

WEBBER WENTZEL

in alliance with > Linklaters

Attn: His Excellency, President MC Ramaphosa
President of the Republic of South Africa
Union Buildings
Government Avenue
Pretoria

By email: presidentrsa@presidency.gov.za
president@presidency.gov.za
malebo@presidency.gov.za
mike@presidency.gov.za

90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Docex 26 Johannesburg

T +27 11 530 5000
F +27 11 530 5111

www.webberwentzel.com

(Page 1 of 2 including this page)

Your reference	Our reference	Date
	D Milo /N Padayachee /Z Ranisi 3030652	10 April 2019

CONFIDENTIALITY NOTE: This letter contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this letter or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax, e-mail or telephone at the numbers listed above and we will reimburse the costs of doing so.

Dear Mr President

IN RE: THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD ("THE SABC")

- As you are aware, we act on behalf of:
 - Media Monitoring Africa; and
 - S.O.S Support Public Broadcasting Coalition,
(referred to collectively as "**our clients**").
- We refer to our letter dated 2 April 2019 (a copy of which is attached as "**A**" for ease of reference), as well as your letter dated 10 April 2019, in which you confirm that:
 - the President has received the security clearances and CVs for the recommended candidates;
 - the appointment "*will be made soon*".
- We also refer to public statements made by the President's Spokesperson, Ms Khusela Diko, which make it clear that the vetting process has been completed "*with an announcement due imminently*".

13666384_5

Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa M Adderley NG Alp RL Appelbaum DC Bayman KL Beilings AE Bennett AP Blair DHL Booysen AR Bowley MS Burger RI Carrim T Cassim SJ Chong A Christie KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland JH Davies PM Daya L de Bruyn PU Dela JHB de Lange M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver W Drue HJ du Preez CP du Toit SK Edmundson KH Eiser AE Esterhuizen MJR Evans AA Felekis G Fitzmaurice JB Forman C Gabriel CP Gaul KL Gawith OH Geldenhuys MM Gibson H Goolam CI Gouws PD Grealay JM Harvey MH Hathorn JS Henning KR Hillis S Hockey CM Hofheld PM Holloway AV Ismail ME Jarvis CA Jennings CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy A Keyser MD Kota JC Kraamwinkel M Kyle J Lamb E Louw L Marais S McCafferty MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu M Moloi LE Mostert VM Movshovich RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatumba L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane BA Phillips MA Phillips D Ramjettan GI Rapson Z Rawoot K Rew SA Ritchie NJA Robb DC Rudman WJ Rysbergen G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor TK Thekiso PZ Vanda PP van der Merwe SE van der Meulen CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warrington J Watson AWR Westwood RH Wilson M Yudaken **Chief Operating Officer:** SA Boyd

4. We attach a news article in this regard, dated 9 April 2019, as “**B**”.
5. Our clients submit that there is no plausible basis for any further delay in the appointment of the candidates. Particularly where (as set out in our letter, dated 2 April 2019), the President has no discretion regarding whether to appoint the candidates recommended by the National Assembly.
6. Accordingly, all that is pending is for the President to make the announcement of the appointments. Our clients urge the President to appoint the recommended candidates by no later than **12h00 on Monday, 15 April 2019**.
7. If the President does not do so, our clients will have no option but to approach the Constitutional Court on an urgent basis for an order, *inter alia*, directing the President to appoint the candidates.
8. All our clients’ rights are reserved.

Yours faithfully

WEBBER WENTZEL

Dario Milo / Nadia Padayachee

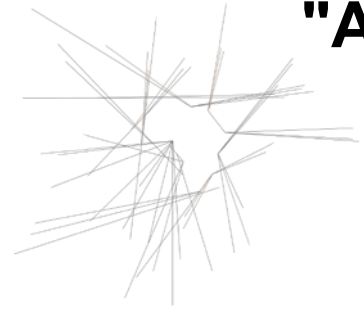
Partner / Senior Associate

Direct tel: +27 11 530 5232

Direct fax: +27115306232

Email: dario.milo@webberwentzel.com

Letter sent electronically without signature.



Attn: His Excellency, President MC Ramaphosa
President of the Republic of South Africa
 Union Buildings
 Government Avenue
 Pretoria

By email: presidentrsa@presidency.gov.za
president@presidency.gov.za
malebo@presidency.gov.za
mike@presidency.gov.za

90 Rivonia Road, Sandton
 Johannesburg, 2196
 PO Box 61771, Marshalltown
 Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 11 530 5000

F +27 11 530 5111

www.webberwentzel.com

Your reference

Our reference

Date

D Milo /N Padayachee /Z Ranisi
 3030652

2 April 2019

CONFIDENTIALITY NOTE: This letter contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this letter or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax, e-mail or telephone at the numbers listed above and we will reimburse the costs of doing so.

