



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 GEFP and sustainability of its return on investments.

www.amagp.co.za

f GEFP Watchdog - Waghond



NEWSLETTER NO 4 of 2019

AMAGP – Association for Monitoring and Advocacy of Government Pensions
BOT – Board of Trustees [of the GEFP]
FSCA – Financial Sector Conduct Authority [previously the FSB]
GEFP - Government Employees' Pension Fund
PEO – Primary Executive Officer
PIC – Public Investment Corporation
PSA – Public Servants' Association
ROI – return on investment
SC – state capture
SCOF – Standing Committee on Finance
SCOPA - Standing Committee on Public Accounts
SOC – state owned company
SOE – state owned entities

"The GEFP now has R1,8 trillion assets under management, up 8,3% (R1,7 trillion) from 2017. There are 1 273 125 active members, and 450 322 pensioners and beneficiaries." Moneyweb, 10 December 2018

The Editor's Word

The various commissions in the news continue to provide horrifying detail of the depth of fraud and corruption in the top echelons of our government. The importance of recovering the funds isn't in the public eye as yet but is slowly picking up. I trust we will

see the demand for recovery become an irresistible flood.

You might not realise it but the AMAGP played and still plays a very important watchdog role – the one who wakes up everyone, who then act to resolve the threat. A huge amount of work has gone into making decisionmakers aware of the threat to our pension fund and the credibility of the AMAGP, to the extent that the AMAGP is a recognised and credible source and resource.

The Ayo saga isn't going to end soon. It is clear that our billions are being held so tightly that only a major effort will release it, probably taking many years to recover what hasn't been squandered. The litigation has started, after CIPC's Notice, with, "surprise!", the PIC prominently involved to prevent recovery.

See Barbara Curson's article below on the report of actuarial value of the Fund – 'the cash cow is no more'.

Anyone taken a look at Steinhoff's share price recently? How much is the loss at this stage?

Haven't heard anything about the one single pension fund recently, but trust me, it isn't going to go way. It is probably going to remain quiet until all the commissions have completed their work, then going to appear as a solution to all the Fund's problems.

NEWS NEWS NEWS

GEFP Actuarial Valuation 2017

'n Kort oorsig oor die aktuariële waarde van die Fonds van 'n baie betroubare bron:

"From: CHRISTO VAN DYK

Sent: Friday, 22 February 2019 12:06 AM

To: Hennie Roux
Subject: Re: GEPF Actuarial Valuation 2018

Die fonds boer agteruit, so dui die dalende befondings vlak % sedert 2014 vir ons aan.

HOEKOM?

Die pensioen verpligtinge groei vinniger as die bates.

Befondingsvlak berekening: Bates ÷ Pensioenverpligtinge*

BATES...

Die volgende faktore werk saam om die bate kant van die vergelyking stadiger te laat groei...

vinnig stygende koste om beleggings te bestuur;

PLUS

die feit dat nie alle bydraes belê word nie;

PLUS

die opbrengste op beleggings nie die voordele ten volle kan dek nie;

PLUS

die OBK wat beleggings maak wat nie groei nie en/of nie dividende of rente gee nie.

PENSIOEN VERPLIGTINGE...

Pensioen verpligtinge kant...

word beïnvloed hoofsaaklik deur die meer as inflasie salarisaanpassings; (en dalk nog daai gevalle waar mense ekstra diensjare kry sonder dat hulle bygedra het)

n Veroudering van die werkskorps; (meer jare diens @ hoër salarisse)

*RESERWES

Die bedrag waarmee bates die laste oorskry... In 2018 was dit R137bn. In 2016 was dit R223bn DUS ons het met R85bn agteruit geboer.

ONTHOU

IN 2014 was die reserwes R252bn. Onse Mokate RvT het dus agteruit geboer met R115Bn (252 - 137). Soos gesien kan word, word die bedrag beskikbaar stelselmatig verminder, DIT terwyl die bedrag wat opsy gesit MOET word BLY groei.

Omdat die volle reserwes nie bekostig kan word nie is daar onbefondste risikos tov die solvensie en die 100% CPI verhogings elemente.

SLOTSOM

Op die stadium lyk dit of die klem verskuif het. Die trustees probeer nie eens meer om die langtermyn vlak te herstel soos dit in 2006 was nie. Nou is dit net om die minimum fonds vlak bo 90% te hou.

Christo van Dyk"

Kommentaar

Christo stel dit so bondig en so duidelik.

Aktuaris – iemand wat die bates en laste van 'n fonds ontleed om die finansiële status en risiko te bepaal.

STATEMENT

By AP Stemmet
Spokesman Amagp
25 February 2019

In reaction to the announcement in connection with this matter by the President, the Association for Monitoring and the Advocacy of Government Employees Pensions wrote the enclosed letter to the GEPF.

Except for the questions posed in our letter and this new opportunity created by the President, the GEPF should perhaps also be asked whether any actions were taken over the years to hold persons and instances accountable for losses incurred of workers' and pensioners' money.

Adamus P Stemmet
Spokesman: AMAGP
Durbanville
0823209240

adamusp2602@gmail.com

Date: Mon, Feb 25, 2019 at 11:03 AM

Subject: Recovery of GEPF funds that were lost due to Impropriety

To: Abel Sithole <Abel.Sithole@gepf.co.za>
Cc: Deon Botha <deon.botha@pic.gov.za>

Good day Mr Sithole,

AMAGP is anxious to know whether GEPF would now use the opportunity to recover Pension Funds that have been lost due to project/investment beneficiaries that have not honoured their contractual commitments; also iro ways as described in the title above?

