 

**TO: Chairperson, Standing Committee on Finance [Mr Y Carrim, MP]**

**FROM: Constitutional and Legal Services Office**

**DATE: 27 November 2017**

**SUBJECT: Advice on the way forward to consider the KPMG report on the so-called SARS ‘rogue unit’ report**

**Purpose**

1. The purpose of this note is to advise the Standing Committee on Finance (SCoF) on the way forward to consider the KPMG report on the so-called SARS ‘rogue unit’ report.

**Context**

1. On 15 September 2017 the Sunday Times reported that:[[1]](#footnote-1)

* SARS engaged KPMG SA in December 2014 to perform an "extensive document investigative review which resulted in the 'Report on Allegations of Irregularities and Misconduct'.
* A version of the report dated 3 September 2015 was leaked and made public on 4 October 2015. It was accepted as final on 26 January 2016.
* At a later stage‚ this mandate was extended to the provision of a report which included conclusions‚ recommendations and legal opinions. As a result‚ during the course of the engagement‚ the scope of the work changed.
* International auditing firm KPMG withdrew all of its findings‚ recommendations and conclusions around its report into the South African Revenue Service (SARS) "rogue spy unit" at the time of the media report.

1. On 29 September 2017 Mr D Maynier MP wrote to the Chairperson of the SCoF to request that the committee programme include:

* scrutinizing SARS handling of KPMG South Africa’s investigative review into the so-called SARS “Rogue Unit” which resulted in the report, entitled “Report on Allegations of Irregularities and Misconduct”, dated 04 December 2015; and
* scrutinizing SARS’ handling of KPMG International’s report on KPMG South Africa’s investigative review into the so-called SARS ‘rogue unit’, including the press conference held on 18 September 2017.

1. The SCOF chairperson informed the Committee that he has engaged with the Chairpersons of the Joint Standing Committee on Intelligence (JSCI), Mr Charles Nqakula MP, and the Standing Committee on Public Accounts (SCOPA), Mr Themba Godi MP, about the respective roles the Finance and these other two Committees could play in processing the matter. The SCOF chairperson said that Mr Godi informed him that SCOPA would not be taking the matter forward, and Mr Nqakula told him that if they received a proposal similar to Mr Maynier’s from a DA member in the JSCI they would consider what action to take.
2. The Chairperson also engaged with the CEO of the Independent Regulatory Board for Auditors (IRBA), Mr Bernard Agulhas, on what role they could play in respect of KPMG’s role in this matter. Mr Agulhas explained that as the report on the so-called ‘rogue unit’ is a forensic investigation and not an audit report, IRBA’s initial legal advice was that they could not investigate report but could look into the conduct of the auditor within their legal mandate. He said this also at a SCOF Committee The Chairperson informed me that he spoke with Mr Agulhas again on 27 November and was told that IRBA had initiated an inquiry into the conduct of the KPMG auditor but would not be considering the report as a whole.
3. The Chairperson requested the Legal Services Office to frame the terms of reference for a SCOF Inquiry into the matter that is distinct from the role the JSCI would play. We would have to consider after further engagement on this but our initial advice is provided here.

**Regulatory Framework**

1. NA rule 232, read with rule 227, mandates the SCoF to maintain oversight of an executive organ of state within its portfolio. It must maintain oversight of SARS, in other words. In doing so, it may monitor, investigate, enquire into and make recommendations concerning any such executive organ of state, including the legislative programme budget, rationalisation, restructuring, functioning, organisation, structure, staff and policies of such organ of state, institution or other body or institution.
2. The JSCI is established by the Intelligence Services Control Act 40 of 1994 and is mandated by section 199(8) of the Constitution to maintain oversight of all security services, including any intelligence services. Oversight of the services performed by intelligence services – which might include the ‘rogue unit’ – falls within the purview of the JSCI.

1. In scrutinising the handling by SARS of the report from KPMG it appears necessary that the contents of the various drafts of the report must be examined. This raises questions whether the report contains classified information about intelligence services.
2. In addition to or as an alternative to scrutinising the contents of the report, the committee could call relevant persons from SARS and KPMG to enquire into the handing of the report. As an alternative, this option would not disclose classified aspects of the report. It would also leave the contents of the report in the hands of the JSCI.

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1. <https://www.timeslive.co.za/politics/2017-09-15-kpmg-cans-sars-rogue-unit-report-apologises-to-gordhan/> [↑](#footnote-ref-1)