Association for Monitoring and Advocacy of Government Pensions (AMAGP)

NPO Registration No: 198-822

SEMPER VIGILANS

The Association for Monitoring and Advocacy of Government Pensions: An independent group of pensioners and civil servants concerned about the long term viability of the GEPF and sustainability of its return on investments.

www.amagp.co.za

GEPF
your investment, your future

NEWSLETTER NO 5 of 2018

AMAGP – Association for Monitoring and Advocacy of Government Pensions
BOT – Board of Trustees [of the GEPF]
GEPF - Government Employees' Pension Fund
PEO – Primary Executive Officer
PIC – Public Investment Corporation
PSA – Public Servants' Association
SC – state capture
SCF – Standing Committee on Finance
SCOPA - Standing Committee on Public Accounts
SOC – state owned company
SOE – state owned entities

There are 1 273 784 active members, 437 051 pensioners, and "R 1 67 trillion in assets under management". GEPF Advertisement for a Government Employees Pension Ombud. Rapport 4 February 2018.

The Editor's Word

The deterioration in the GEPF's financial sustainability seems to have started in 2014, if what is available in the annual financial statements is true. Any such deterioration does not happen overnight, it takes time to realise. Whatever caused the deterioration probably started around 2011 or even before. But isn't that about the time of the African Bank debacle? It might have started even earlier than that. This needs some thought and research.

African Bank? The Fund lost about R4 billion, but immediately after the bank being placed under curatorship, the PIC advanced R2,6 billion to create the "New" African Bank and almost immediately increased its shareholding to about 23,8%. Due diligence?

See the articles on Resilient below, and note Greenbay's [part of the Resilient Group] share price dropping sharply since December 2017. The PIC has a sizeable shareholding in Resilient.

Centre Point Shopping Centre, Milnerton? What about it? The PIC bought the premises in 2007, demolished the existing derelict structures in 2011, with door opening planned for 2013. Nothing happened, nothing, nothing; eventually known as 'the great hole of Milnerton'. After enquiries in parliament in 2016 prompted by concerned pensioners, building eventually started, reported to be R 260 million. Construction still hasn't been completed, but soon. Now what happened after purchase, no income from the property in 10 years, etc? Who owned the property previously? Was any corrective action taken to prevent any similar recurrence? This isn't the only property the PIC owns, I wonder what PIC Real Estate Managers' [Ream] portfolio looks like. It should be reflected in annual financial statements I believe.

The articles about Survé and the PIC's investments in it make horrifying reading. Let the reader beware, once you start reading you won't be able to stop. Your hair may stand up straight, then curl, then turn white at the implications. You may also wish to read the full reports by following or pasting the links.

A worrying trend is prospective pensioners taking their actuarial interest before leaving, and investing it in another source of pension income. Doing this makes them independent of the GEPF, actually using the Fund as a 'savings account'. There are evidently many advantages to this; mainly being sure you do indeed get your entire pension, no risk of it being squandered later. I believe the main culprits are the senior civil servants, who should know better and be part of AMAGP. This approach results in the Fund having a large cash outflow but at the same resulting smaller monthly pension requirement, with a smaller financial base for investment. The damaging large cash outflow in 2015 was due to the large number of teachers taking their actuarial interest.

Quis custodiet ipsos custodes? [who guards the guards] The GEPF doesn't fall under the oversight of the FSCA [previously FSB]. Not having studied the GEPF Act in such detail I wonder under whose financial oversight does it really fall? Surely its clients, the pensioners and contributors[workers – trade unions], must be part of the oversight? If we really think about it, how can we trust auditors, including that of the largest fund in Africa, when major audit companies in SA are under suspicion and investigation about their audit findings, eg Steinhoff, SARS, etc. Who audits the auditors? See also the last article by Dr McKinley.

Editor

NEWS NEWS NEWS

Synopsis

DAILY MAVERICK

Holier than thou: Sanctimonious passive fund managers

Fatima Vawda

11 Apr 2018 (South Africa)

Over the past decade passive fund managers have been resolute in their investment case against active fund managers. The theory they put forward is that replicating a market index based on a straightforward methodology such as a market capitalisation weighted process will outperform active managers.

Passive evangelists generally justify their views based on three arguments:

- Over the long term, market indices always outperform the average active manager;
- Passive funds are much cheaper than actively managed funds; and
- Passive funds are more transparent than actively managed portfolios.

The active versus passive debate becomes interesting when considering morality and ethical behaviour. How do we judge the morality of the companies we invest in?

For example weapons manufacturers held responsible for the spate of mass shootings in the United States, or manufacturers of pressure cookers that are used as bomb casings to stage attacks, or fertilisers used to destroy buildings in terrorist attacks. What about the use of child labour to manufacture your designer bags or laboratory testing of cosmetics on animals?

But arms manufactures also supply weapons to arm United Nation peacekeepers and work on missile shields to protect countries against nuclear threats from rogue nations. At the same time, many of these companies contribute towards improving the lives of people and societies through innovations in civil aviation, communication and technology. On the other hand, what about companies with poor corporate governance as was the case with Steinhoff and African Bank or companies such as Facebook breaching data privacy laws?

As investors one needs to ensure that your money is not used to fund businesses which breach your ethicals in the pursuit of profits because these companies over time tend to underperform those with strong governance frameworks. Passive fund managers had to hold Steinhoff given that it was ranked among the top 20 largest shares by market capitalisation on the JSE, whereas active managers could choose if they wanted to hold or not hold the stock based entirely on merit.

By merit we mean that the active fund manager would scrutinise the financial position of the company, question management on their decisions. etc. As shareholders, active managers can also exercise their vote at company annual general meetings and influence the way in which corporates are managed. For example, active managers can vote against excessive corporate executive pay or conflicts of interest of board positions, thereby blocking controversial actions by company management.

Passive fund managers, therefore, cannot invest responsibly as all they are doing is using a mathematical formula to replicate some market index. This also means that they do not exercise their proxy votes at company annual general meetings. What is interesting though is the push by National Treasury for institutional investors to consider passive investments as a suitable investment strategy, as is evidenced in the recently promulgated Retirement Fund Default Regulations.

This is divergent to the position of the Government Employees Pension Fund who is a signatory to the United Nations Principles of Responsible Investment and has a responsible investment policy incorporating environmental, social and governance (ESG) issues into the fund's decision-making. Following Steinhoff, National Treasury may want to revisit its position on passive investing.

Of course there is the valid argument to be made that many active fund managers owned a lot of Steinhoff shares, in some cases in excess of its weighting in the benchmark. This is a separate debate to be had with regards to the seriousness with which asset managers take their responsibility in respect of implementing sound ESG practices rather than an argument against active management in its entirety.

Clearly then, the sanctimonious conduct of passive fund managers is not only in conflict with the fundamental basics of investment management, which is buying stocks based on future cash flows, but is also in conflict with the code of responsible investment.

In a country recovering from State Capture and malfeasance and a disgraceful display of irresponsibility by private sector boards and executives who need to all be held to account for their actions, it is even more important not to simply absolve oneself of responsibility by investing purely on a passive basis.

