

Your Ref:
Room 827, Bram Fischer Building

Our Ref: CENTLEC BOARD
Date: 30 October 2022

**THE SPEAKER OF COUNCIL
CLLR STEFANI LOCKMAN-NAIDOO**

**COUNCIL ITEM: REPORT ON THE STATUS AND FUNCTIONING OF THE
MANGAUNG MUNICIPAL ENTITY – CENTLEC**

1. PURPOSE

1.1 The purpose of this report is to:

1.1.1 Brief council on the status of affairs at CENTLEC due resignation of six (6) board members with the two (2) board members who remained just resigned on 29 October 2022 rendering CENTLEC operating without board of directors.

1.1.2 Council approve and appoint Board Administrator at CENTLEC for period of six months or until new board members are appointed.

2. BACKGROUND

2.1 The board was appointed by the Municipal Council on the 1st of November 2020 for a period of three (3) years. The term of office of the board was ending in the year 2023. The Board consisted of seven (7) board of directors, namely, Adv T Manye, Adv K Moroka, MS T Mazibuko, Ms Y Skwintshi, Ms R Tsiki, Mr. C Choau and Mr. T Ngubeni. During February 202, one of the board members Mr. C Choau passed away and the board remained with six (6) board members.

2.2 In May 2022, the Municipality received a letter from the CEO of CENTLEC dated the 23rd of May 2022, addressed to the Executive Mayor, informing the Executive Mayor of the resignation of four (4) board members. A copy of the letter from the CEO is attached hereto as **Annexure A**. The letter *inter alia* stated that four (4) board of directors who resigned were Adv T Manye, Mr. T Ngubeni, Ms T Mazibuko and Ms Y Skwintshi. The resignation letters are attached as **Annexure B**.

3. DISCUSSION

- 3.1 When the four (4) board of director resigned in May 2022, two (2) directors including the Chairperson remained as board members although their status was questionable because they did not meet the minimum requirements of number of board members in accordance with the Companies Act. On 29 October 2022, the two (2) board directors, Mr KM Moroka (Chairperson) and Ms RL Tshiki notified the Executive Mayor of their resignation with immediate effect as board members at CENTLEC. Copies of the letters of resignation are attached hereto as **Annexure C**. The implication thereof is that as of 31 October 2022, CENTLEC is operating without board members.
- 3.2 There have been several correspondences written to the Executive Mayor by the Secretary of the Board, Mr Thabo Malgas, who once described the legal status of the board at the time as a “*synoptical opinion of the status of the Board in its current form.*” The letter is attached hereto as **Annexure D**.
- 3.3 CENTLEC has been experiencing major challenges, and this assertion was confirmed in the correspondence received from the CEO of CENTLEC, the Board Secretary as well as the Chairperson of the Board. Therefore, the situation in the entity requires urgent intervention by council as the main and majority Shareholder. The Chairperson once articulated challenges facing the entity in his report to CoGTA Ministerial Task Team March 2022. The Chairperson also referred to this report on his resignation, wherein he made several recommendations including amongst others that provincial and national government must institute an inquiry into non-functioning of the Board, dissolution of the board and that Council appoint an interim Board Administrator whilst a process of recruitment for a new board of directors is undertaken as **Annexure E**.
- 3.4 Based on the above status quo that CENTLEC has been without board of directors for some time now, council is advised to appoint an Administrator in line with numerous applicable legislation and guidelines such as Kings IV on corporate governance, Companies Act and Municipal Systems Act. In doing so, council must ensure that the new board of directors have the requisite range of expertise to provide strategic direction to the entity that would be in the best interest of council as the shareholder and community of Mangaung in so far as provision of service delivery.
- 3.5 To that end, Council is advised to appoint an Administrator for a period of six (6) months and or until the new board of directors are appointed. The Administrator must facilitate such appointments and report to council on the state of affairs on a monthly basis.

4. FINANCIAL IMPLICATIONS

- 4.1 CENTLEC is a strategic entity established for electricity reticulations and provision as amongst one of the service delivery enshrined in the Constitution to municipalities. The provision of electricity should be in a sustainable manner to the community, therefore poor corporate governance may result in poor performance CENTLEC which will impact in poor electricity provision and lack of revenue collection resulting in financial stability and sustainability.

5. LEGAL IMPLICATION

- 5.1 Section 93A of the Systems Act provides for the duties of parent municipalities with respect to municipal entities and states, *inter alia*, that the parent municipality of a municipal entity must exercise any shareholder, statutory, contractual, or other rights and powers it may have in respect of the municipal entity to ensure that both the municipality and the municipal entity comply with this Act, Municipal Finance Management Act and any other applicable legislation.
- 5.2 The parent Municipality must also ensure that the municipal entity is managed responsibly and transparently, meets its statutory, contractual, and other obligations. The absence of policy decision making structure in line with corporate governance principles may compromise management of the entity leading to audit queries and a negative finding by the Auditor General.

6. STRATEGIC IMPLICATION

- 6.1 The Municipality as the Parent Entity must ensure the appropriate functioning of any Entity within its control, in terms of the Municipal Systems Act. The Strategic objective of this report is therefore to ensure good governance, financial viability, optimal revenue generation, optimal institutional transformation with capacity to execute its mandate.
- 6.2 Recently, the dysfunctionality of the board and the fact that certain board members have served as board of directors for period more than 15 years were raised by external and internal such as provincial SCOPA and Portfolio Committee for CoGTA and MPAC. The recent report of MPAC recommended that board be dissolved, and administrator be appointed within 60 days from the date of MPAC report. This time frame has since passed and therefore council is advised to condone the lapse of time without implementation of the MPAC recommendations.

7. CONSULTATION UNDERTAKEN

Extensive consultations were held with Acting City Manager, CEO of CENTLEC, Executive Mayor and Section 80 Committee for Corporate Services and MAYORAL Committee.

COUNCIL ITEM: REPORT ON THE STATUS AND FUNCTIONING OF THE MANGAUNG MUNICIPAL ENTITY – CENTLEC

8. RECOMMENDATIONS

It is recommended that council

- (a) Note the status of board members at CENTLEC and concerns raised by oversight committees for local government internal, provincial, and national.
- (b) That all board directors including the Chairperson has since resigned rendering CENTLEC operating without a board of directors as of 31 October 2022.
- (c) That Council appoint Board Administrator for period of six (6) months and or until the new board members are appointed.
- (d) That the Board Administrator facilitate the recruitment and appointment of the board of directors within period of six (6) months after the date of council resolution and report monthly on the state of affairs and progress made to Council.
- (e) That council condones the 60 days period that has lapsed since the recommendation by MPAC that the board must be dissolved, and council appoint new board members.

Submitted by:



Adv Nkateko Mpangane
Head of Department (acting), Corporate Services
Date: 30/10/2022

~~APPROVED/ NOT APPROVED~~



Mr T Motlashuping
City Manager (acting)
Date: 30/10/2022



Executive Mayor
Cllr Mxolisi Siyonzana
Date: 04/11/2022



30 Rhodes Avenue
Oranjesig
Bloemfontein
9301

www.centlec.co.za

✉ @centlec@ @centlecutility

OFFICE OF THE CEO

Contact Person: Malefane Sekoboto	Date: 23 May 2022
E-mail: Malefane.sekoboto@centlec.co.za	Tel: 051 409 2255 Fax:
Our Ref.: CENTLEC's Request to the Shareholders in Respect of the Business of the Entity	Your Ref.:

The Executive Mayor (Mr. M Siyonzana)

The Acting City Manager (Mr. T Motlashuping)

Mangaung Metropolitan Municipality
BLOEMFONTEIN

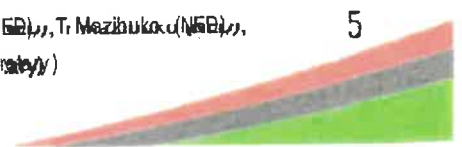
Dear Sir/s

RE: CENTLEC'S REQUESTS TO THE SHAREHOLDER IN RESPECT OF THE BUSINESS OF THE ENTITY

The above matter has reference.

The Centlec management together with the Company Secretary met the Ministerial team from Cogta and National Treasury on Friday the 4th of March 2022. Discussions were held in respect of the operations of the entity, amongst others, and the relationship of the entity with the parent municipality.

In the meeting, parties discussed in detail the legislative relationship and operational relations between the entity and the shareholder. It became glaring to the meeting that there are areas that needs attention in as far as the above-mentioned relations are concerned hence the Ministerial Team advised us to direct this communique in respect of what hampers us as the entity and made those known to the shareholder to see whether a cordial and professional working environment could be established in the dealings of the entity and the shareholder. It is therefore against this background that Centlec management wishes to bring the following to the attention of the shareholder in trying to re-establish the above-mentioned relations.



1. The Board

Section 66(1) of the Companies Act 71 of 2008 provides that the business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.

Further to the above, Clause 5.10 of the Memorandum of Incorporation provides for the holding of meetings in relation to the business of the entity. We wish to bring to the attention of the shareholder that the last Ordinary Board of the entity was held on the 26* of November 2021 dealing with the Quarter 4 Reporting of the entity which had to be sent to the shareholder by the Board in terms of Chapter 12 of the Municipal Finance Management Act read with Clause 3.4 of the Memorandum of Incorporation.

2. CENTLEC Board Charter

In terms of clause 10 Removal of Directors

Section 93G of Municipal Systems Act states that the parent municipality may remove or recall a Director appointed or nominated by the parent municipality, if the performance of the Director is unsatisfactory; if the Director, either through illness or for any other reason, is unable to perform the functions of office effectively; or if the Director, whilst holding office is convicted of fraud or theft or any offence involving fraudulent conduct; or has failed to comply with or breached any legislation regulating the conduct of Directors, including any applicable code of conduct. It is recommended that the parent municipality clearly spells out its expectation and possibly a performance contract would be suitable instrument to be used in this regard. Should the Director fail to meet the performance targets stated in his or her contract, then the municipality is encouraged to intervene and remove such Director. Notwithstanding the performance contract, should a director breach any of his common law or fiduciary duties, the parent municipality should still be in a position to remove such director.



3. Board Evaluation and Performance

- i. Clause 14.1 states that "In line with the recommendation of Corporate Governance, the Board individually and collectively shall evaluate its performance annually and shall endeavor to benchmark its performance against international best practice. KPI's ("Key Performance Indicators") should be identified in all areas, and these should be regularly measured against actual performance".
- ii. Clause 14.2 states that "The Board shall appraise the performance of the CEO annually or such other basis as the Board may determine".
- iii. Clause 14.3 states that "The Board shall also endeavor to regularly review the performance of each of the Board committees to ensure that their composition, mandate, and authority which enables them to provide effective assistance to the Board in the key areas in which they function".

4. Current status of our affairs

The board was appointed by council on the 01 November 2020 for a period of three (3) years consisted of seven (7) board of directors viz. Adv T Manye, Adv K Moroka, MS T Mazibuko, Ms Y Skwintshi, Ms R Tsiki, Mr. C Choau and Mr. T Ngubeni. One member passed (Mr. C Choau) during the month of February 2021 and the board remained with six non-directors.

Several Special Meetings were then held, with the businesses affecting the Board and other legislated reporting of the Entity enroute to the Shareholder being part of the agenda to those meetings. We should further bring to the attention of the shareholder that ever since the above ordinary meeting, the Board has not sat to deal with the current financial year's reporting, which in our opinion raises an audit finding by the AGSA should the situation with the Board is not addressed.

It is without doubt that there are tensions in the Board between, amongst others, the members of the Board, to which the shareholder was called upon by members of the board to intervene. **It is worth noting that, four (4) non directors resigned from CENTLEC board (Adv T Manye, Mr. T Ngubeni, Ms T Mazibuko and Ms Y Skwintshi). Attached resignation letters.**

The entity's CEO also requested intervention of the shareholder in relation to the interference of the Board Chairperson to the operations of the entity.

These matters are still outstanding, and the shareholder has yet to address them.



These are but some of the matters that hampers the operations of Centlec in as far as governance is concerned and therefore the shareholder is hereby requested to act and address these fundamental issues so that the business of the entity may continue as it should.



5. Recommendations

1. That, the board be dissolved immediate effect because only two members remains which is supported by the letter of the Chairperson of the board dated 17 January 2022 submitted to the Executive Mayor stated that "16.1.3 the Board consistently fails to exercise its fiduciary duties and prudence in terms of the Companies Act, Municipal Systems Act and the Municipal Finance Management Act because of the following reasons and/or facts.
2. 16.1.3.1 the Board is not functional; The Board of the Municipal Entity, "for reasons best known to individual Board of Directors", has not been having functional meetings due to reprehensible conduct by some Board of Directors resulting in the paralysis of the Board's work in that its scheduled business become disrupted leading to noncompliance with legislative prescripts including the cessation of the relationship between the Chairperson and the CEO.
3. Invoke Section 93G of Municipal Systems Act states that the parent municipality may remove or recall a Director appointed or nominated by the parent municipality, if the performance of the Director is unsatisfactory; if the Director, either through illness or for any other reason, is unable to perform the functions of office effectively; or if the Director, whilst holding office is convicted of fraud or theft or any offence involving fraudulent conduct; or has failed to comply with or breached any legislation regulating the conduct of Directors, including any applicable code of conduct.
4. The council appoint interim board administrator whilst the process of new recruitment of board of directors is ensuing within a period of three months.

Kind Regards



MS. Sekoboto

CHIEF EXECUTIVE OFFICER

Adv. T. L. MANYE
Free State Society of Advocates

ADVOCATES CHAMBERS Tel: 051 430 1567
63 ZOLA BUDD STREET Cell: 072 472 8555
PARK WESTMAN, LIONS Fax: 051 482 4224
BLOEMFONTEIN Email: manyet@fsslaw.co.za

TO **COMPANY SECRETARY**
CENTLEC
30 RHODES AVENUE
ORANJESIG

Re: Board of Non-Executive Directors

1. It is regrettable that I have to inform you of my resignation from Centlec Board of Directors with immediate effect.
2. I thank the Chairman, fellow Directors, Company Secretary, CEO and his executive management for time spent in meetings and the support received in execution of Board Business.

T L MANYE
19 JANUARY 2022



No.30 Constantia Street
Lilyvale Estate
Bloemfontein
9322

23 May 2022

The Company Secretary
Centlec (SOC) Ltd
30 Rhodes Avenue
Bloemfontein 9300

By Email : Thabo.Malgas@centlec.co.za

Cc: Valencia.Motseki@centlec.co.za

Attention: Mr T. Malgas

RE: RESIGNATION FROM CENTLEC (SOC) Ltd as the NON – EXECUTIVE DIRECTOR

I wish to tender my resignation from the Centlec (SOC) Ltd Board of Directors with immediate effect.

The recent challenges and the none functionality of the Board over the past couple of months had made it very difficult for one to execute the Boards fiduciary duties and responsibilities to ensure that Centlec (SOC) Ltd strives to attain its strategic objective and mission.

I wish the Board well in the pursuit of its business and had really gained a lot during a short tenure as the Board Member.

Hope the above is in order



Themba Ngubeni

23/05/2022

Ms. T Mazibuko
22955 Hillside View
Bloemfontein
9323
21 May 2022

Mr. T Malgas
Company Secretary
Centlec (SOC) Ltd
30 Rhodes Avenue
Bloemfontein
9300

Dear Mr Malgas

Resignation as Centlec (SOC) Ltd Non-Executive Director

Kindly accept this letter as my formal resignation from the Centlec (SOC) Ltd board of directors with immediate effect.

It was great a pleasure having served as a Non-Executive Director for the entity for the past one and half year, due to recent developments and the board not being able to function, I have opted to resign in order to avoid reputational damage to my name and career.

I wish the organization the best for future endeavors and regret any inconvenience that might have caused due to my resignation.

Regards,

Thandi Mazibuko

St Remy, Arundo Estate
Rietspruit Road
Centurion
20 May, 2022

Company Secretary
Centlec
30 Rhodes Avenue
Bloemfontein

Dear Mr Malgas,

Please accept this letter as my formal resignation from the board of directors of Centlec, effective immediately.

It has been my pleasure to serve on the board for the past year and a half. However, due to the recent non-operational state of the board and to protect my personal career from reputational damage I have decided to step down.

I wish the organization only the best for the future, and regret any inconvenience my resignation may cause.

Sincerely,
Yolisa Skwintshi



The Honourable executive Mayor
MESSRS MXOLISI SIYONZANA
319 BRAM FISCHER BUILDING
MARKGRAAF STREET

29 October 2022
Your ref: Exec Mayor
Email: mxolosi.siyonzana@mangaung.co.za
Email: morokaoo2@gmail.com

Bloemfontein
9301
Our Ref: reletsiki@rocketmail.com

Dear Executive Mayor (Shareholder executive)

RE: RESIGNATION LETTER (NED) RL TSIKI/ CENTLEC

I, Relebohile Leomile Tsiki, 890812 0331 083, resign immediately from CENTLEC as non-executive director, effective today 29 October 2022 00:31.

My decision to resign is as follows:

I am unable to fulfil my duties and obligations as a member of the board.

Even though I was attending board meetings as well as two executive interviews, I have not been remunerated for my service as a board member since June 2021.

Even though I am resigning because of the circumstances, I am very grateful for the opportunity.

I wish the entity and the Municipality all the best.

Kind Regards

Relebohile L Tsiki



Email: reletsiki@rocketmail.com

Mobile: 0799 091 707

3. May I hasten to reflect that, despite the problems I later encountered in Centlec as a Chairperson of the Board which are more fully tabulated in my above communications and Reports, *albeit* on a limited level, I am extremely grateful for the remarkable opportunity that was granted to myself by Mangaung Metropolitan Municipality (Councillors) to act as Chairperson of Centlec Board and also as a Board of Director of Centlec since my dates of appointments. The confidence bestowed on me by the Shareholder is highly appreciated and for which I am indebted.
4. Let me further hasten to wish the Shareholder and Centlec all the best in the future.
5. Should the Shareholder's Representative require any information or clarity, if there is a need for it, please do not hesitate to revert to me.

Kind Regards,



KM MOROKA

CENTLEC: CHAIRPERSON

Email: morokaoo2@gmail.com

Cell phone: 083 262 0036



OFFICE OF THE CHAIR

30 Rhodes Avenue
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Contact Person: Mr K M Moroka	Date: 28 October 2022
E-mail: morokaoo2@gmail.com	Tel: 051 447 2406 Fax: 051 447 2462
Our Ref.: Chairperson	Your Ref.: Exec. Mayor

THE HONORABLE EXECUTIVE MAYOR

MESSRS MXOLISI SIYONZANA
319 BRAM FISCHER BUILDING
MARKGRAAF STREET
BLOEMFONTEIN
9301

Email: mxolisi.siyonzana@mangaung.co.za
cc: Stefani.Lockman@mangaung.co.za
: reletsiki@rocketmail.com

Dear Executive Mayor (Shareholder's Representative),

RE: KENOSI McDONALD MOROKA (NED) RESIGNATION LETTER // CENTLEC

1. I am referring to the above-mentioned matter and hereby submit to your good selves my letter as an official notification of my immediate resignation as chairperson of Centlec Board and a Non-Executive Director of Centlec Board. Therefore, my final day of service in these aforementioned positions is today, effective from 23h30.
2. My decision to resign is due to a number of reasons some of which are tabulated in my correspondences to your good-selves including the Reports I have submitted to the Ministerial Task Team and NCOP which Reports I copied to your good-selves.

Directors: K Moroka (Chairperson),
R. Tsiki (NED), (NED) M. Sekoboto (CEO),
T Malgas (Company Secretary)



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OFFICE OF THE COMPANY SECRETARY

Contact Person: Thabo Malgas	Date: 27 May 2022
E-mail: thabo.malgas@centlec.co.za	Tel: 051 412 2605
Our Ref.:	Your Ref.: Executive Mayor

The Executive Mayor Mangaung Metropolitan Municipality BLOEMFONTEIN

Dear Sir/s

**RE: CENTLEC BOARD // RESIGNATION OF BOARD OF DIRECTORS
DIRECTOR THANDI MAZIBUKO
DIRECTOR YOLISWA SKWINTSHI
DIRECTOR THEMBA NGUBENI**

The above matter has reference, and the email of the chairperson and response of the CEO also bears reference.

We have perused both the letter of the Board Chairperson and the email response of the CEO thereto and wish to provide a synoptical opinion of the status of the Board in its current form and further whether certain members are indeed Directors in the true meaning of the Companies Act, Municipal Systems Act and Centlec's Memorandum of Incorporation. These legislations are intertwined in determining the concept of who is a director considering that individual's participation rights and voting rights in a Board Meeting.

In this advice/memorandum therefore we shall deal first with the Shareholder's representatives and whether they are Board members and or Directors in terms of the Municipal Systems Act as this is a piece of legislation that gives effect to their participation thereof in the entity's Board.

Section 93D. of the MSA provides the following in relation to the Municipal (shareholder) representatives:

Directors: KM Moroka (Chairperson), T Ngubeni (NED), Y Skwintshi (NED), R Tsiki (NED), T Mazibuko (NED),
T Manye (NED), MS Sekoboto (CEO), T Malgas (Company Secretary)

(1) The council of a parent municipality must designate a councilor or an official of the parent municipality, or both, as the representative or representatives of the parent municipality— (a) to represent the parent municipality as a non-participating observer at meetings of the board of directors of the municipal entity concerned.

Section 93F of the MSA disqualifies the Shareholder Representatives further to being a Director of the entity and states the following:

- (1) A person is not eligible to be a director of a municipal entity if he or she— (a) holds office as a councilor of any municipality; (b) is a member of the National Assembly or a provincial legislature; (c) is a permanent delegate to the National Council of Provinces; (d) is an official of the parent municipality of that municipal entity.

Consequential, it is common cause that the Shareholder Representatives are Councilors and as such cannot be Directors of the entity.

Section 66 of the Companies Act provides the following, which is also postulated in Clause 5.1.1 of the Entity's Memorandum of Incorporation:

- (1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.
- (2) The board of a company must comprise—
(a) in the case of a private company, or a personal liability company, at least one director; or
(b) in the case of a public company, or a non-profit company, at least three directors.

These three directors are, for all intents and purposes, Non-Executive Directors as also specified and maintained in Section 95E of the Municipal Systems Act and which provides the following, in relation to the appointment of Directors:

Section 93E provides, in relation to the Appointment of directors:

- (1) The board of directors of a municipal entity—
(a) must have the requisite range of expertise to effectively manage and guide the activities of the municipal entity;
(b) must consist of at least a third non-executive directors; and
(c) must have a non-executive chairperson...

Thus, in respect of the abovementioned legislation/s, the Shareholder Representatives are not Directors as provided for in the legislation. The CEO and the CFO are Executive Directors and for a quorum (*my emphasis*), as specified in Section 93E, the Board must consist of at least a Third Non-Executive Directors.

Presently, after resignations of the other for (4) Directors, the Board only has Two (2) Non-Executive Directors and as such no quorum will be established for a sitting of a

board meeting unless and/or until the Shareholder intervenes in relation to the status and/or composition of the Entity's Board.

Hopefully this assist for purposes of a way forward henceforth.

Yours Sincerely

Electronically sent
(thus not signed)

THABO MALGAS
Company Secretary



OFFICE OF THE CHAIR

30 Rhodes Avenue
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Bloemfontein
9301

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Contact Person: KM	Date: 15 March 2022
E-mail: morokaoo2@gmail.com	Tel: 051 447 2406 Fax: 051 447 2462
Our Ref.: Chairperson	Your Ref.: COGTA

**Mr MPHOGALE
LEADER-MINISTERIAL TASK TEAM
CHIEF DIRECTOR
LOCAL GOVERNMENT SUPPORT &
INTERVENTION MANAGEMENT
MINISTRY: COOPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS OF
REPUBLIC OF SOUTH AFRICA
PRETORIA**

“Without Prejudice & Confidential”

Per Email: MphoM@cogta.gov.za

Dear Sir,

**RE: REPORT ON THE GOVERNANCE PARALYSIS OF CENTLEC //
MINISTERIAL TEAM VISIT – MANGAUNG GOVERNANCE PARALYSIS**

1. I refer to our previous correspondence relating to the above matter and find attached hereto a status Report as well as annexures thereto regarding the paralysis of governance at Centlec.
2. I express profound gratitude for the opportunity granted to me to set-out in a Report, albeit, in a summarised manner the facts and circumstances that has resulted in what I perceive as Chairperson of the Board as the paralysis of Governance in Centlec.

Directors: K Moroka (Chairperson), T.L Manye (NED)
Y Skwintshi (NED), T. Ngubeni (NED) R. Tsiki (NED), T. Mazibuko (NED) M. Sekoboto (CEO),
T Malgas (Company Secretary)

3. I place it on record that I strictly reserve my rights to add, amend and/or vary the contents of the Report in due course.

4. I trust that you shall find this in order.

Yours Faithfully,

Electronically sent

K.M MOROKA

Chairperson: Centlec (SOC) (Pty) Ltd

**CHAIRPERSON'S REPORT IN RESPECT OF THE GOVERNANCE
PARALYSIS AT CENTLEC AND THE IMPLICATIONS THEREOF ON
SERVICE DELIVERY**

1. INTRODUCTION:

1.1. This Report is compiled in my capacity as the Chairperson of the Centlec Board of Directors and without consultation and assistance of fellow members of the said Board, for reasons that shall be apparent at a later stage in this Report.

1.2. I confirm that I have been a member of the Centlec Board of Directors for 13 years or more and only assumed incumbency of the Chairperson position on the 1st of November 2020. I have also served as a Board Member of several other State Owned Enterprises (SOE) and have in the process amassed extensive knowledge, skills and experience in SOE governance.

1.3. Centlec is a Municipal Entity as contemplated in various municipality-related original and subordinate legislations. Principally, it has two governance strands being, on one hand, the Board of Directors, who are appointed by the Parent Municipality and on another hand, the Executive

Management, who are employees employed by the BOD. It is wholly owned by the Mangaung Metropolitan Municipality (MMM) which is commonly referred to, interchangeably, as its "Sole Shareholder" or "Parent Municipality".

- 1.4. Centlec's constitutional mandate is primarily the distribution of electricity to the Mangaung Municipal area and contractual municipalities in the Southern Free State. Currently, it employs approximately 726 employees.
- 1.5. In the execution of its mandate, the entity utilises its own employees and other resources. Under certain circumstances, it is compelled to procure goods and services through the public procurement system. In this instance, it is governed by the relevant public procurement prescripts emanating from the Constitutional imperatives set out in section 217 of the Constitution.

2. STRUCTURE AND FUNCTIONING OF THE MUNICIPAL ENTITY:

- 2.1. Centlec's governance, operations and/or systems are governed by the provisions of the Constitution, Companies Act, Municipal Structures Act, Municipal Systems Act, Municipal Finance Management Act and relevant directives regulated by National Treasury.
- 2.2. In addition to the said legislation, the relationship between the Sole Shareholder and the entity is governed by the Shareholder's Compact and there is also a Memorandum of Incorporation (MOI).

- 2.3. The Municipal Entity was duly incorporated in terms of the provisions of the Companies Act and is essentially a State Owned Company (SOC) which translates to the fact that, its quintessential purpose is not for profit making but is to deliver a basic service to the community, who are one of its extremely important stakeholder within its licensed area.
- 2.4. The BOD is charged with a fiduciary duty of overseeing the administration of the Municipal Entity and provide policy direction. The standard of conduct prescribed for the Board Members includes, but is not limited to, acting with a degree of care, skill and diligence and honesty, acting in good faith, and acting for a proper purpose, acting in the best interest of and for the benefit of the Municipal Entity.
- 2.5. As required by the Companies Act, the Municipal Entity duly employed a Company Secretary who is accountable to the Board and is responsible for the performance of all the duties as outlined in section 88 of the Companies Act and any other duties as may be assigned to him by the Board. The Company Secretary is also a repository of governance knowledge and advice and is the source of company's conscience and ensuring that the municipal integrity takes precedence over short term personal gain and benefit.
- 2.6. The Executive Management is on the other hand, charged with the implementation of BOD's decisions and execution of operational and management issues. The CEO is essentially accountable to the Board of

Directors for the administration and management of the Entity, and must comply with various duties and responsibilities as set out in section 94 to 107 of the MFMA.

2.7. The BOD is led by the Chairperson who is drawn amongst the members of the Board and is appointed by the Council of the Sole Shareholder. The Board of Directors' tenure in office is 3 years and in the current financial year it had 7 members, 5 of which were Non-Executive members and 2 are Executive Members who included the CEO and CFO of the entity.

2.8. In the litany of operational and management issues that the executive management is responsible for, it is procurement of goods and services, human resource, financial management, engineering, retail and sales, to mention a few. The Executive Management is under the stewardship of the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and different the Executive Managers.

2.9. On a periodical basis, the Entity must account about the financial affairs and service delivery matters to the Sole Shareholder and also to the Auditor General of South Africa (AGSA).

3. DISSENSION BETWEEN THE BOARD AND THE EXECUTIVE MANAGEMENT

- 3.1. Given my length of tenure as a member of Centlec Board, experience, knowledge and skills acquired over the years in Local Government and Corporate affairs. By reason of the aforesaid, I can vouch that the relationship between the Board and the Executive Management has deteriorated to an abysmal level due to untoward conducts.
- 3.2. I have no doubt that the CEO has, primarily, played a major causative role in the breakdown of the relationship between the two centres of power in the entity. Those who are in complicit with the CEO include some members of the Executive Management. Furthermore, some Board Members have aided and abetted the CEO in the perpetration of the wrongdoings.
- 3.3. As a consequence of the dissension, the Municipal Entity in its various forms has been rendered dysfunctional with the consequence that service delivery has been adversely impacted.
- 3.4. In an attempt to regularise the affairs of the Municipal Entity, I have employed various means including reiterating *ad naseaum* on every opportunity I had the importance of compliance with statutory reports and governance prescripts to both the BOD and the Parent Municipality. Hence, as a last straw, my request for the Shareholder's intervention.

3.5. At the core of the dissension are the following factors, and this is not by any means, an exhaustive list:

3.5.1. Non-compliance with procurement prescripts;

3.5.2. Non-compliance with statutory reporting obligations;

3.5.3. Non-compliance with the Shareholders Compact and Memorandum of Incorporation (MOI);

3.5.4. Financial mismanagement;

3.5.5. Unaccountability to the Board and Shareholder; and

3.5.6. Maladministration

4. IMPACT OF THE DISSENSION IN THE PARALYSIS OF THE BOARD:

4.1. Lack of coherence and cooperation amongst Board Members:

4.1.1 The BOD is one of the victims of the internal wrangling in the entity with its functioning and activities seriously disrupted. Some members of the BOD have raised issues that lack merit but are misplaced. This is as a result of information placed at their disposal without providing proper context. This is exemplified by uninformed allegations made against me relating to the era when I was requested to stand in as an Acting CEO.

4.1.2 The concerned BOD members acted in conjunction with the members of the Executive Management to peddle certain falsehoods about the award of the ICT tender. In their media

campaigns they omitted to mention that the alleged irregularities were duly condoned by the Council of the Parent Municipality as audited by AGSA.

4.2. Lack of assistance to and cooperation with the Board;

4.2.1 The legislative reports from the CEO were inexplicably delayed and in some instances were not even placed before the BOD. This remiss was further compounded by the fact that those members of management responsible for the items were not available to present to the BOD;

4.2.2 Circumstances were aggravated by the CEO's express decision that he would not attend the BOD's meeting and subsequently persisted with the boycott;

4.2.3 There is a disturbing trend that has come to my observation, that officials who insist on compliance and those who are compliant have unconventional means applied against them with a view to dissuade (silence) them from insisting on compliance including those acting in compliance with the prescripts.

4.3. Inability to properly account to Shareholder and AGSA;

4.3.1 Despite the legislative obligation on the part of the Entity to submit Annual Financial Statements (AFS) as constitutionally mandated

by section 126(1) of the MFMA; the CEO failed to comply with stipulated date for submission;

4.3.2 The failure to inform the BOD's on the progress of the statutory Audit by means of the presentation of detailed progress Management Report (MR) which ultimately would inform the Audit opinion in the final Audit Report. This resulted in an impasse wherein the final audited AFS was not signed by me;

4.3.3 When Management made available the detailed MR, after it had persistently refused to do so, the MR was (is) riddled with discrepancies relating to its contents.

4.3.4 For instance, and I quote verbatim on the Overall Message of AGSA:

a) *"The AFS submitted for Auditing were not prepared in all material respects as material misstatements occurred. Adequate review of the system of internal control and compliance with laws and regulations did not regularly take place in addition, Financial Statements should be properly reviewed for completeness and accuracy prior to submissions thereof for Auditing due to non-compliance with General Recognised Accounting Practices (GRAP)",* and further in the Management Report;

b) *“Note 42 to the Financial Statements indicates that the Municipal Entity incurred a net loss of R22m during the year ended 30 June 2021 and as of that, the Entity’s current liabilities exceeded its current assets by R62m. These events or conditions, along with other matters set forth in note 42, indicate that a material uncertainty exists that may cast significant doubt on the Municipal Entity’s ability to continue as a going concern”.*

4.3.5 Some of the findings raised by the AGSA in the detailed MR indicated that there were in some instances “no management comments” and or “awaiting management comments” which signified that Management was non-responsive. It is my considered view that this fact is a source of consternation taking to account that AGSA had to ultimately conclude its statutory Audit. It remains a mystery to me how the AGSA could be expected to discharge its statutory duties without responses on crucial findings.

4.4. Relationship with Parent Municipality

4.1.1 The non-fulfilment of the Entity’s obligations as prescribed in the Shareholders Compact regarding the quarterly monetary contributions to the Shareholder culminated in discontent on the part of the Shareholder. The latter contends that without payment

of the contributions, the Entity is of no value to it considering the huge investment it made on the Entity;

4.1.2 The Management has on several occasions by-passed the Board in communicating with the Parent Municipality. This is manifested by the tendency on the part of the CEO to submit reports to the Parent Municipality without the approval of the BOD.

5. IMPACT ON SERVICE DELIVERY

5.1. Distribution of electricity supply:

The intermitted power failures in the supply and/or transmission of electricity occasioned by poor maintenance of the electricity infrastructure resulted in distribution centres blown out. Inevitably that resulted in declining levels of the delivery of service.

5.2 Community dissatisfaction:

Due to the poor service delivery the consumers have opted for alternative energy sources such as solar systems. This is also evidenced by declining revenue as reported in the quarterly reports of the Entity. Media abounds with reports of prevalent failures on the part of the Entity that the community is extremely dissatisfied about. The image and gravitas of the Entity is severely compromised.

5.3 Adverse Media attention

It has come to my cognizance that the irregularities and inefficiencies at Centlec are widely reported in the mass media, print and electronic. This emanates from the growing community dissatisfaction which has manifested its self through mass protests which have not escaped the attention of the media. Inevitably, the image of the Entity is adversely impacted by the unfavourable reports.

6. EFFORTS TO STEP-IN OR INTERVENE

6.1. Communication to the Sole Shareholder:

In an efforts to arrest the declining fortunes of the Entity I constantly reported and discussed the areas of my concern with the Executive Mayor wherein I invited intervention on the part of the Parent Municipality.

6.2. Step-in processes:

In terms of the Shareholder compact, the Parent Municipality in its capacity as the Shareholder is entitled to intervene in the affairs of the Entity under certain circumstances. Pursuant to my request for intervention the Council of the Parent Municipality resolved to embark on an intervention. This move is dependent on, *inter alia*, a resolution of the BOD and it appears from my observations that there is no consensus amongst the members of the BOD.

6.3. Impeding factors against intervention.

The much-needed resolution of the BOD appears to be elusive and that there appears to be no buy-in by the rest of the BOD members. There are tentative signs that the management of the Entity might resist the anticipated intervention. This is borne out by the fact that they already have sought a Senior Counsel's legal opinion, without the Board's consent and knowledge. Lastly, the Parent Municipality must nominate and appoint a suitable qualified person as a step-in representative.

7. WAYFORWARD (RECOMMENDATIONS)

After having taken into consideration all the facts and circumstances as set out in this Report I humbly wish to make the following remarks accompanied by recommendations:

7.1. Remote possibilities of restoration of a normal relationship between Board and Executive Management and other stakeholders;

7.1.1 It is my respectful submission that the matters have so deteriorated so much between the two strands of leadership at the Entity, that a stable relationship is remotely possible;

7.1.2 In the circumstances, the only avenue that appears to be viable is for the Board and/or the Chairperson of the Board be authorised to, amongst others:

- a) institute disciplinary proceedings against errant officials and/or members of the Executive Management;
- b) Commission an in-depth forensic investigation into the management of financial activities of the entity since the tenure of the current CEO for the period he rendered services as the Chief Executive Officer of the Entity;
- c) By reason of the Management's non-responsiveness to crucial Audit Findings raised by AGSA, the competence of Management is brought to question. Consequently, it becomes vital that a competency level requirement assessment through an extensive and intensive skills audit be conducted.

7.1.3. Without detracting from the provisions of 7.1.2 hereinbefore, that the Shareholder and/or authorised Representatives or officials of the Shareholder and/or the relevant Provincial or National Department:

- a) Institute an inquiry into the reasons of the non-functioning of the Board and/or abdication of the fiduciary responsibilities (duties) by the BODs;

- b) Appointment of additional new Board members with relevant skills and knowledge to facilitate a full complement of the BODs; and/or
- c) Disbandment of the current Board.

7.2 That the Ministerial Task Team considers any other additional and/or appropriate alternative measure(s) to improve service delivery for the benefit of the communities in the Province.