

TO: MINISTER OF FINANCE

FROM: FSCA SHORTLISTING PANEL

RECOMMENDATIONS AND COMPREHENSIVE REPORT

**PROCESS FOR SELECTION OF CANDIDATES FOR APPOINTMENT AS
COMMISSIONER OF THE FINANCIAL SECTOR CONDUCT AUTHORITY**

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1. Introduction

This is the **Report** of the reconstituted Financial Sector Conduct Authority (FSCA) Shortlisting Panel to the Minister of Finance, and deals with the process undertaken by the Shortlisting Panel to recommend two persons for the position of Commissioner of the FSCA, for the consideration of the Minister.

The Shortlisting Panel will submit a separate report to the Minister for the positions of up to four Deputy Commissioners of the FSCA, expected to be done by mid-March 2021.

2. Background

The process to appoint a Commissioner and Deputy Commissioners of the FSCA commenced in April 2018, following the promulgation of the Regulations in terms of sections 61(4), 288 and 304 of the Financial Sector Regulation Act (FSR Act).

Subsequently, an advert for the Commissioner and Deputy Commissioner positions was placed in the media with a due date of 21 May 2018, and interviews for the Commissioner position were conducted on 2 February 2019. Given the inflexibility of the original Regulations, the first Shortlisting Panel was not able to identify a minimum of four candidates for interviewing by the Ministerial Panel (both these requirements of a minimum number and the Ministerial Panel are no longer in effect after the amendment of the Regulations). Furthermore, the original Regulations were so inflexible that they did not allow for the filling of vacancies on the Shortlisting Panel, when some of its members were automatically disqualified from serving on the Shortlisting Panel when they left their employment (at the South African Reserve Bank and the National Consumer Commission), making it difficult to continue with the recruitment process.

The vacancies on the 2018 Shortlisting Panel arose after the term of the South African Reserve Bank (SARB) Deputy Governor, Mr Daniel Mminele, ended, and the retirement of the then National Consumer Commissioner, Mr Ebrahim Mohamed. The former Chairperson of the Financial Services Board, Mr Abel Sithole, who also was a member of the Transitional Management Committee (TMC) of the FSCA and the person designated

in terms of the original Regulations to perform the functions of the Commissioner of the FSCA, also ceased to be a member of the Shortlisting Panel following his resignation from the FSCA and appointment as the Chief Executive Officer of the Public Investment Corporation.

The Financial Sector Regulations were subsequently amended to simplify the process of appointing the Commissioner and Deputy Commissioners of the FSCA, and to clarify how vacancies on the Shortlisting Panel would be handled. The amendments were promulgated on 5 August 2020 (refer to a National Treasury media statement published 6 August 2020) (http://www.treasury.gov.za/comm_media/press/2020/20208006%20Media%20statement%20-%20Publication%20of%20Amended%20Regulations%20In%20Terms%20of%20the%20Financial%20Sector%20Regulation%20Act,%202017.pdf) . The revised Regulations enabled the resumption of the recruitment process.

The Minister of Finance appointed replacement members nominated by the two institutions to the Shortlisting Panel, and re-appointed all other previous members, in terms of Regulation 9(1) and (2) of the Financial Sector Regulations on 15 September 2020. At that stage, the Shortlisting Panel became properly constituted, and allowed the process for the shortlisting and recommending of candidates to proceed expeditiously (also refer to a National Treasury media statement published on 25 September 2020) (http://www.treasury.gov.za/comm_media/press/2020/20200925%20Media%20statement%20-%20FSCA%20Commissioner%20and%20DCs.pdf) .

3. Constitution of the Shortlisting Panel

The following persons were appointed as members of the Shortlisting Panel by the Minister of Finance:

(i) **Mr Ismail Momoniat (Chairperson)**

Mr Momoniat (the Deputy Director-General for Tax and Financial Sector Policy at the National Treasury) was, following his nomination by the Director-General

of National Treasury, appointed in terms of Regulation 9(2)(a)(i) of the Regulations.

(ii) Ms Fundi Tshazibana

Ms Tshazibana was appointed in terms of Regulation 9(2)(a)(ii) of the Regulations. She is a Deputy Governor of the SARB responsible for Financial Markets and International.

