

Mr Mkhuleko Hlengwa
Chairperson of the Standing Committee on Public Accounts

27 May 2021

Dear Mr Hlengwa

ALLEGATIONS OF MALADMINISTRATION, MISMANAGEMENT AND CORRUPTION AT THE DEVELOPMENT BANK OF SOUTHERN AFRICA

1. The Development Bank of Southern Africa ("**DBSA**") takes note of the allegations of maladministration, mismanagement and corruption at the DBSA, as contained in both public letters and submissions to the Standing Committee on Public Accounts ("**SCOPA**") by Mr Bantu Holomisa ("**Mr Holomisa**").
2. In considering this response, we have taken note of SCOPA's media statement dated 18 November 2020 informing *inter alia* that an investigation will be conducted into (i) allegations of financial irregularities in respect of certain loans made by the DBSA and (ii) allegations of victimisation of board members of the DBSA (the "**media statement**").
3. The DBSA finds it rather unfortunate that Mr Holomisa sought to place documents before SCOPA at the eleventh hour, depriving both the DBSA and SCOPA of the opportunity to interrogate the veracity of the unsubstantiated allegations.
4. While the DSBA, along with other interested parties, had awaited the proposal and operational framework from SCOPA (as alluded to in the media statement), the DBSA has decided to take a proactive approach in placing this correspondence before SCOPA. We trust this will provide additional context and assistance to SCOPA in making an informed decision.
5. From the outset, the DBSA wishes to reassure SCOPA, Mr Holomisa and all interested and/or affected parties that it is not aware of any maladministration, mismanagement and/or corruption of whatsoever nature within the current operating environment at the DBSA. The DBSA categorically denies such allegations.



E Godongwana (Chairman), M Swilling (Deputy Chairman),
PK Dlamini* (Chief Executive), M Janse van Rensburg,
Adv. M Kganedi, G Magomola, MP Matji, B Mosako*,
B Mudavanhu, MT Ngqaleni, B Nqwababa, P Nqeto,
A Sing

*Executive
Bathobile Sowazi (Company Secretary)

1258 Lever Rd, 011 313 3911
Headway Hill, 011 313 3500
Midrand,
1685
www.dbsa.org

6. The DBSA welcomes engagement on these matters and undertakes to cooperate in any such processes as SCOPA may deem appropriate in the circumstances. The DBSA remains confident that these allegations will eventually be dismissed.
7. In the ensuing content of this correspondence, the DBSA will seek to address the broad categories of Mr Holomisa's allegations (not all of which may be pertinently relevant for the contemplated proceedings before SCOPA, but which nonetheless necessitate a response at this juncture). The content of this correspondence should not be regarded as conclusive or exhaustive of the DBSA's position in relation to Mr Holomisa's allegations and the DBSA will supplement its responses in this regard, to the extent required, in due course.
8. The DBSA remains concerned that certain individuals have sought to implicate it without foundation.

9. **The veracity of the allegations**

- 9.1 The transactions to which Mr Holomisa's allegations relate are of a complex nature. Additionally, the underlying documents in relation to such transactions are voluminous, to say the least.
- 9.2 Mr Holomisa's allegations are premised on incomplete and/or inaccurate information, which has been provided to him on a piecemeal basis by parties who themselves are not privy to the entirety of the information and/or documentation relevant to such matters. Accordingly, Mr Holomisa has drawn misdirected conclusions from such misinformation, which has undoubtedly led to his ill-informed and unfounded allegations in relation to these matters.
- 9.3 Where the remainder of Mr Holomisa's allegations are guided by the seemingly biased views of parties who have taken issue with the DBSA as a result of their personal discontent with what has transpired in certain instances, the DBSA respectfully submits that such information is jaundiced and the allegations relating thereto are therefore, at the very least, misconstrued.



