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: A volunteer 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 Watchdog - Waghond

GEPF Forum

NEWSLETTER NO 5 of 2023

AMAGP – Association for Monitoring and Advocacy of Government Pensions
AR – annual report
BOT – Board of Trustees [of the GEPF]
FSCA – Financial Sector Conduct Authority [previously the FSB]
GEPF - Government Employees' Pension Fund
PIC – Public Investment Corporation
PSA – Public Servants' Association
ROI – return on investment
SCOF – Standing Committee on Finance
SCOPA - Standing Committee on Public Accounts
SLAPP - Strategic litigation against public participation
SOE – state owned entity

The Government Employees Pension Fund (GEPF) is Africa's largest pension fund. We have more than 1.2 million active members, in excess of 450 000 pensioners and beneficiaries, and assets worth more than R1.61 trillion. GEPF is a defined benefit pension fund that was established in May 1996 when various public sector funds were consolidated. Our core business, which is governed by the Government Employees Pension Law (or GEP Law), as amended, is to manage and administer pensions and other benefits for government employees in South Africa. https://www.GEPF.gov.za/ dd 27 April 2023.

***WE ARE THE OWNERS OF THE GEPF** and we have the right to expect the GEPF BOT and the PIC to manage and invest OUR money in a responsible and profitable way, to the advantages of members and pensioners. Note the misbalance: the single pensioner on the BOT representing all 450 000 pensioners and the 15 representatives from the multitude of trade unions and government departments representing the 1,2 million active members.*

The AMAGP does not want any GEPF member to leave the Fund, because it still is the best pension fund in the RSA. BUT, we as members and owners of the Fund have to protect it against abuse.

The Editor's Word

SLAPP (strategic litigation against public participation) is a well known tactic used by large business, where litigation is drawn out endlessly by said large business, up to the point where the smaller litigator can't fund the litigation anymore. Often such litigation is about ecological distress caused by big business operations, with the few against big business. The Constitutional Court has ruled on this recently to the advantage of the smaller litigator. For more information, Google is your friend.

AMAGP provides briefs and fact sheets to parliamentarians wrt GEPF matters since 2016. This allows parliamentarians to be informed when GEPF matters are discussed and debated and able to ask the right questions. Especially the meetings about the annual reports of the PIC and GEP, and in SCOPA and SCOF meetings.

The challenge in all of these is that the meetings often take place at very short or no notice, not allowing proper preparation. One is allowed to wonder why such short or no notice… Possibly it goes hand in hand with the GEPF and PIC seemingly obsession with secrecy and no transparency.

Please join and strengthen our hand. No membership fee is payable but donations are welcome because AMAGP needs funds to further protect your fund.
Bank : FNB Brooklyn, AMAGP Business Account, Account Number 62743347454 Branch Code 251345

Confirming: the figures used in the comments below are taken from the 2022 GEPF AR, which on its own reflects the GEPF financial status as at the beginning of 2022. Said figures currently about a year and a half old.

Now for news from the media

The PIC/AYO deal is still news, albeit low key There are six articles below giving you, dear reader, the opportunity to decide what to believe. You need to read all of them to have an inkling of the whole picture. I think Daily Maverick's is the most brutally honest one and the first article the one with the most detail.

The important part is that it seems as if there is a huge loss in the PIC investment in AYO with GEPF funding. It looks like 90% of the R4,3bn investment is gone. OF course, The PIC got some money back in the form of dividends, but it would take good detection to be able to determine how much the dividends were and add the amounts to the alleged R600mn.

It would be philosophical to say that you don't win all investments if it weren't for the reports of PIC processes disregarded, contractual mismanaged, etc. The Commission of Inquiry into the PIC was clear on this. Read the reports below for a clearer view of the 'settlement'.

Transnet's purchase of locomotives from China has been contentious for almost a decade. Take note of Minister Gordhan's visit to China to resolve this.

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Synopsis

Terms of the PIC/AYO deal revealed – it is a bloodbath for State Pensioners

By Tim Cohen and Neesa Moodley
Business Maverick
25 Mar 2023

Technology company AYO and the PIC have settled their legal dispute through mediation in a deal in which the PIC will get paid around R600mn of its original R4,3bn investment for 5% of the company's shares, thus formalising the massive loss suffered by SA's state pensioners during the five-year ordeal.