A number of hard evidence cases already exist eg impairments having been listed in your Annual reports of 2017 and 2018.

There are also other crude examples of unlawful activities which have occurred since circa 2014, eg losses that happened at old African Bank (and findings by the Myburgh Commission), recently resuscitated by an independent chartered accountant body; currently the Ayo Technology investment where R4,3bn has been dropped into a bottomless hole. Through "attachments" some lost value could be gained (eg Surve's acquisition of seven expensive apartments at V&A waterfront costing R 140m), whilst the latter did not even honour his commitments iro Sekunjalo (Independent News and Media)! And what about recovering the R7m from each of the two PIC officials who were black-mailed at VBS bank during their tenures as directors at VBS?

And so we can continue relentlessly about other wilful looting, eg the dishing out of millions of GEFP Funds to so-called facilitators as transaction fees (TFs), where some TFs were as ridiculously high as R 50m for a single transaction!

Finally, we are encouraged by the President's strengthening of the SIU bmo a very strong and senior judicial team of eight judges.

AMAGP would welcome your comment please?

Kind Regards,

Albert van Driel
AMAGP Management

Comment

Don't hold your breath for any reply from the GEFP.

Synopsis

Dan Matjila and the mystery R50m

24 February 2019 by Mpumzi Zuzile

A consortium that applied for a R1,7bn loan from the PIC to buy a stake in oil giant Total SA claims that then PIC boss Dan Matjila forced it to partner with another company - and pay that company R50m. The deal is to be probed by the judicial commission of

inquiry looking into allegations of impropriety at the PIC.

Sources close to the deal said that in 2015, Kilimanjaro Capital, known as KiliCap, applied for a R1,7bn loan to buy a majority stake in Total SA (Tosaco), a BEE group that owned 25% of Total SA (TSA). The Sunday Times understands the loan was to develop 20 TSA-branded retail service stations across SA. The deal went through the rigorous PIC process, including due diligence. After being considered by two investment committees, it was recommended to the Board that it be approved.

It was at this stage, claimed KiliCap, that Matjila told it to partner with another bidder, Sakhumnotho Group Holdings. After KiliCap agreed to partner with Sakhumnotho, the PIC approved the deal and lent the merged consortium R1,8bn - R100m more than had originally been requested. It was believed the additional R100m was for the costs of due diligence, though sources said R50m would have been sufficient. Following this, KiliCap paid R50m to Sakhumnotho.

Documents show that Kilicap applied for the loan in May 2015. In June, the PIC's portfolio management committee gave the green light for the company to go ahead with its due diligence. A month later the committee recommended the KiliCap transaction be submitted to the Private Equity Priority Sector and Small Medium Enterprise Fund Investment Panel - a subcommittee of the PIC board - for final approval.

But before the final subcommittee met, Matjila allegedly told Kilicap that there was another consortium, Sakhumnotho, that wanted the same BEE stake from TSA and that they should form a partnership.

"[KiliCap director Lawrence Mulaudzi] was shocked as to why they would be taken through the whole due diligence process only to be told they are not the only one," a highly placed PIC source said. "They were told to either partner with Sakhumnotho or lose the entire deal. Because they didn't want to lose out on the deal, they agreed that half a loaf is better than no bread at all."

Contacted yesterday for comment, PIC spokesperson Sekgoela Sekgoela said the entity would not be able to respond before going to print.

Sakhumnotho chair Siphon Mseleku told the Sunday Times he had been introduced to Mulaudzi by Matjila, who called them both to his office. Mulaudzi denied this, saying: "No. I never met Matjila and Mseleku in the same room." He met both men separately, he said.

Asked to comment, Matjila said: "I cannot comment on anything related to PIC. I've been approached by the commission [of inquiry] to give evidence."

Mseleku claimed the process was conducted professionally. "Many BEE companies (including among them Kilimanjaro and Sakhumnotho) were invited to bid for the shares. We then proceeded to submit our bids separately, as we were not aware at the time who else was invited."

Mseleku said he had met Matjila, who told him he was meeting another bidder directly after their meeting. "I then proceeded to follow him to the boardroom to meet Mulaudzi and he introduced us and said here is Mr Mulaudzi, who is here for the same reason as yourself. He repeated what he had told me to Mulaudzi, that the PIC will only engage with the winning bidder as opposed to many competing prospective buyers."

He said that for commercial reasons and to have a win-win situation they both agreed to merge the two consortiums and have 50% share each in the merged entity.

Regarding the R50m paid to his company, Mseleku said it was because Sakhumnotho had "separately commissioned the services of transaction advisers, technical advisers, legal advisers, financial advisers, etc, to advise us on the transaction and conduct the due diligence on our behalf".

"We at Sakhumnotho have built our company over the last 19 years on the values of good business ethics, moral values and good corporate governance. We value honesty and integrity. We do not in our business participate in paying bribes to anyone," he said.

Asked when Sakhumnotho had submitted its funding proposal to the PIC, Mseleku said he was travelling and could not remember the dates. "To my knowledge the information you are requesting is internal PIC information

which they don't normally share with applicants," he said.

Mulaudzi said KiliCap was formed at the start of 2015 and first approached the PIC in May 2015. "The decision for KiliCap to merge with Sakhumnotho was taken in July 2015."

Mulaudzi confirmed the payment to Sakhumnotho. Asked what it was for, he said: "We would direct you to Sakhumnotho, who would be better placed to provide an answer on what this amount was used for."

Comment

Nicely phrased answer. However, this seems like a normal transaction except for the extra R100m, which should be investigated and the money returned. Did the Fund pay a commission to both companies, with our money?