(iii) Ms Thezi Mabuza

Ms Mabuza was appointed in terms of Regulation 9(2)(a)(iii). She is the Acting Commissioner of the National Consumer Commission.

(iv) Prof Deon Rossouw

Prof Rossouw was appointed in terms of Regulation 9(2)(a)(iv). He is an Extraordinary Professor in Philosophy at Stellenbosch University and the Chief Executive Officer of The Ethics Institute. He served as the President of the International Society of Business, Economics and Ethics (ISBEE), and is a member of the King Committee on Corporate Governance.

(v) Mr Sizwe Nxasana

Mr Nxasana was appointed in terms of Regulation 9(2)(a)(v) as a person with suitable experience and expertise in the financial sector, having been the Chief Executive Officer of the FirstRand Group from 2005 to 2015. He is currently a social entrepreneur with the Sifiso Learning Group and Future Nation Schools.

4. Adoption of a Secretariat for the Shortlisting Panel

At its meeting on 16 September 2020, the Shortlisting Panel adopted a Secretariat of three officials from National Treasury, comprising National Treasury's Head of Human Resource Management (Ms Patricia Tomotomo), Ms Olaotse Matshane and Mr Ngoni

Mangoyi. The Secretariat provides administrative and secretarial support to the Shortlisting Panel.

5. The selection process

The National Treasury advertised the position of Commissioner on 20 September 2020 in the *Sunday Times* newspaper, and on 22 September 2020 in the *Business Day* newspaper. The Deputy Commissioner positions were advertised in the *Sunday Times* newspaper on 06 September 2020.

The original Shortlisting Panel that was appointed in 2018 followed the approach outlined in the report of the “*Commission of Inquiry into Tax Administration and Governance by SARS*” chaired by Judge Nugent for appointing the Commissioner of SARS, to guide the selection process for the FSCA Commissioner and Deputy Commissioners. The new and reconstituted Shortlisting Panel confirmed this approach recommended by the Nugent Commission at its first meeting held on 16 September 2020, following the amendment of the Regulations. The Shortlisting Panel thus ensured that the process is open and transparent. The National Treasury also confirmed to the Shortlisting Panel that the Minister supported the Shortlisting Panel in adopting the approach of the Nugent Commission, and that the Minister took account of the need for members of the Shortlisting Panel to be of high standing and who inspire confidence with the public, and that both the members and the recruitment process be apolitical.

The Shortlisting Panel also made the decision to re-advertise the Commissioner position (please refer to item 6 below) at its 16 September 2020 meeting, given the long delay due to the COVID-19 pandemic and the national lockdown after the 16 March 2020 closing date for the February 2020 advertisement.

Paragraph 40 on page 186 of the final report of the *Commission of Inquiry into Tax Administration and Governance by SARS*:

“Our view is that the Commissioner of SARS should be appointed by the President, after consultation with the Minister of Finance, according to a transparent process. The process should be along the following lines:-

- 1. the President should of his own volition select, or upon nominations, select a candidate or candidates for appointment;*
- 2. following the selection by the President of the candidate or candidates it should be followed by an open and transparent process for the purposes of providing input to the President, or the Minister, as to the suitability for office of the candidate. This process should be apolitical and the persons providing the input should be selected on their personal merits including impeccable reputation and probity, and not on the basis of being a representative of any organisation;*
- 3. the candidate or candidates of the choice of the President or Minister, as the case may be, should be subjected to interview by an apolitical panel comprising persons of high standing who inspire confidence across the tax-paying spectrum;*
- 4. there should be criteria against which to evaluate the attributes of the candidate or candidates and the members of the panel;*
- 5. as regards the suitability of the persons to be considered as candidates for appointment as Commissioner the criteria against which the candidate or candidates should be evaluated for suitability should be:-*

first and foremost, he or she must be, and must be reputed to be, of unblemished integrity;

he or she must have proven experience of managing a large organization at a high level; and

he or she must not be aligned to any constituency, and if so aligned, he or she must renounce that alliance upon appointment.

