



# Response to Allegations of Maladministration and Mismanagement

**Presentation to SCOPA on  
01 June 2021, 09:30 – 13:00**

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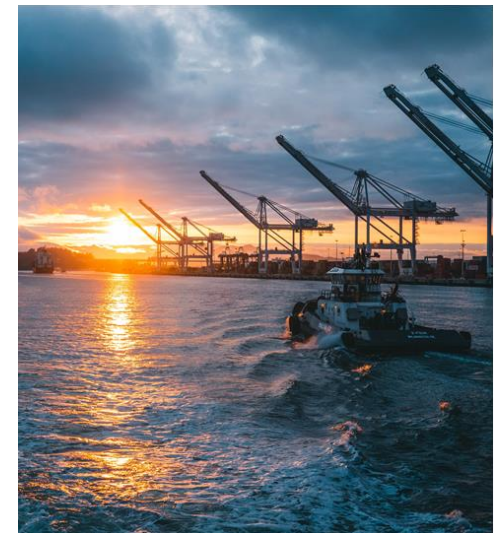
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➤ *Poseidon matter*

➤ *Process of appointing Board members*

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# A. OUR UNDERSTANDING OF THE ALLEGATIONS

- 1. In the case of Cranbrook Property Projects (Pty) Ltd where three companies are involved, namely, *Blue Horizon Investments 11*, *Moeparutsi Properties* and *Proline Trading 60*, the total of the outstanding loans allegedly stood at R426 million and in the end the DBSA allegedly approved the write-back of hundreds of millions of Rands in interest according to the in duplum-rule, but also wrote off R259 million.**
- 2. The DBSA funded a company called Poseidon, which allegedly had links to Harith General Partners, a company that had not been painted in a favourable light by the Mpati Commission.**
- 3. In the case of Board members, it is alleged that there has been victimisation of certain Board members and an irregular reformation of the Board.**

+30

**Number of individual sub-allegations**



4

**Number of logical categories in response**

- DBSA investment process
- Chronology of Cranbrook transactions
- Poseidon matter
- Process of appointing Board members

**The allegations are premised on incomplete and/or inaccurate information**

# B.2 DBSA INVESTMENT PROCESS

- Determine if the proposed funding fits the Banks mandate and strategy
- Key issues to be addressed in Due Diligence (DD) discussed and agreed

- Detailed analysis of the funding request including financial, social, technical institutional and developmental aspects
- DD Team made up of various relevant staff

- Considers funding proposal based on information gathered and assessed during DD
- Approves if within mandate otherwise recommends to Board Credit and Investment Committee
- Approval or recommendation decision based on consensus

- Considers funding application based on recommendation by Investment Committee (IC)
- Approves final terms and conditions to be negotiated with client

Early Review Report to IC



Due Diligence



Appraisal Report to IC



Appraisal Report to BCIC



Workout and Recoveries



Post Investment Management



Disbursement Process



Negotiation and Contracting Stage

- Management of Non Performing Loans (NPL) to improve performance and maximum collections for the Bank
- Assessment of collectable amounts
- Recommends impairments of NPLs and write-offs to management and Board based on what is deemed collectable
- Pursues post write-off recoveries

- Monitors adherence to terms and conditions
- Ensures early interventions when signs of weakness are detected
- Ensures timeous collection of payments when due

- Management of disbursements based on milestones as well as terms of the facility

- Negotiation of loan conditions based on terms and conditions approved by IC/BCIC

# B.3 OUR RESPONSE

## Chronology of Cranbrook Transactions

### DBSA approached by Cranbrook

2006

- Funding bulk infrastructure for housing in Limpopo and B-BBEE shareholder in Cranbrook
- Within DBSA developmental mandate
- Lephalale identified as growth node at the time – increased housing demand due to growing mining sector
- Due diligence performed

### Impact of Global Financial Crises

2009

- Downturn in economic growth impact on mining
- Decline in housing demand
- Moeparutsi in default and debt restructured
- Moeparutsi repaid R10,4m between 2009 and 2011

### Restructure and Repayment

2011/12

- Proline Trading repaid R24,1m between 2011 and 2020
- Proline and Blue Horizon agreements amended, extending repayment periods
- Agreement provides for DBSA to receive at least 70% of proceeds of every stand sold

