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Media Statement

Immediate Release

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*RIGHT OF RESPONSE: Riddle of the R111m Coega deal*  
*[Published 26 April 2019]*

**[Article]:** “At the centre of the questionable R111-million paid...”

**[CDC Response]:** it is worth noting the continued & sustained reference to a ‘fraudulent payout of R111m’ is a misrepresentation of facts. The facts regarding the dispute mechanism process embarked by Eastern Cape Department of Health (ECDoH) and Coega Development Corporation (CDC) as early as 2016 are as follows:

- An order in favour of the CDC for an amount of **R 24 562 080.00** (*including interest charges and VAT*) by the Grahamstown High Court was made on 27 March 2018; The order was made following a summary judgement application made by the CDC, in response to which the ECDOH admitted to being indebted to the CDC in the amount of **R 24 562 080.00**, this after several attempts by the CDC to get the ECDOH to pay the CDC for services rendered; and
- An arbitration award for **R 150 887 815.64** (*including interest charges and VAT*) by a Panel of Three (3) Arbitrators comprising of different Professionals, namely Professional Civil Engineer; Professional Quantity Surveyor; and Chartered Accountant was awarded on 07 September 2018. It bears emphasis that the Chairperson and convenor of the Tribunal was Trevor Kay and not Mr Riddle.

**[Article]:** *"...by the Eastern Cape health department to the Coega Development Corporation (CDC) is an arbitrator who scored multimillion-rand contracts from the corporation..."*

**[CDC Response]:** The assertion that Mr Riddle 'scored multi-million rand contracts from the CDC is factually incorrect and in-fact mischievous.

- The Mail & Guardian has sought to portray the CDC as having played an active role in the appointment of Mr Riddle as one of the arbitrators, despite the detailed facts that were provided to them prior to going to print in line with the deadline given to the CDC. As demanded of the media (and the Journalist in question) and in accordance with the Code of Ethics and Conduct for South African Print and Online Media, they could have independently verified CDC's version of events with the Association of Arbitrators, regrettably it does not appear that such was done.
- The Mail & Guardian sought to embed, in the reader's minds, that the CDC gave multi-million rand contracts to Mr Riddle allegedly in return for him finding in favour of the CDC in the arbitration process. The consistent and protracted steps that were taken by the CDC prior to finally going the arbitration route have inexplicably been disregarded. The article seems to suggest that Mr Riddle single-handedly conquered and/or pressured the other two Arbitrators in order to influence the outcome of the arbitration; which on its own is an insult to the professional integrity of the Arbitrators. As far as we are aware, the verdict of the Arbitrators and the Award was unanimous.
- Facts related to Omega Civils, which Mr Riddles is a Director, is contained in the following paragraphs, which forms part of this response.

**[Article]:** *"...one of the people on the arbitration panel who decided last year that the province's health department should pay the CDC R150-million, had previously got lucrative contracts from the state-owned company...."*

**[CDC Response]:** The statement is factually incorrect and is designed to tarnish our reputation and to cause irreparable brand damage to the CDC or that of the Arbitrator. The CDC has invested millions of rands in its brand, and therefore reserves our rights in law. The following facts bear relevance:

- Mr Riddle, who was one of independently sourced panel of three (3) Arbitrators is/was a Director of Omega Civils;

- Prior any involvement by the CDC and at which point the arbitration proceedings between the ECDOH and the CDC were not even in the pipeline, Omega Civils was appointed by the Nelson Mandela Bay Municipality (NMBM) under contract number SCM 253 to provide the construction of the Miscellaneous Civil Engineering Works of the NMBM. Therefore, the CDC played no part at all in the appointment of Omega Civils, neither did it have any knowledge of the appointment;
- The procurement process under contract number SCM 253 was undertaken by the NMBM prior the involvement of the CDC;
- In December 2014, at the instance of NMBM, the contract SCM 253 between NMBM and Omega Civils was ceded by NMBM to the CDC as the duly appointed Programme Implementing Agent (PIA) of the Department of Economic Development Environmental Affairs and Tourism (DEDEAT) and the Eastern Cape Provincial Planning & Treasury, which funded the construction of the Miscellaneous Civil Engineering Works of the NMBM;
- The contract was ceded to the CDC by NMBM in order to fast track the delivery of the construction of Miscellaneous Civil Engineering Works on behalf of NMBM;
- There was never any CDC award nor payment under contract CDC/471/15 to Omega Civils;
- Omega Civils completed the work on the ceded contract CDC/26/15 on 24 September 2015, effectively three (3) years before the appointment of Mr. Riddle by the Association of Arbitrators, as one of the three (3) duly qualified Arbitrators.

