

CRICKET SOUTH AFRICA

MEDIA BRIEFING ON SUMMARY FORENSIC REPORT RELEASE

PRESENTED BY JOHN MOGODI,
A NON-INDEPENDENT DIRECTOR TO THE BOARD OF CRICKET SOUTH AFRICA

5 October 2020

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Ladies and gentlemen,
Good morning.

I welcome you to Cricket South Africa's media briefing on the highly publicised Forensic Report.

As you may be aware, CSA has very specific procedures on how the organisation manages communications but as you will understand for reasons soon to be explained, the distribution of information around the Forensic Report is handled very differently, and sensitively. To avoid any potential consequences of miscommunication, misunderstanding, or misrepresentation, Cricket South Africa is releasing this Summary Forensic Report to our internal stakeholders, sponsors, and the media, simultaneously.

BACKGROUND

At the outset, I would like to dispel any misconceptions of insolence and defiance in matters relating to the release of the complete Forensic Report and reaffirm CSA's commitment to transparency. I reiterate what has been said at various meetings, media briefings, interviews and various stakeholder communications: the forensic report was commissioned to be used as an internal document, and never intended for public release. Any utterances to the contrary of this, was done so without mandate from CSA.

The independent legal opinions that CSA obtained, clearly outlined the potential risks and significant damages the organisation could face, were the full report to be distributed publicly. Before I launch into the summarised details of the report, allow me to explain the rationale behind the legal concerns:

- The Fundudzi Forensic Report released to CSA on 31 July 2020 covers a 48-month period, from 2016 to 2019, and contains extensive information about the organisation, individuals and third parties, which we, as Cricket South Africa, have not been able to investigate, corroborate or clarify in its totality as yet.
 - While we are not claiming the report to be inaccurate, it is important to understand that Fundudzi's forensic analysis is a single-sided report, and not all of the individuals or parties mentioned, have had the opportunity to provide responses to the findings as yet.
 - For current or potential litigation on matters relating to this report, the identity of certain people or entities will not be disclosed at this time as such disclosure may cause harm to the interests of that juristic parties or CSA, and could potentially prejudice any legal action that CSA is pursuing or may take accordingly.
 - The summary report contains footnotes of where certain identities are not being revealed in the interim.

SO, WHY THE CHANGE OF HEART?

Following requests from the Ministry of Sports, Art and Culture, South African Sports Confederation and Olympic Committee (SASCOC), members of the media, and concerns from sponsors and employees about the contents of the Fundudzi Forensic Report, CSA has, with legal counsel, decided to make a summary forensic report available to all stakeholders, including cricket-loving members of the public, via the media and other distribution channels.

The full forensic report was made available to the CSA Members' Council for inspection, subject to certain conditions related to confidentiality, including the execution of non-disclosure agreements, in line with the protection of the organisation.

In the interest of cricket and to mend relationships, CSA's Members Council, unanimously agreed to make the summary Forensic Report available to all stakeholders, including the Board of CSA and its executives, and thereafter to all interested stakeholders including members of the media.

Importantly, the summary of all findings and recommendations ("Summary Forensic Report") is a direct extract from the Fundudzi Report and has not been amended by CSA's lawyers, save for the matters detailed below.

As previously reported, the CSA Board appointed Bowman's Attorneys to assist the independent Audit and Risk Committee members to project manage a legal roadmap to give full effect to all findings and recommendations in the Fundudzi Report and identify matters that require further investigation and or corroboration.

INTRODUCTION OF THE FUNDUDZI FORENSIC REPORT

Upon the suspension and subsequent dismissal of CSA's Chief Executive Officer (CEO), Thabang Moreo, CSA's Cricket Council and its Board Members unanimously agreed to appoint a service provider to conduct an investigation into various governance issues and allegations relating to possible failure of controls and insufficient executive oversight.

Fundudzi Forensic Services (Fundudzi), completed the forensic audit and delivered the 4-year final draft forensic report (period covered January 2016 to December 2019) to the CSA Audit and Risk Committee on 31 July 2020.