Synopsis

Mondli Gungubele questions PIC board's handling of Dan Matjila allegations

25 February 2019 Warren Thompson

Deputy Finance Minister Mondli Gungubele questioned the credibility and manner in which the PIC Board dealt with allegations against its previous CEO, Dan Matjila, on Monday. "I held the view that the Board had not carried out its fiduciary duties," said Gungubele in reference to an allegation improper relation between Matjila and a woman.

Gungubele, who was appointed chair of the Board of the PIC in May 2018, described on Monday how his first priority was to review the manner in which the Board had dealt with the allegations made against Matjila in September 2017. When Gungubele reviewed the manner in which the Board had dealt with these accusations, he was perplexed as to why it publicly expressed confidence in Matjila at the time.

"If you [had just been] advised to conduct a forensic investigation and before receipt of the report from internal audit, how then did you reach a determination to express confidence in the CEO and CFO? I wanted them to re-look at the issue and they said they were happy with the way it was handled and the matter was closed," said Gungubele.

He also alluded to factions on the Board that became evident any time the matter of Matjila was discussed. "The evidence on record will show that at any point in time on the issues affecting Dr Matjila, there was division. I have openly questioned whether some Board members had a relationship with Matjila outside of the Board roles," Gungubele said.

The PIC inquiry is also investigating allegations of corruption against four of its directors, including Gungubele.

thompsonw@businesslive.co.za

Comment

And around and around we go with role players rushing to absolve themselves from any impropriety. Hopefully the impropriety will stick to them for a long time.

Synopsis

We don't have to pay back PIC's R4,3bn - AYO

AYO | 26 February 2019

The company says that the demand that it do so has no merit. AYO Response to article in Business Day

Shareholders are referred to the article published in the Business Day on 26 February 2019 referring to the compliance notice issued by the Companies and Intellectual Property Commission (CIPC) requiring that the PIC recoup its investment in AYO. AYO has not had sight of such compliance notice.

AYO will formally respond via SENS to shareholders this morning, but believes the grounds for such recoupment have no merit and are baseless.

Update:

AYO Further Response to Article in Business Day

Shareholders are referred to the article published in the Business Day on 26 February 2019 referring to a compliance notice issued by the CIPC requiring that the PIC recoup its investment in AYO.

AYO would like to reiterate to shareholders that it believes the grounds for such recoupment have no merit and are baseless for the following reasons:

1. The process followed by CIPC was procedurally incorrect CIPC falls within the ambit of the Promotion of Administrative Justice Act, 2000 which gives effect to the right to administrative justice. Therefore, both the PIC and AYO should have been consulted and had sight of the Notice.

It is concerning therefore that a newspaper was informed of the Notice prior to both parties concerned having at least, at the very minimum, received a copy of such compliance notice. AYO believes that such action on the part of CIPC to be highly regrettable, if not irresponsible.

AYO further believes that CIPC, by failing to inform and provide it with a copy of the Notice to PIC, has acted contrary to the provisions of the Promotion of Administrative Justice Act.

AYO notes that the decision by CIPC is unprecedented and would like to categorically state that it did not, and has not, received a copy of the Notice.

2. CIPC has based its decision on incorrect information

Based solely on the information contained in the Article, it would appear CIPC has reached a conclusion to issue the Notice based on incorrect information.

It is stated in the Article that, according to the records of CIPC, AYO has never generated turnover of more than R12 million.

Shareholders are referred to the audited financial statements of AYO for the 12 months ended 31 August 2018 and are advised that AYO generated revenue in excess of R638 million for such financial year.

It still needs to be determined why CIPC believes AYO's revenue to have never exceeded R12 million, but needless to say, this is incorrect.

CIPC is confusing company turnover with Group consolidated revenue and profitability.

3. CIPC determination of the value of AYO

The Article refers to CIPC stating that the key issue was the high valuation the PIC placed on AYO's shares at listing and that this did not 'square' with its own information which shows a company with revenue never exceeding R12 million.

As disclosed above, besides CIPC having incorrect information about AYO, it seems they have undertaken a valuation of AYO to determine if the investment by the PIC was sound or not.

AYO questions whether the CIPC mandate allows for it to undertake a valuation, compare it to the valuation of another company (in this case the PIC) and based on the discrepancy between such valuations, issue a compliance notice.

For the record, AYO stands by its valuation, is implementing its strategy in line with its pre-listing statement and questions the jurisdiction competence of CIPC to make determinations on valuations.

4. AYO was never contacted to provide input.

AYO was not consulted at any time prior to the issuance of the Notice, meaning the decision by CIPC was, in addition to being based on incorrect information, potentially biased and influenced by a disinformation campaign by media houses and individual journalists.

AYO re-asserts that the investment the PIC made into the holding group during the listing, remains sound. AYO has made significant strides forward with an established and solid base, and a number of sound acquisitions and investments.

AYO regrets CIPC's action and advise that it is ready to engage with CIPC on the matter.

Cape Town

Statement issued by AYO through SENS, 26 February 2019

Comment

Note the words: "no merit, baseless, procedurally incorrect, concerning, highly regrettable, irresponsible, contrary, incorrect, incorrect, incorrect, confusing, incorrect, questions the jurisdiction competence of CIPC, incorrect, potentially biased,

disinformation campaign". Listed them as they appear, makes one wonder who they have writing the statement as the whole response is about attacking the credibility of the CIPC and its compliance notice without once answering anything about the recoupment. It is called obfuscation – "to deliberately make it seem confusing and difficult to understand".