- 6. once a candidate is appointed the recommendations of the panel should be made public.”*

Box 1: Extract from the Report of the *Commission of Inquiry into Tax Administration and Governance by SARS*

At a subsequent meeting, the Shortlisting Panel adopted a procedures document to guide its processes (Annexure A). The Shortlisting Panel committed itself to embracing “*the*

principle of transparency and appropriate public participation in its process for selecting and recommending suitably qualified and experienced candidates for the positions of Commissioner and Deputy Commissioners of the FSCA for appointment by the Minister of Finance". The Shortlisting Panel ensured that the procedures for the selection process are transparent, with regular reporting to the public.

This procedures' document outlines that the Shortlisting Panel would submit its recommendations to the Minister in a report recommending one or up to three recommended candidates, after it has shortlisted and interviewed the candidates who applied for the Commissioner position or Deputy Commissioner positions.

The Shortlisting Panel noted at one of its meetings that since the interviews are meant to select candidates who best fit into the positions of Commissioner (and Deputy Commissioners), *"(t)he interview processes will not be open to the public, in line with the process recommended by Judge Nugent in the appointment process for the Commissioner of SARS, to ensure that as many candidates as possible can be interviewed."*

The Shortlisting Panel notes that *"The Minister has the prerogative to appoint or not appoint any of the candidates that might be recommended by the Shortlisting Panel."* The Regulations make provision for the Minister to appoint another candidate that was not recommended by the Shortlisting Panel, and to publish his reasons for doing so.

The Shortlisting Panel recommends that the Minister makes the Report of the Shortlisting Panel public, as well as all public comments received, when making the announcement on the appointment of the Commissioner and the Deputy Commissioner/s.

The Shortlisting Panel also developed selection criteria in line with the requirements of the FSR Act and Regulation 11 of the Financial Sector Regulations, which is outlined below.

6. Re-advertising of the Commissioner position

In anticipation of the amendment of the revising of the Regulations, the position of Commissioner was re-advertised with a closing date of 16 March 2020.

At its meeting on 16 September 2020, the Shortlisting Panel noted the list of candidates that had applied for the Commissioner position from the second advert that closed on 16 March 2020. However, due to the delay in the process following the COVID-19 pandemic and the national lockdown after the closing date of the advert, the Shortlisting Panel resolved that the position should be re-advertised, for a two-week period. The Shortlisting Panel also resolved that a parallel headhunting process would also be undertaken. An advert (with a closing date of 2 October 2020) was placed in the *Sunday Times* newspaper on 20 September 2020, and also in the *Business Day* newspaper on Tuesday, 22 September 2020.

The Secretariat (acting on the direction of the Shortlisting Panel) contacted all the candidates that were interviewed on 2 February 2019 and informed them that the position had been re-advertised, and alerted them that if they were still interested, they needed to re-apply for the position

7. Response to legal challenge on the recruitment process

The approach taken by the Shortlisting Panel also took account of the legal challenge to the process for the selection and shortlisting of candidates for the positions of Commissioner and Deputy Commissioners of the FSCA, by Open Secrets and Unpaid Benefits Campaign filed on 22 October 2020 in the North Gauteng High Court. They were seeking interim relief, pending a review of the Financial Sector Regulations, in the following terms:

- (i) that the Shortlisting Panel be interdicted from shortlisting and interviewing candidates, or making recommendations to the Minister for the appointment of any candidates to the positions of Commissioner or Deputy Commissioners of the FSCA;

- (ii) that to the extent that there had been any shortlisting or interviewing process, that the respondents (i.e. the Minister and the Shortlisting Panel) be compelled to publish within 3 days of the grant of an order the schedule of interviews and candidates, including the criteria for shortlisting and interviewing; and
- (iii) that access be granted to the media and civil society to the shortlisting and interviewing process.