**[Article]:** *“...Riddle’s company, Omega Civils, had been awarded two contracts in 2015 – one for close to R15-million for “the construction of miscellaneous civil engineering works” and another for R50-million to maintain roads and stormwater infrastructure....”*

**[CDC Response]:** The statement is grossly incorrect. There was never an award or payment of R50m to Omega Civils. As contained in our response sent to the Mail & Guardian, which was deliberately disregarded and maliciously not included in the article by the journalist, the following facts bear relevance:

- In December 2014, NMBM ceded its contract, number SCM 253, to the CDC with the total contract amount of R 50m for the Miscellaneous Civil Engineering works, constituting components of which were appointments to the following companies;
  - Techni Civils;
  - Omega Civils;
  - Wavelengths Civils; and

- Izana Civils.
- As an inherited Consolidated Contract, initially, the CDC assigned to the ceded contract a Consolidated Contract No: CDC/471/15, in order to correctly reference the consolidated form in which it was ceded to the CDC;
- In compliance with the Public Finance Management Act [PFMA] and the CDC's contract management prescripts, the CDC allocated individual Contract Numbers to each inherited Construction Company, for which Omega Civils was assigned CDC/26/15, for a Contract Amount of R 14 953 720.08, as reflected in your attachment; and
- Self- evident, the balance from the R 50m is traceable to the names of the other contractors.

**[Article]:** "...Tuswa alleges [CDC] was allowed to handpick arbitration panel members...."

**[CDC Response]:** This statement is defective. The facts which can be verified are the following:

- On 27 April 2018, this after the court order on 27 March 2018, at the instance of the SG of ECDoH and duly accepted by the CDC, the ECDoH and CDC agreed to enter into an Arbitration process wherein the parties agreed that the Tribunal must be constituted by Professionals from three (3) disciplines, namely (i) Professional Civil Engineer; (ii) Professional Quantity Surveyor; and (iii) Chartered Accountant;
- To ensure complete transparency, objectivity and to insulate the appointment process from any perceived or real undue influence, both the ECDoH and the CDC agreed that professional associations should make the appointments without recommendations of the names from any of the parties;
- Delegated officials from both the ECDoH and the CDC were jointly involved with the administrative process of interfacing with the Associations that were to make the appointment of the Arbitrators;
- On 15 June 2018, the Association of Arbitrators appointed three (3) Arbitrators which appointments were reviewed by the Association as contained herein below:
- On 19 June 2018, the CDC, out of its own volition, and without being prompted to do so, alerted the Association of Arbitrators of a potential conflict of interest in respect of one (1) of the Arbitrators;
- Consequently, the Association of Arbitrators withdrew the appointment of the potentially conflicted Arbitrator.

- Another Arbitrator recused himself from the nominated list;
- On 22 June 2018, the Association of Arbitrators appointed two (2) Arbitrators and directed the CDC & ECDoH to approach the South African Institute of Chartered Accountants (SAICA) for the appointment of the remaining Chartered Accountant Arbitrator to complete the specified three (3);
- On 3 July 2018, SAICA finalised the nomination of the third Arbitrator, who is a Chartered Accountant by profession;
- Neither ECDoH nor CDC raised any objection to the appointment of the last names pertaining to the three (3) Arbitrators and no conflict of interest was identified by any of the parties;
- In addition and in compliance with article eleven (11) of the rules of the Association of Arbitrators, each Arbitrator signed and handed a statement of impartiality to both ECDoH and the CDC;
- On 06 July 2018, the ECDoH and CDC met and agreed on the ground rules that would jointly be proposed to the Arbitrators; and
- On 11 July 2018, a commencement meeting convened and presided over by the tribunal and attended by ECDoH and CDC was held, in which meeting the ground rules were outlined by the tribunal.