Since the PIC invested R4,3bn in 2017, AYO Technology, ultimately controlled by businessman Iqbal Survé, has been paying huge dividends, even though it's technically in a loss-making position, resulting in the gradual reduction of the PIC's original investment.

The mediation deal effectively leaves those payments in place, but it draws a line under the dispute, ending the litigation and allowing the

PIC to get back a small portion of what it originally invested – while not placing AYO in immediate jeopardy of bankruptcy but leaving the PIC with around R600mn of its original investment of R4,3bn.

The PIC bought 29% of AYO's shares in its initial public offering in December 2017 on behalf of the GEPF in a process it has now itself claimed in court was irregular. AYO's share price has since fallen by around 85% over the past five years from R43 to R4,70 a share. The settlement agreement sees AYO paying the PIC R20 a share.

Along with the immediate 5% share buyback by AYO, the GEPF will have the option of selling another 5% of the shares back to AYO in three years' time subject to the solvency of AYO, and at a pre-determined price of at least R20 a share. The settlement means that the PIC and the GEPF by extension, will have locked in losses of at least R2,5bn in this controversial investment. In the meantime, the GEPF will remain a 25,1% shareholder of AYO and have one board seat for every 10% of the company it owns. The GEPF representative will also chair the board.

This arrangement seems likely to bring a halt to the gradual bleeding of the company in favour of its holding companies. AYO is 49,4% owned by Africa Equity Empowerment Investments, which is majority-owned by Sekunjalo Investments. Sekunjalo Investments was founded and is chaired by Survé. Sekunjalo also owns a small direct stake in AYO, making it effectively the controlling shareholder of AYO.

Although the further bleeding of AYO's cash resources now seems likely, the deal will not reverse the approximately R3bn paid in dividends to the holding companies over the past five years. But it does give AYO the opportunity to trade its way out of its current crisis.

Justifying the PIC's agreement to the mediation, the corporation's lawyers noted that commercially, the PIC had to balance the probability of the success of the litigation, the quantum it was likely to recover and the potential growth of the business under different management and board.

They pointed out that the last reported numbers in AYO showed a net asset value of around R3bn and a cash balance of around R1,2bn. The PIC had, therefore, secured about half the cash available in the business for 4,99% of the shares and secured a put option on another 5% of the shares.

In a brief statement issued on Friday night, the PIC merely confirmed that a settlement had been reached: "The parties have sought to resolve the long-running litigation in a manner that best protects the interests of their stakeholders, in the circumstances, and with a view to giving the business of AYO a chance to create growth and value into the future," the statement reads.

Changes in the governance structure, including the protection of minority shareholder rights, would ensure that the PIC has significant influence over potential value creation for the business over the next three to five years. What the note does not explain is how AYO, which has recorded frequent losses over the past five years, intends to turn around its financial position. **BM/DM**

Comment

Well, at least the litigation with its costs is now, provisionally, at an end. I speculate millions in legal costs, it might be less, we'll probably only know when the PIC AR is published at the end of next year, as these expenses will only appear in the AR as at 28 February 2024. From the initial investment we have recouped about 10%, plus the dividends paid out annually and still to be paid out.
When the R600mn is paid over, we will own about 24% of AYO.
Read in conjunction with other reports, it seems that further legal action should be instituted.

Synopsis

PSA Media Statement | PIC confidential settlement agreement with AYO: PSA demands transparency

27 March 2023

The PSA has noted with concern recent media reports indicating that the PIC and the IT group AYO have clinched a confidential settlement deal regarding the case the PIC brought against AYO.

The PSA raised serious concerns with the investment as far back as 2020 during the Mompati Commission and its subsequent report. The question that still remains is whether AYO misrepresented itself when it secured R4,3bn in funding from the PIC. The current stock value of AYO has fallen from R43 to R4,70 per share, which has major financial implications for the GEPF and its members. The PSA, however, noted that the Mompati Commission indicated that there are internal governance issues at the PIC that should be strengthened. This is another indication that the PIC's investment strategy is not in line with its own investment mandate.