The Minister of Finance approved the filing of an answering affidavit by 5 November 2020. In the answering affidavit, the National Treasury noted that the process for the shortlisting of candidates for the positions of Commissioner and Deputy Commissioners of the FSCA was not secretive, and that only the interview process was private and closed to the media and public. In the affidavit, National Treasury argued that conducting interviews in private ensures that candidates are able to freely express themselves, and to maximise the number of candidates prepared to be interviewed as some may not want their employers to know that they were applying for another job. In a judgment delivered on 17 November 2020, the High Court dismissed Open Secrets and Unpaid Benefits Campaign's application for urgent intervention, but the second part of the case challenging the validity of the Regulations will continue on the normal court roll. This enabled the process for selecting and recommending candidates to continue.

8. Shortlisting process

Development of shortlisting criteria

The Shortlisting Panel developed shortlisting criteria that were used to select candidates who were shortlisted for interviews. In developing the shortlisting criteria, the Shortlisting Panel was guided by Regulation 11 (a) of the Financial Sector Regulations. Regulation 11 (a) requires the candidates to have at least 10 years' experience in a senior or executive position with—

- (i) a regulator (preferably a financial sector regulator);

- (ii) a financial institution;
- (iii) a financial sector industry body;
- (iv) a government department that is responsible for overseeing the regulation of the financial sector;
- (v) an international financial regulatory body; or
- (vi) any two or more of the institutions mentioned in subparagraphs (i) to (v).

The Shortlisting Panel received 90 applications (including applications received via recruitment agencies) for the Commissioner position. At a meeting on 11 November 2020, the Shortlisting Panel worked on a final shortlist of candidates to be interviewed.

The 90 applications that were received were grouped into the following categories:

(i) Candidates who do not meet the minimum requirements in terms of qualifications (18 applications)

These candidates did not possess the minimum National Qualifications Framework Level 8 qualification as was required in the advert.

(ii) Candidates who do not meet minimum requirements in terms of management experience at executive level (44 applications)

These candidates had not gained adequate executive level experience or exposure, or developed requisite competencies, given the nature or level of their work experience.

(iii) Candidates who do not meet requirements relating to relevant experience in financial regulation / financial sector comparable scope (13 applications)

These candidates did not possess experience or exposure to the financial sector or financial sector regulation that would have prepared them adequately for the complexity of the operations of the FSCA.

(iv) Preliminary shortlist (15 applications)

Applicants whose credentials indicate that they had the requisite skills and experience relative to the advertisement.

Upon assessing each candidate's CV in detail, and based on the requirements in the advert and the selection criteria, the Shortlisting Panel agreed to shortlist 5 suitably qualified candidates for interviewing.

9. Interviews

The interviews were conducted on Saturday 21 November 2020, on the MS Teams virtual platform.

The candidates were requested to prepare presentations on the following topic *“What are the key challenges facing the financial sector in the way it treats its customers? What should the FSCA do to ensure financial institutions treat customers better? How will you lead the FSCA to do so?”*.

As part of the selection and interview process, all candidates submitted their presentations prior to their respective interviews.

Two candidates, Ms Astrid Ludin and Mr Unathi Kamlana, emerged as the best fits for the Commissioner position from the interview process. The three candidates not recommended for the Commissioner position were subsequently considered as applicants for the Deputy Commissioner positions.

The Shortlisting Panel requested that the two recommended candidates undergo competency assessments before making a final recommendation to the Minister. This was duly done, as outlined below.

10. Suitability checks on the candidates

10.1. Standard reference checks

Before the interviews, National Treasury commenced standard pre-employment checks on all the shortlisted candidates. From the pre-employment checks, there was no adverse information that altered the preferences of the Shortlisting Panel. The required security checks by the State Security Agency were also completed, and no information emerged that altered the recommendations of the Shortlisting Panel.

10.2. Competency tests

Standard competency tests were performed to assess conceptual abilities to solve complex problems, behavioural patterns, personal preferences and work style, emotional intelligence and social stability. The psychometric tests elaborated on the aptitude of the candidates on conceptual and technical matters, as well as leadership capabilities. A report by *The Assessment Toolbox* informed the Shortlisting Panel's views on the suitability of the candidates. The tests did not reveal any matters that led to the disqualification of either candidate.

10.3. Enhanced reference checks

At the direction of the Shortlisting Panel, the National Treasury performed an additional set of reference checks, akin to a 360-degree review to obtain feedback from candidates' managers, peers, staff and stakeholders. Four references were received for each of the candidates.

