



**MINISTER
TRADE, INDUSTRY AND COMPETITION
REPUBLIC OF SOUTH AFRICA**

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Mat Cuthbert, MP
DA Shadow Minister of Trade, Industry and Competition

Dear Honourable Cuthbert

Matters related to the National Lotteries Commission

- 1 I refer to your undated letter, received by my office at 15h30 on Friday 4 September 2020, dealing with matters relating to the Board of the National Lotteries Commission.
- 2 Your letter refers to investigations involving projects funded by the NLC and the refusal of the NLC to publish information regarding beneficiaries.
- 3 You request that I should take action by “firing the board and placing the NLC under administration by the DTIC with immediate effect.”
- 4 A number of serious concerns relating to the NLC have been brought to my attention. I have taken steps to address these concerns and to identify the extent of the challenges in the institution. These steps have taken into account the applicable legal requirements that an Executive Authority need to comply with, and are intended to ensure that my decisions are not overturned in legal proceedings based on procedural defects.
- 5 In respect of allegations of misuse of funds, following my appointment in the current portfolio in the new Administration last year:
 - 5.1 In August 2019, I wrote to the NLC to advise of deficiencies in their forensic investigation into various allegations, I requested that criminal charges be laid in respect of wrong-doing and monies be recovered and I further requested that the DTI’s internal audit team be provided with the list of Pro-Active projects that the NLC had approved, for it to separately review;
 - 5.2 In the same month, I requested information regarding the independent service provider appointed by the NLC during the previous administration to investigate matters relating to misuse of funds, and in particular, the

process undertaken to appoint the provider, the terms of reference and the expected date for the finalization of the report;

- 5.3 In September 2019, the DTI internal audit team visited one of the projects, namely the Denzhe drug rehabilitation centre, at my request, to do an on-site inspection;
 - 5.4 In November 2019 I requested that any implicated staff member be placed on immediate leave of absence during the investigation;
 - 5.5 In March 2020, I directed that the DG of the DTIC appoint an independent forensic investigator to compile a report on identified projects;
 - 5.6 In May 2020, I supported a request that consideration be given to further investigations by the SIU (Special Investigating Unit) into allegations of maladministration; and
 - 5.7 In August 2020, charges were laid with the police to enable a criminal investigation.
- 6 In order to ensure the integrity of the investigation, further information cannot at this stage be made available. However, the Department has been given a mandate to pursue the necessary investigations and action fully.
 - 7 In respect of release of beneficiary information, the NLC provided my office with a legal opinion that stated that the release of beneficiary information was not permitted in terms of the relevant legislation. In response, I
 - 7.1 advised the NLC that I was not in agreement with their legal interpretation on the prohibition on disclosure of beneficiary information;
 - 7.2 pointed out that the publication of this information was consistent with its obligation to open and transparent governance;
 - 7.3 refused a request by the Chairperson of the NLC proposing that the issue of the interpretation of Regulation 8 be deferred pending the determination of the Court application by UCSA and pointed out that this interpretation was at odds with the interpretation adopted by myself and the DTI as well as that previously adopted by the NLC and inconsistent with the unambiguous language of Lotteries Act which require the NLC to operate in an open and transparent manner;
 - 7.4 Gave notice of my intention to defend a court application by Zakheni Ma Africa purportedly brought on behalf of beneficiaries that sought to prevent publication of information, which resulted in the court application being withdrawn;
 - 7.5 Advised the Chairperson of the Portfolio Committee of my view that the NLC is expected to make beneficiary information available to Parliament;

- 7.6 continued to provide replies to parliamentary questions relating to beneficiaries, including through requesting that the NLC provides me with a list of the names of the top 50 beneficiaries in the past 10 years and beneficiaries who received R10 million or more; and providing this list subsequently to parliament; and
- 7.7 requested that information on the beneficiaries for 2017/18 and 2018/19 be made available and on 28 July 2020, I tabled three lists of funded projects before Parliament, namely the 2017/18 List of Funded Projects; the 2018/19 List of Funded Projects; and the COVID-19 List of Funded Projects.
- 8 In respect of the future of the Board, this is a matter that I will address on completion of the next phase of the investigation and the information that it yields. I bring to your attention the following:
- 8.1 Section 3(5) of the Lotteries Act sets out the grounds on which the Minister may terminate the membership of a board member. The Minister may do so, after gaining knowledge of any possible disqualification, on grounds of either serious misconduct or the prolonged inability of the member to serve on the board.
- 8.2. The grounds of disqualification of members of the board are listed in section 3A of the Lotteries Act and I am appending it as an Annex to this letter.
- 8.3 The grounds of disqualification of members are extremely specific and would require credible allegations or findings that a board member has engaged in specific misconduct.
- 8.4 The exercise of this power is subject to the provisions of section 33 of the Constitution in respect of just administrative action.
- 8.5 At such time as I am satisfied that grounds exist for the termination of the membership of any member of the Board, I will set in motion the requisite process.
- 9 With regard to your request that NLC be placed under the administration by the DTIC, I draw your attention to the applicable legal provisions. As the Lotteries Act does not provide for administration of the NLC by the DTIC, an interim administrator may only be appointed in the circumstances permitted by the Public Finance Management Act. Section 49(3) of the PFMA authorizes the National Treasury “in exceptional circumstances” to appoint a functionary of a public entity as the accounting authority of another public entity. This would allow for an interim appointment pending the process of appointing a new Board. Only at such time as the appropriate conditions are met, will a request to National Treasury to appoint one or more competent functionaries to perform the functions of the Board, be appropriate.

- 10 In light of the above, I am providing the Department an opportunity to complete the necessary investigations and to do so in a procedurally proper manner.

Yours sincerely



EBRAHIM PATEL
MINISTER OF TRADE INDUSTRY AND COMPETITION