

SPORT AND RECREATION SOUTH AFRICA

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MINISTRY OF SPORT AND RECREATION

APPOINTMENT OF A COMMITTEE TO INVESTIGATE ALLEDGED IRREGULARITIES OR MALPRACTICES IN THE GOVERNANCE AND MANAGEMENT OF THE SOUTH AFRICAN SPORTS CONFEDERATION AND OLYMPIC COMMITTEE (SASCOC)

I, Thembelani Waltermade 'Thulas' Nxesi MP, Minister of Sport and Recreation, hereby, by virtue of the powers conferred on me under section 13(5) (a) of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998 as amended) read with the Public Finance Management Act, 1999 (Act No. 1 of 1999 as amended) and its Treasury Regulations, hereby establish a committee to investigate alleged irregularities or malpractices in the governance and management of the South African Sports Confederation and Olympic Committee ("**SASCOC**") as set out in the Schedule.

The Committee shall comprise of Judge Ralph Zulman, a retired judge, as chairperson, Ms. Shamima Gaibie, a practicing attorney as a member and Dr. Ali Bacher as the other member following a consultation with the Minister of Justice and Correctional Services.

MINISTER OF SPORT AND RECREATION

SCHEDULE

MINISTRY OF SPORT AND RECREATION

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Background

1. Recently the media has reported on the alleged irregularities and malpractices in the governance and management of the South African Sports Confederation and Olympic Committee (**SASCOC**) which has tarnished the image and integrity SASCOC and sports fraternity in general.
2. The alleged irregularities and malpractices in the governance and management of SASCOC which were also brought to the attention of the Minister of Sport and Recreation entail the following:
 - 2.1 Disregard and/or contravention of the SASCOC’s Constitution by certain members of SASCOC or a faction of the members of SASCOC;
 - 2.2 Disregard by the President of SASCOC of the legal opinions of 2 senior counsels relative to the status of the Provincial Council and the Associate Member as to who would be eligible for election at the SASCOC Quadrennial Council Meeting on 26 November 2016. This resulted in the President erroneously co-opting various individuals onto the Executive, thereby exceeding the requirements as set out in the SASCOC Constitution;

- 2.3 Unilateral decision by the President of SASCOC in responding to the Minister of Sport and Recreation's concerns instead of acting in unison with the Board;
- 2.4 Usurping the executive powers and functions of the Chief Executive Officer of SASCOC by the President of SASCOC;
- 2.5 Removal of certain members of the Board of SASCOC through improper means and in contravention of the SASCOC Constitution and failure to provide reasons for their removal as required by the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- 2.6 SASCOC calling for new votes to remove these members after receiving the initial vote which has determined that these members should be retained by the SASCOC Board;
- 2.7 Alleged illegal attempts by certain members of SASCOC to manipulate the votes of these elections in order to oust certain members of the SASCOC Board;
- 2.8 Allegations in general that the elections for SASCOC Board members were biased and in conflict with the provisions of the SASCOC Constitution as these elections did not meet the stipulated criteria;
- 2.9 SASCOC and its Board allegedly acting contrary to, taking illegal or questionable decisions or being involved in illegal activities which are inconsistent with its Constitution and good corporate governance;
- 2.10 Financial mismanagement by SASCOC and its Board;
- 2.11 Failure by SASCOC and its Board to implement effective and sound labour processes and disciplinary measures in respect of the CEO of SASCOC is concerned;

2.12 Whether the governance and administration of SASCOC and its Board are dysfunctional to such a degree that it –

2.12.1 clearly corroborates the fact that SASCOC has failed in terms of fiduciary responsibilities and that its Governance leaves much to be desired; and

2.12.2 requires the Minister of Sport and Recreation to intervene by, amongst others, dissolving the SASCOC board as a last resort;

2.13 SASCOC totally abdicating its responsibility to address the dispute between the South African Sports and Fitness Federation (“**SASAFF**”) and Dr. George Van Heerden and Ms. Lynette Early by failing to implement and execute the findings and recommendations of Adv. Pullinger SC as contained in the Pullinger Report submitted by him to SASCOC more than 2 years ago;

2.14 SASCOC’s funding allegedly being used to fight personal and political battles as a result of its President’s intervention (e.g. SASCOC had to pay nearly R 1.5 million (legal costs and expenses) in relation to the matter of Karate South Africa, etc.) which should have rather been spent to help develop Team South Africa and sport in general;

2.15 SASCOC Board members allegedly refuse to sign non-disclosure and confidentiality agreements in terms of good corporate governance whereas a certain Board member (Ms. Merril King) has indeed disclosed information regarding the CFO of SASCOC to the SASCOC Board and all the staff of SASCOC despite having been told not to do so. In addition, no steps have subsequently been taken against Ms. King despite requests to take action against her;

- 2.16 Alleged discrimination by SASCOC by openly stated to its Board members that Ms. Jean Kelly, an employee within the administration, cannot be appointed as the Chef de Mission of Team South Africa as she is “White”;
 - 2.17 Attempts from some of SASCOC’s Board members to express their concerns and opposition with regard to certain matters have allegedly been bluntly ignored by its President;
 - 2.18 Allegations that certain individuals in SASCOC are benefitting directly as a result of their business positions and have failed to disclose any conflict of interest in this regard; and
 - 2.19 Allegedly SASCOC’s headquarters and the home of its CEO have been “bugged” as confirmed by a security report.
- 3. SASCOC failed to provide the Minister of Sport and Recreation with satisfactory answers to the above alleged irregularities and mismanagement in the governance and management of SASCOC;
 - 4. The above-mentioned alleged irregularities and mismanagement in the governance and management of SASCOC necessitate the appointment of a Ministerial Committee (Committee) to investigate, make findings, report on and make recommendations in relation to the above-mentioned irregular conduct by SASCOC and its Board.
 - 5. The Committee shall inquire into, investigate, make findings and recommendations, and report on the following matters to the Minister of Sport and Recreation:
 - 5.1 The complaints reported in the media and addressed to the Minister of Sport and Recreation as contemplated in subparagraphs. 2.1 to 2.19 above;
 - 5.2 Investigate and report to the Minister of Sport and Recreation on the exact reasons which resulted in SASCOC becoming dysfunctional and

failing to execute its fiduciary responsibilities in accordance with its Constitution and to govern and administer its domain and mandate desirably;

