
GENERAL NOTICE

NOTICE 811 OF 2011

DEPARTMENT OF SPORT AND RECREATION

MINISTRY OF SPORT AND RECREATION

MINISTERIAL COMMITTEE FOR THE INVESTIGATION INTO THE FAILURE BY CRICKET SA TO ADHERE TO CERTAIN RECOMMENDATIONS OF KPMG AND LEGAL COUNSEL FOLLOWING A FORENSIC INVESTIGATION INTO THE AFFAIRS OF CRICKET SA GIVEN THE SERIOUSNESS OF THE CONTRAVENTIONS OF THE COMPANIES ACT

I, Fikile April Mbalula MP, Minister of Sport and Recreation, in accordance with Treasury Regulation 20 [issued in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999)] and section 13(5) (a) of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998 as amended), hereby establish the committee set out in the schedule hereto to investigate the non compliance by Cricket SA as referred to above.

Mr. F A Mbalula MP

Minister of Sport and Recreation

Ministry of Sport and Recreation

Terms of reference for the investigation into the failure by Cricket SA to adhere to certain recommendations of KPMG and Legal Counsel following a forensic investigation into the affairs of Cricket SA given the seriousness of the contraventions of the Companies Act

Background

1. The events that preceded the abovementioned need to appoint a judge to investigate and report on the failure by Cricket SA to adhere to certain recommendations of KPMG and the legal advice of Legal Counsel as referred to hereunder, encompass the following, amongst others:
 - 1.1 The Ministry of Sport and Recreation and the South African Sports Confederation and Olympic Committee ("**SASCOC**") have agreed in principle to allow Cricket SA to address and resolve the following issues internally within the said sports body, amongst others:
 - 1.1.1 The issue of contestation within Cricket SA;
 - 1.1.2 the issue pertaining to the bonuses paid to employees of Cricket SA (including the CEO, Mr. Gerald Majola) in connection with the staging by Cricket SA of the Indian Premier League ("**IPL**") and the International Cricket Council ("**ICC**") Champions Trophy tournaments in 2009; and
 - 1.1.3 determining an appropriate policy to regulate the bonus payments by Cricket SA in future.
2. Sport and Recreation South Africa ("**SRSA**") and SASCOC have subsequently recommended to the President of Cricket SA, Dr. M Nyoka, that they should jointly identify 4 or 5 forensic audit companies,

screen them and appoint one company to do a forensic audit into the affairs of Cricket SA, as referred to in par. 1.1.

3. Dr. Nyoka, however, chose not to adhere to this advice and appointed KPMG to do the said forensic audit.
4. In essence, KPMG's report and its recommendations entail the following, amongst others:
 - 4.1 Every cent of the R68m for the IPL was properly accounted for and audited and no evidence could indicate that there was any misappropriation of the funds of Cricket SA;
 - 4.2 no monies are missing from the coffers of Cricket SA;
 - 4.3 the remuneration and travel allowance policy of Cricket SA must be reviewed;
 - 4.4 KPMG, however, indicated that there seemed to be a non disclosure of the bonus payments made to employees of Cricket SA in the above regard as required in terms of the Companies Act; and
 - 4.5 KPMG subsequently recommended that Cricket SA sought legal advice from Senior Counsel in this regard as KPMG has not been mandated, nor is it within their ambit, to express their views on the guilt or innocence of an employee of Cricket SA in this regard.
5. Moreover Cricket SA took a majority vote decision to –
 - 5.1 accept the recommendations of the forensic report of KPMG that there is a possible irregular conduct relative to the Companies Act and the fiduciary duties of directors; and
 - 5.2 seek assistance with SASCOG for the appointment of the Legal Counsel as referred to above.
6. Stemming from the above, SASCOG and Cricket SA mandated Adv. A Bham SC to draft and formulate a legal opinion as contemplated in par.

5.5 which was presented to Cricket SA by the said advocate at a Board meeting of Cricket SA. In essence, the legal opinion endorsed the fact that–

6.1 sections 234 and 235 of the Companies Act were breached by Mr. Majola which constitute serious contraventions of the Act;

6.2 there was a breach of fiduciary duties owed to Cricket SA arising from the manner in which the IPL bonuses were determined and paid out as well as the non disclosure of the IPL bonuses by Mr. Majola; and

6.3 the legal views of the Legal Counsel of Mr. Majola as referred to hereunder, are unfounded and, therefore, incorrect.

7. At the same meeting, however, another legal opinion was presented by Adv. P Pretorius SC to the said Board as instructed by Dr. Nyoka who was not present at the said Board meeting. In essence, the legal opinion endorsed the fact that–

7.1 the allegations against Mr. Majola are serious;

7.2 Mr. Majola contravened the Companies Act by failing to carry out his fiduciary duty to disclose to Cricket SA all matters relevant to the said bonuses and that he gained personally there from;

7.3 Mr. Majola must account for his actions in terms of the Articles of Association by way of a disciplinary hearing, alternatively the provisions of the Companies Act;

7.4 consideration be given to recover the bonus amounts paid to Mr. Majola; and

7.5 employees who are guilty of the same or similar offences as in the case of Mr. Majola, must be treated alike.

8. Likewise the Legal Counsel of Mr. Gerald Majola also made a presentation at the same meeting of the Board claiming that Mr. Majola did in fact disclose his bonus payment in the above regard albeit not

following the correct prescribed processes as contemplated in the Companies Act.

