



AUDITOR - GENERAL  
SOUTH AFRICA

The Honourable Ms Phumuzile Ngwenya-Mabila  
Chairperson: Portfolio Committee on Department Rural Development and Land Reform  
PO Box 15  
Cape Town  
8000

19 October 2017

Dear Hon. Ngwenya-Mabila

*Please see below questions and AG responses based on PC Engagement on 3 October 2017*

### **Portfolio Committee Question 1**

The Auditor-General was requested by the committee in our engagement on 3 October 2017 to provide clarity how the AGSA distinguishes between the Ingonyama Trust and the Ingonyama Trust Board. The following response should be noted:

### **Auditor- General Response**

#### **Ingonyama Trust**

The purpose of the KwaZulu-Natal Ingonyama Trust Act No. 3KZ of 1994 (KITA) was to provide for the establishment of the Ingonyama Trust and for certain land to be held in trust; and to provide for matters incidental thereto.

Section 2 of KITA reads as follows:

**" 2. Establishment of the Ingonyama Trust.—(1) A corporate body, to be called the Ingonyama Trust, hereafter referred to as the Trust, is hereby established with perpetual succession and power to sue and be sued and, subject to the provisions of this Act, to do all such acts and things as bodies corporate may lawfully do."**

#### **Financial regulations issued in terms of KITA that are applicable to the Trust:**

Regulation 2 states that: *These regulations shall apply to the financial administration of all income earned or accrued to the Trust and are subject to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999).*

Regulation 4 deals with Accounting records and states the following:

*(1) The Account Officer shall keep, in conformity with generally accepted accounting practice appropriate to the business of the Trust, accounting records which fairly present in the state of affairs of the Trust as at the end of the financial year concerned and the results of its operations for that year, including*

*—*  
*(a) records showing its assets and liabilities;*

- (b) a register of fixed assets showing in respect thereof the respective dates of any acquisition and the cost thereof depreciation (if any), and where assets have been re-valued, the date of the revaluation and the re-valued amount thereof, the respective dates of any disposals and the consideration received in respect thereof;
- (c) records containing entries from day-to-day of all cash received and paid out, in sufficient detail to enable the nature of the transactions and, except in the case of cash sales, the names of the parties to the transaction to be identified;
- (d) records of all purchases and sales on credit, including services, in sufficient detail to enable the nature of the purchase and sale and the parties to the transactions to be identified; and
- (e) vouchers supporting entries in accounting records.

In terms of Regulation 5(1), the financial year of the Trust is 31 March of each year.

Regulation 6(1) deals with annual financial statements and states that *the official shall within a period set by the accounting authority, cause annual financial statements in respect of the financial year to be prepared.*

In terms of Regulation 20(1), the financial statements and records of the Trust shall be audited annually by the Auditor-General. In terms of sub-regulation (2), the Auditor-General must submit a report on the Trust's financial statements to—

- (a) the accounting authority;
- (b) the official;
- (c) the KwaZulu-Natal Provincial Legislature;
- (d) the national Parliament;
- (e) the House of Traditional Leaders of KwaZulu-Natal;
- (f) the Minister of Land Affairs; and
- (g) the Premier of the Province of KwaZulu-Natal.

#### **Ingonyama Trust Board (ITB):**

The purpose of the KwaZulu Ingonyama Trust Amendment Act, No. 9 of 1997 (amended Act) was provided to establish the Ingonyama Trust Board:

Section 2A of the KITA reads as follows, " **2A. KwaZulu-Natal Ingonyama Trust Board.—**

- (1) There is hereby established a board to be known as the KwaZulu-Natal Ingonyama Trust Board.
- (2) The Board shall administer the affairs of the Trust and the trust land and without detracting from the generality of the foregoing the Board may decide on and implement any encumbrance, pledge, lease, alienation or other disposal of any trust land, or of any interest or real right in such land.
- (3) The Board shall consist of—
  - (a) the Ingonyama or his or her nominee who shall be the chairperson of the Board; and
  - (b) four members appointed by the Minister after consultation with the Ingonyama, the Premier and the chairperson of the House of Traditional leaders of KwaZulu-Natal; and
  - (c) four members appointed by the Minister, with due regard to regional interests, in consultation with the Premier, who shall consult with the Ingonyama and the chairperson of the House of Traditional Leaders in this regard."