- 5.3 Investigate and report on any non-compliance by the SASCOC Board or any other person or body with the provisions of the SASCOC Constitution or any other applicable laws that could have caused or contributed to SASCOC being dysfunctional or failing to execute its fiduciary responsibilities;
- 5.4 Investigate and report on serious or disruptive divisions between factions of the membership of SASCOC and its staff and the reasons which have caused it;
- 5.5 Investigate and report on any irregularities discovered which have or could have contributed to the complaints referred to in subparagraphs 2.1 – 2.19 above;
- 5.6 Enquire into, assess and report on the effectiveness and efficiency of the current administration of SASCOC and in particular identify all aspects of SASCOC's current administrative system which encourages illegal practices or shortcomings relative to its governance and administration in terms of its Constitution;
- 5.7 Enquire into and report on the degree of compliance by SASCOC and its Board members and staff, amongst others, with its Constitution and applicable laws especially insofar as good corporate governance is concerned;
- 5.8 Recommend ways to eliminate deficiencies or shortcomings identified by the Committee;
- 5.9 Recommend systems, practices and procedures to improve the administration of SASCOC and its Board, facilitate compliance with its Constitution, applicable laws, especially when weighed against the SASCOC Constitution, rules and regulations;

- 5.10 Assess the provisions of the SASCOC Constitution for any weaknesses and propose remedies to address such weaknesses;
- 5.11 Assess the legal standing of the SASCOC Board and make recommendations on how to proceed (e.g. should independent persons rather be appointed as SASCOC Board members, etc.) inclusive of any structural weaknesses of SASCOC identified (e.g. has SASCOC executed and distinguished its operational decisions and actions sufficiently and effectively from its executive decisions and actions in accordance with the provisions of its Constitution or not);
- 5.12 Report and make recommendations on how a similar occurrence of the complaints referred to in subpar. 2.1 to 2.19 above is to be prevented in future;
- 5.13 Add to, vary or amend these Terms of Reference from time to time in consultation with the Minister of Sport and Recreation; and
- 5.14 The Committee must be assisted by such persons as the chairperson may consider necessary for the proper execution of administrative functions of the Committee or such persons as appointed by SRSA.

Infrastructure and Logistics

- 6. The infrastructure and logistics surrounding the Terms of Reference of the Committee shall be subject to and must be dealt with in terms of the relevant prescripts of Sport and Recreation South Africa.
- 7. The payments and allowances to be made to the Committee members must be determined in terms of the Annual Circular for Remuneration of Boards and Committees.
- 8. The Committee shall be subject to and be conducted in terms of the provisions of regulation 20 of the Treasury Regulations.

9. The Committee shall where appropriate, refer any matter for prosecution, further investigation by an appropriate law enforcement agency, government department or regulator regarding the conduct of a certain person/s.
10. The rules to facilitate the gathering of evidence and securing the attendance of witnesses and the production of documents during the investigation encapsulate the following, amongst others:
 - 10.1 The Committee may sit at any place in the Republic for the purpose of hearing evidence or addresses or of deliberating;
 - 10.2 For the purpose of ascertaining any matter relating to the subject of its investigations, the Committee shall have the powers to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects;
 - 10.3 A summons for the attendance of a witness or for the production of any book, document or object before the Committee shall be signed and issued by the chairperson of the Committee in a form prescribed by him or her and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial in a superior court at the place where the attendance or production is to take place;
 - 10.4 If required to do so by the chairperson of the Committee a witness shall, before giving evidence, take an oath or make an affirmation which oath or affirmation shall administered by the chairperson of the Committee;
 - 10.5 Any person who wilfully interrupts the proceedings of the Committee or who wilfully hinders or obstructs the Committee in the performance of its functions shall be guilty of an offence and liable on conviction to a fine not exceeding R 5 000-00 or to imprisonment for a period not exceeding six months or to both such fine and imprisonment;
 - 10.6 Any person summoned to attend and give evidence or to produce any book, document or object before the Committee who, without sufficient

cause (the onus of proof whereof shall rest upon him or her) fails to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the inquiry or until he or she is excused by the chairperson of the Committee from further attendance, or having attended, refuses to be sworn or to make affirmation as a witness after he or she has been required by the chairperson of the Committee to do so or, having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him or her, or fails to produce any book, document or object in his or her possession or custody or under his control, which he or she has been summoned to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding R 5 000-00 or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment; and

- 10.7 Any person who after having been sworn or having made affirmation, gives false evidence before the Committee on any matter, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence liable on conviction to a fine not exceeding R 10 000-00 or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment. The Chairperson shall make rules to facilitate the gathering of evidence and secure the attendance of witnesses and the production of documents.
11. The Committee shall finalize its work within a period of three (3) months from the date hereof and must submit its final report to the Minister of Sport and Recreation within a period of one (1) month after the date on which it completes its work: Provided that the Minister of Sport and Recreation may be approached by the Committee with a written request to grant to the Committee an extension of the 3 months' deadline period for an additional period as determined by the Minister in writing in relation to the finalization of the committee's work and/or the submission of its final report to the Minister.