E Godongwana (Chairman), M Swilling (Deputy Chairman),
PK Dlamini* (Chief Executive), M Janse van Rensburg,
Adv. M Kganedi, G Magomola, MP Matji, B Mosako*,
B Mudavanhu, MT Ngqaleni, B Nqwababa, P Nqeto,
A Sing

*Executive
Bathobile Sowazi (Company Secretary)

1258 Lever Rd, 011 313 3911
Headway Hill, 011 313 3500
Midrand,
1685 www.dbsa.org

10. The DBSA's Corporate Governance

- 10.1 At all levels, the DBSA subscribes to the highest standards of corporate governance, integrity and ethics. It is a commitment that is guarded jealously and is intrinsic in every step it takes in fulfilling its mandate.
- 10.2 The DBSA is governed by stringent corporate governance policies, which have been carefully developed and are resolutely applied at every level within the organisation. Additionally, both internal and external checks and balances at every level of the organisation ensure that all operations and decisions do not solely lie with a single officer, but rather relies on collaborative consensus.
- 10.3 It is important to highlight that for present purposes, decisions taken by the board were informed by recommendations made by internal and external advisers. The DBSA continues to be guided by and act in accordance with such recommendations.
- 10.4 Additionally, the DBSA is audited annually by the Auditor General of South Africa and has, to date, achieved a clean audit.
- 10.5 Of particular relevance and importance, no adverse findings have been made in relation to the impugned transactions.

11. The impugned transactions

11.1 Poseidon

- 11.1.1 Mr Holomisa alleges that the DBSA funded Politically Exposed Persons as part of this transaction, without due process being followed.

Background

- 11.1.2 In June 2019, the DBSA received an application requesting project preparation funding support for the preparation and development of critical water infrastructure projects within South Africa and throughout Africa to be undertaken through Poseidon (Pty) Ltd.



E Godongwana (Chairman), M Swilling (Deputy Chairman),
PK Dlamini* (Chief Executive), M Janse van Rensburg,
Adv. M Kganedi, G Magomola, MP Matji, B Mosako*,
B Mudavanhu, MT Ngqaleni, B Nqwababa, P Nqeto,
A Sing

*Executive
Bathobile Sowazi (Company Secretary)

1258 Lever Rd, 011 313 3911
Headway Hill, 011 313 3500
Midrand,
1685 www.dbsa.org

- 11.1.3 When considering the application, the DBSA recognized, among other strategic objectives and impacts, the potential of catalysing project preparation funding for smaller size water projects. This would enable such projects to reach financial close while, among other things, reducing the financial burden that municipalities and the state face when implementing new water projects or refurbishing existing water infrastructure facilities in line with demand.
- 11.1.4 On 26 March 2020, funding of R50 million was approved by the DBSA's Board Credit and Investment Committee.
- 11.1.5 Notwithstanding the approval, no DBSA funds have been disbursed in relation to this matter to date.

Processes followed

- 11.1.6 The decision to fund this transaction was made in full compliance with the DBSA's established internal credit approval process, which includes the financial, institutional, legal, environmental and social assessment of a project and would ordinarily include an analysis of the compliance and risk considerations associated with any potential investment.
- 11.1.7 Additionally, the DBSA also conducted due diligence and appraisal processes focused on the compliance and risk related issues associated with this transaction, which included the identification of politically exposed persons and adverse media associated with the project. The outcome of these processes was thoroughly reviewed and, where appropriate, mitigated, to the extent possible.
- 11.1.8 The approval of the DBSA's funding was further subjected to certain conditions, which are intended to mitigate the risks emanating from the above findings.
- 11.1.9 When Mr Holomisa brought this issue to the media's attention, the DBSA's board subjected the transaction to an enhanced due diligence which was conducted by Werksmans Attorneys, an independent law firm. The enhanced due diligence



E Godongwana (Chairman), M Swilling (Deputy Chairman),
PK Dlamini* (Chief Executive), M Janse van Rensburg,
Adv. M Kganedi, G Magomola, MP Matji, B Mosako*,
B Mudavanhu, MT Ngqaleni, B Nqwababa, P Nqeto,
A Sing

*Executive
Bathobile Sowazi (Company Secretary)

1258 Lever Rd, 011 313 3911
Headway Hill, 011 313 3500
Midrand,
1685 www.dbsa.org

sought to investigate the ownership of the shareholding for the purposes of confirming whether there was any conflict of interest.

- 11.1.10 It is important to alert SCOPA to the fact that the findings from Werksmans Attorneys confirmed that the allegations made by Mr Holomisa are without merit.

11.2 Cranbrook

- 11.2.1 Mr Holomisa alleges that the DBSA's processes in relation to the write-off and recovery of certain amounts have been irregular.

Background

- 11.2.2 The loans in question were approved between 2007 and 2009, in accordance and full compliance with the DBSA's credit processes which were applicable at that time.
- 11.2.3 During March 2020, submissions were made to the Board, among other things, seeking approval for the write-off of arrear interest that had accrued on the loans to an amount exceeding the outstanding capital balance, in breach of the *in duplum* rule.
- 11.2.4 The DBSA, in accordance with the principles of *in duplum* and international financial reporting standards, sought to accurately reflect these loans in its books of account.

