

**CLOSING REPORT IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**Report No: 41 of 2021/22  
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**CLOSING REPORT ON ALLEGATIONS THAT MINISTER OF PUBLIC ENTERPRISES, MR PRAVIN GORDHAN, MP, MEDDLED IN THE RECRUITMENT PROCESS OF THE CHIEF EXECUTIVE OFFICER OF THE MANGO AIRLINES SOC LTD IN VIOLATION OF THE CONSTITUTION AND THE EXECUTIVE ETHICS CODE.**

## 1. INTRODUCTION

- 1.1 This is a closing report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 [Act No. 23 of 1994] (Public Protector Act).
- 1.2 The investigation relates to allegations that the Minister of Public Enterprises, Mr Pravin Jamnadas Gordhan, MP (Minister Gordhan), interfered with the recruitment process of the Chief Executive Officer (CEO) of the Mango Airlines SOC Ltd (Mango) and in so doing, acted in violation of the Executive Ethics Code, 2000 published by proclamation in Government Gazette: No 21399 Notice No 41 Regulation 6853 in terms of section 2(1) of Executive Members' Ethics Act, 1998 (Executive Ethics Code) (as amended by cabinet on 7 February 2007 through a Ministerial Handbook: A Handbook for Members of the Executive and Presiding Officers)
- 1.3 The report is submitted to His Excellency, President Matamela Cyril Ramaphosa (the President) in terms of section 3(2)(a) read with section 3(3) of Executive Members' Ethics Act, 82 of 1998 (EMEA).
- 1.4 The report is also submitted to Chief Whip of the Economic Freedom Fighters (EFF), Mr Nyiko Floyd Shivambu, MP (Mr Shivambu) in terms of section 8(1) read with section 8(3) of the Public Protector Act.
- 1.5 The report is also submitted to Minister Gordhan in terms of section 8(1) read with section 8(3) of the Public Protector Act.

## 2. THE COMPLAINT

2.1 The complaint to the Public Protector was lodged by Mr Shivambu, MP in terms of section 4(1) of EMEA through a letter dated 28 October 2019.

2.2 In essence, the Complainant alleged *inter alia* that:

2.1.1 Minister Gordhan illegally instructed the Chairperson of Mango Board of Directors (Mango Board), Mr Matsidiso Peter Tshisevhe (Mr Tshisevhe), through his advisor, to ensure that Mr Nico Bezuidenhout (Mr Bezuidenhout) was appointed to the position of the CEO of Mango. In his own words, the Complainant stated thus:

*“We believe that Gordhan’s involvement in the appointment of Mr Bezuidenhout is unqualified, the lie about his qualification is inconsistent with Gordhan’s office and that he has exposed himself to a situation involving risk of a conflict between his responsibilities and private interest as required by section 96 (1) and (2) of the Constitution of the Republic of South Africa; (sic)*

2.1.2 When the South African Airways SOC Ltd Board of Directors (SAA Board) wrote to inform him about the decision to appoint the CEO of Mango, Minister Gordhan used the information entrusted to him to improperly benefit Mr Bezuidenhout who otherwise would not have qualified for the position which he was later appointed to; and

2.1.3 Minister Gordhan did not act in good faith because the candidate that the Mango Board had initially recommended had gone through a rigorous interview process and his involvement was not in the best interest of good governance.

**3. Based on analysis of the complaint, the following issue was identified to inform and focus the investigation:**

3.1 Whether the alleged involvement of the Minister of Public Enterprises, Mr Pravin Jamnadas Gordhan, in the recruitment process of the Chief Executive Officer of the Mango Airlines SOC Ltd was in violation of the Constitution and the Executive Ethics Code.

**4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

4.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

4.2 Section 182(1) of the Constitution provides that:

*“The Public Protector has power as regulated by national legislation –*

*(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice,*

*(b) to report on that conduct ; and*

*(c) to take appropriate remedial action”.*

4.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.

4.4 Section 4(1)(a) of EMEA, provides *inter alia* that, the Public Protector “...*must investigate in accordance with section 3, an alleged breach of the Code of Ethics on receipt of a complaint by the President, a Member of the National Assembly*

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*or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister...”*

4.5 This complaint was lodged by a Member of the National Assembly against a Cabinet Member and therefore the complaint fell within the purview and jurisdiction of matters that should be investigated by the Public Protector.

4.6 In terms of section 3 of EMEA, the Public Protector must submit a report on the alleged breach of the Executive Ethics Code by a Cabinet Member within 30 days of the receipt of the complaint. If the Public Protector reports at the end of this period that the investigation has not yet been completed, she must submit another report when the investigation has been completed.

