



TWO OCEANS MARATHON NPC INDEPENDENT INVESTIGATION SUMMARY REPORT

25 October 2020

THE TOM INDEPENDENT INVESTIGATIVE REPORT

This document provides a summary of the most important findings of an investigation into allegations made against the Two Oceans Marathon NPC management by Mr James Evans in an open letter published in December 2019.

The investigation was conducted in 2020 by three independent experts: Forensic consultant and accounting specialist KOBUS NELL, legal expert and business analyst PJ VELDHUIZEN and advocate CRAIG CUTLER. The investigators submitted their final report to the TOM NPC Board on 13 October 2020.

Please find below a summary of the findings of the TOM Independent Investigative Report.

1. REMUNERATION OF DIRECTORS

Mr Evans claimed that a director of TOM has been remunerated as an employee. The allegation related to the resignation of an employee who was responsible for the TOM commemorative book and a promotional film six weeks before the TOM race in 2019. With pressure to finish these projects in a short space of time, a director with the required marketing and media skills was asked by the Board to see through the production process and subsequently appointed by TOM for this purpose. An operational mistake occurred when the board member was not appointed as an independent contractor but given a part-time employment contract. The director resigned at last year's Annual General Meeting.

EVALUATION AND RECOMMENDATIONS:

The auditors found that even though the Board did not intend to contravene the MOI (Memorandum of Incorporation), in this case, it did constitute a contravention. They added: "There are certain ambiguities in the MOI in this regard and we suggest that revisions to the MOI should be investigated."

The auditors found that TOM's MOI does not preclude a director or a party related to a director from providing goods or services to TOM. But they recommended that it might be advisable to amend the MOI to preclude supply of goods and services to TOM by any member of the Board or any party related to any member of the Board.

They also recommended that in order to avoid any corporate governance infractions in future, every member of the Board from now on be required to complete the Director Development course offered by the Institute of Directors of South Africa.

2. RENOVATIONS TO THE NEW TOM PREMISES

Mr Evans raised the concern that a company controlled by Mr Rodney Maharage, chairperson of the TOM NPC Board, had been appointed and paid to effect renovations to a property acquired by TOM to provide a permanent office situated at 125 Main Rd, Heathfield.

EVALUATION AND RECOMMENDATIONS:

The investigators did not fault the Board on their decision to acquire a property rather than to continue to pay rent. The report states: "It appears the Board applied its mind to the issues and the explanation provided appears to be reasonable."

The Board's decision to award the contract for the renovation to a company in which a director had a financial interest was done in accordance with Section 75 of the Companies Act that requires that a director who has a financial interest in a matter being deliberated on by the Board must disclose the general nature of his interest and must leave the meeting immediately after making such disclosure.

The investigators observed: "On balance it seems to us that the acceptance of the Parch Quotation was in the best interests of TOM. The Parch Quotation was the cheapest quote. Moreover, it also appears from the Parch Quotation that Parch was prepared to fund the entire project until completion, without the necessity for provisional payments or building draws." They added that the Board acted responsibly and appropriately by obtaining an independent review as to the procedure adopted in accepting the quotation. The investigators concluded: "Mr Maharage and Parch appear to have acted in good faith."

3. THE TOM 50 COMMEMORATIVE BOOK

Mr Evans was concerned that the commemorative book compiled in 2019 was printed by Associated Printing, a company owned by Mr Maharage. He noted that it is suspicious that an inordinately high amount of 10 000 copies of the book was printed. He stated that this is not the norm in the printing industry and it was "unnecessary". The implication is that the high amount of copies was approved to benefit Associated Printing (and Mr Maharage) as more profit would be made on a higher print run.

EVALUATION AND RECOMMENDATIONS:

The investigators noted the unexpected pressure that resulted from the notice TOM received shortly before the 2019 marathon that the company that had been responsible for printing the commemorative book, Tenfour Media Publishing would no longer be able to do the job. The initial decision to print 10 000 copies was not made by Mr Maharage and he did not offer a quote when TOM started looking for a printer as he had no intention of trying to secure the work.

