

# Department of Trade, Industry and Competition

## Briefing to the Select Committee by the DTIC on Progress Report on the Implementation of the Recommendations of the 'Zondo Commission

21 November 2023



the dtic

Department:  
Trade, Industry and Competition  
REPUBLIC OF SOUTH AFRICA

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the dti Customer Contact Centre: 0861 843 384

the dti Website: [www.thedti.gov.za](http://www.thedti.gov.za)



## Purpose

Briefing to the Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour on the recommendations of the State Capture Commission Report (Zondo Commission Report).

# Presentation Outline

- **Background And Context**
- **State capture – roadmap**
- **State capture – cases pursued**
- **Recommendation on the Companies Act**



# State Capture (SOC's)

# State Capture ... continued

## **Delinquency Applications:**

Section 169(2)(b)(i) or (ii) read with Section 162(3),

At a meeting in March 2023 between the Department of Public Enterprises; Law Enforcement Agencies and State Owned Companies that fall within the DPE portfolio the CIPC indicated that on the basis of an adequately investigated and substantiated report and recommendation of an independent investigator under section 169(2)(b)(i) or (ii), it would be competent for the CIPC to initiate delinquency or probationary proceedings against a person: under section 162(3), in the Commission's name, provided, first, that the challenged person is or was (within the previous two years) a director of any company and, second, that contemplated circumstances apply in the case of either delinquency or probation. The DPE had undertaken to work with the SOCs to gather the necessary evidence.

# State Capture ... continued

- Despite best efforts progress has been slow as the DPE has indicated the difficulty experienced by the SOCs in gathering the necessary evidence to submit to the CIPC. The CIPC is actively engaging with the DPE to understand the specific difficulties and find solutions.
- To date only one SOC has managed to put together and submit a delinquency request. Documents were analyzed and further clarification was requested. This was provided in a piecemeal format by the SOC. The CIPC analysis is ongoing.
- With regards to the SIU/SABC delinquency referral a related judgement was delivered on 10 October 2023 in favour of the SIU. We have requested that the SIU advise us if the parties intend to appeal the judgement and are awaiting feedback.



# **State Capture**

## **Private Sector Entities Cases Pursued**

# State capture...continued

## OVERVIEW OF PRIVATE SECTOR ENTITIES

CIPC is also pursuing private entities and natural persons mentioned in the slides to follow,

- Companies were required to provide proof of steps taken to address certain governance matters and the areas requiring attention, per the State Capture report.
- Compliance Notices were issued to various legal entities, other matters were closed after provision of satisfactory evidence