## **5. THE INVESTIGATION**

### **5.1 Methodology**

5.1.1 The investigation into the complaint is conducted in accordance with section 182(1) of the Constitution, read with sections 3 and 4 of EMA and section 7 of the Public Protector Act.

5.1.2 In terms of section 4(1)(a) of EMEA, the Public Protector must investigate an alleged breach of the code of ethics on receipt of a complaint from the President, a Member of the National Assembly and a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister.

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## 5.2 Approach to the investigation

- 5.2.1 The approach to the investigation included analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.
- 5.2.2 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:
- (a) What happened?
  - (b) What should have happened? vested
  - (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to a violation of the Executive Ethics Code?
  - (d) In the event of a violation, what action should be taken?
- 5.2.3 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the alleged conduct of Minister Gordhan constitutes violation of the Constitution and/or the Executive Ethics Code.
- 5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by Minister Gordhan to prevent violation of the Constitution and/or the Executive Ethics Code.
- 5.2.5 The President was informed about the investigation and that it might not be concluded within the thirty (30) day period as prescribed by 3(2)(a) of EMEA through a letter dated 15 November 2019. Consequently, the Public Protector undertook to submit the report as envisaged in section 3(3) of EMEA.

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## 6. KEY SOURCES OF INFORMATION

### 6.1 Correspondence and documents

- 6.1.1 Complaint letter of Mr NF Shivambu, MP dated 28 October 2019.
- 6.1.2 Letter from the Public Protector to the President dated 15 November 2019.
- 6.1.3 Letter from the Public Protector to Ms Thandeka Mgoduso, acting Chairperson of SAA Board dated 15 November 2019.
- 6.1.4 Letter from the Public Protector to Minister Gordhan dated 15 November 2019.
- 6.1.5 Request for extension by Malatji & Co on behalf of Minister Gordhan dated 11 December 2019.
- 6.1.6 Response from Minister Gordhan to the Public Protector dated 20 February 2020.
- 6.1.7 Letter from the Chairperson of the SAA Board to Minister Gordhan dated 13 May 2019.
- 6.1.8 Letter from Minister Gordhan to Chairperson of the SAA Board dated 14 May 2019.
- 6.1.9 Letter from the Public Protector to Mr Shivambu dated 11 June 2020.
- 6.1.10 Letter from Mr JB Magwaza to Minister Gordhan dated 27 September 2018
- 6.1.11 Subpoena from the Public Protector to JB Magwaza dated 25 August 2020.
- 6.1.12 Affidavit of the late, Mr JB Magwaza, former Chairperson the SAA Board dated 13 October 2020
- 6.1.13 Response from SAA Board to the Public Protector dated 19 December 2019
- 6.1.14 Resolution of SAA Board meeting held on 29 November 2018.
- 6.1.15 SAA Board resolution no. 2018/B1 dated 25 September 2018.
- 6.1.16 Letter addressed to the SAA Board and co-signed by Ms Mgoduso, Mr Bassa and Mr Jarana dated 12 September 2018.
- 6.1.17 Excerpt from SAA Board Minutes of meeting held on 31 August 2018.
- 6.1.18 First advertisement of the CEO of Mango position dated 15 September 2016
- 6.1.19 First advertisement of the CEO of Mango position, undated.
- 6.1.20 Subpoena from the Public Protector to Mr Tshisevhe dated 25 August 2020.

6.1.21 Affidavit of Mr Tshisevhe, Chairperson of the Mango Board dated 16 September 2020.

6.1.22 Memorandum of Incorporation dated 22 May 2015.

## **6.2 Legislation**

6.2.1 Constitution of the Republic of South Africa, 1996.

6.2.2 The Executive Members' Ethics Act, 82 of 1998.

6.2.3 The Public Protector Act, 23 of 1994.

6.2.4 King IV Report on Corporate Governance for South Africa, 2016.

## **7. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS.**

**7.1 Regarding whether the involvement of the Minister of Public Enterprises, Mr Pravin Jammadas Gordhan, in the recruitment process of the Chief Executive Officer of the Mango Airlines SOC Ltd was in violation of the Constitution and the Executive Ethics Code:**

### ***Common cause issues***

7.1.1 The position of the CEO of Mango became vacant on 1 August 2016 and was filled through an acting capacity, first by Mr Nic Vlok until his retirement on 31 October 2018; and second by Ms Marelize Labuschagne until the appointment of the permanent CEO.

