Honourable Yunus Carrim
Chairperson, Standing Committee on Finance
National Assembly
By email ycarrim@parliament.gov.za
cc awicomb@parliament.gov.za

Dear Sir,

SUBMISSION ON PIC AMENDMENT BILL

We appreciate the extended opportunity to comment on the Public Investment Corporation Amendment Bill.

We limit our comments to sections of the Bill that impact on the free flow of information and freedom of the media, since these fall within our advocacy mandate – to help secure the information rights that are the lifeblood of our field, investigative journalism. We note, however, that information rights are indivisible and that whatever benefit there may be for investigative journalists also apply to the rest of the media and the public in general.

ABOUT AMABHUNGANE

The amaBhungane for Investigative Journalism NPC (amaBhungane) is a non-profit company founded in 2009 to develop investigative journalism so as to promote a free, capable media and open, accountable, just democracy.

We pursue our objective through:

• Our investigations programme: developing best practice in our field by producing major investigative stories that are accurate and fair, advance methods and standards, set an example to the wider media, expose wrongdoing and enable people to hold power to account;
• Investigations support programme: to help others develop and practice investigative journalism.
• Advocacy programme: to help secure the information rights investigative journalists need to do their work.

As we practise investigative journalism, we are ideally placed to identify legal, policy and practical threats to the information flows that are the lifeblood of our field.

Our submission follows. We are available to elaborate in an oral presentation to the committee.

Yours faithfully,

Karabo Rajuli
Advocacy coordinator
karabor@amabhungane.org
021 813 6836/082 3656553

amaBhungane Centre for Investigative Journalism NPC 2009/024323/08 | Public Benefit Organisation 930049364
Directors: T Kupe (chair), N A M Dawes, S C Brümmer, S P Sole, A M Quintal, V T Timse, S N Mbete, S Msimang
PREAMBLE

The Public Investment Corporation (PIC) is the biggest single investor in the economy. It is a market mover and can make winners and losers via its investments.

The very extensive influence this creates in the economy gives it a power that can be used for the benefit of its clients and the broader public, or abused for individual benefit, market manipulation and political or factional patronage.

Up to now the PIC has operated under very limited oversight and disclosure provisions considering the enormous financial power that it exercises.

Recent media articles, based in part on leaks and in part on the examination of the limited public information that there is about the PIC’s investments, suggest the fears of abuse are well founded.

For example, the PIC invested billions in Ayo Technologies and Sekunjalo Independent Media, and it nearly invested billions more in Sagarmatha Technologies. All three companies appeared to be seriously overvalued and all three are controlled by the same man.

Meanwhile, the PIC’s CEO Dan Matjila has been publicly accused of channelling funds to a “girlfriend”. The police are investigating.

Questionable and politically-motivated PIC investments are not a new phenomenon. For example, read amaBhungane’s reporting on Erin Energy (previously named Camac Energy) and the PIC’s 2012 deal with Capitec’s BEE consortium. Please refer to the articles in Annexure 1.

We are busy trying to scrutinise a number of other potentially problematic deals. But without transparency, holding the PIC to account is slow and difficult work, with only a limited chance of success.

Clause 2 of the Bill creates a substitute for Section 5 which would significantly broaden the mandate of the PIC to intervene in the economy for various public policy purposes.

Worthy as these purposes may be, they would also introduce greater subjectivity in decision-making. This in turn would reinforce the need for transparency of the PIC’s investments and of its decision-making processes.

The Bill attempts to deal with disclosure, but in our view the proposed provisions are insufficient given the very real temptation to abuse the PIC’s enormous financial muscle.

RATIONALE FOR GREATER TRANSPARENCY

It is trite that transparency disincentivises the abuse of power and incentivises good decision-making.

But on what grounds could one dictate openness to an institution that in many ways is the equivalent of a private fund manager, which would be subject to very little transparency?

The answer is simple: GEPF, the PIC’s main client, is a defined benefit fund, guaranteed by the state.1 If PIC fails to satisfy GEPF’s obligations to civil servant pensioners, the state has to make good.

This is a matter of great public interest as tax money will be used and as there may be potentially catastrophic knock-on risks to the entire economy.

1 Section 31 of the Government Employees Pension Law, 1996, provides: “This Law shall bind the State and the Government shall be responsible for meeting the obligations of the Fund, whether properly funded or not, in favour of its members, pensioners and beneficiaries...”
TRANSPARENT SELECTION OF THE BOARD

Clause 3 of the Bill provides for the minister to appoint board members in consultation with Cabinet.

In keeping with other institutions that exercise significant public power and oversight, our view is that appointments to the PIC board should follow a public interview process conducted by the National Assembly.

Not only stakeholders, but also members of the public should be able to make nominations.

DISCLOSURE PROVISIONS

The Bill makes three attempts to improve disclosure.

1. **The addition of subclause (5) after section 6(4) of the current Act, to provide for the publication of ministerial directives.**

The current Act provides:

(4) The Minister may issue directives to the board regarding the management of the corporation if—
(a) it is in the public interest; or
(b) it is reasonably necessary to do so.

The addition would provide:

(5) A directive contemplated in subsection (4) must be—
(a) based on the investment criteria set out in section 5 of this Act;
(b) tabled in the National Assembly;
(c) tabled before the depositors; and
(d) published on the website of the corporation, within 30 days from the date on which it was issued.

We **support** the proposal that any directive of the minister is tabled and published on the PIC's website within 30 days.

2. **The amendment by Clause 4 of Section 10 of the current Act to provide for the annual tabling and publishing of a report reflecting all investments of deposits, whether listed or unlisted.**

The amendment would add:

(3) The corporation must, when investing a deposit on behalf of the depositor, invest in projects that will benefit the members of the respective depositor.
(4) A report reflecting all investments of deposits, whether listed or unlisted, must annually be—
(a) submitted to the Minister for tabling with the annual report of the department; and
(b) published on the website of the corporation.

We **support** this disclosure. It is central to the transparency required.

We fail to understand Treasury/the PIC/the GEPF’s objection to this proposal. It merely codifies the practice of the past two years, motivated by Treasury.

The above parties argued in their April 19 submission to the Committee:

*The PIC as asset manager should not be compelled to disclose information about another entity, i.e. its clients and that are also the assets owners (e.g. the GEPF) without consent.*
This argument appears to assume privileges for the GEPF which it as a public entity simply does not have. The GEPF is a creature of law – the Government Employees Pension Law, 1996, and related instruments (“GEP Laws”).

The GEP Laws already impose significant transparency provisions on the GEPF.

### EXISTING TRANSPARENCY PROVISIONS IMPOSED ON GEPF

In terms of section 9(6) and 10 of the GEP Laws, the Minister of Finance shall submit to Parliament the GEPF’s annual financial statements, report of the auditors and a report by the board regarding the state of affairs, business and financial position of the of the GEPF, and the degree in which the objects of the GEPF have been furthered. Significant detail is required in the board report.

In terms of items 4.10.1 and 4.10.2 of Schedule 1 to the GEP Laws ("Schedule 1"), the board of the GEPF must cause to be published in the Government Gazette a report on the activities of the GEPF, including the financial statements of the GEPF; and remuneration paid to trustees.

In terms of item 4.10.3 of Schedule 1, a copy of the report must be made available to any member of or person who has an interest in the GEPF upon the payment of a fee.

The GEPF annual reports submitted by the Minister to Parliament can be readily accessed online at [http://www.gepf.gov.za/index.php/annual_reports](http://www.gepf.gov.za/index.php/annual_reports).

The annual financial statements ("AFS") of the GEPF are also published online as part of the annual reports. The AFS provide information in relation to the investment of the GEPF's assets.

The GEPF's AFS include detailed accounts relating to the GEPF's investments. The details of the top 10 investments per investment category are included in the schedules to the AFS.

As already noted, the state guarantees the GEPF’s obligation to beneficiaries, which is a matter of great public interest and of necessity imposes a transparency obligation on the GEPF and by extension the PIC.

As also noted, if the PIC’s investment mandate is broadened as proposed in Clause 2 of the Bill, then the PIC’s investment choices and their consequences are in any case a matter of direct public interest.

There is no indication that the PIC or the companies it invests in have suffered as a result of the last two rounds of disclosure.

We note that the amendment proposed by Clause 4 of the Bill does not specify which classes of information regarding the PIC’s investments should be disclosed. We assume this is a matter for regulation as provided for in Clause 7 of the Bill.

We welcome the proposal that the Minister must table draft regulations in the National Assembly for comment. We believe, however, that Clause 7 could be strengthened as follows:

a) It should require public participation.
b) It should require National Assembly approval.
c) It should require that the minister must prescribe the classes of information to be disclosed in terms of Section 10(4).

In our view, classes of information to be disclosed should include:

- significant equity acquisitions and disposals;
- the price paid (received for disposals);
- the extent of any discount;
- the external fees associated with the transaction and to whom they were paid;
✓ the value of the investment as of a designated cut-off date and the associated current profit/loss;
✓ any debt financing and their terms;
✓ the risk profile of the investment;
✓ the level/percentage of control exercised by the PIC;
✓ the identity of any board representatives appointed by the PIC;
✓ the identity and nature of any conflict disclosures relating to the investment;
✓ the identity of the promoters of any investment opportunity.

3. The insertion by Clause 4 of a Section 11A, requiring the publication of any significant transactions requiring approval in terms of the PFMA and other legislation.

The insertion would add:

11A. (1) The corporation must annually report on the total number and details of requests made to the Minister for approval of any significant transactions requiring such approval in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), or in terms of any other legislation, together with an indication of which of those requests were granted.
(2) The corporation must submit the report contemplated in subsection (1) to the Minister for tabling together with the annual report of the department.”.

As we understand it, this provision seeks to promote transparency with regard to the extent of the PIC investment in other public entities or their debt, including government and parastatal bonds. If our understanding is correct, we support this initiative.

This is particularly relevant given the extent of the PIC/GEPF’s exposure to SOCs like Eskom, whose potential default may cause systemic economic risk.

EXTENDING DISCLOSURE

In leaked information that has come to light, we have seen that internal concerns, such as those raised by the Risk Committee, have been ignored.

To that end we propose a provision enabling public access to records of the PIC’s investment decisions. This would include board, portfolio and investment committee minutes in so far as they deal with investment decisions.

We note that PAIA may not be the appropriate mechanism for such access, given that Section 44, Operation of Public Bodies, allows a public body to refuse access to records containing inter alia:

(ii) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law.

We recommend a dedicated provision with the following features:

Any member of the public may request, and the PIC must provide within seven days, any minute of a decision regarding a PIC investment, provided that:

a) A prescribed period must have passed after the investment was made;
b) Disclosure may be refused for reasons of commercial confidentiality, subject to all reasonable efforts to redact the relevant records on the same grounds;
c) Any records that are already publicly available in some form may not be refused;
d) Where there is an overriding public interest, records may not be refused.
The South African Constitution makes provision for public involvement in lawmaking, oversight and other processes of Parliament. South Africa's democratic system not only provides for citizens to elect their representatives, but also allows citizens to have a say in matters that affect them.

One of the ways that the public can make their voices heard is by making submissions to the National Assembly Committees, the National Council of Provinces Committees or Joint Committees.

For submissions from the public to be effective, content and format need to be considered carefully.

It is important that a submission is easily read and understood by the Members of committees.

WHAT IS A SUBMISSION?

A submission is the presentation of views or opinions on a matter or piece of legislation under consideration by a committee of Parliament.

Submissions may be presented in your language of choice.

Submissions are usually in written form. They can be reinforced through oral representation to the committee, if the person or group who has made the submission is invited to make an oral presentation.

Making submissions creates an opportunity for any member of the public to propose changes or suggest possible actions to ensure that the laws passed by Parliament or any other matter being considered by Parliament, serve their purpose.