Synopsis

Focus on quantity rather than quality in PIC investments - former director

4 March 2019 Sibongile Khumalo

Vuyo Jack (Twitter/Empowerdex)

According to the interim findings of an internal PIC governance review report concluded in 2014, the state-run asset manager appeared more focused on getting as many deals signed as possible, rather than focusing on quality. This is according to evidence by Vuyo Jack, who was appointed to the PIC Board in 2012.

His evidence on Monday before the judicial commission provided a glimpse into the business operations of the asset manager. The findings of the interim report, which was based on interactions with employees, included concerns regarding weak and unaccountable leadership, said Jack.

He testified that "much energy and attention in past years has been [focused] on getting as many deals as possible to push the quantity line and meet numerical outputs, irrespective of the quality of the benchmarks set by clients in their investment mandates."

While this was "not explicit in our interviews with staff, it was most certainly implicit in data from PIC documents supplied to us," he said.

'Compromised quality'

Jack said the danger to this approach was that "it compromised quality and results in an exponential rise in the number of bad deals."

Some of the questionable investment decisions undertaken by the state-run asset manager include investment in the disgraced VBS Mutual Bank and retailer Steinhoff, which saw billions lost as a result of drastic fall in the

company's shares following an international accounting scandal in December 2017.

Last week, the CIPC ordered the PIC recover the R4,3bn capital it invested in AYO Technology Solutions, stating that the asset manager did not act in good faith and in the best interests of the company when making the investment.

Calls for clarity

According to Jack - who is the founder of BEE verification agency Empowerdex - to remedy the governance related challenges, the draft report recommended urgent interventions, including clarity on the role of the chair. It raised the question of whether a "deputy non-political chairperson" should be appointed.

Last week, a number of PIC board members appeared before the commission, including chairperson and Deputy Finance Minister Mondli Gungubele. Board members spoke of anxieties and distrust among them following the arrival of anonymous emails claiming corruption among directors.

The Commission has revealed that executives who earlier presented evidence had received death threats, but officials are adamant that the threats have not deterred witnesses from coming forward.

Comment

Interesting that "numerical outputs" is mentioned; needs some further thought on why, don't you think? Also that the PIC and Board knew about the problems four years ago already and did not act in the recommendations; no wonder the Board resigned.

Synopsis

PIC accused of rewarding cover-ups with extra pay, bonuses

6 March 2019 Janice Kew, Bloomberg

The PIC rewarded employees with extra pay and bonuses for helping to cover up a culture of mismanagement and corruption, according to the former chief technology officer.

While some dysfunction at the top of the PIC dates back to before departed CEO Daniel Matjila succeeded Elias Masilela more than

four years ago, the situation got worse afterwards, Luyanda Ntuane said on Tuesday in Pretoria as he testified at the commission of inquiry.

The PIC is increasingly under the spotlight as Board members, managers and other workers testify at the inquiry. Tension at the top came to a head last month when nine directors resigned en masse, including Chairman Mondli Gungubele, who is also the country's Deputy Finance Minister.

"I believe the Commission must investigate and look into the payroll of the PIC and note the changes in salaries and bonus payouts over the years," said Ntuane, who was one of six executive committee members. "Some of the employees have enjoyed this growth in salaries, but equally know that the context under which they were applied was usually to hide the true beneficiaries of the increases."

In the three and a half years Ntuane worked at PIC, he said the restructuring of departments at least five times was used to justify increases. He described how the salaries of some newly graduated employees would more than double before they had gone through a single review period and how there were instances where workers that were toeing the line would end up earning more than their managers.

Division, Distrust

Ntuane's testimony follows that of several other former PIC employees, who have told the inquiry of long-term friction, division and distrust. When Matjila took over as CEO, he swiftly made changes to the way the executive committee was structured and this resulted in Ntuane reporting to current acting chief executive Matshepo More, who was the chief financial officer at the time. More saw herself as indispensable and ignored all recommendations he made, Ntuane said.

Ntuane was suspended after being accused by an unnamed whistle-blower of sexual harassment and procurement irregularities and left the PIC in May 2016. Matjila and other executives deny wrongdoing.

On Monday the commission of inquiry was told that the PIC board appointed auditors at Deloitte in 2013 to review working conditions because of mounting tensions in various sub-committees and the executive committee.

Comment

What a sordid tale it is getting to be.

Synopsis

'I own the PIC', ex-CEO Dan Matjila is said to have told employee

6 March 2019 Sibongile Khumalo

Dan Matjila was so determined to find the source of anonymous emails claiming he was corrupt that external security experts were brought in to probe the company's IT system - without the PIC's own IT team being aware of the move. This is according to testimony by Vuyokazi Menye, who headed the corporation's IT department, at the judicial commission of inquiry on Wednesday.

Menye told of how Matjila fought to uncover the identity of a "James Nogu" who had circulated claims of corruption against him. Menye told the commission that in September 2017 she found out from Eric McGee, a consultant at the technology company BCX, that the company had tried to install a rogue system on the PIC network without success.

"We were shocked to hear about this," she said. She said McGee told her they were acting on the instruction of the CEO and the then-Chief Financial Officer, Matshepo More. Menye said McGee then congratulated the IT team for having "strong and effective security measures" in the system.

Menye further stated that she wrote to Matjila to express her concern about conducting an information security assessment without involving the company's internal IT department. She said this "exposed the company to great risk" and was "not in line with good governance".

Matjila, according to Menye's testimony, responded to her concern by saying the information security assessment was an instruction from the Board. The inquiry's assistant commissioner, Gill Marcus, requested that Board minutes, where the decision was apparently taken to hire the external IT security company, be made available to the commission.