**[Article]:** *“...M&G has identified two contracts awarded to Omega Civils, with contract numbers CDC/471/15 and CDC/26/15, on January 12 and July 5 2015, respectively.....”*

**[CDC Response]:** As contained in our earlier response:

- There was no award nor payment for contract CDC/471/15;
- The only valid contract which was contained as part of the ceded contract SCM 253 from the NMBM included four contractors - Techni Civils; Omega Civils; Wavelengths Civils; and Izana Civils;
- As an inherited Consolidated Contract, initially, the CDC assigned to the ceded contract a Consolidated Contract No: CDC/471/15, in order to correctly reference the consolidated form in which it was ceded to the CDC; and
- In compliance to the Public Finance Management Act [PFMA] and the CDC’s contract management prescripts, the CDC allocated individual Contract Numbers to each inherited Construction Company, for which Omega Civils was assigned CDC/26/15, for a Contract Amount of R 14 953 720.08.



**[Article]:** “...He also claims that the money may have found its way into ANC politicians’ pockets in the province and that Omega Civils may have been used to disperse the funds.....”

**[CDC Response]:** The allegations made by Tuswa are mischievous, baseless and lacking in substance. As a responsible corporate citizen, CDC management has requested the Audit and Risk Committee (ARC), which is a committee of the CDC Board, to commission an independent audit/enquiry on the financials and/or bank accounts of the CDC to test the veracity of the allegations.



*RIGHT OF RESPONSE: Hawks probe R111m hospital fraud [updated]*  
*[Published 18 April 2019]*

**[Article]:** *“The Hawks are investigating an alleged fraudulent payout of more than R110-million by the Eastern Cape health department...”*

**[CDC Response]:** The continued & sustained reference to a ‘fraudulent payout of R110m/R111m’ is a vexatious misrepresentation of facts. The facts regarding the dispute mechanism process embarked by Eastern Cape Department of Health (ECDoH) and Coega Development Corporation (CDC) as early as 2016 are as follows:

- An order in favour of the CDC for an amount of **R 24 562 080.00** (*including interest charges and VAT*) by the Grahamstown High Court was made on 27 March 2018;
- An arbitration award for **R 150 887 815.64** (*including interest charges and VAT*) by a Panel of Arbitrators comprising of Professionals from three (3) disciplines, namely Professional Civil Engineer; Professional Quantity Surveyor; and Chartered Accountant was awarded on 07 September 2018.

**[Article]:** *“The money, desperately needed by hospitals and clinics, apparently found its way into the pockets of senior ANC officials in the province...”*

**[CDC Response]:** To establish the veracity of the allegations levelled by the former employee of ECDoH who was unceremoniously dismissed for fraud and corruption, the CDC management has requested the Audit and Risk Committee (ARC), which is a committee of the CDC Board, to commission an independent audit and/or enquiry on the financials and/or bank accounts of the CDC.

**[Article]:** *“The so-called debt to Coega was paid without provision of the supporting documentation in the form of invoices, confirming that services were delivered and that invoices submitted are valid and authentic...,” claims the affidavit.*

**[CDC Response]:** The CDC has consistently acted within defined parameters of the Service Delivery Agreement (SDA) and provisions that govern interaction between arms of government. The statement by the former health employee is

devoid of any truth. It is important to note that the CDC claims have been affirmed by independent processes, which culminated in the following sequence of events:

1. There had been a sustained and unsubstantiated assertion by ECDoH that it did not owe any monies to the CDC;
2. On 16 November 2017, the CDC sent a letter of Demand to the ECDoH;
3. On 24 January 2018 the CDC issued and served a summons against the ECDOH;
4. In response to the summons, ECDoH reneged on their previously held posture of 'not owing any monies to the CDC' and admitted that they owed the CDC an amount of R 24 562 080.70;
5. On 27 March 2018, an order was granted by the Grahamstown High Court against the ECDOH for payment to the CDC of the admitted amount of R 24 562 080.70, within 30 working days from 27 March 2018;
6. This left a contested balance of R 129.8 million;
7. On 27 April 2018, at the instance of the SG of ECDoH and duly accepted by the CDC, and subsequently endorsed by the SG of PPT on 13 July 2018, ECDoH and CDC agreed to enter into an Arbitration process, convened by a panel of three independent experts to make a final determination on the dispute, which determination would not be appealable by both parties; and
8. The experts were selected by the **Institute of Arbitrators of Southern Africa** and the **South African Institute of Chartered Accountants [SAICA]**, in order to ensure objectivity and professional independence for the appointment of Arbitrators.

**[Article]:** *“a number of senior ANC politicians and members of the legislature were lobbied to get the health department to pay the state-owned Coega...”*

**[CDC Response]:** The statement alleging that there were ANC politicians lobbied is factually incorrect. Firstly, the CDC as a state owned entity reports to the Department of Economic Development and Environmental Affairs (DEDEAT).

The executive Authority of the CDC is the MEC DEDEAT. Over and above the reporting requirements prescribed by the different statutes, the CDC from time-to-time reports to the legislature, SCOPA, etc.

As a major contributor in the Eastern Cape Economy, the CDC would as and when necessary report to and seek the audience of amongst others the Premier of the Eastern Cape, its Executive Authority (DEDEAT), and any other government official that is legally authorized to interface with the CDC.

The CDC embarked on a dispute resolution process as early as mid-2016 with a view of resolving the matters following the Intergovernmental Relations mechanisms as prescribed in the SLA between the parties.

The CDC met with the following arms of government with a view to resolve the dispute amicably between both parties:

- 05 July 2016 – Former MEC of Health in the Eastern Cape, Dr Pumza Dyantyi in Port Elizabeth;
- May 2016 – Former MEC of DEDEAT in the Eastern Cape, Mr Sakhumzi Somyo in East London CDC Offices;
- 25 August 2016 - Premier of the Eastern Cape, Mr Phumulo Masualle at the Provincial Government Offices in Bhisho;
- 30 August 2017 - Mr Sakhumzi Somyo (DEDEAT) & MEC Dr Pumza Dyantyi (ECDoH) at the Provincial Treasury offices in Bhisho;
- 1 November 2017 – the CDC appeared before the Health Portfolio Committee at the EC Legislature in Bhisho; and
- 9 November 2017 - the CDC appeared before the Portfolio Committee on Economic Development, Environment Affairs and Tourism at the EC Legislature in Bhisho.

**[Article]:** *“The R111-million is said to be an irregular portion of a total R150 million that was paid to Coega as the result of an arbitration award in September last year, after a drawnout battle between the Eastern Cape health department and the entity....”*

**[CDC Response]:** Once again the above statement is grossly incorrect and does not take into account the amount litigated by the CDC, which was subsequently made an order of the Grahamstown High Court and fully ventilated in the arbitration process. In the context of the allegation made, the below outlined facts are of material significance:

1. **Interim Award** on paragraphs 207 to 222 - **The correct interpretation and application of the 2009 SDA**, fully explains the award arguments contained as part of our response for ease of reference;
2. **Annexure IA1** captures the calculated amount inclusive of the R111m, contained as part of our response for ease of reference; and
3. The Arbitration tribunal also issued an **Article 37 Interpretation of Award** dated 28 September 2018 which dealt with the R111m specifically, contained as part of our response for ease of reference.

Furthermore, as previously indicated, the claim was for Management fees that the CDC charged for the implementation of work done by the organisation on behalf of ECDOH. The basis of which, are fully ventilated in the SDA signed by both parties and independently interpreted by the Tribunal. The associated invoices were submitted to ECDoH with relevant supporting information/documentation.