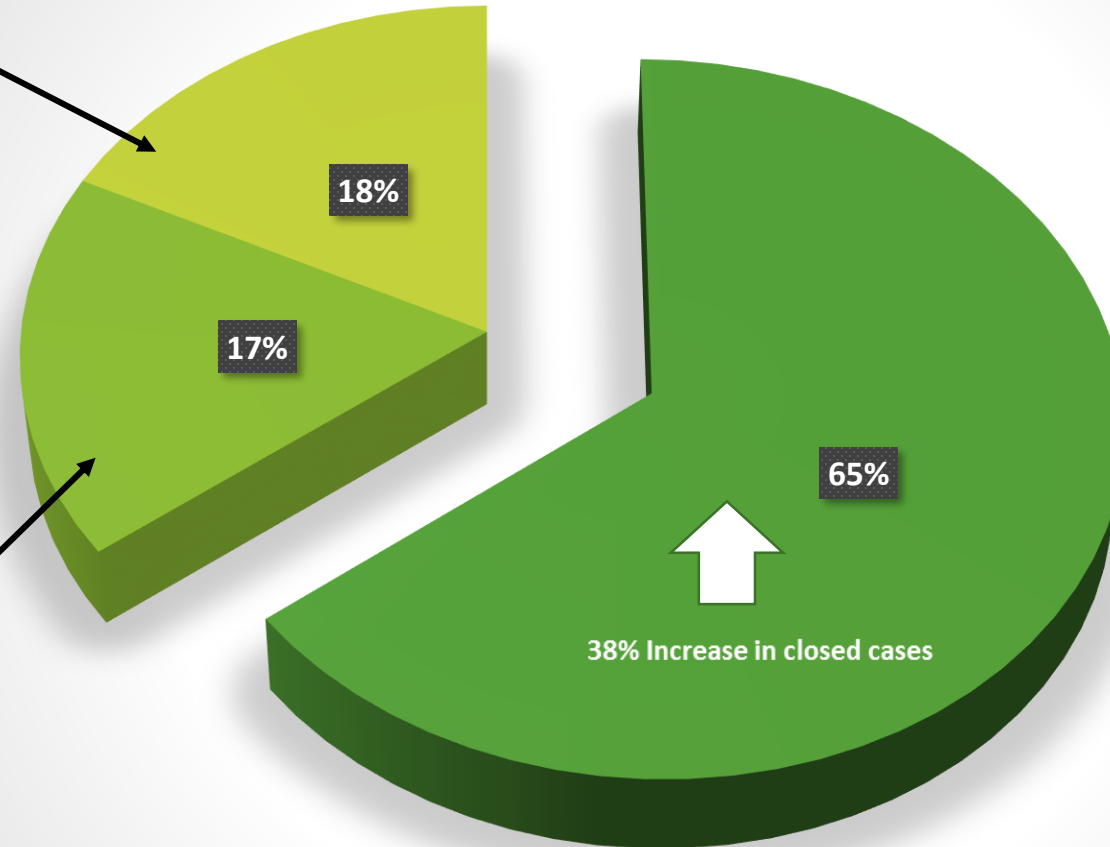


# Summary on Private Sector Entities (Cont.)

- 1 case to be referred for criminal investigation

- 2 X Compliance Notices Prepared

- 2 X Matters referred to State Attorney for proceedings against implicated directors (Yakhe Kwinana & Edwin Sodi)



- Closed
- Compliance Notice Issued
- Pending (still under investigation)

# List And Status of Private Entities Investigated

	Entity and Reg. Number	Action Taken	Output from Feb'23 Actions	Update as at 05 April 2023	Report as at 22 May 2023	Status as at 06 November 2023
1	LSG Skychefs South Africa 1992/000913/07	Correspondence sent 6 November 2022	Received –but did not address the content of the letter Replied with more info & no response up-to-date	Response with attachments has just been received There is no need for further - investigation	Satisfactory response received  07 March 2023	Investigation closed
2	BidAir Group 1993/004374/07	No Contacts-to be addressed below	No Contacts-to be addressed below	See Below	To consider with No. 3 below	Investigation Closed.
3	BidAir Cargo 2004/019639/07	First letter issued		Bidvest Corporate services/Holding Company Responded but to establish connections with co under 2	Response received 20 January 2023	Investigation closed
4	JM Aviation South Africa 2015/053564/07	First letter issued	Correspondence sent	Submission investigation and CoR 137.1 Complaint sent	Submission under way to issue Compliance Notice	Compliance Notice Issued

# List And Status of Private Sector Entities Investigated

	Entity and Reg. Number	Action Taken	Output from February'23 Actions	Update as at 05 April 2023	Report as at 22 May 2023	Status as at 06 November 2023
5	Swissport South Africa 1992/003624/07	First Letter issued	Correspondence sent	Submission investigation and CoR 137.1 Complaint sent	Submission under way to issue Compliance notice.	Compliance documents ready to be issued
6	Pricewaterhouse coopers INC 1998/012055/21	First letter issued November	No Direct email Contacts were later established	Response has been received	Response covered all aspects of the Letter of PWC 15 Feb 2023	Matter resolved and closed
7	Nkonki Inc. 2002/017422/21	Matter not pursued further	Correspondence sent	Matter Closed-Voluntary Liquidation	Entity no longer exist	Company Liquidated and no further action
8	Air Chefs 1990/006277/30	First letter issued November	Correspondence sent	Submission investigation and CoR 137.1 Complaint sent	-Independent from SAA will follow up with compliance notice.	The Company is not a private company, it is a State owned Company. Compliance Notice to be issued since it has not complied with investigation.
9	Airbus Southern Africa 1981/003906/07	First letter issued November	Correspondence sent	Response received	Satisfactory Response dated 14 February 2023	Matter closed as the response was satisfactory
10	Homix 2012/176951/07	First Letter issued November	Correspondence sent	Submission investigation and CoR 137.1 Complaint sent	Submission under way to issue Compliance notice	Compliance Notice issued

