

STATEMENT ON THE PIC COMMISSION OF INQUIRY REPORT RELEASED ON 12 MARCH 2020

17 March 2020, Houghton, Johannesburg

Stakeholder Relations

Sakhumnotho Group Holdings Proprietary Limited (“Sakhumnotho”) notes the Report of the Judicial Commission of Enquiry into Allegations of Impropriety at the Public Investment Corporation (PIC) as released by the Presidency on 13 March 2020 (the “PIC Report”).

Whilst Sakhumnotho is currently reviewing in detail the findings of the PIC Report it however notes with disappointment that, notwithstanding the submissions made to the Commission on behalf of Sakhumnotho by its chairman, there is a significant difference of opinion between the Commission and Sakhumnotho on some of the aspects relating to the TOSACO transaction. Some of the areas of difference of opinion with the Commission’s findings relate to the following:

a) The merger between Sakhumnotho and Kilimanjaro was not voluntary

The Commission makes a finding that there is no merit to the claim that the merger between Sakhumnotho and KiliCap was voluntary.

For the sake of clarity, it must be pointed out that Sakhumnotho never merged with KiliCap but rather the two companies formed a joint venture company through which the TOSACO investment was made. Sakhumnotho continues to exist as a separate legal entity in its own right. The formation of the joint venture company was a product of a negotiated process which is evidenced by the shareholders agreement that KiliCap and Sakhumnotho concluded voluntarily regulating amongst others their relationship as co-shareholders of the joint venture company. Any finding to the contrary by the Commission fails to take cognisance of all the factual and surrounding circumstances around the formation of the joint venture company. By its own admission, the Commission makes an observation and/or finding that the advice to the two entities to “merge” would not be deemed improper and further points out that the Commission was unable to point to any policy of the PIC, legislation or contractual obligation that may have been contravened in this regard.

Accordingly, Sakhumnotho stands firm by the submission made by its Chairman, Mr Mseleku to the Commission and the testimony he presented before the Commission. Sakhumnotho is considering its options on whether to take this aspect on review and will be seeking necessary legal advice in relation thereto.

b) The PIC should have conducted a due diligence on Sakhumnotho and the newly formed KISACO Consortium

The Commission makes a finding that there is no merit to the claim that there was no need to do a detailed due diligence on Sakhumnotho as it was already and existing client of PIC.

It must be observed that whether a due diligence needs to be made on any applicant is an internal PIC governance matter. At the time of conclusion of the TOSACO transaction Sakhumnotho complied with all the requirements that PIC required it to comply with and, in this regard, Sakhumnotho submitted all documentation which the PIC team required from it at the time in order to progress the conclusion of the transaction. Accordingly, Sakhumnotho was led to believe that the process followed and/or documentation submitted was/were sufficient to comply with the relevant funding requirements.

c) The issue of the R100 million transaction fees

The Commission makes a finding that PIC committees should have been informed of the transaction fees and that the relevant PIC official acted improperly in not disclosing the increase of the loan amount from R1,7billion to R1.8billion.

It must be noted that the transaction fees were capitalised and as such form part of the loan amount advanced under the loan agreement concluded with the PIC and, as such, the transaction fees were never viewed as a grant. The repayment terms of the loan are set out in detail in the loan agreement and the borrower, being the joint venture company, has been servicing its repayment obligations in accordance with the relevant terms thereof. In addition, the transaction agreements always contemplated that the transaction fees would be paid back to the PIC when the first dividend was received by KISACO. It is a matter of fact that the transaction fees were duly paid as per agreement.

It is bewildering that the Commission would make a recommendation that the PIC consider instituting legal proceedings to recover the said transaction fees when there hasn't been any default under the loan agreement and when in fact the said fees have been repaid.

d) The issue of donations to political parties and other such entities

The Commission makes reference to communication sent by the then CEO of PIC to amongst others Mr Mseleku, wherein the then PIC CEO requests Mr Mseleku to consider making donations to the ANC and COSATU.

Whilst no adverse finding is made against Sakhumnotho per se it is worth noting that Sakhumnotho has previously donated to different types of organisations as part of its culture of giving and continues to do so. Organisations which have received donations from Sakhumnotho include churches, political parties, NGOs both locally and internationally.

Sakhumnotho did not start donating to the ANC, as a result of our dealings with the PIC. In fact, many South African corporates make similar donations to political parties.

In light of the foregoing Sakhumnotho is of the view that the Commission appears to have misdirected itself and, as a result, ended up with findings and/or recommendations relating to the TOSACO transaction which are biased, and are not backed by facts and/or that seem to create a dark cloud on how Sakhumnotho conducts its business dealings with PIC. Accordingly, Sakhumnotho is weighing up its



options on whether to take the PIC Report, in whole or in part, on review and will be seeking necessary legal advice in relation thereto.

We will update our stakeholders in due course once there has been any further developments on this matter.

As a responsible corporate citizen Sakhumnotho will continue to conduct its business in an ethical manner and in compliance with the law and will co-operate with all relevant authorities to the extent required. However, Sakhumnotho will not stand idle when its rights are trampled upon and reserves its rights to enforce and/or defend its rights when the need arises.

For further queries, kindly contact us on info@sakhumnotho.com.

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