

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number:

In the matter between:

ORGANISATION UNDOING TAX ABUSE

Applicant

and

MINISTER OF FINANCE

First Respondent

NATIONAL TREASURY

Second Respondent

MINISTER OF TRADE, INDUSTRY & COMPETITION

Third Respondent

DEPARTMENT OF TRADE, INDUSTRY & COMPETITION

Fourth Respondent

COMPANIES & INTELLECTUAL PROPERTY COMMISSION

Fifth Respondent

FOUNDING AFFIDAVIT

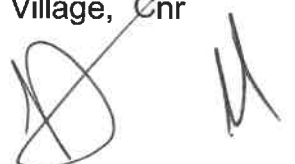
I, the undersigned,

STEFANIE FICK

declare under oath:

1.

- 1.1 I am an adult female executive director at the applicant's Accountability and Public Governance Division, with offices at Unit 4, Boskruin Village, Cnr



President Fouche and Hawken Road, Bromhof, Randburg, Gauteng. I am duly authorised by resolution from the applicant's executive committee to represent the applicant in these proceedings and depose to this affidavit on behalf of the applicant. The resolution is attached as annexure "FA1".

- 1.2 This founding affidavit's contents fall within my knowledge (except where the contrary appears from the context thereof) and are thus accurate and correct.
- 1.3 I hold an LLB degree from Unisa and am an admitted advocate (non-practising). Prior to joining OUTA in 2017, I was a prosecutor for 17 years and a member of the Johannesburg Society of Advocates for 5 years. I thus understand the legal submissions in this affidavit.
- 1.4 I request that the annexures attached to this founding affidavit and their contents be read and incorporated as if they were restated and dealt with accordingly. Without detracting from the generality of the requested incorporation, I shall specifically deal with those portions of the annexures most relevant to the adjudication of this application.
- 1.5 Since any reference to the annexures may constitute hearsay evidence:
- 1.5.1 I request that it be admitted in terms of the provisions of section 3(1) of the Law of Evidence Amendment Act 45 of 1988;
- 1.5.2 The annexures are true copies of the original documents; and



1.5.3 The admission of the relevant hearsay evidence will not prejudice the applicants because the annexures are true copies of the original documents. They can deal with the relevant facts and submit any rebutting proof in the answering affidavit.

1.6 Certain documents may constitute data messages contemplated in section 15 (read with section 1) of the Electronic Communications & Transactions Act 25 of 2002 [*ECTA*]. I request that the data messages enjoy the evidentiary due weight afforded by ECTA.

THE PARTIES

2.

2.1 The applicant is **ORGANISATION UNDOING TAX ABUSE NPC** [*OUTA*], a non-profit company registered and incorporated under the Companies Act 71 of 2008 [*the Companies Act*] with registration number 2012/064213/08 and registered office at Unit 4, Boskruin Village Office Park, corner President Fouché and Hawken Road, Randburg, Gauteng, as it appears from a printout of an electronic company search (annexure "**FA2(1)**").

2.2 OUTA is also a Public Benefit Organisation registered under section 30 of the Income Tax Act 58 of 1962 with registration number 930042651, as it appears from the letter issued by the Tax Exemption Unit of the South Africa Revenue Service attached (annexure "**FA2(2)**").

2.3 OUTA is a civil action organisation that:

- 2.3.1 Investigates, exposes, and combats corruption, maladministration, and the abuse of taxes and public funds in the public sector;
- 2.3.2 Challenges irrational and unconstitutional government decisions, policies, and legislation;
- 2.3.3 Works to improve public administration and service delivery; and
- 2.3.4 Advocates for positive policy changes and holds those responsible for misconduct accountable.

3.

- 3.1 The first respondent is the **MINISTER OF FINANCE** [*the Minister*], acting in his official capacity and the member of Cabinet responsible for the control and administration of the National Treasury, with principal office at 40 Church Street, Old Reserve Bank Building, Second Floor, Pretoria, Gauteng.
- 3.2 The Minister is cited as the executive authority responsible for administering the Public Finance Management Act 1 of 1999 [*PFMA*], as provided in Rule 10A of the Uniform Rules of Court.
- 3.3 The State Attorney, Pretoria, with principal place of business at Ground Floor, SALU Building, 316 Thabo Sehume Street, is the designated legal representative representing the Minister in these proceedings.

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4.

- 4.1 The second respondent is the **NATIONAL TREASURY** [*Treasury*], a South African government department established as a juristic person that may be a party to legal proceedings in its own name under section 5 of the PFMA, with principal office at 40 Church Street, Old Reserve Bank Building, Second Floor, Pretoria, Gauteng.
- 4.2 The Treasury is an organ of state within the national sphere of government that also exercises public powers and performs public functions under the PFMA, including managing national economic policy, preparing the annual budget, and controlling the government's finances.
- 4.3 The State Attorney, Pretoria, with principal place of business at Ground Floor, SALU Building, 316 Thabo Sehume Street, is the designated legal representative representing the Treasury in these proceedings.
- 4.4 This application will also be served on the Director-General of the Treasury at the address mentioned in 4.1 above and at the office of the State Attorney at the address mentioned in 4.3 above, as required by section 2 of the State Liability Act 20 of 1957, as amended.

5.

- 5.1 The third respondent is the **MINISTER OF TRADE, INDUSTRY & COMPETITION** [*the TIC Minister*], acting in his official capacity and the member of Cabinet responsible for the control and administration of the

Department of Trade, Industry & Competition, with principal office at the DTIC, 77 Meintjies Street, Block A, Third Floor, Sunnyside, Pretoria, Gauteng.

- 5.2 The TIC Minister is the executive authority responsible for administering the Companies Act.
- 5.3 The State Attorney, Pretoria, with principal place of business at Ground Floor, SALU Building, 316 Thabo Sehume Street, is the designated legal representative representing the TIC Minister in these proceedings.

6.

- 6.1 The fourth respondent is the **DEPARTMENT OF TRADE, INDUSTRY & COMPETITION** [*the DTIC*], a South African government department and an organ of state within the national sphere of government that also exercises public powers and performs public functions.
- 6.2 Its principal office is at the DTIC Campus, 77 Meintjies Street, Block A, Third Floor, Sunnyside, Pretoria, Gauteng.
- 6.3 The State Attorney, Pretoria, with principal place of business at Ground Floor, SALU Building, 316 Thabo Sehume Street, is the designated legal representative representing the DTIC in these proceedings.
- 6.4 This application will also be served on the Director-General of the DTIC at the address mentioned in 6.2 above and at the office of the State Attorney at the

address mentioned in 6.3 above, as required by section 2 of the State Liability Act 20 of 1957, as amended.