Passive investing removes accountability and allows corporates and other institutions to engage in deplorable activities without facing any consequences. Beware the hidden contradictions of the gospel from the passive evangelist.

DM12

Comment

Is the PIC a passive investor? Interesting that we just recently took note of UNPRI, which the GEPF subscribes to but apparently selectively complies with. As well as its ESG policy.

Synopsis

Radio

Developments around allegations levelled at Resilient

Questionable share deals, BEE partner operations under review, and two authoritative investigations – Moneyweb journalist Ray Mahlaka.

Warren Thompson/6 April 2018 19:05

Warren Thompson: There has been a lot of news, with conjecture, allegations and accusations regarding what is transpiring. A little earlier this afternoon I asked our in-house listed-property journalist Ray Mahlaka to give us an update, given that we were expecting the report into the independent review conducted by the auditor-general, Mr Fakie, with Resilient saying they needed a little bit of time there. Today we are expecting the publication of a report by the previous auditor-general, Mr Fakie, into certain matters around Resilient.

Ray Mahlaka: First of all, this is an independent review that was mandated by the Resilient board to look at various aspects of scathing allegations that have been levelled at the Resilient Group of Companies, including its sister companies Fortress, Nepi Rockcastle and Greenbay Properties.

The second part will also look at Resilient's BEE partners. They are the Siyakha Education Trusts. What we know from the various reports that have been published is that Resilient would offer loans to its empowerment partners to buy shares in the groups at inflated prices. And when those BEE groups repay those loans, which can be booked as additional income for Resilient, which it can now pay as dividends. So what you've seen is that the Resilient Group of Companies has posted dividend payments that are way above inflation at a time when its peers have been downgrading dividend payments and struggling to meet inflation-beating dividends,

Those are the two main issues that the independent review will look at. But, bear in mind that there are another two investigations that are also ongoing, by the JSE and the Financial Sector Conduct Authority.

Warren Thompson: This is a situation I think the Resilient group has been through before?

Ray Mahlaka: I don't think so, because a very important point is that various market watchers have raised concerns about the level of share-buying by key directors of the four groups. There is a general perception that the investigation by Resilient does not go far enough in looking at the directors' dealings of key directors of the company. But I guess that's where the Financial Sector Conduct Authority and the JSE will take the investigation a step further. But I must say, Warren, there is a general concern and feeling that the independent review might actually exonerate Resilient and the three sister companies of any wrongdoing because this is, again, a board-initiated process.

Comment
The PIC shareholding in Resilient is about R 278 million or 10.7%.

Synopsis

Resilient cleared of damning allegations

Nothing untoward in share dealings – Fakie.

Ray Mahlaka and Warren Thompson 11 April 2018

https://www.moneyweb.co.za/in-depth/investigations/resilient-cleared-over-damning-allegations/?utm_source=Moneyweb&utm_campaign=46c9e84cfc-EMAIL_CAMPAIGN_2018_04_11&utm_medium=email&utm_term=0_b106a40770-46c9e84cfc-203387677&mc_cid=46c9e84cfc&mc_eid=e5a98c1e2f

An independent investigation commissioned by Resilient has cleared the property group's key directors and related parties of any misconduct relating to insider trading and share price manipulation.

The findings of the investigation – led by former Auditor-General Shauket Fakie and released minutes before the market close on Tuesday – exonerates Resilient from scathing allegations contained in reports by asset manager 36ONE, stockbroker Navigare and independent sell-side research house Arqaam Capital.

Resilient has been accused of using a complex web of cross-shareholdings in sister companies Fortress, Nepi, Rockcastle and Greenbay Properties together with the purchase of a substantial volume of shares by directors and related parties to unlawfully influence share prices, create the illusion of liquidity and artificially increase the net asset values (NAV) of the four companies' shares.

In addition, the authors of the reports had further accused Resilient of extending loans to its black economic empowerment vehicles like the Siyakha Education Trusts in order to charge artificially high interest rates that boosted earnings to Resilient.

However, Fakie's six week-long investigation has found no evidence of any wrongdoing relating to the allegations contained in the three industry reports. The investigation's main findings are: "there is no evidence of executive misconduct and/or breaches of applicable governance rules and policies by Resilient, its executives and the Siyakha Trusts; there is no evidence of any market manipulation; and there is no evidence of any insider trading."

Fakie had undertaken to meet with 36ONE Asset Management. This meeting did not happen. 36ONE provided a short statement in reply to the release of the report:

"The report conclusions are surprising and inconsistent with our report and the reports of other asset managers. One must bear in mind that the scope of his mandate was limited and he did not have access to the trade data that the JSE and FSCA [Financial Sector Conduct Authority]. In addition, no investigation was done on property transactions by related parties. No explanation is given why these companies trade at such premiums to NAV and are an aberration in comparison to their peers locally and internationally.

We have not changed our views. We were not interviewed. We offered to engage but we were told that there was no time to meet with *us as he [Fakie] was under pressure to deliver his report. We are confident that the truth will come out."*

Given the severe allegations levelled against Resilient and its directors since January 2018 – which have wiped more than R100 billion off the value of Resilient and its three sister companies – some market watchers expected the independent review to be a whitewash as the scope of the investigation was limited in the first place.

An analyst, who didn't want to be named, said the integrity of the investigation would be questioned as its scope was initially set by Resilient and Fakie, and its capacity to review individual share trades wouldn't be thorough enough.

In fact, Resilient admitted to the latter, saying Fakie and independent advocate Tony Ferreira did not have access to the full set of records of Resilient's JSE share transactions in order "to identify potential insider trading or share price manipulation, and not having the power to compel all parties who may possess relevant information to provide testimony or produce documents". "However, the board has done all it can to facilitate an appropriately thorough review within these limitations," Resilient said.

The investigation relied largely on documentation provided by Resilient, interviews with its executives and associates, the Siyakha Education Trusts, and interviews with the sister property group's executives. Despite Resilient and its directors being cleared of any wrongdoing, two investigations are underway by the FSCA (formerly known as the Financial Services Board) and the JSE, which will both probe the trading of the company's shares since the start of 2018.

The FSCA and JSE investigations are borne out of several parties expressing concerns about the share price volatility of the Resilient companies and whether there were suspicious trades. All eyes are on whether the findings of the FSCA and JSE investigation will corroborate that of Fakie's, as both market regulators will rely on – although not exclusively – the same documentation used by Fakie in their own investigations.

If Resilient is found guilty of market abuse, market manipulation or insider trading, it might face a capped (up to R1 million for insider trading based on the profits of the company investigated) or uncapped administrative fine or a criminal investigation by the National Prosecuting Authority (NPA). If the matter is referred to the NPA, Resilient directors could each face a penalty of R15 million or imprisonment of up to ten years.

Comment
The scope of the investigation already predetermined the findings. A detail investigation with wider scope may decide differently.