Menye testified that she queried if the security company was properly vetted and

had been made to sign a nondisclosure agreement, given that it had been given access to the company's sensitive IT system. She received no response to her question.

Menye on Wednesday also related how Matjila became enraged when she refused to give him access to all the system administrator passwords for the company. "I told him that I cannot do that because, if I do, I will be breaching the IT governance and controls."

Menye said an irate Matjila stood up and said "... This is my organisation, I own the PIC, give me all the system admin passwords."

Menye was later put on suspension and offered a R7,2m settlement by the PIC around June 2018.

Comment

Menye would be a good prospect for any company, based on her insistence on IT governance and controls. And standing on her conviction on what is right, not who is right. The settlement offer is an indication of how right she was.

And of course the Board decision is still out there waiting to be read.

Synopsis

The CIPC opens with an aggressive gambit. Novel approach, but is the CIPC backed by the Companies Act?

Barbara Curson 7 March 2019 Moneyweb

A week ago the CIPC hit the headlines when it issued a Compliance Notice to the PIC directors in regard to PIC's equity investment in Ayo of R4.3 billion. The Notice states that the commission believes on reasonable grounds that the PIC Board of Directors has contravened section 76 of the Companies Act and prescribes the remedies to "bring the company's conduct into compliance with the act". These remedies direct that the board of directors must:

- Recover the capital investment of R4,3 billion made to Ayo within 15 days; and
- Recover any interest that may have accrued on this capital investment.

The CIPC's administrative action in issuing the Notice raises a number of questions:

- The PIC invests according to a mandate. Will CIPC be issuing compliance notices in regard to all the under-performing investments?
- Why did CIPC wait a year to issue the notice?
- In the Notice CIPC included a schedule described as "Ayo in its various corporate incarnations declared turnover to the CIPC". What is the CIPC's point? Is it of the view that turnover figures drive the valuation of shares in a listed company? Does CIPC not lay any credence on pre-listing statements and audited annual financial statements?
- How does the CIPC propose the PIC retract its investment in Ayo? Further, the CIPC appears to be under the impression that an equity investment earns interest, or should earn interest?
- The compliance notice was issued under Section 76 that doesn't provide for a penalty nor a remedy.
- Various state-owned entities have not only not complied with requisite acts, but they have also squandered money on irregular, fruitless, and wasteful expenditure. Will the CIPC be making an application to court to have the directors declared delinquent? Will the directors be made to pay back the losses?

Now that the President has put the country on track of undoing wrongs, and everyone has been following the various inquiries and commissions with shock, horror and anger, has the CIPC been spurred on to start enforcing compliance more rigorously? Issuing the Compliance Notice has created a stir, but is it backed up by the Companies Act?

Perhaps the CIPC will now issue Compliance Notices to all the parties that have been flouting the act in one way or another. Meanwhile, the PIC will no doubt bring an application in terms of Section 172 of the act to the Companies Tribunal of South Africa for a review of the Compliance Notice issued by the CIPC. We have not heard the end of this matter.

Moneyweb reached out to the CIPC for comment but did not receive anything back prior to publishing.

Comment

There is more to the article, asking questions about more sections of the act that may be applicable. Where is the R4,3billion then?

There is undoubtedly going to be more interesting developments when the dust settles, not just about Ayo I believe.

PIC, AYO seek to interdict CIPC

Politics 10 March 2019 Ayanda Mdluli IOL

Xolani Mkhwanazi, the deputy chairperson of the PIC Board, said in an affidavit filed before the court that AYO was confident the shares the PIC purchased were valid and would resist attempts by the PIC to recover the money. Mkhwanazi said, as a result, it would be "objectively impossible" for the PIC to recover the money.

He added the notice was "irrational and unreasonable" and that the process followed by the CIPC was "procedurally unfair and unlawful". Mkhwanazi said the PIC would suffer irreparable harm if the court did not set aside the notice issued by the CIPC.

"The consequence of non-compliance with a compliance notice is that the PIC and its board are non-compliant with the Companies Act." "A finding that the PIC is acting contrary to the Companies Act, in and of itself, will impact on the reputation and credibility of the PIC as an investor, and could have broad-ranging negative consequences for South African markets. That is so, I am advised, because under section 171 (5) of the Companies Act the notice remains in force until it is set aside by the Companies Act."

In addition, Mkhwanazi said, it would be impossible for the PIC to comply with the notice because it required an outcome - the recovery of the funds - without indicating the legal basis on which such a recovery can occur, or what steps are to be taken or are required to reach the stipulated outcome within the period prescribed by the notice.

Had the CIPC cared to give notice of its intended findings and decision prior to issuing the notice, he said, the PIC would have advised it of the "correct facts" and the processes underway, which would have or ought to have materially influenced its decision. "The process followed by the CIPC was accordingly procedurally unfair and unlawful."

Mkhwanazi further argued the notice was based “on a material error of fact”. This was because it was predicated on non-compliance by PIC board members with their fiduciary duties - in approving the share price - when the decision had been taken by former PIC CEO Dan Matjila without the knowledge and approval of the board in line with his delegated authority.

On Thursday, AYO also launched urgent application in the North Gauteng High Court. It cited the CIPC, the Minister of Trade and Industry and the PIC as respondents. AYO CEO, Howard Platjes, asked the court to interdict and restrain the CIPC from enforcing the compliance notice and prohibit the PIC from complying with the notice. AYO also brought an application to review the CIPC notice and ultimately set it aside.

