



# LIMPOPO

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## PROVINCIAL GOVERNMENT

REPUBLIC OF SOUTH AFRICA

11/12/2018

### **MEDIA STATEMENT**

#### **VBS Forensic investigations results**

##### **1. Prelude**

In June 2018, we commissioned a Forensic Investigation into the investments that were made by Municipalities in Limpopo with the VBS Mutual Bank. The investigations were led by the Limpopo Provincial Treasury and were in line with Section 13(1) (a) & (b) of the Municipal Finance Management Act as well as the Municipal Investment Regulations.

These investigations followed the discovery of alleged unlawful investments and subsequent investigations of the municipalities in question by the South African Reserve Bank.

#### ***These Municipalities are;***

1. Vhembe District Municipality,

2. Makhado Local Municipality,
3. Collins Chabane Local Municipality,
4. Fetakgomo/Greater Tubatse local Municipality,
5. Lepelle-Nkumpi local Municipality,
6. Ephraim Mogale Local Municipality,
7. Greater Giyani Local Municipality,
8. Elias Motsoaledi Local Municipality,
9. Makhuduthamaga Local Municipality, and
10. Polokwane Municipality,

Investigations with regard to the Capricorn District Municipality and Thulamela have not been concluded.

## **2. The terms of reference**

The terms of reference for this Forensic Investigation were;

- ✓ To determine from 2014 to date, the investments made by the municipalities, with specific reference to ;
  - the amounts invested,
  - The date of investment,
  - The investment period,

- The interest earned/accrued on the investment,
- The balances due by VBS Bank to individual municipalities,
- ✓ To determine which funds were invested by municipalities,
- ✓ To determine compliance of individual investment Policies with the requirements of the Municipal Finance Management Act and the Municipal Investment regulations,
- ✓ To determine whether officials responsible for investment complied with investment policies,
- ✓ To determine the processes followed to invest the funds with VBS Mutual Bank and to determine if the processes were consistent with the Municipality's Investment Policy. Municipal Finance Management Act and the Municipal Investment Regulations.
- ✓ To determine whether there was approval by various councils,
- ✓ To determine whether the investment with VBS Mutual Bank was approved by the various municipalities Councils.
- ✓ To determine which officials were involved in recommending and/or approving the investment decisions,
- ✓ To determine which remedial steps, if any, have been taken by the municipalities,
- ✓ To determine what actions have been taken by the municipalities since VBS Mutual Bank was placed under

curatorship,

- ✓ To determine if the investment decisions were contrary to the Municipal Finance management Act and the related Treasury regulations,
- ✓ To determine which official could and should be charged with financial misconduct in terms of section 171 of the Municipal Finance management Act.
- ✓ To determine if the investment decisions were contrary to the Municipal Finance management Act and the related Treasury regulations,
- ✓ To determine which officials could and should be charged with the offence in terms of section 172 of the Municipal Finance management act, and,
- ✓ To determine if any municipal official or Councillor involved in the investment decision received any incentives and/or commission or loan(s) from VBS Mutual Bank.

### **3. The overall findings were that;**

- All Municipal Officials and political office bearers interviewed, admitted knowledge of the Municipal Finance Management Act, the Municipal Management Act, the Municipal Structures Act and the Municipal Systems Act.

- All the municipalities had cash Management and Investment Policies as required by sections 13 of the Municipal Finance Management Act,
- The policies did not, in various respects, comply with the Municipal Investment regulations. In particular there was material non-compliance with Regulations 4 which sets out the core elements required in an investment policy. Despite the non-compliance the policies were tabled and approved by various councils.
- The investment of all individual municipalities were made in contravention of Section 7(3)(b) of the Municipal Finance Management Act. In particular by having bank accounts, and investment accounts with an institution which is not registered as a bank in terms of the Banks Act 94 of 1990.
- The investments of all the individual municipalities with VBS Mutual Bank were made in contravention of Regulation 6 of the Municipal Investment regulations in particular by investing with an institution which is not registered as a bank in terms of the Banks Act 94 of 1990.
- The investments with the VBS Mutual Bank were made in contravention of the specific Cash management and Investment Policies applicable in the individual municipalities.
- That the various Municipal Managers and Acting Municipal managers committed financial misconduct in terms of section

171(1) of the Municipal Finance Management Act.

#### **4. Recommendations and Actions taken per municipality**

##### **4.1. Vhembe District Municipality,**

###### **4.1.1. Recommendations;**

- It is recommended that disciplinary actions be considered against the Municipal managers in terms of Section 17 (1) of Municipal Finance Management Act, that they,
  - (a) Contravened a provision of the Act,
  - (b) Failed to comply with a duty imposed by a provision of this Act, and
  - (c) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.
- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all

reasonable steps to prevent irregular expenditure.

- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(c),(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs

The amounts involved are R1 billion and the outstanding amounts are R300 million.

#### **4.1.2. Action Taken**

- The Municipal Manager and the CFO were suspended in October and subsequent actions as recommended here will follow up.
- Recovery of all amounts outstanding.

#### **4.2. Makhado Local Municipality,**

- It is recommended that disciplinary actions be considered against the Municipal managers in terms of Section 17 (1) of Municipal Finance Management Act, that they,

- (d) Contravened a provision of the Act,
  - (e) Failed to comply with a duty imposed by a provision of this Act, and
  - (f) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.
- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
  - It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(c),(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs

Recommendations;

1. It is recommended that disciplinary action actions

#### **4.3. Collins Chabane Local Municipality,**



- It is recommended that disciplinary actions be considered against the Municipal managers in terms of Section 17 (1) of Municipal Finance Management Act, that they,
  - (g) Contravened a provision of the Act,
  - (h) Failed to comply with a duty imposed by a provision of this Act, and
  - (i) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.
- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs

#### **4.4. Fetakgomo/Greater Tubatse local Municipality,**

- It is recommended that disciplinary actions be considered against the Municipal managers in terms of Section 17 (1) of Municipal Finance Management Act, that they,
  - (j) Contravened a provision of the Act,
  - (k) Failed to comply with a duty imposed by a provision of this Act, and
  - (l) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.
- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs

#### 4.5. **Lepelle-Nkumpi local Municipality,**

- It is recommended that disciplinary actions be considered

against the Municipal managers in terms of Section 17 (1) of Municipal Finance Management Act, that they,

(m) Contravened a provision of the Act,

(n) Failed to comply with a duty imposed by a provision of this Act, and

(o) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.

- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs

#### **4.6. Ephraim Mogale Local Municipality,**

- It is recommended that disciplinary actions be considered

against the Municipal managers in terms of Section 17 (1) of Municipal Finance Management Act, that they,

(p) Contravened a provision of the Act,

(q) Failed to comply with a duty imposed by a provision of this Act, and

(r) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.

- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs

#### 4.7. Greater Giyani Local Municipality,

- It is recommended that disciplinary actions be considered against the Municipal managers in terms of Section 17 (1) of

Municipal Finance Management Act, that they,

(s) Contravened a provision of the Act,

(t) Failed to comply with a duty imposed by a provision of this Act, and

(u) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.

- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs

#### **4.8. Elias Motsoaledi Local Municipality,**

- It is recommended that disciplinary actions be considered against the Municipal managers in terms of Section 17 (1) of

Municipal Finance Management Act, that they,

(v) Contravened a provision of the Act,

(w) Failed to comply with a duty imposed by a provision of this Act, and

(x) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.

- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs.

#### **4.9. Makhuduthamaga Local Municipality,**

- It is recommended that disciplinary actions be considered against the Municipal managers in terms of Section 17 (1) of

Municipal Finance Management Act, that they,

(y) Contravened a provision of the Act,

(z) Failed to comply with a duty imposed by a provision of this Act, and

(aa) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.

- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs

#### **4.10. Polokwane Municipality.**

- It is recommendations that disciplinary actions be considered against the Municipal managers in terms of Section 17 (1) of

Municipal Finance Management Act, that they,

(bb) Contravened a provision of the Act,

(cc) Failed to comply with a duty imposed by a provision of this Act, and

(dd) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.

- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs

## **1. Collins Chabane**



- It is recommended that disciplinary actions be considered against the Municipal managers in terms of Section 17 (1) of Municipal Finance Management Act, that they,
  - (ee) Contravened a provision of the Act,
  - (ff) Failed to comply with a duty imposed by a provision of this Act, and
  - (gg) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.
- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(c),(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs

- Disciplinary actions against the Municipal Manager, and the CFO.
- Civil recovery of funds against the Municipal Manager and

the CFO.

- The amounts involved is **R120million**. The outstanding amount is R120million.

## 2. **Elias Motsoaledi.**

- It is recommended that disciplinary actions be considered against the Municipal managers in terms of Section 17 (1) of Municipal Finance Management Act, that they,
  - (hh) Contravened a provision of the Act,
  - (ii) Failed to comply with a duty imposed by a provision of this Act, and
  - (jj) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.
- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(c),(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs

- Disciplinary action be preferred against the Municipal Manager, and the CFO.
- Civil recovery in terms of section 32(1)(c), (d) and Section 32(2) of the Municipal Finance Management Act against the CFO, the Municipal Manager and the Manager of Expenditure in the Municipality.
- The amounts involved is **R190million** and no outstanding amount.

