

RAILWAY SAFETY REGULATOR
MINUTES OF THE SPECIAL MEETING OF THE BOARD
HELD ON WEDNESDAY, 10 FEBRUARY 2021
MICROSOFT TEAMS

STRICTLY CONFIDENTIAL

PRESENT:

Mr. Boy Johannes Nobunga	BJN	Chairperson
Ms. Yongama Pamla	YP	Deputy Chairperson
Adv Johannes Collen Weapond	CW	Member
Mr. Sisa Mtwá	SM	Member
Ms. Ningi Khumalo	NK	Member
Ms. Nompumelelo Sibongile Ekeke	NE	Member
Ms. Dineo Mathibedi	DM	Member
Ms. Salome Nwabueza	SN	Member
Ms. Tshepo Kgare	TK	Member/Acting CEO

APOLOGIES:

Adv Frans Van Der Westhuizen	FvdW	Member
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IN ATTENDANCE:

Mr. Mmuso Selaledi	MS	Acting Company Secretary
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OPENING AND WELCOME

- 1.1 BJN opened the meeting.

2 APOLOGIES

- 2.1 AN apology was noted for Adv Van Der Westhuizen.
- 2.2 No other apologies were noted.

3 QUORUM

- 3.1 The Chairperson confirmed that the meeting was duly quorate.

4 APPROVAL OF THE AGENDA

- 4.1 Item 6.6 (HRRC report) was moved earlier to item 6.3 in the agenda.
- 4.2 The agenda was duly approved.

5 DECLARATION OF INTEREST

- 5.1 ME declared that she has been appointed onto the Board of one of the entities of the City of Johannesburg.
- 5.2 None of the members had any interests to declare.

6 APPROVAL OF MINUTES OF THE PREVIOUS MEETING

- 5.1. There were no previous minutes to approve as this is a special meeting.

7 PROBATION EXECUTIVE LEGAL AND BOARD GOVERNANCE

- 7.1 BJN provided a summary of the report submitted by the Board Chairperson. The report narrated the sequence of events in the process of the non-confirmation of the probation of the Executive Legal and Board Governance and the interactions that took place between the ACEO, the Board Chairperson and the HRRC. He indicated that the ACEO first consulted with him on the 29 January 2021 notifying him of her intention to not confirm the probation.
- 7.2 These interactions culminated in a report with recommendations from the HRRC, a response from the ACEO with an accompanying legal opinion and the scheduling of the special board meeting.

- 7.3 TK provided a summary of her report dated 01 February 2021 to the Board. The ACEO had taken various factors into consideration in making the decision. The ACEO had on multiple occasions requested the Executive Legal and Board Governance to submit her performance agreement which did not happen. The failure to submit the performance contract prevented her as the supervisor to communicate expectations and deliverables to the employee and effect the provisions of the probation policy. The Executive Legal and Board Governance did not attend the scheduled meeting or the requests for submission of the performance agreement.
- 7.4 The report also makes observations which, although not the main basis, and therefore not included in the termination letter, outlines some of the ACEO's considerations for not confirming the probation. The observations included complaints from Executives and Senior Managers about the failure of the Executive Legal and Board Governance to attend Exco governance meetings and their working relationship. The ACEO had received requests for transfers from 2 of the 3 employees who reported to the Executive Legal and Board Governance. The report includes recommendations for a review of on-boarding processes, conducting Executive competency assessments and the review of reporting arrangements of the Legal and Board Governance role.
- 7.5 Board members requested clarity on whether the line manager or the supervisor draws up the performance agreement. TK explained that the RSR process is that the employee draws up the performance agreement and submits it to the supervisor for review and discussion. Members advised that the instructions for submission for performance agreement should have been in written format rather than verbal.
- 7.6 TK confirmed that a written request for a meeting was sent to the Executive Legal and Board Governance to avail herself for a discussion relating to her performance agreement. Members also questioned whether the issue of the poor relationship was timeously raised with the Executive Legal and Board Governance. BJN confirmed that the matter was raised, and the Board Chairperson did make an intervention to improve relations.

- 7.7 TK confirmed that a discussion did take place between her and the Board Chairperson on 29 January 2021 wherein the Chairperson did indicate his discomfort and that the ACEO should consider an extension period to allow for reflection and consideration by the Board. TK confirmed that she thereafter obtained legal advice which indicated to her that there was no basis to extend the probation as the Executive Legal and Board Governance did not submit the performance agreement as requested. TK further indicated that she advised BJN that notwithstanding the expiry of the probation period, she had allowed the Executive Legal and Governance 5 days to conclude the handover process. She undertook to provide BJN with a report and the legal opinion to allow BJN to interact with the necessary Board structures. There was further consultation between BJN and TK on the matter before BJN decided to refer it to the HHRC.
- 7.8 DM provided a summary of the HHRC report. The report indicated that the HHRC met to consider an email sent to the Board by the Executive Governance and Legal on 03 February 2021. The committee resolved that the probation of the Executive Legal and Board Governance be extended for 3 months as the ACEO should have consulted the Board on the removal of the Company Secretary. The Committee had identified challenges around the dual reporting of the Executive Legal and Board Governance and the recruitment and on-boarding of Executives. Members raised questions around the role of the HR Department once it was clear that the performance agreement had not been submitted.
- 7.9 DM indicated that the committee was of the view that the role of HR was glaringly omitted in the process. DM confirmed that the meeting of the HHRC was an in-committee that did not invite the AECO nor the HR Department. TK explained that the report of 01 February 2021 submitted to the Board was designed to explain how she arrived at her decision, instead of setting out the process and explain the involvement of other functionaries as she believed it to be operational. SM raised some concerns around the role and involvement of HR in intervening where problems have arisen between an employee and supervisor. SM questioned the correctness of the legal opinion with regards to the issue of consultation. CW explained that in law there are concepts on “in consultation” and “after consultation”.