#### **Ingonyama Trust Board (ITB):**

The ITB is a Schedule 3A public entity listed in the Schedules to the PFMA. This means that the ITB must comply with all the provisions in the PFMA relating to a public entity, including, providing a separate set of financial statements.



## **Portfolio Committee question 2**

In addition to the above the AGSA was also requested to provide further clarity with regards to the findings that gave rise to the qualified audit opinion and the relevant recommendations made. There were 2 matters in this regards as listed below:

### **Auditor General Response**

#### **Recommendations to resolve the royalty income finding**

##### **Revenue – Royalties (Ingonyama Trust)**

In terms of the Minerals and Petroleum resources royalty act no.28 of 2008, paragraph 2 imposition of royalties states that:

A person must pay a royalty for the benefit of the national revenue fund in respect of the transfer of a mineral resource extracted from within the republic.

In terms of this act - transfer means:

(a) The disposal of a mineral resource or

(c) The consumption, theft, destruction or loss of a mineral resource, other than by way of flaring or other liberation into the atmosphere during the exploration or production, if that mineral resource has not been previously disposed of, consumed, stolen, destroyed or lost.

The date of commencement of the act was 1 May 2009.

Inspected an agreement between La Farge/ Richards bay Quarry and ITB and confirmed the following:

Clause 5.1.1 States that as from the commencement date the lease, the lessee shall pay to the lessor or its agent monthly a royalty of 5% of the ex-mine selling price of the material removed and sold from the lease area or the market related ex-mine selling price of material removed from the lease area, whichever is the greater, subject to payment of a minimum royalty of R4 000 per monthly.

A transitional provision was afforded to the trust to continue receiving the contractual royalty as per item 11(5) of Schedule II of the Act, if, within five years. (01 May 2004 to 30 April 2009) from the date on which the MPRDA Act took effect it informed the Minister of its need to continue to receive such consideration or royalties and the reasons therefor, and furnish the Minister with the prescribed information.

The trust did not fulfill the requirements of the transitional provisions, as no submission was made to the Minister to retain the royalty for its own benefit. Accordingly the agreement entered into between Lafarge and the trust to receive the royalty income is void.

During the audit of revenue, it was confirmed that revenue from royalty income of R922 424.04 was received during financial year under audit which is contrary to the requirements of the Minerals and Petroleum resources royalty act as this revenue is legally accrued to the national revenue fund in terms of this act.

#### **Recommendation**

The revenue raised must be reversed and the royalty must be recognized as a liability. The Ingonyama Trust Board must liaise with Treasury and Minister of Rural Development and Land Reform to resolve the matter or permission to continue receiving the royalties.

## **Recommendations to confront the valuation of land finding**

### **Valuation of land (Ingonyama Trust)**

In terms of Generally Recognised Accounting Practice, GRAP 17, Property, plant and equipment requires that where assets acquired at nil or nominal consideration through the exercise of powers, these assets shall be recognised at fair value as at the date of acquisition.

Furthermore, in terms of section 51(1) (c) of the Public Finance Management Act No.1 of 1999 (PFMA), an accounting authority of a public trust must ensure that the public entity:

(c) is responsible for the management, including the safeguarding, of the assets and for the management of revenue, expenditure and liabilities of the public entity.

As indicated in note 21 to the financial statements of Ingonyama Trust, land has not been valued but is disclosed according to the extent held.

Through discussions with management and the audit committee, it was established that valuing land to meet requirements of GRAP would not be cost effective and would not benefit the beneficiaries. The trust has not complied with financial reporting framework and land has been disclosed at nil value.

### **Recommendation**

A process to fair value the land should be undertaken to correctly record the value of land in the land register and recorded accordingly in the general ledger and financial statements to ensure compliance with GRAP.

In addition, the ITB should consult with Treasury to determine if the entity can seek other alternatives to resolve the matter.

Yours sincerely



**Eugene de Haan**  
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