therefore these allegations were malicious and the source lacked credibility.

5.26 After these comments by the First Respondent and the Chief Financial Officer, the Board deliberated and then resolved to reverse its decision to conduct a forensic investigation, as recommended by Head of Internal Audit.

5.27 At our meeting on 22 June 2018, I then posed the following clarity seeking questions to my fellow directors:

5.27.1 Why did the Board not implement the internal audit recommendation which it had already resolved on?
Why did it allow itself to go past this point;

- 5.27.2 Secondly, was it proper for the Board to allow individuals who were subjects of the allegations and a pending investigation to question the credibility of the whistle blower. This was in light of the fact that the board reconsidered its decision based on the First Respondent and Chief Financial Officer's views on this matter;
- 5.27.3 Administratively, the Head of Internal Audit reports to the First Respondent, why did the Board subject him to investigating his superior when he had already expressed his discomfort;
- 5.27.4 What was the reason for the Board to overturn a resolution to conduct an investigation and substitute it with a mere review or verification process;
- 5.27.5 When the Board ultimately decided to conduct a review, why was the internal audit scope narrowed to exclude some of the allegations;
- 5.27.6 Why did the Board issue a statement that it accepted the First Respondent's responses even before it had received the review or verification process report by

internal audit? What was then the purpose of the review because it appears from the statement that the Board had already made up its minds and exonerated the First Respondent?

5.28 I then moved to the minutes of 29 September 2017. The minutes of the meeting of 29 September 2017 are annexed to the Applicant's Founding Affidavit and marked "FA 11".

5.29 Briefly, in that meeting the Head of Internal Audit presented the review report that he had prepared. The Internal Audit Report revealed to the Board that although Ms Pretty Louw was not a shareholder of Mobile Satellite Technologies (Pty) Ltd, there was a "principal agent" agreement between her company and Mobile Satellite Technologies (Pty) Ltd, a company had been granted a loan of R21 million and granted CSI funds by the Second Respondent.

5.30 I asked the Board if this did not raise red flags to it in light of the allegations that Miss Louw was alleged to be the First Respondent's girlfriend and that a company she had a relationship with had secured funds from the Second Respondent.

5.31 The Board had also found that the First Respondent had acted in good faith when he asked a director of the Second Respondent's Investee company to give Ms Louw R300 000 to settle her personal debt.

5.32 I asked the Board why it did not see it fit to probe the extent of the relationship of the First Respondent and Ms Louw in light of the implied allegation of impropriety. I must state that it is common practice that when a transaction that requires approval involves a party that the Second Respondent's director or employee is closely associated with, that he or she is required to recuse themselves and also declare this conflict. In this instance, in the event that the First Respondent was indeed in a relationship with Ms Louw, it would have been improper for him to attend meetings or to sign any documentation for approval. For this reason, this exclusion in the internal audit scope which had been pronounced by the Board concerned me. The internal audit report is annexed to the First Respondent's Answering Affidavit and marked "M 8". While I accept that the First Respondent had furnished responses to the Board on the allegations, I felt uncomfortable with the Board's approach of accepting such responses as the gospel truth and not subjecting them to an independent investigation process. In fact, I openly told my fellow directors that this decision could be found to have been improper

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and was one of the reasons that the Board were being accused of 'covering up' for the First Respondent.

5.33 I then referred the Board to the minutes of 6 October 2017, which are annexed to the First Respondent's Answering Affidavit and marked "**M 10**".

5.34 In that brief meeting, the Board resolved that any further investigations against the First Respondent and Chief Financial Officer should be terminated. It confirmed that it viewed allegations against them as baseless.

5.35 The Board further discredited the whistle blower. It resolved that the whistle blower's credibility was questionable. The Board confirmed that because it had received management responses, that this matter could then be closed. The Chairman of the Board was subsequently mandated to instruct the Head of Internal Audit to stop any further work that he was doing.

5.36 I point out that when the Board took this resolution, it had not even had sight or considered responses by the First Respondent and the Chief Financial Officer in relation to further allegations levelled against them.