HOW TO WRITE A SUBMISSION?

While there is no set format for a submission to a committee, it should be well thought out and easy to read.

The following suggestions may help to achieve this:

**Heading** – Head your submission with the name of the committee to which it is addressed and the full title of the Bill or topic.

**Who is it from?** – Clearly state whom the submission is from. State your name or give the name of the organisation you represent.

**Contact Details** – Include a contact address and daytime telephone number. If for private reasons you do not wish those details to be publicly released with your submission, state this in a covering letter and leave it off the submission itself.

**Do you wish to appear before the Committee?** – Clearly indicate whether you would like the opportunity to address the committee in person. If you represent an organisation and you wish others to appear with you before the committee, either for support or to speak, include their names and roles.

**Your organisation** – If you are writing on behalf of an organisation, give brief details of the organisation's aims, membership and structure. Make sure that you have the authority to do so and note your position within the organisation.

**Who else supports you?** – You may note how widely you have consulted during the writing of the submission. Your submission may have more standing if it has a wide support base.
COMMISSION OF INQUIRY INTO ALLEGATIONS OF IMPROPRIETY REGARDING THE PUBLIC INVESTMENT CORPORATION APPOINTED IN TERMS OF PROCLAMATION NO. 30 OF 2018 PUBLISHED IN THE GOVERNMENT GAZETTE NO. 41979 OF 17 OCTOBER 2018 (the "Commission")
(HELD AT PRETORIA)

STATEMENT

I, the undersigned

VICTOR TIMOTHY SEANIE

do hereby state as follows:

1. I am an adult male currently employed by the Public Investment Corporation (PIC) as Assistant Portfolio Manager: Non-Consumer Industrials.

2. Save where the context indicates to the contrary, or where it is otherwise stated, the facts contained in this statement are within my personal knowledge and are, to the best of my belief, both true and correct.

3. I have, to an extent, been following the statements made by the witnesses who have given evidence in this Commission, as well as following some of the media coverage from various media outlets. I do not intend to address any of the above directly but to the extent that I may omit to deal with any particular allegation referring to or affecting me directly and to the extent that such allegations are inconsistent with what is set out in this statement, same is denied as if specifically traversed.

4. Before I set out my version and understanding of the matters that relate to the terms of reference of this Commission, I would like to, by way of introduction,
set out my educational background and experience in investment management. Furthermore, I am going to set out the events that led me to approach this Commission and give my side of the story.

My education and work experience

5. I completed matric in 1999 and passed it with 6 distinctions. I obtained a Bachelor of Business Science (Finance) Honours degree from the University of Cape Town in 2004. In 2005 I obtained a Bachelor of Commerce Honours (Accounting) degree from the University of Johannesburg. I served articles at PwC as a trainee accountant from 2006 to 2008. I then qualified as a Chartered Accountant (CA(SA)) at the end of 2008. In 2013 I became a Chartered Financial Analyst (CFA) charterholder.

6. I joined Allan Gray as an equity analyst in 2009. I then joined Kagiso Asset Management as a senior equity analyst from 2014. In October 2016 I began working as an assistant portfolio manager at PIC.

My investment management experience

7. I have researched, financially modelled and made investment decisions on more than 1,000 publicly traded companies during my 10-year investment career.

8. My job title at PIC is “assistant portfolio manager”. Based on my previous experience my role is essentially that of an equity analyst without the authority to directly manage company share portfolios with full discretion. My role at PIC entails making investment recommendations on publicly listed companies to portfolio managers verbally and in writing. The portfolio managers have the discretion to decide whether or not to implement my recommendations. It is therefore important to note that listed equity investments made at PIC ultimately generally reflect the investment views and decisions of the portfolio managers, general managers and the senior executives.
9. I believe I was the closest individual to the AYO Technology Solutions (AYO) and Sagarmatha Technologies (Sagarmatha) transactions at the PIC in terms of familiarity with AYO and Sagarmatha's pre-listing statements, questioning AYO and Sagarmatha and their representatives, etc.

Key individuals involved in the AYO transaction

10. The main people who were involved in the AYO transaction from the PIC include, but are not limited to, the following:
   10.1. CEO: Dr Daniel Matjila ("Dr Dan");
   10.2. CFO: Matshepo More;
   10.3. Executive Head of Listed Investments: Fidelis Madavo;
   10.4. General Manager: Listed Equities: Lebogang Molebatsi;
   10.5. Portfolio Manager: Non-Consumer Industrials: Sunil Varghese (my line manager);
   10.6. Assistant Portfolio Manager: Non-Consumer Industrials: Victor Seanie; and
   10.7. PIC's Risk, Legal and Environmental Social and Governance (ESG) teams, represented by Tshifango Ndadza, Sasa Fako and Sylvester Sebico, respectively

11. The main representative from AYO whom I dealt with was Malick Salie (AEEI Head of Corporate Finance & Business Development).

How equity research reports for final PMC approval are reviewed

12. Certain large listed investments such as AYO require prior approval by the PIC's Portfolio Management Committee-Listed Investments (PMC-LI or PMC). Four types of reports are submitted to PMC in order for the committee to make its decision: Appraisal ("equity"), ESG, Risk and Legal.

13. After carrying out my research and due diligence on a prospective investment, I compile the equity research report containing background information, analysis, a conclusion and recommendation on the investment.
14. This equity research report is then reviewed by my portfolio manager, Sunil Varghese; then it is reviewed and recommended for submission to PMC by the General Manager: Listed Equities, Lebogang Molebatsi; and finally reviewed and approved for submission to PMC by the Executive Head of Listed Investments, Fidelis Madavo. The reviewers read these reports in detail and instruct me to edit the report as they see fit.

15. In my experience at PIC I have had no control over the conclusion and recommendation sections of the equity reports that I compile. The essential content of the conclusion and investment recommendation sections are dictated by Sunil Varghese, Lebogang Molebatsi and Fidelis Madavo who review the reports. In many instances this lack of control extends to other sections of these reports, such as valuation. Therefore, the most important aspects of the report (valuation, conclusion and recommendation) are dictated by my reviewers.

16. My lack of control over and final say on the content of the conclusion sections of PMC equity reports that I compile particularly concerned me in the cases of AYO, Vodacom Tanzania, and Distell.

My general experience of how the PIC operates when making investment decisions

17. First, I must state that I was very shocked to have been handed a suspension notice on 22 January 2019. This was very unexpected as I am a very small player in the bigger scheme of things at the PIC and in respect of the AYO transaction. Following this, it became very important that I speak out as I realised that there were forces that were working against me and this Commission could be my only salvation to my good name and my professional integrity. Both of which I have worked hard for.

18. Accordingly, I would like to give a bit of background about my experience at the PIC in relation to how investment decisions are often made. I would also like to take this opportunity to speak on behalf of many of my colleagues who fear to
come forward and speak at this Commission because the general culture at the PIC is one of victimisation and suppression of voices of reason. I hope many of them will be encouraged to come forward and have their say for the betterment of the organisation.

19. In my experience, sound investment recommendations by investment professionals are often ignored at PIC. However, I must hasten to add that there is a lot of good at the PIC. Having said that, I learnt that the PIC’s work culture is also one of intimidation (“you don’t question, you comply”), ostracism, fear, coercion and undermining the independent, researched views of investment professionals. Furthermore, PIC has no trusted independent whistle-blower hotline that I am aware of. This adds to the anxiety that many of us have to speak out.

20. I joined PIC with the understanding that it has a dual mandate: to generate returns on behalf of clients and to contribute to the developmental goals of South Africa. I believe in these principles. However, I observed at least one instance of a culture of pushing through deals that fulfil neither objective.

21. For example, Sagarmatha and Vodacom Tanzania illustrate this phenomenon.

22. I expressed my very negative view of Sagarmatha and stated that its forecasts were extremely bullish. Despite a recommendation I made in April 2018 to invest in Sagarmatha at a price of R7.06 or less per share (compared to a listing price of R39.62 per share set by Sagarmatha), the PMC recommended the transaction for approval to the Investment Committee (IC), a PIC board subcommittee. I discuss more of this investment later.

23. In June 2017 I recommended that the PIC not invest up to R1.15bn in Vodacom Tanzania (VTZ) at TZS850 per share because I valued the company at TZS683 per share. This was agreed to by all my seniors and we signed a notification memo on 4 July 2017 informing PMC of this.
24. However, on Tuesday 18 July 2017 my line manager (Portfolio Manager: Non-Consumer Industrials, Sunil Varghese) sent me an email stating:

"We will be holding a special PMC on Monday or Tuesday next week in favour of VTZ. They have agreed to give us a put option of 680 shillings exercisable after 3 years and an underwriting fee of 1%. Hope you can amend the report on the weekend."

25. Given that the PIC is a long term investor and intended to hold the Vodacom Tanzania shares for a long period (more than 3 years), I did not believe that the put option provided adequate long term downside protection for our clients. I communicated this view to my line manager.

26. After PMC approved the investment in Vodacom Tanzania: I was criticized by the General Manager: Listed Equities, Lebogang Molebatsi, for not showing conviction for an investment I did not believe in, but that those in decision-making positions at PIC were determined to make. Although he did empathise with me somewhat.

Introduction to AYO

27. On 16 November 2017 at around 10:15 I was instructed by the Executive Head of Listed Investments (Fidelis Madavo), through his personal assistant, to immediately attend an introductory meeting with AYO at PIC’s offices.

28. I believe I attended the AYO meeting on 16 November 2017 with my colleagues Sunil Varghese (Portfolio Manager: Non-Consumer Industrials) and Desmond Sibuyi (Analyst: Non-Consumer Industrials). AYO was represented at the meeting by Malick Salie (AEEI Head of Corporate Finance & Business Development), Kevin Hardy (CEO), Siphiwe Nodwele (Chief Investment Officer), and I think about two others whose names I cannot perfectly recall (my meeting notes have their names down as Walter and Mbuso).

29. The purpose of the meeting was for AYO's management and representative(s) to present the AYO investment opportunity to PIC with the intention to obtain
PIC's support for and participation in its listing on the Johannesburg Stock Exchange (JSE). These type of introductory meetings happen regularly.

An unreasonably short timeframe given for AYO process

30. Throughout this statement I use the terms initial public offering ("IPO") and listing via private placement interchangeably since we are dealing with new listings.

31. To begin research work on a company about to have an IPO or new stock exchange listing, we as investment analysts typically study the company's prospectus or pre-listing statement.

32. I requested AYO's pre-listing statement from Malick Salie via email on 17 November 2017 at 15:50. Mr Salie only emailed me AYO's pre-listing statement a week later on 24 November 2017 at 08:01.

33. In this section I measure the approval timeframe as time from receipt of a company's pre-listing statement/prospectus to date of final transaction decision (approval or otherwise) by PMC.

34. The estimated approval timeframes and estimated transaction values for IPOs I have worked on as primary equity analyst at PIC are as follows:

34.1. Vodacom Tanzania: 11.7 weeks. R841m.

34.2. RH Bophelo: 9.9 weeks. Between R400m-R500m.

34.3. Sagarmatha: 11.7 weeks. R3bn-R7.5bn (this is the range Sagarmatha sought).

34.4. AYO: 3.0 weeks*. R4.3bn. (*Measured until 15 December 2017, the closing date of the AYO private placement.)

35. According to the notes from our first meeting on 11 January 2018, Sagarmatha management indicated that they wanted to list on the JSE at the end of January 2018. This would have given the PIC less than three weeks to conduct its approval process in order to participate in Sagarmatha's listing.
36. Because it manages the capital sought by companies, PIC has the power to dictate timeframes to companies seeking funding from it. The AYO process was unusual in that it seemed to me AYO was dictating timeframes to the PIC. I found this strange and untoward.

