



# **EXHIBIT SS 4**

## **REFERENCE BUNDLE**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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**R15  
EXPRESS  
EDITION**

Neighbourhood  
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## ZERO HEROES

Cape medics ready for dry taps Page 8



## Captain who?

Why Aiden Markram is the Proteas' latest skipper Back Page



## LOVE BITES

Six top writers pluck heart strings Lifestyle

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# Sunday Times

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# Prasa in Zuma bank scandal

Agency plans R1bn stake in bank that lent cash for Nkandla

By **THANDUXOLO JIKA, MZILIKAZI wa AFRICA** and **KYLE COWAN**

● Cash-strapped Prasa is investing R1-billion with the bank that lent President Jacob Zuma R7.8-million to “pay back the money” in the Nkandla scandal.

This is despite the bank not meeting the state entity's investment requirements and the Passenger Rail Agency of South Africa itself struggling financially.

The Sunday Times has learnt from senior executives that Prasa's interim chairwoman, Advocate Tintswalo Makhubele, and acting CEO, Cronet Molepo, are putting their weight behind a move to ensure that the first R500-million tranche of the investment is paid to VBS Mutual Bank this week – without any agreement being signed.

Makhubele and Prasa denied the claims, saying the investment idea predated her appointment on October 19 and that no one had been instructed to pay VBS.

But the Sunday Times has seen correspondence from Prasa's former acting CEO Lindikhaya Zide confirming the state entity's commitment to a R1-billion investment with a return of 8.25% per annum.

“We intend to commence with an investment of R1-billion only. Further steps regarding such will be communicated thereafter.

“Our finance department will be in contact with you to facilitate the necessary arrangements for the transaction within the next 21 working days. We are excited by the opportunity to work with an institution such as yours,” Zide wrote on November 6.

Two months later, on January 24, the bank's CEO, Andile Ramavhunga, wrote back “pleased” to be offering a revised rate of 9.25%. Ramavhunga stresses that VBS is “fully compliant” with all National Treasury regulations.

The Sunday Times has reliably learnt that VBS sent Prasa a letter this week reminding it to effect payment of the first tranche by close of business on Friday February 2.

### ‘Expecting a payment’

Prasa did not respond to a request to provide the date on which VBS first proposed the investment.

“The acting CEO, as well as the interim chairperson of the board, have not instructed any officials of Prasa to facilitate any payment to VBS,” said Prasa spokeswoman Nana Zenani, despite the VBS letters showing otherwise.

“The proposal is still under discussion internally and a decision is yet to be made. The proposal from VBS predates both the acting group CEO and the chairperson of the interim board.”

But four Prasa sources with intimate knowledge of the matter independently told the Sunday Times that in December Makhubele and Molepo pressured acting



## PLAYING IT COOL

From left, Jordan Ruiters, Ashley van Aar and Chatwin Greyson jump off the Kalk Bay harbour wall to cool down during sweltering temperatures in Cape Town, which is experiencing the worst drought in more than a century. See Page 8 Picture: Esa Alexander

### About VBS

#### 1982

● Started operating as Venda Building Society

#### 2000

● Granted mutual bank licence

#### 99.93%

● Black ownership on March 31 2017

#### 4

● Branches on March 31 2017

#### R87-million

● Turnover in year ended March 31 2017

#### R5.9-million:

● Profit in year ended March 31 2017

chief financial officer Yvonne Page to sign off on the investment. Page, according to one source, expressed reservations and refused to pay the funds.

Prasa said it had met a VBS delegation but no agreement had been signed.

But an insider at VBS confirmed it was expecting a payment from Prasa by Friday. “Prasa had agreed to invest R1-billion and it will come in two tranches and the first payment was expected before the end of the business day on Friday,” said the source.

“We are not being used as a conduit for any corrupt activities, this is a pure investment and it will be monitored by the National Treasury and the Reserve Bank. Prasa will get value for their money. This is not money intended for Zuma or the Gupatas, it is pure investment,” said the VBS official.

Yesterday Molepo passed the buck to Zide, saying: “There was a proposal prior to my time, and there have been other proposals.”

Molepo said the proposal made by VBS was in the “normal course” of business.

Pressed on whether or not he was admit-

ting that Prasa was entertaining an unsolicited bid from VBS or any other bank, Molepo denied this and again put the blame on Zide: “I was told that they get proposals from time to time, and that there is another proposal in addition to the VBS one in possession of Prasa.”

Zide yesterday confirmed that Prasa received an unsolicited bid from VBS and that it was willing to invest with the bank if it met all the criteria.

“As far as I know the new board is still busy with the matter with VBS and appointed an auditor to look into the matter on Friday,” he said.

“After VBS approached us and made their proposal, I wrote them a letter assuring them that if they can meet our investment criteria we can invest between R500-million up to R1-billion for a start with them.”

Zide said Prasa has invested about R13-billion with other banks. Nothing had been paid to VBS yet, he said.

Prasa, according to another executive,

To Page 2 →

## BIG STORY

### War on children: playgrounds turn to places of terror

A teacher-priest arrested for allegedly sexually assaulting a 12-year-old pupil in KwaZulu-Natal.

A Boksburg high school principal receiving oral sex in his office from two pupils and four older women – and filming the antics.

A school counsellor on trial in Pietermaritzburg for raping and sexually assaulting several boys.

And a Johannesburg high school water polo coach charged with rape, sexual assault and attempted murder.

For any parent entrusting the safety and wellbeing of their child to a school and its staff, it's a litany of allegations that makes for grim reading.

In the first case, the teacher – arrested on Wednesday at his new school after being fired by the school where one of the alleged assaults took place – will make his second court appearance next week.

At Reiger Park No 2 Secondary School in Gauteng, the principal resigned in October



**A Reiger Park No 2 Secondary School parent shares his opinion with Gauteng education MEC Panyaza Lesufi.**

and served his last day on January 15.

Now the Gauteng education department wants to rescind his resignation so that he can be fired and prevented from working as a teacher again.

The other two cases are already the subject of high court trials and involve more than 170 allegations against the accused, aged 32 and 22 respectively.

“The department has a zero-tolerance stance on allegations of sexual assault and has never hesitated to act,” said Gauteng education MEC Panyaza Lesufi. Page 5



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## INSIDE

How school with 85% pass rate held back 228 pupils Page 6

## R27BN LOSER

But Christo Wiese says he's hanging on to his Stenhoff stake Business Times



## Court threat to state of nation address

By **RANJENI MUSUMANY**

● Opposition parties have threatened to interdict the state of the nation address if parliament's presiding officers, Baleka Mbete and Thandi Modise, do not accede to their demand for a postponement by tomorrow.

As ANC officials make a last-ditch attempt today to persuade President Jacob Zuma to leave office, opposition leaders are cranking up the pressure to prevent him from delivering the speech at the opening of parliament on Thursday.

They are demanding that the speech be postponed until parliament can hold impeachment proceedings, or that a new president present the address.

In a letter seen by the Sunday Times, United Democratic Movement leader Bantu Holomisa called it “objectionable” that Mbete and Modise had decided the address should go ahead as scheduled.

Writing on behalf of the UDM, COPE, the EFF, the DA, the IFP and the African Christian Democratic Party after a meeting on Friday, Holomisa noted that the Constitutional Court, in ruling last year that the National Assembly had failed to hold Zuma to account over Nkandla, gave parliament a deadline to formulate impeachment procedures for a president.

“We therefore urge you to postpone the Sona... to enable your office to complete the process of adopting the impeachment regulations and procedures,” the letter says.

“Accordingly, we await your urgent positive response to this request not later than the end of business on Monday.

“Failure to meet this deadline [means] we shall be left with no option but to consider approaching an appropriate court.”

The ANC is split over the address, with growing internal opposition to Zuma remaining president and delivering it.

Zuma has refused to step down, telling

allies this week that he was prepared to face impeachment proceedings.

The argument to be presented by senior ANC leaders today that he should step aside to avoid impeachment or a motion of no confidence is expected to fall on deaf ears.

Mbete said on Friday that a motion of no confidence requested by the EFF had been scheduled for February 22.

The Sunday Times has learnt that EFF leader Julius Malema will ask Mbete this week to rule that the vote be held as a secret ballot, as was the case in August when at least 29 ANC MPs voted with the opposition to remove Zuma.

Parliament's spokesman, Moloto Mothapo, said a secret ballot was only granted in exceptional circumstances.

“Voting on motions of no confidence is generally open, and the one scheduled for February 22 is no different,” he said.

See page 4





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Authorised financial services and registered credit provider  
VBS Mutual Bank Reg. No. 1051 NCR No. NCRCP2  
FSP No. 30857

Mr. Cromet Molepo  
Acting Group CEO  
Passenger Rail Agency of South Africa  
1040 Burnet Street, PRASA House  
Hatfield  
Pretoria  
0001

24 January 2018

Dear Mr. Molepo

## RE: INVESTMENT MANDATE

I am pleased to hear that your meeting with our Chairman Mr. Matodzi was fruitful and constructive. I am in agreement that I will be the point of contact for this investment and will avail myself to you and your team for all matters that you require clarity on regarding the investment.

We thank you for your business and I am pleased to inform you that we have approved the betterment of the rate on your investment by an additional 100 basis points to 9.25% from the previously quoted rate.

I would also like to highlight that VBS is a registered bank (license number 1051) as registered by the Registrar of Banks. VBS is a bank as defined in section 7 of PFMA act and section 31 of treasury regulations. It therefore qualifies to take deposits and investments with entities regulated by PFMA.

It is important to note that section 31.2.2 of treasury regulations on bank and investments states that:

“31.2.2” When going out on tender, and if the relevant treasury has not proposed its own bank, the public entity must take into account:-

- (a) that the bank is registered with the South African Registrar of Banks;
- (b) that the bank is a member or sponsored by a member of the Payments Association of South Africa (PASA);
- (c) contracting by the bank with persons, or categories of persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability;
- (d) the cost effectiveness; and
- (e) the ability of the bank to provide the required services which includes sufficient systems, infrastructure and branch networks.”

VBS is fully compliant with all the above. It is also important to emphasize section 31.2.2(c) which encourages public entities to do business with previously disadvantaged banking institutions like VBS which is currently the only black owned bank in the country.





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SS4-PRASA-REF-003

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I would also like to highlight that all investments held by the bank are accounted and managed using stringent liquidity and risk management framework approved by the board and reported accordingly to the Reserve Bank on a monthly basis. VBS is also one of the most highly capitalized banks in the country, with a current capital adequacy of 32% against industry average of 15%.

The two largest shareholders of VBS are the Public Investment Corporation (PIC) and Vele investments, a 100% black owned investment company with more than 50 billion in assets. These shareholders are registered as VBS shareholders of record by the Reserve Bank. The bank is therefore owned by highly capitalized institutions.

Yours sincerely

---

Andile Ramavhunga  
**Chief Executive Officer**



## MEMORANDUM

|                 |   |
|-----------------|---|
| <b>To:</b>      | <b>MR CROMET MOLEPO</b>                     |
|                 | <b>ACTING GROUP CHIEF EXECUTIVE OFFICER</b> |
| <b>From:</b>    | <b>YVONNE PAGE</b>                          |
|                 | <b>ACTING GROUP CHIEF FINANCIAL OFFICER</b> |
| <b>Date:</b>    | <b>30 January 2018</b>                      |
| <b>Subject:</b> | <b>VBS INVETSMENT</b>                       |

### 1. PURPOSE

- 1.1. The purpose of this memorandum is to respond to questions raised by the Sunday Times as well as the AGCEO.

### 2. BACKGROUND

- 2.1. The Sunday Times send through questions to AGCEO to respond to – the questions and answers are below:
- 2.2. There are now questions raised by AGCEO – the response to the questions are below.

### 3. QUESTIONS RAISED BY SUNDAY TIMES AND ANSWERS THERETO:

- 3.1. Q: Can Prasa tell the Sunday Times who is driving this investment from Prasa and who is leading the process at VBS?  
A: It is driven from the AGCEO office.
- 3.2. Q: Has Prasa facilitated similar investments in the past with VBS bank? If so, when?  
A: No
- 3.3. Q: Where is the money for this investment going to be sourced by Prasa considering that it has been in the red financially and struggling to pay salaries?  
A: Should investment be made; monies will come from surplus monies from capital that may be available for short periods of time due to delays or postponement on some capital projects.
- 3.4. Q: How does Prasa ensure that the investment and VBS as an institution identified for the investment falls within National Treasury regulations that Prasa must adhere to?  
A: The investment must comply with Treasury Regulation no 31.3.
- 3.5. Q: Has Prasa approached National Treasury for permission to make payment to VBS?



A: Prasa was in process of doing an analyses to understand if proposal complies with PRASA policy and would then approach Treasury officially to ensure it complies with relevant regulations.

3.6. Q: We understand that the acting CEO, Cromet Molepo as well as the interim chairwoman of the board, Adv. Makhubele, have instructed that the first payment of R500-million be made to VBS. Was payment made?

A: No instruction was received from CEO and Chairperson of the Board to do payment, and no payment was made to VBS bank.

3.7. Q: Can Prasa confirm that VBS bank meets the investment criteria of Prasa?

A: VBS bank does not meet the investment criteria of PRASA.

3.8. Q: If no, why?

A:

- Any activity which may be construed as speculative in nature is expressly forbidden.
- Institutions must have a minimum short term domestic credit rating of F1 or equivalent by reputable credit rating agency.
- Counterparty must have a minimum equity of R2.5 billion.
- Preservation of capital by only investing in money market instruments.
- VBS does not meet the credit risk analyses that was done on their financial statements.
- Permissible investment instruments are money market linked instruments that allow liquid funds at short notice while obtaining an attractive return.

3.9. Q: If yes, please explain how?

A: NA

3.10. Q: Are there deadlines that VBS or Prasa have agreed to and if so, who was involved in this process?

A: NA

3.11. Q: What are the terms and conditions of the investment by Prasa, and has any official agreement been signed?

A: NA

3.12. Q: From what cost centre are these funds being drawn? Is it from the Prasa capital budget, or pension fund etc.?

A: See response to 3.3.

3.13. Q: In terms of regulations and internal Prasa controls, does the authority fall with the office of the CEO or chairwoman to authorise such payments?

A: No

**4. QUESTIONS RAISED BY AGCEO AND ANSWERS THERETO:**

**4.1.** Q: We also need explanation from you and your team how the communication and the selective proposal of VBS ended up with the media.

A: We have no idea.

**4.2.** Q: Also confirm whether this is the only proposal for investment you and your team have ever received.

A: Argon Asset Managers contacted the Treasury team last year; as Argon did not meet the investment policy criteria, we declined the proposal.

**4.3.** Q: Why is the proposal by another institution given to us on Monday omitted in the Sunday Times enquiry?

A: We have no idea.

**5. CONCLUSION**

**5.1.** We do not know how the information got to the media.

**5.2.** I did consult with National Treasury as per discussion with yourselves. National Treasury advised that I write an official letter requesting advise from them, they are there to guide when matters are not clear.

Prepared by



---

**Ms Yvonne Page**

**Acting Group Chief Financial Officer**

**Date:** 30/01/2018



Ms Yvonne Page  
PO Box 73219  
Lynnwood Ridge  
0040

Mr. Cromet Molepo  
Acting GCEO PRASA  
PRASA House  
1040 Burnett Street  
Hatfield  
0120

Dear Mr Molepo

## RESIGNATION

Please accept this letter as notice of my resignation. My last day of service will be 31 March 2018.

I want to take this opportunity to thank you for the personal growth and professional experience I have gained in the years I have worked for PRASA.

There is a mammoth task ahead of PRASA to make it into a profitable and sustainable business and I wish you all the success in getting it there.

Yours sincerely



---

Yvonne Page  
Date: 1/01/2018



**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

**COMPREHENSIVE INVESTIGATION REPORT:  
PRASA CONTRACTS -**

**RESURGENT RISK MANAGEMENT (PTY) LTD**



**prasa**

PASSENGER RAIL AGENCY  
OF SOUTH AFRICA

**31 OCTOBER 2016**





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31 October 2016

National Treasury  
Office of the Chief Procurement Officer (OCPO)

Dear Mr Vukani Ndaba

Via Email: [Vukani.Ndaba@treasury.gov.za](mailto:Vukani.Ndaba@treasury.gov.za)

**COMPREHENSIVE INVESTIGATION REPORT: PRASA CONTRACTS –  
RESURGENT RISK MANAGEMENT**

Attached please find our comprehensive investigation report in terms of our SLA, regarding Resurgent Risk Management, one of the 20 PRASA contracts assigned to us for investigation.

Should you have any further questions or concerns, please contact me on 082 419 1262 or 012 664 5568, or on e-mail at [wbouwer@nexfor.co.za](mailto:wbouwer@nexfor.co.za)

Yours faithfully

A handwritten signature in black ink, appearing to read 'adv w. bouwer', with a long horizontal stroke extending to the right.

**ADV WERNER BOUWER**  
**DIRECTOR: NEXUS FORENSIC SERVICES (PTY) LTD**

## EXECUTIVE SUMMARY

| INVESTIGATION RESULTS – BACKGROUND SEARCHES   |  |
|---|--|
| SUMMARY OF MAJOR FINDINGS & CONCLUSIONS   | RECOMMENDATIONS  |
| <p>SARS responded that it did not issue RRM's TCC with ref no 0064/2015/0005510417</p> <p>RRM denied that SARS did not provide it, and referred the issue for legal advice.</p> | <p>Further follow-up with SARS should be conducted before any steps are considered, as it is possible that SARS' records may be incorrect.</p> |

| INVESTIGATION RESULTS – APPOINTMENT OF RRM THROUGH CONFINEMENT  |  |
|---|--|
| SUMMARY OF MAJOR FINDINGS   | RECOMMENDATIONS  |
| <p>The GCEO instructed that the confinement process should be followed as sourcing method.</p> <p>The CPTC never recommended or approved the confinement application as contained in the recommendation report signed by the GCEO. The statement in the recommendation memorandum that the CTPC had approved the confinement application is incorrect.</p> <p>There are numerous material and irreconcilable contradictions between the CTPC's resolution in December and the approved conditions in the approved memorandum.</p> | <p>Disciplinary action against Mantsane for financial misconduct (contravention of section 57), inter alia for –</p> <ul style="list-style-type: none"> <li>o Dereliction of duties</li> <li>o Failing to prevent irregular expenditure</li> </ul> |



| INVESTIGATION RESULTS – APPOINTMENT OF RRM THROUGH CONFINEMENT  |   |
|---|---|
| SUMMARY OF MAJOR FINDINGS   | RECOMMENDATIONS   |
| <p>The confinement application was substantively unjustifiable (no urgency / emergency; expertise that was unique; or secrecy).</p> <p>A budget was not secured for the SRTVA project before or after the GCEO signed the confinement request.</p> <p>The amounts of R43 291 621,06 (FY 2016) and R9 580 216,26 (FY 2017) were spent irregularly.</p>   | <p>Criminal action against Phungula and Mantsane on a charge of fraud, for misrepresenting what the CTPC had approved in the recommendation report</p> <p>Criminal action against the GCEO for failing to comply with his fiduciary duties (section 50) and general responsibilities (section 51) in his capacity as a member of the Accounting Authority.</p> <p>That the Board considers reporting the RRM contract to the SA Police Services in terms of section 34 of PRECCA, to ensure compliance with its reporting duty.</p> |
| SUMMARY OF MAJOR CONCLUSIONS  |   |
| <p>Mantsane failed to prevent irregular expenditure when participating in the process that followed after the 2014 December meeting, which culminated in the 1 March approval (<b>Exhibit 13</b> - which he drafted)</p> <p>Phungula, having been present at the September and December 2014 meeting, had to have had intimate knowledge of the CTPC's view on the confinement request. He, when signing the recommendation report; misrepresented to the GCEO and/or PRASA what the CTPC approved</p> <p>The GCEO, when instructing the end-user to follow the confinement process, acted grossly negligent in the execution of his duties</p> |   |

| INVESTIGATION RESULTS – APPOINTMENT OF RRM THROUGH CONFINEMENT  |  |                 |
|---|--|-----------------|
| SUMMARY OF MAJOR FINDINGS   |  | RECOMMENDATIONS |
| <p>The findings and conclusions pertaining to the actions of Mantsane, the GCEO and Phungula, falls within the 'manner of action' described and prohibited in sections 4 and 12(1)(i) of PRECCA.</p> <p>It cannot be excluded that the disregard for proper process as per our findings and conclusions above, was as a result of, or in lieu of; gratification as defined in PRECCA.</p> |  |                 |

| INVESTIGATION RESULTS – CONTRACT COMMENCEMENT AND MOBILISATION FEE   |  |
|--|--|
| SUMMARY OF MAJOR FINDINGS  | RECOMMENDATIONS  |
| <p>Khuzwayo, having attended both CTPC meetings, had to have known or at least suspected that the approval of the confinement was irregular. As such, Khuzwayo failed to act reasonably when notifying SCM of the approval, and thereby ensuring the process progresses.</p> <p>The payment plan (where the mobilisation fee is provided for) attached to the SLA was a result of an irregular approval</p> <p>The mobilisation fee was not justified as per <b>paragraph 2.4</b> of the October 2014 memorandum of Phungula, and therefore irregular</p> <p>Mantsane, when he accepted the invoice for the mobilisation fee and submitted it for payment, failed to prevent irregular expenditure</p> <p>RRM did commence with work on 1 April 2015.</p> <p>We are unable to make any finding as to whether the mobilisation fee constitutes fruitless and wasteful expenditure as well, due to the lack of evidence within PRASA on the deliverables received.</p> | <p>PRASA should consider the institution of disciplinary proceedings against Khuzwayo and Mantsane on charges of financial misconduct (contravention of section 57).</p> |
| SUMMARY OF MAJOR CONCLUSIONS   |  |
| <p>Khuzwayo and Mantsane failed to take effective and appropriate steps to prevent irregular expenditure.</p>  |  |

| INVESTIGATION RESULTS – CONTRACT EXECUTION  |  |
|---|--|
| SUMMARY OF MAJOR FINDINGS & CONCLUSIONS   | RECOMMENDATIONS  |
| <p>RRM provided numerous reports to PRASA on the SRTVA, and provided services to PRASA</p> <p>The logistics management on PRASA’s side has not been according to the contract, in that Steering Committees were not held</p> <p>PRASA has been struggling to pay the contract, due to a lack in budget</p> <p>RRM has been paid the amounts as per the payment schedule, although not always on time.</p> <p>We were severely hampered by the lack of PRASA evidence pertaining to the monitoring and logistics in respect of the contract.</p> | <p>It was not within our scope to investigate where documentation is, or who is directly responsible for the delay in providing the documentation and data, or for misplacing / destroying / losing the documentation / data.</p> <p>The PRASA Board should investigate the root causes for the delay or omission in providing the required data / documentation; and act accordingly.</p> |





**PASSENGER RAIL AGENCY OF SOUTH AFRICA  
("PRASA")**

**PRIVILEGED, PRIVATE AND CONFIDENTIAL**

**REPORT: RESURGENT RISK MANAGERS (PTY) LIMITED**



**REPORT: PASSENGER RAIL AGENCY OF SOUTH AFRICA/ RESURGENT RISK MANAGERS (PTY) LTD**

**1. INTRODUCTION**

- 1.1. On 6 May 2013 Kabelo Mantsane ("Mantsane"), in his position as Head Group Corporate Security for the Passenger Rail Agency of South Africa ("PRASA"), sought approval from the GCEO Tshepo Lucky Montana ("Montana") for a confinement to appoint Resurgent Risk Managers (Pty) Ltd, registration number 2010/015326/07 ("Resurgent") for undercover operation and information gathering services to the value of R4 126 230-00 for the Western Cape and R2 750 820-00 for KZN [See **Annexure "A"**].
- 1.2. Subsequent to a recommendation report on 27 February 2015 Montana approved the appointment of Resurgent on 1 March 2015 at a "total budget of approximately" R87 846 922-19 over a period of 24 months to engage in risk and security vulnerability assessments. This appointment appears to have been the result of a "stand-alone" confinement. [See **Annexure "B"**].
- 1.3. On 4 March 2015, a Notice to Proceed was issued by PRASA to Resurgent and a consultancy agreement was signed on 18 May 2015. [See **Annexures "C" and "D"**].
- 1.4. An investigation was commissioned to determine the veracity of these risk and security vulnerability assessments, the underlying contracts and any possible irregularities in the appointment of this supplier.
- 1.5. This report (in whole or in part) may not, without our prior written consent -



- 1.5.1. be transmitted or disclosed to or be used to be relied upon by any other person or entity whatsoever for any purposes whatsoever; or
- 1.5.2. be quoted or referenced to or made public or filed with any third party for any purposes whatsoever,

except, in either case to the extent that PRASA is required to disclose this report by reason of any law, regulation or order of court or in seeking to establish its cause of action/defence in any legal or regulatory proceedings or investigation.

## 2. BACKGROUND

- 2.1. Resurgent, according to their own prospectus, specialize in identifying, categorizing and managing risk, whether preventable risk, optional strategic risk or unpreventable external risk and implementing solutions.
- 2.2. In the mentioned recommendation report, with regard to security risk threat and vulnerability assessments in corporate security, it is prudent that security threats within PRASA need to be understood and that PRASA should proactively develop security measures to eliminate or manage potential threats and the impact thereof.
- 2.3. The report went further and in detail explained the scope of security service provision to assist in identifying security vulnerabilities and suggests that a confinement contract should be entered into with Resurgent for a 24-month period.
- 2.4. In a memorandum from Mantsane of PRASA to Arthur Fraser, a director of Resurgent, dated 19 March 2015 and headed "Resurgent Payment Schedule" (but only signed by Mantsane on 22 April 2015), the payment of the R87,846,922.19 over 2 years is detailed month by month. Various services to be executed by Resurgent over 24 months are also



listed with the payable amount next to it. Two more evenly dated memorandums deal with the scope of work to be performed and project milestones.

2.5. In the 18 May 2015 "*Consultancy Agreement for Security Risk Threat and Vulnerability Assessment*" under contract number HO/CORPSEC/01/03/2015 with Resurgent, Montana described services to be provided from 1 April 2015 to 31 March 2017 at the cost mentioned above.

2.6. Although the Consultancy Agreement was only signed by Montana on or about 18 May 2015, the notice from PRASA to Resurgent to proceed was already issued on 4 March 2015.

2.7. According to available financial information gleaned from the financial management system of Prasa, Resurgent issued the following invoices to Prasa, which were all paid :

2.7.1 2015-04-25 : R4,680,425.62 [paid 2015-05-28] - mobilisation and project initiation

2.7.2 2015-05-25 : R3,597,788.42 [paid 2015-06-05] - operational Implementation

2.7.3 2015-06-25 : R3,597,788.42 [paid 2015-07-01] - operational Implementation

2.7.4 2015-07-25 : R3,597,788.42 [paid 2015-09-18] - operational Implementation [R7,195,576.84 paid Including invoice of 2015-08-25]





2.7.5 2015-08-25 : R3,597,788.42 [paid 2015-09-18] – operational implementation [R7,195,576.84 paid including Invoice of 2015-07-25]

2.7.6 2015-09-25 : R3,597,788.42 [paid 2015-12-03] – operational implementation

2.8. The amounts charged on the face of it, appear to be excessive when regard is had to the nature of the services to be rendered. However, a more detailed verification of these services as well as an analysis of their reports generated will provide a more clear indication as to whether the amounts charged were appropriate or excessive.

2.9. According to Thabiso Phori of Prasa all original invoices of Resurgent were collected and signed for by Nexus Forensic Investigations (one of the firms engaged by National Treasury) and thus need to be requested from them. We presume that all Resurgent reports to Prasa will also be found with Nexus.

2.10. Two employees of Prasa are indirectly linked on a second tier level to Resurgent by virtue of the fact that they share directorships with one of Resurgents' directors, A Frazer, in other unrelated entities (namely Khula Industrial Investment Corporation (Pty) Ltd and Morvest Group Limited). They are Audrey Mokhobo and Popo Molefe. Mokhobo however resigned from Khula before Resurgent was appointed by PRASA and Molefe has since resigned from Morvest during 2016.

2.11. The information of the two businesses, namely Khula Industrial Investment Corporation (Pty) Ltd, registration number 1998/022478/07 and Morvest Group Ltd, registration number 2003/012583/06, are summarised below.



2.12. In addition, PSIRA's online records were scrutinised as Resurgent's services indicate that it and its directors and employees should be registered with PSIRA. Enquiries made revealed that neither Resurgent nor its directors seem to be registered with PSIRA.

2.13. The nature of the confinement, the process followed and the validity of the Supply Chain Management process need to be scrutinised further.

### 3. **RESURGENT COMPANY INFORMATION**

3.1. The active directors of **Resurgent** are as follows:

3.1.1. Arthur Joseph Peter Fraser  
ID number 6502245099089

Active since 01/08/2011

3.1.2. Barry Henry Fraser  
  
ID number 6809305292086

Active since 01/08/2011

3.1.3. Manala Elias Manzini  
  
ID number 5503095731087

Active since 01/08/2011

3.1.4. Stanley Siyabonga Mcetywa  
  
ID number 6503165671089

Active since 13/12/2013



3.1.5. Morestat Corporate Services

Active since 13/12/2012

3.2. The resigned directors of Resurgent are as follows:

3.2.1. Azlez Kader

ID number 6005285212083

Resigned 01/08/2011

3.2.2. Jayesh Nana

ID number 7104185115089

Resigned 01/08/2011

3.2.3. Janet Mary Salmon

ID number 5606180103185

Resigned 19/07/2010

3.3. The current auditors of Resurgent are Mazars.

4. **KHULA COMPANY INFORMATION**

4.1. The active directors of **Khula Industrial Investment Corporation** are as follows:

4.1.1. Jurgen Kogl

ID number 5606065186008



Active since 11/12/1998

4.2. The resigned directors of **Khula Industrial Investment Corporation** are as follows:

4.2.1. Barry Henry Fraser

ID number 6809305292086

Resigned 24/12/2004

4.2.2. Matodzi Liphoba

DOB 430417

Resigned 22/08/2000

4.2.3. Maxwell Tamsanqa Maisela

DOB 420504

Resigned 18/09/2001

4.2.4. Audrey Theresa Masisi Mokhobo (PRASA)

ID number 5601170765085

Resigned 22/08/2000

4.2.5. Phangisile Virginia Mtshali

ID number 6702220318088

Resigned 24/12/2004





4.2.6. Charles David Nupen

ID number 5006195612082

Resigned 18/09/2003

4.2.7. Robinson Muthanyi Ramaite

ID number 6903075973080

Resigned 07/02/2001

4.2.8. Khehla Shubane

ID number 5605225755082

Resigned 25/09/2003

4.2.9. Frederick van Zyl Slabbert

ID number 4003025076001

Resigned 07/06/1999

## 5. **MORVEST COMPANY INFORMATION**

5.1. The active directors of **Morvest Group** are as follows:

5.1.1. Alexander Evan

ID number 6509225079080

Active since 15/06/2011



5.1.2. Madoda Papiyana

ID number 7311045443086

Active since 12/01/2006

5.1.3. Surendranath Singh

ID number 5903145221081

Active since 12/01/2006

5.1.4. Faheem Mohammed Varachia

ID number 8910125195083

Active since 19/08/2015

5.1.5. Mohammed Suliman Varachia

ID number 6905185231085

Active since 12/01/2006

5.2. There are some 31 resigned directors of **Morvest** and the relevant resignations are *inter alia* as follows:

5.2.1. Barry Henry Fraser

ID number 6809305292086

Resigned on unknown date

5.2.2. Popo Simon Molefe

ID number 5204265732084



Resigned 20/04/2016

5.2.3. Robinson Muthanyi Ramaite

ID number 6903075973080

Resigned on unknown date

## 6. CONCLUSIONS AND FURTHER ACTION

- 6.1. The appointment of Resurgent by way of a stand-alone confinement must be scrutinised inasmuch as this method of appointing suppliers has been consistently improperly utilised and by PRASA and its employees.
  - 6.2. In addition, the motivation of Resurgent's appointment by way of a confinement by Phungula and Mantsane requires scrutiny, as the motivation appears to be weighted in favour of the supplier rather than PRASA.
  - 6.3. The amounts invoiced appear to be excessive for the nature of the services rendered, but a physical verification of these services as well as the reports provided to PRASA with regard to the services will more accurately determine whether the amounts charged are valid, and represent the value received by PRASA for the services rendered.
  - 6.4. Additional staff members involved in the confinements should be identified and interviewed with a view to instituting possible disciplinary action against them.
7. This report was prepared solely for the purpose of reporting our findings to you. It should therefore not be utilized for any other purpose.



8. We trust that you find this report in order and we look forward to taking this matter further.





A



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PASSENGER RAIL AGENCY  
OF SOUTH AFRICA

Flare 2.

## SUPPLY CHAIN MANAGEMENT

## CONFINEMENT

TENDER NUMBER:

PROJECT DESCRIPTION: INFORMATION GATHERING OPERATIONS

TRANSACTION: CONFINEMENT

END USER  
(REGION / DEPARTMENT): PRASA CORPORATE SECURITY

## 1 BACKGROUND

1.1. PRASA is faced with a complicated and sophisticated threat that takes advantage of the open nature of the PRASA operational environment. This current state of vulnerability allows the launch of attacks against PRASA assets. The complex nature of the threat is based on the fact that the threat is internally brewed by individuals with a comprehensive understanding (technical and infrastructure employees) of the entire rail network. The knowledge of the rail network operations makes it possible for the criminal elements to strategically perpetrate acts of sabotage against PRASA in an attempt to paralyse passenger rail services. The most critical rolling stock and rail network that is constantly targeted by criminal elements are:

- 1.1.1. Motor Coaches
- 1.1.2. Signalling Cables and systems.
- 1.1.3. Vandalism of Signal Cables.
- 1.1.4. Object Placement on perway.

1.2. The targeting of motor coaches is to incapacitate service delivery that is likely to lead to less trains being available which will reflect on the failure of PRASA leadership to deliver reliable passenger services to the communities. Once the objective of lack of service delivery is achieved this will lead to the mobilisation of communities to potentially violently target PRASA assets, infrastructure, marches against and boycott PRASA services.

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APPROXIMINAL ORGANISATION SENT OF INFORMATION GATHERING AND COVERT SECURITY COMPANIES: FEBRUARY 2013

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PROVIDING RAIL SERVICES  
TO SOUTH AFRICA

- 1.3. Since the beginning of the year the total damage incurred by PRASA due to train torching is estimated in excess of R70 million.
- 1.4. This is further aggravated by the prevalence of collusion within the company whereby employees provide critical and sensitive internal information to criminals to advance their own personal interests. There is furthermore a common objective amongst some groups within the company to discredit the current PRASA Executive Management in an effort to force a regime change within the organisation. An even greater concern is that some of these employees are at operational strategic levels within the PRASA Rail environment where they can severely cause harm to PRASA and destabilise passenger rail services.
- 1.5. The ongoing incidents of gross vandalism, torching of trains and cable theft being experienced in Gauteng Province have negatively impacted on Metrorail service delivery. This situation has to be addressed as a matter of urgency. It is therefore imperative that all the relevant, applicable and necessary resources are sourced to ensure that the requisite passenger rail services are in place and operate on schedule with adequate safety and security.
- 1.6. It must furthermore be noted that the abovementioned criminal activities may result in total service disruption of Metrorail services across PRASA Rail operational environment particularly in Gauteng Province, the Western Cape and Kwa-Zulu Natal Regions if the relevant proactive measures are not implemented with immediate effect. Although the current random spate of torching of trains is mostly taking place in Gauteng there are indications of the threat spreading to other regions. This points to a serious security challenge that PRASA is expected to face in a short to medium term.
- 1.7. The current situation requires intensive information driven investigation and network that must involve surreptitious operations. This type of approach will be able to detect and expose any underhanded planning that may be taking place within criminal groupings. This strategy is key to breaking the backbone of criminal groupings that have malicious intentions towards PRASA and South African commuters.
- 1.8. The operational strategy of these criminal groupings requires specialised information gathering skill that can infiltrate and expose the malicious activities and the individuals behind acts of criminality that are being perpetrated against PRASA. The PRASA Security and SAPS deployment irrespective of the numbers that are deployed will not deal with the intrinsic nature of the prevailing security threat of train torchings by criminal groupings hence it is highly recommended that specialised information gathering tactic be used to stabilise the situation.



## **2. PURPOSE**

2.1. The purpose of this motivation is to seek approval for the appointment of competent and reputable Security Companies to conduct undercover operation and information gathering operations on behalf of PRASA at an operational level. The purpose is to gain evidence or information to detect and expose acts of criminality against PRASA Assets. The undercover operation technique provides a crucial support to information gathering that together produces a complete picture of an environment being investigated.

## **3. SCOPE OF WORK**

3.1. The Scope of Security Service Provision is as follows:

- 3.1.1. Breaking the backbone malicious damage to property and train torching.
- 3.1.2. Information gathering.
- 3.1.3. Undercover Investigation.

3.2. The Interventions above will ensure the achievement of the following:

- 3.2.1. Identification of criminal elements involved in malicious activities perpetrated against PRASA.
- 3.2.2. Identification of staff members who collude with criminal elements.
- 3.2.3. Enhancement of investigative capabilities so as to ensure more successful criminal prosecutions.
- 3.2.4. Ensuring consistent and uninterrupted service delivery.
- 3.2.5. Identification and management of security breaches within the organisation.
- 3.2.6. Building of a comprehensive security framework customised to PRASA Security requirements.
- 3.2.7. Protection of PRASA Assets.



#### **4. CONTRACT DELIVERY PERIOD**

- 4.1. The contract delivery is over a period of three months for both service providers recommended in this submission.

#### **5. PROCEDURAL**

##### **5.1. Confinement**

- 5.2. The companies listed are specialists in providing undercover operation and information gathering services. The Policy Authority of the Supply Chain Management Policy under clause 2.2 directs that any deviation from the SCM policy and procedure must be approved by the GCEO. The SCM policy through clause 11.3.7 provides further guidance regarding the confinement for appointment of professional services and the consequent requirement for the GCEO to approve and ratify such requests.

#### **6. REASONS FOR CONFINEMENT**

- 6.1. The nature of the security service required necessitates the application of a need to know principle as the element of secrecy needs to be attained at all costs. An open tender process will defeat the whole purpose of undercover operations as there is a possibility that this security approach will be made known to the perpetrators of these malicious activities. It is therefore prudent that the companies recommended be appointed on a confinement due to the sensitive nature of surreptitious security operations.
- 6.2. The severity and seriousness of the security risks that PRASA is being exposed to furthermore requires that an emergency process be followed to expedite the deployment of the specialised information requirement within the PRASA environment.
- 6.3. Both companies are reputable service providers with extensive experience in undercover operations and information gathering expertise.

#### **7. RISK IF PROJECT IS NOT IMPLEMENTED**

- 7.1. The risks associated with non implementation of this confinement are summarised but are not limited to the following:

##### **7.1.1 Ongoing vandalism and arson attacks directed towards PRASA Rail Assets;**



- 7.1.2 A negative impact passenger rail service delivery as a result of malicious activities;
- 7.1.3 Revenue leakage as maintenance cost increase and fare revenue losses will be suffered;
- 7.1.4 Continuous theft of train infrastructure components;
- 7.1.5 The annual astronomical expenditure experienced by PRASA Rail as a result of the above mentioned criminal activities far exceeds the implementation of security measures proposed by this confinement.
- 7.1.6 Increase in insurance liabilities
- 7.1.7 Risks associated with insurance renewal and possible increase in insurance cost.

## 8 DETAIL OF FUNDING FOR PROJECT

| # | Company                             | Contract Value | Regions        |
|---|-------------------------------------|----------------|----------------|
| 1 | Open Water Risk Solutions (Pty) Ltd | R 2 731 668.00 | Gauteng        |
| 2 | Resurgent Risk Managers (Pty) Ltd   | R 4 126 230.00 | Western Cape   |
| 3 | Resurgent Risk Managers (Pty) Ltd   | R 2 750 820.00 | Kwa-Zulu Natal |

## 9 BEE REPORT

- 9.1 Attached is documentation provided by the companies.

## 10 SECURITY SCREENING

- 10.1 The security screening will be conducted by Corporate Security.

## 11 BANK RATING

- 11.1 To be conducted by Supply Chain Management

## 12. RECOMMENDATION

- 12.1 PRASA Security herewith sought the Group Chief Executive Officer's approval for the appointment of Open Water Risk Solutions (Pty) Ltd for undercover operation and information gathering services within Gauteng for a period of three months at a total contract value of R 2,731,668.00.





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AUTHORITY OF SOUTH AFRICA

12.2 PRASA Security herewith sought the Group Chief Executive Officer's approval for the appointment of Resurgent Risk Managers (Pty) Ltd for undercover operation and information gathering services for a period of three months that is recommended at a total contract value of R 4 126 230.00 for the Western Cape and R 2 750 820.00 for Kwa-Zulu Natal.

12.3 The companies contained in this submission have been recommended by the Government Security Regulator as reputable and credible service providers that specialises in undercover operations and information gathering services.

Requested by

*pp* Kabelo Mantsane  
Head Group Corporate Security

06/05/13  
Date

|  |  |
|--|--|
| Recommended <input type="checkbox"/>                                   | Approved <input type="checkbox"/>                                      |
| Not Recommended <input type="checkbox"/>                               | Not Approved <input type="checkbox"/>                                  |
| <hr/> Mr C Mbatha<br>Group Chief Procurement Officer<br><br>Date _____ | <hr/> Mr TL Montana<br>Group Chief Executive Officer<br><br>Date _____ |

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APPROPRIATE ORGANISATIONS OF INFORMATION GATHERING AND COVERT SECURITY COMPANIES: FEBRUARY 2013

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PASSENGER RAIL AGENCY  
OF SOUTH AFRICA

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**RECOMMENDATION REPORT**

**TO :** GROUP CHIEF EXECUTIVE OFFICER

**FROM :** GROUP CHIEF PROCUREMENT OFFICER

**TENDER NUMBER :** N/A

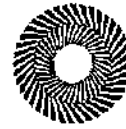
**PROJECT DESCRIPTION :** SECURITY RISK THREAT AND VULNERABILITY ASSESSMENTS

**END USER :** CORPORATE SECURITY

**1. Background**

**1.1** The Security Risk, Threat and Vulnerability Assessments (SRTVA) are an important aspect of determining the security situations within an organisation. In today's volatile world, PRASA as a company is not immune to security threats that may hinder it to deliver on its mandate of the provision of safe, reliable and efficient public passenger transport. It is therefore quite prudent that SRTVA approach be adopted to get a clear understanding of security threats faced by PRASA in order to proactively develop security measures to eliminate or manage the potential threat and the associated impact. This methodology will empower and give PRASA Corporate Security direction in the development and implementation of its security plans that will support the business objectives of PRASA.

*J. T. M.*



- 2.2 This exercise will furthermore assist in identifying security vulnerabilities within PRASA Environment and develop mitigating measures through the development of the PRASA Security Strategy that addresses the uniqueness of every PRASA business unit.

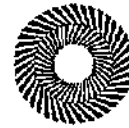
### 3. SCOPE OF WORK

#### 3.1 The Scope of Security Service Provision is as follows:

- 3.1.1 This exercise will furthermore assist in identifying security vulnerabilities within PRASA Environment and develop mitigating measures through the development of the PRASA Security Strategy that addresses the uniqueness of every PRASA business unit.
- 3.1.2 An assessment of threat and vulnerability applicable to Corporate Office, head offices, Regional offices and other physical locations (Stations, Staging Yards, and Depots).
- 3.1.3 Identify security threats pertain to the modernisation projects with specific reference to the security state of readiness for the implementation programme.
- 3.1.4 Evaluation of the safety of personnel, passengers, visitors and assets within premises of PRASA.
- 3.1.5 A detailed review of employee safety and security processes at all locations.
- 3.1.6 Identifying emerging threats, scrutinizing known risks, and evaluating potential strategic and tactical responses.
- 3.1.7 An assessment of the current state of physical security and provision of possible solutions.
- 3.1.8 An evaluation of the use of technology and electronic security systems and their applicability when compared to best practices and identified threats.

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- 3.2.1 Identification and management of security breaches within the organisation.
- 3.2.2 Identification and exposure of staff members who collude with criminal elements.
- 3.2.3 Identification of personnel members involved in acts of corruption.
- 3.2.4 Identification of criminal elements involved in fictitious liability claims against PRASA.
- 3.2.5 Identification of criminal elements involved in malicious activities perpetrated against PRASA.
- 3.2.6 Enhancement of investigative capabilities so as to ensure more successful criminal prosecutions.
- 3.2.7 Ensuring consistent and uninterrupted service delivery.
- 3.2.8 Building of a comprehensive security framework customised to PRASA Security requirements.
- 3.2.9 Protection of PRASA Assets
- 3.2.10 Ability of PRASA Security to match the Modernisation Project and maintain the environment post modernisation.

#### **4. CONTRACT DELIVERY PERIOD**

- 4.1 The contract delivery is over a period of twenty four months for the service provider recommended in this submission.

#### **5. PROCEDURAL**

##### **5.1 Confinement**

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OF SOUTH AFRICA

## **7. RISK IF PROJECT IS NOT IMPLEMENTED**

**7.1** The risks associated with non-implementation of this confinement are summarised but are not limited to the following:

- 7.1.1** Prevalence of theft and corrupt activities within the company.
- 7.1.2** Collusion with criminal elements on corrupt activities perpetrated against PRASA.
- 7.1.3** Continuous acts of vandalism and arson attacks directed towards PRASA Assets;
- 7.1.4** A negative impact passenger rail service delivery as a result of malicious activities;
- 7.1.5** Revenue leakage as maintenance cost increase and fare revenue losses will be suffered;
- 7.1.6** Continuous theft of infrastructure, train and bus components;
- 7.1.7** The annual expenditure experienced by PRASA as a result of the above mentioned criminal activities far exceeds the implementation of security measures proposed by this confinement.
- 7.1.8** Increase in insurance liabilities.
- 7.1.9** Risks associated with insurance renewal and possible increase in insurance cost.

## **8 DETAIL OF FUNDING FOR PROJECT**

- 8.1** Corporate Security sought the Group Chief Executive Officer's approval for confining business to Resurgent Risk Managers (Pty) Ltd as a framed agreement between PRASA Corporate Security and Resurgent Risk Managers (Pty) Ltd at a total budget of approximately R 87 846 922.19 over a period of twenty four months.

T. L. M.

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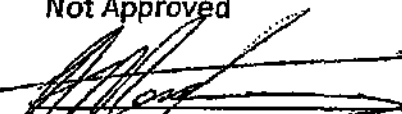
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OF SOUTH AFRICA

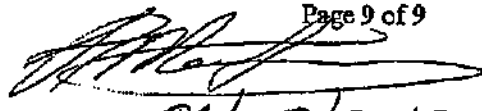
### 13. RECOMMENDATION

13.1 Corporate Security sought the Group Chief Executive Officer's approval for confining business to Resurgent Risk Managers (Pty) Ltd as a framed agreement between PRASA Corporate Security and Resurgent Risk Managers (Pty) Ltd at a total budget of approximately R 87 846 922.19 over a period of twenty four months.

|  |   |
|--|---|
| Recommended <input checked="" type="checkbox"/>                                    | Approved <input checked="" type="checkbox"/>  |
| Not Recommended <input type="checkbox"/>   | Not Approved <input type="checkbox"/>   |
|  |  |
| Dr J Phungula  | Mr TL Montana   |
| Group Chief Procurement Officer  | Group Chief Executive Officer   |
| Date <u>27-02-2015</u>   | Date <u>01/03/2015</u>  |

Dr Phungula and Mr Mantzane  
Approval for the confinement of  
business to Resurgent Risk Managers  
(Pty) Ltd is with effect from  
1 April 2015. A proper contract  
should be put in place and  
security of information to be  
protected at all times.

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01/03/2015




**prasa**

 PASSENGER RAIL AGENCY  
OF SOUTH AFRICA

 PRASA HoUSE  
1040 Burnett Street  
Hatfield  
Pretoria

 Private Bag X101  
Braamfontein, 2017  
T: +27 12 748 7000

**NOTICE TO PROCEED**

|                   |   |                   |                     |
|-------------------|---|-------------------|---------------------|
|                   | <b>Resurgent Risk Manager (Pty) Ltd</b>           | <b>Enquiries:</b> |                     |
|                   | 31 West Street                                    |                   | Prasa House         |
|                   | Houghton  |                   | 1st Floor           |
|                   | Johannesburg, 2198                                |                   | 1040 Burnett Street |
|                   |   |                   | Hatfield, Pretoria  |
| <b>Attention:</b> | Mr Arthur Fraser                                  |                   |                     |
| <b>Email:</b>     | Arthur@resurgentrisk.biz                          |                   | mmosholl@prasa.com  |
| <b>Tel:</b>       | 084 288 6732                                      | <b>Tel:</b>       | 011 748 7293        |
| <b>Reference:</b> | HO/CORPSEC/01/03/2015                             | <b>Date:</b>      | 04 March 2015       |
| <b>Subject:</b>   | Security Risk Threat and Vulnerability Assessment |                   |                     |

Please be informed that approval has been granted for the security risk threats and vulnerability assessments for a period of twenty four months from 01 April 2015 to 31 March 2017 at R87 846 922.19 (Eighty seven million eight hundred and forty six thousand nine and twenty two Rands and nineteen cents only)

Before commencement of the service you are requested to contact:  
**Mr. Kabelo Mantsane Head Corporate Security on Tel: 011 748 7060** in order to conclude the contract arrangement.

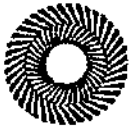
Formal contract documents will be concluded within 60 days and you will be advised regarding the signing thereof.

In this regard the following person will contact you to arrange the necessary meeting with regards to the signing of the contract.

**Mr. Sidney Khuzwayo, Senior Manager Assurance , at Tel: 012 748 7295**

**Directors:** Dr P Mofolo (Chairman), TL Montane (Group CEO),  
C Cole, X George, NS Khawwa, ZP Marase,  
C Manyungwana, MJ Mofolo, L Mchilini,  
N Mtsheni, WS Steenkamp

**Company Secretary:**  
L Zide

**prasa**PASSENGER RAIL AGENCY  
OF SOUTH AFRICA

All invoices for payment, reflecting contract number: HO/CORPSEC/01/03/2015 Vat no. 4900110612 must be made out to Finance Department Private Bag x 101 Braamfontein, 2017

Please indicate your acceptance of this notice in writing to the undersigned by no later than 06 March 2015.

Kind regards

**Ms Matshidiso Mosholi**

**Senior Manager Procurement & Tendering  
Supply Chain Management**

Date:

04/03/2015

JOHANNESBURG  
31 West Street  
Houghton  
2198  
PO Box 87084, Houghton  
Johannesburg, 2041  
Tel: +27 101 11 332-8500



**resurgent**  
risk managers

CAPE TOWN  
Suite No. 8  
Second Floor  
Madison Place  
Alphen Office Park  
Constantia  
Tel: +27 (0) 21 794-8620

4<sup>th</sup> March, 2015.

Ms Matshidiso Mosholi  
Senior Manager Procurement and Tendering  
Supply Chain Management  
PRASA  
PRASA House  
1040 Burnell Street  
Hatfield  
Pretoria

Dear Ms Mosholi

**NOTICE TO PROCEED : REFERENCE HO/CORPSEC/01/03/2015**

We acknowledge with thanks your Notice to Proceed for the Security Risk Threat and Vulnerability Assessment and record our sincere acceptance of this notice.

We will contact Mr Kabelo Mantsane regarding the signing of the contract as stipulated in your said Notice.

Once again we humbly thank you for appointing Resurgent Risk Managers with the Security Risk Threat and Vulnerability assessment and look forward to a good working relationship with PRASA.

Yours sincerely

  
ARTHUR FRASER  
CEO



RESURGENT RISK MANAGERS (PTY) LTD

## Consultancy Agreement

for

### *Security Risk Threat and Vulnerability Assessment*

CONTRACT NUMBER : *HO/CORPSEC/01/03/2015*

CONSULTANT : *Resurgent Risk Managers (Pty) Ltd*

NATURE OF WORK : *Security Risk Threat and Vulnerability Assessment*

LOCALITY : *Nationally*

COMMENCEMENT DATE : *1 April 2015*

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COMPLETION DATE : *31 March 2017*

CONTRACT VALUE : *R 87 846 922 .18 (Eighty seven Million eight hundred and forty six thousand nine hundred and twenty two rands nineteen cents ) inclusive of VAT and disbursements*

T.M.M.



RESURGENT RISK MANAGERS (PTY) LTD

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PASSENGER RAIL AGENCY  
OF SOUTH AFRICA

RESURGENT RISK MANAGERS (PTY) LTD

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## 1. DEFINITIONS

In this Agreement, the following words and expressions shall have the meaning assigned to them below and cognate expressions shall have a corresponding meaning, unless inconsistent with the context:

- 1.1. **"Agreement"** shall mean this agreement together with all the annexures attached hereto;
- 1.2. **"Applicable Law"** shall mean the Constitution and all applicable statutes, regulations, codes of good practice, sector codes, industry charters, ordinances, by-laws, rules (including rules of court) and other secondary legislation, directives, practice notes having force of law in South Africa or the province of Gauteng in which the Project is conducted, and the common law arising out of judicial decisions, notifications and with which the Parties are bound to comply;
- 1.3. **"Business Day"** shall mean any day except Saturday, Sunday or proclaimed public holiday in South Africa;
- 1.4. **"BBBEE"** shall mean Broad Based Black Economic Empowerment as defined in Act 53 of 2003;
- 1.5. **"Change in Law"** shall mean the coming into effect after Signature Date of this Agreement of any Law, or any amendment or variation to any Law other than any Law that on or before Signature Date has been published in a draft bill;
- 1.6. **"Completion Date"** shall mean the last day of the **31<sup>st</sup> March 2017** from Effective Date;
- 1.7. **"Confidential Information"** shall mean all confidential information owned exclusively by either Party relating to its business or operations and including, but without being limited thereto, information relating to technical know-how and data, drawings, methods, processes and procedures, and other information, which comes into possession or under the control of the other party in any manner whatsoever, in the course of this Agreement;

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- 1.8. **"Consents"** shall mean all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licenses, permissions required to be issued by or made with any Responsible Authority in connection with the performance of the Services;
- 1.9. **"Constitution"** shall mean the Constitution of the Republic of South Africa;
- 1.10. **"Consultant"** shall mean **Resurgent Risk Managers (Pty) Ltd** a company duly registered in accordance with the Companies Act of 2008 and having the registration number **2010/015326/07**;
- 1.11. **"Consultants Bid"** shall mean the bid submitted by the Consultant in response to the RFP;
- 1.12. **"Contract Price"** mean an amount of **R 87 846 922 .18 ( eighty seven Million eight hundred and forty six thousand nine hundred and twenty two rands nineteen cents )** inclusive of VAT and disbursements, payable to the Contract in accordance clause 9 of this Agreement;
- 1.13. **Consultant Default"** means any of the following events or circumstances:
- 1.13.1. any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act, 1936 or the Companies Act, 2008) being entered into by or in relation to the Consultant;
  - 1.13.2. a liquidator, business rescue practitioner or the like taking possession of or being appointed over, or any, winding-up, execution or other process being levied or enforced upon the whole or any material part of the assets of the Consultant;
  - 1.13.3. the Consultant ceases to carry on business;
  - 1.13.4. the Contract fails to secure the issue of the Certificate of Occupation within a period of 20 (twenty) days from the Project Completion Date;
  - 1.13.5. the Consultant commits a breach of any of its material obligations under this Agreement; and /or



- 1.13.6. the Consultant abandons the Works for a period of longer than ten (10) Business Days.
- 1.14. **"Effective Date"** shall mean 1 April 2015
- 1.15. **"Force Majeure"** shall mean any of the events listed in clause 18 which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement;
- 1.16. **"Good Industry Practice"** shall mean applying, in relation to the manner in which the Works are performed and the services are rendered, the standards, practices, methods and procedures conforming to Applicable Law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;
- 1.17. **"Law"** shall mean the Constitution, and all applicable statutes, regulations, codes of good practice, sector codes, industry charters, ordinances, by-laws, rules (including rules of court) and other secondary legislation, directives, practice notes having force of law in South Africa and the common law arising out of judicial decisions, notifications and with which the Parties are bound to comply;
- 1.18. **"Occupational Health and Safety Act"** shall mean the Occupational Health and Safety Act, 85 of 1993;
- 1.19. **"Parties"** shall mean the Consultant and PRASA;
- 1.20. **"PRASA"** shall mean the Passenger Rail Agency of South Africa a public entity established in terms of the Legal Succession to the South African Transport Services Act 9 of 1989;
- 1.21. **"PRASA's Default"** shall mean if the following occurs:
- 1.21.1. PRASA fails to make the payment in accordance with the provisions of Annexure B; and
- 1.21.2. PRASA commits a breach of any material term of this Agreement.



- 1.22. **"Professional Indemnity Insurance"** means the professional indemnity insurance of the Consultant which shall have maximum liability cover of double the contract price;
- 1.23. **"Project Term"** shall mean a period of *twenty four months* from Effective Date;
- 1.24. **"Public Entity"** shall mean a public entity as defined in the Public Finance Management Act, of 1999;
- 1.25. **"Responsible Authority"** shall mean any ministry, any minister, any organ of state, any official, any official in the public administration or any other governmental or regulatory department, commission, department, entity, service utility, board of directors, committee, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question;
- 1.26. **"Restricted Enterprise"** shall mean an entity restricted from contracting with PRASA or any other Public Entity as a result of being listed either on the register for tender defaulters compiled in terms of the regulations to the Prevention and Combating of Corrupt Activities Act 12, of 2004; or any other relevant applicable Law;
- 1.27. **"Services"** shall mean services to be provided by the Consultant as indicated in Clause 9 and Schedule A of this Agreement;
- 1.28. **"Signature Date"** shall mean the date of signature of this Agreement by the last party signing;
- 1.29. **"South Africa"** shall mean the Republic of South Africa;
- 1.30. **"Sub-Consultant"** shall mean the Sub-Consultant appointed by the Consultant subject to the provisions of clauses of this Agreement;
- 1.31. **"Variation"** shall mean any variations or extension of the scope of the Services and such Variation shall be limited cumulatively to 10% of the Contract Price.



## 2. INTERPRETATION

This Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:

- 2.1. references to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Agreement;
- 2.2. references to "Month" shall be to a calendar month;
- 2.3. references to "Parties" shall include the Parties' respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees;
- 2.4. references to a "person" shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organization, association or partnership, whether or not having separate legal personality;
- 2.5. references to any "Responsible Authority" or any public or professional organization shall include a reference to any of its successors or any organization or entity, which takes over its functions or responsibilities;
- 2.6. references to "clauses", "sub-clauses" and "Schedules" are references to the clauses, sub-clauses and Annexures of this Agreement;
- 2.7. the headings of clauses, sub-clauses and Schedules are included for convenience only and shall not affect the interpretation of this Agreement;
- 2.8. the Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Agreement or any part of it;
- 2.9. words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter;

*Handwritten signature/initials: Jm TLM*



- 2.10. references to "this Agreement" shall include this Agreement as amended, varied, novated or substituted in writing from time to time;
- 2.11. any reference to any enactment, order, regulation or similar instrument shall be construed as a reference to enactment, regulation or instrument as amended, re enacted or replaced from time to time;
- 2.12. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day in which case the last day shall be the immediately following Business Day; and references to "written" do not include communications by way of electronic mail.

### 3. INTRODUCTION

- 3.1. On the 28 August 2014 Resurgent Risk Managers presented a unique security solution, that addresses following critical security services:
  - 3.1.1. Security advice on integration of Command and Control Centres
  - 3.1.2. Development of Control System for Operational Tunnel.
  - 3.1.3. Develop Security Standards in terms of security technology for seamless integration.
  - 3.1.4. Compile detailed specification for control systems and perimeter demarcation for asset protection within the operational tunnel.
  - 3.1.5. Information Gathering and Analysis.
  - 3.1.6. Daily Debriefing of Operational Activities.
  - 3.1.7. Weekly Debriefing of Operational Activities.
  - 3.1.8. Serve in an advisory capacity in conjunction with Corporate Security on the current projects.
- 3.2. A submission for the confinement of the works to the consultant was prepared by Corporate Security and was subsequently approved on 01 March 2015

### 4. INCONSISTENCY

- 4.1. The documents forming the Agreement between the Parties are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:
  - 4.1.1. This Agreement and Annexures thereto;
  - 4.1.2. Letter of appointment of the Consultant.



4.2. If an ambiguity or discrepancy is found in the documents and same cannot be resolved by reference to the priority of the documents, the Parties shall endeavor to resolve the matter failing which they can refer the matter to arbitration in terms of this Agreement.

## 5. DURATION

This Agreement shall commence on the Effective Date and shall terminate at the end of the Completion Date.

## 6. REPRESENTATION AND WARRANTIES

### 6.1. The Consultants warranties

The Consultant hereby warrants that:

- 6.1.1. it is a limited liability company, duly incorporated and validly existing under the Laws and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Agreement;
- 6.1.2. its obligations under this Agreement are legal, valid, binding and enforceable against it, in accordance with the terms of this Agreement;
- 6.1.3. all information disclosed by or on behalf of the Consultant at any time up to the Signature Date and up to the end of the Project Term and, in particular, during the bid process preceding the award of this Agreement to the Consultant, is true, complete and accurate in all respects and the Consultant is not aware of any facts or circumstances not disclosed to PRASA which would, if disclosed, be likely to have an adverse effect on PRASA's decision (acting reasonably) to award this Agreement to the Consultant ;
- 6.1.4. the execution and performance of this Agreement does not and will not contravene any provision of its constitutive documents as at the Signature Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Consultant as at the Signature Date;
- 6.1.5. the execution and performance of this Agreement does not and will not contravene any intellectual property rights held by any other person;

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OF SOUTH AFRICA

RESURGENT RISK MANAGERS

- 6.1.6. no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the best of the knowledge of the Consultant as at the Signature Date having made all reasonable enquiries, threatened against it or to the best of its knowledge any of its Sub contractor, which is likely to have a material adverse effect on the ability of the Consultant to undertake the Works;
- 6.1.7. the Consultant is not subject to any obligation, non-compliance with which is likely to have a material adverse effect on its ability to undertake the Works;
- 6.1.8. no proceedings or any other steps have been taken or, to the best of the knowledge of the Consultant having made all reasonable enquiries, threatened for the winding-up or liquidation or business rescue (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final) or deregistration of Consultant or any (or all) of its Sub contractor, or for the appointment of a liquidator, judicial manager, business rescue, consultant or similar officer over it or over any of its assets;
- 6.1.9. it will use reasonable care and skill in carrying out its obligations under this Agreement;
- 6.1.10. it is not a Restricted Enterprise; and
- 6.1.11. in being awarded its appointment under this Agreement, it did not engage, either directly or indirectly, or in any manner participate in the perpetration of a Corrupt Activities Act 12 of 2004; and
- 6.1.12. notwithstanding the terms of any insurances provided to PRASA, it has all the insurances required in its sector to ensure that the rights of PRASA are comprehensively protected.

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## 7. PRASA WARRANTIES

### 7.1 PRASA hereby warrants that:

- 7.1.1. it has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Agreement; and
- 7.1.2. its obligations under this Agreement are legal, valid, binding and enforceable against it, in accordance with the terms of this Agreement.

## 8. CO-OPERATION

Each Party shall co-operate with the other in the exercise and performance of their respective rights and obligations in terms of this Agreement.

## 9. SERVICES

- 9.1. The Consultant shall provide the Services in accordance with Good Industry Practice and this Agreement.
- 9.2. The detailed scope of Services to be provided by the Consultant is detailed in the Scope of Services Annexure A.
- 9.3. The detailed implementation and the timelines for the provisions of the services to be provided by the Consultant is detailed in the Implementation and Deliverables Schedule, Annexure C
- 9.4. The Services to be undertaken by the Consultant shall include the following:
  - 9.4.1. Identify security vulnerabilities within the PRASA environment and develop mitigating measure through the development of the PRASA security strategy that addresses the uniqueness of every PRASA business unit
  - 9.4.2. Assessment of threat and vulnerability applicable to corporate office, head offices, regional offices and other physical locations ( stations, staging yards and depots)
  - 9.4.3. Evaluation of the safety of personnel, passengers, visitors and asserts within PRASA Premises
  - 9.4.4. A detailed review on employee safety and security processes at all locations

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OF SOUTH AFRICA

RESURGENT RISK MANAGERS

9.4.5. Identifying emerging threats and scrutinising known risks and evaluating potential strategically and tactical responses

9.4.6. Review of PRASA Security Policy

9.4.7. Evaluation of current compliance security audits against security provision.

## 10. PAYMENT

10.1. The payments for Services shall be paid in accordance with the Payment Schedule which is Annexure "B" of this Agreement.

10.2. Payment shall be made into the Consultants bank account set out in the invoice.

10.3. PRASA shall effect payment 30 (sixty) days after receipt of such an invoice.

## 11. INVOICING

11.1. The Consultant shall issue to PRASA invoices in accordance to Payment Schedule and the invoices shall:

11.1.1. Indicate the VAT number of the Consultant;

11.1.2. Indicate the full details of the Consultant and bank account;

11.1.3. Be a valid tax invoice in accordance with the requirements of the South African Revenue Services; and

11.1.4. Indicate the vendor number provided to the Consultant by PRASA.

## 12. JOINT AND SEVERAL LIABILITY

12.1. If the Consultant constitutes (under Applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons -

12.2. these persons shall be deemed to be jointly and severally liable to the PRASA for the performance of the Services;

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- 12.3. these persons shall notify the PRASA of their leader who shall have authority to bind the Consultant and each of these persons; and
- 12.4. the Consultant shall not alter its composition or legal status without the prior consent of the PRASA.

### 13. INSURANCE

The Consultant confirms that it maintains Professional Indemnity Insurance with a well-established insurance office or a reputable underwriter. The Consultant undertakes to maintain such insurance for up to a period of 1 year after the Project Term. The Professional Indemnity taken out by the Consultant is attached hereto and marked Annexure D.

### 14. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

- 14.1. All the reports and data such as maps, diagrams, drawings, specifications, plans, statistics, calculations, databases, software applications and support registrations or materials obtained, compiled or prepared by the Consultant during the Project Term shall become the exclusive property of PRASA. Until the Completion Date, the Consultant shall provide all such documents and data to PRASA, and shall not use them for purposes not connected with the contract, without PRASA's prior written approval.
- 14.2. The Consultant shall not publish any articles related to the performed services and shall not make reference to them during the performance of services to other beneficiaries, and shall not disclose the information obtained from PRASA, without PRASA's prior written consent.
- 14.3. Any results or rights, including copyrights and other intellectual or industrial property rights obtained under this Agreement shall become the exclusive property of PRASA, who may use, publish, assign or transfer them at its discretion, without any geographic or other restrictions, except for the case when the intellectual or industrial property rights already exist.

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*Handwritten text: TZ-M*



## 15. PLACE WHERE SERVICES WILL BE RENDERED

The Consultant will perform most services in accordance with this Agreement at a location of consultant's discretion. In addition, the consultant will perform services on the telephone and at such other places as necessary to perform these services in accordance with this agreement.

## 16. BREACH

If any Party breaches any material provision or term of this Agreement (other than those provisions which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 7 (seven) days of receipt of written notice from an aggrieved Party/ies requiring it to do so (or if it is not reasonably possible to remedy the breach within 7 (seven) days, within such further period as may be reasonable in the circumstances provided that the Party in breach furnishes evidence within the period of 7 (seven) days, reasonably satisfactory to the aggrieved Party/ies, that it has taken whatever steps are available to it to commence remedying the breach), then the aggrieved Party/ies shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to claim specific performance of any obligation whether or not the due date for performance thereof has arrived, and without prejudice to the aggrieved Party's or Parties' rights to claim damages.

## 17. TERMINATION

17.1. Subject to the provisions of clause 17 this Agreement may be terminated by either Party following the occurrence of either the Consultant Default or PRASA's Default.

17.2. If Termination is as a result of a PRASA Default the Consultant shall be entitled to payment for all the Services undertaken by the Consultant up to the date of termination which Services must firstly be approved by the PRASA.

17.3. If termination is as a result of the Consultant Default the following shall occur:

17.3.1. The Consultant shall pay any damages that PRASA might have suffered due to the default.

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17.4. Notwithstanding any other clause in this Agreement, PRASA shall be entitled to give the Consultant a 30 days notice of termination of this Agreement.

17.5. In the event of a termination as contemplated in this clause, save for payment/reimbursement for work already done, the Consultant shall have no claim whatever based on enrichment, or reimbursement, or any other claim of any nature whatsoever, against PRASA in respect of or arising from or connected to termination contemplated in this clause. The termination as contemplated shall not constitute a dispute and shall not be subject to any mediation or arbitration as per clause 17.4.

17.6. Notwithstanding the clause 16 or any other clause in this Agreement if the Consultant commits any breach as contemplated in clauses 29.5.1 to 29.5.5 to it shall entitle PRASA to terminate this Agreement with immediate effect.

#### 18. FORCE MAJEURE

18.1. In the event of any acts of God, war, war-like operation, rebellion, riot, civil commotion, lockout, interference of trade unions, sonic shock waves caused by aircraft or other aerial devices or action taken beyond or outside the reasonable control of the Parties hereto preventing them or any one of them from the performance of any obligation hereunder, then the Party affected by such force majeure shall immediately notify the other Party forthwith as to the nature and extent of the circumstances in question.

18.2. Where a Party is (or claims to be) affected by an event of Force Majeure:

18.2.1. it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and

18.2.2. it shall not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure to comply with its obligations.

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- 18.3. The Party claiming relief shall serve written notice on the other Party within 5 (five) days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- 18.4. A subsequent written notice shall be served by the Party claiming relief on the other Party within 5 (five) days, or such longer period as may be agreed between the Parties, which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken by that Party to mitigate the effect of Force Majeure event and an estimate of the period of time required to overcome it (and/or its effects).
- 18.5. The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.
- 18.6. If, following the issue of any notice referred to in clause 18.4, the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other Party as soon as reasonably possible.
- 18.7. If the Force Majeure event persist, for a period of more than 20 (twenty) days either Party may terminate this Agreement.

## 19. NOTICES AND LEGAL SERVICE

- 19.1. All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of this Agreement or relating to it shall be given in writing and sent by registered post, or delivered by hand, or transmitted by facsimile to the recipient Party at its relevant address set out below:

### 19.1.1. If to PRASA at:

Address: PRASA House  
1040 Burnette Street  
Hatfield





Pretoria  
 Postal address: Private Bag X101,  
 Braamfontein  
 2017  
 Facsimile number: 011 773 1600  
 Attention: **Group Executive Legal Department**

19.1.2. if to The Consultant:  
 Address: River view Office park  
 Block H Junnadel Avenue  
 Midrand  
 1682  
 Attention: **Mr A Fraser**  
 Postal address: PO Box 87084  
 Houghton  
 Johannesburg

---

2041

Telephone number: 27(0) 11 339 - 0000

19.2. Either Party may, by written notice to the other Party, change any of the addresses at which or the designated person for whose attention those notices or other communications are to be given.

19.3. Any notice or other communication given by any Party to the other Party which:

19.3.1. is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th (seventh) day after the date of posting; or

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T.L.M.*



- 19.3.2. is delivered by hand to the addressee during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or
- 19.3.3. is transmitted by facsimile to the addressee during the normal business hours of the addressee at its specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report.
- 19.4. The previous provisions of this clause 19 shall not invalidate any notice or other communication actually given and received otherwise than as described in those provisions.
- 19.5. The Parties choose their respective physical addresses in clause 19.1 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant Party until it nominates a new physical address within the Republic of South Africa in writing to be its new *domicilium citandi et executand*.

## 20. CONFIDENTIALITY

- 20.1. Each Party shall keep all Confidential Information of the other Party confidential while this Agreement remains in force and for a period of 7 (seven) years after it terminates for any reason. Each Party shall also use reasonable endeavours to prevent its employees, agents and Sub Consultant from making any disclosure to any person of any Confidential Information of the other Party while this Agreement remains in force and for a period of seven years after it terminates for any reason.
- 20.2. The disclosures permitted in the definition of Confidential Information may only be made subject to obtaining appropriate confidentiality restrictions con confidentiality restrictions consistent with the provisions of this clause from the intended recipients.

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T.L.M.



## **21. DISPUTE RESOLUTION**

- 21.1. Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 (ten) Business Days of such dispute arising.
- 21.2. If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to arbitration, which proceedings shall be held in Johannesburg in accordance with the Arbitration Foundation of South Africa Rules.
- 21.3. This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause.
- 21.4. This clause is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 21.5. This clause shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

## **22. GOVERNING LAW AND CONSENT TO JURISDICTION**

----- This Agreement is exclusively governed by and construed in accordance with the laws of the Republic of South Africa and is the Parties irrevocably consent to the non-exclusive jurisdiction of the North Gauteng High Court.

## **23. COSTS AND EXPENSES**

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

## **24. VARIATIONS**

- 24.1. PRASA has the right to propose Variations to the Services in accordance with this clause 24.
- 24.2. All Variations shall only be valid if approved by the Group Chief Executive Officer of PRASA and reduced in writing.



- 24.3. If PRASA requires a Variation to the Scope of Services it must serve a notice in writing to the Consultant detailing the requested Variation ("**Variation Proposal**").
- 24.4. The Variation Proposal must set out the Variation required in sufficient detail as to enable the Consultant to calculate the cost of the Variation Proposal.
- 24.5. As soon as practicable and in any event within 5 (five) Business Days after having received the Variation Proposal, the Consultant shall deliver to PRASA:
- 24.5.1. the estimated costs of the Variation Proposal; and
  - 24.5.2. the impact of the Variation Proposal on the Project timelines.
  - 24.5.3. As soon as practicable and in any event within 5 (five) Business Days after receiving the information from the Consultant regarding the impact of the Variation Proposal on the Project timelines and the costs, PRASA shall:
  - 24.5.4. confirm its intention in writing to proceed with the Variation Proposal and enter into any documents to amend the Agreement as is necessary to give effect to the Variation Proposal; or
  - 24.5.5. withdraw the Variation Proposal.

## 25. SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in a manner which makes it effective and valid under any Law, but if any provision of this Agreement is held to be illegal, invalid or unenforceable under any Law, that illegality, invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force.

## 26. COUNTERPARTS

This Agreement may be executed in any number of identical counterparts, all of which when taken together shall constitute one agreement. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the Parties shall constitute a full original of this Agreement for all purposes.



## 27. ENTIRE AGREEMENT

27.1. Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

27.2. Each of the Parties acknowledges that:

27.2.1. it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Agreement or not) except those expressly contained in or referred to in this Agreement, and the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a remedy available under this Agreement; and

27.2.2. this clause 27 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under any Law governing this Agreement.

---

## 28. LIMITATION OF LIABILITY

28.1. Under no circumstances shall either Party be liable for any indirect, consequential or like damages which may arise pursuant to this Agreement.

28.2. General indemnity: To an extent that it relates to the Services, the Consultant indemnifies and shall keep PRASA indemnified at all times against all losses sustained by PRASA in consequence of any:

28.2.1. loss of or damage to property;

28.2.2. breach of a statutory duty arising under applicable law;

28.2.3. claim for or in respect of the death or personal injury of any individual; or

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- 28.2.4. any breach by the Consultant of any warranties given by it in this Agreement;
  - 28.2.5. including, without limitation, any legal fees or costs, arising in connection with the performance or non-performance of any Services;
  - 28.2.6. save to the extent caused by the negligence or wilful misconduct of PRASA or by a breach by PRASA of an express provision of this Agreement.
- 28.3. The Consultant indemnifies and shall keep PRASA indemnified at all times against all losses sustained by PRASA in consequence of any claim or action whatsoever instituted against PRASA by a sub-Consultant of the Consultant. In the event that the Consultant or any of its sub-Consultants rendering the Services to PRASA, become involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then the Consultant shall immediately inform PRASA thereof and on request supply PRASA with a copy of any award made pursuant to such proceedings or agreement and any documentation that PRASA may request in respect thereof.

## 29. CESSION OR DELEGATION AND SUBCONTRACTING

- 29.1. Neither Party shall cede or delegate any right or obligation under this contract nor enter into any sub-contract of whatever nature for the execution therefore or part thereof without the prior written consent of the other.
- 29.2. Should the Consultant apply to cede or assign the whole portion of the contract, the circumstances shall be reported to PRASA. PRASA shall be notified immediately of the Seller's intention to cede and/or assign its business. The name(s) of the new company and its directors shall be furnished to PRASA together with any other information reasonably required by PRASA.
- 29.3. Under no circumstances shall it be taken for granted that PRASA will approve of the session and/or assigning if PRASA has not been provided with all the relevant details.
- 29.4. The Consultant may sub-contract any of its obligations in terms of this Agreement to a third party, provided that:-

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OF SOUTH AFRICA

**RESURGENT RISK MANAGERS**

- 29.4.1. such sub-contracting shall not absolve the Consultant from the responsibility for complying with its obligations in terms of this Agreement and the Consultant hereby indemnifies and holds PRASA harmless against any loss, harm or damage which PRASA may suffer as a result of such sub-contracting;
  - 29.4.2. such sub-contracting shall not have the effect of diluting or circumventing the provisions of the Consultant Bid Submission and this Agreement;
  - 29.4.3. the Consultant shall at all times remain the sole point of contact for PRASA in respect of the acquisition of services by PRASA; and
  - 29.4.4. no such sub-contracting shall have any effect on the Tender Amount payable by PRASA to the Consultant in terms of this Agreement.
- 29.5. The Consultant shall during the term of this agreement not be allowed to proceed with any of the following matters prior to receiving written consent of PRASA's Chief Procurement Officer and Group Chief Executive Officer:
- 29.5.1. any transfer of any amount of shares of the Consultant;
  - 29.5.2. any change in the composition of the Consultant;
  - 29.5.3. any change in the ownership of the Consultant;
- 
- 29.5.4. any material change in the constitution, memorandum, articles of association of similar document providing for the creation, formation or incorporation of the Consultant; or
  - 29.5.5. any change on the BBBEE component of the Consultant
- 29.6. provided that the Consultant shall not require any approval and/or consent of the PRASA and/or PRASA's Chief Procurement Officer and Group Chief Executive Officer where any change as contemplated in clauses 29.5.1 to 29.5.5 any transfer of any amount of shares of the Consultant; to any change on the BBBEE component of the Consultant does not have impact of the BBBEE status of the Consultant.

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### 30. PUBLIC RELATIONS AND PUBLICITY

30.1. The Consultant acknowledges that certain information pertaining to the Project is required to be disclosed in accordance with the statutory reporting obligations of PRASA as it may be required to publish from time to time in response to enquiries from:

- 30.1.1. Parliament and its members and officers in accordance with the provisions of the Public Finance Management Act; and
- 30.1.2. the Auditor-General under the Public Audit Act; and
- 30.1.3. persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, 2000.

30.2. Subject to clause 30.1 neither Party shall communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior approval of the other Party, such consent not to be unreasonably withheld.

### 31. PENALTY FOR DELAY

31.1 If the Consultant fails to complete the Services within the time stipulated in this Contract for completion of Services or a part or portion of Services, the Consultant shall be liable to the Employer for an amount calculated at 0.5% of the Contract Price per delayed Day, which shall be paid for every Day which shall elapse between the time for due completion and completion of the relevant Services. However, the total amount due under this sub-clause shall not exceed the maximum of 10% of the Contract Price.

31.2 The imposition of such penalty shall not relieve the Consultant from its obligation to complete Services or from any of its obligations and liabilities under the Contract,

31.3. The Employer may set off or deduct from the fees due to the Contractor any penalty amounts due and owing by the Contractor in terms of clause 31.1.

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## 32. INDEPENDENT STATUS

### 32.1. No Partnership.

Nothing in this Agreement shall be construed as creating a partnership between the Parties and neither Party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other Party.

### 32.2. It is recorded that it is the intention of the parties to exclude all legal consequences of a partnership.

### 32.3. The Consultant shall comply with all employment legislation.

### 32.4. The Consultant warrants that it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its sub-Consultants and its relationship with PRASA. This includes, but is not limited to, the Labour Relations Act, 1995, the Basic Conditions of Employment Act, 1997, the Employment Equity Act, 1998 and any other applicable employment legislation currently in force or which may come into force during the currency of this Agreement. The Consultant warrants that it is not and will not in future be in contravention of any of the provisions of any such legislation and in the event of such contravention, the Consultant shall immediately take all steps to remedy such contravention. If PRASA advises the Consultant of any contravention of such legislation in writing, the Consultant shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep PRASA informed regarding the steps taken and the implementation and the result thereof.

### 32.5. The Consultant warrants that it is conversant with section 198(4) of the Labour Relations Act and warrants further that any the services supplied by the Consultant shall be as an independent Consultant as defined in the Labour Relations Act and the Occupational Health and Safety Act, 1993 and will render the Services as such.

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32.6. The Consultant hereby indemnifies and holds PRASA harmless against any claim or action whatsoever in terms of section 198(4) of the Labour Relations Act, instituted against PRASA by a Consultant of the Consultant. In the event that the Consultant or any of its Consultant s rendering a service to PRASA, become involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then the Consultant shall immediately inform PRASA thereof and on request supply PRASA with a copy of any award made pursuant to such proceedings or agreement and any documentation that PRASA may request in respect thereof.

SIGNED at PRETORIA on 18<sup>th</sup> MAY 2015

For: PRASA

DIRECTOR

Who warrants that he is duly authorised

AS WITNESSES:

1. \_\_\_\_\_
2. \_\_\_\_\_

SIGNED at \_\_\_\_\_ on 11<sup>th</sup> May 2015

For: RESURGENT

DIRECTOR

who warrants that he is duly authorised

AS WITNESSES:

- 1.
- 2.



## ANNEXURE A - SCOPE OF SERVICES

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PRASA HOUSE  
1040 Burnett Street  
Halffield  
Pretoria

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Braamfontein, 2017  
T: +27 12 748 7000

## MEMORANDUM

|          |  |
|----------|--|
| TO:      | MR A FRASER – RESURGENT RISK MANAGERS                  |
| FROM:    | KABELO MANTSANE : ACTING HEAD GROUP CORPORATE SECURITY |
| DATE:    | 19 MARCH 2015  |
| SUBJECT: | RESURGENT RISK MANAGERS SCOPE OF WORK                  |

### 1. Background:

- 1.1. The Security Risk, Threat and Vulnerability Assessments (SRTVA) are an important aspect of determining the security situations within an organisation. It is therefore quite prudent that SRTVA approach be adopted to get a clear understanding of security threats faced by PRASA in order to proactively develop security measures to eliminate or manage the potential threat and the associated impact. This methodology will empower and give PRASA Corporate Security direction in the development and implementation of pro-active security measures.
- 1.2. The SRTVA will furthermore assist in the implementation appropriate security measures and aids. PRASA Corporate Security regard SRTVA as the main driver of security strategy without which the department would not be in a position to effectively develop its security needs in respect of human resource skills; security aids (technological systems, CCTV, alarms, etc.) and security standards.

### 2. Scope of Work

- 2.1. The appointment of Resurgent Risk Managers is an critical enabler in ensuring that the department creates additional capacity to address its requirements for Security Risk Threat and Vulnerability Assessments.

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2.2. The scope of security service provision by Resurgent Risk Managers is as follows:

- 2.2.1. An assessment of threat and vulnerability applicable to Corporate Office, head offices, Regional offices and other physical locations (Stations, Staging Yards, and Depots).
  - 2.2.2. Provide Security advice on Integration of Command and Control Centres
  - 2.2.3. Development of Control System for Asset Protection within the Operational Tunnel.
  - 2.2.4. Develop Security Standards in terms of security technology for seamless integration.
  - 2.2.5. Compile detailed specification and requirements for an open tender process.
  - 2.2.6. Serve in an advisory capacity in conjunction with Corporate Security on the current projects with respect to security technology and international best practices.
  - 2.2.7. Identify security threats pertain to the modernisation projects with specific reference to the security' state of readiness for the implementation programme.
- 
- 2.2.8. Evaluation of the safety of personnel, passengers, visitors and assets within premises of PRASA.
  - 2.2.9. A detailed review of employee safety and security processes at all locations.
  - 2.2.10. Identifying emerging threats, scrutinizing known risks, and evaluating potential strategic and tactical responses.
  - 2.2.11. An assessment of the current state of physical security and provision of possible solutions.
  - 2.2.12. An evaluation of the use of technology and electronic security systems and their applicability when compared to best practices and identified threats.
  - 2.2.13. Evaluation of compliance security audit against security provisions.

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- 2.2.14. A demographic analysis of the criminal activity in an immediate locality and possible solutions and the impact on PRASA environment.
- 2.2.15. Evaluate the current use of fencing as a security measure for asset protection.
- 2.2.16. Advice on the role of security in Brand and Image Protection.
- 2.2.17. Provide guidance on Employment Screening Solutions.
- 2.2.18. Give solution on forewarning information collection and analysis.
- 2.2.19. Provide an initial Vulnerability Findings report, documenting the results of our vulnerability and security advising measures.
- 2.2.20. Development of PRASA Security Corporate Security Strategy and Strategies for different business units.
- 2.2.21. Review of current PRASA Security Policy.
- 2.2.22. Provision of an Early Warning Business Intelligence Reports covering the following product lines during the period of the contract;
  - 2.2.22.1. **Daily Insights Brief (DIB)** – a daily security brief issued Monday through Friday. This report contains analysed information that could impact negatively on the smooth running of the business on that particular day.
  - 2.2.22.2. **Daily Insights Brief (DIB)** – a daily security brief issued Monday through Friday. This report contains analysed information that could impact negatively on the smooth running of the business on that particular day.
  - 2.2.22.3. **Weekly Security Summary (WSS)** – a weekly (Friday) report highlighting major local events and global activity designed to address the different security risk areas affecting PRASA.
  - 2.2.22.4. **Event-driven Situation Briefs and Analysis** – Issued on an as-needed basis to cover high-profile special events or emerging situations.

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- 2.2.23.1. Identification and management of security breaches within the organisation.
- 2.2.23.2. Identification and exposure of staff members who collude with criminal elements.
- 2.2.23.3. Identification of personnel members involved in acts of corruption.
- 2.2.23.4. Identification of criminal elements involved in fictitious liability claims against PRASA.
- 2.2.23.5. Identification of criminal elements involved in malicious activities perpetrated against PRASA.
- 2.2.23.6. Enhancement of investigative capabilities so as to ensure more successful criminal prosecutions.
- 2.2.23.7. Ensuring consistent and uninterrupted service delivery.
- 2.2.23.8. Building of a comprehensive security framework customised to PRASA Security requirements.
- 2.2.23.9. Implementation of Pro-active security measures for Protection of PRASA Assets
- 2.2.23.10. Ability of PRASA Security to match the Modernisation Project and maintain the environment post modernisation.

Regards

  
KD Mantsane  
Acting Head Group Corporate Security2015/04/22.  
Date



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PRASA HOUSE  
1040 Burnett Street  
Hatfield  
Pretoria

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T: +27 12 748 7000

|          |  |
|----------|--|
| TO:      | MR A FRASER – RESURGENT RISK MANAGERS                  |
| FROM:    | KABELO MANTSANE : ACTING HEAD GROUP CORPORATE SECURITY |
| DATE:    | 19 MARCH 2015  |
| SUBJECT: | RESURGENT PAYMENT SCHEDULE                             |

## 1. INTRODUCTION

- 1.1. The tabulated below is the payment schedule with deliverables for the period of the 2015/16 to 2016/17 financial year. The service provider will be evaluated in accordance with the deliverables depicted in this table.

| Payment Period | Deliverables  | Payment Due    |
|----------------|---|----------------|
| April 2015     | <ul style="list-style-type: none"> <li>– Team Mobilisation and project initiation</li> <li>– Orientation of team on: <ul style="list-style-type: none"> <li>o Security Challenges</li> <li>o PRASA Corporate Plan</li> <li>o PRASA Operational Environment</li> <li>o Modernisation</li> <li>o ICT Security challenges</li> <li>o Security Constraints</li> </ul> </li> <li>– Scope Scale and Definition</li> <li>– System Requirements and data restructuring.</li> <li>– PRASA Security Strategy Review</li> <li>– Review of Physical Security Standards and Guidelines</li> <li>– Review of Security Operating Procedures</li> </ul> | R 4,680,425.63 |
| May 2015       | <ul style="list-style-type: none"> <li>– Conduct SRTVA's in the following areas in preparation for security readiness for test corridor: <ul style="list-style-type: none"> <li>o Wolmerton Staging Yard testing facility.</li> <li>o Pretoria Station</li> <li>o Wolmerton to Olifantsfontein Corridor with specific reference to the following:</li> </ul> </li> </ul>  | R 3,597,788.42 |

### Directors

Dr P Molefe (Chairman), TL Montana (Group CEO),  
ZP Manase, C Cole, WS Steenkamp, NS Kheswa,  
MJ Matlala, S Buthelesi, X George, L McMillan,  
C Manyungwana, N Mxenge

Company Secretary  
L Zide

*T. L. M.*  
*KM*





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|           |   |                |
|-----------|---|----------------|
|           | <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> <ul style="list-style-type: none"> <li>○ Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul>  |                |
| June 2015 | <ul style="list-style-type: none"> <li>- Conduct SRTVA's in the following areas in preparation for security readiness for test corridor:               <ul style="list-style-type: none"> <li>○ Braamfontein Staging Yard testing facility.</li> <li>○ Benrose Staging Yard testing facility.</li> <li>○ Park Station</li> <li>○ Park Station to Olifantsfontein Corridor including the Germiston triangle with specific reference to the following:                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> </ul> </li> <li>- Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul>  | R 3,597,788.42 |
| July 2015 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Threat and Vulnerability Assessments at the following areas:               <ul style="list-style-type: none"> <li>○ Benrose Staging Yard</li> <li>○ Kaalfontein to Leralla corridor with specific reference to the following:                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> <li>○ Johannesburg to Naledi corridor with specific reference to the following:                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> <li>○ Naledi Staging Yard</li> </ul> </li> <li>- Compile detailed reports on Risk</li> </ul> | R 3,597,788.42 |

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|                | Assessment with recommendations and security interventions required.  |                |
|----------------|---|----------------|
| August 2015    | <ul style="list-style-type: none"> <li>- Conduct Security Risk Threat and Vulnerability Assessment on the following corridors:               <ul style="list-style-type: none"> <li>o New Canada to Houtheuwel</li> <li>o Germiston to Kwesine</li> <li>o Germiston to Daveyton</li> <li>o Benoni to Springs</li> <li>o Johannesburg to Randfontein</li> </ul> </li> <li>- The SRTVA will focus on:               <ul style="list-style-type: none"> <li>o Hot Spots</li> <li>o Sub-Stations</li> <li>o Relay rooms</li> <li>o Equipment rooms</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  | R 3,950,371.69 |
| September 2015 | <ul style="list-style-type: none"> <li>- Compile Detailed specification with the requisite security interventions that are required to address a total integrated fit for purpose security system with perimeter demarcation for effective protection of the following areas:               <ul style="list-style-type: none"> <li>- Pretoria to Wolmerton Corridor,</li> <li>- Kaalfontein to Leralla,</li> <li>- Johannesburg to Naledi,</li> <li>- Pretoria to Johannesburg corridor including the Germiston Triangle</li> <li>- New Canada - Houtheuwel</li> <li>- Germiston to Kwesine</li> <li>- Germiston to Daveyton</li> <li>- Benoni to Springs</li> <li>- Johannesburg to Randfontein</li> <li>- Wolmerton Staging Yard</li> <li>- Braamfontein Staging Yard</li> <li>- Pretoria Station</li> <li>- Park Station</li> <li>- Benrose Staging Yard</li> <li>- Naledi Staging Yard</li> </ul> </li> </ul> | R3 597 788.42  |

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|               |   |               |
|---------------|---|---------------|
| October 2015  | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 58 stations within Gauteng North on the following Corridors               <ul style="list-style-type: none"> <li>o Mabopane</li> <li>o Ga-Rankuwa</li> <li>o Saulsville</li> <li>o Pretoria – Pinedene</li> <li>o Gazina</li> <li>o Mamelodi</li> </ul> </li> <li>o Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul>  | R3 597 788.42 |
| November 2015 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 31 stations within Gauteng East on the following Corridors:               <ul style="list-style-type: none"> <li>o Olifantsfontein – Knights</li> <li>o Delmore – Daveyton</li> <li>o Dunswart – Springs</li> </ul> </li> <li>- Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul>  | R3 597 788.42 |
| December 2015 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 73 stations within Gauteng West on the following Corridors:               <ul style="list-style-type: none"> <li>o Germiston – Johannesburg</li> <li>o Johannesburg – Randfontein</li> <li>o George Koch – Naledi</li> <li>o Germiston – Kwesine</li> <li>o Germiston – Alberton</li> <li>o New Canada - Houtheuwel</li> <li>o Delmore – Daveyton</li> <li>o Dunswart – Springs</li> </ul> </li> <li>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul> | R3 597 788.42 |
| January 2016  | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on the following Corridors Depots:               <ul style="list-style-type: none"> <li>o Salt River Staging Yard</li> <li>o Pardon Island Yard</li> <li>o Philippi Staging Yard</li> <li>o Culumburg Staging Yard</li> <li>o Firgrove Staging Yard</li> </ul> </li> </ul>   | R3 597 788.42 |

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|               |   |               |
|---------------|---|---------------|
|               | Compile detailed reports on Risk Assessment with recommendations and security interventions required.   |               |
| February 2016 | <ul style="list-style-type: none"> <li>- Conduct SRTVA's in the following areas in preparation for security readiness:               <ul style="list-style-type: none"> <li>o Mutual – Kapteinsklip</li> <li>o Philippi – Nolungile</li> <li>o Lavistown – Sarepta</li> <li>o Kuilsrivier – Strand</li> <li>o Koelenhof – Lynedoch</li> <li>o Woodstock – Tygerberg</li> <li>o Ndabeni – Southfield                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p> | R5 540 594.17 |
| March 2016    | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 41 stations within Western Cape on the following Corridors:               <ul style="list-style-type: none"> <li>o Woodstock – Maitland</li> <li>o Cape Town – Simons Town</li> <li>o Ndabeni – Southfield</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  | R3 597 788.42 |
| April 2016    | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 32 stations within Western Cape on the following Corridors:               <ul style="list-style-type: none"> <li>o Esplanade – Bellville</li> <li>o Mutual – Serepta</li> <li>o Netreg to Kapteinsklip</li> <li>o Philippi to Khayelitsha</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   | R3 597 788.42 |
| May 2016      | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 14 stations within Western Cape on the following Corridors:               <ul style="list-style-type: none"> <li>o Kuilsrivier – Strand</li> <li>o Koelenhof – Lynedoch</li> </ul> </li> </ul>  | R3 597 788.42 |

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|           | Compile detailed reports on Risk Assessment with recommendations and security interventions required.  |               |
| June 2016 | <ul style="list-style-type: none"> <li>- Compile Detailed specification with the requisite security interventions that are required to address a total integrated fit for purpose security system with perimeter demarcation for effective protection of the following corridors:               <ul style="list-style-type: none"> <li>o Mutual – Kapteinsklip</li> <li>o Philippi – Nolongile</li> <li>o Lavistown – Sarepta</li> <li>o Kuilsrivier – Strand</li> <li>o Koelenhof – Lynedoch</li> <li>o Woodstock – Tygerberg</li> <li>o Ndabeni – Southfield</li> <li>o Philippi Staging Yard</li> <li>o Culumburg Staging Yard</li> <li>o Firgrove Staging Yard</li> </ul> </li> <li>- The detailed Specification will focus on the following areas:               <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> </ul> | R3 597 788.42 |
| July 2016 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on the following Corridors Depots:               <ul style="list-style-type: none"> <li>o Springfield Staging Yard</li> <li>o Durban Staging Yard</li> </ul> </li> <li>- Conduct Security Risk Threat and Vulnerability Assessments on the following corridors:               <ul style="list-style-type: none"> <li>o Umlazi – Zwelethu</li> <li>o Crossmoor – Heavenside</li> <li>o Pine Town – See View</li> <li>o Umzinto – Durban</li> <li>o Umgent – Effingham</li> <li>o Briadene – Kwa-Mashu                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> </ul> </li> </ul> </li> </ul>   | R3 597 788.42 |



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|                | <p>▪ Sub-stations</p> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  |               |
| August 2016    | <p>– Conduct Security Risk Assessments on 61 stations within Durban Region on the following Corridors:</p> <ul style="list-style-type: none"> <li>○ Umlazi – Zwelethu</li> <li>○ Crossmoor – Heavenside</li> <li>○ Pine Town – See View</li> <li>○ Umzinto – Durban</li> <li>○ Umgeni – Effingham</li> <li>○ Briadene – Kwa-Mashu</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   | R3 597 788.42 |
| September 2016 | <p>– Compile Detailed specification with the requisite security interventions that are required to address a total integrated fit for purpose security system with perimeter demarcation for effective protection of the following corridors:</p> <ul style="list-style-type: none"> <li>○ Umlazi – Zwelethu</li> <li>○ Crossmoor – Heavenside</li> <li>○ Pine Town – See View</li> <li>○ Umzinto – Durban</li> <li>○ Umgeni – Effingham</li> <li>○ Briadene – Kwa-Mashu</li> </ul> <p>– The detailed Specification will focus on the following areas:</p> <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> | R3 597 788.42 |
| October 2016   | <p>– Conduct Security Risk Assessments on the following Depots:</p> <ul style="list-style-type: none"> <li>○ East London Staging Yard</li> <li>○ Cambridge Staging Yard</li> </ul> <p>– Conduct Security Risk Assessments on 19 stations within East London on the following Corridors:</p>   | R3 597 788.42 |

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|               | <ul style="list-style-type: none"> <li>○ East London – Blainey</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |               |
| November 2016 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on the following Depot:               <ul style="list-style-type: none"> <li>○ Port Elizabeth Staging Yard</li> </ul> </li> <li>- Conduct Security Risk Assessments on 10 stations within Port Elizabeth on the following Corridor:               <ul style="list-style-type: none"> <li>○ Port Elizabeth – Uitenhage</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p> | R3 597 788.42 |
| December 2016 | <ul style="list-style-type: none"> <li>- Compile Security Risk Threat and Vulnerability profile for PRASA Group.</li> <li>- Debrief Operational Security Managers on the entire process.</li> <li>- Train and Orientate Operational Security Managers on the Fundamental principles and importance of Security Risk Threat and Vulnerability Assessments.</li> </ul>   | R3 597 788.42 |
| January 2017  | <ul style="list-style-type: none"> <li>- PRASA Security Strategy Review</li> <li>- Review of Physical Security Standards and Guidelines</li> <li>- Review of Security Operating Procedures</li> </ul>  | R3 597 788.42 |
| February 2017 | <ul style="list-style-type: none"> <li>- Training of Operational Security Personnel               <ul style="list-style-type: none"> <li>○ Gauteng</li> <li>○ Eastern Cape</li> </ul> </li> </ul>  | R3 597 788.42 |

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| March 2017 | - Training of Operational Security Personnel <ul style="list-style-type: none"><li>o Western Cape</li><li>o Durban</li><li>o Hand Over To PRASA Security</li></ul> | R1 702 673.05 |
|------------|--|---------------|

Regards

  
KD Mantsane  
Acting Head Group Corporate Security  
Date





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RESURGENT RISK MANAGERS

**ANNEXURE B - PAYMENT SCHEDULE**

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Pretoria

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Braamfontein, 2017  
T: +27 12 748 7000

|          |  |
|----------|--|
| TO:      | MIR A FRASER – RESURGENT RISK MANAGERS                 |
| FROM:    | KABELO MANTSANE : ACTING HEAD GROUP CORPORATE SECURITY |
| DATE:    | 19 MARCH 2015  |
| SUBJECT: | RESURGENT PAYMENT SCHEDULE                             |

## 1. INTRODUCTION

- 1.1. The tabulated below is the payment schedule with deliverables for the period of the 2015/16 to 2016/17 financial year. The service provider will be evaluated in accordance with the deliverables depicted in this table.

| Payment Period | Deliverables  | Payment Due    |
|----------------|---|----------------|
| April 2015     | <ul style="list-style-type: none"> <li>- Team Mobilisation and project Initiation</li> <li>- Orientation of team on:               <ul style="list-style-type: none"> <li>o Security Challenges</li> <li>o PRASA Corporate Plan</li> <li>o PRASA Operational Environment</li> <li>o Modernisation</li> <li>o ICT Security challenges</li> <li>o Security Constraints</li> </ul> </li> <li>- Scope Scale and Definition</li> <li>- System Requirements and data restructuring.</li> <li>- PRASA Security Strategy Review</li> <li>- Review of Physical Security Standards and Guidelines</li> <li>- Review of Security Operating Procedures</li> </ul> | R 4,680,425.63 |
| May 2015       | <ul style="list-style-type: none"> <li>- Conduct SRTVA's in the following areas in preparation for security readiness for test corridor:               <ul style="list-style-type: none"> <li>o Wolmerton Staging Yard testing facility.</li> <li>o Pretoria Station</li> <li>o Wolmerton to Olifantsfontein Corridor with specific reference to the following:</li> </ul> </li> </ul>  | R 3,597,788.42 |

Directors: Dr P Motsele (Chairman), TL Morlane (Group CEO),  
ZM Maseko, C Cole, WS Steenkamp, NS Khensu,  
M.J Motale, S Bulehletzi, K George, L Mchilisa,  
C Manyangwane, N Mxango

Company Secretary:  
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|           | <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> <ul style="list-style-type: none"> <li>○ Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul>  |                |
| June 2015 | <ul style="list-style-type: none"> <li>- Conduct SRTVA's in the following areas in preparation for security readiness for test corridor:               <ul style="list-style-type: none"> <li>○ Braamfontein Staging Yard testing facility.</li> <li>○ Benrose Staging Yard testing facility.</li> <li>○ Park Station</li> <li>○ Park Station to Olifantsfontein Corridor including the Germiston triangle with specific reference to the following:                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> </ul> </li> <li>- Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul>  | R 3,597,788.42 |
| July 2015 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Threat and Vulnerability Assessments at the following areas:               <ul style="list-style-type: none"> <li>○ Benrose Staging Yard</li> <li>○ Kaalfontein to Leralla corridor with specific reference to the following:                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> <li>○ Johannesburg to Naledi corridor with specific reference to the following:                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> <li>○ Naledi Staging Yard</li> </ul> </li> <li>- Compile detailed reports on Risk</li> </ul> | R 3,597,788.42 |

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|                | Assessment with recommendations and security interventions required.  |                |
|----------------|---|----------------|
| August 2015    | <ul style="list-style-type: none"> <li>- Conduct Security Risk Threat and Vulnerability Assessment on the following corridors:               <ul style="list-style-type: none"> <li>o New Canada to Hourtheuwel</li> <li>o Germiston to Kwesine</li> <li>o Germiston to Daveyton</li> <li>o Benoni to Springs</li> <li>o Johannesburg to Randfontein</li> </ul> </li> <li>- The SRTVA will focus on:               <ul style="list-style-type: none"> <li>o Hot Spots</li> <li>o Sub-Stations</li> <li>o Relay rooms</li> <li>o Equipment rooms</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   | R 3,950,371.89 |
| September 2015 | <ul style="list-style-type: none"> <li>- Compile Detailed specification with the requisite security interventions that are required to address a total integrated fit for purpose security system with perimeter demarcation for effective protection of the following areas:               <ul style="list-style-type: none"> <li>- Pretoria to Wolmerton Corridor,</li> <li>- Kaalfontein to Leralla,</li> <li>- Johannesburg to Naledi,</li> <li>- Pretoria to Johannesburg corridor including the Germiston Triangle</li> <li>- New Canada - Houtheuwel</li> <li>- Germiston to Kwesine</li> <li>- Germiston to Daveyton</li> <li>- Benoni to Springs</li> <li>- Johannesburg to Randfontein</li> <li>- Wolmerton Staging Yard</li> <li>- Braamfontein Staging Yard</li> <li>- Pretoria Station</li> <li>- Park Station</li> <li>- Benrose Staging Yard</li> <li>- Naledi Staging Yard</li> </ul> </li> </ul> | R3 597 788.42  |

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| October 2015  | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 58 stations within Gauteng North on the following Corridors               <ul style="list-style-type: none"> <li>o Mabopane</li> <li>o Ga-Rankuwa</li> <li>o Saulsville</li> <li>o Pretoria – Pinedene</li> <li>o Gazina</li> <li>o Mamelodi</li> </ul> </li> <li>o Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul>  | R3 597 788.42 |
| November 2015 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 31 stations within Gauteng East on the following Corridors:               <ul style="list-style-type: none"> <li>o Olifantsfontein - Knights</li> <li>o Dellmore – Daveyton</li> <li>o Dunswart – Springs</li> </ul> </li> <li>- Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul>   | R3 597 788.42 |
| December 2015 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 73 stations within Gauteng West on the following Corridors:               <ul style="list-style-type: none"> <li>o Germiston – Johannesburg</li> <li>o Johannesburg – Randfontein</li> <li>o George Koch – Naledi</li> <li>o Germiston – Kwaesine</li> <li>o Germiston – Alberton</li> <li>o New Canada – Houtheuwel</li> <li>o Dellmore – Daveyton</li> <li>o Dunswart – Springs</li> </ul> </li> <li>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul> | R3 597 788.42 |
| January 2016  | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on the following Corridors Depots:               <ul style="list-style-type: none"> <li>o Salt River Staging Yard</li> <li>o Pardon Island Yard</li> <li>o Phillippi Staging Yard</li> <li>o Culumburg Staging Yard</li> <li>o Firgrove Staging Yard</li> </ul> </li> </ul>  | R3 597 788.42 |

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|               | Compile detailed reports on Risk Assessment with recommendations and security interventions required.   |               |
| February 2016 | <ul style="list-style-type: none"> <li>- Conduct SRTVA's in the following areas in preparation for security readiness:               <ul style="list-style-type: none"> <li>o Mutual – Kapteinsklip</li> <li>o Philippi – Nofungile</li> <li>o Lavistown – Sarepta</li> <li>o Kuilsrivier – Strand</li> <li>o Koelenhof – Lynedoch</li> <li>o Woodstock – Tygerberg</li> <li>o Ndabeni – Southfield                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p> | R5 540 594.17 |
| March 2016    | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 41 stations within Western Cape on the following Corridors:               <ul style="list-style-type: none"> <li>o Woodstock – Maitland</li> <li>o Cape Town – Simons Town</li> <li>o Ndabeni – Southfield</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  | R3 597 788.42 |
| April 2016    | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 32 stations within Western Cape on the following Corridors:               <ul style="list-style-type: none"> <li>o Esplanade – Bellville</li> <li>o Mutual – Serepta</li> <li>o Netreg to Kapteinsklip</li> <li>o Philippi to Khayelitsha</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   | R3 597 788.42 |
| May 2016      | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 14 stations within Western Cape on the following Corridors:               <ul style="list-style-type: none"> <li>o Kuilsrivier – Strand</li> <li>o Koelenhof – Lynedoch</li> </ul> </li> </ul>  | R3 597 788.42 |

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|           | Compile detailed reports on Risk Assessment with recommendations and security interventions required.  |               |
| June 2016 | <ul style="list-style-type: none"> <li>- Compile Detailed specification with the requisite security interventions that are required to address a total integrated fit for purpose security system with perimeter demarcation for effective protection of the following corridors:               <ul style="list-style-type: none"> <li>o Mutual – Kapteinsklip</li> <li>o Philippi – Nolungile</li> <li>o Lavistown – Sarepta</li> <li>o Kuilsrivier – Strand</li> <li>o Koelenhof – Lynedoch</li> <li>o Woodstock – Tygerberg</li> <li>o Ndabeni – Southfield</li> <li>o Philippi Staging Yard</li> <li>o Culumburg Staging Yard</li> <li>o Firgrove Staging Yard</li> </ul> </li> <li>- The detailed Specification will focus on the following areas:               <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> </ul> | R3 597 788.42 |
| July 2016 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on the following Corridors Depots:               <ul style="list-style-type: none"> <li>o Springfield Staging Yard</li> <li>o Durban Staging Yard</li> </ul> </li> <li>- Conduct Security Risk Threat and Vulnerability Assessments on the following corridors:               <ul style="list-style-type: none"> <li>o Umlazi – Zwelethu</li> <li>o Crossmoor – Heavenside</li> <li>o Pine Town – See View</li> <li>o Umzinto – Durban</li> <li>o Umgeni – Effingham</li> <li>o Briardene – Kwa-Mashu                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> </ul> </li> </ul> </li> </ul>  | R3 597 788.42 |

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|                | <p>▪ Sub-stations</p> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |               |
| August 2016    | <p>- Conduct Security Risk Assessments on 61 stations within Durban Region on the following Corridors:</p> <ul style="list-style-type: none"> <li>o Umlazi – Zwelethu</li> <li>o Crossmoor – Heavenside</li> <li>o Pine Town – See View</li> <li>o Umzinto – Durban</li> <li>o Umgeni – Effingham</li> <li>o Briardene – Kwa-Mashu</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   | R3 597 788.42 |
| September 2016 | <p>- Compile Detailed specification with the requisite security interventions that are required to address a total integrated fit for purpose security system with perimeter demarcation for effective protection of the following corridors:</p> <ul style="list-style-type: none"> <li>o Umlazi – Zwelethu</li> <li>o Crossmoor – Heavenside</li> <li>o Pine Town – See View</li> <li>o Umzinto – Durban</li> <li>o Umgeni – Effingham</li> <li>o Briardene – Kwa-Mashu</li> </ul> <p>- The detailed Specification will focus on the following areas:</p> <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> | R3 597 788.42 |
| October 2016   | <p>- Conduct Security Risk Assessments on the following Depots:</p> <ul style="list-style-type: none"> <li>o East London Staging Yard</li> <li>o Cambridge Staging Yard</li> </ul> <p>- Conduct Security Risk Assessments on 19 stations within East London on the following Corridors:</p>  | R3 597 788.42 |

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OF SOUTH AFRICA

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|               | <ul style="list-style-type: none"> <li>o East London – Blainey</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |               |
| November 2016 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on the following Depot:               <ul style="list-style-type: none"> <li>o Port Elizabeth Staging Yard</li> </ul> </li> <li>- Conduct Security Risk Assessments on 10 stations within Port Elizabeth on the following Corridor:               <ul style="list-style-type: none"> <li>o Port Elizabeth – Uitenhage</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p> | R3 597 788.42 |
| December 2016 | <ul style="list-style-type: none"> <li>- Compile Security Risk Threat and Vulnerability profile for PRASA Group.</li> <li>- Debrief Operational Security Managers on the entire process.</li> <li>- Train and Orientate Operational Security Managers on the Fundamental principles and importance of Security Risk Threat and Vulnerability Assessments.</li> </ul>   | R3 597 788.42 |
| January 2017  | <ul style="list-style-type: none"> <li>- PRASA Security Strategy Review</li> <li>- Review of Physical Security Standards and Guidelines</li> <li>- Review of Security Operating Procedures</li> </ul>  | R3 597 788.42 |
| February 2017 | <ul style="list-style-type: none"> <li>- Training of Operational Security Personnel               <ul style="list-style-type: none"> <li>o Gauteng</li> <li>o Eastern Cape</li> </ul> </li> </ul>  | R3 597 788.42 |

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| March 2017 | - Training of Operational Security Personnel<br>o Western Cape<br>o Durban<br>o Hand Over To PRASA Security | R1 702 673.05 |
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Regards

  
KD Mahlasane  
Acting Head Group Corporate Security  
Date



## ANNEXURE C- IMPLEMENTATION AND DELIVERABLES SCHEDULE

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|                 |   |
|-----------------|---|
| <b>TO:</b>      | <b>MR A FRASER – RESURGENT RISK MANAGERS</b>                  |
| <b>FROM:</b>    | <b>KABELO MANTSANE : ACTING HEAD GROUP CORPORATE SECURITY</b> |
| <b>DATE:</b>    | <b>19 MARCH 2015</b>  |
| <b>SUBJECT:</b> | <b>RESURGENT PROJECT MILESTONES</b>                           |

## 1. INTRODUCTION

- 1.1. The tabulated below is the payment schedule with deliverables for the period of the 2015/16 to 2016/17 financial year. The service provider will be evaluated in accordance with the deliverables depicted in this table.

| Payment Period | Deliverables  |
|----------------|---|
| April 2015     | <ul style="list-style-type: none"> <li>- Team Mobilisation and project initiation</li> <li>- Orientation of team on:               <ul style="list-style-type: none"> <li>o Security Challenges</li> <li>o PRASA Corporate Plan</li> <li>o PRASA Operational Environment</li> <li>o Modernisation</li> <li>o ICT Security challenges</li> <li>o Security Constraints</li> </ul> </li> <li>- Scope Scale and Definition</li> <li>- System Requirements and data restructuring.</li> <li>- PRASA Security Strategy Review</li> <li>- Review of Physical Security Standards and Guidelines</li> <li>- Review of Security Operating Procedures</li> </ul>                   |
| May 2015       | <ul style="list-style-type: none"> <li>- Conduct SRTVA's in the following areas in preparation for security readiness for test corridor:               <ul style="list-style-type: none"> <li>o Wolmerton Staging Yard testing facility.</li> <li>o Pretoria Station</li> <li>o Wolmerton to Olifantsfontein Corridor with specific reference to the following:                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> <li>o Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul> </li> </ul> |
| June 2015      | <ul style="list-style-type: none"> <li>- Conduct SRTVA's in the following areas in preparation for</li> </ul>   |

**Directors**

 Dr P Molefe (Chairman), TL Motlana (Group CEO),  
ZP Manase, C Cele, WS Sleenkamp, NS Kheswa,  
MJ Mallala, S Buthelezi, X George, L McMillan,  
C Manyungwana, N Mxenge

**Company Secretary,**  
L Zide

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PASSENGER RAIL AGENCY  
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|                | <p>security readiness for test corridor:</p> <ul style="list-style-type: none"> <li>o Braamfontein Staging Yard testing facility.</li> <li>o Benrose Staging Yard testing facility.</li> <li>o Park Station</li> <li>o Park Station to Olifantsfontein Corridor including the Germiston triangle with specific reference to the following: <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> </ul> <p>- Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  |
| July 2015      | <p>- Conduct Security Risk Threat and Vulnerability Assessments at the following areas:</p> <ul style="list-style-type: none"> <li>o Benrose Staging Yard</li> <li>o Kaalfontein to Leralla corridor with specific reference to the following: <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> <li>o Johannesburg to Naledi corridor with specific reference to the following: <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> <li>o Naledi Staging Yard</li> </ul> |
|                | <p>- Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  |
| August 2015    | <p>- Conduct Security Risk Threat and Vulnerability Assessment on the following corridors:</p> <ul style="list-style-type: none"> <li>o New Canada to Houtheuwel</li> <li>o Germiston to Kwesine</li> <li>o Germiston to Daveyton</li> <li>o Benoni to Springs</li> <li>o Johannesburg to Randfontein</li> </ul> <p>- The SRTVA will focus on:</p> <ul style="list-style-type: none"> <li>o Hot Spots</li> <li>o Sub-Stations</li> <li>o Relay rooms</li> <li>o Equipment rooms</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |
| September 2015 | <p>- Compile Detailed specification with the requisite security interventions that are required to address a total integrated fit for purpose security system with perimeter</p>  |



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|               | <p>demarcation for effective protection of the following areas:</p> <ul style="list-style-type: none"> <li>- Pretoria to Wolmerton Corridor,</li> <li>- Kaalfontein to Leralla,</li> <li>- Johannesburg to Naledi,</li> <li>- Pretoria to Johannesburg corridor including the Germiston Triangle</li> <li>- New Canada - Houtheuwel</li> <li>- Germiston to Kwesine</li> <li>- Germiston to Daveyton</li> <li>- Benoni to Springs</li> <li>- Johannesburg to Randfontein</li> <li>- Wolmerton Staging Yard</li> <li>- Braamfontein Staging Yard</li> <li>- Pretoria Station</li> <li>- Park Station</li> <li>- Benrose Staging Yard</li> <li>- Naledi Staging Yard</li> </ul> |
| October 2015  | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 58 stations within Gauteng North on the following Corridors               <ul style="list-style-type: none"> <li>o Mabopane</li> <li>o Ga-Rankuwa</li> <li>o Saulsville</li> <li>o Pretoria – Pinedene</li> <li>o Gazina</li> <li>o Mamelodi</li> </ul> </li> <li>o Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul>  |
| November 2015 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 31 stations within Gauteng East on the following Corridors:               <ul style="list-style-type: none"> <li>o Olifantsfontein - Knights</li> <li>o Dellmore – Daveyton</li> <li>o Dunswart – Springs</li> </ul> </li> <li>- Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul>   |
| December 2015 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 73 stations within Gauteng West on the following Corridors:               <ul style="list-style-type: none"> <li>o Germiston – Johannesburg</li> <li>o Johannesburg – Randfontein</li> <li>o George Koch – Naledi</li> <li>o Germiston – Kwesine</li> <li>o Germiston – Alberton</li> <li>o New Canada - Houtheuwel</li> <li>o Dellmore – Daveyton</li> </ul> </li> </ul>   |



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|               | <ul style="list-style-type: none"> <li>o Dunswart – Springs</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |
| January 2016  | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on the following Corridors Depots:               <ul style="list-style-type: none"> <li>o Salt River Staging Yard</li> <li>o Pardon Island Yard</li> <li>o Philippi Staging Yard</li> <li>o Culumburg Staging Yard</li> <li>o Firgrove Staging Yard</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  |
| February 2016 | <ul style="list-style-type: none"> <li>- Conduct SRTVA's in the following areas in preparation for security readiness:               <ul style="list-style-type: none"> <li>o Mutual – Kapteinsklip</li> <li>o Philippi – Nolungile</li> <li>o Lavistown – Sarepta</li> <li>o Kuilsrivier – Strand</li> <li>o Koelenhof – Lynedoch</li> <li>o Woodstock – Tygerberg</li> <li>o Ndabeni – Southfield                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p> |
| March 2016    | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 41 stations within Western Cape on the following Corridors:               <ul style="list-style-type: none"> <li>o Woodstock – Maitland</li> <li>o Cape Town – Simons Town</li> <li>o Ndabeni – Southfield</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  |
| April 2016    | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 32 stations within Western Cape on the following Corridors:               <ul style="list-style-type: none"> <li>o Esplanade – Bellville</li> <li>o Mutual – Serepta</li> <li>o Netreg to Kapteinsklip</li> <li>o Philippi to Khayelitsha</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |

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| May 2016  | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 14 stations within Western Cape on the following Corridors:               <ul style="list-style-type: none"> <li>o Kuilsrivier – Strand</li> <li>o Koelenhof – Lynedoch</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  |
| June 2016 | <ul style="list-style-type: none"> <li>- Compile Detailed specification with the requisite security interventions that are required to address a total integrated fit for purpose security system with perimeter demarcation for effective protection of the following corridors:               <ul style="list-style-type: none"> <li>o Mutual – Kapteinsklip</li> <li>o Philippi – Nolungile</li> <li>o Lavistown – Sarepta</li> <li>o Kuilsrivier – Strand</li> <li>o Koelenhof – Lynedoch</li> <li>o Woodstock – Tygerberg</li> <li>o Ndabeni – Southfield</li> <li>o Philippi Staging Yard</li> <li>o Culumburg Staging Yard</li> <li>o Firgrove Staging Yard</li> </ul> </li> <li>- The detailed Specification will focus on the following areas:               <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> </ul> |
| July 2016 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on the following Corridors Depots:               <ul style="list-style-type: none"> <li>o Springfield Staging Yard</li> <li>o Durban Staging Yard</li> </ul> </li> <li>- Conduct Security Risk Threat and Vulnerability Assessments on the following corridors:               <ul style="list-style-type: none"> <li>o Umlazi – Zwelethu</li> <li>o Crossmoor – Heavenside</li> <li>o Pine Town – See View</li> <li>o Umzinto – Durban</li> <li>o Umgeni – Effingham</li> <li>o Briadene – Kwa-Mashu                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> </ul> </li> </ul> </li> </ul>   |





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|                | <p>▪ Sub-stations</p> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  |
| August 2016    | <p>– Conduct Security Risk Assessments on 61 stations within Durban Region on the following Corridors:</p> <ul style="list-style-type: none"> <li>○ Umlazi – Zwelethu</li> <li>○ Crossmoor – Heavenside</li> <li>○ Pine Town – See View</li> <li>○ Umzinto – Durban</li> <li>○ Umgeni – Effingham</li> <li>○ Briadene – Kwa-Mashu</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |
| September 2016 | <p>– Compile Detailed specification with the requisite security interventions that are required to address a total integrated fit for purpose security system with perimeter demarcation for effective protection of the following corridors:</p> <ul style="list-style-type: none"> <li>○ Umlazi – Zwelethu</li> <li>○ Crossmoor – Heavenside</li> <li>○ Pine Town – See View</li> <li>○ Umzinto – Durban</li> <li>○ Umgeni – Effingham</li> <li>○ Briadene – Kwa-Mashu</li> </ul> <p>– The detailed Specification will focus on the following areas:</p> <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> |
| October 2016   | <p>– Conduct Security Risk Assessments on the following Depots:</p> <ul style="list-style-type: none"> <li>○ East London Staging Yard</li> <li>○ Cambridge Staging Yard</li> </ul> <p>– Conduct Security Risk Assessments on 19 stations within East London on the following Corridors:</p> <ul style="list-style-type: none"> <li>○ East London – Blainey</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  |
| November 2016  | <p>– Conduct Security Risk Assessments on the following Depot:</p> <ul style="list-style-type: none"> <li>○ Port Elizabeth Staging Yard</li> </ul>  |



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|               | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 10 stations within Port Elizabeth on the following Corridor: <ul style="list-style-type: none"> <li>o Port Elizabeth – Uitenhage</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>                   |
| December 2016 | <ul style="list-style-type: none"> <li>- Compile Security Risk Threat and Vulnerability profile for PRASA Group.</li> <li>- Debrief Operational Security Managers on the entire process.</li> <li>- Train and Orientate Operational Security Managers on the Fundamental principles and importance of Security Risk Threat and Vulnerability Assessments.</li> </ul> |
| January 2017  | <ul style="list-style-type: none"> <li>- PRASA Security Strategy Review</li> <li>- Review of Physical Security Standards and Guidelines</li> <li>- Review of Security Operating Procedures</li> </ul>  |
| February 2017 | <ul style="list-style-type: none"> <li>- Training of Operational Security Personnel <ul style="list-style-type: none"> <li>o Gauteng</li> <li>o Eastern Cape</li> </ul> </li> </ul>  |
| March 2017    | <ul style="list-style-type: none"> <li>- Training of Operational Security Personnel <ul style="list-style-type: none"> <li>o Western Cape</li> <li>o Durban</li> <li>o Hand Over To PRASA Security</li> </ul> </li> </ul>  |

Regards

  
KD Mantsane  
Acting Head Group Corporate Security

2015/04/22  
Date

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## ANNEXURE D – PROFESSIONAL INDEMNITY INSURANCE

*John T. Lewis*

www.prasa.com


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 PASSENGER RAIL AGENCY  
OF SOUTH AFRICA

 PRASA HOUSE  
1040 Barnard Street  
Hatfield  
Pretoria

 Private Bag X101  
Braamfontein, 2017  
T: +27 12 748 7000

**MEMORANDUM**

|                 |   |
|-----------------|---|
| <b>TO:</b>      | <b>MR A FRASER – RESURGENT RISK MANAGERS</b>                  |
| <b>FROM:</b>    | <b>KABELO MANTSANE : ACTING HEAD GROUP CORPORATE SECURITY</b> |
| <b>DATE:</b>    | <b>19 MARCH 2015</b>  |
| <b>SUBJECT:</b> | <b>RESURGENT RISK MANAGERS SCOPE OF WORK</b>                  |

**1. Background:**

- 1.1. The Security Risk, Threat and Vulnerability Assessments (SRTVA) are an important aspect of determining the security situations within an organisation. It is therefore quite prudent that SRTVA approach be adopted to get a clear understanding of security threats faced by PRASA in order to proactively develop security measures to eliminate or manage the potential threat and the associated impact. This methodology will empower and give PRASA Corporate Security direction in the development and implementation of pro-active security measures.
- 1.2. The SRTVA will furthermore assist in the implementation appropriate security measures and aids. PRASA Corporate Security regard SRTVA as the main driver of security strategy without which the department would not be in a position to effectively develop its security needs in respect of human resource skills; security aids (technological systems, CCTV, alarms, etc.) and security standards.