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- 5.37 I then asked the Board why It issued a statement saying these allegations had been thoroughly Investigated when it was clear that they were not. In fact, there was never an investigation conducted. It was just a document verification process. I expressed my concern that it appears that the Board has elected to 'edit' the allegations It had received and only look into specific issues. It was not clear to me why this was done.
- 5.38 After raising these issues, the directors made their input, they responded to my questions of clarity. What was glaringly surprising to me is that the main justification that the board had for overturning its decision to conduct a proper investigation into the allegations against the First Respondent was that the First Respondent had discredited the source of the allegations because they were based on leaked information and that they were malicious. Further, that the Board had accepted his responses. There was no other reason whatsoever.
- 5.39 In fact when I kept asking various questions on these matters, there were even some directors who accused me as the Chairperson of the board of having ambushed them. They said that I should have set out all my questions in writing and given them time to respond. They also said that I was being unfair because I was asking them questions about matters which took

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place in 2017. This argument was in my view disingenuous. As mentioned above, the Board had dealt with this very same matter in its May meeting. All documents pertaining to it were given to the directors to apply their minds on the matter and that is how the Board approved the documents for submission to the Third Respondent.

5.40 Furthermore as a fellow director, I did not have to ask my clarity seeking questions and express my views in a form of written correspondence. That could have been interpreted as a pseudo-enquiry which I have no powers to hold. Instead I had chosen to exercise my fiduciary responsibilities by permitting us to debate these matters in a formal board meeting.

5.41 What was further disturbing was that the Board had mandated the very same individual, the First Respondent, to investigate the leakages on allegations that implicated him and the Chief Financial Officer. The initial forensic investigation conducted by Business Connexion (Pty) Ltd and Naledi Advisory, having been instructed by management clearly shows this. The entire scope and preliminary findings are about the allegations made by the source which the CEO had already labelled as lacking credibility and malicious. I attach the summary of the forensic report marked "MG 4". The complete forensic report is 92 pages. The

summary captures all the salient issues which were dealt with by the forensic investigators. Should this Honourable Court, however, require the full report, it will be made available to it at the hearing of these proceedings.

5.42 From this report, it appears to me that the Board empowered the First Respondent to find the person or people who had levelled allegations against him and the Chief Financial Officer. In my view, it is difficult to avoid the impression that this creates, which is, that the Board had allowed the First Respondent to conduct a 'witch hunt' against the whistle blower. This, in turn, raises questions about the disciplinary enquiries that were based on these allegations that have been conducted to date. At our 18 May 2018 board meeting, I was advised by the Board that all the disciplinary processes were overseen by the First Respondent's on the basis that they were operational matters which did not require the intervention of the Board. It is clear that the Board did not consider a potential conflict of interest by the First Respondent and the Chief Financial Officer in being directly involved and/or overseeing this process.

6. CONCLUSION

6.1 It is clear that the Board prioritised the forensic investigation to identify those responsible for circulating "malicious" reports against the First Respondent and the Chief Financial Officer. This was after the very same Board had resolved not to conduct a forensic investigation on allegations against the First Respondent. This, in my view, could be seen to have been an attempt by the board to shield the First Respondent and the Chief Financial Officer and expose the whistle blower.

6.2 I have just been recently appointed Chairperson of the Board of the Second Respondent. I was not privy to all the previous discussions relating to allegations against the First Respondent until our meeting of 18 May 2018 and 22 June 2018. In the interest of good governance and in order to ensure that the second respondent does not unnecessarily end up in a perilous state, I have made an effort to abreast myself as quickly as possible of the events which were unfolding at a lightening pace. Having raised my concerns with the Board, which I have alluded to above, I cannot confidently state before this honourable court that the Board of the Second Respondent acted properly when it dealt with these matters. In fact, having sat in a five-hour board meeting to debate these very same matters on 22 June 2018, I


respectfully submit that my fellow directors have become defensive when it comes to decisions made in relation to these allegations against the First Respondent and the Chief Financial Officer. There is not much objectivity and independence. In my view, the Board has blindly relied on the views and advice of the First Respondent and in the process compromised its duty of care.