9. After deliberating on the said legal opinions and advice, Cricket SA subsequently decided to resolve this matter as follows, amongst others:

- 9.1 Due to the insufficient disclosure of the bonuses received by Mr. Majola in respect of the IPL and Champions League in 2009, Mr. Majola is severely reprimanded by Cricket SA;
- 9.2 the bonuses of all the senior management of Cricket SA must reviewed by Cricket SA;
- 9.3 no further actions are to be taken against Mr. Majola and any of the staff of Cricket SA;
- 9.4 a policy in relation to the delegation of powers must be implemented by Cricket SA; and
- 9.5 all senior managers of Cricket SA must in future declare all amounts received by them from all sources other than Cricket SA to its Board.

10. Given the approach and decision taken by Cricket SA as referred to par. 9 it would seem as if Cricket SA has possibly not applied its mind properly relative to the seriousness of the contraventions of the Companies Act. It is hence proposed that the decision and actions to be taken as determined by Cricket SA must, therefore, be independently interrogated, reviewed and reported on to SRSA against the backdrop of –

- 10.1 the recommendations contained in the report of KPMG;
- 10.2 the legal advice submitted to Cricket SA by the Legal Counsel referred to in par. 6, 7 and 8; and
- 10.3 the appropriateness or otherwise of the sanctions being decided upon by Cricket SA in this regard in view of the above.

11. Having determined the above it therefore, became prudent to appoint a committee consisting of a judge only to investigate and report to SRSA on the reasons for the failure by Cricket SA to adhere to certain recommendations of KPMG and Legal Counsel following a forensic investigation into the affairs of Cricket SA given the seriousness of the contraventions of the Companies Act as referred to above.

Specific Terms of Reference

12. The committee must—

12.1 investigate and report on the reasons for the failure of Cricket SA to adhere to certain recommendations of KPMG and Legal Counsel as referred to in par. 6 and 7, following a forensic investigation into the affairs of Cricket SA given the seriousness of the contraventions of the Companies Act;

12.2 investigate and report on—

- (a) maladministration in the Cricket SA in relation to payment of bonuses to officials in respect of the IPL, circumstances surrounding those payments;
- (b) whether the said bonus payments were made in contravention of any law, in general, and Companies Act in particular;
- (c) non compliance with legal advice or KPMG report.

12.3 investigate and report on any irregularities discovered during the KPMG's investigation;

12.4 analyse any relevant documents relating to its Terms of Reference and to do the necessary interrogations on the basis thereof;

12.5 enquire into, assess and report on the effectiveness and efficiency of the current administration of Cricket SA and in particular identify all aspects of the current administrative system which allows for or encourages undesirable or illegal practices;

12.6 enquire into and report on the degree of compliance by Cricket SA and its staff with applicable laws;

12.7 recommend ways to eliminate deficiencies identified; and

12.8 recommend systems, practices and procedures to improve the administration of Cricket SA, facilitate compliance with applicable laws and to optimise the provision of the services rendered by Cricket SA and its staff.

Procedure to be followed by committee

13. In accordance with the scope of the enquiry and in an attempt to finish the enquiry within a period of 1 month or such additional period as may be determined by the Minister, the following procedural framework is to be adhered to by the committee. Within this framework the Chairperson may establish additional procedures for the committee in consultation with the Minister.

14. The committee must follow procedures which are informal, flexible and non accusatorial and which permit for the maximum participation by interested parties.

15. The committee must carry out its functions in two phases:

15.1 In the first phase, the committee must—

- (a) request the Board of Cricket SA, any of its employees or any other person as it deems fit, to make written submissions to the committee strictly relating to these Terms of Reference within the time period stipulated by the committee; and
- (b) invite members of the public who wish to so to make written submissions to the committee strictly relating to these Terms of Reference within the time period stipulated by the committee;
- (c) acknowledge receipt of the submissions promptly, must record the name of the person or organisation submitting the submission and the date and time on which the submission was received. Anonymous and relevant submissions may be regarded but submissions which do

not adhere to the Terms of Reference may not be regarded; and

- (d) summarise all submissions and collate the essential elements of each submission;

15.2 The committee reserves the right to invite those persons, who in the committee's opinion should supplement their written submissions, to address the committee by way of oral evidence.

15.3 In the second phase—

- (a) the committee in its discretion, must invite persons who have made written submissions to address it. When doing so, the committee reserves the right to determine the date, time and place on which the person will address it, the time allocated to do so and form and manner the address will take;
- (b) the address will be led by the chairperson of the committee;
- (c) in relation to such addresses, the chairperson must decide on the appropriate procedure. Verbal submission may be taken under oath without cross examination;
- (d) if the committee decides to hold addresses or hearings, it should do so in places which will be accessible to those wishing to address it in different parts of the country;
- (e) the committee may receive affidavits. If the affidavits contain allegations of the commission of an offence, those affidavits must be submitted to the appropriate authority for investigation;
- (f) upon completion of the addresses or hearings, the committee must take immediate steps to summarise the information gained at the addresses or hearings;
- (g) the report must contain a summary of all information placed before it relating to the Terms of Reference and the key observations made by the committee. The report must

highlight systematic problems which need to be addressed and contain recommendations based on the written and oral submissions made; and

- (h) the report must be delivered to the Minister of Sport and Recreation **not later than 1 month** as from the date on which the committee has officially been established.

Appointment of chairperson and members of committee

16. The committee is hereby established and consists of a Chairperson and two members.

17. The committee must be assisted by such persons as the chairperson considers necessary for the proper execution of administrative functions of the committee or such persons as appointed by SRSA.

Infrastructure and Logistics

18. The infrastructure and logistics surrounding the Terms of Reference of the committee will be subject to and must be dealt with in terms of the relevant prescripts of Sport and Recreation South Africa.

19. The payments and allowances to be made to the committee member must be determined in terms of the Annual Circular for Remuneration of Boards and Committees.