7.10 TK provided a summary of the legal opinions submitted. The opinion from Baloyi Attorneys deals with the process of probation, the responsibilities of the employer and the authority of the CEO as well as the remedies that arise at the end of a probation period. TK explained that the previous Board had taken a position that it would not get involved in labour relations issues and expressed this view in the organisation's grievance policy. In TK's view, the real issue at play is around consultation and the ACEO did seek legal advice on the legal requirements for consultation. TK indicated that the arguments advanced by the Board are similar to those advanced by the Executive Legal and Board Governance to her and her view is that they should be referred to the CCMA and not to the Board as this violates the grievance policy. She also believes the CCMA is best placed to adjudicate on the matter including the issue of consultation.

7.11 BJN stressed that the integrity and objectivity of board members should not be called to question and that board members should be allowed to freely apply themselves to this matter. SN sought clarity on the need for the 2 legal opinions and why these could not be provided by internal Legal Services. TK explained that the first opinion was obtained before the probation decision was made, whilst the second opinion was sought in response to the report from the HRRC to specifically deal with the issue of consultation. TK did not seek legal advice from Legal Services as Ms. Tabane was the Executive Legal and Board Governance and would have been conflicted in the matter.

7.12 BJN asked for the advice of CW who advised the board to consider whether the reasons for granting the extension would be sufficient, whether the extension would be within the policies of the RSR and that adequate consultation should take place with the ACEO and the Board. BJN stressed that the Board would have to clearly set out its reasons for granting an extension. CW also wanted to know if there is a provision for deviation from the probation policy and TK responded that there was no such provision.

7.13 The Board went into an in-committee meeting.

7.14 Following the in-committee, which excluded the ACEO and the Company Secretary, BJN narrated the resolution of the Board. MS advised the Board that the policies of the RSR had clearly stated that the Board should not act as an appeal authority for matters involving Executives. MS further advised that the Board that in exercising public power, it should consider seeking a legal opinion on the resolution taken to confirm its rationality and that the Board had the authority to resolve as such.

RESOLUTIONS

- 7.15 The Board in its in-Committee meeting considered the Chairpersons report, the Acting CEOs reports, the legal opinions from Baloyi attorneys and Werksmans Attorneys, the HRRC report, the Performance Management Policy, and the Probation Policy.
- 7.16 The Board resolves that the performance management policy of the RSR does not apply to employees on probation.
- 7.17 The Board resolves that the probation policy applies to all employees on probation, this policy has provisions on how the performance of employees on probation should be managed, and these sections should have been followed to the letter. The Probation Policy places emphasis on the line manager to keep the employee informed of any defects of their performance.
- 7.18 The Board resolved that the following sections of the Probation Policy have not been complied with:
- Section 3.3 Ensure that the probation process is undertaken by all employees and is applied in a supportive framework.
 - Section 6.4 After 3 months management shall conduct a mid-term probation review.
 - Section 7.3 Clear and comprehensive accurate record of the probation period and standards of performance that must be identified with time frames on how performance will be evaluated.
 - Section 7.4 A monitoring and evaluation form must be signed by the manager and employee for purposes of managing performance.
 - Section 7.6 Challenges around performance should be raised timeously with the employee and she must be given time to address those issues.
 - Section 7.7 Clear and ambiguous warnings must be given where performance standards are not met.
 - Section 7.8 Puts the onus on the manager to keep records of the discussions that are signed by both parties, or a witness in the case that one of the parties does not sign.
 - Sections 8.2 to 8.6 which narrate the role of HR in the monitoring and reporting on the probation process.
 - Section 9.3 Termination of the probation in line with the poor performance procedure.

7.19 The Board further resolves that:

- Section 12.2 of the Board Charter was not complied with in that the CEO must consult the Board on the dismissal of the Company Secretary, which never happened as the consultation was post facto.
- An extension be granted to the probation of the Company Secretary for a period of 3 months.
- Following the extension, the HRRC has been mandated to conduct an investigation whereby both the ACEO and the Company Secretary will be heard and the HRRC will provide a report to the Board. The HRRC would have to engage the ACEO on any remedies or recommendations that arise from their report.

8 CLOSURE

8.1 With there being no other business to transact, the meeting was closed at 18:40

SIGNED AS A CORRECT RECORD OF PROCEEDINGS

CHAIRPERSON

DATE