7.

- 7.1 The fifth respondent is the **COMPANIES & INTELLECTUAL PROPERTY COMMISSION** [*the CIPC*], a South African government department established as a juristic person that may be a party to legal proceedings in its own name under section 185 of the Companies Act, with its principal office at DTIC Campus, 77 Meintjies Street, Block F—Entfufukweni), Sunnyside, Pretoria, Gauteng.
- 7.2 The CIPC is an organ of state within the national sphere of government that also exercises public powers and performs public functions under the PFMA, including registering companies and intellectual property rights, and enforcing relevant legislation.
- 7.3 The State Attorney, Pretoria, with principal place of business at Ground Floor, SALU Building, 316 Thabo Sehume Street, is the designated legal representative representing the CIPC in these proceedings.

PURPOSE OF THE APPLICATION

8.

- 8.1 This application is for a declarator that sections 83(4) and 84 of the PFMA are unconstitutional because they impose a lower standard of accountability on the

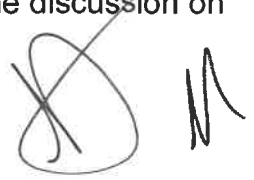
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accounting authorities of state-owned national public entities listed in Schedules 2 and 3 of the PFMA which are not companies registered under the Companies Act, than on directors of state-owned entities that are registered in terms of the Companies Act.

8.2 Specifically, the application will focus on the fact that the remedy of declaring a director of a state-owned entity registered under the Companies Act delinquent is available to public interest litigants such as OUTA, whereas there is no equivalent remedy against accounting authorities of public entities that are not registered under the Companies Act. I will show that this distinction is unjustifiable and violates the constitutional rights of equality and access to courts, as well as the constitutional values of accountability and transparency that public entities are required to uphold.

8.3 In this context a **director** of a state-owned company as defined in section 1 of the Companies Act read with section 66 thereof, is equivalent to an **accounting authority** or a **member of an accounting authority** of a state-owned entity that is not registered under the Companies Act as defined in section 1 of the PFMA read with section 49(2) thereof.

8.4 The difference between state-owned entities not registered as companies and those that are, is more fully discussed in paragraph 12 below under the heading '*Public Entities Established under the PFMA*'. The phrase "state-owned entity" or "SOE" refers to both a state-owned entity that is registered under the Companies Act and one that is not. In this regard, I refer to the discussion on

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the differences between them in paragraph 12 below. For the sake of convenience and brevity, I shall refer to the former as “SOC” and the latter as “SOE” even though both are state-owned entities.

8.5 The application is brought in terms of s 172(2) of the Constitution of the Republic of South Africa, Act 108 of 1996 [*the Constitution*], which sets out the powers of courts in constitutional matters.

8.6 The respondents are cited as interested parties. No specific relief is requested against any of the respondents, and OUTA will only seek costs against a respondent if the respondent opposes the relief that OUTA seeks in the notice of motion.

8.7 A notice in accordance with Rule 16A of the Uniform Rules of Court will be filed with the Court’s registrar simultaneously with this application to ensure that any other interested parties have notice of the proceedings.

JURISDICTION

9.

9.1 The Gauteng Division, Pretoria [*the Court*], has the necessary jurisdiction to adjudicate this application for an order that declares section 83 of the PFMA unconstitutional because:

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- 9.1.1 The first to fifth respondents' principal offices are situated within the Court's area of jurisdiction;
- 9.1.2 The Constitution is the supreme law of South Africa;
- 9.1.3 The Constitution created the Court, and as the Court is a guardian of the Constitution, the Court has the inherent power to interpret and apply the Constitution;
- 9.1.4 Public finance is a constitutional matter, and Chapter 13 of the Constitution stipulates transparency, **accountability**, and effective financial management as the principles for managing public finances across the national, provincial, and local spheres of government;
- 9.1.5 The Minister and the Treasury administer the PFMA within the Court's area of jurisdiction;
- 9.1.6 Section 83 of the PFMA defines what constitutes financial misconduct in the public sector, assigns responsibility and, together with section 84, provide sanctions for negligent and wilful financial misconduct by public entities' accounting authorities and officials; and
- 9.1.7 Sections 83(4) and 84 of the PFMA do not pass the constitutional muster because:
- (1) It does not provide sufficient accountability and sanctions for financial misconduct by public entities' accounting authorities and officials as stipulated by the Constitution; and

- (2) It negates the constitutional principle of equality, as its sanctions for and the consequences of financial misconduct are less severe than those prescribed by other legislation on other entities, irrespective of whether it is public or private.

STRUCTURE OF THE FOUNDING AFFIDAVIT

10.

The main purpose of this affidavit is to demonstrate the disparities between the provisions of the PFMA (read in conjunction with applicable Treasury Regulations) and the Companies Act, particularly regarding the available remedies for financial misconduct, and to illustrate how these disparities violate certain constitutional rights and principles. Accordingly, I will structure the founding affidavit as set out below.

The PFMA and Treasury Regulations

- 10.1 First, I will discuss the purpose of the PFMA;
- 10.2 Second, I will discuss the nature of public entities established under the PFMA;
- 10.3 Third, I will discuss the nature and composition of public entities' accounting authorities under the PFMA;
- 10.4 Fourth, I will outline the duties and responsibilities of the public entities' accounting authorities under the PFMA;
- 10.5 Fifth, I will outline the acts of financial misconduct under the PFMA;

- 10.6 Sixth, I will outline the sanctions under the PFMA for financial misconduct;
- 10.7 Seventh, I will outline the provisions of Regulation 33.1 of the National Treasury published Regulations for Departments, Trading Entities, Constitutional Institutions, and Public Entities (2005);

The Companies Act

- 10.8 Eighth, I will discuss the purpose of the Companies Act;
- 10.9 Ninth, I will discuss the nature of a company registered and incorporated under the Companies Act;
- 10.10 Tenth, I will discuss the nature and composition of companies' boards of directors under the Companies Act;
- 10.11 Eleventh, I will discuss the nature and composition of company directors under the Companies Act;
- 10.12 Twelfth, I will discuss a company director's liability for a breach of the fiduciary duty the director owes the company or any loss, damages, or costs sustained by the company under the Companies Act;

Comparison between the PFMA and the Companies Act

- 10.13 Thirteenth, I will outline the similarities between the duties and obligations of accounting authorities and company directors under the PFMA and the Companies Act;

10.14 Fourteenth, I will show that there is a disparity between the accountability under the PFMA and the Companies Act;

10.15 Fifteenth, the consequences of the disparity under the PFMA, the MFMA, and the Companies Act;

Constitutional rights and principles

10.16 Sixteenth, I will discuss the constitutional rights and principles that are infringed upon because of the lesser degree of accountability applicable to SOE accounting authorities as opposed to SOC directors.