### Loans approved

2007/08

- Loan of R10 million approved to Moeparutsi to acquire 17% shareholding in Cranbrook
- Board Investment Committee approved 5-tranche R124m loan to Blue Horizon for bulk infrastructure in Lephalale in 2007
- Approved 5-tranche R125m to Proline Trading for bulk infrastructure in Burgersfort in 2008

### Repayment and portfolio monitoring

2010

- Blue Horizon repaid R113,5 m between 2010 and 2017
- Cranbrook transactions managed by post investment portfolio

2013 to 2021

### Recovery Strategy

- Long term turnaround strategy adopted – wait for market to turn
- Loans secured by mortgage bonds; don't prescribe for 30 years
- Valuations and quarterly reporting as non-performing
- Blue Horizon placed in liquidation in 2017, auction of properties for benefit of DBSA ongoing.
- By 2019, still minimal sales - turnaround strategy reviewed
- In duplum interest written off in 2020
- Legal recovery processes ongoing

- In addition to Internal Audit forensic review, the DBSA Board also mandated an external, independent legal investigation by DM5 Incorporated into this transaction.
- This investigation has recently concluded and the outcomes are currently being considered by both the DBSA and the Auditor General.
- While the matter remains under consideration, it is important for draw SCOPA's attention to the fact that no fraud, corruption or non-compliance with applicable laws and regulations was identified by the external investigators in the Cranbrook transactions.



# B.5 POSEIDON MATTER

## Chronology of Poseidon Transaction

### Application for project preparation funding

- Preparation and development of critical water infrastructure projects within South Africa and throughout Africa by Poseidon (Pty) Ltd
- Recognised impact of catalyzing project preparation funding predominately for smaller size private sector water projects

June  
2019

### Board asks for additional due diligence

- When the Poseidon issue was brought to media's attention, the DBSA Board subjected the transaction to an enhanced independent due diligence by Werksmans Attorneys

June  
2020

### Funding approved

- R50m approved by the DBSA's Board Credit and Investment Committee
- Full compliance with investment process
- Due diligence focused on the risk from politically exposed persons and adverse media associated with the project
- Appropriate risk mitigants instituted

March  
2020

### Facility committed

- The facility agreement was committed conditionally pending the satisfaction of condition precedents
- No funds disbursed to date

Nov  
2020

### General findings:

- Applying the DBSA's anti-money laundering framework, the Risk Management and Compliance Programme, together with the DBSA's Management of Politically Exposed Persons Policy, we found no active PEPs in respect of the Borrower, Project Sponsor, the Melokuhle Family Trust and Harith Holdings Employee Trust.
- The independent advanced due diligence aligned to the DBSA's internal findings re beneficial ownership and politically exposed persons.



## B.6 PROCESS OF APPOINTING BOARD MEMBERS

- The appointment of Board members is done in a fair and transparent manner.
- The Act provides that the Minister should gazette regulations on the process of Board members appointment.
- The Human Resources, Remunerations and Nominations Committee (HRNC) considered the nominations and made recommendations to the Board.
- In line with the DBSA Act, the Minister appoints Board members.
- In this instance the majority of members' terms on the HRNC were coming to an end, hence would be conflicted if they made recommendations on their own reappointments, hence why the Board resolved that the appointment process be dealt with by non-conflicted members.
- 9 • The reappointment of members is not automatic.

## C. CONCLUSION

- These allegations have serious potential reputational repercussions.
- No evidence of conflict of interest, collusion or fraud on transactions.
- The failure of the transactions in question is attributable to the economic recession in the aftermath of the financial crisis.
- Despite sovereign-linked credit rating, the DBSA's standalone alone rating<sup>1</sup>, performance and audit outcomes place it as one of the best governed SOEs around.
- Improvements in the DBSA's governance standards are ongoing, but the Bank does not need frivolous distractions currently when infrastructure development is central to the economic recovery.