**2. Scope of Work**

- 2.1. The appointment of Resurgent Risk Managers is an critical enabler in ensuring that the department creates additional capacity to address its requirements for Security Risk Threat and Vulnerability Assessments.

**Directors**  
Dr P Molefe (Chairman), TL Motlana (Group CEO),  
ZP Manase, C Cele, W/S Steenkamp, NS Khawana,  
M/M Malala, S Bulthuis, X George, A McMillan,  
C Manyemane, N Hlangane

**Company Secretary:**  
L. Zide

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**2.2. The scope of security service provision by Resurgent Risk Managers is as follows:**

- 2.2.1. An assessment of threat and vulnerability applicable to Corporate Office, head offices, Regional offices and other physical locations (Stations, Staging Yards, and Depots).**
  - 2.2.2. Provide Security advice on Integration of Command and Control Centres**
  - 2.2.3. Development of Control System for Asset Protection within the Operational Tunnel.**
  - 2.2.4. Develop Security Standards in terms of security technology for seamless integration.**
  - 2.2.5. Compile detailed specification and requirements for an open tender process.**
  - 2.2.6. Serve in an advisory capacity in conjunction with Corporate Security on the current projects with respect to security technology and international best practices.**
  - 2.2.7. Identify security threats pertain to the modernisation projects with specific reference to the security' state of readiness for the implementation programme.**
- 
- 2.2.8. Evaluation of the safety of personnel, passengers, visitors and assets within premises of PRASA.**
  - 2.2.9. A detailed review of employee safety and security processes at all locations.**
  - 2.2.10. Identifying emerging threats, scrutinizing known risks, and evaluating potential strategic and tactical responses.**
  - 2.2.11. An assessment of the current state of physical security and provision of possible solutions.**
  - 2.2.12. An evaluation of the use of technology and electronic security systems and their applicability when compared to best practices and identified threats.**
  - 2.2.13. Evaluation of compliance security audit against security provisions.**

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- 2.2.14. A demographic analysis of the criminal activity in an immediate locality and possible solutions and the impact on PRASA environment.
- 2.2.15. Evaluate the current use of fencing as a security measure for asset protection.
- 2.2.16. Advice on the role of security in Brand and Image Protection.
- 2.2.17. Provide guidance on Employment Screening Solutions.
- 2.2.18. Give solution on forewarning information collection and analysis.
- 2.2.19. Provide an initial Vulnerability Findings report, documenting the results of our vulnerability and security advising measures.
- 2.2.20. Development of PRASA Security Corporate Security Strategy and Strategies for different business units.
- 2.2.21. Review of current PRASA Security Policy.
- 2.2.22. Provision of an Early Warning Business Intelligence Reports covering the following product lines during the period of the contract;
  - 2.2.22.1. **Daily Insights Brief (DIB)** – a daily security brief issued Monday through Friday. This report contains analysed information that could impact negatively on the smooth running of the business on that particular day.
  - 2.2.22.2. **Daily Insights Brief (DIB)** – a daily security brief issued Monday through Friday. This report contains analysed information that could impact negatively on the smooth running of the business on that particular day.
  - 2.2.22.3. **Weekly Security Summary (WSS)** – a weekly (Friday) report highlighting major local events and global activity designed to address the different security risk areas affecting PRASA.
  - 2.2.22.4. **Event-driven Situation Briefs and Analysis** – Issued on an as-needed basis to cover high-profile special events or emerging situations.

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**2.2.23. The Interventions above must ensure the achievement of the following:**

- 2.2.23.1. Identification and management of security breaches within the organisation.
- 2.2.23.2. Identification and exposure of staff members who collude with criminal elements.
- 2.2.23.3. Identification of personnel members involved in acts of corruption.
- 2.2.23.4. Identification of criminal elements involved in fictitious liability claims against PRASA.
- 2.2.23.5. Identification of criminal elements involved in malicious activities perpetrated against PRASA.
- 2.2.23.6. Enhancement of investigative capabilities so as to ensure more successful criminal prosecutions.
- 2.2.23.7. Ensuring consistent and uninterrupted service delivery.
- 2.2.23.8. Building of a comprehensive security framework customised to PRASA Security requirements.
- 2.2.23.9. Implementation of Pro-active security measures for Protection of PRASA Assets
- 2.2.23.10. Ability of PRASA Security to match the Modernisation Project and maintain the environment post modernisation.

Regards

  
 KD Mantsane  
 Acting Head Group Corporate Security

  
 2015/04/22  
 Date





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Pretoria

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T: +27 12 748 7000

|                 |   |
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| <b>TO:</b>      | <b>MR A FRASER – RESURGENT RISK MANAGERS</b>                  |
| <b>FROM:</b>    | <b>KABELO MANTSANE : ACTING HEAD GROUP CORPORATE SECURITY</b> |
| <b>DATE:</b>    | <b>19 MARCH 2015</b>  |
| <b>SUBJECT:</b> | <b>RESURGENT PROJECT MILESTONES</b>                           |

## 1. INTRODUCTION

- 1.1. The tabulated below is the payment schedule with deliverables for the period of the 2015/16 to 2016/17 financial year. The service provider will be evaluated in accordance with the deliverables depicted in this table.

| Payment Period | Deliverables  |
|----------------|---|
| April 2015     | <ul style="list-style-type: none"> <li>- Team Mobilisation and project initiation</li> <li>- Orientation of team on: <ul style="list-style-type: none"> <li>o Security Challenges</li> <li>o PRASA Corporate Plan</li> <li>o PRASA Operational Environment</li> <li>o Modernisation</li> <li>o ICT Security challenges</li> <li>o Security Constraints</li> </ul> </li> </ul>   |
|                | <ul style="list-style-type: none"> <li>- Scope Scale and Definition</li> <li>- System Requirements and data restructuring.</li> <li>- PRASA Security Strategy Review</li> <li>- Review of Physical Security Standards and Guidelines</li> <li>- Review of Security Operating Procedures</li> </ul>  |
| May 2015       | <ul style="list-style-type: none"> <li>- Conduct SRTVA's in the following areas in preparation for security readiness for test corridor: <ul style="list-style-type: none"> <li>o Wolmerton Staging Yard testing facility.</li> <li>o Pretoria Station</li> <li>o Wolmerton to Olifantsfontein Corridor with specific reference to the following: <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> </ul> </li> <li>o Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul> |
| June 2015      | <ul style="list-style-type: none"> <li>- Conduct SRTVA's in the following areas in preparation for</li> </ul>   |

Directors  
Dr P Molefe (Chairman), TL Mofokeng (Group CEO),  
ZP Manase, C Cele, WS Steenkamp, NS Khawane,  
MJ Mafalala, S Butholuzi, K George, L McKellan,  
C Mawungwana, N Nkomo

Company Secretary:  
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|                | <p>security readiness for test corridor.</p> <ul style="list-style-type: none"> <li>o Braamfontein Staging Yard testing facility.</li> <li>o Benrose Staging Yard testing facility.</li> <li>o Park Station</li> <li>o Park Station to Olifantsfontein Corridor including the Germiston triangle with specific reference to the following: <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> </ul> <p>- Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |
| July 2015      | <p>- Conduct Security Risk Threat and Vulnerability Assessments at the following areas:</p> <ul style="list-style-type: none"> <li>o Benrose Staging Yard</li> <li>o Kaalfontein to Leratla corridor with specific reference to the following: <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> <li>o Johannesburg to Naledi corridor with specific reference to the following: <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> <li>o Naledi Staging Yard</li> </ul> <p>- Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p> |
| August 2015    | <p>- Conduct Security Risk Threat and Vulnerability Assessment on the following corridors:</p> <ul style="list-style-type: none"> <li>o New Canada to Houtheuwel</li> <li>o Germiston to Kwesine</li> <li>o Germiston to Daveyton</li> <li>o Benoni to Springs</li> <li>o Johannesburg to Randfontein</li> </ul> <p>- The SRTVA will focus on:</p> <ul style="list-style-type: none"> <li>o Hot Spots</li> <li>o Sub-Stations</li> <li>o Relay rooms</li> <li>o Equipment rooms</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  |
| September 2015 | <p>- Compile Detailed specification with the requisite security interventions that are required to address a total integrated fit for purpose security system with perimeter</p>   |

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|               | <p>demarcation for effective protection of the following areas:</p> <ul style="list-style-type: none"> <li>- Pretoria to Wolmerton Corridor,</li> <li>- Kaalfontein to Leralla,</li> <li>- Johannesburg to Naledi,</li> <li>- Pretoria to Johannesburg corridor including the Germiston Triangle</li> <li>- New Canada - Houtheuwel</li> <li>- Germiston to Kwesine</li> <li>- Germiston to Daveyton</li> <li>- Benoni to Springs</li> <li>- Johannesburg to Randfontein</li> <li>- Wolmerton Staging Yard</li> <li>- Braamfontein Staging Yard</li> <li>- Pretoria Station</li> <li>- Park Station</li> <li>- Benrose Staging Yard</li> <li>- Naledi Staging Yard</li> </ul> |
| October 2015  | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 58 stations within Gauteng North on the following Corridors               <ul style="list-style-type: none"> <li>o Mabopane</li> <li>o Ga-Rankuwa</li> <li>o Saulsville</li> <li>o Pretoria – Pinedene</li> <li>o Gazina</li> <li>o Mamelodi</li> </ul> </li> <li>o Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul>  |
| November 2015 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 31 stations within Gauteng East on the following Corridors:               <ul style="list-style-type: none"> <li>o Olifantsfontein - Knights</li> <li>o Dellmore – Daveyton</li> <li>o Dunswart – Springs</li> </ul> </li> <li>- Compile detailed reports on Risk Assessment with recommendations and security interventions required.</li> </ul>   |
| December 2015 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 73 stations within Gauteng West on the following Corridors:               <ul style="list-style-type: none"> <li>o Germiston – Johannesburg</li> <li>o Johannesburg – Randfontein</li> <li>o George Koch – Naledi</li> <li>o Germiston – Kwesine</li> <li>o Germiston – Alberton</li> <li>o New Canada - Houtheuwel</li> <li>o Dellmore – Daveyton</li> </ul> </li> </ul>   |

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|               | <ul style="list-style-type: none"> <li>o Dunswart – Springs</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |
| January 2016  | <p>- Conduct Security Risk Assessments on the following Corridors Depots:</p> <ul style="list-style-type: none"> <li>o Salt River Staging Yard</li> <li>o Pardon Island Yard</li> <li>o Philippi Staging Yard</li> <li>o Culumburg Staging Yard</li> <li>o Fingrove Staging Yard</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  |
| February 2016 | <p>- Conduct SRTVA's in the following areas in preparation for security readiness:</p> <ul style="list-style-type: none"> <li>o Mutual – Kapteinsklip</li> <li>o Philippi – Nolongile</li> <li>o Lavistown – Sarepta</li> <li>o Kuilsrivier – Strand</li> <li>o Koelenhof – Lynedoch</li> <li>o Woodstock – Tygerberg</li> <li>o Ndabeni – Southfield               <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p> |
| March 2016    | <p>- Conduct Security Risk Assessments on 41 stations within Western Cape on the following Corridors:</p> <ul style="list-style-type: none"> <li>o Woodstock – Maitland</li> <li>o Cape Town – Simons Town</li> <li>o Ndabeni – Southfield</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>  |
| April 2016    | <p>- Conduct Security Risk Assessments on 32 stations within Western Cape on the following Corridors:</p> <ul style="list-style-type: none"> <li>o Esplanade – Bellville</li> <li>o Mutual – Serepta</li> <li>o Netreg to Kapteinsklip</li> <li>o Philippi to Khayelitsha</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |

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| May 2016  | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 14 stations within Western Cape on the following Corridors:               <ul style="list-style-type: none"> <li>o Kuilsrivier – Strand</li> <li>o Koelenhof – Lynedoch</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |
| June 2016 | <ul style="list-style-type: none"> <li>- Compile Detailed specification with the requisite security interventions that are required to address a total integrated fit for purpose security system with perimeter demarcation for effective protection of the following corridors:               <ul style="list-style-type: none"> <li>o Mutual – Kapteinssklip</li> <li>o Philippi – Notungile</li> <li>o Lavistown – Sarepta</li> <li>o Kuilsrivier – Strand</li> <li>o Koelenhof – Lynedoch</li> <li>o Woodstock – Tygerberg</li> <li>o Ndabeni – Southfield</li> <li>o Philippi Staging Yard</li> <li>o Culumburg Staging Yard</li> <li>o Firgrove Staging Yard</li> </ul> </li> <li>- The detailed Specification will focus on the following areas:               <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> <li>▪ Sub-stations</li> </ul> </li> </ul> |
| July 2016 | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on the following Corridors Depots:               <ul style="list-style-type: none"> <li>o Springfield Staging Yard</li> <li>o Durban Staging Yard</li> </ul> </li> <li>- Conduct Security Risk Threat and Vulnerability Assessments on the following corridors:               <ul style="list-style-type: none"> <li>o Umlazi – Zwelethu</li> <li>o Crossmoor – Heavenside</li> <li>o Pine Town – Sea View</li> <li>o Umzinto – Durban</li> <li>o Umgeni – Effingham</li> <li>o Briardene – Kwa-Mashu                   <ul style="list-style-type: none"> <li>▪ Hot Spot Areas</li> <li>▪ Relay Rooms</li> <li>▪ Equipment Rooms</li> </ul> </li> </ul> </li> </ul>   |

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|                | <p>■ Sub-stations</p> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |
| August 2016    | <p>– Conduct Security Risk Assessments on 61 stations within Durban Region on the following Corridors:</p> <ul style="list-style-type: none"> <li>○ Umlazi – Zwelethu</li> <li>○ Crossmoor – Heavenside</li> <li>○ Pine Town – See View</li> <li>○ Umzinto – Durban</li> <li>○ Umgeni – Effingham</li> <li>○ Briardene – Kwa-Mashu</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |
| September 2016 | <p>– Compile Detailed specification with the requisite security interventions that are required to address a total integrated fit for purpose security system with perimeter demarcation for effective protection of the following corridors:</p> <ul style="list-style-type: none"> <li>○ Umlazi – Zwelethu</li> <li>○ Crossmoor – Heavenside</li> <li>○ Pine Town – See View</li> <li>○ Umzinto – Durban</li> <li>○ Umgeni – Effingham</li> <li>○ Briardene – Kwa-Mashu</li> </ul> <p>– The detailed Specification will focus on the following areas:</p> <ul style="list-style-type: none"> <li>■ Hot Spot Areas</li> <li>■ Relay Rooms</li> <li>■ Equipment Rooms</li> <li>■ Sub-stations</li> </ul> |
| October 2016   | <p>– Conduct Security Risk Assessments on the following Depots:</p> <ul style="list-style-type: none"> <li>○ East London Staging Yard</li> <li>○ Cambridge Staging Yard</li> </ul> <p>– Conduct Security Risk Assessments on 19 stations within East London on the following Corridors:</p> <ul style="list-style-type: none"> <li>○ East London – Blainey</li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>   |
| November 2016  | <p>– Conduct Security Risk Assessments on the following Depot:</p> <ul style="list-style-type: none"> <li>○ Port Elizabeth Staging Yard</li> </ul>   |

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|               | <ul style="list-style-type: none"> <li>- Conduct Security Risk Assessments on 10 stations within Port Elizabeth on the following Corridor:               <ul style="list-style-type: none"> <li>o Port Elizabeth – Uitenhage</li> </ul> </li> </ul> <p>Compile detailed reports on Risk Assessment with recommendations and security interventions required.</p>     |
| December 2016 | <ul style="list-style-type: none"> <li>- Compile Security Risk Threat and Vulnerability profile for PRASA Group.</li> <li>- Debrief Operational Security Managers on the entire process.</li> <li>- Train and Orientate Operational Security Managers on the Fundamental principles and importance of Security Risk Threat and Vulnerability Assessments.</li> </ul> |
| January 2017  | <ul style="list-style-type: none"> <li>- PRASA Security Strategy Review</li> <li>- Review of Physical Security Standards and Guidelines</li> <li>- Review of Security Operating Procedures</li> </ul>  |
| February 2017 | <ul style="list-style-type: none"> <li>- Training of Operational Security Personnel               <ul style="list-style-type: none"> <li>o Gauteng</li> <li>o Eastern Cape</li> </ul> </li> </ul>  |
| March 2017    | <ul style="list-style-type: none"> <li>- Training of Operational Security Personnel               <ul style="list-style-type: none"> <li>o Western Cape</li> <li>o Durban</li> <li>o Hand Over To PRASA Security</li> </ul> </li> </ul>  |

Regards

  
 KD Mantsane  
 Acting Head Group Corporate Security

2015/04/22  
 Date

  
 J. M. G. M.



**prasa**

PASSENGER RAIL AGENCY  
OF SOUTH AFRICA

PRASA HOUSE  
1040 Burnett Street  
Hatfield  
Pretoria

Private Bag X101  
Braamfontein, 2017  
T: +27 12 748 7010

**Mr L Zide**

**Per e-mail**

## **NOTICE OF DISCIPLINARY PROCEEDINGS**

1. Pursuant to your recent special leave, you are hereby given notice to attend disciplinary enquiry before **Adv Anthea Platt SC**, an advocate at the Johannesburg Bar, as follows:

**Date(s):** 15 to 17 April 2019

**Time:** 09h00 to 16h00

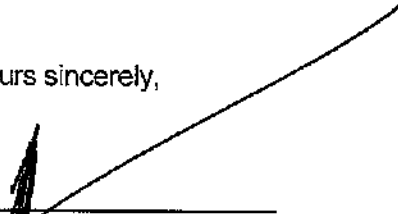
**Venue:** Mkhabela Huntley Attorneys Inc, Block C, 7 Eton Road,  
Sandhurst, Sandton.

2. Details of the misconduct charges to which you are required to answer appear on **Annexure A** hereto. You will in due course be provided with bundles of documents upon which PRASA will rely at the hearing.
3. You are hereby reminded that you have a right to a fair disciplinary hearing, which includes but is not limited to –
  - 3.1. the right to prepare your case;

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- 3.2. the right to be present at the disciplinary hearing;
  - 3.3. the right to be represented (at your own cost);
  - 3.4. the right to lead oral evidence and to produce any evidence;
  - 3.5. the right to cross-examine the company's witnesses and to question any evidence produced.
4. Naturally, PRASA reserves the right to amend the charges should it become necessary in the future.

Yours sincerely,

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**Dr N Sishi**  
**Group Chief Executive Officer**  
**Passenger Rail Agency of South Africa**

Date: 2019 / 04 / 04





## ANNEXURE A

### CHARGE SHEET - MR LINDIKAYA ZIDE

#### A. VENDA BUILDING SOCIETY MUTUAL BANK TRANSACTION

1. Whilst you were employed in the position of Acting Group Chief Executive Officer ("AGCEO") of Passenger Rail Agency of South Africa ("PRASA") you were required to, amongst others, discharge your duties and functions faithfully, diligently, promptly and punctually, in accordance with the policies of, or those that apply to, PRASA and with due regard to the Constitution and the laws of the Republic of South Africa.
2. Your duties entailed, amongst others:
  - 2.1. To ensure compliance with all legislation, regulations and policies that are applicable to PRASA, including but not limited to the Public Finance Management Act, 1 of 1999 ("PFMA") and the Treasury Regulations and Practice Notes promulgated in terms of the PFMA;
  - 2.2. To ensure compliance with the Supply Chain Management Policy ("PRASA SCM Policy") of PRASA; and
  - 2.3. To disclose to PRASA all acts and omissions which may constitute a breach by you of your obligations to PRASA.
3. On or about 6 November 2017, by letter to Mr Andile Ramavhunga ("Ramavhunga"), the erstwhile Chief Executive Officer of Venda Building

Society Mutual Bank ("**VBS Bank**"), you, in your capacity as AGCEO of PRASA, accepted a proposal from VBS Bank, thereby committing PRASA to make an investment of the sum of at least R1 billion with VBS Bank.

4. On account of your abovementioned conduct, you committed various acts of misconduct, details of which appear more fully in the the charges set out below:
  - 4.1. **Charge 1:** On or about 6 November 2017, when you irregularly committed PRASA to an investment of at least R1 billion to VBS Bank, you acted in breach of the PRASA delegation of authority, pursuant to which the GCEO has a transaction limit of R100 million, which the investment would exceed by 10 times;
  - 4.2. **Charge 2:** On or about 6 November 2017, when you accepted the VBS Bank proposal, you failed to satisfy yourself that the approach from Ramavhunga, to solicit an investment of at least R1 billion from PRASA to VBS Bank complied with the requirements for acceptance of an unsolicited bid as contemplated in clause 11.3.3 of the PRASA SCM Policy and/or Treasury Practice Note 11 of 2008 / 2009;
  - 4.3. **Charge 3:** On or about 6 November 2017, when you irregularly committed PRASA to an investment of R1 billion with VBS Bank, you acted in breach of PRASA Treasury Management Policy ("**PRASA TMP**"), by failing to ensure that VBS Bank was selected pursuant to a competitive process as contemplated in 14.5 of the TMP;



- 4.4. **Charge 4:** On or about 6 November 2017, when you irregularly committed PRASA to an investment of at least R1 billion to VBS Bank you did not adequately or diligently assess the risk profile of VBS Bank, thereby acting in breach of the PRASA TMP which enjoined you to manage the risk inherent to investment activities as contemplated in 14.4 of the PRASA TMP;
- 4.5. **Charge 5:** On or about 6 November 2017, when you irregularly committed PRASA to an investment of at least R1 billion to VBS Bank you failed to ensure that PRASA dealt only with an authorised counterparty because VBS Bank was neither a Fitch F1 or equivalent institution nor did it have a minimum equity of R2.5 billion as contemplated in 14.5 and 14.7 of the PRASA TMP;
- 4.6. **Charge 6:** By your involvement with VBS Bank and the role you played in the tainted transaction stipulated above, you brought PRASA's name and reputation into disrepute;
- 4.7. **Charge 7:** By your involvement with VBS Bank and the role you played in the tainted transaction stipulated above, you failed to set a good example of good management, diligence and accountability reasonably expected of a Group CEO of PRASA; and
- 4.8. **Charge 8:** In committing the aforesaid conduct, you acted with gross or serious negligence.



## B. KG MEDIA (PTY) LTD TRANSACTION

1. Whilst you were employed in the position of Group Executive, Legal and Risk of PRASA you were required to, amongst others, discharge your duties and functions faithfully, diligently, promptly and punctually, in accordance with the policies of, or those that apply to, PRASA and with due regard to the Constitution and the laws of the Republic of South Africa.
2. Your duties entailed, amongst others those set out above in paragraph A.2.
3. On or about 24 August 2015, the Public Protector published the report entitled "*Derailed*" pursuant to which the Public Protector made numerous findings of maladministration and improper conduct on the part of PRASA and its employees. Upon analysis of the Public Protector's report and various documents emanating therefrom, PRASA has established that you are implicated in various acts of serious misconduct relating to unlawful procurement processes in which you participated.
4. The details of your misconduct appear more fully from the charges set out below:
  - 4.1. **Charge 9:** On or about 18 August 2009 you unlawfully awarded a contract to KG Media (Pty) Ltd ("**KG Media**") and/or signed a contract with KG Media for the publication and distribution of a newspaper entitled "*Kwela Express*" for circulation within PRASA trains for the



period 1 April 2009 to 31 March 2012. (the “*first contract*”). It was clear from the wording of the first contract that it was not preceded by a procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective as required by, amongst others, the SCM Policy of PRASA and the PFMA.

- 4.2. **Charge 10:** On or about 22 May 2012 you unlawfully extended / alternatively renewed the first contract with KG Media for the period 1 April 2012 – 1 April 2015 (the “*second contract*”). Such extension was unlawful because the second contract was not preceded by a procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective as required by, amongst others, the SCM Policy of PRASA and the PFMA.

- 4.3. **Charge 11:** You failed to prevent irregular expenditure:

4.3.1. With respect to the first contract, of the amount of R400 000.00 per month (excl. VAT) over 36 months; and / or

4.3.2. With respect to the second contract, of the amount of R465 669.75 per month (excl. VAT) over 36 months.

- 4.4. **Charge 12:** You breached section 57 of the PFMA in that you failed to ensure that within your area of responsibility you took effective and appropriate steps to prevent irregular expenditure.



- 4.5. **Charge 14:** You failed to set a good example of good management, diligence and accountability reasonably expected of a Group Executive: Legal and Risk of the public entity.

### **Conclusion**

5. PRASA views your misconduct in a serious light.
6. Should you be found guilty of the aforementioned allegation(s), the PRASA disciplinary policy provides for dismissal as but one of the competent sanctions.
7. PRASA reserves the right to amend and/or add to the allegation(s) of misconduct preferred against you.
8. In the event of such amendment, you will be given an adequate opportunity to deal with any further allegation(s) brought against you.

**INTERNAL DISCIPLINARY INQUIRY**

In the matter between:

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**

**EMPLOYER**

and

**LINDIKHAYA ZIDE**

**EMPLOYEE**

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**EMPLOYERS' HEADS OF ARGUMENT**

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**Background**

1. PRASA is a state owned entity, listed in Schedule 3B of the Public Finance Management Act, 1999 (the PFMA<sup>1</sup>). PRASA performs an important public function, being the transport of rail commuters locally and nationally.
2. Mr Zide has held numerous roles at PRASA, being Group Executive: Legal and Risk, the Acting Group CEO, and most recently the Company Secretary.
3. On 4 April 2019 PRASA charged Mr Zide with misconduct pertaining to engagements and transactions with two entities: Venda Building Society Mutual Bank ("VBS") and KG Media.
4. The hearing sat on 23 April and 13 and 14 May 2019.
5. PRASA led two witnesses, Mr Zaman, Chief Audit Executive and Mr Fani Dingiswayo, the General Manager, Group Legal Services and Acting Company Secretary.
6. Mr Zide did not testify and led no witnesses.
7. With respect to the KG Media charges, the enquiry forms part of the remedial action ordered by the Public Protector following her damning report "*Derailed*" in August 2015 which found procurement irregularities to the value of approximately R2.8 billion at

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<sup>1</sup> Act 1 of 1999

PRASA.<sup>2</sup> Pursuant to this finding the Public Protector ordered the Board to take disciplinary action against employees implicated in maladministration and improper conduct.

### **The charges**

8. With respect to VBS Bank there are 8 charges pertaining to Mr Zide, in his then capacity of Group CEO in November / December 2017: of exceeding his authority, of failing to check whether a proposal from VBS satisfied PRASA policies and Treasury regulations; of bringing PRASA's name into disrepute, and failing to set a good example of executive leadership.<sup>3</sup>
9. With respect to KG Media there are 5 charges<sup>4</sup>, whilst he was the Group Executive, Legal and Risk, of unlawfully awarding a contract to KG Media in 2009 which contravened the competitive and fair procurement principles of the SCM Policy, extending that contract 3 years later, incurring irregular expenditure, and by failing within his area of responsibility, as per section 57 of the PFMA to prevent the irregular expenditure. He is also charged with failing to set a good example of executive leadership.

### **Evidence led on VBS**

10. Mr Zaman and Mr Dingiswayo led evidence on the VBS charges.
11. Mr Zaman gave evidence that:
  - 11.1. He was approached by the Chairperson of the Board, in early February 2018 to urgently review PRASA's involvement in allegations that PRASA had made an investment commitment to VBS Bank of R1 billion. The review was triggered by media queries circulating at the time.<sup>5</sup>
  - 11.2. On 5 February, Mr Zaman wrote to Mr Zide about the matter, and in particular referred to Mr Zide's letter of 6 November 2017, in which he had accepted an offer from VBS to make an investment to the bank.<sup>6</sup> Mr Zide was asked to respond within a few days, but did so only in September 2018.

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<sup>2</sup> "Derailed" pg 4, para (v)

<sup>3</sup> Bundle 2, pg 4 and 5

<sup>4</sup> Pg 6 and 7

<sup>5</sup> Transcript, 23 April, pg 21

<sup>6</sup> Bundle 2, pg 29



- 11.3. Mr Zaman drafted an initial report without Mr Zide's input, which was presented to the Board in March 2018,<sup>7</sup> and a final report in October 2018 which considered Mr Zide's submissions.<sup>8</sup>
- 11.4. Mr Zaman said that Mr Zide's letter of 6 November 2017 constituted an acceptance of the proposal from VBS on 1 November 2017. He says, *"My understanding is if you look at the context of the letter it's a confirmation to VBS that the proposal has been accepted and further arrangements will be made for the deposit of the amount of R1 billion."*<sup>9</sup>
- 11.5. VBS acted on the letter and opened an investment account on 2 December 2017.
- 11.6. VBS relied on the letter, and when the CFO, Ms Yvonne Page informed VBS that PRASA does not agree to make a first instalment of R500 million<sup>10</sup>, VBS replies, *"Please refer to the attached (the letter from Zide) wherein we have received confirmation that PRASA has determined to go ahead with this transaction on the basis of the offer that we had presented..."*<sup>11</sup>
- 11.7. Mr Molapelo, who followed Mr Zide as the Acting Group CEO, referred too to that letter, to confirm that Zide had approved the proposal.<sup>12</sup> Mr Molapelo writes to Page, *"Dear Yvonne. I refer to the approval of the investment in VBS by my previous – L K Zide, and the several discussions we've had over the past weeks. I have had discussions with the Chairperson and negotiated an improvement in the original proposal which we have accepted"*
- 11.8. Mr Zaman's evidence was that, as the internal auditor he understood that *"this wasn't a proposal at this stage...it was a done deal..."*<sup>13</sup>
- 11.9. Mr Zaman gave evidence that the delegation of authority had been violated.<sup>14</sup> An amount of R1 billion needed the Board's and the Minister's approval.<sup>15</sup>

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<sup>7</sup> See bundle B, pg 8.11 – 8.21

<sup>8</sup> See Bundle, pg 9

<sup>9</sup> Transcript, pg 42

<sup>10</sup> Bundle 2, pgs 45 and 46 and transcript pf 61

<sup>11</sup> Transcript, pg 61

<sup>12</sup> Pg 46

<sup>13</sup> Pg 62

<sup>14</sup> Transcript, pg 67

11.10. He said the proposal from VBS was an unsolicited bid, and what was required thereafter was to conduct a market analysis, and to consider national Treasury guidelines.

11.11. He found that the “due diligence” was conducted after the commitment was made, ‘post facto’. He says, “...*acceptance of the investment proposal was done prior to an adequate and effective due diligence process being performed.*”<sup>16</sup>

11.12. Mr Zaman found that there had been management override of the requisite processes<sup>17</sup> and this was impermissible unless there was higher authority (like the Board or the Minister) to do so, but there wasn’t.<sup>18</sup>

11.13. Ultimately Prasa did not make the investment because the risk was too high and the liquidity of the bank was a concern.<sup>19</sup>

12. Mr Dingiswayo gave the following evidence:

12.1. Mr Dingiswayo referred to the *Sunday Times* article on 4 February 2018 “*PRASA in new Zuma bank scandal*”<sup>20</sup>. The article refers to Mr Zide, “...*the Sunday Times has seen correspondence from PRASA’s former CEO Lidikhaya Zide Confirming the state entity’s commitment to a R1 billion investment with a return of 8.25% per annum.*” The letter of 6 November is repeated at length.

12.2. Mr Zide is mentioned in 2 further media reports, drafted by fin 24 “*R1n VBS investment: Embattled Prasa denies imminent deal, admits to proposal*”<sup>21</sup> and News 24 “*VBS blasts “unfounded” report, says its dealings with Prasa are above board.*”

12.3. He referred to Adv Motau’s report called “*The Great Bank Heist*”. Adv Motau SC investigated the collapse of VBS Bank, essentially a pyramid scheme looted by it’s executives to the financial detriment of it’s clients.

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<sup>15</sup> Transcript 68 and 69

<sup>16</sup> Transcript, pg 66 and 67

<sup>17</sup> Pg 47

<sup>18</sup> Pg 50

<sup>19</sup> Pg 51

<sup>20</sup> Bundle 2, pg 227

<sup>21</sup> Bundle 2, pg 221

- 12.4. Mr Dingiswayo referred to various extracts in the report implicating PRASA and Mr Zide. Motau writes, *"VBS went on a concerted and deliberate campaign to attract very substantial deposits from municipalities and at a later stage, state entities such as PRASA, by the payment of so-called commissions in order to solicit such deposits. This, in many instances, included the payment of bribes to various public officials who were in a position to influence the making of such deposits."*<sup>22</sup>
- 12.5. The value of the commissions is reported to be between R30 – R40 million to be "paid to highly placed PRASA officials."<sup>23</sup>
- 12.6. Mr Zide's letter of 6 November 2017 is quoted verbatim in the report.<sup>24</sup>
- 12.7. VBS's Ramavhunga testified that the *'PRASA deposit was "awarded" in terms of the Zide letter dated 6 November 2017...*<sup>25</sup>

### 13. Concessions made by Mr Zide

- 13.1. Mr Zide's legal representative conceded that there wasn't compliance with Treasury regulations and Prasa policies.<sup>26</sup> It became unnecessary therefore from PRASA's side to lead any evidence to prove that there was none compliance with these regulatory instruments.
- 13.2. Mr Zide's defence is simply that his letter of 7 November constitutes a letter of intent and does not give rise to a binding contract. It follows, according to Mr Zide's legal representative that if the chairperson finds that the letter, is simply a letter of intent, and not a contract then none of the consequences of misconduct follow pertaining to breach of delegation of authority, breach of SCM policy, breach of Treasury Regulations and the like. Conversely if the chair is of the view that the letter did give rise to a binding contract, then, Mr Zide is guilty as charged, as there was non compliance with the various requisite regulatory instruments.

### Evidence led on KG Media

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<sup>22</sup> Bundle 1, pg 118, para 18.1.2

<sup>23</sup> Bundle 1, pg 122, para 99

<sup>24</sup> Bundle 1, pg 125, para 112

<sup>25</sup> Bundle 1, pg 126, para 117

<sup>26</sup> Transcript, pg 65

14. Mr Dingiswayo explained that PRASA had entered into an agreement in 2009 with an ex employee, Mr Pule Mabe's company KG Media to produce a newspaper for train commuters.
15. The agreement followed an unsolicited bid from KG Media. The proposal did not qualify for acceptance as contemplated in clause 11.3.3 of the SCM Policy<sup>27</sup> as the concept was not unique, and could have been provided through a competitive bidding process, and there were suppliers in the market (such as Caxton) said Mr Dingiswayo who could provide a similar product.
16. Mr Zide signed the first contract in 2009<sup>28</sup>, and a 3 year extension to the contract in 2012.<sup>29</sup>
17. Mr Dingiswayo gave evidence that the contract amounts were paid, R400 000 per month for the first, and R465 000 per month for the second contract. This amounted to irregular expenditure as the contracts were unlawful from inception and none compliant with the SCM policy, the PFMA and the Constitution. The Public Protector held the same view in her report *"Derailed"*.<sup>30</sup>
18. When cross examined, and presented with an approval for the second contract by the Head of Procurement and the Group Chief Executive Officer, and asked what Zide should have done faced with these approvals, Mr Dingiswayo replied that he should have *"satisfied himself before signing the contract that it qualifies as an unsolicited bid"*.

The chair follows up, *"Can Group Legal say to the GCEO I know you have approved this but in my mind I don't think that it qualifies. Do they have that latitude or not?"*

Mr Dingiswayo replies, *"That's their job...their key function is to advise the company on whether things are compliant or none compliant."*<sup>31</sup>

Adv Van As for Mr Zide enters the fray, *"So Mr Zide should have read through this and turned around and said to both the Group CEO and the chief procurement officer, and while we are about it, the procurement manager, that this is not an unsolicited bid because it does not comply with 11.3.3."*

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<sup>27</sup> Bundle 1, pg 66

<sup>28</sup> Bundle 3, pg 18

<sup>29</sup> Bundle 3, pg 41

<sup>30</sup> Bundle 1, pg 12, para 7.9.5

<sup>31</sup> Transcript, 13 May 2019, pg 157

Mr Dingiswayo: “Yes”.

Adv Van As, “*Okay, and he should have done that in 2009 and again in 2012*”

Mr Dingiswayo, “Yes”.

19. Adv Van As argued that to discipline an employee 10 years later was ‘*shockingly unfair*.’ Mr Dingiswayo explained that these transgressions only came to light with the publication of ‘Derailed’ in 2015. Thereafter there was an investigation to ascertain the identity of the implicated employees, as required by the Public Protector in her remedial orders. The Investigation was conducted by Mkhabela Huntley Attorneys, forwarded to PRASA in June 2017 but discussed at the Board in mid June 2018. Thereafter charges were drafted and numerous disciplinary enquiries set in motion.<sup>32</sup>

### **The charges and the evidence**

20. Zide has conceded that he failed to comply with the various statutory, regulatory and mandatory policies pertaining to PRASA when he irregularly undertook to secure a R1 billion deposit into VBS Bank.
21. Mr Zaman gave evidence of Zide’s none compliance. He spoke of management’s override of controls. He said that there were post facto attempts to regularise Zide’s undertaking, but those attempts ultimately failed as the Finance Department at PRASA refused to buckle to the unlawful dealings of leadership at PRASA with VBS Bank officials.
22. Mr Dingiswayo referred to the various newspaper articles and Adv Terry Motau SC’s report on VBS Bank. Clearly Zide has brought Prasa into disrepute.
23. Mr Zide had no factual defence to the KG Media charges. He admitted signing the first contract, and the extension for the second. It was clear that the contracts arose from an unsolicited bid which failed to satisfy the criteria for consideration set out in the SCM policy. Irregular expenditure in the region of R35 million was incurred.
24. Mr Zide has failed to protect the interests of PRASA. He has been grossly derelict in his duties. He has failed dismally to set a high standard of ethical conduct befitting of an executive in his position.
25. He should be found guilty of all the charges against him.

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<sup>32</sup> Transcript, 13 May, pg 186

## Legal challenges from Zide and PRASA's response

26. Did the offer letter from VBS on 1 November and Zide's acceptance on 6 November constitute a legally binding contract? (the merits of Zide's defence)

26.1. The offer from VBS Bank on 1 November reads,

*"Dear Mr Zide, On behalf of VBS Mutual Bank...I submit to you a lucrative proposal, which I hope you will find to be in line with your Investment and Savings Strategy. Essentially our offer would include the following: (i) an 8.25% p.a interest on investment; (ii) Flexible terms as per business needs. We trust you will favourably consider this proposal.."*

26.2. Mr Zide replies,

*"Dear Mr Ramavhunga,*

*On behalf of PRASA, I duly acknowledge the receipt of the letter ...We have considered VBS Mutual Bank's proposal and we fittingly accept your offer of 8.25% pa interest and flexible terms.*

*We intend to commence with an investment of R1 000 000 000.00 (1 Billion Rands) further steps regarding such will be communicated thereafter.*

*Our finance department will be in contact with you to facilitate the necessary arrangements for the transaction within the next 21 working days. We are excited by the opportunity to work with an institution such as yours...*

*Sincerely Lindikaya Zide, Acting GCEO".*<sup>33</sup>

26.3. Whilst there is an offer, and a concomitant acceptance, the exchange does not lead to the conclusion of a valid contract. We agree with our opponents that Mr Zide's letter did not give rise to a legally enforceable contract. We say so because the agreement was unlawful from inception:

26.3.1. Mr Zide had no authority to bind PRASA as the quantum of the deposit exceeded his delegation of authority (up to R100 million);

26.3.2. Such an act would contravene section 7(2) of the PFMA as National Treasury had not given its approval to open a bank account with VBS;

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<sup>33</sup> Bundle B, p 29

26.3.3. The offer of 1 November amounted to an impermissible unsolicited bid, which failed to comply with clause 11.3.3 of the PRASA SCM policy and, Treasury Practice Note 11 of 2008 / 2009.

26.3.4. The agreement clearly contravenes public policy considerations.

26.4. Christie in the Law of Contract writes, “The law would be hopelessly self contradictory if it treated a contract to commit an unlawful act as enforceable, as it would be approbating and reprobating the same act, blowing hot and cold.”<sup>34</sup>

26.5. In our view Zide’s defence is misconceived. PRASA has not charged with Zide with concluding a (valid and enforceable) contract with VBS, but with ‘irregularly committing’ PRASA to an investment of R1 billion. The commitment is qualified by the word ‘irregularly’ and denotes qualities of impropriety and unlawfulness.

26.6. It matters not whether the undertaking amounted to the conclusion of a valid and enforceable contract – Zide’s conduct making the irregular and tainted commitment – amounted to gross misconduct as it constituted a contravention of the various regulatory and governance restraints applicable to PRASA.

26.7. The concessions Zide made that his conduct contravenes PRASA policies and the PFMA stand regardless of whether or not the letter of 6 November 2017 was simply a “letter of intent” or an “agreement to agree” as argued by his legal representative.

26.8. Importantly Zide gave no evidence in his defence. Despite his legal representative bemoaning the fact that the Public Protector did not interview him, and nor did MHA prior to drafting the Implementation Report, Zide chose to remain silent. He spurned an opportunity to present a competing version to the one presented by PRASA. PRASA’s compelling evidence of his misconduct stands, materially unchallenged.

27. Excessive delay in instituting misconduct hearing

27.1. We agree that in general instituting charges against an employee some 10 years after the offence was allegedly committed would be considered unfair. However the context of the KG Media arise out of unusual circumstances.

27.2. The Public Protector reported on widespread malfeasance at PRASA in 2015. She noted widespread corruption, irregular expenditure and a culture of complicit

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<sup>34</sup> Pg 356

executives and employees transgressing financial and managerial checks and balances.

27.3. It was only in August 2015 when the irregular contract with KG Media's Pule Mabe came to light. Thereafter there was an investigation to identify implicated employees; and a report prepared which went to the Board.

27.4. Mr Zide was charged in April 2019, and the time from the publication of the Public Protector's report, until he was charged is 3.5 years, which is not excessive noting the turmoil and changes in leadership in the public entity.

27.5. It is important to bear in mind that the Public Protector's remedial action is binding.<sup>35</sup>The Public Protector instructs the Minister of Transport to

*'ensure that the PRASA Board considers the acts of maladministration and improper conduct...and takes appropriate disciplinary action against the officials of PRASA in respect of their conduct referred to therein'.<sup>36</sup>*

27.6. She also instructs the Chair of the Board to

*'take cognizance of the findings of maladministration and improper conduct by Mr Montana and other functionaries at PRASA and takes or ensures that appropriate disciplinary action is taken against the responsible officials where it considers appropriate.'<sup>37</sup>*

27.7. Bearing in mind the mandatory provisions of the Public Protector's remedial action, that disciplinary action must be taken against implicated employees; and the reasonable explanation for the delay, we submit that the delay does not amount to a waiver of the employer's rights to take disciplinary action against Mr Zide.

27.8. Mr Zide's second and final legal challenge therefore fails.

## Conclusion

28. Zide's legal defences do not withstand scrutiny.

29. Zide should be found guilty of all the VBS and KG Media charges.

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<sup>35</sup> *Economic Freedom Fighters v Speaker of the National Assembly and others* (2016) 3 SA 580 cc. See too *Democratic Alliance v SABC and others*,; *Democratic Alliance v Motsoeneng* [2017] 2 BLLR 153 (WCC).

<sup>36</sup> Pra 9.1.3 of the report

<sup>37</sup> Para 9.2.1



**Dawn Norton**

**MKHABELA HUNTLEY ATTORNEYS**

**28 May 2019**

## INTERNAL DISCIPLINARY ENQUIRY

In the matter between:

**PRASA**

Employer

and

**LINDIKHAYA ZIDE**

Employee

## THE AWARD

### INTRODUCTION

1. This award follows the disciplinary hearing into the conduct of Mr. Lindikhaya Zide (*“the employee”*), an attorney and the Company Secretary. Passenger Rail Agency of South Africa (*“the employer”*), alleges that the employee is guilty of thirteen counts of misconduct which I will detail later. Two witnesses testified on behalf of the employer, Mr. Zaaman and Mr. Dingiswayo. The employee called no witnesses nor gave evidence in the hearing<sup>1</sup>. The employee pleaded not guilty to all the charges<sup>2</sup>.

<sup>1</sup> In *Galante v Dickinson* 1950 (2) SA 460 (A) at 465 Schreiner JA said that: *“It is not advisable to seek to lay down any general rule as to the effect that may properly be given to the failure of a party to give evidence on matters that are unquestionably within his knowledge. But it seems fair at all events to say that in an accident case where the defendant was himself the driver of the vehicle, the driving of which the plaintiff alleges was negligent and caused the accident, the court is entitled, in the absence of evidence from the defendant, to select out of two alternate explanations of the cause of the accident which are more or less equally open on the evidence, that one which favours the plaintiff as opposed to the defendant.”*

<sup>2</sup> Transcript page 15 lines 23 to 25 (23 April)

2. It was not in dispute, that the employee had authored the letter of 6 November 2017 which accepted the offer from VBS, an unsolicited bid, for the employer's surplus funds to be invested with the Bank at a rate of 8.25% per annum<sup>3</sup>. This letter is in response to the VBS letter dated 1 November 2017. The letter reads in the relevant part, *"On behalf of VBS Mutual Bank ("VBS" or "the Bank"), I would like to take this opportunity to thank you for allowing us to present our investment rate. I submit to you a lucrative proposal, which I hope you will find to be in line with your investment and savings strategy."*<sup>4</sup> In turn, the employee's response in the relevant part reads: *"On behalf off Passenger Rail Agency of South Africa (PRASA) I duly acknowledge the receipt of the letter sent with VBS Mutual Bank's proposed investment terms. We have considered VBS Mutual Bank's proposal and we fittingly accept your offer of 8.25%p.a. interest and flexible terms as per our needs. We intend to commence with an investment of R1000 000 000 (R1 Billion) only. Further steps regarding such will be communicated thereafter. Our finance department will be in contact with you to facilitate the necessary arrangements for that transaction within the next 21 days. We are excited by the opportunity to work with an institution such as yours"*
  
3. During the hearing it was put to the witnesses on behalf of the employer that Venda Building Society ("VBS") does not have the credit and liquidity rating which is compliant with the policy of the employer for investing any

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<sup>3</sup> Bundle 2 page 29

<sup>4</sup> Bundle 2 page 28

surplus funds of the employer<sup>5</sup>; further that no supply chain management procedures need be complied with, in instances, where there are no contracts concluded; and that compliance with supply chain management requirements specified in the policy of the employer is triggered only when a contract is concluded<sup>6</sup>. I will deal with these contentions later.

4. The first charge is couched as follows:

*“Charge 1: On or about 6 November 2017, when you irregularly committed PRASA to an investment of at least R1 billion to VBS bank, you acted in breach of the PRASA delegation of authority, pursuant to which the GCEO has a transaction limit of R100 million, which the investment would exceed by 10 times.*

5. In respect of this charge, Zaaman, the Chief Audit Executive with the employer, testified that in terms of the policy of the employer, the Group Chief Executive Officer (“GCEO”) has a threshold of R100 million in respect of any transaction, which applied to the employee during the relevant time when the later was the Acting GCEO. A transaction of this nature would require the Board of Control to recommend to the Minister of Transport for approval. No Board of Control made the recommendation for any investment with VBS neither was the approval of the Minister of Transport obtained for that transaction. This evidence was not challenged<sup>7</sup>.

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<sup>5</sup> Transcript page 16 lines 19 to 24 (23 April)

<sup>6</sup> Transcript page 14 lines 10 to 19 (23 April)

<sup>7</sup> In *Ex Parte Minister of Justice: Re R v Jacobson and Levy* 1931 AD 466 at 478, Stratford JA held that “*Prima facie evidence in its usual sense is used to mean prima facie proof of an issue, the burden of proving which is upon the party giving that evidence.*”

6. The contention on behalf of the employee is that no Board of Control recommendation or the Ministerial approval was necessary since the actual contract was ultimately not concluded with VBS. Zaaman and Dingiswayo, the General Manager: Group Legal Services and the Acting Company Secretary, conceded this proposition as correct under cross examination. The opinion of these witnesses in this respect is misplaced. Ultimately, whether or not the policy applies when an agreement is concluded, is a matter that ultimately, I must determine with the policy properly interpreted.
7. There is no doubt that the response of the employee is unequivocal that it is made on the letterhead of the employer giving the response an official status; the letter also commits the employer into an arrangement relating to the finances of the employer; it obligates the employer to investing an amount in excess of a R100 million threshold; and also that the finance department of the employer will facilitate that transaction and stipulates the time within which such an investment will occur.
8. I have no doubt that in the first place there is an offer and an acceptance which are the necessary requirements for a contractual agreement, and if the terms of the agreement were lawful, then VBS would have been entitled to

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*In the absence of further evidence from the other side, the prima facie proof becomes conclusive proof and the party giving it discharges his onus."*

claim specific performance in line with the acceptance of the offer as set out in the two communications.

9. I am therefore not persuaded that the concession made by Zaaman on a law point is correct or the contention held on behalf of the employee has any merit. The employee would have been bound by the policy dictates to first seek the Board of Control's recommendation and the Ministerial approval before putting pen to paper.
10. In the circumstances, the employer has discharged its onus of showing that the employee was in breach of exceeding his delegation of authority.
11. It should be stated upfront that all the charges, (being charge 1 to 8), arise from the same set of facts and from the same set of policies, therefore one must be careful not to have charges that are duplicated. I now turn to deal with charges 2 through to 5 and 8. During the evidence in chief of Zaaman, Mr. Van As, the employee's counsel stated, which was confirmed by the employee that *"insofar as there was a and perhaps and my client sits here and he is an attorney, insofar as there wasn't compliance with the various supply chain policies, PFMA, Treasury regulations our defence is one that there wasn't a contract. This was nothing more than a letter of intent. Mr. Zide?"* and the employee responded *"Right"*<sup>8</sup>.

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<sup>8</sup> Transcript page 71 lines 2 to 8 (23 April)

12. The justification, provided by the employee, for this non-compliance is not correct in law. Especially if one has regard to paragraph 11.3.3 of the SCM policy which deals with unsolicited bids. It is clear from the wording that *“unsolicited bids are generally prohibited unless approved for consideration.”* Thus, even if it was a statement of intent, there would still need to be compliance with paragraph 11.3.3 of the SCM Policy in relation to the unsolicited bid for it to be approved for consideration. This was not done. *A fortiori*, there would therefore be no compliance with charges 2, 3, 4 and 5. Therefore, the employer has discharged its onus in showing that the employee had acted with gross negligence when he penned the letter of 6 November 2017 without the necessary authority to do so.

13. Charge 6 is couched in the following terms:

**Charge 6:** *By your involvement with VBS Bank and the role you played in the tainted transaction stipulated above, you brought PRASA's name and reputation into disrepute.*

14. Disrepute is defined in the Oxford Dictionary as *“a lack of good reputation or respectability”*<sup>9</sup>. Dingiswayo stated under cross examination that it does not matter whether the letter was leaked to the press or not, the publication of the letter and the conclusion of the contract would cause the employer to suffer reputational harm<sup>10</sup>. Dingiswayo's evidence was also that the employer was just coming out of litigation fatigue and seemed to be turning

<sup>9</sup> Ninth Edition, 1995 Clarendon Press, Oxford

<sup>10</sup> Transcript page 168 line 22 to page 169 line 24 (13 May)

a corner in its processes, when the VBS transaction came to light and showed that the employer was “*not doing things in a proper way*”<sup>11</sup>.

15. I disagree with the view that it is the conclusion of the contract that would cause the employer to suffer reputational harm. The media reports seem to place the spotlight on the employer and specifically on the fact that the employee “*accepted*” the offer made by VBS. Whether the facts were correct or not, it placed the employer front and center in the public arena and called into question whether there was compliance with the procurement policies.
16. It was the linking of the employer to VBS in circumstances where VBS was itself under investigation, that caused the reputational harm to the employer. In the words of the employee’s counsel, “*We’re dealing with somebody – and you quote (sic) honestly and openly tell the disciplinary chairperson as somebody who signs a careless and inappropriate letter, carelessly and inappropriately worded, but there’s no contract*”<sup>12</sup>, it is this letter which caused confusion in the public domain as to the relationship between VBS and the employer.
17. Therefore, the linking of the employer with VBS and the subsequent denial of any agreement gave the general impression to a reasonable person that there was something more. All of which stemmed from the employee’s letter.

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<sup>11</sup> Transcript page 111 line 18 to page 112 line 11 (13 May)

<sup>12</sup> Transcript 85 lines 15 to 22 (23 April)



18. Thus, in weighing the evidence before me, especially when there is no rebuttal evidence, the explanation tendered by the employer's witnesses is more probable. It is the explanation favoured.
19. I find that the employer has discharged its onus of showing that the employee's involvement in the VBS transaction brought the employer's name and reputation into disrepute.
20. Charge 7 is couched in the following terms:

***Charge 7:** By your involvement with VBS Bank and the role you played in the tainted transaction stipulated above, you failed to set a good example of good management, diligence and accountability reasonably expected of a Group CEO of PRASA.*

21. The evidence of Dingiswayo was that senior managers must live by the prescripts of the Public Finance Management Act, 1999 and the Constitution of the Republic of South Africa, 1996 and the example is to be set at the most senior level<sup>13</sup>. Thus, a Group CEO must lead by example and be the first to comply with the policies and procedures of the company if he expects his employees to do the same. I find that the employee in failing to implement the procedures laid down in the SCM policy and the TMP, failed to lead by example.

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<sup>13</sup> Transcript page 123 line 23 to page 124 line 23 (13 May)

22. Paragraph 16 of the TMP specifically states that if one fails to comply with the TMP, disciplinary charges will be laid against you and this can only be condoned by the GCEO. The necessary disciplinary proceedings were instituted against the employee, and correctly so.
23. It is the employee who can testify as to how he conducted himself within the company and whether he had set a good example or not. There was nothing to rebut the evidence of the employer. I therefore find that the employer has discharged its onus that the employee failed to set a good example of good management.

#### *KG Media*

24. The KG Media charge relates to two periods being 2009 and 2012 in which the employee signed two contracts which saw KG Media providing a newspaper to the employer for the benefit of the employer's passengers. These charges are also related to the same set of facts and on the same policies of the employer. Once again, it should be uppermost in one's mind that the charges are not duplicated.
25. The employer led the evidence of Dingiswayo in relation to this charge. The charges relating to KG Media are provided below:

*“Charge 9: On or about 18 August 2009 you unlawfully awarded the contract to KG Media (Pty) Ltd (“KG Media”) and/or signed a contract with KG Media for the publication and distribution of a newspaper entitled “Kwela Express” for circulation within PRASA trains for the period 1 April 2009*

*to 31 March 2012 (“the first contract”). It was clear from the wording of the first contract that it was not preceded by a procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective as required by, amongst others, the SCM Policy of PRASA and the PFMA.*

*Charge 10: on or about 22 May 2012 you unlawfully extended/ alternatively renewed the first contract with KG Media for the period 1 April 2012-2015 (“the second contract”). Such extension was unlawful because the second contract was not preceded by a procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective as required by, amongst others, the SCM Policy of PRASA and the PFMA.*

*Charge 11: You failed to prevent irregular expenditure:*

- *With respect to the first contract, of the amount of R400 000.00 per month (excl VAT) over 36 months; and/or*
- *With respect to the second contract, of the amount of R465 669.74 per month (excl VAT) over 36 months.*

*Charge 12: You breached section 57 of the PFMA in that you failed to ensure that within your area of responsibility you took effective and appropriate steps to prevent irregular expenditure.”*

26. Before dealing with the merits of the matter I will firstly deal with the issue of the delay.

### The Delay

27. In the employee’s heads of argument, they proffer the submission that the employer has waived its right to discipline the employee when the Mkhabela Huntley report did not recommend the employee be disciplined. They also

submit that there has been a lengthy delay between the alleged misconduct and the disciplinary proceedings.

28. During cross examination, Dingiswayo was questioned in relation to the delay in bringing the disciplinary proceedings in relation to both contracts considering that the first contract was dated 10 years ago. The evidence is that the employer at no stage thought that the contracts of 2009 and 2012 were unlawful. The first time this was brought to the employer's attention was when the Public Protector brought out her report titled "*Derailed*", on 24 August 2015, and recommended that the Board of PRASA conduct further investigations into the conclusion of the contracts and bring the necessary persons to book.
29. The evidence was that after this report, the Board instructed Mkhabela Huntley to conduct an investigation and this report was concluded on 6 June 2017 and presented to the Board in March 2018. Thereafter, various disciplinary proceedings were instituted and around September or October 2018, in another disciplinary enquiry, new information surfaced which then implicated the employee and it was thereafter that disciplinary proceedings were brought against the employee<sup>14</sup>.

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<sup>14</sup> Transcript page 163 line 9 to page 165 line 8 (13 May)

30. If regard is had to the Employee Relations Policy of PRASA dated 07/09/2007<sup>15</sup>, there are no timelines stipulated for when an investigation and a disciplinary proceeding are to be finalized. However, the Employee Relations Policy does provide under investigations that this should be concluded as soon as practically possible<sup>16</sup>.
31. The employee relies on the Constitutional Court in *Stokwe v Member of the Executive Council: Department of Education, Eastern Cape and Others*<sup>17</sup> which looked at the issue of the delay in concluding disciplinary proceedings. The Constitutional Court held that the requirement of promptness not only extends to the institution of disciplinary proceedings, but also to their expeditious completion<sup>18</sup>.
32. The Stokwe case turned on the finalisation of the appeal process and looked at factors that should assist in determining whether a delay is unfair in the context of disciplinary proceedings. This the court held that:
- “(a) the delay has to be unreasonable. In this context, firstly, the length of the delay is important. The longer the delay, the more likely it is that it would be unreasonable.
  - (b) the explanation for the delay must be considered. In this respect, the employer must provide an explanation that can reasonably serve to excuse the delay. A delay that is inexcusable would normally lead to a conclusion of unreasonableness.

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<sup>15</sup> Bundle 1 page 19

<sup>16</sup> Bundle 1 page 23 para 5.5

<sup>17</sup> 2019 (4) BCLR 506 (CC)

<sup>18</sup> Supra at para 67

- (c) It must also be considered whether the employee has taken steps in the course of the process to assert his or her right to a speedy process. In other words, it would be a factor for consideration if the employee himself or herself stood by and did nothing.
  - (d) Did the delay cause material prejudice to the employee? Establishing the materiality of the prejudice includes an assessment as to what impact the delay has on the ability of the employee to conduct a proper case.
  - (e) The nature of the alleged offence must be taken into account. The offence may be such that there is a particular imperative to have it decided on the merits. This requirement however does not mean that a very serious offence (such as a dishonesty offence) must be dealt with, no matter what, just because it is so serious. What it means is that the nature of the offence could justify a longer period of further investigation, or a longer period in collating and preparing proper evidence, thus causing a delay that is understandable.
  - (f) All the above considerations must be applied, not individually, but holistically.”<sup>19</sup>
33. In this instance from the time of the instituting of the charge on 4 April 2019, the hearing was conducted on 23 April and concluded on 14 May 2019, thus in that respect there is no delay in the disciplinary proceedings.
34. The delay stems from the investigation of the charge. This, as the explanation goes, stems from 24 August 2015 to 4 April 2019. This is some

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<sup>19</sup> Supra at para 72

3 years and 7 months. As stated above, the Employee Relations Policy requires that the investigation be finalized as soon as practically possible.

35. Thus, if I apply the factors as stated by the Constitutional Court holistically, then the following arises:

35.1. The length of the delay is 3 years and 7 months which, on the face of it, seems to have taken quite long time to finalize the investigation. This is calculated from the report of the Public Protector.

35.2. The employer has provided an explanation for the delay. What is important to note in this case is that the employer only knew that the contracts were unlawful in August 2015 and not at its inception or shortly thereafter. The explanation also deals with what steps the employer had taken during the investigation phase that ultimately led to the employee being charged.

35.3. As stated before, the employee was only charged in April 2019 and the hearing was conducted in April 2019 as well. Thus, the delay was raised in cross examination on what the employer had done to investigate and determine that the employee was implicated. There is also no evidence that the employee had taken any steps during the investigation phase to speed up the process.

35.4. There was no evidence led by the employee that he was materially prejudiced by the delay.

35.5. The nature of the offence is not one that would in the normal course require a lengthy period of investigation. In fact, once the employer got further information it was a mere 5 months before charges were instituted against the employee. The report of the Public Protector focused mainly on Mr. Montana and his role in various contracts. The KG media contract was one such contract. From the evidence of Dingiswayo, it seems that, the involvement of the employee in this transaction was only discovered in September/October 2018. When cross examined on this point, Dingiswayo stated that in the *“ordinary course of these things either through investigation or through disciplinary processes further evidence emerges and it cannot be ignored. So that is what happened in this case.”*<sup>20</sup>

36. Therefore, this case is slightly different to what is contended in the Stokwe case, however, even if I rely on the principles espoused there, I find that this case is different in that the investigation was triggered by an independent third party which then raised the red flag as to the KG Media transaction, although the focus was different. It was then, after further investigations and

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<sup>20</sup> Transcript page 159 line 24 to page 160 line 5 (13 May)



disciplinary processes, that the information implicating the employee was made known<sup>21</sup>.

37. I therefore find that the employer has not waived its right to discipline as proffered by the employee as there was no evidence led on a waiver of this right. I find that the explanation tendered by the employer, without any other factors raised by the employee, to be satisfactory to excuse the delay.

#### The merits

38. The evidence of the employer through Dingiswayo was that the employee was at the relevant stage the Group Executive: Legal and Risk. Dingiswayo testified that *“part of the responsibilities of the legal department is to advise PRASA on compliance and non-compliance. So, in this transaction he participated to a non-compliant transaction when in terms of his role he should’ve advised the company that the transaction does not comply with the laws of, that PRASA is subject to.”*<sup>22</sup>
39. This evidence although subjected to cross examination remained that the legal department has the necessary latitude to inform the GCEO that they are of the opinion that a contract does not comply with the employer’s policies<sup>23</sup>.

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<sup>21</sup>Transcript page 166 line 4 to page 167 line 2 (13 May)

<sup>22</sup> Transcript page 148 line 17 to page 149 line 2 (13 May)

<sup>23</sup> Transcript page 152 line 8 to page 157 line 21 (13 May)

40. It was admitted that the employee signed the 2009 and 2012 contracts. As the Group Executive: Legal and Risk, a reasonable attorney would have provided his opinion on the contract before and independently verified whether the contracts were in accordance with the law governing the employer as well as the SCM policies and procedures. There is no evidence to suggest whether this was independently done by the employee or not. It is only the employee who has the knowledge of whether there was compliance with this or not.
41. On the recommendation report for the 2012 contract it was put to Dingiswayo that “*Zide should have read through this and turned around and said to both the group CEO and the chief procurement officer, and while we are about it, the procurement manager, that this is not an unsolicited bid because it does not comply with 11.3.3.*”<sup>24</sup>” The response by Dingiswayo was “*Yes*”<sup>25</sup>.
42. I therefore find, that without any explanation to counter this version, the *prima facie* evidence of the employer must become conclusive.
43. I thus find that the employer has discharged its onus in relation to charges 9 to 14 in that the employee failed to comply with the policies of the employer and the Public Finance Management Act.

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<sup>24</sup> Transcript page 157 lines 13 to 17 (13 May)

<sup>25</sup> Transcript page 157 line 18 (13 May)

**AL PLATT SC**

**CHAIRPERSON: Disciplinary Enquiry**

**20 June 2019**

**STATEMENT OF LINDIKHAYA ZIDE ON MITIGATING CIRCUMSTANCES**

1. I have some thirteen years' service with PRASA.
2. I have a clean disciplinary record.
3. I am married with two minor children. I am the primary breadwinner and also support my brother and his family.
4. Insofar as the KG Media charges are concerned, I draw to the Disciplinary Chairperson's attention that I never received training on the PFMA or the SCM Policy. I therefore did not fully appreciate or understand that the former CEO, Mr Montana, could not simply exercise his discretion and conclude such an agreement. This is especially so since other senior executives, who are involved in supply chain management, also approved the KG Media Agreement. ||
5. Mr Montana furthermore did not tolerate opposition to his decisions and would suspend and even dismiss executives who did not implement his decisions. He wanted to dismiss Mr Dingiswayo for not implementing one of his decisions. ||
6. I was therefore afraid of losing my job if I questioned the KG Media Agreement, especially in circumstances where I was not sure that it is appropriate or necessary to do so.
7. Insofar as the VBS Bank charges are concerned, I had been urged by the PRASA Board to do business with black empowered businesses. VBS Bank was the only black owned bank and therefore I believed that PRASA should prioritize business with VBS Bank.
8. It was also imperative that I invest PRASA monies at the highest possible returns in order to allow PRASA to pay bonuses to particularly its lowest earning employees.
9. At the time that I had to make this decision, I had only been acting in the position for a short while, and was under pressure to make decisions. I honestly believed that I was acting in the best interests of PRASA and advancing black economic empowerment by engaging with VBS Bank. ||

10. Also, at the time I wrote the letter of intent, I was of the view that it simply expressed an intention to invest the funds, and that it was not a binding agreement yet. PRASA also believed that the letter was not binding, as expressed in media statements. It is common cause that PRASA suffered no harm as a result of the letter.
11. I now understand and appreciate that I should have followed PRASA'S procedures with more diligence. I acknowledge that writing the letter was an error of judgement on my part. I however did not gain from the proposed transaction in any manner, and I also did not act in a dishonest or underhand manner. I took a wrong decision whilst under pressure in a new position.
12. I apologize for this error of judgement as well as my failure to display more care in properly assessing the KG Media Agreement.
13. Should I not be dismissed, I will return to the position of company secretary. In this position, I will not have to make the executive decisions which resulted in the KG Media and VBS Bank charges.
14. I have been asked to and have performed various company secretary duties during my suspension. I have a good working relationship with many of my colleagues who I have interacted with during the period of suspension, including Mr Piet Sebola, (insert list of duties performed and interactions with colleagues). I respectfully submit that I am more than able to discharge the duties and responsibilities of company secretary at PRASA.
15. I therefore further respectfully submit that there has not been an irretrievable breakdown in the trust relationship and employment relationship.
16. I therefore request the Disciplinary Chairperson to impose a lesser sanction than dismissal so as to not cause undue economic hardship to my family.
17. I once again apologize for my lack of judgement. I am committed to rendering diligence service to PRASA, and believe that I can still play a positive role in the organisation.

LINDIKHAYA ZIDE

26 JUNE 2019

## INTERNAL DISCIPLINARY ENQUIRY

In the matter between:

**PRASA**

Employer

and

**LINDIKHAYA ZIDE**

Employee

## SANCTION

### INTRODUCTION

1. This sanction follows on the finding that Mr. Lindikhaya Zide (“*the employee*”), an attorney and the Company Secretary was found guilty of the charges<sup>1</sup> leveled against him by Passenger Rail Agency of South Africa (“*the employer*”).

<sup>1</sup> **Charge 1:** On or about 6 November 2017, when you irregularly committed PRASA to an investment of at least R1 billion to VBS bank, you acted in breach of the PRASA delegation of authority, pursuant to which the GCEO has a transaction limit of R100 million, which the investment would exceed by 10 times. **Charge 2:** On or about 6 November 2017, when you accepted the VBS Bank proposal, you failed to satisfy yourself that the approach from Ramavhunga, to solicit an investment of at least R1 billion from PRASA to VBS Bank complied with the requirements for acceptance of an unsolicited bid as contemplated in clause 11.3.3 of the PRASA SCM Policy and/or Treasury Practice Note 11 of 2008/2009. **Charge 3:** On or about 6 November 2017, when you irregularly committed PRASA to an investment of R1 billion with VBS Bank, you acted in breach of PRASA Treasury Management Policy (“PRASA TMP”), by failing to ensure that VBS Bank was selected pursuant to a competitive process as



2. The employer called no witness to testify in aggravation and the employee testified in relation to mitigation of sanction. The employee placed the following facts before me in mitigation namely that: he has thirteen years' service with PRASA; he has a clean disciplinary record; he is married with

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*contemplated in 14.5 of the TMP. **Charge 4:** On or about 6 November 2017, when you irregularly committed PRASA to an investment of at least R1 billion to VBS Bank you did not adequately or diligently assess the risk profile of VBS Bank, thereby acting in breach of the PRASA TMP which enjoined you to manage the risk inherent to investment activities as contemplated in 14.4 of the PRASA TMP. **Charge 5:** On or about 6 November 2017, when you irregularly committed PRASA to an investment of at least R1 billion to VBS bank you failed to ensure that PRASA dealt only with an authorized counterparty because VBS Bank was neither a Fitch F1 or equivalent institution nor did it have a minimum equity of R2.5 billion contemplated in 14.5 and 14.7 of the PRASA TMP. **Charge 6:** By your involvement with VBS Bank and the role you played in the tainted transaction stipulated above, you brought PRASA's name and reputation into disrepute. **Charge 7:** By your involvement with VBS Bank and the role you played in the tainted transaction stipulated above, you failed to set a good example of good management, diligence and accountability reasonably expected of a Group CEO of PRASA. **Charge 8:** In committing the aforesaid conduct, you acted with gross or serious negligence. **Charge 9:** On or about 18 August 2009 you unlawfully awarded the contract to KG Media (Pty) Ltd ("KG Media") and/or signed a contract with KG Media for the publication and distribution of a newspaper entitled "Kwela Express" for circulation within PRASA trains for the period 1 April 2009 to 31 March 2012 ("the first contract"). It was clear from the wording of the first contract that it was not preceded by a procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective as required by, amongst others, the SCM Policy of PRASA and the PFMA. **Charge 10:** on or about 22 May 2012 you unlawfully extended/ alternatively renewed the first contract with KG Media for the period 1 April 2012-2015 ("the second contract"). Such extension was unlawful because the second contract was not preceded by a procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective as required by, amongst others, the SCM Policy of PRASA and the PFMA. **Charge 11:** You failed to prevent irregular expenditure: With respect to the first contract, of the amount of R400 000.00 per month (excl VAT) over 36 months; and/ or With respect to the second contract, of the amount of R465 669.74 per month (excl VAT) over 36 months. **Charge 12:** You breached section 57 of the PFMA in that you failed to ensure that within your area of responsibility you took effective and appropriate steps to prevent irregular expenditure. **Charge 14:** You failed to set a good example of good management, diligence and accountability reasonably expected of a Group Executive: Legal and Risk of the public entity.*

two minor children and the primary breadwinner; he had not received training on the PFMA or the SCM Policy and did not fully appreciate and understand that the former CEO could not simply exercise his discretion and conclude such an agreement; the former CEO did not tolerate opposition to his decisions; he was afraid of losing his job; he felt pressured to invest PRASA monies with black empowerment businesses; he acted at all times in the best interest of PRASA; he believed that the letter of 6 November 2017 was an expression of intent and PRASA did not suffer any harm as a result of the letter; he did not gain from the VBS transaction; he apologized for the error in judgment; he should not be dismissed as he will be returning to the position of Company Secretary and there he does not have to make executive decisions; he has, while on special leave from 15 March 2019, being asked to perform various company secretary duties; there has not been an irretrievable breakdown in the trust and employment relationship; and that the dismissal will cause undue economic hardship to his family.

3. The employer is seeking summary dismissal and provided submissions as to why this should be the appropriate sanction. These are, namely that his actions was the genesis of the VBS scandal implicating PRASA; he was the most senior manager at the time; he concluded unlawful contracts with KG Media; he was the agent in the irregular spend of R35million, he breached his duty of good faith owed to PRASA by pursuing tainted ventures with



third parties; he ignored PRASA's statutory checks and balances; his continued employment would pose a continued risk to PRASA; he has shown no remorse. The employer also submitted that the Disciplinary code does not contain specific disciplinary offences with concomitant sanctions. However, so the employer submits, that the employee breached two of the general species of misconduct being behavior that is damaging the image of the company and failure to comply with existing orders/standards or to obey rules and regulations.

4. The general principle of fairness is paramount when determining the issue of sanction. The Labour Appeal Court approved the approach in Computicket v Marcus NO & Others (1999) 20 ILJ 342 (LAC) in which it held that: *"The question of sanction for misconduct is one on which reasonable people can readily differ. One person may consider that dismissal is the appropriate sanction for an offence, another that something less, such as a warning, would be appropriate. There are obviously circumstances in which a reasonable person would naturally conclude that dismissal was the appropriate sanction, for example, if there has been theft of a significant amount of money, fraud or other untrustworthy conduct on the part of the [employee]... There are obviously circumstances in which dismissal would not be warranted. I take for instance the circumstances of an employee who is five minutes late for work in circumstances in which such misconduct has no prejudicial consequences for the employe[r]. Between these two poles there is a range of possible circumstances in which one person might take a view different from another without either of them properly being castigated as unreasonable."*

5. When looking at the facts placed before me, and in balancing these competing interests, what strikes at the heart of this case is that, the employee who is an attorney and employed in positions like Group Executive: Legal and Risk and now the Company Secretary, admitted to breaching the law and company policies he is employed to ensure compliance with. The employee then stated in mitigation that maybe he required training on the PFMA and the Supply Chain Management policy. This I find as a thin excuse for mitigation.
6. I would expect an attorney with the years of service of the employee in the senior positions held by him, to have an understanding of the PFMA and the Supply Chain Management policy and how this pertains to his role as Group Executive or Acting Group Chief Executive Officer.
7. Furthermore, the employee states that he is in the position of Company Secretary and therefore will not be making executive decisions of the kind he was charged with. However, what I find difficult to understand by this statement is that a company secretary by its very nature must ensure compliance with the law. Therefore, his admission that he failed to comply with statutory prescripts policy goes to the root of his employment with PRASA in the very positions he held and currently holds.
8. The employee also contended that the employer failed to lead evidence that the employment relationship was rendered intolerable or has broken down

and therefore, a lesser sanction should be imposed especially since the employee during his special leave was required to fulfill certain tasks. The Labour Appeal Court has dealt with the issue of an employee not leading any evidence on the employment relationship and held that where an employee is found guilty of gross misconduct it is not necessary to lead evidence pertaining to a breakdown in the trust relationship as it cannot be expected of an employer to retain a delinquent employee in its employ<sup>2</sup>. The Labour Appeal Court also found that when the conduct of the employee goes to the root of the employment relationship then it is deserving of the severest sanction. This is more so when the gross misconduct is failing to comply with statutory regulations and contravening the duty to act in good faith. In that case, the Labour Appeal Court found that, there was no need to lead evidence of a breakdown in the relationship as it was obviously the case<sup>3</sup>.

9. I align myself to the thinking of the Labour Appeal Court in this instance. The misconduct is very serious. It goes to the very root of the employment relationship with the employee. It can be said to be the sole purpose of his employment, namely, to ensure compliance with statutory prescripts. The

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<sup>2</sup> Impala Platinum Ltd v Jansen and Others [2017] JOL 38325 (LAC) at para 13

<sup>3</sup> Ibid at para 20

evidence of Dingiswayo confirms this when he stated during cross-examination that this is the job<sup>4</sup>.

10. Taking into consideration all the evidence before me, I find that the appropriate sanction is dismissal.

**AL PLATT SC**

**CHAIRPERSON: Disciplinary Enquiry**

**28 June 2019**

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<sup>4</sup> Transcript pages 156 - 157 (13 May)



Subject **SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION) // RAILPRO HOLDINGS (PTY) LTD (IN LIQUIDATION)**

From Michelle Schutte <michelle@tshwanetrust.co.za>

To <PhenyaM@dot.gov.za>, <KNaicker@agsa.co.za>, <VvBerg@prasa.com>, <bmkhumalo@prasa.com>, <Jennifer.Joni@prasa.com>, <SMokotedi@prasa.com>, 'Martha Ngoye' <martha.ngoye@prasa.com>, <Bongisizwe.Mpondo@prasa.com>

Copy <hannes@tshwanetrust.co.za>, <admin@schabortpotgieter.co.za>, <mandla@mk.co.za>, 'Aviwe Ndyamara' <aviwe@tshwanetrust.co.za>

Date 2020-02-18 09:18

- PRASA REPORT TO STAKEHOLDERS.pdf (~3.8 MB)
- ANNEXURE I - Stadler.pdf (~1.1 MB)

Dear Sir/Madam,

I attach hereto an updated report reflecting the current situation in the liquidation process of the above mentioned two companies.

It would be appreciated if you could study the report and let me have your input as far as it is relevant to your involvement in this matter.

You are welcome to contact me on 082 573 9302 or Michelle at 0861 874 926 if you need any further clarity on specific issues being dealt with in the report.

Yours Faithfully

J Z MULLER

Obo Joint Liquidators



1207 Cobham Road, Queenswood, Pretoria, 0186

P.O. Box 2101, Pretoria, 0001

Docex 51, Pretoria

MK 56 Pretoria // MK 346 Johannesburg & MK 291 Cape Town

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Tshwane Trust Co (Pty) Ltd is a proud LEVEL 2 Broad-Based BEE Contributor

#### OFFICE HOURS

MONDAY TO THURSDAY : 08H00 – 16H30

FRIDAY : 08H00 – 13H00



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## TSHWANE TRUST CO. (PTY) LTD

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/ur Ref/Ons Verw: J Z H MULLER/ms

Your Ref/U Verw:

18/02/2020

### REPORT TO STAKEHOLDERS

Dear Sir / Madam,

**RE: SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)  
REPORT ON THE ADMINISTRATION OF THE ESTATES OF SWIFAMBO  
RAIL LEASING (PTY) LTD. (IN LIQUIDATION) AND RAILPRO HOLDINGS  
(PTY) LTD. (IN LIQUIDATION)**

1. On the 18th of December 2018 both the abovementioned companies were liquidated by way of a special resolution. Subsequent to the resolutions being registered Mr. Aviwe Ntandazo Ndyamara and Mr. Mandla Professor Madlala were appointed as the Provisional Liquidators of "Swifambo". A copy of their certificate of appointment is attached hereto marked as **annexure "A"**. Likewise in the estate of "Railpro+" Mr. Aviwe Ntandazo Ndyamara and Mr. Nicolas Timkoe were appointed as provisional liquidators, a copy of their Certificate of Appointment is attached hereto marked as **annexure "B"**.
2. Subsequent to the appointment of the provisional liquidators, on the request of the Director of the Company, Mr. Mashaba, an Appeal was launched to the Constitutional Court regarding the judgment that PRASA obtained against "Swifambo" with reference to the tender contract awarded to "Swifambo". In this regard an Application was brought for the extension of the powers of the provisional liquidators which Application were funded by Mr. Mashaba. A copy of the order extending the powers of the provisional liquidators is attached hereto marked as **annexure "C"**. The Appeal to the Constitutional Court was dismissed with costs.

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LIQUIDATORS ARE MEMBERS OF SARIPA AND ABRIPSA  
 Directors: L. Sibuya | A.N. Ndyamara | J.Z.H. Müller  
 Consultant: Y Ebrahim

3. On the 6th of March 2019 the Master convened the first meeting of creditors and members in the estate of "Swifambo". At the first meeting of the creditors Mr. Johannes Zacharias Human Muller was appointed as joint final liquidator based on the vote of the members at the members meeting. A copy of the amended Certificate of Appointment, reflecting the appointment of the final liquidators is attached hereto marked as **annexure "D"**.
4. The final liquidators, obtained documents and information from the Attorneys representing PRASA and decided to hold an inquiry into the affairs of "Swifambo" and "Railpro". In this regard Applications were brought to obtain authority to convene an inquiry in terms of Section 417 of the Companies Act which orders were granted by the High Court in Pretoria. Copies of these orders is attached hereto marked as **annexures "E" and "F"**.
5. From the info obtained, flow of funds can be summarised as follows:

5.1.1 Monies received:

**Railpro Holdings (Account number: 20 253 811 7)**

|         |            |                  |
|---------|------------|------------------|
| 5.1.1.1 | 05/04/2013 | R 460 526 315.79 |
| 5.1.1.2 | 12/01/2015 | R 444 565 613.96 |

**Swifambo Rail Leasing (Account number: 02 268 257 0)**

|         |            |                  |
|---------|------------|------------------|
| 5.1.1.3 | 06/12/2013 | R 64 473 684.21  |
| 5.1.1.4 | 13/05/2014 | R 335 308 062.36 |
| 5.1.1.5 | 01/07/2014 | R 430 166 416.92 |
| 5.1.1.6 | 24/12/2014 | R 468 672 880.80 |
| 5.1.1.7 | 05/06/2015 | R 182 424 651.62 |
| 5.1.1.8 | 07/07/2015 | R 264 070 324.63 |

**TOTAL**

**R2 650 207 950.29**

**5.2.2 Payments made from Railpro Holdings:**

|         |            |                 |
|---------|------------|-----------------|
| 5.2.2.1 | Landgrebe  | R 30 554 056.52 |
| 5.2.2.2 | A. Mashaba | R 1 680 000.00  |

**5.2.2.3 Entities under control of Mashaba:**

|           |                |                 |
|-----------|----------------|-----------------|
| 5.2.2.3.1 | Britewave      | R 9 293 000.00  |
| 5.2.2.3.2 | AM Investments | R 31 066 859.88 |
| 5.2.2.3.3 | AMCE           | R 29 816 020.28 |
| 5.2.2.3.4 | MM Trust       | R 50 000 000.00 |
| 5.2.2.3.5 | Manoroko Makol | R 26 200 000.00 |

**TOTAL**

**R146 375 880.16**



|            |   |                               |
|------------|---|-------------------------------|
| 5.2.2.4    | Makhensa Mabunda                              | R 22 664 000.00               |
| 5.2.2.5.   | Entities under control of Mabunda             |                               |
| 5.2.2.5.1  | Siyaya Energy                                 | R 2 030 515.00                |
| 5.2.2.5.2  | Siyaya Rail Infrastructure                    | R 5 140 000.00                |
| 5.2.2.5.3  | Bahn Wheels                                   | R 28 320 000.00               |
| 5.2.2.5.4  | Enerwaste                                     | R 27 880 000.00               |
|            | <b>TOTAL</b>                                  | <b><u>R 63 370 515.00</u></b> |
| 5.2.2.6    | Musa Capital                                  | R 13 500 000.00               |
| 5.2.2.7    | Mj Mboweni                                    | R 1 000 000.00                |
| 5.2.2.8    | Payments to Similex / Gomes                   |                               |
| 5.2.2.8.1  | Nkosi Sabelo Inc.                             | R 31 000 000.00               |
| 5.2.2.8.2  | Knowles Hussain                               | R 10 400 000.00               |
|            | <b>TOTAL</b>                                  | <b><u>R 41 400 000.00</u></b> |
| 5.2.2.9    | SANCO   | R 500 000.00                  |
| 5.2.2.10   | Payments to be investigated further           |                               |
| 5.2.2.10.1 | Beyond Capital                                | R 2 850 000.00                |
| 5.2.2.10.2 | Freeland Cons.                                | R 4 990 650.00                |
| 5.2.2.10.3 | Van Rooyen Family Trust                       | R 2 750 000.00                |
| 5.2.2.10.4 | van Stryp Family Trust                        | R 8 250 000.00                |
| 5.2.2.10.5 | Strauss Daly                                  | R 1 140 000.00                |
|            | <b>TOTAL</b>                                  | <b><u>R19 980 650.00</u></b>  |
| 5.2.3      | Payment from Swifambo Rail Leasing (Pty) Ltd. |                               |
| 5.2.3.1    | Mabunda                                       | R 1 230 000.00                |
| 5.2.3.2    | Entities under the control of Mabunda         |                               |
| 5.2.3.2.1  | Siyaya DB Con.<br>(In Liquidation)            | R 6 076 895.48                |
| 5.2.3.2.2  | S. Group                                      | R 1 870 949.38                |
| 5.2.3.2.3  | Nsovo Holdings                                | R 1 273 511.52                |
| 5.2.3.2.4  | Rishi Rishile Inv.                            | R 1 631 290.07                |
| 5.2.3.2.5  | Ntshovelo Logist.                             | R 1 710 000.00                |
| 5.2.3.2.6  | Sterlings Living                              | R 5 000 000.00                |
|            | <b>TOTAL</b>                                  | <b><u>R 17 562 646.45</u></b> |
| 5.2.3.3    | Entities under the control of Mashaba         |                               |
| 5.2.3.3.1  | Bahn Wheels                                   | R 7 500 000.00                |
| 5.2.3.3.2  | Mizana  | R 5 859 658.03                |
| 5.2.3.3.3  | Mizana  | R 399 256.00                  |
| 5.2.3.3.4  | AM Luxury Lodge                               | R 10 870.00                   |
| 5.2.3.3.5  | Manoroko Makol                                | R 9 000 000.00                |
|            | <b>TOTAL</b>                                  | <b><u>R 22 769 784.03</u></b> |

|           |   |          |                             |
|-----------|---|----------|-----------------------------|
| 5.2.3.4   | Jacob Zuma Foundation                   | R        | 150 000.00                  |
| 5.2.3.5   | Motor Vehicles                          | R        | 1 023 230.99                |
|           | Motor Vehicles                          | R        | 893 019.00                  |
|           | <b>TOTAL</b>                            | <b>R</b> | <b><u>1 916 249.99</u></b>  |
| 5.2.3.6   | Payments to be investigated further     |          |                             |
| 5.2.3.6.1 | Clifton Renovation                      | R        | 471 046.50                  |
| 5.2.3.6.2 | Kapital Mindz                           | R        | 256 500.00                  |
|           | <b>TOTAL</b>                            | <b>R</b> | <b><u>727 546.50</u></b>    |
| 5.2.4     | Payments from AMCE                      |          |                             |
| 5.2.4.1   | Landgrebe                               |          | R55 139 540.00              |
| 5.2.4.2   | A. Mashaba                              |          | R 1 334 450.00              |
| 5.2.4.3   | Entities under the control of Mashaba   |          |                             |
| 5.2.4.3.1 | AMCE (Absa)                             | R        | 4 800 000.00                |
| 5.2.4.3.2 | S le Rinene                             | R        | 2 585 933.13                |
| 5.2.4.3.3 | AM Inv.                                 | R        | 1 500 000.00                |
| 5.2.4.3.4 | Britewave                               | R        | 1 650 000.00                |
| 5.2.4.3.5 | MA Minerals                             | R        | 401 875.00                  |
| 5.2.4.3.6 | Vuyaninah Prop.                         | R        | 674 369.00                  |
| 5.2.4.3.7 | Clear Bubbles Trading (VFV)             | R        | 5 000 000.00                |
|           | <b>TOTAL</b>                            | <b>R</b> | <b><u>16 612 177.13</u></b> |
| 5.2.4.4   | Siyaya Rail (Mabunda)                   | R        | 5 999 000.00                |
| 5.2.4.5   | Snyman de Jager (Att)                   | R        | 2 180 000.00                |
| 5.2.4.6   | Similex                                 | R        | 28 600 000.00               |
| 5.2.4.7   | Hover Dynamics (Helicopter)             | R        | 11 074 049.02               |
| 5.2.4.8   | Motor Vehicles                          | R        | 8 664 990.76                |
| 5.2.4.9   | Cartier Jewellers                       | R        | 445 000.00                  |
| 5.2.4.10  | Discovery Life                          | R        | 1 000 000.00                |
| 5.2.5     | Transactions to be investigated further |          |                             |
| 5.2.5.1   | AWA World                               | R        | 4 000 000.00                |
| 5.2.5.2   | 220405328                               | R        | 10 000 000.00               |
| 5.2.5.3   | 748554718                               | R        | 2 500 000.00                |
| 5.2.5.4   | 202447618                               | R        | 2 000 000.00                |
| 5.2.5.5   | XJV Inv                                 | R        | 2 050 000.00                |
| 5.2.5.6   | Tshovo                                  | R        | 2 000 000.00                |
| 5.2.5.7   | TA Tshaka                               | R        | 6 237 374.15                |
|           | <b>TOTAL</b>                            | <b>R</b> | <b><u>19 787 374.15</u></b> |

5.2.6 Properties acquired by Mashaba and entities under his control after payments from PRASA:

| <b>Property</b>                                 | <b>After 4/13</b> |
|---|-------------------|
| <b>Zetacor Six (Pty) Ltd.<br/>(In Business)</b> |                   |
| Farm Welverdiend 243<br>(14) (10/04/2014)       | R12 084 000.00    |
| Farm Guernesy 81 (158)<br>(21/06/2013)          | R17 000 000.00    |
| Farm Fleur de Lys 195 (1)<br>(21/06/2013)       | R 7 000 000.00    |

|  |               |
|--|---------------|
| <b>No 33 Sturdee Mews<br/>(Pty) Ltd. (In Business)</b> |               |
| Erf Edenburg 203 (8)<br>(14/07/2016)                   | R9 302 000.00 |
| SS Leopard Rock Unit 85<br>(996/2005) (25/07/2015)     | R 450 000.00  |
| Erf Maroeladal Ext 12<br>1128 (0) (23/10/2014)         | R3 750 000.00 |

3.2.6 Properties acquired by Mabunda and entities under his control after payments from PRASA

|   |               |
|---|---------------|
| <b>PERSONAL</b>   |               |
| Bond – SS Sable Hills 3<br>Unit 39 (961/2007)<br>(23/06/2015) | R3 800 000.00 |

|  |                |
|--|----------------|
| <b>Nsovo Holdings (Pty)<br/>Ltd. (In Business)</b> |                |
| Erf Kosmosdal Ext. 80<br>4639 (0) (13/06/2016)     | R 670 000.00   |
| Erf Kosmosdal Ext. 80<br>4640 (0) (13/06/2016)     | R 670 000.00   |
| Erf Waltloo 78 (0)<br>(07/04/2014)                 | R15 000 000.00 |
| Farm Legend 788 (197)<br>(30/07/2013)              | R 7 500 000.00 |
| Erf Kosmosdal Ext. 55<br>3288 (0) (22/10/2013)     | R 2 850 000.00 |
| Erf Kosmosdal Ext. 31<br>1864 (0) (23/07/2013)     | R 3 385 000.00 |

|   |                |
|---|----------------|
| <b>Siyazi Holdings (Pty) Ltd. (Voluntary Liquidation)</b> |                |
| SS Kingsplace (374/1984)<br>Unit 11 (27/03/2015)          | R525 000.00    |
| SS Kingsplace (374/1984)<br>Unit 18 (27/03/2015)          | R525 000.00    |
| <b>Nyavani Beef Masters (Pty) Ltd. (In Business)</b>      |                |
| Farm Limpopo 944<br>(21/04/2016)                          | R13 850 000.00 |

5.3 It appears from the above that huge amounts of monies were channelled to Mr. Mashaba and various entities under his control as well as Mr. Mabunda and various entities under his control.

5.4 We also embarked on a marketing drive to market the locomotives and after proper research and consideration WH Auctioneers were appointed as they were part of the Richie Group which gave us access to an international platform. Attached hereto please find the auctioneers report marked as **annexure "G"**

Subsequent to the dismissal of the urgent application, the liquidators managed to sell 8 of the locomotives for R95 335 000,00. The liquidators have since received payment of the aforesaid purchase price.

5.5. An auction was arranged by the liquidators for the 13 locomotives which were by agreement handed over to the liquidators. Before the auction could commence, Mr. Mashaba issued a Combined Summons against the liquidators and PRASA. A copy of the Summons is attached hereto marked as **annexure "H"**.

5.6. After the Summons was issued an urgent interdict Application was launched by Mr. Mashaba to stop the auction from proceeding. The said Application was dismissed with costs. The cost order against Mr. Mashaba, is to be taxed during March this year.

5.7 Subsequent to the dismissal of the urgent application, the liquidators managed to sell 8 of the locomotives for R95 335 000.00 excluding commission and VAT. The liquidators have since received payment of the aforesaid purchase price.

## 6. **STEPS TAKEN WITH REFERENCE TO THE INFORMATION OBTAINED AT THE INQUIRY**

### 6.1 **LEGAL PROCEEDINGS**

6.1.1. Application for 417 Enquiry - Swifambo Rail Leasing (Pty) Ltd. - Granted - Court Order dated 28 May 2019

6.1.2. Application for 417 Enquiry - Railpro Holdings (Pty) Ltd. - Granted - Court Order dated 17 September 2019

6.1.3. Extension of Powers - Granted - Court Order dated 13 August 2019

6.2 Enquiry:

**29 June 2019**

Mr. A. Mashaba

Mr. G. Sabelo

**05 August 2019**

Mr. A. Mabunda

**27 August 2019**

Mr. AA Mashaba

Mr. LZ Cele

**28 August 2019**

Mr. A Mashaba

**19 September 2019**

Mr. AA Mashaba

Mr. LZ Cele

**26 September 2019**

Mr. MSR Mabunda

**25 October 2019**

Mr. G. Sabelo

Mr. VA Mabunda

**24 February 2020**

Anthony Jack Feldman (Hover Dynamics)

Thaniel Makhosini Mashele

Standard Bank

Absa Bank

Carlos Alberto Fernandes Araujo

Cindy Mabunda

Tshepo John Molapo

Daniel Hayward

6.5 Mr. Mashaba did not give his co-operation at the inquiry and did not supply us with any documentation.

6.7. Bahn Wheels Solutions (Liquidation Application) (R28 320 000.00) - Granted - Court Order dated 15 October 2019

6.8. Gomes (Ad fundandam aut confirmandam jurisdictionem)  
Application (R40 140 000.00) - Granted - Court order 14/01/20)

7. Mabunda and entities Actions:
  - 7.1 **Makensa Solly Risimati Mabunda - Leasing (R7 460 000.00)**  
Received Notice of Intention to Oppose on the 21<sup>st</sup> of January 2020. Time till the 18<sup>th</sup> of February 2020 to deliver plea.
  - 7.2 **Makensa Solly Risimati Mabunda - Railpro (R22 664 000.00)**  
Received Notice of Intention to Oppose on the 21<sup>st</sup> of January 2020. Time till the 18<sup>th</sup> of February 2020 to deliver plea.
  - 7.3 **Enerwaste Solutions (Pty) Ltd. - Railpro (R27 880 000.00)**  
Received Notice of Intention to Oppose on the 21<sup>st</sup> of January 2020. Time till the 18<sup>th</sup> of February 2020 to deliver plea.
  - 7.4 **Beyond Corporate (Pty) Ltd. - Railpro (R2 850 000.00)**  
Received Notice of Intention to Oppose on the 21<sup>st</sup> of January 2020. Time till the 18<sup>th</sup> of February 2020 to deliver plea.
  - 7.5 **Nsovo Holdings (Pty) Ltd. - Leasing (R4 571 374.28)**  
Received Notice of Intention to Oppose on the 21<sup>st</sup> of January 2020. Time till the 18<sup>th</sup> of February 2020 to deliver plea.
  - 7.6 **S. Group Holding (Pty) Ltd. - Leasing (R1 870 949.38)**  
Received Notice of Intention to Oppose on the 21<sup>st</sup> of January 2020. Time till the 18<sup>th</sup> of February 2020 to deliver plea.
  - 7.7 **Sterlings Living (Pty) Ltd. - Leasing (R5 000 000.00)**  
Receive a Notice of Intention to Defend on the 9<sup>th</sup> of December 2019. Time till the 6<sup>th</sup> February 2020 to file plea. No plea received as yet.
8. **APPLICATIONS OPPOSED**
  - 8.1.1. A. Mashaba (interdicting the auction) - Application dismissed - Court Order dated 11 September 2019
  - 8.1.2. Review Application (Mabunda, Landgrebe and others) - Still in process
9. **ACTIONS IN PROCESS FOR RECOVERING OF MONIES**
  - 9.1.1. Against the Directors of "Swifambo" inter alia Mashaba (Action in terms of Section 424 of the Companies Act) for the amount of R3 005 300 000.00 and against the Directors of "Railpro" for the amount of R905 091 929.42.
  - 9.1.2 Against AM Investments - Case number: 4287/2020
    - 9.1.2.1 AM Investments - R31 066 859.88.
    - 9.1.2.2 A M Luxury Game Reserve - R5 021 080,00
    - 9.1.2.3 WKH Landgrebe & Co - R10 530 796,07
    - 9.1.2.4 Xinjovo Enterprises CC - R6 275 000,00
    - 9.1.2.5 Openprops 1012 CC - R3 694 335,00
  - 9.1.3. Against MM Trust - Case number: 4273/2020
    - 9.1.3.1 MM Trust - R26 200 000,00 alternatively R50 711 077,00
    - 9.1.3.2 WKH Landgrebe & Co - R30 551 206,52



- 9.1.4. Against Mashaba, WKH Landgrebe - Case number: 4272/2020  
 9.1.4.1 First to Seventh Defendants - R2 650 207 950,30  
 9.1.4.2 First, Third, Fifth, Sixth, Seventh and Eight Defendants - R905 091 929,42

- 9.1.5. Against AM Consulting Engineers - Case number: 4271/2020  
 AM Consulting Engineers (Pty) Ltd - R29 117 065,22

10. The liquidators also entered into negotiations with Stadler, the company which bought Vossloh, the supplier of the locomotives regarding a possible commercial settlement of the disputes between "Swifambo" and themselves. In this regard certain proposals were made regarding the assets in Valencia, Spain as well as the manufacturing of the further locomotives. These proposals are summarised as follows:

Scenario 1:

That the 7(seven) Afro 4000 locomotives, manufactured, completed and stored in the yard of Stadler in Valencia be sold by agreement between the parties for an amount of approximately €2.8 million (two point eight million euros) each and that the proceeds be paid to Swifambo Rail Leasing (Pty) Ltd (in liquidation) minus expenses in relation to the storage, conversion and marketing of the said locomotives. That the liquidator of Swifambo Rail Leasing (Pty) Ltd (in liquidation) at all times be kept abreast and any offers regarding the sale of the locomotives and that any offer be agreed upon by both parties.

The 5(five) EuroDual locomotives be sold and the proceeds to be paid to Swifambo Rail Leasing (Pty) Ltd (in liquidation) minus costs incidental to the storage conversion and marketing of the said locomotives. That the liquidator of Swifambo Rail Leasing (Pty) Ltd (in liquidation) at all times be kept abreast and any offers regarding the sale of the locomotives and that any offer be agreed upon by both parties.

Scenario 2:

Delivery of the 5(five) EuroDual locomotives together with a calculation of the number of EuroDual locomotives to be manufactured for the amount of ZAR 1 873 474 161.62 already paid to Vossloh by Swifambo Rail Leasing (Pty) Ltd (in liquidation).

Scenario 3:

Delivery of the 5(five) Euro dual locomotives plus a calculation of the number of Eurodual locomotives to be manufactured for the value already received as well as the proceeds of the 7(seven) Afro 4000 locomotives to be sold above.

Subsequent to the above, a letter was sent to Stadler on the 6<sup>th</sup> of December 2019 in order to reach a commercial settlement. Attached hereto the reply from Stadler dated the 22<sup>nd</sup> of January 2020 marked as **annexure I** wherein Stadler mentioned their counter-proposal.

These scenarios are without prejudice communications between the liquidators and Stadler. It is however of the utmost importance that Prasa together with the liquidators, meet with Stadler (Vosshloh) to discuss the above mentioned scenarios and or other options for the benefit of Prasa.

We have been informed that Peter Jennelton of Stadler has arranged a meeting with the Administrator of PRASA, which meeting is to be held on the 13<sup>th</sup> of March 2020. It will be to the benefit of PRASA to consult with the Liquidators before the abovementioned meeting.

11. **Liquidation & Distribution Account.**

As undertaken by the liquidators, the First L & D Account was drawn immediately upon receipt of the proceeds of the auction. This account was done with the aim of paying a dividend to PRASA as soon as possible. As per the attached account attached as **annexure "J"**. According to the account, Prasa would receive a substantial dividend of well over R63mil.

The account was sent to both the Auditor General as well as Prasa's legal team before lodgement of the account.

After lodgement and inspection by the Master of the account the account was advertised to lie open for inspection from 29 November 2019 to 13 December 2019. During this period, on the 26<sup>th</sup> of November 2019 a review application was served on the liquidators. The applicants in the review application are W K H Landgrebe & Co, A M Investments (Pty) Ltd & Auswell Mashaba.

We also received an objection against the account by the same applicants as mentioned above.

The crux of the objection was against the liquidators fees which was taken according to the tariff of the Insolvency Act and more importantly the admission and validity of Prasa's claim.

The liquidators have already entered an appearance to oppose the said application and the opposing papers are in an advance stage of preparation.

It is however imperative that Prasa enter an appearance to defend and file opposing papers as soon as possible, in order to protect their claim against the estate.

The liquidators have decided to withdraw this account pending the finalisation of the review application.

A copy of the application of the extension of this account is attached hereto as **annexure "K"**.

12. The liquidators are currently marketing the remaining 6 Afro Diesel Locomotives by way of an online Auction. This auction was to end on the 27<sup>th</sup> of February 2020 at 13:00. This deadline has however been postponed till the 25<sup>th</sup> of March 2020 at 13:00. The reason for this is that there are two parties one being an American company and the other a French company who are interested in buying but need time to arrange finance. I attach a copy of the marketing report which shows that the auction has already had 15 793 visits from various countries as set in **annexure "L"** hereto.






It is important for Prasa to consider the effect of having their claim expunged. The effect will be that the proceeds realised in the company in liquidation will inevitably flow to its shareholders and ultimately to Mr Mashaba.

The recoveries mentioned earlier in this letter will also be on risk.

Please feel free to contact writer here off should you have any queries.

Yours Faithfully

A handwritten signature in black ink, appearing to be 'JZH', enclosed within a large, loopy circular flourish.

J Z H MULLER

obo JOINT LIQUIDATORS

"A"  
J.465

the doj &amp; cd

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

SERTIFIKAAT VAN AANSTELLING VAN \*VOORLOPIGE LIKWIDATEUR(S)/  
LIKWIDATEUR(S)/VOORLOPIGE GERECHTELIIKE BESTUURDER/  
GERECHTELIIKE BESTUURDER  
[Maatskappijwet, No. 61 van 1973 (soos gewysig); Wet op Beslote Korporasies, No. 69 van 1984]

CERTIFICATE OF APPOINTMENT OF \*PROVISIONAL LIQUIDATOR(S)/  
LIQUIDATOR(S)/PROVISIONAL JUDICIAL MANAGER/  
JUDICIAL MANAGER  
[Companies Act, No. 71 of 2008 (as amended); Close Corporations Act, No. 69 of 1984]

No: T 2979/18

Hierby word gesertifiseer dat /

This is to certify that

AVIWE NTANDAZO NDYAMARA &amp; MANDLA PROFESSOR MADLALA

TSHWANE TRUST CO. (PTY) LTD

PO BOX 2101

PRETORIA

0001

aangestel is as \*Voorlopige Likwidateur / Voorlopige Geregtelelike Bestuurder met die magte soos uiteengesit in Artikel  
van Wet No van van  
#is/are appointed \*Provisional Liquidators / Provisional Judicial Manager with the powers as set out in Section  
386(1)(a)(b)(c)(e) and 4(f) of Act No 61 of 1973 of

die \*Maatskappy / Beslote-Korporasie bekend as  
the \*Company / Close Corporation known as

SWIFAMBO RAIL LEASING (PTY) LTD

REG NO: 2010/007968/07

wat onder \*Voorlopige Likwidasie / Voorlopige Geregtelelike Bestuur geplaas is \*op Bevel van die Hooggeregshof  
which has been placed under \*Provisional Liquidation / Provisional Judicial Management \*by Order of the

van Suid-Afrika  
High Court of South Africa

Afdeling/Landdroshof  
Division/Magistrate's

vir die distrik van  
Court for the district of

/deur  
By

Spesiale Besluit geregistreer op  
Special Resolution registered on

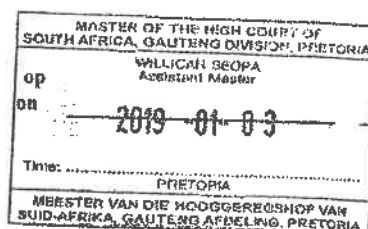
18<sup>TH</sup> DECEMBER

2018

Geteken te

Signed at

PRETORIA



ASST MEESTER VAN DIE HOOGGEREGSHOF

Namens Departement van Justisie en Konstitusionele Ontwikkeling

ASST MASTER OF THE HIGH COURT

On behalf of the Department of Justice and Constitutional Development

"B"  
J.465

the doj &amp; cd

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

**SERTIFIKAAT VAN AANSTELLING VAN \*VOORLOPIGE LIKWIDATEUR(S)/  
LIKWIDATEUR(S) / VOORLOPIGE GERECHTELIKE BESTUURDER/  
GERECHTELIKE BESTUURDER**

[Maatskappywet, No. 61 van 1973 (soos gewysig); Wet op Beslote Korporasies, No. 69 van 1984]

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LIQUIDATOR(S) / PROVISIONAL JUDICIAL MANAGER/  
JUDICIAL MANAGER**

[Companies Act, No. 71 of 2008 (as amended); Close Corporations Act, No. 69 of 1984]

No: T 2978/18

Hierby word gesertifiseer dat /

This is to certify that

AVIWE NTANDAZO NDYAMARA &amp; NICHOLAS TIMKOE

TSHWANE TRUST CO. (PTY) LTD

PO BOX 2101

PRETORIA

0001

aangestel is as \*Voorlopige Likwidateur / Voorlopige Geregtelelike Bestuurder met die magte soos uiteengesit in Artikel  
van Wet No van van

\*is/are appointed \*Provisional Liquidators / Provisional Judicial Manager with the powers as set out in Section  
386(1)(a)(b)(c)(e) and 4(f) of Act No 61 of 1973 of

die \*Maatskappy / Beslote-Korporasie bekend as  
the \*Company / Close-Corporation known as

RAILPRO HOLDINGS (PTY) LTD

REG NO: 2011/109702/07

wat onder \*Voorlopige Likwidasie / Voorlopige Geregtelelike Bestuur geplaas is \*op Bevel van die Hooggeregshof  
which has been placed under \*Provisional Liquidation / Provisional Judicial Management \*by Order of the

van Suid-Afrika  
High Court of South Africa

Afdeling/Landdroshof  
Division/Magistrate's

vir die distrik van  
Court for the district of

/deur  
by

Spesiale Besluit geregistreer op  
Special Resolution registered on

18<sup>TH</sup> DECEMBER

2018

Geteken te

Signed at PRETORIA

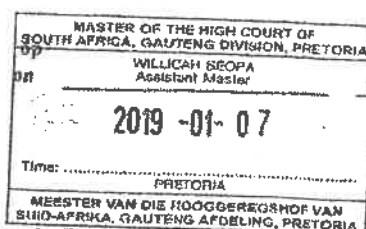
*P. H. M. M. M.*

ASST MEESTER VAN DIE HOOGGEREGSHOF

Namens Departement van Justisie en Konstitusionele Ontwikkeling

ASST MASTER OF THE HIGH COURT

On behalf of the Department of Justice and Constitutional Development



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

BEFORE THE HONOURABLE MR JUSTICE FOURIE (J), ON THIS THE  
12<sup>TH</sup> DAY OF FEBRUARY 2019, IN COURT 6F

CASE NO: 8214/2019

In the *ex parte* application of:

AVIWE NTANDAZO NDYAMARA N.O.

First Applicant

MANDLA PROFESSOR MADLALA N.O.

Second Applicant

[in their capacity as the joint provisional liquidators of  
SWIFAMBO RAIL LEASING (PTY) LTD (Reg no: 2010/007968/07)]

DRAFT ORDER

AFTER HAVING HEARD COUNSEL FOR THE APPLICANTS AND HAVING  
CONSIDERED THE PAPERS FILED OF RECORD, THE COURT GRANTS  
THE FOLLOWING ORDER:

1. The forms and service are dispensed with and the matter is heard as one of urgency in terms of Uniform Rule 6(12);
2. The Applicants' powers as joint provisional liquidators of SWIFAMBO RAIL LEASING (PTY) LTD (Reg no: 2010/007968/07) ("Swifambo") are hereby extended in terms of Sections 386(5), read with Section 387(3) of the Companies Act, 61 of 1973, to include:

- 2.1. To enter into short term lease agreements on behalf of Swifambo;

- 2.2. To sell and transfer any property belonging to Swifambo;

|  |
|--|
| <p>PROCESSED BY THE DEPUTY CLERK OF COURT</p> <p>Private Bag X67, Pretoria 0001</p> <p>2019-02-14</p> <p>GD-PRET-026</p> |
|--|

- 2 -

- 2.3. The engaging of attorneys to act on behalf of the Applicants in order to give legal advice and to prosecute an appeal against the judgment and order so made by the Supreme Court of Appeal of South Africa on 30 November 2018, under case number: 1030/2017, to the Constitutional Court of the South Africa;
- 2.4. The employment of agents in as far as may be necessary to collect and locate assets of Swifambo;
- 2.5. To negotiate with debtors of Swifambo, and to enter into agreements with such debtors;
- 2.6. The appointment of an engineering company or firm with the requisite skill and qualification to conduct an inspection, research and to do all that is necessary to compile a report on the various assets of Swifambo – in particular railway locomotives currently situated in the Republic of South Africa and / or Spain, or wherever such locomotives may be found – and to report back to the Applicants in this regard;
- 2.7. The appointment of a firm of auditors to conduct a full financial audit of Swifambo financial affairs – in particular the income tax, pay-as-you-earn tax, Value Added Tax and any other charges imposed by the South African Revenue Service which are due, owing and payable and / or reimbursable – and to do all that is necessary to report back to the Applicants in this regard;

Private Bag X67, Pretoria 0001

2019 -02- 14

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- 2.8. Elect whether or not to abide by certain agreements concluded by Swifambo prior to its liquidation, subject to advice received from duly appointed attorneys;
- 2.9. Compromise or accept any claim by or against Swifambo;
- 2.10. the exercise of the powers as provided for in Section 386(4)(l) of the Companies Act;
- 2.11. the extended powers as granted in paragraphs 2.1. to 2.10. above, shall be exercised subject to the approval of the Master of the High Court.
3. The Applicants are authorised to approach this Court on the same papers, supplemented as may be necessary, to obtain further powers in relation to the administration of the insolvent estate of Swifambo.
4. The costs of this application shall be costs in the winding-up of Swifambo.

  
BY ORDER

Private Bag X87, Pretoria 0001

2019-02-14

GD-PRET-026



"D"  
J.465

the doj &amp; cd

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

**SERTIFIKAAT VAN AANSTELLING VAN \*VOORLOPIGE LIKWIDATEUR(S)/  
LIKWIDATEUR(S)/VOORLOPIGE GEREGETELIKE BESTUURDER/  
GEREGTELIKE BESTUURDER**

[Maatskappywet, No. 61 van 1973 (soos gewysig); Wet op Beslote Korporasies, No. 69 van 1984]

**CERTIFICATE OF APPOINTMENT OF \*PROVISIONAL LIQUIDATOR(S)/  
LIQUIDATOR(S)/PROVISIONAL JUDICIAL MANAGER/  
JUDICIAL MANAGER**

[Companies Act, No. 61 of 1973 (as amended); Close Corporations Act, No. 69 of 1984]

No: T2979/18

Hierby word gesertifiseer dat

This is to certify that

**AVIWE NTANDAZO NDYAMARA, JOHANNES ZACHARIAS HUMAN  
MULLER & MANDLA PROFESSOR MADLALA**

**TSHWANE TRUST**

**P O BOX 2101**

**PRETORIA**

**0001**

aangestel is as \*Voorlopige Likwidateur / Voorlopige Geregte Like Bestuurder met die magte soos uiteengesit in Artikel  
van Wet No van van  
\*is/are appointed \*Provisional Liquidator / Provisional Judicial Manager with the powers as set out in Section  
386 (1) of Act No 61 of 1973 of

die \*Maatskappy / Beslote Korporasie bekend as  
the \*Company / Close Corporation known as

**SWIFAMBO RAIL LEASING (PTY) LIMITED  
REG NO: 2010/007968/07**

wat onder \*Voorlopige Likwidasie / Voorlopige Geregte Like Bestuur geplaas is \*op Bevel van die Hooggeregshof  
which has been placed under \*Provisional Liquidation / Provisional Judicial Management \*by Order of the

van Suid-Afrika

High Court of South Africa

**Gauteng Division: Pretoria**

/Landdroshof  
/Magistrate's

vir die distrik van

Court for the district of

/deur  
/by

Spesiale Besluit geregistreer op  
Special Resolution registered on

18<sup>TH</sup> DECEMBER 2018

Geteken te  
Signed at

**PRETORIA**

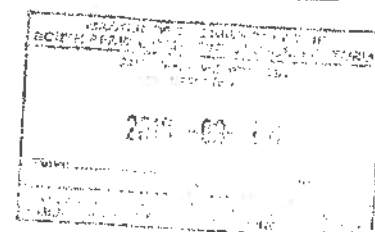
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on

2019

**MEESTER VAN DIE HOOGEREGSHOF**

Nemens Departement van Justisie en Konstitusionele Ontwikkeling  
MASTER OF THE HIGH COURT

On behalf of the Department of Justice and Constitutional Development





"E"

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case number: 35727/2019

On 28 May 2019 before his Lordship Justice Vorster AJ;

In the *ex parte* application of:

*[Handwritten signature]*  
28/5/19

AVIWE NTANDAZO NDYAMARA N.O.

FIRST APPLICANT

JOHANNES ZACHARIAS HUMAN MULLER N.O.

SECOND APPLICANT

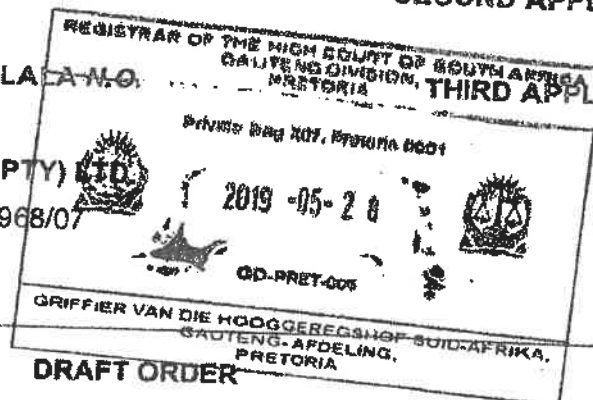
MANTLA PROFESSOR MADLALA N.O.

THIRD APPLICANT

SWIFAMBO RAIL LEASING (PTY) LTD

Registration number 2010/007968/07

(In liquidation)

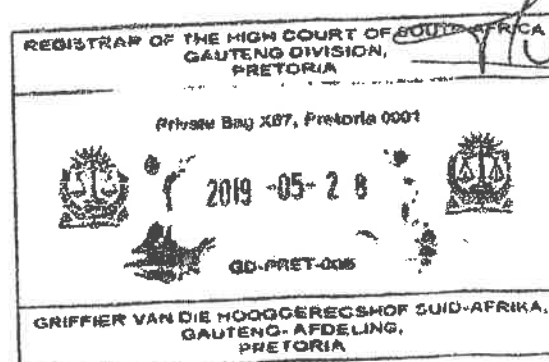


After the hearing of counsel on behalf of the Applicants and after perusal of the papers filed the court orders as follows:

1. The company **SWIFAMBO RAIL LEASING (PTY) LTD** with Registration number 2010/007968/07 (in liquidation) is declared to be unable to pay its debts in accordance with the provisions of Section 388 of the Companies Act, Act 61 of 1973, as read with Schedule 9 of Schedule 5 of the Companies Act, Act 71 of 2008;



2. Leave is granted to the Applicants to hold a Commission of Inquiry into the affairs of the company in terms of the provisions of Section 417 and 418 of Act 61 of 1973.
3. The scope of the inquiry shall be to investigate the financial affairs of the company, including its trade, dealings, affairs and property;
4. Neil Krige is appointed in terms of Section 418(1)(a) of the Act as the Commissioner with the authority to fix the times and places of the inquiry in his sole discretion;
5. All the provisions of Section 418 of the Act shall apply to the inquiry;
6. These court papers and all proceedings shall be forwarded to the Commissioner and shall be kept private and confidential;
7. The costs of this application shall be costs in the liquidation;
8. A copy of this application and the order granted by this Court shall be delivered by hand, alternatively fax, further alternatively electronic mail to the Master of the High Court, Pretoria prior to the commencement of the inquiry.



Per: Registrar

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

*Qx F*

Case number: 68573/19

ON THIS 17<sup>th</sup> DAY OF SEPTEMBER 2019 BEFORE THE HONOURABLE JUSTICE  
SARDIWALLA J:

In the *ex parte* application of:

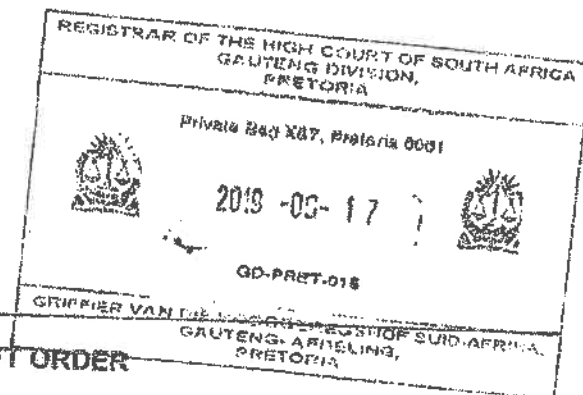
AVIWE NTANDAZO NDYAMARA N.O.

FIRST APPLICANT

NICHOLAS TIMKOE N.O.

SECOND APPLICANT

RAILPRO HOLDINGS (PTY) LTD  
Registration number 2011/109702/07  
(In liquidation)



DRAFT ORDER

Having heard counsel on behalf of the Applicants and having read the papers the court order as follows:

1. The company RAILPRO HOLDINGS (PTY) LTD with Registration number 2011/109702/07 (in liquidation) is declared to be unable to pay its debts in accordance with the provisions of Section 388 of the Old Companies Act, Act 61 of 1973, as read with Schedule 9 of Schedule 5 of the Companies Act, Act 71 of 2008;
2. A Commission of Inquiry (*"the inquiry"*) into the affairs of the company may be held in terms of the provisions of Section 417 and 418 of Act 61 of 1973.

*Lu*

3. The scope of the inquiry shall be to investigate the financial affairs of the company, including its trade, dealings, affairs and property;
4. Neil Krige (*"the Commissioner"*) is appointed in terms of Section 418(1)(a) of the Act and he is authorised to fix the times and places of the inquiry in his sole discretion;
5. All the provisions of Section 418 of the Act shall apply to the inquiry;
6. These court papers and all proceedings must be forwarded to the Commissioner and shall be kept private and confidential;
7. The costs of this application shall be costs in the liquidation;
8. A copy of this application and the order granted by this Honourable Court shall be delivered by hand, alternatively fax, further alternatively electronic mail to the Master of the High Court, Pretoria prior to the commencement of the inquiry; and

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION,  
PRETORIA

Per Registrar

Private Bag X87, Pretoria 0001

2019-09-17

GO-PRET 015

GRIFFIE VAN DIE HOOGGERECHTSHOF SUID-AFRIKA,  
GAUTENG AFDELING,  
PRETORIA

h~



To Tshwane Trust Co. (Pty) Ltd  
C/O: Hannes Muller  
1207 Cobham Road, Queenswood  
Pretoria, 0186

16 October 2019

Per E-mail: [hannes@tshwanetrust.co.za](mailto:hannes@tshwanetrust.co.za); [michelle@tshwanetrust.co.za](mailto:michelle@tshwanetrust.co.za)

**RE: SWIFAMBO RAIL LEASING (IN LIQUIDATION) – SALES REPORT**

Dear Mr. Muller,

With reference to the above-mentioned matter, kindly find below the breakdown of the sales in respect of the locomotives sold.

| Lot          | Asset Number | Serial | Description                          | Location     | Bid Amount             | Vat On Bid Amount      | Total                  |
|--------------|--------------|--------|--------------------------------------|--------------|------------------------|------------------------|------------------------|
| 1            | 4013         | 2793   | Afro 4000 Diesel Electric Locomotive | Braamfontein | R 13 050 000.00        | R 1 957 500.00         | R 15 007 500.00        |
| 2            | 4009         | 2789   | Afro 4000 Diesel Electric Locomotive | Braamfontein | R 13 550 000.00        | R 2 032 500.00         | R 16 582 500.00        |
| 3            | 4008         | 2788   | Afro 4000 Diesel Electric Locomotive | Braamfontein | R 13 050 000.00        | R 1 957 500.00         | R 15 007 500.00        |
| 4            | 4005         | 2785   | Afro 4000 Diesel Electric Locomotive | Braamfontein | R 13 500 000.00        | R 2 025 000.00         | R 15 525 000.00        |
| 5            | 4003         | 2783   | Afro 4000 Diesel Electric Locomotive | Braamfontein | R 13 450 000.00        | R 2 017 500.00         | R 15 467 500.00        |
| 6            | 4010         | 2790   | Afro 4000 Diesel Electric Locomotive | Braamfontein | R 2 800 000.00         | R 420 000.00           | R 3 220 000.00         |
| 8            | 4001         | 2761   | Afro 4000 Diesel Electric Locomotive | Blaemfontein | R 13 500 000.00        | R 2 025 000.00         | R 15 525 000.00        |
| <b>Total</b> |              |        |                                      |              | <b>R 82 900 000.00</b> | <b>R 12 435 000.00</b> | <b>R 95 335 000.00</b> |

|                                    |  |                 |
|------------------------------------|--|-----------------|
| Payments Received by Tshwane Trust |  |                 |
| 1st                                |  | R 3 000 000.00  |
| 2nd                                |  | R 3 658 200.00  |
| 3rd                                |  | R 3 500 000.00  |
| 4th                                |  | R 85 176 800.00 |

**Total Payments Received** **R 95 335 000.00**

|                            |              |
|----------------------------|--------------|
| Less Costs for Advertising | R 809 781.84 |
| VAT                        | R 91 484.28  |

**Total Costs for Advertising Inc Vat** **R 701 225.89**

*The way auctions should be.*

**WH AUCTIONEERS (PTY) LTD.**

Company Registration Nr.: 2010/023906/07 • VAT Nr: 4370258388

Directors: Mr. S. Winterstein, Mr. N. Hunsarij & Ms. P. Narasimany

578 16<sup>TH</sup> ROAD, RANDJES PARK, MIDRAND, 1685 • PO BOX 557, KELVIN, 2054

TEL: 011 574 5700 • EMAIL: [INFO@WHAUCTIONS.COM](mailto:INFO@WHAUCTIONS.COM)

[WWW.WHAUCTIONS.COM](http://WWW.WHAUCTIONS.COM)



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Please do not hesitate to contact me should you require any further information.