10.17 Seventeenth, I will refer to examples that show the effect of the lack of public accountability for SOE accounting authorities.

10.18 Eighteenth, I will show the difference where the directors of SOCs can be held accountable by public interest litigants, with specific reference to the matter of ***Organisation Undoing Tax Abuse NPC and Another v Myeni and Another*** (15996/2017) [2019] ZAGPPHC 957 (12 December 2019) [*the Myeni case*] in which the erstwhile CEO of South African Airways, Dudu Myeni, was declared a delinquent director for life.

10.19 In conclusion, I show that the disparity between sections 83(4) and 84 of the PFMA and section 162 of the Companies Act regarding the sanctions that can be imposed on the officials in charge of SOEs and SOCs warrants a declaration of unconstitutionality because the accounting authorities of SOEs are less accountable to the public than the directors of SOCs.

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PURPOSE OF THE PUBLIC FINANCE MANAGEMENT ACT

11.

11.1 The introduction to the PFMA reads (that the purpose of the PFMA is) “*To regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; **to provide for the responsibilities of persons entrusted with financial management in those governments**; and to provide for matters connected therewith.*”

11.2 Section 2 of the PFMA states that its purpose “*is to secure transparency, **accountability**, and sound management of the revenue, expenditure, assets and liabilities of the institutions*” to which the PFMA applies.

PUBLIC ENTITIES ESTABLISHED UNDER THE PFMA

12.

12.1 Section 1 of the PFMA defines “*public entity*” as a national or provincial enterprise or a board, commission, company, corporation, fund, or other entity (which is not a national or provincial enterprise) established under legislation or a provincial constitution, fully or substantially funded either from the National or Provincial Revenue Fund or through a tax, levy, or other money imposed in terms of legislation, and accountable to Parliament or a provincial legislature.

12.2 A public entity is established in the public sector but outside the public service, among other things, for:

12.2.1 Strategic, social, or economic intervention by the State or to deal with strategic risks and dangers that the State or society faces to its security, health, prosperity, or well-being; and/or

12.2.2 Adopting commercial and business principles in service delivery when it is required; and/or

12.2.3 Signalling that there is a need for objectivity and more operational autonomy, yet retaining accountability in service delivery.

12.3 Schedules 2 and 3 of the PFMA list the major and national public entities established in South Africa. In this regard, I refer to what I have stated above in paragraph 8, and the discussion that follows should be read in conjunction with it:

12.3.1 These public entities include government business enterprises established by law to achieve various socio-economic activities and developmental objectives. They are generally known as "*state-owned enterprises*" ['SOEs'].

12.3.2 A state-owned company ['SOC'] is an SOE registered under the Companies Act as a company and listed as a public entity in Schedule 2 or 3 of the PFMA.

12.3.3 SOC's are thus subject to the provisions of both the Companies Act **and** the PFMA. Contrary to private companies whose directors are subject to the fiduciary duties under the Companies Act, SOC directors have a greater responsibility. They are subject to the fiduciary duties under the Companies Act and "heightened fiduciary duties", namely, the additional responsibilities under sections 50 and 51 of the PFMA.

12.3.4 Although all SOC's are also SOE's, it does not follow that all SOE's are SOC's because an SOE that is not incorporated under the Companies Act (even though listed in Schedule 2 of the PFMA and being an SOE) is not a company under the Companies Act and thus not an SOC.

12.3.5 However, both SOC's and SOE's (other than SOC's) are public entities and organs of state because the State controls them.

THE ACCOUNTING AUTHORITIES OF PUBLIC ENTITIES UNDER THE PFMA

13.

13.1 Section 49 of the PFMA provides that:

13.1.1 Every public entity must have an authority accountable under the PFMA;

13.1.2 If the public entity has a board or other controlling body, that board or controlling body is the accounting authority for that entity; and



- 13.1.3 If it does not have a controlling body, the chief executive officer or the other person in charge of that public entity is the accounting authority for that public entity unless specific legislation applicable to that public entity designates another person as the accounting authority.

THE DUTIES AND RESPONSIBILITIES OF ACCOUNTING AUTHORITIES UNDER THE PFMA

14.

- 14.1 Under section 50(1)(a) to (d) of the PFMA, the accounting authority for a public entity must:

- 14.1.1 Exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;
- 14.1.2 Act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;
- 14.1.3 On request, disclose to the executive authority responsible for that public entity or the legislature to which the public entity is accountable all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature; and
- 14.1.4 Seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the state's financial interests.

14.2 Sections 50(2)(a) & (b) of the PFMA provide that a member of an accounting authority may not act in a way inconsistent with the responsibilities assigned to an accounting authority in terms of the PFMA, or use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to benefit another person improperly.

14.3 Under section 50(3)(a) & (b) of the PFMA, a member of an accounting authority must:

14.3.1 Disclose to the accounting authority any direct or indirect personal or private business interest that the member or any spouse, partner or close family member may have in any matter before the accounting authority; and

14.3.2 Withdraw from the proceedings of the accounting authority when that matter is considered unless the accounting authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant.

14.4 Under section 51(1)(a) to (h) of the PFMA, an accounting authority for a public entity must ensure that the public entity has and maintains:

14.4.1 Effective, efficient and transparent systems of financial and risk management and internal control;

- 14.4.2 A system of internal audit under the control and direction of an audit committee complying with and operating per regulations and instructions prescribed in terms of sections 76 and 77 of the PFMA;
 - 14.4.3 An appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and
 - 14.4.4 A system for properly evaluating all major capital projects before a final decision on the project.
- 14.5 The accounting authority must also take effective and appropriate steps to:
- 14.5.1 Collect all revenue due to the public entity concerned; and
 - 14.5.2 Prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and
 - 14.5.3 Manage available working capital efficiently and economically.
- 14.6 The accounting authority is responsible for managing (including safeguarding) the public entity's assets, revenue, expenditures, and liabilities.
- 14.7 The accounting authority must comply with any tax, levy, duty, pension and audit commitments as legislation requires.
- 14.8 The accounting authority must take effective and appropriate disciplinary steps against any employee of the public entity who contravenes or fails to comply

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with a provision of the PFMA, commits an act that undermines the public entity's financial management and internal control system, or makes or permits an irregular, or fruitless, and wasteful expenditure.

14.9 The accounting authority is responsible for the public entity's submission of all reports, returns, notices and other information to Parliament or the relevant provincial legislature and to the relevant executive authority or treasury, as may be required by the PFMA.