<sup>1</sup>Association of African Development Finance Institutions' Prudential Standards, Guidelines and Rating System



**THANK YOU**

# ADDITIONAL: SPECIFIC RESPONSES

## *Chronology of Cranbrook Transactions – Moeparutsi*

- “No repayments of the loan after 2012 and no letters of demand have ever been issued”
  - **A total amount of R10,463,167.98 of which R6,613,624.56 was allocated to capital repayment had been received from Moeparutsi before the borrower defaulted. As BEE shareholder, Moeparutsi would repay the loan from dividends earned from Cranbrook. As demand for the properties plummeted, dividends did not materialise and Moeparutsi was unable to service the loan fully.**
- “No such an entity, ‘Moeparutsi Properties (Pty) Ltd’, has ever been registered”
  - **Incorrect. Moeparusti Properties was a registered entity under registration number 2006/003552/07**
- “The original loan agreements were very poorly drafted”
  - **The DBSA loan documents provide adequate mechanisms for DBSA to enforce its rights.**

# ADDITIONAL: SPECIFIC RESPONSES

## *Chronology of Cranbrook Transactions*

- “DBSA does not have any contact or financial information on the borrower or any of the sureties on record”
  - **Incorrect. Over the years, DBSA dealt with the borrowers at a Cranbrook group level. DBSA has been in regular contact with Cranbrook as Cranbrook continued to explore mechanism to turnaround the project. It was evident that there was no immediate market for the properties in the Spekboom and Ledibeng developments (all of which are bonded to the DBSA) and DBSA adopted a long-term strategy to align to market movements. Moeparutsi’s was intended to repay the BEE loan from the dividends earned from Cranbrook. Whilst the transactions were in distress, no dividends were earned. Notwithstanding, Moeparutsi repaid more that R10 million toward the original loan obligation.**
- “The loan was absurdly enough, directly deposited into Cranbrook’s account”
  - **Whilst the monies were not deposited into Cranbrook’s account it must be borne in mind that the purpose of the Moeparutsi loan was to acquire shareholding in Cranbrook so it wouldn’t have been untoward to pay the monies directly to Cranbrook.**

# ADDITIONAL: SPECIFIC RESPONSES

## *Chronology of Cranbrook Transactions*

- “The board recently wrote off this debt, because it cannot locate the borrowers”
  - **Incorrect. In April 2020, the Board wrote off the in duplum interest that accrued over the years on the Proline and Blue Horizon loans, the interest accrued on the outstanding capital exceeded the capital amount of the loans. In accordance with the in duplum rule, DBSA had to write off the interest in excess of the capital amount as a principle of law it is not able to recover interest in excess of the capital amount of a loan. The only write-off on the Blue Horizon and Proline loans pertain to the in duplum interest which is irrecoverable as a principle of law.**
  - **In addition, DBSA Board approved the write-off of the outstanding capital and interest on the Moeparutsi loan as DBSA, in consultation with external legal advisors, assessed that the prospects of recovery against Moeparutsi are very slim given the loan was not secured by immovable property and is deemed to have prescribed.**

# ADDITIONAL: SPECIFIC RESPONSES

## *Chronology of Cranbrook Transactions – Blue Horizon*

- “Loan was repaid, but this is unsubstantiated”
  - **Incorrect. Blue Horizon repaid R113,5 million towards the R124 million loan in seven instalments between 2010 and 2017. The remaining property (bonded in favour of DBSA) in the development is being sold off by auction by the liquidator for the benefit of DBSA.**
- “Liquidator’s attorney hinted at potential fraudulent transactions”
  - **During August 2018, the liquidator obtained consent from the Master of the High Court to conduct an inquiry under section 417/418 of the Companies Act, 1973 into the conduct the directors of Blue Horizon. This inquiry commenced in November 2018 and is ongoing.**
- “BSRU asked the Board to agree to a carve-out, in favour of the DBSA, of up to R20 million - relevant legislation prescribes a fair distribution of an insolvent company’s assets”
  - **Incorrect. DBSA’s claim, as a secured creditor in the estate of Blue Horizon has been accepted. The liquidation process of Blue Horizon is still ongoing and the liquidator is in the process of selling off the immovable property in the Ledibeng development for the benefit of the DBSA as the only secured creditor.**
- “Request to write back the interest of R11,6 million”
  - **Only in duplum interest was written off. The interest was deemed to be irrecoverable because of the legal principle of in duplum which means that a creditor cannot recover interest in excess of that the balance of the capital outstanding.**