The scope and objectives of Fundudzi's investigation was as follows:

1. Determine whether CSA Management and Board of Directors adhered to the governance framework;
2. Determine whether effective internal controls were in place to prevent or detect material misstatements and other irregularities;
3. Determine whether key sub-committees, reasonably relied on management information and applied reasonable levels of professional scepticism to such information before recommending such proposals for approval by the Board;
4. Determine whether there were completeness and adherence to key policies, such as:
 - i. Delegation of authority (ensuring adherence to levels of authority);
 - ii. Declaration of conflict of interest;
 - iii. Procurement policy;
 - iv. Enterprise risk management policy;
 - v. Employee expense claims policy;
 - vi. Fraud prevention policy;
 - vii. Asset management policy;
 - viii. Cell phone policy;

5. Determine the completeness and correctness of management reports over the last twelve (12) months;
6. Determine whether CSA's funds were used for intended purposes;
7. Determine whether decisions were made in the interest of CSA; and
8. Provide feedback on allegations against Thabang Moreo (Moreo).

Fundudzi prepared an investigation report containing, inter alia, various findings, conclusions and recommendations (the Final Draft Forensic Report).

The full Forensic Report touched on roughly 20 themes/areas of concern:

1. Revocation of media accreditation.
2. Relationship with SACA.
3. Allegations of non-responsiveness by CSA.
4. Appointment of 'Service Provider X'1.
5. Step-in rights at WPCA.
6. Step in rights at NWC.
7. Framework Agreement entered into between GSC and CSA.
8. Production Agreement entered into between GSC and CSA.
9. Expenditures relating to CSA credit cards.
10. Extending loans to affiliates / unions.
11. Effectiveness of internal controls.
12. Examining payments related to tax and VAT liability.
13. Structure of the Board.
14. Fraud detection and prevention.
15. Value-In-Kind sponsorships.
16. Organisational design.
17. Appointment of Chantel Moon as Head of HR.
18. Reviewing policies.
19. Review of key procurement contracts.
20. NSA Vulindlela Agreements.

The Fundudzi Report was used in the proceedings to discipline Moreo, who was subsequently dismissed. The conduct of Moreo is dealt with extensively in the Forensic Report, and many of the recommendations are to act against him.

While the Summary Forensic Report contains all the detailed information, we summarise some of the key findings below for easy reference:

1. Revocation of media accreditation.

Instituting disciplinary action against Moroe for the revocation of media accreditation which contravened section 76(3)(b) of the Companies Act, clause 2.1 of the CSA Code of Conduct and Clause 4.1 of his employment contract.

Review and update CSA Media Guidelines Policy and Protocols as well as the CSA Accreditation Policy to outline the processes to be followed in addressing an impasse between CSA and Media.

2. Relationship with SACA.

That CSA Board considers instituting disciplinary action against Moroe for failure to protect the interest of CSA in that he failed to ensure that SACA was paid timeously.

3. Allegations of non-responsiveness by CSA.

The fact that Board members had to intervene in operational matters indicates that Management and/or Moroe failed to respond to SACA accordingly.

4. Appointment of 'Service Provider X'1.

Instituting disciplinary action against Moroe for:

- failing to follow procurement processes in the appointment of 'Service Provider X'; and
- failing to act in the best interest of CSA in terms of Section 76(3)(b) of the Companies in that he caused CSA to pay 'Service Provider X' R3 019 244.82 without following Procurement Policies and Procedures.
- Register a criminal case in terms of Section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004.
- Obtain legal advice regarding the desirability to institute legal action to recover funds paid to 'Service Provider X' in view of no evidence of delivery of services.

5. Step-in rights at WPCA.

That the CSA Board considers instituting disciplinary action against Moroe for the following:

- Failing to act in good faith and for a proper purpose and in the best interests of the company in terms of section 76(2) of the Companies Act in that he withheld information

relating to the signing of the lease agreement as well as the withdrawal of the suspension letter by Stefanutti Stocks;

- Failing to comply with clause 12.4.2 of the Mol which required that the Board shall as soon as possible after determining that action is required to be taken by the Company as contemplated in clause 12.4.1, notify the Affiliate Member or Associate Member in writing thereof;
- Failing to exercise step-in rights with immediate effect as he only informed WPCA of the decision to step-in on 21 September 2019 (14 days later) in a letter dated 20 September 2019;
- Failing to act with integrity in that he failed to inform the CSA Board of the change in the trigger and that the CPUT lease agreement had been signed;
- Failing to act with the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions in relation to the company as carried out by him having his general knowledge, skill and experience in terms of section 76(3)(c) of the Companies Act by not informing the Board of the signing of the CPUT lease agreement and withdrawal of the suspension notice by Stefanutti Stocks; and
- failing to take the lead in ensuring that the Board's directive was implemented without delay in terms of Section 66 of the Companies Act; and
- For causing the CSA to incur costs in the amount of R565 000.00 relating to the arbitration matter against WPCA which costs could have been avoided had he exercised due care, skill and diligence as expected of a director.