Synopsis

DAILY MAVERICK

amaBhungane Analysis: Iqbal Survé's mythical beast

7 Apr 2018 (South Africa)
https://www.dailymaverick.co.za/article/2018-04-07-amabhungane-analysis-iqbal-survs-mythical-beast/#.WsprqGYUncc

The full extent of the destruction at Independent Media since the Public Investment Corporation placed the company at the disposal of Iqbal Survé has been laid bare – ironically via Surve's outrageous attempt to use other people's money to plug the R2,3-billion hole in his media balance sheet.
By Sam Sole for amaBhungane.

Last week, on 28 March, a company 73% owned by Survé's family trust issued a remarkable "Pre-listing Statement" inviting selected investors to subscribe for a "private placement" of shares ahead of a planned listing on the Johannesburg Stock Exchange. The company's name is Sagarmatha Technologies and the pre-listing statement represents a desperate bid to portray it as a high-tech start-up in the mould of an African Google or Amazon.

In reality, it looks like a desperate attempt to save Independent, which will be incorporated into Sagarmatha if the private placement attracts enough money. Survé is seeking to raise a minimum of R3-billion via this private placement despite the fact that the company he's selling is technically insolvent and labouring under the burden of some R2,3-billion in debt.

The situation is dire because Survé needs to find R863-million by August this year to repay 50% portion of loans from a Chinese state consortium and the Government Employees Pension Fund (GEPF) that funded his acquisition and development of Independent Media. Sekunjalo Independent Media (SIM), controlled by Survé, owns 55% of Independent Media.

Independent is the successor to the venerable but battered Argus newspaper group that was offered up in politically directed sales, first to the Irish Independent group in 1994, and then to Survé's consortium in 2013 in a R2-billion mainly debt-funded deal.

The funds from the GEPF were controversially extended to Survé's consortium via the Public Investment Corporation (PIC), which drew criticism for making an investment driven by political considerations rather than returns for government employee pensions. The PIC took 25% of Independent, as well as funding Survé. The other 20% of Independent was picked up by a consortium consisting of the China Africa Development Fund and China International Television Corporation.

Suspicions are now rife that the private placement has been engineered largely to allow the PIC to come to the rescue with more government pensioners' cash.

Just what a mess Survé made of Independent is clear in his pre-listing statement. The interim financial information disclosed by SIM reveals that, as of 30 June 2017, SIM had accumulated losses of R752-million and that the company's total liabilities exceed its assets by R547-million. The figures include and reflect the financial state of Independent because SIM exercises control over via its 55% holding.

The pre-listing statement discloses that SIM suffered significant losses every year of operation since Survé took over. It says the group's revenue was "negatively affected" by declining advertising sales and reduced margins on advertising.

The group is losing cash, mainly due to interest payments, though it has been making only limited interest payments on its major loans. The interest bearing debt of some R2,3-billion includes just under R1-billion owed to the Chinese, half of which must be paid by 15 August and R770-million owed to the GEPF, half of which also falls due in August.

Another debt to GEPF is currently sitting at R490-million, but is due for final calculation and payment only in 2020. Given that the company is technically bankrupt, the auditor's report notes: "The ability of the company to continue as a going concern is dependent on a number of factors. The most significant of these is that the directors continue to procure funding for the ongoing operations for the company." In other words, Survé needs cash and, given the August debt deadlines, he needs a lot and he needs it fast.

What to do?

Enter Sagarmatha. The issue about Sagarmatha – and the listing as a whole – is the disconcerting way in which benefits appear to flow to Survé and his family interests. To understand this, we need to follow closely how the initial Sagarmatha package was put together.

Step 1 – establish a company at R1 per share. Sagarmatha Technologies started corporate life in 2013 as the Independent Media Corporate Services Pty Ltd, of which 120 shares were issued to a company which is effectively wholly-owned by Survé's family trust. The shares were a nominal R1 each.

Step 2 – get another company you control to buy shares for real cash. On 31 December 2014 Independent, controlled by Survé, injected R10.3-million into Sagarmatha Technologies in exchange for 31 new shares. There were now 151 shares; Independent held 20,5% of the company for which it had paid R10.3-million. Survé's family trust now held 79,5% of the company, for which it had paid just R120.

Step 3 – inject assets. Several new and some existing assets were injected into Sagarmatha Technologies.

ANA

In March 2015 Survé launched the African News Agency (ANA), held 79% by Sagarmatha Technologies and 21% by another vehicle of the Survé family trust. ANA was established to replace the old SA Press

Association, which closed its doors at the end of March 2015. ANA is tiny. The pre-listing statement says it currently has a staff of 26 and its low cost strategy is “crafted around strategic media partnerships” that enable ANA “to package and on-sell authentic African content to news and media organisations across Europe, North America and the BRICS countries”.

ANA's sales for 2015 were R8,3-million (with an operating loss of R22,5-million) but Survé somehow managed to persuade the China Africa Fund to buy 5% of the company for R357 million. This ridiculous sum valued ANA alone as being worth R7,14-billion. What were the Chinese actually buying? That remains to be seen. Note, this share expansion diluted the Survé trust holding in ANA slightly to 20%. That 20% will be relevant later.

Loot

Also in March 2015. Sagarmatha Technologies acquired a 75% shareholding in Loot Online, an internet shopping site. The purchase was funded mainly via R420-million worth of free advertising, which would have come mainly from Independent's print titles – not from Sagarmatha's resources. It is not clear from the pre-listing document how this gift to Sagarmatha was accounted for in Independent's books. Loot Online actually brings in a bit of cash, earning R150-million in 2016, though at a R3-million operating loss.

IOL

Independent also transferred its online offering to Sagarmatha – Independent Online, which leverages its value off Independent's titles, for a price of R19-million – as well as the IOL Property Joint Venture, for R7,7-million.

Step 4 – repeat Step 2

On 31 December 2016 Independent was again persuaded to buy more shares in Sagarmatha: this time 10 shares for just under R137-million, or R13,7-million per share.

Step 5 – sell yourself shares at a discount.

On exactly the same date, 31 December 2016, the Survé family vehicle bought 839 shares for R553-million. This is R659,222 per share, compared to the R13,7-million per share that Independent paid on the same date.

To recap: Independent contributed a total of R147-million – for 41 shares, giving it 4.1% of Sagarmatha Technologies, while the Survé trust contributed R553-million for 959 (839 + 120) shares, giving it 95.9% of Sagarmatha Technologies.

Still, R553-million was a lot of money – or was it? In fact, the pre-listing statement discloses that no money changed hands at all. Instead Sagarmatha Technologies (controlled by the Survé family trust) issued 839 new shares, effectively to the Survé family trust, in exchange for the 20% of the African News Agency owned by the Survé family trust. This “R553-million” transaction valued ANA at a still ridiculous R2,7-billion.

So Survé effectively got 95.9% percent of Sagarmatha in exchange for 20% of ANA. The pre-listing document deals rather coyly with this transaction, noting: “The share issues to Independent Media and [the company owned by the Survé family trust] on 31 December 2016 were part of an internal group restructuring in order to obtain the optimal Listing structure. All entities were under common control at the time of issue and therefore the issue price of the shares was not the determining factor.”

You don't say.