37. On 22 January 2019 at the Commission, PIC’s Executive Head of Listed Investments, Fidelis Madavo said: "...in IPOs you have challenges in that people come one month or so prior to IPO and they want PIC to participate. And we have had instances where we have sent them away to say, look we have a process. We have a two-stage process where we need to do a proper due diligence."... "We incorporate other teams in what we do"... "Look, you want the PIC to participate, we have processes. If you don’t want our processes then we can come on board after you have IPO’d. I think we have said that." (at 2:02:57 in eNCA recording).

38. In my observation, what Mr Madavo stated in the above paragraph was done with some companies. However, it was not done by management above my level in the case of AYO.

“Investing without research is like playing poker and never looking at the cards”

39. As a result of the very short timeframe (at least 70% shorter than usual) to conduct the AYO process I believed it was in the best interest of our clients and the PIC for all relevant teams to immediately commence research into AYO. As a result, on 27 November 2017 and 30 November 2017 I made a professional judgement call and requested our ESG, Risk and Legal teams to allocate team members to assist on the AYO IPO. The intention of my request was to quickly alert these teams to the fact that due diligence would be required due to the fact that there was extreme time pressure to conduct the AYO process.

40. Usually due diligence exercises begin after PMC has granted approval for a due diligence.
Based on my experienced, I was confident that PMC would in any event approve a due diligence exercise. Note that doing due diligence does not automatically mean that an investment will be made.

On 01 December 2017 at 14:55 I contacted my colleague in the company secretary department to request her to schedule a PMC meeting (to approve due diligence) at the earliest possible date.

According to an email I received from my portfolio manager on 5 December 2017 at 12:20, a PMC meeting (that I presume was scheduled for around 6 December 2017) was postponed.

A PMC meeting was scheduled for 13 December 2017. This PMC meeting was never held. I believe I was informed by company secretariat the reason was a failure to achieve a quorum.

It is important to note that the underlying intention of a PMC approval for due diligence is to ensure that there is sufficient PMC appetite for an investment to justify expenditure on a due diligence exercise. This is because some due diligence exercises involve incurring expenses for travel, appointment of external service providers, consultants, etc. However, the due diligence I requested for AYO at that stage only involved desktop research without any additional direct expenses. Therefore, PIC’s resources were still being efficiently utilized.

Faulting me for following the spirit of prudent investment procedure by requesting due diligence work from the ESG, Risk and Legal teams which would have certainly been required is the first reason (out of three) PIC has given for my suspension on 21 January 2019.

Had I not requested our ESG, Risk and Legal teams to conduct due diligence, no documented evidence in the PIC would have existed by 14 December 2017 that Ayo, in my view, was a bad investment. Whether PMC approval was received for the due diligence is immaterial to the substance and spirit of the
process. I believe commencing research/due diligence (which did not involve the incurring of additional costs) as early as possible was in the best interest of our clients.

48. At the PIC Commission on 23 January 2019, PIC’s head of internal audit Lufuno Nemagovhani was asked for reasons given by employees for “flouting” processes and whether internal audit looked into that. Lufuno replied: “May I, for now, not respond to that question given that it is still work in progress” (at 1:31:30 in the recording). When internal audit asked me why I requested the teams to commence due diligence work at the time I did I provided the same reasons I discussed in the above paragraphs. I also provided reasons to Lufuno and his team for the second reason for my suspension, which I discuss later in this statement.

The AYO transaction was a foregone conclusion

49. On 8 December 2017 at 14:45 I sent the following email to AYO representative Malick Salie (AEEI Head of Corporate Finance & Business Development):

“Subject: AYO: PIC process

Dear Malick

As mentioned when we spoke, the earliest the PIC can make a decision on whether to participate in AYO’s IPO is near the end of January 2018.

This means that the proposed listing date of 15 December 2017 would be too early for PIC to participate.

Are you able to move the listing date?

Kind regards
Victor”
After 6 days, on 14 December 2017 at 14:34, Malick Salie sent the following response:

"Dear Victor

Thank you for your email.

I understand that many of these questions were dealt with in the presentation to the executive teams by our senior executives. From my understanding, the urgency of the listing as a result of the impending contract with one of the big corporates and the need for a black empowered ICT player is what's driving all of the urgency. I also understood that there is support from the PIC executives in the light of the BT agreement and the growth forecast for Sasol and the acquisition strategy.

I will check with Khalid and the team but I know that the listing is definitely proceeding this year and this was a critical discussion which was held with the senior PIC executives. This is just my view as a sort of a worker bee in the system but I will check with Khalid & Kevin and ask them to give a call to the relevant people. Of course all of this is way above my pay grade.

Kind Regards

AM Salie"

Malick Salie's delayed response to my email was typical of the dismissive way I and my immediate PIC team were treated by Ayo's executives and representative. We believed this dismissive treatment was a direct result of the high likelihood that they were assured that they would receive the R4.3bn from the PIC regardless of differing views from my immediate team.

The 14 December 2017 email from Malick convinced me that regardless of my own opinion of the investment merits of AYO, individuals with decision-making
authority at PIC had already decided that they would ensure that PIC invests in AYO.

There was no negotiation around the AYO listing price

53. When companies offer their shares in an IPO it is normal for the company to negotiate the IPO share price based on the demand for its shares from mainly institutional investors.

54. The PIC Listed Equities team was never engaged to negotiate an IPO price for AYO. AYO approached us with a fixed R43 per share which we were not allowed to negotiate. When we questioned the R43 valuation we were told that the R43 cannot be changed.

55. In conversations with my portfolio manager (Sunil Varghese) and general manager (Lebogang Molebatsi) I expressed my view that the R43 per share valuation was excessive. They agreed with this view.

How Iqbal Survé controls Sagarmatha and AYO

56. In substance, Ayo and Sagarmatha are co-subсидiaries of ultimate effective controlling shareholder, the Survé family. This shareholding structure is as follows:

56.1. Ayo is 49.39% owned by African Equity Empowerment Investments Limited (“AEEI”). AEEI is 61.17% owned by Sekunjalo Investment Holdings (Pty) Ltd (“Sekunjalo”).

56.2. Sagarmatha is 96% owned by Sekunjalo.

56.3. Sekunjalo is 100% owned by the Haraas Trust. The trustee of the Haraas Trust is Iqbal Survé. The beneficiaries of the Haraas Trust are Rayhaan Survé and Saarah Survé, both Iqbal Survé’s children.

The perceived personal relationship between Dr Dan and Iqbal Survé
57. On 4 April 2018 at around 14:00 a meeting was held between the PIC Listed Equities team and Sagarmatha management at the PIC office.

58. Attendees from:
   58.1. PIC: Fidelis Madavo, Lebogang Molebatsi, Victor Searie
   58.2. Sagarmatha: Iqbal Survé, Takudzwa Hove

59. Purpose of the meeting: Sagarmatha had approached PIC to subscribe for between R3bn and R7.5bn in Sagarmatha shares in Sagarmatha’s IPO.

60. During the meeting Iqbal Survé said: "I consider Dr Dan a good friend".

61. I believe this relationship was the genesis and primary driver of the PIC’s investment in AYO.

Dr Dan signs the AYO subscription agreement without PMC approval

62. Before 08:30 on the morning of 14 December 2017 Dr Dan told myself and Lebogang Molebatsi (General Manager: Listed Equities) that PIC will subscribe for R4.3bn worth of AYO shares in AYO’s IPO (this timing is based on evidence from a text message). To effect this, Dr Dan signed the AYO irrevocable subscription agreement and instructed Lebogang Molebatsi to co-sign it as Lebogang was the acting Executive Head of Listed Investments at the time in Fidelis Madavo’s absence. The subscription agreement was signed before 11:44 as Dr Dan’s personal assistant scanned and sent it to me at 11:44 on 14 December 2017. I thought signing the subscription agreement was highly irregular because I had never seen it happen before and PMC had not yet approved the AYO transaction.

63. We raised our qualms (due diligence incomplete, lack of PMC approval) about entering into the AYO transaction, but Dr Dan overruled us. In an informal meeting I attended around the day of signing the subscription agreement Dr Dan said (paraphrasing): "I will use my authority as CEO to sign the AYO
subscription agreement and have the decision ratified at the next PMC meeting.

Rubber stamping the AYO transaction

Later in the day on which Dr Dan signed the AYO subscription agreement (14 December 2017) I completed compiling the equity report that needed to be submitted to PMC for an approval (strictly speaking ratification) decision of the AYO transaction. In the sections of the report I had control over I expressed my negative view of the investment by highlighting the many and significant risks of AYO and the fact that management's assumptions underpinning their AYO valuation were very optimistic.

Given that the AYO investment had already been irrevocably entered into (by Dr Dan signing the irrevocable subscription agreement), my equity report reviewers Sunil Varghese and Lebogang Molebatsi, in accordance with what I deduced to be Dr Dan's wishes, dictated that the conclusion and recommendation sections of the equity report reflect a favourable investment recommendation for AYO. This report was presented to PMC on 20 December 2017.

There is nothing from my side that manifested support for the AYO investment before it was entered into on 14 December 2017, therefore there was no common purpose between me, the CEO (Dr Dan) and the equity report reviewers.

The ESG, Risk and Legal emailed their completed due diligence reports to me on 14 December 2017 at 17:21 (ESG) and 15 December 2017 at 08:21 (Legal) and 11:00 (Risk).

My colleague in our Risk team, Tshifhango Ndadza, raised pertinent concerns relating to AYO such as counter-party exposures (Project Iris), governance and revenue forecasts among other things.

PMC members were likely aware that the AYO subscription agreement was signed before the PMC meeting.
69. The following PMC members in attendance at the PMC meeting on 20 December 2017 signed the AYO payment memo on 19 December 2017:

69.1. Dr Dan Matjila (CEO)
69.2. Matshepo More (CFO)
69.3. Leon Smit (Acting Executive Head: Listed Investments)
69.4. Winnifred Setshedi (Acting Executive Head: Legal, Counsel, Governance and Compliance)
69.5. Gaanewe Adams (Acting General Manager: Listed Equities)

70. It therefore stands to reason that the above five PMC members were aware that the irrevocable AYO subscription agreement had been signed prior to 20 December 2017. Given the timing and sense of urgency of the 20 December 2017 PMC meeting I assumed the remaining three PMC members in attendance were also aware that the subscription agreement was signed before this meeting.

71. Therefore, I believed PMC members in general were already aware that the AYO subscription agreement had been signed before the 20 December 2017 PMC meeting. And I believe whether the subscription agreement had been signed or not had no bearing on appraising the investment merits of AYO, which I believed was the reason for the PMC meeting.

72. The second stated reason (out of three) for my suspension was that I failed to disclose in the PMC meeting that the subscription agreement had already been signed. This insinuates that I inappropriately withheld information from PMC that PMC was unaware of. Note that during this PMC meeting I was not asked whether the subscription agreement had been signed. I therefore did not deliberately withhold this information from PMC.

Conditions precedent introduced despite the AYO transaction already being substantially executed
73. At the PMC meeting held on 20 December 2017 to approve the AYO transaction, the following conditions precedent were proposed and accepted by PMC members:

73.1. The PIC and Ayo entering into a put option; to protect PIC’s client against a share price decline (“downside protection”).

73.2. A commitment that Ayo will spend the equity funds raised only on acquisitions for growth and within 24 months.

73.3. The Legal and ESG Teams performing a complete due diligence and providing feedback to the PMC-LI Committee.

73.4. Ayo implementing a conflict of interest policy.

73.5. The appointment of independent non-executive directors to the board of Ayo.

73.6. Shareholder approval for all acquisitions (other than BT) that are greater than 10% of Ayo’s market cap.

74. Specifically, I recall that the CFO at the time, Matshepo More, proposed the first condition (the downside protection) at the 20 December 2017 PMC meeting. I found this very strange (if not disingenuous) and irregular because Ms More was aware that the irrevocable subscription agreement had already been signed on 14 December 2017 and she had already signed the AVO payment memo on 19 December 2017 i.e. she knew AYO was a done deal already.