7.1.2 Mr Bezuidenhout was appointed as the CEO of Mango for a period of five (5) years commencing on 1 September 2019 and terminating on 31 August 2024. However, he only assumed his duties as the CEO of Mango on 1 October 2019.



- 7.1.3 It was also reported that Mr Bezuidenhout subsequently resigned as the CEO of Mango on 20 August 2020.

### ***Issues in dispute***

- 7.1.4 The Complainant alleged that Minister Gordhan illegally instructed Mr Tshisevhe through his advisor to ensure that Mr Bezuidenhout was appointed as the CEO of Mango.
- 7.1.5 The Complainant alleged that Minister Gordhan's involvement in the appointment of Mr Bezuidenhout was unqualified, inconsistent with his office and that he exposed himself to a situation involving risk of conflict between his responsibilities and private interests.
- 7.1.6 Further that, when the SAA Board wrote to Minister Gordhan to inform him about the decision to appoint CEO of Mango, he used his position and information entrusted to him to improperly benefit Mr Bezuidenhout, who otherwise would not have qualified for the position he was later appointed to.
- 7.1.7 The Complainant was also of the view that Minister Gordhan did not act in good faith or in the best interest of good governance when he got involved in the matter because the candidate that was initially recommended by the Mango Board had been selected through a rigorous process.

### **Minister Gordhan's response**

- 7.1.8 Through a letter dated 15 November 2019, the Public Protector requested Minister Gordhan to respond to the Complainant's allegations. Minister Gordhan, through a letter from his legal representatives, Malatji & Co Attorneys

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(Malatji & Co) dated 11 December 2019, requested extended period of 30 days to file his response to the allegations, which permission was granted.

- 7.1.9 In his submission dated 20 February 2020 through Malatji & Co, the Minister denied the veracity of the Complainant's allegations.
- 7.1.10 Minister Gordhan indicated that the Mango Board had initially submitted a recommendation for the appointment of Mr Glen Orsmond (Mr Orsmond) as Mango's CEO for his consideration. This recommendation was withdrawn because it emanated from a process in which the SAA Board had not participated.
- 7.1.11 The SAA Board then re-initiated the recruitment process. The recruitment panel, comprising of the CEO of SAA and members of both the SAA and Mango Boards, identified Mr Bezuidenhout as their preferred candidate for the position of the Mango's CEO. Minister Gordhan did not play any role in either the shortlisting or the interview process.
- 7.1.12 On 3 May 2019, the SAA Board subsequently recommended the appointment of Mr Bezuidenhout to Minister Gordhan based on his experience, deep knowledge and global understanding of the aviation industry, his commercial acumen, strong leadership traits and proven track record.
- 7.1.13 Minister Gordhan considered the said recommendation and concurred with it in a letter to the Chairperson of the SAA Board dated 14 May 2019.
- 7.1.14 Minister Gordhan expressly denied that he issued an instruction to Mr Tshisevhe through his legal advisor to ensure that Mr Bezuidenhout was appointed.

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- 7.1.15 It was further submitted in the response that “*It is unclear in what way Minister Gordhan’s ‘involvement in the appointment of Mr Bezuidenhout is unqualified’*” since he played no role in shortlisting or evaluating a final list of preferred candidates, other than ultimately concurring with the appointment of Mr Bezuidenhout as per the SAA Board’s recommendation.
- 7.1.16 He also indicated that he was unclear about the reference to “*the lie about his qualification*” that appeared in the Complainant’s allegations and requested further clarity in this regard.
- 7.1.17 Minister Gordhan specifically denied that he exposed himself to a situation involving a risk of conflict between his responsibilities and private interest as contemplated in section 96(1) and (2) of the Constitution. He submitted that he had no “*private interest*” that conflicted with his public responsibility.
- 7.1.18 He also specifically denied that he used the information entrusted to him to improperly benefit Mr Bezuidenhout. He also requested clarity on what “*information*” the Complainant was referring to since he only had access to the recommendation made by the SAA Board regarding the appointment of Mr Bezuidenhout.
- 7.1.19 To this end, the Complainant was requested to provide clarification on some of his allegations in a letter dated 11 June 2020, but no response was received to date.
- 7.1.20 Minister Gordhan denied that he violated the Executive Ethics Code and his oath of office through his involvement in the appointment of Mr Bezuidenhout as the CEO of Mango.