So now Survé had a little company selling stuff online (at a loss) but with a stated value of R392-million, mainly due to the ridiculous valuation of ANA. It is this vehicle, Sagarmatha Technologies, into which he now wants to inject SIM – with its 55% of Independent and its massive debt. Then he wants to list this elaborate confection on the Johannesburg Stock Exchange.

But he can't.

Even with Sagarmatha Technologies extravagant R392-million valuation, the pre-listing documents show that SIM's debt still drowns the combined entity, leaving it with a negative valuation (minus R303-million) or minus 30 cents per share for each of the 1 billion shares in issue.

Who would buy those shares?

Enter “the African Unicorn”.

Survé's newspaper titles have carried a blizzard of material punting Sagarmatha in recent days, from four page wrap-around advertorial, to breathless puff pieces from his chief cheerleader, Adri Senekal de Wet, the editor of *Business Report*. She has hyped

Sagarmatha as an “African Unicorn”, employing American terminology where a technology start-up valued at more than a billion dollars is termed a unicorn.

The pre-listing statement describes the company to be listed as creating “an integrated multi-sided platform ecosystem in Africa that knits technology platforms; content creation and distribution and e-commerce into a consolidated value proposition aimed at attracting prime customers for monetisation”.

What does this mean?

Senekal de Wet quotes two of the VIP passengers Survé has gathered on the Sagarmartha departure platform, Ambassador Harold Doley Junior, 71, and Jim Rogers, 75, both Americans, both involved in investment advisory services and both serving on Sagarmatha's informal “International Advisory Board”. “Sagarmatha is the next emerging markets technology platform growth and success story, with e-commerce, syndicated news and business content, digital media, and technology ventures in one African-owned and managed integrated group,” she quotes Doley as saying.

“Sagarmatha’s e-commerce offerings are Africa’s own Amazon, Tencent and Alibaba. In syndicated news content it is Africa’s answer to Reuters and to Bloomberg for business content. In digital news it is an African alternative to Quartz, Daily Beast, and NYT Digital,” she quotes Rogers as saying. (It might be irrelevant that Rogers has recently predicted that the next stock market crash would be more severe than in 2008. “When we have a bear market again, and we are going to have a bear market again, it will be the worst in our lifetime,” Rogers told Bloomberg on February 18 this year.)

Despite all this hype, the JSE will not list an insolvent company – hence the requirement to raise a minimum of R3-billion from private placement investors before the listing of Sagarmatha can go ahead. Injecting R3-billion in cash would raise the value of the company to a positive R2,58-billion, or R2,43 per share. Notwithstanding this modest improvement, the company has set the price for the private placement at R39.62 per share.

This means that if an investor commits to the minimum investment of R1-million and if the private placement is successful, his R1-million will immediately be worth only R61,332 – unless public investors on the JSE are willing to price the shares higher in the hope of investing in an African Unicorn.

The extraordinary price set for the shares is based on an “independent valuation” of Sagarmatha (assuming the merger with SIM) carried out by a California company called Redwood Valuation Partners. The pre-listing statement makes it clear that this valuation is entirely dependent on forecasts of Sagarmatha's fabulous success going forward, since its current assessed value is negative.

Redwood says that information relied on included “management’s budget for the group for the year ending 31 December 2018 and the forecast for the financial years ending 31 December 2018 to 2026; the group’s listing investor presentation; and other financial and non-financial information and assumptions made by management”.

To sweeten this unlikely proposition, the pre-listing statement identifies five investors who have delivered “irrevocable undertakings” to purchase between R50-million and R100-million worth of shares at the private placement price of R39.62 per share. One is Nadia Kamies, known to some as Iqbal Survé's wife, who has promised to spend at least R50-million.

Conveniently, if the private placement is successful a company of which the Survé family trust is an 85% shareholder will earn a fee of up to R52,5-million. Even more conveniently, if the private placement is successful, the Survé family trust will end up owning between 60% and 65% of the joined-up Sagarmatha-SIM concoction, worth at least R1,7-billion in real cash.

Another person in for R50-million is Leonardo Nicolo Altini. That is not surprising as his family trust is already exposed to Sagarmatha via a 9% shareholder. The same is true for Selwyn Lewis, who already holds 7.5%.

The two gentlemen in for at least R100-million each are the Americans, Doley and Rogers. For them, the amounts may be small change, but it is not clear how they get past the restriction on page two of the pre-listing statement, which notes “the private placement will not be made to or be capable of acceptance by investors outside of South Africa".

If less than R3-billion is raised with the private placement, then there is no JSE listing and the whole scheme falls apart. In truth, if the PIC does not come to the private placement party, there will be no party at all. But if the PIC does invest it would be a travesty, given the bloodline of this unicorn – and a betrayal of government employees.

You have been warned.**DM** 14

Comment

Terrifying reading. Note the date of 2013.

Nicolaas Kriek was busy with an analysis of this fiasco in the making, and has further information to add to the excellent technical analysis by amaBhungane:

"1. Sekunjalo (SIM) the mother coy and AEEI had already been listed in 2013/14, SIM probably earlier.
2. AYO Tech Solutions in which PIC invested R4.3 Bn, was listed in Dec 2017.
3. In the pre-listing statement, the companies AYO and AEEI were not mentioned.
4. AYO is closely linked to AEEI (GEPF/PIC R 4.3 Bn was probably intended to bail SIM and AEEI out of its debt spirals)!
5. In a recent Survé statement it was declared that the funds for AYO were raised on the JSE (PIC R 4.3 Bn)!
6. Sagarmatha (SMT) listing was planned for 6 Apr, but postponed to 13 Apr, due to SMT not reaching a Private Placement target of R 7.5 Bn(latter a Survé pipe dream).
7. It has been reported by specialist commentators that "The going concern difficulties" (sic in Survé empire), is aggravated by its Directors which continue to procure investor funding for operational purposes!!"

Synopsis

Right of Reply: Independent Media response to amaBhungane/Daily Maverick

DAILY MAVERICK
SOUTH AFRICA
8 APR 2018 (SOUTH AFRICA)

South Africa, we have a problem. There is a move afoot in the country that is potentially far more dangerous than the Guptas' attempted takeover of the country, and that is media manipulation and unethical reporting designed to prevent broader economic participation.

By INDEPENDENT MEDIA

This is Independent Media's response to the analysis by amaBhungane's Sam Sole, published in Daily Maverick.
https://www.dailymaverick.co.za/article/2018-04-08-right-of-reply-independent-media-response-to-amabhunganedaily-maverick/#.WswStaCxVTs

The most important point we would like to make here is that we, as Independent Media and Sagarmatha Technologies Limited, have nothing to hide. What worries most of our media competitors – our main detractors – is that we have identified the future of media and have constructed a Multi-Sided-Platform (MSP) that will make traditional media houses obsolete. Before we address the blatant untruths in the recent amaBhungane so-called "exposé" that attempted to question the pre-listing statement of the company due to list on the JSE, let us discuss journalist ethics in this country.

How is it that journalists now feel they have the right to undermine a listing of a competitor, by approaching international investors and interrogating the intelligence of their investing in Sagarmatha, a process that can only be described as an attempt to determine the outcome for their own favour?