75. In my view, the downside protection condition precedent (as was also the case with Vodacom Tanzania) was proposed to justify the unjustifiable. Investors usually do not buy downside protection when they buy shares. I believe downside protection as used in the cases of AYO and Vodacom Tanzania suggests that there was little confidence in the investments’ prospects.

**AYO’s put option/downside protection was completely inadequate**

76. A downside protection agreement was only entered into on 19 October 2018.

77. This downside protection agreement only protected PIC from a share price decline of R22, not the original R43 purchase price. This meant PIC was
unprotected for losses up to R21 per share (equal to approximately R2.1bn of PIC’s initial R4.3bn investment).

78. It should be noted that the downside protection period was only for 90 days from 19 October 2018. Therefore, PIC has been provided no long term protection. This is inconsistent with PIC’s stated long term investment philosophy and the PIC’s intended holding period for the AYO shares.

79. At day two of the PIC Commission of Inquiry hearings Fidelis Madavo (Executive Head of Listed Investments) said: "We are long term investors. We look at returns over a minimum of two to three years" (at 0:47:45 in the eNCA recording). I believe the downside protection accepted by PIC was inconsistent with sound principles of long term investing and did not provide our client with meaningful protection against capital loss in the long term.

80. In my view, adequate downside protection would have been for an indefinite long term period. I voiced my objections to the key terms of the final downside protection agreement but I was overruled.

Applying AYO lessons to Sagarmatha

81. Following the AYO debacle, I became highly concerned that my name was becoming associated with equity report conclusion, recommendation and other sections that I had no control over and did not agree with.

82. When Sagarmatha approached us to participate in its listing in January 2018 I informed my portfolio manager (Sunil Varghese) and general manager (Lebogang Molebatsi) that I would no longer be signing equity reports unless I could have more control over and have the final say on the key aspects of the equity report (the conclusion, recommendation and valuation sections).

83. As a result, on 5 April 2018 I compiled and signed an equity report recommending that PIC invest in Sagarmatha at a price of R7.06 or less per share (compared to a listing price of R39.62 per share set by Sagarmatha). I did this because I believed that Sagarmatha would not accept R7.06 and as a result
probably abort its plans to list on the JSE. I believed Sagarmatha was worth closest to the bottom end of my valuation range of R4.39 per share, if not less. Despite this, on 6 April 2018 the PMC recommended the transaction for approval to the Investment Committee (IC), a PIC board subcommittee.

84. On 10 April 2018 the IC stated that (among other other):
84.1. PIC management should follow their delegated authority and decide whether or not to invest in Sagarmatha;
84.2. In the event that PIC management decides to invest the entire R3bn to safeguard the listing of Sagarmatha, the PIC should obtain downside protection for at least 12 months or beyond the US listing.

85. It was not clear to me at the time whether IC approved a PIC investment in Sagarmatha at R7.06 or less per share or at R39.62 per share. Meeting minutes also do not indicate for which price IC granted its permission to management. However, given that it was unlikely that Sagarmatha would accept a price of R7.06 or less, I was very surprised that PIC management still proceeded with attempting to conclude the Sagarmatha investment. Based on the fact that management was moving ahead with the transaction, in my mind it seemed that PIC management was intent on making the investment at R39.62 per share.

86. After IC approved the Sagarmatha transaction PIC management then proceeded to attempt the completion of the investment. I witnessed some of their negotiations with Iqbal Survé who offered some of his stakes in unlisted companies as collateral to back the downside protection arrangement. It appeared to me that he could not muster adequate collateral. Negotiations continued, but I was not privy to the rest of the discussions. I only heard from a colleague that negotiations failed due to a possible FSB rule violation (detected by my colleague Tatenda Makuti in our Legal department due to his FSB experience) and therefore PIC did not invest.

87. Minutes of the IC meeting on 23 May 2018 do not mention any of the events or reasons in the above paragraph. These minutes state that "the IC declined to approve the recommended transaction wherein the PIC would participate in the
Sagarmatha listing at or below the PIC's base case estimate of Sagarmatha's intrinsic value of R7.06."

**PIC's unfair suspension**

88. By unfairly suspending me and publishing my name PIC has severely prejudiced me and caused me irreparable reputational damage in an industry where a trusted name is paramount. The PIC's decision to publish my name for the public's consumption was taken when the allegations set out in my letter of suspension were not yet tested in a fair process. Neither was I afforded the opportunity of a hearing before being suspended. It appears that the conclusion of guilt has been reached without me having an opportunity to state my side of the story. PIC has robbed me of my most valuable asset and source of livelihood. According to PIC's website as of today, I am not aware of the PIC ever naming suspended employees in an official media release in the past. I believe this is a prime example of employee victimisation at the PIC that this Commission was established to enquire into.

89. The third stated reason (out of three) for my suspension was that in an interview with members of the PIC Internal Audit department in December 2018, I allegedly was not candid when replying to questions (related to AYO) asked of me, and in so doing, did not assist and/or impeded the on-going investigation.

90. I would like to place it on record that this allegation is completely untrue. After Dr Dan resigned as CEO I assumed that the PIC environment would be healthier and more open and so I felt free to voice what I believed and understood to be the case in the AYO matter. Therefore, I answered all Internal Audit questions candidly and to the best of my ability. I believe the reason in the above paragraph was fabricated to justify my unfair suspension.

91. On 22 January 2019, the day I was handed my suspension letter, I sent an email to PIC's Chris Pholwane (Executive Head: Human Resources) in which I requested reasons for Internal Audit's allegation of my lack of candour during their investigation. As of this writing I have not yet received a response.
Potential reasons I believe I have been scapegoated

92. In my view, I was scapegoated and suspended as a result of:
   92.1. Expressing independent views in the interest of our clients that run counter to those of some PIC executives; and
   92.2. Being suspected of whistleblowing (which I did not do) and therefore not part of the circle of executives intent on preventing incriminating information from leaking from the PIC.

93. Two incidents illustrate the above.

94. Sometime between September - November 2018 I received a phone call during working hours from a gentleman named Njabulo who said he worked at the National Prosecuting Authority (NPA). He said that he was calling me to talk about a complaint I allegedly lodged a week before with the NPA regarding irregular activities at the PIC. I told him I had not made any submission to the NPA. Then he told me he was in possession of a document listing the aforementioned activities and the document contained my name as the purported sender.

95. I immediately reported the incident to my General Manager (Lebogang Molebatsi), Executive Head (Fidelis Madavo) and the CEO (Dr Dan Matjila). The CEO confirmed that the phone number I received the call from in fact belonged to the NPA and Njabulo did work for the NPA. A week later my line manager (Portfolio Manager Sunil Varghese) called me into his office and asked me whether I really did not make a submission to the NPA. I replied that I had not. Then he said colleagues approached him asking (paraphrasing): “What’s up with Victor? Is he leaking PIC information?” I realized then that certain people in the organization viewed me with suspicion.

96. On about 5 December 2018 PIC management called me into our Mapungubwe meeting room to provide input to the PIC’s SCOPA report. When acting CEO Matshepo More asked me why I hadn’t requested a PMC meeting to approve a
due diligence into AYO earlier I responded that I didn’t believe AYO had investment merit and therefore I initially shelved working on it. Matshepo replied (paraphrasing): "is there a different way we can word that for SCOPA". The group of managers then brainstormed ways of spinning a reason to present to SCOPA. I believe that moment revealed to management that I was too honest to be co-opted into what to me seemed to be a cover up for the irregular decision made by the former CEO (Dr Dan) to invest in AYO.
VUYO JACK

Submission to the PIC Commission

Sandton, February 2019
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>TABLE OF CONTENTS</td>
<td>II</td>
</tr>
<tr>
<td>VUYO JACK</td>
<td>4</td>
</tr>
<tr>
<td>PREAMBLE</td>
<td>4</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>5</td>
</tr>
<tr>
<td>EMPOWERDDEX</td>
<td>5</td>
</tr>
<tr>
<td>ACCOUNTING STANDARDS BOARD</td>
<td>7</td>
</tr>
<tr>
<td>PUBLIC INVESTMENT CORPORATION</td>
<td>9</td>
</tr>
<tr>
<td>SERVING ON THE PIC BOARD</td>
<td>11</td>
</tr>
<tr>
<td>BUSINESS CONNECTIONS WITH THE PIC</td>
<td>11</td>
</tr>
<tr>
<td>DELoitte's CLIMATE SURVEY</td>
<td>12</td>
</tr>
<tr>
<td>PIC INNOVATION LAB APPROVAL</td>
<td>13</td>
</tr>
<tr>
<td>MANAGEMENT GETAWAY</td>
<td>13</td>
</tr>
<tr>
<td>PIC INNOVATION LAB SESSIONS</td>
<td>14</td>
</tr>
<tr>
<td>GOVERNANCE REVIEW HISTORY</td>
<td>14</td>
</tr>
<tr>
<td>INTERMISSION: DAVIS TAX COMMITTEE VS PIC GOVERNANCE REVIEW</td>
<td>16</td>
</tr>
<tr>
<td>BACK AT THE PIC GOVERNANCE REVIEW PROCESS</td>
<td>17</td>
</tr>
<tr>
<td>DRAFT GOVERNANCE REVIEW REPORT FINDINGS</td>
<td>19</td>
</tr>
<tr>
<td>1. INCHOATE DELEGATION OF AUTHORITY</td>
<td>21</td>
</tr>
<tr>
<td>2. WEAK AND UNACCOUNTABLE LEADERSHIP</td>
<td>21</td>
</tr>
<tr>
<td>3. DERELECTION OF FIDUCIARY DUTIES BY THE EXECUTIVE</td>
<td>22</td>
</tr>
<tr>
<td>4. SUSPICION AND POLARISATION</td>
<td>22</td>
</tr>
<tr>
<td>5. MISALIGNED PRINCIPAL-AGENT RELATIONS</td>
<td>22</td>
</tr>
<tr>
<td>6. WEAK MONITORING AND ACCOUNTABILITY</td>
<td>22</td>
</tr>
<tr>
<td>7. LOW SPECIFICITY AND OVERSIGHT OF DEALS</td>
<td>23</td>
</tr>
<tr>
<td>DRAFT GOVERNANCE REPORT STRATEGIC INTERVENTIONS</td>
<td>24</td>
</tr>
<tr>
<td>(1) DRAFT BOARD GOVERNANCE POLICY BASED ON BEST PRACTICE</td>
<td>24</td>
</tr>
<tr>
<td>(2) CLARIFY ROLE OF THE CHAIRPERSON OF THE BOARD</td>
<td>25</td>
</tr>
<tr>
<td>(3) EXPAND REPRESENTATIVITY OF EXCO</td>
<td>25</td>
</tr>
<tr>
<td>(4) SCRAP MANCO</td>
<td>25</td>
</tr>
<tr>
<td>DRAFT GOVERNANCE REPORT URGENT INTERVENTIONS</td>
<td>25</td>
</tr>
<tr>
<td>(1) CLARIFY FUND INVESTMENT PANEL STRUCTURES (FIPs) AND APPOINT FURTHER NON-EXECUTIVES</td>
<td>26</td>
</tr>
<tr>
<td>(2) REVISE DELEGATIONS OF AUTHORITY</td>
<td>26</td>
</tr>
<tr>
<td>(3) CLARIFY ROLES OF MANAGERS AND STAFF RESPONSIBLE FOR THE MANAGEMENT OVERSIGHT AND ACCOUNTABILITY WITHIN THE PIC</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>(4)</td>
<td>Scrap Moderation Policy with immediate effect</td>
</tr>
<tr>
<td>(5)</td>
<td>Recalibrate the Balance Scorecard to reflect strategic issues</td>
</tr>
<tr>
<td>(6)</td>
<td>Empower managers to manage using Balance Scorecard</td>
</tr>
<tr>
<td>(7)</td>
<td>Change Africa Internal Controls from listed entities to private</td>
</tr>
<tr>
<td>INVESTMENTS</td>
<td>27</td>
</tr>
<tr>
<td>(8)</td>
<td>Appoint Senior Investment Officials (SIOS)</td>
</tr>
<tr>
<td>DRAFT GOVERNANCE REVIEW FINDINGS ENGAGEMENTS/WORKSHOPS</td>
<td>28</td>
</tr>
<tr>
<td>SOCIAL AND ETHICS COMMITTEE INVESTIGATION</td>
<td>30</td>
</tr>
<tr>
<td>ESCALTATION OF ISSUES WITH BOARD CHAIR AND SHAREHOLDER</td>
<td>32</td>
</tr>
<tr>
<td>DEPARTMENT OF ARTS AND CULTURE</td>
<td>34</td>
</tr>
<tr>
<td>END OF ROLES WITHIN THE NATIONAL TREASURY AND ITS ENTITIES</td>
<td>35</td>
</tr>
<tr>
<td><strong>EPILOGUE</strong></td>
<td>38</td>
</tr>
</tbody>
</table>
I, the undersigned,