The CDC claimed costs based on a recognised fee scale as prescribed in the Department of Public Service and Administration (the DPSA) Schedule, Department of Public Works guidelines and the Engineering Profession Act 2000, as amended by Government Gazette No. 28643 of 31 March 2006 and as amended from time-to- time.

**[Article]:** *“September 2018. It is worth noting that the chief financial officer (Mr Kaye), director legal services (Mr M Mlambo) and I cautioned Dr [Thobile] Mbengashe (health department superintendent-general) of paying this amount without the necessary corresponding documents,” claims the affidavit...”*

**[CDC Response]:** It bears emphasis the following factual accounts involving ECDoH’s **CFO, Mr. Simon Kaye** in the arbitration process. Due to the failure by ECDoH to implement the directives of the former MEC’s - Sakhumzi Somyo and Dr. Pumza Dyantyi and with the CDC having exhausted all the dispute resolution processes as envisaged in the Intergovernmental Relations Act No 13 of 2005, and the PPT confirming that it had no other instrument available to it to compel ECDoH to abide by its ruling, the CDC was forced to institute legal action against ECDoH, initially by way of a letter of Demand served on ECDoH on 16 November 2017.

In response to the CDC’s letter of demand, the SG of ECDoH – Dr. Thobile Mbengashe, requested the CDC to grant access to ECDoH’s **CFO, Mr. Simon**

**Kaye**, for him to independently review CDC's claim, which assessment was duly granted and held on **21, 22 and 28 November 2017**. In a correspondence to the CDC [19 December 2017], the SG of ECDoH further committed as follows: "The department is prepared to tender an amount it would conclude as being reasonably due to yourselves without prejudice to our rights, by the latest 28 February 2018." Leading to 24 January 2018, the CDC became privy to the ECDoH's significantly reduced counter claim, and concluded that ECDoH was negotiating in bad faith, thus resolved to issue summons forthwith against ECDoH claiming R 154 142 808.00.

**[Article]:** *"Tuswa wants the Hawks to investigate Coega's bank accounts..."*

**[CDC Response]:** As already indicated in our previous response, the CDC notes the statement and will await interaction from the Hawks and/or law enforcement agencies.

**[Article]:** *"Mbengashe wrote to the tribunal asking it how it had arrived at the amount..."*

**[CDC Response]:** The tribunal comprehensively responded to this item under the heading – *ARTICLE 37 INTERPRETATION OF AWARD*. This is contained as part of our response for ease of reference.

**[Article]:** *"But Silinga's office this week said they..."*

**[CDC Response]:** The continued reference to 'Silinga's office' is mischievous and seeks to infer that the CDC's CEO has his personal Spokesperson. The CEO does not have a personal Spokesperson; as a result, all CDC's media engagements are the responsibility of the CDC's Communications Department, headed by the CDC's Spokesperson. Furthermore, the continued reference to 'Silinga's office' seeks to infer that the CEO played a material role in the Arbitration process, which is contrary to the facts.

**[Article]:** *"...Tuswa said the arbitration process was flawed because the panel selection was controlled by Coega..."*

**[CDC Response]:** The CDC rejects this assertion as stated in the article – *"a claim the agency denies. It said the process was agreed upon by both parties."* However, what the article fell short of detailing was the objective and independent process that

was followed to appoint the Arbitrators. A process which the CDC comprehensively outlined in its previous response to the Mail & Guardian, further outlined below:

- The Eastern Cape Department of Health (ECDoH) and Coega Development Corporation (CDC) represented by Superintendent General (SG), Dr. Mbengashe and the Chief Executive Officer (CEO), Pepi Silinga respectively concluded an arbitration agreement, wherein the parties agreed that the Tribunal must be constituted by Professionals from three (3) disciplines, namely (i) Professional Civil Engineer; (ii) Professional Quantity Surveyor; and (iii) Chartered Accountant;
- However, to ensure complete transparency, objectivity and to insulate the process from any perceived or real undue influence, both the ECDoH and the CDC agreed that professional associations should make the appointments without recommendations of the names from any of the parties;
- Delegated officials from both the ECDoH and the CDC were jointly involved with the administrative process of interfacing with the Associations that were to make the appointment of the Arbitrators;
- On 15 June 2018, the Association of Arbitrators appointed three (3) Arbitrators; which appointments were reviewed by the Association as contained herein below:
- On 19 June 2018, the CDC, out of its own volition, alerted the Association of Arbitrators of a potential conflict of interest in respect of one (1) of the Arbitrators;
- Consequently, the Association of Arbitrators withdrew the appointment of the potentially conflicted Arbitrator, and another Arbitrator recused himself from the nominated list;
- On 22 June 2018, the Association of Arbitrators appointed two (2) Arbitrators and directed the CDC & ECDoH to approach South African Institute of Chartered Accountants (SAICA) for the appointment of the remaining Chartered Accountant Arbitrator to complete the specified three (3);
- On 3 July 2018, SAICA finalised the nomination of the third Arbitrator, who is a Chartered Accountant by profession;
- Neither ECDoH nor CDC raised any objection to the appointments of the last names pertaining to the three (3) Arbitrators and no conflict of interest was identified by any of the parties;
- In addition and in compliance with article eleven (11) of the rules of the Association of Arbitrators, each arbitrator signed and handed a statement of impartiality to both ECDoH and the CDC;
- On 06 July 2018, the ECDoH and CDC agreed on the ground rules that would jointly be proposed to the Arbitrators; and



- On 11 July 2018, a commencement meeting convened and presided over by the tribunal and attended by ECDoH and CDC was held, in which meeting the ground rules were outlined by the tribunal.

**[Article]:** *“The arbitrator’s decision was clearly wrong, he said, claiming irregularities and fraudulent activities in the Coega payment claim...”*

**[CDC Response]:** The CDC cannot comment on behalf of the Arbitrators, however the CDC made a claim for Management fees of the work done in line with the SDA between the parties.

**[Article]:** *“CDC had submitted its claim largely based on using a non-existing service level agreement alleged by Coega Development Corporation to have been signed by both parties during the 2014-15 financial year...”*

**[CDC Response]:** As indicated in our previous response, the CDC submitted its claims based on the 2009 Service Delivery Agreement (SDA), which remains in force until the discharge of all contractual obligations.

**[Article]:** *“...during the planning stage of projects and progress on site during implementation ...” said Silindile Manqina, communications officer in Silinga’s office,...*

**[CDC Response]:** The CDC requested in writing that the Mail & Guardian attributes all comments to the CDC spokesperson – Dr. Ayanda Vilakazi, CDC’s Head of Marketing, Brand and Communications, dully authorized to speak on behalf of the CDC.

END.

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**About Coega:** The Coega Development Corporation (Pty) Ltd (CDC) is the operator of the Coega Special Economic Zone (SEZ) in Nelson Mandela Bay Municipality, South Africa. Established in 1999, the CDC is wholly-owned by the Province of the Eastern Cape under the Economic Development, Environmental Affairs, and Tourism department. The Coega SEZ is South Africa’s award winning premier location for new industrial investments and a gateway to African and World markets. The CDC aims to provide a competitive investment location and a total business solution for its customers, as well as ensuring sustainable economic development in the region. The SEZ is a fully registered Customs Control Area (CCA), which benefit those qualifying investors located in the zone with various investment incentives (<http://www.coega.co.za/DocumentList.aspx?cmd=browse&objID=80&catID=46>). To date, the CDC has delivered on its mandate to provide socio-economic development for the Eastern Cape, and has enabled the creation 112 974 direct jobs



since inception, with 43 operational investors and boasts an investment portfolio in excess of R9.9 –billion (as at April 2019). Four investors are currently undergoing construction of their plants at Coega, they have pledged a private sector investment of R12.1 billion. These investors are BAIC SA (R11 billion), OSHO Cement (R600 million), MM Engineering (R350 million), Akacia Medical (R100 million) and Hella (R53 million). Jointly, these investors are putting a dent on unemployment by creating the much needed jobs during the construction phase.

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