Kind Regards,

Ms. Prelena Narainsamy  
Director

*The way auctions should be.*

**WH AUCTIONEERS (PTY) LTD.**

Company Registration Nr.: 2010/023906/07 • VAT Nr: 4370258388

Directors: Mr. S. Winterstein, Mr. N. Hunsaf & Ms. P. Narainsamy

578 16<sup>TH</sup> ROAD, RANDSPARK, MIDRAND, 1685 • PO BOX 557, KELVIN, 2054  
TEL: 011 574 5700 • EMAIL: INFO@WHAUCTIONS.COM  
WWW.WHAUCTIONS.COM

8/30/2019

WH Auctioneers | Truck Auctions, Construction Plant Auctions, Parkhome Auctions, Catering Auctions, Online Auctions, Auction bld...  
[Back To My Sales \(/auction-011/mySales\)](#)

# 13x Afro 4000 Diesel Electric Locomotives - Online Auction - Swifambo Rail Leasing (Pty) Ltd (In Liquidation) T2979/18 Ending On 12 Sep 2019 at 11:00 AM SAST

'G'

Auctions    Items

## Sale Information

| Vendor Name    | Number of Lots | Number of Bids | Pending Offers             | Currency | Selling                    | Not Selling                | Sold                       | Unsold                     |
|----------------|----------------|----------------|----------------------------|----------|----------------------------|----------------------------|----------------------------|----------------------------|
| WH Auctioneers | 13             | 0              | 0                          | ZAR      | 0                          | 0                          | 0                          | 0                          |
|                |                |                | <a href="#">VIEW ITEMS</a> |          | <a href="#">VIEW ITEMS</a> | <a href="#">VIEW ITEMS</a> | <a href="#">VIEW ITEMS</a> | <a href="#">VIEW ITEMS</a> |

## Bidders

Approved / Not Approved

1    12

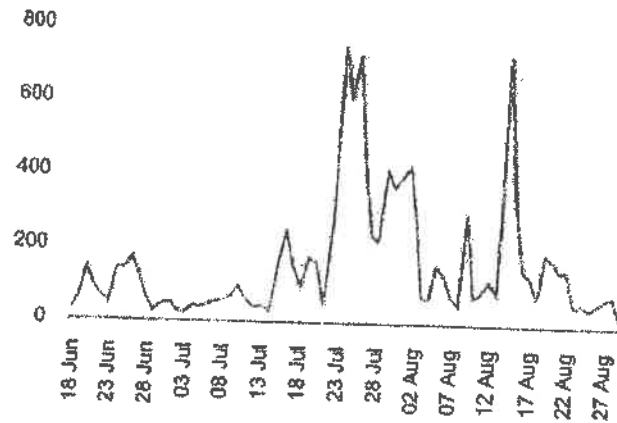
## Auction Visits

11,686

8/30/2019

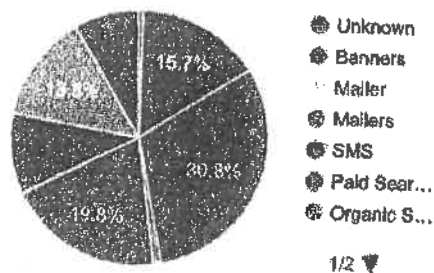
WH Auctioneers | Truck Auctions, Construction Plant Auctions, Parkhome Auctions, Catering Auctions, Online Auctions. Auction bid...

## Visits Over Time



"G"

## Visits By Source



## Visits By Country

### Top Locations



South Africa

### Visits

7043



United States



















921

[Show more...](#)

8/30/2019

WH Auctioneers | Truck Auctions, Construction Plant Auctions, Parkhome Auctions, Catering Auctions, Online Auctions, Auction bld...

## Top Locations

|  | Visits |
|--|--------|
|  United Kingdom | 613    |
|  Australia      | 426    |
|  Sweden         | 371    |
|  India          | 281    |
|  Germany        | 208    |
|  Spain          | 199    |
|  Switzerland    | 127    |
|  Canada         | 103    |
|  Zimbabwe       | 82     |
|  France         | 76     |
|  Mozambique     | 72     |
|  New Zealand    | 69     |
|  Netherlands    | 66     |
|  Portugal      | 57     |
|  Norway       | 54     |
|  Denmark      | 48     |
|  Botswana     | 39     |
|  Tanzania     | 36     |

Show more...

3  7,043



(COMBINED SUMMONS)

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

"H"  
"AM1"  
28

CASE NUMBER: 63178/19

In the matter between:

AUSWELL MASHABA

PLAINTIFF

and

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA

FIRST DEFENDANT

VOSSLOH

SECOND DEFENDANT

SWIFAMBO RAIL LEASING PROPRIETARY LIMITED

THIRD DEFENDANT

RAILPRO HOLDINGS PROPRIETARY LIMITED

FOURTH DEFENDANT



TO: THE SHERIFF OR HIS DEPUTY:

INFORM:

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA a legal person established in terms of Section 22 of the Legal Succession of the South African Transport Services Act, Act 9 of 1989, with its principle place of business situated within the area of jurisdiction of the above Honourable Court at PRASA HOUSE, 1040 BURNETT STREET, HATFIELD, PRETORIA, GAUTENG PROVINCE.

(hereinafter called the FIRST DEFENDANT)

AND INFORM:

VOSSLOH; a company duly incorporated in accordance with the Laws of Spain and having its main place of business in South African situated within the area of jurisdiction of the above Honourable Court at 38 NEDERBERG CRESCENT, HURLINGHAM MANOR, SANDTON, JOHANNESBURG, GAUTENG PROVINCE.

(hereinafter called the SECOND DEFENDANT)

**AND INFORM:**

**SWIFAMBO RAIL LEASING PROPRIETARY LIMITED; (REG NO: 2010/007968/07)**  
 (in liquidation). The joint liquidators of the Third Defendant are Mr JZH Muller and N  
 Ndyamara of Tshwane Trust and MP Madlala with main place of business at 1207  
**COBHAM ROAD, COLBYN PRETORIA, SOUTH AFRICA.**  
 (hereinafter called the THIRD DEFENDANT)

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**AND INFORM:**

**RAILPRO HOLDINGS PROPRIETARY LIMITED; (REG NO: 2011/109702/07)** (in  
 liquidation). The provisional joint liquidators are Mr. A Ndyamara of Tshwane Trust and  
 Mr N Timkoe. Tshwane Trust's main place of business is 1207 COBHAM ROAD  
**COLBYN, PRETORIA, SOUTH AFRICA.**  
 (hereinafter called the FOURTH DEFENDANT)

**THAT:**

**AUSWELL MASHABA**, an adult male businessman of No 400 on 16<sup>th</sup> Road Central  
 Park Block G Midrand  
 (hereinafter referred to as the PLAINTIFF)

hereby institutes action against the Defendants in which action the Plaintiff claims the  
 relief on the grounds as set out in the Particulars of Claim annexed hereto.

**INFORM** the Defendants further that if any Defendant disputes the claim and wishes  
 to defend the action, the Defendant shall-

- (i) Within TEN (10) Court days of the service upon the Defendant of this Summons,  
 file with the Registrar of this Court at High Court, corner Vermeulen & Paul Kruger  
 Streets, Pretoria, Notice of Defendant's Intention to defend and serve a copy  
 thereof on the Attorneys of the Plaintiff, which notice shall give an address (not  
 being a post office or poste restante) referred to in Rule 19(3) for the service upon  
 the Plaintiff of all notices and documents in the action;
- (ii) Thereafter, and within twenty (20) Court days after filing and serving notice of  
 intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiff  
 a plea or exception, notice to strike out, with or without a counterclaim.


INFORM the Defendant further that if the Defendant fails/fail to file and serve notice as aforesaid, judgment as claimed may be given against the Defendant without further notice to the Defendant, or if, having filed and served such notice, the Defendant fails/fail to plead, except, make application to strike out or to counterclaim, judgment may be given against the Defendant.

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AND immediately thereafter serve on the Defendant a copy of this Summons and return the same to the Registrar with whatsoever you have done thereupon.

DATED AT PRETORIA ON THIS THE 23<sup>rd</sup> DAY OF AUGUST 2019.

\_\_\_\_\_  
REGISTRAR OF THE HIGH COURT

  
\_\_\_\_\_  
(SGD) MARTHELI KRUGER  
CORNE WILKENS ATTORNEYS  
ATTORNEYS FOR PLAINTIFF  
3<sup>RD</sup> FLOOR, BURLINGTON HOUSE  
BURLINGTON ARCADE  
235 CHURCH STREET  
PRETORIA  
REF: WM61

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**PARTICULARS OF CLAIM**

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**1.**

- 1.1 The Plaintiff is **AUSWELL MASHABA**, an adult male businessman of No 400 on 16<sup>th</sup> Road Central Park Block G Midrand
- 1.2 The Plaintiff is a Director of Swifambo Rail Leasing (Pty) Limited (in liquidation) (the Third Defendant) (hereinafter referred to as **SWIFAMBO**).
- 1.3 The Plaintiff is a director of Railpro Holdings (Pty) Ltd (Reg No 2011/109702/07) (in liquidation) (the Fourth Defendant) (hereinafter referred to as **RAILPRO**).
- 1.4 The Plaintiff holds 80 of the 100 issued shares in Railpro. Railpro in turn holds 100 of the 100 issued shares in **SWIFAMBO**.

**2.**

The First Defendant is **THE PASSENGER RAIL AGENCY OF SOUTH AFRICA** (hereinafter referred to as "**PRASA**"); a legal person established in terms of Section 22 of the Legal Succession of the South African Transport Services Act, Act 9 of 1989, with its principle place of business at Prasa House, 1040 Burnett Street, Hatfield, Pretoria, Gauteng Province.

3.

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The Second Defendant is **VOSSLOH ESPAÑA, S.A.** (hereinafter referred to as "VOSSLOH"); a company duly incorporated in accordance with the Laws of Spain and having its main place of business in South African at 38 Nederberg Crescent, Hurlingham Manor, Sandton, Johannesburg, Gauteng Province.

4.

4.1 The Third Defendant is **SWIFAMBO RAIL LEASING PROPRIETARY LIMITED;** (REG NO: 2010/007968/07) (in liquidation) (hereinafter referred to as "SWIFAMBO).

4.2 The joint liquidators of the Third Defendant are Mr JZH Muller and N Ndyamara of Tshwane Trust and MP Madlala, whose further particulars are unknown.

4.3 Tshwane Trust's main place of business is 1207 Cobham Road Colbyn Pretoria.

5.

5.1 The Fourth Defendant is **RAILPRO HOLDINGS PROPRIETARY LIMITED;** (REG NO: 2011/109702/07) (in liquidation).

5.2 The provisional joint liquidators are Mr. A Ndyamara of Tshwane Trust and Mr N Timkoe, whose further particulars are unknown.

5.3 Tshwane Trust's main place of business is 1207 Cobham Road Colbyn Pretoria.

6.

6.1 On the 30<sup>th</sup> of November 2018, the Supreme Court of Appeal of South Africa confirmed an order setting aside a contract for the supply of AFRO 4000 locomotives.

6.2 The Supreme Court of Appeal of South Africa found that:

6.2.1 There was no change of asset holding between SWIFAMBO and PRASA.

6.2.2 VOSSLOH had complete control over every aspect of the contract for the supply of locomotives manufactured by VOSSLOH to PRASA.

6.2.3 The involvement of SWIFAMBO took place as a front for VOSSLOH.

6.2.4 The real role of SWIFAMBO was to enable VOSSLOH to become the real bidder to the tender which led to the contract (that was set aside).

6.2.5 The contract for the supply of locomotives to PRASA was set aside with retrospective effect.

6.3 In terms of the contract, 13 AFRO 4000 locomotives were supplied by VOSSLOH to PRASA.

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6.4 The 13 AFRO 4000 locomotives are currently in the possession of PRASA.

6.5 As a result of the contract having been set aside, the restitution of the locomotives supplied follows by operation of South African Law.

7.

On the 4<sup>th</sup> of December 2018, Werksmans Attorneys ostensibly representing PRASA, wrote a letter to SWIFAMBO and RAILPRO wherein they:

7.1 demanded payment of the amount of R2,650,208,400.35 as claimed in the action instituted in the High Court, Gauteng Local Division, Johannesburg (Case Number: 16/20101); and

7.2 tendered return of the locomotives supplied to them.

8.

8.1 Werksmans Attorneys ostensibly on behalf of PRASA has subsequently presented a claim to a meeting of creditors of SWIFAMBO in the amount of R2,650,208,400.38 premised on the repayment of the amounts paid for the purchase on the premise that SWIFAMBO is bound to make restitution based on the decision of the Supreme Court of Appeal as set out above.

8.2 The authority furnished to Werksmans to present the claim was ostensibly provided by Ms. Martha Ngoye.

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**9.**

- 9.1 On the 12<sup>th</sup> of February 2019, PRASA reported in writing on the "feasibility of the re-introduction of the AFRO 400 locomotives". A copy of the report is attached hereto as annexure "A".
- 9.2 The report concluded that subject to some modifications and tests being conducted made that the locomotives could be deployed in the Free State, Northern Cape and Eastern Cape.
- 9.3 The report was prepared with regard to the input and requirements of the Railway Safety Regulation.

**10.**

The joint liquidators of SWIFAMBO have taken steps to market and sell the 13 AFRO 4000 locomotives as part of the assets of SWIFAMBO in liquidation.

**11.**

In the light of the finding of the Supreme Court of Appeal of South Africa the Plaintiff contends that the restitution should take place between PRASA and VOSSLOH.



12.

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The actions of the joint liquidators in dealing with the locomotives as property of SWIFAMBO and together with the claims of PRASA against SWIFAMBO prejudices the position of SWIFAMBO, its shareholder and Plaintiff as a director.

13.

In the above premise, a declaratory order should be granted.

Wherefore Plaintiff seeks the following orders:


1. A declaratory order that the locomotives supplied by the Second Defendant to First Defendant (PRASA) be restituted to Second Defendant;
2. A declaratory order that the Third Defendant [SWIFAMBO (in liquidation)] is not entitled to deal with the 13 locomotives supplied by VOSSLOH to PRASA as assets of SWIFAMBO in liquidation;
3. A declaratory order that restitution of funds take place between the Second Defendant, in its position as the real bidder, to the First Defendant;
4. Costs be paid by any party opposing the relief sought.
5. Further or alternative relief.

DATED AND SIGNED AT PRETORIA THIS 23<sup>rd</sup> DAY OF AUGUST 2019

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MARTHELI KRUGER

Attorney duly admitted with  
the right of appearance in  
terms of section 4 (2) of the Right  
of Appearance in Courts Act 60/1995  
Certificate no: 12535/ 2009

  
(SGD) MARTHELI KRUGER  
CORNE WILKENS ATTORNEYS  
ATTORNEYS FOR PLAINTIFF  
235 CHURCH STREET  
3RD FLOOR, BURLINGTON HOUSE  
BURLINGTON ARCADE  
PRETORIA  
REF: WM61

" 3 "

SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)

REGISTERED ADDRESS: 294 MILNER STREET, WATERKLOOF, PRETORIA

REG NO: 2010/007968/07

MASTERS REFERENCE : T2979/18

(Date of Registration of CM26 - 18/12/18 )

FIRST LIQUIDATION AND DISTRIBUTION ACCOUNT

LODGED BY :

A N NDYAMARA, J Z H MULLER & M P MADLALA

JOINT LIQUIDATORS

TSHWANE TRUST CO (PTY) LTD  
1207 COBHAM AVENUE  
QUEENSWOOD  
PRETORIA

**SWIFANBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)****MASTERS REFERENCE : 02879/18****RECONCILIATION STATEMENT**

|  |               |  |
|--|---------------|--|
| <b>BALANCE AS PER BANK STATEMENT</b>           |               | (85 451,00)                            |
| <b>ADD : Investment</b>                        | 8 200 000,00  |  |
|  | 85 176 800,00 |  |
| Deposit (cancelled sale)                       | 500 000,00    | 93 876 800,00                          |
|  |               | 93 791 349,00                          |
| <b>Less: Outstanding payments</b>              | 10 000,00     |  |
|  | 795 163,44    |  |
|  | 155 132,00    | 960 295,44                             |
| <b>BALANCE AS PER CASH BOOK</b>                |               | 92 831 053,56                          |
| <b>MASTERS FEES</b>                            | 275 000,00    |  |
| <b>PROVISION FOR ADVERTISING</b>               | 113,48        |  |
| <b>SARS</b>                                    |               |  |
| Output VAT                                     | 12 435 000,00 |  |
| <b>Less: Input VAT</b>                         | 1 806 848,68  | 10 528 151,32                          |
| <b>W H AUCTIONEERS</b>                         |               |  |
| Advertising costs                              | 701 225,89    |  |
| <b>TSHWANE TRUST CO (PTY) LTD</b>              |               |  |
| Storage of records                             | 1 030,00      |  |
| Petties, Postage & Stationery                  | 600,00        |  |
| Beeld  | 328,36        |  |
| Citizen  | 417,70        | 2 376,06                               |
| <b>LIQUIDATORS FEES</b>                        |               |  |
| Fees Residue Account                           | 9 583 500,00  |  |
| <b>Add : VAT 15%</b>                           | 1 437 525,00  | 11 021 025,00                          |
| <b>BALANCE AVAILABLE FOR DISTRIBUTION</b>      |               |  |
| <b>AND AWARDED AS FOLLOWS :-</b>               |               |  |
| <b>Preferent Creditors</b>                     |               |  |
| Section 100(ii)                                |               | 5 000,00                               |
| Claim no 1                                     |               |  |
| First dividend payable to concurrent creditors | 65 298 161,83 |  |
|  | 5 000 000,00  |  |
| <b>BALANCE TRANSFERRED TO SECOND ACCOUNT</b>   |               | <b>R92 831 053,56 . R92 831.053,56</b> |

**SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)**  
**MASTERS REFERENCE: T2479/18**  
**FIRST LIQUIDATION ACCOUNT**  
**PREF. RESIDUE ACCOUNT**

| <b>RECEIPTS<br/>OF WHOM RECEIVED AND NATURE<br/>OF ASSETS</b> | <b>VOUCHER<br/>NO</b> | <b>INPUT<br/>VAT</b> | <b>OUTPUT<br/>VAT</b> |                       |
|---|-----------------------|----------------------|-----------------------|-----------------------|
| <b>W H AUCTIONEERS</b>  |                       |                      |                       |                       |
| Proceeds of 7 locomotives                                     | 1                     |                      | 12 435 000,00         | 95 335 000,00         |
| <b>W H AUCTIONEERS</b>  | 2                     |                      |                       | 500 000,00            |
| Deposit (sale cancelled)                                      |                       |                      |                       |                       |
|   |                       |                      | <u>R12 435 000,00</u> | <u>R95 835 000,00</u> |
| <b>DISBURSEMENTS<br/>NATURE OF DISBURSEMENTS</b>              | <b>VOUCHER<br/>NO</b> | <b>INPUT<br/>VAT</b> | <b>OUTPUT<br/>VAT</b> |                       |
| <b>LIQUIDATION BONDING SERVICES</b>                           |                       |                      |                       |                       |
| Asset Cover   | 4                     | 10 737,39            | 82 320,00             |                       |
| Additional Asset Cover  | 5                     | 20 234,81            | 155 132,00            |                       |
| Premium and stamp duty on security bond<br>from 24/12/19 - 20 | 6                     | 75 863,84            | 581 622,74            | 819 074,74            |
| <b>SARS</b>   |                       |                      |                       |                       |
| Output VAT  |                       |                      | 12 435 000,00         |                       |
| Less: Input VAT   |                       |                      | <u>1 906 848,68</u>   | 10 528 151,32         |
| <b>EXPENSES</b><br>(as per Schedule "B")                      | 7                     | 270 901,81           |                       | 2 184 181,39          |
| <b>W H AUCTIONEERS</b>  |                       |                      |                       |                       |
| Advertising costs   |                       |                      | 609 761,64            |                       |
| Add: VAT  |                       | 91 464,25            | <u>91 464,25</u>      | 701 225,89            |
| <b>ADVERTISING SECOND MEETING OF<br/>CREDITORS</b>            |                       |                      |                       |                       |
| Government Gazette (General)                                  |                       | 19,74                | 151,32                |                       |
| Government Gazette (F1)                                       |                       | 4,93                 | 37,82                 |                       |
| The Citizen   | 10                    | 54,48                | 417,70                |                       |
| Die Beeld   | 11                    | 42,83                | <u>328,36</u>         | 935,20                |
| <b>STORAGE OF RECORDS</b>                                     |                       |                      |                       | 1 030,00              |
| <b>BANK CHARGES</b>   |                       |                      |                       | 501,17                |
| <b>PROVISION FOR ADVERTISING</b>                              |                       |                      |                       | 113,46                |
| <b>PETITES, POSTAGE &amp; STATIONERY</b>                      |                       |                      |                       | 600,00                |
| <b>LIQUIDATORS FEES</b>                                       |                       |                      |                       |                       |
| 10% on R95 685 000,00   |                       |                      | 9 533 500,00          |                       |
| 10% on R500 000,00  |                       |                      | <u>50 000,00</u>      |                       |
|   |                       |                      | 9 583 500,00          |                       |
| <b>ADD: VAT 15%</b>   |                       | 1 437 525,00         | <u>1 437 525,00</u>   | 11 021 025,00         |
| <b>MASTERS FEES</b>   |                       |                      |                       |                       |
| Gross Realisations  |                       |                      | <u>R95 835 000,00</u> |                       |
| Over R50 000,00   |                       |                      | 1 000,00              |                       |
| Over R150 000,00  |                       |                      |                       |                       |
| R275 x R5 000,00 (19 137 x R275)                              |                       |                      | <u>5 262 875,00</u>   |                       |
|   |                       |                      | <u>R5 263 875,00</u>  |                       |
| <b>MAXIMUM MASTER FEES</b>                                    |                       |                      |                       | <u>275 000,00</u>     |
| Balance carried forward                                       |                       | 1 906 848,68         |                       | 25 531 836,17         |

**SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)****MASTERS REFERENCE : T2679/18****FIRST LIQUIDATION ACCOUNT****FREE RESIDUE ACCOUNT (Continued)**

| <b>DISBURSEMENTS</b>                             | <b>VOUCHER</b> | <b>DEBIT</b>         | <b>CREDIT</b>         |
|--|----------------|----------------------|-----------------------|
| <b>NATURE OF DISBURSEMENTS</b>                   | <b>NO</b>      | <b>VAT</b>           | <b>VAT</b>            |
| Balance brought forward                          |                | 1 906 848,88         | 25 531 838,17         |
| <b><u>BALANCE AVAILABLE FOR DISTRIBUTION</u></b> |                |                      |                       |
| <b><u>AND AWARDED AS FOLLOWS :-</u></b>          |                |                      |                       |
| Preferent Creditor                               |                |                      | 5 000,00              |
| Claim no 1                                       |                |                      |                       |
| First dividend payable to                        |                |                      |                       |
| concurrent creditors                             |                |                      | 85 298 161,83         |
| <b><u>BALANCE TRANSFERRED TO SECOND</u></b>      |                |                      |                       |
| <b><u>ACCOUNT</u></b>                            |                | <u>R1 906 848,88</u> | <u>5 000 000,00</u>   |
|  |                |                      | <u>R95 835 000,00</u> |

**SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)****MASTERS REFERENCE : T2979/13****EXPENSES AS PER COURT ORDER DATED 12/2/19****SCHEDULE "B"**

|          |                                |                    |                      |
|----------|--------------------------------|--------------------|----------------------|
| 19/8/19  | Schabot Inc - 417 application  | 65 217,39          | 500 000,00           |
|          | Niel Krige - 417 enquiry       | -                  | 20 000,00            |
|          | Conference facility - 417 appl | -                  | 15 500,00            |
| 19/19/19 | Conference facility - 417 appl | -                  | 4 400,00             |
|          | Schabot Inc - Machaba appl     | 95 347,37          | 730 996,53           |
|          | Conference facility - 417 appl | -                  | 6 000,00             |
|          | Conference facility - 417 appl | -                  | 6 000,00             |
|          | Werksmans Attorneys -          | 6 619,88           | 79 597,42            |
|          | Constitutional court           | -                  | -                    |
|          | Crimpton Transcriptions        | -                  | 16 524,00            |
|          | Niel Krige - 417 enquiry       | -                  | 10 000,00            |
|          | Schabot Inc - 417 application  | 103 716,97         | 795 163,44           |
|          |                                | <u>R270 901,61</u> | <u>R2 184 181,39</u> |

SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)  
MASTERS REFERENCE : T2979/18  
INTEREST AND BANK CHARGES  
ANNEXURE "A"

|                    | <u>INTEREST</u>             | <u>BANK<br/>CHARGES</u> |
|--------------------|-----------------------------|-------------------------|
| BANKSTATEMENT NO 1 | <u>                    </u> | <u>501,17</u>           |
|                    | <u>                    </u> | <u>R501,17</u>          |



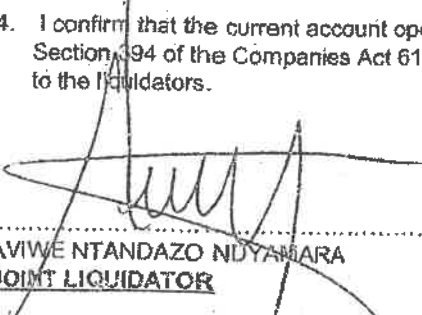
**SWIFAMBO RAIL LEASING (PTD) LTD (IN LIQUIDATION)**  
**MASTERS REFERENCE: 12079/12**  
**FIRST DISTRIBUTION ACCOUNT**

| CLAIM NO | NAME & ADDRESS OF CREDITOR   | NATURE OF CLAIMS                         | TOTAL CLAIM      | CLAIMS            |                   | CLAIMS            |                | AWARDS            |                  | DEFICIENCY   |
|----------|--|--|------------------|-------------------|-------------------|-------------------|----------------|-------------------|------------------|--------------|
|          |  |  |                  | PREFERENT SECURED | CONCURRENT        | PREFERENT SECURED | CONCURRENT     | PREFERENT SECURED | CONCURRENT       |              |
| 1        | WKH Landgrebe & Co   | Withdrawn (1st mtg)                      |                  |                   |                   |                   |                |                   |                  |              |
| 2        | AM Investments (Pty) Ltd   | Withdrawn (1st mtg)                      |                  |                   |                   |                   |                |                   |                  |              |
| 1        | WKH Landgrebe & Co   | Professional services rendered (auditor) | 665 215,70       | 5 000,00          | 660 215,70        | 5 000,00          |                | 16 531,58         |                  |              |
| 2        | AM Investments (Pty) Ltd   | Withdrawn (2nd mtg)                      |                  |                   |                   |                   |                |                   |                  |              |
| 3        | Passenger Rail Agency of SA<br>c/o Werksmans Attorneys<br>Private Bag 10015,<br>Sandton, 2146<br>Ref: SARC0001.788 | Taxed bill of costs                      | 369 124,62       |                   | 369 124,62        |                   |                | 9 242,76          |                  | 359 881,86   |
| 4        | Passenger Rail Agency of SA<br>c/o Werksmans Attorneys<br>Private Bag 10015,<br>Sandton, 2146<br>Ref: SARC0001.788 |  | 2 605 208 400,53 |                   | 2 605 208 400,53  |                   |                | 65 233 550,24     | 2 539 974 850,29 |              |
| 5        | Passenger Rail Agency of SA<br>c/o Werksmans Attorneys<br>Private Bag 10015,<br>Sandton, 2146<br>Ref: SARC0001.788 | Judgement                                | 1 551 029,06     |                   | 1 551 029,06      |                   |                | 38 837,25         |                  | 1 512 191,81 |
|          |  |  |                  | R5 000,00         | R2 607 788 759,91 | R5 000,00         | R65 298 161,83 | R2 541 846 923,96 |                  |              |

SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)MASTERS REFERENCE : T2979/18AFFIDAVIT

I, the undersigned, AVIWE NTANDAZO NDYAMARA, of P.O. Box 2101, PRETORIA, 0001  
JOINT LIQUIDATOR, of the abovementioned estate hereby declares as follows :-

1. The Account hereto annexed contains a full and true account of the administration of the estate.
2. The Claims have been inspected by me in terms of Section 45 of the Insolvency Act as read with the Close Corporations and Companies Act.
3. There is still 8 locomotives to be realized.
4. I confirm that the current account opened in this matter complies with the provisions of Section 94 of the Companies Act 61 of 1973 and does not include any agency fee payable to the liquidators.

  
.....  
AVIWE NTANDAZO NDYAMARA  
JOINT LIQUIDATOR

I, hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at PRETORIA, on the 21 day of October 2019 the Regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

  
.....  
COMMISSIONER OF OATHS

Commissioner of Oaths  
ANCHEN BASSON  
Ad - Hoc: Office Manager  
(Ref 9/1/8/2 Pretoria)  
1207 Cobham Road  
Queenswood, Pretoria  
0186

SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)MASTERS REFERENCE : T2979/18AFFIDAVIT

I, the undersigned, JOHANNES ZACHARIAS HUMAN MULLER, of P.O. Box 2101, PRETORIA, 0001  
JOINT LIQUIDATOR, of the abovementioned estate hereby declares as follows :-

1. The Account hereto annexed contains a full and true account of the administration of the estate.
2. The Claims have been inspected by me in terms of Section 45 of the Insolvency Act as read with the Close Corporations and Companies Act.
3. There is still 8 locomotives to be realized.
4. I confirm that the current account opened in this matter complies with the provisions of Section 394 of the Companies Act 61 of 1973 and does not include any agency fee payable to the liquidators.



.....  
JOHANNES ZACHARIAS HUMAN MULLER  
JOINT LIQUIDATOR

I, hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pretoria, on the 21<sup>st</sup> day of October 2019, the Regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.




.....  
COMMISSIONER OF OATHS

Commissioner of Oaths  
DEIDRE BASSON  
Ad - Hoc: Insolvency Practitioner  
(Ref 61/10/2016 Pretoria)  
1207 Cobham Road  
Queenswood, Pretoria  
0186


SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)MASTERS REFERENCE : T2979/18AFFIDAVIT

I, the undersigned, **MANDLA PROFESSOR MADLALA**, of **MANCI KNOOP** -  
**JOINT LIQUIDATOR**, of the abovementioned estate hereby declares as follows :-

1. The Account hereto annexed contains a full and true account of the administration of the estate.
2. The Claims have been inspected by me in terms of Section 45 of the Insolvency Act as read with the Close Corporations and Companies Act.
3. There is still 8 locomotives to be realized.
4. I confirm that the current account opened in this matter complies with the provisions of Section 394 of the Companies Act 61 of 1973 and does not include any agency fees payable to the liquidators.

  
**MANDLA PROFESSOR MADLALA**  
**JOINT LIQUIDATOR**

I, hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pietermaritzburg on the 25th day of October 2019, the Regulations contained in Government Notice No. R1268 of 21 July 1972, as amended, and Government Notice No. R1848 of 19 August 1977, as amended, having been complied with.

  
**JOYCE DUDUZILE NGCOBO**  
**COMMISSIONER OF OATHS**  
**EX- OFFICIO OFFICER**  
**234 BERG STREET**  
**PIETERMARITZBURG**

"K"


**TSHWANE TRUST CO. (PTY) LTD**

1207 Cobham Road, Queenswood, 0186 | P.O. Box 2101, Pretoria, 0001, Docex 51, Pretoria  
 Tel: 0861 874 926 | Fax: (012) 333 4672 | e-mail: michelle@tshwanetrust.co.za  
 Reg No: 1973 / 011373 / 07 | VAT 4860191891

/ur Ref/Ons Verw: J Z H MULLER/ms

Your Ref/U Verw: T2979/18

14/01/2020

THE MASTER OF THE HIGH COURT  
 PRETORIA

BY HAND

Dear Sir,

r/e: **SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)**  
**MASTER'S REF: T2979/18**

1. We refer to the above as well as your letter dated 27 November 2019.
2. You requested a motivation for the Liquidator's fee reflected in the First Liquidation Distribution Account, calculated in accordance with Schedule B of the Insolvency Act.
3. We furthermore received an objection to the First Liquidation & Distribution Account by Mr Cameron *inter alia* against the fee.
4. It would also be premature to respond to the objection prior to the hearing and finalisation of the Review Application.
5. We attach hereto sworn affidavits in respect of our application for an extension of time to lodge an Amended / Second Liquidation & Distribution Account. (This will be sent to all proven creditors via registered mail)

Yours Faithfully

**J Z H MULLER**  
**JOINT LIQUIDATOR**

Tshwane Trust Co. (Pty) Ltd is a proud **LEVEL 2** Broad-Based BEE contributor

**LIQUIDATORS ARE MEMBERS OF SARIPA AND ABRIPSA**  
 Directors: L Sibiya | A.N. Ndyamara | J.Z.H. Müller  
 Consultant: Y Ebrahim

**SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)**  
**MASTER'S REF: T2979/18**

**SWORN AFFIDAVIT IN TERMS OF SECTION 404 OF THE COMPANIES ACT OF 1973, AS AMENDED, READ WITH SECTION 66 OF THE CLOSE CORPORATION ACT OF 1984**

1. The First Liquidation & Distribution Account 'the Account' was lodged on 28 October 2019.
2. On 26 November 2019, a Review Application 'the Application' was served on the Liquidators. A copy of the application was also served on your office.
3. The Account lay open for inspection from 29 November 2019 to 13 December 2019.
4. On 10 December 2019, an objection to the Account was lodged. The crux of the objection is that the Account, in its current form, cannot be confirmed pending adjudication of the Application.
5. We estimate that the Application will be heard some time during the third quarter of this year (2020).
6. The outcome of the Application will determine the amendments to be made to the Account, if any.
7. Considering the above, we hereby request an extension of time to lodge an Amended / Second Account for a period of six (6) months following which a further report and/or application will be submitted.

Yours Faithfully



**JOHANNES ZACHARIAS HUMAN MULLER**  
**JOINT LIQUIDATOR**

I, hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pretoria on the 20 day of July 2020, the Regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

17. Basson  
**COMMISSIONER OF OATHS**

Commissioner of Oaths  
**ANCHEN BASSON**  
 Ad - Hoc: Office Manager  
 (Ref 9/1/8/2 Pretoria)  
 1207 Cobham Road  
 Queenswood, Pretoria  
 0186



**SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)**  
**MASTER'S REF: T2979/18**

**SWORN AFFIDAVIT IN TERMS OF SECTION 404 OF THE COMPANIES ACT OF 1973, AS AMENDED, READ WITH SECTION 66 OF THE CLOSE CORPORATION ACT OF 1984**

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6. The outcome of the Application will determine the amendments to be made to the Account, if any.
7. Considering the above, we hereby request an extension of time to lodge an Amended / Second Account for a period of six (6) months following which a further report and/or application will be submitted.

Yours Faithfully

  
**AVIWE NTANDAZO NDYAMARA**  
**JOINT LIQUIDATOR**

I hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pretoria on the 21 day of January 2020, the Regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

  
**COMMISSIONER OF OATHS**


**Commissioner of Oaths**  
**LEAH HLARENG MAPHOSA**  
**Ad - Hoc: Liquidator**  
**(Ref 62/10/2016 Pretoria)**  
**1207 Cobham Road**  
**Queenswood, Pretoria**  
**0186**

**SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)**  
**MASTER'S REF: T2979/18**

**SWORN AFFIDAVIT IN TERMS OF SECTION 404 OF THE COMPANIES ACT OF 1973, AS AMENDED, READ WITH SECTION 66 OF THE CLOSE CORPORATION ACT OF 1984**

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5. We estimate that the Application will be heard some time during the third quarter of this year (2020).
6. The outcome of the Application will determine the amendments to be made to the Account, if any.
7. Considering the above, we hereby request an extension of time to lodge an Amended / Second Account for a period of six (6) months following which a further report and/or application will be submitted.

Yours Faithfully



**MANDLA PROFESSOR MADLALA**  
**JOINT LIQUIDATOR**

I, hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pietermaritzburg on the 20th day of January 2020, the Regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

**Rozena Mahomed**  
 Commissioner of Oaths  
 Practising Attorney  
 181 Burger Street  
 Pietermaritzburg, 3201



2/14/2020

WH Auctioneers | Truck Auctions, Construction Plant Auctions, Parkhome Auctions, Catering Auctions, Online Auctions, Auction bid...  
[Back To My Sales \(/auction-011/mySales\)](#)

# 6x Afro 4000 Diesel Electric Locomotives - Online Auction - Swifambo Rail Leasing (Pty) Ltd (In Liquidation) T2979/18 Ending On 27 Feb 2020 at 1:00 PM SAST

Auctions Items

## Sale Information

| Vendor Name    | Number of Lots | Number of Bids | Pending Offers             | Currency | Selling                    | Not Selling                | Sold                       | Unsold                     |
|----------------|----------------|----------------|----------------------------|----------|----------------------------|----------------------------|----------------------------|----------------------------|
| WH Auctioneers | 6              | 0              | 0                          | ZAR      | 0                          | 0                          | 0                          | 0                          |
|                |                |                | <a href="#">VIEW ITEMS</a> |          | <a href="#">VIEW ITEMS</a> | <a href="#">VIEW ITEMS</a> | <a href="#">VIEW ITEMS</a> | <a href="#">VIEW ITEMS</a> |

## Bidders

Approved / Not Approved

8 14

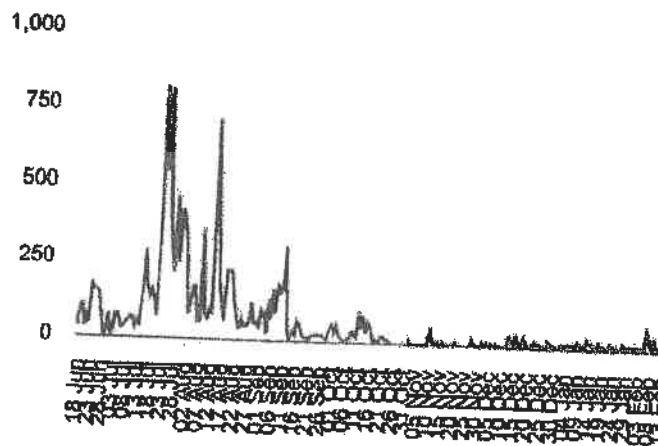
## Auction Visits

15,793

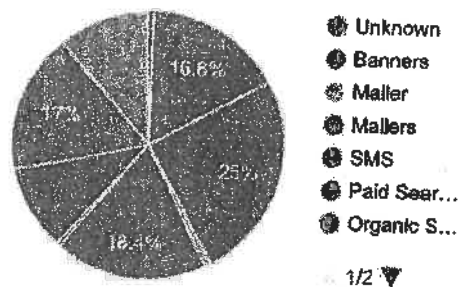
2/14/2020

WH Auctioneers | Truck Auctions, Construction Plant Auctions, Parkhome Auctions, Catering Auctions, Online Auctions. Auction bid...

## Visits Over Time

































## Visits By Source



## Visits By Country

### Top Locations

|  | Visits |
|--|--------|
|  South Africa   | 10054  |
|  United States  | 1011   |
|  United Kingdom | 747    |

|   |             |     |
|---|-------------|-----|
|    | Australia   | 516 |
|    | India       | 396 |
|    | Sweden      | 385 |
|    | Spain       | 319 |
|    | Switzerland | 297 |
|    | Germany     | 231 |
|    | Bulgaria    | 99  |
|    | Mozambique  | 99  |
|    | Zimbabwe    | 99  |
|    | France      | 88  |
|    | Portugal    | 88  |
|    | Zambia      | 88  |
|    | Netherlands | 77  |
|   | New Zealand | 77  |
|  | Canada      | 66  |
|  | Turkey      | 55  |
|  | Botswana    | 44  |
|  | Denmark     | 44  |
|  | Norway      | 44  |
|  | Czechia     | 33  |
|  | Hungary     | 33  |
|  | Italy       | 33  |
|  | Namibia     | 33  |
|  | Pakistan    | 33  |
|  | Panama      | 33  |
|  | Romania     | 33  |
|  | Sri Lanka   | 33  |
|  | Tanzania    | 33  |

2/14/2020

WH Auctioneers | Truck Auctions, Construction Plant Auctions, Parkhome Auctions, Catering Auctions, Online Auctions. Auction bid...

|   |                 |    |
|---|-----------------|----|
|  | Austria         | 22 |
|  | China           | 22 |
|  | Finland         | 22 |
|  | Indonesia       | 22 |
|  | Iran            | 22 |
|  | Kazakhstan      | 22 |
|  | Kenya           | 22 |
|  | Malaysia        | 22 |
|   | Myanmar (Burma) | 22 |

11 10,064

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 Privacy Policy (/auction-011/content/privacy)



(<http://www.whauctions.com/>)

Annexure CM100

THE COMPANIES ACT, 1973

Annexure CM100

Master's Reference No. \_\_\_\_\_

STATEMENT OF AFFAIRS  
(Section three hundred and sixty three of the Act.)

Name of company RAILPRO HOLDINGS (PTY) LTD

Date of winding-up order N/A

Name and address of liquidator N/A

Statement of affairs on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ the date of the winding-up order

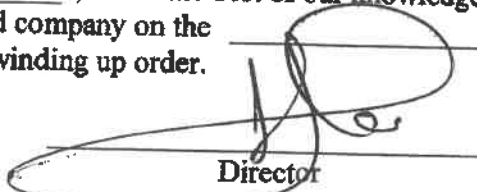
**STATEMENT OF AFFAIRS**

(Section three hundred and sixty three of the Act.)

| LIABILITIES  | I. - As regards |    |
|--|-----------------|----|
|  | R               | c  |
| Debts and liabilities  |                 |    |
| (I) Unsecured creditors and claimants as per List "A"  | 105,000         | 00 |
| (II) Secured and preferent creditors as per List "B"   |                 |    |
| Estimated surplus (if any) after meeting liabilities of company, subject to costs of liquidation |                 |    |
|  | R 105,000       | 00 |
| The nominal amount of unpaid capital liable to be called up is R                                 |                 |    |

|   | II. - As regards |   |
|---|------------------|---|
|   | R                | c |
| Capital issued and allotted:-                           |                  |   |
| Founders shares of R _____ per share                    |                  |   |
| Ordinary shares of R _____ per share                    |                  |   |
| Preference shares of R _____ per share                  |                  |   |
| Particulars of any other capital                        |                  |   |
| Less unpaid calls estimated to be irrecoverable R _____ |                  |   |
| Add deficiency to meet liabilities as above _____       |                  |   |
|   | R                |   |

I, AUSWELL MASHABA of MIDRAND  
 being a director, and I, \_\_\_\_\_ of \_\_\_\_\_  
 being the secretary of the abovenamed company make oath/truly affirm and say that the above statement  
 and several lists hereunto annexed, marked \_\_\_\_\_, are to the best of our knowledge and  
 belief a complete and true statement of the affairs of the said company on the \_\_\_\_\_ day  
 of \_\_\_\_\_ 20 \_\_\_\_\_ the date of the winding up order.

  
 Director

Secretary

(Section three hundred and sixty three of the Act.)

| ASSETS  |   | R    | c |
|---|---|------|---|
| (a) Property as per List "C"  |   | 0,00 |   |
| (b) Book debts as per List "D":-  |   |      |   |
| Recoverable   | R |      |   |
| Doubtful  | R |      |   |
| Irrecoverable   | R |      |   |
| Estimated to realise  |   |      |   |
| (c) Bills of exchange or other similar securities as per List "E":-         |   |      |   |
| Estimated to realise  |   |      |   |
| (d) Unpaid share capital as per List "F":-                                  |   |      |   |
| Estimated to realise  |   |      |   |
| Estimated deficiency of assets to meet liabilities and costs of liquidation |   |      |   |

|  |      |     |
|--|------|-----|
| Estimated surplus as above (if any), subject to costs of liquidation | R    | c   |
| TOTAL DEFICIENCY*  | 0,00 |     |
|  | R    | NIL |

Signed and sworn to/declared before me at Madison this 06 day of December 20 18

### Exempt from Stamp Duty

\*If the Master so directs, this deficiency is to be explained by Statement "G" or in such a manner as the Master may require.



LIST "A"

UNSECURED CREDITORS

The names must be numbered consecutively, creditors for R20 and upwards being placed first.

NOTES

- 1. If any creditor of the company is also a debtor thereof, but for an amount less than the amount of his claim against the company, the gross amount due to the creditor and the amount of his counter-claim must be shown in the third column, and the balance only be inserted under the heading "Amount of Debt", as follows:-

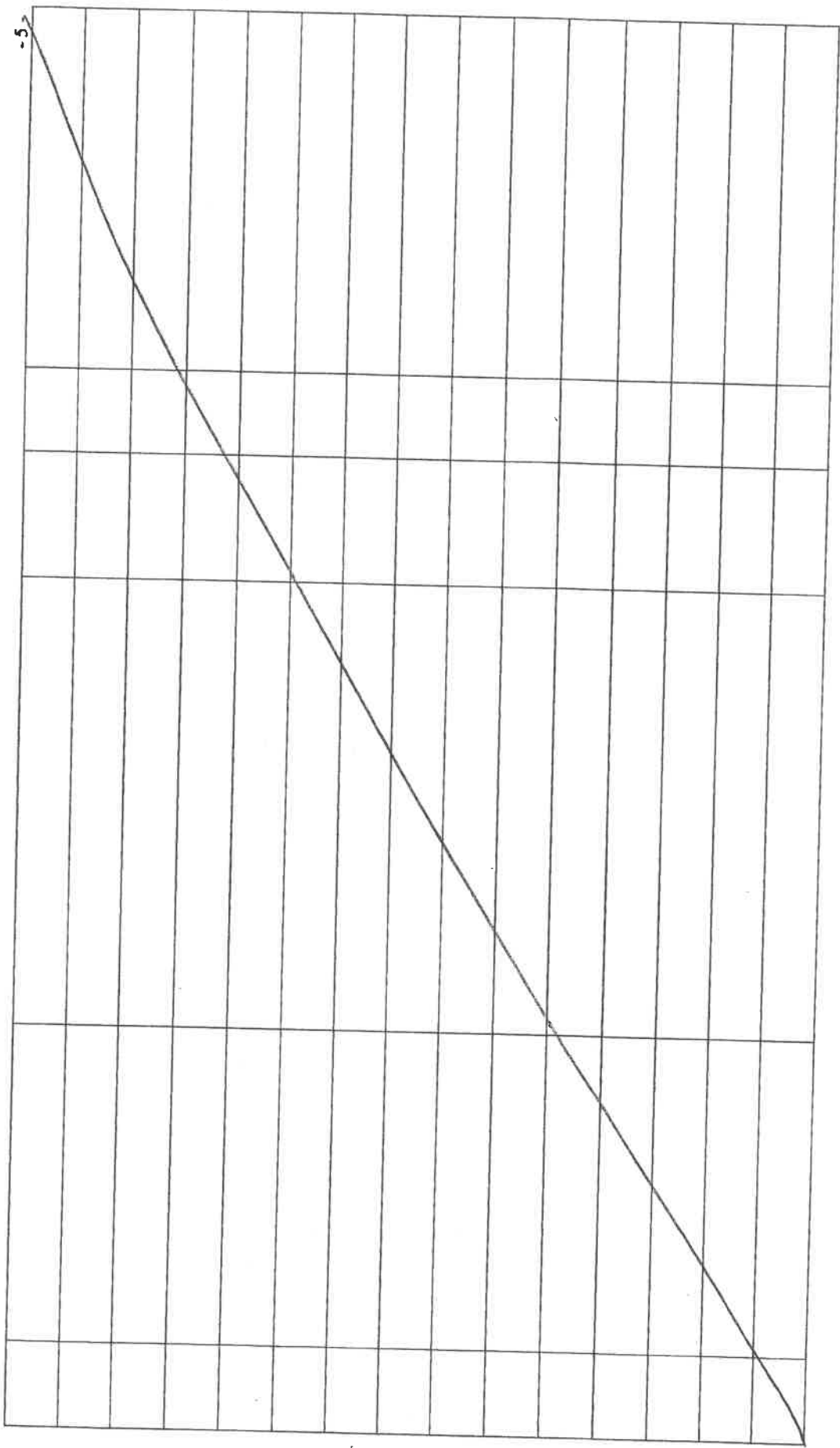
|                              |   |   |
|------------------------------|---|---|
|                              | R | c |
| Gross amount due to creditor |   |   |
| Less counter-claim           |   |   |

Such set-off must not be included in list "D"

- 2. Particulars of any bills of exchange and promissory notes in possession of a creditor must be inserted under the heading "Remarks".
- 3. The names of any creditors who are also contributories or alleged contributories of the company, must be shown separately and described as such at the end of the list.

| No. | Name                      | Address and Occupation    | Amount of Debt |    | Remarks |
|-----|---------------------------|---------------------------|----------------|----|---------|
|     |                           |                           | R              | c  |         |
| 1.  | W.K.H. Landgrebe & Co. SA | PO BOX 3665, Randburg     | 50,000         | 00 |         |
| 2.  | AM Investments (Pty) Ltd  | PO BOX 803, Kyalami, 2125 | 55,000         | 00 |         |
|     |                           | Estate, Midland, Graham   |                |    |         |
|     |                           | 1684                      |                |    |         |
|     |                           |                           |                |    |         |
|     |                           |                           |                |    |         |
|     |                           |                           |                |    |         |





## LIST OF SECURED AND PREFERENT CREDITORS

The names must be arranged in alphabetical order and numbered consecutively

[illegible]

LIST "C"

PROPERTY

Full particulars of every description of property not included in any other list are to be set forth herein.

| Full Statement and Nature of Property  | Estimated to Realise |   |
|--|----------------------|---|
|  | R                    | c |
| (a) Cash at bank (as per bank certificate attached)                            |                      |   |
| (b) Cash in hand   |                      |   |
| (c) Stock-in-trade at (as per valuation attached*)                             |                      |   |
| (d) Machinery at (as per valuation attached*)                                  |                      |   |
| (e) Trade fixtures, fittings, office furniture, utensils, etc.                 |                      |   |
| † (f) Investments in stocks or shares  |                      |   |
| † (g) Loans for which mortgage or other security held                          |                      |   |
| † (h) Other property (excluding book debts, bills of exchange or unpaid calls) |                      |   |

\*The valuation must be made by a person approved by the Master

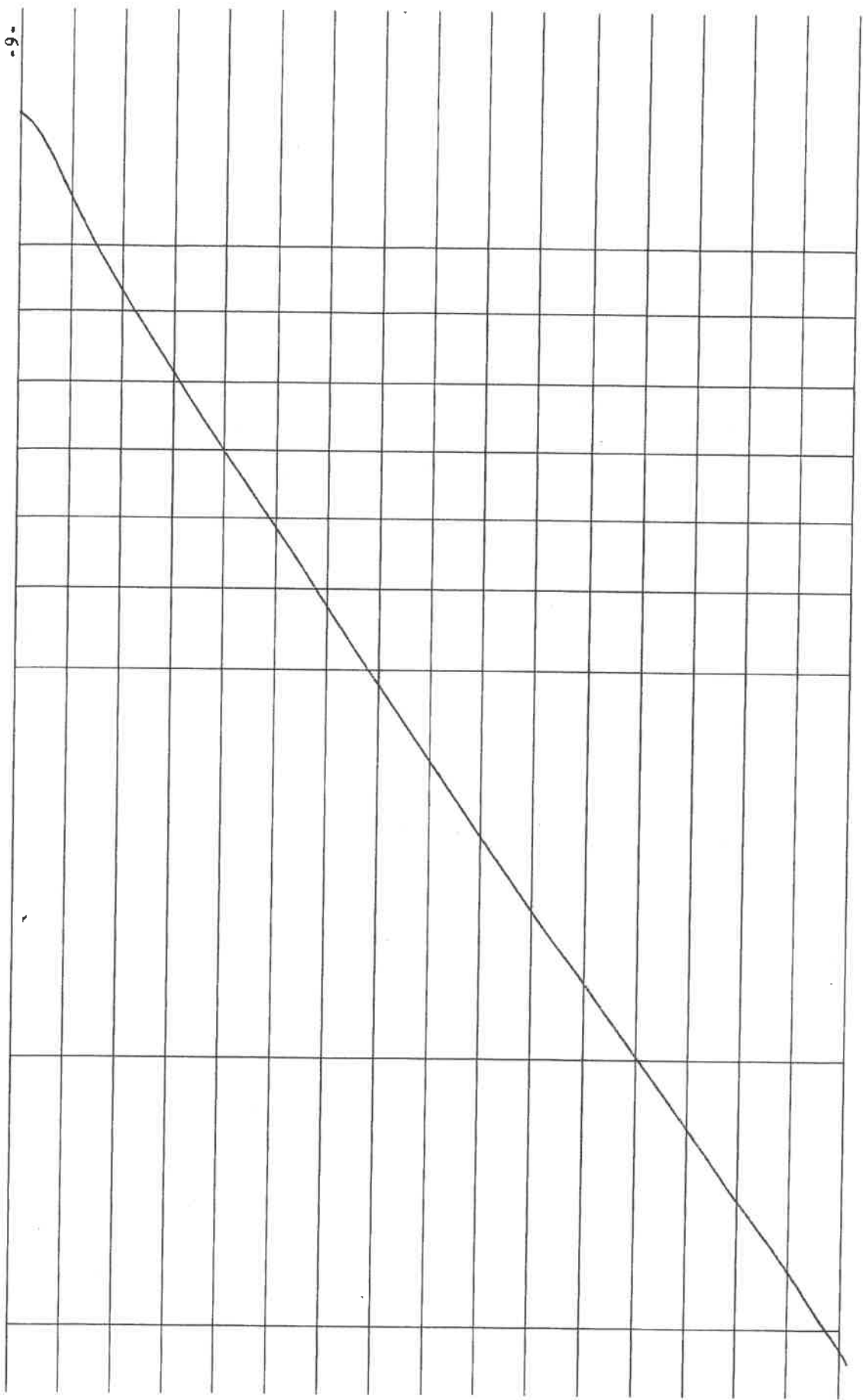
†State particulars

**DEBTS DUE TO THE COMPANY**

NOTE: If any debtor of the company is also a creditor thereof, but for an amount less than his indebtedness, the gross amount due to the company and the amount of the counter-claim must be shown in the third column, and the balance only be inserted under the heading "Amount of Debt", as follows:-

|   | R | C |
|---|---|---|
| Gross amount due to company                   |   |   |
| Less counter-claim                            |   |   |
| Such set-off must not be included in List "A" |   |   |

[illegible]



**BILLS OF EXCHANGE, PROMISSORY NOTES, ETC., ON HAND AND AVAILABLE AS ASSETS**[illegible]

## LIST

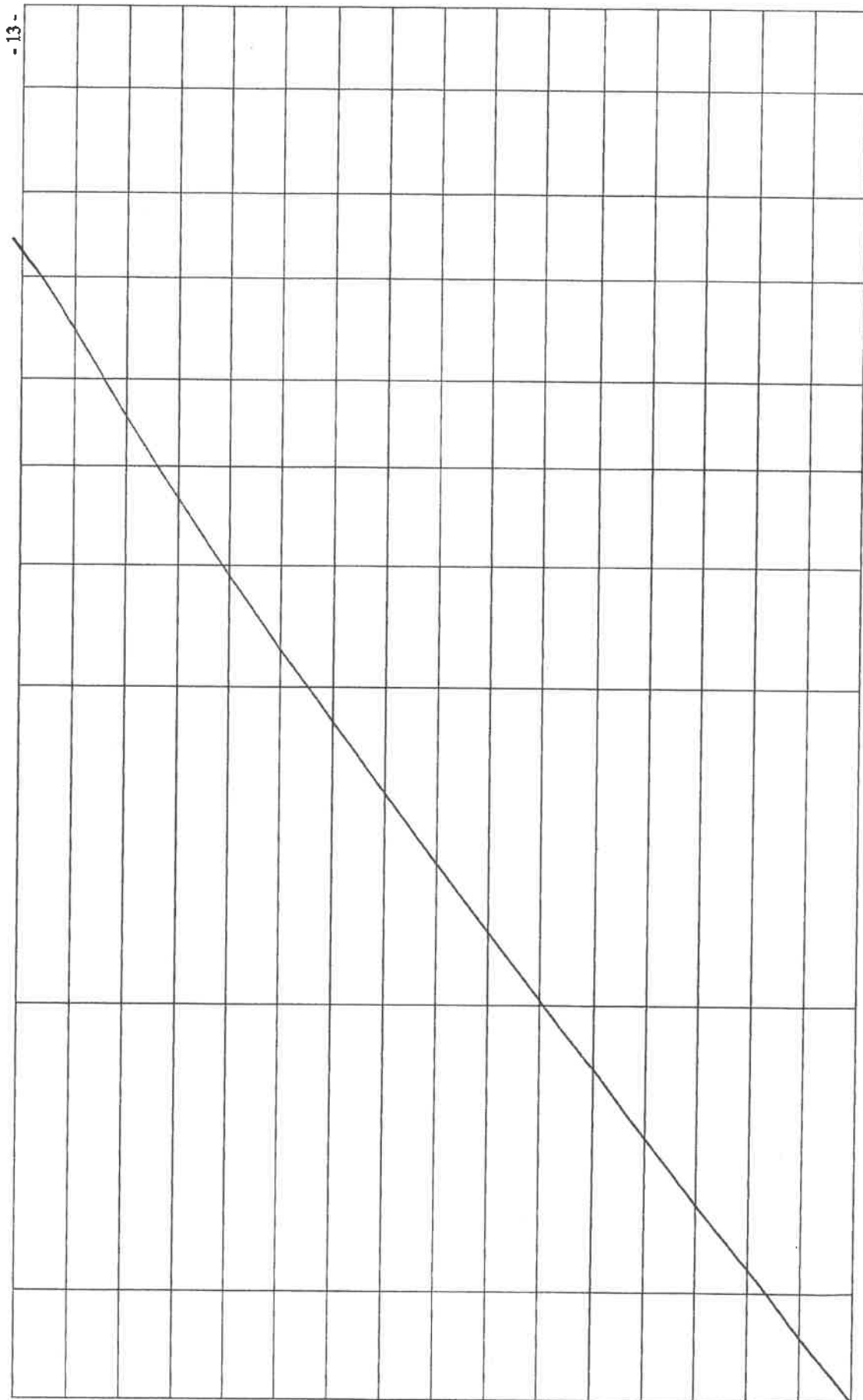
## UNPAID SHARE CAPITAL

[illegible]

**UNPAID SHARE CAPITAL**

[illegible]





## Statement "G"

**DEFICIENCY ACCOUNT***(N.B. This account is prepared only at the request of the Master.)*

(1) Deficiency Account where the winding-up order has been made within three years of formation of the company.

|   | R  | c |
|---|----|---|
| I. Gross profit (if any) arising from carrying on a business from date of formation of company to date of winding up order (as per trading account annexed) |    |   |
| II. Receipts (if any) during the said period from undermentioned sources :-   |    |   |
| Interest on loans _____   |    |   |
| Interest on deposits _____  |    |   |
| Transfer fees _____   |    |   |
| Amount paid on shares issued and subsequently forfeited (as per list annexed)   |    |   |
| III. Other receipts (if any) during the said period not included under any of the above headings:-  |    |   |
| IV. Deficiency as per statement of affairs (Part II) _____  |    |   |
| Total amount to be accounted for  | †R |   |

## Statement "G" (cont.)

## DEFICIENCY ACCOUNT

|  |  |                   |   | R                                      | c |
|--|--|-------------------|---|--|---|
| I. Expenditure in carrying on the business from date of formation of the company to date of winding-up order:- |  |                   |   |  |   |
| GENERAL EXPENDITURE  |  | Amount Discharged |   | Amount due at Date of winding-up order |   |
|  |  | R                 | c | R                                      | c |
| Salaries   |  |                   |   |  |   |
| Wages not charged in trading account   |  |                   |   |  |   |
| Rent   |  |                   |   |  |   |
| Rates and taxes  |  |                   |   |  |   |
| Legal expenses   |  |                   |   |  |   |
| Commission   |  |                   |   |  |   |
| Interest on loans  |  |                   |   |  |   |
| Interest on debentures   |  |                   |   |  |   |
| Miscellaneous expenditure (as per list annexed)  |  |                   |   |  |   |
| II. Directors' fees from the date of formation of company to date of winding-up order                          |  |                   |   |  |   |
| III. Dividends declared during the said period   |  |                   |   |  |   |
| IV. Losses and depreciation written off in the company's books:-*  |  |                   |   |  |   |
| Irrecoverable debts  |  |                   |   |  |   |
| Losses on investments  |  |                   |   |  |   |
| Depreciation of property   |  |                   |   |  |   |
| Preliminary expenses   |  |                   |   |  |   |
| V. Losses and depreciation not written off in the company's books, now written off by directors :-*            |  |                   |   |  |   |
| Irrecoverable debts  |  |                   |   |  |   |
| Losses on investments  |  |                   |   |  |   |
| Depreciation of property   |  |                   |   |  |   |
| Preliminary expenses†  |  |                   |   |  |   |
| VI. Other losses and expenses:-  |  |                   |   |  |   |
| Total amount to be accounted for   |  |                   |   | †R                                     |   |

\* Lengthy particulars must be entered into a separate schedule.

† These figures must agree



## Statement "G" (cont.)

## DEFICIENCY ACCOUNT

|  |  | R                 |   | c                                      |   |
|--|--|-------------------|---|--|---|
| I. Excess (if any) of assets over capital and liabilities over assets on the * day of , 20 as per the company's balance sheet (this and any previous balance sheets to be annexed) |  |                   |   |  |   |
| II. Expenses of carrying on the business from the* day of , 20 to date of winding-up order:-   |  |                   |   |  |   |
| GENERAL EXPENDITURE  |  | Amount Discharged |   | Amount due at Date of winding-up order |   |
|  |  | R                 | c | R                                      | c |
| Salaries _____   |  |                   |   |  |   |
| Wages not charged in trading account _____   |  |                   |   |  |   |
| Rent _____   |  |                   |   |  |   |
| Rates and taxes _____  |  |                   |   |  |   |
| Legal expenses _____   |  |                   |   |  |   |
| Commission _____   |  |                   |   |  |   |
| Interest on loans _____  |  |                   |   |  |   |
| Interest on debentures _____   |  |                   |   |  |   |
| Miscellaneous expenditure (as per list annexed) _____  |  |                   |   |  |   |
| III. Director's fees from the* day of , 20 to date of the winding-up order   |  |                   |   |  |   |
| IV. Dividends declared during the said period  |  |                   |   |  |   |
| V. Losses and depreciation from the* day of , 20 to date of the winding-up order written off in the company's books:-†   |  |                   |   |  |   |
| Irrecoverable debts _____  |  |                   |   |  |   |
| Losses on investments _____  |  |                   |   |  |   |
| Depreciation of property _____   |  |                   |   |  |   |
| Preliminary expenses _____   |  |                   |   |  |   |
| VI. Losses and depreciation not written off in the company's books, now written off by directors :-†   |  |                   |   |  |   |
| Irrecoverable debts _____  |  |                   |   |  |   |
| Losses on investments _____  |  |                   |   |  |   |
| Depreciation of property _____   |  |                   |   |  |   |
| Preliminary expenses† _____  |  |                   |   |  |   |
| VII. Other losses and expenses:-   |  |                   |   |  |   |
| Total amount to be accounted for   |  | †R                |   |  |   |

\* Three days before date of winding-up order.

† Lengthy particulars must be entered into a separate schedule.

‡ These figures must agree

**ANNEXURE CM100**

Master's Reference No. ....

**STATEMENT OF AFFAIRS**

(Section three hundred and sixty-three of the Act.)

company RAIL PRO HOLDINGS (PTY) LTD  
 REGISTRATION OF SPECIAL RESOLUTION  
 of winding-up order 15-12-2019.  
 and address of liquidator A. NDYMARIA & N. TIMKOE.

Statement of affairs on the 15th day of DECEMBER 2018 the date of the winding-up order.  
 DURATION OF SPECIAL LIQUIDATION RESOLUTION

| LIABILITIES  |         | R            | c |
|--|---------|--------------|---|
| Debts and liabilities  |         |              |   |
| (i) Unsecured creditors and claimants as per List "A"  | .. .. . | 126,800      | = |
| (ii) Secured and preferent creditors as per List "B"   | .. .. . | 1,450,000    | = |
| Estimated surplus (if any) after meeting liabilities of company, subject to costs of liquidation |         | 96,213,607   | = |
|  |         | R297,870,407 | = |

The nominal amount of unpaid capital liable to be called up is R.....

II. - As regards

| Capital issued and allotted:                       |                   | R | c | R | c |
|--|-------------------|---|---|---|---|
| Founders' shares of R .....                        | per share .. .. . |   |   |   |   |
| Ordinary shares of R .....                         | per share .. .. . |   |   |   |   |
| Preference shares of R .....                       | per share .. .. . |   |   |   |   |
| Particulars of any other capital .. .. .           | .. .. .           |   |   |   |   |
| Unpaid calls estimated to be irrecoverable .. .. . | R .. .. .         |   |   |   |   |
| Deficiency to meet liabilities as above .. .. .    | .. .. .           |   |   |   |   |
|  |                   | R |   |   |   |

AVSWELL MASHABA of .....  
 a director, and I, ..... of .....  
 the secretary of the abovenamed company make oath/truly affirm and say that the above statement  
 the several lists hereunto annexed, marked A - D, are to the best of our knowledge  
 belief a complete and true statement of the affairs of the said company on the 15th day  
DECEMBER 2018 the date of the winding-up order.  
DECLARATION OF CAPL OF A SPECIAL  
LIQUIDATION RESOLUTION

Director

Secretary

15



| ASSETS  |    |    |             | R           | c |
|---|----|----|-------------|-------------|---|
| Property as per List "C"  | .. | .. | ..          | 296,293,607 | = |
| Good debts as per List "D":-  |    |    |             |             |   |
| Recoverable   | .. | .. | R 1,576,800 |             |   |
| Doubtful  | .. | .. | R .....     | NIL         | - |
| Irrecoverable   | .. | .. | R .....     | NIL         | - |
| Estimated to realize  | .. | .. | R 1,576,800 | 1,576,800   | = |
| Losses of exchange or other similar securities as per List "E":-            |    |    |             |             |   |
| Estimated to realize  | .. | .. | ..          | NIL         |   |
| Unpaid share capital as per List "F":-                                      |    |    |             |             |   |
| Estimated to realize  | .. | .. | ..          | NIL         |   |
| Estimated deficiency of assets to meet liabilities and costs of liquidation |    |    |             |             |   |
|   |    |    |             | 297,870,407 | = |

es.

|  |    |    |    |   |   |
|--|----|----|----|---|---|
| Surplus as above (if any), subject to costs of liquidation | .. | .. | .. | R | c |
| TOTAL DEFICIENCY *   | .. | .. | .. |   |   |
|  |    |    |    | R |   |

Deponents have acknowledged that they know and understand the contents of this affidavit/

and sworn to/declared before me at JHB this 13th day 7 2020

DOUGLAS SEAN PATRICK PURSEY ACCA  
ACCA MEMBERSHIP No. 1355521  
Commissioner of Oaths RSA  
Suite 7 De Havilland House, 16 York Street  
Kensington 8, Johannesburg  
Republic of South Africa

Signature

Stamp Duty

Master so directs, this deficiency is to be explained by Statement "G" or in such other manner as may require.

21



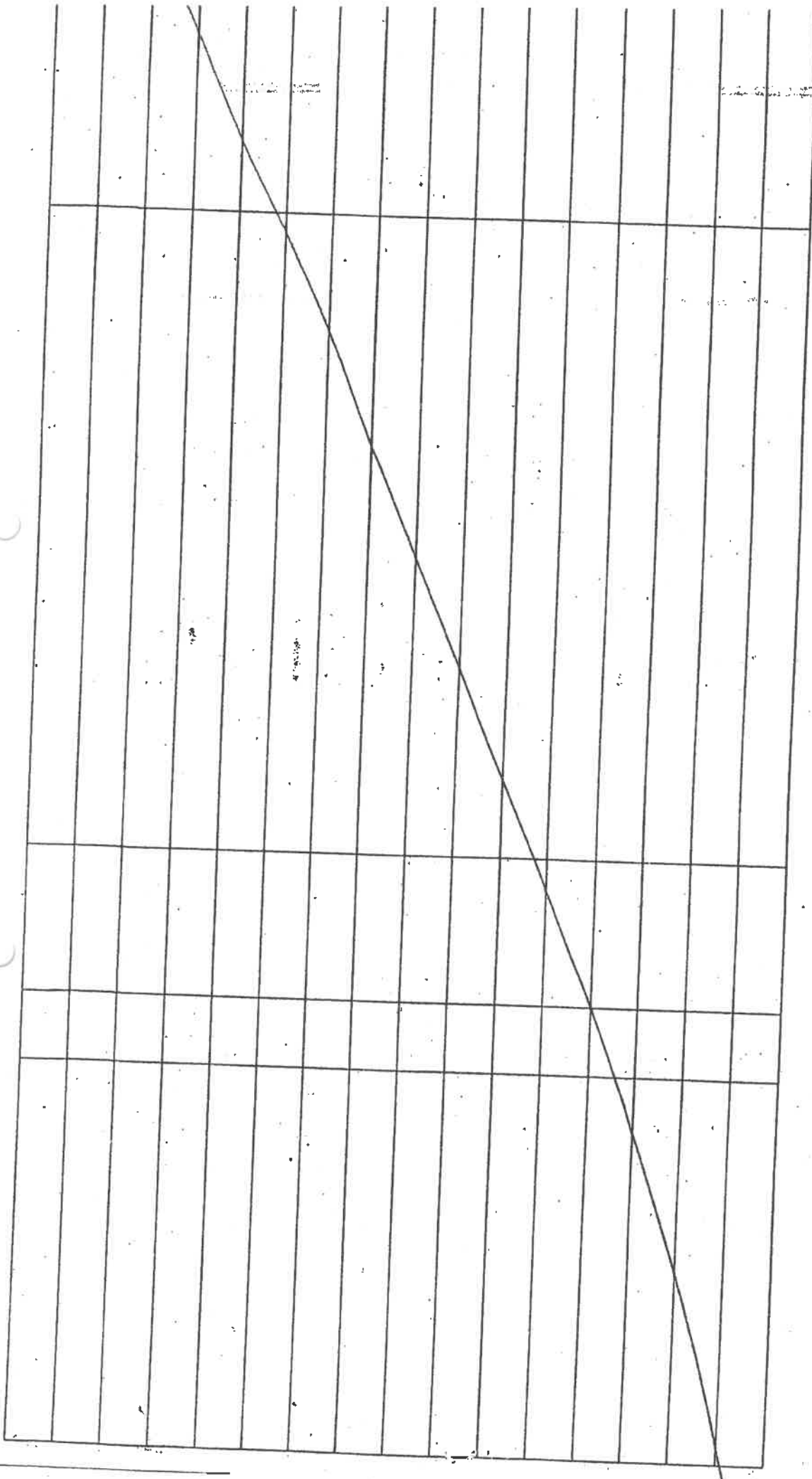
NOTES.

1. If any creditor of the company is also a debtor thereof, but for an amount less than the amount of his claim against the company, the gross amount of his counter-claim must be shown in the third column, and the balance only be inserted under the heading "Amount of Debt", as follows:—

RE

2. Particulars of any bills of exchange and promissory notes in possession of a creditor must be inserted under the heading "Remarks"
3. The names of any creditors who are also contributories or alleged contributories of the company must be inserted under the heading "Contributories."

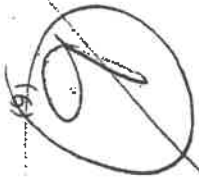
[illegible]





| Full Statement and Nature of Property   | Estimated to Realize |                |
|---|----------------------|----------------|
|   | R                    | c              |
| (a) Cash at bank (as per bank certificate attached) .. .. .   | NIL                  |                |
| (b) Cash in hand .. .. .  | NIL                  |                |
| (c) Stock-in-trade at ..... (as per valuation attached*)  | NIL                  |                |
| (d) Machinery at ..... (as per valuation attached*)   | NIL                  |                |
| (e) Trade fixtures, fittings, office furniture, utensils, etc. .. .. .  | NIL                  |                |
| (f) Investments in stocks or shares .. .. .<br>80 ORDINARY SHARES IN<br>CAPITAL OF SIFWAMBO RAIL<br>WAYING (M) LTD (SEE NOTE 2)   | SEE (h)              |                |
| (g) Loans for which mortgage or other security held .. .. .   | NIL                  |                |
| (h) Other property (excluding book debts, bills of exchange or unpaid calls) ..<br>80% OF THE DIVIDENDS THAT ACCRUE<br>ON THE SHARES REFERRED TO IN (F)<br>(SEE NOTE 3) |                      | 296,293,607=00 |

valuation must be made by a person approved by the Master.  
e particulars.

[illegible]















**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF RAILPRO HOLDINGS (PTY) LTD ("HOLDINGS")****NOTE 1**

1. Mr F Massaro was registered as an employee of Holdings with SARS.
2. Notwithstanding registration as aforesaid, Mr F Massaro was to all intents and purposes employed by Leasing and any liability of Holdings was recoverable by Holdings from Leasing.
3. In or about November 2016 Mr F Massaro's employment with Holdings was terminated and which termination had as its consequence a liability to SARS in the sum of R1 449 577.44 which amount was never paid to SARS.
4. Annexed hereto as Annexures A and B are the relevant documents relative to the liability of Holdings to SARS.

RAILPRO HOLDINGS  
F MASSARO

|                                 |        |              |   |
|---------------------------------|--------|--------------|---|
| LUMP SUM SEVERANCE PACKAGE      | 3907   | 3,000,000.00 |   |
| GROSS EARNINGS                  |        | 3,000,000.00 | A |
| VEHICLE TOYOTA PRADO 3.0Tdi A/T | 3801   | 560,000.00   | B |
| PAYE ON A + (B*.80)             | 41.00% | 1,413,680.00 |   |
| UIF CONTRIBUTION                |        | 148.72       |   |
| TOTAL DEDUCTIONS                |        | 1,413,828.72 |   |
| NETT PAY                        |        | 1,586,171.28 |   |
| COMPANY CONTRIBUTIONS           |        |              |   |
| UIF CONTRIBUTION                |        | 148.72       |   |
| SDL                             |        | 35,600.00    |   |
| TOTAL COMPANY CONTRIBUTIONS     |        | 35,748.72    |   |
| TOTAL COST TO COMPANY           |        | 3,595,748.72 |   |

17-Nov-16

PAYE/UIF/SDL LIABILITY TO SARS ON ABOVE :

|       |              |
|-------|--------------|
| PAYE  | 1,413,680.00 |
| UIF   | 297.44       |
| SDL   | 35,600.00    |
| TOTAL | 1,449,577.44 |



SWIFAMBO RAIL HOLDINGS PTY LTD  
8587 PO BOX  
MIDRAND  
1685

# PAYROLL TAXES

EMPSA

## Statement of Account

Enquiries should be addressed to SARS:

### Contact Details

PO BOX 436  
PRETORIA  
0001

Tel: 0800 00 7277

Website: [www.sars.gov.za](http://www.sars.gov.za)

### Details

Reference number: 7470784218

Date: 2020/07/13

Statement period: 2016/03/01 to 2017/02/28

Always quote this reference number when contacting SARS

### Summary Information: Employer Reconciliation

|                       |        |
|-----------------------|--------|
| TRANSACTION YEAR 2016 | 388.67 |
| TRANSACTION YEAR 2017 | 0.00   |
| UNALLOTTED PAYMENTS   | 0.00   |
| CLOSING BALANCE       | 388.67 |

Trading Name: SWIFAMBO RAIL HOLDINGS

| Transaction details |                     |  |            |            |      |
|---------------------|---------------------|--|------------|------------|------|
| 2016/04/04          | 7470784218LC2016035 | DECLARATION                            | 138 906.65 | 138 906.21 | 0.00 |
| 2016/04/04          | 7470784218LC2016036 | REVISED DECLARATION                    | 49 980.82  | 49 980.25  | 0.00 |
| 2016/04/05          | 7470784218LC2016035 | PAYMENT (RECEIPT NO. A38497122)        | 188 886.17 | 188 886.17 | 0.00 |
|                     |                     | TOTAL LIABILITY                        | 188 886.17 | 188 886.17 | 0.00 |
|                     |                     | FINANCIAL MOVEMENT                     | 188 886.17 | 188 886.17 | 0.00 |
|                     |                     | BALANCE: TAX PERIOD 201603             |            | 0.00       | 0.00 |
| 2016/05/08          | 7470784218LC2016048 | DECLARATION                            | 159 321.02 | 159 321.02 | 0.00 |
| 2016/05/08          | 7470784218LC2016048 | PAYMENT (RECEIPT NO. E28942408)        | 159 321.02 | 159 321.02 | 0.00 |
|                     |                     | TOTAL LIABILITY                        | 159 321.02 | 159 321.02 | 0.00 |
|                     |                     | FINANCIAL MOVEMENT                     | 159 321.02 | 159 321.02 | 0.00 |
|                     |                     | BALANCE: TAX PERIOD 201604             |            | 0.00       | 0.00 |
| 2016/05/31          | 7470784218LC2016050 | DECLARATION                            | 130 965.16 | 130 965.16 | 0.00 |
| 2016/06/02          | 7470784218LC2016050 | PAYMENT (RECEIPT NO. E38240118)        | 130 965.16 | 130 965.16 | 0.00 |
|                     |                     | TOTAL LIABILITY                        | 130 965.16 | 130 965.16 | 0.00 |
|                     |                     | FINANCIAL MOVEMENT                     | 130 965.16 | 130 965.16 | 0.00 |
|                     |                     | BALANCE: TAX PERIOD 201605             |            | 0.00       | 0.00 |
| 2016/06/29          | 7470784218LC2016062 | DECLARATION                            | 113 163.19 | 113 163.19 | 0.00 |
| 2016/06/30          | 7470784218LC2016062 | PAYMENT (RECEIPT NO. E39580456)        | 113 163.19 | 113 163.19 | 0.00 |
|                     |                     | TOTAL LIABILITY                        | 113 163.19 | 113 163.19 | 0.00 |
|                     |                     | FINANCIAL MOVEMENT                     | 113 163.19 | 113 163.19 | 0.00 |
|                     |                     | BALANCE: TAX PERIOD 201606             |            | 0.00       | 0.00 |
| 2016/06/02          | 7470784218LC2016074 | DECLARATION                            | 162 489.78 | 162 489.78 | 0.00 |
| 2016/06/05          | 7470784218LC2016074 | PAYMENT (RECEIPT NO. E40024824)        | 162 489.78 | 162 489.78 | 0.00 |
|                     |                     | TOTAL LIABILITY                        | 162 489.78 | 162 489.78 | 0.00 |
|                     |                     | FINANCIAL MOVEMENT                     | 162 489.78 | 162 489.78 | 0.00 |
|                     |                     | BALANCE: TAX PERIOD 201607             |            | 0.00       | 0.00 |
| 2016/06/30          | 7470784218LC2016086 | DECLARATION                            | 153 643.02 | 153 643.02 | 0.00 |
| 2016/06/01          | 7470784218LC2016086 | PAYMENT (RECEIPT NO. E40414998)        | 153 643.02 | 153 643.02 | 0.00 |
|                     |                     | TOTAL LIABILITY                        | 153 643.02 | 153 643.02 | 0.00 |
|                     |                     | FINANCIAL MOVEMENT                     | 153 643.02 | 153 643.02 | 0.00 |
|                     |                     | BALANCE: TAX PERIOD 201608             |            | 0.00       | 0.00 |
| 2016/07/08          | 7470784218LC2016088 | DECLARATION                            | 153 242.78 | 153 242.78 | 0.00 |
| 2016/07/07          | 7470784218LC2016088 | CREDIT JOURNAL (RECEIPT NO. A41016474) | 153 242.78 | 153 242.78 | 0.00 |
|                     |                     | TOTAL LIABILITY                        | 153 242.78 | 153 242.78 | 0.00 |
|                     |                     | FINANCIAL MOVEMENT                     | 153 242.78 | 153 242.78 | 0.00 |
|                     |                     | BALANCE: TAX PERIOD 201609             |            | 0.00       | 0.00 |
|                     |                     | BALANCE: TAX PERIOD 201610             |            | 0.00       | 0.00 |
|                     |                     | BALANCE: TAX PERIOD 201611             |            | 0.00       | 0.00 |
|                     |                     | BALANCE: TAX PERIOD 201612             |            | 0.00       | 0.00 |
|                     |                     | BALANCE: TAX PERIOD 201701             |            | 0.00       | 0.00 |
|                     |                     | BALANCE: TAX PERIOD 201702             |            | 0.00       | 0.00 |
|                     |                     | CUMULATIVE BALANCE                     |            | 0.00       | 0.00 |

Unallocated payments excluded from the cumulative balance

Reference number: 7470784218

EMPSA\_RO

2015.05.06

01/03

| Ageing - Transactions are aged according to the original due date, including all related interest and penalties |         |         |         |          |       |
|---|---------|---------|---------|----------|-------|
| Current   | 30 Days | 60 Days | 90 Days | 120 Days | Total |
| 0.00  | 0.00    | 0.00    | 0.00    | 0.00     | 0.00  |

| Compliance Information  |                              |                    |  |
|---|------------------------------|--------------------|--|
| Active SDL Reference  | L470784218                   | Seta Code (SDL)    | SETA CODE 02 CHAMBER CODE 81900          |
| Outstanding EMP501 Reconciliations  | 2020,2019,2018,2017,CONTINUE | Outstanding EMP201 | 2020/05,2020/04,2020/03,2020/02,CONTINUE |
| Selected For Audit or Verification  |                              |                    |  |
| EMPLOYERS OPTING TO MAKE USE OF THE COVID-19 TAX RELIEF FOR PAYE AND/OR ETI MUST ENSURE THAT ALL QUALIFYING CRITERIA ARE MET, INCLUDING THE GROSS INCOME THRESHOLD AND TAX COMPLIANCE STATUS. NOT MEETING THE CRITERIA WILL RESULT IN THE WITHDRAWAL OF THE TAX RELIEF. PLEASE CONSULT THE SARS WEBSITE FOR MORE INFORMATION. |                              |                    |  |

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF RAILPRO HOLDINGS (PTY) LTD ("HOLDINGS")****NOTE 2**

1. At all material times Holdings was a non-trading entity.
2. At all material times Holdings permitted Leasing to deposit amounts into its account on the basis that such amounts were the property of Swifambo Rail Leasing (Pty) Ltd ("Leasing").
3. For reasons that are unclear Holdings entered into contracts with certain service providers (including its auditors) on the basis and understanding that all liabilities arising therefrom were payable by and/or were for the account of Leasing and consequently the amounts owing by Holdings to the creditors reflected in the Holdings Statement of Affairs are recoverable by Holdings from Leasing.



**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF RAILPRO HOLDINGS (PTY) LTD ("HOLDINGS")**

**NOTE 3**

1. Holdings is the registered shareholder of 80 ordinary shares in the capital of Swifambo Rail Leasing (Pty) Ltd ("Leasing").
2. By virtue of the recordal in paragraph 1, Holdings would be entitled to 80% of any dividends declared and payable by Leasing, which declaration and payment would be automatic i.e. if Leasing remained in liquidation.
3. Leasing has caused to draft and have signed a CM 100 Statement of Affairs ("the Statement") and which was commissioned on the 13<sup>th</sup> July 2020.
4. As indicated in the Statement:-
  - 4.1. Leasing is solvent to an extent of R4 600 840 897.00; and
  - 4.2. an indebtedness by Leasing to PRASA has not been reflected for the reason that the claim of PRASA can only be determined arising from legal proceedings; and
  - 4.3. Leasing has reflected 3 amounts that are owing by PRASA to Leasing and in aggregate is the sum of R805 183 000.00; and
  - 4.4. that Vossloh Espana is indebted to Leasing in the sum of R3 159 054 000.00.



5. In order to "err on the side of caution" Holdings has calculated that (as a minimum) the surplus (referred to in paragraph 4.4.) may be reduced to the sum of R370 367 009.00 as a consequence of deducting from the amount indicated in paragraph 4.1:-
- 5.1. the sum of R2 650 208 400.35 (the amount paid by PRASA to Leasing);  
and
  - 5.2. the sum of R805 183 000.00; and
  - 5.3. the sum of R775 082 488.00 (referred to in Note 10 to the Notes to the CM 100 Statement of Leasing).
6. As a consequence of what is referred to in paragraph 5, Holdings would be entitled to (as a shareholders' dividend claim) the sum of R296 293 607.00 (this does not take into account administration costs) i.e. it is this amount that is reflected in the Statement to which this note refers.
7. In addition to the foregoing it must be borne in mind that the claim of Leasing against Vossloh is Euro based and that the current exchange rate of the Rand to the Euro is in the region of R19.00 and accordingly the amount recovered by Leasing from Vossloh in Rand terms will then result in the amount in the Statement of Leasing increasing substantially i.e. by over R20%.

Annexure CM100

THE COMPANIES ACT, 1973

Annexure CM100

Master's Reference No. \_\_\_\_\_

**STATEMENT OF AFFAIRS**

(Section three hundred and sixty three of the Act.)

Name of company SWIFAMBO RAIL LEASING (PTY) LTD

Date of winding-up order N/A

Name and address of liquidator N/A

Statement of affairs on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ the date of the winding-up order

# STATEMENT OF AFFAIRS

(Section three hundred and sixty three of the Act.)

| LIABILITIES  | I. - As regards |        |
|--|-----------------|--------|
|  | R               | c      |
| Debts and liabilities  |                 |        |
| (I) Unsecured creditors and claimants as per List "A"  | 3,005,500       | 000-00 |
| (II) Secured and preferent creditors as per List "B"   |                 |        |
| Estimated surplus (if any) after meeting liabilities of company, subject to costs of liquidation |                 |        |
|  | R 3,005,500     | 000-00 |
| The nominal amount of unpaid capital liable to be called up is R                                 |                 |        |

|   | R | c | II. - As regards |   |
|---|---|---|------------------|---|
|   |   |   | R                | c |
| Capital issued and allotted:-                           |   |   |                  |   |
| Founders shares of R _____ per share                    |   |   |                  |   |
| Ordinary shares of R _____ per share                    |   |   |                  |   |
| Preference shares of R _____ per share                  |   |   |                  |   |
| Particulars of any other capital                        |   |   |                  |   |
| Less unpaid calls estimated to be irrecoverable R _____ |   |   |                  |   |
| Add deficiency to meet liabilities as above _____       |   |   |                  |   |
|   | R |   |                  |   |

I, Auswell Mashaba of Midrand  
being a director, and I, \_\_\_\_\_ of \_\_\_\_\_  
being the secretary of the abovenamed company make oath/truly affirm and say that the above statement  
and several lists hereunto annexed, marked \_\_\_\_\_, are to the best of our knowledge and  
belief a complete and true statement of the affairs of the said company on the \_\_\_\_\_ day  
of \_\_\_\_\_ 20 \_\_\_\_\_ the date of the winding up order.

Director

Secretary

**STATEMENT OF AFFAIRS**

(Section three hundred and sixty three of the Act.)

*Creditors.*

| ASSETS  | R             | c |
|---|---------------|---|
| (a) Property as per List "C"  | 1,8 000 00.00 |   |
| (b) Book debts as per List "D":-  |               |   |
| Recoverable _____ R   |               |   |
| Doubtful _____ R  |               |   |
| Irrecoverable _____ R   |               |   |
| Estimated to realise _____  |               |   |
| (c) Bills of exchange or other similar securities as per List "E":-               |               |   |
| Estimated to realise _____  |               |   |
| (d) Unpaid share capital as per List "F":-  |               |   |
| Estimated to realise _____  |               |   |
| Estimated deficiency of assets to meet liabilities and costs of liquidation _____ |               |   |
|   | 1,8 000 00.00 |   |

*Contributories.*

|  |   |     |
|--|---|-----|
| Estimated surplus as above (if any), subject to costs of liquidation | R | c   |
| TOTAL DEFICIENCY*  |   |     |
|  | R | NIL |

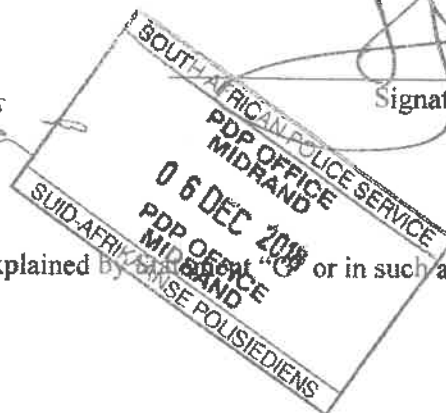
The deponents have acknowledged that they know and understand the contents of this affidavit/declaration

Signed and sworn to/declared before me at Midrand this 06 day of December 20 18

Exempt from Stamp Duty

Signature

\*If the Master so directs, this deficiency is to be explained by \_\_\_\_\_ or in such a manner as the Master may require.



LIST "A"

UNSECURED CREDITORS

The names must be numbered consecutively, creditors for R20 and upwards being placed first.

NOTES

1. If any creditor of the company is also a debtor thereof, but for an amount less than the amount of his claim against the company, the gross amount due to the creditor and the amount of his counter-claim must be shown in the third column, and the balance only be inserted under the heading "Amount of Debt", as follows:-

|                              |   |   |
|------------------------------|---|---|
|                              | R | c |
| Gross amount due to creditor |   |   |
| Less counter-claim           |   |   |

Such set-off must not be included in list "D"

2. Particulars of any bills of exchange and promissory notes in possession of a creditor must be inserted under the heading "Remarks".  
3. The names of any creditors who are also contributories or alleged contributories of the company, must be shown separately and described as such at the end of the list.

| No. | Name       | Address and Occupation | Amount of Debt |   | Remarks |
|-----|------------|------------------------|----------------|---|---------|
|     |            |                        | R              | c |         |
|     | SEE LIST A |                        |                |   |         |
|     |            |                        |                |   |         |
|     |            |                        |                |   |         |
|     |            |                        |                |   |         |
|     |            |                        |                |   |         |

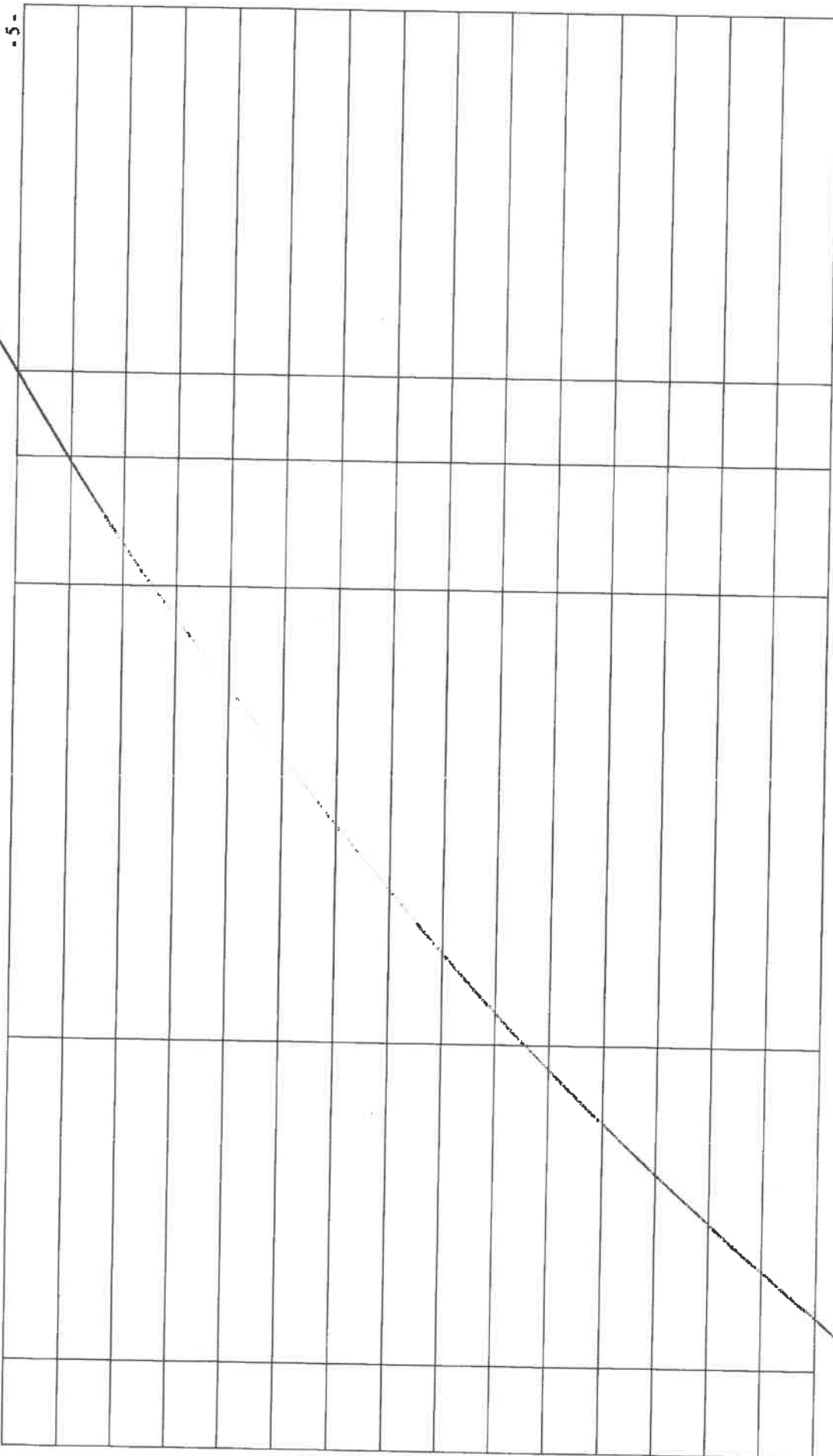
SWIFAMBO RAIL LEASING (PTY) LTD (REGISTRATION NUMBER: 2010/007968/07)

LIST "A"

LIST OF CREDITORS:

|                          |                   |
|--------------------------|-------------------|
| AM INVESTMENTS (PTY) LTD | R 4,800,000.00    |
| WKH LANDSGREBE & CO      | R500,000.00       |
| VOSSLOH ESPANA           | R400,000,000.00   |
| PRASA                    | R2,600,000,000.00 |
| SARS                     | UNDETERMINED      |
| TOTAL:                   | 3,005,300,000.00  |

-5-



## LIST OF SECURED AND PREFERENT CREDITORS

**The names must be arranged in alphabetical order and numbered consecutively**

[illegible]



## LIST "C"

-7-

## PROPERTY

Full particulars of every description of property not included in any other list are to be set forth herein.

| Full Statement and Nature of Property  | Estimated to Realise |    |
|--|----------------------|----|
|  | R                    | c  |
| (a) Cash at bank (as per bank certificate attached)                            |                      |    |
| (b) Cash in hand   |                      |    |
| (c) Stock-in-trade at (as per valuation attached*)                             |                      |    |
| (d) Machinery at (as per valuation attached*)                                  | 1,800.00             | 00 |
| (e) Trade fixtures, fittings, office furniture, utensils, etc.                 |                      |    |
| † (f) Investments in stocks or shares  |                      |    |
| † (g) Loans for which mortgage or other security held                          |                      |    |
| † (h) Other property (excluding book debts, bills of exchange or unpaid calls) |                      |    |

\*The valuation must be made by a person approved by the Master

†State particulars

## DEBTS DUE TO THE COMPANY

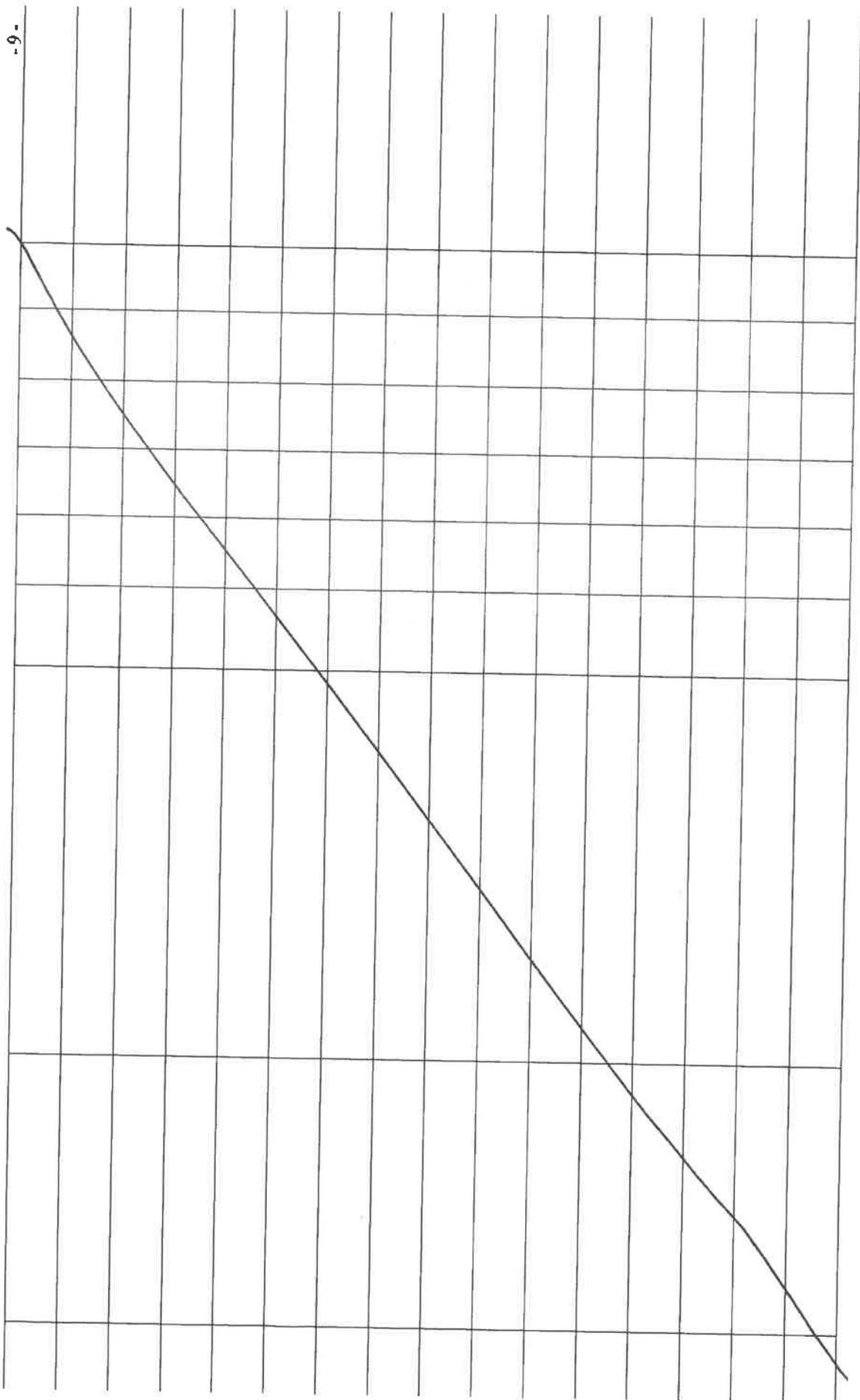
**The names must be numbered consecutively.**

NOTE: If any debtor of the company is also a creditor thereof, but for an amount less than his indebtedness, the gross amount due to the company and the amount of the counter-claim must be shown in the third column, and the balance only be inserted under the heading "Amount of Debt", as follows:-

|                             |            |
|-----------------------------|------------|
| Gross amount due to company |            |
| Less counter-claim          |            |
|                             | <b>R c</b> |

**Such set-off must not be included in List "A"**

[illegible]



**BILLS OF EXCHANGE, PROMISSORY NOTES, ETC., ON HAND AND AVAILABLE AS ASSETS**

[illegible]

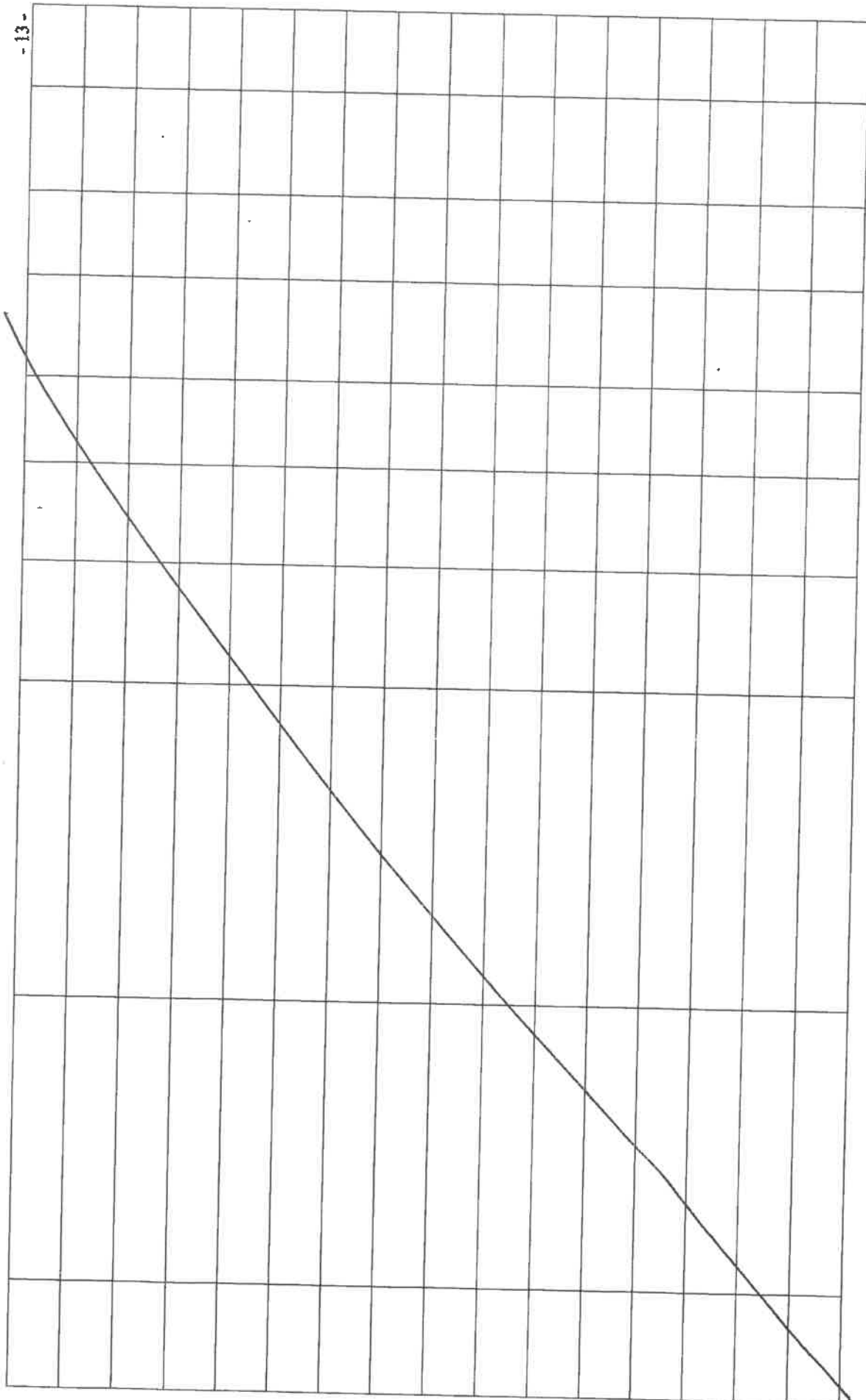
## UNPAID SHARE CAPITAL

[illegible]

## LIST "F" (continued)

## UNPAID SHARE CAPITAL

[illegible]



## Statement "G"

- 14 -

**DEFICIENCY ACCOUNT***(N.B. This account is prepared only at the request of the Master.)*

(1) Deficiency Account where the winding-up order has been made within three years of formation of the company.

|   | R  | c |
|---|----|---|
| I. Gross profit (if any) arising from carrying on a business from date of formation of company to date of winding up order (as per trading account annexed) |    |   |
| II. Receipts (if any) during the said period from undermentioned sources :-   |    |   |
| Interest on loans _____   |    |   |
| Interest on deposits _____  |    |   |
| Transfer fees _____   |    |   |
| Amount paid on shares issued and subsequently forfeited (as per list annexed)   |    |   |
| III. Other receipts (if any) during the said period not included under any of the above headings:-  |    |   |
| IV. Deficiency as per statement of affairs (Part II) _____  |    |   |
| Total amount to be accounted for  | †R |   |



## Statement "G" (cont.)

## DEFICIENCY ACCOUNT

|  |  | R                 |   | c                                      |   |
|--|--|-------------------|---|--|---|
| I. Expenditure in carrying on the business from date of formation of the company to date of winding-up order:- |  |                   |   |  |   |
| GENERAL EXPENDITURE  |  | Amount Discharged |   | Amount due at Date of winding-up order |   |
|  |  | R                 | c | R                                      | c |
| Salaries   |  |                   |   |  |   |
| Wages not charged in trading account   |  |                   |   |  |   |
| Rent   |  |                   |   |  |   |
| Rates and taxes  |  |                   |   |  |   |
| Legal expenses   |  |                   |   |  |   |
| Commission   |  |                   |   |  |   |
| Interest on loans  |  |                   |   |  |   |
| Interest on debentures   |  |                   |   |  |   |
| Miscellaneous expenditure (as per list annexed)  |  |                   |   |  |   |
| II. Directors' fees from the date of formation of company to date of winding-up order                          |  |                   |   |  |   |
| III. Dividends declared during the said period   |  |                   |   |  |   |
| IV. Losses and depreciation written off in the company's books:-*  |  |                   |   |  |   |
| Irrecoverable debts  |  |                   |   |  |   |
| Losses on investments  |  |                   |   |  |   |
| Depreciation of property   |  |                   |   |  |   |
| Preliminary expenses   |  |                   |   |  |   |
| V. Losses and depreciation not written off in the company's books, now written off by directors :-*            |  |                   |   |  |   |
| Irrecoverable debts  |  |                   |   |  |   |
| Losses on investments  |  |                   |   |  |   |
| Depreciation of property   |  |                   |   |  |   |
| Preliminary expenses†  |  |                   |   |  |   |
| VI. Other losses and expenses:-  |  |                   |   |  |   |
| Total amount to be accounted for   |  |                   |   | †R                                     |   |

\* Lengthy particulars must be entered into a separate schedule.

† These figures must agree

Statement "G"

DEFICIENCY ACCOUNT (continued.)

(N.B. This account is prepared only at the request of the Master.)

(2) Deficiency Account where the winding-up order has been made within three years of formation of the company.

|  | R  | c |
|--|----|---|
| I. Excess (if any) of assets over capital and liabilities on the * day of , 20 as per the company's balance sheet (this and any previous balance sheets to be annexed)   |    |   |
| II. Gross profit (if any) arising from carrying on a business from the * day of , 20 to date of winding-up order (as per trading account annexed)  |    |   |
| III. Receipts (if any) during the said period from the undermentioned sources:-<br>Interest on loans<br>Interest on deposits<br>Transfer fees<br><br>Amount paid on shares issued and subsequently forfeited (as per list annexed) |    |   |
| IV. Other receipts (if any) during the said period not included under any of the above headings  |    |   |
| V. Deficiency as per statement of affairs (Part II)  |    |   |
| Total amount to be accounted for   | †R |   |

## Statement "G" (cont.)

## DEFICIENCY ACCOUNT

|   |   | R  | c |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
|---|---|--|---|-------------------|--|--|--|---|---|---|---|----------|--|--|--|--------------------------------------|--|--|--|------|--|--|--|-----------------|--|--|--|----------------|--|--|--|------------|--|--|--|-------------------|--|--|--|------------------------|--|--|--|---|--|--|--|
| <p>I. Excess (if any) of assets over capital and liabilities over assets on the * day of , 20 as per the company's balance sheet (this and any previous balance sheets to be annexed)</p> |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| <p>II. Expenses of carrying on the business from the* day of , 20 to date of winding-up order:-</p>   |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| GENERAL EXPENDITURE   |   | <table border="1"> <thead> <tr> <th colspan="2">Amount Discharged</th> <th colspan="2">Amount due at Date of winding-up order</th> </tr> <tr> <th>R</th> <th>c</th> <th>R</th> <th>c</th> </tr> </thead> <tbody> <tr> <td>Salaries</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Wages not charged in trading account</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Rent</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Rates and taxes</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Legal expenses</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Commission</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Interest on loans</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Interest on debentures</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Miscellaneous expenditure (as per list annexed)</td> <td></td> <td></td> <td></td> </tr> </tbody> </table> |   | Amount Discharged |  | Amount due at Date of winding-up order |  | R | c | R | c | Salaries |  |  |  | Wages not charged in trading account |  |  |  | Rent |  |  |  | Rates and taxes |  |  |  | Legal expenses |  |  |  | Commission |  |  |  | Interest on loans |  |  |  | Interest on debentures |  |  |  | Miscellaneous expenditure (as per list annexed) |  |  |  |
| Amount Discharged   |   | Amount due at Date of winding-up order   |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| R   | c | R  | c |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Salaries  |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Wages not charged in trading account  |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Rent  |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Rates and taxes   |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Legal expenses  |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Commission  |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Interest on loans   |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Interest on debentures  |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Miscellaneous expenditure (as per list annexed)   |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| <p>III. Director's fees from the* day of 20 to date of the winding-up order</p>   |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| <p>IV. Dividends declared during the said period</p>  |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| <p>V. Losses and depreciation from the* day of 20 to date of the winding-up order written off in the company's books:-†</p>   |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Irrecoverable debts   |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Losses on investments   |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Depreciation of property  |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Preliminary expenses  |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| <p>VI. Losses and depreciation not written off in the company's books, now written off by directors :-†</p>   |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Irrecoverable debts   |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Losses on investments   |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Depreciation of property  |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Preliminary expenses†   |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| <p>VII. Other losses and expenses:-</p>   |   |  |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |
| Total amount to be accounted for  |   | †R   |   |                   |  |  |  |   |   |   |   |          |  |  |  |                                      |  |  |  |      |  |  |  |                 |  |  |  |                |  |  |  |            |  |  |  |                   |  |  |  |                        |  |  |  |   |  |  |  |

\* Three days before date of winding-up order.

† Lengthy particulars must be entered into a separate schedule.

‡ These figures must agree

**ANNEXURE CM100**

Master's Reference No. ....

**STATEMENT OF AFFAIRS**

(Section three hundred and sixty-three of the Act.)

SEE NOTE 1.

of company SWIF AMBO RAIL LEASING PTY LTDREGISTRATION OF SPECIAL RESOLUTION 15-12-2018  
of winding up orderand address of liquidator H. MULLER, A NOY MARIA1 MADALANStatement of affairs on the 15th day of DECEMBER 2018, the date of the winding-up order.REGISTRATION OF SPECIAL LIQUIDATION RESOLUTION  
er Government Printer's Copyright Authority  
ed. Johannesburg City No. 5025 of 8th October, 1973

## LIABILITIES

R

c

## Debts and liabilities

(i) Unsecured creditors and claimants as per List "A" SEE NOTE 2.

16,482,173 =

(ii) Secured and preferent creditors as per List "B"

NIL =

Estimated surplus (if any) after meeting liabilities of company, subject to costs of liquidation

4,600,842,897 =

R 4,617,323,070 =

The nominal amount of unpaid capital liable to be called up is R.....

II. - As regards

| Capital issued and allotted:               | R | c | R | c |
|--|---|---|---|---|
| Founders' shares of R ..... per share      |   |   |   |   |
| Ordinary shares of R ..... per share       |   |   |   |   |
| Preference shares of R ..... per share     |   |   |   |   |
| Particulars of any other capital           |   |   |   |   |
| unpaid calls estimated to be irrecoverable | R |   |   |   |
| deficiency to meet liabilities as above    |   |   |   |   |
|  |   |   | R |   |

AUSWELL MASHABA of .....  
 a director, and I, ..... of .....  
 the secretary of the abovenamed company make oath/truly affirm and say that the above statement  
 in several lists hereunto annexed, marked ....., are to the best of our knowledge  
 a complete and true statement of the affairs of the said company on the 15th day  
SEPTEMBER 2018, the date of the winding-up order. REGISTRATION BY CIPC  
 A SPECIAL LIQUIDATION RESOLUTION

Director

Secretary

B  
A

# OF AFFAIRS

sixty-three of the Act)

## Creditors.

| ASSETS  |                 |
|---|-----------------|
| (a) Property as per List "C"                                      | .. .. .         |
| (b) Book debts as per List "D":-                                  |                 |
| Recoverable   | SEE NOTE 3 .. [ |
| Doubtful  | .. .. .         |
| Irrecoverable   | .. .. .         |
| Estimated to realize  | .. .. .         |
| (c) Bills of exchange or other similar securities as per List "E" |                 |
| Estimated to realize  | .. .. .         |
| (d) Unpaid share capital as per List "F":-                        |                 |
| Estimated to realize  | .. .. .         |
| Estimated deficiency of assets to meet liabilities and c          |                 |

## Contributories.

Estimated surplus or deficit (if any) subject to costs of liquidation



1. If any creditor of the company is also a debtor thereof, but for an amount less than the amount of his claim against the company, the gross amount due amount of his counter-claim must be shown in the third column, and the balance only be inserted under the heading "Amount of Debt", as follows:—

Gross amount due to creditor  
Less counter-claim

R 16,482,000 = 01

Such set-off must not be included in list "D"

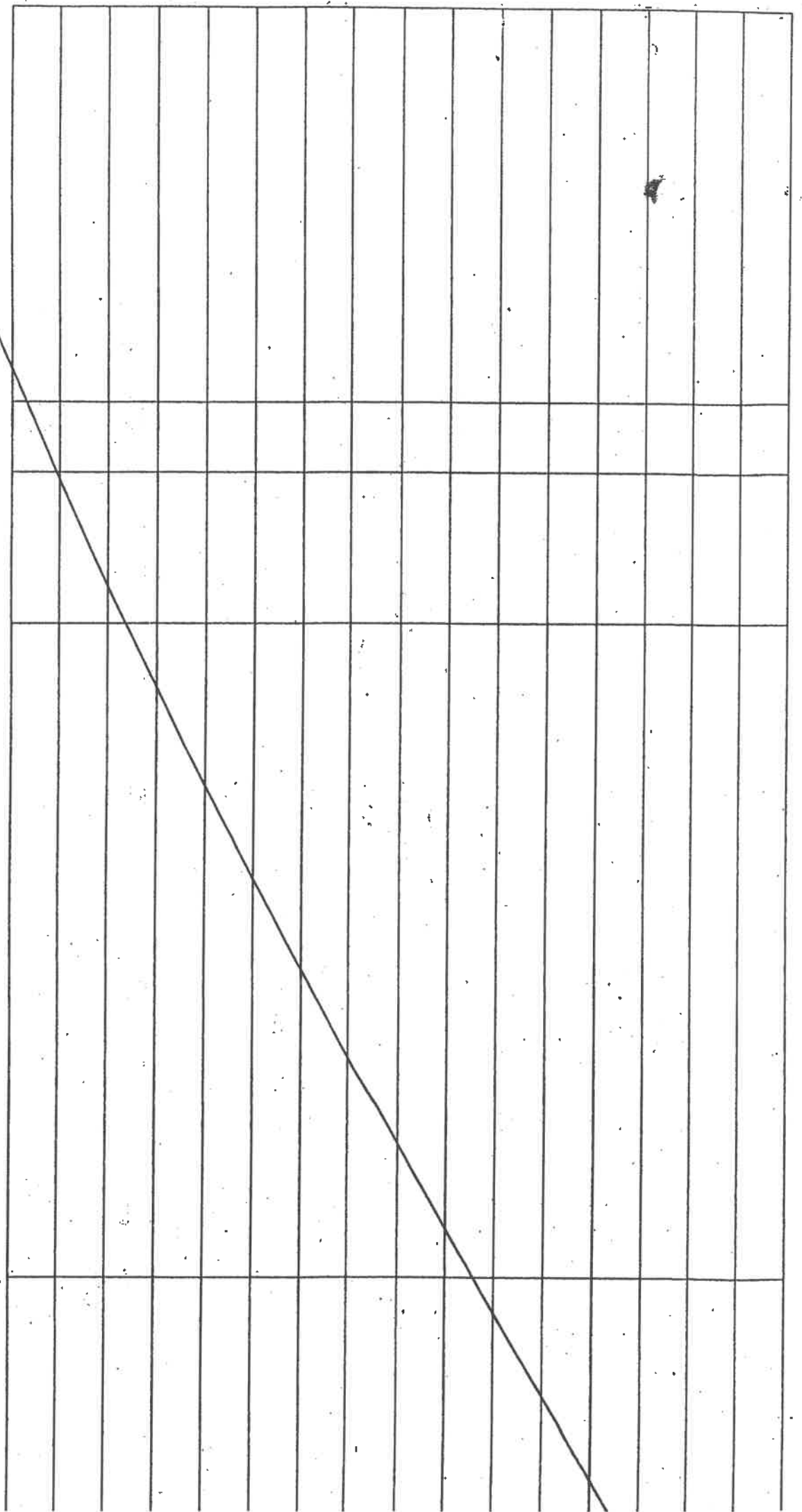
2. Particulars of any bills of exchange and promissory notes in possession of a creditor must be inserted under the heading "Remarks".

3. The names of any creditors who are also contributories or alleged contributories of the company, must be shown separately and described as such at

| No. | Name                          | Address and Occupation  | Amount of Debt |
|-----|-------------------------------|-------------------------|----------------|
| 1   | PASSENGER RAIL AGENCY OF SIA. | STATIC OWNED ENTERPRISE | CLAIMANT BE    |
| 2   | W K H LANGRISH & CO           | AUDITORS                | DEFINITION     |
| 3   | A M INVESTMENTS (PTY) LTD     | INVESTMENT ENTERPRISE   | 665,000 =      |
| 4   | VOSSLOH ESPANN                |                         | 4,883,000 =    |
| 5   | K SAUER                       |                         | 878,570 =      |
| 6   | C K EINHORN                   |                         | 280,613 =      |
| 7   | RAILPRO HOLDINGS (PTY) LTD    |                         | 289,190 =      |
| 8   |                               |                         | 1,576,800 =    |
| 9   |                               |                         |                |
| 10  |                               |                         |                |

OP

R 16,482,000 =





## List "B"

## LIST OF SECURED AND PREFERENT CREDITORS

**The names must be arranged in alphabetical order and numbered consecutively.**

[illegible]

(1)  
CM/100  
7

## LIST "C"

## PROPERTY

Full particulars of every description of property not included in any other list are to be set forth herein.

| Full Statement and Nature of Property  | Estimated to Realize |      |
|--|----------------------|------|
|  | R                    | c    |
| (a) Cash at bank (as per bank certificate attached) .. .. .  | NIL                  |      |
| (b) Cash in hand .. .. .   | NIL                  |      |
| (c) Stock-in-trade at <u>PRASA (CAPE TOWN)</u> SEE NOTE 8 (as per valuation attached*)   | 8787,570             | = 00 |
| (d) Machinery at .. .. . (as per valuation attached*)  | NIL                  |      |
| (e) Trade fixtures, fittings, office furniture, utensils, etc. SEE NOTE 7  | UNCERTAIN            | NIL  |
| †(f) Investments in stocks or shares .. .. .   |                      |      |
| †(g) Loans for which mortgage or other security held .. .. .   | NIL                  |      |
| †(h) Other property (excluding book debts, bills of exchange or unpaid calls) ..<br>13 X LOCOMOTIVES (1 A WRITE OFF)<br>(SEE NOTE 8) | NIL                  |      |
| TOTAL R 8,787,570 = 00   |                      |      |

\*The valuation must be made by a person approved by the Master.

†State particulars.

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CM1100

List "D"

## DEBTS DUE TO THE COMPANY

The names must be numbered consecutively.

Note: If any debtor of the company is also a creditor thereof, but for an amount less than his indebtedness, the gross amount due to the company and the amount of the counter-claim must be shown in the third column, and the balance only be inserted under the heading "Amount of Debt", as follows:-

Gross amount due to company .....

Less counter-claim .....

Such set-off must not be included in list "A"

| No. | Name of Debtor | Address and Occupation             | Amount of Debt |   |            |   |               |   | Particulars of any Securities held for Debt |
|-----|----------------|------------------------------------|----------------|---|------------|---|---------------|---|---|
|     |                |                                    | Recoverable    |   | Doubtful   |   | Irrecoverable |   |   |
|     |                |                                    | R              | c | R          | c | R             | c |   |
| 1   | ✓              | MAMAROKO MAKOELEA TRUST            | 12,700,000     | = |            |   |               |   | SEE NOTE 9                                  |
| 2   | ✓              | VOSSLOH ESPANA                     | 3,159,040,000  | = |            |   |               |   | SEE NOTE 10                                 |
| 3   | ✓              | SARS                               | 326,515,000    | = |            |   |               |   | SEE NOTE 11                                 |
| 4   |                | GREEN KAIL HOLDINGS (PTY) LTD      |                |   | 52,000     | = |               | ✓ | SEE NOTE 12                                 |
| 5   |                | CAPITAL ONE HOLDINGS (PTY) LTD     |                |   | 17,417,000 | = |               | ✓ | SEE NOTE 13                                 |
| 6   | ✓              | BAHN WHEEL SOLUTIONS (PTY) LTD     |                |   | 37,323,000 | = |               | ✓ | SEE NOTE 14                                 |
| 7   | ✓              | BRIGHT WAVE TECHNOLOGIES (PTY) LTD |                |   | 21,928,000 | = |               | ✓ | SEE NOTE 15                                 |
| 8   |                | WORKERS HEALTH (PTY) LTD           |                |   | 158,000    | = |               |   | SEE NOTE 16                                 |
| 9   |                | SWIFAMBO RAIL SOLUTIONS (PTY) LTD  |                |   | 500        | = |               |   | SEE NOTE 17                                 |
| 10  | ✓              | BILAPI FARMING (PTY) LTD           |                |   | 24,511,000 | = |               |   | SEE NOTE 18                                 |

APD

|    |   |                                       |               |  |  |  |  |  |   |
|----|---|---------------------------------------|---------------|--|--|--|--|--|---|
| 11 | ✓ | PASSENGER RAIL AGENCY OF SOUTH AFRICA | 109,735,000 = |  |  |  |  |  | DOTTIES ECP<br>SFE NOTE 19              |
| 12 | ✓ | PASSENGER RAIL AGENCY OF SOUTH AFRICA | 53,508,000 =  |  |  |  |  |  | DAMAGED LOCO<br>SFE NOTE 20             |
| 13 | ✓ | PASSENGER RAIL AGENCY OF SOUTH AFRICA | 641,940,000 = |  |  |  |  |  | LOCOMOTIVES SWAPES (F3m)<br>SFE NOTE 21 |
| 14 | ✓ | MR M. MABUNDU                         | 28,894,000 =  |  |  |  |  |  | SEE NOTE 22                             |
| 15 | ✓ | CLIFTON RENOVATION                    |               |  |  |  |  |  | SEE NOTE 23                             |
| 16 | ✓ | STANES OLEY INC                       | 773,000 =     |  |  |  |  |  | SEE NOTE 24                             |
| 17 | ✓ | GEORGE SEBELO                         |               |  |  |  |  |  |   |
|    | ✓ | NKOSI SEBELO ATTORNEYS                |               |  |  |  |  |  |   |
|    | ✓ | KNOWLES HUSSAIN INC                   | 79,040,000 =  |  |  |  |  |  | SEE NOTE 25                             |
|    | ✓ | SIMILEX (PTY) LTD                     |               |  |  |  |  |  |   |
|    | ✓ | MRS MARIYA GOMEZ                      |               |  |  |  |  |  |   |
| 18 | ✓ | MA A MASHABA                          |               |  |  |  |  |  |   |
|    | ✓ | MR M. MABUNDU                         | 2,400,000 =   |  |  |  |  |  | SEE NOTE 26                             |
|    | ✓ | MR M.T. MASHIELU                      |               |  |  |  |  |  |   |
| 19 | ✓ | MR A MASHABA                          |               |  |  |  |  |  |   |
|    | ✓ | MR M. MABUNDU                         | 120,000 =     |  |  |  |  |  | SEE NOTE 27                             |
|    | ✓ | MR M.T. MASHIELU                      |               |  |  |  |  |  |   |

AP

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CMH88

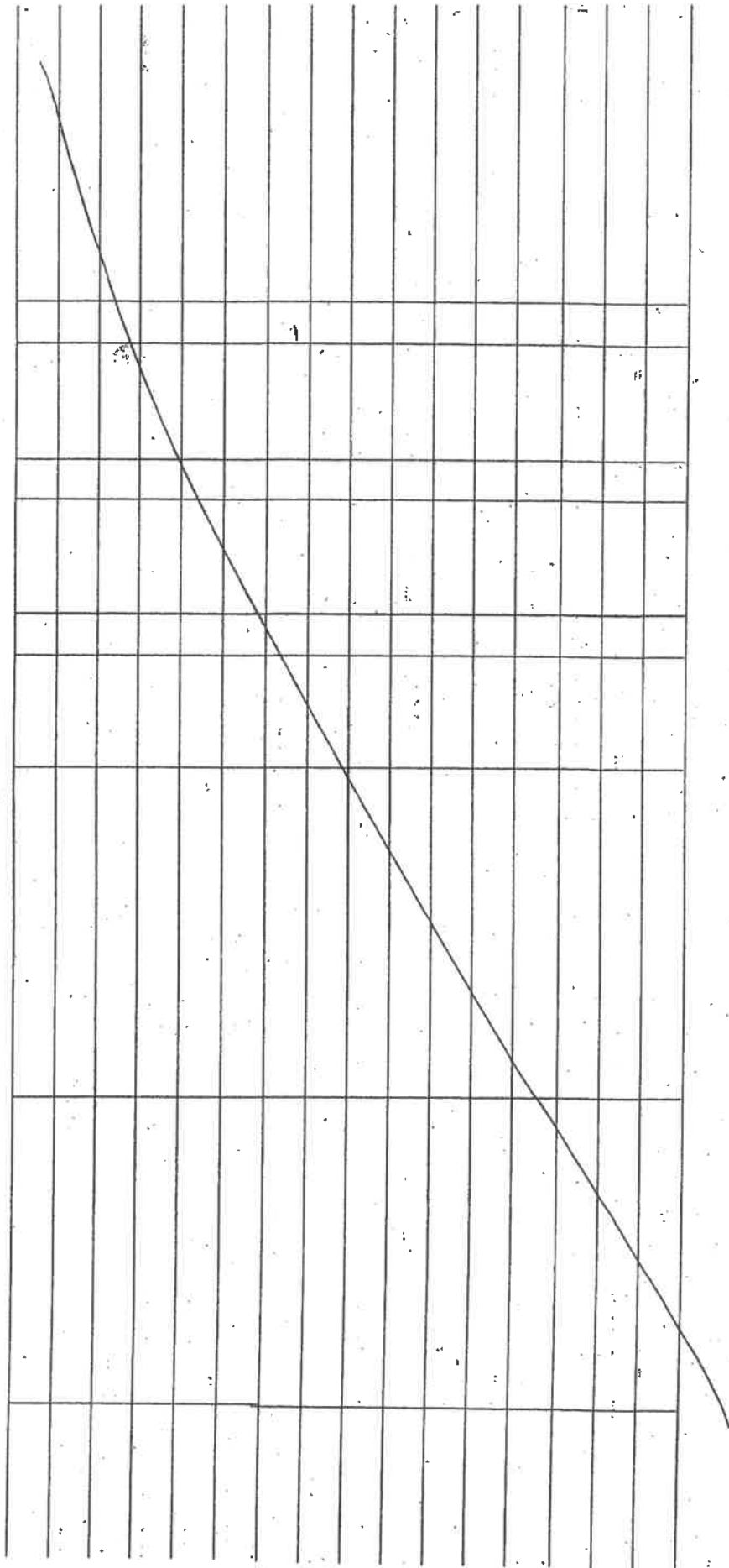
**NOTE:** If any debtor of the company is also a creditor thereof, but for an amount less than his indebtedness, the gross amount due to the company and the amount of the counter-claim must be shown in the third column, and the balance only be inserted under the heading "Amount of Debt", as follows:-

R

45318155000 75720006 = 00

Q  
A





(9)  
11

AD

List 'B'

## BILLS OF EXCHANGE, PROMISSORY NOTES, ETC., ON HAND AND AVAILABLE AS ASSETS

[illegible]

## UNPAID SHARE CAPITAL

[illegible]

4

13



**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 34**

1. At all material times Railpro Holdings (Pty) Ltd ("Railpro") never traded albeit that there were minor instances where contracts were concluded between Railpro and certain service providers.
2. The benefits in regard to the services referred to in paragraph 1 accrued directly to Leasing.
3. It was agreed impliedly/tacitly agreed between Railpro and Leasing that Leasing would be liable to pay all amounts (liabilities) incurred by Railpro to service providers which had provided services to Railpro and/or to entities that Railpro became indebted to.
4. As at the date of liquidation of Leasing, Leasing was liable to pay all debts of Railpro which debts are reflected in the Railpro CM Statement of Affairs.

**SUMMARY AND RECORDALS IN REGARD TO A CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING") ("THE NEW STATEMENT") AND NOTES REFERRED TO THEREIN, THE NEW STATEMENT BEING IN THE NATURE OF AN AFFIDAVIT SIGNED BY AN EX-DIRECTOR OF LEASING, MR A MASHABA ("AM") DATED THE 13<sup>TH</sup> JULY 2020**

**NOTE 1**

1. The notes attached hereto and numbered 2 – 34 relate to the New Statement and more particularly those financial matters referred to therein.
2. On the 6<sup>th</sup> December 2019, AM purported to sign a CM 100 Statement of Affairs of Leasing ("the Old Statement") which statement failed to completely and accurately reflect the financial information that the Companies Act No 71 of 2008 ("the Co Act") requires in terms of section 363 of the Co Act - the circumstances under which AM signed the Old Statement are detailed in certain legal proceedings pending before the High Court, Gauteng Division, Pretoria under case number 88912/2019 and more particularly that certain "experts" in insolvency matters guided and advised AM as to what should be referred to in such a document which advices were false.
3. AM has been advised by Attorney J J F Cameron ("Cameron") to cause to prepare the New Statement in order to comply with the provisions of section 363 of the Co Act and in order to do so, AM engaged the previous auditors of Leasing to perform a forensic audit into the financial affairs of Leasing which audit was finalised on the 13<sup>th</sup> July 2020.
4. It will be self-evident from the New Statement that:-
  - 4.1. Leasing is factually solvent; and

- 4.2. the claim of PRASA is not reflected therein as same would need to be quantified in an action which AM has been advised needs to be instituted by PRASA against Leasing as its claims constitutes an unjust enrichment claim.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 2**

1. From time to time PRASA paid Leasing the sum of R2 650 208 400.35 – although PRASA's claim against Leasing was proven at a meeting of creditors of Leasing (R2.6 billion), AM contends that this claim amount is incorrect in that PRASA's claim is an unjust enrichment claim and can only be determined through a legal process i.e. an action – as a consequence the Statement does not contain any liability amount owing by Leasing to PRASA.

2. In the event that a Court should determine that the claim of PRASA (as an unjust enrichment claim):-

2.1. is equal to the amount paid by PRASA to Leasing and in aggregate the sum of R2 650 208 400.35; and

2.2. the claims of Leasing against PRASA (items 11, 12 and 13 under List D) are not claims that Leasing has against PRASA

then the extent of the solvency of Leasing is the sum of R1 145 449 496.65 and being R4 600 840 897.00 less the sum of R2 650 208 400.35 less the sum of R805 183 000.00 (items 11, 12 and 13 under List D).

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")**

**NOTE 3**

1. The book debt of Leasing and in aggregate the sum of R4 608 535 500.00 and which may be subject to downward adjustments for the reasons indicated hereinbelow.
2. The reasons can be as a consequence of :-
  - 2.1. certain debtors having being placed into liquidation subsequent to 15<sup>th</sup> December 2018; and
  - 2.2. certain amounts in fact not being recoverable from certain of the debtors for the reason that certain debtors that have been identified in fact rendered services which were services rendered by them for and on behalf of Leasing.
3. It would only be possible to determine the extent of the reductions referred to hereinabove during the course of litigation that the liquidators would have to institute against the entities concerned or arising from the liquidators of Leasing lodging claims against those entities that have been liquidated.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 4**

1. The claim of PRASA against Leasing has not been quantified for those reasons indicated in Note 2.
2. As will be indicated in notes 11, 12 and 13 PRASA (on an unjust enrichment basis) is indebted to Leasing in amounts of R109 735 000.00 plus R53 508 000.00 plus R641 940 000.00 and which amounts AM contends cannot be offset against any claim dividend that PRASA may become entitled to from Leasing.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 5**

1. As indicated in Note 6, Vossloh sold to Leasing (and delivered to PRASA) 2 containers of spare parts at a selling price of €539 076.97.
2. When that amount in paragraph 1 is converted into Rands (R16.30 to the Euro as at 15<sup>th</sup> December 2019) this amount equals that figure reflected in item 4 of List A.
3. As a consequence of Leasing not invoicing PRASA and as a consequence of the judgment of Judge Francis these spare parts remain to be treated as an asset of Leasing and obviously if this asset is no longer in the PRASA's possession then this amount remains to be recovered from PRASA.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")**

**NOTE 6**

1. During the forensic audit, it was determined from accounts submitted by the Clearing & Forwarding agents that Vossloh had supplied certain spare parts directly to PRASA in or about December 2014 and that the relevant invoice of Vossloh had not been paid by Leasing and furthermore Leasing had not invoiced PRASA – the Vossloh invoices is attached marked Annexure A.
2. To the best of AM's knowledge the spare parts are in 2 containers in the possession of PRASA at its Culamborg Depo in Cape Town.
3. Leasing has a claim to these goods which have a Rand value calculated with reference to the Rand to Euro exchange rate of R16.30 to the Euro as at the 15<sup>th</sup> December 2018.



29. Dec. 2014 9:51

No. 0427 P. 4

**vossloh****CUSTOMS INVOICE****INVOICE N°:****FEA 2014/ 0272****VALENCIA :****03/12/2014****ORDEN :****B03750****N° PEDIDO :****FECHA PEDIDO :****N° PROVEEDOR :**

**PASSENGER RAIL AGENCY OF SOUTH AFRICA ( PRASA)**  
 managed by SWIFAMBO Rail Leasing  
 Proprietary Ltd.  
 PRASA – SMDYL Rolling Stock  
 Colenborg depot: Old Marine Drive,  
 CAPE TOWN (SUDAFRICA)

| DELIVERY<br>NOTE   | CONCEPTO<br>CONCEPT                                       | PRECIO UNITARIO<br>UNIT PRICE | IMPORTE TOTAL<br>TOTAL AMOUNT EURS |
|--|---|-------------------------------|------------------------------------|
| 72.965<br>73.340<br>73.241   | LOTE DE CONSIGNACION SEGUN LISTA DE<br>MATERIALES ADJUNTA |                               | 539.076,97                         |
| CONDICIONES DE ENTREGA:<br>DELIVERY TERMS: CIF CAPE TOWN, landed on rail |   |                               | NO CHARGE                          |
| <b>TOTAL FACTURA<br/>TOTAL INVOICE</b>                                   |   |                               | <b>539.076,97</b>                  |

VOSSLON ESPARA, S.A.  
P.E.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 7**

1. Leasing suspended its trading/business activities shortly after legal proceedings were instituted by PRASA against it.
2. The cessation of business activities was such that movable assets of Leasing (furniture, electronic equipment etc) was sold to a number of third parties the majority whereof were sold to a debtor as indicated in List D and being number 8.
3. As AM was not involved in the closure of Leasing's business (the vacation of its premises) AM cannot warrant all of the movable assets were in fact sold by Leasing to various third parties and accordingly it may be possible that certain movables were unlawfully removed by unknown parties – this may require the relevant investigation to be undertaken by the liquidators of Leasing.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 8**

1. As at the date of the liquidation of Leasing PRASA was in possession of 13 locomotives (which in total had travelled approximately 160 000 kms) and one of which was a write off in that it had been damaged in an accident.
2. Subsequent to Leasing's liquidation:-
  - 2.1. PRASA surrendered to the Leasing liquidators the 13 locomotives (albeit that these remained at certain storage facilities of PRASA); and
  - 2.2. the Leasing liquidators commissioned WH Auctioneers to dispose of the locomotives; and
  - 2.3. on or about the 12<sup>th</sup> September 2019 WH Auctioneers sold 7 locomotives (6 of them remain to be auctioned and are the subject matter of an internet auction which will terminate on the 31 July 2020); and
  - 2.4. the amount realised at the auction (7 locomotives) was the sum of R91 190 000.00 exclusive of VAT i.e. at an average price of approximately R15million each (this amount included a commission amount which was paid by the buyer and which was not disclosed in the L & D Account of the Leasing liquidators) – see Annexure A hereto which is a "VAT invoice" generated by Tshwane Trust Co (Pty) Ltd and dated the 10<sup>th</sup> October 2019.

3. AM contends that the Leasing liquidators should never have sold the locomotives for the reason that these should have been tendered to Vossloh i.e. Judge Francis having determined that the sub-contract agreement between Leasing and Vossloh (in terms whereof Vossloh sold to Leasing 68 locomotives – subsequently reduced to 60) constituted a “fronting” arrangement which was of such a nature that it was unlawful and as such either remained to be set aside/cancelled and in which event the Leasing liquidators would have been compelled to return the locomotives to Vossloh.
4. By virtue of the foregoing the 13 locomotives (their value) have not been reflected in the Statement.





# TSHWANE TRUST CO. (PTY) LTD

1207 Cobham Road, Queenswood, 0186 | P.O. Box 2101, Pretoria, 0001, Docex 51, Pretoria  
Tel: 0861 874 926 | Fax: (012) 333 4572 | e-mail: michelle@tshwanetrust.co.za  
Reg No: 1973 / 011373 / 07 | VAT 4860191891

Our Ref: Tshwane

Your Ref: Tshwane

## VAT INVOICE NR: SRL 01

10/10/2019

TRAXTON SHELTON (PTY) LTD

REG NO: 2004028216/07

VAT NO: 4180219075

REGISTERED OFFICE: Unit 1002, 9<sup>th</sup> Floor, 16 Baker Str, Rosebank, 2196

Dear Sir,

Re: SWIFAMBO RAIL LEASING (PTY) LTD (IN LIQUIDATION)

VAT NO: 4710263106

c/o TSHWANE TRUST, 1207 COBHAM ROAD, QUEENSWOOD, 0186

### Purchase price of:

|   |                        |
|---|------------------------|
| 1x Afro 4000 Diesel Electric Locomotive (Serial no: 2765)           | R 13 500 000.00        |
| 1x Afro 4000 Diesel Electric Locomotive (Serial no: 2763)           | R 13 450 000.00        |
| 1x (Damaged) Afro 4000 Diesel Electric Locomotive (Serial no: 2790) | R 2 800 000.00         |
| 1x Afro 4000 Diesel Electric Locomotive (Serial no: 2761)           | R 13 500 000.00        |
| 1x Afro 4000 Diesel Electric Locomotive (Serial no: 2767)           | R 13 550 000.00        |
| 1x Afro 4000 Diesel Electric Locomotive (Serial no: 2762)           | R 13 050 000.00        |
| 1x Afro 4000 Diesel Electric Locomotive (Serial no: 2768)           | R 13 050 000.00        |
| <b>Sub: 15% VAT</b>   | <b>R 82 800 000.00</b> |
|   | <b>R 12 435 000.00</b> |

### Total:

**R 95 335 000.00**

Less: Paid on 19/09/2019

R 3 000 000.00

Paid on 19/09/2019

R 3 500 000.00

Paid on 25/09/2019

R 3 658 200.00

**TOTAL DUE TO SWIFAMBO RAIL LEASING (PTY) LTD  
(IN LIQUIDATION)**

**R 85 176 800.00**

Yours Faithfully

**J Z H MULLER  
JOINT LIQUIDATOR**

Tshwane Trust Co. (PTY) Ltd is a proud LWB 25 and Bored BEE institution

LIQUIDATORS ARE MEMBERS OF SARIPA AND ABIPSA  
Directors: L. Sanyal, A. N. Mhlanga, J. Z. H. Muller  
Consultant: Y. G. G. G. G.



**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 9**

1. As a consequence of the conclusion of the sale of locomotives agreement between Leasing and PRASA (on or about the 11<sup>th</sup> May 2015) Leasing was compelled to conclude an agreement with the Department of Trade & Industry ("DTI") in terms whereof Leasing undertook to invest the sum of R921 052 632.00 in BEE enterprises in South Africa (although the agreement with DTI indicated that the enterprises should have been those involved in the rail industry) Leasing was advised that the DTI would permit the investing of funds in any BEE enterprise in SA on the basis that the relevant BEE criteria was present).
2. Arising from the foregoing Leasing agreed to make available funds to this entity i.e. by way of an "interest free" loan and which is repayable by no later than the expiry of a 10 year period from the date of each amount constituting the loan was advanced by Leasing to it.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 10**

1. On the 3<sup>rd</sup> July 2017 Judge Francis held that to all intents and purposes Leasing, when concluding a sale agreement (for the sale of 70 locomotives) to PRASA, in fact acted as a "front" for Vossloh Espana, Vossloh having manufactured the locomotives in accordance with PRASA's specifications.
2. Arising from the foregoing the sub-contract between Vossloh and PRASA was either null and void, (ab initio) or remained to be set aside by the Leasing liquidators – to the best of AM's knowledge the Leasing liquidators have not taken any steps against Vossloh and furthermore the Leasing liquidators contend that any claims against Vossloh have become prescribed.
3. Arising from the determination of "fronting" Leasing has claims against Vossloh for repayment of:-
  - 3.1. amounts paid by Leasing to Vossloh which in aggregate is the sum of €132 917 000.00 (see Annexure A hereto); and
  - 3.2. interest on the amounts indicated in Annexure A from the dates that each payment was effected by Leasing to Vossloh is in aggregate the sum of €60 890 000.00 (see Annexures B1 – B8 hereto).

4. The amounts indicated in paragraph 3.1 and 3.2 total the sum of €193 807 000.00 and when converted into Rands is the sum of R3 159 054 000.00 (at an exchange rate of R16.30 to the Euro as at the 15<sup>th</sup> December 2018).
5. The possibility exists that this claim should be abated by the selling price of the 13 locomotives that were delivered by Vossloh to PRASA (on behalf of Leasing) and if that is so then the amount referred to in paragraph 4 should be reduced by the sum of €3 657 052.00 x 13 (the number of locomotives delivered) which equals the sum of €47 547 760.00 and when converted into Rands (R16.30 to the Euro ) is the sum of R775 028 488.00 i.e. deducting this amount from the sum of R3 159 054 000.00 then Leasing's claim against Vossloh is the sum of R 2 384 025 512.00 (in this event the selling price of the locomotives and estimated to be R150m will then be reflected as an asset of Leasing and would need to be referred to in List C of the Statement).



A

SWIFAMBO RAIL LEASING  
VOSSLOH INVOICES & PAYMENTS  
PAYMENT SUMMARY

| YEAR END & DATES |           | EURO                     | PAYMENTS<br>RATE | ZAR              |
|------------------|-----------|--------------------------|------------------|------------------|
| YEAR ENDED       | 28-Feb-14 |                          |                  |                  |
| 31-Jul-13        |           | € 22,000,000.00 R        | 13.1250 R        | 288,750,000.00   |
| 31-Dec-13        |           | € 3,599,365.00 R         | 14.4800 R        | 52,118,805.20    |
| 17-Jan-14        |           | € 21,494,542.40 R        | 14.8875 R        | 319,999,999.98   |
| YEAR ENDED       | 28-Feb-15 |                          |                  |                  |
| 16-May-14        |           | € 16,904,503.60 R        | 14.2900 R        | 241,565,356.44   |
| 08-Jul-14        |           | € 25,600,000.00 R        | 14.6500 R        | 375,040,000.00   |
| 20-Jan-15        |           | € 22,689,982.41          | 13.5302 R        | 307,000,000.00   |
| YEAR ENDED       | 29-Feb-16 |                          |                  |                  |
| 15-Jun-15        |           | € 8,147,047.05 R         | 13.9928 R        | 114,000,000.00   |
| 14-Jul-15        |           | € 12,541,835.98 R        | 13.9533 R        | 175,000,000.00   |
| TOTALS           |           | € 132,977,276.44 R       | 14.0887 R        | 1,873,474,161.63 |
|                  |           | AVERAGE<br>RATE PER EURO |                  |                  |

Data/memo/Mashaba/1<sup>st</sup> Interest calculation 9 June 2020 amended**MORA INTEREST CALCULATION ON THE SUM OF € 22M FROM 31/7/13-18/12/18**

| <b><u>PERIOD</u></b>        | <b><u>NUMBER OF DAYS</u></b> | <b><u>INTEREST AMOUNT IN EUROS (€)</u></b> |
|-----------------------------|------------------------------|--|
| 31/7/13-31/7/14<br>15.5% PA | 365                          | €3.41M                                     |
| 1/8/14-6/1/16<br>9% PA      | 524                          | €2.84M                                     |
| 7/1/16-29/2/16<br>9.75% PA  | 53                           | €0.31M                                     |
| 1/3/16-30/4/16<br>10.25% PA | 61                           | €0.376M                                    |
| 1/5/16-31/8/17<br>10.5% PA  | 488                          | €3.08M                                     |
| 1/9/17-30/4/18<br>10.25% PA | 242                          | €1.49M                                     |
| 1/5/18-18/12/18<br>10% PA   | 232                          | €1.39M                                     |
| <b><u>TOTAL</u></b>         |                              | <b><u>€12.89M</u></b>                      |

B1

Data/memo/Mashaba/2<sup>nd</sup> Interest calculation 9 June amended 2020**MORA INTEREST CALCULATION ON THE SUM OF € 3.599M FROM 31/12/13-18/12/18**

B2

| <b><u>PERIOD</u></b>         | <b><u>NUMBER OF DAYS</u></b> | <b><u>INTEREST AMOUNT IN EUROS (€)</u></b> |
|------------------------------|------------------------------|--|
| 31/12/13-31/7/14<br>15.5% PA | 212                          | €0.32M                                     |
| 1/8/14-6/1/16<br>9% PA       | 524                          | €0.45M                                     |
| 7/1/16-29/2/16<br>9.75% PA   | 53                           | €0.08M                                     |
| 1/3/16-30/4/16<br>10.25% PA  | 61                           | €0.06M                                     |
| 1/5/16-31/8/17<br>10.5% PA   | 488                          | €0.50M                                     |
| 1/9/17-30/4/18<br>10.25% PA  | 242                          | €0.24M                                     |
| 1/5/18-18/12/18<br>10% PA    | 232                          | €0.22M                                     |
| <b><u>TOTAL</u></b>          |                              | <b><u>€1.87M</u></b>                       |

Data/memo/Mashaba/3<sup>rd</sup> Interest calculation 9 June 2020 amended**MORA INTEREST CALCULATION ON THE SUM OF € 21.494M FROM 17/1/14-18/12/18**

B3

| <b><u>PERIOD</u></b>        | <b><u>NUMBER OF DAYS</u></b> | <b><u>INTEREST AMOUNT IN EUROS (€)</u></b> |
|-----------------------------|------------------------------|--|
| 17/1/14-31/7/14<br>15.5% PA | 195                          | €1.77M                                     |
| 1/8/14-6/1/16<br>9% PA      | 524                          | €2.77M                                     |
| 7/1/16-29/2/16<br>9.75% PA  | 53                           | €0.30M                                     |
| 1/3/16-30/4/16<br>10.25% PA | 61                           | €0.36M                                     |
| 1/5/16-31/8/17<br>10.5% PA  | 488                          | €3.00M                                     |
| 1/9/17-30/4/18<br>10.25% PA | 242                          | €1.46M                                     |
| 1/5/18-18/12/18<br>10% PA   | 232                          | €1.36M                                     |
| <b><u>TOTAL</u></b>         |                              | <b><u>€11.02M</u></b>                      |

Data/memo/Mashaba/4<sup>th</sup> Interest calculation 9 June 2020 amended**MORA INTEREST CALCULATION ON THE SUM OF € 16.9M FROM 16/5/14-18/12/18**

B4

| <b><u>PERIOD</u></b>        | <b><u>NUMBER OF DAYS</u></b> | <b><u>INTEREST AMOUNT IN EUROS (€)</u></b> |
|-----------------------------|------------------------------|--|
| 16/5/14-31/7/14<br>15.5% PA | 77                           | €0.55M                                     |
| 1/8/14-6/1/16<br>9% PA      | 524                          | €2.18M                                     |
| 7/1/16-29/2/16<br>9.75% PA  | 53                           | €0.23M                                     |
| 1/3/16-30/4/16<br>10.25% PA | 61                           | €0.289M                                    |
| 1/5/16-31/8/17<br>10.5% PA  | 488                          | €2.37M                                     |
| 1/9/17-30/4/18<br>10.25% PA | 242                          | €1.14M                                     |
| 1/5/18-18/12/18<br>10% PA   | 232                          | €1.07M                                     |
| <b><u>TOTAL</u></b>         |                              | <b><u>€7.82 M</u></b>                      |

Data/memo/Mashaba/5<sup>th</sup> Interest calculation 9 June 2020 amended**MORA INTEREST CALCULATION ON THE SUM OF €25.6M FROM 8/7/14 - 18/12/18**

BS

| <b><u>PERIOD</u></b>        | <b><u>NUMBER OF DAYS</u></b> | <b><u>INTEREST AMOUNT IN EUROS (€)</u></b> |
|-----------------------------|------------------------------|--|
| 8/7/14-31/7/14<br>15.5% PA  | 23                           | €0.25M                                     |
| 1/8/14-6/1/16<br>9% PA      | 524                          | €3.30M                                     |
| 7/1/16-29/2/16<br>9.75% PA  | 54                           | €0.369M                                    |
| 1/3/16-30/4/16<br>10.25% PA | 61                           | €0.438M                                    |
| 1/5/16-31/8/17<br>10.5% PA  | 488                          | €3.59M                                     |
| 1/9/17-30/4/18<br>10.25% PA | 242                          | €1.73M                                     |
| 1/5/18-18/12/18<br>10% PA   | 232                          | €1.62M                                     |
| <b><u>TOTAL</u></b>         |                              | <b><u>€11.29M</u></b>                      |

Data/memo/Mashaba/6<sup>th</sup> Interest calculation 9 June 2020 amended**MORA INTEREST CALCULATION ON THE SUM OF €22.689M FROM 20/1/15 - 18/12/18**

B8

| <b><u>PERIOD</u></b>        | <b><u>NUMBER OF DAYS</u></b> | <b><u>INTEREST AMOUNT IN EUROS (€)</u></b> |
|-----------------------------|------------------------------|--|
| 20/1/15- 6/1/16<br>9% PA    | 351                          | €1.96M                                     |
| 7/1/16-29/2/16<br>9.75% PA  | 53                           | €0.32M                                     |
| 1/3/16-30/4/16<br>10.25% PA | 61                           | €0.388M                                    |
| 1/5/16-31/8/17<br>10.5% PA  | 488                          | €3.18M                                     |
| 1/9/17-30/4/18<br>10.25% PA | 242                          | €1.54M                                     |
| 1/5/18-18/12/18<br>10% PA   | 232                          | €1.44M                                     |
| <b><u>TOTAL</u></b>         |                              | <b><u>€8.82M</u></b>                       |

Data/memo/Mashaba/7<sup>th</sup> Interest calculation 9 June 2020 amended**MORA INTEREST CALCULATION ON THE SUM OF €8.147M FROM 15/6/15 - 18/12/18**

137

| <b><u>PERIOD</u></b>        | <b><u>NUMBER OF DAYS</u></b> | <b><u>INTEREST AMOUNT IN EUROS (€)</u></b> |
|-----------------------------|------------------------------|--|
| 15/6//15-6/1/16<br>9% PA    | 205                          | €0.41M                                     |
| 7/1/16-29/2/16<br>9.75% PA  | 53                           | €0.11M                                     |
| 1/3/16-30/4/16<br>10.25% PA | 61                           | €0.139M                                    |
| 1/5/16-31/8/17<br>10.5% PA  | 488                          | €1.143M                                    |
| 1/9/17-30/4/18<br>10.25% PA | 242                          | €0.55M                                     |
| 1/5/18-18/12/18<br>10% PA   | 232                          | €0.51M                                     |
| <b><u>TOTAL</u></b>         |                              | <b><u>€2.86M</u></b>                       |



Data/memo/Mashaba/8<sup>th</sup> Interest calculation 9 June 2020 amended**MORA INTEREST CALCULATION ON THE SUM OF €12.541M FROM 14/7/15 - 18/12/18**

B8

| <u>PERIOD</u>               | <u>NUMBER OF DAYS</u> | <u>INTEREST AMOUNT IN EUROS (€)</u> |
|-----------------------------|-----------------------|-------------------------------------|
| 14/7/15-6/1/16<br>9% PA     | 175                   | €0.54M                              |
| 7/1/16-29/2/16<br>9.75% PA  | 53                    | €0.17M                              |
| 1/3/16-30/4/16<br>10.25% PA | 61                    | €0.21M                              |
| 1/5/16-31/8/17<br>10.5% PA  | 488                   | €1.76M                              |
| 1/9/17-30/4/18<br>10.25% PA | 242                   | €0.85M                              |
| 1/5/18-18/12/18<br>10% PA   | 232                   | €0.797M                             |
| <b><u>TOTAL</u></b>         |                       | <b><u>€4.32M</u></b>                |

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 11**

1. Arising from the sale of locomotives agreement concluded between PRASA and Leasing and VAT invoices that Leasing submitted to PRASA, Leasing became obliged to pay to SARS, from time to time, amounts in aggregate in the sum of R326 514 689.28.
2. As a consequence of the judgment of Judge Francis the payments to SARS remain to be recovered by Leasing from SARS and which recovery steps were initiated by attorney SC Vercueil ("Vercueil"), he, on the 24<sup>th</sup> January 2019, having made demand upon SARS to refund the amount referred to in paragraph 1 – see Annexure A hereto.
3. The Leasing liquidators have indicated that they are continuing with a process to recover the VAT payment amounts but notwithstanding information in this regard, (by AM) they refuse to furnish same to AM.

A

Vercueil

s. c. vercueil  
 prokureur notaris & akteuimaker  
 attorney notary & conveyancer

Menlo Regs Kamers, 11e Straal 49, Menlopark  
 Menlo Law Chambers, 49 11th Street, Menlo Park  
 Posbus / P O Box 36716, Menlopark, 0102

t: 012 346 0810 / 012 346 5797 / 012 460 3994  
 c: 083 389 0886 / f: 012 346 1512  
 e: faan@vercueil.co.za

my verwysing / my reference:  
 u verwysing / your reference:

Case No 304 451 57

MS Tshumy.

24/1/19

Our Ref.: SC VERCUEIL  
 Your Reference: 4710263106

By Hand

24 January, 2019.

**FOR ATTENTION: VAT ASSESSMENTS DEPARTMENT**

**SA Revenue Service  
 Pretoria**

Dear Sir/ Madam

**Re: Swifambo Rail Leasing Pty Ltd (Reference No. 4710263106)-**

1 We are acting on behalf of the liquidator, Mr Aviwe Ntandzaro Ndyamara and Mr Nicholas Timkoe who was appointed by the Master of the Supreme Court (copy of appointment attached as Annexure "A").

2 We were instructed to submit a request in terms of Section 93(1)(d)(ii) read with Section 99(1) of the Tax Administration Act, 28 of 2011 as amended, in respect of the VAT returns submitted by Swifambo Rail Leasing (PTY) LTD (Swifambo), in terms of Section 28 of the Value Added Act, 89 of 1991 as amended, in regard to the November 2013, April 2014, June 2014, January 2015, June 2015 and October 2015 VAT periods, on the grounds set out herein after.

3 In support of our request it will be prudent to supply you with the relevant historical facts.

3.1 Swifambo is a registered "VENDOR" (Reference number 4710263106) in terms of the VAT Act

3.2 After winning the tender to supply PRASA with 70 electrical/hybrid locomotives (Units) Swifambo entered into a sale agreement to supply the manufactured Units to PRASA.

3.3 In terms of the abovementioned agreements PRASA was obliged to make certain progress payments

3.4 Swifambo entered into a purchase/manufacturing agreement with a Spanish company known as VOSSLOH.

3.5 On delivery of GOODS by Swifambo to PRASA the progress following payments were made by PRASA:

3.5.1 R 406, 526, 315.79 inclusive of VAT

3.5.2 R 64, 473,684.21 inclusive of VAT

3.5.3 R 468, 672,880.86 inclusive of VAT

3.5.4 R 335,308, 602.36 inclusive of VAT

3.5.5 R 430, 168, 416.92 inclusive of VAT

3.5.6 R 288, 657, 078.19 inclusive of VAT

3.5.7 R 155, 908, 535.77 inclusive of VAT

3.5.8 R 182, 424, 561.62 inclusive of VAT

3.5.9 R 82, 111, 118.73 inclusive of VAT

3.5.10 R 181, 959, 205.90 inclusive of VAT

3.6 The abovementioned amounts were reflected as SALES/supply of goods in the VAT returns submitted by Swifambo in respect VAT PERIODS referred to in paragraph 2 above.

3.7 Swifambo, in the returns that were submitted, has incorporated the determination of the tax by means of the SELF-ASSESSMENT, as defined in Section 1 of the Tax Administration Act, method.

3.8 After delivery of the first shipment of the 13 Units by Swifambo to PRASA the board of PRASA attacked the validity of the sale agreement entered into between Swifambo and PRASA in court.

3.9 The purchase agreement entered between Swifambo and VOSSLOH was not disputed and all the goods delivered by VOSSLOH have been reflected as stock-in-trade and Work in Progress (WIP) in the books of Swifambo.

3.10 The decision of the High Court was upheld by the Supreme Court of Appeal on the 30 November 2018. (Copy of the judgement is attached as Annexure "B")

3.11 The judgement holds in the agreement entered between Swifambo and PRASA is null and void from day one.

3.12 In a process to safeguard the assets of Swifambo the liquidator has instructed the auditors, W.K.H. Landgrebe & Co, to supply revised Vat returns for the relevant VAT Periods to reflect the position as per Appeal Court judgement being the legal position on the date of the letter. (The revised VAT returns are attached as Annexure "C 1 – 6")

4 From the mere perusal of the Appeal Court judgement it is apparent that the self-assessments done by Swifambo, in submitting its' original VAT returns, (in respect of the relevant VAT Periods), do not reflect the correct calculated tax due to an undisputed error. Swifambo incorrectly declared the abovementioned amounts received from PRASA, for the relevant periods, as sales/goods supplied.

5 In terms of section 93(1)(d)(ii) of the Tax Administration Act("TAA"), we hereby request that SARS issues reduced VAT217 Notices of Assessment for the above-stated VAT periods on the grounds that the contract between the vendor and Passenger Rail Agency of South Africa("PRASA") has been set aside by the High Court of South Africa, and the vendor's Appeal (Case No. 1030/2017) was dismissed by the Supreme Court of Appeal of South Africa on 30 November 2018.

6 Accordingly, owing to the fact that the parties to the contract, these being the Vendor and PRASA, are restored to the position prior to the date on which the contract was entered into, all tax invoices issued by the vendor are null and void and all output taxes must be reversed.

7 Accordingly, we herewith attach the following VAT 201 Returns (Annexure "C 1 - 6"), showing the correct positions as a consequence of the contract being set aside:

- 201311 VAT 201 Return: VAT credit: - R19,761,238.76(Paid:R103,016,451.74;
- 201404 VAT 201 Return: VAT credit: - R1,286,629.00(Paid:R39,891,554.05);
- 201406 VAT 201 Return: VAT credit: -R2,750,119.02(Paid: R50,077,335.70);
- 201501 VAT 201 Return: VAT credit - R34,442,301.69(Paid:R20,153,475.47);
- 201506 VAT 201 Return: VAR credit -R31,912,819.00(Paid:R22,919,897.35)
- 201510 VAT 201 Return: VAT credit -R724,791.95(Net refund:R421,924.45).

8 In addition to the above VAT credits totaling R90,877,899.42, the payments of for these periods, totaling R235,636,789.86 must remain credited to the taxpayer.

9 You are requested to make payment of any credits due my trust account, being S.C. Vercueil Attorney Trust Account, The South African Bank of Athens, Account Number: 200 001 10335, Branch Pretoria, Branch code 410-145

10 Should you have any queries please do not hesitate to contact this office.

Yours faithfully



S.C. Vercueil

R 90 877. 899.42  
R 235 636 789.86

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 12**

1. As a consequence of the conclusion of the sale of locomotives agreement between Leasing and PRASA (on or about the 11<sup>th</sup> May 2015) Leasing was compelled to conclude an agreement with the Department of Trade & Industry ("DTI") in terms whereof Leasing undertook to invest the sum of R921 052 632.00 in BEE enterprises in South Africa (although the agreement with DTI indicated that the enterprises should have been those involved in the rail industry) Leasing was advised that the DTI would permit the investing of funds in any BEE enterprise in SA on the basis that the relevant BEE criteria was present).
2. Arising from the foregoing Leasing agreed to make available funds to this entity i.e. by way of an "interest free" loan and which is repayable by no later than the expiry of a 10 year period from the date of each amount constituting the loan was advanced by Leasing to it.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 13**

1. As a consequence of the conclusion of the sale of locomotives agreement between Leasing and PRASA (on or about the 11<sup>th</sup> May 2015) Leasing was compelled to conclude an agreement with the Department of Trade & Industry ("DTI") in terms whereof Leasing undertook to invest the sum of R921 052 632.00 in BEE enterprises in South Africa (although the agreement with DTI indicated that the enterprises should have been those involved in the rail industry) Leasing was advised that the DTI would permit the investing of funds in any BEE enterprise in SA on the basis that the relevant BEE criteria was present).
2. Arising from the foregoing Leasing agreed to make available funds to this entity i.e. by way of an "interest free" loan and which is repayable by no later than the expiry of a 10 year period from the date of each amount constituting the loan was advanced by Leasing to it.



**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 14**

1. As a consequence of the conclusion of the sale of locomotives agreement between Leasing and PRASA (on or about the 11<sup>th</sup> May 2015) Leasing was compelled to conclude an agreement with the Department of Trade & Industry ("DTI") in terms whereof Leasing undertook to invest the sum of R921 052 632.00 in BEE enterprises in South Africa (although the agreement with DTI indicated that the enterprises should have been those involved in the rail industry) Leasing was advised that the DTI would permit the investing of funds in any BEE enterprise in SA on the basis that the relevant BEE criteria was present).
2. Arising from the foregoing Leasing agreed to make available funds to this entity i.e. by way of an "interest free" loan and which is repayable by no later than the expiry of a 10 year period from the date of each amount constituting the loan was advanced by Leasing to it.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 15**

1. As a consequence of the conclusion of the sale of locomotives agreement between Leasing and PRASA (on or about the 11<sup>th</sup> May 2015) Leasing was compelled to conclude an agreement with the Department of Trade & Industry ("DTI") in terms whereof Leasing undertook to invest the sum of R921 052 632.00 in BEE enterprises in South Africa (although the agreement with DTI indicated that the enterprises should have been those involved in the rail industry) Leasing was advised that the DTI would permit the investing of funds in any BEE enterprise in SA on the basis that the relevant BEE criteria was present).
2. Arising from the foregoing Leasing agreed to make available funds to this entity i.e. by way of an "interest free" loan and which is repayable by no later than the expiry of a 10 year period from the date of each amount constituting the loan was advanced by Leasing to it.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 16**

1. In or about July 2017, Leasing sold and delivered its office furniture items to an entity being Workers' Health (Pty) Ltd.
2. Notwithstanding the rendition of a tax invoice (Annexures A1 -A2 hereto), Workers' Health has failed to effect payment thereof and legal proceedings will have to be instituted for the recovery of this amount and/or alternatively the recovery of the furniture – it was an implicit/tacit term of the sale that the furniture items would remain to be owned by Leasing until payment of the invoice had been effected.

TAX INVOICE



AI

Name: Workers Health  
Address: 33 Frickers Road, Wlovo  
City: Johannesburg  
Contact Person: Tshepo Molapo  
Phone No: 010 330 0350

Date: 31.07.2017  
Contact Person: Gcobisa Sibango  
Invoice No: 102058

OFFICE FURNITURE

| QTY | DESCRIPTION                                  | UNIT PRICE  | TOTAL     |
|-----|--|-------------|-----------|
| 1   | Lumna 4 piece Chicane Reception Desk - Cream | R 30,000.00 | 30,000.00 |
| 1   | Walking closet 5 bay filling Cabinet         | R11,000.00  | 11,000.00 |
| 1   | Brown Cabinet Lever Arch Range               | R2100.00    | 2,100.00  |
| 3   | Revolution Slim Cluster desks                | R 1,632.13  | 4,896.75  |
| 1   | Round Boardroom Table                        | R 2,911.79  | 2,911.79  |
| 1   | Allegro Big Boardroom Table                  | R14238.79   | 14,238.03 |
| 9   | Falcon High Back Chairs                      | R850.00     | 7,654.50  |
| 8   | Zira Visitors Chairs                         | R 725.00    | 5,800.00  |
| 1   | Federal Mahogany L shape desk                | R 4,000.00  | 4,000.00  |
| 2   | High Glass door Cabinet Black                | R 800.00    | 1,600.00  |
| 1   | Euro Executive L Shape desk                  | R 4,559.03  | 4,559.03  |
| 1   | Boardroom chest of 2.4m                      | R 6,270.00  | 6,270.00  |
| 1   | Boardroom Cocktail Cabinet                   | R 6,071.07  | 6,071.07  |
| 1   | Judges High Back Chair                       | R 3,850.07  | 3,850.07  |
| 1   | Reception Book Advertiser                    | R233.00     | 233.00    |

PAYMENT DETAILS

Account Name: Swifambo Rail Leasing (Pty) Ltd  
Bank: Standard Bank  
Branch: Santon (051001)  
Account No.: 022682570

|                   |              |
|-------------------|--------------|
| TOTAL (VAT EXCL.) | R 105,184.24 |
| VAT (14%)         |              |
| TOTAL (VAT INCL.) | R 105,184.24 |

| 90 Days + | 60 Days | 30 Days | Current      | TOTAL DUE    |
|-----------|---------|---------|--------------|--------------|
| R 0.00    | R 0.00  | R 0.00  | R 105,184.24 | R 105,184.24 |

Certified as correct and recommended for payment.

Signed: Gcobisa Sibango

Date: 26/10/17

Name in block letters  
Swifambo Rail Leasing PTY (Ltd)

A2

TAX INVOICE



Name: Workers Health  
Address: 33 Frickers Road, Illovo  
City: Johannesburg  
Contact Person: Tshepo Molapo  
Phone No: 010 330 0350

Date: 31.07.2017  
Contact Person: Gcobisa Sibango  
Invoice No: 102057

OFFICE FURNITURE

| QTY               | DESCRIPTION  | UNIT PRICE | TOTAL       |
|-------------------|--|------------|-------------|
| 1                 | Mahogany Executive desk +PED+CR                    | R 4,500.00 | R 4,500.00  |
| 1                 | Boardroom Table in Mahogany                        | R 6,937.23 | R 6,937.23  |
| 11                | Leather look Business class boardroom Chairs       | R 1,149.50 | R 12,644.50 |
| 1                 | Brown filling cabinet                              | R 650.00   | R 650.00    |
| 2                 | cube Quilted Single Seater Red                     | R 2,119.29 | R 4,238.57  |
| 1                 | Reception Eclipse 1800 in Mahogany Veneer Desk     | R 9,946.44 | R 9,946.44  |
| 4                 | Open plan in Prime Rectengular Desks               | R 1,137.00 | R 4,548.00  |
| 2                 | Glass door Cabinet (Mahogany)                      | R 2,150.00 | R 4,300.00  |
| 2                 | Business Class Chair - Black Leather Look          | R 1,195.50 | R 2,399.00  |
| 4                 | Business Vis Black Leather Look - Visistors Chairs | R 699.50   | R 2,798.00  |
| TOTAL (VAT EXCL.) |  |            | R 52,961.74 |
| VAT (14%)         |  |            |             |
| TOTAL (VAT INCL.) |  |            | R 52,961.74 |

**PAYMENT DETAILS**

Account Name: Swifambo Rail Leasing (Pty) Ltd  
Bank: Standard Bank  
Branch: Sandton (051001)  
Account No.: 022682570

| 90 Days + | 60 Days | 30 Days | Current     | TOTAL DUE:  |
|-----------|---------|---------|-------------|-------------|
| R 0.00    | R 0.00  | R 0.00  | R 52,961.74 | R 52,961.74 |

Certified as correct and recommended for payment.

Signed:

Date: 26/10/17

Name in block letters

Swifambo Rail leasing PTY (ltd)

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 17**

1. It was Leasing's intention to conduct a business in the name of this entity and in anticipation of doing so it caused to apply for and obtain from the Standard Bank of SA a bank account and into which bank account Leasing paid this amount – it is possible that this account has been closed by the Standard Bank and that the sum of R500.00 has been extinguished as a consequence of bank charges.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 18**

1. As a consequence of the conclusion of the sale of locomotives agreement between Leasing and PRASA (on or about the 11<sup>th</sup> May 2015) Leasing was compelled to conclude an agreement with the Department of Trade & Industry ("DTI") in terms whereof Leasing undertook to invest the sum of R921 052 632.00 in BEE enterprises in South Africa (although the agreement with DTI indicated that the enterprises should have been those involved in the rail industry) Leasing was advised that the DTI would permit the investing of funds in any BEE enterprise in SA on the basis that the relevant BEE criteria was present).
2. Arising from the foregoing Leasing agreed to make available funds to the Mamaroko Makoela Trust this entity i.e. by way of an "interest free" loan and which is repayable by no later than the expiry of a 10 year period from the date of each amount constituting the loan was advanced by Leasing to it – the Mamaroko Makoela Trust purchased shares (60%) and a loan account claim in/against this entity but subsequently that purchase agreement was declared null and void and by which time the purchase proceeds were invested (as working capital) into the business of this entity.



**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")**

**NOTE 19**

1. Notwithstanding the Court having set aside the decisions of the PRASA Board to having awarded a tender to Leasing and the sale agreement (for the sale of locomotives) AM has been advised that PRASA would be liable for amounts expended by Leasing for and on behalf of PRASA and being clearing, forwarding and shipping costs which costs related to the 13 locomotives that were delivered by Leasing to PRASA.
2. Annexed hereto as:-
  - 2.1. As **Annexure A** and being a schedule indicating amounts paid by Leasing to the clearing, forwarding and shipping service providers, which amounts are in aggregate the sum of R109 735 064.39; and
  - 2.2. As **Annexures B1 – B18** the invoices of the clearing, forwarding and shipping service providers.
3. AM has been advised that the sum of R109 735 064.39 remains to be recovered by Leasing from PRASA **and not be off-set against any claim of PRASA against Leasing** as an enrichment claim i.e. if PRASA does not pay same then Leasing (through its liquidators) is compelled to institute legal proceedings against PRASA.



| Swiftambo Rail Leasing                       |          | Prepared by: W.K.H. Landgrebe & Co. |           | Updated to date of closure of accounts plus certain accruals |     | Printed :    |               | 30-Jun-20 |                            |
|--|----------|-------------------------------------|-----------|--|-----|--------------|---------------|-----------|----------------------------|
| Cash Book Details - 01/03/2013 to 18/12/2018 |          | Reference                           |           | Description  |     | Updated :    |               | 30-Jun-20 |                            |
| Date   | Account  | Name                                | Reference | Description  | COY | Bank Account | Invoice No.   | Reference | 7720/200                   |
|  |          |                                     |           | **   |     |              |               |           | WIP-<br>Ship/Clearing Cost |
| 25/11/2014                                   | 7720/200 | WIP-Locos Ship/Clearing             | PNO01     | Sebenza Clearing & Forwarding                                | SRL | 90002821996  | 316366/316367 | 7         | 8,456,623.09               |
| 25/11/2014                                   | 7720/200 | WIP-Locos Ship/Clearing             | PNO02     | Sebenza Clearing & Forwarding                                | SRL | 90002821996  | 316366/316367 | 7         | -100,000.00                |
| 25/11/2014                                   | 7720/200 | WIP-Locos Ship/Clearing             | PNO03     | Correcting Sebenza Clearing Payment                          | SRL | 90002821996  | 316366/316367 | 7         | 100,000.00                 |
| 25/11/2014                                   | 7720/200 | WIP-Locos Ship/Clearing             | PNO04     | Correct Sebenza Payment 316366/7                             | SRL | 90002821996  | 316366/316367 | 7         | 90,000.00                  |
| 03/12/2014                                   | 7720/200 | WIP-Locos Ship/Clearing             | PDEC03    | Sebenza Clearing & Forwarding                                | SRL | 022682570    | 316423        | 7         | 359,858.44                 |
| 09/12/2014                                   | 7720/200 | WIP-Locos Ship/Clearing             | PDEC15    | Inala Shipping   | SRL | 370362756    | 041214        | 7         | 39,109.62                  |
| 18/12/2014                                   | 7720/200 | WIP-Locos Ship/Clearing             | PDEC20    | Sebenza Clearing & Forwarding                                | SRL | 370362756    | 316449        | 7         | 5,939.66                   |
| 07/01/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             | PIANO     | Sebenza Clearing & Forwarding                                | SRL | 90002821996  | 316539        | 7         | 1,304,734.60               |
| 14/01/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             | PIANO4    | Sebenza Clearing & Forwarding                                | SRL | 022682570    | 316583        | 7         | 34,511,450.17              |
| 17/01/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             | PIANO9    | Inala Shipping   | SRL | 370362756    | 041214-01     | 7         | 25,890.87                  |
| 02/03/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             |           | Payment to Seben Sebenza                                     | SRL | 022682570    | 316824        | 7         | 32,510,819.23              |
| 24/03/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             |           | Payment to Inala   | SRL | 370362756    | 110315        | 7         | 11,592.12                  |
| 09/04/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             |           | Payment to Seben Sebenza Forwarding                          | SRL | 022682570    | 316958        | 7         | 14,000,000.00              |
| 16/04/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             |           | Payment to Seben Sebenza Forwarding                          | SRL | 022682570    | 316958        | 7         | 8,000,000.00               |
| 16/04/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             |           | Payment to Inala   | SRL | 370362756    | 130415        | 7         | 21,742.02                  |
| 25/05/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             |           | Payment to Sebenza   | SRL | 370362756    | 316688        | 7         | 5,742.96                   |
| 08/06/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             |           | Payment to Seben Sebenza                                     | SRL | 022682570    | 316958        | 7         | 9,705,951.11               |
| 20/07/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             |           | Payment to Seben Sebenza Forwarding                          | SRL | 022682570    | D-18586       | 7         | 165,377.15                 |
| 27/10/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             |           | Payment to Seben Sebenza Forwarding                          | SRL | 022682570    | 318027        | 7         | 486,576.44                 |
| 05/11/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             |           | Payment Sebenza  | SRL | 370362756    | 318354?       | 7         | 17,951.08                  |
| 14/12/2015                                   | 7720/200 | WIP-Locos Ship/Clearing             |           | Payment to Sebenza   | SRL | 370362756    | 54342/3/4     | 7         | 14,705.83                  |
| TOTALS                                       |          |                                     |           |  |     |              |               |           | 109,735,064.39             |

D

# SEBENZA

FORWARDING & SHIPPING (PTY) LTD

Co. Reg. 15085401250407 Vat No. 14710160625

Tel +27 21 595-9300  
Fax +27 21 535-5215  
info@sebenza.co.za  
24-30 Loosack Avenue,  
Epping Industria 2, 7460  
P.O. Box 165, Eppindust, 7475

## TAX INVOICE

|  |                                   |                      |             |   |                         |               |              |
|--|-----------------------------------|----------------------|-------------|---|-------------------------|---------------|--------------|
| Invoice No.  | 315366                            | Date                 | 21-Nov-2014 | Account No.   | 5209                    | Reference No. | 411.CSL.2596 |
| To<br>SWIFAMBO RAIL LEASING (PTY) LTD<br>MIDRAND, JOHANNESBURG |                                   |                      |             | All cheques payable to:<br><b>SEBENZA FORWARDING &amp; SHIPPING (PTY) LTD</b><br>For electronic transfers, release will only be granted once funds have been confirmed by our bank. |                         |               |              |
| Attn : PO BOX 8557   |                                   | VAT No. N/A          |             |   |                         |               |              |
| Importer   | SWIFAMBO RAIL LEASING PTY LTD     |                      |             | Supplier  | VOSSLAH KIEPE GES M.B.H |               |              |
| Origin   | VIENNA DANUBEPIER NOV             |                      |             | Destination   | CAPE TOWN               |               |              |
| Vessel   | GOLDEN KAROO (Voy. No: 4229)      |                      |             | WCO Terms   | CIF                     |               |              |
| MOBL   | MCSM4228BICP201                   |                      |             | MOBL  | BZO-080304              |               |              |
| S.O.B.   | 08-Nov-2014 Customs Value 355 087 |                      |             | E.T.A   | 26-Nov-2014             |               |              |
| No. of Packages  | 2                                 |                      |             | Client Reference  |                         |               |              |
| Gross Mass (kg)  | 2770.00                           | Volumetric Wt. 2.770 |             | Chargeable Wt.  | 3.000                   |               |              |

### CONTAINERS

|  |  |  |  |  |  |
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### CHARGES

| Code                                | Description        | VAT Code | Foreign Amount       | Local Amount (Excl) | VAT      |
|-------------------------------------|--------------------|----------|----------------------|---------------------|----------|
| 52421                               | CUSTOMS VAT        | Z        |                      | R4 678,82 ZAR       |          |
| 50257                               | RELEASE FEE        | Z        |                      | 2 500,00 ZAR        |          |
| 61961                               | CARTAGE            | S        |                      | 540,15 ZAR          | (75,62)  |
| 63087                               | CARGO DUES         | S        |                      | 397,33 ZAR          | (59,61)  |
| 6304                                | LANDING ORDER      | Z        |                      | 954,27 ZAR          |          |
| 54025                               | DOCUMENTATION      | S        |                      | 450,00 ZAR          | (67,50)  |
| 121                                 | AGENCY SEA IMPORTS | S        |                      | 2 048,86 ZAR        | (307,33) |
| Foreign Currency Breakdown (Totals) |                    |          | SUBTOTAL (EXCL VAT): | 61 869,03 ZAR       |          |
|                                     |                    |          | VAT:                 | 451,03 ZAR          |          |
|                                     |                    |          | TOTAL DUE:           | 62 320,06 ZAR       |          |

If you have any queries which could affect payment of this invoice please contact our Helpdesk on +27 115710061 - helpdesk@sebenza.co.za

REMARKS  
THANK YOU FOR YOUR ONGOING SUPPORT

BANKING DETAILS (ZAR):

Standard Bank, Marlinan Square  
Branch Code: 020809  
Account Number: 070 840 248

BANKING DETAILS (USD):

SWIFT Code: SBZAZJ

# SEBENZA

FORWARDING & SHIPPING (PTY) LTD

Co. Reg. : 1935/01256407

Vat No. : 4710160326

Tel +27 21 505-9300

Fax +27 21 535-5215

info@sebenza.co.za

24-30 Losack Avenue,

Epping Industria 2, 7480

P.O. Box 186, Eppindust, 7476

## TAX INVOICE

Invoice No. 316367 Date 21-Nov-2014 Account No. 5209 Reference No. 411.CSI.2595

To  
SWIFAMBO RAIL LEASING (PTY) LTD.  
MIDRAND, JOHANNESBURG

All cheques payable to:  
**SEBENZA FORWARDING & SHIPPING (PTY) LTD**

For electronic transfers, release will only be granted once funds have been confirmed by our bank.

Attn: PO BOX 3887

VAT No. 4710263106

Importer SWIFAMBO RAIL LEASING PTY LTD  
Origin VIENNA DANUBEPIER HOV  
Vessel GOLDEN KAROO (Voy. No: 4228)  
MOBL MCSM4228BICP200  
S.O.B. 07-Nov-2014 Customs Value 51,464,216  
No. of Packages 2  
Gross Mass (kg) 112500.00 Volumetric Wt. 269.843

Supplier VOSSLAH KIEPE GES.M.B.H  
Destination CAPE TOWN  
INCOTERMS CIF  
MOBL BKO-000301  
ETA 26-Nov-2014  
Client Reference  
Chargeable Wt. 270.000

### CONTAINERS

### CHARGES

| Code  | Description        | VAT Code | Foreign Amount | Local Amount (Excl) | VAT          |
|-------|--------------------|----------|----------------|---------------------|--------------|
| 52257 | CUSTOMS VAT        | Z        |                | ZAR                 | 7,925,469.32 |
| 50207 | RELEASE CHARGES    | Z        |                | 2,500.00 ZAR        |              |
| 65087 | CARGO DUES         | S        |                | 59,525.00 ZAR       | (8,347.50)   |
| 6204  | LANDING ORDER      | Z        |                | 53,040.00 ZAR       |              |
| 6204  | ABNORMAL CARGO     | Z        |                | 99,000.00 ZAR       |              |
| 52361 | SPECIAL ATTENDANCE | S        |                | 10,000.00 ZAR       | (1,400.00)   |
| 111   | AGENCY SEA IMPORTS | S        |                | 285,237.90 ZAR      | (39,933.31)  |

Foreign Currency Breakdown (Totals)

SUBTOTAL (EXCL VAT) : 909,402.90 ZAR  
VAT : 7,975,170.13 ZAR  
TOTAL DUE : 8,484,573.03 ZAR

If you have any queries which could affect payment of this invoice please contact our Helpdesk on +27 115710661 - helpdesk@sebenza.co.za

#### REMARKS

THANK YOUR FOR YOUR ONGOING SUPPORT

BANKING DETAILS (ZAR) :

Standard Bank, Marimben Square  
Branch Code: 020909  
Account Number: 070 940 246

BANKING DETAILS (USD) :

SWIFT Code: SBZAZJ



# SEBENZA

FORWARDING & SHIPPING (PTY) LTD

Co. Reg. : 156521256/07

Vat No. : 1471070025

Tel +27 21 505-9300

Fax +27 21 535-5215

info@sebenza.co.za

24-38 Lossack Avenue,

Epping Industria 2, 7460

P.O. Box 165, Eppindur, 7475

## TAX INVOICE

|   |                                     |      |                |   |                       |                |              |
|---|-------------------------------------|------|----------------|---|-----------------------|----------------|--------------|
| Invoice No.   | 315423                              | Date | 01-Dec-2014    | Account No.   | 5209                  | Reference No.  | 411.CSI.2639 |
| To<br>SWIFAMBO RAIL LEASING PTY LTD<br>PO BOX 8557 MIDRAND JOHANNESBURG |                                     |      |                | All cheques payable to:<br><b>SEBENZA FORWARDING &amp; SHIPPING (PTY) LTD</b><br>For electronic transfers, release will only be granted once funds have been confirmed by our bank. |                       |                |              |
| ATL : VAT No. N/A   |                                     |      |                |   |                       |                |              |
| Importer  | SWIFAMBO RAIL LEASING PTY LTD       |      |                | Supplier  | VOSELAN KIEPE GIE MBH |                |              |
| Origin  | ALGERIAS                            |      |                | Destination   | CAPE TOWN             |                |              |
| Vessel  | MAERSK CERES (Voy. No: 147A)        |      |                | NCO Terms   | CFR                   |                |              |
| MOBL  | MOLU28008834899                     |      |                | NOBL  | 078999                |                |              |
| S.O.B.  | 15-Nov-2014 Customs Value 2,067,246 |      |                | ETA   | 01-Dec-2014           |                |              |
| No. of Packages   | 1                                   |      |                | Client Reference  |                       |                |              |
| Gross Mass (kg)   | 3055.00                             |      | Volumetric Wt. | 0.000   |                       | Chargeable Wt. | 4.000        |

### CONTAINERS

|              |  |  |  |  |  |
|--------------|--|--|--|--|--|
| NOWU-2213664 |  |  |  |  |  |
|--------------|--|--|--|--|--|

### CHARGES

| Code                                | Description               | VAT Code | Foreign Amount | Local Amount (ZAR) | VAT        |
|-------------------------------------|---------------------------|----------|----------------|--------------------|------------|
| 52257                               | CUSTOMS VAT               | Z        |                | ZAR                | 320,782.70 |
| 5240                                | CUSTOMS DUTY              | Z        |                |                    |            |
| 50287                               | RELEASE FEES              | Z        |                | 17,238.96 ZAR      |            |
| 50207                               | SHIPPING LINE CHARGES     | Z        |                | 1,380.00 ZAR       |            |
| 65127                               | CARGO DUES 20FT           | S        |                | 2,088.00 ZAR       |            |
| 711                                 | CARTAGE SEA IMPORTS       | S        |                | 1,976.34 ZAR       | (376.60)   |
| 811                                 | DOCUMENTATION SEA IMPORTS | S        |                | 1,750.00 ZAR       | (245.00)   |
| 211                                 | AGENCY SEA IMPORTS        | S        |                | 450.00 ZAR         | (63.00)    |
| Foreign Currency Breakdown (Totals) |                           |          |                | 12,094.52 ZAR      | (1,693.21) |
| SUBTOTAL (EXCL VAT) :               |                           |          |                | 36,787.82 ZAR      |            |
| VAT :                               |                           |          |                | 323,060.62 ZAR     |            |
| TOTAL DUE :                         |                           |          |                | 359,858.44 ZAR     |            |

If you have any queries which could effect payment of this invoice please contact our Helpdesk on +27 115710651 - helpdesk@sebenza.co.za

REMARKS  
THANK YOUR FOR YOUR ONGOING SUPPORT

BANKING DETAILS (ZAR) :

Standard Bank, Marimman Square  
Branch Code: 020908  
Account Number: 070 540 246

BANKING DETAILS (USD) :

SWIFT Code: SEBZAZJJ



Tel +27 21 505-9300  
Fax +27 21 535-5215  
Info@sebenza.co.za  
24-30 Losack Avenue,  
Epping Industria 2, 7460  
P.O. Box 165, Eppindust, 7475

Co. Reg. : 1996/012344/07      Vat No. : 4716160525

| TAX INVOICE (COPY)   |                                  |   |   |                       |          |
|--|----------------------------------|---|---|-----------------------|----------|
| Invoice No.  | Date                             | Account No.   | Reference No.   |                       |          |
| 316449   | 12-Dec-2014                      | 5209  | 412.CA1.2664  |                       |          |
| To<br>SWIFAMBO RAIL LEASING PTY LTD<br>PO BOX 8557 MIDRAND JOHANNESBURG  |                                  | All cheques payable to:<br><b>SEBENZA FORWARDING &amp; SHIPPING (PTY) LTD</b><br>For electronic transfers, release will only be granted once funds have been confirmed by our bank. |   |                       |          |
| Attn :                      VAT No. N/A  |                                  |   |   |                       |          |
| Importer   | SWIFAMBO RAIL LEASING PTY LTD    |   | Supplier  | VOSSLAH KIRPE GEE MBH |          |
| Origin   | LONDON HEATHROW                  |   | Destination   | CAPE TOWN             |          |
| Flight   |                                  |   | INCOTERMS   | FOB                   |          |
| NAWS   | 900-COURIER                      |   | NAWS  | 125-58466288929       |          |
| S.D.B.   | 01-Dec-2014 Customs Value 37,445 |   | E.T.A   | 04-Dec-2014           |          |
| No. of Packages  | 5                                |   | Client Reference  | HAND HELD             |          |
| Gross Mass (kg)  | 88.00                            |   | Volumetric Wt. 0.025  | Chargeable Wt.        | 88.000   |
| CONTAINERS   |                                  |   |   |                       |          |
|  |                                  |   |   |                       |          |
| CHARGES  |                                  |   |   |                       |          |
| Code   | Description                      | VAT Code  | Foreign Amount  | Local Amount (Excl)   | V.A.T    |
| 52423  | PROVISIONAL PAYMENT              | Z   |   | 4,226.46 ZAR          |          |
| 741  | CARTAGE AIR IMPORTS              | S   |   | 480.00 ZAR            | (63.00)  |
| 341  | DOCUMENTATION AIR IMPORTS        | S   |   | 450.00 ZAR            | (63.00)  |
| 141  | AGENCY AIR IMPORTS               | S   |   | 380.00 ZAR            | (49.00)  |
| 52361  | SPECIAL ATTENDANCE               | S   |   | 750.00 ZAR            | (105.00) |
| 171  | PROVISIONAL PAYMENT LIQUIDATION  | S   |   | 380.00 ZAR            | (53.20)  |
| Foreign Currency Breakdown (Totals)  |                                  |   | SUBTOTAL (EXCL VAT) :   |                       |          |
|  |                                  |   | 6,506.46 ZAR  |                       |          |
|  |                                  |   | VAT :   |                       |          |
|  |                                  |   | 333.20 ZAR  |                       |          |
|  |                                  |   | TOTAL DUE :   |                       |          |
|  |                                  |   | 6,939.66 ZAR  |                       |          |
| If you have any queries which could affect payment of this invoice please contact our Helpdesk on +27 115710661 - helpdesk@sebenza.co.za |                                  |   |   |                       |          |
| REMARKS<br>THANK YOUR FOR YOUR ONGOING SUPPORT   |                                  |   | BANKING DETAILS (ZAR) :<br>Standard Bank, Martindale Square<br>Branch Code: 020900<br>Account Number: 070 840 246 |                       |          |
|  |                                  |   | BANKING DETAILS (USD) :<br>SWIFT Code: SBZAZAJJ   |                       |          |

BS

**SEBENZA**  
FORWARDING & SHIPPING (PTY) LTD

Tel +27 21 505-8300  
Fax +27 21 535-5215  
info@sebenza.co.za  
24-30 Loosack Avenue,  
Epping Industria 2, 7480  
P.O. Box 186, Eppingindus, 7475

Co. Reg. : 1998/012564/07    Vat No. : 4710700025

| TAX INVOICE  |                                     |   |   |                     |              |
|--|-------------------------------------|---|---|---------------------|--------------|
| Invoice No.  |                                     | Date  |   | Account No.         |              |
| 316539   |                                     | 30-Dec-2014   |   | 5209                |              |
| Reference No.  |                                     | To  |   |                     |              |
| 412.CSI.2732   |                                     | SWIFAMBO RAIL LEASING PTY LTD<br>PO BOX 5387 MIDRAND JOHANNESBURG |   |                     |              |
| All cheques payable to:  |                                     | SEBENZA FORWARDING & SHIPPING (PTY) LTD                           |   |                     |              |
| For electronic transfers, release will only be granted once funds have been confirmed by our bank.                                       |                                     |   |   |                     |              |
| ATN:   |                                     | VAT No. 4710263106  |   |                     |              |
| Importer   |                                     | SWIFAMBO RAIL LEASING PTY LTD                                     |   | Supplier            |              |
| Origin   |                                     | TREFFEN   |   | Destination         |              |
| Vessel   |                                     | SAPHMARINE BOLAND (Voy. No: 151A)                                 |   | INCOTERMS           |              |
| MOBL   |                                     | SAPH754588140   |   | HOSL                |              |
| S.O.B.   |                                     | 17-Dec-2014 Customs Value 8,056,155                               |   | E.T.A               |              |
| No. of Packages  |                                     | 1   |   | Client Reference    |              |
| Gross Mass (kg)  |                                     | 4979.00   |   | Chargesable Wt.     |              |
|  |                                     | Volumetric Wt. 40.000   |   | 40.000              |              |
| CONTAINERS   |                                     |   |   |                     |              |
| NOWU-7163205   |                                     |   |   |                     |              |
| CHARGES  |                                     |   |   |                     |              |
| Code   | Description                         | VAT Code  | Foreign Amount  | Local Amount (Excl) | V.A.T        |
| 52257  | CUSTOMS VAT                         | Z   |   | ZAR                 | 1,233,098.72 |
| 5240   | CUSTOMS DUTY                        | Z   |   | 2,088.10 ZAR        |              |
| 50207  | RELEASE FEES                        | Z   |   | 4,209.00 ZAR        |              |
| 55167  | CARGO DUES 40FT                     | Z   |   | 3,952.44 ZAR        | (883.37)     |
| 50257  | CARTAGE PLACING CONTAINER ON GROUND | S   |   | 3,200.00 ZAR        | (448.00)     |
| 50750  | UNPACKING/FORKLIFT                  | S   |   | 4,200.00 ZAR        | (588.00)     |
| 52361  | SPECIAL ATTENDANCE                  | S   |   | 2,598.00 ZAR        | (336.00)     |
| 311  | DOCUMENTATION SEA IMPORTS           | S   |   | 450.00 ZAR          | (63.00)      |
| 111  | AGENCY SEA IMPORTS                  | S   |   | 43,896.29 ZAR       | (6,148.48)   |
| Foreign Currency Breakdown (Totals)  |                                     |   |   |                     |              |
| SUBTOTAL (EXCL VAT):   |                                     |   | 63,488.03 ZAR   |                     |              |
| VAT:   |                                     |   | 1,241,246.57 ZAR  |                     |              |
| TOTAL DUE:   |                                     |   | 1,304,734.60 ZAR  |                     |              |
| If you have any queries which could affect payment of this invoice please contact our Helpdesk on +27 115710681 - helpdesk@sebenza.co.za |                                     |   |   |                     |              |
| REMARKS  |                                     |   | BANKING DETAILS (ZAR):  |                     |              |
| THANK YOUR FOR YOUR ONGOING SUPPORT  |                                     |   | Standard Bank, Montmen Square<br>Branch Code: 020808<br>Account Number: 070 648 246 |                     |              |
|  |                                     |   | BANKING DETAILS (USD):  |                     |              |
|  |                                     |   | SWIFT Code: SEBZAJJJ  |                     |              |

Co. Reg.: 18957129407 Vol. No.: 4710100000

Tel +27 21 505-8300  
Fax +27 21 535-5215  
Info@asbenza.co.za  
24-30 Losack Avenue,  
Epping Industria 2, 7400  
P.O. Box 185, Epping, 7475

| TAX INVOICE |        |               |              |
|-------------|--------|---------------|--------------|
| Invoice No. | 316583 | Date          | 13-Jan-2015  |
|             |        | Account No.   | 5209         |
|             |        | Reference No. | 412.CSL.2727 |

All cheques payable to:  
**SEBENZA FORWARDING & SHIPPING (PTY)  
LTD**

For electronic transfers, release will only be granted once funds have been confirmed by our bank.

Att.: VAT No. 4710253106

|                 |                                       |                         |
|-----------------|---------------------------------------|-------------------------|
| Importer        | SWIFAMBO RAIL LEASING PTY LTD         |                         |
| Origin          | LEICOMS                               |                         |
| Vessel          | BRUNNEN SKY (Voy. No: 5201)           |                         |
| MOBL            | MCSM5201XICD200                       |                         |
| S.O.B.          | 20-Dec-2014 Customs Value 209,376,640 |                         |
| No. of Packages | 8                                     |                         |
| Gross Mass (kg) | 450718.00                             | Volumetric Wt. 1075.372 |

|                  |                       |
|------------------|-----------------------|
| Supplier         | VOSELAN KIEPE QES MBH |
| Destination      | CAPE TOWN             |
| INCO Terms       | CIF                   |
| NOBL             | 079433                |
| E.Y.A.           | 06-Jan-2015           |
| Client Reference |                       |
| Chargeable Wt.   | 1080.000              |

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| Code  | Description                         | VAT Code | Foreign Amount | Local Amount (Excl) | VAT          |
|-------|-------------------------------------|----------|----------------|---------------------|--------------|
| 52237 | CUSTOMS VAT                         | Z        |                | ZAR 32,290,784.96   |              |
| 63087 | CARGO DUES BREAKBULK                | S        |                |                     |              |
| 6304  | LANDING ORDER                       | Z        |                | 235,537.20 ZAR      | (32,975.21)  |
| 68168 | ABNORMAL CARGO                      | Z        |                | 212,161.50 ZAR      |              |
| 50207 | RELEASE FEES                        | Z        |                | 396,480.00 ZAR      |              |
| 52361 | SPECIAL ATTENDANCE                  | Z        |                | 1,120.00 ZAR        |              |
| 111   | AGENCY SEA IMPORTS                  | S        |                | 10,400.00 ZAR       | (1,400.00)   |
|       | Foreign Currency Remittance (Total) | S        |                | 1,167,601.14 ZAR    | (163,588.16) |

#### Foreign Currency Breakdown (Tobias)

|                       |                   |
|-----------------------|-------------------|
| SUBTOTAL (EXCL VAT) : | 2,022,909.84 ZAR  |
| VAT :                 | 32,488,540.33 ZAR |
| TOTAL DUE :           | 34,511,450.17 ZAR |

If you have any queries which could affect payment of this invoice please contact our Helpdesk on +27 115710661 - [helpdesk@sebenza.co.za](mailto:helpdesk@sebenza.co.za)

REMARKS  
THANK YOUR FOR YOUR ONGOING SUPPORT

**BANKING DETAILS (ZAR):** Standard Bank, Maritzburg Square,  
Branch Code: 020908  
Account Number: 078 640 240

BANKING DETAILS (USD): BSWFT Code: 882AZAJJ





Co. Reg. : 1896/012564/07    Vat No. : 4710149623

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Fax +27 21 535-5215  
Info@sebenza.co.za  
24-30 Loosck Avenue,  
Epping Industria 2, 7460  
P.O/ Box 185, Eppindust, 7475

B7

| TAX INVOICE   |                                       |                  |   |                            |              |
|---|---------------------------------------|------------------|---|----------------------------|--------------|
| Invoice No. 316824  |                                       | Date 02-Mar-2015 |   | Account No. 5209           |              |
|   |                                       |                  |   | Reference No. 502.CSI.2920 |              |
| To<br>SWIFAMBO RAIL LEASING PTY LTD<br>PO BOX 5597 MIDRAND JOHANNESBURG   |                                       |                  | All cheques payable to:<br><b>SEBENZA FORWARDING &amp; SHIPPING (PTY) LTD</b><br>For electronic transfers, release will only be granted once funds have been confirmed by our bank. |                            |              |
| Attn: VAT No. 4710263106  |                                       |                  |   |                            |              |
| Importer  | SWIFAMBO RAIL LEASING PTY LTD         |                  | Supplier  | VOSSLAN ICEPE GEE MBH      |              |
| Origin  | VIENNA DANUBEPIER HOV                 |                  | Destination   | CAPE TOWN                  |              |
| Vessel  | GREEN MOUNTAIN (Voy. No: 5205)        |                  | INCOTERMS   | CFR                        |              |
| MOBL  | NCEMS205BICP201                       |                  | HOBL  |                            |              |
| S.O.B.  | 14-Feb-2015 Customs Value 197 236 552 |                  | ETA   | 04-Mar-2015                |              |
| No. of Packages   | 3                                     |                  | Client Reference  |                            |              |
| Gross Mass (kg)   | 450788,00                             |                  | Chargeable Wt.  | 1079,000                   |              |
| Volumetric Wt.  |                                       | 1079,000         |   |                            |              |
| CONTAINERS  |                                       |                  |   |                            |              |
|   |                                       |                  |   |                            |              |
| CHARGES   |                                       |                  |   |                            |              |
| Code  | Description                           | VAT Code         | Foreign Amount  | Local Amount (Excl)        | V.A.T        |
| 52257   | CUSTOMS VAT                           | Z                |   | ZAR 30 374 444,24          |              |
| 65067   | CARGO DUES BREAKBULK                  | S                |   |                            |              |
| 6204  | LADING ORDER                          | Z                |   | 235 537,20 ZAR             | (32 975,21)  |
| 6204  | ABNORMAL CARGO                        | Z                |   | 212 181,50 ZAR             |              |
| 50207   | RELEASE FEE                           | Z                |   | 396 080,00 ZAR             |              |
| 51361   | SPECIAL ATTENDANCE                    | S                |   | 1 330,00 ZAR               |              |
| 111   | AGENCY SEA IMPORTS                    | S                |   | 10 000,00 ZAR              | (1 480,00)   |
| Foreign Currency Breakdown (Totals)   |                                       |                  |   | 1 093 062,35 ZAR           | (153 025,73) |
| SUBTOTAL (EXCL VAT):  |                                       |                  |   | 1 948 971,05 ZAR           |              |
| VAT:  |                                       |                  |   | 30 551 948,18 ZAR          |              |
| TOTAL DUE:  |                                       |                  |   | 32 510 919,23 ZAR          |              |
| If you have any queries which could affect payment of this invoice please contact our Helpdesk on +27 11 5710561 - helpdesk@sebenza.co.za |                                       |                  |   |                            |              |
| REMARKS<br>THANK YOUR FOR YOUR ONGOING SUPPORT  |                                       |                  | BANKING DETAILS (ZAR):<br>Standard Bank, Merriman Square<br>Branch Code: 020909<br>Account Number: 070 640 246  |                            |              |
|   |                                       |                  | BANKING DETAILS (USD):<br>SWIFT Code: SBZAZAJJ  |                            |              |





SMU 507 ?  
STU 507 ?

Tel +27 21 505-9300  
Fax +27 21 535-5215  
Info@eschenza.co.za  
24-30 Lonsack Avenue,  
Epping Industria 2, 7480  
P.O. Box 185, Eppingindust, 7475

Co. Reg. : 14020123407 Vol No. : 4715100235

| TAX INVOICE  |                                       |                |   |                     |                   |               |             |
|--|---------------------------------------|----------------|---|---------------------|-------------------|---------------|-------------|
| Invoice No.  | 310958                                | Date           | 08-Apr-2015   | Account No.         | 5209              | Reference No. | 503.CSL3022 |
| To<br>SWIFAMBO RAIL LEASING PTY LTD<br>PO BOX 8887 MIDRAND JOHANNESBURG  |                                       |                | All cheques payable to:<br><b>SEBENZA FORWARDING &amp; SHIPPING (PTY) LTD</b><br>For electronic transfers, release will only be granted once funds have been confirmed by our bank. |                     |                   |               |             |
| Attn: VAT No. 4710253105   |                                       |                |   |                     |                   |               |             |
| Importer   | SWIFAMBO RAIL LEASING PTY LTD         |                | Supplier  | VOGSELOH ESPANA S.A |                   |               |             |
| Origin   | BARCELONA                             |                | Destination   | CAPE TOWN           |                   |               |             |
| Vessel   | BRIGHT SKY (Voy. No: 5207)            |                | INCO Terms  | CFR                 |                   |               |             |
| MOBL   | MCSMS2078ICP208                       |                | NOEL  |                     |                   |               |             |
| S.O.B.   | 15-Mar-2015 Customs Value 192 210 768 |                | E.T.A   | 02-Apr-2015         |                   |               |             |
| No. of Packages  | 6                                     |                | Client Reference  |                     |                   |               |             |
| Gross Mass (kg)  | 450788,00                             | Volumetric Wt. | 1079372,000   | Chargeable Wt.      | 1079372,000       |               |             |
| CONTAINERS   |                                       |                |   |                     |                   |               |             |
|  |                                       |                |   |                     |                   |               |             |
| CHARGES  |                                       |                |   |                     |                   |               |             |
| Code   | Description                           | VAT Code       | Foreign Amount  | Local Amount (ZAR)  | V.A.T.            |               |             |
| 82257  | CUSTOMS VAT                           | Z              |   | ZAR 29 600 438,10   |                   |               |             |
| 63087  | CARGO DUES BREAKBULK ABNORMAL         | S              |   | 235 537,30 ZAR      | (32 975,21)       |               |             |
| 63084  | LANDING ORDER ABNORMAL                | Z              |   | 212 161,86 ZAR      |                   |               |             |
| 6284   | ABNORMAL CARGO                        | Z              |   | 396 886,00 ZAR      |                   |               |             |
| 50207  | RELEASE FEE                           | Z              |   | 1 238,00 ZAR        |                   |               |             |
| 52361  | SPECIAL ATTENDANCE                    | S              |   | 10 808,00 ZAR       | (1 400,00)        |               |             |
| 111  | AGENCY SEA IMPORTS                    | S              |   | 1 065 572,44 ZAR    | (149 236,20)      |               |             |
| Foreign Currency Breakdown (Totals)  |                                       |                |   |                     |                   |               |             |
|  |                                       |                | SUBTOTAL (EXCL VAT):  |                     | 1 921 681,64 ZAR  |               |             |
|  |                                       |                | VAT:  |                     | 29 784 069,57 ZAR |               |             |
|  |                                       |                | TOTAL DUE:  |                     | 31 705 951,21 ZAR |               |             |
| REMARKS  |                                       |                |   |                     |                   |               |             |
| THANK YOUR FOR YOUR ONGOING SUPPORT  |                                       |                |   |                     |                   |               |             |
| If you have any queries which could affect payment of this invoice please contact our Helpdesk on +27 118710861 - <a href="mailto:helpdesk@sebenza.co.za">helpdesk@sebenza.co.za</a><br>BANKING DETAILS (ZAR): Standard Bank, Marneville Square<br>Branch Code: 020909<br>Account Number: 070 940 246<br>BANKING DETAILS (USD): SWIFT Code: SBZAZAJJ |                                       |                |   |                     |                   |               |             |

Form prepared and printed by AIT-41UP

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00-Apr-2015 09:02:06 (A)

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Version: 1.0.4.02



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Co. Reg. : 1962012864/07    Vat No. : 471018825

| TAX INVOICE (DRAFT)   |                             |  |                       |                     |     |
|---|-----------------------------|--|-----------------------|---------------------|-----|
| Invoice No.   |                             | Date   |                       | Account No.         |     |
| D-18586   |                             | 09-Jan-2015  |                       | 5209                |     |
| Reference No.   |                             | To   |                       |                     |     |
| 503.CEL3022   |                             | SWIFAMBO RAIL LEASING PTY LTD<br>PO BOX 8567 MIDRAND JOHANNESBURG                                  |                       |                     |     |
| Attn:   |                             | All cheques payable to:  |                       |                     |     |
| VAT No. 4710283106  |                             | SEBENZA FORWARDING & SHIPPING (PTY) LTD  |                       |                     |     |
|   |                             | For electronic transfers, release will only be granted once funds have been confirmed by our bank. |                       |                     |     |
| Importer  |                             | Supplier   |                       | Vessel              |     |
| SWIFAMBO RAIL LEASING PTY LTD   |                             | VOSSLOH ESPANA S.A   |                       | CAPE TOWN           |     |
| Origin  |                             | Destination  |                       | CPR                 |     |
| BARCELONA   |                             | MOBL   |                       | ETA                 |     |
| BRIGHT SKY (Voy. No: 5207)  |                             | MOBL   |                       | 02-Apr-2015         |     |
| MOBL  |                             | MOBL   |                       | Client Reference    |     |
| MCNHS2075ICP300   |                             | MOBL   |                       | 1079372.000         |     |
| S.O.B.  |                             | MOBL   |                       |                     |     |
| 15-Mar-2015 Customs Value 192,210,764   |                             | MOBL   |                       |                     |     |
| No. of Packages   |                             | MOBL   |                       |                     |     |
| 5   |                             | MOBL   |                       |                     |     |
| Gross Mass (kg)   |                             | MOBL   |                       |                     |     |
| 450788.00   |                             | MOBL   |                       |                     |     |
| Volumetric Wt. 1079372.000  |                             | MOBL   |                       |                     |     |
| CONTAINERS  |                             |  |                       |                     |     |
|   |                             |  |                       |                     |     |
| CHARGES   |                             |  |                       |                     |     |
| Code  | Description                 | VAT Code   | Foreign Amount        | Local Amount (Excl) | VAT |
| 113   | INTEREST UNTIL 07 June 2015 | Z  |                       | 165,377.15 ZAR      |     |
| Foreign Currency Breakdown (Totals)   |                             |  | SUBTOTAL (EXCL VAT) : | 165,377.15 ZAR      |     |
|   |                             |  | VAT :                 | 0.00 ZAR            |     |
|   |                             |  | TOTAL DUE :           | 165,377.15 ZAR      |     |
| REMARKS   |                             |  |                       |                     |     |
| THANK YOUR FOR YOUR ONGOING SUPPORT   |                             |  |                       |                     |     |
| BANKING DETAILS (ZAR) : Standard Bank, Menlman Square<br>Branch Code: 082005<br>Account Number: 070 640 246 |                             |  |                       |                     |     |
| BANKING DETAILS (USD) : SWIFT Code: SBZAZJ  |                             |  |                       |                     |     |



Vat No. : 4710100628

| TAX INVOICE   |                                     |                       |   |   |                    |               |              |
|---|-------------------------------------|-----------------------|---|---|--------------------|---------------|--------------|
| Invoice No.   | 318027                              | Date                  | 09-Oct-2015   | Account No.   | 5209               | Reference No. | 508.CSI.3597 |
| To<br>SWIFAMBO RAIL LEASING PTY LTD<br>PO BOX 8587 MIDRAND JOHANNESBURG   |                                     |                       | All cheques payable to:<br><b>SEBENZA FORWARDING &amp; SHIPPING (PTY) LTD</b><br>For electronic transfers, release will only be granted once funds have been confirmed by our bank. |   |                    |               |              |
| Att.: VAT No. 4710263106  |                                     |                       |   |   |                    |               |              |
| Importer  | PASSENGER RAIL AGENCY OF SA         |                       |   | Supplier  | VOSSLOH ESPANA SAU |               |              |
| Origin  | VALENCIA DE LA CONCEPCION           |                       |   | Destination   | CAPE TOWN          |               |              |
| Vessel  | MSC AZOV (Voy. No: NZ526A)          |                       |   | INCO Terms  | CIF                |               |              |
| MOBL  | MSCUVO890049                        |                       |   | HOBL  |                    |               |              |
| S.O.B.  | 06-Jul-2015 Customs Value 3,153,065 |                       |   | E.T.A   | 23-Jul-2015        |               |              |
| No. of Packages   | 1                                   |                       |   | Client Reference  | PO NB-45264608     |               |              |
| Gross Mass (kg)   | 8300.00                             | Volumetric Wt. 20.000 |   | Chargeable Wt.  | 20.000             |               |              |
| CONTAINERS  |                                     |                       |   |   |                    |               |              |
| MSCU-3658521  |                                     |                       |   |   |                    |               |              |
| CHARGES   |                                     |                       |   |   |                    |               |              |
| Code  | Description                         | VAT Code              | Foreign Amount  | Local Amount (Excl)   | VAT                |               |              |
| S2257   | CUSTOMS VAT                         | Z                     |   | ZAR   | 486,576.44         |               |              |
| Foreign Currency Breakdown (Totals)   |                                     |                       | SUBTOTAL (EXCL VAT) :   |   | 0.00 ZAR           |               |              |
|   |                                     |                       | VAT :   |   | 486,576.44 ZAR     |               |              |
|   |                                     |                       | TOTAL DUE :   |   | 486,576.44 ZAR     |               |              |
| <p>If you have any queries which could affect payment of this invoice please contact our Helpdesk on +27 115710661 - <a href="mailto:helpdesk@sebenza.co.za">helpdesk@sebenza.co.za</a></p> |                                     |                       |   |   |                    |               |              |
| REMARKS<br>THANK YOUR FOR YOUR ONGOING SUPPORT  |                                     |                       |   | BANKING DETAILS (ZAR) :<br>Standard Bank, Merriman Square<br>Branch Code: 020909<br>Account Number: 070 640 246 |                    |               |              |
|   |                                     |                       |   | BANKING DETAILS (USD) :<br>SWIFT Code: SBZAZAJJ   |                    |               |              |
| <p>Form prepared and printed by AIR-SHP 11883 09-Oct-2015 00:09:00 (A) Stamp Mailing 1000</p>   |                                     |                       |   |   |                    |               |              |





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P.O. Box 185, Eppindust, 7475

Co. Reg. : 1995/012594/07      Vat No. : 4710160625

| TAX INVOICE  |  |             |   |                     |          |
|--|--|-------------|---|---------------------|----------|
| Invoice No.  | Date   | Account No. | Reference No.   |                     |          |
| 318025   | 09-Oct-2015                                      | 5209        | 507.CSI.3550  |                     |          |
| To<br>SWIFAMBO RAIL LEASING PTY LTD<br>PO BOX 8587 MIDRAND JOHANNESBURG  |  |             | All cheques payable to:<br><b>SEBENZA FORWARDING &amp; SHIPPING (PTY) LTD</b><br>For electronic transfers, release will only be granted once funds have been confirmed by our bank. |                     |          |
| Att. :                                      VAT No. 4710263106   |  |             |   |                     |          |
| Importer   | PASSENGER RAIL AGENCY OF SA                      |             | Supplier  | VOSSLOH ESPANA SAU  |          |
| Origin   | VALENCIA DE LA CONCEPCION                        |             | Destination   | CAPE TOWN           |          |
| Vessel   | MAERSK LANGKLOOF (Voy. No: 155A)                 |             | INCO Terms  | CIF                 |          |
| MOBL   | SVLCA1491  |             | HOBL  | 150101991/0101      |          |
| S.O.B.   | 20-Jul-2015      Customs Value 34,775            |             | E.T.A   | 02-Aug-2015         |          |
| No. of Packages  | 4  |             | Client Reference  | PO NB-45264608      |          |
| Gross Mass (kg)  | 170.00                      Volumetric Wt. 1.037 |             | Chargeable Wt.  | 2.000               |          |
| CONTAINERS   |  |             |   |                     |          |
| FSCU-9905848   |  |             |   |                     |          |
| CHARGES  |  |             |   |                     |          |
| Code   | Description                                      | VAT Code    | Foreign Amount  | Local Amount (Excl) | VAT      |
| 52257  | CUSTOMS VAT                                      | Z           |   | ZAR                 | 5,582.22 |
| Foreign Currency Breakdown (Totals)  |  |             | SUBTOTAL (EXCL VAT) :                      0.00ZAR  |                     |          |
|  |  |             | VAT :    5,582.22ZAR  |                     |          |
|  |  |             | TOTAL DUE :                                      5,582.22ZAR  |                     |          |
| If you have any queries which could affect payment of this invoice please contact our Helpdesk on +27 115710661 - helpdesk@sebenza.co.za |  |             |   |                     |          |
| REMARKS<br>THANK YOUR FOR YOUR ONGOING SUPPORT   |  |             | BANKING DETAILS (ZAR) :                      Standard Bank, Menlman Square<br>Branch Code: 020909<br>Account Number: 070 640 246  |                     |          |
|  |  |             | BANKING DETAILS (USD) :                      SWIFT Code: SBZAZAJ  |                     |          |

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Co. Reg. : 1800181352457      Vol. No. : 0700000073

| TAX INVOICE   |  |          |   |  |            |
|---|--|----------|---|--|------------|
| Invoice No.   | 318354   | Date     | 27-Nov-2015   | Account No.  | 5209       |
|   |  |          | Reference No.   | 511.CCL4174  |            |
| To<br>SWIFAMBO RAIL LEASING PTY LTD<br>PO BOX 8587 MIDRAND JOHANNESBURG   |  |          | All cheques payable to:<br><b>SEBENZA FORWARDING &amp; SHIPPING (PTY) LTD</b><br>For electronic transfers, release will only be granted once funds have been confirmed by our bank. |  |            |
| Attn: VAT No. 4710283186  |  |          |   |  |            |
| Importer<br>Origin<br>Flight<br>Master Bill<br>S.O.B.<br>No. of Packages<br>Gross Mass (kg)   | SWIFAMBO RAIL LEASING PTY LTD<br>JOHANNESBURG<br><br>801<br>28-Nov-2015 Customs Value<br>3<br>2000.00 Volumetric Wt. 0.000 |          | Supplier<br>Destination<br>BICO Terms<br>Home Bill<br>ETA<br>Client Reference<br>Chargeable Wt.   | CAPE TOWN<br>SAP<br><br><br>27-Nov-2015<br>SPREADER BEAM AND SLINGS<br>2.000 |            |
| CONTAINERS  |  |          |   |  |            |
| CHARGES   |  |          |   |  |            |
| Code  | Description  | VAT Code | Foreign Amount  | Local Amount (Rand)  | VAT        |
| 50257   | COLLECTION IN JHB TO DEPOT   | S        |   | 2,435.00 ZAR   | (268.90)   |
| 50257   | TRANSPORT JHB TO CPT ON UTILISATION OF 8M CONTAINER  | S        |   | 10,500.00 ZAR  | (1,470.00) |
| 50257   | DELIVERY IN CPT FROM DEPOT TO BPO  | S        |   | 2,635.00 ZAR   | (268.90)   |
| Foreign Currency Breakdown (Totals)   |  |          | SUBTOTAL (EXCL VAT) :   | 15,570.00 ZAR  |            |
|   |  |          | VAT :   | 2,267.00 ZAR   |            |
|   |  |          | TOTAL DUE :   | 17,837.00 ZAR  |            |
| If you have any queries which could effect payment of this invoice please contact our Helpdesk on +27 115710881 - <a href="mailto:helpdesk@sebenza.co.za">helpdesk@sebenza.co.za</a><br><b>REMARKS</b><br>THANK YOUR FOR YOUR ONGOING SUPPORT |  |          |   |  |            |
| BANKING DETAILS (ZAR) :   |  |          | Standard Bank, Macmillan Square<br>Branch Code: 620606<br>Account Number: 070 840 246   |  |            |
| BANKING DETAILS (USD) :   |  |          | SWIFT Code: SBZAZAJJ  |  |            |



# Inala Shipping (Pty) Ltd

Reg. No. 2008/019828/07  
Vat. No. 4040256044

Business address:  
15 School Road  
Summit Square  
Morningside  
Sandton 2196

Postal address:  
PO Box 5154  
Rivonia  
2128

Tel : +27 (11) 326 5652  
Fax : +27 (86) 516 1437  
Email : chartering@inala-shipping.co.za

Att: Swifambo Holding (PTY) LTD  
400 16<sup>th</sup> Road,  
Block K, East,  
Central Office Park  
Midrand, Gauteng

INVOICE : 04/12/14  
DATE : 04 December 2014  
REF : AFRG 4001

Currency : Rands

## INVOICE

| QTY | UNIT | DESCRIPTION  | AMOUNT (EXCL VAT) | VAT | AMOUNT INCL VAT  |
|-----|------|--|-------------------|-----|------------------|
|     |      | Accommodation  |                   |     | R18628.20        |
|     |      | Airfares   |                   |     | R8362.96         |
|     |      | Car rental   |                   |     | R5073.19         |
|     |      | Parking fee  |                   |     | R527.00          |
|     |      | Total  |                   |     | <u>R32591.35</u> |
|     |      | Add 20% service fee  |                   |     | R6518.27         |
|     |      | Total due to Inala Shipping  |                   |     | R39109.62        |
|     |      | Please remit to Inala Shipping (Pty) Ltd<br>FNB, 4 Merchant Place, Code 200 607<br>Account No. 62233374107 |                   |     |                  |

PROCESSED

Total amount due to Inala Shipping (Pty) Ltd

4650/000

R39109.62



# Inala Shipping (Pty) Ltd

Reg. No. 2008/019828/07  
Vat. No. 4040256044

Business address:  
15 School Road  
Summit Square  
Morningside  
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Postal address:  
PO Box 5154  
Rivonia  
2128

Tel : +27 (11) 326 5652  
Fax : +27 (86) 518 1437  
Email : chartering@inala-shipping.co.za

Att: Swifambo Holding (PTY) LTD  
400 16<sup>th</sup> Road,  
Block K, East,  
Central Office Park  
Midrand, Gauteng

INVOICE : 04/12/14  
DATE : 04 December 2014  
REF : AFRO 4001

Currency : RANZIS

## INVOICE

| QTY  | UNIT | DESCRIPTION                 | AMOUNT (EXCL VAT) | VAT | AMOUNT INCL VAT  |
|--|------|-----------------------------|-------------------|-----|------------------|
|  |      | Accommodation               |                   |     | R13399.38        |
|  |      | Airfares                    |                   |     | R4060.37         |
|  |      | Car rental                  |                   |     | R3745.48         |
|  |      | Parking fee                 |                   |     | R370.53          |
|  |      | Total                       |                   |     | <u>R21575.76</u> |
|  |      | Add 20% service fee         |                   |     | R4315.11         |
|  |      | Total due to Inala Shipping |                   |     | R25890.87        |
| <p>Please remit to Inala Shipping (Pty) Ltd<br/>FNB, 4 Merchant Place, Code 200 607<br/>Account No. 62233374107</p> <p>Inala Shipping (Pty) Ltd<br/>Reg No: 2008.019828-07</p> |      |                             |                   |     |                  |
| <p><b>PROCESSED</b></p>  |      |                             |                   |     |                  |
| <p>Total amount due to Inala Shipping (Pty) Ltd</p>  |      |                             |                   |     |                  |
| <p>4650/000 R25890.87</p>  |      |                             |                   |     |                  |





# Inala Shipping (Pty) Ltd

Reg. No. 2008/019828/07  
 Vat. No. 4040256044

Business address:  
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 Morningside  
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Postal address:  
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 2128

Tel : +27 (11) 326 5652  
 Fax : +27 (86) 518 1437  
 Email : chartering@inala-shipping.co.za

Att: Swifambo Holding (PTY) LTD  
 400 16<sup>th</sup> Road,  
 Block K, East,  
 Central Office Park  
 Midrand, Gauteng

INVOICE : 11/03/15  
 DATE : 11 March 2015  
 REF : AFRO 4006-4009

Currency: Rands

## INVOICE

| QTY | UNIT | DESCRIPTION  | AMOUNT (EXCL VAT) | VAT | AMOUNT INCL VAT |
|-----|------|--|-------------------|-----|-----------------|
|     |      | Accommodation  |                   |     | R5065.50        |
|     |      | Airfares   |                   |     | R2962.58        |
|     |      | Car rental   |                   |     | R1373.77        |
|     |      | Parking fee  |                   |     | R 258.25        |
|     |      | Total  |                   |     | <u>R9660.10</u> |
|     |      | Add 20% service fee  |                   |     | R1932.02        |
|     |      | Total due to Inala Shipping  |                   |     | R11592.12       |
|     |      | Please remit to Inala Shipping (Pty) Ltd<br>FNB, 4 Merchant Place, Code 200 607<br>Account No. 62233374107 |                   |     |                 |
|     |      | Inala Shipping (Pty) Ltd<br>Reg No: 2008/019828/07   |                   |     |                 |

PROCESSED

Total amount due to Inala Shipping (Pty) Ltd

R11592.12



# Inala Shipping (Pty) Ltd

Reg. No. 2008/019828/07  
Vat. No. 4040256044

Business address:  
15 School Road  
Summit Square  
Morningside  
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Postal address:  
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Tel : +27 (11) 326 5652  
Fax : +27 (86) 518 1437  
Email : chartering@inala-shipping.co.za

Att: Swifambo Holding (PTY) LTD  
400 16th Road,  
Block K, East.  
Central Office Park  
Midrand, Gauteng

INVOICE : 13/04/15  
DATE : 13 April 2015  
REF : AFRO 4010-4013

Currency : RANDS

## INVOICE

| QTY  | UNIT | DESCRIPTION  | AMOUNT (EXCL VAT) | vat | AMOUNT INCL VAT |
|--|------|--|-------------------|-----|-----------------|
|  |      | Accommodation  |                   |     | R 10 005.36     |
|  |      | Airfares   |                   |     | R 6 566.31      |
|  |      | Car rental   |                   |     | R 1 546.68      |
|  |      | Parking fee  |                   |     | R 0.00          |
|  |      | Total  |                   |     | R 18 118.35     |
|  |      | Add 20% service fee  |                   |     | R 3 623.67      |
|  |      | Total due to Inala Shipping  |                   |     | R 21 742.02     |
|  |      | Inala Shipping (Pty) Ltd<br>Reg No: 2008 019828 07   |                   |     |                 |
|  |      | Please remit to Inala Shipping (Pty) Ltd<br>FNB, 4 Merchant Place, Code 200 607<br>Account No. 62233374107 |                   |     |                 |
| Total amount due to Inala Shipping (Pty) Ltd |      |  |                   |     | R 21 742.02     |

PROCESSED

07-03-2017 04:54:23PM

A/R Customer Transactions (ARCTRN01)

Sebanza Forwarding and Shipping (Pty) Ltd

Page 1

From Customer Number [SWI001J] To [SWI001J]  
From Document Date [ ] To [31-12-9999]  
Session Date [28-02-2017]  
Report Format [Customer Transactions by Document Date]  
Account Type [All Customers]  
Transaction Types [Invoice, Debit Note, Credit Note, Interest, Unapplied Cash, Prepayment, Receipt, Refund]  
Include Contact/Phone/Credit Limit [No]  
Include Space For Comments [No]  
Include Zero-Balance Customers [Yes]  
Include Transaction Type Totals [Yes]  
Show Applied Details [Yes]  
Show Fully Paid Transactions [Yes]  
Sort Transactions by Transaction Type [Yes]  
Print Amounts in [Customer Currency]

| Customer Number/Name/<br>Document Number/Type    | Order Number | PO Number/<br>Check/Receipt Number | Doc. Date/<br>Appl. Date                             | Due Date or Chk./Receipt No./<br>Applied Type/Applied No. | Batch -<br>Entry             | Days<br>Over | Transaction<br>Amount                                    | Balance |
|--|--------------|------------------------------------|--|---|------------------------------|--------------|--|---------|
| SWI001J SWIFAMBO RAIL LEASING (PTY) LTD<br>54342 | IN           | D15234                             | 25-11-2015<br>14-12-2015                             | 31-12-2015<br>PY PY00000000132                            | 1-696<br>65-1                | 0            | 4,825.05<br>-4,825.05 ①                                  | 0.00    |
| 54343  | IN           | D15234                             | 25-11-2015<br>14-12-2015                             | 31-12-2015<br>PY PY00000000132                            | 1-694<br>65-1                | 0            | 2,772.28<br>-2,772.28 ②                                  | 0.00    |
| 54344  | IN           | D15234                             | 25-11-2015<br>14-12-2015                             | 31-12-2015<br>PY PY00000000132                            | 1-698<br>65-1                | 0            | 7,108.50<br>-7,108.50 ③                                  | 0.00    |
| PY00000000132                                    | PY           | D15234<br>D15234<br>D15234         | 14-12-2015<br>14-12-2015<br>14-12-2015<br>14-12-2015 | D15234<br>PY 54344<br>PY 54343<br>PY 54342                | 65-1<br>65-1<br>65-1<br>65-1 |              | -14,705.83 ④<br>7,108.50<br>2,772.28<br>4,825.05 ⑤+⑥+⑦+⑧ | 0.00    |
| Customer Total:                                  |              |                                    |  |   |                              |              | ZAR 0.00   | 0.00    |
| Current Amount Invoice Total:                    |              |                                    |  |   |                              |              | 0.00   | 0.00    |
| Current Amount Debit Note Total:                 |              |                                    |  |   |                              |              | 0.00   | 0.00    |
| Current Amount Credit Note Total:                |              |                                    |  |   |                              |              | 0.00   | 0.00    |
| Current Amount Interest Total:                   |              |                                    |  |   |                              |              | 0.00   | 0.00    |
| Current Amount Unapplied Cash Total:             |              |                                    |  |   |                              |              | 0.00   | 0.00    |
| Current Amount Prepayment Total:                 |              |                                    |  |   |                              |              | 0.00   | 0.00    |
| Current Amount Receipt Total:                    |              |                                    |  |   |                              |              | 0.00   | 0.00    |

24/11/17

BS

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 20**

1. Arising from the judgment of Judge Francis, PRASA apparently surrendered 13 locomotives to the liquidators of Leasing and whereafter the liquidators of Leasing caused to have 1 damaged locomotive sold by way of an internet auction sale for the sum of R3 600 000.00 (exclusive of VAT).
2. It is contended that PRASA is indebted to Leasing in an amount equal to the value of this locomotive i.e. €3 822 million multiplied by R14.00 (the exchange rate when it was delivered to PRASA) i.e. the sum of R53 508 000.00 .
3. It is furthermore contended that in all likelihood PRASA would have insured the locomotive and received the insurance proceeds and which proceeds remain to be paid by PRASA to Leasing (on an unjust enrichment basis).

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 21**

1. Arising from the judgment of Judge Francis, PRASA apparently surrendered 13 locomotives to the liquidators of Leasing and whereafter the liquidators of Leasing caused to have 6 locomotives sold by way of an internet auction sale for the sum of R88 110 000.00 (exclusive of VAT).
2. It is contended that PRASA is indebted to Leasing in an amount equal to the value of these locomotives i.e. €3. 822 million multiplied by 6 (number of locomotives) multiplied by R14.00 (the exchange rate when it was delivered to PRASA) i.e. the sum of R642 096 000.00 less the amount achieved at the auction.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 22**

1. Mr M Mabunda ("MM") although having offered advice and having made available consultancy services (through a number of entities forming part of the S Group) was never employed by Leasing and accordingly it is not understood/apparent as to why he received various amounts and in aggregate an amount in excess of R28m.
2. By virtue of the foregoing it is contended that MM is indebted to Leasing unless MM is able to furnish information and/or documentation indicating the legal basis upon which he received various amounts from Leasing.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 23**

1. There are 3 instances where Leasing paid amounts to this entity.
2. There are no supporting documents (statements and invoices) that have been located in the course of a forensic audit of the books and records of Leasing and furthermore internet searches have not identified the place of business of this entity.
3. It will be necessary for the liquidators of Leasing to determine from the bankers of Leasing into the identity of the account these payments were effected in order to determine the whereabouts of this entity and thereby to determine whether the services rendered by it were expenses incurred by Leasing in the course of its business activities.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 24**

1. No documentation in support of this payment by Leasing to this firm of attorneys has been located.
2. Demand has been made to this firm of attorneys to furnish information / documentation relative to this payment but to date, such demands have not given rise to the production of information/documentation.
3. It will be necessary for the liquidators of Leasing to determine from these attorneys the reason/s relative to this payment in order to determine whether the services rendered by these attorneys were expenses incurred by Leasing in the course of its business activities.



**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")**

**NOTE 25**

1. Shortly after Leasing was awarded the locomotive tender by PRASA, Mr A Mashaba ("AM") and Mr M Mabunda ("MB") were approached by 2 individuals who held themselves out to be fundraisers for the African National Congress ("ANC").
2. The 2 persons referred to in 1 were:-
  - 2.1. Mrs Maria Gomes ("MG") ; and
  - 2.2. Attorney George Sebelo (at that stage, a partner/shareholder in a legal firm by the name of Nkosi Sebelo ("GS").
3. Under pressure from MG and GS, AM on behalf of Leasing, agreed to arrange for a donation to the ANC of an amount equal R88 million and which would be dealt with as follows:-
  - 3.1. AM would receive a "handling fee" in the region of R8m; and
  - 3.2. the balance in the sum of R80m would be paid as and when directed by MG and GS —at that stage, it was indicated to AM that a company owned by GS being Similex (Pty) Ltd, ("Sim") would generate invoices to Leasing.

4. Arising from the foregoing, payments were effected to MG and GS and in aggregate the amount of R79.4 m as indicated in a schedule which is annexed hereto as **Annexure A**.
5. At a S417 enquiry GS testified that he had never been a fund raiser for the ANC and the only part that he/NS played in Leasing was to collect amounts invoiced by Sim to Leasing and whereafter he disbursed the amount received (presumably into the trust account of NS) as directed by MG.
6. By virtue of the foregoing the donations by Leasing for the benefit of the ANC never "reached" the ANC and MG and GS have unlawfully received and retained the sum of R79.4 m and accordingly these amounts are refundable to Leasing.

SCHEDULE OF DONATIONS TO ANC

| NO | DATE    | AMOUNT | PAID TO                                   | ANNEXURES |
|----|---------|--------|---|-----------|
| 1. | 11/4/13 | R14.3M | NKOSI SEBELO INC ("NCI")                  |           |
| 2. | 22/4/13 | R14.2M | NCI                                       |           |
| 3. | 22/5/13 | R10.4M | NCI PAID INTO TRUST<br>ACCOUNT OF KNOWLES |           |
| 4. | 10/1/14 | R14.1M | SIMILEX                                   |           |
| 5. | 20/1/14 | R14.5M | SIMILEX                                   |           |
| 6. | 6/5/14  | R9.4M  | SIMILEX                                   |           |
| 7. | ?       | R90K   | SIMILEX                                   |           |
| 8. | ?       | R2.05M | SIMILEX                                   |           |

NOTES:

Annexed hereto as Annexures B1 – B6 are documents in support of the payments.

D

**am** **BL**  
**Consulting Engineers**  
 (Pty) Ltd

20 May 2013

Mr. Dheena Pather  
 Account Executive  
 Business Banking,  
 Standard Bank  
 Private Bag X1017  
 Sunninghill  
 2157

Dear Mr. Pather

**LETTER OF AUTHORITY - (PAYMENT TO A CREDITOR)**

Kindly facilitate the following payment from Swifambo Rail Holdings, account number: 202538117 to the following account;

**1. BANK : NEDBANK**

BRANCH NAME : Northern Gauteng  
 BRANCH CODE : 146-905  
 ACCOUNT NO. : 1469018578  
 ACCOUNT NAME : Knowles Husain Lindsey Inc Trust Account  
 AMOUNT : R10 400 000.00  
 REFERENCE : Nkosi Sabelo Incorporated

The total amount for the above three payments is R10 400 000.00

Please, feel free to contact me for any further clarifications.

Thank you in advance.

Sincerely

Mr. Auswell Mashaba  
 Executive Chairman  
 A-M Consulting Engineers (Pty) Ltd  
 Tel: 011 315 1569  
 Cell: 082 457 7075  
 Email: [amashaba@amce.co.za](mailto:amashaba@amce.co.za)

A-M Consulting Engineers (Proprietary) Limited Registration Number: 2607027840/07 VAT No: 4770219410  
 P.O. Box 4657, Midway, 1695, Block A, 1st Floor, Central Park, 400 10th Road, Midway, 1695



www.angospengergroup.com  
directors : maria cruz gomes | domingos Gomes

From: SIMILEX (PTY) Limited

Date: 01th January 2014

INVOICE Nr:002/sml/2014

to: A-M-Consulting Engineers (Pty) Ltd  
Block G, Central Park 400 16<sup>th</sup> Rd  
Midrand 1685  
Johannesburg - South Africa

| Client                             | Description   | Company   | rate                    | Total                             |
|------------------------------------|---|---|-------------------------|-----------------------------------|
| A-M-Consulting Engineers (PTY) Ltd | Service Rendered: IRPTN planning Development & Implementation | Similex (PTY) Ltd   | 30% of the total amount | RS 14.100.000,00                  |
|                                    |   | Bank details:<br>FNB Bank,<br>B. code:254-605,<br>Acc: 62415888538<br>Swift code:<br>FIRNZAJJ |                         | Total Amount:<br>RS 14.100.000,00 |

company registration number: 2013/017141/07

ne: +27 10 500 1410 | Fax: +27 11 500 8305 | e-Mail: info@angospengergroup.co.za







PS  
4652

"RAZI"

B10

**A-M**  
**Consulting Engineers**  
(Pty) Ltd

Mr. Dheens Palther  
Account Executive  
Business Banking,  
Standard Bank  
Private Bag X1017  
Sunninghill  
2157

Date: 17 January 2014

Subject: Payment Authorisation - (Payment to a Creditor)

Dear Mr. Dheens Palther

Kindly facilitate the following payment from the A-M Consulting Engineers Market Link account number 144133679, to the following account:

|              |                       |
|--------------|-----------------------|
| 1. BANK      | : First National Bank |
| BRANCH CODE  | : 294 605             |
| ACCOUNT NO.  | : 624 158 98538       |
| ACCOUNT NAME | : Simflex Pty (Ltd)   |
| AMOUNT       | : R14 500 000.00      |

The total amount for the above payment is R 14, 500 000.00

Should clarity be required, kindly contact the undersigned.

Yours Sincerely,

  
Mr. Auewell Mashaba  
Executive Chairman  
A-M Consulting Engineers (Pty) Ltd  
Tel: 011 315 1559  
Cell: 082 457 7075  
Email: [amashaba@amce.co.za](mailto:amashaba@amce.co.za)

s/v D.

Confirmed with  
Mr. Mashaba  
17/1/2013  
confirmed acc no. at  
Pub. with  
Nelisiwe 20/1/2013

A-M Consulting Engineers (Proprietary) Limited Registration Number: 2003/02784201 VAT No: 477071811  
P.O. Box 1507, Midrand, 1685 | Block C, 1st Floor, Central Park, 439 15th Road Midrand, 1685  
T: +27 (0) 11 312 1559 / 6, +27 (0) 11 312 1571 | [www.amce.co.za](http://www.amce.co.za)  
Director: A Mashaba & N Mashaba

Phu 97





## Internet Banking: Notice of Payment

6 May 2014

Dear Auswell

**Subject:** Notice of Payment: Similex PTY LTD

Please be advised that A. MASHABA made a payment to your account as indicated below. You can contact A. MASHABA at 0824577075.

|                                     |                 |
|-------------------------------------|-----------------|
| Transaction number:                 | 802A58BDBC-1    |
| Payment date:                       | 2014-05-06      |
| Payment made by:                    | A. MASHABA      |
| Payment made to:                    | Similex PTY LTD |
| Beneficiary bank name:              | FIRSTRAND       |
| Beneficiary account number:         | 62415885538     |
| Bank branch code:                   | 254605          |
| For the amount of:                  | R 9 400 000.00  |
| Immediate interbank payment:        | N               |
| Reference on beneficiary statement: | AMCE            |

View your account to confirm that you have received this payment as the following apply to Internet Banking payments into non-ABSA bank accounts.

- Payments made on weekdays before 15:30 will be credited to the receiving bank account by midnight of the same day.
- Payments made on weekdays after 15:30 will be credited by midnight the following day.
- Payments made on a Saturday, Sunday or Public holiday will be credited to the account by midnight of the 1st following weekday.

If you need more information or assistance, please call us on 08600 08600 or +2711 276 7900 (International calls).

Yours sincerely

General Manager: Digital Channels

This document is intended for use by the addressee and is privileged and confidential. If the transmission has been misdirected to you, please contact us immediately. Thank you.

Member of / Lid van



Abesa Bank Limited Reg No 1986/004794/06 Authorised Financial Services Provider and Registered Credit Provider Reg No NCRCP7 Company Information: [www.abesa.co.za](http://www.abesa.co.za)

Abesa Bank Beperk Reg-no 1986/004794/06 Gemagtigde Finansiële diensteverskaffer en Geregistreerde Kredietverskaffer Reg No NCRCP7 Maatskappy-inligting: [www.abesa.co.za](http://www.abesa.co.za)

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**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 26**

1. It is recorded that the credit card division of the Standard Bank issued to Leasing 3 credit cards in the names of these 3 persons.
2. Without access to the credit card transactions which gave rise to debit amounts being processed against each card, it is not possible to determine whether certain debits were in the nature of private/personal expenses and if these arose then the person/s concerned would be indebted to Leasing.
3. The aggregate of amounts paid by Leasing to the credit card division of the Standard Bank is the amount reflected.
4. It will be necessary for the liquidators of Leasing to determine from the credit card division of the Standard Bank what debit amounts were reflected (arising from the usage of the credit cards) and to thereby determine what debit amounts constituted expenses incurred by Leasing in the course of its business activities.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 27**

1. It is recorded that the financial institution Master Card, issued to Leasing 3 credit cards in the names of these 3 persons.
2. Without access to the credit card transactions which gave rise to debit amounts being processed against each card, it is not possible to determine whether certain debits were in the nature of private/personal expenses and if these arose then the person/s concerned would be indebted to Leasing.
3. The aggregate of amounts paid by Leasing to Master Card is the amount reflected.
4. It will be necessary for the liquidators of Leasing to determine from Master Card what debit amounts were reflected (arising from the usage of the credit cards) and to thereby determine what debit amounts constituted expenses incurred by Leasing in the course of its business activities.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 28**

1. From time to time this entity rendered engineering services to Leasing and consequently raised invoices for payment by Leasing and such invoices were paid.
2. In reconciling the invoices rendered and payments effected by Leasing it appears that Leasing overpaid this entity the reason/s therefor is uncertain.
3. An audit of the books and records of this entity is in the process of being undertaken to determine the correctness or otherwise of this possible overpayment by Leasing to this entity.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 29**

1. From time to time this entity rendered administration and management services to Leasing and consequently raised invoices for payment by Leasing and such invoices were paid.
2. In reconciling the invoices rendered and payments effected by Leasing it appears that Leasing overpaid this entity the reason/s therefor is uncertain.
3. An audit of the books and records of this entity is in the process of being undertaken to determine the correctness or otherwise of this possible overpayment by Leasing to this entity.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 30**

1. The bank statements of Leasing and Holdings reflect payments to individuals/entities which identities cannot be determined – the payments are as reflected in **Annexure A** hereto.
2. It will be necessary for the Leasing liquidators to determine from the bankers of Leasing the identities of the parties that received the amounts indicated in Annexure A and thereafter to determine from those parties the reasons for the payments by Leasing to them.

| Swifambo Rail Leasing                        |          |                         | Prepared by: W.K.H. Landgrebe & Co. |   |  | Updated to date of closure of accounts plus certain Accruals |    |                               | Printed :<br>Updated :<br>Invoice No. |  | 30-Jun-20<br>30-Jun-20<br>Reference |         | 9990/000<br>Opening<br>Balance /<br>Suspense<br>Account |               |
|--|----------|-------------------------|-------------------------------------|---|--|--|----|-------------------------------|---------------------------------------|--|-------------------------------------|---------|---|---------------|
| Cash Book Details - 01/03/2013 to 18/12/2018 |          |                         | Reference                           |   |  | COY  |    |                               | Bank Account                          |  |                                     |         |   |               |
| Date   | Account  | Name                    | Reference                           |   |  | Description  |    |                               | COY                                   |  | Bank Account                        |         |   |               |
|  |          |                         |                                     |   |  |  |    |                               |                                       |  |                                     |         |   |               |
|  |          |                         |                                     |   |  |  | ** |                               |                                       |  |                                     |         |   |               |
| 06/12/2012                                   | 9990/000 | Opening Balance / Suspe | 2570 4                              |   |  |  |    | Trf Ex Imall Loan ?           | SRL                                   |  | 022682570                           | Unknown |   | -300.00       |
| 01/10/2013                                   | 9990/000 | Opening Balance / Suspe | POCT01                              |   |  |  |    | IB Trf to Refund              | RPH                                   |  | 202538117                           | Unknown |   | 550,000.00    |
| 03/02/2014                                   | 9990/000 | Opening Balance / Suspe | PFEB01                              |   |  |  |    | Trf to 302 273313339          | SRL                                   |  | 022682570                           | Unknown |   | 800.00        |
| 30/05/2014                                   | 9990/000 | Opening Balance / Suspe | PMAY11                              |   |  |  |    | IB Trf to Refund?             | RPH                                   |  | 202538117                           | Unknown |   | 5,000,000.00  |
| 09/06/2014                                   | 9990/000 | Opening Balance / Suspe | PIJUN06                             |   |  |  |    | IB Trf to Refund?             | RPH                                   |  | 202538117                           | Unknown |   | 286,000.00    |
| 03/03/2015                                   | 9990/000 | Opening Balance / Suspe | 0.1                                 | * |  |  |    | Transfer to from money market | SRL                                   |  | 678504253                           | Unknown |   | -5,000,000.00 |
| 26/03/2015                                   | 9990/000 | Opening Balance / Suspe | 0 1                                 |   |  |  |    | Transfer from Money Market    | SRL                                   |  | 022682570                           | Unknown |   | -90,059.38    |
| 19/06/2015                                   | 9990/000 | Opening Balance / Suspe | 13                                  | * |  |  |    | Payment to @homeliving Space  | RPH                                   |  | 202538117                           | Unknown |   | 480,000.00    |
| 27/07/2015                                   | 9990/000 | Opening Balance / Suspe | 0 1                                 |   |  |  |    | Foschini Retail Group @home   | RPH                                   |  | 202538117                           | Unknown |   | -480,000.00   |
| 20/08/2015                                   | 9990/000 | Opening Balance / Suspe | 41                                  |   |  |  |    | IB Transfer to Refund Loan    | RPH                                   |  | 202538117                           | Unknown |   | 242,000.00    |
| 15/12/2015                                   | 9990/000 | Opening Balance / Suspe | 206                                 | * |  |  |    | Transfer to 2015349025/1      | SRL                                   |  | 022682570                           | Unknown |   | 200,000.00    |
| 31/03/2016                                   | 9990/000 | Opening Balance / Suspe | 15                                  | * |  |  |    | Transfer to CSC - Johannes    | RPH                                   |  | 202538117                           | Unknown |   | 5,700,000.00  |
| 01/03/2018                                   | 9990/000 | Opening Balance / Suspe | 8                                   |   |  |  |    | Trf 2018060002/1 Source ?     | RPH                                   |  | 202538117                           | Unknown |   | -90,000.00    |
| 07/08/2018                                   | 9990/000 | Opening Balance / Suspe | 8117196                             |   |  |  |    | Swifambo Rail Leasing ?       | RPH                                   |  | 202538117                           | Unknown |   | 2,000.00      |
| TOTALS                                       |          |                         |                                     |   |  |  |    |                               |                                       |  |                                     |         |   | 6,800,440.62  |

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**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 31**

1. As a consequence of the conclusion of the sale of locomotives agreement between Leasing and PRASA (on or about the 11<sup>th</sup> May 2015) Leasing was compelled to conclude an agreement with the Department of Trade & Industry ("DTI") in terms whereof Leasing undertook to invest the sum of R921 052 632.00 in BEE enterprises in South Africa (although the agreement with DTI indicated that the enterprises should have been those involved in the rail industry) Leasing was advised that the DTI would permit the investing of funds in any BEE enterprise in SA on the basis that the relevant BEE criteria was present).
2. Arising from the foregoing Leasing agreed to make available funds to this entity i.e. by way of an "interest free" loan and which is repayable by no later than the expiry of a 10 year period from the date of each amount constituting the loan was advanced by Leasing to it.



**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")****NOTE 32**

1. Subsequent to Leasing concluding a subcontract agreement with Vossloh (for the sale of 70 locomotives) and without the knowledge of Leasing (and its consent) Vossloh paid to Mr M Mabunda / S Group an amount of approximately R75m
2. It is AM's contention that this amount should have been paid by Vossloh to Leasing (as some form of rebate) and according the Leasing liquidators need to recover this amount from Mr M Mabunda / the S Group.