Dear Honourable President

IN RE: THE SOUTH AFRICAN BROADCASTING CORPORATION (SOC) LIMITED (“the SABC”)

1. As you are aware, we act on behalf of:
 - 1.1 Media Monitoring Africa, a non-profit organisation which promotes ethical and fair journalism that supports democracy and human rights; seeks to protect the constitutional right to freedom of expression, and advocates for the free flow of information to the public on matters of public interest; and
 - 1.2 S.O.S Support Public Broadcasting Coalition, a non-profit, voluntary association which supports the strengthening of public and community broadcasting in the public interest, primarily by monitoring and assisting with the resolution of problems facing the SABC, (referred to collectively as (“our clients”).
2. As set out in our previous letters, our clients are deeply concerned about the delays in appointing candidates to fill the 8 vacancies on the SABC’s Board as it is inquorate and cannot function until their appointment by the President.
3. Our clients were encouraged that the list of recommended candidates was approved by

13641354_1

Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa M Adderley NG Alp RL Appelbaum DC Bayman KL Beillings AE Bennett AP Blair DHL Booyen AR Bowley MS Burger RI Carrim T Cassim SJ Chong A Christie KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland JH Davies PM Daya L de Bruyn PU Dela JHB de Lange M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver W Drue HJ du Preez CP du Toit SK Edmundson KH Eiser AE Esterhuizen MJR Evans AA Felekis G Fitzmaurice JB Forman C Gabriel CP Gaul KL Gawith OH Geldenhuys MM Gibson H Goolam CI Gouws PD Grealy JM Harvey MH Hathorn JS Henning KR Hillis S Hockey CM Holfeld PM Holloway AV Ismail ME Jarvis CA Jennings CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy A Keyser MD Kota JC Kraamwinkel M Kyle J Lamb E Louw L Marais S McCafferty MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu M Moloi LE Mostert VM Movshovich RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatsumba L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane BA Phillips MA Phillips D Ramjettan GI Rapson Z Rawoot K Rew SA Ritchie NJA Robb DC Rudman WJ Rysbergen G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor TK Thekiso PZ Vanda PP van der Merwe SE van der Meulen CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warmington J Watson AWR Westwood RH Wilson M Yudaken **Chief Operating Officer:** SA Boyd

the National Assembly on **Tuesday, 19 March 2019** and that the list of candidates by now will have been sent to the Office of the President for the recommended members to be appointed.

4. Our clients are concerned that it has been 2 weeks since the National Assembly approved the candidates, but you have not yet appointed them.

5. Our clients again emphasise that:

5.1 a functioning Board is critical to ensuring the SABC's independence;

5.2 The Constitutional Court has held that the public broadcaster facilitates the public's rights to freedom of information and the media, as well as their right to vote;

5.3 The SABC's role in these rights is particularly significant given the upcoming national elections in May 2019. The most critical period for a constitutional democracy to have a properly functioning and independent public broadcaster is in the build-up to, and coverage of, national elections.

6. Our clients point out that:

6.1 Section 13 of the Broadcasting Act provides that “[t]he twelve non-executive members of the Board must be appointed by the President on the advice of the National Assembly.”

6.2 The phrase “*on the advice of*” must be contrasted with the text used in relation to numerous other appointments and decisions, where the President is required to make an appointment or decision “*after consultation with*” a given entity.

6.3 Where the President is required to act “*on the advice of*” an entity, the President has no discretion. Once the twelve people have been selected by the National Assembly and the names are sent to the President, the President is obliged to appoint those persons.

7. This has been made clear by respected academics and courts. For instance:

7.1 In *Cape Bar Council v Judicial Service Commission and Others* [2011] ZAWCHC 388; 2012 (4) BCLR 406 (WCC) at para 21 the court held:

“The JSC serves a unique and crucial function in the South African judicial system, whether one accepts the construction that it has sole responsibility for deciding who should be appointed as judges to the various High Courts, or whether one inclines to the view that the President retains some limited form of discretion as the respondents contended. The latter construction is however difficult to reconcile with the imperative terms of s 174(6) of the Constitution.”