The Board's subsequent rushed decision to ask Associated Printing to take over the printing of the commemorative book in time for the 2019 TOM race is described by the investigators as "a significant lapse of corporate governance" because there is no audit trail pertaining to the appointment of Associated Printing and budgetary aspects were not minuted according to the correct procedure.

However, they conclude: "When regard is had to the other quotations received in respect of printing, it does appear that the Associated Printing quotation in respect of the commemorative book was reasonable. It is apparent from the invoice that Associated Printing printed 10 535 copies of the book at a unit price of R 104.87 excluding VAT. Mr Evans in his letter states that the print cost of the books amounted to R173 per copy. Manifestly, this is not correct."

4. FINANCIAL STATEMENTS

Mr Evans raised concerns pertaining to the annual financial statements of TOM. He states that the annual financial statements were not available at the last AGM. He also raised concerns regarding the content of the annual financial statements.

EVALUATION AND RECOMMENDATIONS:

The investigators found that TOM's auditors Advantage Accountants have breached the Companies Act inter alia by auditing and preparing the annual financial statements. "We recommend that TOM retains either a different auditor or a different preparer of the annual financial statements." Because Advantage Accountants are also the auditor of various other entities that are related to the chairperson of the Board, Mr Maharage, the investigators recommended it would be advisable to consider the appointment of a different auditor for the sake of transparency and perceived independence. Regarding the issue of financial statements, the report found it is commonplace for abridged annual financial statements to be provided before an AGM. "Unabridged annual financial statements may be requested at any time. We do not think that the Board was remiss in this regard."

5. APPOINTMENT OF DEBRA BARNES AS RACE DIRECTOR

Mr Evans is concerned that Ms Debra Barnes was appointed as Race Director without the position having been advertised.

EVALUATION:

Ms Barnes resigned as a director of TOM on 30 September 2017. The report states that the TOM MOI does not stipulate any particular procedure for the hiring of executive staff or the necessity to advertise such positions. In light of the explanations provided, the investigators did not think the Board was remiss in this regard.

6. COMPANY SECRETARY

Resolve Secretarial Services (“Resolve”) has been appointed as the TOM company secretary since approximately 2009.

EVALUATION AND RECOMMENDATIONS:

The investigators identified several problems with the services of Resolve Secretarial Services to TOM as “it does not appear to have properly discharged the usual obligations of a company secretary”. They noted that Resolve “has failed to engage with the investigators or to respond to emails in this regard”. The report suggests the Board may wish to consider whether Resolve has performed its mandate and, if not, to consider obtaining the services of an alternative company secretary.

7. FAILURE BY SABC TO BROADCAST THE 2019 TOM

Mr Evans claimed the failure to broadcast the 2019 race was as a result of the incompetence of the Board.

EVALUATION:

The investigators were informed that the failure to broadcast the 2019 race resulted from an impasse between Athletics South Africa (ASA, the entity which owns the broadcast rights) and the SABC, who was unable to pay ASA. They concluded that the Board had not been remiss in this regard.

8. LOSS OF OLD MUTUAL SPONSORSHIP

Mr Evans was concerned that the Board engaged in expensive property purchases and renovations to the New Premises in circumstances where it knew that the Old Mutual sponsorship had been lost and that TOM could not afford to do this.

EVALUATION:

The investigators were informed the Board only established that it would lose the Old Mutual sponsorship in late 2018, after the immovable properties had already been acquired and after the renovations to the new Premises had already been completed. The investigators did not think the Board had been remiss in this regard.

9. LOSS OF IAU GOLD LABEL STATUS

Mr Evans advised the investigators that this issue has been rectified and his concern in this regard accordingly falls away. “We are instructed that there was no loss of the IAU Gold Label Status and that same was timeously applied for and granted on 27 February 2020.”

10. UNRESOLVED ISSUE

The investigators noted that after an interview with a former employee of TOM, they had sent an email to Mr Maharage for the purpose of providing him with an opportunity to comment on certain allegations and to provide information pertaining to the allegations. Despite the invitation, Mr Maharage did not engage meaningfully with the investigators and no further comments were received.

THE TWO OCEANS MARATHON NPC BOARD

25 October 2020

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