



MINISTRY OF FINANCE
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

MINISTER GIGABA SET TO TAKE PUBLIC PROTECTOR REPORT ON REVIEW

The Minister of Finance, Malusi Gigaba, has instructed counsel to institute review proceedings for the review and setting aside of the findings, remedial action and the entire report of the Public Protector, titled *“Alleged Failure to Recover misappropriated Funds”*. The basis for the review is that, the remedial action breaches the principle of legality and the findings of fact are not necessarily adequately connected to the evidence which was before the Public Protector.

Prior to taking the above decision, the Minister engaged the Public Protector to gain a deeper understanding of the facts and evidence, which underpins some of the findings and conclusions against the Government. This was necessary because the investigation preceded the Minister’s tenure in office.

During the discussions with the Public Protector, which were cordial and insightful, it became apparent that, his concerns about the report can only be practically addressed through judicial review proceedings. This was confirmed by the legal advice obtained by the Minister that the review is the appropriate course of action in light of the binding judgments of the Constitutional Court and the Supreme Court of Appeal.

The Minister has not taken the decision to seek judicial review lightly. He has taken the decision primarily to protect the constitutional mandate of the South African Reserve Bank, an important institution created by section 224(1) of the Constitution to *“protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic”*.

The Minister believes that the proposed constitutional amendment is not necessary. The Constitution does not contemplate the protection of the currency for its own sake, but specifically in the interest of balanced and sustainable economic growth. These two objectives of the Reserve Bank are mutually supportive and reinforcing.

It is notable that the Public Protector report has generated a public discussion concerning the role of the Reserve Bank. The role of the Reserve Bank is a policy question. Its primary mandate is in the Constitution. There is no intention in the part of the Executive to amend the Constitution in any manner. In any event, the first port of call for any policy changes would not be the Constitution, but the pre-constitutional legislation which governs the Reserve Bank, the South African Reserve Bank Act 90 of 1989.

On the recommendations by the PP that the Special Investigating Unit should take steps to recover the *“misappropriated public funds unlawfully given to ABSA Bank in the amount of R1.125 billion”*. The view of the Minister, consistent with the principle of state succession, is that he is bound by decisions taken by his predecessors in this regard. These matters will also form part of the judicial review proceedings to be instituted.

Issued on behalf of the Ministry of Finance

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