VUYO JACK

state as follows:

PREAMBLE

1. I provide this statement in order to assist the Public Investment Corporation Commission of Enquiry with respect to the potential recommendations it can make based on the work I did within the PIC from December 2012 until November 2015. I am mindful of the significance of the PIC and the work of the Commission as stated in the preamble of the terms of reference of the Commission:

a. AND WHEREAS the Government is the guarantor of last resort for the obligations of the GEPF, a failure of the PIC or a failure of any significant investments for the GEPF, exposes the Government to substantial financial vulnerability;

b. AND WHEREAS the PIC must be managed in accordance with the highest standard of ethics, integrity and efficiency, so that its governance and investment decisions are beyond reproach and the investment of funds on behalf of members of the GEPF, in particular, are adequately safeguarded;

2. I respond to the following parts of the Commission’s terms of reference, paragraphs 1.15 and 1.16 which state the following:

1.15 Whether the current governance and operating model of the PIC, including the composition of the Board, is the most effective and efficient model and, if not, to make recommendations on the most suitable governance and operational model for the PIC for the future.
1.16 Whether, considering its findings, it is necessary to make changes to the PIC Act, the PIC Memorandum of Incorporation in terms of the Companies Act, 2008, and the investment decision-making framework of the PIC, as well as the delegation of authority for the framework (if any) and, if so, to advise on the possible changes.

INTRODUCTION

3. I am a forty-two-year-old black male, born and raised in Dube Village, Soweto. Growing up my ambition was to be a filmmaker and a musician, which is why I decided to study business in order to learn how to raise money for my film and music productions.

4. I hold a B.Com Honours degree in Taxation (1997) from the University of the Witwatersrand (WITS). In 1998, I did one year of academic articles by lecturing at WITS. I completed the remaining two years of my articles with PricewaterhouseCoopers (PwC). In January 2001 I qualified as a Charted Accountant, and registered with the South African Institute of Charted Accountants (SAICA). While at PwC I specialised in financial services audits and later during my articles, I worked in the Learning and Education Division because I was attracted to teaching.

EMPOWERDEX

5. In 2001 I was employed at WITS as a Financial Accounting III lecturer on a full-time basis. In June 2001, myself and my colleague Mr. Chia-Chao Wu co-founded Empowerdex (Pty) Ltd (Empowerdex), a black-owned company which pioneered Broad-Based Black Economic Empowerment (B-BBEE) advisory and empowerment ratings as well as evaluation of B-BBEE transactions and their contribution to economic empowerment of
black beneficiaries. The company was the first BEE Rating Agency in South Africa. As Empowerdex grew in scale, I could not continue lecturing on a full-time basis hence I opted to lecture part-time while building the company.

6. In 2003 I was part of the BEE Task Team which advised the Minister of Trade and Industry on the BEE legislation and the BEE guidelines to help companies implement BEE in a sustainable manner. Empowerdex was engaged to contribute towards the Department of Trade and Industry’s (dti) BEE Strategy and was subsequently involved in the drafting of the BEE Codes of Good Practice which were gazetted in 2007.

7. From 2004 to 2009 I was appointed as adviser to the Minister of Minerals and Energy on BEE in the liquid fuel industry. I also compiled a ten-year review of BEE in 2004 for the office of the President in the publication called, Ten Year Review of Democracy. In 2007 I wrote two books titled; Broad-Based BEE: The Complete Guide and Make BEE Work for You.

8. From inception until 2008, I was very involved in the day-to-day running of Empowerdex as a Chief Executive Officer and Chairman. In 2009, I handed over the reins of running Empowerdex to Mrs Lerato Ratsoma and I assumed the role of the Chairman. This allowed me to explore other business interests. In 2009 I co-founded an investment company CapAfrica, which focused on opportunities in the logistics sectors and private equity investments. One of our landmark investment was DB Schenker South Africa, (Deutsche Baan a State Owned Entity registered in Germany, is the ultimate holding company of DB Schenker) where we acquired a 25.1% shareholding.
9. In 2008 I started a think-tank called Africa Empowered, which served as a platform for businesses to contribute to the economic development of Africa and to engage with people at grass-root level. I was chosen as one of the Young Global Leaders (2009) by the World Economic Forum based in Davos, Switzerland and I became a Founding Curator for the Johannesburg Hub of the Global Shapers by the World Economic Forum in 2011.

ACCOUNTING STANDARDS BOARD

10. In February 2007, I was appointed as a board member of the Accounting Standards Board (ASB), which is a National Public Entity, established by the Minister of Finance in terms of Section 87 of the Public Finance Management Act. The ASB consists of the Board and the Secretariat. The board consist of non-executive members of the ASB, whose powers, functions, terms and conduct are prescribed by regulations made by the Minister of Finance in terms of Section 91 of the PFMA. The functions of the ASB are as follows:

a. Set Standards of Generally Recognised Accounting Practice (GRAP) for the financial statements of institutions in all spheres of government;

b. Recommend to the Minister of Finance effective dates of implementation of these Standards of GRAP for the different categories of institutions to which these Standards of GRAP apply;

c. Promote accountability, transparency, and effective management of revenue, expenditure, assets and liabilities of the institutions to which these Standards of GRAP apply a public organisation legislated in schedule three of the Public Finance Management Act (PFMA) in charge of establishing accounting standards for public sector organisations including, but not limited to; municipalities and government departments.
11. The ASB reports to the Finance Minister and shared an Audit Committee with the National Treasury owing to its small size and budget constraints. In October 2009 I was nominated by the ASB to be a representative of the ASB within the Audit Committee of the National Treasury which was then chaired by Mr Ignatius Sehoole. After Mr Sehoole’s term as the Audit Committee Chair expired in September 2010, I was appointed the Chair effective from 1 October 2010.

12. The National Treasury Audit Committee is also the audit committee for other public entities reporting to the National Treasury:
   a. Government Pension Administration Agency (GPAA), a government agency, established in terms of section 7A(4) of the Public Service Act (1994) with effect from 1 April 2010. The GPAA administer benefits on behalf of the GEPF and of National Treasury;
   b. Co-operative Banks Development Agency (CBDA) was established to regulate, promote and develop co-operative banking, including deposit-taking and lending co-operatives; and
   c. Accounting Standards Board.

13. In March 2011, my term as a board member of the ASB was renewed for a period of three years. I was elected as the Chairman of the ASB effective from 26 March 2012. The chair of the ASB also chairs the Management Committee of the ASB due to the small size of the public entity. This brought about an anomaly whereby I was the Chairman of the ASB while chairing the National Treasury Audit Committee (which included the ASB matters) and this goes against good corporate governance principles. The solution to the anomaly was that the ASB Audit Committee sessions were chaired by a different member of the National Treasury Audit Committee, which at the time was Mr Joe Lesejane.
PUBLIC INVESTMENT CORPORATION

14. In November 2012, I was requested to provide my CV by Mr. Dondo Mogajane who indicated that the Minister of Finance Mr Pravin Gordhan wanted to put my name forward for the board of the Public Investment Corporation (PIC) to cabinet.

15. The PIC is a South African state-owned entity, with the Minister of Finance as shareholder representative. Established in 1911, PIC is one of the largest asset managers in Africa. The PIC manages 87% of the GEPF's investment portfolio directly and the remainder through local and international external managers.

16. I was appointed as an independent non-executive director of the PIC in December 2012 by cabinet. During the course of 2013 I was a member of the following committees:
   a. Audit & Risk Committee (ARC)
   b. Social & Ethics Committee (SEC)

17. When I joined the PIC board, Mr Ignatius Sehoole was also a board member and he chaired the Audit and Risk Committee and the Private Equity and Africa Fund Investment Panel. In November 2013 Mr Sehoole term as a board member expired and new board members were appointed by cabinet. The realignment of the board members to different sub-committees of the board took place on the introduction of the new members of the board.
18. In 2014 I was appointed to chair the following committees:

   a. Audit and Risk Committee
   b. Private Equity and Africa Fund Investment Panel

19. In addition to the chairing the above committees above (paragraph 18) I was a member of the following committees:

   a. Member of the PIC Directors’ Affairs Committee (by virtue of being the Chairman of ARC)
   b. Member of the PIC Investment Committee (by virtue of being a Chairman of the Private Equity and Africa Fund Investment Panel
   c. Member of the PIC Social and Ethics Committee
   d. Member of the PIC Human Resources and Remuneration Committee
   e. Member of the PIC Property Committee

20. I rationalised my appointment to the PIC board as being on the strength of my experience as the chairperson of the National Treasury, GPAA, CBDA and ASB’s Audit Committee during my tenure at the National Treasury. I discerned that my appointment was strategic for the National Treasury in order to have oversight on the exposure of the PIC since there was already oversight on the pension contributions and claims at GPAA. From a risk and governance point of view, oversight on both pension fund contributions and benefit disbursements by the GPAA and the contributions deposited into the Government Employees Pension Fund (GEPF) but was managed by the PIC, enabled an indirect eagle eye oversight for the National Treasury. Oversight on the PIC was critical in managing government’s risk in that it sought to ensure that the GEPF never had to face a dreadful scenario where it can incur pension liabilities that exceeds its assets to a point where it would not have enough reserves
to pay out to beneficiaries. In this unthinkable scenario the National Treasury would have to intervene because of the defined benefit nature of the pensions covered by the GEPF, where government takes the ultimate risk for the net liabilities. This view is confirmed in the preamble of the of the PIC Commission Terms of Reference which states: AND WHEREAS the Government is the guarantor of last resort for the obligations of the GEPF, a failure of the PIC or a failure of any significant investments for the GEPF, exposes the Government to substantial financial vulnerability.

21. Oversight on GPAA was also crucial since it ensured that from a collection’s perspective, the administration was robust and thorough so that the PIC has assets to manage on behalf of the GEPF. The abovementioned oversight at both the PIC and GPAA level, were my strategic intent in my playing the governance roles in general with the objective of minimising government risk.

