

## 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

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### SUMMARY OF DECISION DATED 9 DECEMBER 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 (“**Mr Jordan**”) with ten charges of improper conduct in relation to his conduct as audit engagement partner of the 2013 audit of African Bank and African Bank Investments Limited (ABIL). On 5 October 2020, the Committee handed down its written decision on the merits of the matter finding Mr Jordan guilty of five of the charges. (This summary should be read with the summary of that decision.)
2. Thereafter, a sanction hearing was convened for the parties to make submissions as to the appropriate sanction. In this regard, written sanction submissions were filed on 2 November 2020, witness statements were filed on 16 November 2020 and the sanction hearing was set down *via* Microsoft Teams on the weekend of 21, 22 and 23 November 2020. The *Pro-Forma* Complainant, acting on behalf of the IRBA, called Ms Linda de Beer, Ms Zine Mshengu and Mr Desmond Lockey as witnesses. Mr Jordan testified on his own behalf along with Mr Lwazi Bam, Ms Vuyolwethu Luso and Mr Peter Chidgey.
3. On 9 December 2020, the Committee issued its findings on the appropriate sanction wherein the question of sanction was considered from three perspectives.<sup>1</sup> Firstly, the nature of the misconduct of which Mr Jordan has been found guilty.<sup>2</sup> Secondly, the public interest, including the interests of both the auditing profession and the broader public, particularly that part of it which places reliance on the services provided by the auditing profession.<sup>3</sup> Thirdly, the personal and professional circumstances of the auditor and the potential impact on him of the sanction.
4. The Committee found, *inter alia*, the following factors in mitigation when considering the appropriate sanction:

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<sup>1</sup> Sanction Findings, page 53, paragraph 122.

<sup>2</sup> Sanction Findings, page 53, paragraph 122.

<sup>3</sup> Sanction Findings, page 53, paragraph 122.

- 4.1.1. Mr Jordan had not been found guilty of dishonesty and that, ordinarily, it is a finding of dishonesty tends to result in deregistration.<sup>4</sup>
- 4.1.2. The pressurised circumstances under which the audit was conduct were also compounded by the need to deal with mixed messages coming from the Bank's credit and finance department.<sup>5</sup>
- 4.1.3. It was not a case of complete audit failure where no audit work had been done.<sup>6</sup>
- 4.1.4. Mr Jordan had to endure the suspicion that hung over him throughout the proceedings, accompanied by his having been withdrawn from involvement in any audits during the this period, until his acquittal on the dishonesty charge<sup>7</sup>;
- 4.1.5. Mr Jordan is a very hard-working, committed and determined professional who has leadership qualities and played a role in mentoring and retaining professional quality young black professionals;<sup>8</sup> and
- 4.1.6. Mr Jordan had an unblemished record preceding his conviction on the charges.<sup>9</sup>

4.2. In addition, the Committee accepted that there were aspects of the audit failure which were attributable to the firm, Deloitte and not just Mr Jordan which should be considered in mitigation along with the contributions undertaken by Deloitte set out in paragraph 6.6 below.

5. The Committee found, *inter alia*, the following factors in aggravation when considering the appropriate sanction:

5.1. The charges were considered serious, *inter alia*, because:

- 5.1.1. They all related to the most significant item on a bank's balance sheet, namely net advances.<sup>10</sup>
- 5.1.2. Auditing is an inherently technical process; the failure to apply the framework of accounting and auditing standards is a failure at the heart of the auditing function.<sup>11</sup>
- 5.1.3. The value of misstatements found by the Committee in each charge was material.<sup>12</sup>
- 5.1.4. The charges related to a Bank; when its financial stability came into question, this had systemic implications. The importance of financial stability in the banking sector to the

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<sup>4</sup> Sanction Findings, page 54, paragraph 126.

<sup>5</sup> Sanction Findings, page 60, paragraph 138.

<sup>6</sup> Sanction Findings, page 61 - 62, paragraph 144 - 145.

<sup>7</sup> Sanction Findings, page 65, paragraph 156.

<sup>8</sup> Sanction Findings, page 66, paragraph 160.

<sup>9</sup> Sanction Findings, page 67, paragraph 161.

<sup>10</sup> Sanction Findings, page 55, paragraph 128.

<sup>11</sup> Sanction Findings, page 55, paragraph 129.

<sup>12</sup> Sanction Findings, page 56, paragraph 131.

economy as a whole is a reason for enhanced accuracy and quality of reporting and auditing.<sup>13</sup>

- 5.1.5. The audit pertained to a Bank whose business model was inherently risky along with the fact that Mr Jordan and his team had themselves recognized the audit as being one involving much greater than normal risk, enhanced the duty of care required in relation to the conduct of the audit.<sup>14</sup>
- 5.1.6. Charge 9 was an offence repeated over many years, which is more serious, as Mr Jordan had an opportunity to reflect in each year from 2009 and which meant that there were substantially more opportunities to force management to correct their erroneous approach to the *in duplum* issue<sup>15</sup>
- 5.1.7. The seriousness of charge 2 was contributed to by Mr Jordan's attempts to "correct" his 2013 final report to the audit committee during oral evidence.<sup>16</sup>
- 5.1.8. Whilst the issues arising in the audit were complex and this should be viewed in mitigation, this is tempered by the facts that Mr Jordan was able to point out in prior years or in the report to the audit committee that management's approach was not in line with industry practice or IAS 39<sup>17</sup> and that the tendency to understate impairments points to there being something other than complexity at play, such as Mr Jordan's failure to apply professional scepticism.<sup>18</sup>
- 5.1.9. Whilst Mr Jordan's reliance on the advice of technical experts in the firm is a mitigating factor, it was limited by the failure to follow the auditing standards in relation to the proper briefing of the expert, confirmation and discussion of the opinion, and appropriate execution pursuant to the opinion.<sup>19</sup>
- 5.2. The public interest and interests of the profession were considered. ABIL was a company listed on the Johannesburg Stock Exchange which created a particular duty of care to the public.<sup>20</sup> Further, the audit pertained to a bank, subject to regulatory provisions, of a size significant enough to present a threat to the stability of the financial system.<sup>21</sup> In addition, the increased scrutiny of the auditing profession on account of significant company and audit failures ought to have been borne in mind on the part of Mr Jordan and Deloitte when conducting this and all other public interest audits.<sup>22</sup>
- 5.3. In respect of Mr Jordan's personal circumstances, the Committee raised with concern that Mr Jordan might not fully have taken on board the implication of the Committee's findings in its decision on the

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<sup>13</sup> Sanction Findings, page 57, paragraph 133.

<sup>14</sup> Sanction Findings, page 57, paragraph 134.

<sup>15</sup> Sanction Findings, page 58, paragraph 135.

<sup>16</sup> Sanction Findings, page 58 - 59, paragraph 136.

<sup>17</sup> Sanction Findings, page 59, paragraph 137.1.

<sup>18</sup> Sanction Findings, page 59, paragraph 137.2.

<sup>19</sup> Sanction Findings, page 60 – 61, paragraph 141.

<sup>20</sup> Sanction Findings, page 62, paragraph 146.

<sup>21</sup> Sanction Findings, page 61 - 62, paragraph 147 – 148.

<sup>22</sup> Sanction Findings, page 63, paragraph 150.

merit findings.<sup>23</sup> In addition, the Committee pointed out that Mr Jordan had assumed responsibility as the engagement partner of African Bank at 33 years old which required him to deal with management, some of whom were former Deloitte auditors, who were many years his senior.<sup>24</sup> This pointed to a need for firms to ensure that the necessary coaching and support is in place when young talent is advanced and for persons in positions like Mr Jordan to recognize and acknowledge when they are in need of help.<sup>25</sup>

6. Accordingly, the Committee made the following findings on sanction under rule 7.6 of the IRBA Disciplinary Rules, read with section 51(3), (4) and (5) of the Auditing Profession Act and Rule 8 of the Disciplinary Rules, effective from 1 January 2021<sup>26</sup>:

6.1. Mr Jordan's right to practise is suspended for a period of two years.

6.2. The sentence in paragraph 6.1 is suspended in terms of rule 8.2 for a period of three years, subject to the following conditions:

6.2.1. Mr Jordan does not commit any offence similar to the offences upon which he was convicted in the decision of the Committee dated 5 October 2020, during the said three-year period;

6.2.2. Mr Jordan is precluded for a period of one year from 1 January to 31 December 2021, from –

6.2.2.1. appointment as engagement partner, as defined in paragraph 7(a) of ISA 220 Quality Control for an Audit of Financial Statements; and

6.2.2.2. signing any audit opinion in respect of any audit;

6.2.3. Mr Jordan must during the three-year period of the suspension referred to in paragraph 6.2, maintain IRBA annual continuing professional development requirements;

6.2.4. Mr Jordan must by no later than 31 December 2021 undertake and complete refresher training on –

6.2.4.1. accounting and auditing standards pertinent to the intended client base to be audited from 1 January 2022, and

6.2.4.2. the IRBA code of conduct,

such training to be agreed upon in advance with IRBA, whose agreement to any training proposed by Mr Jordan is not to be unreasonably withheld; and

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<sup>23</sup> Sanction Findings, page 65, paragraph 157.

<sup>24</sup> Sanction Findings, page 66, paragraph 159.

<sup>25</sup> Sanction Findings, page 66, paragraph 159.

<sup>26</sup> Sanction Findings, page 77 - 79, paragraph 184.

- 6.2.5. Mr Jordan must by no later than 31 December 2021 satisfy IRBA as to his compliance with the training requirements in paragraph 6.2.4.1 and 6.2.4.2.
- 6.2.6. The sentence referred to in paragraph 6.1 may be imposed in the event of a proven breach of the condition in paragraph 6.2.1, notwithstanding that the date of the conviction of the similar offence is later than 31 December 2023.
- 6.3. Mr Jordan is fined as follows:
- 6.3.1. R 200 000 in respect of Charge 1;
- 6.3.2. R 200 000 in respect of Charge 2;
- 6.3.1. R 200 000 in respect of Charge 3;
- 6.3.2. R 100 000 in respect of Charge 6; and
- 6.3.3. R 100 000 in respect of Charge 9.
- 6.4. The IRBA is directed to publish –
- 6.4.1. on its website –
- 6.4.1.1. the Committee’s full decision on the merits;
- 6.4.1.2. the Committee’s sanction, in full;
- 6.4.1.3. the Committee’s summary of its decision on the merits;
- 6.4.1.4. a fair summary of the decision on sanction, the draft to be prepared by the IRBA and submitted to the chairperson for approval by no later than midday on Thursday 10 December 2020; and
- 6.4.2. in the IRBA News, the summaries of the decisions on the merits and sanction.
- 6.5. The Committee endorsed the agreement between the parties that the Mr Jordan pay a contribution to the costs of the proceedings in an amount of R 31 176 618.30.
- 6.6. The Committee noted the contribution to be made by Deloitte and Mr Jordan as recorded in correspondence addressed to the Committee as follows:
- 6.6.1. Deloitte will make a R 500 000 donation both to the University of Fort Hare and the University of Limpopo; and
- 6.6.2. Mr Jordan has offered to run workshops at the University of Fort Hare and the University of Limpopo on an annual basis for at least three years on the public interest role that

auditors play in the economy, as well as in society, and to assist in preparing particularly Honours students for the rigors of the auditing profession.