6.3 The undisputed facts are that the Board of the Second Respondent have never conducted an investigation. It has had a number of opportunities to reconsider this decision especially in light of the continuous public outcry, queries from the third respondent, who is the sole shareholder, and even the criminal investigation. The Board has, however, continuously refused, neglected and/or failed to do so. This has caused tension and created 'camps' in the Board as there is a dominating view by the majority who refuse for these matters to be relooked at and a minority view who have constantly questioned the process adopted by the Board.


6.4 It is prudent for me to point out that I have expressed my views on these matters in order to assist this Honourable Court, as the Fourth Respondent. I am also mindful that as a director, I remain bound by the Board's majority decisions until they are overturned

either by this honourable court or the Third Respondent as empowered by the PIC Act.

6.5 Having said so, It gives me comfort that the Third Respondent has now embarked on a process to deal with these matters in the interest of the Second Respondent. From his correspondence to the board aforementioned, It is clear that he recognises and reminds the Board about the critical role that the Second Respondent plays in our country as a whole. It is in this light that one can conclude that the Third Respondent will soon give a clear directive to the Board.


DEPONENT

Thus signed and sworn to before me on this the ^{10th} day of **JULY 2018**, the Deponent having acknowledged that he knows and understands the content of the above affidavit, the regulations contained in the Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.


Sibusiso Blessing Dube
EX OFFICIO
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
REPUBLIC OF SOUTH AFRICA
Sandton Close 2, 2nd Floor, Block A
Cnr. 5th & Norwich Close, Sandton, 2146
P.O. Box 785219, Sandton, 2146


COMMISSIONER OF OATHS

"MGI"

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PRETORIA HELD AT PRETORIA

SUBPOENA IN TERMS OF SECTION 205 ACT 51/1977

A.TO :(Full names) **Mondli Gungubele** (Chairman of the Board)

(Company and Address) **Public Investment Corporation (PIC), 01 Central Square, Menlyn, Pretoria.**

1. Whereas it appears to me that you are the person who can furnish material or relevant information to wit:(Nature of the information required)

• **As per attached annexure "A"**

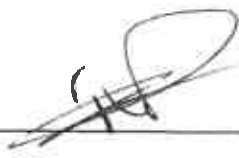
2. You are hereby required to appear in person before me or any other Magistrate in Court ^B at the Pretoria Magistrates Court, Cnr Sophie De Bruyn and Francis Baard Streets on the 25 day of May 2018 at 8H30 to be examined by the Public Prosecutor duly authorized thereto and to testify about all that you know about the alleged offence to wit **Corruption** suspected to have been committed by **unknown / known** suspects to wit **Unknown Persons**.

3. Provided that if you have furnished the required information to the satisfaction of the Public Prosecutor or Investigating Officer to wit **Sergeant Kgalle Mphole** with contact particulars **0827051375 / MpholoKS@saps.gov.za** on or before 18/05/2018 prior to the date on which you are required to appear before me or another Magistrate, you shall be under no further obligation to appear before me or another Magistrate.

4. **WARNING: Failure to comply with this subpoena may result in a warrant for your arrest being issued. Such failure may also constitute an offence in terms of Section 188(1) read with sections 170(2), 189 and Section 205 of the Criminal Procedure Act 51 of 1977.**

B. **To the authorised official:** Serve this subpoena on the named person and report back to the authorised Senior/Control/Public Prosecutor on what you have done in this regard.

SIGNED BY ME AT PRETORIA ON THIS 03 DAY OF May 2018.