SERVING ON THE PIC BOARD

Business connections with the PIC

22. Prior to my appointment on the PIC board, I had the following business connections with the organisation:

a. In 2010/11 I interacted with a representative of the Isibaya Fund to understand their funding model since I was interested in renewable energy using biomass as an input to generate electricity, biodiesel and biogas. The company which I used to pursue my stated interest was Uhuru Energy (Pty) Ltd., where I was a minority shareholder.

b. During 2011 Empowerdex provided advisory services to the PIC vis-à-vis how the PIC can optimally use its BBBEE Facilitator Status; and

c. Empowerdex also provided rating services to the PIC during 2011/12 financial year.
23. The abovementioned transactions were the only business dealings I had with the PIC before being appointed as a director on the PIC’s board.
   a. Uhuru Energy was never funded by the PIC.
   b. Empowerdex did not directly provide any advisory services to the PIC while I was a director.
   c. The rating services that Empowerdex offered to the PIC were terminated as soon as I became a director. This was recorded in the minutes of a board meeting held during 2013. I cannot recall which board meeting this was.

**Deloitte’s Climate Survey**

24. Deloitte was commissioned in August 2013 to conduct a survey of the working conditions at the PIC through staff interviews. 134 staff members were interviewed. The reason the board commissioned the survey was because there was mounting tension in various sub-committees and EXCO. See Annexure.

25. Some of the pertinent findings of the climate survey presented to the PIC Board were as follows:
   - Fear culture and not unified;
   - Lack of strategic direction;
   - Management by fear and poor people management;
   - Management does not have employees’ best interest at heart;
   - Blame shifting and poor decision-making abilities;
   - Do not address problems; and
   - Moving goal post.
26. Given the gravitas of the issues raised through the Deloitte's Climate Survey, the board decided that one way to tackle the issues was through conducting a governance review, which was to be led by the head of the Audit and Risk Committee Mr Ignatius Sehoole. In 2013 KPMG was commissioned to undertake the governance review. See Annexure

**PIC Innovation Lab Approval**

27. I then suggested to the board that we should take leadership in remedying the issues raised since the buck stops with us as the last link in the reporting chain. I proposed to the board that we confront the issues through a PIC Innovation Lab. See Annexure for the Presentation. The idea behind the innovation lab was to address staff issues in a proactive manner rather than taking a reactive stance. We all knew what the problems were and needed an innovative way to address them. The innovation lab was designed to cover both technical knowledge and human resources issues within the PIC in line with the issues emphasised by the climate survey, its objective was to give meaning to working at the PIC, hence the theme "It must mean something to work at the PIC." I drafted a presentation to the board, it was approved with the resolution See Annexure for the board submission.

**Management Getaway**

28. When the proposal of the PIC Innovation Lab was recommended by the Directors Affairs Committee and approved by the Board, some managers suggested that the first session to ideally introduce the concept should be at the Management Getaway that was held in October 2013. I conceptualised the launch to be an interactive musical experience that would bring out the issues mentioned in the climate survey at the guttural level for management. I hired a band and musicians at my own cost in order to expedite the process of launching the PIC Innovation Lab and to build on the excitement exhibited by most of the staff members.
PIC Innovation Lab Sessions

29. After the Management Getaway most senior managers were quite encouraged and an expanded list of sessions were planned for the three offices of the PIC and it also included the PIC Property team.

30. The first few innovation lab sessions were conducted in Johannesburg and Cape Town, providing staff with a platform to vocalise issues they have in general within PIC, directly to the board of directors, thus creating robust rapport between employees and board members. Some of the staff feedback that came out of the first sessions held on 13 January 2014 was as follows (See Annexure for the feedback to the Board):

- Self-discovery;
- Presence of executives did not allow for open discussions;
- Management can be quite defensive about comments made;
- The idea was fresh and different from previous interventions; and
- More similar sessions should be conducted with a bigger forum to get a comprehensive picture of how things could improve.

31. The early sessions of the PIC Innovation Lab were quite a hit with the staff to the point that some EXCO members were not happy with the energy that was unleashed as a result of these sessions. As a consequence the sessions were permanently terminated without credible motivation given to myself or the Board (See Annexure for cancellation correspondence) The parallel Governance Review process that was underway contributed to the unhappiness by some EXCO members.

Governance Review History

32. In November 2013 new board members were appointed since the outgoing board members had exceeded their tenure on the board. I was
than selected to chair the Audit and Risk Committee as well the Private Equity and Africa Fund Investment Panel which was in charge of managing all the Private Equity and Africa investment deals. Prior being elected chairman of the Audit and Risk Committee, Mr Ignatius Sehoole, whom I had replaced as chairman, had engaged with KPMG to conduct a governance review in response to the Deloitte Climate Survey results however, there were issues raised by the executive directors in relation to the procurement process followed. When I became the chairman of the Audit and Risk Committee, I drafted and submitted to the board a memo (See Annexure) to approve the approach to the Governance Review.

33. The KPMG engagement letter was signed in January 2014 and their budget amounted to R866 000 (Excl VAT). I then stipulated that we may continue using KPMG’s services to complete the work they had already done as part of phase 1 of the Governance Review and perhaps have Mr Sehoole on an advisory capacity if need be since he had valuable knowledge of some of the issues as the outgoing chairperson of the Audit and Risk Committee. I also suggested that we employ a business writer, Mr Malcolm Ray, as a scribe to assist myself with the Audit and Risk Committee (ARC) reports as part of phase 2 of the Governance Review.

34. I drafted the Governance Review memo with the recommendation to the board was that they should approve a budget not exceeding R2 million to cover the cost of the governance review. In addition the PIC should approve the deviation from normal procurement process to appoint KPMG and any other relevant service providers required for the completion of the governance review, so that we were compliant with the PFMA legislation. The deviation from the normal procurement process was requested due to:

a. the sensitive nature of the Governance Review exercise; and
b. the urgency of getting the Governance Review done due to the gravity of the issues raised by staff.

35. Once the memo was approved by the board, I then asked KPMG to provide me with the interim reports they had completed to date. In reviewing the reports, I became aware that no non-executive board members were interviewed for the KPMG Board self-assessment tools, only staff members were interviewed. The reports also focused more on high-level processes rather than on strategic issues raised through the Deloitte Climate Survey. From this vantage point, I could not utilise the reports at a strategic level to come up with substantive recommendations to the board about what needed to change. As far as fulfilling their mandate in relation to the engagement letter, KPMG did deliver even though the report was inadequate in addressing the root causes of the governance issues faced by the PIC. Moreover, the report did not encompass all operational divisions of the PIC due to resistance by some divisions. Therefore, given the draft report there was scope restriction on the Investments portion of the PIC because they were not able to set up appointments with the investments team which was a problem for the exercise since Dr Dan Matjila did not meet with KPMG, not once.

Intermission: Davis Tax Committee vs PIC Governance Review

36. In 2013 while serving as a non-executive director on the PIC board, I was appointed to be a member of the Davis Tax Committee. One of the sub-committees I was allocated to, was tasked with analysing and preventing Base Erosion and Profit Shifting (BEPS). Within this sub-committee I focused on the issue of digital economy and its tax implications. I looked at strategic ways that would allow SARS to capture tax from electronic sales of international online companies such as Amazon, Apple and so forth. In coming up with a suitable tax regime for digital companies, I had to conduct research on world best practices and also consider double tax
agreements that existed between South Africa and foreign countries. Phase one of the project involved designing a reporting framework and research methodology. Phase two was data collection through interviews with government officials, SARS officials, NGOs in the information technology (IT) sector, as well as local and international IT based firms.

**Back at the PIC Governance Review Process**

37. As a chairman of ARC, I then initiated sessions with staff from the different divisions within the PIC since there was a missing link between Deloitte's climate report and KPMG's governance report. Using a music analogy, in my opinion, the Deloitte's climate report followed a struggle/revolutionary music approach in that it tried to capture everyone's perceptions in a manner which made sure that everyone's voice is heard but did not comprehensively cover solutions to those issues raised. On the other hand, the KPMG governance review took a classical music approach since it was based on templates and generic surveys not really tailor made for the issues at hand fully. My approach in dealing with the governance issues took a jazz music approach, i.e. I needed to establish a sweet spot between the structured approach captured in KPMG's report and the spirit and soul of the people contained in Deloitte's climate survey report.

38. In March 2014 we kickstarted the interview sessions. These sessions were not easy as there was a pervasive atmosphere of fear amongst staff in speaking out on the pertinent problems faced by the PIC. They feared intimidation and revenge from the senior managers. I provided them with the assurance that these sessions would be robust and honest, with any comments not being attributed to a particular individual. Furthermore I promised that I would do my utmost best to provide cover when necessary to the staff that told the truth. I truly needed to cover their backs because they could lose their livelihood if there was revenge of any sort from implicated parties. A connection of trust was built with the participants who
were able to lay out the problems within the PIC in a comprehensive manner. The credibility of the stories had to also be corroborated by factual evidence. It must be noted that there were certain things some people said that was not corroborated by evidence which decreased the credibility of their version of problems. In these engagements I was accompanied by Mr. Malcolm Ray, who I used as a scribe who wrote down his notes but no audio/visual recording of the sessions took place.

39. The sessions were very tough and quite incisive in approach, mostly cutting the chase to focus on the facts. Some people cried as they relayed their experiences within the PIC. Dr Zulu Xaba, the Chief Risk Officer, even resigned later in the year as a result of the depth and robustness of the engagements we had in these sessions and even beyond. The result of these sessions sent mixed messages: to the broader staff as it allowed them an ability to offload their issues and come up with constructive suggestions; for some EXCO members these sessions sent a message of a witch-hunt and as a result they were apprehensive of engaging based on the feedback received from staff about the intensity of the sessions.

40. As a consequence Dr Dan Matjila never attended a single session of the Governance Review process of KPMG and the PIC ARC. He then requested to be provided with the engagement letter from KPMG and scope for work, which he was subsequently furnished with in the spirit of transparency. In contrast Mr Elias Masilela, the CEO at the time, participated constructively in the engagements from the Management Getaway, PIC Innovation Lab and the Governance Review sessions. Ms. Matshepo More also participated constructively and made good suggestions to the finance session held with her team.
41. In March 2014 I also wrote a Memo to the Deputy Minister who was the chairperson of the board, Mr Nhlanhla Nene, requesting the chairman to approve that I travel to the United States of America and Canada to meet international pension funds and developmental financial institutions (DFIs) and asset managers. This would help me establish what the best practices are in governance models by interacting directly with the organisations. I further suggested to the chairperson that the PIC should share the costs of my international trip with the South African Revenue Services (SARS) because of my work with the Davies Tax Commission on the digital economy issues. The plan was that the PIC pays for the trip and then claim back half of the expenditure from the Davies Tax Committee.

42. The memo contained a list of the companies I had set up appointments with including, CalPERS, IFC, Ontario Teacher’s Pension Plan (OTTP), BlackRock and GRIIS for April 2014. Upon concluding the data gathering process and analysing the data, a report was drafted and completed in May 2014.

43. In addition to the international visits undertaken an extensive document review of both internal (PIC) and external sources took place in order to construct what is the ideal governance model the PIC needs to consider.

Draft Governance Review Report findings

44. The draft Governance Review Report looked at interim findings and urgent remedies or interventions. The risks identified after the staff interviews and the documentary review necessitated urgent action on the board’s part. An extract from the report I compiled summarises the interim findings as follows:

"In terms of our mandate for this review, challenges of delegated authority, accountability, transparency, and oversight arose as the scale and range
of assets under management by the PIC grew. The question of the 'agility' (inputs, implementation) of the PIC, its structures and committees, therefore rested on the assumption of a lag between the governance system and internal human and infrastructural capacity, on the one hand, and the fiduciary duties of the PIC on the other. On the evidence of the review, the organisation has adapted to, and embedded a tightly controlled executive structure rather than agile and flexible governance model adequate to the complex challenges of expansion. Thus, our findings and analyses of operational issues and organisational capacity have largely focused on the growing disconnect between operational functionality on the ground, including authorities and decision-making powers, administrative capacities, staffing and technical capacity of the PIC's line departments, and a centralised and evidently unaccountable executive leadership.