6. Step in rights at NWC.

The CSA Board considers instituting disciplinary action against Moroe for:

- failing to ensure that the NWC kept and provided audited financial statements for the period of two years 2016/17 and 2017/18; and
- failing to obtain Board approval for the extension of the Administrator period beyond six months.

7. Framework Agreement entered into between GSC and CSA.

Instituting disciplinary action against Moroe for:

- Failing to act in good faith and for a proper purpose in terms of Section 76(3)(a) of the Companies Act in that he did not inform FinCom and the Board that the due diligence on GSC was not conducted;

- Failing to act in the best interest of CSA in terms of Section 76(3)(b) of the Companies Act by not ensuring that the due diligence was conducted, and the Bank Guarantee was obtained; and
- Failing to act with the degree of care, skill and diligence that may be reasonably expected of a person carrying out the same function in relation to the company in terms of Section 76(3)(c) of the Companies Act in that:
 - He failed to show leadership by ensuring that the risk identified by Manning were properly addressed;
 - He failed to ensure the FinCom and Board's instructions were complied with in relation to the provision of due diligence report;
 - He failed to ensure the FinCom and Board take decisions based on properly presented and complete information; and
 - He failed to ensure that CSA does not suffer losses or potential losses flowing from GSC's failure to fulfil its obligations in instances where their bank guarantee was not obtained.
- Instituting disciplinary action against Appiah for failure to exercise due care and skill expected from a reasonable person in a similar position in that he failed to ensure that FinCom and the Board's instructions were complied with in relation to the provision of the due diligence report.

8. Production Agreement entered into between GSC and CSA.

Instituting disciplinary action against Moroe for:

- Failing to act in good faith and for a proper purpose in terms of Section 76(3)(a) of the Companies Act in that he as he was aware or ought to have been aware that the RFP for Production Services included a matching rights clause as the RFP was sent to him by Appiah and Becker;
- Failing to act in the best interest of CSA in terms of section 76(3)(b) of the Companies Act in finalising the appointment of GSC;
- Failing to act with the degree of care, skill and diligence that may be reasonably expected of a person carrying out the same function in relation to the company in terms of Section 76(3)(c) of the Companies Act in that he in that he was aware or ought to have known that the 2018 Production Agreement between CSA and GSC did not include any matching rights clause; and
- Failing to exercise due care, skill and diligence in terms of Section 76(3)(c) of the Companies in finalizing the appointment of GSC Act in that he ought to have identified the risk of possible litigation against CSA by unsuccessful bidders.

9. Expenditures relating to CSA credit cards.

- Approve a detailed Credit Card Policy.
- Provide guidelines relating to expenditure on alcohol in terms of the approved Credit Card Policy.
- Provide guidelines relating to the use of credit cards for travelling expenses in terms of the approved Credit Card Policy.
- Limit the allocation of credit cards to the CEO and CFO.
- Centralise procurement of goods and services as provided for in the SCM policy.
- Keep a register of all clothing items distributed to CSA staff and stakeholders to ensure that the items are distributed to the correct recipients.
- Institute disciplinary action against Moroe for failing to ensure that CSA has an approved Credit Card Policy, which resulted in the inappropriate use of CSA s funds.

10. Extending loans to affiliates / unions.

- Amending the composition of the Board to include more Independent Directors in order to ensure independence and objectivity in respect of matters relating to Affiliates.
- Review the Delegation of Authority document and the Financial Assistance to Affiliates and Associate Members Policy relating to FinCom's authority to approve loans to affiliates.

11. Effectiveness of internal controls.

- Commencing with the process of nomination of candidates to fill the independent non-executive director vacancies.
- Ensure that the appointment of independent non-executive directors in is line with Companies Act and the CSA MOI.
- Review the nomination Committees TOR to determine whether it is desirable for the chair of the Board to be a member of the Committee.

12. Examining payments related to tax and VAT liability.

- The Report contain no express recommendations in relation to the examination of payments related to tax and VAT liability.

13. Structure of the Board.

- Commencing with the process of nomination of candidates to fill the independent non-executive director vacancies.