MAGISTRATE: PRETORIA



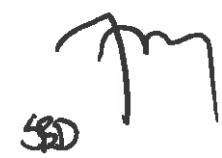
Lweit Mathibela a Senior/Control/Public Prosecutor with the National Prosecuting Authority duly authorised in writing by the National Director/ Director of Public Prosecutions to request a Magistrate to issue subpoenas in terms of the provisions of S205 of the Criminal Procedure Act 51/1977, confirm that I have submitted a formal request for the above subpoena on a separate document that now forms part of the record of proceedings in respect of this application.



Signature: Authorised Prosecutor

2018-05-03

Date



ANNEXURE "A"

1. The true copy of the minutes and resolutions taken on Board meetings dated 15th September 2017, 29th September 2017, 06th October 2017 and 26th March 2018. Affidavit from scribe should cover the minutes.
2. The full voice recordings, in MP3 or MP4 format, of the minutes dated 15th September 2017, 29th September 2017, 06th October 2017 and 26th March 2018. This should include In-Camera meeting. (Two copies).
3. The true copy of the minutes from the meeting held by/with Audit and Risk Committee on 26th March 2018. The affidavit from the scribe should cover the minutes.
4. The full voice recordings, in MP3 or MP4 format, of the minutes held by/with Audit and Risk committee on 26th March 2018. This should include In-camera meeting held thereafter. (Two copies)
5. The copy of policy in place that is used in funding or providing a loan to investee. (A general procedure)
6. Explain fully the procedure/process followed in providing loan to Mobile Satellite Technology (MST), and attach a certified copy of the contract/agreement.
7. Copies of the emails, from Mimecast, for Mr Daniel Matjila and Ms Matshediso More from 01 May 2016 to 30 April 2018.



Magistrate



Date



RETURN OF SERVICE OF SUBPOENA

I hereby certify that I have served this subpoena upon the within named person by

Delivering the original /a true copy to her /him personally, the nature and exigency of the contents of the subpoena having been explained to the recipient on this 4 day of May 2018.

MARLOW CREW WIT M Genovese

Name and signature of recipient



SIGNATURE OF AUTHORISED OFFICIAL

0827051375

FULL NAMES: K GAILE MIPHOLD

DESIGNATION: POLICE SERGEANT

170 Failure of accused to appear after adjournment or to remain in attendance
(1) An accused at criminal proceedings who is not in custody and who has not been released on bail, and who fails to appear at the place and on the date and at the time to which such proceedings may be adjourned or who fails to remain in attendance at such proceedings as so adjourned, shall be guilty of an offence and liable to the punishment prescribed under subsection (2). (2) The court may, if satisfied that an accused referred to in subsection (1) has failed to appear at the place and on the date and at the time to which the proceedings in question were adjourned or has failed to remain in attendance at such proceedings as so adjourned, issue a warrant for his arrest and, when he is brought before the court, in a summary manner enquire into his failure so to appear or so to remain in attendance and, unless the accused satisfies the court that his failure was not due to fault on his part, convict him of the offence referred to in subsection (1) and sentence him to a fine not exceeding R800 or to imprisonment for a period not exceeding three months.

188 Failure by witness to attend or to remain in attendance
(1) Any person who is subpoenaed to attend criminal proceedings and who fails to attend or to remain in attendance at such proceedings, and any person who is warned by the court to remain in attendance at criminal proceedings and who fails to remain in attendance at such proceedings, and any person so subpoenaed or so warned who fails to appear at the place and on the date and at the time to which the proceedings in question may be adjourned or who fails to remain in attendance at such proceedings as so adjourned, shall be guilty of an offence and liable to the punishment contemplated in subsection (2). (2) The provisions of section 170 (2) shall *mutatis mutandis* apply with reference to any person referred to in subsection (1).

189 Powers of court with regard to recalcitrant witness
(1) If any person present at criminal proceedings is required to give evidence at such proceedings and refuses to be sworn or to make an affirmation as a witness, or, having been sworn or having made an affirmation as a witness, refuses to answer any question put to him or refuses or fails to produce any book, paper or document required to be produced by him, the court may in a summary manner enquire into such refusal or failure and, unless the person so refusing or failing has a just excuse for his refusal or failure, sentence him to imprisonment for a period not exceeding two years or, where the criminal proceedings in question relate to an offence referred to in Part III of Schedule 2, to imprisonment for a period not exceeding five years. (2) After the expiration of any sentence imposed under subsection (1), the person concerned may from time to time again be dealt with under that subsection with regard to any further refusal or failure. (3) A court may at any time on good cause shown remit any punishment or part thereof imposed by it under subsection (1).