On this basis, the PSA calls for transparency and rejects this secretive deal between the PIC and AYO. The current state of affairs and the manner in which the PIC, as a plaintiff, settled this matter in secrecy leaves much to be desired. The PSA will leave no stone unturned to obtain the facts relevant to this matter. The PSA calls on the PIC to provide the details of this settlement with AYO, failing which, the PSA will have no other option than to consider litigation.

Comment

A quite valid view from the PSA, however, lacking action about turning stones. We'll have to see if expensive litigation ensues.

Synopsis

AMAGP Media Statement 2/2023: Re the Settlement Agreement between the Public Investment Corporation (PIC) and AYO Technologies.

27 March 2023

The litigation between the PIC and AYO Technologies received high media exposure in March 2023. This litigation ended via a settlement agreement between the parties – an agreement that was described in the media as a bloodbath for state pensioners. To retrieve R600million from a claim of R4,3billion is indeed a bloodbath.

On 24 March 2023 the PIC motivated their decision to enter into this settlement agreement as follows: '*The parties have sought to resolve the long-running litigation in a manner that best protects the interests of their stakeholders.* The PIC can only act in the interest of its client i.e., the GEPF. It does not owe any loyalty to stakeholders. The PIC's settlement agreement betrayed the GEPF and state pensioners.

The Judicial Commission of Inquiry into allegations of Impropriety at the PIC [Mpati] made more than 20 recommendations about the PIC's AYO/Sekunjalo Group investment decision. There is a deafening silence from the GEPF, the PIC and government about the implementation of these recommendations. Critical is the silence about consequence management for PIC managers involved in this decision. Mpati (pages 714-716) inter alia recommended that

- *the GEPF, The PIC and government should institute an appropriate investigation as to whether Dr Matjila violated the FIAS Act requirements of honesty and integrity as well as 'fit and proper'*

and that

- *the PIC should consider whether any personal liability is attached to the conduct of Dr Matjila .... if found to be the case, would make Dr Matjila liable to make the loss to the PIC whole.*

We thus pose the following questions:

- GEPF/PIC: Did you institute the '*appropriate investigations'* as recommended by Mpati, and if so, what was the outcome of said?

And

-PIC: Did you '*give consideration to whether any personal liability is attached'* as recommended? If so, what was the outcome of this consideration? Also: Did you initiate processes to '*make Dr Matjila liable to make the loss to the PIC whole'* as recommended?

Zirk Gous
Spokesperson for AMAGP

Comment

I believe very valid questions. I have doubts about answers forthcoming from the GEPF and PIC.

Synopsis

After the Bell: Going through the AYO of a needle

Sekunjalo Investments chair Iqbal Survé. Sekunjalo owns a small direct stake in AYO, making it effectively its controlling shareholder.(Photo: Gallo Images/Phill Magakoe)

Daily Maverick
By Tim Cohen
27 March 2023

Why does the PIC think that the very people who screwed them are now suddenly going to become great IT innovators, something they didn't manage when they had billions in the bank?

The PIC and technology company AYO announced an out-of-court settlement of their public dispute on Friday, which has been made an order of court. The details of the arrangement have yet to be announced, but *Business Maverick* has seen some documents which explain the essence of the agreement. For public servants, the news is bad; for AYO, the agreement is a triumph.

The dispute arose after the PIC made an absolutely extraordinary investment in 2017 in AYO, so extraordinary that it was obvious from the start something was fundamentally flawed.

The PIC bought 29% of AYO's shares during its initial public offering in December 2017 on behalf of the GEPF for R4,3bn. The company at the time, it emerged later, had a turnover of R478,7mn, and its after-tax profit was R27mn. The company's listing documents, however, suggested that in the year after the listing, the company would be making around R760mn. I mean, you have to laugh.

The PIC's mandate essentially is to invest the pensions of government employees sensibly. But the PIC also has the mandate to develop the country, so investing in building and growing young companies is really where it can and should make a difference. If it can't do that, then it has no intrinsic function. So, although the investment in AYO was trivial in monetary terms, by its standards, it's an important indication of its utility. Fail here, and the entire *raison d'être* of the PIC falls away.