# ADDITIONAL: SPECIFIC RESPONSES

## *Chronology of Cranbrook Transactions – Proline Trading*

- “Odd arrangement for the DBSA to have entertained (granting of facilities to PT 60)”
  - **Not at all. In August 2008, DBSA’s Board Investment Committee approved a loan of R125m for Proline. The loan to Proline was provided to facilitate the funding required to install the municipal services on Portion 10 of the Farm Mooifontein 313KT in Burgersfort also known as the Spekboom development. At the time, it was envisaged that the development would ultimately comprise of an estimated 1 944 serviced residential, commercial, health and education stands on 295 hectares. At the time of granting the loan, Burgersfort was forecast to become one of the major growth nodes in South Africa, due to the rapid expansion of platinum mining activity in the area.**
- “Never issued any letters of breach and/or letters of demand to the debtor”
  - **Not true. Letters of demand were issued in 2011 and 2020. Of critical importance is the fact that DBSA had been in contact with Cranbrook throughout and Proline acknowledged its indebtedness to DBSA throughout. DBSA’s developed a long-term turnaround strategy awaiting a change in the market towards increase in demand for properties and/or exploring additional investors. The loan is secured by a mortgage bond and does not prescribe for thirty years.**

# ADDITIONAL: SPECIFIC RESPONSES

## *Chronology of Cranbrook Transactions – Proline Trading*

- “PT 60 continues to be in default”
  - **Correct. Despite efforts on the part of Cranbrook, no additional funding or investors materialised and the transaction remains in default. In accordance with the restructuring agreement between DBSA and Proline, DBSA continues to receive at least 70% of the proceeds of all stands sold. The loan is under management of the business support and recovery unit (BSRU).**
- “Although loan secured by a mortgage bond, the value of the property is currently worth R61.8 million”
  - **As part of its monitoring and recovery process, DBSA undertakes valuations of the assets which it holds security over. The DBSA holds first ranking mortgage bonds over all remaining stands in the Spekboom development (approximately 200 stands) and Ledibeng development (approximately 260 stands).**
- “Requested that legal action against the individual sureties be delayed”
  - **DBSA has formulated a comprehensive legal strategy for recovery of monies owing in these transactions and is actively pursuing all its rights under the agreements.**

# ADDITIONAL: SPECIFIC RESPONSES

## *Chronology of Cranbrook Transactions – Additional queries*

- “DBSA did not apply the ‘in duplum-rule’ correctly in the BH 11 and PT 60 deals”
  - **Incorrect. Interest that is deemed to have exceeded the capital amount of the loan is irrecoverable because the legal principle of *in duplum* provides that interest in excess of the capital loan amount may not be claimed. To ensure that the loan balance in DBSA books is not overstated this excess amount needs to be written off so that an accurate recoverable amount is reflected on the DBSA books. The authority for this adjustment and write-off of loan amounts vests with the DBSA Audit and Risk Committee.**

# ADDITIONAL: SPECIFIC RESPONSES

## *Chronology of Cranbrook Transactions – Additional queries*

- “Had not taken action to recover the debt, for three years, legal rights to recovery extinguished”
  - **Incorrect. DBSA reviewed its recovery strategy for the Cranbrook transactions quarterly. Strategy was revised as it became apparent that turnaround of the market was not likely. DBSA is actively pursuing all its rights under the agreements.**
  - **Prescription is a legal principle in terms of which a debtor’s liability to pay an outstanding debt is extinguished after the passing of prescribed time periods set out in the Prescription Act, 1969. In South Africa, debts which are not secured by notarial bonds or mortgage bonds prescribe three years after repayment is due, unless legal proceedings are commenced and/or the debtor continues to acknowledge the indebtedness and/or continues to make repayment. Once a debt prescribes a debtor is not legally obliged to pay it. Debts secured by notarial bonds prescribe after six years and debt secured by mortgage bonds prescribe after thirty years.**
  - **Over the years, DBSA has been in regular contact with Cranbrook and throughout Cranbrook has acknowledged its indebtedness to the DBSA and continued to make payment to the DBSA from the sale of stands in Spekboom and Ledibeng developments. In addition, the debts of Proline and Blue Horizon are secured by mortgage bonds over the property of the developments and don’t prescribe for thirty years.**
  - **Moeparutsi’s debt was a BEE loan and not secured by a notarial or mortgage bond and regrettably, no repayment of the loan have been made since 2010. It is likely that Moeparutsi will claim prescription on the monies owing to DBSA. It must be emphasized that a total amount of R10,463,167.98 of which R6,613,624.56 was allocated to capital repayment had been received from Moeparutsi before the loan prescribed.**