- 7.2 Christina Murray and Richard Stacey in Constitutional Law of South Africa note that: “The term ‘on the advice of’ means ‘on the instruction of’ and leaves no discretion.”¹
- 7.3 Iain Currie and Johan de Waal, discussing the process of judicial appointment state:
- “Others judges of the superior courts are appointed by the President on the advice of the [Judicial Services] Commission which means that the President is bound to accept the decision of the Commission and appoint as judges the persons that it recommends, effectively removing executive control over the appointment of superior court judges.”²*
8. Section 13(3) of the Broadcasting Act provides that the President “*must designate one of the members referred to in subsection (2) as the chairperson and another member as the deputy chairperson, both of whom must be non-executive members of the Board.*” Our clients respectfully submit that as the Board presently has a chairperson Mr Bongumusa Makhatini who has been functioning very well (particularly under extremely challenging circumstances) the President should exercise his power in terms of section 13(3) simply to re-designate Mr Bongumusa Makhatini as the chairperson.
9. Accordingly:
- 9.1 Our clients request that your office confirms that the President has indeed received the list of candidates from the National Assembly as well as clarifying why there has been a delay in the appointment. Please respond by **Friday, 5 April 2019**; and
- 9.2 Our clients urge the President to appoint the recommended candidates by **Wednesday, 10 April 2019**, failing which our clients will consider the legal avenues open to them.
10. All our clients’ rights are reserved.

Yours faithfully

WEBBER WENTZEL

Dario Milo

Partner

Direct tel: +27 11 530 5232

Direct fax: +2711 530 6232

Email: dario.milo@webberwentzel.com

Letter sent electronically without signature.

¹ Woolman et al *Constitutional Law of South Africa* 18-5 fn 3. See also H Corder “Judicial Authority in a Changing South Africa (2004) 24 *Legal Studies* 253 at 263; and C Murray “Who Chooses Constitutional Court Judges” (1999) 116 *SALJ* 865 at 865.

² I Currie and J de Waal *New Constitutional and Administrative Law* at 304.

"B"



News Sport TV Radio Education TV Licences Contact Us

News Lifestyle Sport Features Opinion Elections Madiba

HOME » HOMEPAGE LATEST STORIES SLIDER »

Presidency says SABC board appointment imminent

9 April 2019, 9:21 PM | SABC | @SABCNewsOnline



Tags: Cyril Ramaphosa, Parliament, National Assembly, Media Monitoring Africa, Khusela Diko



Image: SABC News

Failure by the Presidency to fill the eight vacancies by tomorrow (Wednesday), the non profit organisation says it will pursue legal avenues.

The Presidency says it's still considering the National Assembly's recommendations of 8 candidates to be appointed on the SABC Board.

Presidential spokesperson Khusela Diko says the announcement on the Board is imminent, without committing to a time frame.

"The President realises the urgency as it relates to the appointment of the SABC Board. But having appreciated that, – it's also important that he satisfy himself with the recommendation as made. And it is for this reason that a process of vetting as we normally do with all appointments has been undertaken. There hasn't really been a delay. If you would member that this recommendation came to the president at the end of March. So with the Minister of Communications we have gone through the applications. We have gone through that process again. And it's sitting on the desk of the President with an announcement due imminently," Diko explains.

Earlier on Tuesday, the DA has accused President Cyril Ramaphosa of kowtowing to ANC Secretary general Ace Magashule's faction on the appointment of the eight candidates to serve on the SABC Board.

Today marks three weeks since the National Assembly passed a resolution to appoint the candidates.

The President received the Assembly's recommendations at the end of last month.

Lobby group Media Monitoring Africa (MMA) has written to the Presidency to ensure whether the President had received the recommended candidates to serve on the board.

Lawyers for Media Monitoring Africa and the SOS Support Broadcasting Coalition have given Ramaphosa until the end of business on Wednesday to appoint the Board or face legal action.

DA spokesperson Phumzile van Damme says her party has been reliably informed that Magashule's faction is fighting against the appointment of the approved candidates.

ELECTIONS 2019



(Home)

COUNTDOWN TO 2019 ELECTIONS

DAYS HOURS MINUTES

27 : 09 : 53

CHECK YOUR REGISTRATION STATUS TO MAKE SURE YOU HAVE PROPERLY REGISTERED TO VOTE FOR THE 2019 NATIONAL ELECTIONS.

It is important that you're registered at the voting station for your residential address - Using our tool ensures you are registered in the correct place and can vote in the next election.

Enter your ID number below to

LATEST



POLITICS

By-elections under way in Sol Plaatje Municipality