This is a dangerous move – not only for these journalists and the publications they represent but for the country as a whole. This is in effect, tantamount to dissuading international investment from entering South Africa, at a time when the country is actively pursuing capital injections to counter the years of negative growth.

Media has the inalienable right to contact whomever they wish, of course, to understand the business/story they are working on and to get comment. But, to actively seek to sabotage the deal because of a personal grudge or because their own businesses stand on the edge of extinction, is in our mind, highly unethical.

An untransformed media landscape still exists in this country, so there is a lot riding on Sagarmatha's listing. It will change the face of media in South Africa and the continent, forever. So, let us put the facts out there:

Sam Sole is not a financial journalist. That is evident in the factual inaccuracies contained in the so-called 'analysis' piece published this past weekend. He has condensed a 212-page document into essentially five steps. This leaves a lot open to interpretation and misrepresentation. Secondly, it is hardly an investigation, given that the information is in the public domain and that we were never once contacted for our comment or insight or to check the facts of this article.

The article focuses on Independent Media – it does not set the landscape for the reader to understand the bigger picture. Independent Media makes up less than 5% of the Sagarmatha Technologies value proposition. The investment into Independent Media is a private equity transaction, this is what Sam Sole has missed completely.

The debt – Independent Media is actually ahead of its scheduled repayments to the PIC/GEPF, having already made a sizeable capital repayment early in the investment phase. It has also serviced interest payments to its other minority shareholder, Interacom. Although there was no requirement to pay the 50% of the loan until September 2018, Sekunjalo and Independent Media have accelerated repayments.

Another myth the *Daily Maverick* and others have been peddling over the past few years, is that the PIC loaned more than R2-billion to Independent Media. This is a gross misrepresentation of the facts, which are: the PIC originally had a combined investment and loan of R1-billion, of which R150-million was repaid early on, which is far less than its transactions with the likes of Tiso Blackstar (formally Times Media Group), Caxton, CTP and even Naspers.

Independent Media carries no bank loans. All of its debt is to shareholders who have a vested interest in the long-term success of the business. Mr Sole conveniently ignores the fact that many media houses in South Africa share the same investor grouping too.

The reality is that Independent Media has benefited at no cost to anyone else other than Sekunjalo who has solely invested in the modernisation of the business. It has moved from a legacy print business to an advanced content technology business that consistently wins global awards for its innovation.

The other reality is that all media houses are battling with declining revenues. The difference here is that Independent Media has jumped on the super-galactic highway and has managed to re-engineer itself to take advantage of technology and the fourth industrial revolution.

Flow to the family

Once again, everything is fully disclosed in the PLS – a public document written with investors in mind, and something that therefore talks in a language that the financial community inherently understands. But, let's take one point as an example. The interpretation by amaBhungane seeks to paint the Survé family as self-serving when it allegedly sells itself shares at a discounted rate and makes poor old Independent Media pay a lot more.

The truth of the matter is that this issue of shares to Independent Media was due to an internal restructure in preparation for a future listing as fully disclosed in the pre-listing statement. Far from the Survé family benefiting, the outcome is that Independent Media, without any payment, now owns 40,000,000 shares in Sagarmatha Technologies which are worth R1.575-billion post listing, as per the Redwood valuation.

If the journalist in question or his contacts understood financial reporting they would have identified that the "Treasury shares" referenced in the PLS are in fact owned by Independent Media and on a standalone basis, "not consolidated basis" – Independent Media is very much solvent. That is the value created by Sekunjalo.

Valuation

Old habits die hard it would appear, as this narrow-minded approach and recalcitrance to understanding platform businesses and new paradigms is hampering our ability as a country to go where other developed and emerging markets are already playing. The media's questioning the integrity of one of the world's most respected valuation firms that has performed countless valuations conforming with US Securities and Exchange (SEC) filings, and, which was put through stringent JSE review, along with the requirements set down by the JSE, doesn't do much to build trust in South Africa.

All of this could have been so easily explained, had anyone bothered to have picked up the phone or sent an email. Independent Media and Sagarmatha Technologies are more than willing to address questions pertinent to the listing from the information that is contained in the PLS.

To reiterate, Mr Sole did not have the decency to offer Independent Media or Sagarmatha Technologies the opportunity to respond. In the world of fake news, the most basic requirement for journalism to survive is to fact check.

Not having done so, and only selecting certain components that have been left open to misinterpretation, is a travesty of reporting. So, what is Mr Sole and the *Daily Maverick*'s agenda? **DM**
Photo: Iqbal Survé (Photo: WEF)

Comment
The reply is very light on facts, doesn't really say anything except denigrate the Sole analysis and Sole himself, and mainly complains about journalism, delightfully avoiding the proposed listing.

Synopsis
DAILY MAVERICK

Sagarmatha: The super-galactic highway to absurdity

Ivo Vegter

10 Apr 2018 (South Africa)
https://www.dailymaverick.co.za/opinionista/2018-04-10-the-super-galactic-highway-to-absurdity/?utm_medium=email&utm_campaign=First%20Thing%2011%20April%202018%20Kulula%2060&utm_content=First%20Thing%2011%20April%202018%20Kulula%2060+CID_f8291ce1701eebc7edbe5d469fef84ea&utm_source=TouchBasePro&utm_term=Sagarmatha%20The%20super-galactic%20highway%20to%20absurdity#.Ws3KskxuLcc

Business Report, part of Iqbal Survé's debt-ridden, insolvent and terrifically misnamed Independent Media, has made for hilarious reading lately. Its toady-in-chief has been spouting gibberish in defence of the dubious listing of Sagarmatha Technologies, Survé's grand scheme to keep his business afloat.

"Unethical and fake news should be criminalised," says Adri Senekal de Wet, the former executive for stakeholder relations at Sekunjalo Investment, who was appointed executive editor of *Business Report* 18 months ago. One might imagine that when the editor of a major newspaper calls for journalism to be criminalised, we'd get a few more details. But her opinion piece does not elaborate on what would constitute unethical or fake news, why it ought to be criminalised, who would be the arbiter of truth, or why she wouldn't be the first to be marched off in shackles.

Her ire is directed primarily at Sam Sole, the journalist who penned a damning analysis of the proposed JSE listing of an entity called Sagarmatha Technologies, following a private placement of shares. The intent is to raise R7.5-billion, valuing the cobbled-together company at anything between R12-billion and R50-billion, depending on whom you believe. It was cobbled together from an old-school media house (with a website), a relatively minor e-commerce retailer (Loot.co.za), a small-time news agency (African News Agency) with an extraordinary valuation, and a second-rate property website.

Its major asset will be Sekunjalo Investment's 55% stake in Independent Media, bought with the help of government loans by Iqbal Survé's company in 2013, and driven into the ground since. Independent Media carries billions of rand worth of debt, much of which is payable in the very near future. It has racked up about R750-million in losses, and is, by its own admission, insolvent.

In a press release bylined to a *Business Report* reporter, Sagarmatha's joint CEO, Gary Hadfield, denied that the listing has anything to do with Independent Media's debts, but that doesn't address the problem of what, exactly, is in the listing vehicle to justify such a huge valuation.