# ADDITIONAL: SPECIFIC RESPONSES

## *Chronology of Cranbrook Transactions – Additional queries*



- BSRU has for years been negligent in its monitoring of this bad debt”
  - **Far from it. In accordance with the DBSA’s governance procedures, BSRU reports on the status of all DBSA’s non-performing loans to the Investment Committee (consisting of Executives and Managers of the DBSA) on a quarterly basis and to the Board Audit and Risk Committee (consisting of DBSA Board members) on a half yearly basis. The DBSA intentionally adopted a long-term turnaround strategy given the nature of the investment. The BSRU considered and revised the impairment to be held against the non-performing loans in the Cranbrook Group. The debts of Proline and Blue Horizon are secured by mortgage bonds over the property of the developments and don’t prescribe for thirty years.**
- “Clear signs that this entire transaction might constitute BEE-fronting”
  - **Incorrect. No evidence to support this allegation was found.**
- “Decisions were made without honouring internal systems”
  - **Incorrect. These transactions were approved in accordance with all processes and delegations in place at the time.**

# ADDITIONAL: SPECIFIC RESPONSES

## *Process of appointing Board members*

- “Chairperson of the board unilaterally wrote to the Finance Minister about two vacancies and reappointment”
  - **The Human Resources, Remunerations and Nominations Committee (HRNC) considered the nominations and recommended it to the Board. A member’s dissent was recorded at that meeting. The letter that was sent to the Minister was shared with the whole board. In line with the DBSA Act the Minister appoints Board members and the process for appointment needs to be gazetted by means of regulations. The Regulations have not been gazetted and these were the issues that were being highlighted to the Minister.**
- “A now former board member allegedly dared to question the Cranbrook and other matters”
  - **Simply not true. All Board members can engage robustly.**

# ADDITIONAL: SPECIFIC RESPONSES

## *Process of appointing Board members*

- “Chairperson allegedly instructed the DBSA officials that this former board member’s fees be withheld”
  - **Numerous letters were written to the Board member who ignored the board resolution to submit the DBSA issued device. This resulted in that member being unable to exercise her fiduciary obligations.**
- “External legal opinion willfully ignored”
  - **The DBSA never solicited such an opinion. The external opinion from the Bank lawyers was not ignored. Important to note that the issues that were raised by the external legal opinion referenced in the allegation were not ignored either, as a result the ARC resolved that our internal audit should investigate the issues raised and source the services of an external law firm to assist.**
- “Board membership ended through concerted effort of the chairperson to rid the DBSA of a board member who would not toe the line”
  - **Board members renewals are not automatic and are at the discretion of the Minister.**
- “Chairperson unliterally appointed an executive search firm”
  - **The services of an independent executive search company were secured and the process was led by the Chair as is customary. The independent search firm met with the Board Chair, Chair of HRNC and CEO to understand the requirements.**



# ADDITIONAL: SPECIFIC RESPONSES

## *Process of appointing Board members*

- “DBSA Act regulations in terms of which the Minister of Finance must make Board appointments never been promulgated”
  - **The DBSA does not determine this process. It has however raised the matter with the Minister.**
- “DBSA chairperson, chief executive officer and the company secretary were ruling the roost”
  - **False. The DBSA subscribes to the highest standards of corporate governance, integrity and ethics. It is governed by stringent corporate governance policies, which have been carefully developed and are resolutely applied at every level within the organisation.**
- “DBSA’s management refused (my) Public Access to Information Act application”
  - **The DBSA has a legal duty to protect confidential and commercially sensitive client information.**
- “DBSA funded a company called Poseidon, which allegedly had links to Harith General Partners”
  - **Applying the DBSA’s anti-money laundering framework, the Risk Management and Compliance Programme, together with the DBSA’s Management of Politically Exposed Persons Policy, we found no PEPs in the transaction. An independent advanced due diligence was undertaken on the Poseidon project structure. All underlying information and documentation were gathered lawfully. The relevant companies were engaged directly. There were no findings of any ultimate beneficial ownership or politically exposed persons.**