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Our ref : Mr. Venter/MJ/NS0161

Your ref :

Date : 2 February 2026

BY EMAIL

**TO: THE DIRECTOR GENERAL OF THE DEPARTMENT OF
TRADE, INDUSTRY AND COMPETITION**

**AND TO: THE INFORMATION OFFICER OF THE DEPARTMENT OF
TRADE, INDUSTRY AND COMPETITION (AND TO HER / HIS
DEPUTIES)**

ATT.: DR GERHAD J CALITZ

Dear sirs / mesdames,

**RE: SOLIDARITY // THE MINISTER OF TRADE, INDUSTRY AND
COMPETITION & ANOTHER – IN RE: R 100 BILLION TRANSFORMATION**

Partners: Stephanus Gabriël Serfontein Proc (SA) • Marthinus Jakobus Viljoen B Proc • Stephanus Petrus Swart Biur LLB • Lodewyk Serfontein BProc • Carel Nicolaas Venter LLB

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FUND - REQUEST FOR CIRCULATION OF REVAMPED
DOCUMENTATION AND SERIOUS CONCERNS ARISING FROM
MISLEADING PAIA RESPONSE

1. We confirm that we act on behalf of Solidarity upon whose authority and instructions we address this letter to you.

2. This correspondence must be read together with Solidarity's request for access to information submitted in terms of the Promotion of Access to Information Act 2 of 2000 ("PAIA"), the Department's response dated 21 May 2025, Solidarity's internal appeal, and the subsequent complaint lodged with the Information Regulator. All of which will accompany this letter.

3. At the outset, Solidarity records its deep concern regarding material inconsistencies between the Department's PAIA response of 21 May 2025 and subsequent information now in the public domain concerning the imminent launch of the so - called "revamped" Transformation fund.

4. In its PAIA response, the Department repeatedly represented, in unequivocal terms, that key aspects of the Transformation Fund were "still under development". This assertion was relied upon to justify the refusal to disclose, *inter alia*:

- 4.1 any studies, feasibility assessments, cost analyses or impact assessments;
- 4.2 any records relating to projected establishment or operational costs;
- 4.3 any records of costs already incurred;
- 4.4 any approvals relating to such costs; and
- 4.5 any documentation or records concerning the establishment and operationalisation of the Fund.

5. The Department further expressly stated that, at that point, no finalised studies, cost analyses, or formally approved expenditure records existed for release, and relied extensively on section 44(1)(a) of PAIA to shield what it described as an ongoing deliberative process.
6. These representations were material. They went to the heart of Solidarity's ability to exercise its constitutional right to access information, to participate meaningfully in the public process, and to assess the legality, rationality and fiscal propriety of the proposed Fund.

7. Solidarity has now become aware, through credible media reporting and information attributed to an internal ministerial briefing pack, that the Department is preparing to launch a revamped Transformation Fund as early as next week.

8. According to this information, the Fund has reached a level of operational maturity which includes, *inter alia*:
 - 8.1 a materially redesigned incentive structure awarding 30 BBBEE points in exchange for a 3% contribution of net profit after tax;

 - 8.2 identified and quantified early commitments amounting to approximately R13.1 billion, including commitments from public entities such as the Unemployment Insurance Fund, the Industrial Development Corporation and the Development Bank of Southern Africa;

 - 8.3 a clearly articulated governance model involving a minister-appointed board, supported by an investment committee;

 - 8.4 the incubation of the Fund within a special purpose vehicle linked to the National Empowerment Fund; and

8.5 a defined sectoral focus and suite of financial instruments, including grants, loans and equity.

9. These disclosures are fundamentally irreconcilable with the Department's earlier position that the Fund's design, costs, approvals and supporting documentation were not yet sufficiently developed to permit disclosure.

10. Solidarity is constrained to state, plainly and on record, that it was misled by the Department's PAIA response of 21 May 2025.

11. While Solidarity accepts that policy formulation is iterative, the level of detail now disclosed, particularly quantified funding commitments, governance structures and incentive calibration, could not have materialised in the absence of internal financial modelling; cost and risk assessments; draft participation agreements and governance instruments; and internal approvals and decision-making processes.

12. The representation that no such records existed, or that their disclosure was not feasible, is therefore no longer sustainable. At best, the PAIA response materially understated the maturity of the process. At worst, it conveyed an inaccurate factual picture which deprived Solidarity of its statutory and constitutional rights.