- Ensure that the appointment of independent non-executive directors is in line with Companies Act and the CSA MOI.
- Review the nomination Committees TOR to determine whether it is desirable for the chair of the Board to be a member of the Committee.

14. Fraud detection and prevention.

- CSA to consider conducting detailed investigations into the following allegations:
 - Allegations of mismanagement at 'Cricket Club A' in Mpumalanga; and
 - Allegations of illegal practices taking place at 'Cricket Union B'

15. Value-In-Kind (VIK) sponsorships.

- Develop a VIK policy or guideline.
- Ensure that there is centralised control and management of the VIK products.
- Keep a detailed register of items distributed to CSA staff and various team members in respect of VIK products

16. Organisational Design (OD).

Fundudzi were further not able to compare how the current CSA OD looks like versus the OD Project recommendation as not all positions (as per the approved OD) have been filled.

17. Appointment of Chantel Moon as Head of HR.

- Advertise and fill the position of HR Manager/Head of HR as per the approved OD structure.
- Institute disciplinary action against Moroe for:
 - Contravening paragraph 3.4.2 of the SCM policy in the appointment of Moon;
- Failing to act in the best interest of CSA in terms of section 76(3)(b) on the Companies Act in that he caused CSA to pay People Link R1 699 335 for the period August 2019 to April 2020 without following procurement processes; and
- Failing to act with the degree of care, skill and diligence that may be reasonably expected of a person carrying out the same function in relation to CSA in terms of Section 76(3)(c) in that he appointed People Link without following procurement processes.

18. Reviewing policies.

- Instituting disciplinary action against Moroe for failing to ensure that procurement processes were followed in the appointment of NSA Vulindlela.

- Update the Procurement Policy and Procedure to clarify that deviation must be done prior to entering into a contract with a supplier as opposed to CSA ratifying minor breaches of procurement policies after the fact (entering into a contract or placing an order with a service provider).
- A tender process should be followed in the future in relation to the appointment of security related service provider to ensure that CSA benefits from obtaining competitive bids.

19. Review of key procurement contracts.

- Fundudzi could not determine whether procurement processes had been followed in the procurement of goods and services in terms of the top 40 contracts due to lack of documentation.

20. NSA Vulindlela Agreements.

- Instituting disciplinary action against Moroe for failing to ensure that procurement processes were followed in the appointment of NSA Vulindlela.
- Update the Procurement Policy and Procedure to clarify that deviation must be done prior to entering into a contract with a supplier as opposed to CSA ratifying minor breaches of procurement policies after the fact (entering into a contract or placing an order with a service provider).
- A tender process should be followed in the future in relation to the appointment of security related service provider to ensure that CSA benefits from obtaining competitive bids.

Having highlighted the Fundudzi concerns, Cricket South Africa has already taken action on many of the findings and recommendations of the forensic report and has further engaged Bowmans to detail a roadmap to address:

- What further actions will be taken by CSA,
- Who will be responsible for these actions, and
- When they are expected to be completed.

Once consensus has been reached by the Board and Bowmans the detailed roadmap will be presented to the Members Council and other key stakeholders. A third-party assurance provider will be appointed to provide stakeholders with assurance that the required actions have been taken.

The current Bowmans Draft roadmap recommends the following key areas to be considered by the Members Council:

- Appoint an independent director as the Chairperson of the Board, and ensure that the appointed person has the skills required;
- Ensure that the MOI and related governance processes lead to the appointment of a Board with a significant range of skills to perform, with a majority of Board members who are not members of the Members Council or participants in the member structures;
- Separate the Members Council and its workings from CSA through amendment of the MOI and bolstering the constitutional documents of the Members Council so that regulation of Members happens at that level;
- Ensure that the Board of CSA can always constitute a Nominations Committee and appoint Directors to fill casual vacancies quickly (noting that the Members Council appoints the Board at General Meetings and retains strong influence at that level);
- Take steps to ensure that the Members Council fulfils its role by resolving the geographical alignment issues;
- Clarify the roles, responsibilities of each type of member, i.e., Affiliate Members, Ancillary Members etc., the membership requirements and the regulations governing such membership including, but not limited to, the impact of failure by each member to adhere/comply with the membership requirements;
- Review the terms of the MOI relating to step-in rights to learn from the experiences in the Western Province and North West step-ins as detailed in the Fundudzi Report;
- Deal in the MOI with the consequences of the failure of Members to comply with provisions such as the current 10.9, and provide that Members adhere to appropriate governance requirements before they can exercise their rights pursuant to the MOI.