And wow, did they fail. Almost immediately after the company was listed, the share price started to implode. Coming to the market at R43, the share price is now around R4,50, valuing the company at no more than what remains of its cash.

The reason its cash is so diminished is that the company, despite being loss-making almost every year since listing, has been dishing out huge dividends and has been loaning money to companies in the group hand over fist. So, the R4,3bn is now almost gone.

This of course places the PIC in a difficult position. As a minority shareholder, it can object but not prevent the company from paying dividends. But the act is so cynical, so inherently corrupt, you are just left speechless.

Bulldozer Matjila

The PIC launched a legal action to get its money back, claiming that AYO had misled it into making the investment. Finally, five years later, the court action began a week or so ago, and the first witness, PIC assistant portfolio manager Victor Seanie, testified essentially in favour of the PIC's claim. But he also asserted that the PIC's procedures had been violated, generally making the organisation look like a bunch of Keystone Cops. Everything was rushed through at the last minute, aided by the organisation's then CEO Dan Matjila, who aggressively headed the bulldozing.

In an explanation of the settlement to the PIC's board, the PIC's lawyers revealed that the chance of victory in the case was around 50%. My own impression is that they were well on the way to demonstrating fraud.

Presumably, the PIC felt their chances were so slight because AYO could and probably would have made the point that it wasn't their fault that the PIC had not followed its own procedures. And neither was it their fault that the PIC pumped vast amounts of money into a medium-sized company with modest prospects. The PIC would obviously challenge these claims, but you can see how this could easily end up being a close-run thing.

Dished-out dividends

It appears that mediation negotiations with the PIC and AYO have been on the go behind the scenes for years. The PIC initially demanded all its money back, and presumably, this encouraged AYO to accelerate dishing out the cash in dividends to its shareholders.

Ultimately, what the parties agreed is that AYO will, loosely speaking, give the PIC back around R600mn through a share sale which will reduce the GEPF's holding by just under 5%, and the company will keep the rest of the cash. The PIC may divest more in a few years' time and will get a few seats on the board, including chairmanship, in the meantime.

Is this a fair mediation? That depends on how you look at it. If you say, well, the money paid out in dividends is gone, so the maximum the PIC could get is what the company has left, which is about double that. So at least it's getting something back. It also leaves the company standing, which makes it possible that it could get more in the future, and AYO's employees will still have their jobs.

And, importantly, it means the PIC can sweep its own governance problems, of which there are obviously many, under the carpet. The witnesses who were about to testify would presumably have contradicted Seanie, making the PIC look even more like rank amateurs.

That's the plus side.

Broken trust

But on the negative side, the deal allows AYO to get away with all the absurd dividend payments it's been making over the years, which in total amount to more than R2bn.

The other problem is that the PIC is left in partnership with precisely the organisation it claims defrauded it. And not only in partnership but in the position of junior partner. And not only a junior partner but an even more junior partner than it was before. Why does the PIC think that the very people who screwed them are now suddenly going to become great IT innovators, something they didn't manage when they had billions in the bank?

Obviously, there is a temptation to believe that companies can be turned around, and the PIC can still save face in the long run if ever the company becomes a grand money-spinner. But AYO is an IT solutions business, and this is a competitive field in which delivery is absolutely key. It depends on clients trusting you will get the job done around about the time you say you will get it done.

Can you trust an organisation that, without batting an eyelid, screws government pensioners out of billions? I might be wrong, but I don't think so. **DM/BM**

Comment

En excellent article, giving the reader both possible sides of an extremely involved and murky transaction.
It doesn't seem as if AYO is going to stay a going concern for much longer, extending Daily Mavericks views.

Synopsis

Behind the PIC's secret settlement with Ayo Technology

BL Premium
29 March 2023
By Kabelo Khumalo

Legal opinion provided to the PIC advised it to settle its long-standing dispute with AYO, saying the prospects of recouping its R4,3bn investment in the company in 2017 were grim.

Attorneys told the PIC there were several obstacles that hampered the chances of success in a lawsuit it brought against Ayo.