Platjes said “The effect of this directive, if enforced (whether within 15 days or thereafter) is that AYO must return R4,3bn to the PIC; this notwithstanding the fact that it has acquired those funds pursuant to a valid transaction and the effect of returning it, at this stage, is to do untold harm to the business of AYO and the investment of its shareholders. Despite these dire consequences for AYO, it was neither consulted nor afforded a hearing prior to the issue of the notice.

“Surprisingly, in its letter of February 27, 2019, the CIPC takes the view that because the notice was issued to the PIC, the CIPC seemingly bore no obligation to afford AYO a hearing; it is contended that the PIC should make contact with AYO. I am advised the CIPC’s view is plainly wrong as a matter of law.”

The matter is set to be heard on Tuesday.

Legal expert Zwakele Madonsela of BZH Madonsela Attorneys, said the matter represented a potential reputational management disaster for the CIPC. “It’s clear from the papers that the CIPC has overstepped the mark and did not apply their minds to the facts. They did not seek opinion from the PIC or AYO and acted irrationally. Those are the facts according to both sets of papers.”

He added that the CIPC’s move had resulted in massive reputational harm to AYO. “This

smacks of possible collusion between someone from the PIC and CIPC. Any investment in South Africa can no longer be considered safe if the regulator can overstep its boundaries for no good reason without a court case or hearing the other side of the story.”

The CIPC could not be reached for comment by the time of publishing.

* Mdluli is a special investigations reporter for Voices360.

Comment

I just love the verbiage; fertile imaginations and a huge dictionary of scary words and terms with no content. Note some of the rhetoric: “objectively impossible, irrational and unreasonable, procedurally unfair and unlawful, cared to give notice, correct facts, procedurally unfair and unlawful, irreparable harm, material error of fact, untold harm, dire consequences, Surprisingly, plainly wrong as a matter of law, reputational management disaster, overstepped the mark”, etc. Is the PIC using the same press release writer as Ayo?

No reply from CIPC so far, but I wonder who who is paying for that ‘legal experts’ opinion? No mention of the merits of returning the money...

Synopsis

Public Servants Association wants answers on PIC loan to Eskom

Trade union applies to court to get clarity on R5bn to Eskom, plus how PIC directors are appointed.

8 March 2019 Financial Mail

Yet another confrontation has befallen the beleaguered PIC. This time it’s to explain the inner workings of its relationship with the GEPIF over the grant of an R5bn bridging loan from the PIC to Eskom. The purpose of the loan was to allow Eskom time to arrange longer-term borrowings from financial institutions. Fundamentally at issue was whether:

- The loan was guaranteed by the government. If it wasn’t, which is denied, there are at least explanations of how the

government considers the guarantees take effect.

- The GEPF was consulted. The PIC, represented by then CEO Dan Matjila, says it was consulted. The GEPF, represented by principal executive officer Abel Sithole, says it wasn't.
- The GEPF Board ever discussed the loan either prior or subsequent to it having been granted. Because the investment mandate of the GEPF to the PIC is kept confidential, respective obligations aren't in the public domain.

This latest dispute came about because the PSA, a 230 000-member trade union with a seat on the GEPF board, has applied to the high court in Pretoria under the Promotion of Access to Information Act for disclosures that relate not only to the loan but also to the ministerial appointment of PIC directors.

What happens next? Will witnesses be called, either to the PIC Commission of Inquiry or to give evidence in court? Both options are debatable.

Ramaphosa's rubicon

No date for the PSA hearing has been scheduled. It could be that a hearing is unnecessary because much of the requested information is already revealed in a series of voluminous affidavits. So it would be over to the Commission, should it want, for a deeper dig into how the PIC operates.

The affidavits have been deposed by PSA general manager Ivan Fredericks in launching the notice of motion, then by the various respondents: Stadi Mngomezulu of the National Treasury for the Minister of Finance, Matjila for the PIC and Sithole for the GEPF. Incidentally, Mngomezulu is also a GEPF trustee and Sithole is also acting commissioner of the Financial Sector Conduct Authority.

In essence, the PSA wants to know how the PIC directors were appointed; for example, whether the minister exercised "due regard" to nominations submitted to him by depositors. It turned out that there were none. The PSA also wants to see documents in support of the PIC's contention that the loan was in fact guaranteed by the government.

On 5 February 2018 the PIC issued what purported to be a joint announcement by it and the GEPF. It stated that the PIC, on

behalf of the GEPF, had agreed to advance Eskom the bridging loan for the purpose of funding Eskom's operations for the month of February; that the PIC had obtained approval in line with its investment mandate and corporate governance requirements; that the GEPF and PIC board took comfort in the fact that the bridging loan was fully backed by a government guarantee; and that the PIC and GEPF were encouraged by the recent changes in Eskom governance.

On 13 February 2018, the PIC issued a statement expressing its concern about the "false, misleading information" in the media about the decision by the PIC and GEPF to provide Eskom with the short-term R5bn loan facility. "The decision to advance the bridging loan facility to Eskom was taken in consultation with the GEPF," it said.

In replying to the respondents' answering affidavits, however, Fredericks contends that this PIC statement is directly contradicted by Sithole. Under oath, Sithole now says the PIC did not submit an application for the bridging loan to the GEPF; that the application was not considered by the GEPF; and that the GEPF "did not participate in taking any decisions relevant to the Eskom bridging loan".

Fredericks further insists that the Treasury did not have any records relating to the PIC Board request and that, on the Minister's version, there was clearly no valid government guarantee for the loan. Whereas the PIC claimed that the Minister had considered and approved the guarantee, the Minister says "that he did not and that it was not necessary for him to have done so".