13. In the circumstances, Solidarity hereby formally requests that the Department, without delay:

- 13.1 circulate the revamped Transformation Fund document, briefing pack and/or concept document currently relied upon in preparation for the Fund's imminent launch;
- 13.2 disclose all records reflecting the revised incentive structure, governance model and funding mechanisms;
- 13.3 clarify, on affidavit if necessary, the extent to which internal studies, cost analyses, approvals and expenditure existed at the time of the PAIA response dated 21 May 2025; and
- 13.4 identify any expenditure already incurred, or commitments made, by or through public entities in relation to the Fund.
- 13.5 refrain from implementing the Fund in absence of

13.5.1. of demonstrable compliance with the mandatory requirements of the PFMA and all other statutory prescripts including but not limited to –

13.5.1.1 lawful authorisation of expenditure; proper budgetary approval and appropriation;

13.5.1.2 compliance with requirements relating to fiscal oversight, accountability and transparency;

13.5.1.3 the establishment of adequate governance, control and risk management frameworks; and

13.5.1.4 adherence to the prohibitions against irregular, fruitless and wasteful expenditure

13.5.2 providing the specified documentation as requested in our PAIA application is provided.

14. Given the scale, fiscal implications and systemic impact of the Fund, continued reliance on generic assertions of “ongoing development” is no longer tenable and would further undermine the integrity of the consultative process.

15. It is trite to state that the Public Finance Management Act 1 of 1999 (“PFMA”) is unequivocal in its application to all public funds, particularly in matters involving the allocation, transfer and accounting of such resources. The use of

public funds - directly or indirectly - for the establishment and/or operation of the Fund must comply with the requirements of the PFMA, including but not limited to the provisions relating to authorised expenditure, fiscal oversight, wasteful and irregular expenditure and parliamentary oversight.

16. This is not a matter of form, terminology or policy preference. The constitutional validity of public power turns on substance and effect. A regulatory framework that compels the diversion of private funds to a centrally directed structure under threat of adverse compliance consequences intrudes into a domain reserved to Parliament and engages the full suite of fiscal governance obligations under the Constitution and the PFMA.
17. The attempt to entrench such a mechanism through the Codes does not insulate it from scrutiny; it heightens it. If anything, the use of delegated legislation to give binding effect to what is, in substance, a levy underscores the necessity for full transparency, disclosure of underlying documentation, and demonstrable compliance with all statutory prescripts before any implementation is contemplated.
18. The PFMA is peremptory in its application to all public funds, whether administered directly by a department or indirectly through entities, special purpose vehicles, public entities or public-private arrangements. Any attempt



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to circumvent or dilute its application through structure or nomenclature is unlawful.

19. The Department's reliance on the proposed amendments to the Broad-Based Black Economic Empowerment Codes of Good Practice as the operative mechanism for implementing the Transformation Fund materially aggravates the concerns set out above. The Codes are instruments of delegated legislation issued under section 9 of the Broad-Based Black Economic Empowerment Act and are intended to provide guidance on measurement, interpretation and verification of empowerment compliance. They are not, and cannot lawfully be, employed as vehicles to impose compulsory, quantified financial obligations with direct fiscal consequences.
20. To the extent that the Draft Codes elevate contribution to the Transformation Fund to a decisive compliance requirement, enforced through sub-minimum thresholds and discounting penalties, they purport to do precisely that. In substance, this represents the imposition of a profit-based financial exaction by regulatory instrument, without parliamentary authorisation and without the safeguards that attend the exercise of fiscal power.
21. In the absence of:

- 21.1 duly approved feasibility studies, financial and fiscal impact assessments;

- 21.2 clear authorisation and approval by the relevant accounting authority and, where applicable, National Treasury;
- 21.3 lawful governance instruments and accountability mechanisms; and
- 21.4 demonstrable compliance with the PFMA and Treasury Regulations, any implementation of the Fund would be unlawful, irrational and constitutionally invalid.

22. Solidarity notes that subsequent to the submission of its initial comments, the Minister has now published further proposed amendments to the Broad-Based Black Economic Empowerment Codes of Good Practice for public comment. These developments materially intersect with, and in several respects aggravate, the constitutional, legal and fiscal concerns already articulated.
23. The publication of additional Draft Codes does not cure the defects identified herein; on the contrary, it reinforces the conclusion that the Department persists in seeking to entrench, through successive layers of delegated legislation, a compulsory financial architecture that lacks lawful authority and parliamentary sanction.

24. In the circumstances and having regard to Solidarity's prior submissions read together with the contents hereof, Solidarity expressly reserves its rights to supplement, amplify and revise its representations as may be necessary once the full implications of the newly published Draft Codes are properly ascertainable.
25. For the avoidance of doubt, nothing contained in these submissions, nor the timing thereof, may be construed as acquiescence in the lawfulness of the Draft Codes or any aspect of the Transformation Fund framework, and Solidarity reserves all rights, including the right to pursue appropriate relief, should the Department proceed to implement a regulatory scheme that is, in substance and effect, constitutionally infirm.
26. Solidarity expressly reserves all rights flowing from the misleading nature of the PAIA response, including its rights to pursue relief before the Information Regulator, National Treasury, the Auditor-General, and the courts.

Yours faithfully,

SERFONTEIN, VILJOEN & SWART

Per: Mr. CN Venter

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