Processes followed

- 11.2.5 The DBSA's internal policies which govern the process of write-offs are dealt with by the Bank's Business Support and Recovery Unit ("**BSRU**"). Furthermore, all write-offs are subject to approval by the Audit and Risk Committee ("**ARC**") of the Board, on recommendation by the Bank's Investment Committee, only when very clear criteria have been met, as set out in the Bank's write-off policy.



E Godongwana (Chairman), M Swilling (Deputy Chairman),
PK Dlamini* (Chief Executive), M Janse van Rensburg,
Adv. M Kganedi, G Magomola, MP Matji, B Mosako*,
B Mudavanhu, MT Ngqaleni, B Nqwababa, P Nqeto,
A Sing

*Executive
Bathobile Sowazi (Company Secretary)

1258 Lever Rd, 011 313 3911
Headway Hill, 011 313 3500
Midrand,
1685 www.dbsa.org

- 11.2.6 When this matter was first raised at the DBSA's ARC, a board member requested that an external opinion be obtained. Having considered the matter, ARC resolved that any legal review be included in the internal audit process already underway at the time.
- 11.2.7 Despite the resolution reached by ARC, the board member unilaterally and without authority instructed an advocate, on very limited information, to provide an opinion on the matter. This was done outside of the DBSA's policies and processes which exist for this purpose. She seemingly misrepresented to her nominated counsel that she was obtaining this opinion on the DBSA's behalf. Further, the relevant board member concerningly sought to be paid for her opinion in addition to being reimbursed for the amounts that were, without authorisation, incurred by her. The Board of the DBSA sought external legal opinion on her conduct and the tax invoice presented by her and was expressly advised not to pay or reimburse her.
- 11.2.8 Given the board member's actions, the DBSA's board sought external legal advice on the matters in question, so as to guide the decisions of the board. All opinions requested by the board complied fully with the DBSA's processes in this regard.
- 11.2.9 It is factually incorrect that certain legal opinions were wilfully ignored. After careful consideration of the correctly sought opinions, the board member's opinions were found to be flawed.
- 11.2.10 The DBSA's board acted within the recommendations of the legal opinions it solicited when making its decisions in relation to this matter.
- 11.2.11 The DBSA's external auditors, as part of their audit process, also conducted a review of the transactions and were satisfied with the DBSA's internal controls in managing the investment portfolio, including write-offs. The Auditor General did not identify any non-compliance with laws or regulations relating to this transaction and recommended that management continue with the Internal Audit Investigation into the transaction.



11.2.12

Veracity of allegations

- 11.2.13 The allegations inferring that writing-off *in-duplum* interest is irregular are false and reflect a basic lack of understanding of this common law rule. *In duplum interest* cannot be recovered and therefore the decision taken by the board to write this back is standard accounting practice and a principle applied at all financial institutions. It is grossly misleading to suggest that the accounting write-off of *in-duplum* interest amounts to a waiver of rights of recovery against a client or debtor.
- 11.2.14 Given the effluxion of time, the parties who were involved in the decision to fund this transaction are no longer with the organisation. Accordingly, it is simply without merit to suggest that current members of the DBSA are acting with an ulterior motive when making the relevant decisions, given that they were not part of the decision to fund this transaction initially.
- 11.2.15 Allegations that the BSRU are not exhausting all avenues in recovering funds are also false and grossly misleading. The DBSA is actively managing this matter and pursuing the recovery of the amounts in question, to the extent possible. This transaction is being managed at the highest levels of the organisation and remains an active agenda item, currently being dealt with by the board of the DBSA.
- 11.2.16 It is important for SCOPA to note that the gist of the allegations made by Mr Holomisa was also reported to the Auditor General as part of an ostensible whistle-blower complaint. The DBSA cooperated fully with the Auditor General in its investigation. The Auditor General did identify internal control deficiencies relating to the monitoring process of loans pre 2012. It however confirmed that these deficiencies are no longer applicable in the current DBSA monitoring processes. The Auditor General concluded it did not identify any non-compliance with applicable laws and regulations relating to this transaction.