## Evidence of the late Mr JB Magwaza

- 7.1.21 Through a subpoena dated 25 August 2020, the Public Protector requested Mr Magwaza to respond to the issues under investigation. Mr Magwaza through his affidavit dated 13 October 2020 and supplementary affidavit dated 22 October 2020 made the following submissions:
- 7.1.21.1 During the SAA Board meeting held on 31 August 2018, there was consensus that Mr Orsmond was the best candidate from those candidates that were interviewed by the Mango Board.
- 7.1.21.2 The issue of Mango Board's failure to involve Mr Vuyani Jarana (Mr Jarana), as the former CEO of the holding company, was also raised with Mr Tshisevhe. It was then resolved that Mr Jarana should be included in the recruitment process, given the important role the CEO of the holding company plays in the strategic management and oversight of all subsidiary companies, including Mango.
- 7.1.21.3 It was resolved that a second interview of Mr Orsmond for the position of Mango's CEO would be scheduled. The interview panel selected consisted of the following members:

	<b>NAME</b>	<b>DESIGNATION</b>
1.	Ms Thandeka Mgoduso	SAA Board member Chairperson of the SAA Remuneration Committee
2.	Mr Vuyani Jarana	SAA Board member and CEO of SAA
3.	Mr Ahmed Bassa	SAA Board member and Chairperson – SAA Technical.

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- 7.1.21.4 On 25 September 2018, the SAA Board resolved to approve the appointment of Mr Orsmond as the CEO of Mango, through resolution no. 2018/B15.
- 7.1.21.5 In a letter to Minister Gordhan dated 27 September 2018, Mr Magwaza notified him of the SAA Board's approval for the appointment of Mr Orsmond as Mango's CEO. The reason thereof was that the SAA Board was obligated to appoint the Mango's CEO in consultation with the Minister, in terms of the SAA's memorandum of incorporation (MOI) read with the Shareholder's Compact Agreement between SAA and the government of South Africa.
- 7.1.21.6 In a letter to Minister Gordhan dated 2 October 2018 entitled "**NOTIFICATION OF THE APPOINTMENT OF A CHIEF EXECUTIVE OFFICE FOR MANGO AIRLINES SOC LTD ("MANGO")**", Mr Magwaza wrote *inter alia* that:
- "We wish to inform the Honourable Minister, that after following a rigorous recruitment process of Mango, the SAA approved the appointment of Mr Glen Orsmond for the position of CEO for Mango."*
- 7.1.21.7 Mr Magwaza was contacted by the Minister's advisor, Mr Patel Dipak (Mr Dipak), between 27 September 2018 and 2 October 2018. Mr Dipak referred him to the issue that Mr Jarana raised with Minister Gordhan.
- 7.1.21.8 The issue was that only one candidate, being Mr Orsmond, was interviewed for the position of the CEO of Mango. There was a further concern of the inclusiveness, effectiveness and transparency of the recruitment process.
- 7.1.21.9 He then informed Mr Dipak that he would table the issue with the SAA Board and recommend that the Board interviews at least two shortlisted candidates for the post (one being Mr Orsmond).

7.1.21.10 Minister Gordhan wrote a letter to Mr Magwaza dated 2 October 2018 and entitled “**NOTIFICATION OF THE APPOINTMENT OF A CHIEF EXECUTIVE OFFICE FOR MANGO AIRLINES SOC LTD (MANGO)**”, which *inter alia* read thus:

*“I understand that you have had conversation with my Advisor in this regard, and wish to thank you for your favourable consideration of our request to ensure the most effective and transparent process to appoint a CEO for Mango Airlines SOC Limited (Mango). Mango is a fully-owned subsidiary of South African Airways SOC LTD” (SAA).*

*As discussed and agreed, an interview panel of the main SAA Board as well as the CEO of SAA will interview two final short listed candidates before submitting the preferred candidate for my consideration.*

*This process will ensure that we get the most suitable candidate for the position. In addition, it will establish the right level of governance and co-operation between the SAA Board and the Mango Board, as well as ensure a healthy, functional and effective alignment between the SAA CEO and the Mango CEO.*

*I look forward to your final recommendation and continued support in our bid to stabilize, strengthen and grow the SAA and Mango businesses.*

7.1.21.11 Mr Magwaza submitted that Minister Gordhan and his Advisor did not request that a specific candidate be considered for the position of Mango’s CEO save to advise that it would be more effective and transparent appointment if more than one candidate was interviewed for the position of the Mango’s CEO.

