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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

**CHAIRPERSON'S DIRECTIVE IN TERMS OF REGULATION 10(6) OF THE
REGULATIONS OF THE COMMISSION**

TO : MS KHUMBUDZO NTSHAVHENI
**MINISTER OF SMALL BUSINESS DEVELOPMENT AND
ACTING MINISTER IN THE PRESIDENCY**

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By virtue of the powers vested in me in my capacity as Chairperson of the abovementioned Commission by Regulation 10(6)* of the Regulations of the Judicial Commission of Inquiry

* Regulation 10(6) of the Regulations of the Commission reads: "For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person."

into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, I hereby direct you, **Ms Khumbudzo Ntshavheni**, to:

1. deliver to the Secretary of the Commission at the above address on or before **30 July 2021** an affidavit or affirmed declaration in which:
 - (a) you confirm that you were a member of the Audit and Risk Committee of the Board of Directors of Denel SOC Ltd in the last four months of 2015, in 2016 and 2017;
 - (b) you confirm whether you were a member of the Audit and Risk Committee when it made a decision or recommendation (to the Board of Directors of Denel SOC Ltd) on or about 23 September 2015 that Mr Riaz Saloojee, Mr Fikile Mhlontlo and Ms Elizabeth Afrika be suspended from their respective positions as Group Chief Executive Officer, Chief Financial Officer and Company Secretary.
 - (c) you furnish the reasons relied upon by the Audit and Risk Committee for its decision or recommendation that Mr Riaz Saloojee, Mr Fikile Mhlontlo and Elizabeth Afrika be suspended.
 - (d) you furnish reasons why the two executives and the company secretary were not afforded the opportunity they asked for to be able to make representations as to why they should not be suspended.
 - (e) you furnish your full account of the Board's meeting of 10 September 2015 and the meeting of the Audit and Risk Committee on or about 22 September 2015 and meeting of the Board of 22 and/or 23 September 2015, if there was a Board meeting on any one or both of those dates.

- (f) you give full information that was before the Audit and Risk Committee when it made the decision to suspend, or, made the recommendation to the Board to suspend, the two executives and the company secretary.
- (g) you state all you know about what the Audit and Risk Committee or the Board discussed from time to time from 23 September 2015 to January 2017 concerning:
 - (i) the allegations of misconduct levelled against the two executives and the company secretary;
 - (ii) the suspension of the two executives and the company secretary;
 - (iii) the holding of a disciplinary inquiry against two executives and the company secretary;
 - (iv) the possible payment of money to the two executives and company secretary to get them to leave Denel; and
 - (v) whether a decision was taken at some stage by the Board or the Audit and Risk Committee not to convene a disciplinary inquiry against the two executives and the company secretary and, if so, the reasons for that a decision.
- (h) you give the reasons why Denel paid the amounts that it paid to the two executives and the company secretary for them to leave Denel.
- (i) you give the reasons why no disciplinary inquiry was held from the first date of the suspension of the two executives and the company secretary until they left

Denel in circumstances where they had been suspended on the basis that a disciplinary inquiry was to be held in regard to certain allegations of misconduct against them;

- (j) the reasons for this failure to hold a disciplinary inquiry are even more important in light of Mr D Mantsha's evidence before the commission that there was strong evidence of serious misconduct against the two executives and the company secretary even at the time when the Board of Directors took the decision to suspend the two executives and the company secretary; in fact Mr Mantsha testified that there was no way that the two executives could have been found not guilty of serious misconduct if a disciplinary hearing was held;
- (k) you deal with correspondence that you became aware of that related to the suspension of the two executives and the company secretary or the payment of money to them in connection with their departure from Denel.
- (l) you state whether you admit or deny the allegations made or evidence given about, or, against, the Audit and Risk Committee (of which you were a member) at paragraphs 95, 101 to 114 of the statement (Part 1) of Mr Riaz Saloojee dated 19 February 2019, attached hereto marked "A";
- (m) you state whether you admit or deny the allegations made or evidence given about, or, against, the Audit and Risk Committee (of which you were a member) in the statement (Part 2) of Mr Riaz Saloojee dated 19 February 2019, attached hereto (with annexures) marked "B". We attach hereto the transcript of day 70, when Mr Saloojee testified regarding the above issues for ease of reference.

2. If you would like assistance from the Commission in order to prepare the affidavit or affirmed declaration, you must, within five days (excluding weekends and public holidays) of receipt of this directive, contact, or, communicate with, the Secretary or Acting Secretary of the Commission and indicate that you would like such assistance in which case the Commission will provide someone to assist you with the preparation of the affidavit or affirmed declaration. In such a case you will not pay anything for such assistance. In this regard, please contact Ms Rushaan Lewis (rushaanl@commissionsc.org.za).
3. If, in order to prepare the affidavit or affirmed declaration, you do not need any assistance from the Commission, you must, with or without the assistance of a lawyer of your own choice, prepare the affidavit or affirmed declaration and have it delivered to the Secretary of the Commission on or before the date given above for the delivery of the affidavit. If you make use of a lawyer of your own choice to assist you to prepare such affidavit or affirmed declaration, the Commission will not be responsible for the payment of your lawyer's fees or costs.
4. This directive is issued for the purpose of pursuing the investigation of the Commission.
5. Your attention is drawn to Regulations 8(2), 11(3)(a) and (b) and 12(2)(c), (d) and (e) of the Regulations of the Commission, as amended. Regulation 8(2) reads:

"8 (1) ...

(2) A self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947)."

Regulation 11(3)(a) and (b) reads:

“11 (1) ...

(2) ...

(3) No person shall without the written permission of the Chairperson—

(a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or

(b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.”

Regulation 12(2)(c), (d) and (e) reads:

“12 (1) ...

(2) Any person who

(a) ...

(b) ...

(c) ... wilfully hinders, resists or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10(1) or (2);

(d) refuses or fails, without sufficient cause, to submit, within a period fixed by the Chairperson or at all, an affidavit or affirmed declaration pursuant to a directive issued by the Chairperson under regulation 10(6); or

(e) contravenes a provision of regulation 11, is guilty of an offence and liable on conviction -

(i) in the case of an offence referred to in paragraph (a), (c),

- (d) or (e), to a fine, or to imprisonment for a period not exceeding 12 months; or
- (ii) in the case of an offence referred to in paragraph (b), to a fine, or to imprisonment for a period not exceeding six months.”

SIGNED IN JOHANNESBURG ON THIS 15th DAY OF JULY 2021.



JUSTICE RMM ZONDO
DEPUTY CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA

and

CHAIRPERSON: JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE