

**DISCIPLINARY COMMITTEE FOR  
THE INDEPENDENT REGULATORY BOARD FOR AUDITORS**

In the matter between:

**INDEPENDENT REGULATORY BOARD FOR AUDITORS**

Complainant

and

**TWALIZIDANGA MGCINISIHLOLO JORDAN**

First Respondent

**DANIE FRANCOIS CROWTHER**

Second Respondent

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**SUMMARY OF DECISION DATED 5 OCTOBER 2020**

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The following summary is provided to assist members of the public and is not binding on the Disciplinary Committee of the IRBA (the Committee).

- 1 The Independent Regulatory Board for Auditors (IRBA) charged Mr Twalizidanga Mgcinisihlalo Jordan with ten charges of improper conduct in relation to his conduct of the 2013 audit of African Bank and African Bank Investments Limited (ABIL), and for one of the charges, in relation to the 2009 – 2012 audits of African Bank and ABIL. It also charged Mr Daniël Francois Crowther with one charge of improper conduct in relation to the 2013 audit. Mr Jordan was the audit engagement partner while Mr Crowther assisted him during the 2013 audit.
- 2 The Committee heard oral evidence on these charges over a period of 66 days between March 2018 and December 2019. Thereafter, the Committee heard oral argument on 8 and 9 June 2020. It handed down its written decision on the merits of the matter on 5 October 2020. It found Mr Jordan guilty of five of the charges, while Mr Crowther was found not guilty of the charge he faced.

- 3 The Minister of Finance placed African Bank under curatorship on 10 August 2014. The purpose of the disciplinary hearing was to establish whether the audit work in 2013 (and earlier) was improperly conducted. The Committee did not explore or determine the origins of the decline of the Bank.
- 4 The charges generally concerned audit work performed on impairment of loans and advances in 2013, the interpretation and application of IAS 39, the audit work on impairments relating to *in duplum* loans from 2009 to 2012 and on the going concern assessment of the Bank and its holding company (ABIL) in 2013. The charges allege that it was inappropriate to have issued unqualified audit opinions in the years 2009 to 2013 relative to African Bank and ABIL.
- 5 Charge 10 comprised of two parts. It firstly accused Mr Jordan and Mr Crowther of dishonestly suppressing audit evidence in that they allegedly dissuaded the Bank's head of credit, Mr Gustav Raubenheimer, from putting his concerns about the Bank's impairment practices in writing to them. The Committee concluded that there were serious internal contradictions and improbabilities in Mr Raubenheimer's version and found Mr Jordan and Mr Crowther not guilty of this component of the charge.
- 6 The second part of Charge 10 alleged that Mr Jordan and Mr Crowther suffered from a lack of independence, objectivity and professional scepticism. The Committee found that these allegations overlapped with other charges and it would be procedurally and substantively unfair to convict the auditors due to this overlap.
- 7 Mr Jordan was found guilty of Charges 1, 2, 3, 6 and 9:
  - 7.1 Charge 1 concerned the audit work pertaining to the reliance by the management of the Bank on an insurance reserve (referred to as the Stangen IBNR), various accelerated cash collection initiatives (referred to as ACCIs) and a coverage effect (a reduction in impairments in anticipation of improved economic conditions) to justify the fact that the

financial statements reflected lower impairment charges than indicated by the statistical credit impairment models. The difference between the two was referred to as “the Gap” and the justification process as “filling the Gap”. The Committee found that Mr Jordan did not obtain sufficient audit evidence to support the full quantum of the various justifications for filling the Gap. In relation to the reliance on the Stangen IBNR, the Committee found that Mr Jordan did not follow the advice obtained in a technical consultation. Even if the advice was considered to support Mr Jordan’s incorrect reliance on the insurance reserve, the consultation process was not properly executed or documented. In relation to the ACCIs, the Committee found that the audit team prepared inconsistent documents, which did not justify their acceptance by Mr Jordan. The documents were also lacking in detail and accuracy. Reliance on a coverage effect, and the audit work relating to that, was unreasonable in the face of the documented difficult trading conditions facing the Bank. Accordingly it was inappropriate for Mr Jordan to have accepted that the Gap was filled. There remained a shortfall of at least R656 million. The flawed audit work identified in the decision on this charge contributed to Mr Jordan’s incorrectly issuing an unqualified audit opinion regarding the 2013 financial statements of African Bank and ABIL.

- 7.2 Charge 2 concerned the impairment of early-stage delinquent loans (loans between 30 and 90 days in arrears). In 2013, the Bank’s management applied an “Incurred But Not Reported” (IBNR) methodology to calculate the impairment. The curator restated the 2013 accounts in an amount of R3.674 billion because, in his view, an IBNR methodology was inappropriate to calculate the impairment of early-stage delinquent loans. The Committee found that, while an IBNR methodology was not necessarily inappropriate in principle, the methodology utilised by Deloitte in calculating the impairment on these loans was not reasonable and its calculation in 2013 was flawed. The Committee found that the application of the emergence factor in the IBNR formula, caused an unreasonable

downward adjustment of R637 million in the impairment charge. Whilst Mr Jordan relied on a technical expert to compute the calculations, the Committee found that Mr Jordan did not perform the audit work required by the expert. Management's application of the emergence factor had varied from industry practice and did not correctly reflect what factually happened on these loan accounts. This had been an area of concern for Mr Jordan since 2012. As the engagement partner, he was responsible for the audit work pertaining to the error. The error was in excess of materiality and did not give rise to a reasonable estimation of the impairments of the loans that were between 30 and 90 days in arrears. The flawed audit work identified in the decision on this charge contributed to Mr Jordan's incorrectly issuing an unqualified audit opinion regarding the 2013 financial statements of African Bank and ABIL.

- 7.3 Charge 3 concerned the calculation of the original effective interest rate i.e. the discount rate applied to the determination of the net present value of estimated future cash flows for non-performing loans. This determination is required by IAS39 for purposes of determining the level of impairment losses on such loans. The Bank's management contended from 2009 that the loan origination fee should not be taken into account in calculating the discount rate, in respect of loans that were out of term. They based this on an interpretation of the applicable accounting standard, IAS 39. Mr Jordan consulted with a technical expert from Deloitte, who accepted the Bank's contention. The Committee found the opinion from the technical expert to be incorrect and that IAS 39, properly interpreted and applied, left no room for the exclusion of the origination fee from the calculation of the discount rate. The Committee also found that Mr Jordan could, in any event, not rely on the technical opinion because the Bank – in fact – excluded the origination fee entirely from the calculation of the discount rate in relation to both in and out of term loans. The Committee found that the cumulative effect of this error measured from 2009 to 2013 was R489 million which was well above audit materiality. The flawed audit

work identified in the decision on this charge contributed to Mr Jordan's incorrectly issuing an unqualified audit opinion regarding the 2013 financial statements of African Bank and ABIL.

7.4 Charge 6 concerned an intercompany loan the Bank made to Ellerine Furnishers (Pty) Ltd (Ellerine Furnishers). The Committee found Mr Jordan guilty of not appropriately documenting his audit work and conclusions on the potential impairment of this loan in the Bank's 2013 audit file. The Committee declined to find that there was insufficient audit evidence for the non-impairment of the loan, because such evidence could be found in the audit work conducted on Ellerine Furnishers by another Deloitte auditor.

7.5 Charge 9 concerned the calculation of the discount rate for *in duplum* loans in the 2009-2012 financial years. *In duplum* loans are those where the arrear interest due equals the capital amount of the loan, at which point interest may no longer be charged. Management contended that a 0% discount rate should be applied to such loans, because the Bank earned no interest on them. Mr Jordan pointed out that this contention was not supported by IAS 39, but did not insist that management correct this error in the 2009, 2010, 2011 and 2012 financial years. In 2013, the Bank's management eventually restated the prior year accounts on Mr Jordan's insistence. The Committee found that Mr Jordan should have insisted on the correction of the error in each of the 2009 to 2012 financial years (and not only in 2013) and that there was not sufficient appropriate audit evidence in those years to support his view that the annual financial statements of African Bank in those years were not misstated, despite the *in duplum* error. Accordingly it was inappropriate for Mr Jordan to have issued unqualified audit opinions in the years 2009 to 2012 relative to African Bank and ABIL. Mr Jordan was found not guilty of the second part of Charge 9, which concerned the manner of disclosure of the prior year error in the 2013 annual financial statements. However, the Committee

found that there was non-compliance with paragraph 49(a) of IAS8. Whilst this did not constitute improper conduct, it was not insignificant.

8 Mr Jordan was found not guilty of Charges 4, 5, 7, 8 and 10 (Charge 10 is dealt with above):

8.1 Charge 4 concerned the audit work performed in relation to the assessment of management bias in respect of the 2013 financial statements. The Committee found that elements of this charge overlapped with other charges and accordingly a prosecution of this charge, in light of it overlapping with other charges could not be justified.

8.2 Charge 5 concerned management's practice of partially or fully suspending interest on late-stage delinquent loans. IRBA initially alleged that this practice resulted in the revenue earned and impairment losses each being misstated by R3 billion respectively. The Committee found that suspension of interest was widespread in both local and international banking practice. Where this nil interest method could be shown to operate as a proxy for the net interest method, there may be compliance with IAS 39. Here, the quantum of any misstatement that might have arisen from any incorrect application of the nil interest method was not proven by IRBA to be in the amount alleged. Nor was the amount proven to be material. Accordingly Mr Jordan was found not guilty of the charge. The Committee however recorded that "in reaching this finding, the Committee should not be seen as endorsing the nil interest approach. Compliance with IFRS is in our view far more likely to be achieved if the net interest approach is followed".

8.3 Charges 7 and 8 concerned the allegation that Mr Jordan ought to have modified or qualified his audit reports on ABIL's 2013 rights issue circular and the 2013 financial statements respectively, because there were material uncertainties regarding the going concern status of the Bank as at 31 August 2013 and 30 September 2013. The Committee held that in

view of the rights offer being fully underwritten, no material uncertainty existed at the relevant times and, on that basis, that the audit work performed by Mr Jordan was sufficient and appropriate to sustain the Bank's going concern assumption and related disclosure.