E Godongwana (Chairman), M Swilling (Deputy Chairman),
 PK Dlamini* (Chief Executive), M Janse van Rensburg,
 Adv. M Kganedi, G Magomola, MP Matji, B Mosako*,
 B Mudavanhu, MT Ngqaleni, B Nqwababa, P Nqeto,
 A Sing

*Executive
 Bathobile Sowazi (Company Secretary)

1258 Lever Rd, 011 313 3911
 Headway Hill, 011 313 3500
 Midrand,
 1685 www.dbsa.org

11.2.17 In addition, the DBSA's board also mandated an external, independent legal investigation by DM5 Incorporated into this transaction. This investigation has only just 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 to draw SCOPA's attention that no fraud, corruption or non-compliance with applicable laws and regulations was identified.

11.3 **Smile Telecoms Limited**

11.3.1 Mr Holomisa alleges that the DBSA intentionally funded a company belonging to Ms Irene Charnley, who is also a member of the Public Investment Corporation's Board, with the full knowledge that such funds were destined to be utilized outside of South Africa.

Background

11.3.2 Smile Telecoms Holdings Limited and its subsidiaries ("**Smile**") is a pan-African telecommunications group with operations in Nigeria, Tanzania, Uganda and the Democratic Republic of Congo and has an associate company in South Africa which provides shared services to all the Smile companies.

11.3.3 In August 2014 the DBSA approved a term loan facility to Smile, which forms part of a multi-lender facility.

11.3.4 The DBSA Act permits the DBSA to fund transactions across the African continent, which it regularly does. The facility conforms with the mandate of the DBSA in that Smile provides telecommunication services on the African continent.

11.3.5 A portion of the facility was disbursed in August 2015, in accordance with the approved terms of the credit decision.



E Godongwana (Chairman), M Swilling (Deputy Chairman),
PK Dlamini* (Chief Executive), M Janse van Rensburg,
Adv. M Kganedi, G Magomola, MP Matji, B Mosako*,
B Mudavanhu, MT Ngqaleni, B Nqwababa, P Nqeto,
A Sing

*Executive
Bathobile Sowazi (Company Secretary)

1258 Lever Rd, 011 313 3911
Headway Hill, 011 313 3500
Midrand,
1685 www.dbsa.org

Veracity of allegations

- 11.3.6 In a similar vein to the transactions above, the DBSA followed its internal processes for the purposes of funding this transaction.
- 11.3.7 It boggles the mind as to what Mr Holomisa's allegations seek to achieve.

12. Regarding the DBSA's Board and ancillary issues

Appointment of chairperson

- 12.1 The framing that Mr Godongwana's status as a politically exposed person ("**PEP**") renders him unfit for his role as chairperson is unfounded, misleading and politically charged. Additionally, Mr Godongwana's qualifications and experience have enabled him to contribute meaningfully to the DBSA.
- 12.2 Notwithstanding the above, Mr Godongwana's appointment was, in any event, made pursuant to an enhanced due diligence as per the DBSA's policies and his appointment as chairperson of the DBSA's board was concurred to by the Minister.

Appointment of board members

- 12.3 The DBSA notes with serious concern the recent allegations made by Mr Holomisa, wherein it is alleged that the DBSA has committed fraud and forgery by manipulating correspondence from the Ministry of Finance in relation to the appointment of board members.
- 12.4 The DBSA dismisses these allegations with the utmost contempt it deserves and reserves its rights accordingly.

Victimisation of board members

- 12.5 Allegations that fees are being withheld by the DBSA with the intention to victimise board members are false and grossly misleading. These allegations are based on biased misinformation and unfounded conclusions.



E Godongwana (Chairman), M Swilling (Deputy Chairman),
PK Dlamini* (Chief Executive), M Janse van Rensburg,
Adv. M Kganedi, G Magomola, MP Matji, B Mosako*,
B Mudavanhu, MT Ngqaleni, B Nqwababa, P Nqeto,
A Sing

*Executive
Bathobile Sowazi (Company Secretary)

1258 Lever Rd, 011 313 3911
Headway Hill, 011 313 3500
Midrand,
1685 www.dbsa.org

- 12.6 The board member's refusal to submit her DBSA iPad to the investigators, despite repeated directives to the contrary, resulted in her not having access to the new board platform, which materially impacted on her ability to fulfil her duties as a director.
- 12.7 The DBSA consulted its attorneys and sought the advice of senior and junior counsel. The advice from Advocate J Gauntlet SC QC concluded that her refusal to implement without good reason a legitimate requirement with which all other board members complied with impeded a current investigation, the functioning of the board and was in breach of her fiduciary responsibilities.
- 12.8 It was thus appropriate, on the advice provided, to withhold fees until such time as she complied with the requirement or the board had an opportunity to deliberate on the matter further.

