



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

LEGAL SERVICES

PO Box 15 Cape Town 8000 Republic of South Africa
Tel: 27 (21) 403 2911
www.parliament.gov.za

Tel: (021) 403-2626
Direct: (021) 403-3342
Fax (021) 403-3888
E-mail: bloots@parliament.gov.za

MEMORANDUM

[Confidential]

**TO: Mr SE Kholwane, MP
Chairperson of the PC on Communications**

COPY: Secretary to Parliament

**FROM: Constitutional and Legal Services Office
[Dr BE Loots – Parliamentary Legal Adviser]**

DATE: 22 April 2013

REF: 125/2013

SUBJECT: OPINION ON THE APPOINTMENT OF AN INTERTIM SABC BOARD MEMBER



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INTRODUCTION

1. Our office was requested to urgently advise on the mandate of the Portfolio Committee on Communications ('the Committee') to act in terms of the Broadcasting Act, No 4 of 1999 ('the Act') in the context of the recommendation of individuals to serve as members of the Interim SABC Board.

BACKGROUND

2. On 19 March 2013 the Committee reported to the National Assembly ('the NA') that Dr I Abedian by resolution of the House be recommended to the appointing authority (the President of the RSA) to serve as a member of the Interim SABC Board in terms of section 15A(3)(b) of the Act. This resolution was adopted and the appointing authority approved the recommendations.
3. It has since come to light that the policies of Bigen Africa (Pty) Ltd prevent its directors from being state employees. As a director of Bigen Africa (Pty) Ltd, Dr I Abedian may not be in the employ of the State. A copy of the letter from the Chairperson of the SABC Board communicating this fact to the Minister of Communications is hereto attached for ease of reference.

LEGAL ADVICE

4. The NA is legislatively mandated to recommend a replacement for Dr I Abedian to the appointing authority in terms of the process outlined in section 15A(3)(a), as he was one of the five names initially recommended by House resolution.
5. The Committee, functioning as that extension of the NA exercising oversight over the Department of Communications and related entities, therefore has an obligation to report to the NA on the current situation and recommend a suitable candidate to fill the interim board position of Dr I Abedian.
6. Section 15A of the Act does not expressly outline the procedure to be followed in the recommendation of an interim board member. The practice has been for the Committee (as extension of the National Assembly) to determine what process to follow in the identification of a suitably qualified individual to nominate.



Dr BE Loots
Parliamentary Legal Adviser

4 April 2013

Honourable Minister of Communications
Ms Dina Pule MP
iParioli House
1166 Park Street
Hatfield
PRETORIA
0001

Dear Honourable Minister Pule

CONFLICT OF INTEREST IN RESPECT OF DR I ABEDIAN

Dr I Abedian has raised his concern with the Company Secretary that, as the Chairman of Bigen Africa (Pty) Ltd, which provides services to both the public and private sector, and the possible conflict of interest arising from his appointment as a Non-Executive Director of the SABC.

In terms of his appointment to the SABC Board, he is classified as an employee of the State. This places Dr Abedian in conflict with the requirement of Bigen Africa (Pty) Ltd that none of its directors may be in the employ of the State in order to avoid any bids in respect of infrastructure projects at national, provincial and local government levels being declared null and void.

Under the circumstances, Dr Abedian remaining as an Interim Board Member, would negatively affect his business and his position as the Chairman of Bigen Africa (Pty) Ltd.

It is therefore requested that an individual, preferably with legal skills, be nominated for appointment as a Non-Executive Director on the Interim Board of the SABC for approval by the Honourable President J G Zuma.

Your assistance in respect of the above will be highly appreciated.

Yours faithfully



Ms Z E Tshabalala
CHAIRPERSON SABC BOARD