Sole wasn't the first to raise red flags. On 3 April, the day the news first broke, Ann Crotty wrote a critical article for *Business Day*, noting that Independent Media's ability to continue as a going concern is predicated on its need to raise new capital, adding: "The combined collection of businesses [in Sagarmatha] is unprofitable and have a negative net value."

On 5 April, Senekal de Wet published an opinion piece that ostensibly explained everything, headlined, "How to value multi-sided platform businesses." Apparently, we should value them like Apple, Google parent Alphabet, Microsoft, Amazon and Tencent, because they generate "huge margins". Imagine such a giant, in Africa! Of course, the problem is Sagarmatha is no such thing, and generates negative margins.

A "multi-sided platform" (MSP) is an awesome thing, according to Senekal de Wet, and although mere readers might not be aware of the term, Sagarmatha's shrewd investors certainly are. Here's the thing. The term has been around for at least 15 years. It loosely describes any business that facilitates transactions between two or more markets, as opposed to selling products or integrating services. It is an extraordinarily generic term.

Ebay is an MSP, as is any site that brings buyers and sellers together. Uber is an MSP, because it connects drivers and riders. Paypal is an MSP, because it connects merchants and customers. And according to MIT's Sloan Management Review, the Windows operating system and shopping malls are also examples of MSPs, because they connect developers and users, and retailers and consumers, respectively. Classified advertising pages were MSPs, before the internet killed them. There's nothing new here.

Who exactly Sagarmatha will connect in this manner is obscured beneath a steaming pile of buzzwords and adjectives. Her article reads like – sorry, *is* – a frothy press release. On the same day, a "staff reporter" wrote another press release for Sagarmatha. The headline alone is clearly opinion masquerading as news: "Why you should be paying attention to Sagarmatha". Among the reasons, apparently, is that "Sagarmatha's e-commerce offerings [basically, Loot.co.za] are Africa's own Amazon, Tencent and Alibaba". No disrespect to Loot, but Amazon it ain't.

A day later, even though the listing had been postponed twice (to Friday the 13th, for good luck), at least two of the papers in the Independent stable carried execrable puff pieces announcing the creation of an "African Unicorn", that is, a $1-billion (R12-billion) listing.

She writes that actually, Independent Media makes up only about 5% of the new company's assets. That description only fits if one accepts the anomalous valuation of the African News Agency (ANA).

According to Sole, in 2015 ANA had 26 staff, booked revenue of R8.3-million and made an operating loss of R22.5-million. Yet a deal with the China Africa Fund for 5% of the company inexplicably valued it at over R7 billion. Not only does that give it an astonishingly large negative price/earnings ratio, but it doesn't have anywhere near the revenue to change that. Worse, after the proposed listing of Sagarmatha was announced, the founding chairman of ANA, Ladislas Agbesi, launched legal action that disputed Survé's ownership of ANA. So it might be worth nothing at all.

Senekal de Wet has always been a marketer, specialising in public or investor relations. She has no experience as a journalist, other than a claimed two-year stint at *Beeld* during the dotcom boom in the late 1990s (which might explain some of her old-fashioned, buzz-wordy prose). Yet she repeatedly questions Sole's competence. Unlike her, he has 32 years of experience as an investigative journalist and has won numerous prestigious awards for his work.

The difference between media houses that employ Sole's ilk, and Independent Media, writes Senekal de Wet, is "that Independent Media has jumped on the super-galactic highway and has managed to re-engineer itself to take advantage of technology and the fourth industrial revolution".

When the dotcom boom was in full swing, the internet was sometimes referred to as an information superhighway, a term coined by then-Senator Al Gore 40 years ago. Twenty years later, those of us in the know call it "the internet". What on earth (or in space) a super-galactic highway is, is anyone's guess. People who use such nonsensical words are, *ipso facto*, either clueless or swindlers.

"Re-engineering [a company] to take advantage of technology," is likewise a decades-old idea. What Senekal de Wet is describing is actually the third industrial revolution, also known as the digital revolution. It isn't news. And suggesting that a publication like *Daily Maverick*, which was founded and exists exclusively online, is somehow stuck in the pre-digital era is simply ignorant.

The fourth industrial revolution is a buzzword that refers to technology that blurs the lines between the physical, the biological and the digital. There is nothing in her description of Sagarmatha that suggests it has anything to do with hallmarks of the fourth industrial revolution, like artificial intelligence, nanotechnology, robotics, quantum computing or biotechnology. Sorry, but an e-commerce retailer doesn't count. In fact, there is nothing in Sagarmatha's portfolio, whether or not it actually exists, that is remotely innovative.

The truth of the matter – that Sagarmatha is a dubious investment scheme based on an absurd valuation of a company of disputed ownership, probably designed to rescue a media house which has fallen off a financial cliff since its takeover by Survé's firm – is irrelevant when a purely *ad hominem* attack can be made against those who say so.
DM
Ivo Vegter

Comment
We have the analysis, the rebuttal and the reply to the rebuttal. The analysis contains facts, detail, explanations. The rebuttal has little factual about it, addresses the author of the analysis and not the analysis. I have edited much of the rhetoric in the Daily Maverick reply, but please read it online and you will enjoy journalistic sniping. Dear reader, you decide for yourself but I for one would insist on very detailed due diligence before even thinking of investing. The PIC already has a substantial interest in this whole process due to its loans and shareholding; going on previous PIC experiences we shouldn't expect too much due diligence. It is now in your hands.

Some comment from Albert van Driel

The conditions for the financing of Independent Media transaction was kept secret for long, but amounted to R 2 Bn of pensioners' hard-earned savings; divided up into various components eg a soft loan with about a 5-year lag on interest payments (not even mentioning terms of capital paybacks); a large amount for the purchase of Riley's Independent News and Media (highly inflated), out of which the PIC received a measly small equity shareholding in whatever of the splintered Iqbal companies are left; the upfront advance of a sizeable amount to facilitate localisation of assets, BBEEE transformation, and the creation of digital capabilities.

Optrede teen Iqbal Survé-maatskappye moet dringend kom om verdere stroping van staatsdiens se pensioenfonds te keer

Mediaverklaring deur:
Adv. Anton Alberts
VF Plus-voorsitter
10 April 2018

Terwyl daar groot vrae hang oor Vrydag se beoogde notering van 'n nuwe mediamaatskapppy wat straks deels moontlik gemaak kan word met geld van die staatsdienspensioenfonds (SDPF), raak dit al hoe duideliker dat die SDPF se geld in 'n velerlei bedenklike transaksies gestroop word.

Die nuwe mediagroep Sagarmatha Technologies, word hoofsaaklik besit deur 'n familietrust van Iqbal Survé, die uitvoerende voorsitter van Independent Media.

Die SDPF hou reeds deur die Openbare Beleggingskorporasie (OBK), wat die fonds bestuur, 'n aandeel van 25% in Independant Media. Luidens mediaberigte in Business Day is Independant Media in 'n geldelike verknorsing en hoop word geplaas op die verkope van aandele vir Sagarmatha Technologies nadat die maatskappy komende Vrydag op die Johannesburgse aandelebeurs genoteer is, om hom te red. Dit blyk dat Independent Media deel van Sagarmatha Technologies sal word en sodoende befonds sal word deur die nuwe genoteerde maatskappy.