14.10 The accounting authority must comply and ensure the public entity complies with the provisions of the PFMA and any other legislation applicable to the public entity.

ACTS OF FINANCIAL MISCONDUCT UNDER THE PFMA

15.

15.1 Section 83(1) of the PFMA provides that a public entity's accounting authority commits an act of **financial misconduct** if that accounting authority wilfully or negligently fails to comply with, among others, the abovementioned requirements of sections 50 and 51 of the PFMA or makes or permits an irregular expenditure or a fruitless and wasteful expenditure.

15.2 Section 83(2) of the PFMA provides that if the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.

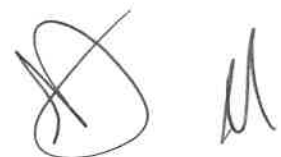
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- 15.3 Section 83(3) of the PFMA provides that if an official of a public entity to whom a power or duty is assigned in terms of section 56 of the PFMA commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

THE SANCTIONS FOR FINANCIAL MISCONDUCT UNDER THE PFMA

16.

- 16.1 Section 83(4) of the PFMA provides that "*Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation.*"
- 16.2 Section 84 of the PFMA provides for the applicable legal regime for disciplinary proceedings, and reads "*A charge of financial misconduct against an accounting officer or official referred to in section 81 or 83, or an accounting authority or a member of an accounting authority or an official referred to in section 82, must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that accounting officer or authority, or member or official, and any regulations prescribed by the Minister in terms of section 85.*"
- 16.3 It follows that under the PFMA:
- 16.3.1 A charge of financial misconduct against an accounting authority or its member(s) must be investigated, heard and disposed of under the accounting authority or its member(s)' statutory or other conditions of

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appointment or employment, and any regulations prescribed by the Minister under section 85 of the PFMA; and

- 16.3.2 The only sanctions for financial misconduct are dismissal, suspension, or undefined “sanctioning”.

REGULATION 33.1 OF THE NATIONAL TREASURY REGULATIONS FOR DEPARTMENTS, TRADING ENTITIES, CONSTITUTIONAL INSTITUTIONS, AND PUBLIC ENTITIES (15 MARCH 2005)

17.

- 17.1 On 15 March 2005, under section 85 of the PFMA (which empowers the Minister to make Regulations), the National Treasury published Regulations for Departments, Trading Entities, Constitutional Institutions, and Public Entities (2005) dealing with various PFMA aspects, including financial misconduct [*the NTR*].
- 17.2 Regulation 33.1 of the NTR provides that if an accounting authority or any member is alleged to have committed financial misconduct, the relevant executive authority must initiate an investigation and, if the allegations are confirmed, ensure that appropriate disciplinary proceedings are initiated immediately.
- 17.3 After consultation with the executive authority, the relevant treasury may direct that a person other than an employee of the public entity conduct the investigation and issue any reasonable requirement regarding how the investigation should be performed.

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17.4 Under Regulation 33.2 of the NTR, an accounting authority must advise the Auditor-General and the relevant executive authority and treasury of any criminal charges it has laid against any person in terms of section 86 of the PFMA.

17.5 Should an accounting authority fail to take appropriate action, the executive authority or relevant treasury may direct a public entity to lay charges of criminal financial misconduct against any person.

THE PURPOSE OF THE COMPANIES ACT

18.

18.1 The introduction to the Companies Act reads, among others, (that the purpose of the Companies Act is) *"To provide for the incorporation, registration, organisation and management of companies, ...; to provide for efficient legal redress for investors and third parties with respect to companies; ..."*

COMPANIES REGISTERED AND INCORPORATED UNDER THE COMPANIES ACT

19.

19.1 A company is a juristic person incorporated under the Companies Act, a domesticated company (which is under section 1 of the Companies Act a foreign company whose registration has been transferred to the Republic under section 13(5) to (11) of the Companies Act), or a juristic person that, immediately before the commencement of the Companies Act, was:

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- 19.1.1 Registered under the previous Companies Act 61 of 1973 [*the previous Companies Act*], or the Close Corporations Act 69 of 1984 (if it has been converted under Schedule 2);
- 19.1.2 In existence and recognised as an “existing company” under the previous Companies Act; or
- 19.1.3 Deregistered under the previous Companies Act and has been re-registered under the Companies Act.
- 19.2 Section 19(1) of the Companies Act provides that a company exists continuously from the date its incorporation is registered and has all the powers and capacity of an individual, except where those powers are incapable to a juristic person.
- 19.3 Section 66(1) of the Companies Act stipulates that a company’s board (which must be comprised of directors) manages or directs its business and affairs and has the authority to exercise all of its powers and perform its functions.

COMPANIES’ BOARDS OF DIRECTORS UNDER THE COMPANIES ACT

- 19.4 Section 1 of the Companies Act defines a “*director*” as a member of the board of a company or an alternate company director and includes any person occupying the position of a director or alternate director, by whatever name designated.
- 19.5 Section 19(2) of the Companies Act provides that a person is not liable for the company’s liabilities and obligations solely because of being a company

director, except to the extent that the Companies Act or the company's Memorandum of Incorporation provides otherwise.

THE DUTIES AND RESPONSIBILITIES OF COMPANY DIRECTORS UNDER THE COMPANIES ACT

20.

20.1 Under sections 76(2)(a) & (b) of the Companies Act, a company director must not use the position of director, or any information obtained while acting in the capacity of a director to:

20.1.1 Gain an advantage for the director, or for another person other than the company or a wholly-owned subsidiary of the company; or

20.1.2 Knowingly cause harm to the company or a subsidiary of the company; and

20.1.3 Communicate to the board at the earliest practicable opportunity any information that comes to the director's attention, unless the director:

(1) Reasonably believes that the information is immaterial to the company, or

(2) Generally available to the public, or known to the other directors;
or



- (3) Is bound not to disclose that information by a legal or ethical obligation of confidentiality.

20.2 Section 76(3)(a), (b) & (c) of the Companies Act provides that a company director must exercise the powers and perform the functions of a director in good faith, in the best interests of the company, and with the degree of care, skill, and diligence that may reasonably be expected of a person carrying out the same functions in relation to the company as those carried out by that director and having the general knowledge, skill and experience of that director.

20.3 Section 76(3) of the Companies Act provides that in respect of any particular matter arising in the exercise of the powers or the performance of the functions of a director, a specific company director:

20.3.1 Will have satisfied these obligations if the director:

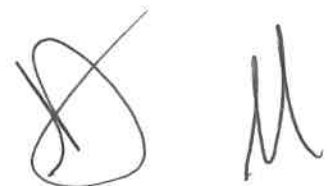
- (1) Has taken reasonably diligent steps to become informed about the matter;
- (2) Had no material personal financial interest in the subject matter of the decision and had no reasonable basis to know that any related person had a personal financial interest in the matter or complied with the requirements of section 75 of the Companies Act; and
- (3) Made a decision, or supported the decision of a committee or the board, concerning that matter, and the director had a rational

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basis for believing, and did believe, that the decision was in the company's best interests.