**NOTES TO THE CM 100 STATEMENT OF AFFAIRS OF SWIFAMBO RAIL LEASING (PTY) LTD ("LEASING")**

**NOTE 33**

1. From time to time Siyaya Consulting Engineers was paid amounts totalling R7 243 773.00 – see **Annexure A** hereto.
2. AM bears no knowledge as to the reasons for these payments and accordingly disputes that Siyaya was entitled to these amounts – the only documents that have been located in regard to the alleged services rendered by Siyaya to Leasing are annexed hereto as **Annexures B1 – B11**.
3. In regard to the alleged scope of work (detailed in Annexure B4) AM disputes that the consulting services indicated therein were ever rendered by Siyaya to Leasing and accordingly the liquidators of Siyaya (one of whom is Muller who is a co-liquidator of Leasing should be called upon to investigate whether these services were rendered by Siyaya to Leasing).
4. In addition to the foregoing the Leasing liquidators should lodge a claim against the insolvent estate of Siyaya.

A

**SIYAYA GROUP**

| <b><u>NO</u></b> | <b><u>DATE</u></b> | <b><u>AMOUNT (ROUNDED OFF)</u></b> | <b><u>ACC NO THAT PAYMENT<br/>MADE FROM</u></b> |
|------------------|--------------------|------------------------------------|---|
| 1.               | 9/7/14             | R552 900.00                        | 70  |
| 2.               | 23/11/15           | R171K                              | 70  |
| 3.               | 25/1/16            | R230 739.00                        | 17  |

**SIYAYA CONSULTING ENGINEERS**

|     |          |             |                       |
|-----|----------|-------------|-----------------------|
| 4.  | 17/9/14  | R809 400.00 | 70                    |
| 5.  | 24/10/14 | R1.2M       | 70 REPAID ON 3/11/14? |
| 6.  | 4/12/14  | R735 300.00 | 70                    |
| 7.  | 29/6/15  | R346 401.15 | 70                    |
| 8.  | 30/6/15  | R601 317.47 | 70                    |
| 9.  | 4/8/15   | R162 226.06 | 70                    |
| 10. | 5/11/15  | R147 552.06 | 70                    |
| 11. | 23/11/15 | R322 557.37 | 70                    |
| 12. | 9/12/15  | R817 331.03 | 70                    |

**SIYAYA DB CONSULTING ENGINEERS**

|     |        |               |    |
|-----|--------|---------------|----|
| 13. | 6/5/14 | R1.147 049.38 | 70 |
|-----|--------|---------------|----|



Block C  
Riverview Office Park  
Janadel Avenue, Vorna Valley  
Midrand, 1682  
PO Box 3499  
Halfway House, Midrand, 1685  
Tel: +27 11 205 0014  
Fax: +27 86 770 9382  
Email: admin@sgroupco.co.za  
Website: www.sgroupco.co.za

## TAX INVOICE 009

Vat: 4770243345

Swifambo Rail Leasing  
Block A 1<sup>st</sup> Floor  
Central Park  
Number 400, 16<sup>th</sup> Road  
Midrand 1685

ORIGINAL TAX INVOICE NUMBER 008 – CONSULTING FEE , ADMINISTRATION & OTHER  
EXPENSES – LEE MING-DER & KLEINEIDAM CLAUS – MONTH AUGUST 2015

|              |            |
|--------------|------------|
| Total Amount | 292 874.70 |
| + 14% VAT    | 41 002.46  |

|               |                    |
|---------------|--------------------|
| Total Invoice | <b>R333 877.16</b> |
|---------------|--------------------|

Please remit this amount to our bank account in South Africa

Standard Bank, Branch Code: 009953 Bank Account Number: 201345897

Yours sincerely,

**Mr. Makhensa Mabunda**  
**Siyaya DB Engineers**  
**Date: 2015/08/24**



Block C  
Riverview Office Park  
Janadel Avenue, Vorna Valley  
Midrand, 1682  
PO Box 3499  
Halfway House, Midrand, 1685  
Tel: +27 11 205 0014  
Fax: +27 86 770 9382  
Email: admin@sgroupco.co.za  
Website: www.sgroupco.co.za

## TAX INVOICE 010

Vat: 4770243346

Swifambo Rail Leasing  
Block A 1<sup>st</sup> Floor  
Central Park  
Number 400, 16<sup>th</sup> Road  
Midrand 1685

ORIGINAL TAX INVOICE NUMBER 010 – CONSULTING FEE, ADMINISTRATION & OTHER  
EXPENSES – LEE MING-DER, KLEINEIDAM CLAUS & TEBOGO MMUSHI – MONTH  
SEPTEMBER 2015

|                      |                    |
|----------------------|--------------------|
| Total Amount         | 283 030.31         |
| + 14% VAT            | 39 624.24          |
| <b>Total Invoice</b> | <b>R322 654.55</b> |

Please remit this amount to our bank account in South Africa

Standard Bank, Branch Code: 009953 Bank Account Number: 201345897

Yours sincerely,

*M. Makhensa*

Mr. Makhensa Mabunda  
Siyaya DB Engineers  
Date: 2015/09/23



Block C  
Riverview Office Park  
Janadel Avenue, Vorna Valley  
Midrand, 1682  
PO Box 3499  
Halfway House, Midrand, 1685  
Tel: +27 11 205 0014  
Fax: +27 86 770 9382  
Email: admin@sgroupco.co.za  
Website: www.sgroupco.co.za

## TAX INVOICE 012

Vat: 4770243345

Swifambo Rail Leasing  
Block A 1<sup>st</sup> Floor  
Central Park  
Number 400, 16<sup>th</sup> Road  
Midrand 1685

ORIGINAL TAX INVOICE NUMBER 012- CONSULTING FEE , ADMINISTRATION & OTHER  
EXPENSES - LEE MING-DER - MONTH NOVEMBER 2015

|                      |                    |
|----------------------|--------------------|
| Total Amount         | 141 087.12         |
| + 14% VAT            | 19 752.20          |
| <b>Total Invoice</b> | <b>R160 839.32</b> |

Please remit this amount to our bank account in South Africa

Standard Bank, Branch Code: 009953 Bank Account Number: 201345897

Yours sincerely,

*M. Mabunda*

**Mr. Makhensa Mabunda**  
**Siyaya DB Engineers**  
**Date: 2015/12/01**

Directors: MSR Mabunda  
Reg. No: 2006/004006/07

B4

## **Scope of Works**

### **Consulting Services**

- Assist with the development of warehousing system and spare parts management; R 185 000;00
- Assist Swifambo and preparations on the general overview of warranty management system between Swifambo and PRASA and Swifambo and Vossloh as well as to align accordingly and protect Swifambo interest and risks management; R 250 000;00
- Assessment and development of recommended management information system and review of Vossloh Proposed system and recommendations to be recommended to PRASA, R 150 000,00.
- Provision of support and services for the maintenance management R 150000,00
- Provision of Train Driver Expert and assist Swifambo with the implementation of proper manuals, assistance with the commissioning and Testing over 1 year from October 2014. R 600 000.00
- Provision of Driver expert for the development of Train the Trainer program and manual and assist PRASA with the alignment of procedure manual for the operations handbook of the locomotive. R 500 000.00

**Total Estimated Costs R 1 835 000.00**

1125

BS

**Resources Costs from March 2015 Claus Klein Adam. Attach CV of**  
**R160 000, 00 a month**

- Provision of support and technical management as resources for the spares, warranty and overall management. Services for Claus to Swifambo from March 2015 till March 2017
- Training and capacity building of Swifambo Maintenance Team
- Supporting Maintenance manager for the PRASA maintenance Contract



B6

Block H Riverview Office Park  
Janadef Avenue Vorna Valley  
Midrand 1682  
PO Box 3499  
Halfway House Midrand 1685  
Tel: +27 11 205 0012  
Fax: +27 86 560 0873  
Email: admin@sgruopco.co.za  
Website: www.sgruopco.co.za

**TAX INVOICE 001**

Vat: 4770243345

Swifambo Rail Leasing  
Block A 1<sup>st</sup> Floor  
Central Park  
Number 400, 16<sup>th</sup> Road  
Midrand 1685

ORIGINAL TAX INVOICE NUMBER 001 – SWIFAMBO LOCALIZATION OF  
LOCOMOTIVES AND MAINTENANCE CONTRACT

January to April 2014 @R200 000.00 excl (vat) 800 000, 00

## Transportation and Accommodation Costs

## Applicable payment

|   |            |
|---|------------|
| - 2 trips Spain                               | 140 000,00 |
| - Accommodation : January--R17 594            | 44 183,67  |
| - February--R 14589.67                        |            |
| - March -- R 12 000                           |            |
| Transport Trains and Taxis (600 euros)        | 9000, 00   |
| - Overseas Dinners, Lunch January--March 2014 | 13 000,00  |

1 006 183,67

+ 14% VAT

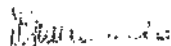
140 865, 71

Total Invoice

1 147 049, 38

Please remit this amount to our bank account in South Africa  
Standard Bank, Branch Code: 001155 Bank Account Number: 061103241

Yours sincerely,



Mr Makhensa Mabunda  
Siyaya DB Engineers  
Date: 2014/04/01

206183.67  
25320.80 VAT.  
180862.87

PROCESSED

Siyaya Consulting Engineers (Pty) Ltd

P.O. Box 3499  
Halfway House  
Midrand  
1685  
VAT NO. 4770243345

71 Courtday Crescent  
Randjesfontein  
Midrand  
1682

137

Swifambo Rail Leasing (pty) Ltd  
Block A 1st Floor  
Central Park  
Number 400 16th Road  
Midrand 1685

Tax Invoice

23/07/15

1

INA10201

| Account | Your Reference               | Tax Exempt | Sales Code |            |       |        |            |
|---------|------------------------------|------------|------------|------------|-------|--------|------------|
| SRL01   | 008                          | N          |            | Exclusive  |       |        |            |
| Code    | Description                  | Quantity   | Unit       | Unit Price | Disc% | Tax    | Nett Price |
| 1000017 | Afro4000 maintenance project |            |            |            |       | 14.00% | 142,303.56 |

Received in good order  
Signed \_\_\_\_\_

Date \_\_\_\_\_

|                  |            |
|------------------|------------|
| Sub Total        | 142,303.56 |
| Discount @ 0.00% | 0.00       |
| Amount Excl Tax  | 142,303.56 |
| Tax              | 19,922.50  |

Randjesfontein  
Midrand  
1682

Siyaya DB Engineers (Pty) Ltd  
P.O. Box 3489  
Halfway House  
Midrand  
1685  
VAT NO. 4770243345

Tax Invoice

Date 01/09/14

Page 1 *158*

Document No INA10114

Swifambo Rail Leasing (pty) Ltd  
Block A 1st Floor  
Central Park  
Number 400 16th Road  
Midrand 1685

Deliver to

PAID

| Account | Your Reference | Tax Exempt | Tax Reference | Sales Code | Exclusive |
|---------|----------------|------------|---------------|------------|-----------|
| RL01    |                | N          |               |            |           |

| Description             | Quantity | Unit | Unit Price | Disc% | Tax    | Nett Price |
|-------------------------|----------|------|------------|-------|--------|------------|
| 1009100 Consulting fees |          |      |            |       | 14.00% | 710.000.00 |

Received in good order

Signed \_\_\_\_\_ Date \_\_\_\_\_

© Softline (Pty) Ltd

|                  |            |
|------------------|------------|
| Sub Total        | 710.000.00 |
| Discount @ 0.00% | 0.00       |
| Amount Excl Tax  | 710.000.00 |
| Tax              | 89.400.00  |
| Total            | 899.400.00 |



# SIYAYA

db Consulting  
Engineers

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Janadel Avenue Vorna Valley  
Midrand 1682  
PO Box 3499  
Halfway House Midrand 1685  
Tel: +27 11 205 0012  
Fax: +27 86 560 0873  
Email: admin@sgroupco.co.za  
Website: www.sgroupco.co.za

## TAX INVOICE 003

Vat: 4770243345

B9

Swifambo Rail Leasing  
Block A 1<sup>st</sup> Floor  
Central Park  
Number 400, 16<sup>th</sup> Road  
Midrand 1685

**ORIGINAL TAX INVOICE NUMBER 003 - SWIFAMBO LOCALIZATION OF  
LOCOMOTIVES AND MAINTENANCE CONTRACT**

July to September 2014 @R200 000.00 excl. (vat)

600 000, 00

Innotrans and Spain Flights and Hotel Accommodation  
( 21 September till 3 October 2014)  
Transportation and Accommodation Costs

110 000.00 A

Total Amount

710 000.00

+ 14% VAT

99 400.00

Total Invoice

809 400.00  
=====

Please remit this amount to our bank account in South Africa  
Standard Bank, Branch Code: 009953 Bank Account Number: 201345897

Yours sincerely,

*Mabunda*

Mr Makhensa Mabunda  
Siyaya DB Engineers  
Date: 2014/09/10

**PAID**

B10



Block C  
Riverview Office Park  
Janadel Avenue, Vorna Valley  
Midrand, 1682  
PO Box 3499  
Halfway House, Midrand, 1685  
Tel: +27 11 205 0014  
Fax: +27 86 770 9382  
Email: admin@sgroupco.co.za  
Website: www.sgroupco.co.za

**TAX INVOICE 004****Vat: 4770243345**

**Swifambo Rail Leasing**  
**Block A 1<sup>st</sup> Floor**  
**Central Park**  
**Number 400, 16<sup>th</sup> Road**  
**Midrand 1685**

**ORIGINAL TAX INVOICE NUMBER 004 – SWIFAMBO LOCALIZATION OF LOCOMOTIVES AND MAINTENANCE CONTRACT**

|  |                   |
|--|-------------------|
| October 2014 to December 2014 @R200 000.00 excl. (vat) | 600 000.00 /      |
| Transportation and Accommodation Costs                 | 45 000.00         |
| Total Amount   | 645 000.00        |
| + 14% VAT.   | 90 300.00         |
| <b>Total Invoice</b>                                   | <b>735 300.00</b> |

Please remit this amount to Mabunda M.S. bank account in South Africa  
NedBank, Branch Code: 198765 Bank Account Number: 1057142697

Yours sincerely,

**Mr. Makhensa Mabunda**  
**Siyaya DB Engineers**  
**Date: 2014/12/02**

Directors: MSR Mabunda; VH Mabunda  
Reg. No.: 2006/004006/07



# SIYAYA

*Rail Solutions*

Block H  
Riverview Office Park  
Vomori Valley  
Midrand 1685  
PO Box 3499  
Halfway House  
Tel: +27 11 205 0012  
Fax: +27 86 560 0873

1311

## TAX INVOICE 001

Vat: 4710258312

Swifambo Rail Leasing  
Block A 1<sup>st</sup> Floor  
Central Park  
Number 400, 16<sup>th</sup> Road  
Midrand 1685  
Vat No. 4710263106

ORIGINAL TAX INVOICE NUMBER 001 – SWIFAMBO – AFRO4000 MAINTENANCE PROJECT

September - November 2014 @R2 837.21per hr. excl (vat)

(215 hours)

R610 000.45

Admin Cost (Travel, Office space etc.)

R210 000.63

Total excl. VAT

R820 000.08

+ 14% VAT

R114 800.06

= Total Invoice

R934 800.14

Please remit this amount to our bank account in South Africa

Standard Bank, Branch Code: 001155 Bank Account Number: 061103799

Yours sincerely,

Mr H.G. Hlomane  
Siyaya Rail Solutions  
Date: 2015/01/27

# DERAILED

*A report on an investigation into allegations of maladministration relating to financial mismanagement, tender irregularities and appointment irregularities against the Passenger Rail Agency of South Africa (PRASA)*

*Report No: 3 of 2015/16*



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## Executive Summary

*"It is because procurement so palpably implicates socio-economic rights that the public has an interest in it being conducted in a fair, equitable, transparent, competitive and cost-effective manner."*

Allpay Consolidated Investment Holdings (PTY)Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC)

- (i) *"Derailed"* is my report as Public Protector issued in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 and section 8(1) of the Public Protector Act 23 of 1994.
- (ii) The report communicates my findings and the appropriate remedial action I am taking in terms of the remedial power given by section 182 (1) (c) of the Constitution, following the investigation of 37 complaints initially lodged by the South African Transport and Allied Workers Union (SATAWU) in 2012 and later pursued by the National Transport Movement (NTM), alleging maladministration and related improper conduct involving procurement irregularities, conflict of interest, nepotism and human resources mismanagement, including victimization of whistle-blowers, by the Group Chief Executive Officer (Mr Montana) and other functionaries at the Passenger Rail Agency of South Africa (PRASA). PRASA is an important and, I believe, strategic organ of state. Its handling of public finances and procurement of goods and services has implications for efficient and effective public transport delivery in compliance with section 195 of the Constitution. Section 195 of the Constitution provides, among others, a requirement that:

- 
- (iii) *"Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*
- a. A high standard of professional ethics must be promoted and maintained.*
  - b. Efficient, economic and effective use of resources must be promoted...."*
- (iv) As a public infrastructure provider, PRASA also has implications for the economy. A state owned enterprise with an estimated total net value of assets over **R19 billion** as at 2010/2011, PRASA is an organ of state listed as a National Government Business Enterprise in terms of Schedule 3B of the Public Finance Management Act 1 of 1999 (PFMA). PRASA has four subsidiaries, namely: **Metrorail**, operating commuter rail services in urban areas; **Shosholoza Meyl** operating regional and intercity rail services; **Autopax**, operating regional and intercity coach services; and **Intersite**, managing the corporate property portfolio. PRASA reported an accumulated loss of **R4.4 billion** for 2010/12.
- (v) PRASA reported an accumulated loss of **R1 billion** for 2014/2015 financial year. The budget allocation from Government for PRASA for the MTEF period 2015/2016 to 2017/2018 is **R17.2 billion**. The 37 cases reported by the Complainant mostly deal with alleged procurement irregularities with the amount involved being more than **R2.8 billion**. As the report was being finalized further allegations of procurement irregularities at PRASA were reported.
- (vi) I must indicate upfront that SATAWU's attempt to withdraw its complaint is discomfoting particularly because PRASA management was initially reluctant to cooperate, using the withdrawal as a basis for questioning this office's continuation with the investigation. Allegations of victimisation of whistle-blowers, though not yet adjudicated, do add to the concern. There is an indication, for example, that Mr Craig Nte may have suffered an occupational detriment after whistle-blowing, while a

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member of the Executive of SATAWU which was later deposed followed by SATAWU's inexplicable attempt to withdraw the matter. His matter is dealt with in the part of this report dealing with Human Resources (HR) complaints relating to arbitrary suspensions and dismissals.

- (vii) During the course of the investigations various allegations regarding victimisation of current and former employees of PRASA were raised by the Complainant and some Executives. I have however decided to defer this issue to be adjudicated upon in volume 2 of this report.
- (viii) PRASA is controlled by a PRASA Board of Control (PRASA Board), chaired by a Non-Executive Chairman, and which in terms of section 49(2) (b) of the PFMA is its Accounting Authority. The Group Chief Executive Officer (GCEO) has delegated authority in terms of *PRASA Powers and Authority of the Board and Delegation of Authority*.
- (ix) The essence of the complaints was that Mr. Montana, then Group Chief Executive Officer (GCEO) of PRASA, and/ or PRASA, improperly awarded tenders; appointed service providers without following proper tender processes and allowed maladministration, corruption, conflict of interest and financial mismanagement, in the procurement of goods and services and managed human resources irregularly, including nepotism and the improper handling of whistle-blowers. NTM (the Complainant) specifically alleged that:
  - 1. PRASA improperly cancelled all contracts for cleaning services on 15 March 2012, and subsequently improperly appointed Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services on a contract valued above

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the R500 000 threshold without advertising and in contravention of the Treasury Regulations and Supply Chain Management (SCM) Policies of PRASA;

2. Reakgona Commercial and Industry Hygiene was awarded a contract due to its association with the GCEO's close business associate, Mr. Isaac Modiselle;
3. PRASA appointed Sidas Security Company improperly at a higher rate on tender 525/2010/GAU/PS to replace National Force Security on the instructions of the GCEO but improperly terminated the contract 9 months after its appointment;
4. Proper procurement processes were not followed in the appointment of Vimtsire Security Services Company which allegedly failed to meet the minimum requirements for appointment. Royal Security was also allegedly appointed on the same tender in 2009 and allegedly billed PRASA R2. 8 million instead of the agreed amount of R2. 5 million per month;
5. The appointment of Royal Security on the tender concerned was irregular, as its original contract WM/FIN/CA/7/24/06 was terminated by PRASA due to its underperformance;
6. An amount of R600 000, alleged to have been improperly authorised by PRASA's Head: Corporate Services, was improperly paid in advance to Enlightened Security for a contract for the Tshwane Region prior to its appointment on tender TSH/RISK/436/10/2008;

- 
7. A Dark Fibre and Integrated Communication Systems tender amounting to R800 million was improperly awarded to Siemens nationally during the financial year 2009/2010 whereas the advertisement was for a narrower reach;
  8. A tender for the installation of high speed passenger gates worth R800 million was awarded to a certain contractor in 2009/2010 for the Doornfontein station but it was later improperly extended to other stations nationally without following proper tender processes;
  9. PRASA improperly incurred an upfront payment, to a developer of the City Mall for the construction of an underground train station (Bridge City Project), without going on a bidding process and without proper authorisation during the periods 2008 to 2010;
  10. PRASA improperly appointed a media company to produce *Hambanathi* during 2008/2009;
  11. A PRASA Board member, Mr Vusi Twala, was improperly awarded a tender by Intersite, a subsidiary of PRASA, to provide CCTV cameras;
  12. A Change Management Consultant, Mr Ezra Ndwandwe, was appointed at a cost of R2 million without following proper procurement processes during 2008/2009;
  13. The GCEO improperly awarded a tender amounting to an estimated R10 million to the erstwhile CEO of the South African Rail Commuters Corporation (SARCC), Mr Edwin Lekota, for the development of a contingency emergency

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preparedness programme for Metrorail without following proper procurement processes;

14. Umjanji Consortium, a company formed and incorporated after the closing date for submission of tenders on tender HO/CA/739/02/2010, was improperly awarded a tender on Media Advertising and Broadcasting Concession Agreement in March 2011 without following proper procurement processes in contravention of the PRASA Supply Chain Management Policies;
15. The GCEO improperly awarded a contract for the provision of professional advisory service on the signalling project to a friend, Mr Makhensa Mabunda of Siyaya DB, who did not possess the necessary skills and experience and without following proper procurement processes;
16. A tender amounting to R22 million for the Park Station Development Framework was allegedly not advertised but recommended for approval to be awarded to a contractor named ARUP, which was associated with Dr Gasa, a member of the PRASA Board, during November 2009;
17. Between the years 2008 and 2010, PRASA engaged construction companies in the 2010 Soccer World Cup Station Building Project, the Capex Project and renovation of existing stations without following proper procurement processes and an overspending of R2 billion amounting to fruitless and wasteful expenditure was incurred in addition to the budgeted amount of R3 billion;
18. During January 2010, Autopax, a subsidiary of PRASA, lost buses during theft and PRASA failed to pursue an investigation into the matter but instead replaced the buses at a cost of R2.8 million;

- 
19. In April 2010, Autopax concluded an irregular security contract with Futuris Guarding (PTY) amounting to R54 337.20 per month;
20. PRASA was delaying to pay Rasakanya Builders, the service provider to PRASA Corporate Real Estate Solutions (PRASA Cres), and has improperly served a notice of termination of the contract, thereby leaving 36 employees of Rasakanya Builders without pay for services rendered;
21. The GCEO/PRASA incurred irregular and/or fruitless and wasteful expenditure relating to the following transactions: upfront payment of an amount of R80 million for the FIFA World Cup sponsorship without proper approval; budget and/or allocated funds which resulted in fruitless and wasteful expenditure; and to this end, the GCEO invested funds with FIFA based on the agreement that PRASA would recoup the expenditure through the sales of tickets to commuters/soccer fans and it is asserted that the money was never recovered;
22. Brand Leadership was awarded the new PRASA branding contract to the value of R9 million. However, the contract amount was improperly inflated to R19 million, thereby resulting in irregular/fruitless and wasteful expenditure of R10 million;
23. During the period 2009/2010, the GCEO allegedly requested R1 billion funding from the National Treasury on the pretext that it would be used during the taking over of operations of Shosholozza Meyl. It is alleged that National Treasury paid R500 million, and nevertheless, the funds were never used for their intended purpose;

- 
24. PRASA Operational Expenditure(OPEX) budget was improperly overspent by R2.2 billion without the approval of the PRASA Board during the period 2009/2010;
25. PRASA Head Office staff vacated its Offices at Jorissen Building 14 months before the expiry of the lease agreement but PRASA continued to pay rental, which constituted fruitless and wasteful expenditure;
26. After vacating Jorissen Building, PRASA acquired Umjantshi House Building to accommodate its Head Office staff without following proper procurement processes and without a proper budget approval;
27. The GCEO instructed PRASA Management at the Intersite Building in Woodmead to vacate the premises 20 months prior to the expiry of the lease agreement, but continued to pay for the lease, thereby constituting fruitless and wasteful expenditure;
28. The GCEO dismissed five Senior Executives unlawfully during the years 2008 and 2011 and the CCMA ordered their reinstatement, which he rejected and instead compensated them with an estimated R5 million, which constituted fruitless and wasteful expenditure. The Group Executive HR was replaced improperly by the GCEO's uncle, Mr Mphefo Ramutloa, without proper recruitment processes being followed;
29. During February 2010, an unlawful electronic funds transfer (EFT) was uncovered in a forensic report by Deloitte, in which R8.1 million was fraudulently transferred in the Durban and Tshwane Regions but no action was taken against those implicated in the transactions;



- 
30. During the period 24 to 27 September 2009, Mr Montana undertook a leisure trip in a Blue Train to Cape Town together with 10 female companions and returned in a South African Airways (SAA) flight costing PRASA R17 000.00. The total cost of the trip was allegedly an estimated R170 000.00 which constituted fruitless and wasteful expenditure;
31. During 2008/2009, the Executive Corporate Affairs Manager, Mr P Mabe, allegedly received salaries from PRASA despite having left its service and Mr Montana allegedly misled the Exco and the PRASA Board that the employee was not on PRASA's payroll.
32. PRASA disregards the labour relations processes and conditions of employment when dealing with labour issues thereby costing the entity enormous amounts of money that resulted in fruitless and wasteful expenditure. To this end it is alleged that:
- a) Mr Stephen Ngobeni, Mr Montana's cousin in the employment of PRASA, was improperly appointed as a Training Contractor to provide training services on the handling of People with Disability. He was later allegedly improperly transferred without a disciplinary process being instituted against him; and
  - b) Mr Montana unlawfully engages yearly in a series of suspending employees perpetually with payment of salaries costing PRASA an estimated R3.35 million in fruitless and wasteful expenditure.

---

33. The Complainant further raised allegations of conflict of interests relating to the following members of the PRASA Board:

- a) A member of the PRASA Board, Dr Bridgette Gasa, who is also a Director of ARUP, a company alleged to be contracted to provide advisory services to PRASA, and a Director in another company that is also providing consultancy services to PRASA, is benefiting improperly as her involvement in these companies while serving as a member of the PRASA Board constitutes a conflict of interest;
- b) The Chairman of the PRASA Board, Mr Sfiso Buthelezi is alleged to be the Chief Executive Officer of Makana, a subsidiary of Cadiz, a company allegedly providing advisory service to PRASA on the Rolling Stock Recapitalisation Project. His alleged involvement is asserted to constitute a conflict of interest; and
- c) The wife of Mr Bushy Boshielo was appointed as a General Manager of Autopax without following proper recruitment processes during Mr Boshielo's tenure as a member of PRASA Board.

34. During 2008/2009, Mr Montana improperly appointed Mr Chimanda as a Special Advisor at PRASA at a cost of R2 million, without following proper recruitment processes and in contravention of the PRASA Recruitment Policy.

35. About 17 tenders/contracts collectively exceeding R2.8 billion were specifically identified by the Complainant for investigation of supply chain irregularities, including non-competitive processes, cronyism, scope creep, cost overruns, overpayment and fruitless and wasteful expenditure.

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- (x) Despite each complaints being a distinct matter worthy of a separate investigation, the 37 complaints were investigated collectively thus forming one systemic investigation. The following issues were identified in respect of each complaint with a view to focusing the investigation:
1. Did PRASA improperly extend, to other stations nationally, a tender for the installation of high speed passenger gates worth R800 million to Siyangena Technologies in 2009/2010 for the Doornfontein station which was later extended to other stations nationally?
  2. Did PRASA improperly extend the appointment of Siemens tender for the Dark Fibre and Integrated Communication Systems amounting to R800 million to other stations nationally, during the financial year 2009/2010 when it was only advertised for Gauteng?
  3. Did PRASA improperly terminate all contracts for cleaning services and was the subsequent appointment of Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services improper?
  4. Did PRASA improperly appoint Sidas Security on a security tender in replacement of National Force Security on the GCEO's instruction?
  5. Did PRASA improperly appoint of Vimtsire Security Services, which failed to meet the minimum requirements for appointment on tender number 525/2010/GAU/PS?

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6. Did PRASA improperly appoint and pay Royal Security R2.8 million instead of R2.5 million for security services?
  7. Did PRASA improperly advance a payment of R600.000.00 to Enlightened Security?
  8. Did PRASA improperly appoint a media company to produce *Hambanathi Magazine* during 2008/2009?
  9. Did PRASA improperly appoint Mr Ezra Ndwandwe, on a Change Management Consultancy at a cost of R2 million in 2008/2009?
  10. Did PRASA improperly increase the scope and value of marketing and communications tender number HO/M&C/305/07/2009 awarded to Brand Leadership for R29 million?
  11. Did the GCEO improperly appoint Mr Edwin Lekota on a tender amounting to R10 million for the development of a Contingency Emergency Preparedness Programme for Metrorail?
  12. Did PRASA improperly award a tender to Umjanji Consortium, for the media, advertising and broadcasting concession agreement?
  13. Did the GCEO improperly award a contract for the provision of professional advisory service on the signalling project to a friend, Mr Makhensa Mabunda of Siyaya DB, who did not possess the necessary skills and experience and without following proper procurement processes?

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14. Did PRASA improperly award a tender in the amount of R22 million for Park Station Development Framework to ARUP, a company associated with its board member?
  15. Did PRASA improperly fail to investigate the theft of the buses of its subsidiary, Autopax?
  16. Did PRASA improperly award a security services contract to Futuris Guarding in April 2010 at Autopax City to City for a total amount of R231 204.00?
  17. Did PRASA improperly terminate the Rasakanya Builders contract on 1 November 2012?
  18. Did the GCEO/PRASA improperly implement an upfront payment in the amount of R 80 million for the FIFA World Cup sponsorship without proper approval, budget and/or allocated funds thus constituting to fruitless and wasteful expenditure?
  19. Did PRASA improperly incur an over expenditure of R2.2 billion on PRASA's operations budget in 2009/2010 financial year?
  20. Did PRASA fail to spend a subsidy of R500 million received for Shosholoza Meyl for the 2009/2010 period and not use it for its intended purpose?
  21. Did PRASA incur rental expenditure for Jorissen Building after vacating it 20 months before the expiry of its lease resulting in fruitless and wasteful expenditure?

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22. Did PRASA improperly incur rental expenditure on Intersite Building after vacating the building 10 months before the expiry of its lease resulting in fruitless and wasteful expenditure?
  23. Did the GCEO improperly terminate contracts of Executives resulting in fruitless and wasteful expenditure amounting to an estimated R5 million?
  24. Did the GCEO improperly suspend employees resulting in labour dispute settlements amounting to R3.35 million thus constituting fruitless and wasteful expenditure?
  25. Did PRASA Board Chairman, Mr Sfiso Buthelezi, improperly fail to disclose and manage a conflict of interest arising from his interest in Makana, a subsidiary of Cadiz, a company allegedly providing advisory services to PRASA on the Rolling Stock Programme?
  26. Did Dr Bridgette Gasa, a PRASA Board member improperly fail to disclose and manage a conflict of interest arising from her interest in ARUP and her directorship in another company providing consultancy services to PRASA?
  27. Did the GCEO improperly appoint Mr Joel Chimanda at a cost of R2 million as a Special Advisor?
  28. Did PRASA improperly replace the Group Executive HR with the GCEO's uncle, Mr Mphefo Ramutloa without following proper recruitment process?

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29. Did PRASA improperly fail to take disciplinary action against staff members allegedly involved in fraudulent Electronic Funds Transfers amounting to R8.1 million?
  30. Did Mr. Montana improperly transfer Mr Stephen Ngobeni without disciplinary process being followed for his alleged irregular appointment of a Training Contractor to provide training services on the handling of People with Disability thereby amounting to maladministration?
  31. Did PRASA improperly implement an upfront payment to a developer of the City Mall for the construction of an underground train station on the Bridge City Project without proper authorisation during the period 2008 to 2010?
  32. Did PRASA improperly award a CCTV cameras tender to Mr Vusi Twala?
  33. Did PRASA improperly engage various construction companies in respect of 2010 Soccer World Cup Projects?
  34. Did PRASA improperly procure Umjantshi House from Transnet in September 2009 by flouting supply chain management prescripts?
  35. Did PRASA improperly appoint Ms Shiela Boshielo, the wife of Mr. Bushy Boshielo, the former member of the PRASA Board as General Manager of Autopax?
  36. Did Mr Montana improperly take a Blue Train trip to Cape Town together with 10 female companions during the period between 24 to 27 September 2009 and

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return by SAA flight at an estimated cost of R170 000.00 and did such amount to fruitless and wasteful expenditure?

37. Did PRASA improperly pay a salary to Mr Mabe, former Executive Corporate Affairs Manager during 2008/2009, after his resignation from PRASA amounting to fruitless and wasteful expenditure?
38. Although the investigation covered all abovementioned issues, the findings on seven (7) issues will be made in a follow up report due to failure by PRASA to provide certain requested documents and information.
- (xi) The investigation included the sourcing and analysis of corporate documents pertaining to the impugned transactions, interviews and meetings with selected witnesses and research into the regulatory framework, which includes the Constitution, laws, Treasury Regulations and corporate policies.
- (xii) In arriving at the **findings**, I have been guided by the standard approach adopted by the Public Protector South Africa as an institution, which simply involves asking: What happened? What should have happened? Is there a discrepancy between what happened and what should have happened? If there is a discrepancy, does the conduct amount to improper conduct or maladministration? If there was indeed improper conduct or maladministration, what would be the appropriate remedial action?
- (xiii) As is customary, the "what happened" enquiry is a factual question settled on the assessment of evidence and making a determination on a balance of probabilities. To arrive at a finding on what happened, the investigation, like all others, relied on oral and documentary submissions by the Complainant and PRASA management,



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principally represented by the GCEO, Mr Montana. Interviews/meeting held primarily to clarify evidence already gathered, were also held with the Complainant, Mr Montana assisted by his lawyers and the PRASA Board. The question regarding what should have happened on the other hand, relates to the standard that the conduct in question should have complied with.

- (xiv) In determining the standard that the GCEO and other functionaries at PRASA should have complied with, to avoid improper conduct or maladministration, I was guided, as is customary, by the Constitution, national legislation and applicable policies and guidelines, including corporate policies and related regulatory instruments. Key among corporate policies, that informed the investigation was the *PRASA Procurement and Supply Chain Management Policy (SCM Policy)* and the *Delegation of Authority* document. The SCM Policy approved in 2009 thus preceding the matters investigated, is very comprehensive. It commences with defining supply chain management and its purposes.
- (xv) The SCM Policy affirms and commits to uphold section 217 of the Constitution setting the vision behind it and standards to be upheld in state procurement or Supply Chain Management (SCM) processes, which vision includes ensuring a fair, equitable, transparent, competitive and cost-effective public procurement system. The SCM Policy also roots itself in Treasury Regulations regulating SCM. It further outlines the steps to be taken in pursuit of the procurement of goods and services within PRASA covering Demand Management, Contract Administration, Material Management, Disposal Management, Procurement Strategy and Acquisition Management. Also regulated are permissible deviations, which include urgency and single source providers. The policy also deals with management of conflict of interest. The investigation was also guided by Human Resources policies, to the extent that some allegations involved the appointment, promotion and termination of employees,

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including executives. In this regard section 195 of the Constitution setting a standard for all conduct in state affairs was relied on to a great extent. To the extent that there was an allusion to whistle-blower victimization, I took into account the provisions of the Protected Disclosures Act 26 of 2000.

- (xvi) At the commencement of the investigation, the allegations were brought to the attention of PRASA management through the GCEO, Mr Montana, the Chairman of the PRASA Board and then former Board. Towards the final stages, the new Board was engaged, including sharing of provisional findings with it and enlisting its support with regard to missing or conflicting information in the management submissions.
- (xvii) All information and evidence gathered during interactions with PRASA management and complainants were taken into account in an effort to reconstruct what happened and if what happened was in line with the rules. Parties implicated by the evidence gathered by the time a Provisional Report had been prepared, were sent notices under section 7(9) of the Public Protector Act alerting them of evidence implicating them and the possibility of adverse findings. A discretionary notice was also sent to the Complainant alerting them to allegations not supported by evidence. In all cases, responses were solicited and affected parties given an opportunity to provide further information and to engage via meetings.
- (xviii) I must record that the investigation team and I had immense difficulty piecing together the truth as information had to be clawed out of PRASA management. When information was eventually provided, it came in drips and drabs and was incomplete. Despite the fact that the means used to obtain information and documents from PRASA included a subpoena issued in terms of section 7(4) of the Public Protector Act, many of the documents and information requested are still outstanding. Until about three weeks before issuing the report, PRASA was still being asked for

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outstanding documents and information on contracts awarded and some staff appointments.

- (xix) I must also indicate that the authenticity of many of the documents submitted by PRASA management as evidence, principally relating to procurement, is doubtful. Many of the memoranda for approval of tenders and related documents submitted by PRASA management, were undated, unsigned and, at least in one case, incomplete. Examples in this regard include documents relating to the contracting of Vimtsire Security, ARUP and Enlightened Security Services. In some of the cases, had this been an audit, only a disclaimer would be a legitimate audit outcome.
- (xx) After unsuccessfully asking the new PRASA Board and its Chairman to assist, I decided it would be in the public interest to proceed with the report and defer unanswered questions to second report. The second report has also been necessitated by further allegations of financial impropriety, corruption and tender irregularities at PRASA, which came too late to be investigated and incorporated in this report. The issues covered in the original 37 complaints that have been deferred to the second report are the following:
1. Did PRASA improperly implement an upfront payment to a developer of the City Mall for the construction of an underground train station on the Bridge City Project without proper authorisation during the period 2008 to 2010?
  2. Did PRASA improperly award a CCTV cameras tender to Mr Vusi Twala?
  3. Did PRASA improperly engage various construction companies in respect of 2010 Soccer World Cup projects?
  4. Did PRASA improperly procure Umjantshi House from Transnet in September 2009 by flouting supply chain management prescripts?

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5. Did PRASA improperly appoint Ms Shiela Boshielo, the wife of Mr. Bushy Boshielo, the former member of the PRASA Board as General Manager of Autopax?
  6. Did Mr Montana improperly take a Blue Train trip to Cape Town together with 10 female companions during the period between 24 to 27 September 2009 and return by SAA flight at an estimated cost of R170 000 and did such amount to fruitless and wasteful expenditure?
  7. Did PRASA improperly pay a salary to Mr Mabe, former Executive Corporate Affairs Manager during 2008/2009, after his resignation from PRASA amounting to fruitless and wasteful expenditure?
- (xxi) What is encouraging is that both Mr Montana, and the Board have welcomed the Provisional Report which did not differ vastly from this final report and committed themselves to implementing the remedial action once the report is made final. For this, I am grateful as such conduct is line with the constitutional ideal regarding the relationship between the Public Protector and organs of state as envisaged in section 181 of the Constitution. Section 181 enjoins organs of state to assist, and protect the Public Protector and other institutions supporting constitutional democracy to ensure their effectiveness, among other things.
- (xxii) After a careful examination of the evidence and information obtained during the investigation and the regulatory framework setting the standard that should have been upheld by PRASA , my findings are the following:
1. **Regarding PRASA's alleged improper extension to other stations nationally, a tender for the installation of high speed passenger gates worth R800 million to Siyangena Technologies in 2009/2010 initially advertised for the Doornfontein station, Gauteng:**

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- a) The allegation that PRASA improperly extended the scope of a tender awarded to Siyangena Technologies for the supply and installation of high speed passenger gates at Doornfontein station to a national scope is substantiated. However, the total amount of the contract was **R1.95 billion** and not **R800 million** as alleged.
  - b) The scope of a tender for high speed passenger gates advertised for two train stations, Doornfontein and Nasrec in Gauteng was awarded by the PRASA Board to Siyangena Technologies, and later extended to cover additional stations, on the basis of a closed bidding process with those that had bid for the two Gauteng stations.
  - c) The extension of the tender scope beyond what had been advertised was in contravention of paragraph 11.3.2 of PRASA SCM Policy, section 38 of the PFMA, PPPFA and section 217 of the Constitution requiring fair, equitable, transparent, competitive and cost-effective bidding processes.
  - d) The extension of Siyangena Technologies' contract to more stations than were specified in the tender advertisement accordingly constitutes maladministration and improper conduct.
2. **Regarding PRASA's alleged improper extension of a tender awarded to Siemens for the Dark Fibre and Integrated Communication Systems amounting to R800 million to additional stations nationally, during the financial year 2009/2010 when it was only advertised in Gauteng:**

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- a) The allegation that PRASA improperly extended the scope and value of a tender awarded to Siemens for Dark Fibre and Integrated Communication Systems beyond what was advertised and approved by the Corporate Tender Procurement Committee (CTPC) with the effect of substantially increasing the contract price is substantiated. However, the total contract amount was **R256 million** and not **R800 million** as alleged.
  - b) PRASA improperly extended, to the Durban (KZN) and Western Cape regions, a tender for the design, supply and installation of the Dark Fibre and Integrated Communication Systems, which had been advertised and won by Siemens for the Wits and Pretoria region, without following an open and competitive tender process. This was in contravention of paragraph 11.3.7. of PRASA SCM Policy and section 217 of the Constitution, among others.
  - c) The extension of the scope and price of the design, supply and installation of the Dark Fibre and Integrated Communication Systems tender to other regions accordingly constitutes maladministration and improper conduct.

**3. Regarding PRASA's alleged improper termination of all contracts for cleaning services and subsequent irregular appointment of Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services:**

- (a) The allegation that PRASA improperly terminated the contracts of seven (7) cleaning companies and improperly replaced them with Reakgona Commercial

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and Industry Hygiene (Reakgona) and Katanga Cleaning Services (Katanga), is substantiated.

- (b) The contracts of 7 cleaning companies were summarily terminated by Mr Montana on 14 March 2012 in contravention of paragraph 13.1 of the contracts between PRASA and the cleaning companies, which prescribes a 48 hour notice to be given to the defaulting party to remedy a breach. He replaced them with Reakgona and Katanga on 15 March 2015, whose services were procured without a transparent and competitive process.
- (c) The conduct of Mr. Montana with regard to the summary termination of the contracts of 7 cleaning companies is also inconsistent with the provisions of the PRASA SCM Policy, the PFMA, PPPFA and section 217 of the Constitution.
- (d) PRASA's summary termination of the contracts of 7 cleaning companies and their irregular replacement with Reakgona and Katanga, accordingly constitutes maladministration, abuse of power and improper conduct.
- (e) The failure by Mr Montana to afford the 7 cleaning companies an opportunity to explain themselves and possibly remedy the breach cannot be considered to be in line with section 33 of the Constitution and the provisions of PAJA.

**4. Regarding PRASA's alleged improper appointment of Sidas Security on a security tender in replacement of National Force Security on the GCEO's instruction:**

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- a) The allegation that Sidas Security was improperly appointed to replace National Force Security is substantiated. However, no evidence could be found to prove that the improper appointment was done on Mr Montana's instructions.
  - b) The month to month contract of National Force Security was terminated on 15 April 2009 and awarded to Sidas Security for **R3 711 197.72**, by Mr Chris Moloi without a tender process or competitive quotations being sought.
  - c) The appointment was in contravention of paragraph 11.3.5 of the PRASA SCM Policy and paragraph 4.7.5.1 of the National Treasury SCM Guidelines of 2004.
  - d) PRASA's failure to take action against the authorised official, who approved the submission for the appointment of Sidas Security, constitutes maladministration and improper conduct.

**5. Regarding PRASA's alleged improper appointment of Vimtsire Security Services, which failed to meet the minimum requirements for appointment on tender number 525/2010/GAU/PS:**

- a) The allegation that Vimtsire Security Services was improperly appointed while not meeting the requirements is substantiated.
- b) PRASA appointed Vimtsire Security Services on two contracts for tender 525/2010/GAU/PS without an advertisement or competitive quotations. The first contract was signed on 23 February 2010 without specifying the period of the contract for an amount of **R4 596 480.00** and the second contract was signed on 29 May 2010 for the period 13 March 2010 to 13 August 2010 for the amount of **R7 537 680.00**. The contract was further extended by PRASA from 1



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January 2011 to 31 December 2011 for an amount of **R14 441 976.00**, without a competitive process.

- c) The appointment and extension of the contract of Vimtsire Security amounting to **R26 576 136 00.00** were unlawful, in contravention of paragraph 11.3.1 of the PRASA SCM Policy read with the Delegation of Authority, section 217 of the Constitution, among others.
- d) The conduct of PRASA in appointing and extending the contract of Vimtsire Security Services irregularly accordingly constitutes maladministration and improper conduct.

**6. Regarding PRASA's alleged improper appointment and payment of Royal Security for an amount of R2.8 million for security services:**

- a) The allegation that Royal Security was paid **R2.8 million** instead of **R2.5 million** stipulated in the contracts, was not substantiated.
- b) Documentary evidence shows that the amount paid by PRASA to Royal Security was **R2.5 million**.

**7. Regarding PRASA's alleged improper advance payment of R600.000.00 to Enlightened Security:**

- a) The allegation that Enlightened Security was irregularly given an advance payment of about **R600.000.00** is substantiated.

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- b) PRASA made a first payment of **R684.720.00** to Enlightened Security for security services at Mabopane station on **22 October 2008** which was preceded by an invoice dated **19 September 2008** before the signing of the contract and the issuing of a *Notice to Proceed*, which followed on **17 October 2008**.
  - c) Mr Joe Ngcobo's conduct in making advance payments to Enlightened Security accordingly constitutes maladministration and improper conduct.
  - d) PRASA management became aware of this violation but took no disciplinary steps against the manager responsible, Mr Joe Ngcobo, despite initially commencing a disciplinary process. This conduct is in violation of the accounting officer's responsibility under section 38 of the PFMA and is accordingly irregular and constitutes maladministration and improper conduct.

**8. Regarding PRASA's alleged improper appointment of a media company to produce Hambanathi Magazine during 2008/2009:**

- a) The allegation that PRASA improperly appointed a media company to produce *Hambanathi* is substantiated.
- b) PRASA entered into a contract (referred by it as a partnership) with KG Media providing for the publication and distribution of PRASA information to its commuters and stakeholders, through *Kwela Express*, which used to be a corporate magazine of Metrorail (subsidiary of PRASA, using the name *Hambanathi* when Mr Pule Mabe, the then owner of **Kwela Express**, was employed there).

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- c) The contract was from 1 April 2012 to 1 April 2015 (a period of 3 years) for the amount of **R465 669.75** per month which translates to **R5 588 000.37** per annum and a total contract amount of **R16 764 111.00** without a competitive and transparent bid process. Mr Montana extended the contract in March 2015 for a further 3 years **R16 764 111.00** despite a forewarning through a notice issued in terms of section 7(9) of the Public Protector Act, that the arrangement was likely to be determined to be unlawful. Effectively, PRASA is renting space on *Hambanathi/Kwela* for the price of about R465 669.75 a month.
- d) Considering the fact that PRASA created *Hambanathi/Kwela* and simply failed to register it as a patent, I find the arrangement with Mr Mabe's company, KG Media, rather bizarre.
- e) The appointment of KG Media, without a competitive process did not comply with requirements for single sourcing or any of the permissible procurement processes prescribed in the PRASA SCM Policy as production of a corporate newsletter is not an exclusive skills area or product for KG Media and paragraph 11.3.3 of the PRASA SCM Policy prohibits unsolicited bids.
- f) PRASA's appointment and extension of the contracts with KG Media for the *Hambanathi* totalling an amount of **R 33 528 222.00** is unlawful, a flagrant contravention of PRASA's own SCM Policy, Treasury Regulations, the PFMA and section 217 of the Constitution and constitutes maladministration and improper conduct.
- g) Mr Montana's recent extension of the *Hambanathi* contract while being aware contract of an impending finding of maladministration regarding the

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*Hambanathi* while having asked for time extension to respond to the section 7(9) notice, is an act of bad faith, which is inconsistent with his responsibilities under section 195 of the Constitution, requiring a high standard of professional ethics and, which, according to the Constitutional Court, in *Khumalo versus MEC for Education KwaZulu Natal*, imposes a duty on him to correct an irregularity once his attention has been drawn to it. His actions in this regard, constitute gross maladministration and improper conduct. Such conduct is not only unlawful but also displays disconcerting disregard for the rule of law.

**9. Regarding PRASA's alleged improper appointment of Mr Ezra Ndwandwe, on a Change Management Consultancy at a cost of R2 million in 2008/2009:**

- a) The allegation that Mr Montana improperly appointed Mr. Ezra Ndwandwe, is substantiated. However, it is the Consultancy and not the person that was appointed and the amount involved was **R10 833. 774. 00** for 12 months.
- b) Ndwandwe Consultancy was appointed by Mr. Montana for the Value Creation and Culture Change process at PRASA on 14 June 2008 for the amount of R6 220 800.00 without requiring three quotations from suppliers in the PRASA database as prescribed in paragraph 11.3.1.1 of the PRASA SCM Policy. The contract was extended for a further 6 months with the contract amount variation of **R4 612 974.00** exceeding 40%.
- c) The appointment of Ndwandwe Consultancy by Mr Montana was unlawful, in contravention of PRASA's own SCM Policy, Treasury Regulations on procurements, the PFMA and section 217 of the Constitution and accordingly constitutes improper conduct and maladministration.

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- d) From the evidence it is clear that Mr Ndwandwe's consultancy's appointment was triggered by an existing relationship, which had included an excursion that took place immediately before the impugned contract was initiated. It is also clear that no process was followed to establish if any other agency offered similar services. More importantly, no demand management exercise preceded the engagement. Unfortunately, the investigation did not examine what the excursion mentioned in the procurement memorandum dated 16 September 2008 was for, whether or not PRASA paid for it and how Mr Ndwandwe's consultancy had been procured it as the impugned engagement apparently flows from that excursion. This constitutes improper conduct and maladministration.

**10. Regarding PRASA's alleged improper increase of the scope and value of a marketing and communications tender number HO/M&C/305/07/2009 awarded to Brand Leadership:**

- a) The allegation that PRASA improperly increased the scope and price of a marketing and communications tender awarded to Brand Leadership, is substantiated. However the tender price and price variation amount were actually higher than alleged.
- b) The scope of a tender recommended by the PRASA Bid Adjudication Committee (BAC) at the value of **R12.000.000.00** was increased beyond the advertised scope to **R29. 528. 000.00** by PRASA's CTPC, when it awarded it without the Accounting Officer's approval. The project timeline was also stretched, by an additional 6 months. It originally ran from October 2009 to September 2010 and was extended to March 2011.

- c) In increasing the scope and price of the advertising tender in excess of what was advertised and without approval by the GCEO, the conduct of the PRASA CTPC was in contravention of the PRASA SCM Policy, National Treasury SCM Guidelines 5.16.1.1.1 of 2004 setting out a proper process for demand management and the process to be followed in extending the scope of a contract. The conduct of PRASA was improper and constitutes maladministration.

**11. Regarding the GCEO's alleged improper appointment of Mr Edwin Lekota on a tender amounting to R10 million for the development of a Contingency Emergency Preparedness Programme for Metrorail:**

- a) The allegation that PRASA improperly appointed Mr Edwin Lekota on a tender is substantiated.
- b) Mr Lekota's Lekga Investment Holdings, was appointed directly by PRASA for the ISO 9001: 2000 compliance work without a competitive process.
- c) I am unable to accept Mr Montana's submission that the appointment of Mr Edwin Lekota, former CEO of SARCC, the predecessor of PRASA on a panel with, Dr Chris Dutton and Mr Friedel Mulke as part of the Board of Inquiry in terms of his powers. The evidence shows that Carundell was indeed awarded a contract to deal with the emergency arising from the burning of trains in Soshanguve, City of Tshwane, Gauteng. The same evidence shows that Mr Lekota was subcontracted by Carundel to deal with the burning of the trains.

- d) However, I am encouraged by Mr Montana's undertaking in his response to the provisional findings, to ensure that such experts are, in future, invited to be part of an existing panel of experts in the PRASA database.

**12. Regarding PRASA's alleged improper award of a tender to Umjanji Consortium, for the media, advertising and broadcasting concession agreement:**

- a) I have deferred my findings on this complaint as PRASA is yet to submit some of the bid documents, key being the tender documents submitted by Umjanji Consortium, which need to be subjected to a forensic examination. Evidence uncovered so far confirms that:
  - i. On 31 January 2011, Mr Montana awarded the Media and Broadcasting Services tender HO/CA739/02/2010 to Umjanji Consortium, an entity led by Provantage Media, which is apparently the only constituent part of Umjanji Consortium that attended the compulsory briefing session for the tender on 22 February, 2010.
  - ii. Umjanji Consortium was not in existence at the time of closure of the tender on 11 March 2010.

**13. Regarding the GCEO's alleged improper awarding of a contract for the provision of professional advisory service on the signalling project to a friend, Mr Makhensa Mabunda of Siyaya DB**

- a) No evidence was found substantiating that Mr Mabunda was or is Mr Montana's friend and that such friendship informed his company's appointment.

- b) Mr Montana did appoint Siyaya DB, which scored slightly lower than Mott Macdonald, on tender HO/INF/203/06/2010 for rendering of technical assistance and supervision for the national signalling project, following an open and competitive tender process.
- c) I have accepted these reasons given being that the highest bidder failed to meet PRSASA's requirements relating to pricing certainty and BEEE compliance as both cogent and rational
- d) I am accordingly unable to find that the award of the tender to Siyaya DB by Mr Montana and/ or PRASA constitutes maladministration or improper conduct.

**14. Regarding PRASA's alleged improper awarding of a tender in the amount of R22 million for Park Station Development Framework to ARUP, a company associated with its board member.**

- a) The allegation that ARUP was improperly awarded a tender for the Park Station Development Framework is substantiated. However, the amount involved was much less than the alleged **R22 million**, it was **R3 898 940.00** which did not require Board approval.
- b) PRASA conceded that a proper procurement process was not followed in the appointment of ARUP and took action against the persons implicated in the appointment concerned.



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- c) I accordingly do not see the need to make a finding of maladministration or improper conduct. The aspect relating to a board member's alleged involvement is addressed separately.

**15. Regarding PRASA's alleged failure to investigate the theft of buses of its subsidiary, Autopax:**

- a) The allegation that PRASA improperly failed to investigate the theft of buses of its subsidiary, Autopax, is not substantiated.
- b) Records show that PRASA conducted an investigation and internal disciplinary hearings regarding the theft of the Autopax buses leading into the suspension of one employee and dismissal of another. Furthermore, cases were registered with the SAPS in respect of the theft of the buses and there were regular follow up activities.

**16. Regarding PRASA's alleged improper awarding of a security services contract to Futuris Guarding in April 2010 at Autopax City to City for a total amount of R231 204.00:**

- a) The allegation that Futuris Guarding was improperly appointed is substantiated. However, the amount involved was higher than alleged as it was about **R10.6 million** for a six month contract.
- b) Although security unarguably involves danger as envisaged in urgency provisions of paragraph 11.3.5 of the PRASA SCM Policy, the implementation of urgency procurement failed to comply with the procedure

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laid out in the PRASA SCM policy in that the deviation was not ratified and approved by the GCEO, a deviation I consider material.

- c) The actions of Mr Joe Buthelezi, Acting Supply Chain Manager in the appointment of Futuris Guarding on a security contract on confinement, without the GCEOs approval constitutes maladministration and improper conduct.
- d) PRASA's failure to take disciplinary action Mr Buthelezi for the appointment of Futuris Guarding constitutes improper conduct and maladministration.

**17. Regarding PRASA's alleged improper termination of the Rasakanya Builders contract on 1 November 2012:**

- a) The allegation that PRASA improperly terminated the contract of Rasakanya Builders is not substantiated.
- b) PRASA terminated its month to month contract with Rasakanya Builders on 28 September 2012, with effect from 01 November, 2012, giving it a month's notice.
- c) I could not find any impropriety with the termination and accordingly am unable to find that PRASA's conduct constitutes maladministration or improper conduct.

**18. Regarding the GCEO/PRASA's alleged improper implementation of an advance payment in the amount of R 80 million for the FIFA World Cup sponsorship without proper approval, budget and/or allocated funds thus constituting to fruitless and wasteful expenditure:**

- a) The allegation that PRASA made an advance payment in the amount of R80 million to FIFA without proper approval, budget or allocated funds which resulted in fruitless and wasteful expenditure is not substantiated.

**19. Regarding PRASA's alleged improper incurring of an over expenditure of R2.2 billion on PRASA's operations budget in 2009/2010 financial year:**

- a) The allegation that PRASA improperly incurred an over expenditure is substantiated. However, the amount involved was far less than alleged. It was **R523 792 767.00**
- b) PRASA exceeded its budget by **R523 792 767.00** for the 2009/2010 financial year.

**20. Regarding PRASA's alleged failure to spend a subsidy of R500 million received for Shosholoza Meyl for the 2009/2010 period and not use it for its intended purpose:**

- a) The allegation that PRASA failed to spend the subsidy received for Shosholoza Meyl for 2009/2010 financial year is not substantiated.
- b) PRASA received a government subsidy of R450.00.00 for the year 2009/10 for Shosholoza Meyl.
- c) I am unable to confirm if the subsidy was indeed used for its intended purpose as the operational expenditure for Shosholoza Meyl was not reflected separately in the overall budget of PRASA.

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- 21. Regarding PRASA's alleged incurring of rental expenditure for Jorissen Building after vacating it 20 months before the expiry of its lease resulting in fruitless and wasteful expenditure:**
- a) The allegation that PRASA improperly incurred rental expenditure which constitutes fruitless and wasteful expenditure due to vacating of the Jorissen Building before the expiry of its lease agreement is substantiated.
  - b) On the authority of Mr Montana, PRASA (SARCC) paid rental for a vacant office property number 66 Jorissen Street, Braamfontein, Johannesburg, for 20 months after vacating it prior to the expiry of its lease agreement and without exercising its option of subletting.
  - c) The hasty vacation of Jorissen's Place Building resulting in continued full payment of rent for unused lettable space for 20 months. This cannot be consistent with the efficiency and cost effective dictates expected in state affairs under section 195 of the Constitution and the standards set for proper handling of public funds under the PFMA, particularly section 51 thereof.
  - d) The actions of PRASA management and its Board regarding the move to Umjantshi House and payment for vacant premises, for about 20 months and failing to mitigate the loss by subletting the premises, amounts to fruitless and wasteful expenditure.
- 22. Regarding PRASA's alleged improper incurring of rental expenditure on Intersite Building after vacating the building 10 months before the expiry of its lease resulting in fruitless and wasteful expenditure:**

- a) The allegation that PRASA improperly incurred rental expenditure and the consequent fruitless and wasteful expenditure, due to vacating Intersite Building before the expiry of its lease, is substantiated.
- b) PRASA vacated the Intersite building about 10 months before the lease expiry date and continued with rental payments for the building for the vacant building until the expiry of the lease.
- c) The conduct of PRASA accordingly constitutes maladministration and improper conduct.

**23. Regarding the GCEO's improper termination of contracts of Executives resulting in fruitless and wasteful expenditure amounting to an estimated R5 million:**

- a) The allegation that Mr Montana improperly terminated the services of 5 of its Executives mentioned in paragraph 6.27.2.1 of this report is substantiated.
- b) Mr Montana terminated the services of five Executives during 2008-2013 without following proper procedure as provided for in paragraph 4.4 of PRASA's Disciplinary Code and Procedure. This resulted in the CCMA overturning some of the terminations and others being settled out of court at cost to PRASA.
- c) PRASA subsequently paid labour dispute settlements amounting to **R3 816 735.32**, principally due to procedural irregularities in the disciplinary steps taken against involved officials, which payments can be said to

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constitute fruitless and wasteful expenditure as envisaged in section 38(1)(c)(ii) of the PFMA.

- d) Failure by PRASA to follow its corporate disciplinary procedures and labour laws relating to procedural fairness constitutes maladministration and improper conduct.

**24. Regarding the GCEO's alleged improper suspension of employees resulting in labour dispute settlements amounting to R3.35 million thus constituting fruitless and wasteful expenditure:**

- a) The allegation that the GCEO suspended employees without following proper disciplinary procedures is substantiated in respect of some of the employees as others were not suspended by him.
- b) PRASA suspended 7 employees without following proper procedure as provided for in the Labour Relations Act and paragraph 11 of its Disciplinary Code and Procedure, leading to loss of approximately of R2 million in wages during their suspension period.
- c) The case studies regarding the seven (7) officials mentioned in paragraph 6.28.2.3 of the report support the conclusion of a pattern of habitual suspensions for periods exceeding thirty(30) days without following proper procedure.
- d) The conduct of PRASA in habitually suspending employees was in contravention of paragraph 11.1 of its Disciplinary Code and Procedure which provides that the employer has the right to suspend an employee with

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pay for a period not exceeding thirty (30) calendar days and also in contravention of paragraph 4.4 of PRASA Disciplinary Code and Procedure and Schedule 1 Part VII of the Basic Conditions of Employment Act which provides that employment practices shall ensure employment fairness.

- e) It is not unreasonable to draw a nexus between the payment of salaries for staff sitting at home with pay for long periods of time and failure to manage employment relations appropriately, and the conclusion that the payment of salaries without any value derived therefrom is irregular and constitutes fruitless and wasteful expenditure.
- f) PRASA's conduct in this regard amounts to fruitless and wasteful expenditure in contravention of the provisions of section 38(1) (c) (ii) read with section 51(b)(ii) of the PFMA while being at odds with the financial prudence and efficiency requirements of section 195 of the Constitution.
- g) The conduct of PRASA regarding improper suspension of employees accordingly constitutes maladministration and improper conduct.

- 25. Regarding PRASA Board Chairman, Mr Sfiso Buthelezi's alleged failure to disclose and manage a conflict of interest arising from his interest in Makana, a subsidiary of Cadiz, a company allegedly providing advisory services to PRASA on the Rolling Stock Programme:**

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- a) The evidence regarding the allegation that Mr Buthelezi, former Chairman of the PRASA Board, improperly failed to disclose and manage a conflict of interest arising from his interest in Makana, a subsidiary of Cadiz, a company alleged to be providing advisory services to PRASA is inconclusive.
  - b) The documents have not been provided by PRASA, whose GCEO only offered an explanation disputing the allegation and providing the names of companies involved in the said advisory services.
  - c) Accordingly, I have deferred my findings on this allegation and will be dealt with in the second report.

**26. Regarding Dr Bridgette Gasa's, a PRASA Board member's alleged failure to disclose and manage a conflict of interest arising from her interest in ARUP and her directorship in another company providing consultancy services to PRASA:**

- a) The allegation that the then PRASA Board Member, Dr Bridgette Gasa, failed to disclose and manage a conflict of interest arising from her appointment to the Board while two companies she had an interest in provided services to PRASA, is not substantiated.
- b) Whilst Dr Gasa was indeed a Director at ARUP from 09 February 2011, she made the necessary disclosure to PRASA on 20 July 2011, resigned on 15 May 2012 and when making her disclosure on 10 October 2012, excluded ARUP, as she no longer was a board member.



- c) ARUP SA (Pty) Ltd was indeed awarded a contract by PRASA for the Park Station Development Framework on 21 June 2011; however the contract was for R3.8 million which would not have required Board approval.

**27. Regarding PRASA's alleged improper appointment of Ms Shiela Boshielo, wife of then Board Member, Mr. Bushy Boshielo, as the General Manager of Autopax:**

- a) I have deferred my finding on the alleged nepotism regarding the appointment of Ms Boshielo as PRASA has failed to provide the selection and appointment memoranda and some of the relevant documents.
- b) In its initial response Mr Montana stated on behalf of PRASA that Ms Boshielo was appointed on 06 April 2010 through a headhunting process. Later, in response to the provisional findings, Mr Montana turned around to state that the submission was a mistake as Ms Boshielo was appointed through a recruitment and selection process and was selected from amongst other candidates but repeatedly failed to honour requests to provide the recruitment and selection documents to substantiate the assertion.

**28. Regarding the GCEO's alleged improper appointment of Mr Joel Chimanda at a cost of R2 million as a Special Advisor:**

- a) The allegation that Mr. Montana improperly appointed Mr Chimanda for advisory services is substantiated.

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- b) However, it was Mr. Chimanda's company, AR Chimanda Consulting that was contracted for **R1 999.750.00** on a monthly retainer of **R150 000.00**, which makes the appointment a procurement contract and not an employment contract. As juristic person cannot be an employee, the contract is incapable of being defended under the GGEO's powers to appoint special advisors, as attempted by Mr Montana in his submissions.
  - c) The appointment of Mr. Chimanda's company was not preceded by a competitive bid process, nor is he offering exclusive specialised services entitling him to be the sole provider in terms of the provisions of the PRASA SCM Policy
  - d) The conduct of Mr Montana, in appointing AR Chimanada Consulting, is accordingly in contravention of the SCM policy, the PFMA, PPPFA and section 217 of the Constitution.
  - e) The conduct of Mr Montana accordingly constitutes maladministration and improper conduct.

**29. Regarding PRASA's alleged improper replacement of the Group Executive HR with the GCEO's uncle, Mr Mphefo Ramutloa, without following proper recruitment process:**

- a) The allegation that Mr. Mphefo Ramutloa was improperly appointed in replacement of Group Executive HR by PRASA is not substantiated.

- b) No evidence could be found to support the allegation that Mr. Mphefo Ramutloa is Mr Montana's uncle.

**30. Regarding PRASA's alleged failure to take disciplinary action against staff members allegedly involved in fraudulent Electronic Funds Transfers amounting to R8.1 million:**

- a) The allegation that PRASA failed to take disciplinary action against employees involved in the fraudulent electronic financial transfers of its funds, from its corporate bank accounts, is partially substantiated.
- b) Action was taken against one of the six (6) employees found responsible by a Deloitte forensic investigation, for security lapses that led to the fraudulent electronic transfer of PRASA funds amounting to R8.1million in its KwaZulu Natal and Gauteng bank accounts.
- c) PRASA took action against Ms Pallaiyiah but inexplicably failed to take disciplinary action against the other six individuals recommended for possible disciplinary action as mentioned in paragraph 13.3 of the Deloitte Report of 26 February 2010.
- d) The conduct of Mr Montana regarding failure to take disciplinary action against the other five (5) employees constitutes maladministration and improper conduct.

**31. Regarding Mr Montana's alleged improper taking of a Blue Train trip to Cape Town together with 10 female companions during the period between 24 to 27 September 2009 and return by SAA flight at an estimated cost of R170 000 and possible fruitless and wasteful expenditure:**

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- (a) The evidence regarding this issue is inconclusive. While the photographic evidence received from the Complainant apparently places Mr Montana on the train and a hotel with women companions, he he has denied the allegation but referred to a different trip.
  - (b) I have deferred my finding on this allegation and will be dealt with in the second report.

**32. Regarding Mr Montana's alleged improper transferring of Mr Stephen Ngobeni without a disciplinary process being followed for his alleged irregular appointment of a Training Contractor to provide training services on the handling of People with Disability:**

- a) I have deferred my finding on the alleged failure by Mr Montana to take disciplinary action against Mr Stephen Ngobeni as PRASA has failed to provide the necessary documents relating to the issue.
- b) No evidence was found in support of the allegation that Mr Ngobeni is Mr Montana's cousin.
- c) I have deferred my findings on this allegation and will be dealt with in the second report.

**33. General observations**

- 33.1 The transactions investigated and related findings reveal a culture of systemic failure to comply with the SCM policy, particularly involving failure

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to plan for bulk procurement, test the market appropriately for competitive pricing and to manage contracts, which culture may have cost PRASA millions in avoidable expenditure and preventable disruption of services.

33.2 There also seems to be a culture of either poor information management or hiding of information that could provide evidence of maladministration and other forms of improper conduct. If the pattern is not arrested it has the potential to derail the effective and efficient procurement of goods and services to support PRASA operations and consequently service delivery by this important national asset. Poor financial management also has implications for the national revenue as it may mean frequent yet preventable rescue funding.

33.3 Regarding PRASA's failure to provide information, it must be appreciated that public accountability via administrative bodies such as the Public Protector is not accountable to Complainants but to the public that entrusts public functionaries with public power and resources. It is, accordingly, not open to public functionaries to try and win a case by withholding or hiding information.

(xxiii) The remedial action I take in terms of section 182(1) (c) of the Constitution is to require:

**(a) The Minister of Transport to:**

- 1) Take cognizance of the findings regarding the unethical conduct and maladministration by PRASA relating to the irregularities mentioned in the report.

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- 2) Ensure that the PRASA Board considers the report and, where appropriate, acts in terms of section 84 and as contemplated in section 85 of the PFMA.
  - 3) Ensure that the PRASA Board considers the acts of maladministration and improper conduct referred to in paragraph 8 of this report and takes appropriate disciplinary action against the officials of PRASA in respect of their conduct referred to therein.
  - 4) Include in her oversight activities with regard to PRASA as an State Owned Enterprise, the monitoring of implementation of remedial action taken in pursuit of the findings in terms of powers conferred under section 182(1)(c) of the Constitution.

**(b) The Chairman of PRASA Board to ensure that:**

- 1) The PRASA Board takes cognizance of the findings of maladministration and improper conduct by Mr Montana and other functionaries at PRASA and takes or ensures that appropriate disciplinary action is taken against the responsible officials, where it considers appropriate.
- 2) The PRASA Board evaluates the effectiveness of PRASA's internal controls on Supply Chain Management and Human Resources processes to identify systemic deficiencies with a view to take corrective action to prevent a recurrence of the improprieties referred to in this report.
- 3) The PRASA Board reviews the PRASA SCM Policy regarding the R350 million threshold value for competitive bidding process of procurement of goods and services

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- 4) The PRASA Board reports to the National Treasury and the Auditor-General, particulars of the alleged financial misconduct and the steps taken in connection with such financial misconduct, as contemplated in section 85 of the PFMA.
  - 5) To commission the National Treasury in conducting a forensic investigation into all PRASA contracts above R10 million since 2012 and take measures to address any findings regarding systemic administrative deficiencies allowing ongoing maladministration and related improprieties in its procurement system.

**(c) The Acting GCEO of PRASA:**

- 1) Should ensure that PRASA adopts a monitoring system that ensures that proper procurement processes and HR processes are followed on appointing service providers and individuals.
- 2) To ensure PRASA reviews the existing policy or the policy provisions on managing conflict of interest to ensure there is no confusion regarding expectations from employees and Board Members.
- 3) Together with the Board, review the entire PRASA SCM Policy in particular clause 11.3 of the policy.
- 4) To ensure that prior to signing a formal contract or service level agreement with a contractor must ensure that such contracts or agreements are legally sound to avoid potential litigation and to minimise possible fraud and corruption. This must include legal vetting by at least the Legal Services of the agency. Such contracts or agreements must be actively managed in order to ensure that both the agency and the contractors meet their respective obligations.

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- 5) To ensure that there is compliance with paragraph 11.1 of the Disciplinary Code and Procedure of Metrorail to avoid prolonged and costly suspensions of employees.

**(d) The National Treasury's Chief Procurement Officer:**

- 1) In consultation with the PRASA Board, consider commissioning a forensic investigation on all PRASA contracts or tenders valued above R10 000 000.00 issued between 1 April 2012 and 30 June 2015.
- 2) The terms of reference to be approved by the Public Protector and to include a forensic examination of all suspected or alleged corrupt relationships.
- 3) The Public Protector to be kept abreast of the progress of the investigation and favoured with the final report.



## LIST OF ACRONYMS

|                             |  |
|-----------------------------|--|
| <b>ADV</b>                  | <b>Advocate</b>  |
| <b>CEO</b>                  | <b>Chief Executive Officer</b>   |
| <b>CFO</b>                  | <b>Chief Financial Officer</b>   |
| <b>Constitution</b>         | <b>The Constitution of the Republic of South Africa No. 108 1996</b>   |
| <b>Crowie</b>               | <b>Crowie Projects (Pty) Ltd</b>   |
| <b>Email</b>                | <b>Electronic Mail</b>   |
| <b>EXCO</b>                 | <b>Executive Council</b>   |
| <b>GCEO</b>                 | <b>Group Chief Executive Officer</b>   |
| <b>HOD</b>                  | <b>Head of Department</b>  |
| <b>Makhubela</b>            | <b>Makhubela Attorneys</b>   |
| <b>NTM</b>                  | <b>National Transport Movement</b>   |
| <b>PFMA</b>                 | <b>Public Finance Management Act No. 1 of 1999</b>   |
| <b>PRASA</b>                | <b>Passenger Rail Agency Of South Africa</b>   |
| <b>RTPC</b>                 | <b>Regional Tender Procurement Committee</b>   |
| <b>SARCC</b>                | <b>South African Rail Commuters Corporation</b>  |
| <b>SATAWU</b>               | <b>South African Transport And Allied Workers Union</b>  |
| <b>SC</b>                   | <b>Senior Counsel</b>  |
| <b>SCM</b>                  | <b>Supply Chain Management</b>   |
| <b>The Board</b>            | <b>The Board of PRASA</b>  |
| <b>Treasury Regulations</b> | <b>The Treasury Regulations and instructions for departments, trading entities, constitutional institutions and public entities, issued in terms the Public Finance Management, 1999</b> |

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## REPORT ON AN INVESTIGATION INTO THE ALLEGATIONS OF FINANCIAL MISMANAGEMENT TENDER IRREGULARITIES IRREGULAR APPOINTMENTS AND MALADMINISTRATION LEVELLED AGAINST PRASA

### 1. INTRODUCTION

- 1.1. *"Derailed"* is my report as the Public Protector issued in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) read with section 8(1) of the Public Protector Act 23 of 1994 following an investigation into 37 complaints alleging maladministration principally involving procurement irregularities, financial mismanagement, conflict of interest, and human resources mismanagement, incorporating the victimization of whistle blowers, launched principally against the PRASA GCEO, Mr Lucky Montana by the South African Transport Workers Union and subsequently pursued by the National Transport Movement (NTM), both of which are trade unions involved in the transport sector.
- 1.2. PRASA is an important and, I believe, strategic organ of state. Its handling of public finances and procurement of goods and services has implications for efficient and effective public transport delivery in compliance with section 195 of the Constitution. As a public infrastructure provider, PRASA also has implications for the economy. A state owned enterprise with an estimated total net value of assets over as at 2010/2011 **R19 billion**, PRASA is an organ of state listed as a National Government Business Enterprise in terms of Schedule 3B of the Public Finance Management Act 1 of 1999 (PFMA). PRASA has four subsidiaries, namely: **Metrorail**, operating commuter rail services in urban areas; **Shosholoza Meyl** operating regional and intercity rail services; **Autopax**, operating regional and intercity coach services; and **Intersite**, managing the corporate property

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- portfolio. PRASA reported an accumulated loss of **R4.4 billion** for 2010/12 financial year.
- 1.3. PRASA reported an accumulated loss of **R1 billion** for 2014/2015 financial year. The budget allocation from Government for PRASA for the MTEF period 2015/2016 to 2017/2018 is **R17.2 billion**. The 37 cases reported by the Complainant mostly deal with alleged procurement irregularities with the amount involved being more than **R2.8 billion**. As the report was being finalized further allegations of procurement irregularities at PRASA were reported.
- 1.4. PRASA is controlled by a PRASA Board of Control (PRASA Board), chaired by a non-executive chairman, and which in terms of section 49(2) (b) of the PFMA is its Accounting Authority. The Group Chief Executive Officer (GCEO) has delegated authority in terms of PRASA's Powers and Authority of the PRASA Board and Delegation of Authority.
- 1.5. At the time the report was being finalised, more complaints against PRASA regarding tender irregularities, financial mismanagement, cronyism and corruption were brought to my attention however these came too late to be investigated and incorporated in this report. These complaints will be dealt with in volume 2 of this report.
- 1.6. The report is submitted in terms of section 8(1) of the Public Protector Act 23 of 1994, to the following persons:
- 1.6.1. The Chairman of PRASA Board, Dr P Molefe;
- 1.6.2. The former Group Chief Executive Officer (GCEO) of Passenger Rail Agency of South Africa (PRASA) Mr. Tshepo Lucky Montana;

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1.7. Copies of the report are also circulated to:

- 1.7.1. The Complainant, the National Transport Movement;
- 1.7.2. Mr. Craig Nte, General Secretary of the National Transport Movement;
- 1.7.3. Minister of Transport, Ms Dipuo Peters;
- 1.7.4. The Auditor General of South Africa, Mr Thembekile Kimi Makwetu; and
- 1.7.5. The Chief Procurement Office of the National Treasury, Mr Kenneth Brown.

## **2. THE COMPLAINT**

2.1. A list of complaints was lodged with this office by the Executive Committee (Exco) of the South African Transport and Allied Workers Union (SATAWU) led by its then President, Mr Ephraim Mphahlele and General Secretary, Mr Craig Nte, in March 2012. When SATAWU inexplicably withdrew its complaints, Exco of the National Transport Movement (NTM), apparently a splinter union from SATAWU whose Exco members were part of the SATAWU representatives who lodged the complaints, hereinafter referred to as the Complainant, subsequently requested the continuation of the investigation. The essence of the complaints, which ended up being 37 principally levelled against PRASA management, in particular its Group Chief Executive Officer (GCEO), Mr Lucky Montana, was allegations of financial mismanagement, procurement irregularities, unmanaged conflict of interest, nepotism/cronyism/corruption, irregular appointments and maladministration. About 17 tenders/contracts collectively exceeding R2.8 billion were specifically identified by the Complainant for investigation of supply chain irregularities, including non-competitive processes, cronyism, scope creep, cost overruns, overpayment and fruitless and wasteful expenditure.

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2.2. I must indicate upfront that SATAWU's attempt to withdraw its complaint is discomforting particularly because PRASA management was initially reluctant to cooperate using the withdrawal as justification. Allegations of victimisation of whistle-blowers, though not yet adjudicated, do add to the concern. There is an indication, for example, that Mr Nte may have suffered an occupational detriment after the lodging of this complaint in that Mr Nte.

2.3. The following provides an overview of allegations made by the Complainant against PRASA management:

**Procurement irregularities**

2.3.1. The Complainant alleged that:

2.3.1.1. On 15 March 2012, PRASA allegedly terminated all contracts for cleaning services irregularly and irregularly appointed Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services on a contract valued above the R500 000 thresholds without advertising and in contravention of the Treasury Regulations and Supply Chain Management Policies.

2.3.1.2. Reakgona Commercial and Industry Hygiene were irregularly awarded the contract due to its association with GCEO's closest business associate, Mr. Isaac Modiselle.

2.3.1.3. PRASA allegedly irregularly awarded a tender No 525/2010/GAU/PS to Sidas Security Company improperly at a higher rate to replace National Force Security on the GCEO's instructions but terminated the contract 9 months later after its appointment.

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- 2.3.1.4. Proper procurement processes were not followed in the appointment of Vimtsire Security Services, which allegedly failed to meet the minimum requirements for appointment.
- 2.3.1.5. Royal Security was allegedly appointed on the same tender in 2009 and allegedly billed PRASA R2.8 million instead of the agreed amount of R2 5 million per month; and The appointment of Royal Security on the tender concerned was irregular, as its original contract WV/FIN/CA/7/24/06 was terminated by PRASA due to its underperformance.
- 2.3.1.6. An amount of R600 000, alleged to have been improperly authorised by the PRASA Head: Corporate Services, was improperly paid to Enlightened Security for a contract for the Tshwane Region prior to its appointment on tender TOSH/RISK/436/10/2008.
- 2.3.1.7. The scope of a Dark Fibre and Integrated Communication Systems tender amounting to R 800 million awarded to Siemens was irregularly extended nationally during the financial year 2009/2010 without proper tender advertisement being followed.
- 2.3.1.8. A tender for the installation of high speed passenger gates worth R800 million was awarded to a certain contractor in 2009/2010 for the Doornfontein station but was later irregularly extended to other stations nationally without following proper tender processes.
- 2.3.1.9. PRASA improperly incurred an upfront payment to a developer of the City Mall for the construction of an underground train station (Bridge City Project) without

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going on a bidding process and without proper authorisation during the periods 2008 to 2010.

- 2.3.1.10. PRASA allegedly appointed a contractor irregularly for *Hambanathi Magazine* without following proper procurement processes during 2008/2009.
- 2.3.1.11. PRASA Board member, Mr Vusi Twala, was irregularly awarded a tender by Intersite, a subsidiary of PRASA to provide CCTV cameras.
- 2.3.1.12. Change Management Consultant, Mr Ezra Ndwandwe was appointed at a cost of R 10 million without following proper procurement processes during 2008/2009.
- 2.3.1.13. During 2009, the GCEO irregularly awarded a tender amounting to an estimated R 10 million to the erstwhile Chief Executive Officer (CEO) of the South African Rail Commuters Corporation (SAC), Mr Eddie Lekota for the development of a contingency emergency preparedness programme for Metrorail without following proper procurement processes.
- 2.3.1.14. Umjanji Media Consortium, a company formed and incorporated after the closing date for submission of tenders on tender HO/CA/739/02/2010, was irregularly awarded a tender on Media Advertising and Broadcasting Concession Agreement in March 2011 without following proper procurement processes in contravention of the PRASA Supply Chain Management Policies.
- 2.3.1.15. The GCEO irregularly awarded a contract for the provision of professional advisory service on the signalling project to his friend, Mr Makena Mabunda

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(who is associated with Siyaya DB), who did not possess the necessary skills and experience and without following proper procurement processes.

- 2.3.1.16. A tender amounting to R 22 million for the Park Station Development Framework was not advertised but recommended to be awarded to a contractor named ARUP, which is associated with a certain member of the PRASA Board, during November 2009.
- 2.3.1.17. Between the years 2008 and 2010, PRASA engaged construction companies in the 2010 Soccer World Cup Station Building Project, the Capex Project and renovation of existing stations without following proper procurement processes. An overspending of R 2 billion amounting to fruitless and wasteful expenditure was allegedly incurred in addition to the budgeted amount of R 3 billion.
- 2.3.1.18. During January 2010, Autopax, a subsidiary of PRASA, lost buses during theft and management failed to pursue an investigation into the matter but instead replaced the buses at a cost of R2. 8 million.
- 2.3.1.19. In April 2010, Autopax concluded an irregular security contract with Futuris Guarding (PTY) amounting to R54 337.20 per month.
- 2.3.1.20. It is alleged that PRASA was delaying to pay Rasakanya Builders, the service provider to PRASA Corporate Real Estate Solutions (PRASA Cres) and irregularly served a notice of termination of the contract, thereby leaving 36 employees of Rasakanya Builders without payment for services rendered.
- 2.3.1.21. The GCEO/PRASA incurred irregular and/or fruitless and wasteful expenditures relating to the following transactions:



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- i Payment of an amount of R80 million upfront for the FIFA World Cup sponsorship without proper approval, budget and/or allocated funds which resulted in fruitless and wasteful expenditure
  - ii PRASA invested funds with FIFA based on the agreement that PRASA would recoup the expenditure through the sales of tickets to commuters/soccer fans and it is asserted that the money was never recovered.
  - iii Brand Leadership was awarded a new PRASA branding contract to the value of R 9 million. However the contract amount was alleged to have been improperly inflated to R19 million, thereby resulting in irregular/fruitless and wasteful expenditure of R10 million.
  - iv During the period 2009/2010, the GCEO requested R 1 billion funds from the National Treasury on the pretext that it would be used during the taking over of operations of Shosholozza Meyl. National Treasury paid R 500 million but the funds were never used for their intended purpose.
  - v PRASA operational expenditure (OPEX) budget was irregularly overspent by R2.2 billion without the approval of the PRASA Board during the period 2009/2010.
  - vi PRASA Head Office staff vacated its Offices at Jorissen Place 14 months before the expiry of the lease agreement but PRASA continued to pay rental, which constituted a fruitless and wasteful expenditure.

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- vii After vacating Jorissen Place, PRASA acquired Umjantshi House Building to accommodate its Head Office staff without following proper procurement processes and without a proper budget approval.
  - viii The GCEO instructed PRASA Management at Intersite Building in Woodmead to vacate the premises 20 months prior to the expiry of the lease agreement, but continued to pay for the lease, thereby incurring fruitless and wasteful expenditure.
  - ix The GCEO dismissed five Senior Executives unlawfully during the years 2008 and 2011 and the CCMA ordered their reinstatement, which the GCEO rejected and instead compensated them with an estimated R 5 million, resulting in fruitless and wasteful expenditure.
  - x Group Executive HR was allegedly replaced improperly by the GCEO's uncle, Mr Mphefo Ramutloa, without proper processes being followed.
  - xi During February 2010, unlawful electronic funds transfer was uncovered in a forensic report by Deloitte, in which R8.1 million was fraudulently transferred in the Durban and Tshwane Regions but no action was taken against those implicated in the transactions.
  - xii During the period 24 to 27 September 2009, the GCEO undertook a leisure trip in a Blue Train to Cape Town together with 10 female companions for free and returned in a South African Airways (SAA) flight costing PRASA R17 000. The total cost of the trip was allegedly an estimated R170 000.00 which constituted fruitless and wasteful expenditure.

- xiii During 2008/2009, the Executive Corporate Affairs Manager, Mr P Mabe, received salaries from PRASA despite having left its service and you allegedly misled the Exco and the PRASA Board of Directors (PRASA Board) that the employee was not on PRASA's payroll.

### **Labour relations irregularities**

- 2.3.2. The Complainant alleged that PRASA disregards the labour relations processes and conditions of employment when dealing with labour issues thereby costing the entity enormous amount of money that results in fruitless and wasteful expenditure. To this end it is alleged that:
- 2.3.2.1. Mr Stephen Ngobeni, a cousin to the GCEO in the employment of PRASA, improperly appointed a Training Contractor to provide training services on the handling of People with Disability. He was irregularly transferred without disciplinary process being instituted against him.
- 2.3.2.2. The GCEO unlawfully engaged, yearly, in series of suspending employees perpetually with payment of salaries costing PRASA an estimated R3.35 million in fruitless and wasteful expenditure.
- 2.3.2.3. Whistle-blowers are persecuted, with some having been unduly suspended or dismissed in violation of prescribed procedures.

### **Conflict of interest**

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- 2.3.3. The Complainant alleges failure to disclose and manage conflict of interest, by the following members of the PRASA Board, specific allegations being that:
- 2.3.3.1. Member of the PRASA Board of Directors of PRASA (PRASA Board), Ms Bridgette Gasa, who is also a Director of ARUP, a company alleged to be contracted to provide advisory services to PRASA, and a Director in another company that is also providing consultancy services to PRASA, is benefiting improperly as her involvement in these companies while serving as a member of the PRASA Board constitutes a conflict of interests.
- 2.3.3.2. Chairperson of the PRASA Board, at the time, Mr Sfiso Buthelezi is the Chief Executive Officer of Makana, a subsidiary of Cadaz, a company providing advisory service to PRASA on the Rolling Stock Recapitalisation Project, which constitutes a conflict of interest.
- 2.3.3.3. The wife of Mr Bushy Boshielo, was appointed as a General Manager of Autopax without following proper recruitment processes during Mr Boshielo's time as a PRASA Board member.
- 2.3.3.4. During 2008/2009, the GCEO irregularly appointed Mr Joel Chimanda as a Special Advisor at PRASA's cost of R2 million, without following proper recruitment processes and in contravention of the PRASA Recruitment Policy.
- 2.4. SATAWU's attempt to withdraw of its complaint raises a lot of questions, particularly because PRASA Management was initially reluctant to cooperate. After giving this office a run-around regarding information and documents requested, Mr Montana, asked at the meeting held with him and his team following a subpoena, advised that he did not understand why the investigation was continuing given the

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fact that SATAWU had withdrawn its complaint. Allegations of victimisation of whistle-blowers, though not yet adjudicated, do add to the concern. He was advised that the office has the constitutional and statutory power to investigate without a complaint and that NTM had taken the matter forward.

2.5. An allegation has been made by SATAWU that pressure was applied including harassment. I have not adjudicated these allegations. However, there is an indication, for example, that Mr Craig Nte may have suffered an occupational detriment after whistle-blowing, while a member of the executive of SATAWU, which was later deposed followed by SATAWU's inexplicable attempt to withdraw the matter. His matter is dealt with in the part of this report dealing with Human Resources (HR) Complaints relating to arbitrary suspensions and dismissals.

2.6. The complaints were lodged in terms of section 182 of the Constitution and the Public Protector Act.

### 3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

3.1. The Public Protector is an independent constitutional institution established under section 181(1)(b) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2. Section 182(1) of the Constitution provides that:

*"The Public Protector has the power, as regulated by national legislation-*

*(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*

- (b) to report on that conduct; and*
- (c) to take appropriate remedial action."*

- 3.3. The Public Protector's powers are regulated and amplified by the Public Protector Act, 23 of 1994 which states, among others, that the Public Protector has the power to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector Act also confers power to resolve the disputes through conciliation, mediation, negotiation or any other appropriate dispute resolution mechanism as well as to subpoena persons and information in from any person in the republic for the purposes of an investigation. The subpoena powers were employed in respect of PRASA, when requests for information and documents were not being met by Mr Montana and his management team. When I finally met with Mr Montana and his team, he enquired as to why the investigation was proceeding as SATAWU had withdrawn it, whereupon he was advised of this office's power to investigate mero motu and that NTM had since picked up the baton.
- 3.4. PRASA is a public entity and the complaints lodged against it relate to maladministration and improper conduct in state affairs and as a result this matter falls within my ambit.
- 3.5. The jurisdiction and power to investigate was not disputed by any of the parties. However, I must indicate that it was difficult to get information from PRASA, with this being a main causal factor behind the delay in finalising this investigation which was lodged in 2012. Promises for documents were not kept and even a request for assistance from the Board yielded very few source documents. It was also discomfoting that Mr Montana boasted about the failure of complainants to provide documentary evidence on some of the allegations and asked that I

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adjudicate those matters in his favour when he failed to provide legitimately requested documents. In this regard it must be appreciated that public accountability via administrative bodies such as the public Protector is not accountability to complainants but to the Public as the sovereign that entrusts public functionaries with public power and resources. It is not open to public functionaries accordingly, to try and win a case by withholding or hiding information.

- 3.6. Mr Montana's response to the provisional findings was however, deeply encouraging. He said in part:

*"We confirm that PRASA welcomes the Provisional Report and the remedial action recommended by the Public Protector. PRASA views the Remedial Actions concerned as an essential tool to assist it in improving its internal administrative and financial controls. PRASA believes that the remedial actions will in future, strengthen its governance framework, operations and internal controls in ensuring that PRASA is safeguarded against irregular or unlawful conduct within its organisation."*

- 3.7. The PRASA Board's assurance's at our meeting on 30 June 2015, is a further source of comfort. Not only did the Board support and undertake to cooperate on the investigation and its outcomes, it indicated that it was also seized with an internal processes of reviewing corporate procurement management and related matters. The Board also confided that it too had picked up worrying patterns and had began the process of implementing measures to minimise systemic administrative deficiencies enabling and masking procurement irregularities.

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## **4. THE INVESTIGATION**

### **4.1. Methodology**

- 4.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.
- 4.1.2. The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration. Section 6 of the Public Protector Act gives the Public Protector the authority to investigate and report her findings regarding any complaint lodged.

### **4.2. Approach to the investigation**

- 4.2.1. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:
- a) What happened?
  - b) What should have happened?
  - c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or other improper conduct?
  - d) In the event of maladministration or improper conduct, what would it take to remedy the wrong or to right the wrong occasioned by the said maladministration or improper conduct?



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- 4.2.2. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the GCEO and other PRASA functionaries acted in the manner alleged by the Complainant. The sources of evidence principally included institutional documents such as bid documents, memoranda, minutes and copies of correspondence. Viva voce evidence was received from selected witnesses, mainly the Complainant, PRASA management, the former board and the current board during meetings and or interviews. Evidence was evaluated and a determination made on what happened based on a balance of probabilities.
- 4.2.3. It is important to note that the GCEO was concerned that he was being asked to provide evidence instead of the Complainant. Administrative oversight investigations are not criminal proceedings but an accountability forum for persons entrusted with public power. In the *Public Protector Versus Mail and Guardian*, 2011(4) SA 420 (SCA), the Supreme Court of Appeal made it clear that it is the Public Protector's duty to actively search for the truth and not to wait for parties to provide all of the evidence as judicial officers do.
- 4.2.4. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met or complied with by PRASA to prevent maladministration and prejudice. In this case, key reliance was placed on PRASA's comprehensive SCM Policy, in addition to national laws, policies and guidelines. This office's own institutional touchstones, being principles from previous reports, are always, and were also taken into account.

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- 4.2.5. The enquiry regarding remedial or corrective action seeks to explore options for redressing the consequences of maladministration. Where a Complainant has suffered prejudice, the idea is to place him or her as close as possible to where they would have been had the organ of state complied with the regulatory framework setting the applicable standards for good administration. In the case of conduct failure as was the case in the complaints investigated, remedial action seeks to right or correct identified wrongs while addressing any systemic administrative deficiencies that may be enabling or exacerbating identified maladministration or improper conduct.
- 4.2.6. The substantive scope of the investigation focused on compliance with the law and prescripts regarding the awarding of tenders, appointment of staff and service providers, and termination of contracts as well as generally accepted accountability practices for the period not exceeding 2012.
- 4.2.7. Due to the lack of resources, the delays in the investigation and other challenges referred to in this report, it was not possible to investigate all the allegations and suspicion of impropriety that were raised by the Complainant and other sources of information. It was also not possible to subject some of the allegations, particularly those alleging cronyism and nepotism, to a forensic test. This impediment was compounded by the failure by PRASA to provide requested information and evidence expeditiously.
- 4.3. On analysis of the complaint and allegations, the following issues were considered and investigated:**
- 4.3.1. Did PRASA improperly extend to other stations nationally, a tender for the installation of high speed passenger gates worth R 800 million to Siyangena

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Technologies in 2009/2010 for the Doornfontein station which was later extended to other stations nationally?

- 4.3.2. Did PRASA improperly extend the appointment of Siemens for the Dark Fibre and Integrated Communication Systems tender amounting to R800 million to other stations nationally, during the financial year 2009/2010 when it was only advertised in Gauteng?
- 4.3.3. Did PRASA improperly terminate all contracts for cleaning services and was the subsequent appointment of Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services improper?
- 4.3.4. Did PRASA improperly appoint Sidas Security on a security tender in replacement of National Force Security on the GCEO's instruction?
- 4.3.5. Did PRASA improperly appoint of Vimtsire Security Services, which failed to meet the minimum requirements for appointment on tender number 525/2010/GAU/PS
- 4.3.6. Did PRASA improperly appoint and pay Royal Security R2.8 million instead of R2.5 million for security services?
- 4.3.7. Did PRASA improperly advance a payment of R600.000.00 to Enlightened Security?
- 4.3.8. Did PRASA improperly appoint a media company to produce *Hambanathi Magazine* during 2008/2009?

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- 4.3.9. Did PRASA improperly appoint Mr Ezra Ndwandwe, on a Change Management Consultancy at a cost of R2 million in 2008/2009?
- 4.3.10. Did PRASA improperly increase the scope and value of marketing and communications tender number HO/M&C/305/07/2009 awarded to Brand Leadership for R29 million?
- 4.3.11. Did the GCEO improperly appoint Mr Edwin Lekota on a tender amounting to R10 million for the development of a Contingency Emergency Preparedness Programme for Metrorail?
- 4.3.12. Did PRASA improperly award a tender to Umjanji Consortium, for the media, advertising and broadcasting concession agreement?
- 4.3.13. Did the GCEO improperly award a contract for the provision of professional advisory service on the signalling project to a friend, Mr Makhensa Mabunda of Siyaya DB, who did not possess the necessary skills and experience and without following proper procurement processes?
- 4.3.14. Did PRASA improperly award a tender in the amount of R22 million for Park Station Development Framework to ARUP, a company associated with its board member?
- 4.3.15. Did PRASA improperly fail to investigate the theft of the buses of its subsidiary, Autopax?
- 4.3.16. Did PRASA improperly award a security services contract to Futuris Guarding in April 2010 at Autopax City to City for a total amount of R231 204.00?

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- 4.3.17. Did PRASA improperly terminate the Rasakanya Builders contract on 1 November 2012?
- 4.3.18. Did the GCEO/PRASA improperly implement an upfront payment in the amount of R 80 million for the FIFA World Cup sponsorship without proper approval, budget and/or allocated funds thus constituting to fruitless and wasteful expenditure?
- 4.3.19. Did PRASA improperly incur an over expenditure of R2.2 billion on PRASA's operations budget in 2009/2010 financial year?
- 4.3.20. Did PRASA fail to spend a subsidy of R500 million received for Shosholozza Meyl for the 2009/2010 period and not use it for its intended purpose?
- 4.3.21. Did PRASA incur rental expenditure for Jorissen Building after vacating it 20 months before the expiry of its lease resulting in fruitless and wasteful expenditure?
- 4.3.22. Did PRASA improperly incur rental expenditure on Intersite Building after vacating the building 10 months before the expiry of its lease resulting in fruitless and wasteful expenditure?
- 4.3.23. Did the GCEO improperly terminate contracts of Executives resulting in fruitless and wasteful expenditure amounting to an estimated R5 million?
- 4.3.24. Did the GCEO improperly suspend employees resulting in labour dispute settlements amounting to R3.35 million thus constituting fruitless and wasteful expenditure?

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- 4.3.25. Did PRASA Board Chairman, Mr Sfiso Buthelezi, improperly fail to disclose and manage a conflict of interest arising from his interest in Makana, a subsidiary of Cadiz, a company allegedly providing advisory services to PRASA on the Rolling Stock Programme?
- 4.3.26. Did Dr Bridgette Gasas, a PRASA Board member improperly fail to disclose and manage a conflict of interest arising from her interest in ARUP and her directorship in another company providing consultancy services to PRASA?
- 4.3.27. Did the GCEO improperly appoint Mr Joel Chimanda at a cost of R2 million as a Special Advisor?
- 4.3.28. Did PRASA improperly replace the Group Executive HR with the GCEO's uncle, Mr Mphefo Ramutloa without following proper recruitment process?
- 4.3.29. Did PRASA improperly fail to take disciplinary action against staff members allegedly involved in fraudulent Electronic Funds Transfers amounting to R8.1 million?
- 4.3.30. Did Mr. Montana improperly transfer Mr Stephen Ngobeni without disciplinary process being followed for his alleged irregular appointment of a Training Contractor to provide training services on the handling of People with Disability thereby amounting to maladministration?

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**4.4. The following issues will be dealt with in volume 2 of this report:**

- 4.4.1. Did PRASA improperly implement an upfront payment to a developer of the City Mall for the construction of an underground train station in the Bridge City Project without proper authorisation during the period 2008 to 2010?
- 4.4.2. Did PRASA improperly award a CCTV cameras tender to Mr Vusi Twala, who was a board member at the time?
- 4.4.3. Did PRASA improperly engage various construction companies in respect of 2010 Soccer World Cup projects?
- 4.4.4. Did PRASA improperly procure Umjantshi House from Transnet in September 2009?
- 4.4.5. Did PRASA improperly appoint Ms Shiela Boshielo, the wife of former PRASA Board Member, Mr. Bushy Boshielo, as the General Manager of Autopax?
- 4.4.6. Did PRASA's GCEO improperly take a Blue Train trip to Cape Town together with 10 female companions during the period between 24 to 27 September 2009 and return by SAA flight at an estimated cost of R170 000 and did such amount to fruitless and wasteful expenditure?
- 4.4.7. Did PRASA improperly pay a salary to Mr Mabe, former Executive Corporate Affairs Manager during 2008/2009, after his resignation from PRASA amounting to fruitless and wasteful expenditure?

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#### **4.5. Key Sources of information**

##### **4.5.1. Documents**

###### **4.5.1.1. An undated extract of the PRASA supplier database.**

###### **Documents relating to extension of the tender for the installation of high speed passenger gates to Siyangena Technologies in 2009/2010**

###### **4.5.1.2. A copy of the advertisement for tender no. SG/Gates/003/2009**

###### **4.5.1.3. Letter from Miss Mosholi, Manager Procurement dated 04 November 2010.**

###### **4.5.1.4. Minutes of the Tender Evaluation Committee dated 13 and 14 December 2010.**

###### **4.5.1.5. PRASA Board resolution dated 14 February 2011.**

###### **4.5.1.6. Agreement between PRASA & Siyangena Technologies in relation to tender no. SG/Gates/003/2009;**

###### **4.5.1.7. Agreement between the Main Contractor & PRASA for the 7 stations Cape Town, Rhodesfield, Windermere, Langa, Bridgette City, Moses Mabhida and Orlando;**

###### **4.5.1.8. Termination letter against the Main Contractor;**

###### **4.5.1.9. Approved Submission to extend the mandate of Siyangena to the 71 stations;**



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- 4.5.1.10. Tender records in relation to the closed tender for the installation of speed gates project i.e. Acquisition records, BEC & BAC reports, Appointment letter etc.;
  - 4.5.1.11. Unsigned letter dated 4 November 2010;
  - 4.5.1.12. Undated and unsigned Submission for Adjudication;
  - 4.5.1.13. Minutes of meeting held on 13 and 14 December 2010;
  - 4.5.1.14. CTPC document dated 14 February 2011 signed 20 February 2011;
  - 4.5.1.15. Letter from Siyangena Technologies to PRASA dated 28 March 2011; and
  - 4.5.1.16. Agreement between PRASA & Siyangena for the installation of speed gates.

**Documents relating to the extension of Siemens for the Dark Fibre and Integrated Communication Systems tender**

- 4.5.1.17. Tender advertisement, dated 6 February 2009, for tender number HO/SIGNALS/02/2009/WT1802 relating to Design, Construction and Implementation of a new Railway Signalling system nationally;
- 4.5.1.18. Request for proposal relating to tender for Design, Construction and Implementation of a new Railway Signalling system nationally;
- 4.5.1.19. Attendance register for a briefing session relating to tender number HO/SIGNALS/02/2009;

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- 4.5.1.20. Agreement between PRASA & Siemens relating to tender for "THE DESIGN, SUPPLY AND INSTALLATION OF THE INTEGRATED COMMUNICATIONS SYSTEMS (ICS) IN WITS (WT81201), TSHWANE (PR81081), DURBAN (DB 82101) AND CAPE TOWN (CA 82901)";
- 4.5.1.21. Acceptance letter by Siemens, dated 19 December 2008, relating to tender for "THE DESIGN, SUPPLY AND INSTALLATION OF THE INTEGRATED COMMUNICATIONS SYSTEMS (ICS) IN WITS (WT81201), TSHWANE (PR81081), DURBAN (DB 82101) AND CAPE TOWN (CA 82901)";
- 4.5.1.22. Specifications relating to tender for "THE DESIGN, SUPPLY AND INSTALLATION OF THE INTEGRATED COMMUNICATIONS SYSTEMS (ICS) IN WITS (WT81201), TSHWANE (PR81081), DURBAN (DB 82101) AND CAPE TOWN (CA 82901)".
- 4.5.1.23. Undated submission for turnaround strategy 2010 Projects;
- 4.5.1.24. Email correspondence dated 31 May 2007 from Miss Matshidiso Mosholi;
- 4.5.1.25. TPC document signed on 22 April 2008;
- 4.5.1.26. Undated tender recommendation report;
- 4.5.1.27. Undated memorandum for the Durban and Cape Town Regions;
- 4.5.1.28. Undated recommendation report;
- 4.5.1.29. Undated recommendation report dealing with the Extension.

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**Documents relating to the termination of all contracts for cleaning services and the subsequent appointment of Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services**

- 4.5.1.30. An unsigned letter dated 01 November 2005 from B Mazibuko Acting Regional Manager to Dyno Cleaning;
- 4.5.1.31. A letter dated 22 November 2005 from Mr B Mazibuko Acting Regional Manager to Dyno cleaning;
- 4.5.1.32. A contract between Intersite Property Management Services and Dyno Cleaning Services signed on 29 November 2005;
- 4.5.1.33. A contract between Intersite Property Management Services and Dyno Cleaning Services dated 01 December 2004;
- 4.5.1.34. A contract between Intersite Property Management Services and Dyno Cleaning Services dated 02 December 2004;
- 4.5.1.35. Contract extension letter dated 07 November 2006 from Mr K Vallabh Senior Regional Manager addressed to Dyno Cleaning;
- 4.5.1.36. Extension letter dated 10 November 2006 from Mr K Vallabh Regional Manager addressed to Dyno Cleaning;
- 4.5.1.37. Termination letters (7) (seven) dated 14 March 2012 for different service providers;

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- 4.5.1.38. A motivation of emergency letter dated 29 March 2012;
- 4.5.1.39. Appointment letter dated 23 April 2012 issued to Reakgona Commercial and Industry Hygiene;
- 4.5.1.40. Contract between Reakgona Commercial and Industry Hygiene and PRASA signed on 15 April and 16 April 2012;
- 4.5.1.41. Quotation dated 23 March 2012 from Katanga Cleaning Services;
- 4.5.1.42. Quotation from Katanga Cleaning Services dated 28 March 2012;
- 4.5.1.43. A letter of Appointment issued to Katanga Cleaning Services dated 23 April 2012;
- 4.5.1.44. An undated and unsigned specifications letter which appears to have been submitted by Katanga Cleaning Service;
- 4.5.1.45. A letter of appointment dated 23 April 2012 issued to Katanga Cleaning Services;
- 4.5.1.46. Contracts between PRASA and Katanga Cleaning Services signed on 10 April, 16 April 2012 and 8 November 2012;
- 4.5.1.47. Directorship search conducted for Mr Isaac Modiselle

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**Documents relating to the appointment of Sidas Security on a security tender in replacement of National Force Security**

- 4.5.1.48. An unsigned submission for the replacement of National Force Security in the Gauteng South Region dated 15 April 2009;
- 4.5.1.49. An investigation report dated 21 July 2009 was obtained from the investigation team to the Head of Corporate Security Services;
- 4.5.1.50. A cancellation letter dated 31 August 2009 for Sidas Security contract addressed to Sidas Security;
- 4.5.1.51. A termination letter dated 31 August 2009 in respect of Sidas Security contract;
- 4.5.1.52. A copy of memorandum from Mr Stephen Nkhuna to Mr N Sangweni dated 09 February 2010, regarding termination of security contracts;
- 4.5.1.53. A memorandum from Mr Joe Buthelezi to National Force Security Services dated 10 February 2010.
- 4.5.1.54. Procedures on tender 525/2010/GAU/PS
- 4.5.1.55. An undated and unsigned submission for adjudication document for tender number 525/2010/GAU/PS;
- 4.5.1.56. An e-mail dated 16 March 2010 from Mr Nhlanganiso Vokozela addressed to Mr Ronnie Khumalo;

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- 4.5.1.57. E-mail dated 19 March 2010 from Mr Joey Van Eden to Mr Joe Buthelezi;
- 4.5.1.58. Unsigned letter from Mr RM Khumalo Acting Regional Security Manager to Ms N Sangweni Regional Manager dated 20 July 2010;
- 4.5.1.59. A copy of letter of proceed dated 03 March 2010 for Changing Tides;
- 4.5.1.60. An e-mail correspondence dated 04 August 2010 from Kabelo Mantsane to Nozipho Sangweni, Mr Ronnie Mzwandile Khumalo;
- 4.5.1.61. An e-mail correspondence dated 6 August 2010 from Ronnie Mzwandile Khumalo to Nozipho Sangweni;
- 4.5.1.62. Email dated 6 August 2010 from Nozipho Sangweni addressed to Mr Ronnie Mzwandile Khumalo, Kabelo Mantsane;
- 4.5.1.63. Email from Craig Nte dated 12 August 2010 addressed to Ronnie Mzwandile Khumalo;
- 4.5.1.64. A realignment and extension of security contracts letter dated 26 August 2010 signed by Mr Kabelo Mantsane;
- 4.5.1.65. Undated document titled "tender for provisions of various security services";
- 4.5.1.66. Contract between PRASA and Vimtsire Security Services dated 23 February and 29 May 2010;

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- 4.5.1.67. Contract between PRASA and Enlightened Security 23 February and 21 May 2010;
- 4.5.1.68. Notice to proceed letters dated 03 March 2010;
- 4.5.1.69. Email correspondence dated 09 March 2010 from Mr Dumisani Xolelo to Mr Joe Buthelezi;
- 4.5.1.70. Email correspondence dated 11 March 2010 from Miss Yvonne Mokotedi to Mr Shumi Gorata Mokotedi;
- 4.5.1.71. Email correspondence dated 16 March 2010 from Mr Nhlanganiso Vokozela to Mr Ronnie Khumalo;
- 4.5.1.72. Email correspondence dated 19 March 2010 from Mr Joey Van Eden to Mr Joe Buthelezi and Ms Yvonne Moetsela;
- 4.5.1.73. Unsigned letter dated 20 July 2010 from Mr Ronnie Khumalo to Ms Nozipho Sangweni.

**Documents relating to the appointment of Vimtsire Security Services**

- 4.5.1.74. An undated notice to Tenderers, with a tender number 525/2010/GAU/PS;
- 4.5.1.75. Undated minutes resolutions;
- 4.5.1.76. An undated and incomplete submission for adjudication document for tender number 525/2010/GAU/PS;

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- 4.5.1.77. Notice to proceed letter dated 3 March 2010;
  - 4.5.1.78. Contract between PRASA and Vimtsire Security Services dated 23 February 2010;
  - 4.5.1.79. Submission to extend contract validity dated 12 March 2013;
  - 4.5.1.80. Extension letter dated 13 May 2013.

**Documents relating to the payment to Royal Security**

- 4.5.1.81. An extension of contract document for Royal Security dated 15 January 2011;
- 4.5.1.82. Undated responds which prepared by Mr Abel Baloyi addressed to Royal Security;
- 4.5.1.83. Tax invoice from Royal Security dated 28 February 2011;
- 4.5.1.84. An undated remittance advice amounting to R 5,005,323.41 in respect of Royal Security;
- 4.5.1.85. A letter of correspondence to finance from Mr Abel Baloyi which was signed on 11 April 2011;
- 4.5.1.86. Undated and unsigned schedule of payment to Royal Security;
- 4.5.1.87. A termination letter dated 01 September 2009 from Mr Sello Motaung Supply Chain Manager addressed to Sidas Security Guards;



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- 4.5.1.88. Tender Advice dated 15 December 2010 from CTPC Secretariat to Mr Kabelo Mantsane;
- 4.5.1.89. Notice to proceed dated 03 March 2010;
- 4.5.1.90. An undated notice to Tenderers, with a tender number 525/2010/GAU/PS;
- 4.5.1.91. An addendum document dated 24 February 2010, for tender number 525/2010/GAU/PS;
- 4.5.1.92. An appointment letter dated 03 March 2010 for Royal Security signed by Mr Joe Buthelezi on 11 March 2010 and on 12 March 2010 by a representative of Royal Security;
- 4.5.1.93. A contract for project number 525/2010/GAU/PS which was signed by the representative of Royal Security on 22 February 2010.

**Documents relating to the advance a payment to Enlightened Security**

- 4.5.1.94. A copy of a quotation from Enlightened Security dated 09 September 2008;
- 4.5.1.95. A notice to proceed letter dated 17 October 2008 from Mr Joe Buthelezi to addressed to Enlightened security;
- 4.5.1.96. Unsigned letter dated 17 December 2008 from SJ Ngcobo Acting Regional Chief to Mr Sisa Mtwla Regional;
- 4.5.1.97. An unsigned copy of minutes of the meeting held on 31 August 2009 at 10:30;

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- 4.5.1.98. Tax invoice dated 01 September 2009 from Enlightened Security;
- 4.5.1.99. A copy of a memorandum dated 04 September 2009 from Mr Stephen Nkhuna to Mr Sisa Mtwla regarding application for the extensions of the suspension;
- 4.5.1.100. Letter dated 14 October 2008 from Mr Amen Dlamini to Mr Joe Ngcobo;
- 4.5.1.101. Undated copy of a document entitled "notice of the pending disciplinary hearing" reflecting author as Mr H Cohen signed on 07 January 2010 by an unspecified person;
- 4.5.1.102. A copy of tax invoice from Enlightened Security dated 01 November 2008;
- 4.5.1.103. A credit note a statement dated 05 May 2009 from Enlightened Security;
- 4.5.1.104. An untitled and unsigned schedule of payments relating to Enlightened Security;
- 4.5.1.105. A signed copy of the statement of oath dated 09 September 2009 from Mr Frans Makgaba;
- 4.5.1.106. A letter dated 10 September 2009 from Enlightened Security with REF "response to enquiry";
- 4.5.1.107. A letter dated 19 January 2010 addressed to Mr Joe Ngcobo from Mr Stephen Nkhuna;

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**Documents relating to the appointment of a media company to produce  
*Hambanathi***

4.5.1.108.A partnership agreement entered into between PRASA and KG Media Investment on 22 May 2012;

4.5.1.109.A notice to proceed from PRASA dated 20 May 2015 to KG Media regarding renewal of the media partnership commuter publication contract.

**Documents relating to the appointment of Mr Ezra Ndwandwe**

4.5.1.110.A motivation document indicating motivation for confinement for Ndwandwe Consultancy dated 25 June 2008;

4.5.1.111.An undated recommendation report for tender HO/HR/05/200/PR2248 addressed to the Chief Executive Officer from Chief Procurement Officer;

4.5.1.112.An unsigned and undated contract entered into between PRASA and Ndwandwe Consultancy for an amount of R7 091 712.00 (Vat Inclusive);

4.5.1.113.A memorandum entitled Group Procurement & Tender Administration dated 16 July 2008;

4.5.1.114.Eight(8) copies of Tax Invoice received from Ndwandwe Consultant to PRASA for the services rendered;

4.5.1.115.A resolution minute document entitled CTPC for project HO/HR/05/200/PR2248 stamped dated 08 June 2009;

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- 4.5.1.116. An undated submission of extension for project number HO/HR/05/200/PR2248;
- 4.5.1.117. A copy of a purchase order dated 10 June 2008;
- 4.5.1.118. A copy of a purchase order dated 05 June 2009;
- 4.5.1.119. Undated and unsigned recommendation from Chief Procurement Officer to Group Chief Executive Officer;
- 4.5.1.120. An e-mail correspondence from Miss Zoliswa Mbuli-Copiso to Mr Paul M Zikhali and Miss Matshidiso Mosholi;
- 4.5.1.121. An undated recommendation report from Chief Procurement Officer to Chief Executive Officer for tender number HO/HR/05/200/PR2248;

**Documents relating to the increase of scope and value for marketing and communications tender to Brand Leadership.**

- 4.5.1.122. Recommendation report on Re-branding from SARCC to PRASA to appoint Brand Leadership at the cost of R2 899 900.00 exclusive VAT signed and approved by Chief Procurement Officer and the GCEO on 11 December 2008;
- 4.5.1.123. Recommendation report on Marketing and Communication Services for PRASA group to appoint brand Leadership at the cost of R9 528 000.00 and R20 000 000.00 approved Chief Procurement Officer and the GCEO on 19 October 2008 (HO/M&C/305/07/2009);

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- 4.5.1.124. Agreement for provision of Marketing & Communication Services between Brand Leadership and PRASA;
- 4.5.1.125. Memorandum dated 16 July 2009 from Mr Tiro Holele to GCEO;
- 4.5.1.126. Undated document signed by Mr Tiro Holele;
- 4.5.1.127. Undated Notice to tenderers;
- 4.5.1.128. Copy of newspaper advertisement;
- 4.5.1.129. Document entitled "list of quotation/tender received" addressed to Mr Tiro Holele from CFSC/TPC Secretary;
- 4.5.1.130. Standard contract in tender documents;
- 4.5.1.131. Adjudication report dated 22 October 2010
- 4.5.1.132. Letter of acceptance from Brand Leadership to PRASA dated 21 October 2009;
- 4.5.1.133. Letters to service providers informing them that they have not been successful on the Marketing and Communication Services for PRASA;
- 4.5.1.134. Notice to Proceed from PRASA to Brand Leadership dated the 20 October 2009;
- 4.5.1.135. Rebranding tender dated 11 December 2008 Transaction value R3 305 886;

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- 4.5.1.136. Marketing & Communication tender dated 19 October 2009 at value of R29 528 000.00;
- 4.5.1.137. Confinement and update of Executive Lounge at value of R448 135.00.
- 4.5.1.138. Condonation from R30 million to R36.8 million;
- 4.5.1.139. Submission to condone increase of amount for Brand Leadership dated 26 May 2011;
- 4.5.1.140. Correspondence from Brand Leadership to PRASA regarding overdue account;
- 4.5.1.141. Submission for Adjudication for rebranding tender;
- 4.5.1.142. Submission for Adjudication for Marketing & Communication tender;
- 4.5.1.143. Adjudication Report for increase in contract value of the Marketing and Communication tender;
- 4.5.1.144. List of Quotations;
- 4.5.1.145. Briefing Session;
- 4.5.1.146. Payment schedule for Brand Leadership;
- 4.5.1.147. A memorandum dated 8 July 2010 requesting approval for a confinement approach on procurement of furniture branding of the executive lounge and upgrade of the 11th floor PRASA Boardroom;

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**Documents relating to the appointment of Mr Edwin Lekota on a tender for the development of a Contingency Emergency Preparedness Programme.**

4.5.1.148. Engagement letter between Lekga investments and PRASA dated 1 March 2008;

4.5.1.149. The unsigned minutes of the CFSC dated 25 August 2010;

4.5.1.150. A memo from Chief Procurement Officer Mr Chris Mbatha sent to GCEO, Mr Tshepo Lucky Montana;

4.5.1.151. A memorandum entitled tender advice dated 27 September 2010 prepared by the Company secretariat addressed to Mr Enos Ngutshane;

4.5.1.152. Publication in the PMG website dated 23 October 2009;

**Documents relating to award of a tender to Umjanji Consortium**

4.5.1.153. Briefing session attendance register dated 22 February 2011 in respect of tender HO/CA/739/02/2010;

4.5.1.154. The recommendation report for tender HO/CA/739/02/2010 in respect of the successful service provider;

4.5.1.155. A letter to proceed dated 31 January 2011 addressed to Umjanji Consortium;

4.5.1.156. Letters of regret dated 25 February 2011 addressed to other bidders;

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4.5.1.157. Media advertising and broadcasting concession agreement between PRASA and Umjanji Consortium;

4.5.1.158. The company registration certificate for Umjanji Media Consortium;

4.5.1.159. Letters from Primedia;

4.5.1.160. National Council of Provinces written reply from Minister of Transport dated 9 March 2012

**Documents relating to the award of a contract to Siyaya DB.**

4.5.1.161. An undated copy of the submission for adjudication in respect of the tender HO/INF(s)/203/06/2010: Signal and Telecommunications;

4.5.1.162. Unsigned copy of minutes of the CTPC dated 14 October 2010;

4.5.1.163. Memorandum dated 16 November 2010 from Mr Chris Mbatha addressed to Mr Tshepo Lucky Montana;

4.5.1.164. A memo entitled tender advice dated 26 November 2010 issued by Ms Matshidiso Mosholi to Ms Sorin Baltac;

4.5.1.165. A notice to proceed issued to Siyaya DB Engineers on 7 December 2010;

4.5.1.166. A contract between Siyaya DB and PRASA;



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**Document relating to the award of a tender for Park Station Development Framework to ARUP**

4.5.1.167. Preliminary report on bus theft dated 10 June 2011 addressed to the GCEO of PRASA from Mr Kabelo Mantsane;

4.5.1.168. Various Labour Court documents in respect of case between PRASA and Cromet Molepo;

4.5.1.169. CCMA award letter dated 14 August 2012 signed off by Mr Timothy Boyce, CCMA Senior Commissioner;

4.5.1.170. Tender recommendation for approval document from Supply Chain Management in respect of ARUP;

4.5.1.171. A letter of appointment for ARUP dated 20 December 2010 in respect of sub-precinct development framework was provided by PRASA;

**Documents relating to the theft of the buses at Autopax**

4.5.1.172. Ms Sindi Mabaso-Koyana affidavit dated 24 October 2013;

4.5.1.173. A report dated 26 January 2010 was addressed to the GCEO, from Mr Kabelo Mantsane;

4.5.1.174. A suspension letter dated 13 July 2010 addressed to Mr Frans Makgaba from Mr Saki Zamxaka;

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- 4.5.1.175.A disciplinary hearing notice dated 01 November 2010 issued to Mr Frans Makgaba;
- 4.5.1.176.Suspension letter dated 13 July 2010 addressed to Mr Chris Brand to Mr Saki Zamxaka;
- 4.5.1.177.Document entitled "annexure F" dated 25 January 2010 from Mr Kabelo Mantsane to Mr Saki Zamxaka;
- 4.5.1.178.Investigation report dated 09 July 2010
- 4.5.1.179.A memorandum dated 11 October 2010 from Mr Enos Ngutshane, Presiding officer addressed to Mr Chris Brand;
- 4.5.1.180.An undated referral to the CCMA document in respect of Mr Chris Brand;
- 4.5.1.181.A letter dated 20 July 2010 entitled stolen buses addressed to Mr Tokollo Mahlake from Ms Tilly Nkosi;
- 4.5.1.182.Investigation report dated 26 October 2010 prepared by Mr Daniel Momberg addressed to Ms Tiesie Lange;
- 4.5.1.183.A status report dated 24 February 2011 from Mr Francois van Eden, Senior Manager Security addressed the CEO of Autopax Mr Saki Zamxaka;
- 4.5.1.184.Insurance policy between Paladin and Autopax;
- 4.5.1.185.Claim form dated 17 November 2011;

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4.5.1.186. Email correspondence dated 23 February 2012 from Mr Gary Mabunda, Group Manager, Insurance and Risk to Mr Francois Van Eeden;

4.5.1.187. Email dated 23 February 2012 from Mr Saki Zamxaka addressed to Mr Gary Mabunda and Mr Francois Van Eeden;

4.5.1.188. An agreement between Autopax and Daimler Fleet Management South Africa;

**Documents relating to the award of a security services contract to Futuris Guarding**

4.5.1.189. A quotation dated 20 May 2010 from Mr Andre Van Tonder of Futuris Guarding addressed to Mr Frans Makgaba;

4.5.1.190. An acceptance of quotation document signed by Mr Frans Makgaba on 16 April 2010;

4.5.1.191. Memorandum of agreement between Autopax and Futuris Guarding, signed on 30 April 2010 by Mr Frans Makgaba;

4.5.1.192. A memorandum of agreement entered into between Autopax and Futuris Guarding on 20 July 2010;

4.5.1.193. Futuris Guarding invoices totalling R231 206.15 (Inclusive of VAT);

4.5.1.194. A suspension letter dated 13 July 2010 from Mr Saki Zamxaka addressed to Mr Frans Makgaba;

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4.5.1.195. The notification for hearing letter dated 02 November 2010 addressed to Mr Frans Makgaba from Mr Saki Zamxaka;

4.5.1.196. A memorandum entitled submission for the replacement of National Force Security in the Gauteng South Region dated 15 April 2009;

4.5.1.197. A memorandum entitled "termination of Security Contracts" dated 09 February 2010 prepared by Mr Steven Nkhuna;

**Documents relating to the termination of Rasakanya Builders contract**

4.5.1.198. Motivation for the month to month extension of Rasakanya Builders contract dated 09 March 2009;

4.5.1.199. Motivation for the month to month extension of Rasakanya Builders contract dated 27 March 2009;

4.5.1.200. Contract termination letter for Rasakanya Builders contract dated 28 September 2012;

**Documents relating to implementation of an upfront payment to FIFA World Cup**

4.5.1.201. An undated Memorandum of Understanding (MOU) between FIFA, MATCH, South African Government and PRASA;

4.5.1.202. A copy of an agreement entered into between FIFA and PRASA on 11 June 2009;

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4.5.1.203.A lease agreement entered into between PRASA, Autopax and MATCH in June 2010;

4.5.1.204.Annexure F of the agreement between PRASA and MATCH and FIFA;

4.5.1.205.Settlement agreement between PRASA and MATCH dated 12 April 2011;

4.5.1.206.PRASA's Annual report for the year ended 31 March 2011;

**Documents relating to incurring of an over expenditure**

4.5.1.207.A letter dated 22 January 2010 requesting urgent intervention into finance functions of PRASA from GCFO to GCEO;

4.5.1.208.A letter from Mr Nozipho Sangweni; Gauteng Regional Manager dated 21 January 2010 addressed to Mr Jason Mlaudzi;

4.5.1.209.A letter dated 20 May 2011 from Mr Todd, Credit Manager Metro file addressed to Mr Mansingh, Intersite Property Management;

4.5.1.210.A memo dated 16 January 2012 in respect of changes in management and controls signed off by Mr Kameshni Naidoo;

4.5.1.211.A copy of the provisional allocations to PRASA-2010 MTEF schedule reflecting the audited allocations;

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4.5.1.212. PRASA income statement budget including Shosholoza Meyl and Autopax for year 2009/10;

4.5.1.213. A consolidated statement of comprehensive income for the year ended March 2010;

4.5.1.214. A total of seven (7) letters dated 19 March 2009 from Mr David Kekana, CFO addressed to divisions of PRASA;

4.5.1.215. Statement of a former Senior Manager at PRASA dated 23 October 2013;

**Documents relating to a subsidy of R500 million received for Shosholoza Meyl**

4.5.1.216. PRASA, Annual Financial Statements for the period from 2008/9 to 2010/11;

4.5.1.217. Copies of the budgets for the years ending 2008/9 and 2009/10;

4.5.1.218. An undated letter received from the National Treasury entitled MTEF allocations 2008/9 to 2010/11;

4.5.1.219. Additional funding request document received from National Treasury;

**Documents relating to the incurring rental expenditure for Jorissen Building**

4.5.1.220. Lease agreements entered into between PRASA and Liberty Life on 14 December 2006;

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4.5.1.221. An agreement between PRASA and Transnet in respect of sale of Umjantshi building dated 28 September 2009;

4.5.1.222. Sale agreement between PRASA and Transnet dated 28 September 2009;

**Documents relating to the termination of contracts of Executives**

4.5.1.223. A settlement letter from Mr Montana addressed to Mr Salani Sithole dated 08 October 2008;

4.5.1.224. Settlement agreement for Mr Salani Sithole dated 7 October 2009 signed off by Mr Lindikhaya Zide;

4.5.1.225. Account payment schedule reflecting payment made to Mr Salani Sithole on 21 October 2009;

4.5.1.226. Settlement Agreement between PRASA and Mr Viwe Mlenzana, Case number J1687/11 dated 08 November 2011;

4.5.1.227. Settlement Agreement between PRASA and Ms Sindi Mabaso-Koyana, dated 30 April 2013;

4.5.1.228. The arbitration award letter dated 14 August 2012 in the case between Mr Cromet Molepo and PRASA;

4.5.1.229. PRASA application for leave to appeal dated 25 July 2013 in respect of a case between Mr Cromet Molepo and PRASA;

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4.5.1.230. Financial Statements for the years ending 2009/10, 2010/11 and 2011/12;

**Documents relating to the suspension of employees**

4.5.1.231. A memorandum dated 30 December 2012 prepared by Mr Silence Vilane, SATAWU Provincial Rail Secretary addressed to POBC, NOBC, Rail coordinators and PRASA Management.