(4) Any sentence imposed by any court under subsection (1) shall be executed and be subject to appeal in the same manner as a sentence imposed in any criminal case by such court, and shall be served before any other sentence of imprisonment imposed on the person concerned.

(5) The court may, notwithstanding any action taken under this section, at any time conclude the criminal proceedings referred to in subsection (1).

(6) No person shall be bound to produce any book, paper or document not specified in any subpoena served upon him, unless he has such book, paper or document in court.

(7) Any lower court shall have jurisdiction to sentence any person to the maximum period of imprisonment prescribed by this section.

205 Judge, regional court magistrate or magistrate may take evidence as to alleged offence
(1) A judge of the supreme court, a regional court magistrate or a magistrate may, subject to the provisions of subsection 4, upon the request of an attorney-general or a public prosecutor authorized thereto in writing by the attorney-general, require the attendance before him or any other judge, regional court magistrate or magistrate, for examination by the attorney-general or the public prosecutor authorized thereto in writing by the attorney-general, of any person who is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed: Provided that if such person furnishes that information to the satisfaction of the attorney-general or public prosecutor concerned prior to the date on which he is required to appear before a judge, regional court magistrate or magistrate, he shall be under no further obligation to appear before a judge, regional court magistrate or magistrate.

(2) The provisions of sections 182 to 185 inclusive, 179 to 181 inclusive, 187 to 189 inclusive, 191 and 204 shall *mutatis mutandis* apply with reference to the proceedings under subsection (1). (3) The examination of any person under subsection (1) may be conducted in private at any place designated by the judge, regional court magistrate or magistrate. (4) A person required in terms of subsection (1) to appear before a judge, a regional court magistrate or a magistrate for examination, and who refuses or fails to give the information contemplated in subsection (1), shall not be sentenced to imprisonment as contemplated in section 189 unless the judge, regional court magistrate or magistrate concerned, as the case may be, is also of the opinion that the furnishing of such information is necessary for the administration of justice or the maintenance of law and order.




MG2

Alwin Britz

From: Shaviv Singh
Sent: 10 July 2018 07:46 AM
To: Alwin Britz
Subject: FW: Urgent Special Board Meeting

From: Mondli Gungubele <Mondli.Gungubele@treasury.gov.za>
Date: 19 June 2018 at 21:34:11 SAST
To: CompanySecretariat <CompanySecretariat@pic.gov.za>
Cc: Bheki Magagula <bheki@phathelainvestments.com>, Claudia Manning <cemanning@mweb.co.za>, Daniel Matjila <daniel.matjila@pic.gov.za>, Desiree Hartney <Desiree.Hartney@pic.gov.za>, Dudu Hlatshwyao <dudu@changeeq.co.za>, Linda Ganca <Linda.Ganca@treasury.gov.za>, Lindiwe Toyi <lindi.toyi@gmail.com>, Mathukana Mokoka <mathukana.mokoka@gmail.com>, Matshepo More <matshepo.more@pic.gov.za>, Mmathabo Vutula <mmathabov@barloworld.com>, Nokuthula Vilakazi <nokuthula.vilakazi@pic.gov.za>, Pitsi Moloto <pitsipmoloto@gmail.com>, Sandra Beswick <sandra@sbassociates.co.za>, Sibusisiwe Zulu <sibusisiwe@me.com>, Tantaswa Nyoka <tantaswaf@barloworld.com>, Thapelo Mokoena <Thapelo.Mokoena@treasury.gov.za>, Trueman Goba <trueman.goba@hatch.com>, Xolani Mkhwanazi <xolani@phathelainvestments.com>, All Users PIC <AllUsersPIC@pic.gov.za>
Subject: Re: Urgent Special Board Meeting

WHEREAS - AN ENDLESS PUBLIC NEGATIVITY ABOUT PIC CONTINUES UNABATED

WHEREAS - THERE IS A SEEMING UNCERTAINTY ON HOW TO WITH THE REPUTATIONAL MANAGEMENT PERTAINING TO RESPONSES AT VARIOUS GIVEN MOMENTS .