The PIC alleged that the funds in Ayo were used, at least in material part, to settle the outstanding liabilities of certain of Ayo's related companies.

The legal opinion lists six key considerations that the top management ought to consider before agreeing to a settlement while the civil lawsuit was already under way in the Western Cape High Court.

They include:

- The prospects of success in the litigation, including the complexity and novel nature of the claims of the PIC;
- The financial position of Ayo, including cash on hand as reflected in the latest management accounts in possession of the PIC, to satisfy the payment amounts proposed in the settlement agreement;
- The evidence that has been led to date and witnesses still to be led, including those who had been "reputationally impugned in other proceedings, and those witnesses who were reluctant or refused to give evidence";
- Threats levelled against witnesses;
- The potential growth of Ayo under different management and board, and the prospects of greater financial returns for the clients; and
- The costs of the litigation and uncertainty of recovery or enforcement of a judgment, if eventually obtained.

The PIC and Ayo surprised many observers on Friday when announcing they had abandoned litigation and reached an out-of-court settlement, the details of which they said would not be made public.

Valuation

Business Day understands that the secrecy surrounding the terms and conditions of the settlement will come under the spotlight when the board of the PIC, which manages about R2,3trn worth of assets on behalf of government employees, meets on April 17.

Business Day understands that the veil over the deal struck between the PIC and Ayo will soon be lifted if the board has its way. While the board was kept abreast of the mediation efforts that were taking place between the parties, Business Day understands that the finer details caught the board off guard, particularly the confidentiality clause.

Third party

PIC spokesperson Adrian Lackay said: "The confidentiality clauses in the settlement agreement bind the contracting parties. An interested third party can approach the court to uplift the order and get access to it."

"The question that still remains is whether Ayo misrepresented itself when it secured R4,3bn in funding from the PIC," the union said in a statement. "The value of Ayo has fallen from R43 to R4,70 a share, which has major financial implications for the GEPF and its members," it added.

Survé, who also chairs the Sekunjalo Group, told one of the newspapers controlled by the group that justice had prevailed. "We were always confident of our case and their own witnesses verified our version," said Survé. "It's very good that the other shareholder, the PIC, and ourselves can now turn our attention to growing the business. The settlement is a very good outcome for everybody."

Comment

If justice had prevailed is, surely, a matter of opinion, especially if the newspaper you own heralds it.

Synopsis

Why Gordhan's diplomatic visit to China is a make-or-break moment for Transnet

The locomotive of a Transnet freight train transports wagons of coal on 29 September 2022. (Photo: Waldo Swiegers / Bloomberg via Getty Images)

Business Maverick
By Ray Mahlaka
29 Mar 2023

In April, Gordhan is set to meet his diplomatic counterparts in China to resolve a dispute between Transnet and China Railway Rolling Stock Corporation (CRRC), a state-owned company in China that manufactures locomotives. CRRC is a global rail giant; it is the world's largest manufacturer of rolling stock (locomotives/vehicles) and rail equipment.

The dispute is significant as it risks further dragging down South Africa's economy because Transnet has locomotives from CRRC that are idle and should be servicing major domestic industries, prompting Gordhan to intervene to find a political solution with Chinese leaders.

It is an extraordinary move by Gordhan because, up until this point, it was left to Transnet's executive management team to find a solution. And now, the dispute has escalated and will reach diplomatic circles next month.

When the dispute started

The genesis of the dispute between Transnet and CRRC dates back to 2014. At the time, Transnet bought 1 064 new heavy haul locomotives that are supposed to pull the coal and iron ore wagons, for R54,4bn. The purchase by Transnet was laudable as it was projected to increase South Africa's rail capacity, helping the country operate the fifth-largest rail system in the world by 2019.

It's arguably easy to forget that Transnet's operations are a crucial cog in South Africa's economy. Transnet is responsible for ferrying most of the iron ore and coal that South Africa produces and exports to countries around the world. It also carries freight and fuel around the country.