Bowmans further recommends that the following urgent steps are concluded before the 2020 Annual General Meeting scheduled for the 5th of December 2020:

We recommend that the following matters be dealt with:

- Internal disciplinary proceedings against many employees mentioned in the Fundudzi Report are either ongoing or completed.
- The evidence in regard to other employees of CSA mentioned in the Fundudzi Report should be brought to the attention of the Board and delegated to the Human Resource and Remuneration Committee or another appropriate governance structures to brief external legal counsel to advise on possible disciplinary action, and assist with the taking of such appropriate disciplinary action, where necessary.

- Given the steps taken against many other employees, the Board needs to take, and be seen to be taking, a consistent approach against all CSA employees in respect of whom the Fundudzi Report identifies allegations of serious misconduct;
- In addition to the disciplinary proceedings referred to above, the provisions of the Fundudzi Report relating to the Western Province and North West Steps-Ins (5.12) and the Framework Agreement between GSC and CSA (5.13), should be referred for legal opinion to determine if action should be taken against any external parties to recover funds for CSA.
- The recommendations in regard to the appointment by CSA of a certain service provider named in the Fundudzi Report should be followed – a legal opinion should be obtained regarding recoveries of the amounts paid by CSA, and the relevant notifications under the Prevention of Organised Crime Act, 1998 made;
- Management of CSA should be instructed to develop an appropriate credit card policy for approval by the Board, including clear guidelines on the procurement of travel, purchases of alcohol and clothing with credit cards.
- In addition, further investigation should be undertaken on whether to take steps to recover any amounts due to CSA through the unlawful use of credit cards; Management of CSA should review and update CSA Media Guidelines and Protocols, and the CSA Accreditation Policy to outline the processes to occur when an impasse happens (Board approval required for certain actions).
- The process of the necessary appointments for the Internal Audit and Risk position should be commenced immediately, and management should conduct the process under the guidance of the independent directors on the ARComm.
- Management of CSA should be instructed to prepare a draft Value-In-Kind policy for approval by the Board, and should confirm the measures taken to ensure that there is centralised control and management of products and a register of items distributed to staff and team members.
- A collaborative team with representation from Members' Council and Board has been appointed by Members' Council to work in consultation with external Legal Advisors to review the CSA Memorandum of Incorporation. This Task Team submitted a total of 19 key in principle proposals to Members' Council and approved principles have been applied in drafting of a new MOI which will be reviewed by the MOI Review Task Team. It is envisaged that new MOI will be lodged with CIPC and approved by 23 October 2020 in order to be adequately prepared for the AGM.

Following the recommendations regarding contracting with a major third party security provider, management of CSA should be requested to update the Procurement Policy and Procedure to clarify that any deviation from the policy must be applied prior to any contract being entered into, as opposed to CSA ratifying breaches after the fact.

IN CONCLUSION

It is important to note, that External Auditors, PWC, has had full access to the complete forensic report, before passing a clean, unqualified audit.

While Cricket South Africa would have preferred to investigate the Fundudzi recommendations and completed the processes in its entirety, before sharing the findings of the report with our very important stakeholders in cricket, CSA has had to release the report as is, due to the aforementioned factors.

The matters detailed in this memorandum by Fundudzi is for consideration by the Board, to allow the Board to deliberate on the issues raised, and to speedily reach consensus on the key components of the roadmap, and who should take responsibility for preparing and finalising the detailed roadmap.

Cricket South Africa, officially places on record that, while we understand that the Forensic Report is no more than an analysis prepared by Fundudzi on their investigative findings, CSA's Members' Council, Board of Directors, and our executives, will not tolerate fraud, corruption or mismanagement of any kind.

Although the Forensic Report is not a court judgment, and the findings and conclusions therein have not been tested, CSA takes the Fundudzi recommendations and Bowman's Attorneys' reiteration, very seriously.

Further to CSA's commitment to address the Forensic Report findings, the Members Council is confident in the Board's ability to effectively address the challenges and to focus on protecting the long-term sustainability of Cricket South Africa.

Cricket South Africa is committed to act with determination, without fear, favour or prejudice to restore the image of the organisation and to continue promoting the beautiful game of cricket.

Ends/