These assumptions were tested across the board and found to be true as a motive and modus operandi in at least one respect: the PIC's remuneration policy and grading system and how the latter are manipulated by executive leadership to maintain control. The result of contradictions between the PIC's fiduciary duties and its actual authorities and governance practices in the day to day operations of the organisation is a confusing lack of clarity about governance, decision-making and accountability throughout the organisation. Arguably, executive leadership at the PIC is now subject to charges of a gross dereliction of the PIC's fiduciary obligations in exercising the powers conferred on the executive by the Board on behalf of the shareholder and stakeholders. In other words, the current governance practice fundamentally encourages a rule by executive committee and therefore encourages tension between fiduciaries, dilutes accountability, and fosters sub-optimal decision-making. We make this charge without prejudice and on the basis of the experiences of some 80 people whose views were sought during the review.
For if the key challenge we tried to understand during the review was the PIC’s failure to respond to challenges of expansion, there were several nested themes that arose from the findings with which we conclude this review: (1) Delegation of Authority; (2) Leadership; (3) Principal-Agent relations; (4) Fiduciary duties; (5) Specificity and monitorability.

1. Inchoate Delegation of Authority

There are a number of governance and structural issues which confound clear fiduciary decision-making authority and reflect a highly fragmented and dysfunctional system. There are, for example, currently several fracture lines related to issues such as delegations of authority, delegations of duties, and related risks in the oversight and reporting processes of the organisation. The result is a continuing process of friction and abrasion that often manifests in tensions driven by a culture of fear that runs along reporting lines as a modus operandi by executive leadership to maintain narrow agendas at the cost of the wider interests of the PIC, its clients and the shareholder.

2. Weak and unaccountable leadership

Overlaying all this is a crisis of leadership and challenge of purpose. As noted above, lack of clear authority also equates to lack of clear accountability and therefore inconsistencies, operational dysfunctions, and a lack of a galvanising sense of mission among leadership. This has taken the form of de facto vetoes by EXCO of committees, structures and managers delegated by the Board to execute its mandate, as well as threats and fear tactics through the use of the remuneration system to bully staff into line. The latter was a theme that ran across the full spectrum of staff we consulted during the review. While current dysfunctions have been largely between two chiefs and their respective opponents and supporters, it is foreseeable that similar power plays could erupt into any of the many fiduciaries with overlapping and inconsistent roles.
3. Dereliction of fiduciary duties by the executive

There were several limitations to the review, however, which effectively prevented further investigation of the impact of the practices at the PIC on its core business: investments. Some evidence emerged which suggested derelictions of the fiduciary duties of leadership which should be investigated. They include deliberate and conscious efforts by EXCO to dissemble crucial oversight bodies such as Risk from an independent look at investment processes and decisions. At least one consequence that came to light during the review was a raft of reclassifications of listed companies in which the PIC is invested to 'unlisted'. There are others, which will be taken up in the final report to be presented to the Board in July.

4. Suspicion and polarisation

Similarly, limited legitimacy; a 'parochial mentality' that foments suspicion and polarisation and impedes the ability to transcend divisions; a lack of clarity or vertical coherence; and limited attention to overall PIC goals were other factors encountered that to a greater extent has constrained the capacity of the organisation to reach its objectives. A consequence of this problem was the absence of clear, well-articulated and designed, and consistent strategies. Thus the ability to achieve synergies between interventions by departments at different levels of responsibility was weakened by mission drift within the PIC as a whole.

5. Misaligned Principal-Agent relations

There are also a number of internal factors that have debased the role of the PIC. To some extent, these were an extension of the factors mentioned above. In the PIC investment context, the principals are the stakeholders and shareholder and the agent the PIC.

In theory, public sector agents will have very different agendas to those of their principals in the private sector. However, the PIC's largest principal
is the GEPF, and therefore government. Thus, individual agents seeking to maximise self-interest in the PIC context constitutes a blatant conflict of interests and therefore a dereliction of fiduciary duties to the principal. This misalignment of agent incentives with the interests and objectives of the principals appears to be the core of the governance problem at a macro level and requires urgent intervention if the PIC is to be spared from reputational and financial risk. It is, we conclude, a matter of bringing divergent incentives back into alignment.

6. Weak monitoring and accountability

We have already referenced the problem of accountability. Suffice it to say that the apparent leadership crisis is compounded by poor formal systems of oversight, monitoring and accountability, including the oversight role of risk management, partly because of a lack of specificity of the underlying activities of structures responsible for oversight. At issue is both the overriding role and identity of the structures (risk management, HRRC, Company Secretarial) and the incentive structure which seems to be deeply embedded in the remuneration system and moderation system. At the risk of reducing this observation and interpretation to generalisation, the growth context of the PIC in which approximately R1.7t is under management, combined with the absence of a performance-based incentive structure in the different departments, has distorted the governance system. In that regard, the incentive for demanding accountability from leadership is compromised by lax oversight, but largely undefined underlying activities of the departments that are not functionally aligned to their core business.

7. Low specificity and oversight of deals

The final conclusion of the review is a conceptual observation. A great deal of organisational theory outlines mechanisms to bring the incentives of principals into greater alignment with the agent’s utility functions.
By contrast, there appeared to be a low utility functionality by investment teams at the PIC. In other words, much energy and attention in the past year has been on getting as many deals as possible to push the quantity line and meet numerical outputs irrespective of the quality of the return 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. The danger with such an approach is that it compromises quality and results in an exponential rise in the number of bad deals.

To sum up, then, driven by vague and sometimes contradictory delegations of authority and lines of accountability, there is a tendency by executive leadership toward a substitution of accountability and delegation of roles and related outputs with practices and behaviours geared towards executive control. In that sense, the interests of the executive as well as commitments to the PIC's goals seemed to have run counter to incentive structures and best practice.

Draft Governance Report Strategic Interventions

45. The urgent strategic interventions identified included:

(1) Draft Board Governance policy based on best practice

What is clear from the current overall policy framework is that there is an incomplete Board policy on governance. Given the wide berth of dysfunctions associated with governance-related problems at the PIC, we recommend the immediate drafting of a policy document. We have annexed best practice examples of governance policies in a comparable organisation to help guide the process.
(2) **Clarity role of the Chairperson of the Board**

We recommend immediate clarification of the status of the chair of the PIC Board. The potential hazard, we contend, is not primarily the idea of a shareholder chairing the Board, but whether in the wisdom of the Board a political chair is prudent given the fluid nature of politics, and if so whether such status should not be balanced with a deputy non-political chairperson. This would also ensure continuity should the political chair be removed. Such appointment should be immediate.

(3) **Expand representativity of EXCO**

Expand the Executive Committee (EXCO) to reflect the investment management nature of the PIC, rebuild confidence in the committee and signal trust within the PIC. The link between immediate steps to that effect and the spirit of transparency and progress so sorely lacking at present must be urgently established in the act of reconstituting EXCO.

(4) **Scrap MANCO**

Concurrently scrap MANCO with immediate effect. One of the consequences of the two structures has been rival authorities and the subsumption of MANCO under EXCO. Under an expanded EXCO, the thrust would be forwards, towards a unifying structure and vision.

**Draft Governance Report Urgent Interventions**

46. In addition, to the urgent strategic interventions outlined above, the report highlighted urgent related interventions, which included:
(1) **Clarify Fund Investment Panel structures (FIPs) and appoint further non-executives**

The FIPs structures should be clear and unambiguous, given their operational functionality in investments. The structure should be clarified and a resolution signed to that effect as well as for purposes of appointing further non-executive directors to the panels.

(2) **Revise Delegations of Authority**

The format of the DOA system must be changed to build accountability and, moreover, responsibility in the execution of duties. We recommend in tandem with a revised DOA that each staff member signs a commitment to abide by their delegations, thus enforcing accountability and ownership of responsibilities. Any violation would thus be a dereliction of duty. This method would remove ambiguity, simplify the DOA and clarify roles of individuals within the PIC.

(3) **Clarify roles of managers and staff responsible for the management oversight and accountability within the PIC**

The roles of head of legal, chief risk officer and chief audit executive must be clarified with immediate effect. Such clarification must facilitate oversight such as internal audit, legal and risk.

(4) **Scrap Moderation Policy with immediate effect**

The Moderation policy and the entire edifice of the system must be scrapped immediately in order to rebuild staff morale, restore fairness in
the incentive, remuneration and performance management system and unhinge power bases from abuse of the committee.

(5) **Recalibrate the Balance Scorecard to reflect strategic issues**
Concurrently, initiate an urgent recalibration process in which the next cycle of the Balance Scorecard focuses on strategic issues rather than job descriptions. Concurrently, relook at benchmarks used to determine performance in the scorecard.

(6) **Empower managers to manage using Balance Scorecard**
Concurrently, empower managers to manage staff using the Balance Scorecard.

(7) **Change Africa internal controls from listed entities to private investments**
The internal controls and risk management process of investing in Africa must be immediately put in place to safeguard the PIC assets under management. Furthermore, recast Africa internal controls and risk as private investments rather than listed entities. This should reflect the reality of an investment landscape largely characterised by unlisted entities and opportunities in which internal controls and risk is vastly different to listed investments. This also means that the process to be followed is the private investment one through the FIPS.
(8) Appoint Senior Investment Officials (SIOs)

The appointment of SIOs would greatly enhance the management of operational issues and strengthen accessibility, reporting and accountability at all levels of the PIC.

Draft Governance Review findings engagements/workshops

47. The governance report was first tabled at the audit committee where the findings were discussed in great detail. Each member of the audit committee was handed a physical copy of the report and were requested to return the copies after the meeting in order to safeguard the promise I made to the staff that participated in governance review process. There were issues identified that had to be elevated to the board.

48. Subsequently the report was tabled at board level on a meeting held on the 23rd of May 2014 See Annexures. In the board meeting a facilitation of the climate survey was conducted Craig McConnell from Deloitte. As the non-executive director, I presented findings the governance review without the executive directors present in the in-committee of non-executive directors, whereby it became clear that there was a definite link between the preliminary Governance Review findings, ethics within the PIC and the Deloitte’s Climate Survey.

49. It was then agreed that a special board meeting be scheduled once the report on the Governance Review was finalised to discuss the outcomes of the report with EXCO members. When the executive directors joined the board meeting they raised a concern that the expenses related to the KPMG’s governance review be classified as irregular expenditure since the decision to appoint KPMG was not documented. The stance taken by the non-executive board members was that the work conducted by KPMG
had commenced after approval by the board in November 2013 and as such did not meet the definition of irregular expenditure. It is worth noting that I made sure when I became the ARC Chair, the Governance Review project was documented and approved by the board as per the evidence contained in the memo submitted to the Chairman of the Board.

50. At the end of the Board meeting, to illustrate the importance of the board’s need to lead, I gave the directors at my own cost a book by Ram Charan, Denis Carey and Michael Useem titled "Boards That Lead—when to take charge, when to partner and when to stay out of the way". This book published in early 2014 was a perfect guide to dealing with the issues faced at the PIC and provided great insights.

51. Workshop with the internal audit took place in order to identify how they could be strengthened in their work despite the budgetary constraints they faced. I also arranged the Chief Audit Executive of the National Treasury, Mr Lesego Seperepere to share his insights and experience in dealing with management who may not want to cooperate with internal auditors.