WHEREAS I HAVE APPLIED MY MIND TO THE RELEVANT DOCUMENTS AT MY DISPOSAL .

WHEREAS A BASIS FOR DELIBERATION HAS ARISEN WITH REGARD TO THE ALLEGATIONS WHICH ARE AN ITEM IN THE PUBLIC SPACE .

I HAVE CONSIDERED IT NECESSARY IN MY CAPACITY AS A CHAIR OF THE BOARD TO CONVENE THE MEETING AS STATED IN THE CORRESPONDENCE CIRCULATED BY MR DEON BOTHA.

I HOPE THAT COLLEAGUES WILL FIND THIS IN ORDER

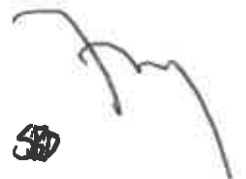
REGARDS

Sent from my iPad

On 19 Jun 2018, at 18:04, CompanySecretariat <CompanySecretariat@pic.gov.za> wrote:

CompanySecretariat |

PIC | PUBLIC INVESTMENT CORPORATION



Menlyn Maine Central Square, Corner Aramist Avenue & Corobay Avenue,
Waterkloof Glen Extension 2, 0181

Direct:

Main: Fax:

Email: companysecretariat@pic.gov.za

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loss whether it be direct, indirect or consequential, arising from information made available and actions resulting there from.

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<meeting.ics>

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"MG3"

Alwin Britz

From: Shaviv Singh
Sent: 10 July 2018 08:09 AM
To: Alwin Britz
Subject: FW: Legal Documents regarding UDM Case

From: Mondli Gungubele <Mondli.Gungubele@treasury.gov.za>
Date: 19 June 2018 at 21:54:06 SAST
To: Dudu Hlatshwayo <dudu@changeeq.co.za>
Cc: Deon Botha <deon.botha@pic.gov.za>, Claudia Manning <cemanning@mweb.co.za>, Lindiwe Toyi <lindi.toyi@gmail.com>, Mathukana Mokoka <mathukana.mokoka@gmail.com>, Pitsi Moloto <pitsipmoloto@gmail.com>, Sandra Beswick <sandra@sbassociates.co.za>, Sibusisiwe Zulu <sibusisiwe@me.com>, Tantaswa Nyoka <tantaswaf@barloworld.com>, Trueman Goba <trueman.goba@hatch.com>, Xolani Mkhwanazi <xolani@phathelainvestments.com>, Daniel Matjila <daniel.matjila@pic.gov.za>, Matshepo More <matshepo.more@pic.gov.za>, Thapelo Mokoena <Thapelo.Mokoena@treasury.gov.za>, Wilna Louw <Wilna.Louw@pic.gov.za>
Subject: Re: Legal Documents regarding UDM Case

I APPRECIATE THE CLARIFICATION SUPPLIED BY THE LEGAL DEPARTMENT IN THIS MATTER .ONE OF THE REASONS WHY WE SHOULD MEET ON FRIDAY AS STATED BY DEON IS TO CLARIFY OURSELVES ON THE COMMON WAY TO HANDLE THIS MATTER .HAVING PERUSED THE RELEVANT DOCUMENTS PERTAINING TO THE MATTER AT HAND A BASIS FOR DELIBERATION HAS ARISEN TO PUT OURSELVES ON A SINGLE PAGE.IN NMY CAPACITY AS A CHAIR I HAVE CONSIDERED IT NECESSARY TO MEET ON FRIDAY TO FIND MEETING OF THE MINDS.