4.5.1.232. A letter of suspension of Mr Craig Nte dated 12 February 2010.

4.5.1.233. A letter of termination of employment contract of Mr Craig Nte dated 17 January 2012.

**Documents relating to Dr Bridgette Gasa, a PRASA Board failure to disclose and manage a conflict of interest arising from her interest**

4.5.1.234. Letter dated 08 May 2011 to Dr Bridgette Gasa from the Minister of Transport;

4.5.1.235. Undated Directors disclosure of interest.

**Documents relating to the appointment of Mr Joel Chimanda**

4.5.1.236. Professional Services Contract dated 26 February 2009.

**Documents relating to the replacement of the Group Executive HR Mr Mphefo Ramutloa**



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4.5.1.237. A copy for the request to advertise the position of Group Executive, HCM with reference GEHCM/R&S/11/11/10 with closing date of 22 November 2010.

4.5.1.238. Copy of Mr Ramutloa's CV.

4.5.1.239. A copy of the internal Application Form.

4.5.1.240. Declaration of interest by Mr Montana dated 25 November 2010.

4.5.1.241. Declaration of interest by Mr Pule Moiloa dated 25 November 2010.

4.5.1.242. Declaration of interest by Mr LB Boshielo dated 25 November 2010.

4.5.1.243. A copy of the interview questionnaire and score sheets.

4.5.1.244. A copy of the appointment letter dated 06 December 2011.

4.5.1.245. An undated copy of the regret letter to Mr Mondi Monde.

**Documents relating to failure to take disciplinary action against staff members involved in fraudulent Electronic Funds Transfers**

4.5.1.246. Fraudulent Electronic Funds Transfers;

4.5.1.247. Deloitte Report dated 26 February 2010;

4.5.1.248. Directors report 2008/09 PRASA Annual Report;

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4.5.1.249. Warning letter to Ms Kumara Pallaiyiah dated 09 June 2010;

4.5.1.250. Grievance document from Ms Kumarie Pallaiyiah.

**Evidence in respect of deferred issues to be dealt with in volume 2 of this report:**

4.5.1.251. Memorandum of Understanding between SARCC, Crowie, Intersite Management Services Ltd, eThekweni Municipality, KwaZulu Natal Department of Transport, Community Safety and Liaison dated 06 July 2007.

4.5.1.252. Approved Memo dated 20 September 2011 Group Executive Manager to Chief Procurement Officer regarding approval required on increased contract value to Crowie (Crowie projects (Pty) Ltd) Projects on the Bridge City Station Development Project;

4.5.1.253. Development Agreement between Crowie and SARCC dated 12 December 2007;

4.5.1.254. Development Agreement between Crowie Projects and PRASA dated 22 February 2010;

4.5.1.255. Project Implementation Agreement between PRASA and Crowie Report;

4.5.1.256. Resolution passed at meeting of Directors of Crowie Project;

4.5.1.257. Email from Ms Luyanda Gantsho to Mr Sydney Khuzwayo and Mr Thabo Mashea dated 06 August 2010;

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- 4.5.1.258. Email from Kevin McGill to Mr Pettersen dated 20 July 2011; and
- 4.5.1.259. Email from Dries Van Der Walt to Kevin McGill dated 30 September 2011;
- 4.5.1.260. Tender Adjudication and Evaluation Report.
- 4.5.1.261. Undated copy of Manager's disclosure of interest, other directorship and interest in contracts questionnaire form by Mr Vusi Twala.
- 4.5.1.262. Copy of the minutes of the Board of Control dated 01 December 2008.
- 4.5.1.263. An account payment schedule stamped paid 23 February 2010 signed by Mr Montana on 10 February 2010 reflecting a payment of R61 560 000;
- 4.5.1.264. The payment history in respect of payment to Transnet stamp dated 23 February 2010;
- 4.5.1.265. A copy of the budget for 2008/9, 2009/10 and 2010/11;
- 4.5.1.266. Financial statements for PRASA for the year 2008/9, 2009/10 and 2010/11 indicating actual capital expenditure;
- 4.5.1.267. Letter of appointment from the Minister of Transport to Mr Boshielo dated 01 October 2006;
- 4.5.1.268. Application letter dated 30 November 2009;
- 4.5.1.269. Autopax employee personal particulars form dated 06 May 2010;

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4.5.1.270. Advertisement in Sunday Times dated 29 November 2009;

4.5.1.271. Email correspondence dated 30 November 2009 from Mrs Boshielo to recruitment@apv.co.za;

4.5.1.272. Letter of appointment dated 15 April 2010 to Mrs Boshielo.

4.5.1.273. Undated declaration of interest form from Mr Sfiso Buthelezi;

4.5.1.274. Letter from the Minister of Transport to Mr Sfiso Buthelezi dated 08 May 2011.

4.5.1.275. Affidavit from the South African Airways;

4.5.1.276. Photographs taken between 24 and 27 September 2009

#### **4.6. Meetings and Interviews conducted**

4.6.1. Meetings were held with Mr Lucky Makhubela of Makhubela Attorneys on 06 February 2013; 13 March 2013; and 21 and 22 May 2015;

4.6.2. A meeting was held with Mr Lindikhaya Zide, Company Secretary of PRASA on 06 February 2013 and 01 August 2013;

4.6.3. Meetings were held with Public Protector and Mr Lucky Montana; CGEO of PRASA on 01 August 2013 and 21 and 22 May 2015;

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- 4.6.4. A meeting was held with Public Protector and Mr Sfiso Buthelezi, then Chairperson of the PRASA Board on 01 August 2013;
  - 4.6.5. Meetings were held with former senior managers of PRASA (names withheld) during the period 2012 and 2014;
  - 4.6.6. Numerous meetings were held with the Complainant between 2012 and 2015 including on the following date: 10 May 2013; 14 May 2013; 12 July 2013; 02 August 2013; 23 August 2013; 28 January 2014 and 04 May 2015
  - 4.6.7. An interview was conducted with Ms Sindi Mabaso-Koyana on 24 October 2013;
  - 4.6.8. Interviews were held with Mr Cromet Molepo on 26 July 2013; 30 May 2014 and 25 July 2014;
  - 4.6.9. Meeting with officials of AGSA on 25 June 2015;
  - 4.6.10. Meeting with Public Protector and Chairperson of the PRASA Board on 30 June 2015;

#### **4.7. Correspondence sent and received**

- 4.7.1. Letter dated 06 July 2012 from the Public Protector to Mr Craig Nte confirming that a preliminary investigation will be conducted;
- 4.7.2. Letter dated 07 November 2012 from the Public Protector to Mr Lucky Montana regarding investigation on the numerous allegations;

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- 4.7.3. E-mail correspondence dated 09 November 2012 from the Public Protector to Mr Lucky Montana concerning allegations against PRASA;
  - 4.7.4. Letter correspondence dated 13 November 2012 from Mr Lucky Montana to the Public Protector, first response to the Public Protector: regarding investigation on the numerous allegations;
  - 4.7.5. E-mail correspondence between Mr Craig Nte and the Public Protector from 01 November 2012 to 07 December 2012 concerning PRASA investigation;
  - 4.7.6. Letter dated 04 December 2012 from Mr Lucky Montana to the Public Protector regarding investigation and extension;
  - 4.7.7. Letter dated 06 December 2012 from the Public Protector to Mr Lucky Montana concerning granting of extension;
  - 4.7.8. Letter dated 06 December 2012 from the Public Protector to Messrs Makhubela Attorneys; concerning granting of extension;
  - 4.7.9. E-mail correspondence dated 25 January 2013 from the Public Protector to Makhubela Attorneys concerning delays in responding to the Public Protector;
  - 4.7.10. E-mail correspondence dated 25 January 2013 from Makhubela Attorneys to the Public Protector acknowledging the delays;
  - 4.7.11. Letter dated 01 February 2013 from Reynaud Daniels to Mr Tshepo Lucky Montana concerning action for damages against Ephraim Mphahlele and SATAWU;

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- 4.7.12. Memorandum of demands response dated 07 February 2013 from National Transport Movement to Office of the Public Protector concerning dissatisfaction about delay of the PRASA investigation;
  - 4.7.13. Letter dated 12 February 2013 from Makhubela Attorneys to the Public Protector regarding Deloitte's report and legal proceedings against SATAWU and Mr Mphahlele;
  - 4.7.14. Letter dated 13 February 2013 Makhubela Attorneys to the Public Protector regarding SATAWU distancing itself from the allegations made by then President Mr Mphahlele;
  - 4.7.15. Letter dated 14 February 2013 from the Public Protector to Makhubela Attorneys regarding submission by PRASA;
  - 4.7.16. E-mail correspondence from 06 December 2012 to 05 February 2013 between Makhubela Attorney and the Public Protector concerning Investigation by the Public Prosecutor against PRASA;
  - 4.7.17. E-mail correspondence between the Public Protector and Makhubela Attorneys from 05 February 2013 to 11 February 2013 concerning investigation against PRASA;
  - 4.7.18. E-mail correspondence from 06 December 2012 to 25 January 2013 between Makhubela Attorney and the Public Protector concerning investigation against PRASA;

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- 4.7.19. E-mail correspondence dated 06 February 2013 from the Public Protector to Mr Craig Nte concerning PRASA investigation;
  - 4.7.20. Letter dated 18 February 2013 from Makhubela Attorneys to the Public Protector concerning PRASA and Mr T L Montana;
  - 4.7.21. E-mail correspondence dated 18 February 2013 and 19 February 2013 between Makhubela Attorney and the Public Protector concerning PRASA;
  - 4.7.22. Letter dated 18 February 2013 from Makhubela Attorneys to the Public Protector regarding PRASA;
  - 4.7.23. E-mail correspondence dated 19 February 2013 from Mr Mthethwa to the Public Protector regarding PRASA;
  - 4.7.24. Letter correspondence dated 20 February 2013 from Makhubela Attorneys to the Public Protector concerning PRASA;
  - 4.7.25. E-mail correspondence dated 20 February 2013 and 21 February 2013 from Makhubela Attorneys to the Public Protector concerning PRASA;
  - 4.7.26. E-mail correspondence dated 21 February 2013 from the Public Protector to Mr Craig Nte and copied to Mr Ephraim Mphahlele concerning response to NTM memorandum of demands;
  - 4.7.27. Letter correspondence dated 21 February 2013 from Makhubela Attorneys to the Public Protector concerning PRASA;



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- 4.7.28. Letter dated 21 February 2013 from the Public Protector to Mr Gasant regarding Authorisation to serve a subpoena by delivery;
- 4.7.29. Subpoena correspondence dated 26 February 2013 to Mr Lucky Montana from the Public Protector;
- 4.7.30. Subpoena dated 26 February 2013 to Mr Sfiso Buthelezi from the Public Protector;
- 4.7.31. Letter dated 26 February 2013 from the Public Protector to Mr Gasant concerning authorisation to serve subpoena by delivery;
- 4.7.32. E-mail correspondence dated 28 February 2013 from the Public Protector to Mr Craig Nte and copied to Mr Ephraim Mphahlele regarding the delays by PRASA;
- 4.7.33. Return of service correspondence dated 01 March 2013 in the case between the Public Protector and Mr Sfiso Buthelezi;
- 4.7.34. Letter correspondence dated 05 March 2013 from Makhubela Attorneys to the Public Protector concerning PRASA;
- 4.7.35. E-mail correspondence from 13 February 2013 to 06 March 2013 between Makhubela Attorneys and the Public Protector concerning PRASA;
- 4.7.36. Letter dated 15 March 2013 from Mr Tshepo Lucky Montana to the Public Protector regarding responses to the numerous allegations against PRASA;
- 4.7.37. Letter dated 15 March 2013 to the Public Protector from Makhubela Attorneys regarding the numerous allegations against PRASA;

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- 4.7.38. Letter dated 26 March 2013 from the Public Protector to Mr Sfiso Buthelezi concerning subpoena issued against him;
  - 4.7.39. Letter dated 26 March 2013 from the Public Protector to Mr Montana concerning subpoena issued against him;
  - 4.7.40. Letter dated 04 April 2013 from Mr Montana to the Public Protector concerning; subpoena issued on 26 February 2013;
  - 4.7.41. E-mail correspondence dated 07 April 2013 from Mr Boitumelo Kgosa/ PRASA to the Public Protector concerning subpoena issued on 26 February 2013;
  - 4.7.42. Letter correspondence dated 08 May 2013 from Mr Craig Nte to the Public Protector regarding intention to submit a memorandum of demand.
  - 4.7.43. Letter to the Chairman of the PRASA Board from the Public Protector on 26 June 2015;
  - 4.7.44. Letter to Mr Montana from the Public Protector dated 01 July 2015;
  - 4.7.45. Letter from the Chairman of the PRASA Board to the Public Protector dated 02 July 2015;
  - 4.7.46. Letter from Mr Montana to the Public Protector dated 13 July 2015.
  - 4.7.47. Minutes of the SARCC Audit and Risk Management Committee Meeting dated 19 November 2008;

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- 4.7.48. Minutes of the Meeting of the PRASA Board of Control of SARCC dated 01 December 2008;
  - 4.7.49. Minutes of the PRASA Board of Control SARCC Audit and Risk Management Committee Meeting dated 05 February 2009;
  - 4.7.50. Minutes of the PRASA Board of Control Audit and Risk Management Committee Meeting dated 14 May 2009;
  - 4.7.51. Minutes of the Meeting of the PRASA Board of Control dated 21 May 2009;
  - 4.7.52. Minutes of the PRASA Board of Control Audit and Risk Management Committee Meeting dated 23 July 2009;
  - 4.7.53. Minutes of the Meeting of the PRASA Board of Control dated 30 July 2009;
  - 4.7.54. Minutes of the PRASA Board of Control Audit and Risk Management Committee Meeting dated 18 November 2009;
  - 4.7.55. Minutes of the PRASA Board of Control Audit and Risk Management Committee Meeting dated 30 November 2009;
  - 4.7.56. Minutes of the PRASA Board of Control Audit and Risk Management Committee Meeting dated 23 February 2010;
  - 4.7.57. Minutes of the PRASA Board of Control Audit and Risk Management Committee Meeting dated 11 May 2010; and

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- 4.7.58. Minutes of the Meeting of the PRASA Board of Control dated 05 August 2010.

**Notices issued in terms of section 7(9) of the Public Protector Act, 1994, to:**

- 4.7.59. Mr Montana dated 06 February 2015;  
4.7.60. Dr Bridgette Gasa dated 05 May 2015;  
4.7.61. Mr Goodman Matampi dated 12 May 2015;  
4.7.62. Ms Tara P Ngubane dated 12 May 2015;  
4.7.63. Mr Chris Mbatha 12 May 2015;  
4.7.64. Mr Tumisang R Kgaboesele dated 08 and 12 May 2015 respectively;  
4.7.65. Mr D Xelelo dated 08 May 2015;  
4.7.66. Mr Joe Buthelezi dated 08 May 2015';  
4.7.67. Mr Steven Nkhuna dated 08 May 2015;  
4.7.68. Ms Nozipho Sangweni dated 08 May 2015;  
4.7.69. Ms Jackie Moshe 08 May 2015;  
4.7.70. Mr Ronnie Khumalo dated 05 May 2015;  
4.7.71. Mr Chris Moloi dated 05 May 2015;

**Responses received to notices issued in terms of section 7(9) of the Public Protector Act, 1994, from:**

- 4.7.72. The former GCEO of PRASA, Mr Montana dated 05 June 2015;  
4.7.73. Response received from Mr Tara Ngubane dated 17 July 2015;  
4.7.74. Responses received from Ms Nozipho Sangweni dated 24 July 2015 and 29 July 2015;  
4.7.75. Response received from Mr Tumisang Kgaboesele dated 24 July 2015;  
4.7.76. Response received from Mr Ronnie Khumalo dated 24 July 2015;

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- 4.7.77. Response received from Dr Bridgette Gasas dated 25 July 2015;
  - 4.7.78. Response received from Mr Chris Moloi dated 24 July 2015
  - 4.7.79. Response received from Mr Christopher Sangweni dated 29 July 2015;
  - 4.7.80. Response received from Mr Goodman Matambi dated 31 July 2015;
  - 4.7.81. Response received from Mr Kabelo Mantsane dated 11 August 2015;

#### **4.8. Websites consulted**

- 4.4.1.1 <http://www.whoswho.co.za> (April 2015);
- 4.4.1.2 <http://www.cipc.co.za> (May 2015);
- 4.4.1.3 <http://www.saflii.org.za> (15 July 2015);and
- 4.4.1.4 <http://www.treasury.gov.za> (April and May 2015)

#### **4.9. Legislation and other prescripts**

##### **Acts**

- 4.9.1. The Constitution of the Republic of South Africa, 1996;
- 4.9.2. The Public Protector Act, 1994;
- 4.9.3. The Labour Relations Act, 1995;
- 4.9.4. The Public Finance Management Act, 1999;
- 4.9.5. Promotion of Administrative Justice Act, 2000;
- 4.9.6. The Preferential Procurement Policy Framework Act, 2000;
- 4.9.7. National Railway Safety Regulator Act, 2002;and
- 4.9.8. Prevention and Combatting of Corrupt Activities Act, 2004.

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**Regulations**

- 4.9.9. National Treasury Regulations issued in terms of PFMA, 2005.

**Policies**

- 4.9.10. The Supply Chain Management Policy of PRASA, February 2009.

**National Guidelines**

- 4.9.11. National Treasury SCM Guidelines dated February 2004.

**Case law**

- 4.9.12. Allpay Consolidated Investment Holdings (PTY)Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC);
- 4.9.13. Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal (CCT 10/13) [2013] ZACC 49

**Touch stones from previous Public Protector Reports**

- 4.9.14. *"Against the Rules Too"*, Report No.33 of 2010/2011 (Volume 2)
- 4.9.15. "GNS", Report No. 20 of 2010/2011

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## **5. THE STANDARD THAT SHOULD HAVE BEEN COMPLIED WITH**

### **Procurement irregularities**

#### **5.1 General Principles**

- 5.1.1 Conduct at PRASA relating to the procurement of goods and services is principally regulated by its own corporate SCM policy. The policy communicates upfront that it seeks to give effect to applicable constitutional, legal, government policy and National Treasury SCM Guidelines relating to authorised procurement of goods and services.
- 5.1.2 Key provisions regulating the impugned conduct of the GCEO and other PRASA functionaries as per the complaints cover the entire SCM cycle from Demand Management, Acquisition Management; Logistics Management; Disposal Management; Risk Management; up to Regular assessment of supply chain performance. Any procurement transaction executed according to the rules and accordingly qualifying not to be adjudicated as constituting maladministration or improper conduct, would have conformed to the following flow chart:

**Schematic: Procurement Steps and areas of responsibility in respect of acquiring goods and services, lease and accommodation**

| PROCUREMENT STEPS   |  | RESPONSIBLE DIVISION                            |
|---|--|---|
| <div>Preparation &amp; Demand Management</div>  | <b>PROCUREMENT STEPS</b>   | <b>RESPONSIBLE DIVISION</b>                     |
|   | <b>INCEPTION / NEEDS ANALYSIS</b>  | <b>PRASA Supply Chain Management Unit (SCM)</b> |
|   | 1. Future need requirements;   |   |
|   | 2. Identification of critical delivery dates;  |   |
|   | 3. The frequency of need;  |   |
|   | 4. Budget availability;  |   |
|   | 5. Expenditure analysis (based on past expenditure);   |   |
|   | 6. Specifications;   |   |
|   | 7. Commodity analysis ( checking for alternatives)   |   |
|   | 8. Industry analysis;  |   |
|   | 9. Initiation and preparation requests for proposal/<br>tender/quote to and from potentials suppliers; |   |
|   | 10. Implementations of preferential procurement.   |   |
|   | <b>FINANCIAL PLANNING</b>  |   |
|   | Recommendation of Financial plan   | GCEO  |
|   | Approval of Financial plan   | BOC   |
|   | Recommendation of budget approval  | GCEO  |
|   | Approval of budget   | BOC   |



## PROCUREMENT PROCESS

1. Assess PRASA's need, including nature and extent of service required End user  
(divisions within PRASA)
2. Determine urgency and other relevant factors

## PROCUREMENT STRATEGY

1. Acquisition management SCM
2. Obtaining quotations, inviting competitive Bids,  
Pre-qualification of bidders and two-stage bidding process.
3. Compiling bid documents and criteria, inviting,  
Evaluating and awarding bids.

## SUPPLY CONTRACT

1. To negotiate, conclude, approving, entering into, amending terminating or  
Cancelling any operational agreement GCEO
2. Lease or rental agreement (excluding financial lease transaction) GCEO

Acquisition management





## EVALUATION OF BIDS

### 1. Method

- |   |  |
|---|--|
| 1.1 Check compliance with bid documents     | Bid Evaluation Committee (BEC)                     |
| 1.2 Disqualifications of non-compliant bids |  |
| 1.3 Bid evaluation                          | Cross Functional Sourcing Committee (CFSC) and BEC |
| 1.4 Bid Adjudication                        | CFSC   |

### 2. Recommendation of bids

- |   |   |
|---|---|
| 2.1 Recommendation of request for confinement to the Corporate Tender<br>Procurement Committee (CTPC)                                 | Divisional Tender and<br>Procurement Committee (DTPC) |
| 2.2 Recommendation of tenders to the CTPC as per Delegation of Authority  | DTPC  |
| 2.3 Recommendation of confinement to Regional Manager as per delegation<br>Of Authority   | Regional Tender and Procurement Committee (RTPC)      |
| 2.4 Recommendation of requests for confinement to the DTPC as per Delegation<br>of Authority  | RTPC  |
| 2.5 Recommendation of tenders to the Regional Manager   | RTPC  |
| 2.6 Review and recommendation of extension of contracts to the Regional Manager<br>As per Delegation of Authority                     | CTPC  |
| 2.7 Recommend withdrawal of bids after closing time, amendments and cancellation<br>after awarding, transfer and cession of contracts | CFSC  |
| 2.8 Recommendation for award of Strategic Partnership to BoC  | GCEO  |

EVALUATION



## Award and contract management

### 1. Tender approval

|  |  |
|--|--|
| 1.1 Financial transaction above R100 million                   | PRASA Board of Control (BOC)                                   |
| 1.2 Financial transaction below R100 million                   | GCEO   |
| 1.3 Financial transaction below R50 million                    | CE of subsidiaries   |
| 1.4 Contractual periods limitations above five years           | GCEO   |
| 1.5 Acquisition, use and disposal of immovable assets          | GCEO, CE and CPO   |
| 1.6 Strategic Partnerships above R500 million                  | BoC  |
| 1.7 Capital Projects above R100 million                        | BoC  |
| 1.8 Capital Projects below R100 million                        | GCEO   |
| 1.9 Minor Capital Works R20 million and below                  | CEO  |
| 1.10 Minor Capital Works R5 million and below                  | Procurement Manager of<br>Division, Subsidiary and Head Office |
| 1.11 Operating tenders of R100 million and below               | GCEO   |
| 1.12 Operating tender of R50 million and below                 | CFO and CEO  |
| 1.13 Operating tenders of R1 million and below                 | Procurement Manager of<br>Division, Subsidiary and Head Office |
| 1.14 Maintenance and material tenders of R20 million and below | CEO and CFO  |
| 1.15 Maintenance and material tenders of R10 million and below | CPO  |
| 1.16 Maintenance and material tenders of R1 million and below  | Procurement Manager<br>of Division, Subsidiary and Head Office |
| 1.17 Strategy and office equipment of R5 million and below     | CPO  |
| 1.18 Strategy and office equipment of R1 million and below     | Procurement Manager<br>of Division, Subsidiary and Head Office |
| 1.19 Lease and rental of R100 million and below                | GCEO   |
| 1.20 Lease and rental of R25 million and below                 | CEO and CFO  |
| 1.21 Lease and rental of R10 million and below                 | CPO  |
| 1.22 Lease and rental of R5 million and below                  | Procurement Manager<br>of Division, Subsidiary and Head Office |

FINAL AWARD

AWARD

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- 5.1.3 It is worth noting that the flow chart does not differ materially from the one presented in my report on "*Against the Rules*" (page 41).
- 5.1.4 I have considered it proper to also present a comprehensive overview of all the key constitutional provisions, laws, policies and related regulatory instruments that collectively shape the standard of compliance that the impugned PRASA transactions or decisions should have complied with to escape being classified as irregular thus constituting maladministration or improper conduct.
- 5.1.5 It must be understood upfront that for conduct to escape a finding of irregularity and ultimately, maladministration or improper conduct, the decision maker must have had authority to act, acted within the confines of that authority and followed the procedure prescribed by the authorising instrument should such procedure be prescribed. However, it must be equally noted, as clarified by the Constitutional Court in *Allpay Consolidated Investment Holdings (PTY) Ltd v Chief Executive Officer of the South African Social Security Agency* that deviation *per se* does not deserve an irregularity finding.
- 5.1.6 Where the authorising instrument permits deviation, a finding of irregularity can only be escaped only if the conduct in question complied with the permission to deviate and remained within the permissible boundaries. In other words deviation is permitted under specified conditions and becomes irregular if such specified conditions were not complied with. Conduct that does not comply with prescribed procedure or permissible deviation provisions, it may still escape irregularity if the deviation was not material and the impugned conduct was reasonable rational in the circumstances.

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## 5.2 The Constitution

5.2.1 The Constitution enjoins PRASA and all other organs of state to ensure that contracts for goods and services are entered into in accordance with a system that is **fair, equitable, transparent, competitive and cost effective**. Section 217 of the Constitution provides that:

*"(1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.".....*

*(2) Subsection ( 1 ) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for-*

*(a) categories of preference in the allocation of contracts; and*

*(b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination..."*

5.2.2 Section 33(1) of the Constitution provides that:

*"(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.*

*(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.*

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(3) *National legislation must be enacted to give effect to these rights and must-*

- (a) *provide for the review of administrative action by a court or, where appropriate,*
- (b) *impose a duty on the state to give effect to the rights in subsections (1) and (2);an independent and impartial tribunal; and*
- (c) *promote an efficient administration."*

5.2.3 When cancelling contracts with service providers, PRASA is required to follow a procedure that is fair, reasonable and also provide written reasons for such cancellation.

5.2.4 The provisions of section 33 of the Constitution also apply to labour administrative actions such as disciplinary action taken against employees.

5.2.5 **Allpay Consolidated Investment Holdings (PTY)Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC)**

5.2.5.1 In his judgment on 29 November 2013 Justice Froneman held that:

*"It is because procurement so palpably implicates socio-economic rights that the public has an interest in it being conducted in a fair, equitable, transparent, competitive and cost-effective manner."*

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5.2.5.2 The Court further held that:

*"...deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence insistence on compliance with process formalities has a three-fold purpose: (a) it ensures fairness to participants in the bid process; (b) it enhances the likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influences."*

5.2.5.3 With regards to compliance with the regulatory framework in procurement, the court held that:

*"Compliance with the requirements for a valid tender process, issued in accordance with the constitutional and legislative procurement framework, is thus legally required. These requirements are not merely internal prescripts that SASSA may disregard at whim. To hold otherwise would undermine the demands of equal treatment, transparency and efficiency under the Constitution. Once a particular administrative process is prescribed by law, it is subject to the norms of procedural fairness codified in PAJA. Deviations from the procedure will be assessed in terms of those norms of procedural fairness. That does not mean that administrators may never depart from the system put into place or that deviations will necessarily result in procedural unfairness. But it does mean that, where administrators depart from procedures, the basis for doing so will have to be reasonable and justifiable, and the process of change must be procedurally fair."*

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- 5.2.5.4 In resorting to procurement under emergency/ urgency provisions state organs cannot rely on lack of planning or self-created urgency to justify deviation from the mandatory competitive and transparent bidding processes.

### 5.3 **Applicable Legislation**

#### 5.3.1 **Overview**

- 5.3.1.1 Building on section 217 of the Constitution, national legislation seeks to provide public functionaries, principally accounting officers and authorities, with guidance regarding the key elements of a procurement system that is fair, equitable, transparent, competitive and cost effective. Practical measures need to be implemented to ensure that procurement in their organs of state is undertaken in accordance with such a system.
- 5.3.1.2 The legislative framework, which includes the Preferential Procurement Policy Framework Act 5 of 2000, Broad Based Black Economic Empowerment Act 53 of 2003, the Public Finance Management Act 1 of 1999 and Treasury Regulations, also incorporates elements of financial management, more specifically relating to avoiding financial mismanagement in the procurement of goods and services.
- 5.3.1.3 The legislative framework basically unpacks the constitutional principles such as fairness, equity, transparency and competitiveness while outlining processes to be followed for a proper procurement process
- 5.3.1.4 It is worth noting that the six phased Supply Chain Management cycle, incorporating Demand Management, Acquisition Management; Logistics Management; Disposal Management; Risk Management; and Regular Assessment



of Supply Chain Performance, that is captured in the PRASA SCM Policy comes from paragraph 16A3.2 of Treasury Regulation which seeks to provide an integrated framework that seeks to simplify compliance with the legal framework for public functionary involved in the procurement of goods and services. It is my considered view that compliance with the PRASA's policy barring the threshold for the procurement of goods without a tender, automatic compliance with the constitutional and legal policy framework. In the same token, a violation of the PRASA SCM Policy translates into contravention of the national legal framework on procurement.

#### 5.4 Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 (PPPFA)

5.4.1 The PPPFA, the key legislation, directly giving effect to section 217 of the Constitution principally provides guidance on striking a balance between the weighting of the functionality of goods and services providers, incorporating pricing and ability to deliver, and considerations of equitable access to state contracts for historically disadvantaged business owners or suppliers.

5.4.2 The PPPFA provides the framework for implementation of preferential procurement policy. Section (2) states that:

*"(1) An organ of state must determine its preferential procurement policy and implement it within the following framework:*

*(a) A preference point system must be followed;*

*(b) (i) for contracts with a Rand value above a prescribed amount a maximum of 10 points may be allocated for specific goals as*

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*contemplated in paragraph (d) provided that the lowest acceptable tender scores 90 points for price;*

*(ii) for contracts with a Rand value equal to or below a prescribed amount a maximum of 20 points may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 80 points for price;*

*(c) any other acceptable tenders which are higher in price must score fewer points, on a pro rata basis, calculated on their tender prices in relation to the lowest acceptable tender, in accordance with a prescribed formula;*

*(d) the specific goals may include:*

*(i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability;*

*(ii) implementing the programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994;*

*(e) any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender;*

*(f) (f) the contract must be awarded to the tenderer who scores the highest points unless objective criteria in addition to those*

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*contemplated in paragraphs (d) and (e) justify the award to another tenderer; and*

*(g) (g) any contract awarded on account of false information furnished by the tenderer in order to secure preference in terms of this Act, may be cancelled at the sole discretion of the organ of state without prejudice to any other remedies the organ of state may have.*

*(2) Any goals contemplated in subsection (1) (e) must be measurable, quantifiable and monitored for compliance."*

5.4.3 The PPPFA is essentially given life through the Broad Based Black Economic Empowerment Act 53 of 2003 and National Treasury SCM Guidelines.

## **5.5 Broad-Based Black Economic Empowerment Act 53 of 2003 (BBBEEA)**

5.5.1 The BBBEEA, essentially seeks to redress the legacy of exclusion of black people (as defined in the Act and further defined in the BEE codes) in the South African economy before the advent of democracy (Before April 27 1994), by imposing preferential for business composition and other equity considerations.

5.5.2 Key provisions of the BBBEEA that PRASA the impugned PRASA procurement activities had to comply with include the requirement of a balance between equity and cost effectiveness. The BBBEEA is principally implemented through Codes of good practice that provide more elaborate guidelines on appropriate weights to be accorded to enterprise functionality and its BEE profile using points to be allocated during the bid adjudicating and evaluation processes Treasury Regulations

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integrate the provisions of the BEE Codes with financial management prescripts arising from the Public Finance Management Act (PFMA)

## 5.6 Public Finance Management Act (PFMA), 1 of 1999

5.6.1 Although essentially setting standards for financial management, including financial controls, the PFMA's provisions have enormous compliance implications for and, to some extent; spill over to the regulation of aspects of state procurement. Key provisions in this regard are principally those relating to fiscal discipline or prudence and the duties imposed on accounting officers and authorities.

5.6.2 It is the PFMA read with Treasury Regulations and guidelines issued under it that bring everything regarding the responsibilities that the PRASA Board and GCEO were required to comply with to escape a finding of maladministration or improper conduct owing to tender and related financial irregularities as alleged in the complaints investigated. Worth noting is that while the GCEO of PRASA is not statutorily the accounting officer as the Board is the accounting authority, through delegations, he has become the accounting officer.

5.6.3 The preamble of the PFMA announce that it seeks:

*"To regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in those governments; and to provide for matters connected therewith."*

- 5.6.4 The PFMA imposes certain basic responsibilities on Accounting officers regarding financial and procurement management. Relevant to the questions that had to be answered in regard to the impugned conduct of the GCEO and other functionaries are principally regulated by section 38 which provides, among others, that:

*"The accounting officer for a department, **trading entity** or constitutional institution—*

- (a) must ensure that that department, trading entity or constitutional institution has and maintains:*
  - (i) **effective, efficient and transparent systems of financial and risk management and internal control;***
  - (ii) ...*
  - (iii) **an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;***
  - (iv) a system for properly evaluating all major capital projects prior to a final decision on the project;*
- (b) is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution;*
- (c) must take effective and appropriate steps to:*
  - (i) collect all money due to the department, trading entity or constitutional institution;*
  - (ii) **prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct;** and*
  - (iii) manage available working capital efficiently and economically;*
- (d) is responsible for the management, including the safe-guarding and the maintenance of the assets, and for the management of the liabilities, of the department, trading entity or constitutional institution;*
- (e) ...*

- 
- (f) **must settle all contractual obligations and pay all money owing, including intergovernmental claims, within the prescribed or agreed period;**
  - (g) **on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing,** particulars of the expenditure to the **relevant treasury** and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender PRASA Board;
  - (h) **must take effective and appropriate disciplinary steps** against any official in the service of the department, trading entity or constitutional institution who:
    - (i) contravenes or fails to comply with a provision of this Act;
    - (ii) commits an act which undermines the financial management and internal control system of the department, trading entity or constitutional institution; or
    - (iii) **makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure"**

5.6.4.1 Section 1 of the PFMA provides for definitions.

*"Fruitless and wasteful expenditure- means expenditure which was made in vain and would have been avoided had reasonable care been exercised;" and*

*"Irregular expenditure- means expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation".*

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- 5.6.4.2 Section 51(b)(ii) of the PFMA further provides that an accounting authority for a public entity must take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity.
- 5.6.4.3 The same as the PRASA SCM policy, the PFMA, together with the National Treasury Regulations and guidelines, impose a responsibility for demand management, which includes requirement that proper planning be in place when setting out a budget and as a consequence, needs are prioritized and budgeted for. The ideal scenario is a need should be identified, analyzed, and included in the strategic planning and therefore budgeted for.
- 5.6.4.4 With regard to budgeting, paragraph 52 of the PFMA, directs PRASA to do the following:

*"Annual budget and corporate plan for schedule 2 public entities and government business enterprises- The accounting authority for a public entity listed in schedule 2 or a government business entity listed in schedule 3 must submit to the accounting officer for a department designated by the executive authority responsible for that Public entity or government business enterprise, and to the relevant treasury at least 1 month or another period agreed by National Treasury before start of the financial year*

- (a) A projection of revenue, expenditure and borrowings for the financial year in the prescribed format; and*
- (b) A corporate plan in the prescribed format covering the affairs of the public entity or business enterprise for the following three financial years, and if it has subsidiaries, also the affairs of the subsidiaries."*

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## 5.7 Prevention and Combating of Corrupt Activities Act, 12 of 2004 (PCCA Act)

### 5.7.1 Section 12 of the PCCA Act provides that:

- "(1) Any person who, directly or indirectly-*
- (a) Accepts or agrees or offers to accept any gratification from any person whether for the benefit of himself or herself or for the benefit of that other person or of another person; or*
  - (b) Gives or agrees or offers to give to any person any gratification whether for the benefit of that other person or for the benefit of another person*
    - (i) In order to improperly influence in any way-*
      - (aa) The promotion, execution or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution; or*
      - (bb) The fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or*
    - (ii) as a reward for acting as contemplated in paragraph (a) is guilty of an offence."*

## 5.8 National Treasury Regulations

5.8.1 Treasury regulations, as indicated earlier, integrate all of the constitutional and legislative requirements for procurement and financial management and set out clear guidelines to facilitate legal compliance. It is these regulations that provide the six phased supply chain management system mentioned earlier and reproduced in the SCM Policy.



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5.8.2 Key compliance requirements relevant to the conduct questioned in the PRASA complaints arise from National Treasury Regulations 2005 issued in terms of the PFMA Act of 1999.

5.8.3 Paragraph 16A3.2 of the National Treasury Regulations of March 2005 states that:

*"A supply chain management system...must-*

- a) be fair, equitable, transparent, competitive and cost effective;*
- b) Be consistent with the Preferential Procurement Policy Framework Act, 2000;*
- c) Be consistent with the Broad Based Black Economic Empowerment Act, 2003;*  
*and*
- d) Provide for at least the following:-*
  - i. Demand management;*
  - ii. Acquisition management;*
  - iii. Logistics management;*
  - iv. Disposal management;*
  - v. Risk management; and*
  - vi. Regular assessment of supply chain performance."*

5.8.4 Paragraph 16A6.1 of the National Treasury Regulations of March 2005 states that:

*"Procurement of goods and services, either by way of quotations or through a bidding process, must be within the threshold values as determined by the National Treasury"*

5.8.5 Paragraph 16A6.3 of the National Treasury Regulations of March 2005 states that:

*"The accounting officer or accounting authority must ensure that-*

- a) Bid documentation and the general conditions of a contract are in accordance with-*

- 
- i. *The instructions of National Treasury; or*
  - ii. *...*
  - b) *...*
  - c) *Bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine..."*

5.8.6 Paragraph 16A6.4 of the National Treasury Regulations of March 2005 state that:

*"If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required good or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority."*

5.8.7 According to paragraph 15.10.1.1 of the National Treasury Regulation of March 2005, the accounting officer is responsible for establishing systems, procedures, processes and training and awareness programmes to ensure efficient and effective banking and cash management.

5.8.8 Paragraph 15.10.1.2 (c) of the National Treasury Regulations of March 2005 provides that for purposes of the regulation, cash management includes avoiding prepayments for goods or services (i.e. payments in advance of the receipt of the goods or services), unless required by the contractual arrangements with the supplier.

5.8.9 Paragraph 33.1.1 of the National Treasury Regulations of March 2005 provides that if an employee is alleged to have committed financial misconduct, the accounting authority of the public entity must ensure that an investigation is conducted into the

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matter and if confirmed, must ensure that a disciplinary hearing is held in accordance with the relevant prescripts.

5.8.10 Paragraph 33.1.2 of the National Treasury Regulations of March 2005 provides that the accounting authority must ensure that the investigation is instituted within 30 days from the date of discovery of the alleged financial misconduct.

5.8.11 Paragraph 33.1.3 of the National Treasury Regulations of March 2005 provides that if an accounting authority or any of its members is alleged to have committed financial misconduct, the relevant executive authority must initiate an investigation into the matter and if the allegations are confirmed, must ensure that appropriate disciplinary proceedings are initiated immediately.

### **Budget**

5.8.12 Paragraph 5.1 of the National Treasury Regulations of March 2005 makes it mandatory for the Accounting Officer of an institution to prepare a strategic plan for the forthcoming Medium Term Expenditure Framework (MTEF) cycle.

5.8.13 Paragraph 5.2.2 of the National Treasury Regulations of March 2005 requires that the strategic plan include the following:

*"5.2.2 The strategic plan must –*

- (a) Cover a period of three years and be consistent with the institution's published medium term expenditure estimates;*

- 
- (b) *Include specific Constitutional and other legislative, functional and policy mandates that indicate the output deliverables for which the institution is responsible;*
  - (c) *include policy developments and legislative changes that influence programme spending plans over the three-year period;*
  - (d) *include the measurable objectives, expected outcomes, programme outputs, indicators (measures) and targets of the institution's programmes;*
  - (e) *include details of proposed acquisitions of fixed or movable capital assets, planned capital investments and rehabilitation and maintenance of physical assets;*
  - (f) *include details of proposed acquisitions of financial assets or capital transfers and plans for the management of financial assets and liabilities;*
  - (g) *include multi-year projections of income and projected receipts from the sale of assets;*
  - (h) *include details of the Service Delivery Improvement Programme;*
  - (i) *include details of proposed information technology acquisition or expansion in reference to an information technology plan; and*
  - (j) *for departments, include the requirements of Chapter 1, Part III B of the Public Service Regulations, 2001." (Emphasis added)*

## **Cash Management**

5.8.14 Paragraph 15.10 of the National Treasury Regulations of March 2005 deals with Banking and Cash Management. Sub-regulation 15.10.1.1 states that *"The accounting officer is responsible for establishing systems, procedures, processes and training and awareness programmes to ensure efficient and effective banking and cash management"*. Sub-regulations 15.10.1.2 (c) further states that for

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purposes of this regulation, sound cash management includes *"avoiding prepayments for goods or services (i.e. payments in advance of the receipt of the goods or services), unless required by the contractual arrangements with the supplier"*.

### **Unauthorised, irregular and fruitless and wasteful expenditure**

5.8.15 Paragraph 9.1.1 of the National Treasury Regulations of March 2005 states that:

*"An Accounting Authority/Officer of an institution must exercise all reasonable care to prevent and detect unauthorised, irregular, fruitless and wasteful expenditure, and must for this purpose implement effective, efficient and transparent process of financial and risk management."*

### **5.9 National Treasury Practice Note no: 8 of 2007/2008**

5.9.1 The practice note is issued in terms of section 76 (4) (c) of the Public Finance Management Act and is intended to regulate the threshold values within which accounting officers / authorities may procure goods, works and services by means of petty cash, verbal / written price quotations or competitive bids.

5.9.2 Paragraph 3.4.1 of the National Treasury Practice Note 8 of 2007/2008 deals with bids above the R500 000.00 thresholds. It provides that:

*"Accounting officers / authorities should invite competitive bids for all procurement above R 500 000"*.

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5.9.3 The National Treasury Practice Note 8 of 2007/2008 further provides at paragraph 3.4.2 that:

*"competitive bids should be advertised in at least the Government Tender Bulletin and in other appropriate media should an accounting officer / authority deem it necessary to ensure greater exposure to potential bidders".*

5.9.4 Paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 deals with the issue of urgency or emergency situations. It provides as follows:

*"Should it be impractical to invite competitive bids for specific procurement, e.g. in urgent or emergency cases or in case of a sole supplier, the accounting officer / authority may procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4. The reasons for deviating from inviting competitive bids should be recorded and approved by the accounting officer / authority or his / her delegate. Accounting officers /authorities are required to report within ten (10) working days to the relevant treasury and the Auditor-General all cases where goods and services above the value of R1 million (VAT inclusive) were procured in terms of Treasury Regulation 16A6.4. The report must include the description of the goods or services, the name/s of the supplier/s, the amount/s involved and the reasons for dispensing with the prescribed competitive bidding process".*

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## Acquisition Management

### 5.10 The Supply Chain Management Policy of PRASA, February 2009.

5.10.1 According to the Supply Chain Management (SCM) Policy dated February 2009, the following is stated regarding Conflict of Interest clause 8.1

*"If an SCM personnel or other PRASA employee or other role player, or any close family member, partner or associate of such official or other role player;*

*8.1.1 has any private or business interest in any contract to be awarded...;*

*8.1.2 ...*

*8.1.3 ...*

*8.1.4 ...*

*8.1.5 Disclose that interest to the GCEO..."*

5.10.2 Paragraph 9.3 deals with the Group CEO and states that:

*"The GCEO has the responsibility to...*

*9.3.8 Approve appointments, irrespective of value, outside of the normal process in emergency situations or other exceptional circumstances that threaten life, property or equipment or can have a major negative impact on the smooth and safe operation of critical services of PRASA in conjunction with Exco..."*

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5.10.3 The following is stated regarding single source/confinement clause 11.3.7.

*"This occurs where the needs of the business preclude the use of the competitive bidding process and for practical reasons only one bidder is approached to quote for goods and/or services.*

*This method can only be used for:-*

- a. Appointment of professional services such as legal, financial, technical contracts and security where unique expertise and/or security are required or*
- b. If it's an emergency as defined in Clause 11.3.6 above the decision to make use of a single source shall be motivated for approval and ratifications by the GCEO."*

Invitation for bids

5.10.4 Paragraph 11.4.7 and 11.4.8 of the SCM Policy states the following in respect of invitation for bids:

- "11.4.7 Bids will be advertised in the print media or any publication if and when is necessary.*
- 11.4.8 Bids will be closed at least three weeks after the date of publication. In exceptional circumstances; a short period may be stipulated. Where this is required; the approval of the GCEO must be sought"*



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## Unsolicited bids

5.10.5 Paragraph 11.3.3 of the SCM policy stated the following regarding unsolicited bids:

*"Unsolicited bids are generally prohibited unless approved for consideration by the GCEO. In approving their consideration, the GCEO shall take the following into account:*

- (i) That the unsolicited bid is a unique concept or offering*
- (ii) That the offering of the bid cannot be provided efficiently through competitive bidding process*
- (iii) That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited bid.*

5.10.6 According to paragraph 11.7.1 of the SCM policy the following is stated in respect of appointment of Consultants:

### General

*"For the purpose of this policy; the term consultant includes; among others; consulting firms; engineering firms; construction managers; management firms; procurement agents; inspection agents; auditors; other multinational organization, investment and merchant banks, universities, research agencies, government agencies non-governmental organizations (NGOs) and individuals".*

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## Bidding methods

*"The bidding methods described above in clause 11.3 will also apply when consultants need to be appointed".*

## Bidding Methods

*"11.3.1 A request for quotation is allowed for procurement not exceeding R 350m. All requisitions above R 350m shall be submitted for the invitation of bids. In respect of procurement below R 350m the following apply:*

*Three written quotes should be obtained from the supplier on the database. In the event that potential suppliers are not available on the Approved Suppliers Database, quotations can be obtained from any other suppliers provided the authorization has been granted as prescribed in clause 11.2.1. above"*

5.10.7 Paragraph 11.2.1 Database Development states the following:

- "(a) SCM shall develop and maintain an Approved Supplier Database. In pursuance of this requirement, SCM shall:*
- (b) Categories the suppliers on the database according to the goods/services they provide, HDI status, locality and a record of past performance indicating whether the supplier has been restricted or not;*
- (c) Ensure that the supplier database is kept up to date;*

- 
- (d) *Annually, through newspapers commonly circulating locally, corporate website, and any other appropriate ways, invites prospective suppliers of goods and services, construction works and consultancy services to apply for listing as accredited prospective suppliers; and*
- (e) *This database must be used for purpose of obtaining quotations. Only in the event where none of the suppliers can meet the requirements of the quote should quotations be obtained from outside the Approved Supplier Database. A motivation to obtain quotes from suppliers not on the database is lodged with the CPO for approval before sending the quotes to the suppliers".*

#### Request for quotations

5.10.8 Paragraph 11.3.1.2 states the following in respect of the request for quotation:

*"Request for quotations must be in writing by means of a letter, facsimile or electronically (e-mail), containing precise and detailed specifications from the onset as contained in the authorized Purchase Requisition.*

Paragraph 11.7.3 state the following in respect the approach followed on appointment of Consultants.

*The following approaches will be used for appointments of consultants;*

- (i) Quality and cost based selection (QCBS).*
- (ii) Quality based selection (QBS).*
- (iii) Selection under fixed budget.*
- (iv) Least cost selection.*
- (v) Selection based on consultants qualifications.*

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- (vi) *Single source selection.*
  - (vii) *Single of individual consultants"*

## **Late bids**

5.10.9 Paragraph 11.4.19 of the SCM Policy states the following in respect of late bids:

*"No late bid shall be considered as a rule. All late bids shall be listed in a register for late bids.*

## **5.11 National Treasury SCM Guidelines of February 2004**

5.11.1 In February 2004, the National Treasury, issued a document entitled "Supply Chain Management: A Guide for Accounting Officers/Authorities" (National Treasury SCM Guidelines). The purpose of the National Treasury SCM Guidelines was to give guidance to accounting officers in fulfilling their roles within the SCM framework.

5.11.2 Paragraph 3 of the National Treasury SCM Guidelines sets out guidelines in regard to demand management and reads as follows:

### *"Demand management*

#### *3.1 Introduction*

*3.1.1 Demand management is the first phase of SCM. The objective is to ensure that the resources required to fulfil the needs identified in the strategic plan of the institution are delivered at the correct time, price and place and that the quantity and quality will satisfy those needs. As part of this element of SCM, a total needs assessment should be undertaken. This analysis should be included as*

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*part of the strategic planning process of the institution and hence will incorporate the future needs.*

*3.1.2 It is vital for managers to understand and utilise sound techniques to assist them in their planning, implementation and control activities. As part of the strategic plan of the institution, resources required for the fulfilment of its obligations should be clearly analysed. This includes a detailed analysis of the goods, works and services required, such as how much can be accomplished, how quickly and with what materials, equipment, etc.” (Emphasis added)*

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5.11.3 This document is applicable to all accounting officers and contains the following principles:

- a) *The identification of a need is the initiating trigger to a procurement process;*
- b) *The fulfilment of the need should form part of the strategic objectives of the department and a needs analysis should therefore be part of the strategic planning process;*
- c) *Sound techniques should be utilised in conducting the needs analysis; and*
- d) *The need should be linked to the budget.*

5.11.4 Paragraph 1.3.2.2 of the National Treasury SCM Guidelines states that Demand Management is the beginning of the supply chain where:

- a needs assessment is done to ensure that goods or services are acquired in order to deliver the agreed service;
- specifications are precisely determined;
- requirements are linked to the budget; and
- the supplying industry has been analysed.

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5.11.5 This phase will bring the Supply Chain practitioner close to the end user and ensures that value for money is achieved.

5.11.6 Paragraph 4 of the National Treasury SCM Guidelines states the following:

“4.7.5.1 *In urgent and emergency cases, an institution may dispense with the invitation of bids and may obtain the required goods, works or services by means of quotations by preferably making use of the database of prospective suppliers, or otherwise in any manner to the best interest of the State.*

4.7.5.2 *Urgent cases are cases where early delivery is of critical importance and the invitation of competitive bids is either impossible or impractical. (However, a lack of proper planning should not be constituted as an urgent case.)*

4.7.5.3 *Emergency cases are cases where immediate action is necessary in order to avoid a dangerous or risky situation or misery. The reasons for the urgency/emergency and for dispensing of competitive bids should be clearly recorded and approved by the accounting officer/authority or his/her delegate.”*

5.11.7 Paragraph 4.9 ‘Advertising Bids’ of the National Treasury SCM Guidelines states that, “Timely notification of bidding opportunities is essential in competitive bidding. Bids should be advertised for at least 30 days before closure in at least the Government Tender Bulletin and in other appropriate media should an accounting officer/authority deem it necessary to ensure greater exposure to potential bidders except in urgent

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*cases when bids may be advertised for such shorter periods as the accounting officer/authority may determine"*

5.11.8 The general approach in terms of the National Treasury SCM Guidelines dated February 2004 are captured as follows:

*Paragraph 5.4.1 states that:*

*"The accounting officer/authority should be responsible for preparing and implementing the project, for selecting the consultant, awarding and subsequently administering the contract. While the specific rules and procedures to be followed for selecting consultants depend on the circumstances of the particular case, at least the following four major considerations should guide the accounting officer's/authority's policy on the selection process:*

- the need for high-quality services;*
- the need for economy and efficiency;*
- the need to give qualified consultants an opportunity to*
- compete in providing the services; and*
- the importance of transparency in the selection process."*

5.11.9 Paragraph 5.4.2 states that:

*"In the majority of cases, these considerations can best be addressed through competition among firms in which the selection is based both on the quality of the services to be rendered and on the cost of the services to be provided (Quality- and Cost-Based Selection [QCBS]) as described in paragraph 5.9.3. However, there are cases when QCBS is not the most appropriate method of selection. For complex or highly specialized assignments or those that invite innovations, selection based on the*

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*quality of the proposal alone (Quality-Based Selection [QBS]), would be more appropriate. Other methods of selection and the circumstances in which they are appropriate are outlined in paragraph 5.10."*

5.11.10 Paragraph 5.4.3 states that:

*"The particular method to be followed for the selection of consultants for any given project should be selected by the accounting officer/authority in accordance with the criteria outlined in this guide."*

5.11.11 Paragraph 5.4.4 states that:

*"When appropriate, the accounting officer / authority may include under the special conditions of contract, the following or similar condition:*

*A service provider may not recruit or shall not attempt to recruit an employee of the principal for purposes of preparation of the bid or for the duration of the execution of this contract or any part thereof"*

5.11.12 Paragraph 5.16.1.1.1 states that:

*"Any granting of a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15 percent, will be subject to the approval of the accounting officer / authority or his / her delegate."*



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## 5.12 The Supply Chain Management Policy of PRASA, February 2009.

5.12.1 PRASA Supply Management Policy, 2009 (PRASA SCM Policy) provides at paragraph 11.3.2 that *"a competitive bidding process is applicable when the estimated total value of the requirement is more than R350 million. This process must be followed irrespective of the type of service or product required."*

5.12.2 In respect of bids below R350m, three written quotations must be obtained from the suppliers on the database. Only in the event where none of the suppliers can meet the requirements, should quotations be obtained from suppliers not on the database whereby a motivation must be lodged with the Chief Procurement Officer for approval.

5.12.3 PRASA SCM Policy provides further at paragraph 11.4.7 for the bids to be advertised in the print media or any publication if and when necessary.

5.12.4 Paragraph 11.3.1 of the PRASA SCM Policy provides that *"a request for quotation is allowed for procurement not exceeding R350 million. All requisitions above R350 million shall be submitted for the invitation of bids."*

5.12.5 Paragraph 11.3.1.1 of the PRASA SCM Policy provides that *"in respect of procurement of below R350 million three written quotes should be obtained from suppliers on the database. In the event that potential suppliers are not available on the Approved Supplier Database, quotations can be obtained from any other suppliers provided the authorisation has been granted as prescribed in clause 11.2.1"* (of the PRASA SCM Policy).

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5.12.6 Paragraph 11.3.3 of the PRASA SCM Policy provides that *"unsolicited bids are generally prohibited unless approved for consideration by the GCEO. In approving their consideration, the GCEO shall take the following into account:*

- *That the unsolicited bid is a unique concept or offering*
- *That the offering of the bid cannot be provided efficiently through competitive bidding processes*
- *That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited bid*

5.12.7 Paragraph 11.3.5 of the SCM Policy provide that :

*"Purchases made for 'emergency situations' where competitive bidding would be inappropriate is limited to the following types of situations:*

- *Disasters (e.g damage from cyclones, floods, fire (sic), etc*
- *Systems failures (including supporting items which could affect the system)*
- *Security risk*

*During emergencies the required goods, works or services may be obtained by means of quotations by preferably making use of the departmental supplier database.*

*A motivation of the emergency purchase should be submitted to the GCEO for ratification."*

5.12.8 Paragraph 11.3.6 of the PRASA SCM Policy provides that:

*"Sole sourcing exist where there is only one source (supplier) available in the market. A sole source may make a special product or technology that no one else does. Where such a situation exist, competitive bidding is not advisable.*

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*All sole sourcing motivations must be submitted to the GCEO or for approval prior to entering negotiations with the sole source"*

5.12.9 Paragraph 11.3.7 of the PRASA SCM Policy provides that single source/confinement:

*"Occurs where the needs of the business preclude the use of competitive bidding process and for practical reasons only one bidder is approached to quote for goods and/or services.*

*This method can only be used for : -*

- *Appointment of professional services such as legal, financial, technical contracts and security where unique expertise and/or security are required or*
- *If it is an emergency as defined in Clause 11.3.6 above*

*The decision to make use of a single source shall be motivated for approval and ratification by the GCEO."*

5.12.10 Paragraph 11.4.19 of the PRASA SCM Policy provides that:

*"No late bids shall be considered as a rule. All late bids shall be register for late bids"*

5.12.11 Paragraph 8.1 of the PRASA SCM Policy provides that:

*"If a SCM personnel or other PRASA employee or other role player, or any close family member, partner or associate or such official or other role player;*

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- 8.1.1 has any private or business interest in any contract to be awarded;*  
*8.1.2 conduct activities that could reflect negatively on the reputation of the agency  
and its personnel ..."*

## **5.13 Powers and Authority of the Board and Delegation of Authority**

### **Powers and Duties of the Board**

- 5.13.1 The Board is empowered to exercise all the powers and authorities to lead, control and manage PRASA and to delegate any or all of such powers to an official(s), employee(s) and any other person and/or to a committee(s) of PRASA, subject to existing PRASA Policies and the provision set out herein.
- 5.13.2 The approval of the Board shall be obtained for all matters that are beyond the authority delegated herein.
- 5.13.3 According to the tender approval there are various categories set out in the Delegation of Authority ranging from R10 million to R100 million for the GCEO.
- 5.13.4 The threshold for Operating tenders:  
GCEO: R100 million;  
CEO's of Subsidiaries: R50 million;  
CFO: R50 million.
- 5.13.5 The threshold for Maintenance and material  
CEO's of Subsidiaries: R20 million;  
CFO: R20 million;  
CPO: R10 million.

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5.14 ***Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal (CCT 10/13) [2013] ZACC 49***

5.14.1 The Constitutional court has stated that section 195 of the Constitution imposes a positive duty on state functionaries to take steps to arrest in amending or apparent irregularity or unlawfulness, which duty primarily flows from the requirement of a high professional and ethical standard imposed by section 191(1)(f) and (g). In the case, Justice Skweyiya held that :

*"Section 195 provides for a number of important values to guide decision makers in the context of public-sector employment. When, as in this case, a responsible functionary is enlightened of a potential irregularity, section 195 lays a compelling basis for the founding of a duty on the functionary to investigate and, if need be, to correct any unlawfulness through the appropriate avenues.*

*This duty is founded, inter alia, in the emphasis on accountability and transparency in section 195(1)(f) and (g) and the requirement of a high standard of professional ethics in section 195(1)(a). Read in the light of the founding value of the rule of law in section 1(c) of the Constitution, these provisions found not only standing in a public functionary who seeks to review through a court process a decision of its own department, but indeed they found an obligation to act to correct the unlawfulness, within the boundaries of the law and the interests of justice.*

*Public functionaries, as the arms of the state, are further vested with the responsibility, in terms of section 7(2) of the Constitution, to "respect, protect, promote and fulfil the rights in the Bill of Rights." As bearers of this duty, and in performing their functions in the public interest, public functionaries must, where*

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*faced with an irregularity in the public administration, in the context of employment or otherwise, seek to redress it. This is the responsibility carried by those in the public sector as part of the privilege of serving the citizenry who invest their trust and taxes in the public administration"*

5.14.2 Accordingly, when considering entering into, extending and cancelling contracts, PRASA, was and still is required to exercise a high standard of professional ethics and act in accordance with the duty required of state functionary to correct an irregularity once it is brought to its attention.

5.14.3 It is also worth mentioning section 33 of the Constitution imposing a duty on any administrator to ensure just administrative action, incorporating among others, the right to be lawful, reasonable and procedurally fair. This duty is critical with regard to the cancellation of contracts. It does not mean of course that summary cancellation of contracts is prohibited where there are rational reasons and reasonable grounds. The permissibility of reasonable and rational deviations was canvassed fully by the Constitutional Court in Allpay Consolidated Investment Holdings (PTY)Ltd v Chief Executive Officer of the South African Social Security Agency discussed in detail below.

### **Labour relations irregularities**

#### **5.15 The Constitution**

5.15.1 Section 195(1) provides that :

*"Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*

- a) *A high standard of professional ethics must be maintained;*
- b) *The public administration must be accountable..."*

5.15.2 Section 23(1) provides that:

*"Everyone has the right to fair labour practice".*

#### 5.16 **Labour Relations Act 66 of 1995**

5.16.1 Paragraph 2 of schedule 7 of the Labour Relation Act states the following with regards to unfair labour practices:

*"Residual unfair labour practices*

- (1) *For the purposes of this item, an unfair labour practice means any unfair act or omission that arises between an employer and an employee,  
Involving-*
  - (a) *The unfair discrimination, either directly or indirectly, against an employee on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility;*
  - (b) *the unfair conduct of the employer relating to the promotion, demotion or training of an employee or relating to the provision of benefits to an employee;*
  - (c) *the unfair suspension of an employee or any other disciplinary action short of dismissal in respect of an employee;*

- (d) *the failure or refusal of an employer to reinstate or re-employ a former employee in terms of any agreement."*

5.16.2 The Labour Relations Act requires that fair procedures be followed in dismissing an employee. Schedule 8, paragraph 4 of the Labour Relations Act states the following:

*Fair procedure*

*"Normally, the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need to be a formal enquiry. The employer should notify the employee of the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegations. The employee should be entitled to a reasonable time to prepare the response and to the assistance of a trade union representative or fellow employee. After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with written notification of that decision.*

**5.17 Metrorail Recruitment and Selection Policy, 01 October 2004**

5.17.1 Paragraph 4 of the Recruitment and Selection Policy states that:

*"In achieving the vision and mission of Metrorail Recruitment and Selection will adhere to the following principles:-*

- *Recruitment and Selection will support and enable business needs;*
- *Employment Equity is a key driver in the recruitment and selection process of Metrorail;*



- 
- *Ensure that all employment practices are fair, equitable and transparent avoiding all forms of favouritism and nepotism;"*

5.17.2 Paragraph 5 deals with the sourcing of candidates and states that:

*"A pool of potential suitable candidates must be obtained through transparent sourcing and communication techniques that are appropriate to the target audience being sourced from.*

5.17.3 Paragraph 5.3 deals with the sourcing of candidates external to Metrorail and states that:

*"Should the Recruitment and Selection process for internal candidates not have identified a suitably competent candidate for appointment candidates may be sourced externally for Metrorail..."*

## **5.18 Disciplinary Code and Procedure of Metrorail, 11 December 2003.**

5.18.1 Paragraph 4.4 provides that:

*"Disciplinary hearing shall be conducted and finalized within a period of thirty (30) calendar days after the incident is brought to Management's attention. Should extension of this period be sought, permission shall be sought from the Regional Managers/Executive Managers Office upon furnishing substantive and legitimate grounds for the delay. If not obtained, the case will be withdrawn".*

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5.18.2 Paragraph 11.1 provides that:

*"The Company shall have the right to suspend an employee with pay prior to the determination of the disciplinary action where, in the opinion of Management, an offence by an employee is regarded as serious, and/or that the continued presence of the employee at the Company's Premises may prejudice the interest of the Company, the employee, other employees or hamper an investigation. The suspension period should(sp) not exceed a maximum of thirty (30) calendar days or the period is to be exceeded permission therefore must be obtained from the GCEO".*

5.19 **Railway Safety Regulator Act, 16 of 2002**

5.19.1 Section 38(1) of the Railway Safety Regulator Act deals with Railway occurrence investigations and states that:

*"An operator must investigate every railway occurrence that takes place directly or indirectly in connection with that operators railway operations, among other things to identify the root cause or causes thereof, within a reasonable time after the occurrence".*

**Conflict of interest and Nepotism/ Cronyism**

5.20 **Paragraph 8 of PRASA's SCM Policy states the following:**

5.20.1 *If an SCM personnel or other PRASA employee or other role player, or any close family member. Partner or associate of such official or other role player:*

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- (a) *Has any private or business interest in any contract to be rewarded;*
  - (b) *Conduct activities that could reflect negatively on the reputation of the Agency and its personnel;*
  - (c) *Participating in any activity that might lead to the disclosure to the Agency's proprietary information or;*
  - (d) *Conduct outside work for suppliers; That staff member or other role player must:-*
    - (i) *Disclose that interest to the GCEO; and*
    - (ii) *Withdraw from participating in any manner whatsoever in the process relating to that contract."*

5.20.2 With regard to alleged nepotism and cronyism, the Prevention and Combatting of Corrupt Activities Act (PCCAA) prohibits and classifies nepotism and cronyism as corrupt activities.

#### 5.21 **Jurisprudence and Touchstones from previous Public Protector reports:**

5.21.1 On the issue of the duty of state functionaries to rectify unlawfulness and the duty of state functionaries to comply with procurement regulatory frameworks as well as the states functionaries' duty to uphold the rule of law. I considered and applied the judgments of the Constitutional Court in the case of *Allpay Consolidated Investment Holdings (PTY)Ltd v Chief Executive Officer of the South African Social Security Agency (No 1)* (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC) (29 November 2013) and *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal* (CCT 10/13) [2013] ZACC 49.

5.21.2 Touch stones or principles from previous Public Protector Reports were also considered. In this regard, principles regarding different responsibilities and

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processes in a valid supply chain process discussed in reports such as *'Against the Rules Too'*, a report on allegations of improper procurement of the lease of office accommodation for the SAPS in the Sanlam Middestad building in Pretoria and the Transnet Building in Durban by the National Commissioner of the South African Police Service (SAPS) and the Department of Public Works (DPW), were considered. In this report I made the following observations; that it was important for an interpretation of the PFMA requirements to organs of state, including Treasury Regulations issued in pursuit of the PFMA, to transcend a mechanical adherence to the letter of the law and is aligned with the spirit and purpose of section 217 of the Constitution.

- 5.21.3 A further point made in this report is that the process of awarding contracts, particularly contracts worth millions of rands, as is the case in point, through deviations must be discouraged as it is open to abuse. The award of contracts of huge financial value seems to be a growing and worrying trend. While the practice may not necessarily be unlawful, the use of this avenue in many of the circumstances, including the present, does not seem justified. Not only do such practices undermine fair competition, there is no doubt that there is a growing negative impact on quality and cost effective pricing, and accordingly, the objectives of section 217 of the Constitution.

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## 6. EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

### 6.1 Complaint 1: Regarding PRASA's alleged improper extension to other stations nationally, a tender for the installation of high speed passenger gates worth R800 million to Siyangena Technologies in 2009/2010 initially advertised for the Doornfontein station in Gauteng:

#### 6.1.1 Common cause

6.1.1.1 It is common cause that PRASA, through Intersite a subsidiary of its predecessor SARCC, awarded a tender for the installation of high speed passenger gates at Nasrec and Doornfontein stations to Siyangena Technologies per contract number SG/GATES/003/2009. PRASA conceded in its response received on 29 August 2013 that the tender was later extended to seven other stations across the country. Those are Cape Town, Rhodesfield, Windermere, Langa, Bridge City, Moses Mabhida and Orlando.

#### 6.1.2 Issues in dispute

6.1.2.1 The key issue for my factual determination was whether or not the 2010 Soccer World Cup PRASA readiness was justification for foregoing tender requirements for bulk procurement. I further had to make a determination on whether or not there was no competitive tender process at all for the scope expansion. PRASA denied that there was no bidding process, submitting that a closed tender was extended to the original four service providers who had submitted bids for the original two 2010 Soccer World Cup stations speed gates project.

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- 6.1.2.2 The justification offered by Mr Montana for increasing the scope to cover seven more stations was that it was discovered that these stations which had also been designated as World Cup Stations had excluded the critical work of installing modern speed gates. In his submissions, including a response to a notice issued under section 7(9) of the Public Protector Act, Mr Montana submitted that the extension was done to ensure World Cup 2010 readiness and that the use of the closed tender complied with the SCM Policy requirement of a competitive process that is open, transparent and fair. He provided some of the tender documents to support his submission.
- 6.1.2.3 I must state upfront, that the documents submitted by mr Montana were not always reliable as some crucial documents were undated and unsigned. Notwithstanding that, the documents disclose that the roll out from two Gauteng stations to national took place in 2011, well after the hosting of the 2010 Soccer World Cup, which took place in June and July 2010. However, the documents also confirm PRASA's submission that there was a closed tender process.
- 6.1.2.4 PRASA submitted that the following two (2) tenderers met the minimum technical requirements for the two Gauteng stations , for which the tender had been advertised:

Table: Tenders complying

| No. | Supplier                  | Tender Price<br>(Excl VAT and<br>contingency) | Tender Price (Incl<br>VAT and<br>contingency) | Tender<br>delivery<br>completion |
|-----|---------------------------|---|---|----------------------------------|
| 1.  | Protea Coin               | R613 095 371.97                               | R698 928 724.04                               | Five<br>months                   |
| 2.  | Siyangena<br>Technologies | R965 304 413.71                               | R1 100 447 031.56                             | Five<br>months                   |

- 6.1.2.5 It further submitted that after a diligent evaluation process, the tender was awarded to Siyangena Technologies.
- 6.1.2.6 The documents relating to the initial appointment of tender number SG/GATES/003/2009 supply and installation of Access Gates (Speedstiles) at Doornfontein and Nasrec stations were not provided.
- 6.1.2.7 The documents submitted by PRASA show that an Intersite adver with tender number SG/GATES/003/2009, was issued in an unknown newspaper and on an unknown date. The same indicate the tender to be for "Supply and Installation of Access Gates (Speedstiles) at Doornfontein and Nasrec Stations – Specialised".
- 6.1.2.8 One of the documents, provided to my office by PRASA, is an unsigned letter dated **4 November 2010**, prepared by Ms Matshidiso Mosholi, Manager in Procurement, addressed to tenderer concerning the Supply and Installation of Access Gates at Doornfontein and Nasrec tender. The letter stated that PRASA

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wished to rollout the project to priority corridors nationwide. As a result the tenderers were invited to a closed briefing session to be held at Umjantshi House on **8 November 2010**. If this letter is to be accepted as authentic. The closed tender process for the roll out happened long after the 2010 Soccer World Cup had taken place. As can be noted, the notification went out in November 2010, about four months after the Soccer World Cup.

- 6.1.2.9 The confirmation that the roll out took place after the World Cup, is further provided by an undated and unsigned Submission for Adjudication. The undated and unsigned documents left me uneasy and in doubt of the reliability and authenticity of such documents. Notwithstanding the doubtful authenticity of unsigned documents, the submission confirms that there was a closed tender process for 7 stations across the country with a **closing date of 17 November 2010**, confined to the four companies that had submitted bids for the original project for Doornfontein and Nasrec in Gauteng. It's also worth noting that the 2010 World Cup is not mentioned as a justification for the roll out, but only mentioned in tracing the genesis of the High Speed Gate initiative. In the Submission for Adjudication the following was stated:

*"On 30 June 2009 PRASA, through Intersite, went out on tender SG/GATES/003/2009 for supply and installation of access gates Doornfontein and Nasrec Stations: 2010 World Cup.*

*A decision was made then to extend the scope of this engagement to also include seven other critical 2010 stations including Cape Town, Rhodesfield, Windermere, Langa, Bridge City, Moses Mabida and Orlando.*

*To roll out the project to the entire network a confined tender was called among the four companies that initially responded to the original open tender viz. Omega Fire and Security, Marohi-KgT Consortium, Siyangena Technologies and Protea Coin.*



*Proposals were sought and received from all four vendors. All four vendors were provided a list of Large, Medium and Small stations to be rolled out. The view was to have a sense of the total cost of the entire project so that a decision of financing, implementation and prioritisation could be made."*

Table: Procedures

|                                      |  |
|--------------------------------------|--|
| <i>Date advertised</i>               | <i>Confinement to companies that tendered initially</i>  |
| <i>Method of Advertising</i>         | <i>N/A</i>   |
| <i>Briefing session</i>              | <i>10/11/2010</i>  |
| <i>Closing date &amp; time</i>       | <i>17/11/2010 at 10h00</i>   |
| <i>Closing Venue</i>                 | <i>30 Wolmarans Street Braamfontein</i>  |
| <i>Number of tenders issued/sold</i> | <i>4</i>   |
| <i>Numbers of tenders received</i>   | <i>4</i>   |
| <i>How tenders issued/sold</i>       | <i>In sealed envelopes in the Tender Box</i>   |
| <i>Tenders received from</i>         | <i>Marothi KgT Consortium, Siyangena Technologies, Protea Coin and Omega Fire and Security</i> |
| <i>Validity expiry date</i>          | <i>31 March 2011</i>   |

- 6.1.2.10 The documents further show that the implementation of the roll out followed a year later in 2011. In a document signed by the Chairperson of the CTPC on 20 February 2011 it was stated that a meeting was convened on 14 February 2011 and a resolution was taken that they concurred with the recommendation that business be awarded to Siyangena Technologies in the amount of R1 100 447

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031.56 (R1.1billion) inclusive of VAT subject to the recommendations to clean up the following:

- That the respective end-user sign the documents;
- That a list of stations as per Annexure A be clearly attached;
- That the price differentials be explained.
- That the background captures the original prices of the pilot project.
- Confirmation that funds are available.
- Member E Swanepoel assists in cleaning up the document and to align it for GCEO's approval.
- That the CPO, the Chairperson and Tiro Holele avail themselves and that all of the above is done.

6.1.2.11 An undated, unsigned Submission for Adjudication provides for the appointment of Siyangena Technologies for the supply and installation of access gates for the amount of R1 100 447 031.56. In the submission it is further recommended that: *"The quoted price be considered indicative subject to negotiations with the preferred bidder and SCM puts together a team inclusive of Technical, legal and finance to negotiate price, funding and implementation conditions."*

6.1.2.12 There was another copy of an undated PRASA Board of Control Resolution of PRASA Board, signed by Mr T Mohube, Company Secretary which states that at the special PRASA Board of Control meeting held on 28 March 2011, the PRASA Board of Control considered the submission from the FCP Committee and having satisfied itself that the tender process that was followed was in line with the SCM Policy and was fair, transparent and objective, resolved, *inter alia*, the following:

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*"Siyangena Technologies should be appointed as a preferred bidder for the Supply and Installation of a Speed Gates in the total amount of R1, 959, 642, 353.00 including VAT. The price includes Public Address, Electronic Display PRASA Boards, Help Points, CCTV and Monitoring as well as Smoke Detection all integrated as a system through Network."*

6.1.2.13 In view of the fact that the roll out happened about a year after the 2010 Soccer World Cup, I am unable to accept Mr Montana's submission that the roll out was for meeting the 2010 Soccer World Cup needs. I must also indicate that Mr Montana's changing narrative regarding what happened is a cause of concern regarding honesty. Regarding whether or not there was a closed tender, I have accepted the evidence, though costing of undated and unsigned documents, purely because the original procurement documents have not been provided.

**6.2 Complaint 2: Regarding PRASA's alleged advance payment to a developer of the City Mall for the construction of an underground train station on the Bridge City Project without proper authorisation during the periods 2008 to 2010:**

6.2.1 Common cause

6.2.1.1 It is common cause that PRASA was involved in the Bridge City Urban Renewal Project. This was confirmed in PRASA's response received on 29 August 2013 and was further confirmed by the GCEO in his response dated 5 June 2015 to the notice I issued in terms of section 7(9) of the Public Protector Act. The GCEO also informed that PRASA invested over R1,2 billion in the project which included construction of station box for R100 million which was successfully completed in 2009, state of the art underground rail station completed in 2011 at the cost of

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R150 million and the laying of rail line between Bridge City and Duff's Road costing over R640 million.

6.2.2 Issues in dispute

- 6.2.2.1 What I had to determine was whether or not PRASA irregularly made an advance payment of R100 million and received no value for it resulting in fruitless and wasteful expenditure.
- 6.2.2.2 In his initial response received on 29 August 2013, Mr Montana repeated in response in terms of section 7(9) of the Public Protector Act, and confirmed that PRASA was a partner in the Bridge City Urban Renewal Project conceived and executed as a Public Private Partnership Project, but denied incurring or making any advance payment.
- 6.2.2.3 A Development Agreement entered into on 18 December 2007 between Crowie (the developer) and SARCC (PRASA's predecessor) and the Development Agreement entered into on 22 February 2010 between PRASA and the same developer do not have any clause providing for advance payments.
- 6.2.2.4 Unfortunately, apart from denying the allegations PRASA did not favour the investigation team with a payment schedule. I am accordingly unable to make a determination if any advance payment was made regularly or irregularly. I have also found no evidence of personal gain to Mr. Montana.

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**6.3 Complaint 3: Regarding the alleged improper extension of a contract awarded to Siemens for the Dark Fibre and Integrated Communication Systems tender amounting to R800 million nationally when it had only been advertised in Gauteng:**

**6.3.1 Common cause**

6.3.1.1 It is common cause that a Dark Fibre and Integrated Communications Systems contract duly awarded to Siemens for two stations in the Gauteng Region, was extended without going to tender to the Western Cape and Durban Regions. This was conceded by Mr Montana in his submission on 29 August 2013 and response to the notice issued in terms of section 7(9) of the Public Protector Act in June 2015

**6.3.2 Issues in dispute**

6.3.2.1 The issues for my determination were whether or not the total amount involved was R800 million as alleged and if the circumstances for the scope extension, without going to tender complied with the urgency requirements of the SCM Policy as submitted by PRASA management.

6.3.2.2 PRASA denied the allegation that the contract awarded to Siemens was for R800 million as alleged. In this regard PRASA submitted information which indicated that all in all Siemens was awarded two major contracts. According to this information the first contract was for Dark Fibre which was for the amount of R121 422 000.00 and that the second contract was for the Integrated Communication Systems for the amount of over R135 392 00.00.

6.3.2.3 I must indicate that the authenticity of evidence submitted by PRASA comprising of memoranda, tender documents, notices to proceed and contracts. It is a great source of concern as key documents are undated and unsigned. That having been said, the evidence confirmed that the total contract amount was R256 814 000.00 made of the following, (refer to table below).

The *table below summarises the appointment in respect of the two projects.*

Table: Appointment of Siemens

| No. | REGION       | DARK FIBRE      | ICS             |
|-----|--------------|-----------------|-----------------|
| 1.  | Western Cape | R28 500 000.00  | R36 000 000.00  |
| 2.  | KZN          | R30 329 000.00  | R25 000 000.00  |
| 3.  | Tshwane      | R22 363 000.00  | R23 000 000.00  |
| 4.  | WITS         | R40 230 000.00  | R51 392 000.00  |
|     |              | R121 422 000.00 | R135 392 000.00 |

### Dark Fibre

6.3.2.4 The documents show that there was an agreement entered into between PRASA and Siemens. The contract was for WT1538 Dark Fibre backbone at Wits and PR1537 Tshwane regions project. Clause 4 of the contracts stated that the contractor shall provide all supervision, labour, Materials, Plant and Contractor's Equipment which may be required.

- 6.3.2.5 Clause 5 of the same contract, states that the Contractor shall carry out design to the extent specified. The Contractor shall promptly submit to the Employer all designs prepared by him.
- 6.3.2.6 The contract was signed by the Siemens representative on 11 February 2009, Clifford Klaas Div. Director Finance & Admin and Ilesavel Pillay Div. Managing Director. The contract was signed by TL Montana on behalf of SARCC on 12 March 2009. The value of the contract was R62 593 000.00 inclusive of VAT.
- 6.3.2.7 In respect of design, supply & installation of Dark Fibre we noted the Memorandum titled Tender Advice's. The table below was on the memorandum.

Table: Tender dates

|       | Date of tender advice |           | Amount ( R )   |
|-------|-----------------------|-----------|----------------|
|       | 10 February 2009      | Cape Town | R28 500 000.00 |
|       | 10 February 2009      |           | R30 329 000.00 |
| TOTAL |                       |           | R58 829 000.00 |

- 6.3.2.8 The Memorandum for the Cape Town region with a total value of R28 500 000.00 (incl VAT) was addressed to Luyanda Gantsho, General Manager (Infrastructure & Facilities Development), Woodmead from TPC Secretariat. The resolution was stated as approved and it was signed by Matshidiso Mosholi Manager Procurement.

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6.3.2.9 The second Memorandum for the KZN region for a total value of R30 329 000 (incl VAT) was addressed to Luyanda Gantsho, General Manager (Infrastructure & Facilities Development), Woodmead from TPC Secretariat. The resolution was stated as approved and it was signed by Matshidiso Mosholi Manager Procurement.

6.3.2.10 On perusal of the documents obtained from PRASA, I have noted that there was an undated recommendation report addressed to the CEO from Chief Procurement Officer. The subject on the letter was extension of Siemens appointment for installation of Dark Fibre Backbone. The report was signed by Chief Procurement Officer, Ms. Tara Ngubane on 10 February 2009 and Acting Chief Executive Officer, Mr David Kekana. We noted that under scope of work section 1 it stated that:

*"1. Scope of work*

*This project entails the installation of a Dark Fibre backbone in the KZN region, to support the installation of Passenger Information and Communication systems at key 2010 FIFA World Cup stations."*

*2. Background*

*In the case of support Passenger Communication and Information systems Infrastructure for the upgrade of key 2010 support stations, an ETC budget allocation of R30.329m was approved for the installation of Dark Fibre backbone in the KZN region."*



Table: Proposed Contract Amendment

|                                   |   |  | ETC Approved Amount (MTEF) |
|-----------------------------------|---|--|----------------------------|
| Current Approved Turnkey Contract | Design, Supply and installation of Dark Fibre Backbone (Gauteng Region) |  | R40.230M<br>R22.363M       |
| Proposed Extended Contract Amount | Design, Supply And installation of Dark Fibre Backbone (KZN Region)     |  | R30.329M                   |
| Proposed Total Contract Value     |   |  | R92.922M (VAT incl)        |

#### Motivation

SARCC believes that standardization of the ICS communication platform and equipment specifications will have a long-term beneficial effect on the operations of SARCC. Siemens have been appointed only for the installation of the support Dark Fibre backbone for the Gauteng region. Similar Dark Fibre backbone support is required for KZN region.

The benefits will accrue from:

- Lower prices due to economic of scale.
- Increase in the negotiation power to SARCC, to further drive the price down.

- 
- *Direct cost and time benefit for SARCC, through the savings of costs associated with the procurement process.*
  - *Benefit of a single, reputable supplier, with capacity to deliver the project.*
  - *Standardization and uniformity in quality standards.*

*Recommendation*

*The approval is hereby sought to confine the supply and installation of Dark Fibre backbone to Siemens Ltd."*

6.3.2.22 I have obtained and reviewed an undated recommendation report addressed to the CEO from the CPO. The subject on the letter was Extension of Siemens appointment for installation of Dark Fibre backbone in Western Cape region. It was signed by the Chief Procurement Officer, Ms Tara Ngubane on 20 February 2009 and Acting Chief Executive Officer, Mr David Kekana. The letter stated the following:

*"Scope of work*

*This project entails the installation of a Dark Fibre backbone in the Western Cape region, to support the installation of Passenger Information and Communication systems at key 2010 FIFA World Cup stations."*

*Background*

*In the case of support Passenger Communication and Information systems Infrastructure for the upgrade of key 2010 support stations, an ETC budget allocation of R28.500M was approved for the installation of Dark Fibre backbone in the KZN region."*

Table: Allocation for regions

|                                    |   |  |                              |
|------------------------------------|---|--|------------------------------|
| <i>Approved</i>                    | <i>Design, Supply and installation of Dark Fibre Backbone (Gauteng</i>    |  | <i>R40.230M<br/>R22.363M</i> |
| <i>Extended<br/>Amount for</i>     | <i>Design, Supply and installation of Dark Fibre Backbone (KZN Region</i> |  | <i>R30.329M</i>              |
| <i>Proposed<br/>Extended</i>       | <i>Design, Supply and installation of Dark Fibre Backbone Cape</i>        |  | <i>R28.500M</i>              |
| <i>Proposed<br/>Total Contract</i> |   |  | <i>R121.422m(VAT In</i>      |

#### Motivation

SARCC believes that standardization of the ICS communication platform and equipment specifications will have a long-term beneficial effect on the operations of SARCC. Siemens have been appointed only for the installation of the support Dark Fibre backbone for the Gauteng region. Similar Dark Fibre backbone support is required for Western Cape region.

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*The benefits will accrue from:*

- *Lower prices due to economic of scale.*
- *Increase in the negotiation power to SARCC, to further drive the price down.*
- *Direct cost and time benefit for SARCC, through the savings of costs associated with the procurement process.*
- *Benefit of a single, reputable supplier, with capacity to deliver the project.*
- *Standardization and uniformity in quality standards.*

*Recommendation*

*Chief Executive Officer's approval is hereby sought to confine the supply and installation of the Cape Town Dark Fibre backbone to Siemens Ltd. At the total contract price of R 28.500 m including VAT.*

- 6.3.2.23      The evidence at my disposal does not indicate that PRASA awarded the Dark Fibre and Integrated Communication system tender amounting to R800 million to Siemens as alleged. I am therefore inclined to rely on the amounts provided by PRASA in the absence of any evidence in the contrary in this regard.
- 6.3.2.24      The issue as to whether the initial awarding of the tender to Siemens for the Gauteng Region and the subsequent extension of the tender to cover the Western Cape and the Durban regions was irregular as alleged, will be resolved when measuring the conduct of PRASA against the relevant rules in the following chapter as that is a legal determination.

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**6.4 Complaint 4: Regarding PRASA's alleged improper termination of all contracts for cleaning services and the subsequent appointment of Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services:**

**6.4.1 Common cause**

6.4.1.1 It is common cause that PRASA summarily terminated the contracts of seven(7) cleaning service providers for Park Station in Johannesburg by letters dated 14 March 2012 following an unscheduled inspection by Mr Montana and colleagues and replaced them with Reakgona Commercial and Industry Hygiene (Reakgona) and Katanga Cleaning Services (Katanga), on 15 and 16 April 2012 respectively for contracts worth **R640 067.41** and **R640 067.41** respectively. It is not in dispute that the two companies took over immediately on 15 March 2012.

6.4.1.2 It is also common cause that the contracts, which were similar, provided for the contractors to be given a 24/48 hour notice to rectify any breach and that summary termination would be considered if the breach is material.

6.4.1.3 Mr Montana admitted that he terminated the contracts of the seven companies on the spot when he and some of his managers took an unscheduled visit to Park Station and found it to be filthy. He further conceded that Reakgona and Katanga were contracted without any tender or competitive process and submitted that this was in line with emergency provisions as PRASA could not be without cleaning services with the seven erstwhile contractors having been summarily dismissed.

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6.4.2 Issues in dispute

- 6.4.2.1 The question for my determination was whether or not the conduct of the seven companies entitled PRASA override their right to a written 48 hour ratification notice in terms of clause 8.1 of the contract (Dyno contract, which I have assumed was standard) and entitled the PRASA GCEO to invoke clause 8.2 of the contract providing that:

*"In the event of a breach that poses any immediate threat or damage to person or property, the other party shall be entitled to cancel the contract with a 24 hour notice to the defaulting party."*

- 6.4.2.2 Unfortunately, no evidence has been submitted by PRASA to support the argument of gross breach of contract *"posing an immediate threat or damage to person or property"*, which is in line with paragraph 11.3.5 of the PRASA SCM Policy permitting deviation to avoid a dangerous situation. There has been no argument made by PRASA indicating a history of dereliction of duty by the seven companies and their engagement with a view to ensure that non-compliance is rectified.

- 6.4.2.3 The letters of termination sent to each of the seven companies do not support PRASA's argument as they do not say anything about the reason for contract termination or deviation from the 48 hour rectification notice. Each letter simply states:

*"We regret to inform you that your contract with PRASA CRES previously known as Intersite Property Management Services, have been terminated with immediate effect starting from today 2012 March 14."*

6.4.2.4 The letters were sent to the following companies:

Table: Letters to companies

|  | Companies                                  | Date of letter |
|--|--|----------------|
|  | Dyno Cleaning                              | 14 March 2012  |
|  | Rainbow Rail Cleaning Services             | 14 March 2012  |
|  | Keewave Trading 40 CC                      | 14 March 2012  |
|  | Kokobela                                   | 14 March 2012  |
|  | Machate Commercial and Industrial cleaning | 14 March 2012  |
|  | Siyakhona Business Enterprise cc           | 14 March 2012  |
|  | Nyota Security and cleaning services       | 14 March 2012  |

6.4.2.5 The submission made on 29 March 2012 motivating for the appointment of Reakgona on a deviation basis, due to an emergency basis, justifies the termination of the seven contracts on the breach of contract by the seven contractors on, among others, *threatening PRASA's operating licence by creating a hazard* on the following basis:

*"During an unscheduled site visit to Park Station by the CEO and Executive management of PRASA CRES on 14th March 2012, the following serious shortcomings were identified:*

a) *generally poor condition of the station as far as cleanliness was concerned;*

- 
- b) poor hygiene and safety conditions affecting commuters and employees;*
  - c) poor performance and/or abandonment of posts by the contracted cleaning contractors; and*
  - d) generally poor and/ or lack of safety critical maintenance at the station".*

6.4.2.6 While the submission by PRASA that a filthy state of the Johannesburg Park Station could present a health hazard to both employees of PRASA and the commuters, is sound and reasonable, the evidence does not prove that the filthiness of the station had reached hazardous proportions and that rectification of such filthiness within 48 hours in compliance with clause 8 was impossible to comply with when the contracts were terminated. It also does not justify blanket arbitrary treatment of all seven contractors.

6.4.2.7 I also find it difficult to believe that the seven companies were equally culpable for the state of affairs at Park Station. The failure to hold a proper meeting with minutes detailing the conditions at the station and role of each cleaning company contribute to the difficulty I have in accepting that invoking clause 8 was impossible or would have perpetuated a hazardous situation for staff and commuters.

6.4.2.8 The evidence also shows that the appointment of Reakgona and Katanga was done on the basis of an emergency procurement memorandum, duly submitted and approved by Mr Montana on 23 April 2012. The submissions as indicated earlier, links the emergency to the termination of the seven previous contracts based on the hazardous situation created by the failure by the seven companies to comply with their contractual obligations.



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- 6.4.2.9 Having evaluated all the evidence before me and in the absence of a history of dereliction of duty and detailed violations by each of the seven contractors, I am unable to accept the argument that the station was in such a condition that the 48 hour rectification notice could not remedy the situation. I am also unable to accept that Reakgoma and the other were appointed to address an emergency as the emergency was self created by the PRASA GCEO's decision to summarily terminate existing contracts without due process.
- 6.4.2.10 Regarding whether or not PRASA, having terminated the contracts unduly failed to pay the contractors on time, I am unable to make a finding as this aspect was not investigated.
- 6.4.2.11 I have also not discovered or been provided with any evidence regarding the allegation that Reakgona was awarded the contract due to the entity's connection with the GCEO's Mr Montana's submission in response to the notice I issued in terms of section 7(9) of the Public Protector Act, that he does not know of any or has ever met a Mr Modiselle in his life.

**6.5 Complaint 5: Regarding the alleged irregular appointment of Sidas Security on security tender in replacement of National Force Security on the GCEO's instruction:**

6.5.1 Common cause

- 6.5.1.1 It is common cause that Sidas Security was appointed by PRASA on a security tender on 20 April 2009 valued at **R3 094 261.00** to replace National Force Security.

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- 6.5.1.2 It is also common cause that the appointment of Sidas Security was not preceded by an open tender or quotation process.
- 6.5.1.3 In its response received on 29 August 2013, PRASA conceded that the appointment of Sidas Security as a security service provider was not in accordance with PRASA's Supply Chain Management Policy and that the PRASA management had already made that determination.
- 6.5.1.4 PRASA further advised that, on discovery of the irregularity, management had instituted an investigation around the appointment of Sidas Security which investigation confirmed the irregular appointment of Sidas Security as well as its poor service and the contract was terminated while appropriate disciplinary steps were taken against the staff members who were implicated.
- 6.5.2 Issues in dispute
- 6.5.2.1 The only matter for my determination was whether the irregular appointment of Sidas Security was on the authority of Mr Montana as the GCEO as alleged.
- 6.5.2.2 In his response to the notice I issued in terms of section 7(9) of the Public Protector Act, Mr Montana denied that Sidas Security was unlawfully appointed on his instructions as alleged.
- 6.5.2.3 To corroborate his version, Mr Montana submitted a Report by Deloitte wherein it was made clear that many security contracts at the time were procured when Metrorail was still part of Transnet and were managed at the Regional level not at SARCC or PRASA Group level. He also contended that the Deloitte Report

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identifies the people who were involved within the Regions for procurement and termination of the security contracts.

6.5.2.4 Mr Montana's version was corroborated by the tender documents being minutes and memoranda as well as a PRASA investigative report dated July 2009.

6.5.2.5 It was further corroborated by the response of Mr Chris Moloi and Mr Ronnie Khumalo in their responses to the notices I issued to them in terms of section 7(9) of the Public Protector Act dated 24 July 2015, who both confirmed that Mr Montana did not issue any instructions. In the circumstances I am persuaded that Mr Montana was not involved in the appointment of Sidas Security.

## **6.6 Complaint 6: Regarding PRASA's alleged improper appointment of Vimtsire Security Services on tender number 525/2010/GAU/PS:**

### **6.6.1 Common cause**

6.6.1.1 It is common cause that Mr Montana appointed Vimtsire Security Services on security tender No: 525/2010/GAU/PS on DATE without an open tender process.

6.6.1.2 In its response received on 29 August 2013, PRASA conceded that it appointed Vimtsire Security Services in terms of Tender No: 525/2010/GAU/PS. PRASA further advised that Vimtsire Security Services was appointed for an amount of R766 080.00 (VAT inclusive), per month, for the Krugersdorp Station.

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6.6.2 Issues in dispute

6.6.2.1 The matter for my determination was whether circumstances existed justifying deviation from an open tender process as envisaged in paragraph 11.3.5 of PRASA SCM Policy.

6.6.2.2 Having conceded that Vimtsire Security was appointed through single sourcing or a confinement procurement process, PRASA submitted that the appointment of Vimtsire Security was done by way of the SCM Policy's urgency provisions. Several SCM records and agreements seeking to confirm Mr Montana's assertion that the appointment was an emergency, were provided.

6.6.2.3 It is again disturbing that the authenticity of the documents supplied cannot be verified as they are mostly undated and unsigned with one crucial document, an adjudication report being incomplete.

6.6.2.4 An undated notice to Tenderers, with tender number 525/2010/GAU/PS, contains the following:

*"TENDERERS ARE INVITED TO TENDER FOR THE PROVISION OF VARIOUS SECURITY SERVICES FOR A PERIOD OF SIX MONTHS"*

6.6.2.5 To support the view made earlier regarding the unreliability of documents supplied by PRASA, minutes of a meeting purportedly held **on 19 March 2010** appear to have been approved by Mr Stephen Nkhuna, Protection Services on **05 March 2010**, Mr Joe Buthelezi Acting Supply Chain Manager on **05 March 2010**, Ms Jackie Moshe RTPC Chairperson and Ms Nozipho Sangweni Regional Manager Gauteng. Regional on **08 March 2010**.

- 6.6.2.6 The minutes meeting reported as having been held on 19 February 2010, provide the following:

Table: Provision of security services at Gauteng region

| File Reference:                       | Tender No. 525/2010/GAU/PS     |
|---------------------------------------|--------------------------------|
| Matter before the committee for       | Consideration                  |
| Nature of matter before the Committee | New Business                   |
| Value of matter before the committee  | R170,000,000.00 (VAT INCLUDED) |
| Value to BEE (BEE% value)             | LEVEL 4                        |
| Budget Allocation                     | R170 000,000.00                |
| Contract period                       | 6 Months period                |

- 6.6.2.7 The comment on the document stated that the procurement department is requesting for the project to be approved as it is more than R500, 000.00.
- 6.6.2.8 The minutes state that the advertised date was 17 February 2010, Closing Date: 26 February 2010 and option date 08 March 2010.
- 6.6.2.9 The documents submitted by PRASA include an undated and incomplete submission for adjudication document for tender number 525/2010/GAU/PS. The following is stated on the document:

*"Scope of work*

*Appointment of contractors for the security services within the Gauteng region.*

*Background/motivation*

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*Metrorail is currently experiencing high incidents of security related risk. Cables, property damage to company's assets and fare evasion are very high. The current security arrangement is unfortunately unable to address these concerns.*

*Contracts for security do exist but these contracts have long expired. At the moment the arrangement has been a month on month type of an agreement. Head Office has promised to advertise a national tender; this tender is still not advertised.*

*It was therefore critical that an immediate action is taken to address all concerns mentioned above, to ensure safeguard Metrorail interest. It was also difficult to go out on tender because of the short period available to address this problem. **The close Tender method was used to ensure that deadlines are met.***

*The end user felt that the current postings of guard is creating problems as there is no proper demarcation and therefore supervision was lacking. Metrorail, as an interested part, was not receiving benefit with the current arrangement and therefore a new thinking was needed to alleviate these problems. It was decided by the end-user that allocation will henceforth be done per segment. This meant that each segment was going to be manned by one company as opposed to the previous arrangement.*

#### *Contract/Delivery period*

*The initial period of the contract is six (6) months based on the waiting period for the new national tender contract." (own emphasis)*

Table: Processes followed

|                               |   |
|-------------------------------|---|
| Date of invitation            | 17 February 2010  |
| Method of invitation          | Letters were sent and confirmation was done telephonically                          |
| Briefing session              | 19 <sup>th</sup> February 2010 at 10 am at Metrorail Station Building Gauteng North |
| Closing date & time           | 26 <sup>th</sup> February 2010 @ 10h00  |
| Closing Venue                 | Tender Box-Metrorail Station Building, Gauteng North                                |
| Number of documents issued    | 13  |
| Number of documents received  | 12  |
| How Proposals received        | In sealed envelopes on the Tender Box   |
| Validity expiry date of offer | 08 March 2010   |

#### 6.6.2.10 Discussion and Proposal Evaluation

*The evaluation of the tender was based on:*

- a) *Capacity- Confirmation that the company has immediate available resources*
- b) *Price*
- c) *Compliance*

*The criteria in terms of price evaluation were done as follows:*

- *Award at the lowest quoted price if price is lower than R7000 per guard excluding vat*
- *If price is higher than R7000, bring price down to R7000 excluding vat*

## TENDERED PRICES BY BIDDERS

| Supplier                      | Unarmed<br>Grade D<br>Excluding vat | Armed Grade<br>D Excluding<br>vat | Horse<br>Excluding vat |
|-------------------------------|-------------------------------------|-----------------------------------|------------------------|
| Changing Tide                 | 7 198.00                            | 8 168.00                          | No quote               |
| Vimtsire Security<br>Services | 7 900.00                            | 8 076.20                          | 8 076.20               |
| Futuris<br>Security           | 6 735.00                            | 7 135.00                          | 3 800.00               |
| Hlanganani<br>Security        | 7 058.00                            | 7 058.00                          | 4 784.00               |
| Manuel<br>Security            | 11 306.68                           | 12 437.34                         | 186.60                 |
| Vusa Isizwe                   | 7 800.00                            | 7 800.00                          | 6 950.00               |
| Sinqobile<br>Security         | 7 117.00                            | 7 284.00                          | 4 200.00               |
| Royal Security                | 8 073.00                            | 8 576.20                          | 10 000.00              |
| Enlightened<br>Security       | 5 702.00                            | No quote                          | No quote               |
| Ulwazi<br>Security            | 9 150.00                            | 9 150.00                          | No quote               |
| Afriguard<br>Security         | 7 160.00                            | 7 250.00                          | 4 000.00               |
| G4S Security                  | No quote                            | No quote                          | No quote               |



6.6.2.11 The following companies were indicated as not taking part in further evaluation as they did not comply:

- G4S Security- did no quote
- Manuel Security-quote very high
- Ulwazi Security- quote high

6.6.2.12 Table: Detail of funding for project

| No | Description                   | INCLUDING VAT              |
|----|-------------------------------|----------------------------|
| A) | Approved Budget for purchases | R170 000 000.00            |
| B) | Source of funding operational | R170 000 000.00            |
| C) | Expected Expenditure          | Year 1:<br>R670 000 000.00 |
|    |                               | Year 2: N/A                |
|    |                               | Year 3: N/A                |

Gauteng South

Table: Tender awards

| Company                    | Segments      | Number of Guards Unarmed Grade D | Cost per Guard | Total per month | Cost for Six Month |
|----------------------------|---------------|----------------------------------|----------------|-----------------|--------------------|
| Vusi Sizwe                 | Soweto & Vaal | 271                              | 7980           | 2,162,580.00    | 12,975,480.00      |
| Sinqobile                  | Brakpan       | 118                              | 7980           | 941,640.00      | 5,649,840.00       |
| Vimtsire Security Services | Krugersdorp   | 96                               | 7980           | 766,080.00      | 4,596,480.00       |
| Royal                      | Johannesburg  | 130                              | 7980           | 1,037,400.00    | 6,224,400.00       |
| Changing Tides             | Kaalfontein   | 146                              | 7980           | 1,165,080.00    | 6,990,480.00       |
| Total                      |               |                                  |                | 6,072,780.00    | 36,436,680.00      |

6.6.2.13 The following recommendations were further stated on the submission:

*"Recommendation*

*Regional Tender and Procurement Committee is requested to approve award business for the following companies:*

*Cables and Patrol*

- 1 Afriguard –Guarding North, South and North areas for an amount of R640 224 including vat per month.
- 2 Hlanganani-Gauteng South, West region for an amount of R1 359 788 per month including vat per month.

- 
- 3 *Futuris-Gauteng South, East region for an amount of R1 771 594.20 including vat per month.*

*Station, Yards and Depots*

- 1 *Vusi Sizwe- Soweto and Vaal for an amount of R2 162 580 including vat per month.*
- 2 *Sinqobile- Brakpan for an amount of R941 640 including per month*
- 3 *Vimtsire Security Services-Krugersdorp for an amount of R766 080 including vat per month.*
- 4 *Royal –Johannesburg for an amount of R1 037 400 including vat per month.*
- 5 *Changing Tides Kaalfontein for an amount of R1 165 080 including vat per month.*
- 6 *Enlightened Gauteng North Area North for an amount of R2 071 290.00 including vat per month.*
- 7 *R 1-Gauteng North Area South for an amount of R1 755 075.60 including vat per month."*

6.6.2.14 I have noted that despite the fact that the Background/motivation in the undated and unsigned submission for adjudication document for Tender Number 525/2010/GAU/PP indicated that "The close Tender method was used to ensure that deadlines are met", in her response to the notice I issued in terms of section 7(9) of the Public Protector Act, Ms Nozipho Sangweni contended that my preliminary finding to that effect is incorrect and insisted that the appointment of Vimtsire Security Services followed the request for quotation bidding method following the fact that it was below R350 million and emergency purchases for security reasons in line with PRASA SCM Policy.

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- 6.6.2.15 The evidence of documents obtained from PRASA revealed that a contract was entered into between PRASA and Vimtsire Security Services, signed by the contractor on 23 February 2010. The contract was for the provision of security personnel, equipment and horses to perform work at various Metrorail stations, yards, depots and sites in the Gauteng Metrorail region.
- 6.6.2.16 Another copy of the contract between PRASA and Vimtsire Security Services was also examined. The contract was signed by the contractor on 29 May 2010. The contract was for the provision of security personnel, equipment and horses to perform work at various Metrorail stations, yards, depots and sites in the Gauteng Metrorail region. The initial contract period was reflected as a period of 6 (six months) commencing on 13 March 2010 and ending on 13 August 2010.
- 6.6.2.17 The documents further revealed a notice to proceed to Vimtsire Security Services (attention Mr Phalatse) from Mr Joe Buthelezi, Acting SCM Manager, dated 03 March 2010, for project 525/2010/GAU/PS: provision of security services for a period of six months in the, protection services department, Metrorail Gauteng North. The notice to proceed stated that "Your quotation dated 25 February 2010 has been approved. This is a six month contract to a maximum amount of R4, 596,480.00 (Four Million Five Hundred and Ninety Six Thousand Four Hundred and Eighty Rand Only) including VAT.

*Stations, Yards and Depots*

Table: Gauteng South

| Company                    | Segments    | Number of Guards Unarmed | Cost per Guard | Total per month | Cost For six Month |
|----------------------------|-------------|--------------------------|----------------|-----------------|--------------------|
| Vimtsire Security Services | Krugersdorp | 96                       | 7,980.000      | 766,080.00      | 4,596,480.00       |
| Total Including (Vat)      |             |                          |                |                 | 4,596,480.00       |

6.6.2.18 The above mentioned notice was signed by Mr Joe Buthelezi, Acting SCM Manager, on behalf of PRASA on 08 March 2010 and was accepted by Godfrey on 08 March 2010 on behalf of Vimtsire Security Services.

6.6.2.19 Another notice to dated 03 March 2010 is a letter addressed to Vimtsire Security Services from Mr Joe Buthelezi Acting Supply Chain Manager stating:

6.6.2.20 *"Your quotation dated 25 February 2010 against has been approved. This is a six month contract to a maximum amount of R7 537,680.00 (Seven Million Five Hundred and Thirty Seven Thousand Six Hundred and Eighty Rand Only) including VAT.*

Table: Gauteng South

| Company   | Segments        | Type    | Number | Cost     | Total per month<br>( R ) | Cost For<br>six Month<br>(R) |
|-----------|-----------------|---------|--------|----------|--------------------------|------------------------------|
| Vitmtsire | Krugers<br>dorp |         |        |          |                          |                              |
|           |                 | Unarmed | 76     | 7,980.00 | 606,480.00               | 3,638,880.00                 |
|           |                 | Armed   | 76     | 8,550.00 | 649,800.00               | 3,898,800.00                 |
| Total     |                 |         |        |          | 1,256,280.00             | 7,537,680.00                 |

6.6.2.21 The notice to proceed letter as mentioned above on the table, was signed by Mr Joe Buthelezi Acting Supply Chain Manager on 08 March 2010 on behalf of PRASA and accepted by Mr Emanuel Dube on 08 March 2010 on behalf of Vimtsire Security Services.

6.6.2.22 The documents included a submission to extend contract validity period for payment purpose dated 12 March 2013. The aim of the submission was to request the Gauteng Provincial Manager's approval to settle Security Services Provinces' invoices for month of March 2013. However, there was also a hand written note saying that " *NOT TO BE PAID REFER ATTACHED* "

6.6.2.23 A n extension letter dated 13 May 2013 from Mr Kabelo Mantsane Head of Corporate Security to Mr Godfrey Nemutandani of Vimtsire Security Services is also part of the documents. It was approved by the Head Group Corporate Security on 13 May 2013 and accepted by a representative from Vimtsire Security Services

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on 16 May 2013. Subject on the letter was extension of security contract with new terms and conditions Metrorail Gauteng Effective 01 May 2013 to 30 April 2014.

6.6.2.24 The following was stated on the letter:

*"We are pleased to advice that approval has been granted to extend your contract with minor changes to render security services to PRASA Rail within the Gauteng at the total contract value of R15, 308,494.56 (Fifteen Million, Three Hundred and Eight Thousand, Four Hundred and Ninety Four Rand and Fifty Six Cent) with a total security contingent of 138 Grade D security officers. The unit cost for security is as follows:*

- |      |                    |                            |
|------|--------------------|----------------------------|
| 1.1. | 69 Grade D Unarmed | @ R7, 950.00 excluding vat |
| 1.2. | 69 Grade D Armed   | @ R8, 268.00 excluding vat |

*Addendum document with additional penalty items are on page two (2) for acceptance/rejection.*

*Addendum to the Contract Document:*

*The current contract signed between your company and PRASA excluded the following penalty provision that needs to be included for the effective management of the Security Service Provision Contracts at an operational level."*

Table: penalty provision

| Item Description   | Penalty Amount |
|--|----------------|
| <i>Uniform</i>   | <i>R500</i>    |
| <i>Hand Cuffs or Handcuffs Keys</i>                                | <i>R75</i>     |
| <i>Baton</i>   | <i>R75</i>     |
| <i>Whistle</i>   | <i>R75</i>     |
| <i>COC( Certificate of Competency)or<br/>Firearm or Ammunition</i> | <i>R350</i>    |

- 6.6.2.25 Regarding the allegation that Vimtsire Security Services was awarded a contract where after it requested PRASA to improperly grant them an indemnity against contractual penalties, my investigation team and I noted an application from Vimtsire Security Services dated 14 February 2011 in that regard.
- 6.6.2.26 It should be noted that copies of subsequent contract(s) entered into between PRASA and Vimtsire Security Services upon the expiry of the contract signed on 29 May 2010, were not provided. An inference that can be drawn is that if the contract signed on 29 May 2010 sought to extend the contract signed on 23 February 2010, whose duration was from 13 March 2010 to 13 August 2010 for another six (6) months, then the contract signed on 29 May 2010 would have expired on 13 February 2011.
- 6.6.2.27 In her response to the notice I issued in terms of section 7(9) of the Public Protector Act regarding the issue, Ms Nozipho Sangweni submitted that the evidence of the letter of extension dated 13 May 2013 suggests that Vimtsire Security Services were operating with an indemnity against penalties. The fact that Vimtsire Security Services applied for indemnity from penalties gives credence to the allegation that it was appointed without meeting the minimum requirements.



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- 6.6.2.28 The Complainant alleged that there were procedural defects and discrepancies within tender no 525/2010/GAU/PS and that no action was taken against the Manager concerned for acquiring additional 241 guards without following SCM Policy.
- 6.6.2.29 An unsigned letter from Mr RM Khumalo: Acting Regional Security Manager addressed to Ms N Sangweni Regional Manager dated 20 July 2010 was provided by the Complainant. Although the authenticity of the letter is doubtful, its contents include the following:

*"Procedural Defects/ Discrepancy within Tender No. 525/2010/GAU/PS*

*Background*

*Protection Services presented a Development Plan to the Gauteng Regional Manager that indicated the guard compliment of 1701. The deployment plan was then used as a base to procure contracted security services.*

*Development*

*On 08 March 2010 the Tender Committee approved the provision of security service at Gauteng Region. The approved provision of the security services was specific to individual security contractors listed below with regard to guards' strength/ compliments and value up to period of six (6) months.*

*Tender Award*

*The below service providers were awarded the tender as summarised."*

Table: Tender award

| <i>Company</i>                    | <i>Guards Approval as per Tender Committee 03 March 2010</i> | <i>Additional Guards Outside Tender Committee Approval after 10 March 2010</i> | <i>Totals</i> | <i>Service Provider invoice</i> | <i>Comments</i>  |
|-----------------------------------|--|--|---------------|---------------------------------|--|
| <i>Vusa Isizwe</i>                | <i>271</i>   | <i>38</i>  | <i>309</i>    | <i>309</i>                      | <i>38 guards not approved through tender (sic) process/committee</i> |
| <i>Hlanganani</i>                 | <i>142</i>   | <i>0</i>   | <i>142</i>    | <i>142</i>                      | <i>Approved By Tender Committee</i>                                  |
| <i>Vimtsire Security Services</i> | <i>96</i>  | <i>56</i>  | <i>152</i>    | <i>152</i>                      | <i>56 guards not approved by the Tender Committee</i>                |
| <i>Royal</i>                      | <i>130</i>   | <i>124</i>   | <i>254</i>    | <i>254</i>                      | <i>124 Guards not approved by the Tender Committee</i>               |
| <i>Futuris</i>                    | <i>201</i>   | <i>0</i>   | <i>201</i>    | <i>203</i>                      | <i>2 Guards not approved by Tender Committee</i>                     |
| <i>Sinqobile</i>                  | <i>118</i>   | <i>0</i>   | <i>118</i>    | <i>118</i>                      | <i>Approved by</i>   |

|                             |     |    |     |     |  |
|-----------------------------|-----|----|-----|-----|--|
|                             |     |    |     |     | <i>Tender Committee</i>                        |
| <i>Changing Tides</i>       | 146 | 21 | 167 | 167 | 21 guards not approved by the Tender Committee |
| <i>R1</i>                   | 270 | 0  | 270 | 270 | Approved by Tender Committee                   |
| <i>Afri-Guard</i>           | 52  | 0  | 52  | 52  | Approved by Tender Committee                   |
| <i>Enlightened Security</i> | 282 | 0  | 282 | 282 | Approved by Tender Committee                   |

*The initial tender security complements is for 1701 guards, yet the current security compliment is 1947.*

*The discrepancy in the contract figures versus the deployment figures is as a result of the additional request made by the Protection Services after the Tender Committee approved the original request. This therefore means that 241 security guards plus 2 security guards that Futuris Guarding is invoicing were never approved by the Regional Tender Committee.*

*The additional request of the 241 security guards was made by Mr D Xelelo on behalf of Mr S Nkhuna on the 10 March 2010 through an e-mail to Ms Y Moetsela and Mr Buthelezi both of Supply Chain. It is upon this correspondence that additional guards were acquired and award letters amended.*

*Protection Services is now aware that Royal, Vusa-Isizwe, Changing Tides and Vimtsire Security Services received two (2) letters, the first one as per the Tender Committee approval and the second one as per the e-mail correspondence. Further to*

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*the award letters, there was additional approval through e-mail of firearms and hand radios which were never part of the Tender Committee approval.*

*The contract value as per the Tender Committee approval per month and for a period of for six (6) months is R13, 670,751.00 million and R82, 024,506 million respectively.*

*The contract value was then changed by the additional request to R15, 862,401 million per month and R95, 174, 406 million for a period of six (6) months. This process was never formally brought to the tender Committee for approval. In light of the above process irregularities the Security Contract Budget was then affected causing a monthly and a period of six (6) month variance of R2,191,650 million and R13,149,900 million respectively.*

#### *Invoices*

*The contracted Security Services Providers invoices are currently based on the award letters which includes the guard compliments 241 to the value of R2, 191,650 million not approved by the Tender Committee."*

- 6.6.2.30 In her response to the notice I issued in terms of section 7(9) of the Public Protector Act regarding the issue, Ms Nozipho Sangweni admitted that the Acting Supply Chain Manager did not follow the PRASA SCM Policy in acquiring additional 241 guards but denied that no action was taken against the manager concerned. Ms Sangweni submitted that she raised the issue of discipline with the manager in charge of the department as well as the head of security at PRASA Head Office at the time, given that she did not have authority over the security department since it was reporting directly to Mr Mantsane, Head of Security at PRASA Head Office.

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6.6.2.31 In support of her contention, she submitted a copy of a memorandum addressed to Mr Mantsane dated 28 July 2010 in which she proposed that the additional unauthorised numbers of security guards be cut with immediate effect. She also proposed therein that necessary corrective action against individuals who transgressed the SCM Policy be addressed. She further indicated that the irregularity was costing the region about R2 million per month which resulted in over-expenditure.

6.6.2.32 From the evidence provided, no corrective action was taken by Mr Mantsane on individuals who transgressed the SCM Policy, as had been proposed by Ms Sangweni. There is also no evidence showing that the unauthorised guards were removed.

**6.7 Complaint 7: Regarding the alleged irregular payment of Royal Security invoice for security services:**

6.7.1 Common cause

6.7.1.1 It is common cause that Royal Security was appointed by Mr Montana as GCEO on tender 525/2010/GAU/PS for the provision of security services for a period of six months in the protection services department of Metrorail Gauteng North and paid for its services.

6.7.2 Issues in dispute

6.7.1.2 The matter for my determination was whether or not an irregular payment of R300 000.00 was made by PRASA bringing the amount paid to Royal Security to R2.8 million instead of the contract price of R2.5 million.

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6.7.1.3 In his response to the notice I issued in terms of section 7(9) of the Public Protector Act, Mr Montana denied that PRASA had irregularly paid an amount of R2.8 million to Royal Security as alleged. PRASA admitted that an invoice of R2.8 million was received from Royal Security but management discovered what appeared to be an error on Royal Security's invoice. He advised that the error was brought to the attention of Royal Security and a correct invoice of R2.5 million was later issued and submitted to PRASA the following month.

6.7.1.4 The Remittance Advice dated 28 February 2011 corroborates Mr Montana's submission that Royal Security was paid an amount of R2.5 million and not R2.8 million.

**6.8 Complaint 8: Regarding PRASA's alleged irregular payment of R600 000.00 made in advance to Enlightened Security:**

6.8.1 Common cause

6.8.1.1 It is common cause that Enlightened Security was awarded a contract of a duration of six months valued at R681 720.00 per month by PRASA and was periodically paid for work done.

6.8.1.2 The fact that Enlightened Security was contracted and paid was not disputed.

6.8.2 Issues in dispute

6.8.2.1 The key matter for my determination was whether or not PRASA made an advance payment before the contract was signed and service rendered.



- 6.8.2.2 In its submissions, including a submission made in response to a notice issued in terms of section 7(9) of the Public Protector Act, PRASA has maintained that it never paid an advance payment to Enlightened Security.
- 6.8.2.3 However, the documents submitted by PRASA which include a payment schedule, 'notice to proceed' and memoranda, tell a different story. The evidence in the form of a copy of a "notice to proceed" shows that whereas letter authorising commencement of work issued on 17 October 2008, the first payment was made on 22 October 2008.
- 6.8.2.4 I am, accordingly satisfied that there is credible evidence proving that an advance payment of R681 720.00 was made to Enlightened Security as alleged. It also appears that the payment was not factored in the payment schedule, with the possibility that there may have been a double payment.
- 6.8.2.5 On perusal of the documents received from the Complainant we noted there was a statement dated 05 May 2009 from Enlightened Security force. The credit note reflected the following:

*Table: credit note details*

| NO | Date       | Invoice  | Company           | AMOUNT       |
|----|------------|----------|-------------------|--------------|
| 1. | 19/09/2008 | 2008-743 | Mabopane Station  | 684 720.00   |
|    | 22/10/2008 | 2008-743 | Payment Thank you | (681 720.00) |
| 2. | 01/10/2008 | 2008-808 | Mabopane Station  | 681 720.00   |
|    | 03/11/2008 | 2008     | Credit Note       | (5 719.84)   |
|    | 22/11/2008 | 0845     | Payment Thank You | (676 000.16) |
|    |            | 2008-808 |                   |              |

|    |            |          |                   |              |
|----|------------|----------|-------------------|--------------|
| 3. | 01/11/2008 | 2008-864 | Mabopane Station  | 681 720.00   |
|    | 01/12/2008 | 2008     | Credit Note       | (4 636.61)   |
|    | 04/12/2008 | 0462     | Payment Thank You | (672 446.78) |
|    | 20/01/2009 | 2008-864 | Underpayment      | 4 636.61     |
|    | 02/02/2009 | 2009-61  | Payment Thank You | (4 636.61)   |
| 4. | 01/12/2008 | 2008-970 | Mabopane Station  | 681 720.00   |
|    | 16/01/2009 | 2008-970 | Payment Thank You | (681 720.00) |
| 5. | 01/01/2009 | 2009-57  | Mabopane Station  | 681 720.00   |
|    | 03/02/2009 | 2009     | Credit Note       | (513)        |
|    | 26/02/2009 | 0002     | Payment Thank You | (681 207.00) |
|    |            | 2009-57  |                   |              |
| 6. | 01/02/2009 | 2009-112 | Mabopane Station  | 681 720.00   |
|    | 06/03/2009 | 2009     | Credit Note       | (627.00)     |
|    | 20/03/2009 | 0018     | Payment Thank you | (681 093.00) |
|    |            | 2009-112 |                   |              |
| 7. | 09/03/2009 | 2009-194 | Mabopane Station  | 681 720.00   |
|    | 06/04/2009 | 2009-    | Credit Note       | (2 348.40)   |
|    | 21/04/2009 | 0037     | Payment Thank You | (679 371.60) |
|    |            | 2009-194 |                   |              |

6.8.2.6 It is noted that in both instances the invoices were issued before the notice to proceed was issued on 17 October 2008. In essence in both instances payment was solicited prior to appointment. This state of affairs gives credence to the allegation that payment was processed prior to appointment. It raises questions as to why PRASA would have accepted the invoices when in fact the appointment had not been made.