Daar is egter ‘n probleem met die notering aangesien Sagarmatha Technologies volgens berigte tegnies insolvent is en dus eers privaat befondsing moet ontvang voordat dit voldoen aan die vereistes van die Wet op Finansiele Markte. Die maatskappy sal moet bewys dat dit gekapitaliseer is met minimum R500 miljoen en dit is goed moontlik dat die OBK weer versoek is om in hierdie konteks in nog ‘n Iqbal Survé-avontuur te belê.

Die VF Plus het daarom vandag ʼn skrywe gerig aan mnr. Deon Botha, die OBK se korporatiewe hoof, waarin hy gevra word of die OBK wel sodanige aandele gaan aankoop. Tot met die uitreiking van hierdie verklaring is nog geen antwoord ontvang nie.

Indien die OBK wel van plan is om aandele in Sagarmata Technologies te bekom, sal die VF Plus die SDPF-pensioenarisse adviseer om onmiddellik ‘n interdik teen die transaksie te bring.

Hier volg enkele voorbeelde wat dui op die bedenklike wyse waarop die staatsamptenare se pensioengeld oor die laaste paar jaar misbruik is: (Die fonds, met ʼn bate van R1,87 triljoen, is die grootste belegger in die land se ekonomie en is daarom ʼn baie aanloklike teiken vir misbruik).

1. Februarie 2018: OBK leen R5 miljard aan die Eskom in die vorm van oorbruggingsfinansiering.
2. Maart 2018: Die Reserwebank plaas VBS Mutual Bank onder kuratele. Die OBK besit sowat 30% aandele in VBS. Dit is ook bekend dat VBS ʼn lening van R8 miljoen aan pres. Jacob Zuma toegestaan het vir sy skuld by Nkandla. Die VF Plus is van mening dat die belang wat die OBK in VBS bekom het, nie om suiwer sakeredes gedoen is nie.
3. OBK het ʼn reuse belegging in Steinhoff gehad en in Desember verlede jaar is die vrees uitgespreek dat die SDPF ʼn verlies van sowat R12 miljard met dié belegging kan ly.
4. In 2015 het die OBK Lonmin van ondergang gered deur, buiten sy bestaande aandele, ʼn verdere 25% van dié platinum-produsent te bekom deur dié regte uitgifte van die sukkelende platinum-produsent. Die beleggingsbedrag was R1,9 miljard. Van belang is egter dat dit gedoen is nadat Lonmin se aandeelprys in die voorafgaande jaar met 80% gedaal vanaf byna R35 tot skaars R3. Wat markwaarde aanbetref het dit binne een jaar R29 miljard tot R3,5 miljard gedaal. Dit was dus ʼn onverbloemde reddingsaksie.
5. In 2014 is berig oor ʼn transaksie waar die OBK sowat R3 miljard belê het in ʼn feitlik bankrot oliemaatskappy, Camac Energy. Daar is berig dat ene mnr. Kase Lawal, ʼn Amerikaner van Nigeriese afkoms en kennis van voormalige pres. Zuma, in beheer was van die maatskappy. Daar is nooit weer hieroor berig nie, en dit is nie bekend of die maatskappy steeds bestaan nie.
6. In 2016 was daar groot ontevredenheid toe ʼn ekonomiese ontwikkelingsplan vir Tshwane/Pretoria goedgekeur is met geld komende van die OBK en die aankondiging dat ‘slegs swart mense’ daarby baat sal vind.

Uit voorafgaande is dit duidelik dat vele beleggings nie om gesonde sakeredes gedoen is nie, en die VF Plus sal voortgaan om gesprek met die OBK-bestuur te voer, en sal aanhou om parlementêre druk op die minister uit te oefen om die staatsdienspensioenfonds onder die pensioenfonds-beregter se jurisdiksie en beskerming te plaas.

Kommentaar
Die AMAGP se invloed is besig om al wyer uit te kring; voorkomende optrede deur politieke partye realiseer. Die VF Plus mediaverklaring bevestig die negatiewe implikasie van Survé se beoogde notering en terselfdertyd ook die vele bedreigings teen die Fonds se volhoubaarheid.

AMAGP letter to the BOT

The letter from AMAGP to Dr F le Roux, the only elected representative of pensioners on the Board of Trustees, GEPF on 22 March 2018.

Investment of R 4.3 Bn in AYO Technology Solutions

Good day Dr Frans,

We have taken note with shock of the PIC approval in Dec 2017, of an investment with "pensioners" savings to the value of R 4.3 Bn, in yet another Survé coy namely AYO Technology Solutions. The latter having submitted a completely unrealistic Business Plan, with a projected growth rate up to year 2020, towards a capitalisation of 18 times its present value (to R 9.00 Bn)!?!

The Independent Media (IM) transaction (of about R 2.0 Bn), with no proven returns yet, remains like "a lump in the throat" . In the meantime Dr Matjila has indicated that the PIC was exploring a possible exit strategy from IM.

Since 2016/17 we became extremely concerned about the poor investment in IM. AMAGP has been sensitising GEPF/PIC since 2016 about IM; we also drafted questions and created other internal research documents actually highlighting the threats about dealings with Dr Iqbal Surve due to a 'shoddy" business record with the PIC/GEPF. As usual our questions and concerns were not professionally addressed, or only answered in a customary narrative by Mr Abel Sithole.

We are also aware of Survé's display of grandeur relating to his so-called business empire. At about May 2017 he declared on AEEI website that the latter had a capitalisation of R 4 Bn, which AMAGP considered highly suspect.

Investigative journalists have concluded that a sizeable amount of the R 4.3 Bn will find its way back to Sekunjalo, the Holding Coy, for partial repayment of its commitments to the PIC. What they did not say however, is that that man of grandeur now has bags of pensioners' savings to continue rewarding himself with a monthly remuneration of R 500 000 per month. The wheels of the Law and Justice turn slowly, but can be relentless and unforgiving, when the "keepers turn to weepers", as Tom Moyane of SARS is experiencing right now!

Finally we wish to pose the following Questions/statements to the BoT's:

1. Why was the "Due Diligence" process waived in Dec 2017?

2. Who should be held accountable?

3. How will the GEPF funds be recovered?

For your urgent attention pse.

Albert van Driel
AMAGP National Management
22 March 2018

Comment
Perhaps the media and politicians will be able to elicit a reply containing some information from the BOT. We despair.

Synopsis

The legal weapons in the ongoing battle against impunity at parastatals

Dale McKinley
5TH JULY 2017

*In this opinion article, **Dale T McKinley** outlines the instruments available within the Public Finance Management Act and the Companies Act to hold nonexecutive directors and executives at state-owned enterprises legally accountable for their actions.*

One of the clearest things to emerge from the ongoing 'State capture' saga is the reality that a culture of impunity from the law and democratic sanction now threatens to engulf society. While such a culture applies to both the public and private sectors, it is especially galling to witness the accompanying levels of corruption and malgovernance from those who are sworn to uphold the law and respect the very democratic practice and ethos that they so loudly proclaim to politically follow.