20.3.2 Is entitled to rely on the performance by any of the persons referred to in section 76(5) of the Companies Act (mentioned below); or to whom the board may reasonably have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law, and any information, opinions, recommendations, reports or statements, including financial statements and other financial data, prepared or presented by any persons mentioned in section 76(5) of the Companies Act, which entitles a company director to rely on:

- (1) One or more employees of the company whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;
- (2) Legal counsel, accountants, or other professional persons retained by the company, the board or a committee as to matters involving skills or expertise that the director reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence; or



- (3) A committee of the board of which the director is not a member, unless the director has reason to believe that the committee's actions do not merit confidence.

COMPANY DIRECTORS' LIABILITY

21.

21.1 Under Section 77(2) of the Companies Act, a company director may be held liable under common law for any loss, damages, or costs the company sustained from a breach of the director's fiduciary duty or a delict flowing from the breach of the director's other duties under the Companies Act and otherwise and the provisions of the company's Memorandum of Incorporation.

21.2 Under section 77(3) of the Companies Act, a company director is liable for any loss, damages or costs sustained by the company as a direct or indirect consequence of the director, among other things, having:

21.2.1 Acted in the name of the company, signed anything on behalf of the company, or purported to bind the company or authorise the taking of any action by or on behalf of the company, despite knowing that the director lacked the authority to do so;

21.2.2 Acquiesced in the carrying on of the company's business despite knowing that it was being conducted in a prohibited manner;

21.2.3 Been a party to an act or omission by the company despite knowing that the Companies Act or omission was calculated to defraud a

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creditor, employee or shareholder of the company, or had another fraudulent purpose;

21.2.4 Signed, consented to, or authorised the publication of any financial statements that were false or misleading in a material respect, or a prospectus or written statement that contained an "untrue statement" (as defined) or a statement to the effect that a person had consented to be a director of the company, when no such consent had been given, despite knowing that the statement was false, misleading or untrue.

21.2.5 Been present or participated in the making of a decision at a meeting of the company's board and failed to vote against:

- (1) The issuing of any unauthorised shares, despite knowing that those shares had not been authorised;
- (2) The issuing of any authorised securities despite knowing that the issue of those securities did not comply with the prescripts of the Companies Act;
- (3) The granting of options to any person despite knowing that any shares for which the options could be exercised or into which any securities could be converted had not been authorised;
- (4) The provision of financial assistance to any person for the acquisition of securities of the company, despite knowing that the



provision of financial assistance did not comply with the provisions of the company's Memorandum of Incorporation;

- (5) The provision of financial assistance to a director for a purpose contemplated in the Companies Act despite knowing that it was inconsistent with that section or the company's Memorandum of Incorporation;
- (6) A resolution approving a distribution, despite knowing that the distribution was contrary to the provisions of the Companies Act;
- (7) The acquisition by the company of any of its shares, or the shares of its holding company, despite knowing that the acquisition was contrary to the provisions of the Companies Act;
or
- (8) An allotment by the company despite knowing that the allotment was contrary to any provision of the Companies Act.

21.3 Under section 77(6) of the Companies Act, a company director's liability is joint and several with any other person who is or may be held liable for the same act.

21.4 The Companies Act also provides that a director who may be held liable for a decision of the company's board may approach the Court to set aside the decision or for other appropriate relief.

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- 21.5 Under section 77(9) of the Companies Act, a court may also relieve a company director from liability (except for wilful misconduct) if the director is or may be liable but acted honestly and reasonably, or (having regard to all the circumstances) it would be fair to excuse the director.
- 21.6 Under section 162 of the Companies Act, a court **must** (the court has no discretion) declare a company director delinquent if the director has failed to discharge a director's duties under the Companies Act.
- 21.7 A delinquency order has serious consequences for a director, including disqualification from holding any directorship or senior management position, potentially for their lifetime or a specified period.
- 21.8 The court may also issue a probation order (which may be subject to conditions) restricting the director's right to act in such a capacity.

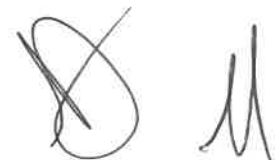
THE SIMILARITY BETWEEN THE DUTIES AND OBLIGATIONS OF ACCOUNTING AUTHORITIES AND SOC DIRECTORS UNDER THE PFMA AND THE COMPANIES ACT

22.

- 22.1 Section 50(1)(a) to (d) of the PFMA requires an accounting authority to **exercise the duty of utmost care** to ensure reasonable protection of the public entity's assets and records and **act with fidelity, honesty, integrity, and in the best interests of the public entity** in managing the public entity's financial affairs, irrespective of whether it is an SOC or not.

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- 22.2 Section 76(3)(a), (b) & (c) of the Companies Act requires a company director to **perform the functions of a company director in good faith, in the best interests of the company, and with the degree of care, skill, and diligence** that may reasonably be expected of a person carrying out the same functions concerning the company as those carried out by that director and having the general knowledge, skill and experience of that director.
- 22.3 Compared to a company director of a company which is not an SOC, an SOC director is also subject to “heightened fiduciary duties” due to the additional responsibilities of the SOC’s board under sections 50 and 51 of the PFMA. A member of an accounting authority is also subject to these PFMA provisions.
- 22.4 Section 50(2)(a) & (b) of the PFMA prohibits a member of an accounting authority from using the position or privileges of, or confidential information obtained as, an accounting authority or a member of an accounting authority for **personal gain or to benefit another person improperly**.
- 22.5 Section 76(2)(a) & (b) of the Companies Act, in turn, prohibits a SOC director from using the position of a director or any information obtained while acting in the capacity of a director to **gain an advantage for the director or another person other than the SOC**.
- 22.6 There is thus no real difference between the duties and responsibilities of a member of an accounting authority of a public entity that is not a SOC and a director of a public entity that is a SOC.



THE DISPARITY BETWEEN THE ACCOUNTABILITY UNDER THE PFMA AND THE COMPANIES ACT

22.7 However, despite the similarities in their duties and responsibilities, there are fundamental differences between the sanctions that apply to and the rights of these accounting authorities under the PFMA and directors under the Companies Act:

22.7.1 Under the Companies Act, a court **must** declare a SOC director who has failed to discharge a director's duties delinquent. At the same time, the PFMA **does not provide** that an accounting authority member who fails to discharge their duties may be declared delinquent.