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6.8.2.7 I am accordingly satisfied that there is credible evidence that an advance payment of R681 720.00 was made to Enlightened Security as alleged. It also appears that the payment was not factored in the payment schedule, with the possibility that there may have a double payment.

**6.9 Complaint 9: Regarding the alleged improper appointment of a service provider for *Hambanathi Magazine*:**

6.9.1 Common cause

6.9.1.1 It is common cause that Mr Montana awarded a three year contract in 2012 to KG Media for the production and distribution of its corporate newsletter *Kwela Express* formerly known as *Hambanathi*, valued at R16 764 111.00 based on monthly payment of R465 669.75.

6.9.1.2 It is also common cause that *Hambanathi* was created and originally published by Metrorail, a subsidiary of PRASA as an inhouse magazine but Metrorail had not patented it. It is also common cause that Mr Pule Mabe, who now owns *Hambanathi* and has renamed it *Kwela Express* used to be a Metrorail employee involved in the production and distribution of *Hambanathi* until he left PRASA in 2008.

6.9.1.3 It is also common cause that the contract was not preceded by an open tender or other competitive bidding process such as obtaining three quotations as prescribed in its SCM Policy. In this regard the service provider was treated as a single source appointed on "confinement".

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6.9.2 Issues in dispute

6.9.2.1 The matter for my determination was whether or not the conditions for permissible single sourcing existed thus allowing PRASA to deviate from an open bidding process.

6.9.2.2 Mr Montana has maintained that Kwela Express is owned privately and the only basis it could take advantage of it as a platform for communicating various aspects of its operations to its stakeholders was through a direct partnership without a competitive bidding process. It is interesting that Mr Montana did not indicate that actually Kwela Express belonged to PRASA and Mr Mabe was only able to appropriate it because he registered a patent on it after leaving PRASA's employment.

6.9.2.3 A perusal of the agreement between the parties reveals the following:

*"Agreement*

- a. *PRASA hereby agrees to review and renew a working relationship/ partnership with the service provider who also hereby agrees thereto, for the provision of the Executive National Commuter Newspaper- Kwela Xpress, and related CSI services limited to Field Activation and the Introduction of additional ticket distribution channels subject to the provisions of this agreement. This agreement shall be subject to a regular review, if necessary, by PRASA.*
- b. *This agreement shall, notwithstanding the date of signature, commence on 01st April 2012 (herein referred to as the Effective Date) and shall continue for*

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*a period of 3 years (36) months until 01st April 2015. The contract shall be reviewed at the end of this period.*

- i. For avoidance of doubt the mobile ticket distribution platform shall become an on-going service for PRASA and its customers beyond the initial contract duration as per clause 3.2 with annual reviews unless terminated earlier as provided for in this contract.*
- ii. The parties may consider entering into a separate and elaborate working agreement to regulate the mobile ticket distribution platforms.*

#### *Pricing Structure and payment*

*In consideration for the performance of the services as agreed to PRASA shall pay to the Services Provider the agreed contract price of R465 669.75 per month with an annual inflationary review. All invoices will be processes in accordance with services rendered as per clause 6.2 on the duties of the service provider. The following cost formula will apply in executing such payments:*

- 5 Pages worth of exposure every month, including advertorial, photography and advertisement divided bi-weekly, with a total of 2 ½ pages per edition calculated in accordance with Kwela Xpress rate-card as follows:*
- 5 full page's (39 cm x 7 columns x265 x5= R361 725)*
- Visual Communications including web insertions and interactive cartoons with a total of six insertions biweekly calculated as follows:*

- 
- 12 insertions compatible for web and mobile broadcast ( 1 insertion=  
R12 500x12= R150 000)
  - Overall Total per moth calculated as follows: (R361 725 + R150 000=  
R511 725 (excl Vat) Discount, at 9% of the total value (R46 055.25)
  - Total Monthly Contract Amount R 465 669.75 excluding Vat."

6.9.2.4 The evidence appears to be consistent with an unsolicited bid scenario but I will later deal with the legal requirements of an unsolicited bid and whether or not the manner in which the procurement of the Kwela Express partnership complied therewith.

6.9.2.5 What must be noted is that no evidence was provided by PRASA indicating that the market was tested and no other service provider could provide the same or similar service as Kwela Express could be found. It would also appear that no independent process was undertaken to test the cost effectiveness of the Kwela Express pricing.

#### **6.10 Complaint 10: Regarding the alleged irregular appointment of Mr Ezra Ndwandwe's Consultancy in 2008/9 period:**

##### **6.10.1 Common cause**

6.10.1.1 It is common cause that PRASA appointed Mr Ezra Ndwandwe as a change management consultant without an open competitive bidding process.

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6.10.2 Issues in dispute

- 6.10.2.1 The matter for my determination was whether or not PRASA's deviation from competitive bidding was justified in the circumstances and the process followed was as authorised by the SCM Policy.
- 6.10.2.2 In its response received on 29 August 2013, PRASA submitted that an entity owned and managed by Mr Ndwandwe, namely Ndwandwe Consultancy was appointed without an open tender or three quotations.
- 6.10.2.3 PRASA further submitted that the appointment was a confinement appointment in terms of its SCM Policy initiated by its Group HR Division, but required the approval of its GCEO in accordance with its SCM Policy.
- 6.10.2.4 Worth noting is a memorandum submitted by PRASA regarding the motivation of confinement for Ndwandwe Consultancy shows that it was engaged to execute a value creation and culture change project after an excursion he facilitated for PRASA management. The document dated 25 June 2008 from Miss Liz Choonara addressed to GCEO, was prepared under the authority of Mr Johannes Mamabolo, recommended by Group Executive HR and approved by the GCEO. The following was said in the motivation.

*"Background*

*Following the **executive excursion held in Parys on January 27 -29<sup>th</sup>, 2008 facilitated by Ndwandwe Consultancy** it was decided that SARCC would engage the services of Ndwandwe Consultancy (PTY) Ltd to assist the organization in its quest **to forge a new vibrant performance and value driven culture.***

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*Facilitation Skills of Ndwandwe Consultancy*

*Ndwandwe Consultancy through its founder and MD Ezra Ndwandwe have done work with SARCC from when he was invited to talk to the top 300 managers on transformation and the challenges that it poses to management today. Following that engagement Ndwandwe has been requested time and again to assist with what would be burning management/ leadership challenges in the organization- to assist in either Finding solutions or to advise management on how to deal with them. To that effect, Ndwandwe has successfully done work for the Wits, Eastern Cape, Cape Town and Head Office. It is against this background that we think Ndwandwe understands our business thoroughly.*

*Exposure to SARCC*

*Given the urgency of the culture change within SARCC at the back of the merger of the different entities, it was decided that Ndwandwe's intervention could not have come at a better time than now.*

*Notwithstanding our procurement and tendering procedures, given that*

- *the consultancy has sufficient knowledge and skills on the subject of organisational culture change and have been exposed to SARCC through the facilitation of: Top 300 Executive Lekgotla in January 2008, RBO'S in Cape Town Region, Executive Excursion in April 2008.*
- *the consultancy understands our business model and the strategy of where are we going, the history of consulting and the clients it has on its books ( which clients are known to be very strict in selecting organizational advisors, particularly African based),*
- *management's commitment to the PRASA Board to change the culture of this organization within two years,*

- 
- *the fact our organization needs to begin to position itself as the employer of choice, we would like to motivate for the appointment of Ndwandwe Consultancy for the period of Eighteen Months (18 Months) to assist the organization with the culture change project.*

#### *Scope of Agreement*

*SARCC seeks the services of Ndwandwe Consultancy for management and leadership development to assist in culture change in the following areas:*

- developing change managements tools,*
- developing and implementing the transformation agenda of the SARCC, in order to change or align the organizational and individual behaviours to support the new strategy and business model.*

*Ndwandwe Consultancy will render services across the HR spectrum but confined to people specific change and transformation as may be required at strategic level from time to time.*

*SARCC would like to appoint Ndwandwe Consultancy as Principal Leadership Development and Management Consulting with regards to Human Capital*

#### *Development.*

*Ndwandwe Consultancy (Pty) will assist SARCC by delivering the necessary interventions through its consultants i.e. to develop change processes, tools, training, facilitation or specific interventions geared at resolving identified problems or barriers to change. Ndwandwe will also act as an advisor to SARCC on what interventions would be needed and quality check such intervention (s) where applicable or necessary.*

*Administration of Agreement:*

*It is the view of both parties that the effectiveness of this agreement in terms of its intentions and mandate needs to be appraised quarterly i.e. it is agreed that both parties and related stakeholders would appraise the effectiveness of this relationship by way of discussion, pointing out where there might be bottlenecks, gaps, corrective measures and/or areas of improvement and benchmark areas. It remains optional for SARCC to use the services of Ndwandwe as their business requires NB: These costs exclude material development and associated printing costs.*

Table: Costing

| <i>1 X Full time resource and 1X part time resources from Ndwandwe</i> |   |                          |                             |                       |                         |  |
|--|---|--------------------------|-----------------------------|-----------------------|-------------------------|--|
|  | <i>Managing Consultant number of hrs.</i> | <i>Account Executive</i> | <i>Number Of days/month</i> | <i>Cost per month</i> | <i>Number of months</i> | <i>Cost for the 18 months duration</i> |
| <i>Part Time Resource MD rate= R2400/hr.</i>                           | 8   |                          | 8                           | 153 600               | 18                      | 2,764,800.00                           |
| <i>Full Time Resource AE rate= R1 500/hr.</i>                          |   | 8                        | 16                          | 192 000               | 18                      | 3,456,000.00                           |
|  |   |                          |                             |                       | <i>Total</i>            | 6,220,800.00                           |

*Proposed Payment Method*

*The payments will be structured as follows:*

***R345 600.00 per month*** based on the number of hours worked for both Managing Consultant and Account Executive as reflected on the table above. The payment will be based on monthly report and invoices supplied. No delivery, No payment."



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- 6.10.2.5 It was further noted on the motivation of confinement document, that there was a handwritten note and it read as *"Liz, Approval is granted, subject to confirmation that supply chain has been involved in this process. It is important that when confinement is chosen as the preferred route provision of SCM policy are adhered to."*
- 6.10.2.6 An undated recommendation report addressed to the GCEO from the Chief Procurement Officer for tender number HO/HR/05/200/PR2248 was also approved by Mr Montana as the GCEO on 16 July 2008. It confirms the scope as being leadership and change management support to facilitate the integration of 5 previously independent entities that then constituted PRASA.
- 6.10.2.7 From the evidence it is clear that Mr Ndwandwe's consultancy's appointment was triggered by an existing relationship, which had included an excursion that took place immediately before the impugned contract was initiated. It is also clear that no process was followed to establish if any other agency offered similar services. More importantly, no demand management exercise preceded the engagement. Unfortunately, the investigation did not examine what the excursion mentioned in the procurement memo was for, whether or not PRASA paid for it and how Mr Ndwandwe's consultancy had been procured it as the impugned engagement apparently flows from that excursion.

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**6.11 Complaint 11: Regarding the alleged irregular awarding of CCTV cameras tender to Mr. Vusi Twala, a then Board Member**

**6.11.1 Common Cause**

6.11.1.1 It is common cause that Mr Vusi Twala had an interest in the CCTV cameras tender.

**6.11.2 Issues in Dispute**

6.11.2.1 The matter for my determination, on the evidence, was whether or not Mr Vusi Twala, a Board Member at the time, had an undisclosed interest in the company awarded the tender and if he and the Board failed to manage a consequent conflict of interest arising from him having to look after his financial interests in the said company while honouring his fiduciary duties to tax payers as a Board member of PRASA.

6.11.2.2 Despite evidence to the contrary, Mr Montana, in his response received on 29 August 2013, submitted that at no stage did PRASA issue a tender for the provision of CCTV cameras to Mr Vusi Twala. In his response to the notice I issued in terms of section 7(9) of the Public Protector Act, Mr Montana also reiterated that Intersite has never at any stage whatsoever awarded a contract for the installation of CCTV cameras to Mr Vusi Twala.

6.11.2.3 While Mr Montana denied that Mr Vusi Twala had an interest in the CCTV cameras tender, one of the documents provided with his submission, is a copy of PRASA Board Minutes of a meeting held on 1 December 2008 reflecting Mr Vusi Twala's disclosure of interest in the CCTV cameras tender. Notably, the minutes in

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question include a recording that the PRASA Board has accepted that Mr Vusi Twala has fully declared his interest with regard to the CCTV cameras tender. There is also a contract questionnaire form completed by Mr Vusi Twala, declaring that he is a Director at several companies and a member in two (2) close corporations.

6.11.2.4 PRASA failed to provide the necessary tender documents relating to this issue.

6.11.2.5 While, the only logical conclusion I could make on the scanty evidence before me, was that Mr Vusi Twala indeed had some interest in the CCTV cameras tender, I could not make a determination regarding the nature of such interest and whether or not the alleged conflict of interest had been managed as prescribed in the SCM Policy.

**6.12 Complaint 12: Regarding PRASA's alleged improper increase of the scope and value of marketing and communications tender number HO/M&C/305/07/2009 awarded to Brand Leadership for R29 million:**

6.12.1 Common cause

6.12.1.1 It is common cause that Brand Leadership was awarded the PRASA branding contract as per tender number HO/M&C/305/07/2009, for an initial total value of R12 921 456.00 and that subsequently the total contract price of R29 528 000.00 included a substantial scope and price variation, from what had been advertised.

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6.12.2 Issues in dispute

6.12.2.1 The matter for my determination was whether or not the circumstances for the scope variation were in line with those authorised in the SCM Policy.

6.12.2.2 PRASA in its response received on 29 August 2013, and subsequent response to the notice I issued in terms of section 7(9) of the Public Protector Act, acknowledged that the original project scope was 12 months valued at R12 921 456.00 and that both scope and price were expanded to 18 months for a total amount of R29 528 000.00, respectively. It maintained that the scope and price variation were reasonable and justified in the circumstances and permissible in terms of the SCM Policy. PRASA submitted the following:

- a) *This was an open and competitive tender advertised in newspapers with an estimated value of R30 million, with many companies participating in the tender.*
- b) *The RFP was advertised on 2 August 2009 in various newspapers and closed on 3 September 2009.*
- c) *Ten bids were received from, Media Inventions, Altimate Consultants, Brand Leadership, Black Vision, Cutting Edge, Gold Creative, Black Magic, Blue Flame, Sakaza Communications, The Communications Firm.*
- d) *Brand Leadership was awarded the tender through a fair and competitive process. The new PRASA Brand Identity was taken to the PRASA Board for approval.*

- e) *The contract award amount was R29.5 million. There was a motivation to increase the contract value to R36.8m which was supported by the tender committee and subsequently approved by the GCEO in terms of a delegated authority...*
- f) *Based on the above, it is Management contention that due process was followed and that the award was beneficial to the company.*

6.12.2.3 A memorandum dated 16 July 2009 prepared by Mr Tiro Holele, GM: Corporate Affairs for the attention of the Mr Tshepo Lucky Montana, GCEO was signed by Mr Tiro Holele, Mr Zipho Mavimbela, Senior Manager, Marketing on 16 July 2009 and was approved by GCEO on the same day.

6.12.2.4 According to the standard contract completed by Brand Leadership in the tender documents, the duration of the contract is from 1 October 2009 to September 2010 and the contract value proposed by Brand Leadership was R12 921 456.00. The contract indicates that Brand Leadership was to provide professional Services in respect of Marketing and Communication services for the PRASA Group.

6.12.2.5 The CTPC approved the appointment at a cost of R12, 921 456.00 (VAT Included) following a recommendation made by Mr Zipho Mavimbela, and Ms Tara Ngubane, Chief Procurement Officer Paragraph 8 of the submission for adjudication report states the detail funding of the project as follows:

- a) *Approved budget purchase R9 528 000 (Including VAT);*
- b) *Source of funding-Operational expenditure budget (2009-2011); and*
- c) *Expected expenditure per annum-year 1, R9 528 000, year 2, R20 million (Including 2010 world cup activities), Year 3-To be announced*

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6.12.2.6 According to a CTPC resolution minutes dated 13 October 2009, the CTPC reconvened and Mr Tiro Holele, GM: Corporate Affairs presented the Submission for Adjudication by the Technical Evaluation Team. He explained to the members of the CTPC that everything related to the creative side, i.e. designs and planning will be done by the recommended service provider. He further indicated that what was proposed was an "*as and when*" contract in a capped amount of R9, 258, 000.00 inclusive of VAT. The following was resolved by the CTPC:

- *Both the creative side of acquisition of the equipment estimated at R20 million for the FIFA World Cup be centralised in the contract so that the total value of the contract be R29, 528, 000.00 inclusive of VAT;*
- *SCM negotiates a cost plus percentage for the acquisition of the required FIFA World Cup marketing equipment; and*
- *Marketing and Communication services tender be awarded to Brand Leadership in the amount of R29, 528, 000.00 inclusive of VAT for the period 1 November 2009 to 31 March 2010 and subject to the contract being capped at R29, 528, 000.00 inclusive of VAT and Approval by the GCEO.*

6.12.2.7 The records show that the Recommendation Report was signed and approved by the GCEO for the appointment of Brand Leadership for provision of Marketing and Communication services at an amount of R29, 528, 000.00 inclusive of VAT. On the same day of approval by the GCEO a tender advice was created in favour of Brand Leadership at the value of R29, 528, 000.00.

6.12.2.8 A contract between Brand Leadership and PRASA, was concluded and signed on 18 January 2010. This was the only contract noted after the letter to proceed was issued to Brand Leadership. The contract was signed two months after the

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appointment date. The duration of the contract was indicated as from 1 November 2009 to 30 November 2011.

- 6.12.2.9 I have noted that the contract between Brand Leadership and PRASA does not reflect the total contract cost, only rates are provided. This creates a potential of price escalations as the contract price is not capped.
- 6.12.2.10 It is disconcerting that PRASA accepted Brand Leadership's bid of R12 921 456.00 (VAT included) on tender number HO/M&C/305/07/2009 whereas the approved budget purchase in that regard was set at R9 528 000.00 (Including VAT). It is also disconcerting that despite the CTPC having resolved that the total value of the contract be capped in the amount of R29 528.000.00 for the period 1 November 2009 to 31 March 2010, the notice to proceed issued to Brand Leadership indicated that the period of the contract was from 1 November 2009 to 30 November 2011.
- 6.12.2.11 It is noted that no explanation was provided by PRASA for the discrepancy alluded to above. I am also not aware of any procurement process which sought to extend the contract beyond 31 March 2010 as resolved by the CTPC.
- 6.12.2.12 In the circumstances, there is substance in the allegation that the PRASA branding contract value escalated beyond the R9 million which was initially envisaged. The facts disclose a clear case of scope creep. The fact that PRASA accepted Brand Leadership's bid of R12 921 456.00 (VAT included) on tender number HO/M&C/305/07/2009 whereas the approved budget purchase in that regard was set at R9 528 000.00 (Including VAT) is proof of that. The fact that the contract between PRASA and Brand Leadership does not specify the actual contract amount also rendered it susceptible to uncontrolled scope escalation.

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6.12.2.13 Similarly, whether the contract was improperly extended beyond 31 March 2010 as already alluded to above is a legal matter which will also be resolved when measuring conduct against the rules in the following chapter.

**6.13 Complaint 13: Regarding the GCEO's alleged improper appointment of Mr Edwin Lekota on a tender amounting to R10 million for the development of a Contingency Emergency Preparedness Programme for Metrorail by PRASA:**

6.13.1 Common cause

6.13.1.1 It is common cause that Lekga Investment Holdings, represented by Mr Edwin Lekota, was awarded a tender for the development of a Contingency Emergency Preparedness Programme for Metrorail by PRASA in 2008.

6.13.2 Issues in dispute

6.13.2.1 In its response PRASA denied that the appointment was irregular and that an improper relationship existed. PRASA submitted that Mr Lekota, the former CEO of PRASA's predecessor SARCC, was appointed to its Board of Inquiry together with two rail technical experts i.e. Dr Chris Dutton and Dr Friedel Mulke due to his train operations expertise as former CEO of SARCC, subsequent to an incident in which six trains were burned in Pretoria. PRASA further submitted that the appointment of the Board of Inquiry was done in accordance with its operating licence obligations with the Rail Safety Regulator (RSR). PRASA also submitted that the team produced a report on the root causes and recommendations and also produced a business continuity management framework.



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- 6.13.2.2 PRASA also submitted that the total amount of that work following the review of Metrorail business continuity management processes and procedures in the respective Metrorail regions amounted to R4.5 million. It further submitted that it does not require a procurement process since it is an emergency when appointing any Board of Inquiry and denied that the tender was improperly awarded and disputed the alleged R10 million costs.
- 6.13.2.3 At this stage I need to emphasise that PRASA did not provide my office with the terms of references regarding the work of the Board of Inquiry appointed as contended and its report and recommendations in that regard. Surely the Board of Inquiry would have been confined to a specific lifespan with a clearly defined mandate and scope.
- 6.13.2.4 With regard to the appointment of Mr Lekota his engagement letter dated 1 March 2008 from Mr Enos Ngutshane, Operational and Safety Department, Head Office addressed to Mr Edwin Lekota defined the scope of the work to be done by Lekga Investment Holdings (Pty) Ltd (Lekga) as represented by Mr Edwin Lekota.
- 6.13.2.5 The engagement was in respect of implementation of management standards (ISO 9001: 2000) towards the integrated management (TMS). The scope of the work was to provide the overall review of railway safety management system, which constitutes the two phases.
- 6.13.2.6 The hourly charge out rates as set out in the engagement letter are captured in the table below:

Table: Lekga charge out rates

| No. | Designation   | Rate (R) |
|-----|---------------|----------|
| 1.  | Consultant    | 1 509    |
| 2.  | Assistant     | 655      |
| 3.  | Administrator | 240      |
| 4.  | Specialist    | 1509     |

Minutes of Cross Functional Sourcing Committee (CFSC): 25 August 2010

6.13.2.7 Unsigned minutes of the CFSC dated 25 August 2010 with resolution number HQ/PROC/CFSC 052/2010, which captures an extract from the resolutions from Sourcing committee minutes of 28 July 2010 also confirm the engagement and scope thereof. There appears to have been some discomfort expressed about the contract :

*"After the deliberation on the matter, CFSC expressed its discomfort that the following issues which were not clear enough or indicated in the submission to make an informed decision, need to be clarified and incorporated in a new submission to the committee.*

- a) **There should be no referral to previous contract-this is now a new appointment confined to the recommended service provider.**
- b) **Clear deliverables of the proposed contract is needed.**
- c) A breakdown schedule to the submission of:
  - i. **Exactly what work that is going to be done and how it is going to be done.**

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- ii. *The rates per hour compared to those in the market place*
    - iii. *The hours that will be worked(timelines)*
  - d) *Written confirmation from finance department of the amount of money available for the transaction*
  - e) *A detailed motivation why it is necessary to implement the management standards*
  - f) *Inclusion of the following supplier documents in the submission to the committee*
    - i. *Valid tax clearance certificate*
    - ii. *Proof of Bank Account*
    - iii. *BEE rating certificate; and*
    - iv. *An official company letterhead*

*CFSC noted the revised submission and after a long discussion of the matter and after comparing the current submission with the previous submission and the contract, could not see a difference in the work and therefore resolved that the following action be taken by the end-user:*

- a) *Submit a motivation to SCM department of the work already been done and the amount that is due to the Service Provider in order to submit the matter to the GCEO for condonation*
- b) *Submit a statement of all outstanding amounts to finance department for payment*
- c) *Terminate the contract by giving the Service provider notice as per clause 5 of the agreement*
- d) *Consult with PRASA Rail on the Benchmarking exercise currently in progress to determine whether there are not overlaps with the Management in terms of ISO 9001-2000*

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- e) **Compile a new specification and issue a tender for the new phase if still required taking into consideration the work already performed at the various Metrorail regions.** (my emphasis)

6.13.2.8 The evidence shows that Mr Lekota was appointed in respect of the implementation of management standards (ISO 9001: 2000) towards the integrated management (TMS). The GCEO's submission that Mr Lekota was appointed as part of the PRASA Board of Inquiry subsequent to the burning of six trains in Pretoria is misleading and clearly not supported by the evidence provided by him. I have also noted that the scope of the work to be done was to provide the overall review of railway safety management system and nowhere in the two phases outlined above does the scope include the investigation of the root causes of the incident regarding the burning of trains in Pretoria and making recommendations in that regard.

6.13.2.9 I have further noted that the minutes of the CFSC dated 25 August 2010 with resolution number HQ/PROC/CFSC 052/2010 (which ostensibly refers to a tender) indicates that *"the contract was signed for a specific deliverable at the time it was discussed with the GCEO"*. The minutes further reiterate that *"we were looking for the implementation of ISO9001 at the Corporate Office"*. This is contrary to the contention by PRASA that in the matter of safety and fatalities, the GCEO in his capacity as the ultimate official responsible for safety has a legal obligation in terms of the Rail Safety Regulator Act to establish a Board of Inquiry as promptly as possible and that the process does not require a tender to be issued.

6.13.2.10 Clearly the appointment of Mr Lekota as indicated above was not in pursuit of the establishment of a Board of Inquiry in relation to the burning of six trains in Pretoria as contended by PRASA. The conclusion that the contract was not for a Board of

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Inquiry is further corroborated by the minutes of the CFSC alluded to above. The minutes further show the CFSC expressed discomfort regarding the 2010 appointment or extension of an existing contract. In this regard, the CFSC indicated the following:

- "a. *There should be no referral to previous contract – this is now a new appointment confined to the recommended service provider.*
- b. *Clear deliverables of the proposed contract is needed.*"

6.13.2.11 The CFSC further resolved, among others, that the end user should terminate the contract by giving the service provider notice as per clause 5 of the agreement and ***compile a new specification and issue a tender for the new phase if still required taking into consideration the work already performed*** at the various Metrorail regions.(My emphasis).

6.13.2.12 With the evidence submitted by Mr Montana himself, I am unable to conclude as he wants me to, that Mr Lekota was appointed as part of a Board the establishment of the *Board of Inquiry* in relation to the burning of six trains in Pretoria as contended by PRASA.

6.13.2.13 Although documents in respect of the appointment of Dr Chris Dutton and Dr Friedel Mulke, as the other members of the *Board of Inquiry* that Mr Montana submitted he appointed Mr Lekota as part of, were not provided to my office by PRASA the investigation uncovered a publication in the PMG website dated 23 October 2009 in which Mr. M S F de Freitas (DA) MP asked the Minister of Transport the following questions:

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- (a) *Whether any contracts have been awarded to any current or former (a) employees or (b) their spouses and/or (c) families of the Passenger Rail Agency of South Africa (PRASA) or any of its affiliates or subsidiaries in the past three years; if not, what is the position in this regard; if so, what are the relevant details in each case;*
- (b) *what process was followed in awarding each contract, (b) when was each contract awarded and (c) what are the amounts involved for each contract;*
- (c) *whether PRASA's policies allow for (a) employees, (b) their spouses and (c) families to be awarded contracts; if not, what is the position in this regard; if so, what are the relevant details?"*

6.13.2.14 The then Minister of Transport responded as follows to the questions above:

- (a) *Following the train burnings in Tshwane on the 18th January 2008, the Passenger Rail Agency of South Africa (PRASA) appointed Carundell Rail to conduct an audit of Contingency Plans in all the Regions of Metrorail and to develop a Business Continuity Management Strategy for PRASA. **Carundell Rail** was appointed following discussions between PRASA and the Railway Safety Regulator (RSR).*
- (b) ***Carundell Rail**, which is owned by Dr Friedel Mulke, sub-contracted two other companies to assist them with the assignment and these companies are:-*
- *DocD Engineering Services (Owner: Dr Chris Dutton); and*

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- *Lekga Investment Holdings (Owner: Mr. Eddie Lekota, a former employee of the then South African Rail Commuter Corporation Limited (SARCC)).*
- (c) *The cost of the project was R6 942 755. The mandate given to the consultant Carundell Rail was as follows:-*
- *To conduct an audit to determine the compliance, effectiveness, adequacy and relevance of the Contingency Plans within the business environment, i.e.:-*
    - *Identification of shortcomings.*
    - *Correlating proposed mitigating actions initiated by the Head Office, the Regions and the Audit Team as determined from separate risk assessments.*
    - *Recommending corrective actions.*
    - *Proposing mitigating plans/models for effective management of the risk profile.*
    - *Obtaining alignment throughout PRASA with respect to business recovery.*

*The appointment was in accordance with PRASA's Supply Chain Management Policy. PRASA's Supply Chain Management Policy requires that in a case where an employee and an employee's spouse or family have an interest in a contract, the employee must disclose this to the Company and the Group Chief Executive Officer. It is required from the employee to withdraw from participating in any manner whatsoever in the process relating to a contract and its awarding."*

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- 6.13.2.15 This evidence suggests that Mr Lekota was indeed a sub-contractor to Carundell Rail, which was appointed not as a Board of Inquiry but as a consultancy to investigate the train burning matters. I can only reasonably conclude that this was not the same appointment in which Mr Lekota's Lekga Investment Holdings, was appointed directly by PRASA for the ISO 9001: 2000 compliance work.
- 6.13.2.16 I have noted that the Minister of Transport's response that the appointment of Carundell Rail was in accordance with PRASA's Supply Chain Management Policy alluded to above, contradicts the contention by the GCEO in his response to the notice I issued in terms of section 7(9) of the Public Protector Act. The GCEO in that regard contended that it would be practically impossible to go out on a tender process to appoint the experts since that was an emergency. The GCEO further contended that PRASA does not require a procurement process when appointing any Board of Inquiry and denied that the work was improperly awarded.
- 6.13.2.17 It is clear that despite the CFSC's resolution that the end user terminate the contract of Lekga Investment Holdings by giving the service provider notice as per clause 5 of the agreement and compile a new specification and issue a tender for the new phase if still required taking into consideration the work already performed at the various Metrorail regions, the contract was not terminated and neither was a tender issued.
- 6.13.2.18 In the circumstances I am inclined to conclude that the appointment of Lekga Investment Holdings represented by Mr Edwin Lekota did not follow any tender process nor was it an appointment in response to the emergency created by the burning of 6 trains thus permitting deviation from a competitive bidding process.



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6.13.2.19 I must say I am deeply concerned over the stories that seem to have been weaved for this investigation without even checking if the procurement documents submitted back up those stories. This I am afraid is one of those stories.

6.13.2.20 However, I do wish to record that a subsequent allegation from the Complainant which stated that: "Eddie Lekota approached PRASA GCEO and requested that he together with his partner Friedel Mulke be granted a tender for developing a contingency/emergency preparedness programme for Metrorail, This Contract was awarded without following procurement process and procedures", was not supported by any evidence uncovered during the investigation.

**6.14 Complaint 14: Regarding PRASA's alleged improper award of a tender to Umjanji Consortium, for the media, advertising and broadcasting concession agreement:**

6.14.1 Common cause

6.14.1.1 It is common cause that Umjanji Consortium was awarded a tender on Media Advertising and Broadcasting Concession (Tender number HO/CA/739/02/2010) in 2011 following a tender closing date of 11 March 2010.

6.14.1.2 It is also not in dispute that Umjanji Consortium was incorporated on 23 April 2010 as per Registration number 2010/08156/07, which was more than a month after the closing date of the tender. It is also not in dispute that the only constituent member of Umjanji Consortium that attended the compulsory tender briefing on 22 February 2010 was Provantage Media and that the other members, KG Media and Future Growth Foundation, never attended and seem not to have even existed by 11 March 2010.

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6.14.2 Issues in dispute

- 6.14.2.1 The matter factual dispute for my determination was whether or not Umjanji Consortium existed as an entity on the date the tender closed and was accordingly competent to be considered for a valid tender.
- 6.14.2.2 PRASA conceded, in its response received on 29 August 2013 and the response to a notice I issued in terms of section 7(9) of the Public Protector Act that Umjanji Consortium did not exist as a consortium when the compulsory briefing took place and that only Provantage Media attended the briefing.
- 6.14.2.3 PRASA, however, submitted that the incorporation of Umjanji Consortium into a juristic person after the closure of the tender was perfectly valid as consortiums are only registered formally as juristic persons when the award or attender has been confirm and that the award of the tender was compliant with its SCM Policy.
- 6.14.2.4 PRASA submitted that the tender was advertised in The Star, The Sowetan and The Sunday Times newspapers between 19 February 2010 and 21 February 2010. PRASA further submitted that the tender attracted the interest of 19 companies, namely Outdoor Network, Brizovect CC, Urban Signs, Elevated Outdoor, Imbani, Continental Outdoor, Mamela Outdoor, Associated Media, Strawberry Worx, and Primedia, What'd Newq, Provantage Media, Second Harvest, Grant Scher, Zoom, Comutanet, Skylite and Optimum Outdoor.
- 6.14.2.5 PRASA also submitted that Provantage Media, which had attended the compulsory briefing meeting (confirmed by attendance register) joined forces with KG Media and Future Growth Foundation and submitted a joint bid as Umjanji Consortium,

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led by Provantage Media and that Umjanji Consortium scored the highest overall points and the tender was accordingly awarded to it.

6.14.2.6 PRASA also advised that the matter is before a court of Law and as such it is not at liberty to disclose these records, unless authorised to do so by a Court of Law. I do not agree with PRASA's submission in this regard.

6.14.2.7 The following source documents were reviewed and analysed in respect of the appointment of Umjanji Consortium on tender HO/CA/739/02/2010:

Briefing session

6.14.2.8 In terms of the briefing session attendance register dated 22 February 2011 in respect of tender HO/CA/739/02/2010; Sixty four (64) individuals from different entities were in attendance.

Recommendation report

6.14.2.9 The recommendation report for tender HO/CA/739/02/2010 in respect of the successful service provider was addressed to the GCEO by Mr Chris Mbatha, the GCPO. The project description was indicated in the report as Media Advertising and Broadcasting Services. The recommendation report captures the following information in respect of the tender.

Table: Timeline of events

| No. | Description                | Dates   |
|-----|----------------------------|---|
| 1.  | Date Advertised            | 19/02/2010 & 21/02/2010   |
| 2.  | Method of Advertising      | The star and Sowetan and Sunday times respectively                                      |
| 3.  | Briefing Session           | 22 February 2010  |
| 4.  | Closing date& Time         | 11 March 2010   |
| 5.  | Closing Venue              | 12 <sup>th</sup> Floor Umjantshi House SCM<br>Dept. 30 Wolmarans Street<br>Braamfontein |
| 6.  | Number of Tenders Received | Deposited in tender box   |
| 7.  | Tenders received from      | Outdoor Network, Brizovect C  |
| 8.  | Validity expiry date       | 31 October 2010   |

6.14.2.10 Paragraph 6 of the report reflects that Nineteen (19) companies responded to the tender and eighteen (18) of the nineteen (19) did not meet all the technical requirements. The request for tender report in respect of this tender was not provided to establish the technical requirements.

6.14.2.11 According to paragraph 6.2 of the report, no tenderers were eliminated. The submissions were scored/evaluated and given marks wherein the submission with highest score was recommended. It appears from this statement that companies that did not meet the technical requirements as per paragraph 6 of the BEC report were further evaluated.

6.14.2.12 According to the recommendation report, Provantage Media scored 68.51 points and were the bidder with the highest points followed by Skylite with 68.03.

6.14.2.13 The following BEC team members supported the recommendation:

Table: BEC Team members

| No. | Name                | Grade          | Department                   |
|-----|---------------------|----------------|------------------------------|
| 1.  | Mr Tiro Holele      | Executive      | Marketing and Communications |
| 2.  | Ms Mapitso Dlepu    | Senior Manager | Marketing and Communications |
| 3.  | Ms Maishe Bopape    | Senior Manager | Prasa Rail SCM               |
| 4.  | Ms Zoliswa Copiso   | Senior Manager | Corporate SCM                |
| 5.  | Ms Annette Lindeque | Senior Manager | Intersite                    |
| 6.  | Mr Daluxolo Qabaka  | Manager        | Corporate BEE                |
| 7.  | Mr Albert Mduli     | Ass Manager    | Corporate SCM                |

6.14.2.14 Paragraph 7 of the report indicates that the members of the Corporate Tender PRASA Board concurred with the recommendation of the BEC.

6.14.2.15 The recommendation was approved by Mr Chris Mbatha and GCEO on 5 November 2010 and 13 December 2010 respectively.

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*Notice to proceed*

6.14.2.16 A letter dated 31 January 2011 from Ms Matshidiso Mosholi, Manager, Supply Chain Management to Mr Jacques Du Preez, Managing Director, Umjanji Consortium titled notice to proceed, states that the tender dated 25 March 2010 from Umjanji Consortium was approved (The name Provantage Media was also put in brackets on the letter). The tender submission from Umjanji Consortium was however not provided.

*Letters to bidders*

6.14.2.17 The letters of regret dated 25 February 2011 were sent to various unsuccessful entities. The letters were signed by Ms Matshidiso Mosholi.

*Contract*

6.14.2.18 The Media advertising and broadcasting concession agreement between PRASA as represented by Intersite and Umjanji Consortium was signed on 27 July 2011 by Mr Jacques Du Preez on behalf of Umjanji Consortium and the CEO of Intersite, Mr TR Kgaboesele as per resolution as stated in the contract.

6.14.2.19 However, the concession agreement concerned was not provided to the investigation team.

*Letter from Primedia*

6.14.2.20 In terms of the subsequent documents received from the Union, a document entitled annexure J2 was provided. Annexure J2 is letter dated 30 March 2011

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from De Wet, Van Der Watt & Jordan Attorneys (representing Primedia) addressed to the Information Officer of PRASA, Group Corporate Secretary of PRASA and advertising and Wayleaves Consultant. The letter queries the appointment of Umjanji Consortium on tender number HO/CA/739/02/2010. The attorneys alleged amongst other things that Umjanji Consortium was not formed at the close of the tender and that no Umjanji Consortium representatives attended a briefing session.

*The Minister response: National Council of Provinces*

6.14.2.21 I also took into account a written reply from the Minister of Transport obtained for question 118 in the National Council of Provinces (NCOP), publication date ,9 March 2012 regarding *the matter*. *Therein Mr Feldman of Cope asked the Minister of Transport if relevant regulations were followed in the appointment of Umjanji Consortium.*

6.14.2.22 The Minister in response on 6 August 2012 stated that PRASA followed all the relevant regulations and procedures. He further stated that Provantage Media, Out of Home Media, SK Media are joint venture partners that formed Umjanji Consortium.

*Umjanji Consortium registration documents*

6.14.2.23 The company registration certificate obtained on 27 September 2013 from the CIPC in respect of Umjanji Consortium reflects the following information:

- a) Registration number 2010/08156/07;
- b) Registration date 23 April 2010;
- c) Postal address PO Box 3052, Cramer view, 2194; and

- d) Active directors Mr Ramosa Kabedi, Mr Nkosi Skhumbuzo, Mr Du Preez Jacques Pieter.

6.14.2.24 From the above information it can be noted that the Umjanji Consortium was **registered on 23 April 2010.**

6.14.2.25 It is clear from the evidence that Umjanji Consortium had not been formed or registered at the time the tender was issued and at the date when the tender closed. The legality of the award to a yet to exist legal person will be dealt with in 7 below.

**6.15 Complaint 15: Regarding the GCEO's alleged improper awarding of a contract for the provision of professional advisory service on the signalling project to a friend, Mr Makhensa Mabunda of Siyaya DB, who did not possess the necessary skills and experience and without following proper procurement processes:**

6.15.1 Common cause

6.15.1.1 It is common cause that PRASA awarded a tender HO/INF(S)/203/06/2010: Signal and Telecommunications to Siyaya DB without a competitive or open bidding process

6.15.2 Issues in dispute

6.15.2.1 The factual matter for my determination was whether or not Mr Mabunda, who owns Siyaya got the tender on account of his alleged friendship with the GCEO and does not possess the necessary skills. I also had to make a determination regarding the



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circumstances for choosing Siyaya, which scored the second highest, during the bid evaluation process.

- 6.15.2.2 The investigation did not uncover any evidence which indicates that there is a friendship between the GCEO and Mr Mabunda as alleged.
- 6.15.2.3 Regarding the allegation that Mr Mabunda does not possess the necessary skills and experience, PRASA submitted that Siyaya DB is a BEE company in partnership with Deutsche Bahn International, a subsidiary of a German Conglomerate, Deutsche Bahn. It further submitted that Siyaya DB bids for railway professional services work opportunities in South Africa and that in August 2009 it had issued a tender HO/INF(S)/008/07/2009 for the provision of professional services on the signalling which was awarded to Siyaya DB on 29 January 2010. PRASA submitted that accordingly the allegation that Siyaya DB lacked the required skill and experience and that they were procured improperly is denied.
- 6.15.2.4 PRASA submitted that it issued a tender HO/INF(S)/203/06/2010 on 4 July 2010 which attracted the interest of three bidders namely R&H Railway Consultants, Mott MacDonald South Africa and Siyaya DB Engineers. The tender was awarded to Siyaya DB in accordance with the SCM Policy of PRASA, on account of the highest scorer not meeting PRASA's requirements on BEE and predictable pricing.
- 6.15.2.5 In terms of the unsigned copy of minutes of the CTPC dated 14 October 2010. It was resolved that Mott Macdonald be appointed on tender HO/INF(S)/203/06/2010 at a cost of R53 825 367.12 (Including VAT).
- 6.15.2.6 Based on the memorandum dated 16 November 2010 from Mr Chris Mbatha addressed to the GCEO. Mr Chris Mbatha stated that the bid evaluation committee

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recommended the appointment of Mott Macdonald as preferred vendor and Siyaya DB as the reserved bidder.

6.15.2.7 He indicated that the bid adjudication committee supported the appointment of Mott Macdonald subject to certain conditions being met, a recommendation that was rejected. Mr Chris Mbatha indicated that he had reviewed all circumstances around this tender, applied his mind and submitted as follows:

- "a) The only three bids were received and all three bids were evaluated. These were from Mott Macdonald, Siyaya DB and RH Railways Consultants. The bid prices were in the order of R53 825 367.12, R80 554 406.40 and R81 549 106.56 respectively including VAT and 8% contingency. In terms of the technical evaluation all three entities are equally capable of doing the job as specified.*
- b) That Siyaya DB are our current Transaction Advisors on the National Signalling project on the Gauteng work package.*
- c) That Mott Macdonald does not comply with our minimum BEE requirements and the technical scoring did not reflect this major weakness. PRASA appointed Mott Macdonald on the Key Operations and Efficiency Measures (KOEM) program early this year and they had undertaken a BEE equity of 30% by June 2010. At the time of this tender Mott Macdonald had failed to comply with this undertaking.*
- d) Mott Macdonald's price whilst significantly low, is conditional upon the value of the contract being below R800 million. If the project was to be above R800m, they reserved the right to revise it upwards. We know that the value*

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*of the project is in fact above R800m and therefore the price of R53 825 367.12 is no longer valid.*

- e) Siyaya DB's price and that of R&H Railways Consultants were on par signifying that the two price offerings are probably the correct baseline price. Messrs' Mott Macdonald came way under the two at R54 million but this clearly was not firm.*
- f) Par. 11.7.7 of our SCM policy provides a dispensation that where the appointment of Consultants is concerned preference be given to appointing those for projects where the tasks represents a natural continuation of previous work carried out. Of course all other material factors need to be taken into account.*
- g) Having had cognisance of the above, I therefore recommend as follows:*
- h) That the Bid Evaluations Committee's recommendation that discussions be entered into with Mott Macdonald be rejected;*
- i) That SiyayaDB be appointed as Technical Assistant and Supervisor for the GNC and the Signalling project in the total amount of R80 554 406.40 incl VAT;*
- j) That SCM enters into negotiations with SiyayaDB with a view to reducing their base price by 8%-10% standard SCM practice. These negotiations should also be inclusive of technical considerations by the Chief Engineer: Signaling and Telecoms Mr Sorin Baltac; and*

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- k) *That PRASA considers widening the scope of this transaction to include the Western Cape and Kwazulu Natal legs of this National Signaling Project and that the appointment includes the two extra regions- again as a natural continuation to work in Gauteng. This calls for my office to request proposals from SDB on extra work and further negotiations*

*IT is my considered view as Chief Procurement Officer that this approach is in the best interest of PRASA as it will ensure that:*

- a) *PRASA harvests immediate costs benefits accruing from continuity. SiyayaDB has done sterling work on the project so far as Transaction Advisors; and*
- b) *PRASA ramps up on the BEE targets in keeping with the PRASA Board's and the Shareholders' aspiration."*

6.15.2.8 The memo was signed by Mr Chris Mbatha and approved by the GCEO on 20 November 2010 and 26 November 2010 respectively.

6.15.2.9 A memo titled "Tender Advice" dated 26 November 2010 was issued by Ms Matshidiso Mosholi to Ms Sorin Baltac, Infrastructure department, Head office. The tender advice indicated that Siyaya DB were appointed on tender HO/INF (S)/203/06/2010 for a total amount of R80 554 406.40(Including VAT).

6.15.2.10 Furthermore, a notice to proceed was sent to Siyaya DB on 7 December 2010 by Ms Matshidiso Mosholi. The letter captured the fact that the tender dated 26 July 2010 for Technical assistance and supervision of a signalling project at a total amount of R74 110 053.88(VAT inclusive) was approved for a 5 year period.

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Having evaluated the evidence I am satisfied that PRASA did choose a second bidder but that bidder was adjudicated as competent. I am also satisfied that there were outstanding questions about the bid that scored the highest, which questions principally threw into question, the predictability of pricing and the BEE status of the company.

**6.16 Complaint 16: Regarding PRASA's alleged improper awarding of a tender in the amount of R22 million for Park Station Development Framework to ARUP, a company associated with a board member:**

6.16.1 Common cause

6.16.1.1 It is common cause that PRASA through its subsidiary, PRASA Corporate Real Estate Solutions (PRASA CRES), appointed ARUP on 27 November 2009 on a contract for the Park Station Development Framework for the amount of R3 898 940.00 without following proper tender procurement processes.

6.16.1.2 PRASA conceded in its responses received on 13 March 2013 and 29 August 2013 respectively that the appointment of ARUP was irregular and advised in this regard that ARUP's contract was never approved as it was improperly negotiated by the former CEO of Intersite (*sic*), Mr Cromet Molepo (Mr Molepo).

6.16.2 Issues in dispute

6.16.2.1 The matter for my determination was whether or not disciplinary action was taken against the employees responsible for the irregular award of the contract to ARUP.

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- 6.16.2.2 PRASA submitted that Mr Molepo was subjected to a proper disciplinary action after the appointment of ARUP, which led to his subsequent dismissal.
- 6.16.2.3 However, Mr Molepo disputed PRASA's submission that he was dismissed for issues relating to the appointment of ARUP and submitted that he was unfairly dismissed for unrelated reasons. In his evidence, he submitted that he challenged the dismissal at the CCMA which reinstated him through an arbitration award of 14 August 2012 with a back payment of R1 174 443.00, which PRASA challenged at the Labour Court.
- 6.16.2.4 PRASA failed to provide documents relating to the dismissal of Mr Molepo, citing the reason that the matter was before a court of law. Furthermore, although PRASA indicated that Mr Molepo was disciplined for the alleged irregular appointment of ARUP, there is no information provided as to whether the contract was terminated or not after PRASA had discovered that the service provider was improperly appointed.
- 6.16.2.5 Furthermore, a letter submitted as evidence by PRASA dated 21 June 2011 from Mr Montana to Mr Molepo, provides for the placement of Mr Molepo on special leave for reasons of allegations of tender irregularities, breach of the PRASA SCM Policy and the Code of Conduct by three officials within the PRASA CRES. However, no specific allegation of the appointment of ARUP by Mr Molepo is cited as the reason for taking action against him.
- 6.16.2.6 The issue of the dismissal of Mr Molepo is fully canvassed in the matter relating to the dismissal of Executives in the report.
- 6.16.2.7 A Tender Recommendation for Approval of the appointment of ARUP obtained as evidence shows that same was signed by Mr Ian Scott, Executive Strategy and Business Management and the General Manager SCM, Mr Khulu Mchuba and

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approved by the Chairperson of the Tender and Procurement Committee (TPC), Ms Thobeka Mahlati on 27 November 2009.

6.16.2.8 The Tender Recommendation for Approval document proposed that the Integrated Development Framework for Park station be created and formalised for implementation. It indicates that the framework was to be developed in a two phase approach, the total cost being R3 898 940.00.

6.16.2.9 As far as the issue relating to the involvement of a member of the board with ARUP at the time when the Park Station Development Framework tender was processed is concerned, the evidence received indicates the member as Dr Bridgette Gasa (Dr Gasa), a director at ARUP from 09 February 2011. However, the Disclosure of Interest Form signed on 20 July 2011 indicates that Dr Gasa had made the necessary disclosures of her interests to PRASA.

6.16.2.10 ARUP SA (Pty) Ltd was indeed awarded a contract by PRASA on 21 June 2011 for the Park Station Development Framework, which was a month before Dr Gasa made her Disclosure of Interest at ARUP. However, the contract was for R3.8 million which would not have required Board approval.

## **6.17 Complaint 17: Regarding PRASA's alleged improper engagement of various construction companies in respect of 2010 Soccer World Cup Projects:**

### **6.17.1 Common cause**

6.17.1.1 It is common cause that during 2010, PRASA engaged various companies in respect of the FIFA World Cup Projects.

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6.17.2 Issues in dispute

- 6.17.2.1 The matter for my determination was whether or not PRASA did not follow the procedures set out in its SCM Policy when procuring the services of the said companies and if any fruitless or wasteful expenditure was incurred.
- 6.17.2.2 PRASA, in its response dated 29 August 2013 and its response to the notice I issued in terms of section 7(9) of the Public Protector Act, denied the allegation that the awarding of tenders to the companies for the 2010 FIFA World Cup Projects was irregular. Mr Montana maintained that all projects undertaken in preparation for the 2010 Soccer World Cup followed an open, transparent, fair and competitive bidding process and that in all the contracts awarded to contractors, such projects were properly advertised as per the requirements of the PRASA SCM Policy.
- 6.17.2.3 He advised that PRASA went out on tender under the banner of 2010 Turn-Around Strategy in October 2007 which attracted 258 suppliers, and 104 bids covering various technical disciplines for which briefing sessions were held in all of PRASA's operational centers that were subjected to a rigorous evaluation process.
- 6.17.2.4 However, PRASA did not provide any relevant tender documents. I have also not discovered any evidence during the course of the investigation, which proves the allegation that various construction companies were improperly appointed for the 2010 Soccer World Cup Project.
- 6.17.2.5 PRASA also denied the allegation that there was an over-expenditure of R2 billion incurred on its CAPEX Budget as a result of the engagement of various companies which amounted to fruitless and wasteful expenditure.



6.17.2.6 I have perused the documents relating to PRASA's Budget and Financial Statements for the period in issue submitted by PRASA. The statements support the allegation that there was over expenditure. The over expenditure on the Capital Budget amounted to R1 286 659 000 and R715 379 000 for the 2008/9, 2009/10 respectively. The over expenditure is captured in the table below:

Table: Over expenditure

| No. | Expenditure      | 2008/9        | 2009/10     |
|-----|------------------|---------------|-------------|
| 1.  | over expenditure | 1 286 659 000 | 715 379 000 |

6.17.2.7 According to page 24 and page 32 of 2008/9 and 2009/10 Financial Statements respectively under the heading "PRASA's Performance against objectives", CAPEX Over-expenditure was incurred in the said financial periods. The details (including reasons) of the over expenditure are captured in the table below:

Table: Capex over expenditure

| Year   | Measure                  | Target         | Actual           | Variance        | Analysis and comment   |
|--------|--------------------------|----------------|------------------|-----------------|--|
| 2008/9 | Capex programme spending | 5%<br>Variance | 35%<br>Overspent | 30%<br>Variance | <p>The over-expenditure is due to the increased costs of delivering the Accelerated Rolling Stock Programme, Station Development Programme and 2010 FIFA world cup projects. Notwithstanding provisions of the PFMA, a strategic decision was made not to cut down on the capital expenditure due to the special circumstances and challenges facing commuter rail. Given its 'knife edge' status, it was believed that a reduction in capital expenditure would have serious negative consequences.</p> <p>In the beginning of 2008/9 financial year, it was established that there was a budgetary shortfall of R1042, 4 million on the accelerated rolling stock programme.</p> |

|         |   |             |        |             |  |
|---------|---|-------------|--------|-------------|--|
|         |   |             |        |             | <p>Forecasts showed that this programme would exceed the R1.5 billion budget from November 2008.</p> <p>As envisaged, material costs increased dramatically in the past quarter of 2008.</p> |
| 2009/10 | Capital(project expenditure management) | 5% variance | +19.1% | 14.1% above | <p>The amount is inclusive of 2010 FIFA World Cup capital projects that was the main reason for the overspend</p>  |

6.17.2.8 I have noticed that the Auditor General indicated in his Annual Report of PRASA for the year ended 2008/9 and 2009/10 on pages 52 and 44 respectively indicated that fruitless and wasteful expenditure incurred by PRASA was only in respect of interest on overdue creditors.

6.17.2.9 Furthermore, I have observed on page 92 of the PRASA's 2009/10 Annual Report that PRASA also does not recognise the expenditure on the FIFA World Cup as fruitless and wasteful expenditure.

6.17.2.10 In the absence of evidence regarding the appointment of construction companies for the 2010 Soccer World Cup Project, I could not make a determination whether or not the appointments concerned were lawful.

6.17.2.11 Regarding the over expenditure, there seems to have been some over expenditure although not mentioned by the Auditor General.

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**6.18 Complaint 18: Regarding PRASA's alleged failure to investigate the theft of buses of its subsidiary, Autopax:**

6.18.1 Common cause

6.18.1.1 It is common cause that during January 2010, a subsidiary of PRASA, Autopax, lost two buses with registration numbers ZFG5469GP and YVV793GP through of theft.

6.18.2 Issues in dispute

6.18.2.1 The matter for my determination was whether or not PRASA failed to take disciplinary action against personnel responsible for the lapses that led to the buses being stolen.

6.18.2.2 PRASA denied that it failed to investigate the theft in question as alleged by the Complainant. In its response received on 29 August 2013 regarding this particular allegation, PRASA submitted that an extensive investigation involving the South African Police Service (SAPS) was undertaken and disciplinary steps subsequently taken resulting in the dismissal of a senior official at Autopax. It provided evidence, including a report addressed to the GCEO, showing that a criminal case of theft with the SAPS at Pretoria Central under case number CAS 1089/01/2010 and follow up action was being taken. The report further showed that additional measures had been adopted to strengthen internal controls in the fleet management system.

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- 6.18.2.3 PRASA further denied that its management did not follow through the investigation of the stolen buses and submitted a letter dated 25 January 2010 from the Head Corporate Security, Mr Kabelo Mantsane (Mr Mantsane), addressed to the CEO of Autopax, Mr Saki Zamxaka (Mr Zamxaka) which related to the bus with registration YVV793GP. It provided that:

*"Autopax stage their buses in bus depot situated in Salvokop Pretoria. On 21 January 2010 at about 20H10 a new Mercedes Benz bus with registration YVV 793 GP was reported stolen from the depot. A criminal case of the theft was immediately opened with the SAPS Pretoria Central with case number CAS 1089/01/2010.*

*..*

*All the security stakeholders were immediately notified about the incident to assist in locating the stolen bus. It is the first time in the company history that a bus has been stolen from the depot in Salvokop. The replacement value of the bus is estimated at R2.8m."*

- 6.18.2.4 I have also noticed that, as a call for strengthening internal control measures, the report concluded that:

*"The role of security within PRASA Group should be given the recognition it deserves. Security advising should always be proactively sourced to avoid or mitigate incidents of criminality from taking place. The observation is that security within PRASA is treated as reactionary means rather than proactive intervention that should be engaged at any stage of the project; and*

*To maintain effective security at Autopax Pretoria Depot, there must be general acceptance that every employee of the company has responsibility for security and must be involved in protecting the interest of Autopax."*

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- 6.18.2.5 A *"Follow up Report on theft of Autopax bus white Mercedes Benz Reg YVV 793 GP"* dated 9 July 2010 issued to Mr Mantsane from Corporate Investigation further corroborate PRASA's submission as it provides details on attempts to track the missing bus in Botswana with the assistance of Interpol.
- 6.18.2.6 PRASA further submitted that as a result of the theft of the two buses concerned, disciplinary action was taken against the officials implicated in the breach of the relevant PRASA's security control measures. A letter dated 13 July 2010, indicating that the Senior Manager Corporate Security, Mr Frans Makgaba (Mr Makgaba), was put on suspension was provided by PRASA.
- 6.18.2.7 Another suspension letter dated 13 July 2010 from Mr Zamxaka to the Executive Manager Operations, Mr Chris Brand (Mr Brand) indicates that Mr Brand was suspended after reporting that, as a second incident, two buses with registration numbers ZGF546GP and ZGV489GP appeared to have left the depots without proper record and that their location was not known. Furthermore, that after the first incident, various measures were to be implemented to ensure that such incidents did not recur.
- 6.18.2.8 A memorandum dated 11 October 2010 from the Presiding officer, Mr Enos Ngutshane, addressed to Mr Chris Brand, reveals that Mr Chris Brand was found guilty of dereliction of duties and responsibilities; alternatively gross negligence or dishonesty; accordingly, Mr Brand was placed on suspension pending an investigation on whether proper procedures were put in place to prevent these incidents from occurring.

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6.18.2.9 The evidence provided by PRASA indicates that PRASA had followed up cases of the stolen buses and did make regular follow up regarding progress of the matter. The evidence also shows that disciplinary action was taken. I am accordingly satisfied that PRASA did its best to recover the stolen buses and to exert accountability on those of its employees it held responsible for security lapses.

**6.19 Complaint 19: Regarding PRASA's alleged improper awarding of a security services contract to Futuris Guarding in April 2010 at Autopax City to City for a total amount of R231 204.00:**

6.19.1 Common cause

6.19.1.1 It is common cause that PRASA through its subsidiary, Autopax appointed Futuris Guarding (Pty) Ltd (Futuris Guarding) on 3 March 2010 on a six months security contract for the Metrorail Gauteng North region on contract 525/2010/GAU/PS, without a tender or competitive bidding process.

6.19.2 Issues in dispute

6.19.2.1 The matter for my determination was whether or not PRASA followed the procedures set out in its SCM Policy when procuring the services of Futuris Guarding.

6.19.2.2 PRASA in its response dated 29 August 2013, conceded that the contract was awarded irregularly and stated that Management detected irregularity in the conclusion of the security contract concerned and took corrective action against the responsible employee.

6.19.2.3 The evidence received from Complainant indicates the following information relied upon by PRASA regarding the appointment of Futuris Guarding on the contract in issue:

6.19.2.4 A quotation dated 20 May 2010 from Marketing Manager, Mr Andre Van Tonder, and ISO of Futuris Guarding addressed to Head of Security, Mr Frans Makgaba (Mr Makgaba) of Autopax, which confirms the acknowledgement for request of quotation, indicates the price structure for security officers as follows:

Table: quotation amount

| No.   | Description   | Amount    |
|-------|---|-----------|
| 1.    | Nightshift-4 unarmed Grade D Security Officer<br>@R6950 per guard | 26 360.00 |
| 2.    | Dayshift-2 -Unarmed Grade D Security Officer@<br>R6590 per guard  | 13 180.00 |
| 3.    | Dayshift-1 Additional Grade D guard unarmed<br>@R6590 per guard   | 6 590.00  |
| 4.    | 1 cell phone @ R600 base radio                                    | 600.00    |
| Total |   | 54 337.20 |

6.19.2.5 An acceptance of quotation of Futuris Guarding was signed by Mr Makgaba on 16 April 2010.

6.19.2.6 According to the memorandum of agreement between Autopax and Futuris Guarding signed on 30 April 2010 by Mr Makgaba on behalf of Autopax, and Mr



- 
- Aubrey Malema on behalf of Futuris Guarding, the duration of the agreement was from 16 April 2010 to 31 July 2010. However, the amount of the contract was not indicated on this document.
- 6.19.2.7 The price charged by Futuris Guarding was not reflected in the memorandum of agreement. Furthermore under paragraph 3 of the agreement, it is stated that the contractor shall render the services, expertise and facilities to the client as set in "annexure A". The "annexure A" referred to was also not provided.
- 6.19.2.8 Another memorandum of agreement entered into between Autopax and Futuris Guarding, signed by Mr Mufamadi on 20 July 2010 on behalf of Futuris Guarding, and by Mr Makgaba on 21 July 2010 on behalf of Autopax indicated the period of the agreement as 1 August 2010 to 31 August 2010. Furthermore it is stated under paragraph 3 of the agreement that the contractor shall render the services, expertise and facilities to the client as set in "annexure A". The "annexure A" referred to was not provided.
- 6.19.2.9 According to the invoices provided by the Complainant, Futuris Guarding charged Autopax a total amount of R231 206.15 (Inclusive of VAT) on a contract for the period from April 2010 to August 2010. The details of the invoices are captured in the table below as follows:

Table: Futuris Guarding invoices

| No.   | Invoice    | Period covered                | Invoice number | Amount     |
|-------|------------|-------------------------------|----------------|------------|
| 1.    | 20/05/2010 | From 16/04/2010 to 30/04/2010 | IN104889       | 22 913.07  |
| 2.    | 20/05/2010 | May 2010                      | IN104890       | 45 759.60  |
| 3.    | 01/05/2010 | May 2010                      | IN104920       | 2 716.88   |
| 4.    | 1/06/2010  | June 2010                     | IN104915       | 53 272.20  |
| 5.    | 1/07/2010  | July 2010                     | IN104945       | 53 272.20  |
| 6.    | 1/08/2010  | August 2010                   | IN104971       | 53 272.20  |
| Total |            |                               |                | 231 206.15 |

6.19.2.10 I have also been provided with a letter of suspension of Mr Makgaba dated 13 July 2010 from the CEO of Autopax, Mr Saki Zamxaka (Mr Zamxaka), which provides that Mr Makgaba was suspended for amongst other things, the Futuris Guarding Systems contract.

6.19.2.11 The Notice for Hearing dated 2 November 2010 from Mr Zamxaka addressed to Mr Makgaba provides in respect of the appointment of Futuris Guarding that:

*"In your capacity as Senior Manager, Security, you wilfully and intentionally procured the services of Futuris Guarding without following the laid down PRASA Supply Chain Management Policy and or process.*

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*In your capacity as Senior Manager: Security, you undermined the authority of Head: Corporate Security, by violating the directive issued by the GCEO, in relation to contracting of security service providers, and; the subsequent instruction issued by Head: Corporate Security"*

6.19.2.12 According to a memorandum titled *"Termination of Security Contracts"* dated 9 February 2010 from the Regional Chief Protection and Security Services of Metrorail, Mr Steven Nkhuna, addressed to the Regional Manager of Metrorail Gauteng, Ms Nozipho Sangweni, PRASA's Protection and Security Services had embarked on realignment of security needs on all PRASA environments in the Gauteng North and South. The memorandum described its purpose as being to sensitise and inform procurement of Protection and Security Services Department to terminate the then service providers and engage on a new agreement to achieve the realignment process.

6.19.2.13 According to paragraph 3 of the memorandum, the procurement department was requested to issue letters of termination of contracts to the security service providers, indicating the last shift for the security companies as 10 March 2010 at 18:00. The following companies were indicated as the ones due to be terminated:

- Afri Guard;
- Hlanganani;
- National Force Security;
- Advance;
- Vusa-Isizwe;
- Singobile;
- Futuris Guarding;
- R1; and

- 
- Enlightened Security

6.19.2.14 According to the information as captured in the paragraph above, Futuris Guarding was one of the companies that were recommended for termination.

6.19.2.15 A Notice to Proceed signed by Mr Buthelezi on 8 March 2010 and accepted on the same day by PF Momavila (sic) on behalf of Futuris Guarding, indicates that Futuris Guarding's quotation number 525/2010/GAU/PS dated 25 February 2010 regarding the provision of security services for a period of six months in the Protection Services Department of Metrorail Gauteng North, for a maximum amount of R10 629 565.20 had been approved.

6.19.2.16 I have not been provided with any evidence to contradict the information submitted herein above by the Complainant regarding the appointment of Futuris Guarding on the contract in issue.

6.19.2.17 I also need to indicate that during the investigation, I issued a Notice in terms of section 7(9) of the Public Protector Act against Mr Buthelezi and Mr Montana relating to this subject, indicating that at the conclusion of the investigation, I might make an adverse finding against Mr Buthelezi and/or PRASA in the above regard, unless evidence to the contrary is provided.

6.19.2.18 Except for the response from Mr Montana received on 29 August 2013 regarding this particular allegation, which provided that Management detected the irregularity in the conclusion of the particular security contract and that corrective action was taken against the responsible employee, no further information was received. Mr Montana's submission in this regard corroborates the complainant's allegation that Futuris Guarding was appointed improperly.

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6.19.2.19 In the circumstances I am inclined to accept the information provided by the Complainant reflecting the factual state of affairs.

**6.20 Complaint 20: Regarding PRASA's alleged improper termination of the Rasakanya Builders' contract on 1 November 2012:**

6.20.1 Common cause

6.20.1.1 It is common cause that Rasakanya Builders (Rasakanya) was a service provider on a cleaning contract to PRASA's subsidiary, PRASA Corporate Real Estate Solutions (PRASA CRES) and that PRASA terminated its contract on 30 October 2012, through a notice dated 28 September 2012.

6.20.2 Issues in dispute

6.20.2.1 The issue for my determination was whether PRASA violated the contract provisions when terminating the contract in the manner it did.

6.20.2.2 PRASA denied that the termination of Rasakanya's contract was irregular. It submitted that the contract was running on a month-to-month basis and that proper notice of termination was given to Rasakanya. and In its response received on 29 August 2013, PRASA submitted documents relating to the extension of contract between PRASA CRES and Rasakanya and a notice of termination of Rasakanya's contract.

6.20.2.3 On expiry of its contract, a letter dated 09 March 2012 from Senior Manager SCM, Ms Ntombeziningi Shezi advised Rasakanya Builders that its contract was extended on a month-to-month basis with effect from 1 January 2012 at an

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escalation of 7.5% "as per gazetted minimum wage increase for contract cleaning" (sic).

- 6.20.2.4 Eight months after the extension of Rasakanya contract on a month-to-month basis, a notice of termination letter dated 28 September 2012 was addressed to Rasakanya Builders from Ms N Kasane on behalf of PRASA CRES and stated the following: "PRASA Cres is currently engaged in the process of reviewing the contracts that it has with its service providers and as a result of that process, we would like to advise of the following:

*"Your contract that you currently have with PRASA Cres will be terminated with effect from 1<sup>st</sup> November 2012;*

*All invoices relating to services rendered by you to PRASA Cres must be submitted no later than the 30<sup>th</sup> of October 2012;"*

- 6.20.2.5 I have not been provided with evidence in the form of payment schedules relating to PRASA's alleged delay to pay Rasakanya for services rendered to PRASA Cres thereby resulting in 36 employees of Rasakanya not receiving payment.
- 6.20.2.6 However, a former Senior Manager of PRASA revealed during an interview with my investigators that several service providers in PRASA CRES division were often paid late due to lack of financial discipline. Nevertheless, I was not provided with evidence to corroborate this assertion.
- 6.20.2.7 On the main issue of termination, the evidence does corroborate PRASA's submission that the contract was a month to month basis at the time of termination. It further shows that Rasakanya was given a month's notice.

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**6.21 Complaint 21: Regarding the GCEO's/PRASA's alleged improper advance payment of the amount of R 80 million for the FIFA World Cup sponsorship without proper approval, budget and/or allocated funds amounting to fruitless and wasteful expenditure:**

6.21.1 Common cause

6.21.1.1 It is common cause that PRASA entered into an agreement with FIFA regarding the 2010 Soccer World Cup events.

6.21.2 Issues in dispute

6.21.2.1 PRASA denied that it had made an advance payment of the amount of R80 million for the FIFA World Cup Sponsorship without proper approval, budget and/or allocated funds which resulted in fruitless and wasteful expenditure.

6.21.2.2 Mr Montana advised, in his response dated 29 August and that following a notice I had issued in terms of section 7(9) of the Public Protector Act, that all PRASA did was to enter into a Value In Kind (VIK) agreement, valued at R80 million wherein PRASA represented by Autopax, undertook to provide "free" transport services to FIFA such as VIP and commuter transport in return for opportunity to market itself on FIFA platforms.

6.21.2.3 PRASA further denied that it invested funds with FIFA based on the agreement that PRASA would recoup the expenditure through the sales of tickets to commuters/soccer fans which it never recouped and thereby resulting in fruitless and wasteful expenditure.

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- 6.21.2.4 Mr Montana submitted that pursuant to the VIK Agreement, PRASA subsidiary, Autopax, purchased 570 new buses and entered into a service level agreement with MATCH to transport the FIFA Family, and Commercial Affiliates at an agreed fee of R172 million during the 2010 World Cup Tournament (Tournament), which at its conclusion led to a dispute between the parties after the reconciliations were done, which were later resolved through arbitration.
- 6.21.2.5 Mr Montana provided the relevant documents regarding the contractual agreements entered into between the Government of the Republic of South Africa, PRASA, Autopax, MATCH and FIFA for the 2010 World Cup. These include a memorandum dated 27 March 2009, which corroborates its version.
- 6.21.2.6 According to *'Appendix B'* to the agreement, PRASA was to provide the railway transportation services for persons and/or goods (PRODUCTS); and bus transportation services and/or other transportation services other than products to FIFA in South Africa as requested by FIFA or its nominee(s) *"up to a value of eighty million South African Rands (ZAR 80 000 000) (the "VIK")"*.
- 6.21.2.7 The submission regarding the R172 million agreement that ended up in arbitration is also corroborated by a lease agreement entered into between PRASA, Autopax and MATCH signed by Mr Montana on 10 June 2010 and Mr Saki Zamxaka on 14 June 2010 on behalf of PRASA and Autopax respectively, and Mr James Byron on 14 June 2010 on behalf of MATCH (Lease Agreement). The agreement shows that it was entered into for the leasing of coaches to MATCH by Autopax and provided under paragraph 5.1 of the agreement that:



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*"The parties hereby agree that PRASA through its subsidiary Autopax shall let and MATCH shall hire the championship period 420 (four hundred and twenty) coaches for utilisation in the Area of Operation."*

- 6.21.2.8 I have noticed in "annexure F" of the Lease Agreement that an amount of R80 million was to be paid directly to Autopax by PRASA in satisfaction of the amounts otherwise due from MATCH under the agreement equal to the anticipated contract value less the cash value. This implies that the R80 million was to be paid to Autopax and not FIFA as the Complainant alleged.
- 6.21.2.9 Mr Montana submitted that a dispute arose between PRASA and MATCH during 2010 Soccer World Cup. In this regard, a settlement agreement between Autopax, PRASA and MATCH, signed by the Mr Montana on behalf of PRASA on 12 April 2011, indicated in paragraph 1 the claimant as PRASA and the defendant as MATCH.
- 6.21.2.10 I have also reviewed a Settlement Agreement from the Arbitration Foundation of South Africa (AFSA) regarding a dispute between the parties dated 12 April 2011, which provided that PRASA and MATCH agreed that MATCH would pay PRASA an all-inclusive ex gratia amount of R42 500 000.00 on or by 13 April 2011, in settlement of PRASA's claim and MATCH would withdraw its counterclaims for repayment of R26 215 200.00 and R80 000 000.00, plus all of the MATCH customer claims in terms of clause 19.1 of Service Level Agreement (SLA).
- 6.21.2.11 The dispute between PRASA and MACTH is captured on page 27 of PRASA's Annual Report for the year ended 31 March 2011 as follows:

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*"PRASA, through its subsidiary Autopax, entered into a service level agreement with MATCH for the provision of bus services, with 420 buses for the duration of the world cup amounting to R174 million. A dispute arose during the World Cup regarding the payment of services related to the contract with MATCH and Autopax. The matter was referred to the Arbitration Foundation of South Africa, which ruled that about R80 million of the value of the contract was not due by MATCH to Autopax. PRASA resolved not to pursue what would have been a costly legal challenge against both FIFA and MATCH."*

6.21.2.12 Furthermore on page 71 of the of PRASA's Annual Report on the 2010/11 Financial Statements, under the heading "Litigation Matters" stated as follows:

*"In the second matter PRASA instituted arbitration proceedings against Match/FIFA for alleged breach of contract pertaining to the service provision by Autopax a wholly owned subsidiary of PRASA, during FIFA World Cup. The matter was finalised and MATCH was ordered to pay a portion of the proved claim and the remainder of R80 million was not paid which was linked to the agreement with FIFA for the National Supporter Status during the Confederations Cup and 2010 FIFA World Cup."*

6.21.2.13 I have not been provided with any evidence to contradict PRASA's submission in the above regard and am therefore inclined to accept it as reflecting the factual state of affairs. I accordingly have no reason to accept that PRASA made any advance payment of R80 million or any amount to FIFA as alleged. What does appear true is that PRASA only got about half of the R80 million it expected to be paid by FIFA for Autopax services.

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**6.22 Complaint 22: Regarding PRASA's alleged improper incurring of R2.2 billion over expenditure on PRASA's operations budget in 2009/10 financial year:**

6.22.1 Common cause

6.22.1.1 It is common cause that PRASA exceeded its Operational Expenditure Budget (OPEX Budget) during the financial year 2009/2010.

6.22.2 Issues in dispute

6.22.2.1 The matter for my determination was the value of the over expenditure amount, which the Complainants placed at R2.2billion.

6.22.2.2 PRASA disputed that it overspent its OPEX Budget by an amount of R2.2 billion which amounted to fruitless and wasteful expenditure during the financial year 2009/2010.

6.22.2.3 In his response dated 5 June 2015 to notice in terms of section 7(9) of the Public Protector Act, 1994, Mr Montana denied that PRASA had incurred an over-expenditure of about R2.2 billion in the 2009/2010 financial year and labelled Complainant's allegation in this regard as "blatantly false". He submitted that the Audited financial Statements of PRASA for the financial year concerned did not record such a loss and that the Auditor-General also did not make any mention of such an over-expenditure as alleged by the Complainant.

6.22.2.4 Mr Montana's assertion was that PRASA as a public entity is audited annually by the office of the Auditor-General and it was therefore inconceivable that an unauthorised over-expenditure of R2.2 billion would escape the attention of the

Auditor-General, and furthermore, that PRASA in the preceding six years had received six unqualified audit opinions from the Auditor General. He provided PRASA's relevant Budgets and Financial Statements for the 2009/2010 financial year, which were reviewed as part of the investigation. copy of the provisional allocations to PRASA-2010 MTEF schedule reflects the following total audited allocations:

Table: 2010 MTEF

| No. | Current expenditure | Capital expenditure | Total expenditure |
|-----|---------------------|---------------------|-------------------|
| 1.  | 3 185 844           | 4 296 549           | 7 482 393         |

- 6.22.2.5 PRASA's budget including Shosholoza Meyl and Autopax for the financial year 2009/2010 reflects a total OPEX Budget of R6 158 032 233.00
- 6.22.2.6 According to page 58 of the 2009/2010 Annual Report of PRASA on the consolidated financial statements of the comprehensive income for the year ended 31 March 2010, operating expenses incurred amounted to R 6 681 825 000.00
- 6.22.2.7 A total of seven letters dated 19 March 2009 from PRASA Chief Financial Officer, Mr David Kekana addressed to various divisions and subsidiaries of PRASA indicated that SARCC (PRASA) operating budget for 2009/10 was approved by the Board of control (PRASA Board). The allocations made are captured in the table below as follows:

Table: Budget allocation

| No.   | Division            |               |
|-------|---------------------|---------------|
| 1.    | Intersite           | 154 807 553   |
| 2.    | Autopax             | 462 928 964   |
| 3.    | Durban region       | 626 979 203   |
| 4.    | Gauteng region      | 1 876 668 866 |
| 5.    | Eastern Cape region | 100 816 933   |
| 6.    | Western Cape        | 922 276 134   |
| 7.    | Shosholoza Meyl     | 866 100 002   |
| 8.    | PRASA Head Office   | 793 221 534   |
| 9.    | Metro rail          | 196 253 043   |
| 10.   | Portfolio           | 157 980 002   |
| Total |                     | 6 158 032 233 |

6.22.2.8 When comparing the OPEX and the actual budget allocated, it reflected that the OPEX Budget was exceeded by the amount of R523 792 767.00 (R6 681 825 000.00 less actual allocated budget of R6 158 032 233.00).

6.22.2.9 According to page 24 of PRASA's Annual Report for the financial year 2009/10 PRASA on funding, the following was captured in respect of the funding shortfall for the financial year concerned:

*"A funding shortfall of R1 billion earlier in the year under review was identified. A submission for additional funding was discussed and presented to the Department of Transport and National Treasury for 2009/10 Financial Year. The funding shortfall has put PRASA in a weak financial difficult position. If not addressed urgently, it will put PRASA in a weak financial position with the potential to undermine the ability of the entity to finance its future capacity expansion programme. This is a major concern to*

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*the Board and Executive Management of PRASA, with appropriate strategies already put in place to reverse this negative position and place PRASA on the trajectory where it will become a commercially-viable and number one public transport operator."*

6.22.2.10 Evidence from former Group CFO of PRASA received on 24 October 2013 indicates that PRASA's over-expenditure on the OPEX budget was due to inadequate ticket sales.

6.22.2.11 I have not discovered any evidence to contradict the financial statements supplied by PRASA in respect of its financial position for the financial year 2009/2010 and am therefore inclined to accept the disclosed overexpenditure of R523 792 767.00 as reflecting the correct financial state of affairs regarding the OPEX Budget for the financial year concerned.

**6.23 Complaint 23: Regarding PRASA's alleged failure to spend a subsidy received for Shosholoza Meyl for the 2009/2010 period and not use it for its intended purpose:**

6.23.1 Common cause

6.23.1.1 It is common cause that during the financial year 2009/2010, PRASA received funds from the National Treasury during the takeover of Shosholoza Meyl operations.

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6.23.2 Issues in dispute

- 6.23.2.1 The matter for my determination was simply whether or not PRASA misused the Shosholoza Meyl funds for something other than the purpose such funds had been appropriated for.
- 6.23.2.2 PRASA denied that it requested funds amounting to R1 billion from the National Treasury during the financial year 2009/2010 which for the taking over of Shosholoza Meyl which it did not use for its intended purpose.
- 6.23.2.3 Mr Montana submitted in PRASA's response received on 29 August 2013 and his response to notice in terms of section 7(9) of the Public Protector Act, 1994 regarding this particular allegation, that Shosholoza Meyl which formed part of the Transnet Group was transferred to PRASA on 1 April 2009 as part of a consolidation of passenger rail entities into a single entity that would report to the Minister of Transport as per Cabinet decision of 1 December 2004.
- 6.23.2.4 Mr Montana denied misuse of Shosholoza Meyl funds and that an amount of R2.2 billion was ever allocated for Shosholoza Meyl. He advised that the SARCC, the predecessor of PRASA, was allocated R500 million for 2008/2009, R450 million in 2009/2010 and R424 million in 2010/2011 for purposes of Shosholoza Meyl operations. He advised that the R500 million was paid over in full by the SARCC to Transnet, the previous owner of Shosholoza Meyl, who kept its operations running as a discontinued business on behalf of the SARCC and Transnet were awaiting the passing of the Amendments to the Legal Succession Act, which was a key condition for the consolidation of passenger rail entities, which was signed into law in December 2008, and thus enabling the transfer of Shosholoza Meyl into PRASA

in April 2009. He alleged that he did not approve the retention of the R500 million as requested by the former GCFO of PRASA.

6.23.2.5 Mr Montana provided the SARCC/PRASA's Annual Reports and Audited Financial Statements for the financial years 2008/2009 and 2009/2010 and 2010/2011.

6.23.2.6 Furthermore, Financial Statements of PRASA for 2008/09 financial year confirm on note 17, under accounts payable, that an amount of R500 million was received from The Department of Transport as subsidy for the Shosholoza Meyl and further that R500 million was payable to Transnet.

6.23.2.7 The Financial Statements of PRASA for 2009/10 financial year reflect on page 78 under accounts payable a nil amount in respect of Transnet payable. This is a reflection that the payable in the amount of R500 million was settled in favour of Transnet in year 2010.

6.23.2.8 According to the Financial Statements for 2008/9 period and 2010/11, the government grant allocated was in the amount of R2 549 604 000 and R3 185 843 000 respectively. The grant in respect of Shosholoza Meyl was not separately disclosed in these Financial Statements.

6.23.2.9 Based on the copy of the budget for the years ending 2008/9 and 2009/10, the following was indicated as subsidy for Shosholoza Meyl:

Table: Shosholoza Meyl subsidy allocation

| No. | 2007/8      | 2008/9      | 2009/10     |
|-----|-------------|-------------|-------------|
| 1.  | 375 000 000 | 500 000 000 | 450 000 000 |



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### **Documents received from National Treasury**

6.23.2.10 Documents received from the National Treasury reflect the request for additional funding by PRASA in respect of Shosholoza Meyl but also confirm the allocations as reflected in the PRASA financial statements.

6.23.2.11 I have not discovered any evidence to contradict PRASA's submission regarding the above allegation that it did not receive an amount of R2 billion from the National Treasury during the financial year 2009/2010 for the Shosholoza Meyl operations, which was not used for its intended purpose.

### **6.24 Complaint 24: Regarding PRASA's alleged incurring of a rental expenditure on Jorissen's Place after vacating the building and before the expiry of the contract resulting in fruitless and wasteful expenditure:**

#### **6.24.1 Common cause**

6.24.1.1 It is common cause that PRASA moved its Head Office from Jorissen's Place before the expiry of the Lease Agreement with Liberty Group Limited (Liberty) after acquiring Umjantshi House from Transnet and continued to pay rental for the duration of its Lease Agreement, which was about 20 months.

6.24.1.2 PRASA did not deny relocating its Head Office from Jorissen's Place to Umjantshi House but justified the premature move on giving effect to a Cabinet Decision of 2004 on the consolidation of SARCC, its subsidiary Intersite, Shosholoza Meyl and Metrorail, which created a necessity to seek office accommodation which was suitable to house these entities in one building.

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6.24.2 Issues in dispute

6.24.2.1 PRASA denied that it vacated Jorissen's Place 14 months prior to the expiry of the Lease Agreement with Liberty and that the rental paid to Liberty during the duration of the Lease Agreement after acquiring Umjantshi House from Transnet amounted to fruitless and wasteful expenditure.

6.24.2.2 It argued that when PRASA Head Office was moved to Umjantshi House, Jorissen's Place and Woodmead Building's IT Infrastructure was left behind and the properties were also used as training facilities for PRASA. I failed to understand how a building could be leased for all lettable space for 20 months just to occasionally use some of the space for training and to keep IT infrastructure, which should have moved to the new building, which eventually happened.

6.24.2.3 It is worth noting that the Lease Agreement between the parties provided for an option for SARCC Metrorail to buy the building after the expiry of the Lease Agreement, however, PRASA submitted that Liberty Life, the owners of the Jorissen's Place, opted to retain the building and accordingly the transaction did not materialise.

6.24.2.4 It is further worth noting that the Lease Agreement further provided at paragraph 9 in respect of subletting and cession that:

*"The tenant shall not be entitled to sublet the whole or any part of the premises save as follows:*

- *Paragraph 9.1.1- If the tenant wishes to sublet, it shall apply to the landlord in writing for its consent to the subletting of the premises or part thereof*

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*giving, in regard to the proposed sublease ...,"* which option could have been explored during the 20 month period of non occupancy.

6.24.2.5 I am satisfied, accordingly that, with the Board's approval, the PRASA GCEO, caused the Jorissen's Place property to be left vacant for a 20 month period during which, full occupancy rent was paid for value not received. Even if it's true that the property was, during the period, used for training and to house IT infrastructure, that would not take away the fact that rental for total lettable space was paid without value for such.

**6.25 Complaint 25: Regarding PRASA's alleged improper procurement of Umjantshi House from Transnet in September 2009:**

6.25.1 Common cause

6.25.1.1 It is common cause that PRASA moved its Head Office from the Jorissen's Place after acquiring Umjantshi House to accommodate its Head Office staff in November 2009.

6.25.2 Issues in dispute

6.25.2.1 The matter for my determination was whether or not the acquisition of Umjantshi House did not follow due process as prescribed in the SCM Policy.

6.25.2.2 PRASA, in its response received on 29 August 2013, and in the reponse to the notice I issued in terms of section 7(9) of the Public Protector Act, denied that it acquired Umjantshi House irregularly without following a proper tender process.

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6.25.2.3 The Agreement of Sale between PRASA and Transnet in respect of Umjantshi House signed on 28 September 2009 by Mr. Montana on behalf of PRASA and by an unidentified individual on behalf of Transnet on 13 January 2010, provides that PRASA purchased Umjantshi House from Transnet in 2009 for the sum of R129 500 000.00 (Including VAT), with effect from 27 March 2009.

6.25.2.4 I have not been provided with the procurement documents in respect of the acquisition of Umjantshi House, except the Agreement of Sale and payments records between PRASA and Transnet. Because of this I am unable to determine if the process followed was one of the competitive processes outlined in the SCM Policy.

**6.26 Complaint 26: Regarding PRASA's alleged improper incurring of a rental expenditure on Intersite Building after vacating the building and before the expiry of the contract resulting in fruitless and wasteful expenditure:**

6.26.1 Common cause

6.26.1.1 It is common cause that PRASA moved its offices from Intersite Building in Woodmead and Jorissen's Place before the expiry of the Lease Agreement and continued to pay rental for the duration of its Lease Agreement for the Intersite Building.

6.26.1.2 PRASA did not deny that it prematurely vacated its premises to move to Umjantshi House ending up incurring full rental for the vacant space. It simply justified the premature move on the basis of a supposed Cabinet Decision of 2004 requiring the consolidation of SARCC and its subsidiary Intersite, Shosholoza Meyl and

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Metrorail, which necessitated office accommodation which was suitable to house these entities in one building.

6.26.2 Issues in dispute

- 6.26.2.1 The issue for my determination was whether or not Cabinet ordered the move and if the space was indeed vacant for a long time during which PRASA incurred rental expenditure without value for the expenditure.
- 6.26.2.2 PRASA, in its submission on 29 August 2013 and, subsequently, in response to a notice I had issued in terms of section 7(9) of the Public Protector Act, denied that the building was left empty. a the GCEO submitted that when PRASA Head Office was moved to Umjantshi House afterward, Jorissen's Place and Intersite Building retained IT Infrastructure and the properties were also used as training facilities for PRASA.
- 6.26.2.3 It is inconceivable that both Jorissen's Place and the Intersite building could have been meaningfully used for training to the extent of setting off the rental paid. With regard to the IT infrastructure, leaving it in the building and not migrating it to Umjantshi House does not make sense. In any event the value paid for full lettable space cannot be offset by miniscule value that may not have been obtained from housing IT infrastructure.

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**6.27 Complaint 27: Regarding the GCEO's alleged improper termination of contracts of Executives resulting in fruitless and wasteful expenditure amounting to an estimated R5 million:**

6.27.1 Common cause

6.27.2 It is common cause that during the period 2008 and 2013, Mr Montana dismissed several Senior Executives whom the CCMA ordered their reinstatement. It is also common cause that Mr Montana and some of the Executives concerned entered into settlement agreements instead of reinstatement.

6.27.3 Mr Montana did not dispute that the dismissals took place and that some were either reversed by the CCCMA or settled thereunder. The justification offered by Mr Montana in entering into settlement agreements was that employment involves a relationship of trust between the employer and employee and that if the trust is broken, there wouldn't be a normal working relationship.

6.27.4 Issues in dispute

6.27.4.1 The issue for my determination was whether or not proper procedures were followed by PRASA before the terminations and/or suspensions were executed.

6.27.4.2 PRASA denied that it improperly terminated the contracts of Senior Executives, namely: COO Metrorail Mr Salani Sithole; CEO Metrorail Mr Sisa Mtwla; GE HR, Ms Liz Choonaira (allegedly replaced by GCEO's uncle Mr. Mphefo Ramutloa); CEO Shosholoza Meyl, Mr Viwe Mlenzana; CFO PRASA Ms Sindi Mabaso-Koyana; RM Eastern Cape Ms Claudia Williams; and CEO PRASA CRES Mr Cromet Molepo, and that it improperly offered them compensation of approximately

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R5 million that resulted in fruitless and wasteful expenditure when the CCMA ordered their reinstatement.

- 6.27.4.3 Mr Montana further denied that the wasteful practices exposed PRASA to litigation and unnecessary costs incurred as the GCEO disregarded the Labour Relations Act and PFMA principles.
- 6.27.4.4 On the allegation that he had preferentially treated and protected his alleged uncle, Mr Mphefo Ramutloa, Mr Montana, in his response which was received on 29 August 2013 and subsequently, following my issuing of a notice in terms of section 7(9) of the Public Protector Act, argued that the only relationship that existed between himself and Mr Ramutloa, whom he allegedly employed to replace the GE: Human Resource, is that of employer and employee and that in so far as the issue of dismissal of employees was concerned, PRASA maintained that it is the prerogative of an employer to maintain order and discipline in the workplace.
- 6.27.4.5 Mr Montana submitted that all the Executives who had left the employment of PRASA were where circumstances permit, first given an opportunity to be heard and be required to make representations as to why action should not be taken against them, and where parties cannot agree on the form of discipline, a matter would be referred to an independent arbitrator. No evidence was provided to support this submission.
- 6.27.4.6 Mr Montana submitted further that in some cases the employer and the employee are able to agree to an amicable parting of ways. In this case, parties are at liberty to conclude a settlement agreement which would record the terms of their separation. However, Mr Montana acknowledged that there are extreme cases

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where an Executive would opt to pursue the matter through forums such as the CCMA or the Labour Court.

- 6.27.4.7 Initially, Mr Montana argued that he was of the firm view that the Office of the Public Protector does not have the jurisdiction on the matters that are before the court of law. In this regard, Mr Montana was duly advised that the law is clear that only matters where a court of law has pronounced is the Public Protector's jurisdiction ousted and that pending matters are not decisions of courts as envisaged in section 182(3) of the Constitution.
- 6.27.4.8 In support of his response, Mr Montana provided the settlement agreements entered into between PRASA and Ms Sindi Mabaso-Koyana which I have noted. I have also reviewed documents submitted by some of the affected Executives and also considered their evidence relating to this matter.

**Mr Salani Sithole**

- 6.27.4.9 A settlement letter dated 8 October 2008 from Mr Montana addressed to Mr Salani Sithole (Mr Sithole) stated the following amongst other things:

*"The Corporation believes that the breakdown of trust and confidence is the basis upon which the settlement shall be formed and achieved. Accordingly and given your unwillingness to accept what the Corporation deems as fair and reasonable settlement offer, in the circumstance, the same settlement offer is hereby formally withdrawn.*

*In the circumstances, the Corporation maintains that there is a breakdown of trust and is accordingly left with no option but to release you from your duties effectively and immediately".*



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- 6.27.4.10 According to the letter, there was an offer of settlement made to Mr Sithole before he took the matter to the CCMA. This can be a reflection of the fact that there was no disciplinary hearing in respect of the matter concerned.
- 6.27.4.11 Memorandum of settlement agreement regarding Mr Sithole dated 7 October 2009 signed by the then Group Executive Legal and Risk, Mr Lindikhaya Zide, (Mr Zide) and approved by Acting Group Executive: Human Resources, Mr Mphefo Ramutloa, indicated its purpose as to seek approval for payment of settlement for Mr Sithole regarding the dispute under case no GAJB 32811/08 lodged with the CCMA.
- 6.27.4.12 According to the memorandum, Mr Sithole instituted proceedings by way of a Referral Form 7.11 at the CCMA under case number GAJB 32811/08 on 26 November 2008, on the grounds of alleged unfair dismissal dated 8 October 2008. The memorandum captured the fact that it was common cause that the employment relationship between the parties had irretrievably broken down and indicated the financial implication of the settlement as R972 150.00 and a net payment of R583 290.00 after tax. According to the account payment schedules, payment was made to Mr Sithole on 21 October 2009.

**Mr Viwe Mlenzana**

- 6.27.4.13 According to the Labour Court document in the matter between PRASA and Mr Viwe Mlenzana under Case number: J1687/11 signed on 8 November 2011 by Mr Viwe Mlenzana (Mr Mlenzana) on behalf of PRASA, a settlement amount of R988 936.07 before tax was noted in favour of Mr Mlenzana. It was further stated that PRASA would pay the legal costs which had been agreed to be party and party costs, occasioned by its non-compliance with the Settlement Agreement.

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This points to a lack of adherence to the labour laws and processes by PRASA and supports the allegation by the Complainant in this regard.

**Ms Sindi Mabaso-Koyana**

6.27.4.14 The Settlement Agreement in respect of former CFO of PRASA, Ms Sindi Mabaso-Koyana (Ms Mabaso-Koyana) signed on 30 April 2013 after her employment contract was terminated, indicates that there was a dispute between PRASA and Ms Mabaso-Koyana in relation to the circumstances in which her employment was terminated.

6.27.4.15 The Settlement Agreement captures the fact that Ms Mabaso-Koyana and PRASA were desirous of resolving the dispute between them and accordingly record the terms of settlement as per the agreement and that all disputes and claims of whatsoever nature between the parties have been fully and finally been settled. It provides in this regard that:

*"The agreement is reached without admission of liability by either party, and simply for the sake of avoidance of further disputes between the parties and all disputes from each party to this agreement pertaining to activities of PRASA and Mabaso-Koyana in relation to the contract of employment is put in finality."*

6.27.4.16 The Settlement Agreement indicates that PRASA agreed to pay to Ms Mabaso-Koyana R1 855 649.25 being the equivalent of seven months' salary.

6.27.4.17 In his response received on 05 June 2015 to notice in terms of section 7(9) of the Public Protector Act, Mr Montana argued that Ms Mabaso-Koyana was employed as PRASA's Group CFO had been released on account of performance related matters and conduct that he as GCEO disapproved of. He advised that he sought

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and obtained the concurrence of the Board on the matter. Mr Montana did not advise on the issue at hand which was whether or not procedure prescribed for disciplinary processes, was followed by him.

6.27.4.18 Ms Mabaso-Koyana, on the other hand addressed the procedural issue in her submission, wherein she maintained that Mr Montana dismissed her unfairly without following a proper disciplinary process for reasons that she was not consulted on matters that related to finance and procurement, despite her being the CFO of PRASA, that she questioned certain payments which were not properly motivated and was not allowed to properly run the financial division as the CFO.

6.27.4.19 In the absence of evidence to support Mr Montana's contention regarding the reasons for Ms Mabaso-Koyana's dismissal and regarding the process followed by Mr Montana in the dismissal her dismissal, I was unable to accept Mr Montana's version despite it being passionately argued, including him blaming Ms Mabaso-Koyana, for the SATAWU dossier that led to this investigation.

**Mr Cromet Molepo**

6.27.4.20 According to the CCMA documents, the arbitration award dated 14 August 2012 provides among others at paragraph 3 in respect of the dispute between Mr Cromet Molepo (Mr Molepo) and PRASA that Mr Molepo, was employed by PRASA from 1 October 2010 at a remuneration package of R2 800 000.00 per annum and was place on special leave at after a meeting held with the Mr Montana on 21 June 2011 pending the finalisation of a Forensic Audit;

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- 6.27.4.21 On 2 August 2011 Mr Molepo met with the Mr Montana who informed him that that he would not be returning to work as the CEO of PRASA CRES, and was given a week to consider the following three options: having his special leave converted to a suspension pending an investigation; concluding a separation agreement; and be redeployed as Mr Montana's special advisor.
- 6.27.4.22 Another meeting was held on 05 September 2011 between Mr Montana and Mr Molepo wherein the latter opted for an appointment as special advisor. Mr Molepo asked for this agreement to be in writing and that the job must be graded, a job profile created and placed on the structure and Mr Montana informed Mr Molepo that he had asked Mr Zide to prepare the relevant contract.
- 6.27.4.23 It is further stated that on 03 October 2011 the employee forwarded a letter to the Mr Montana raising his frustration of not receiving the contract and on 30 January 2012, Mr Montana sent an email to Mr Molepo informing him that he was expected to report for duty on 31 (*sic*) February 2012.
- 6.27.4.24 A letter emailed to Mr Montana on 31 January 2012 by Mr Molepo indicated amongst others that Mr Molepo did not receive an agreement from Mr Zide, and further stated that his proposed redeployment constitutes a unilateral demotion and that he cannot accept such demotion; once the reporting date was clarified he would report for duty on condition that the instruction was that he would report for duty in the position as set out in Mr Montana's letter dated 27 January 2012; and If he was redeployed as the special advisor, he would immediately lodge an unfair labour practice dispute pertaining to a demotion and unilateral change of terms of employment.

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6.27.4.25 Mr Molepo, in his evidence, stated that it was upon that basis that Mr Montana terminated his employment contract on 1 February 2012 in an email, the reason amongst others being that Mr Molepo was directly repudiating an agreement they had. However, an award was made in favour of Mr Molepo at the CCMA, on 14 August 2012 with an order that he be reinstated and that PRASA pay him back the amount of R1 174 443.00 for the period from 2 March 2012 (date of referral to the CCMA) and 3 August 2012 (final date of arbitration) in respect of the period he was suspended.

6.27.4.26 The award was, however, challenged by PRASA in their application for leave to appeal dated 25 July 2013. No further documents were provided by PRASA on this case. PRASA indicated in their response to the allegation that the case was still with the courts. However, I have been provided with further evidence regarding this subject by Mr Molepo.

**Further evidence received:**

6.27.4.27 According to a former Senior Manager of PRASA's evidence, the Group Executives were hired and fired by the GCEO and the HRD.

**Further evidence received from Mr Cromet Molepo**

6.27.4.28 Mr Molepo was interviewed by the investigation team on 25 July 2014. He provided various documents including the CCMA award, Labour Court Order dated 17 July 2013 and various correspondences between his attorneys and PRASA, the former Chairman and certain members of the PRASA Board.

6.27.4.29 Evidence indicates that the CCMA Award made in favour of Mr Molepo on 14 August 2012 was challenged by PRASA and the matter had since been finalised in

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the Labour Court. In a judgment handed down by Honourable Mooki AJ, who made serious findings on the conduct of PRASA, the Judge stated that:-

*"It is a serious matter when an attorney puts his hand to a document intended to be part of the court process when such a document contains falsehoods, and when the court in turn is called to determine a particular matter based on the content of such a document. Mr. Lucky Makhubela signed the notice upon which PRASA makes its application. Mr Makhubela has no personal knowledge of what transpired in court on 7 July 2013...Mr Makhubela failed to comply with what is expected of him as an officer of the court. He conducted himself in an irresponsible manner in putting his hand to an application on the stated grounds. He owes the court a duty to uphold the dignity of the court. He failed to discharge that duty in putting his hand to a document that contains demonstrably false statements about what transpired in court. I find that an order of costs de bonis propriis is appropriate."*

6.27.4.30 In his response dated 05 June 2015 to notice in terms of section 7(9) of the Public Protector Act, Mr Montana argued that Mr Molepo as an expert in the field of real estate, who possessed skills in the property industry, was head-hunted by PRASA when he was working for ABSA Properties and the Board and Mr Montana employed him as CEO of Intersite. He submitted that Deloitte was appointed to investigate the alleged irregular and corrupt activities that were happening at PRASA CRES under the watch of Mr Molepo as the CEO and that Mr Molepo was placed on special leave during the investigation to prevent him from interfering with the investigation. The investigation concluded that Mr Molepo had failed in his duties as the CEO of PRASA CRES and interfered in the appointment of a company called Civils 2000, amongst other irregularities.

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- 6.27.4.31 Mr Montana did not provide me with supporting documents regarding Mr Molepo's appointment of Civils 2000. Mr Montana further submitted that the forensic report recommended that disciplinary action be instituted against the persons implicated including Mr Molepo. At the same time, Mr Molepo was failing to meet performance targets as well as the expectations of PRASA.
- 6.27.4.32 Mr Montana argued that he had a series of consultations with Mr Molepo to discuss his performance as well as the findings and recommendations made by the Deloitte Report and the parties agreed that Mr Molepo would be redeployed and redeployed as Special Advisor to Mr Montana on real estate matters and that the parties further agreed that Mr Molepo's redeployment would be on the same terms and benefits he enjoyed as CEO of PRASA CRES. Mr Montana argued that Mr Molepo decided to repudiate the agreement he had reached with him and chose not to come to work resulting in his dismissal.
- 6.27.4.33 This argument is contrary to the argument that Mr Montana made in his earlier response regarding the dismissal of Mr Molepo involving the appointment of ARUP. He argued that Mr Molepo was relieved of his duties and that the matter was before a court of law and that PRASA was not at liberty to disclose the records.
- 6.27.4.34 Mr Montana further stated that it was on that basis that Mr Molepo went to the CCMA and eventually the Labour Court and that it was clear that the allegation that Mr Molepo was unfairly dismissed was not true.

**Ms Liz Choonaira, Ms Claudia Williams and Mr Sisa Mtw**

- 6.27.4.35 No response was received from PRASA with regard to the abovementioned Executives. However, in the absence of such evidence from PRASA, a reasonable inference to be drawn from PRASA's silence in this regard and failure to provide supporting documents may seem to indicate that Complainant's submission is probable. However, I could not conclude in the absence of evidence.
- 6.27.4.36 In his conclusion regarding this matter, Mr Montana argued that PRASA observed that the provisional findings around the issues of firing of Executives had a tendency of taking away the right of the PRASA GCEO to manage and discipline his Executive team members and that decisions regarding issues relating to settlements with Executives, were made in the best interest of the business.
- 6.27.4.37 The following were reflected as contingent liabilities in terms of labour disputes in PRASA's Annual Reports on Financial Statements for the years ending 2009/10, 2010/11 and 2011/12:

Table: Contingent liability

| No. | Year | Contingent liability-labour disputes | Amount    |
|-----|------|--------------------------------------|-----------|
| 1.  | 2009 | Labour disputes                      | 375 000   |
| 2.  | 2010 | Labour disputes                      | --        |
| 3.  | 2011 | Labour disputes                      | 7 746 000 |
| 4.  | 2012 | Labour disputes                      | 7 746 000 |



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6.27.4.38 The Auditor General indicated in Financial Statements for the year 2008/09, 2009/10, 2010/11 and 2011/12 reports that the fruitless and wasteful expenditure incurred by PRASA was in respect of interest on overdue creditors.

6.27.4.39 The issue whether the dismissal of executives was improper and whether it resulted in fruitless and wasteful expenditure, will be resolved when measuring the conduct of PRASA against the relevant rules in the following chapter as that is a legal determination.

**6.28 Complaint 28: Regarding the GCEO's alleged improper suspension of employees resulting in labour dispute settlements amounting to R3.35 million thus constituting fruitless and wasteful expenditure:**

6.28.1 Common cause

6.28.1.1 It is common cause that PRASA suspended employees during the period in issue and paid the salaries of the employees concerned.

6.28.2 Issues in dispute

6.28.1.2 Mr Montana denied that he unlawfully engaged yearly in a series of suspending employees perpetually with payment of salaries costing PRASA an estimated R 3, 35 million in fruitless and wasteful expenditure.

6.28.1.3 I have been provided by the Complainant with a memorandum dated 30 December 2012 prepared by Mr Silence Vilane, the then SATAWU Provincial Rail Secretary addressed to POBC. NOBC (*sic*), copied to Rail coordinators and

PRASA Management Forum entitled "*SATAWU persecution cases by PRASA management*" in respect of Gauteng Province.

6.28.1.4 The memorandum captures the list of members, shop stewards and managers in Gauteng Province that were allegedly persecuted by PRASA management. The details of the allegations are captured in the table below as follows:

**Table: Details of employees victimised by PRASA**

| No. | Name                 | Allegation  | Period of suspension  | Estimated company loss |
|-----|----------------------|---|---|------------------------|
| 1.  | Miss Siphokazi Ndaba | Alleged violation of procurement procedures and process             | Suspended on 11/02/2010 and subsequently dismissed on 18 March 2011 | R 364 000              |
| 2.  | Mr Martin Hlongwane  | Alleged Insubordination and insolence                               | Suspended on 23 November 2011, still on suspension                  | R 62 000               |
| 3.  | Mr Sello Motaung     | Corruption, violation of company policies, processes and procedures | Suspended on 1 October 2009; still on suspension                    | R 1 200 000            |
| 4.  | Mr Frans Makgaba     | Alleged theft of buses pending investigation on                     | Suspended on 13 July 2010   | R 630 000              |

| No. | Name                | Allegation  | Period of suspension                              | Estimated company loss |
|-----|---------------------|---|---|------------------------|
|     |                     | whether proper procedures were put in place to prevent incidents  |   |                        |
| 5.  | Ms Priscilla Selele | <p>Alleged gross dishonesty in failure to disclose incompetence;</p> <p>Alleged misrepresentation of school qualification</p> <p>Alleged gross dishonesty in misrepresenting a conversation between herself and the CEO on an email whereupon the CEO promised on several occasions to appoint the employee permanently as his PA</p> | Suspended on 6 October , still on suspension      | R 126 000              |
| 6.  | Mr Silence Vilane   | Alleged sending of disrespectful email to Senior Manager, misuse of company computers by sending SATAWU documents within PRASA, misuse of   | Suspended on 7 December 2011, still on suspension | R14 200                |

| No. | Name                                  | Allegation  | Period of suspension   | Estimated company loss |
|-----|---------------------------------------|---|--|------------------------|
|     |                                       | X99 leave and desertion of post/duties  |  |                        |
| 7.  | Miss Samela Sontshatsha and 27 others | PRASA's deliberate refusal to finalise the absorption of workers and allocation thereof to one department   | Workers still employed by PRASA without an allocated department  | No loss to company     |
| 8.  | Mr M Zungu and 20 others              | Alleged unprotected strike/illegal work stoppage  | Workers issued with 12 months final written warnings on 25 July 2011   | Lost working time      |
| 9.  | Mr Gabriel Mabusa                     | Alleged disregard of train working rules whilst driving a train   | Employee removed from duties on 24 June 2010 and reinstated on 1 September 2010  | Lost working time      |
| 10  | Mr Craig Nte                          | 12 February 2010-Absenteeism, bringing company name into disrepute<br><br>Suspended on 03 May 2011-No reasons for suspension , nine charges levelled against the employee | Suspended in November 2004 until March 2006- There was a disciplinary hearing but no ruling, employee thereafter instructed to return to work.<br><br>Suspended on 12 February 2010 until June 2010-No | R 924 000              |

| No. | Name | Allegation | Period of suspension   | Estimated company loss |
|-----|------|------------|--|------------------------|
|     |      |            | charges, no hearing and no ruling, employee thereafter instructed to return to work<br><br>Suspended on 23 May 2011, still on suspension |                        |

6.28.1.5 The details of the complaints are canvassed below as follows

**Miss Siphokazi Ndaba, PRASA Train Operations Manager: Procurement**

6.28.1.6 According to the memorandum, the employee was suspended on 11 February 2010 and was subsequently dismissed for alleged violation of company procedures and process on 18 March 2011. The memo further states that the intention of PRASA was to destroy functionality of SATAWU at PRASA through the management forum. It was further stated that: the company's disciplinary code and procedures required that disciplinary cases be finalised within 30 calendar days but PRASA does not complete disciplinary cases within that time frame; PRASA had to appoint a Manager to act in her position whilst she was on suspension; there was deliberate refusal of organisational rights as per the LRA; and the company loss was indicated as R 364 000.00.

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**Mr Martin Hlongwane, PRASA Area Manager, Customer Services**

6.28.1.7 According to the memorandum, Mr Martin Hlongwane (Mr Hlongwane) was ordered by PRASA management to leave his station, Johannesburg Park station and relocate to New Canada. It is alleged that the employee refused the transfer and was suspended on 23 November 2011 and was still on suspension on 30 December 2012. According to the memorandum, Mr Hlongwane was replaced by Mr Patrick Oliphant who was a station Manager at Daveyton. The monthly salary for Mr Martin Hlongwane was reflected as R 31 000.00 per month. It is further stated that Company policies and procedures were violated and as a result the Company lost R 62 000.00 in respect of the 2 months suspension.

**Mr Sello Motaung, PRASA Supply Chain Manager: Metro Park**

6.28.1.8 According to the memorandum, the company suspended the employee on 1 October 2009 and that the employee was still on suspension at the date of the memorandum. The memorandum further states a hearing with the external presiding officer (Commissioner) ruled that the employee be sanctioned to three month written warning. The memorandum further provides that PRASA has taken the matter for review at the Labour Court as it wanted to dismiss the employee.

6.28.1.9 The memorandum further indicates that the matter was still outstanding from the Labour Court and that the employee was still on suspension for a period of more than two years and as a result, the Company loss for the 2 years suspension was captured as R 1 200 000.00.

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**Mr Frans Makgaba, Senior Manager, Corporate Security**

- 6.28.1.10 According to the memorandum, Mr Frans Makgaba was suspended on 13 July 2010 after 2 disciplinary hearings. It is stated that alleges his suspension was withdrawn after 10 months and that the employee was redeployed back to Corporate Office. The case had not been finalised at date of the date of the compliant and the Company loss is indicated as R630 000.00 for a period of 10 months.

**Priscilla Selele, PA to CEO PRASA Rail**

- 6.28.1.11 According to the memorandum, the employee was appointed in the company position on a fixed term contract and accordingly the appointment violated the SATAWU/PRASA negotiation agreement.
- 6.28.1.12 The memorandum stated further that the employee was redeployed without the necessary transfer documents. On 5 October 2011, the CEO, Mr Moseneke put the employee on a special leave and further served with suspension letter on 6 October 2011.
- 6.28.1.13 The reasons for suspension were indicated as being the: alleged dishonesty in failure to disclose incompetence; alleged misrepresentation of school qualifications; and alleged dishonesty in misrepresenting a conversation between herself and the CEO on an email whereupon the CEO promised on several occasions to appoint the employee permanently as his PA and that seven disciplinary hearings were held against the employee.

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- 6.28.1.14 The company loss was indicated as R126 000.00, which is the period of suspension for 4 months.

**Mr Silence Vilane, Protection Official, PRASA Protection and Security Services Wits Region**

- 6.28.1.15 Mr Silence Vilane was suspended by his line Manager, Mr Thomas Mabasa, pending an investigation. The reasons for the suspension were indicated as the: allegations of sending disrespectful email to the National Department Manager, Mr Kabelo Mantsane; misusing PRASA computers by sending SATAWU documents; and retrieving SATAWU emails from PRASA intranet using PRASA computers; abuse of X99 leave in reporting an X99 leave and being seen at CCMA representing ex-PRASA employee; desertion of post and duties to attend SATAWU activities during working hours.
- 6.28.1.16 The company loss was indicated as R 14 100.00 which was in respect of 2 months suspension.

**Miss Samela Sontshatsha and 27 others, Platform Marshals under PRASA's Protection and Security Services Department**

- 6.28.1.17 According to the memorandum, Ms Sontshatsha and 27 PRASA Platform Marshal Trainees qualified through training to full Platform Marshals but were subsequently transferred to the Customer Services Department
- 6.28.1.18 The memorandum indicated that, SATAWU, through Patrick Oliphant and Silence Vilane, challenged the allocation of a department to these workers and the unfair transfer and unilateral amendment of the terms and conditions of employment of workers concerned. The memorandum further captured the fact that management



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opted for transferring these workers to another department in order to avoid confrontation with SATAWU.

6.28.1.19 No financial loss to PRASA was indicated in respect of the transfer.

**Mr M Zungu and 20 others, PRASA Train Operations Naledi, 7 Train Drivers and 14 Metro guards**

6.28.1.20 According to the memorandum, 21 employees were exposed to safety risk and hazards at their workplace, Naledi station and despite having made the relevant Line Manager and PRASA Management aware of the challenges, no action was taken to eliminate the risks. However, PRASA Management sanctioned employees with a 12 months final written warning for an alleged illegal work stoppage.

6.28.1.21 It is alleged that on the date of the memorandum, the risk situation at the Naledi depot had not been attended to.

**Mr Gabriel Mabusa, PRASA Train Driver, Acting Section Manager, Naledi**

6.28.1.22 Mr Gabriel Mabusa allegedly disregarded train working rules whilst on duty and was removed from his duties on 24 June 2010 but reinstated on 1 September 2010, and PRASA had to pay other train drivers overtime to cover the suspended employee's duty roster, thereby resulting in loss to the company through working time.

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**Mr Craig Nte, Area Manager, PRASA Protection and Security Services Wits Region**

- 6.28.1.23 According to the memorandum, Mr Craig Nte, Area Manager PRASA Protection and Security Services Wits Region was suspended from November 2004 to March 2006. A disciplinary hearing was conducted but no sanction was made and he was instructed to return to work.
- 6.28.1.24 The memorandum further states that the employee was further suspended on 12 February 2010 to June 2010 without any charges, hearing or ruling but the employee was thereafter instructed to return to work.
- 6.28.1.25 The employee was suspended again on 03 May 2011 and was dismissed on 17 January 2012 through a letter of termination of employment contract signed by Mr RM Khumalo the Acting Provincial Manager, which stated that after countless failed attempts to give Mr Nte an opportunity to challenge the evidence to be presented by management and state his case, a decision to terminate his employment contract with immediate effect was taken. PRASA appointed another Manager to act in the employee's position during the suspension period of the employee and the company loss was indicated as R924 000.00 being the salary for 29 months.
- 6.28.1.26 In his response received on 29 August 2013, Mr Montana argued that PRASA is a 16 000 strong employee organisation and that as is normal with any business of PRASA's size, employees face disciplinary hearings that may even result in termination of employment. In this regard Mr Montana submitted that employees are disciplined by their immediate supervisors in accordance with the Disciplinary Code of the company and each employee can appeal the fairness of a disciplinary process and its outcome and that they can also take any PRASA decision on

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review with the CCMA or Labour Court in line with the provision of the Labour Relations Act.

- 6.28.1.27 Mr Montana accordingly denied that he unlawfully engages in the unlawful suspensions of any of its employees thereby resulting in fruitless and wasteful expenditure.
- 6.28.1.28 I was not provided with documents by Mr Montana to substantiate his contention and Mr Montana did not dispute the allegations as stated above and in the memorandum of 30 December 2012.
- 6.28.1.29 Furthermore, in his response to the notice in terms of section 7(9) of the Public Protector Act, 1994, Mr Montana argues that no evidence was provided to support the claim that all employees who had been fired by PRASA were victimised. Furthermore, Mr Montana argues that the information in the Provisional Report have failed to take into account that PRASA as a public entity employs over 18 000 employees who report to different supervisors within different divisions of the organisation and therefore employees are normally disciplined or suspended and eventually dismissed for different types of misconduct and that the GCEO of PRASA is not involved in disciplining employees other than General Managers and Group Executives.
- 6.28.1.30 Mr Montana argued further that PRASA has a structure that includes five CEOs, Regional Managers and immediate supervisors who are responsible for employment, disciplining and where appropriate, dismissal of employees. Any action against the employees would be taken at that level and not by the GCEO as alleged in the complaint. Mr Montana however acceded that most of the employees were not disciplined within 30 day period as required by PRASA's Disciplinary Code. In this regard, Mr Montana indicated that PRASA would ensure

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that there is effective implementation of the Disciplinary Code to avoid wasteful and unauthorised expenditure.

- 6.28.1.31 The issue whether or not the suspension of employees of PRASA complied with the Disciplinary Code and relevant legal prescripts and whether or not the expenditure resulting from such suspensions amount to fruitless and wasteful expenditure, will further be resolved when measuring the conduct of PRASA against the relevant rules in the following chapter as that is a legal determination.

**6.29 Complaint 29: Regarding PRASA's Board Chairman, Mr Sfiso Buthelezi's alleged failure to disclose and manage a conflict of interest arising from his interest in Makana, a subsidiary of Cadiz, a company allegedly providing advisory services to PRASA on the Rolling Stock Programme:**

6.29.1 Common cause

- 6.29.1.1 It is common cause that Mr Sfiso Buthelezi was the Chairman of PRASA Board and the Chief Executive Officer of Makana, a subsidiary of Cadiz during the relevant time of the complaint.

6.29.2 Issues in dispute

- 6.29.2.1 The issue for my determination was whether or no Mr Buthelazi failed to disclose and manage a conflict of interest arising from Makana, a subsidiary of Cadiz.
- 6.29.2.2 In its response received on 29 August 2013, PRASA denied that Cadiz was rendering Advisory Service to PRASA on the Rolling Stock Programme as alleged

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by Complainant and further denied that Mr. Sfiso Buthelezi failed to disclose and manage his conflict of interest in that regard. PRASA argued in this regard that it started the Rolling Stock Fleet Renewal Programme with the appointment of a consultancy to perform a feasibility study. The consortium was led by KPMG assisted by Interfleet and Edward Nathan Sonnenberg.

- 6.29.2.3 PRASA further submitted that it appointed Transactional Advisors for its new Rolling Stock Renewal Programme through a proper and transparent tender process and that Cadaz was not in any way one of the companies appointed by PRASA for the Rolling Stock Fleet Renewal Programme. PRASA indicated that companies in their various capacities appointed to the Project were: Interfleet Technologies; KPMG; LETSEMA; Weber Wentzel; Ledwaba Mazwai Attorneys; Vela VKE; and Arcus Gibb.
- 6.29.2.4 PRASA argued that the allegation that Cadiz is providing advice on the new Rolling Stock Project is not only false but also dangerous as it jeopardise an important process in the upgrading of passenger rail services and the creation of job opportunities within South Africa.
- 6.29.2.5 PRASA submitted that it finally announced the Gibela Consortium as the preferred bidder for the main Rolling Stock Fleet Renewal Programme and that, for the record, the Chairman of the PRASA Board is a Senior Executive at Makana Investment Corporation, which is owned by the Makana Trust, which belongs to former political prisoners in South Africa. Makana Trust has a stake in Cadiz Holding which is not involved in the PRASA Rolling Stock Fleet Renewal Programme.

6.29.2.6 In support of its contention, PRASA provided the declaration of interest of Mr Sfiso Buthelezi and the letter of his appointment as PRASA Board member dated 8 May 2011 from Mr S Ndebele (MP), Minister of Transport to Mr Sfiso Buthelezi which indicates the appointment of Mr. Buthelezi as Board Member of PRASA.

6.29.2.7 In terms of the "*DECLARATION OF INTEREST SUBMITTED BY N.S BUTHELEZI*". Mr. Buthelezi's disclosure of interest is provided as follows:

| Company registration no | Name of company               | Capacity | Nature and extent of interest |
|-------------------------|-------------------------------|----------|-------------------------------|
| 1997/007258/06          | Cadaz Holdings                |          | Shareholder                   |
| 1997/011411/07          | Makana Investment Cooperation | Director | Shareholder                   |

6.29.2.8 I have not been provided with the disclosure documents to verify Mr. Montana's assertion that there has been proper disclosure and management of conflict of interest.

**6.30 Complaint 30: Regarding Dr Bridgette Gasa's, a PRASA Board member's alleged failure to disclose and manage a conflict of interest arising from her interest in ARUP and her directorship in another company providing consultancy services to PRASA:**

6.30.1 Common cause

6.30.1.1 It is common cause that Dr Bridgette Gasa was a member of the PRASA Board and also a Director of ARUP during 2011.

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6.30.2 Issues in dispute

6.30.2.1 The issue for my determination was whether or not Dr Gasas failed to disclose and manage a conflict of interest arising from her Directorship at ARUP.

6.30.2.2 In its response received on 29 August 2013, PRASA denied that Dr Bridgette Gasas (Dr Gasas), a former PRASA Board member failure to disclose and manage a conflict of interest arising from her interest in ARUP and her directorship in another company, providing consultancy services to PRASA. In this regard PRASA argued that PRASA has standing Good Practice Governance protocols, including declaration by PRASA Board Members and Executives in meetings where decisions are to be made. PRASA argued further that the agreement between PRASA and ARUP was entered into before Dr Gasas's appointment as a Director of ARUP.

6.30.2.3 PRASA, in support of its contention, provided the appointment letter of Dr Gasas dated 8 May 2011 from Mr S Ndebele (MP), Minister of Transport to Dr Gasas and the declaration of interest forms that she completed. The letter concerned stated among others that:

*"I am pleased to inform you that you have been re-appointed as a non-executive member to the PRASA Board of PRASA. The appointment is for the period of three (3) years with effect from 1 April 2011."*

6.30.2.4 In terms of the PRASA Director's disclosure of interest, other directorship and interest in contracts questionnaire, Dr Gasas's declaration of interest is captured as follows:

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1. *Are you a director of any other company?*
    - a) *"Elilox Group (Pty) Ltd {own company with 51% shareholdership}*
    - b) *NMC Construction Pty Ltd*
    - c) *Umso Construction Pty Ltd"*
  2. *Are you a member of any close corporation? – "Not at all"*
  3. *Are you involved in any partnership or trust, or are you involved in any other business of whatever nature? – "The Gasa Family Trust Fund as its Trustee"*
  4. *Do you own shares in any other company, other than investments on the JSE Securities Exchange?– "Not at all."*
  5. *Do you own shares in a company, including JSE investments which has or may in the foreseeable future acquire an interest in any contract with the corporation?*

*"I own shares in 27 companies listed in JSE and none of them have interests related to PRASA. Most of them are in the Mineral resource sector."*
  6. *Other than in point 5 above, do you have a material interest whether directly or indirectly, in any contract with the corporation, whether current or to be entered into? – "Not at all."*
  7. *Have you or will you be benefiting materially, either directly or indirectly, from any contract entered into with the corporation or any other contract related thereto? – "Not at all".*

6.30.2.5 Dr Gasa denied in her response dated 25 July 2015 that she was a director at ARUP since 2010 and that she had failed to disclose and manage a conflict of



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interest arising from her appointment to the Board while two companies she had an interest in provided services to PRASA. In this regard, Dr Gasa provided records that confirm that she was indeed a Director at ARUP from 9 February 2011 and that she made the necessary disclosures to PRASA on 20 July 2011. According to evidence received, ARUP SA (Pty) Ltd was indeed awarded a contract by PRASA for the Park Station Development Framework, however the contract was for R3.8 million which would not have required Board approval.

6.30.2.6 I have reviewed the agreement of appointment of Dr Gasa to Directorship of ARUP and noted that Dr Gasa was appointed on 9 February 2011 as Non-Executive Director of ARUP.

**6.31 Complaint 31: Regarding PRASA's alleged improper appointment of Ms Shiela Boshielo, the wife of former PRASA Board Member, Mr. Bushy Boshielo, as the General Manager of Autopax:**

6.31.1 Common cause

6.31.1.1 It is common cause that Ms Boshielo, the wife of the erstwhile member of the PRASA Board, Mr. Bushy Boshielo, was appointed as an Executive Manager Business Development at Autopax on 3 May 2010.