52. I also arranged further workshops with the Risk team who were also under-capacitated in terms of manpower to assist them in strengthening risk management within the PIC. For example the risk organogram within PIC had 31 positions but only 15 positions were filled. Due to the dire situation that the team was in at the leadership level, the team was struggling to stand their ground as one of the key line of defense within the PIC. The Chief Risk Officer always avoided conflict with the EXCO as it could be quite bruising to a person’s mind and soul. As stated before the strain became too much for Dr Xaba and he resigned on 30 September 2014. Dr Xaba was replaced by Mr Paul Magula as the Acting Chief Risk Officer.
53. Various workshops were also conducted with the Investment Committee starting from January 2014 even before the Governance Review gathered momentum. I had raised some concerns I had with the Chair of the Investment Committee, Mr Roshan Morar, after chairing my first meeting of the Private Equity and Africa Investment Panel on 6 Dec 2013 (See Annexures)

Social and Ethics Committee Investigation

54. It was also reported that the Chief Investment Officer (CIO), Dr Dan Matjila, has raised a number of concerns around the governance review with the Chair of the Social and Ethics Committee (SEC), Ms. Rejane Woodroffe. The board delegated the issue be dealt with by the SEC provide feedback in the next board meeting. My understanding of the questions raised by Dr Dan Matjila were as follows:

1) Process issues around the Governance Review
   - KPMG appointment process
     - Terms of reference?
     - Is the work done previously by them not sufficient, is this now an investigation?
     - Is there no conflict of interest with Mr Ignatius Sehoole, whose wife was a partner at KPMG?
   - DAC / Board meeting in camera session where the executive board members were not present, is not the Governance Review a matter for all directors?
   - Interviews with employees without senior staff, is this not problematic

2) Procurement procedures around the Governance Review
   - Did the PIC break procurement rules?
• As a result, is there an irregular expenses to be recognised as per the PFMA requirements?

3) Third Party perceptions
• Is the non-executive director not over-reaching in running interviews for the Governance Review

4) PIC Innovation Lab
• Should a non-executive director be running this? A market can provide this service?
• Were rules not broken there?

55. After the board meeting, I communicated telephonically with Ms Woodroffe about the Governance Review methodology followed. I then submitted the Governance Review methodology to aid the SEC to better understand how I managed the process (See Annexures) Since I was also a member of the SEC, I then recused myself from further attending the SEC's meetings so that they may conduct an investigation without my interference.

56. A special SEC meeting was called to deal with the matter and it was Chaired by Ms. Rejane Woodroffe and attended by an SEC member Ms Sibusisiwe Zulu, I cannot recall how the investigation ended because there was no feedback provided of whatever resolution was reached by the SEC Special Investigation.

57. The gist of the narrative is that Dr Dan Matjila had raised concerns at board level with the methodology used for the Governance Review process, however he neither attended any of the sessions conducted nor did he honour meeting requests sent to his office. He also hardly attended workshops where governance issues were tabled, he only attended board
meetings and his attendance record at the FIPS and some other sub-committee level engagements was a concern. This was an issue that was raised at the Director Affairs Committee, where a resolution that he should scale back on the boards that he sits on such as Ecobank, etc. so he could be more present within the PIC.

**Escalation of issues with Board Chair and Shareholder**

56. Despite cancellations and rescheduling of the engagements with some staff, we ended up meeting with all the critical divisions within the PIC with exception of Dr Dan Matjila. As the Chief Investment Officer who has material delegated authority from the board, he would be a critical person to provide insights into what works and also what doesn’t work with a view of fixing it. All the members of the Executive Committee participated in the Governance Review engagement and provided valuable suggestion about can change except for Dr. Dan Matjila.

59. I first escalated this concern to the Chairman of the Board Mr Nhlanhla Nene, during May 2014 or so, with the hope that he will intervene and encourage Dr Dan Matjila to engage with the Governance Review process. This was not successful because ultimately Dr. Dan Matjila never engaged with the process.

60. When Minister Pravin Gordhan wanted to engage with the members of the PIC Executive Committee due to the constant battles that were taking place within the PIC, I was invited to one of those meetings in my capacity as the Chair of ARC. After the meeting I requested a moment with the Minister so I can appraise him of what are some of the findings of the Governance Review. Due to the limited time we had after meeting, Minister Gordhan suggested that we set up a further meeting to further interrogate
the issues. He saw the state of affairs at the PIC as an emergency that needed to be dealt with and rectified as soon as possible.

61. A further meeting with Minister Gordhan within May 2014 took place a few days later at the SARS offices along with Mr. Dondo Mogajane, the Minister’s then Chief of Staff. I outlined the different interventions that were planned with the different sub-committees of the PIC board. He requested to be apprised of the progress and offered whatever he could do on his side as the shareholder representative to fast-track the quick wins within PIC. I indicated the difficulties we had with engaging with Dr. Dan Matjila in the Governance Review process and the Minister said he will engage with him urgently. However shortly after that meeting, we had the Board meeting on the 23 May 2014 and on 24 May 2014, the Minister of Finance term of office came to an end. Minister Gordhan was replaced by Mr. Nhlanhla Nene as the Finance Minister and the Deputy Finance Minister was Mr. Mcebisi Jonas who effectively became the new Chair of the PIC Board.

62. On the 23 June 2014, I had dinner with Finance Minister Nene to appraise him of the different matters that affected the National Treasury Audit Committee, the IFMS project, the GPAA governance issues, the PIC governance issues, Davis Tax Committee work amongst other things. I updated the Minister on the various workshops we were having with the different sub-committees of the board. The Minister mentioned that at least some of the things arising from the Governance Review were before cabinet and that the role of deputy chairman was agreed to by Cabinet. A cabinet statement came out on the 26 June 2014 announcing Mr. Roshan Morar as the deputy Chairperson of the PIC, confirming Minister Nene’s statement to me. I also highlighted that we still did not succeed in engaging with Dr. Dan Matjila to contribute to the deliberations of the Governance Review.
63. It was during this time that the CEO Mr. Elias Masilela was leaving the organisation, resulting in Ms. Matshepo More to be appointed the Acting CEO. On 1 December 2014, Dr Dan Matjila was appointed CEO of the Public Investment Corporation. In the March 2015 Annual Report of the PIC, the Executive Head of Legal was Ernest Nesane, the Executive Head of Risk was Paul Magula.

**Department of Arts and Culture**

64. During June 2014, I began engaging with Minister Nathi Mthethwa with a view of being his Special Advisor. This was an opportunity to revive my first love: Music and Film, while using my business and finance skills to transform the arts and culture sector. Most people found this a nonsensical move because of the apparently incompatibility of the arts and culture sector to the business sector. For me it was an opportunity to make a difference in the area of my passion.

65. In July 2014 I joined the Department of Arts and Culture, as a Special Advisor to the Minister of Arts and Culture. However due to the numerous issues that had to resolved my time became limited to do other things. In September 2014 my appointment changed from being a Special Advisor to Head of the Phakisa Operation projects within the Ministry to fast-track the programs of the Minister. It was also during this time that the Director-General of the Department of Arts and Culture was suspended. On 1 October 2014, the Minister appointed me the Acting Director-General due to the pervasive nature of the work required with the Department.

66. In reflecting back I took the challenge with the Department of Arts and Culture due to the lack of progress in addressing the critical and substantive matters one identified within the PIC. The Stalingrad approach...
elements were evident in the situation and are usually meant to drain one's energy until one gives up. I lost interest in the PIC at some point due to the effective Stalingrad strategy used by PIC executives and the inability of the Chairs and Shareholder representatives to bring them to account.

67. The bottom line was that I could not rely on the escalation processes to deal with the issues due to the lack of ability to bring accountability to the executives of the PIC both at the Chairperson or Shareholder level. This claim is based on the fact that through all work done I was never able to get anyone to bring Dr. Dan Matjila to account and give his insights into the investment decisions under his watch.

End of roles within the National Treasury and its entities

68. In the November/December 2014 Annual General Meeting, I was removed by the shareholder as the chair of ARC and Ms. Sibusisiwe Zulu was appointed. It is the shareholder's prerogative to appoint the audit committee as noted in the PIC's 2015 Annual Report on page 26 which stated, "The members of the Audit and Risk Committee are all independent non-executive directors who get elected by the shareholder in line with Section 94(2) of the Companies Act, 2008."

69. In 2015 my attendance of the PIC Board meetings declined considerably because I could not invest my attention capital in a place where it is difficult to generate a return on investment for the organisation.

70. In February 2015 my tenure as the Chair of the Accounting Standards Board came to an end.
71. In April 2015 I resigned as the Chair of the National Treasury Audit Committee. There is inherent difficulty in being an acting Accounting Officer of a government department and also being the Chair of an audit committee of another department. Furthermore I was struggling to give enough time to the task at hand at the National Treasury, so it was unfair to the National Treasury for me to remain as Chair.

72. In May 2015, the Private Equity and Africa Fund Investment Panel at the PIC was dissolved and merged to another FIP. The PEA FIP was getting close to be fully invested and had to get more allocation of funds from the GEPF. I guess the timing was opportune to merge it with other FIPS.

73. My performance at the Davis Tax Committee also suffered considerably due to the decreased time I allocated to its work. I received a letter from the Minister of Finance which highlighted this difficulty and suggested that I resign. In July 2015 I resigned from the Davis Tax Committee.

74. The reason I didn’t resign from the PIC board was based on some officials at the National Treasury who contacted me as they were preparing a submission for the renewal of my term. The only obstacle to be dealt with at the time was based on the DPSA Governance Manual requirements and conditions placed on a Head of Department being on a board of an entity under another government department. This arrangement requires consent on both Ministers to agree to that appointment.

75. At the end of November 2015, I received a letter from the Minister of Finance thanking me for my contribution to the PIC. That marked the end of my three-year journey at the PIC.
76. Incidentally I submitted my resignation to the Department of Arts and Culture due to the rising tension my approach to fixing things could bring me into conflict with the Minister there.

77. December 2015 marked the end of my official contributions to the public sector of South Africa.
EPILOGUE

The journey into the public sector brought invaluable insights that culminated into the following initiatives I am engaged with:

a. Subsequent I spent time looking into the building a social wealth fund, the Nation Building Fund, that would address issues raised by the #RhodesMustFall and the #FeesMustFall student movements by bringing innovative funding solutions to the problems. A book called *Freefall* by Malcolm Ray, who was the business writer who worked with me on the PIC Governance Review, looked at the history of education in South Africa from 1836 till 2016.

b. In 2016 I started hosting a 13 week programme for entrepreneurs called Reality-Based Entrepreneurship (RBE) which is a practical program that capacitates start-ups, SMEs and entrepreneurs to understand realities that face them when running businesses. The program unlocks wisdom and generates insights that are required to grow businesses exponentially, by focusing on the inner side of entrepreneurship and proving technical tools for them.

c. In 2018 I piloted Reality-Based Governance (RBG) which is a practical program that capacitates black professionals to understand realities that face them when leading governance within the private and public sectors. The program unlocks wisdom and generates insights which enables the board members grow businesses that they serve exponentially or accelerate service delivery in the public sector.

d. Towards the end of 2016 I reflected on my journeys in both the public and private sector and invoked my love of music to channel the various emotions into recording an album. In 2017 I released a single titled, "I' ll Never Find Another Here And Now" on iTunes, Apple Music amongst other music channels. As we speak a full album titled "Sabela" will be released in June 2018. This completes the circle which started with the love of music and film which moved towards the public and private sector adventures to ultimately round off to a music album.
This has not been a fruitless journey for me but I harvested great insights along the way with the hope of helping others avoid the pitfalls encountered. It is in this spirit I am willing to help the PIC Commission with its work by providing some of the documentation and insights from the Governance Review of 2014.

DATE AND SIGNED AT _______ ON THIS DAY OF ______ FEBRUARY 2019

VUYO JACK