Sent from my iPad

On 19 Jun 2018, at 18:41, Dudu Hlatshwayo <dudu@changeeq.co.za> wrote:

Dear Deon

I support the recommended course of action.

Kind regards

Dudu Hlatshwayo

<IMAGE001.PNG>

From: Deon Botha [<mailto:deon.botha@pic.gov.za>]
Sent: 19 June 2018 14:59
To: Mondli.Gungubele@treasury.gov.za; Claudia Manning <cemanning@mweb.co.za>; Dudu Hlatshwayo <dudu@changeeq.co.za>; Lindiwe Toyi <lindi.toyi@gmail.com>; Mathukana Mokoka <mathukana.mokoka@gmail.com>; Pitsi Moloto <pitsipmoloto@gmail.com>; Sandra Beswick <sandra@sbassociates.co.za>; Sibusisiwe Zulu



<sibusisiwe@me.com>; Tantaswa Nyoka <tantaswaf@barloworld.com>; Trueman Goba <trueman.goba@hatch.com>; Xolani Mkhwanazi <xolani@phathelainvestments.com>; Daniel Matjila <daniel.matjila@pic.gov.za>; Matshepo More <matshepo.more@pic.gov.za>
Cc: Thapelo Mokoena <Thapelo.Mokoena@treasury.gov.za>; Wilna Louw <Wilna.Louw@pic.gov.za>
Subject: Legal Documents regarding UDM Case

Dear Board Members

I trust that my e-mail finds you well. Please find attached documentation from Mr Ernest Nesane the Executive Head of Legal for your attention. Please indicate your approval of the recommended course of action, by return e-mail.

Thank you and kind regards
Deon

Deon Botha | Head:Corporate Affairs

PIC | PUBLIC INVESTMENT CORPORATION
Menlyn Maine Central Square, Corner Aramist Avenue & Corobay Avenue, Waterkloof Glen Extension 2, 0181
Direct: +27 12 742 3522
Main: Fax: +27 12 346 2195
Email: deon.botha@pic.gov.za

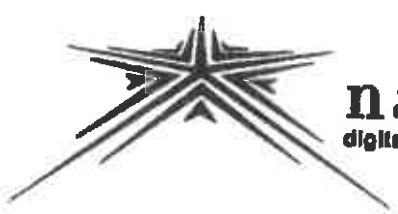
<image002.gif>

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"MG4"



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Business Connexion Proprietary Limited

Progress update

Forensic Investigation at the Public Investment Corporation (PIC)



www.nalediadvisory.co.za

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SBD



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Strictly private and confidential

19 October 2017

**Mr Eric McGee
Business Connexion (Pty) Ltd
1021 Lenchen Avenue
Centurion Central
Centurion
0046**

Dear Mr McGee

Progress update: Forensic investigation at the PIC

- 1. As per our mandate, we have pleasure in presenting our progress update. This progress update was prepared for purposes of providing you with feedback on the work performed to date and our preliminary findings.**
- 2. This document should not be considered as a draft report and its distribution should be limited to the relevant parties.**
- 3. Should you have any comments, please do not hesitate to contact me at +27 (11) 883 2649 or +27 (82) 379 9284.**

Yours sincerely,

**Frans Lekubo
Director
Office: +27 (11) 883 2649
Mobile: +27 (82) 379 9284
frans@nalediadvisory.co.za
www.nalediadvisory.co.za**



Background

4. Based on our meeting held at the PIC on 18 September 2017, we understood that PIC has experienced the following:
- Leaking of confidential information to members of the press; and
 - Circulation of malicious reports against its Chief Executive Officer (CEO) and Chief Financial Officer (CFO) to the Board of Directors (the Board) and Executive Committee (Exco) members via unknown web-based email accounts.