22.7.2 Section 77(2) of the Companies Act expressly states that a director of a SOC may be held liable under the common law for any loss, damages, or costs the SOC sustained from a breach of the director's fiduciary duty or a delict flowing from the breach of the director's other duties under the Companies Act and otherwise, and the provisions of the company's Memorandum of Incorporation.

22.7.3 The PFMA **does not contain** a similar provision.

22.7.4 An SOC director is liable for any loss, damages, or costs sustained by the company as a direct or indirect consequence of the director's actions as stated in section 77(3) of the Companies Act.

22.7.5 The PFMA **has no similar provision**.

22.7.6 Under section 83(4) of the PFMA and regulation 33.2 of the NTR, **the only sanctions** against a member of an accounting authority who has committed financial misconduct are that the member may be dismissed, suspended, or sanctioned for financial misconduct. Should an accounting authority fail to take appropriate action, the executive authority or relevant treasury may direct a public entity to lay charges of criminal financial misconduct against any person.

22.8 Conversely, the Companies Act gives a director who may be held liable for a decision of the company's board the right to approach a Court to set aside the decision or for other appropriate relief.

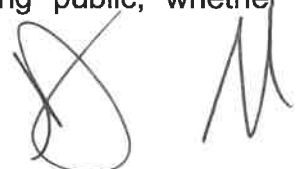
22.9 The PFA **does not contain** a similar provision.

THE CONSEQUENCES OF THE DISPARITY UNDER THE PFMA AND THE COMPANIES ACT

23.

23.1 Although both "sanction" and "penal provision" relate to punishments or consequences for wrongdoing, "penal provision" refers specifically to a legal rule or clause that outlines a punishment. In contrast, "sanction" is a broader term encompassing any penalty or consequence.

23.2 It is trite that declaring a director delinquent under the Companies Act is not to serve as a penal provision but to protect the investing public, whether

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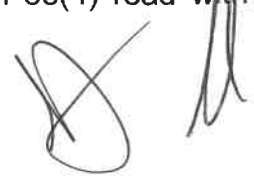
sophisticated or unsophisticated, against the type of conduct that leads to an order of delinquency and to protect those who deal with companies against misconduct of delinquent directors.

- 23.3 Directors who do not discharge their duties owed to an SOC are subjected to more severe sanctions and possible lifelong consequences under the Companies Act than members of the accounting authority of a state-owned enterprise under the PFMA.
- 23.4 It is not possible to declare the accounting authority or an individual member of the accounting authority of a public entity that is not an SOC delinquent under the Companies Act or the PFMA.
- 23.5 This does not pass constitutional muster because it infringes upon the equality provision enshrined in section 9 of the Constitution, as well as the public's right to a fair public hearing before a court or other independent tribunal or forum guaranteed in section 34. It also violates the constitutional principles of accountability and transparency that should be observed in the management of public funds.

VIOLATION OF CONSTITUTIONAL RIGHTS AND PRINCIPLES

24.

- 24.1 In terms of section 8(1) of the Constitution, the Bill of Rights applies to all laws and binds the legislature, the executive, the judiciary, and all organs of state. It is against this backdrop that the disparities between section 83(4) read with



section 84 of the PFMA and section 162 of the Companies Act need to be evaluated.

- 24.2 The disparity between accountability for accounting authorities of SOEs subject only to the PFMA and directors of SOC's also subject to the Companies Act is arbitrary and irrational, especially given the similarities in the duties and responsibilities of such accounting authorities and directors.

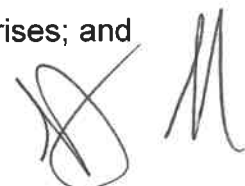
25.

- 25.1 As referred to in paragraph 22 above, this disparity is rooted in the wording of sections 83(4) and 84 of the PFMA and impacts the following sections in the Constitution:

25.1.1 Section 9(1), which guarantees that everyone is equal before the law;

25.1.2 Section 34, which guarantees that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court, or where appropriate, another independent and impartial tribunal or forum;

25.1.3 Section 195(1)(f), which states that public administration must be accountable, and section 195(g), which states that transparency must be fostered by providing the public with timely, accessible and accurate information. According to section 195(2), this applies to every sphere of government, organs of state and public enterprises; and

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25.1.4 Section 215(1), which determines that national, provincial, and municipal budgets and budgetary processes must promote transparency, **accountability** and the effective financial management of the economy, debt, and the public sector. This applies to budgets in all spheres of government.

25.2 I will discuss below the limitations that the disparity imposes on sections 9 and 34 of the Constitution, whether such limitations are reasonable and justifiable with reference to s 36 of the Constitution, and the effect of the differentiation.

25.3 Furthermore, with reference to sections 195(1)(f) and (g) as well as section 215(1) of the Constitution, I will discuss the central role that public accountability plays in the South African constitutional dispensation and the need for greater accountability for public official in charge of state entities dealing with public funds.

26.

Section 9(1) of the Constitution

Section 9(1) of the Constitution is infringed upon by the disparity in various respects:

26.1 There is an unjustified disparity between the directors of SOCs and the accounting authorities of SOEs. Both perform similar roles but face different



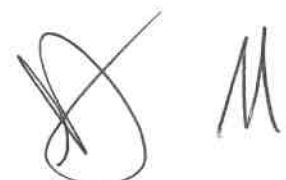
accountability sanctions. There is no rational reason for this unequal treatment when it pertains to the mismanagement of public funds.

26.2 Directors of SOC's are subject to both the Companies Act and the PFMA, and therefore, thus bearing a heightened fiduciary duty, while accounting authorities of SOEs are only subject to the PFMA and the sanctions it imposes. Due to this disparity, SOE accounting authorities who cannot be declared delinquent may continue to hold similar positions across different SOEs without consequences, as demonstrated in several examples below.

26.3 An irrational distinction also exists between parties who may seek remedies against SOE accounting authorities and against SOC directors guilty of fraud or public fund mismanagement.

26.4 Under section 162 of the Companies Act, various parties, including the company, a shareholder, a director, a company secretary or a prescribed officer of the company, a registered trade union representing the company employees or any other representative of the company employees, can apply to declare a SOC director delinquent. The courts have expanded this group to include public interest litigants such as OUTA. The range of parties that can seek redress against a director of a SOC for financial misconduct is therefore broad.

26.5 In contrast, under the PFMA, only the accounting authority itself, the executive authority, or the relevant treasury can impose sanctions on an SOE accounting authority guilty of financial misconduct.