In his affidavit for the Minister, Mngomezulu addresses the PSA's concern that the PIC Board's media statements – to the effect that there is a guarantee – are untrue: "I can confirm that a guarantee does indeed exist. Part of the guarantee is used towards a domestic medium-term note (DMTN) programme, which Eskom is proceeding with, under the oversight of the JSE."

He says Eskom does not have to request government approval prior to issuing notes under the DMTN programme. Instead, for monitoring purposes, Eskom needs only to notify the Treasury of issuances made against the loan's amount.

“There is thus no loan agreement entered into or discussed with the lenders,” the affidavit states. “There is furthermore no individual guarantee documentation for note holders which is prepared for individual issuances, such as in the case of the R5bn in notes bought by the PIC ...”

The DMTN programme provides for the government to issue guarantees, in respect of notes issued by Eskom, so that Eskom can raise finance for its capital expenditure programme. No note has been disclosed in relation to the short-term R5bn bridging facility and neither has a guarantee related to this facility been produced.

As far as the GEPF is concerned, Sithole says it was not a party to the loan agreement and that the PIC did not submit to it an application for the bridging loan. In any event, says Sithole, the GEPF denies that it failed to exercise its fiduciary duties. The PSA’s allegations ignored the facts that the so-called bailout was not free because Eskom was obliged to repay the full R5bn plus interest and has done so.

In an affidavit for the PIC, Matjila says the PSA knew from the outset that the PIC complied with its requests and that the documents requested could be obtained from the Minister or the Treasury. Unfortunately, he adds, the PSA has adopted an unreasonable approach by subjecting the PIC “to this frivolous and unnecessary litigation”.

Should the PSA persist with this approach, he warns, the PIC’s answering affidavit “serves as a notice to PSA that ... the PIC will seek a punitive costs order against the PSA”.

Since the PSA now has much of the information it sought, it is unclear what’s to be done with it. For the contradictions exposed, there’s at least clarity on how the guarantees are seen to be valid and on how the PIC works in relation to the GEPF.

Most usefully, the request for information on how the Minister appoints PIC directors appears to have borne fruit. Indications are that in future the PIC Board, as with the GEPF Board, will include stakeholders, presumably trade unions such as the PSA.

Allan Greenblo is editorial director of Today’s Trustee (www.totrust.co.za), a quarterly

magazine mainly for principal officers and trustees of retirement funds.

Comment

Should I mention the rhetoric again?

The more protest and explanations we read, the closer to the truth we get. Also the contradictions in the leader figures’ testimony, accusations, replies, statements and evidence will hopefully feature at their trials.

Synopsis

GEPF is a cash cow no longer. Actuarial valuation indicates a downward trend.

Barbara Curson 11 March 2019 Moneyweb

A concerted effort must be made to halt the erosion of GEPF funds and reverse the negative trend in its long-term funding level.

The statutory biannual actuarial valuation of the GEPF valuation 31 March 2018 was carried out by Alexander Forbes Financial Services for the first time. The actuarial valuations to date show declining short and long-term funding levels. Nevertheless, Alexander Forbes confirms that the fund was in a sound financial condition as at 31 March 2018.

Funding levels

The funding levels provide an indication of the health of the fund.

- The minimum funding level is calculated by dividing the fair value of assets by liabilities (excluding contingency reserves). The fair value of assets equates to the total funds and reserves in the GEPF annual financial statements.
- The long-term funding level is calculated by dividing the fair value of assets by the total liabilities, which include the contingency reserves.

	31 March 2018	31 March 2016	31 March 2014
	Rm	Rm	Rm
Fair value of assets (A)	1 800 068	1 629 923	1 425 719
Total accrued service liabilities (B)	1 662 640	1 407 177	1 173 516
Total value of	720 893	647 048	541 375

contingency reserves			
Total long-term liabilities (C)	2 383 533	2 054 225	1 714 891
Minimum funding level (A/Bx100)	108,3%	115,8%	121,5%
Long-term funding level (A/Cx100)	75,5%	79,3%	83,1%

The minimum funding level as at 31 March 2018 of 108,3% comes in at 18,3% above the minimum funding level target of 90%, but the long-term funding level of 75,5% falls far below the minimum funding level target level of 100%.

In other words, only 75,5% of the full solvency reserve and other contingency reserves amounting to R2,4 trillion could be covered as at 31 March 2018. However, only R137,4 billion is available to cover the contingency reserves of R720,9 billion as of 31 March 2018.

Recommendations made by Alexander Forbes

The recommendations include:

- That the employer contribution rate be increased as follows:

Employer contribution rates				
	31 March 2018		31 March 2016	
	Services	Other	Services	Other
Current rate	16%	13%	16%	13%
Recommended rate	18,9%	14,4%	19,6%	14,8%

- That the employer use a 3% equity risk premium over the long-term bond yield, instead of 5%, in testing the appropriateness of the current level of contributions.

Should GEPF members have any concerns?

1. Before government comes up with its plan to offer civil servants an additional early retirement option, it should request an actuarial assessment of the impact on the GEPF funds should all those retirees elect to move their funds out of the GEPF to another fund.
2. A 60-year-old pensioner who has to live off the GEPF pension would be more concerned with the long-term funding

levels than the short-term funding levels calculated as at 31 March 2018. It is most worrying that the downward trajectory of both the short-term and long-term funding levels is continuing. If this trend continues, when will the fund run out of money? This would be an interesting number to extrapolate from the downward trend. GEPF pensioners should be given assurance that positive steps will be taken to reverse this negative trend.