# List And Status of Private Sector Entities Investigated

	Entity and Reg. Number	Action Taken	Output from February'23 Actions	Update as at 05 April 2023	Report as at 22 May 2023	Status as at 06 November 2023
11	Albatime 2009/021474/07	No contacts found	No contacts found	No contacts Found	Protracted Legal battle between Moodley and Zondo Commission halted the investigation	Zondo Commission halted investigations and there were no findings
12	Nzunzo Investments 2002/023124/07	First letter issued November	. Correspondence sent	Jared Watson is co-operating And he is new a Director of the Company/Company also linked to Bosasa	Response received 2 March 2022 No more follow ups	The only Director took over ownership after the Zondo Commission completed its work and investigation were stopped and the Director co-operated.
13	Glencore Operations South Africa 1997/017998/07	First Letter issued November	Correspondence sent	Comprehensive response was received under consideration	Co provided all the information 20 December 2022.	Matter closed the Company provided response to CIPC investigation..
14	Glencore Holdings SA 2008/019942/07	-Refer to the above	Refer to the Above	-Same as above No 14	Same as above	Investigation closed, refer to Glencore Operations in no 13.
15	EOH Holdings 1998/014669/06	No action Taken	No findings of wrong doing by Zondo Commission- The Commission was satisfied by corrective measures taken	No correspondence sent.	To consider closing/ No recommendations by ZONDO	The investigation is is closed as there were no findings.
16	Blackhead Consulting B2004/034971/03			New Matter CC converted into a Pty and no contacts	Edwin Sodi resigned from the PTY Ltd just after conversion.	The implicated Director resigned from the Company and he is currently facing Criminal charges.  (SIU to also be engaged by CIPC to pursue governance and transparency requirements in terms of Companies Act)

## Summary on Private Sector Entities

- There are three (3) matters from that list of private sector entities which have been referred to the State Attorney for adjudication by the Courts as they failed to comply with our compliance notice. Senior Counsel has been appointed, viz. Swissport South Africa (1992/003624/07); JM Aviation (2015/05364/07 and Homix (2012/176951/07)
- There is a Yakhe Khwinana matter which is now with the State Attorney for Senior Counsel to pursue a delinquency application. SAICA pronounced on the CA status of Ms Khwinana, this will be grounds to support our S162 application. Busy with consultations with Senior Counsel to enroll matter in court.

## State capture recommendation on the Companies Act

- The State Capture Report recommended for the amendment of section 162 of the Companies Act to increase the time bar for the applications to declare directors delinquent so as to permit applications for a director to be declared delinquent to be brought even after two years.
- This means the time bar of two years for the bringing of an application to declare a director as being delinquent be extended beyond two years.
- The Department is required to respond to the recommendation of the State Capture Commission Report to address the extension of a timeline of when a director can be declared delinquent.
- The time bar was recommended to be increased to 5 years based on the research from the Specialist Committee on Company Law. Modelled against countries such as New Zealand.

# State capture recommendation on the Companies Act

- The Companies Second Amendment Bill was introduced to Parliament on 29 August 2023.
- The Bill is currently in the Parliamentary process in the Portfolio Committee on Trade and Industry.
- The Bill provides for the directors to be held liable for losses and damages brought about by acts that contravenes the Companies Act when it comes to the liability of Directors, and proposes to increase the time such matters may be heard by the courts, on good cause shown.
- The Bill also provides that the time bar to bring an application to declare a Director delinquent be increased to 5 years. In addition, the Bill grants the courts the powers to extend the time on good cause shown.
- The Bill will ensure that Directors are held liable for acts that occurred in the previous years and in the public interest. This will be acts and omissions even long before the Companies Second Amendment Bill comes into effect.

**Thank You**