13. **Alleged tampering with evidence**

- 13.1 It is inconceivable that the DBSA has attempted to conceal acts of corruption by migrating software platforms.
- 13.2 The digital platforms previously used within the DBSA were migrated as a result of the software service provider being acquired by another entity. As such, the software platform was to be discontinued and would no longer be supported. Accordingly, all users were required to migrate to the new platform.
- 13.3 The DBSA also had a legitimate concern regarding information leakage (as evidenced by, among other things, Mr Holomisa's disclosures in this matter) and the available information indicated that the leak likely emanated from the users of the old digital platform. Accordingly, the board sanctioned an investigation into the leak, requiring all board members, executives and administrative staff who had access to confidential information and documentation by way of the digital platform to submit their devices for the purposes of the investigation.
- 13.4 The investigation and migration to the new digital platform occurred simultaneously.



E Godongwana (Chairman), M Swilling (Deputy Chairman),
PK Dlamini* (Chief Executive), M Janse van Rensburg,
Adv. M Kganedi, G Magomola, MP Matji, B Mosako*,
B Mudavanhu, MT Ngqaleni, B Nqwababa, P Nqeto,
A Sing

*Executive
Bathobile Sowazi (Company Secretary)

1258 Lever Rd, 011 313 3911
Headway Hill, 011 313 3500
Midrand,
1685 www.dbsa.org

13.5 The dissemination of confidential information by Mr Holomisa was recognized by the High Court as a legitimate issue of concern and importance to the DBSA which warranted judicial intervention. It ordered, inter alia, the urgent return of DBSA property from a former board member to enable the conclusion of the investigation that had been instituted into the leak of confidential information. The order, as initially granted by Justice Balton, is the subject of multiple applications including ongoing contempt proceedings brought by the DBSA.

14. Conclusion

14.1 The DBSA has previously engaged directly and transparently with Mr Holomisa on various matters relating to the relevant allegations, which correspondence Mr Holomisa conveniently omitted to disclose for present purposes.

14.2 In light of Mr Holomisa's perceived preference to publicly disclose extremely confidential and commercially sensitive information, as opposed to addressing such matters in the appropriate forum, the DBSA is left with no alternative but to assume that Mr Holomisa is making such allegations with an ulterior political motive. Additionally, the inflammatory conclusions drawn from the misinformation are designed to harm the DBSA's good will and reputation in the market, particularly as such allegations are simply unsubstantiated.

14.3 It is important to highlight that the DBSA is spending considerable resources, both internally and externally, in addressing the relevant allegations. The DBSA remains concerned that scarce resources and time which should be employed towards the fulfilment of its mandate are currently being diverted towards addressing these allegations, which are by and large without merit, as evidenced by the numerous opinions and investigations solicited on these matters.

14.4 The DBSA respectfully requests that SCOPA consider these representations and in particular the steps taken by the DBSA to date in addressing these matters when making its decisions as to how it intends proceeding.



E Godongwana (Chairman), M Swilling (Deputy Chairman),
PK Dlamini* (Chief Executive), M Janse van Rensburg,
Adv. M Kganedi, G Magomola, MP Matji, B Mosako*,
B Mudavanhu, MT Ngqaleni, B Nqwababa, P Nqeto,
A Sing

*Executive
Bathobile Sowazi (Company Secretary)

1258 Lever Rd, 011 313 3911
Headway Hill, 011 313 3500
Midrand,
1685 www.dbsa.org

- 14.5 The DBSA respectfully requests that SCOPA, during the enquiry, ensure sufficient protections be implemented for the purposes of safeguarding the DBSA's confidential and commercially sensitive client information, given that the public disclosure thereof would hold dire implications for the DBSA generally.

Yours faithfully



Patrick K Dlamini

Chief Executive Officer and Managing Director



E Godongwana (Chairman), M Swilling (Deputy Chairman),
PK Dlamini* (Chief Executive), M Janse van Rensburg,
Adv. M Kganedi, G Magomola, MP Matji, B Mosako*,
B Mudavanhu, MT Ngqaleni, B Nqwababa, P Nqeto,
A Sing

*Executive
Bathobile Sowazi (Company Secretary)

1258 Lever Rd,
Headway Hill,
Midrand,
1685

011 313 3911
011 313 3500
www.dbsa.org