7.1.21.12 Mr Magwaza indicated that after considering the recruitment packs and interviewing the top two shortlisted candidates identified for the position of Mango's CEO, the SAA Board decided not to recommend either of the candidates for the position. During the SAA Board meeting held on 29 November 2018, it was resolved *inter alia* that:

- (i) *The recommendation to the Shareholder regarding the appointment of Mr Glenn Orsmond ("Mr Orsmond") as the Chief Executive Officer of Mango be and is hereby rescinded;*
- (ii) *The Approval given to Mango for the appointment of Mr Orsmond a CEO of Mango be and is hereby rescinded;*
- (iii) *...*
- (iv) *A panel comprising of Mr Magwaza , Ms Mgoduso, Mr Tshisevhe , Mr Rothschild, Ms Mhlari, Mr Bassa, Mr Kingston , Mr Jarana and Ms Raseroka be and is hereby appointed to oversee the selection process for the Mango CEO position."*

7.1.21.13 The aforementioned resolution was communicated to Minister Gordhan through a letter from Mr Magwaza dated 5 December 2018. The aforesaid letter read *inter alia* that:

*"Pursuant to the request from the Honourable Minister as contained in the above-mentioned letter, an interview panel (the "Panel") consisting of SAA Board members and the Group CEO re-interviewed the top two candidates originally identified for the position. Having considered all the material presented to it, **the Panel resolved not to recommend any of the two candidates for the appointment to the position of CEO: Mango Airlines.***

*As a result of the Panel's recommendation, the SAA Board resolved to rescind its approval given to Mango Airlines for the appointment of Mr Glen Orsmond as CEO: Mango Airlines and requested that a fresh recruitment be initiated.*

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*The interview panel was retained to oversee the recruitment and selection process to ensure that the matter is concluded speedily. The Honourable Minister will be informed about the outcome.”*

### **Evidence of Mr Matsidiso Peter Tshisevhe**

- 7.1.22 Through a subpoena dated 25 August 2020, the Public Protector requested Mr Tshisevhe to respond to the allegations raised by Mr Shivambu. In his affidavit dated 16 September 2020, Mr Tshisevhe submitted that he was the Chairperson of Mango Board and the member of the SAA Board.
- 7.1.23 Mr Tshisevhe vehemently denied that he was instructed by anyone to ensure that Mr Bezuidenhout is appointed as the CEO of Mango. He confirmed that he was part of the interviews by the Remuneration and Nominations Committee (REMCO) of Mango that culminated in the recommendation of Ms Orsmond for the position of the CEO by the Mango Board to the SAA Board.
- 7.1.24 Mr Tshisevhe indicated that the interviews to appoint the CEO of Mango were initially conducted by members of Mango REMCO and none of the SAA executives were involved in the interviews.
- 7.1.25 He confirmed that following the SAA Board’s recommendation of the Mr Orsmond for the position of Mango’s CEO, the Minister addressed a letter to the SAA Board dated 2 October 2018.
- 7.1.26 He also highlighted that it is clear from the said letter that the Minister’s advisor never spoke to him about the appointment of Mr Bezuidenhout as Mango’s CEO, but instead such discussions were held with Mr Magwaza. Further



thereto, the letter was clear on the Minister's reasons for writing to the SAA Board regarding the matter.

7.1.27 The SAA Board deliberated on the contents of the Minister's letter and resolved to adopt a new process to appoint Mango's CEO, which process involved the SAA's executives as per the letter from Minister Gordhan.

7.1.28 His submission was that other than the letter addressed to the SAA Board, he was not aware of any meddling by the Minister or his advisor on the appointment of Mango's CEO. He also indicated that he was not party to any conversation outside the Board and REMCO processes.

#### **Evidence from the submission by the SAA Board**

7.1.29 The Public Protector through a letter dated 15 November 2019, requested the SAA Board to respond to the allegations raised by Mr Shivambu. The SAA Board, made its submission dated 19 December 2020 through the former Interim Executive Chairperson of SAA Board, Ms TN Mgoduso (Ms Mgoduso).

7.1.30 Ms Mgoduso submitted that there were no records that any instruction by Minister Gordhan was issued to Mr Tshisevhe or any other person to appoint Mr Bezuidenhout as the CEO of Mango.

7.1.31 She reported that Minister Gordhan was requested by the SAA Board on recommendation by Mango to approve the appointment of the CEO of Mango, following a recruitment process undertaken by the Mango Board.