But the R54,4bn deal became mired in State Capture corruption. The price tag of purchasing 1 064 new locomotives from CRRC escalated by almost R16bn from the "all-inclusive" R38,6bn originally agreed upon. The R16bn escalation was created to facilitate kickbacks to Gupta-linked firms, Zondo Commission reports dealing with State Capture at Transnet have found. The commission's evidence shows CRRC planned to funnel 21% of the contract value (R9bn) to Gupta-linked shell companies. But the companies ended up receiving at least R3,6bn in late 2016.

Former Transnet bosses including Brian Molefe and Siyabonga Gama (ex-CEO), and Anoj Singh (ex-CFO) have been charged with corruption and money laundering relating to the locomotives deal with CRRC. No one from the local arm of CRRC has been charged.

But SARS has attempted to hold the CRRC accountable for its role in State Capture. SARS found that CRRC E-Loco, the local arm of CRRC, overstated the price of its locomotives sold to Transnet and that the company has a tax debt of more than R3,6bn. CRRC challenged the tax debt at the high court in Pretoria but lost the case.

In its case, SARS argued that it was entitled to instruct CRRC to pay over the money because it was dealing with a "dishonest taxpayer", given the evidence of "large-scale corruption" committed by the Chinese company in its dealings with Transnet. And because of this, the relationship between Transnet and CRRC has broken down.

CRRC retaliates

Transnet has taken delivery of the 1 064 new locomotives from CRRC. But 300 or so stand idle because CRRC has refused to provide spare parts and components to run the locomotives. In January 2023, CRRC withdrew from an in-principle agreement to provide the spare parts to Transnet, which said the Chinese firm refused to cooperate with authorities in South Africa, including SARS.

Without CRRC's assistance, the locomotives cannot run, and Transnet cannot increase its rail volumes or generate money. The economy is also held for ransom.

Transnet's solution to the problem was to buy more locomotives from another company. It planned to procure more locomotives, which would be costly. It is understood by *Business Maverick* that Gordhan wants Transnet to resolve its dispute with CRRC and use the locomotives it already has rather than purchase new ones. One of Gordhan's priorities is to get CRRC to assist Transnet and service the locomotives. But a big hurdle before CRRC does so would be for Gordhan to convince the firm to engage and cooperate with authorities in South Africa, including SARS. **DM/BM**

Comment

Could be the basis for another movie. I'm surprised there isn't one about state capture yet. Interesting that 21% of the R54,4bn deal was intended for corruption. Makes you think what percentage of contract funding is primarily intended for bribes, corruption, etc.
We have about R17,25bn in Transnet SOC.

THE GEPF WATCHDOG / WAGHOND FACEBOOK PAGE

Welcome to our page!!

The GEPF Watchdog/Waghond Facebook page is the social media platform of the non-profit organisation "The Association for the Monitoring and Advocacy of Government Pensions" (AMAGP). The AMAGP has only one agenda point – safeguarding the GEPF against looting and mismanagement.

We are the owners of the GEPF, and we have the right to expect the GEPF Board of Trustees, and the PIC, to manage and invest OUR money in a responsible and profitable way. To the advantages of members and pensioners!

Most of our GEPF members are content with the fact that pensioners still get their monthly pension and perhaps a non-inflation related increase sometimes. They are convinced by GEPF newsletters and ambitious GEPF Annual Reports that our Pension Fund is in a superb condition. The AMAGP newsletters, annua reports and press releases tell a different story.

Our Facebook and AMAGP are together more than 59 000 members and continually growing, but this isn't enough. The continued growth confirms the ever increasing concern pension fund members and pensioners have about the future of their pensions.

As a member of the GEPF (working or retired), this Facebook page will keep you updated about any developments affecting the health of YOUR Pension Fund. It also provides you with the opportunity to participate in the debate and raise issues of concern.

Please read the articles that are posted on the wall, BUT also "re" and "Files". You can get further information on our website – there is no reason to be in the dark regarding our/your Pension Fund, and what you must do as a member.

This page will only have any value for you if you join the AMAGP. Note there are no membership fees. You don't have to do any work for the AMAGP if you do not wish to do so – BUT your membership will add one more voice to AMAGP convince the government our pensions remain ours, not theirs to misuse.

content of information contained in these resources or websites.