From the enhanced reference checks, no information emerged that indicated that either of the two candidates would be unsuitable for appointment. It also aided the Shortlisting Panel in assessing the candidates' strengths and areas for development relative to each other, based on independent views.

11. Invitation for public comments on the suitability of the two candidates

The Shortlisting Panel invited public comments on the suitability of the two candidates, with the call for public comments being published on the National Treasury website on 19 January 2021, with a closing date of 26 January 2021. Commentators were expected to provide cogent reasons and documental evidence if they sought to object to the recommendation for appointment of either of the candidates.

The Shortlisting Panel received 23 comments, with 21 comments supporting either (and in some cases both) candidates, and one comment from Open Secrets and Unpaid Benefits Campaign objecting to the process. The Shortlisting Panel received one objection to the proposed recommendation of Ms Ludin, likely from an employee or former employee of the Companies and Intellectual Property Commission (CIPC), which Ms Ludin headed as Commissioner from May 2011 to April 2015. The Shortlisting Panel inquired from the Department of Trade, Industry and Competition (DTIC) (as the CIPC falls under the executive authority of the Minister of Trade and Industry) whether any reliance could be placed on the objection. The DTIC Director-General confirmed that there were no material issues pending against Ms Ludin, noting instead her sterling stewardship of the CIPC, and stated confidence in her integrity and ability to discharge duties assigned to her.

Given the DTIC Director-General's input, the Shortlisting Panel is of the view that the objection has no merit and that no reliance can be placed in an unsubstantiated allegation, particularly as the objector was not willing to come out in public to make his or her allegations. The objection is thus dismissed.

12. How the two recommended candidates fare against other Deputy Commissioner candidates

After completing the interviews of all the Deputy Commissioner candidates on 22 January 2021, the Shortlisting Panel noted that the candidate who is not appointed Commissioner between Ms Ludin and Mr Kamlana would still be a good fit to be appointed as one of the Deputy Commissioners. This is because the interview processes for both the

Commissioner and Deputy Commissioner positions were identical, allowing the Shortlisting Panel to compare all candidates interviewed for the available positions.

The Shortlisting Panel therefore recommends that one of the two candidates be appointed as Commissioner, and the other as a Deputy Commissioner, as the first two appointments to the FSCA leadership. The positions for up to three additional Deputy Commissioners can then follow, likely in mid-March 2021. The Shortlisting Panel may also involve consultations with the new Commissioner before making further appointments.

13. Recommendation

The Shortlisting Panel recommends the two candidates for the consideration of the Minister, to appoint one of them as Commissioner, and the other as one of the Deputy Commissioners. The Shortlisting Panel noted that the competency assessments confirmed that both candidates are suitable to be recommended for appointment as Commissioner of the FSCA. The public comment process did not yield any cogent objections to alter the views of the Shortlisting Panel. The only objection that was received against Ms Ludin was dismissed by the Shortlisting Panel, after consultations with the Director-General for the DTIC.

The Shortlisting Panel noted the strengths of the two of candidates, based on their qualifications, experience, management style, track record and competencies. Ms Ludin's strengths are in strategy development and formulation, managing a large organisation, consumer protection and business and financial management. Mr Kamlana's strengths are in his understanding of financial sector policy and regulation, including the Twin Peak regulatory reforms, banking sector and stakeholder relations. *(Ms Ludin and Mr Kamlana's CVs are attached as Annexure B).*

In the Shortlisting Panel's considered view, the two candidates could form a successful partnership, with one being appointed as Commissioner and the other appointed as one of the Deputy Commissioners, and successfully lead the FSCA to achieving the following objectives:

- Building a new and large organisation;

- An inclusive and transformed financial sector;
- A robust regulatory framework that promotes fair customer treatment;
- Informed financial customers;
- Strengthening the efficiency and integrity of South Africa's financial markets;
and
- Fostering and cultivating durable and symbiotic relationships with other regulators, and other key stakeholders, including the Minister of Finance and Parliament.

Date: 08 March 2021