7.1.32 In the memorandum from General Manager: Human Resources to the SAA Board Implementation Committee it was recorded that:

7.1.32.1 Upon receipt of the letter from Minister Gordhan dated 2 October 2018, the SAA Board resolved to re-interview the top two candidates for the position in question. Messrs. Orsmond and Bezuidenhout were interviewed through a comprehensive and structured process by the Interview Panel, which included a case study presentation; and

7.1.32.2 The Interview Panel resolved not to recommend any candidate for the appointment to the position of CEO of Mango.

7.1.33 Excerpts from the minutes of the meeting of the SAA Board (2018/17) held on 31 August 2018, at Kempton Park recorded number of issues which appeared therein. The excerpt recorded *inter alia* that:

*“It was reported that the Mango Board had resolved not to involve the Group CEO in line with the mandate of the SAA Board, following the provision of a certain legal opinion around the involvement of a parent company in subsidiary affairs. The Mango Board decided to use the then acting CEO, Mr Nic Vlok, in the interview panel”;*

7.1.34 The SAA Board made the following observations regarding the Mango’s recruitment process:

- (i) *Concerns around the briefness and the quality of the process undertaken by the Mango Board in the selection of such high profile position. According to the best practice, appointing a CEO involved at least two sessions one of which being assessments tests. One interview session was considered to be insufficient. It was agreed that Mango selected its potential CEO from one interview session;*
- (ii) *Insubordination of the Mango Board, particularly Mr Tshisevhe, in not involving the Group CEO as previously instructed...;*

(iii) *Mango's actions were based on its Articles of Association which were silent regarding its Shareholder's (SAA) role regarding the appointment of the CEO. Mango had not revised its Mol to align with the new Companies Act as well as that of SAA and other wholly owned subsidiaries..."*

7.1.35 It was agreed that the SAA's role on the matter was not to note the appointment of Mango's CEO, but to approve and then recommend the appointment to its Shareholders for noting, in line with the Shareholder's Compact and Mol.

7.1.36 After the deliberations, the SAA Board resolved *inter alia* that a second interview for the position of Mango CEO be held with Mr Orsmond.

7.1.37 In letter dated 12 September 2018 addressed to the SAA Board and co-signed by Ms Mgoduso, Mr Bassa and Mr Jarana (the Interviewing Panel), the Interviewing Panel confirmed that Mr Orsmond was interviewed on 11 September 2018 and was found to be suitable for the role of the CEO of Mango. Consequently, Mr Orsmond was recommended to be appointed into the position of the CEO of Mango.

7.1.38 Written resolution no. 2018/B15 of the SAA Board titled "*Approval of the Mango Airlines CEO Appointment*" reflected that, the Board by Round Robin 2018/B15 as of 25 September 2018, resolved to:

1. *"Approve the appointment of Mr Glenn Orsmond for the position of Mango Airlines SOC Ltd; and*
2. *Recommend the appointment of Mr Glenn Orsmond, to the Shareholder for notification."*

**Evidence of the former CEO of SAA, Mr Vuyani Jarana.**

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- 7.1.39 Mr Jarana confirmed that he was initially excluded from the recruitment process which was undertaken by the Mango Board and resulted in the recommendation of Mr Orsmond as the CEO of Mango.
- 7.1.40 His involvement was more of a “*meet and greet*” process, which culminated in the recommendation of Mr Orsmond as the CEO of Mango to Minister Gordhan.
- 7.1.41 When Minister questioned the recruitment process, another panel (consisting of members of both the Mango and SAA Boards) was constituted to interview at least more than one candidate. This interviewing panel interviewed both Mr Orsmond and Mr Bezuidenhout. Although the latter was also interviewed, he did not have a post matric qualification in commerce or relevant field as per the advertisement of the post published on 15 September 2016.
- 7.1.42 Having considered all the material presented to the Interview Panel, i.e. the assessment of the candidates through the structured interview, his advice as well as the legal opinion, the Interview Panel resolved not to recommend any of the candidates for the position of Mango CEO. The Interview Panel was comprised of Mr Magwaza, Ms Mgoduso, Mr Tshisevhe, Mr Rothschild, Ms Mhlari, Mr Bassa, Mr Kingston, Mr Jarana and Ms Raseroka.
- 7.1.43 Consequently, the recruitment process was started afresh with the re-advertisement of the post.
- 7.1.44 It was the new recruitment process based on new requirements for the position of Mango’s CEO which culminated in the appointment of Mr Bezuidenhout as the CEO of Mango.