## **2 .Ephraim Mogale Municipality**

- It is recommended that disciplinary actions be considered against the Municipal managers in terms of Section 17 (1) of Municipal Finance Management Act, that they,
  - (kk) Contravened a provision of the Act,
  - (ll) Failed to comply with a duty imposed by a provision of this Act, and
  - (mm) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.

- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(c),(d) and Section 32(2) of the MFMA be

\* The amounts involved are R80million and the outstanding amount is **R80million**.

### 3. Fetakgomo/Tubatse Municipality.

- It is recommended that disciplinary actions be considered against the Municipal managers in terms of Section 17 (1) of Municipal Finance Management Act, that they,
  - (nn) Contravened a provision of the Act,
  - (oo) Failed to comply with a duty imposed by a provision of this Act, and

(pp) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.

- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1)(c),(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs the two.

\* The amount involved is **R230million** and outstanding amount **R230million**.

#### **4. Giyani Municipality.**

- It is recommended that disciplinary actions be considered against the Municipal managers in terms of Section 17 (1) of Municipal Finance Management Act, that they,
  - (qq) Contravened a provision of the Act,
  - (rr) Failed to comply with a duty imposed by a provision of

this Act, and

(ss) Made or permitted, or instructed another official of the municipality to make, an irregular expenditure.

- It is recommended that disciplinary action be considered against the Municipal Managers in terms of Section 173(1)(a)(iii) of the MFMA Act, in as far as the accounting officers of a municipality is guilty of an offence if that accounting officer deliberately or in a grossly negligent way fails to take all reasonable steps to prevent irregular expenditure.
- It is recommended that disciplinary action be considered against the CFO in terms of the MFMA

It also recommended that the steps providing for civil recovery in terms of Section 32(1) ©,(d) and Section 32(2) of the MFMA be considered against the Municipal Managers and the CFOs

\* The Mayor, the Municipal manager and the Chief Financial Officer were responsible for the irregular investment with VBS.

\* Municipal Council to take action against the Mayor

\* Disciplinary actions against the Municipal Manager, the Chief Financial Officer,

\* Civil recovery of all lost monies against the two officials.

\* The amounts involved are R80million and the outstanding

\* That action and disciplinary action be taken against the

Municipal Manager, the Chief Financial Officer and also civil recovery against the two.

- \* Disciplinary actions against the Municipal Manager, on financial misconduct, and same action against the CFO.

- \* Civil recovery against the two.

- \* it must be noted that the Municipal manager Mr Hitler Maluleke has since resigned, but that does not prevent government from recovering the losses incurred. The Council, Department of Treasury have been instructed to follow same means of recovering financial losses.

- \* The amount involved is **R148 656 million**, and the outstanding amount is **R148 656million**.

## **5. Lepelle Nkumpi Municipality**

- \* Disciplinary actions against Municipal Manager and Financial Manager

- \* Civil action to recover financial losses against the two be preferred.

- \* The amount involved is **R150million** and the outstanding amount is **R150million**

## **6. Makhado Municipality**

- \* Four investments were approved by the CFO, Revenue Manager and Manager Assets irregularly.

\* Disciplinary actions against the Municipal Managers at the time,

\* Civil recovery against the Municipal Managers, CFO, Revenue Manager, and Assets Manager.

\* The amount involved is **R150million** and the outstanding amount is **R53 532million**

#### **7. Makhuduthamaga Municipality.**

\* Disciplinary action against the Municipal Managers, and the CFO.

\* Civil recovery of all lost funds.

\* The amount involved is **R120million** and no outstanding amounts.

#### **7. Polokwane City.**

\* Disciplinary action against the Municipal Manager, the CFO, acting CFOs and 3 Acting Municipal Managers.

\* Further steps providing for civil recovery of finances to all acting CFOs.

\* **The amount involved is R349million and no outstanding amount.**

**The total amount involved and was invested with the VBS was R2,6 billion and the amount still outstanding is R1 082**



**189 171.68.**

**Conclusion.**

Our commitment to the people of Limpopo is that we will ensure that the recommendations from this report are implemented in full. In the same vein, we call on law enforcement agencies to support and supplement our efforts to ensure that justice is done without fear, favour or unreasonable delays.

We want to see arrests, successful prosecutions and serious jail terms for all those who has violated the law.

For our part as government, we will provide all the necessary support to the law enforcement agencies to bring this matter to finality.

This Report, together with the findings, will be handed to all the affected municipal councils for necessary attention and relevant action. We expect that these municipal council will do the right thing.

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**Premiers Spokesperson**

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**Issued by the Office of the Premier**

**Limpopo Provincial Government.**