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- 26.6 Consequently, public interest litigants have legal recourse against directors of SOC's but not against accounting authorities of SOEs.
- 26.7 Sections 83(4) and 84 of the PFMA unjustifiably differentiate between SOE accounting authorities and SOC directors and limit who has recourse to remedies against accounting authorities.
- 26.8 This disparity effectively exempts SOE accounting authorities from public scrutiny despite their management of public funds and them receiving salaries from the public purse.
- 26.9 Another consequence is that the public cannot force the State to remove accounting authorities guilty of financial misconduct, allowing them to be reappointed to similar roles in other public entities. In the case of SOC's, public interest litigants can intervene in the public interest to prevent the reappointment of directors guilty of financial misconduct to similar roles.
- 26.10 There is no rational basis for the disparity in who can seek redress against those responsible for managing public funds, whether they serve as an SOE accounting authority or a SOC director, nor for holding a SOC director to a higher level of accountability than a SOE accounting authority. These disparities serve no legitimate or reasonable purpose.
- 26.11 In the premises, the infringement is not justifiable in terms of section 36(1) of the Constitution.

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27.

Section 34 of the Constitution

27.1 The absence of a comparable sanction (such as a declaration of delinquency) under the PFMA for financial misconduct by an SOE accounting authority undermines section 34 of the Constitution. It denies litigants like OUTA, acting in the public interest, the right to a fair public resolution of disputes before independent and impartial tribunals. Instead, recourse is limited to internal, closed and non-transparent forums.

27.2 This limitation is not justifiable in terms of section 36(1) of the Constitution.

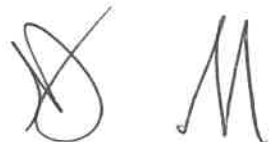
28.

Section 195(1)(f) and (g) of the Constitution

28.1 Public accountability is a fundamental constitutional value. Section 195(1)(f) mandates accountability in public administration, and section 195(1)(g) requires transparency by providing the public with accurate, timely, and accessible information.

28.2 If public access to information is vital to accountability and transparency, the public should also have extensive remedies to enforce these principles.

28.3 Our courts have consistently issued mandamus orders compelling public officials to fulfil their duties and have held them in contempt when necessary.

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Given the Constitution's supremacy, there is no rational basis to hold only some public officials accountable through legal remedies available to the public, while excluding the accounting authorities of SOEs. Thus, mechanisms to declare these accounting authorities delinquent should be available.

29.

Section 215(1) of the Constitution

- 29.1 The PFMA gives effect to section 215(1) of the Constitution which *inter alia* provides for national budgetary processes to promote transparency, accountability, and the effective management of the economy, debt and the public sector.
- 29.2 It has been repeatedly shown that simply adopting these principles without effective enforcement and sanctions is insufficient, as demonstrated by the transfer of accounting authorities implicated in some form of financial misconduct across SOEs.
- 29.3 Although section 83(4) of the PFMA lists financial misconduct by an accounting authority of an SOE as a ground for dismissal, suspension, or any other sanction, there is a wide discretion regarding the consequences for an official found guilty of financial misconduct. There is neither a prescribed sanction nor a way for the public to ensure that the board of an SOE takes appropriate action.

29.3.1 Section 84 of the PFMA merely requires that, where there is a charge of financial misconduct against an accounting authority or a member of an accounting authority, the charge *'...must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment of employment applicable to that accounting officer or authority, or member or official, and any regulations prescribed by the Minister in terms of section 82.'*

29.4 The above contrasts with section 162(5) of the Companies Act, which allows for a public interest litigant to apply for a declaration of delinquency of a company director, and mandates courts to declare directors delinquent if certain criteria are met. The wording of the section is prescriptive: *'A court **must** make an order declaring a person to be a delinquent director if the person...'*

29.5 If sanctions can only be imposed through internal channels with exclusion of the public, transparency and public accountability are sacrificed. Consequently, public recourse to sanctions must align with the principles of transparency and accountability regarding the public sector and public funds.

EXAMPLES OF WHERE THE DISPARITY IS VISIBLE

30.

In what follows, I will provide several examples of accounting authorities of SOEs that are not companies incorporated under the Companies Act that have evaded accountability. These examples are not intended to provoke debate about the

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culpability of these individuals, but merely to illustrate the lack of accountability that may result from the disparity.

31.

Andile Nongogo

31.1 Nongogo was the CEO of the Services Sector Education and Training Authorities [*Services SETA*]. Services SETA's are state-owned entities established by the Skills Development Act 97 of 1998 and must be managed in accordance with the provisions of the PFMA and its related regulations. It is thus an SOE and not a SOC.

31.2 An investigation by OUTA revealed that, under Nongogo's tenure at Services Seta, an irregular tender process was followed and a tender worth R40 million was awarded to an entity known as Five Stars Communication and Projects for branding and marketing material with highly inflated prices, which included:

31.2.1 R93 579.60 for 20 branded T-shirts (i.e. an average of R4 679 per T-shirt);

31.2.2 R264 340 for six branded umbrellas (i.e. an average of R44 057 per umbrella);

31.2.3 R187 600 for video services for a one-day event;

31.2.4 R58 800 for 60 coasters (i.e. R980 per coaster);



- 31.2.5 R36 300 to design a letterhead;
- 31.2.6 R36 300 to redesign a payment advice form where only three minor changes were made to the existing form;
- 31.2.7 R668 200 to print 100 copies of the SSETA Annual Performance Plan;
- 31.2.8 R58 400 for photography services at a one-day event; and
- 31.2.9 R302 010 for the vinyl branding of a tender box.
- 31.3 At the time Nongogo was the official responsible for managing the tender under the Services Level Agreement.
- 31.4 The PFMA regulates Services SETA but lacks a provision similar to the Companies Act, so Nongogo could not be declared delinquent and thus prevented from being appointed to another SOE accounting authority.
- 31.5 Upon his departure from Services SETA, Nongogo was appointed as CEO of the National Student Financial Aid Scheme [‘NSFAS’] in December 2020. NSFAS is a state-owned entity established in terms of the National Student Financial Aid Scheme Act, 56 of 1999, with the main objective to provide financial means to deserving students. It is also an SOE and not an SOC.
- 31.6 An investigation by Werksmans Attorneys and Adv Tembeka Ngcukaitobi SC commissioned by the NSFAS Board in 2023 found conflicts of interest involving

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Nongogo and service providers appointed to manage student allowance payments. The investigations recommended his dismissal.

31.7 Following the Werksmans report, Nongogo's employment was terminated by the NSFAS Board. The Labour Court subsequently dismissed his application for reinstatement.