***Applicable regulatory framework***

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- 7.1.45 Section 96 of the Constitution provides that:
- (1) *Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.*
  - (2) *Members of the Cabinet and Deputy Ministers may not—*
    - (a) *...;*
    - (b) *act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or*
    - (c) *use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.”*
- 7.1.46 EMEA is the national legislation referenced in section 96(1) of the Constitution and the bedrock of the Executive Ethics Code.
- 7.1.47 The general standards which the members of the Executives<sup>1</sup> must comply with are contained in clause 2.1 of the Executive Ethics Code which states that:
- 2.1 *“Members of the Executive must to the satisfaction of the President or the Premier, as the case may be*
- (a) *perform their duties and exercise their powers diligently and honestly;*
  - (b) *fulfill all the obligations imposed upon them by the Constitution and law; and*
  - (c) *act in good faith and in the best interest of good governance; and*
  - (d) *act in all respects in a manner that is consistent with the integrity of their office or the government.” (sic)*

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<sup>1</sup> Member of the Executives' means a Cabinet member, a Deputy Minister or a Member of a Provincial Executive Committee, and 'member' and 'Executive' have corresponding meanings.

7.1.48 Clause 2.3 of the Executive Ethics Code provide that:

2.3 *“Members of the Executive may not*

(c) *act in a way that is inconsistent with their position;*

(d) *use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;*

(e) *expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;”*

7.1.49 In the case of **Public Protector and Others v President of the Republic of South Africa and Others (CCT 62/20) [2021] ZACC 19 (1 July 2021)** (*the President case*). In par 11, the court denoted that:

*“Section 3 empowers the Public Protector to investigate any breach of the code. The scheme that emerges from the reading of this provision is that the Public Protector’s power to investigate is subject to a formal complaint. This suggests that the scope of an investigation is determined by the breach of the code contained in the complaint. It is important to note that section 3 does not authorise the Public Protector to investigate a violation of the Act itself but limits her authority to investigating a breach of the code.”*

7.1.50 The allegations against Minister Gordhan relate to his conduct as the Minister of Public Enterprises and was therefore enjoined to abide by the above provisions of the Constitution and the Executive Ethics Code.

7.1.51 Clause 13.3.1 Memorandum of Incorporation of the SAA read thus:

*“The Board shall, with the approval of the Minister, appoint a suitable skilled and qualified person as the CEO of the Company”.*

7.1.52 The provisions traversed above indicate that Minister Gordhan was responsible for approving the appointment of the CEO of Mango and his involvement therein arose from that obligation.

- 7.1.53 It should be noted that the issues regarding the appointment of the CEO of Mango were first raised by the SAA Board during its meeting on 31 August 2018. In an attempt to cure the anomalies, the SAA Board recommended that Mr Orsmond who was first identified as the suitable candidate for the position, must be re-interviewed with the involvement of the then CEO of SAA, Mr Jarana.
- 7.1.54 According Mr Jarana, he had no opportunity to interview any other candidates that were presented to the Mango Board except Mr Orsmond who was already recommended for the appointment into the role of CEO of Mango. He categorised his engagement with Mr Orsmond as meet and greet and not necessarily an interview process.
- 7.1.55 In this regard, Mr Jarana and the Interview Panel that was tasked to interview Mr Orsmond did not have access to any other candidates from which the Mango Board has initially selected Mr Orsmond.
- 7.1.56 When Minister Gordhan raised questions about the anomalies in the recruitment process, the SAA Board, through the Interview Panel, elected to interview few candidates including Mr Orsmond and Mr Bezuidenhout. However, the process did not result in the recommendation of any candidate for the position of Mango CEO.
- 7.1.57 Consequently, the SAA Board rescinded the previous recommendation that Mr Orsmond be appointed to position of the CEO of Mango and resolved to the start a more inclusive process afresh.
- 7.1.58 Minister Gordhan's involvement in the new process was only limited to the approval of the SAA Board's recommendation of Mr Bezuidenhout to the role of the CEO of Mango.

7.1.59 King IV Report on Corporate Governance for South Africa, 2016 (King IV Report), contain a code of principles and practices on a non-legislated basis. Part 6.6: Principle 10<sup>2</sup> of Supplement for State-owned entities (SOEs) provides that:

*“...In SOEs, the executive authority (as opposed to the accounting authority) often has the power, in terms of enabling legislation or the SOE’s founding documents, to appoint the chief executive officer (CEO). As a matter of good practice, the appointment of the CEO of an SOE should be a robust and transparent process that involves the accounting authority to the greatest extent possible, even if the shareholder has the right to make the final appointment.”*

7.1.60 From the available evidence, it is clear that there were issues relating to the recruitment process which were raised with the Mango Board before the recommendation for the appointment of Mr Orsmond was presented to Minister Gordhan.