Nowhere is this more apparent than in respect of the country's state-owned enterprises (SOEs). What we have been witnessing over the last few years, in particular – the practical extent of which is only now beginning to be confirmed with all the recent revelations – is the extent to which the top management and boards of SOE are centrally responsible for this state of affairs.

Nonetheless, despite the overwhelming evidence, both past and present, coupled with mounting citizen anger and frustration, impunity still reigns supreme. Precious few of those implicated SOE leaders and board members have had to pay any price whatsoever, something political (party and state) protection has gone a long way to ensure.

Although the law is one of the most potentially effective weapons to attack that impunity and thus to improve the governance of SOE, it has not really been used in any targeted or sustained way. This is because most citizens, SOE employees and, indeed, civil society organisations simply do not know the law and the different ways it can be used.

Further, most individuals appointed to either senior management positions or SOE boards are probably not aware of the possible implications of their unethical or unlawful conduct. This is based on the incorrect assumption that there will be no adverse personal consequences for their behaviour as long as they enjoy the support of, or do the bidding of, their political or corporate principals. So, what are the relevant laws and what do they provide that would assist in trying to end the impunity?

First, there is the Public Finance Management Act of 1999. Section 86 explicitly states that it is a criminal offence/ constitutes financial misconduct if any 'accounting authority (that is, a relevant individual, governing body or board) "wilfully or in a grossly negligent way" fails to, besides others, protect "the assets and records of the public entity" and "act with fidelity, honesty, integrity and in the best interests of the public entity". Sections 50 and 51 add that an "accounting authority" may not "use the position or privileges of, or confidential information obtained . . . for personal gain or to improperly benefit another person".

Further, there is a duty "to prevent irregular … fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity". A criminal conviction can result in a fine or a prison sentence of up to five years.

Then there is the Companies Act of 2008, which provides for civil and other legal remedies and applies to those SOE that are companies. According to Section 72, a claim for damages can be made against a director and a member of the executive management (the liability being joint and several) if such a person has breached his or her "fiduciary duty, resulting in any loss or damages suffered by a company for a failure to properly disclose any personal financial interest or for a failure of a director to act in good faith and for a proper purpose, in the best interest of the company and with care, skill and diligence".

Section 165 also empowers certain parties, including shareholders, registered trade unions and prescribed officers of the company or a related company to take a "derivative action", or an action which forces a company to act in instances where the company does not want to. For example, if the company has suffered a loss by the actions of certain directors, a relevant party or person can take legal steps to compel action to be taken.

Additionally, Section 162 allows for those same 'certain parties' to apply to a court for an order declaring a director delinquent or under probation. Such an application would succeed if the director, among others, "grossly abused" his or her position, used information for "personal gain or the advantage of another" and "acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance" of his or her duties. If successful, a declaration of delinquency lasts for seven years and such a person cannot serve as a director again for that period.

There are definitely some challenges to successfully pursuing these legal avenues. These include issues whether one has the standing in law to institute action, and meeting sometimes onerous evidential burdens, as well as the general reluctance of prosecuting authorities to pursue charges filed. Nevertheless, given the ongoing and hugely damaging crisis at SOE such as Eskom, Transnet, the Passenger Rail Agency of South Africa, South African Airways and the South African Broadcasting Corporation, it is surely time to make active and maximum use of all the 'weapons' in our constitutional and legal arsenal.

Those who have engaged, and continue to engage, in corrupt activities and mal-governance are also breaking the law. Just like every other citizen, they need to face the legal consequences of their actions and to know that they will no longer enjoy the impunity that is threatening to tear the political, economic and social fabric of society apart.

Dr McKinley is an independent writer, researcher, lecturer and long-time political and social activist who believes in holding all authority and leadership to democratic accountability.

Edited By: Creamer Media Reporter

Comment
Now you know why funding is essential to ensure actions that will ensure governance and adherence to the rule of law. We also face the lack of political will to use the law in ensuring such governance. Until such time as the political will appears nothing is going to change. Making and changing laws does nothing if you don't apply them fully and consequently.

The GEPF AMAGP: Invitation

GEPF members, either still working or pensioned, are cordially invited to join the GEPF Monitoring Group/AMAGP. There is always place for members and co-workers all contributing to the cause and in their own interest.

Soos meeste van ons staatsdiens pensioenarisse, ontvang u, u pensioen gereeld maandeliks en is en is waarskynlik baie afhanklik daarvan. Agv die swak toestand van regering in die RSA, die aanloklikheid en omvang van ons Fonds en algemene staatskaping, ontstaan die vraag egter hoe volhoubaar dit is. Gebaseer op informasie tot ons besikking, is ons by die AMAGP van mening dat daar wel gevare is en dat ons, die aandeelhouers van die pensioenfonds, dringend hieraan aandag moet gee. Ignorering hiervan kan lei tot 'n soortgelyke situasie as dit waarin Spoorweg pensioenarisse hulle tans bevind. Om die rede versoek ons dat u ons ondersteun. Sluit aan by die AMAGP, 'n vrywillge organisasie, bestaande uit staatsdiens werknemers en pensioenarisse, met die doel om ons Fonds te beskerm.

Contact any one of the following:

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FACEBOOK GROUP

[GEPF Moniteringsgroep]

If you are interested in becoming a member of the organisation, please complete a membership application to be found in the "Files" section on the FB page.

Semper Vigilans!

CONCLUSION

To ponder on…

Dear Reader,

1. The AMAGP endeavours to ensure the sustainability of the GEPF to the benefit of current and future members of the GEPF. We want many more members for logical reasons – to ensure the GEPF Trustees carry out their assigned roles.
2. The MG was established in 2016 as a voluntary organisation and, as the AMAGP, will remain so for the foreseeable future. The AMAGP maintains good relations with the GEPF Trustees as well as the PIC. The AMAGP is also in continuous communication with other stakeholders and interested parties to ensure the widest possible concern for our current and future pensioners.
3. Although until recently the GEPF funding progressed satisfactory in its endeavour to provide sustainable pension benefits to pensioners and future beneficiaries, SC and its resultant tentacles started reaching out to the GEPF and PIC and created alarm. The blatant SC leading inevitably to degrading our democracy and the resultant downgrade in international financial grading still threatens our GEPF's sustained viability, including those very same politicians who eventually want to retire on their state pension.
4. The financial woes of ESKOM, SAA and other SOE [PETROSA, PRASA, Transnet, etc] feature largely, making looting the GEPF very attractive. Think of the billions required for the nuclear power dreams the [doomed to overruns and massive losses].
5. In conclusion dear reader, decide if you want to risk the retirement you are excited about, to be similar to other departed and failed pension funds, or are you prepared to become a paid up member of the AMAGP? Litigation and court interdicts are expensive.

Comments, articles and recommendations about and for the newsletter are welcome. No anonymous submissions will be accepted; however, names may be withheld on request.
Please submit to: editorgepfmg@gmail.co.za