Scope

5. You requested us to assist you in conducting a forensic investigation into the leaking of the confidential information at the PIC and the circulation of the malicious reports against the CEO and CFO of PIC. The purpose of the investigation is to:
- Identify the parties responsible for the leaking of confidential and circulation of malicious reports against the CEO and CFO of the PIC;
 - Establish how the confidential information was obtained and leaked; and
 - Report on our findings and make recommendations.

Procedures performed

6. We consulted with the following PIC personnel:

Table 1

Ref	Name	Position	Date
1	Dr Dan Matjila	Chief Executive Officer	22 September 2017
2	Ms Pamela Phala	Senior Manager: Corporate Legal	3 October 2017
3	Mr Tshepo Rapudi	Investment Associate: Isibaya Fund	3 October 2017
4	Ms Bongani Mathebula	Company Secretary	4 October 2017
5	Mr Paul Magula	Chief Risk Officer	4 October 2017
6	Ms Vuyokai Menye	Executive Head: IT	4 October 2017
7	Mr Roy Rajdhar	Executive Head: Developmental Investment	4 October 2017
8	Ms Matshepo More	Chief Financial Officer	4 October 2017
9	Mr Ernest Nesane	Executive Head: Legal Counsel	4 October 2017
10	Ms Seipati Molchela	Associate Principal: Developmental Investment	12 October 2017
11	Mr Richard Manzini	Investment Associate: Developmental Investment	12 October 2017
12	Ms Wilna Louw	Board Secretary	12 October 2017



Preliminary findings

7. A confidential PIC memorandum relating an MST transaction was leaked to external parties by unknown persons/parties.
8. An unknown person and/or persons using the *alias* "James Nogu" sent various allegations involving the CEO and CFO of the PIC to the PIC Board and other parties.
9. The unknown parties appear to have had details and/or email addresses of the PIC Board and the PIC's internal distribution mailing lists.
10. PIC documents relating to transactions are stored on shared drives which are accessible to staff members within the various divisions.
11. PIC uses a common drive referred to as the "Z-Drive" and all staff members have access to the drive. We found that various PIC teams upload confidential transaction documents to this drive to allow other teams to access same. For instance, the Developmental Investment team would upload transaction documents to the "Z-Drive" to allow teams such as Legal, Audit, etc to access them.
12. Ms Seipati Moichela (Ms Moichela), confirmed that documentation relating to the MST transaction including the memorandum which was leaked to external parties was stored on the "Z-Drive"
13. The company secretariat does not have a strong room at this stage. All board packs are stored in a room which most staff members can access. It should however be noted that a strong room is being constructed.
14. The company secretariat uses a shared drive referred to as the "S-Drive". All company secretariat staff members have access to this drive.
15. The company secretariat is not always provided with the original approved transaction documents. In certain instances, the various PIC teams would retain the original approved documents and provide only the scanned copies to the Company Secretariat *via* email, resulting in staff members being in possession of original confidential documents and the circulation of such documents *via* email.
16. Email addresses of Board members are accessible to all PIC staff members. In this regard, we found that the Company Secretariat sends Board meeting invites to all PIC staff members. This practice was apparently adopted under the leadership of the previous CEO, Mr Elias Masilela (Mr Masilela), who requested that all PIC staff members should be notified of upcoming Board meetings to allow them to prepare relevant submissions in time. This apparently followed complaints by PIC staff members that they were unable to prepare relevant submissions in time as they did not have sight of Board meeting dates.
17. The PIC has "permanent" Exco invitees which include teams such as Audit and other support functions. We found that Exco submissions are provided to the Exco members *via* "Board Papers", an application which allows Exco and Board members to access relevant meeting packs online, using their desktops and/or tablet devices. In this regard,



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confidential transaction documents are published to all Exco members, including the Exco invitees. This increases the number of staff members who have access to confidential information which is not relevant to them.

Way forward

18. Obtain and review the "Mimecast" of certain identified staff members to establish their involvement in the circulation of malicious emails and/or confidential transaction documentation.
19. Interviews with the Deputy Chairperson of the Board and his Personal Assistant to understand the role played in the matter.

[Handwritten signature]
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SD