7.1.61 The process in question required Mango Board to include the CEO of SAA in the recruitment, owing to Mango being a wholly owned subsidiary of SAA.

7.1.62 In the document entitled “*State-owned enterprises: Governance responsibility and accountability Public Sector Working Group: Position Paper 3*”<sup>3</sup>, it was submitted that:

*“The power of the boards of SOEs is often usurped by Government. Government sets and drives the strategy of SOEs; appoints and dismisses*

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<sup>2</sup> “The accounting authority should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities”.

<sup>3</sup> Published by PricewaterhouseCoopers (PwC), the Institute of Directors in Southern Africa (IoDSA) and the Development Bank of Southern Africa (DBSA).



*the CEO; and approves financial and major capital expenditures of the SOEs. This creates a complex situation in which various factors contribute to confuse the board as to its powers and their execution.”*

- 7.1.63 In this case, Minister Gordhan appeared to have exercised his power of approval in a manner consistent with his responsibility of ensuring that the process undertaken was beyond reproach.
- 7.1.64 The evidence of Messrs. Magwaza and Tshisevhe was that they did not receive any instructions that a particular candidate must be appointed, except Minister Gordhan’s concern regarding the process followed. In this regard, it would appear that there was no attempt by Minister Gordhan to usurp the powers of the SAA Board.

### **Conclusion**

- 7.1.65 It can be concluded that there was no evidence corroborating the allegations that Minister Gordhan illegally instructed Mr Tshisevhe through his Advisor to ensure that Mr Bezuidenhout was appointed as the CEO of Mango. Mr Tshisevhe also denied being in any conversation with the Minister’s Advisor.
- 7.1.66 Minister Gordhan’s involvement in the appointment of Mr Bezuidenhout was in line with the Mol which requires him to approve the appointment of the CEO. It cannot therefore be said that his involvement was inconsistent with his office and/or that he exposed himself to a situation involving risk of conflict between his responsibilities and private interests.
- 7.1.67 The SAA Board wrote to Minister Gordhan recommending that he approve the appointment of Mr Orsmond, and there was no evidence that he used his position and information entrusted to him to improperly benefit Mr Bezuidenhout. There is no evidence available showing that the Minister

suggested the name of Mr Bezuidenhout either to the SAA Board or Mango Board.

7.1.68 It would appear that Minister Gordhan only questioned the process followed to ensure adherence to principles of good governance.

7.1.69 The recruitment panel, comprising of the CEO of SAA and members of both the SAA and Mango Boards identified Mr Bezuidenhout as their preferred candidate for the position of the CEO of Mango.

7.1.70 Mr Bezuidenhout was subsequently appointed to the position of the CEO of Mango after the SAA Board resolved to start the process afresh. In this regard, Minister Gordhan did not play any role in either the shortlisting or the interview process, save for approving the recommendation by the SAA Board.

7.1.71 A Discretionary Notice in terms of Rule 42(1) of the Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 (the Public Protector Rules), as promulgated under section 7(11) of the Public Protector Act, was issued to Mr Shivambu on 6 July 2021. However, there was no further submission made by Mr Shivambu in response to the preliminary findings.

## **8. REASON (S) FOR CLOSURE**

8.1 The reasons for closing this matter are as follows:

8.1.1 The allegations that Minister Gordhan illegally instructed Mr Tshisevhe through his Advisor to ensure that Mr Bezuidenhout was appointed as the CEO of Mango could not be corroborated.

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- 8.1.2 There was no evidence supporting that allegations that Minister Gordhan used the information entrusted to him to improperly benefit Mr Bezuidenhout.
- 8.1.3 Minister Gordhan's involvement in the appointment of Mr Bezuidenhout was in line with the MOI which requires him to approve the appointment of the CEO of Mango, being a wholly owned subsidiary of the SAA.
- 8.1.4 The recruitment panel, comprising of the CEO of SAA and members of both the SAA and Mango Boards identified Mr Bezuidenhout as their preferred candidate for the position of the CEO of Mango when the post was re-advertised.
- 8.1.5 Therefore, the allegations that the involvement Minister Gordhan, in the recruitment process of the Chief Executive Officer of the Mango Airlines SOC Ltd was in violation of the Constitution and the Executive Ethics Code could not be corroborated.



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**ADV BUSISIWE MKHWEBANE**  
**PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**

**DATE:** 16/08/2021

*Assisted by Adv. Arius Dathi, Senior Investigator: Investigations Branch*