31.8 Despite the above, Nongogo is not barred from serving as a director of a SOC or serving again as accounting authority of an SOE. As neither Services SETA nor NSFAS is a SOC, and the PFMA thus applies, he cannot be declared delinquent and prevented from being appointed to a SOE again.

32.

Ernst Khoza

32.1 Khoza was Nongogo's successor at NSFAS and resigned from NSFAS shortly after allegations of corruption emerged in early 2024.

32.2 At the time of deposing to this affidavit, Khoza is the chairperson of the board of the South African Civil Aviation Authority ['SACAA'], a public entity established in terms of the now-repealed South African Civil Aviation Act, 40 of 1998, which was replaced by the Civil Aviation Act, 13 of 2009. The SACAA is a state-owned public entity listed in Schedule 3 of the PFMA and, as such, is subject to the provisions of the PFMA.



32.3 Once again, because the PFMA does not contain a delinquency provision, he could be appointed to SACAA without the public (and OUTA) having any recourse.

32.4 To prevent any accusations that OUTA is not transparent, I disclose that at the time of deposing to this affidavit there is pending litigation between OUTA and Khoza in the High Court of the Gauteng Division, Johannesburg. The content of the pending litigation is not relevant for purposes of this application.

33.

Japh Chuwe

33.1 Chuwe was the Registrar and CEO of the Road Traffic Infringement Agency [*RTIA*] from 2010 to 2021, when his employment was terminated by the RTIA board following allegations of maladministration. The RTIA is a state-owned public entity listed in Schedule 3 of the PFMA and, as such, is subject to the provisions of the PFMA.

33.2 At the time of deposing to this affidavit, Chuwe is referred to on his LinkedIn profile as the founder and chairperson of the Majestic Oasis Group of Companies.

33.3 Despite having left the RTIA under a cloud, Chuwe is not barred from serving as a director of a SOC (or any other company) or from again being appointed as an accounting authority of an SOE.



33.4 Once again, because the PFMA does not contain a delinquency provision, he can serve as a director of a company without the public (and OUTA) having any recourse.

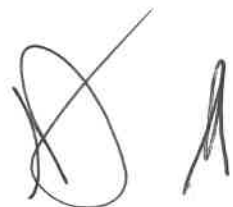
34.

As indicated, none of the above persons are barred from serving as the accounting authority of an SOE or on the board of directors of a SOC or a private sector company. This shows the extent to which the public's hands are tied when it comes to holding high-ranking officials in SOEs to account. If Services SETA, NSFAS and the RTIA were SOCs, the public (and OUTA) would have a recourse under the Companies Act, but under the PFMA, the public has none.

THE DIFFERENCE WHERE STATE-OWNED ENTITIES ARE REGISTERED AS COMPANIES UNDER THE COMPANIES ACT

35.

35.1 OUTA and the South African Airways Pilots Association were successful in declaring Dudu Myeni (now deceased) a delinquent director after her tenure as CEO of South African Airways. The judgment in the Myeni case was handed down in the Gauteng High Court, Pretoria in 2020. The court found Myeni to have been dishonest, in breach of her fiduciary duty, reckless and grossly negligent in her capacity as director of SAA.

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35.2 OUTA's cause of action was rooted in Myeni's reckless conduct that contributed greatly to the financial woes of SAA. The court found at paragraph 271 of the judgment that "...Ms Myeni caused untold harm to SAA and the South African economy by what can only be described as sabotaging, the lucrative Emirates deal and very nearly ruining the Swap Transaction" and a lifelong delinquency was imposed.

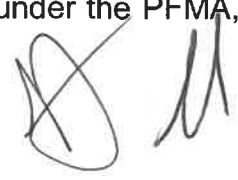
35.3 Had Myeni been an accounting authority of an SOE, this remedy would not have been available to OUTA. Most likely, she would not have been held accountable for her gross abuse of office and breach of her fiduciary duties during her tenure at SAA and for the enormous damage she caused.

CONCLUSION

36.

36.1 In summary, it is necessary to declare sections 83(4) and 84 of the Public Finance Management Act (PFMA) unconstitutional to uphold the constitutional principles of equality, accountability and sound public financial management. The current provisions in sections 83(4) and 84 of the PFMA create an unequal standard that disproportionately mitigates sanctions for financial misconduct within SOEs under the PFMA compared to SOCs under the Companies Act and the PFMA.

36.2 The dual regulatory regime imposed on SOC directors, combining the fiduciary duties under the Companies Act with the heightened duties under the PFMA,

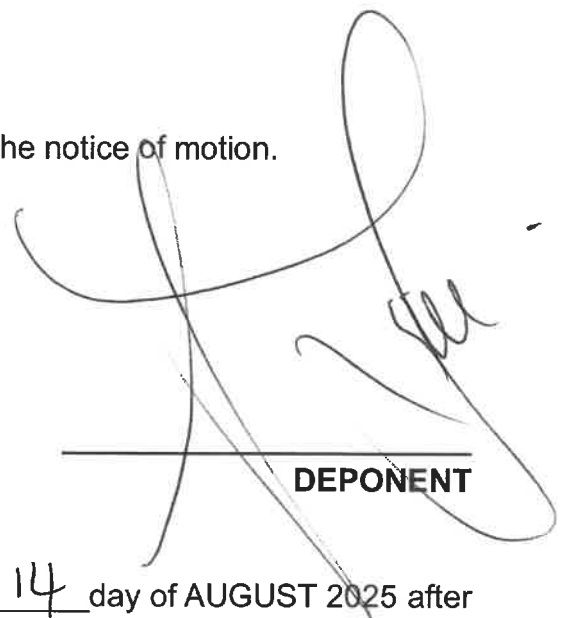


reflects the gravity of their role and the need for public accountability. There is no justifiable reason why an accounting authority or member of an accounting authority of an SOE should be subject to a lower standard than a director of a SOC.

36.3 Uniformity is required in the sanctions for SOE accounting authorities and SOC directors, particularly where they are entrusted with the management of public funds and have important fiduciary duties. Such uniformity can only be achieved if sections 83(4) and 84 of the PFMA are aligned with section 162 of the Companies Act to serve not only as a remedy for public interest litigants but also as a deterrent to financial misconduct in all state-owned entities.

37.

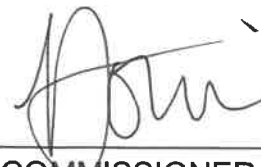
In the premises, I will ask for an order as set out in the notice of motion.



DEPONENT

Signed and sworn before me at PRETORIA on this 14 day of AUGUST 2025 after the deponent declared that she is familiar with the contents of this statement, regards the prescribed oath as binding on her conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).





COMMISSIONER OF OATHS

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