3. Alexander Forbes used a 5% equity risk premium over the long-term bond yield assumption, to the extent that "equities earn a risk premium of 5% over bonds". As the PIC invests according to a specific mandate which is not necessarily driven by high investment returns, a 5% equity premium may be somewhat optimistic.
4. The fair value of assets, which is the total funds and reserves of the GEPF, includes the net investment income. To the extent that the GEPF may not have properly accounted for impairments on loans and investments, there is the risk that the net investment income for 2018 has been overstated.

To negate such fears, the PIC should disclose a detailed schedule of all unlisted investments and all loans plus the interest rate payable on the loans, as well as details of all unpaid loan payments, unpaid interest, and unpaid dividends.

To add to any fears, the GEPF accounts receivable as at March 2018 includes investment debtors of R2,2 billion (2017: R2,7 billion). Presumably, this reflects unpaid interest and unpaid dividends on the unlisted investments? The GEPF should provide greater clarity in the financial statements.

The GEPF is no longer the cash cow it once was. A concerted effort must be made to halt the erosion of its funds and reverse the negative trend in its long-term funding level. A thorough investigation should be carried out by an independent party on all the investments and loans.

* Moneyweb approached the GEPF and Alexander Forbes for comment, but none has been forthcoming.

Comment

Confirming what AMAGP has been saying for years. The essence is the Fund is financially sound but the future pensions aren't.

Synopsis

PIC: We are not 'collaborating' with AYO against companies watchdog

11 Mar 2019 Carin Smith fin24

The PIC said in a statement on Monday it was not "collaborating" with AYO Technology Solutions in opposing a compliance notice issued by the CIPC against the PIC directors, directing them to recover funds invested in AYO. Rather, it said, it was in agreement with the CIPC that losses related to the AYO investment needed to be recovered – but it did not want to breach the deadline set out in the original compliance notice.

The state asset manager issued its statement in response to what it called "a misleading article" published by the Sunday Independent which, in its view, suggested it was "collaborating" with AYO in opposing the CIPC.

The PIC brought a notice of motion in the North Gauteng High Court in Pretoria on Thursday last week, with the CIPC as the respondent. AYO is neither an applicant nor a respondent, according to the court documents seen by Fin24.

In its Monday statement, the PIC said it agreed with the CIPC that any losses relating to its AYO investment should be recovered. The only reason for the notice of motion, set to be heard on Tuesday, is that it does not want to breach the deadline in the CIPC's compliance notice, the PIC said.

According to the state asset manager, the CIPC agreed that the deadline of 14 March would not leave sufficient time to undertake the necessary legal steps to recover losses relating to the AYO transaction.

According to the PIC, when the CIPC issued its Compliance notice in February this year, the PIC and its legal team were already working on the recovery process – and they are still engaged in it.

The compliance notice was issued "on the basis of inaccurate information at the disposal of the CIPC", especially about the role of the

PIC board in relation to the AYO transaction, the asset manager added.

Interdict bid

According to AYO, it applied to the court to have the notice issued by CIPC set aside. "AYO maintains that the uptake by the PIC of its listed shares through a private placement in December 2017 was fully transparent and complied with all the necessary legal requirements and will defend any action which seeks to undermine AYO's contractual rights," AYO said in its statement.

The PIC said it did not support the AYO application and was not collaborating with AYO "in any shape or form". "Any suggestion to the contrary is mischievous and uncalled for. The PIC reserves its rights in this regard," the PIC statement concluded.

Comment

If the PIC isn't with Ayo why is it opposing the CIPC's Notice? Note the new rhetoric "misleading article, inaccurate information, mischievous, uncalled, reserve rights [whatever that means]". The PIC should be overjoyed about any action to recover squandered billions.

Whose money is it using to fund the court application? And has it the PIC Board's approval; didn't the Board resign recently?

The GEPF AMAGP: Invitation

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

Soos meeste staatsdienspensioenarisse is u waarskynlik afhanklik van u maandelikse pensioen vir die gehalte van u lewe. Agv die swak toestand van regering in die RSA, die aanloklikheid en omvang van ons Fonds asook staatskaping [nog nie heeltemal weg nie], ontstaan die vraag hoe volhoubaar die pensioen is en gaan bly, dws hoe lank gaan ons nog die volle pensioen bly kry. Ons by die AMAGP se oorwoë mening is dat daar wel gevare is en dat ons, die aandeelhouers van die pensioenfonds, dringend hieraan aandag moet gee. Verontagsaming hiervan kan lei tot 'n soortgelyke situasie as dit waarin Spoorweg pensioenarisse hulle steeds bevind. Om die rede versoek ons dat u ons ondersteun. Sluit aan by die AMAGP, 'n vrywillige organisasie, bestaande uit staatsdienswerknemers

en -pensioenarisse, met die doel om ons Fonds te beskerm.

Contact any one of the following:

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

Semper Vigilans!

CONCLUSION

To reflect about...

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 provide the ‘voting power’ 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. This increasingly includes members of parliament on all sides of the political spectrum, as soon as they realise their voters’ pensions are endangered.

3. Although until recently [about 2013] the GEPF performed 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 pension. As SC recedes other dangers threaten our Fund, such as the non-performing SOE and bankrupt municipalities that the government wants to use our Fund to fund.

4. The financial woes of ESKOM, SAA and other SOE [PETROSA, PRASA, Transnet, etc] feature largely, making looting the GEPF very attractive.

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, although we haven’t gone that far yet.

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: editorgepfmtg@gmail.co.za

VRYWARING

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