6.31.1.2 It is also common cause at the time of the appointment of Ms Boshielo, Mr Boshielo at time was a PRASA Board member.

6.31.2 Issues in dispute

6.31.2.1 The issue in dispute was whether the appointment of Ms Boshielo was done in line with PRASA's Recruitment and Selection Policy.

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6.31.2.2 A response from PRASA which was received on 29 August 2013 regarding this particular allegation was that:

- a) Ms Boshielo was appointed at Autopax, a wholly owned subsidiary of PRASA in terms of their own recruitment process. Ms Boshielo is in her own right an experienced Public Transport Practitioner, who was employed by the Department of Roads and Transport in Limpopo.
- b) The Recruitment Policy provides for the headhunting of suitably qualified and experienced candidates as long as this is approved by the GCEO of PRASA.
- c) Ms Boshielo was appointed by the PRASA Board of Autopax, a subsidiary of PRASA and her appointment is in line with the provisions of the PRASA Recruitment Policy.
- d) The allegation that the recruitment and appointment of Mrs Boshielo was influenced by any member of the PRASA Board is denied.

6.31.2.3 PRASA GCEO in support of his response provided us with the Job advertisement and email correspondences.

6.31.2.4 The copy of the advertisement shows that the position was advertised in the Sunday Times of 29<sup>th</sup> November 2009.

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6.31.2.5 According to the document untitled "Autopax Job specification", the following information was reflected:

- Job title: Executive Manager Business Development
- Department: CEO
- Closing Date: 7 December 2009
- As per the Employment Equity Plan this position was earmarked for African or coloured female.

6.31.2.6 According to an e-mail dated 30 November 2009 from Ms. Polly Boshielo to "recruitment@apx.co.za" (copied "bopapem@telkomsa.net")

6.31.2.7 The e-mail indicates that the application form and CV was attached and forwarded to Autopax.

6.31.2.8 A copy of an application letter dated 30 November 2009 from Ms Boshielo to Executive Director: HR Autopax Passenger Services (Pty) (Ltd) titled "Application for an advertised post: of Executive Manager: Business Development

*"I, Shela Paulina Polly Boshielo hereby apply for a post of Executive Manager: Business Development as advertised in the Sunday Times of 29<sup>th</sup> November 2009"*

6.31.2.9 According to an e-mail dated 15 April 2010 from Mr. Johannes Matheko, Autopax Passenger Services (Pty) (Ltd), Executive Manager Human Resource, to [pollyboshiela@yahoo.com](mailto:pollyboshiela@yahoo.com) titled Business Development Executive:

*"We refer to the interview held on the 6 April 2010 and wish to inform you were successful in your application. In view of the aforesaid, Autopax will like to make you an offer for employment. Kindly find attached for your perusal and consideration."*

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6.31.2.10 A letter of appointment dated 15 April 2010 addressed to Ms Boshielo signed by S Zamxaka (Chief Executive Officer), Autopax Passenger Services (Pty) (Ltd). According to the letter, Ms Boshielo was appointed as Executive Manager Business Development at Autopax Passenger Services (Pty) (Ltd) with effect from 3 May 2010. A letter of appointment indicates that the acceptance letter was signed on 3 May 2010.

6.31.2.11 Paragraph 9 (Head Hunting) of the PRASA Recruitment and Selection Policy dated 1 December 2008 states

*"The Group Chief Executive Officer has the authority to head hunt, and/or mandate the Human Resource Department to head hunt candidates with appropriate skills knowledge and experience necessary to meet the requirements of the business"*

6.31.2.12 While in the initial response Mr Montana maintained that Ms Boshielo was appointed through headhunting, in response to my provisional findings he changed the tune to state that PRASA's initial submission was made in error as Ms Boshielo was appointed through a recruitment and selection process and was selected from amongst other candidates. However, PRASA failed to provide me with recruitment documents to substantiate their assertion.

6.31.2.13 Except for the job advertisement, the employment offer and the acceptance letter, PRASA failed to provide me with recruitment memoranda in respect of the headhunting and/or recruitment process followed in the appointment of Ms Boshielo.

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**6.32 Complaint 32: Regarding the alleged irregular appointment of Mr Joel Chimanda as PRASA's special advisor at a cost of R 2 million:**

6.32.1 Common cause

6.32.1.1 It is common cause that Mr Joel Chimanda was appointed as a Special Advisor during 2008/2009 at PRASA's cost of R2 million.

6.32.2 Issues in dispute

6.32.2.1 The issue in dispute was whether the appointment of Mr Chimanda was in line with the PRASA's Recruitment and Selection Policy.

6.32.2.2 A response from PRASA which was received on 29 August 2013 regarding this particular allegation was that:

- a) The Financial Advisor was appointed as a result of his experience in Business Strategy and Financial skills. It is the prerogative of the GCEO to appoint within his office, Special Advisors with suitable skills from time to time as required by the business, and
- b) Accordingly, the appointment of Special Advisors to the GCEO does not follow the same recruitment procedure of Executives and other employees as provided for in the Recruitment Policy of PRASA nor a tender process in the appointment of consultants and other professional services.

6.32.2.3 Mr Montana in support of his response provided us with the contract between PRASA and Mr Joel Chimanda.

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6.32.2.4 According to a Professional Services contract entered between South African Rail Commuter Corporation Ltd (SARCC) and AR Chimanda Consulting trading as JC Consulting dated 26 February 2009 the contract provides the following:

**"Clause 3 Commencement and termination**

*This agreement shall notwithstanding the date of signature, commence 27 October 2008 (hereinafter referred to as the commencement date) and shall continue until 31 July 2009 unless terminated earlier as provided for in this agreement*

**Clause 4 Scope of work**

*Scope of Mandate to advise SARCC CEO's office and PRASA Board to develop a plan that will be used by Passenger Rail Agency of South Africa:*

*The overall scope of this mandate is broken down into four broad "business plan input" workflows: whose details are attached hereto marked JC1.*

- *Corporate Governance Structure, Legal, Operating and Reporting Line;*
- *Develop such plan that will guide CEO office, manage and monitor merger and integration SARCC, Metrorail, Shosholozha Meyl, Autopax and Intersite;*
- *PRASA proposed Capital Structure and Pro-forma Balance Sheet;*
- *SARCC Capex and Special Projects that impact PRASA Strategic initiatives in a proposed Strategic Asset Management Function*

...

**Clause 6 Price Structure and Payment**

- *The total value of the contract is R1 995 750 (excluding VAT) which will with effect from 1 March 2009 be paid on a monthly retainer of R 150 000.00 on date of every month.*

- *The Contractor shall be entitled on a monthly basis. To submit the timesheet to CEO office.(sic)*

...

**Clause 10 Price Structure and Payment**

*This agreement, and the proposal submitted by the Contractor to the Client on or about 27 October 2008 constitutes the whole agreement between the parties as to the subject matter thereon and no agreements; representations or warranties between the parties other than those set out herein or in such proposal are binding on parties."*

- 6.32.2.5 I have observed that PRASA appointed AR Chimanda Consulting for advisory services and did not appoint Mr Joel Chimanda as an employee. As such the applicable instrument to measure PRASA's conduct is the PRASA SCM Policy and not its Recruitment and Selection Policy.
- 6.32.2.6 I have found that the appointment of AR Chimanda Consulting was not preceded by a competitive bidding process in compliance with the provisions of PRASA SCM Policy.

**6.33 Complaint 33: Regarding PRASA's alleged improper replacement of the Group Executive HR with the GCEO's uncle, Mr Mphefo Ramutloa without following proper recruitment process:**

6.33.1 Common cause

- 6.33.1.1 It is common cause the Mr Mphefo Ramutloa was appointed as the Group Executive HR by PRASA.

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6.33.2 Issues in dispute

6.33.2.1 The issue in dispute was whether the appointment of Mr Ramutloa was in line with PRASA's Recruitment and Selection Policy.

6.33.2.2 It is also in dispute whether or not Mr Ramutloa is Mr Montana's uncle.

6.33.2.3 In Mr Montana's response to the section 7(9) notice, he provided documentation which indicates that the position of Group Executive HR was advertised internally on 11 November 2010. Two applications were received and one was from Mr Ramutloa dated 22 November 2010.

6.33.2.4 PRASA conducted interviews on 25 November 2010 whereupon Mr Ramutloa was recommended for appointment.

6.33.2.5 Mr Montana and Mr Ramutloa both denied the existence of relationship between them.

**6.34 Complaint 34: Regarding PRASA's alleged failure to deal with staff members who were involved in fraudulent Electronic Funds Transfers:**

6.34.1 Common cause

6.34.1.1 It is common cause that PRASA lost R8.1 million in 2010 through unlawful Electronic Funds Transfer from their Metrorail Durban and Tshwane regions bank accounts.

6.34.2 Issues in dispute

6.34.2.1 The issue for my determination is whether or not PRASA failed to take disciplinary action against employees who were allegedly involved in the loss of the money.



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6.34.2.2 In its response received on 29 August 2013 regarding this particular allegation PRASA stated that:

- a) Management uncovered the fraudulent Electronic Funds Transfers in the Durban and Tshwane regions of Metrorail. Management reported the criminal acts to the SAPS, recovered some of the stolen funds and instituted a forensic investigation.
- b) Management terminated PRASA's banking relationship with Standard Bank after it felt that the bank did not do enough to protect PRASA and that it was not affording due attention to the investigation.
- c) The Audit and Risk Committee of the PRASA Board and Management took appropriate action and reviewed the controls governing the transfer of funds from PRASA bank accounts.
- d) PRASA has raised concerns that the criminal investigations have not been concluded so that those involved in this crime are brought to book.

6.34.2.3 Mr Montana in support of his response provided us with the Deloitte Report dated 26 February 2010.

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6.34.2.4 According to the Deloitte Report the following transpired:

*"Executive summary (enter alia)*

*Two incident of EFT fraud took place at the Durban and Tshwane Regional offices during June and July*

*Approximately R 4 million was fraudulently transferred on each occasion. The total loss at the date of Deloitte report was R 4 710 658.45 as R 3,463 456.44 had been preserved by the respective banks*

*The fraudulent EFT transactions were perpetrated via 369 beneficiary bank accounts. The Nature of the fraud perpetrated in Durban and Tshwane Regions was of a sophisticated and complex level. The possible involvement of more than one crime syndicate and collusion between Prasa staff and external parties are likely*

*Description of the Fraud*

*Durban*

*According to the business online logs from Standard bank, the unauthorised access was initiated after 21h00 on Friday 13 June and continued to run over the long weekend. The access only terminated on Tuesday 18 June at approximately 09h38*

*As a result of hacking, electronic payments totalling to R 4 167 012 were deposited into 180 beneficiary bank accounts mainly held with South African's top 4 bank .*

*The respective banks froze the beneficiary accounts when they were alerted to the fraud and as a result an amount of R1 681 169 was preserved. At the date of the report, Metrorail had recovered R1 679 303. Therefore the total loss by Metrorail in respect of the Durban Fraud was R2, 487 709*

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*Tshwane Region*

*A second fraud was perpetrated just a month later at Metrorail, Tshwane. According to the business Online logs from Standard, the unauthorised access was initiated on Wednesday 9 July 2008 at approximately and again after 22h00. Unauthorised access was gained for the second time on 10 July 2008 after 22h00. There was further unauthorised access on Friday 11 July after 12h00 and again after 18h00, thereafter the access continued to run over all hours of the weekend. The access only terminated on Monday, the 12 July at approximately 03h20. As a result banks froze the beneficiary accounts when they were alerted to the fraud and as result an amount of R1 782 287 had been preserved."*

- 6.34.2.5 Clause 13.2 of the Deloitte report dealing with Negligence of Employees stated the following:

*"Metrorail should consider whether the employees who became aware of the looming Tshwane Fraud on Friday 11 July 2008, as well as those in Durban who did not implement any procedures to mitigate the company's risk immediately on discovery of the unknown transactions when appeared on the CATS system on the afternoon of 17 June 2008, should be disciplined for not preventing additional losses."*

- 6.34.2.6 Section 13.3 deals with possible disciplinary action: contravention of Metrorail's computer policy.

- 6.34.2.7 The following contraventions of the information and Communication Technology: Password Policy, have been identified:

*"Clause 5.4.2 Difficult to Guess Passwords Required: Mr Ngobeni indicated that he made use of a simple or generic password and that someone may have been able to identify it while watching the key PRASA Board as it is typed"*

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*Clause 5.8.4 Passwords Must Never be written down: Both Mr Chetty and Ms Pillay acknowledged that they wrote down their Business Online usernames and password in their diaries*

*Clause 5.8.5 Password Sharing Prohibition: Ms Gcabashe disclosed her username and password to Mr Mabaso to enable him to use her computer when she was not at her desk. This placed Metrorail at risk, especially in view of the fact that Ms Gcabashe has the rights of an IT administration, which involves the authority to access all Metrorail computers.*

*Clause 5.8.5 Password Sharing Prohibition: Mr Ngobeni disclosed his CATS password to Ms Palliyiah telephonically while he was on leave. This action poses the very serious risk to Metrorail as it means that a single user could perform more than one function on CATS.*

*The report also indicates that the following case number:*

*CAS number: Durban Central CAS 1175/06/2008*

*CAS number: Tshwane Central CAS 631/09/2008*

### *Executive Summary*

*According to Mr Sibeko, some two weeks prior to the fraud in Tshwane (around 11 July 2008), he was approached by members of the crime syndicate. They requested him to assist in the execution of fraud.*

*Around the 26th and 27 June 2008, Mr Sibeko, received a telephone call from a man called "John". At the time Mr Sibeko was selling computers in his own personal capacity. John initially contacted him to enquire in this regard. John*

*subsequently contacted Mr Sibeko and met with him, outside his flat in Paul Kruger Street. At the meeting, John explained that he was from Durban, he had obtained money from Metrorail CATS system in Durban and that he required the passwords of the people working on the system in Tshwane.*

*Mr Sibeko approached "Benny" at Protection Services and he was subsequently directed to Mr Kabelo Mantsane (Mr Mantsane), the Head of Protection Services. Mr Sibeko explained the events to Mr Mantsane. Mr Mantsane confirmed that there was a fraud case being investigated in Durban and required additional information. He suggested that Mr Sibeko should meet with John, should he make further contact with Mr Sibeko.*

*Later that week, Mr Sibeko was contacted again and another meeting was requested with John. Mr Sibeko informed Mr Mantsane of the new development and later told him to meet with John and to obtain as much information as possible. Mr Sibeko met with three men in Greenfield in Hatfield, at the meeting, the men explained to Mr Sibeko what they did in Durban. They had a spy software (spyware) which was plugged onto a network or anywhere on a computer that will provide the information they require. They wanted Mr Sibeko to place the spyware for them in order to obtain the passwords they needed. Mr Sibeko told them that he first needed to see the spyware in order to decide on whether he would be able to use it. The men initially offered Mr Sibeko R 150 000 if he successfully secured the passwords.*

*A day or two later after the meeting, Mr Sibeko reverted to Mr Mantsane, and provided him feedback. According to Mr Sibeko, Mr Mantsane informed him that he was working on a plan and that he wanted someone trustworthy from the Police to help with the case.*

*Mr Sibeko later had a third meeting with the men. He wanted to certain how the spyware worked and took his official laptop with him. Mr Sibeko handed his laptop to the men and they proceeded to try to install the software. The software was*

contained on something that looked like a Sony Play Station 2 (PS2) adaptor and the device fitted into one of the ports on the computer. However, the anti-virus software on Mr Sibeko's computer detected the intrusion and the installation was automatically aborted.

The following day Mr Sibeko met with Mr Mantsane at a hotel opposite the Union building. He explained to him exactly what had happened and that the software would not work because of the antivirus program.

Approximately a week later, the men contacted Mr Sibeko again and requested another meeting. They informed him that they had secured the new spyware and wanted to continue with a plan. Mr Sibeko tried to contact Mr Mantsane to provide him with update, but could not get hold of them. Mr Sibeko undertook to meet with the men, but he tried to delay them for 2 to 3 days by not taking their call, as Mr Mantsane informed him that he was waiting for someone from the police to assist. He further met them a couple of times. The men subsequently increased their offer of R 150 000 to R200 000 for Mr Sibeko's assistance.

The criminal case relating to the Tshwane incident was only opened on 13 September 2008, whereas the Fraud incident occurred in Mid-July. Prior to the case being opened, two suspects were arrested in Durban. These suspects were arrested in Durban. These suspects were arrested when they presented themselves as account holders wanting to make withdrawals from the beneficiary bank accounts used to perpetrate the Tshwane fraud. These suspects were subsequently released as the criminal case relating to the Tshwane incident was not opened at the time

During the interview with Mr Mantsane, he acknowledged that the police case for the Tshwane fraud was opened late. Mr Mantsane was of the impression that the case was opened late. Mr Mantsane was of the impression that the case would be opened by Standard Bank. Contrary to Mr Mantsane's statement, the Standard

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*Bank report compiled by the forensic team urged Metrorail to open a police case in respect of the Tshwane fraud.*

*It was pointed out on the report that there is a reporting obligation on PRASA to report the commission of such crime to a police officer in terms of Prevention and Combating of Corrupt activities Act, No 12 of 2004. Section 34 of the said Act stipulates that "Any person in a position of authority who knows or ought reasonably to have known or suspected that another person has committed corruption, the offences of theft, fraud extortion, forgery or uttering of a forged document, involving R100 000 or more, must report such knowledge or suspicion or cause same to be reported to the police official.*

*Mr Sibeko was aware of the looming threat of fraud for approximately 2 weeks prior to the event taking place. He could not provide us with an explanation as to why the bank account was not closed during the Friday of the first week.*

*According to Mr Piet Pieterse of the Scorpions, the matter was only reported to him subsequent to the occurrence of the Tshwane Fraud.*

*(Mr Sibeko had various meetings with members of the syndicate without a backup from the Law-enforcement agencies)*

*According to Mr Sallie, anyone at Metrorail and not necessarily a bank designated person could have reported the fraud treat to Standard Bank and requested that the accounts be shut down accordingly. The duty would then be on Standard Bank to take the necessary precautions, However Mr Mantsane, Mr Kekana and Ms Matloga did not make an attempt to contact Standard Bank on that Friday Afternoon."*

- 6.34.2.8 A copy of a warning letter in respect of Ms Kumarie Pallaiyiah, only signed by the manager (only the signature can't see the name of a person), the letter was signed on 9 June 2010.

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*"Nature of offence*

*Failure to comply to clause 3 (Password Administration) of the Metrorail Network Policy, when by your admission, you requested your subordinate, whilst he away on annual leave, to disclose his CATS password to you for you to process payments on the system on his profile, even though he was not at work on the day in question"*

*Action Taken*

*It has been decided to issue you a Final Written Warning valid for 12 months effective date of signature."*

6.34.2.9 A grievance document by Ms Kumarie Pallaiyiah, Assistant Manager was provided to the investigation team. In the grievance, Ms Pallaiyiah expressed unhappiness about the final written warning that was issued to her on 09 June 2010 after the Deloitte Report. She appealed for her final written warning to be withdrawn and that formal charges be brought against her to enable her to defend herself.

6.34.2.10 According to the Director's section in paragraph 3.1(iii) of the 2008/09 PRASA Annual Report:

*"Fraudulent banking transactions were processed in the Metrorail Durban and Tshwane regions in June 2008 and July 2008 respectively. These transactions were processed through the Standard Bank Business Online Electronic system, which the regions use to pay suppliers. The system's security access controls were breached to process the fraudulent transactions.*

*A total amount of R 8.1 million was withdrawn from the region's bank account and paid into fictitious bank accounts created by fraudster(s). The matter was reported to Standard Bank and the South African Police Service for investigation.*



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*In addition, Deloitte Forensics has been engaged to carry out a more detailed forensics investigation and make recommendations on areas that might still need improvement. The investigation is on-going.*

*To date, Standard bank has recovered R 2.4 million. The balance of the loss has been accounted for in the Financial Statements under review and an insurance claim accordingly.*

*To prevent recurrence of this nature, Management has implemented stringent internal control measures around electronic banking which include, amongst others, removing the ability to create new vendors/creditors from the regions, more frequent changing of passwords as well as enhancing and enforcing of the segregation of duties.*

*The Audit and Risk Management Committee and the PRASA Board are being appraised of progress and developments in this matter."*

- 6.34.2.11 From the evidence provided to me, disciplinary action was taken against only one of the six (6) employees found responsible by a Deloitte forensic investigation, for security lapses that led to the fraudulent Electronic Funds Transfer of funds from their KwaZulu Natal and Gauteng bank accounts.

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6.34.2.12 PRASA took action against Ms Pallaiyiah but inexplicably failed to take disciplinary action against the other five individuals recommended for possible disciplinary as mentioned in paragraph 13.3 of the Deloitte Report of 26 February 2010, to wit:

1. Mr Ngobeni;
2. Mr Chetty;
3. Ms Pillay;
4. Ms Gcabashe; and
5. Mr Mabaso.

**6.35 Complaint 35: Regarding GCEO's alleged improper Blue Train trip to Cape Town together with 10 female companions during the period between 24 to 27 September 2009 and return by SAA flight at an estimated cost of R170 000.00 and did such amount to fruitless and wasteful expenditure:**

6.35.1 Common cause

6.35.1.1 It is common cause that Mr Montana undertook a Blue Train trip to Cape Town during the period 24 to 27 September 2009.

6.35.2 Issues in dispute

6.35.2.1 The issue for my determination was whether or not Mr Montana undertook a Blue Train trip with ten female companions to Cape Town resulting in fruitless and wasteful expenditure.

6.35.2.2 In his response received on 29 August 2013, Mr Montana stated that regarding this particular allegation was that 3 PRASA Executives Engineers embarked on an

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operation inspection of the Blue Train for the purpose of assessing its operations on 25 of April 2011. This date does not correlate with the date alleged by the Complainant and therefor the response in this regard is not relevant to the issue. No evidence relating to PRASA's contention was provided.

6.35.2.3 Mr Montana argued that PRASA uses an electronic diary and at the commencement of everyday calendar year, these electronic diaries automatically delete entries of the preceding years and therefore could not provide same, as the information was already deleted.

6.35.3 Evidence obtained from SAA and the Complainant

6.35.3.1 The evidence reveals that the trip of September 2009 was arranged by the office of the GCEO using PRASA's official travel agency.

6.35.3.2 However, the evidence obtained from SAA indicates that the travelling costs in respect of the persons referred to by the Complainant, was paid for in cash.

6.35.3.3 The Complainant provided photographs taken between 24 and 27 September 2009. Documents received from SAA and photographs received from the Complainant suggest that Mr Montana travelled on 24 September 2009 in the same train with the following persons:

- a) Ms Patience Dlamini;
- b) Ms Dorothy Letsoalo ;
- c) Maggie Mopedi;

- d) Karabo Nosilela; and
- e) Gwendoline Thabane.

6.35.3.4 However, I have not been provided with convincing evidence to conclude that Complainant's allegation is corroborated and proved. In the absence of such evidence, I am inclined to afford Mr Montana the benefit of doubt.

**6.36 Complaint 36: Regarding PRASA's alleged improper payment of salaries to Mr Mabe, former Executive Corporate Affairs Manager during 2008/2009, after his resignation from PRASA amounting to fruitless and wasteful expenditure, and did PRASA's GCEO in relation thereto mislead the Exco and the PRASA Board:**

6.36.1 Common cause

6.36.1.1 It is common cause that Mr Pule Mabe, former Executive Corporate Affairs Manager of the SARCC left its service during 2009.

6.36.2 Issues in dispute

6.36.2.1 Mr Montana denied that PRASA paid salaries to Mr Mabe after he resigned despite having left its service and that he misled EXCO and the PRASA Board that the employee was not on PRASA's payroll but its predecessor, the SARCC.

6.36.2.2 No information relating to payment of salaries in respect of Mr Mabe was provided by PRASA.

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**6.37 Complaint 37: Regarding Mr Montana's alleged improper transferring of Mr Stephen Ngobeni without disciplinary process being followed for his alleged irregular appointment of a Training Contractor to provide training services on the handling of People with Disability thereby amounting to maladministration:**

**6.37.1 Common cause**

6.37.1.1 It is common cause that Mr Stephen Ngobeni was in the employment of PRASA (formerly Cape Metrorail) since 1988.

**6.37.2 Issues in dispute**

6.37.2.1 The issue for my determination was whether or not Mr Ngobeni was improperly transferred without disciplinary processes being followed and whether Mr Ngobeni is related to Mr Montana.

6.37.2.2 PRASA denied in their response dated 29 August 2013, that Mr Stephen Ngobeni was improperly transferred without disciplinary process being followed for his alleged appointment of a Training Contractor to provide training services on the handling of People with Disability. PRASA provided in support of its contention the employment files of Mr Ngobeni containing among others his history of his employment with the organisation since the time of Metrorail.

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- 6.37.2.3 In its response received on 13 March 2013, PRASA submitted that Mr Ngobeni was appointed in the security department of Cape Metrorail in 1988 and worked through the ranks to become head of security, head of operations and was eventually the Regional Manager of Cape Metrorail.
- 6.37.2.4 Documents supporting this contention supplied by PRASA were reviewed and it was noted as confirming the submission by PRASA in this regard. According to PRASA's contention, Mr Ngobeni was demoted and transferred after his handling of a labour dispute that resulted in a strike and loss of assets.
- 6.37.2.5 It was contended that Mr Montana joined the rail utility only in July 2006, eight years after Mr Ngobeni was appointed by Metrorail in Cape Town and Mr Montana accordingly rejected the allegation that Mr Ngobeni is his cousin. I have also not discovered any evidence during the course of the investigation which proves this allegation and in the absence of such evidence I am inclined to conclude that no such relationship exists.
- 6.37.2.6 I have also not discovered evidence to prove that Mr Ngobeni was transferred without disciplinary action being taken against him for the appointment of a Training Contractor as alleged by the Complainants.

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## **7. MEASURING CONDUCT AGAINST THE RULES**

### **7.1 Regarding the alleged irregular awarding of a tender for the installation of high speed passenger gates worth R800 million to a certain contractor in 2009/2010 for the Doornfontein station which was later improperly extended to other stations nationally:**

7.1.1 Having concluded that the PRASA Board extended the scope of the tender awarded to Siyangena Technologies for the supply and installation of high speed passenger gates at Doornfontein and Nasrec stations to other stations nationally, the matter to be adjudicated was whether or not PRASA's conduct in extending the said contract was in contravention of its SCM Policy and applicable national prescripts.

7.1.2 To arrive at a fair answer I had to test PRASA's manner in which the widening of the scope of high speed passenger gates tender was implemented with the requirements of allowing closed tenders.

7.1.3 Had the award been made in response to an emergency as alleged in one of the PRASA versions, the provisions of paragraph 11.3.5 of PRASA SCM Policy would have applied. Although the provisions of this paragraph appear to confine emergency situations to disasters (e.g. damage from cyclones, floods, fire, etc.), systems failures and security risk, it could have been legitimately accepted that not having the high speed passenger gates could pose a risk.

7.1.4 However, having concluded that the submission that the extension was 4 months before the FIFA World Cup in June-July 2010, was untrue, the emergency, I could use the requirements under emergency provisions to assess whether the manner

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in which the extension of the scope for Siyangena's tender complied with such requirements.

7.1.5 The compliance framework I considered appropriate was paragraph 11.3.2 of PRASA SCM Policy regulating general procurement to embark on a competitive bidding process when the estimated total value of the requirement is more than R350 million.

7.1.6 Had PRASA applied the provisions of their own SCM Policy, specifically with regard to needs assessment required to be completed by an end user in terms of their demand management process as provided for in paragraph 10.2, it would have identified the future needs requirement to have the same technology on the same infrastructure nationally. The same argument can be made with regards to the delivery date for the project. Had there been a proper needs assessment, the need for emergency extension of the tender would have been obviated.

**7.2 Regarding PRASA's alleged improper advancing of an upfront payment to a developer of the City Mall for the construction of an underground train station on the Bridge City Project:**

7.2.1 In the absence of conclusive evidence on what happened regarding PRASA's alleged advance payment on City Mall, I could not adjudicate whether or not such payment was made irregularly or in line with PRASA's SCM Policy and national prescripts. My conclusions on this matter will be covered in Volume 2.



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- 7.3 Regarding the alleged irregular awarding of Dark Fibre and Integrated Communication Systems tender amounting to R800 million to Siemens nationally during the financial year 2009/2010 when it was only advertised in Gauteng:**
- 7.3.1 Having concluded that the PRASA extended the scope of the tender awarded to Siemens for the supply and installation of Dark Fibre and Integrated Communication Systems at Gauteng region to two other regions (Cape Town and Durban), the matter to be adjudicated was whether or not PRASA's conduct in extending the said contract was in contravention of its SCM Policy and applicable national prescripts.
- 7.3.2 To arrive at a fair answer I had to test the manner in which PRASA, in widening the scope for the supply and installation of Dark Fibre and Integrated Communication Systems to two other regions (Cape Town and Durban), was implemented without following a competitive procurement process. The appointment of Siemens to the two other regions was concluded by motivation submitted by the Chief Procurement Officer and approved the Acting Chief Executive Officer at the time.
- 7.3.3 This was in contravention with paragraph 11.3.1 of the PRASA SCM Policy which requires that in procurement of goods or services below R350 million, three written quotations should be obtained from suppliers on the PRASA database. PRASA failed to obtain the three quotations but extended the appointment of Siemens to two other regions without submission of any quotations for the extended scope.
- 7.3.4 PRASA extended the design, supply and installation of the Dark Fibre and Integrated Communication Systems tender, which was advertised and won by Siemens for the Wits and Pretoria region, to the Durban (KZN) and Western Cape

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regions without following open and competitive tender processes in contravention of paragraph 11.3.2. of PRASA SCM Policy and section 217 of the Constitution, amongst others.

7.3.5 While PRASA's argument that ensuring uniform technology in all its regions was a rational decision is sound, PRASA should have identified this factor during the demand management stage of the procurement process as envisaged in paragraph 10.1 of its SCM Policy and advertised the tender for the broader scope. We will also never know if pricing competitiveness was not compromised given the fact that it is not unusual for pricing for small scale projects to be higher than that for large scale projects because of the capital outlay involved.

**7.4 Regarding the alleged irregular termination of all contracts for cleaning services and the improper and appointed Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services:**

7.4.1 Having concluded that PRASA terminated the contracts of seven cleaning companies and later replaced them with Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services, the issues I had to adjudicate was firstly, whether the termination was proper and secondly whether the subsequent appointment of the new companies was in line with the PRASA SCM Policy and applicable national prescripts.

7.4.2 The contracts of the 7 cleaning companies were summarily terminated on 14 March 2012 in contravention of paragraphs 8.1 of contracts between PRASA and the cleaning companies which prescribes a 48 hour notice to be given to the defaulting party to remedy the breach. PRASA replaced these companies with

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Reakgona and Katanga on 15 March 2015, whose services were procured without a transparent and competitive process.

- 7.4.3 Mr. Montana submitted that the appointments of the new companies were in line with the emergency provisions of the PRASA SCM Policy. I have not been persuaded by Mr. Montana's attempt to squeeze this conduct into the emergency provisions of the SCM Policy as no allegation was made or evidence provided to show that the cleaning companies could not have complied with the 24/48 hour rule for remedial action by a defaulting party. The conduct further cannot be said to be consistent with the requirements of administrative justice as envisaged in section 33 of the Constitution and the Promotion of Administrative Justice Act (PAJA), Act no. 3 of 2000. It also cannot be said to be consistent with the notion of a people centred state as envisaged in Batho Pele: White Paper on Transforming Public Service Delivery.
- 7.4.4 The conduct of Mr. Montana with regard to the irregular termination and the subsequent appointment is also inconsistent with the provisions of the PRASA SCM Policy, the PFMA and section 217 of the Constitution which requires a fair, equitable, transparent, competitive and cost effective bidding process.
- 7.4.5 I have also not been persuaded by PRASA's reliance on a unique interpretation of its SCM Policy's urgency provisions as it was its own improper termination of the previous cleaning services that created the urgency. Treasury Regulations specifically state that an own created urgency does not qualify for permissible deviation from the mandatory competitive and transparent bidding processes. Whilst the appointment of the Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services was indeed approved by Mr. Montana, the appointment was not in line with paragraph 11.3.2 of the PRASA SCM Policy.

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**7.5 Regarding the alleged irregular appointment of Sidas Security on a security tender in replacement of National Force Security on the GCEO instruction:**

- 7.5.1 Having concluded that PRASA appointed Sidas Security on a security tender to replace National Force Security whose contract was terminated, the issue for me to adjudicate was whether the appointment was in line with PRASA's SCM Policy. I was also required to determine whether indeed the appointment was on Mr. Montana's instructions.
- 7.5.2 The month to month contract of National Force Security was terminated on 20 April 2009 and was awarded to Sidas Security for R3 094 261.00 on the same day without a tender process or sourcing of quotations.
- 7.5.3 The action was in contravention of paragraph 11.3.5 of the PRASA SCM Policy and paragraph 4.7.5.1 of the National Treasury SCM Guideline of 2004 which provides that an emergency *"is a case where immediate action is necessary in order to avoid a dangerous or risky situation or misery"*.
- 7.5.4 PRASA did not dispute that the appointment of Sidas Security was improper. In fact, PRASA took disciplinary action against Mr S Motaung.
- 7.5.5 However, the consequent damage was partially corrected through disciplinary action taken against Mr Motaung, one of the signatories to the appointment.

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**7.6 Regarding the alleged irregular appointment of Vimtsire Security Services by PRASA on tender number 525/2010/GAU/PS:**

- 7.6.1 Having concluded that PRASA appointed Vimtsire Security Services as one of the security companies under tender 525/2010/GAU/PS amounting to R670 million, on a contract valued at R7 537 680.00 and extended twice for the amounts of R14 441 976.00 and R15 308 494.56 respectively without an advertisement or sourcing competitive quotations, the issue for me to adjudicate was whether the appointment was in line with PRASA's SCM Policy and applicable national prescripts.
- 7.6.2 The compliance framework I considered appropriate was paragraph 11.3.2 of PRASA SCM Policy regulating general procurement to embark on a competitive bidding process when the estimated total value of the requirement is more than R350 million.
- 7.6.3 Therefore the appointment of Vimtsire Security Services by PRASA on a six months contract in the amount of R7 537 680.00 and its extension for further 12 months periods amounting to R14 441 976.00 and R15 308 494.56 respectively, were done in contravention of the PRASA SCM Policy as no competitive bidding process was followed.
- 7.6.4 The failure by PRASA to follow a competitive bidding process and to provide me with a motivation for the emergency purchase which should have been submitted to the GCEO for ratification is in contravention of paragraph 11.3.5 of PRASA SCM Policy.

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- 7.6.5 The contract, which I realised was not signed by PRASA and only had Vimtsire Security Services' signature, also provided for a contract price increase of 31% which is in contravention of paragraph 5.16.1.1.1 of the National Treasury SCM Guide which requires a contract change above 15% to be approved by the accounting officer/authority or his/her delegate.
- 7.7 Regarding the alleged irregular payment of Royal Security invoice for security services:**
- 7.7.1 Royal Security was paid R2.5 million in line with the contract and not R2.8 million as alleged. Therefore the allegation was not substantiated by evidence.
- 7.8 Regarding PRASA's alleged improper advancement of a payment of R600.000.00 to Enlightened Security**
- 7.8.1 Having concluded that PRASA made two advance payments amounting to R681 720.00 and R684 720.00 respectively to Enlightened Security, the issue for me to adjudicate was whether the advanced payment was in line with applicable national prescripts.
- 7.8.2 The compliance framework I considered appropriate was paragraph 15.10.1.2(c) of National Treasury SCM Guidelines which stipulates that sound cash management includes avoiding prepayments for goods or services (i.e. payments in advance of the receipt of the goods or services), unless required by the contractual arrangements with the supplier.
- 7.8.3 PRASA's consistent conduct of the advance payment to Enlightened Security prior to the signing of the contracts and the issuing of *"Notices to Proceed"* was in

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contravention of paragraph 15.10.1.2(c) of National Treasury SCM Guidelines. The advanced payment by PRASA, without contracts and related documents to regulate the service provisions and payment schedules with Enlightened Security, was not a sound cash management practice.

7.8.4 Having considered the contracts between PRASA and Enlightened Security I could not find any provision for a contractual arrangement catering for any prepayments to be made by PRASA to Enlightened Security.

7.8.5 I have also observed PRASA management's failure to take disciplinary steps against the Manager responsible for the advance payments, Mr Joe Ngcobo despite initially commencing a disciplinary process. The conduct is in violation of the accounting officer's responsibility under section 38 of the PFMA.

**7.9 Regarding PRASA's alleged improper awarding of the contract for the production of *Hambanathi Magazine*:**

7.9.1 Having concluded that PRASA appointed KG Media for the production of the national commuter newspaper, *Kwela Express* also known as *Hambanathi* for a total contract amount of R33 528 222.00 , without a competitive and transparent bid process, the issue for me to adjudicate was whether the appointment was in line with PRASA's SCM Policy and applicable national prescripts.

7.9.2 The legislative framework I have had to consider in determining if the appointment of KG Media by PRASA was in line with the requisite procurement prescripts are the PRASA SCM Policy, particularly paragraph 11.3.1.1 requiring that procurement for goods and services below R350 million, 3 quotations must be sought from the

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supplier database and section 217 of the Constitution which prescribes a fair, equitable, transparent, competitive and cost effective procurement process.

- 7.9.3 Had PRASA followed its SCM Policy, in particular paragraph 11.3.3, which provides that unsolicited bids are generally prohibited unless, considered and approved by the GCEO, the appointment of KG Media would have been proper had the approval of the GCEO been sought. Instead PRASA entered into a partnership agreement with KG Media, which provided for the publication of advertorials and articles; publication of Metrorail timetables; and relevant information; as well as the coverage of Metrorail events in the interests of rail and public transport users, resulting in KG Media's appointment as a producer of *Hambanathi*.
- 7.9.4 It is clear from the policy that unsolicited bids are reserved for unique concepts or offerings that are not available in the market. The service provided by KG Media to PRASA is not unique and does not fall within the criteria set by paragraph 11.3.3 and therefore the conduct of PRASA was in direct contravention of paragraph 11.3.3 of the PRASA SCM Policy which prohibits unsolicited bids.
- 7.9.5 PRASA's appointment of KG Media for the production of *Hambanathi* without a competitive and transparent process was in violation of its SCM Policy particularly paragraph 11.3.1.1 requiring 3 quotations and section 217 of the Constitution which prescribes a fair, equitable, transparent, competitive and cost effective procurement process.
- 7.9.6 I have also noted that in March 2015, and after PRASA was served with a notice in terms of section 7(9) of the Public Protector Act in February 2015, advising of a possible finding of maladministration in respect of the KG Media contract, PRASA



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- nonchalantly extended the KG Media contract for a further 3 year period from 1 April 2015 to 31 March 2018 for a total contract amount of R465 669.75 per month which translates to R5 588 000.37 per annum and a total contract amount of R16 764 111.00 without following a proper tender process.
- 7.9.7 PRASA's appointment and extension of the contracts with KG Media for the *Hambanathi* totalling an amount of R33 528 222.00 is a flagrant contravention of PRASA's own SCM Policy.
- 7.9.8 Mr Montana's extension of the contract while being aware of an impending finding of maladministration regarding the KG Media contract while having asked for time extension to respond to the section 7(9) notice, is an act of bad faith, which is inconsistent with his responsibilities under section 195 of the Constitution, which requires a high standard of professional ethics and, according to the Constitutional Court, in *Khumalo versus MEC for Education KwaZulu Natal*, which imposes a duty on him to correct an irregularity once his attention has been drawn to it.
- 7.10 Regarding PRASA's alleged improper appointment of Mr Ezra Ndwandwe, a Change Management Consultant:**
- 7.10.1 Having concluded that the allegation that Mr Ezra Ndwandwe's Consultancy Company, and not him personally, was improperly appointed for the amount of R10 833 774. 00 for a period of 12 months is substantiated. The matter to be adjudicated upon was whether or not Mr Montana's conduct in the said appointment was in line with PRASA SCM Policy and national legislative prescripts.

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- 7.10.2 The conduct of Mr Montana in the appointment of Ndwandwe Consultancy for the Value Creation and Culture Change process at PRASA for the amount of R6 220 800.00 without requiring three quotations from suppliers in the PRASA supplier database was in contravention of paragraph 11.3.1.1 of the PRASA SCM Policy. The contract was extended for a further 6 months with the contract amount variation of R4 612 974.00 exceeding 40% in contravention of paragraph 5.16.1.1.1 of the National Treasury SCM Guidelines.
- 7.10.3 I could not accept Mr Montana's assertion that the contract with Ndwandwe Consultancy was an employment contract for a Special Advisor and that he as GCEO had the power to approve. My conclusion is that the contract was for the appointment of Ndwandwe Consultancy as a juristic person, and not Mr Ndwandwe as a natural person. I also could not accept an attempt to pass the contract as an emergency intervention in line with the emergency provisions of paragraph 11.3.5 of the PRASA SCM Policy as change management was not addressing a situation envisaged in the emergency procurement provisions, which include single sourcing.
- 7.10.4 The appointment of Ndwandwe Consultancy by Mr Montana was therefore in contravention of PRASA's own SCM Policy and section 217 of the Constitution.
- 7.10.5 From the evidence it is clear that Mr Ndwandwe's Consultancy's appointment was triggered by an existing relationship, which had included an excursion that took place immediately before the impugned contract was initiated. It is also clear that no process was followed to establish if any other agency offered similar services. More importantly, no demand management exercise preceded the engagement. Unfortunately, the investigation did not examine what the excursion mentioned in the procurement memorandum dated 16 September 2008 was for, whether or not

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PRASA paid for it and how Mr Ndwandwe's Consultancy had been procured it as the impugned engagement apparently flows from that excursion.

**7.11 Regarding PRASA's alleged improper awarding of a CCTV cameras tender to Mr Vusi Twala, a board member at the time:**

7.11.1 I have been unable to conclude whether the CCTV cameras tender was awarded to Mr Vusi Twala, a member of PRASA Board.

7.11.2 In order for me to adjudicate the matter, I would need to have had sight of the documents used in the procurement process for the tender in question, which PRASA failed to provide me with.

7.11.3 However, the only two documents provided to me by PRASA were the Managers' disclosure of interest, other directorship and interest in contract questionnaire form completed by Mr Vusi Twala, declaring that he is a Director at several companies and a member in (2) two close corporations, as well as the PRASA Board's Minutes of a meeting held on 1 December 2008 reflecting Mr Vusi Twala's disclosure of interest in the CCTV cameras Project.

7.11.4 What is however apparent from these documents is that Mr Vusi Twala indeed had some or other interest in the CCTV cameras project. This is due to the minutes reflecting that the PRASA Board has accepted that Mr Vusi Twala has fully declared his interest with regard to the CCTV cameras project.

7.11.5 I could not arrive at a conclusion due to the fact that the evidence regarding the awarding of the CCTV cameras project including the details of the owners of the company was not provided to me.

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**7.12 Regarding PRASA's alleged improper extension of the scope for the marketing and communications on tender number HO/M&C/305/07/2009 awarded to Brand Leadership:**

7.12.1 Having concluded that the allegation that PRASA improperly increased the scope and price of a marketing and communications tender awarded to Brand Leadership is substantiated, the issue for me to adjudicate on is whether or not PRASA's conduct in increasing the scope and price in the said contract was in contravention of its SCM Policy and applicable national prescripts.

7.12.2 To arrive at a fair answer, I had to test PRASA's manner in which the widening of the scope and the price increase of a marketing and communications tender was concluded. PRASA Bid Adjudicated Committee (BAC) recommended the scope of a tender at the value of R12 900 000.00 and it was later increased beyond the advertised scope and the price was consequently increased to R29 528 000.00 by PRASA's CTPC with the approval of the GCEO. The decision by the CTPC to extend the scope and increase the price to R29 528 000.00 for the marketing and communications tender without request and recommendation was in contravention of paragraph 9.4.7 of PRASA SCM Policy which provides that the CTPC has the power to review and approve requests for extension of contracts as per Delegation of Authority. The project timeline was also stretched from September 2009 to October 2009, by an additional 6 months, to March 2010, which amounts to "scope creep".

7.12.3 In increasing the scope and price of the Brand Leadership tender in excess of what was advertised, the conduct of the PRASA's CTPC was in contravention of paragraph 9.4.7 of the PRASA SCM Policy and paragraph 5.16.1.1.1 of the

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National Treasury SCM Guideline of 2004 setting out a proper process for demand management and the process to be followed in extending the scope of a contract.

**7.13 Regarding the GCEO's alleged improper appointment of Mr Edwin Lekota on a tender for the Development of a Contingency Emergency Preparedness Programme for Metrorail:**

- 7.13.1 Having concluded that the allegation that Mr Montana appointed Mr Edwin Lekota's Lekga Investment Holdings, for the ISO 9001: 2000 compliance work without a competitive process, the matter for determination was the implication for compliance with SCM Policy and other applicable national prescripts.
- 7.13.2 The appointment, which was an appointment in confinement or as a single source clearly deviated from the SCM Policy. It could not be justified on special skills as no evidence of Mr Lekota's special skills was mentioned in the motivation for appointment.
- 7.13.3 Furthermore there was no emergency as this appointment was not linked to the burning of trains which had necessitated an investigation. In this regard, I am unable to accept Mr Montana's submission that the appointment of Mr Edwin Lekota, former CEO of the predecessor of PRASA on a panel with, Dr Chris Dutton and Mr Friedel Mulke as part of a Board of Inquiry following the burning of trains in Soshanguve, City of Tshwane, Gauteng.
- 7.13.4 However, I am encouraged by Mr Montana's undertaking in his response to my provisional findings, to ensure that such experts are, in future, invited to be part of an existing panel of experts in the PRASA database.

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- 7.13.5 The appointment was accordingly in contravention of the PRASA SCM Policy, the PFMA, the PPPFA and s217 of the Constitution.
- 7.14 Regarding the GCEO's alleged improper awarding of a tender HO/INF(s) 203/06/2010 for technical assistance and supervision for the national signalling project to Siyaya DB, a company of an alleged friend of the GCEO:**
- 7.14.1 Having concluded that PRASA's improper appointment of Siyaya DB, a company of an alleged friend of Mr Montana is not substantiated, no evidence was found to show that Mr Makhensa Mabunda was or is Mr Montana's friend and that such friendship informed his company's appointment.
- 7.14.2 To arrive at a fair answer, I had to consider the process followed by PRASA in the appointment of Siyaya DB, as provided for by the PRASA SCM Policy and national legislative prescripts. It is evident that PRASA did appoint Siyaya DB even though they scored slightly lower than Mr Mott Macdonald, on tender HO/INF/203/06/2010 for rendering of technical assistance and supervision for the national signalling project. The process followed an open and competitive tender process.
- 7.14.3 I have further established from the bid documents that although Mr Mott Macdonald scored 219.67 points while Siyaya DB scored 216.72 points, PRASA appointed Siyaya DB on account of pricing uncertainty in the Mott Macdonald bid and failure by the same to meet the Black Economic Empowerment requirements of PRASA.

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**7.15 Regarding PRASA's alleged improper awarding of a tender for the Park Station Development Framework to ARUP, a company associated with a board member:**

- 7.15.1 I have concluded that the allegation that ARUP was associated with a PRASA Board member when the Park Station Development Framework tender was processed was not substantiated by evidence because at the time of the said appointment of ARUP the board member concerned was indeed a Director at ARUP from 09 February 2011, she made the necessary disclosures to PRASA on 20 July 2011.
- 7.15.2 The second issue that I had to adjudicate upon was whether or not the appointment of ARUP for the Park Station Development Framework tender was proper, taking into consideration the PRASA SAM Policy and national legislative prescripts.
- 7.15.3 PRASA appointed ARUP on 27 November 2009 on a contract for the Park Station Development Framework for the amount of R3 898 940.00 without following proper tender procurement processes. The direct appointment of ARUP without engaging other suppliers was in contravention of paragraph 11.3.7 of PRASA SCM Policy regarding single source/confinement which requires motivation for the GCEO's approval and ratification of single source or confined procurement. The appointment of ARUP was also in contravention of section 217 of the Constitution.
- 7.15.4 PRASA concurred with the allegation that a proper procurement process was not followed in the appointment of ARUP, as required by its own SCM Policy and took action against the persons implicated in the appointment concerned.

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**7.16 Regarding PRASA's alleged improper engagement of various construction companies in respect of 2010 Soccer World Cup Project and the overspending of R2 billion on its CAPEX Budget:**

- 7.16.1 I have been unable to conclude whether or not there was alleged improper engagement of various construction companies in respect of the 2010 Soccer World Cup Project.
- 7.16.2 In order for me to adjudicate the matter, I would need to have had sight of the documents used in the procurement process for the project in question, which PRASA failed to provide me with.
- 7.16.3 However, except for the explanation provided in response to my investigation in which PRASA denied any impropriety in the appointment of the companies for the 2010 Soccer World Cup Project, no documents relating to the said allegations were provided.
- 7.16.4 I wish to also point out that the Complainant has not provided any details of which construction companies were allegedly involved in the 2010 Soccer World Cup Project. The allegations were vague and lacked details.
- 7.16.5 I could not arrive at a conclusion due to the fact that the evidence regarding the appointment of construction companies for the 2010 Soccer World Cup Project was not provided to me.
- 7.16.6 I am unable to make a final determination regarding the over expenditure incurred by PRASA during 2008/2009 and 2009/2010 respectively due to PRASA's failure to provide me with information relating to this allegation.



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**7.17 Regarding PRASA's alleged failure to investigate the theft of the buses of its subsidiary, Autopax:**

7.17.1 I have concluded that the allegation that PRASA failed to investigate the theft of buses of its subsidiary, Autopax, is not substantiated.

7.17.2 I have been provided with records that confirm that PRASA conducted an investigation and internal disciplinary hearings regarding the theft of the Autopax buses which led to the suspension of Mr Frans Makgaba as well as the dismissal of the Executive responsible for security, Mr Chris Brand for gross negligence and dereliction of duty. Furthermore, cases were registered with the SAPS in respect of the theft of the buses.

**7.18 Regarding PRASA's alleged improper awarding of a guarding contract to Futuris Guarding in April 2010 at Autopax City to City:**

7.18.1 Having concluded that PRASA appointed Futuris Guarding on a security contract at an amount of about R10.6 million for a six month contract, the matter to be adjudicated upon was whether or not the appointment was in line with PRASA SCM Policy and applicable national legislative prescripts.

7.18.2 To arrive at a fair answer, I had to consider the process followed by PRASA in the appointment of Futuris Guarding, as provided for by the PRASA SCM Policy and national legislative prescripts. I have established that PRASA did appoint Futuris Guarding on 3 March 2010 on a six months security contract for Metrorail Gauteng North region for the amount of R10.629 million without a transparent and competitive bidding process.

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- 7.18.3 PRASA's conduct was in contravention of paragraph 11.3.1.1 of the PRASA SCM Policy which provides that three written quotes should be obtained from the supplier on the database. It was also at odds with paragraph 11.3.7 of PRASA SCM Policy regarding single source/confinement which requires the decision to make use of a single source and to be motivated for approval and ratifications by the GCEO. The appointment is also in contravention of the provisions of section 217 of the Constitution.
- 7.18.4 The appointment was also in contravention of paragraph 11.3.5 of the PRASA SCM Policy which requires that procurement for services during an emergency must be motivated for approval and ratifications by the GCEO. Although security unarguably involves danger as envisaged in the emergency provisions of paragraph 11.3.5 of the PRASA SCM Policy, I am not persuaded that the procurement of the services of Futuris Guarding conforms to the requirements of urgency because the motivation was not ratified and approved by the GCEO.
- 7.18.5 I have observed that PRASA having been aware of the improper award of the security contract to Futuris Guarding, it unduly failed to cancel the said contract.
- 7.19 Regarding PRASA's alleged delayed payment and improper termination of the Rasakanya Builders contract on 1 November 2012:**
- 7.19.1 I have concluded that the allegation that PRASA improperly terminated the contract with Rasakanya Builders is not substantiated.
- 7.19.2 I have been provided with records that confirm that PRASA's contract with Rasakanya Builders for cleaning services was extended on a month to month

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basis with effect from 1 January 2012. PRASA terminated the contract on 30 October 2012 and accordingly gave Rasakanya Builders a month's termination notice on 28 September 2012 in compliance with their contractual obligations.

7.19.3 In the absence of conclusive evidence in the form of payment schedules relating to PRASA's alleged failure to pay Rasakanya Builders for services provided, I could not adjudicate whether or not indeed PRASA failed to pay Rasakanya Builders on time for services rendered. My conclusions on this matter will be covered in Volume 2.

**7.20 Regarding the GCEO's/PRASA's alleged improper implementation of an upfront payment of the amount of R 80 million for the FIFA World Cup sponsorship without proper approval, budget and/or allocated funds amounting to fruitless and wasteful expenditure:**

7.20.1 Having concluded that PRASA entered into various agreements with FIFA and MATCH (representing FIFA) during the FIFA World Cup to deliver transport services to the FIFA family and the general public, the issue for me to adjudicate was whether or not PRASA made an advance payment in the amount of R80 million to FIFA without proper approval, budget or allocated funds which resulted in fruitless and wasteful expenditure.

7.20.2 I am satisfied with PRASA's contention that the government of South Africa concluded a Memorandum of Understanding (MOU) with FIFA which led to an agreement between PRASA and MATCH wherein PRASA would provide buses to transport the FIFA family. Furthermore PRASA entered into a value in kind agreement (VIK) with FIFA, wherein PRASA was granted national supporter status by FIFA, which allowed PRASA to market its service for the benefit of soccer fans

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- and the commuting public. The agreement allowed PRASA to fulfill its mandate and transport over 1.4 million spectators by train and bus to stadia and fan parks as well as transporting FIFA delegates for the total value of R80 million.
- 7.20.3 I am further satisfied that there was no exchange of money between PRASA and FIFA in terms of the agreement. The agreement outlined that the only exchange of payment to be made was from PRASA to Autopax for the amount of R80 million in settlement of the amounts otherwise due from MATCH under the agreement equal to the anticipated contract value less the actual cash value.
- 7.20.4 I have also observed that the agreement between FIFA and PRASA does not have any clause that indicates that PRASA would recoup any expenditure through sales of tickets as alleged.
- 7.20.5 I am of the view that for Autopax to be able to perform its obligations under the agreement, PRASA would have had to provide the R80 million upfront payment to allow Autopax to purchase the 420 coaches necessary to transport spectators and FIFA delegates.
- 7.20.6 Furthermore the agreement between PRASA and MATCH, which provided for the payment of R80 million to Autopax, was signed by Mr Montana based on his delegated authority from the PRASA Board which authorises him to approve transactions up to the threshold of R100 million.

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**7.21 Regarding PRASA's alleged improper incurring of R2.2 billion over expenditure on PRASA's operations budget in 2009/10 financial year:**

7.21.1 Having concluded that the allegation that PRASA incurred an over expenditure for the financial year 2009/10 is substantiated, the issue for me to adjudicate was whether or not PRASA incurred an over expenditure of R2.2 billion.

7.21.2 To arrive at a sound conclusion I had to consider PRASA's Annual Financial Statements for the financial year 2009/10 and take into account section 1 of the PFMA which defines unauthorised expenditure as overspending of a vote or main division within a vote.

7.21.3 In the absence of conclusive evidence that supports an over expenditure of R2.2 billion by PRASA, I was able to determine that the operations budget was exceeded by R523 792 767.00 in 2009/10 financial year. In terms of the PFMA, the overspending of the allocated vote by PRASA should be viewed as unauthorised expenditure.

**7.22 Regarding PRASA's failure to spend a subsidy of R500 million received for Shosholoza Meyl for the 2009/2010 period and not use it for its intended purpose:**

7.22.1 I have concluded that the allegation that PRASA failed to spend the subsidy received for Shosholoza Meyl for 2009/2010 financial year is not substantiated.

7.22.2 To arrive at a fair answer, due consideration was given to the budgets, Financial Statements and documentation received from National Treasury that captures information about the subsidy received by PRASA in respect of Shosholoza Meyl.

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- 7.22.3 I have been able to confirm that SARCC, the predecessor to PRASA, received R500 million in 2008 for Shosholoza Meyl operations, these were paid over in full to Transnet which kept the operations of Shosholoza Meyl running and incurred huge costs for this discontinued business.
- 7.22.4 For the years 2009 and 2010 PRASA was allocated subsidies for Shosholoza Meyl to the amounts of R450 million and R424 million respectively. PRASA further stated that, as things currently stand, it does not receive any subsidy from government to operate Shosholoza Meyl, and that it has been running this business using its own resources.
- 7.22.5 I could not find any proof of a request of (R1 billion) from National Treasury in respect of Shosholoza Meyl by PRASA in 2009/10 financial year. The only available evidence indicates that an amount of R447 700 000 was originally requested from National Treasury in 2009/10 financial year followed by another additional request of the same amount.
- 7.22.6 The assertion made by PRASA confirming receipt of the said subsidy for Shosholoza Meyl cannot be confirmed as it was not separately disclosed in PRASA's Annual Financial Statements. I was also unable to confirm if the subsidy was indeed used for its intended purpose as the operational expenditure for Shosholoza Meyl was not reflected separately in the overall budget of PRASA.
- 7.22.7 However, what can be deduced from the evidence was that Shosholoza Meyl was not a profitable business and required an operational budget beyond the allocated subsidy received from National Treasury.

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**7.23      Regarding PRASA's alleged incurring of rental expenditure on Jorissen's Place after vacating the building and before the expiry of the contract resulting in fruitless and wasteful expenditure:**

- 7.23.1      Having concluded that PRASA continued to incur rental expenditure after their vacation of the Jorissen Building before the expiry of its lease agreement, what I had to consider was whether the rental payments indeed constitute fruitless and wasteful expenditure as envisaged by the PRASA SCM Policy and the PFMA.
- 7.23.2      I have observed from the information provided that PRASA (SARCC) vacated Jorissen Building on the instruction of its GCEO, Mr Montana, at the end of 2009 whereas the lease agreement expired on 30 November 2011. PRASA did not exercise its option to sublet the building and continued to pay rental for a vacant building for 20 months.
- 7.23.3      The argument advanced by Mr Montana that PRASA continued to use the building to house its IT network, cannot be accepted. The continual payment of rental by PRASA for Jorissen Building between the end of 2009, when it vacated the premises and 30 November 2011 (approximately 20 months) was in contravention of section 38(1) (b) of the PFMA which provides that an accounting authority of a public institution must take effective and appropriate steps to prevent irregular, fruitless and wasteful expenditure.
- 7.23.4      The hasty vacation of Jorissen Building resulting in continued full payment for unused lettable space for 20 months, cannot be consistent with the efficiency and cost effective dictates expected in state affairs under section 195 of the Constitution and the standards set for proper handling of public funds under the PFMA, particularly section 51 (b) (ii) thereof.

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- 7.23.5 I am further not convinced that Cabinet ordered PRASA to hastily move to the new Umjantshi Building to consolidate its operations, regardless of wasteful financial consequences and in disregard of its own demand management provisions of its SCM Policy.
- 7.24 Regarding PRASA's alleged improper procurement of Umjantshi House from Transnet in September 2009:**
- 7.24.1 I have been unable to conclude whether the procurement of Umjantshi House from Transnet in September 2009 was improper.
- 7.24.2 In order for me to adjudicate the matter, I would need to have had sight of the documents used in the procurement process for the property in question, which PRASA failed to provide me with.
- 7.24.3 The only evidence provided indicates that an agreement between PRASA and Transnet in respect of sale of Umjantshi House for the sum of R1.3 million which was signed on 28 September 2009 by the GCEO on behalf of PRASA and by unidentified individual on behalf of Transnet on 13 January 2010.
- 7.24.4 The purchase of Umjantshi House should have been guided by The Constitution, PFMA and Treasury Regulation.
- 7.24.5 Evidence outlined above leads to the conclusion that there was a sale agreement between PRASA and Transnet in respect of sale of Umjantshi House in September 2009.



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- 7.24.6 I could not arrive at a conclusion due to the fact that the evidence regarding the acquisition of the Umjantshi House was not provided to me.
- 7.25 Regarding PRASA's alleged improper incurring of a rental expenditure on Intersite Building after vacating the building and before the expiry of the contract resulting in fruitless and wasteful expenditure:**
- 7.25.1 Having concluded that PRASA continued to incur rental expenditure after their vacation of the Intersite Building before the expiry of its lease agreement, what I had to consider was whether the rental payments indeed constitute fruitless and wasteful expenditure as envisaged by the PRASA SCM Policy and the PFMA.
- 7.25.2 Documentation in respect of the Intersite Building was not provided by PRASA.
- 7.25.3 However, from the response received from PRASA it is clear that PRASA continued with rental payments for the Intersite Building even after the building was vacated. The continuation of payment on the lease without occupation for period of 20 months amounts to fruitless and wasteful expenditure.
- 7.25.4 PRASA vacated the Intersite building about 20 months before the lease expiry date and continued with rental payments for the building for the vacant building until the expiry of the lease.
- 7.25.5 While the building might well have been used for training purposes as per Mr Montana's latest submission in response to the Provisional Report, the hasty vacation of the building resulting in the payment of full rental for unused lettable space, cannot be said to be consistent with the PFMA's dictates on efficient and

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prudent use of public funds and the dictates of section 195 of the Constitution regarding accountability in public administration.

7.25.6 I need to add that this was the first time Mr Montana made this assertion. All along the justification for vacating and continuation of the rental payment for the lease was that it was per the Cabinet directive. This new explanation conveniently came long after an inspection *in loco* could be conducted.

7.25.7 More specifically, in hastily vacating the Intersite Building and paying rental for about 20 months for unused lettable space, PRASA acted in contravention of its SCM demand management provision and section 38(1) (c) (ii) read with 51 (b) (ii) of the PFMA and the Treasury Regulations, which provides that an accounting authority of a public institution must take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure.

**7.26 Regarding PRASA's alleged improper termination of contracts of its Executives resulting in fruitless and wasteful expenditure:**

7.26.1 Having concluded that PRASA terminated the services of 5 of its Executives between 2008 and 2013, the issue for me to adjudicate was whether or not the terminations followed proper procedures and were in line with PRASA's Disciplinary Code and Procedure, the Labour Relations Act and the Constitution.

7.26.2 PRASA should have complied with their Disciplinary Code and Procedure, in particular paragraph 4.4 which requires a disciplinary hearing to be conducted and finalised within a period of 30 days. However from the evidence provided to me, it is apparent that PRASA failed to comply with its own policies.

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- 7.26.3 Despite PRASA's failure to provide me with records pertaining to the procedure it followed in the termination of the Executives' contract, It can be deduced from the CCMA and Labour Court records provided to me by some of the Executives, that PRASA in most cases were found to have been at fault and not complying with paragraph 4.4 of PRASA's Disciplinary Code and Procedure which resulted in the CCMA overturning some of the terminations.
- 7.26.4 From the records provided to me, the following Executives were unfairly dismissed:
- 7.26.4.1 Mr Cromet Molepo was dismissed by Mr Montana during 2011 and reinstated during August 2012 by a CCMA Arbitration Award with an order against PRASA to pay Mr Molepo an arrear salary in the amount of R1 174 443.00.
- 7.26.4.2 Mr Salani Sithole was dismissed on 8 October 2008 by PRASA and he referred a dispute to the CCMA registered under case number GAJB 32811/08 on 26 November 2008 on the grounds of alleged unfair dismissal. PRASA settled for the dismissal of Mr Sithole for the amount of R 972 150.00 and after tax a net payment of R 583 290.00 on 21 October 2009.
- 7.26.4.3 Mr Viwe Mlenzana was dismissed by PRASA and he referred the matter to the Labour Court under case number: J1687/11A. The Labour Court document was signed on 8 November 2011 by Mr Viwe Mlenzana and the representative from PRASA for a settlement in favour of Mr Viwe Mlenzana in the amount of R988 936.07 before tax was paid. PRASA was to pay the legal costs on party and party costs, occasioned by its earlier non-compliance with the Settlement Agreement.

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- 7.26.4.4 Ms Sindi Mabaso-Koyana, former CFO of PRASA entered into a settlement agreement with PRASA after her contract was terminated. The settlement agreement was signed by Ms Mabaso-Koyana on 30 April 2013 and by an unidentified PRASA representative on an unclear date. PRASA agreed to pay Ms Mabaso-Koyana the equivalent of seven months' salary calculated as follows  $7 \times 265\,092.75 = R1\,855\,649.25$  as a settlement amount.
- 7.26.4.5 The information regarding Mr Sisa Mtwla was not provided by PRASA
- 7.26.5 While Mr Montana makes a valid point in his submission to my Provisional Report, that administrative scrutiny by this office, should not unduly circumscribe or encroach on the right of management to discipline employees, I have taken notice of the fact that PRASA's conduct regarding failure to follow its own disciplinary procedures and general labour law provisions on procedural fairness was heavily sanctioned by the Labour Court.
- 7.26.6 I have observed that PRASA subsequently paid labour dispute settlements amounting to R3 816 735.32, principally due to procedural irregularities in the disciplinary steps taken against involved officials, which payments can be said to constitute fruitless and wasteful expenditure as envisaged in section 38(1)(c) (ii) of the PFMA and the Treasury Regulation 9.1.1 which provide that an Accounting Authority/Officer of a public institution must take effective and appropriate steps to prevent, losses resulting from criminal conduct, and expenditure not complying with operational policies of the public entity.

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**7.27 Regarding PRASA's alleged improper suspension of its employees:**

- 7.27.1 Having concluded that PRASA suspended several employees between 2009 and 2011, the issue for me to adjudicate was whether or not the suspensions followed proper procedures and were in line with PRASA's Disciplinary Code and Procedure, the Labour Relations Act and the Constitution.
- 7.27.2 PRASA should have complied with their Disciplinary Code and Procedure, in particular paragraph 4.4 which requires a disciplinary hearing to be conducted and finalised within a period of 30 days. However from the evidence provided to me, it is apparent that PRASA failed to comply with its own policies.
- 7.27.3 Despite PRASA's failure to provide me with records pertaining to the procedure it followed in the suspension of these employees, It can be deduced from the memorandum provided by the Complainant that PRASA put employees on prolonged periods of suspension with pay without instituting and finalising disciplinary proceedings within the mandatory 30 days period as stipulated in paragraph 4.4 of its Disciplinary Code and Procedure.
- 7.27.4 In my view, PRASA failed, without good reason, to institute and finalise disciplinary action against the employees concerned within thirty (30) calendar days as required by the Disciplinary Code which provides at paragraph 4.4 that disciplinary hearings shall be conducted and finalised within a period of thirty (30) calendar days.
- 7.27.5 The seven(7) officials mentioned below support the conclusion of a pattern of suspensions without following proper procedure in that:

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- 7.27.5.1 Ms Siphokazi Ndaba was suspended on 11 February 2010 pending disciplinary hearing but dismissed on 18 March 2011. The costs implications to PRASA was R364 000.00.
- 7.27.5.2 Mr Martin Hlongwane was suspended on 23 November 2011 for a lengthy period exceeding 30 days and the cost implications to PRASA as a result was R62 000.00.
- 7.27.5.3 Mr Sello Motaung was suspended on 1 October 2009 for a period of two years at a cost implication to PRASA amounting to R1 200 000.00.
- 7.27.5.4 Mr Frans Makgaba was suspended on 13 July 2010 and the suspension lifted after a period of 10 months at a cost implication to PRASA amounting to R630 000.00.
- 7.27.5.5 Mrs Priscilla Selele was suspended on 6 October 2011 for a period of 4 months at a cost implication to PRASA amounting to R126 000.00.
- 7.27.6 The conduct of PRASA in habitually suspending employees for periods exceeding thirty (30) calendar days with pay and without good reason, was in contravention of paragraph 11.1 of its Disciplinary Code and Procedure which provides that the employer has the right to suspend an employee with pay for a period not exceeding thirty (30) calendar days and also in contravention of paragraph 4.4 of PRASA Disciplinary Code and Procedure and Schedule 1 Part VII of the Basic Conditions of Employment Act which provides that employment practices shall ensure employment fairness.

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- 7.27.7 It is not unreasonable to draw a nexus between the payment of salaries for staff sitting at home with pay for long periods of time and failure to manage employment relations appropriately, and the conclusion that the payment of salaries without any value derived therefrom was irregular and constitutes fruitless and wasteful expenditure.
- 7.27.8 PRASA's conduct in this regard amounts to fruitless and wasteful expenditure in contravention of the provisions of section 38(1) (c) (ii) read with section 51 (b) (ii) of the PFMA while being at odds with the financial prudence and efficiency requirements of section 195 of the Constitution.
- 7.28 Regarding the Chairperson of the PRASA Board's alleged failure to disclose and manage a conflict of interest arising from his interest in Makana, a subsidiary of Cadiz, a company allegedly providing advisory service to PRASA on the Rolling Stock and Recapitalisation Project:**
- 7.28.1 I have been unable to conclude whether Mr Buthelezi, former Chairman of the PRASA Board, failed to disclose and manage a conflict of interest arising from his interest in Makana, a subsidiary of Cadiz, a company alleged to be providing advisory services.
- 7.28.2 In order for me to adjudicate the matter, I would need to have had sight of the disclosure documents completed by Mr Buthelezi, which PRASA failed to provide me with. Mr Montana only offered an explanation disputing the allegation and providing the names of companies involved in the said advisory services whilst denying that Cadiz was not involved in the Rolling Stock and Recapitalisation Project.

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- 7.28.3 I could not arrive at a conclusion due to the fact that the evidence regarding the failure of Mr Buthelezi to disclose and manage his interest in Makana, a subsidiary of Cadiz, was not provided to me.
- 7.29 Regarding Dr Bridgette Gasa, a PRASA Board member's alleged failure to disclose and manage a conflict of interest arising from her interest in ARUP and her directorship in another company providing consultancy services to PRASA:**
- 7.29.1 I have concluded that the allegation that the then PRASA Board Member, Dr Bridgette Gasa, failed to disclose and manage a conflict of interest arising from her appointment to the Board while two companies she had an interest in provided services to PRASA, is not substantiated.
- 7.29.2 I have been provided with records that confirm that Dr Gasa was indeed a Director at ARUP from 09 February 2011 and that she made the necessary disclosures to PRASA on 20 July 2011.
- 7.29.3 ARUP SA (Pty) Ltd was indeed awarded a contract by PRASA on 21 June for the Park Station Development Framework; however the contract was for R3.8 million 2011 which would not have required Board approval.
- 7.30 Regarding PRASA's alleged improper appointment of Ms Shiela Boshielo, the wife of Mr. Bushy Boshielo, the erstwhile member of the PRASA Board as General Manager of Autopax:**
- 7.30.1 I have established that PRASA first contended that Ms Boshielo was appointed on 06 April 2010 through a headhunting process for the position of Executive



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Manager: Business Development after the position was advertised in the Sunday Times of 29th November 2009.

7.30.2 I noted further that Mr Montana in response to my provisional findings changed the tune to state that PRASA's initial submission was made in error as Ms Boshielo was appointed through a recruitment and selection process and was selected from amongst other candidates. However, PRASA failed to provide me with recruitment documents to substantiate their assertion.

7.30.3 Except for the job advertisement, the employment offer and the acceptance letter, PRASA failed to provide me with recruitment memoranda in respect of the headhunting and/or recruitment process followed in the appointment of Ms Boshielo.

7.30.4 Accordingly I have deferred my finding on the alleged nepotism regarding the appointment of Ms Boshielo as PRASA has failed to provide the selection and appointment memoranda and related documents.

**7.31 Regarding the GCEO's alleged improper appointment of Mr Joel Chimanda at a cost of R2 million as a Special Advisor to PRASA:**

7.31.1 Having concluded that Mr. Montana appointed AR Chimanda Consulting for advisory services, the matter for me to adjudicate was whether or not the appointment was in line with PRASA SCM Policy and national legislative prescripts.

7.31.2 Whilst it was argued by PRASA that Mr Chimanda, representing AR Chimanda Consulting, had been appointed as a Special Advisor and that no recruitment

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process had to be followed, as it was the prerogative of the GCEO to appoint Special Advisors, is sound. I found that Mr Montana appointed Mr Chimanda's company, AR Chimanda Consulting, which required that a procurement process be utilised. Therefore, the appointment is a procurement contract and cannot be an employment contract as a juristic person cannot be an employee thus making the contract incapable of being defended under the GGEO's powers to appoint Special Advisors.

7.31.3 Furthermore the appointment of AR Chimanda Consulting was not preceded by a competitive bid process, nor is he provisions of the PRASA SCM Policy.

7.31.4 I have established that the appointment was not transparent and competitive and was in contravention of paragraph 11.3.1.1 of PRASA SCM Policy which requires three quotations to be obtained for contracts not exceeding R350 million. Further, I am of the view that AR Chimanda Consulting is not offering exclusive specialised services entitling him to the sole provider as stipulated in paragraph 11.7.1 regarding the appointment of consultants. It was also in contravention of the provisions of section 217 (1) of the Constitution regarding fair, equitable, transparent and cost effective procurement processes.

**7.32 Regarding PRASA's alleged improper replacement of the Group Executive HR with the GCEO's uncle, Mr Mphefo Ramutloa without following proper appointment process:**

7.32.1 I have concluded that the allegation that Mr Ramutloa was improperly appointed to the position of Group Executive HR, is not substantiated. I have found that the appointment of Mr Ramutloa followed a proper recruitment process in line with the Recruitment and Selection Policy.

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- 7.32.2 From the recruitment documents provided, I was able to determine that prior to Mr Ramutloa's appointment PRASA advertised the position of Group Executive HR internally and Mr Ramutloa was shortlisted along with another internal candidate. According to the score sheets, Mr Ramutloa scored the highest.
- 7.32.3 No evidence could be found to support the allegation that Mr. Ramutloa is Mr Montana's uncle.
- 7.33 Regarding PRASA's alleged failure to take disciplinary action against staff members allegedly involved in fraudulent Electronic Funds Transfers (EFT):**
- 7.33.1 I have concluded that indeed PRASA failed to discipline some of the employees involved in EFT transfers.
- 7.33.2 I have established that disciplinary action was taken against one of the six (6) employees found responsible by a Deloitte forensic investigation, for security lapses that led to the fraudulent electronic transfer of PRASA funds amounting to R8.1million in its KwaZulu Natal and Gauteng bank accounts.
- 7.33.3 PRASA took action against Ms Pallaiyiah but inexplicably failed to take disciplinary action against the other five individuals recommended for possible disciplinary as mentioned in paragraph 13.3 of the Deloitte Report of 26 February 2010, to wit:
1. Mr Ngobenj;
  2. Mr Chetty;
  3. Ms Pillay;
  4. Ms Gcabashe; and
  5. Mr Mabaso.

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- 7.33.4 I am of the view that PRASA's failure to take action against certain officials involved in the fraudulent transaction outlined in the Deloitte Report is in contravention of the responsibilities of the Board and the GCEO in terms section 38 (1) (d) of the PFMA which enjoins them, among other things, to take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution who contravenes or fails to comply with a provision of this Act.
- 7.33.5 Further, Mr Montana's conduct is in contravention of section 38(1)(c)(ii) which provides that an Accounting Officer must take effective and appropriate steps to prevent losses resulting from criminal conduct.
- 7.33.6 However, and quite commendably, PRASA subsequently introduced stringent measures to remedy the security breach and avoid future recurrence as well as cancelling their banking services with the bank involved.
- 7.34 Regarding the GCEO's alleged improper Blue Train trip to Cape Town together with 10 female companions during the period between 24 to 27 September 2009 and returned by SAA flight at an estimated cost of R170 000 and which amounts to fruitless and wasteful expenditure:**
- 7.34.1 I have been unable to conclude whether or not there Mr. Montana went on a Blue Train trip to Cape Town with 10 female companions between 24 to 27 September 2009 resulting in fruitless and wasteful expenditure of R170 000.00.

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- 7.34.2 The evidence regarding this issue is inconclusive. However the evidence received from the Complainant apparently places Mr Montana in the alleged situation. Mr Montana has denied the allegation.
- 7.34.3 In order for me to adjudicate the matter, I would need to have had sight of the documents relating to the trip in question, which PRASA failed to provide me with. Accordingly, I have deferred my finding on this allegation and will be dealt with in volume 2 of this report.
- 7.35 Regarding PRASA's alleged improper payment of salaries to Mr Mabe, former Executive Corporate Affairs Manager during 2008/2009, after his resignation from PRASA amounting to fruitless and wasteful expenditure, and did PRASA's GCEO in relation thereto mislead the EXCO and the PRASA Board:**
- 7.35.1 I have been unable to conclude whether or not there was an improper payment of salaries made to Mr Mabe, the former Executive Corporate Affairs Manager, during 2008/2009 after his resignation from PRASA which resulted in fruitless and wasteful expenditure.
- 7.35.2 In order for me to adjudicate the matter, I would need to have had sight of the documents relating to the payment in question and personnel file of Mr Mabe while in the employment of PRASA. However, PRASA failed to provide me with the abovementioned documentation and accordingly I have deferred my finding on this allegation and will be dealt with in volume 2 of this report.

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**7.36 Regarding PRASA's alleged improper transfer of Mr Stephen Ngobeni without a disciplinary process being followed for his alleged irregular appointment of a Training Contractor to provide training services on the handling of People with Disability thereby amounting to maladministration:**

- 7.36.1 I have been unable to conclude whether or not there was an improper transfer of Mr Ngobeni without a disciplinary process being followed for his alleged irregular appointment of a Training Contractor to provide training services on the handling of People with Disability.
- 7.36.2 In order for me to adjudicate the matter, I would need to have had sight of the documents relating to the transfer in question and personnel file of Mr Ngobeni. However, PRASA failed to provide me with the abovementioned documentation and accordingly I have deferred my finding on this allegation and will be dealt with in volume 2 of this report.
- 7.36.3 No evidence was found in support of the allegation that Mr Ngobeni is Mr Montana's cousin.

**8. FINDINGS**

After a careful examination of the evidence and information obtained during the investigation and the regulatory framework setting the standard that should have been upheld by PRASA, my findings are the following:

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**8.1. Regarding PRASA's alleged improper extension to other stations nationally, a tender for the installation of high speed passenger gates worth R800 million to Siyangena Technologies in 2009/2010 initially advertised for the Doornfontein station, Gauteng:**

- 8.1.1. The allegation that PRASA improperly extended the scope of a tender awarded to Siyangena Technologies for the supply and installation of high speed passenger gates at Doornfontein station to a national scope is substantiated. However, the total amount of the contract was R1.95 billion and not R800 million as alleged.
- 8.1.2. The scope of a tender for high speed passenger gates advertised for two train stations, Doornfontein and Nasrec in Gauteng was awarded by the PRASA Board to Siyangena Technologies, and later extended to cover additional stations, on the basis of a closed bidding process with those that had bid for the two Gauteng stations.
- 8.1.3. The extension of the tender scope beyond what had been advertised was in contravention of paragraph 11.3.2 of PRASA SCM Policy, section 38 of the PFMA, PPPFA and section 217 of the Constitution requiring fair, equitable, transparent, competitive and cost-effective bidding processes.
- 8.1.4. The extension of Siyangena Technologies' contract to more stations than were specified in the tender advertisement accordingly constitutes maladministration and improper conduct.

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**8.2. Regarding PRASA's alleged improper extension of a tender awarded to Siemens for the Dark Fibre and Integrated Communication Systems amounting to R800 million to additional stations nationally, during the financial year 2009/2010 when it was only advertised in Gauteng:**

- 8.2.1. The allegation that PRASA improperly extended the scope and value of a tender awarded to Siemens for Dark Fibre and Integrated Communication Systems beyond what was advertised and approved by the Corporate Tender Procurement Committee (CTPC) with the effect of substantially increasing the contract price is substantiated. However, the total contract amount was R256 million and not R800 million as alleged.
- 8.2.2. PRASA improperly extended, to the Durban (KZN) and Western Cape regions, a tender for the design, supply and installation of the Dark Fibre and Integrated Communication Systems, which had been advertised and won by Siemens for the Wits and Pretoria region, without following an open and competitive tender process. This was in contravention of paragraph 11.3.7. of PRASA SCM Policy and section 217 of the Constitution, among others.
- 8.2.3. The extension of the scope and price of the design, supply and installation of the Dark Fibre and Integrated Communication Systems tender to other regions accordingly constitutes maladministration and improper conduct.



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**8.3. Regarding PRASA's alleged improper termination of all contracts for cleaning services and subsequent irregular appointment of Reakgona Commercial and Industry Hygiene and Katanga Cleaning Services:**

- 8.3.1. The allegation that PRASA improperly terminated the contracts of seven (7) cleaning companies and improperly replaced them with Reakgona Commercial and Industry Hygiene (Reakgona) and Katanga Cleaning Services (Katanga), is substantiated.
- 8.3.2. The contracts of 7 cleaning companies were summarily terminated by Mr Montana on 14 March 2012 in contravention of paragraph 13.1 of the contracts between PRASA and the cleaning companies, which prescribes a 48 hour notice to be given to the defaulting party to remedy a breach. He replaced them with Reakgona and Katanga on 15 March 2015, whose services were procured without a transparent and competitive process.
- 8.3.3. The conduct of Mr. Montana with regard to the summary termination of the contracts of 7 cleaning companies is also inconsistent with the provisions of the PRASA SCM Policy, the PFMA, PPPFA and section 217 of the Constitution.
- 8.3.4. PRASA's summary termination of the contracts of 7 cleaning companies and their irregular replacement with Reakgona and Katanga, accordingly constitutes maladministration, abuse of power and improper conduct.
- 8.3.5. The failure by Mr Montana to afford the 7 cleaning companies an opportunity to explain themselves and possibly remedy the breach cannot be considered to be in line with section 33 of the Constitution and the provisions of PAJA.

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**8.4. Regarding PRASA's alleged improper appointment of Sidas Security on a security tender in replacement of National Force Security on the GCEO's instruction:**

8.4.1. The allegation that Sidas Security was improperly appointed to replace National Force Security is substantiated. However, no evidence could be found to prove that the improper appointment was done on Mr Montana's instructions.

8.4.2. The month to month contract of National Force Security was terminated on 15 April 2009 and awarded to Sidas Security for **R3 711 197.72**, by Mr Chris Moloi without a tender process or competitive quotations being sought.

8.4.3. The appointment was in contravention of paragraph 11.3.5 of the PRASA SCM Policy and paragraph 4.7.5.1 of the National Treasury SCM Guidelines of 2004.

8.4.4. PRASA's failure to take action against the authorised official, who approved the submission for the appointment of Sidas Security, constitutes maladministration and improper conduct.

**8.5. Regarding PRASA's alleged improper appointment of Sidas Security on a security tender in replacement of National Force Security on the GCEO's instruction:**

8.5.1. The allegation that Sidas Security was improperly appointed to replace National Force Security is substantiated. However, no evidence could be found to prove that the improper appointment was done on Mr Montana's instructions.

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- 8.5.2. The month to month contract of National Force Security was terminated on 15 April 2009 and awarded to Sidas Security for **R3 711 197.72**, by Mr Chris Moloi without a tender process or competitive quotations being sought.
- 8.5.3. The appointment was in contravention of paragraph 11.3.5 of the PRASA SCM Policy and paragraph 4.7.5.1 of the National Treasury SCM Guidelines of 2004.
- 8.5.4. PRASA's failure to take action against the authorised official, who approved the submission for the appointment of Sidas Security, constitutes maladministration and improper conduct.
- 8.6. Regarding PRASA's alleged improper appointment of Vimtsire Security Services, which failed to meet the minimum requirements for appointment on tender number 525/2010/GAU/PS:**
- 8.6.1. The allegation that Vimtsire Security Services was improperly appointed while not meeting the requirements is substantiated.
- 8.6.2. PRASA appointed Vimtsire Security Services on two contracts for tender 525/2010/GAU/PS without an advertisement or competitive quotations. The first contract was signed on 23 February 2010 without specifying the period of the contract for an amount of **R4 596 480.00** and the second contract was signed on 29 May 2010 for the period 13 March 2010 to 13 August 2010 for the amount of **R7 537 680.00**. The contract was further extended by PRASA from 1 January 2011 to 31 December 2011 for an amount of **R14 441 976.00**, without a competitive process.

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- 8.6.3. The appointment and extension of the contract of Vimtsire Security amounting to **R26 576 136 00.00** were unlawful, in contravention of paragraph 11.3.1 of the PRASA SCM Policy read with the Delegation of Authority, section 217 of the Constitution, among others.
- 8.6.4. The conduct of PRASA in appointing and extending the contract of Vimtsire Security Services irregularly accordingly constitutes maladministration and improper conduct.
- 8.7. Regarding PRASA's alleged improper appointment and payment of Royal Security for an amount of R2.8 million for security services:**
- 8.7.1. The allegation that Royal Security was paid **R2.8 million** instead of **R2.5 million** stipulated in the contracts, was not substantiated.
- 8.7.2. Documentary evidence shows that the amount paid by PRASA to Royal Security was **R2.5 million**.
- 8.8. Regarding PRASA's alleged improper advance payment of R600.000.00 to Enlightened Security:**
- 8.8.1. The allegation that Enlightened Security was irregularly given an advance payment of about **R600.000.00** is substantiated.
- 8.8.2. PRASA made a first payment of **R684.720.00** to Enlightened Security for security services at Mabopane station on 22 October 2008 which was preceded by an invoice dated 19 September 2008 before the signing of the contract and the issuing of a Notice to Proceed, which followed on 17 October 2008.

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- 8.8.3. Mr Joe Ngcobo's conduct in making advance payments to Enlightened Security accordingly constitutes maladministration and improper conduct.
- 8.8.4. PRASA management became aware of this violation but took no disciplinary steps against the manager responsible, Mr Joe Ngcobo, despite initially commencing a disciplinary process. This conduct is in violation of the accounting officer's responsibility under section 38 of the PFMA and is accordingly irregular and constitutes maladministration and improper conduct.
- 8.9. Regarding PRASA's alleged improper appointment of a media company to produce *Hambanathi* Magazine during 2008/2009:**
- 8.9.1. The allegation that PRASA improperly appointed a media company to produce *Hambanathi* is substantiated.
- 8.9.2. PRASA entered into a contract (referred by it as a partnership) with KG Media providing for the publication and distribution of PRASA information to its commuters and stakeholders, through *Kwela Express*, which used to be a corporate magazine of Metrorail (subsidiary of PRASA, using the name *Hambanathi* when Mr Pule Mabe, the then owner of *Kwela Express*, was employed there).
- 8.9.3. The contract was from 1 April 2012 to 1 April 2015 (a period of 3 years) for the amount of **R465 669.75** per month which translates to **R5 588 000.37** per annum and a total contract amount of **R16 764 111.00** without a competitive and transparent bid process. Mr Montana extended the contract in March 2015 for a further 3 years **R16 764 111.00** despite a forewarning through a notice

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issued in terms of section 7(9) of the Public Protector Act, that the arrangement was likely to be determined to be unlawful. Effectively, PRASA is renting space on *Hambanathi/Kwela* for the price of about R465 669.75 a month.

- 8.9.4. Considering the fact that PRASA created *Hambanathi/Kwela* and simply failed to register it as a patent, I find the arrangement with Mr Mabe's company, KG Media, rather bizzare.
- 8.9.5. The appointment of KG Media, without a competitive process did not comply with requirements for single sourcing or any of the permissible procurement processes prescribed in the PRASA SCM Policy as production of a corporate newsletter is not an exclusive skills area or product for KG Media and paragraph 11.3.3 of the PRASA SCM Policy prohibits unsolicited bids.
- 8.9.6. PRASA's appointment and extension of the contracts with KG Media for the *Hambanathi* totalling an amount of **R33 528 222.00** is unlawful, a flagrant contravention of PRASA's own SCM Policy, Treasury Regulations, the PFMA and section 217 of the Constitution and constitutes maladministration and improper conduct.
- 8.9.7. Mr Montana's recent extension of the *Hambanathi* contract while being aware contract of an impending finding of maladministration regarding the *Hambanathi* while having asked for time extension to respond to the section 7(9) notice, is an act of bad faith, which is inconsistent with his responsibilities under section 195 of the Constitution, requiring a high standard of professional ethics and, which, according to the Constitutional Court, in *Khumalo versus MEC for Education KwaZulu Natal*, imposes a duty on him to correct an irregularity once his attention has been drawn to it. His actions in this regard, constitute gross

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maladministration and improper conduct. Such conduct is not only unlawful but also displays disconcerting disregard for the rule of law.

**8.10. Regarding PRASA's alleged improper appointment of Mr Ezra Ndwandwe, on a Change Management Consultancy at a cost of R2 million in 2008/2009:**

- 8.10.1. The allegation that Mr Montana improperly appointed Mr. Ezra Ndwandwe, is substantiated. However, it is the Consultancy and not the person that was appointed and the amount involved was R10 833. 774. 00 for 12 months.
- 8.10.2. Ndwandwe Consultancy was appointed by Mr. Montana for the Value Creation and Culture Change process at PRASA on 14 June 2008 for the amount of R6 220 800.00 without requiring three quotations from suppliers in the PRASA database as prescribed in paragraph 11.3.1.1 of the PRASA SCM Policy. The contract was extended for a further 6 months with the contract amount variation of R4 612 974.00 exceeding 40%.
- 8.10.3. The appointment of Ndwandwe Consultancy by Mr Montana was unlawful, in contravention of PRASA's own SCM Policy, Treasury Regulations on procurements, the PFMA and section 217 of the Constitution and accordingly constitutes improper conduct and maladministration.
- 8.10.4. From the evidence it is clear that Mr Ndwandwe's consultancy's appointment was triggered by an existing relationship, which had included an excursion that took place immediately before the impugned contract was initiated. It is also clear that no process was followed to establish if any other agency offered similar services. More importantly, no demand management exercise preceded the engagement. Unfortunately, the investigation did not examine what the

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excursion mentioned in the procurement memorandum dated 16 September 2008 was for, whether or not PRASA paid for it and how Mr Ndwandwe's consultancy had been procured it as the impugned engagement apparently flows from that excursion. This constitutes improper conduct and maladministration.

**8.11. Regarding PRASA's alleged improper increase of the scope and value of a marketing and communications tender number HO/M&C/305/07/2009 awarded to Brand Leadership:**

- 8.11.1. The allegation that PRASA improperly increased the scope and price of a marketing and communications tender awarded to Brand Leadership, is substantiated. However the tender price and price variation amount were actually higher than alleged.
- 8.11.2. The scope of a tender recommended by the PRASA Bid Adjudicated Committee (BAC) at the value of R12.000.000.00 was increased beyond the advertised scope to R29. 528. 000.00 by PRASA's CTPC, when it awarded it without the Accounting Officer's approval. The project timeline was also stretched, by an additional 6 months, from September 2009 to October 2009, to March 2010, which amounts to "scope creep".
- 8.11.3. In increasing the scope and price of the advertising tender in excess of what was advertised and without approval by the GCEO, the conduct of the PRASA CTPC was in contravention of the PRASA SCM Policy, National Treasury SCM Guidelines 5.16.1.1.1 of 2004 setting out a proper process for demand management and the process to be followed in extending the scope of a



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contract. The conduct of PRASA was improper and constitutes maladministration.

**8.12. Regarding the GCEO's alleged improper appointment of Mr Edwin Lekota on a tender amounting to R10 million for the development of a Contingency Emergency Preparedness Programme for Metrorail:**

- 8.12.1. The allegation that PRASA improperly appointed Mr Edwin Lekota on a tender is substantiated.
- 8.12.2. Mr Lekota's Lekga Investment Holdings, was appointed directly by PRASA for the ISO 9001: 2000 compliance work without a competitive process.
- 8.12.3. I am unable to accept Mr Montana's submission that the appointment of Mr Edwin Lekota, former CEO of SARCC, the predecessor of PRASA on a panel with, Dr Chris Dutton and Mr Friedel Mulke as part of the Board of Inquiry in terms of his powers. The evidence shows that Carundell was indeed awarded a contract to deal with the emergency arising from the burning of trains in Soshanguve, City of Tshwane, Gauteng. The same evidence shows that Mr Lekota was subcontracted by Carundel to deal with the burning of the trains.
- 8.12.4. However, I am encouraged by Mr Montana's undertaking in his response to the provisional findings, to ensure that such experts are, in future, invited to be part of an existing panel of experts in the PRASA database.

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**8.13. Regarding PRASA's alleged improper award of a tender to Umjanji Consortium, for the media, advertising and broadcasting concession agreement:**

8.13.1. I have deferred my findings on this complaint as PRASA is yet to submit some of the bid documents, key being the tender documents submitted by Umjanji Consortium, which need to be subjected to a forensic examination. Evidence uncovered so far confirms that:

8.13.2. On 31 January 2011, Mr Montana awarded the Media and Broadcasting Services tender HO/CA739/02/2010 to Umjanji Consortium, an entity led by Provantage Media, which is apparently the only constituent part of Umjanji Consortium that attended the compulsory briefing session for the tender on 22 February, 2010.

8.13.3. Umjanji Consortium was not in existence at the time of closure of the tender on 11 March 2010.

**8.14. Regarding the GCEO's alleged improper awarding of a contract for the provision of professional advisory service on the signalling project to a friend, Mr Makhensa Mabunda of Siyaya DB**

8.14.1. No evidence was found substantiating that Mr Mabunda was or is Mr Montana's friend and that such friendship informed his company's appointment.

8.14.2. Mr Montana did appoint Siyaya DB, which scored slightly lower than Mott Macdonald, on tender HO/INF/203/06/2010 for rendering of technical

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assistance and supervision for the national signalling project, following an open and competitive tender process.

8.14.3. I have accepted these reasons given being that the highest bidder failed to meet PRSASA's requirements relating to pricing certainty and BEEE compliance as both cogent and rational

8.14.4. I am accordingly unable to find that the award of the tender to Siyaya DB by Mr Montana and/ or PRASA constitutes maladministration or improper conduct.

**8.15. Regarding PRASA's alleged improper awarding of a tender in the amount of R22 million for Park Station Development Framework to ARUP, a company associated with its board member.**

8.15.1. The allegation that ARUP was improperly awarded a tender for the Park Station Development Framework is substantiated. However, the amount involved was much less than the alleged R22 million, it was R3 898 940.00 which did not require Board approval.

8.15.2. PRASA conceded that a proper procurement process was not followed in the appointment of ARUP and took action against the persons implicated in the appointment concerned.

8.15.3. I accordingly do not see the need to make a finding of maladministration or improper conduct. The aspect relating to a board member's alleged involvement is addressed separately.

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**8.16. Regarding PRASA's alleged failure to investigate the theft of buses of its subsidiary, Autopax:**

8.16.1. The allegation that PRASA improperly failed to investigate the theft of buses of its subsidiary, Autopax, is not substantiated.

8.16.2. Records show that PRASA conducted an investigation and internal disciplinary hearings regarding the theft of the Autopax buses leading into the suspension of one employee and dismissal of another. Furthermore, cases were registered with the SAPS in respect of the theft of the buses and there were regular follow up activities.

**8.17. Regarding PRASA's alleged improper awarding of a security services contract to Futuris Guarding in April 2010 at Autopax City to City for a total amount of R231 204.00:**

8.17.1. The allegation that Futuris Guarding was improperly appointed is substantiated. However, the amount involved was higher than alleged as it was about R10.6 million for a six month contract.

8.17.2. Although security unarguably involves danger as envisaged in urgency provisions of paragraph 11.3.5 of the PRASA SCM Policy, the implementation of urgency procurement failed to comply with the procedure laid out in the PRASA SCM policy in that the deviation was not ratified and approved by the GCEO, a deviation I consider material.

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- 8.17.3. The actions of Mr Joe Buthelezi, Acting Supply Chain Manager in the appointment of Futuris Guarding on a security contract on confinement, without the GCEOs approval constitutes maladministration and improper conduct.
- 8.17.4. PRASA's failure to take disciplinary action Mr Buthelezi for the appointment of Futuris Guarding constitutes improper conduct and maladministration.
- 8.18. Regarding PRASA's alleged improper termination of the Rasakanya Builders contract on 1 November 2012:**
- 8.18.1. The allegation that PRASA improperly terminated the contract of Rasakanya Builders is not substantiated.
- 8.18.2. PRASA terminated its month to month contract with Rasakanya Builders on 28 September 2012, with effect from 01 November, 2012, giving it a month's notice.
- 8.18.3. I could not find any impropriety with the termination and accordingly am unable to find that PRASA's conduct constitutes maladministration or improper conduct.
- 8.19. Regarding the GCEO/PRASA's alleged improper implementation of an advance payment in the amount of R 80 million for the FIFA World Cup sponsorship without proper approval, budget and/or allocated funds thus constituting to fruitless and wasteful expenditure:**
- 8.19.1. The allegation that PRASA made an advance payment in the amount of R80 million to FIFA without proper approval, budget or allocated funds which resulted in fruitless and wasteful expenditure is not substantiated.

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**8.20. Regarding PRASA's alleged improper incurring of an over expenditure of R2.2 billion on PRASA's operations budget in 2009/2010 financial year:**

8.20.1. The allegation that PRASA improperly incurred an over expenditure is substantiated. However, the amount involved was far less than alleged. It was R523 792 767.00

8.20.2. PRASA exceeded its budget by R523 792 767.00 for the 2009/2010 financial year.

**8.21. Regarding PRASA's alleged failure to spend a subsidy of R500 million received for Shosholoza Meyl for the 2009/2010 period and not use it for its intended purpose:**

8.21.1. The allegation that PRASA failed to spend the subsidy received for Shosholoza Meyl for 2009/2010 financial year is not substantiated.

8.21.2. PRASA received a government subsidy of R450.00.00 for the year 2009/10 for Shosholoza Meyl.

8.21.3. I am unable to confirm if the subsidy was indeed used for its intended purpose as the operational expenditure for Shosholoza Meyl was not reflected separately in the overall budget of PRASA.

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**8.22. Regarding PRASA's alleged incurring of rental expenditure for Jorissen Building after vacating it 20 months before the expiry of its lease resulting in fruitless and wasteful expenditure:**

- 8.22.1. The allegation that PRASA improperly incurred rental expenditure which constitutes fruitless and wasteful expenditure due to vacating of the Jorissen Building before the expiry of its lease agreement is substantiated.
- 8.22.2. On the authority of Mr Montana, PRASA (SARCC) paid rental for a vacant office property number 66 Jorissen Street, Braamfontein, Johannesburg, for 20 months after vacating it prior to the expiry of its lease agreement and without exercising its option of subletting.
- 8.22.3. The hasty vacation of Jorissen's Place Building resulting in continued full payment of rent for unused lettable space for 20 months. This cannot be consistent with the efficiency and cost effective dictates expected in state affairs under section 195 of the Constitution and the standards set for proper handling of public funds under the PFMA, particularly section 51 thereof.
- 8.22.4. The actions of PRASA management and its Board regarding the move to Umjantshi House and payment for vacant premises, for about 20 months and failing to mitigate the loss by subletting the premises, amounts to fruitless and wasteful expenditure.

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**8.23. Regarding PRASA's alleged improper incurring of rental expenditure on Intersite Building after vacating the building 10 months before the expiry of its lease resulting in fruitless and wasteful expenditure:**

8.23.1. The allegation that PRASA improperly incurred rental expenditure and the consequent fruitless and wasteful expenditure, due to vacating Intersite Building before the expiry of its lease, is substantiated.

8.23.2. PRASA vacated the Intersite building about 10 months before the lease expiry date and continued with rental payments for the building for the vacant building until the expiry of the lease.

8.23.3. The conduct of PRASA accordingly constitutes maladministration and improper conduct.

**8.24. Regarding the GCEO's improper termination of contracts of Executives resulting in fruitless and wasteful expenditure amounting to an estimated R5 million:**

8.24.1. The allegation that Mr Montana improperly terminated the services of 5 of its Executives mentioned in paragraph 6.27.2.1 of this report is substantiated.

8.24.2. Mr Montana terminated the services of five Executives during 2008-2013 without following proper procedure as provided for in paragraph 4.4 of PRASA's Disciplinary Code and Procedure. This resulted in the CCMA overturning some of the terminations and others being settled out of court at cost to PRASA.



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- 8.24.3. PRASA subsequently paid labour dispute settlements amounting to R3 816 735.32, principally due to procedural irregularities in the disciplinary steps taken against involved officials, which payments can be said to constitute fruitless and wasteful expenditure as envisaged in section 38(1)(c) (ii) of the PFMA.
- 8.24.4. Failure by PRASA to follow its corporate disciplinary procedures and labour laws relating to procedural fairness constitutes maladministration and improper conduct.
- 8.25. Regarding the GCEO's alleged improper suspension of employees resulting in labour dispute settlements amounting to R3.35 million thus constituting fruitless and wasteful expenditure:**
- 8.25.1. The allegation that the GCEO suspended employees without following proper disciplinary procedures is substantiated in respect of some of the employees as others were not suspended by him.
- 8.25.2. PRASA suspended 7 employees without following proper procedure as provided for in the Labour Relations Act and paragraph 11 of its Disciplinary Code and Procedure, leading to loss of approximately of R2 million in wages during their suspension period.
- 8.25.3. The case studies regarding the seven (7) officials mentioned in paragraph 6.28.2.3 of the report support the conclusion of a pattern of habitual suspensions for periods exceeding thirty (30) days without following proper procedure.

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- 8.25.4. The conduct of PRASA in habitually suspending employees was in contravention of paragraph 11.1 of its Disciplinary Code and Procedure which provides that the employer has the right to suspend an employee with pay for a period not exceeding thirty (30) calendar days and also in contravention of paragraph 4.4 of PRASA Disciplinary Code and Procedure and Schedule 1 Part VII of the Basic Conditions of Employment Act which provides that employment practices shall ensure employment fairness.
- 8.25.5. It is not unreasonable to draw a nexus between the payment of salaries for staff sitting at home with pay for long periods of time and failure to manage employment relations appropriately, and the conclusion that the payment of salaries without any value derived therefrom is irregular and constitutes fruitless and wasteful expenditure.
- 8.25.6. PRASA's conduct in this regard amounts to fruitless and wasteful expenditure in contravention of the provisions of section 38(1) (c) (ii) read with section 51 (b) (ii) of the PFMA while being at odds with the financial prudence and efficiency requirements of section 195 of the Constitution.
- 8.25.7. The conduct of PRASA regarding improper suspension of employees accordingly constitutes maladministration and improper conduct.

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**8.26. Regarding PRASA Board Chairman, Mr Sfiso Buthelezi's alleged failure to disclose and manage a conflict of interest arising from his interest in Makana, a subsidiary of Cadiz, a company allegedly providing advisory services to PRASA on the Rolling Stock Programme:**

8.26.1. The evidence regarding the allegation that Mr Buthelezi, former Chairman of the PRASA Board, improperly failed to disclose and manage a conflict of interest arising from his interest in Makana, a subsidiary of Cadiz, a company alleged to be providing advisory services to PRASA is inconclusive.

8.26.2. The documents have not been provided by PRASA, whose GCEO only offered an explanation disputing the allegation and providing the names of companies involved in the said advisory services.

8.26.3. Accordingly, I have deferred my findings on this allegation and will be dealt with in the second report.

**8.27. Regarding Dr Bridgette Gasa's, a PRASA Board member's alleged failure to disclose and manage a conflict of interest arising from her interest in ARUP and her directorship in another company providing consultancy services to PRASA:**

8.27.1. The allegation that the then PRASA Board Member, Dr Bridgette Gasa, failed to disclose and manage a conflict of interest arising from her appointment to the Board while two companies she had an interest in provided services to PRASA, is not substantiated.

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- 8.27.2. Whilst Dr Gasa was indeed a Director at ARUP from 09 February 2011, she made the necessary disclosure to PRASA on 20 July 2011, resigned on 15 May 2012 and when making her disclosure on 10 October 2012, excluded ARUP, as she no longer was a board member.
- 8.27.3. ARUP SA (Pty) Ltd was indeed awarded a contract by PRASA for the Park Station Development Framework on 21 June 2011; however the contract was for R3.8 million which would not have required Board approval.
- 8.28. Regarding PRASA's alleged improper appointment of Ms Shiela Boshielo, wife of then Board Member, Mr. Bushy Boshielo, as the General Manager of Autopax:**
- 8.28.1. I have deferred my finding on the alleged nepotism regarding the appointment of Ms Boshielo as PRASA has failed to provide the selection and appointment memoranda and some of the relevant documents.
- 8.28.2. In its initial response Mr Montana stated on behalf of PRASA that Ms Boshielo was appointed on 06 April 2010 through a headhunting process. Later, in response to the provisional findings, Mr Montana turned around to state that the submission was a mistake as Ms Boshielo was appointed through a recruitment and selection process and was selected from amongst other candidates but repeatedly failed to honour requests to provide the recruitment and selection documents to substantiate the assertion.

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**8.29. Regarding the GCEO's alleged improper appointment of Mr Joel Chimanda at a cost of R2 million as a Special Advisor:**

- 8.29.1. The allegation that Mr. Montana improperly appointed Mr Chimanda for advisory services is substantiated.
- 8.29.2. However, it was Mr. Chimanda's company, AR Chimanda Consulting that was contracted for R1 999.750.00 on a monthly retainer of R150 000.00, which makes the appointment a procurement contract and not an employment contract. As juristic person cannot be an employee, the contract is incapable of being defended under the GCEO's powers to appoint special advisors, as attempted by Mr Montana in his submissions.
- 8.29.3. The appointment of Mr. Chimanda's company was not preceded by a competitive bid process, nor is he offering exclusive specialised services entitling him to be the sole provider in terms of the provisions of the PRASA SCM Policy
- 8.29.4. The conduct of Mr Montana, in appointing AR Chimanada Consulting, is accordingly in contravention of the SCM policy, the PFMA, PPPFA and section 217 of the Constitution.
- 8.29.5. The conduct of Mr Montana accordingly constitutes maladministration and improper conduct.

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**8.30. Regarding PRASA's alleged improper replacement of the Group Executive HR with the GCEO's uncle, Mr Mphefo Ramutloa, without following proper recruitment process:**

8.30.1. The allegation that Mr. Mphefo Ramutloa was improperly appointed in replacement of Group Executive HR by PRASA is not substantiated.

8.30.2. No evidence could be found to support the allegation that Mr. Mphefo Ramutloa is Mr Montana's uncle.

**8.31. Regarding PRASA's alleged failure to take disciplinary action against staff members allegedly involved in fraudulent Electronic Funds Transfers amounting to R8.1 million:**

8.31.1. The allegation that PRASA failed to take disciplinary action against employees involved in the fraudulent electronic financial transfers of its funds, from its corporate bank accounts, is partially substantiated.

8.31.2. Action was taken against one of the six (6) employees found responsible by a Deloitte forensic investigation, for security lapses that led to the fraudulent electronic transfer of PRASA funds amounting to R8.1million in its KwaZulu Natal and Gauteng bank accounts.

8.31.3. PRASA took action against Ms Pallaiyiah but inexplicably failed to take disciplinary action against the other six individuals recommended for possible disciplinary action as mentioned in paragraph 13.3 of the Deloitte Report of 26 February 2010.

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- 8.31.4. The conduct of Mr Montana regarding failure to take disciplinary action against the other five (5) employees constitutes maladministration and improper conduct.
- 8.32. Regarding Mr Montana's alleged improper taking of a Blue Train trip to Cape Town together with 10 female companions during the period between 24 to 27 September 2009 and return by SAA flight at an estimated cost of R170 000 and possible fruitless and wasteful expenditure:**
- 8.32.1. The evidence regarding this issue is inconclusive. While the photographic evidence received from the Complainant apparently places Mr Montana on the train and a hotel with women companions, he he has denied the allegation but referred to a different trip.
- 8.32.2. I have deferred my finding on this allegation and will be dealt with in the second report.
- 8.32.3. Regarding Mr Montana's alleged improper transferring of Mr Stephen Ngobeni without a disciplinary process being followed for his alleged irregular appointment of a Training Contractor to provide training services on the handling of People with Disability:
- 8.32.4. I have deferred my finding on the alleged failure by Mr Montana to take disciplinary action against Mr Stephen Ngobeni as PRASA has failed to provide the necessary documents relating to the issue.
- 8.32.5. No evidence was found in support of the allegation that Mr Ngobeni is Mr Montana's cousin.

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- 8.32.6. I have deferred my findings on this allegation and will be dealt with in the second report.

**8.33. General observations**

- 8.33.1. The transactions investigated and related findings reveal a culture of systemic failure to comply with the SCM policy, particularly involving failure to plan for bulk procurement, test the market appropriately for competitive pricing and to manage contracts, which culture may have cost PRASA millions in avoidable expenditure and preventable disruption of services.
- 8.33.2. There also seems to be a culture of either poor information management or hiding of information that could provide evidence of maladministration and other forms of improper conduct. If the pattern is not arrested it has the potential to derail the effective and efficient procurement of goods and services to support PRASA operations and consequently service delivery by this important national asset. Poor financial management also has implications for the national revenue as it may mean frequent yet preventable rescue funding.
- 8.33.3. Regarding PRASA's failure to provide information, it must be appreciated that public accountability via administrative bodies such as the Public Protector is not accountable to Complainants but to the public that entrusts public functionaries with public power and resources. It is, accordingly, not open to public functionaries to try and win a case by withholding or hiding information.



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## **9. REMEDIAL ACTION**

The appropriate remedial action I am taking in pursuit of section 182(1)(c) of the Constitution, with a view of placing the Complainant as close as possible to where they would have been had the improper conduct or maladministration not occurred, while addressing systemic procurement management deficiencies in PRASA, is the following:

### **9.1. The Minister of Transport to:**

- 9.1.1 Take cognizance of the findings regarding the unethical conduct and maladministration by PRASA relating to the irregularities mentioned in the report.
- 9.1.2 Ensure that the PRASA Board considers the report and, where appropriate, acts in terms of section 84 and as contemplated in section 85 of the PFMA.
- 9.1.3 Ensure that the PRASA Board considers the acts of maladministration and improper conduct referred to in paragraph 8 of this report and takes appropriate disciplinary action against the officials of PRASA in respect of their conduct referred to therein.
- 9.1.4 Include in her oversight activities with regard to PRASA as a State Owned Enterprise, the monitoring of implementation of remedial action taken in pursuit of the findings in terms of powers conferred under section 182(1)(c) of the Constitution.

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**9.2. The Chairman of PRASA Board to ensure that:**

- 9.2.1. The PRASA Board takes cognizance of the findings of maladministration and improper conduct by Mr Montana and other functionaries at PRASA and takes or ensures that appropriate disciplinary action is taken against the responsible officials, where it considers appropriate.
- 9.2.2. The PRASA Board evaluates the effectiveness of PRASA's internal controls on SCM and HR processes with a view to take corrective action to prevent a recurrence of the improprieties referred to in this report.
- 9.2.3. PRASA Board considers amending the R350 million threshold value of its SCM Policy for competitive bidding process of procurement of goods and services.
- 9.2.4. The PRASA Board reports to the National Treasury and the Auditor-General, particulars of the alleged financial misconduct and the steps taken in connection with such financial misconduct, as contemplated in section 85 of the PFMA.
- 9.2.5. To support National Treasury in conducting a forensic investigation into all PRASA contracts above R10 million since 2012 and take measures to address any findings regarding systemic administrative deficiencies allowing maladministration and related improprieties in its procurement system.

**9.3. The Acting GCEO of PRASA:**

- 9.3.1. PRASA should adopt a monitoring system that ensures that proper procurement processes and HR processes are followed on appointing service providers and individuals.

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- 9.3.2. Review the existing policy or the policy provisions on managing conflict of interest to ensure there is no confusion regarding expectations from employees and Board Members.
- 9.3.3. Together with the National Treasury, commission a forensic investigation into all PRASA contracts above R10 million since 2012 and take measures to address any findings regarding systemic administrative deficiencies allowing maladministration and related improprieties in its procurement system.
- 9.3.4. Together with the Board, review the entire PRASA SCM Policy in particular clause 11.3 of the policy.
- 9.3.5. To ensure that prior to signing a formal contract or service level agreement with a contractor must ensure that such contracts or agreements are legally sound to avoid potential litigation and to minimise possible fraud and corruption. This must include legal vetting by at least the Legal Services of the agency. Such contracts or agreements must be actively managed in order to ensure that both the agency and the contractors meet their respective obligations.
- 9.3.6. To ensure that there is compliance with paragraph 11.1 of the Disciplinary Code and Procedure of Metrorail to avoid prolonged and costly suspensions of employees.
- 9.4. The Chief Procurement Officer of the National Treasury:**
- 9.4.1. To conduct a forensic investigation into all PRASA contracts above R10 million since 2012.

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- 9.4.2. The terms of reference to be approved by the Public Protector.
- 9.4.3. The Public Protector to be kept abreast of the progress of the investigation.

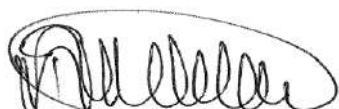
## **10. MONITORING**

- 10.1.1. The Minister of Transport to submit an implementation plan indicating how the remedial action referred to in paragraph 9.1 above will be implemented, within 30 days from the date of my final report.
- 10.1.2. The Chairman of the PRASA Board to submit an implementation plan indicating how the remedial action referred to in paragraph 9.2 above will be implemented, within 30 days from the date of my final report.
- 10.1.3. The Acting GCEO of PRASA to submit an implementation plan indicating how the remedial action referred to in paragraph 9.3 above will be implemented, within 30 days from the date of my final report.
- 10.1.4. The Chief Procurement Officer of the National Treasury to submit an implementation plan indicating how the remedial action referred to in paragraph 9.4 above will be implemented, within 30 days from the date of my final report.

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- 10.1.5. All actions requested in my report as part of the remedial action I have taken in terms of my powers under section 182(1) (c) of the Constitution to be finalised within six months and a final report presented to my office.

*"The principle of legality is applicable in all exercises of public power and not only in administrative action" as defined in PAJA. It requires that all exercises of public power are, at minimum, lawful and rational.*

Justice Skweyiya in *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal* (CCT 10/13) [2013] ZACC 49



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**ADV T N MADONSELA**

**PUBLIC PROTECTOR OF THE  
REPUBLIC OF SOUTH AFRICA**

**DATE: 24 August 2015**

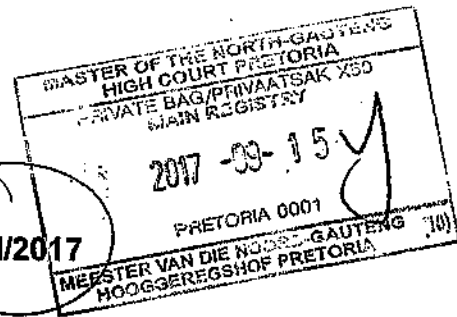
*Assisted by: Governance and Integrity Branch*

**SIYAYA CONSULTING ENGINEERS (PTY) LTD**  
OF JUSTICE

**("THE COMPANY")**

**(IN LIQUIDATION)**

**MASTER'S REFERENCE T801/2017**



**COMMISSIONERS INTERIM REPORT OF THE ENQUIRY IN TERMS OF SECTION 417 (1) AND 418 (2) OF THE COMPANIES ACT 61 OF 1973 READ WITH ITEM 9 OF SCHEDULE 5 OF THE COMPANIES ACT 71 OF 2008 ON**

**1. APPOINTMENT**

- 1.1 The Company was wound up voluntarily in terms of a Special Resolution that was registered on the 24<sup>th</sup> of March 2017.
- 1.2 On the 25<sup>th</sup> of July 2017 the High Court of South Africa Gauteng Division, Pretoria in terms of Section 388 of the Companies Act converted the Special Resolution to a winding up by the Court.
- 1.3 In terms of the aforesaid order the court appointed me as Commissioner to hold an enquiry into the affairs of the company under sections 417 and 418 of the Companies Act, as amended.

**2. THE ENQUIRY**

- 2.1 The enquiry was held on the 28<sup>th</sup> and 31<sup>st</sup> of August 2017 at the Offices of Tshwane Trust, 1207 Cobham Road, Colbyn Pretoria.
- 2.2 The enquiry was conducted in an atmosphere of collegiality which was informed by the conduct of counsel.

### **3. REPRESENTATION**

3.1 On behalf of the Liquidators the examination of witnesses was undertaken by Adv F Botes SC, instructed by two firms of Attorneys Crouse Inc and Mathopo Inc.

3.2 Advocate Kennedy Tsatsawane SC instructed by Diale Mohashoa Attorneys represented the PRASA witnesses.

### **4. THE WITNESSES**

Of the witnesses summoned the following gave evidence:

- 4.1 Mr S Baltic
- 4.2 Mr M Bopape
- 4.3 Mr AM Vermeulen
- 4.4 Mr V Kobuwe
- 4.5 Mr L Montana
- 4.6 Dr D Mthimkulu

### **5. BRIEF SUMMARY OF THE EVIDENCE SO FAR PRESENTED:**

#### **5.1 EVIDENCE OF MR SOREN BALTIC**

- 5.1.1 Mr Baltic is employed by the Passenger Rail Agency of South Africa (PRASA) as a general manager signalling and telecommunications and was responsible for level signalling and telecommunications projects within PRASA.

**RE: THE TECHNICAL ASSISTANCE FOR THE SUPERVISION OF THE NATIONAL RESIGNALLING PROJECT, STAGE 1, PHASES 1 TO 5 AGREEMENT.**

5.1.2 Mr Baltic confirmed that he was familiar with the above agreement which was entered into and concluded between PRASA and the company in liquidation on the 31st of May 2011 which was for Technical Assistance for the Supervision of the National Resignalling Project, Stage 1, Phases 1 to 5 and that the value of the contract was R54,537,600.00.

5.1.3 He further confirmed that he was personally involved and had personal knowledge of the way the contract was implemented and executed and that according to his knowledge the company had complied with the conditions of the contract.

5.1.4 Mr Baltic also said that he had no reason to believe that the company had not complied with the terms of the contract.

5.1.5 According to the company the amount outstanding in terms of this contract is R15,319,491.61. Mr Baltic could not confirm or deny that this figure was accurate and agreed to consult PRASA's records to confirm what was due in terms of the contract and then revert back to the liquidators and the Commission with the correct amount.

5.1.6 On the 8th of September 2017, I received a letter from PRASA's attorneys in which they said that their clients were investigating the matter and that they would, as soon as possible, make their findings available to the Commission.

**RE: CONSULTANCY AGREEMENT FOR "TECHNICAL ADVISOR FOR THE NEW DIGITAL RAILWAY SIGNALLING RADIO NETWORK" CONTRACT NO: HO/INFRA(T) 301/01/2013.**

5.1.7 Mr Baltic testified that he was familiar with the agreement.

5.1.8 During evidence, it appeared that the amount due in respect of agreement could not be agreed upon by the parties to the contract so the company, represented by Mr Mabunda its former CEO, and Mr Baltic agreed to meet to try and calculate the amount which is due and payable to the company and to submit their answer to the Commission and the liquidators by the 11th September 2017.



5.1.9 On the 6th of September 2017, I received letter by e mail from PRASA's attorneys addressed to myself and the 'liquidators' representative Mr Boshoff, in which they confirm that their client Mr Baltic was requested to engage with Mr Mabunda to calculate the amount which was due in terms of the contract no HO/INFRA(T) 301/01/2013.

5.1.10 In the aforesaid letter, they say that the contract was with a company called Siyaya Rail Solutions (Pty) Ltd and not with Siyaya Consulting Engineers, the company which is the subject of the Commission of enquiry.

5.1.11 Accordingly, they say that it is not clear why their client has been called to testify about the affairs of Siyaya Rail Solutions (Pty) Ltd which has no links with company which is the subject of the enquiry.

5.1.12 In the circumstances, it would in my view be appropriate to have the contents of the aforesaid letter raised before the commission when it recommences.

## **5.2 EVIDENCE OF MR MAISHE BOPAPE**

5.2.1 Mr Bopape is a former Senior Manager responsible for Procurement at PRASA Rail.

5.2.2 He explained the checks and balances within PRASA which would monitor the implementation of services required up to payment for the work when it was completed.

## **RE: THE ACCELERATED INFRASTRUCTURE REFURBISHMENT PROJECT CONSULTING AGREEMENT: CONTRACT NUMBER HO/PT/(INFR)/017/06/2013**

5.2.3 The witness has seen the contract.

5.2.4 He said that the contract was concluded between Siyaya with PRASA Tech and not with PRASA Rail and that only PRASA Tech would be able to confirm that the work had been done in terms of the contract.

5.2.5 He could not confirm that the work had been done and that PRASA Cres would be better placed to confirm or deny that the work had been done.

**RE: CONSULTANCY AGREEMENT FOR THE IMPLEMENTATION OF PRASARAIL  
INFRASTRUCTURE REHABILITATION PROGRAM – PHASE II: CONTRACT NUMBER  
HO/PR/INF(P)/201/04/2013**

5.2.6 This contract was concluded between PRASA and Siyaya Consulting Engineer on the 8th of September 2014 with a contract value of R28,819,200.00 and according to Mr Bopape was signed by the authorised official at PRASA.

5.2.7 He said the "agreement pertaining to the asset rehabilitation programme" had been given effect to but that the End-User at PRASA would be better placed to confirm that the work had been done.

5.2.8 Speaking generally, Mr Bopape said that in the time that he was employed by PRASA there were no problems or issues pertaining to the company in terms of service delivery, performance, and the manner in which their work was executed.

5.2.9 He went on to say that some payments due to the company were not being effected by PRASA and that this could have been caused by internal issues within PRASA and not because PRASA was not happy with the work which had been done by the company.

5.2.10 He went on to say that as far as PRASA Rail was concerned the Asset Rehabilitation Programme which was entrusted to the company was successfully and properly and diligently attended to and executed.

**RE: INTERNAL PRASA MEMORANDUM FROM DR JOSEPHAT PHULUNGULA (CHIEF  
PROCUREMENT OFFICER) TO MR TSHEPO LUCKY MONTANA (GROUP CHIEF  
EXECUTIVE OFFICER)**

**PROJECT DESCRIPTION: THE IMPLEMENTATION OF THE MATERIAL CODING  
PROJECT WHICH WAS INITIATED UNDER PRASA TECHNICAL FOR THE BENEFIT OF  
PRASA RAIL NATIONALLY.**

5.2.11 Mr Bopape confirmed that he drafted the above memorandum/document which was the result of a dispute between PRASA Rail and PRASA Technical which were different divisions within PRASA.

5.2.13 The entity which benefitted from the project was PRASA Rail but the “budget and the function” was for PRASA Technical].

5.2.14 Mr Bopape testified to the fact that PRASA Rail was satisfied with work done and said that to the best of his knowledge the End-User was satisfied with the work that had been done.

5.2.15 As a consequence of the dispute he drafted the abovementioned document which was to be referred to the GCEO him to approve:

**A. The regularisation of the appointment of Siyaya DB;**

***B. B That PRASA Technical concludes and signs a contract with Siyaya DB to the tune of R14,000,000.00 excluding Vat;***

C. That upon the successful conclusion and signing of the contract, PRASA Technical effect payment of R14,000,000.00 owed to Siyaya DB as settlement done for work done under the material coding project.

5.2.16 Mr Bopape said amount due at that point in time (the 8th of May 2015) was R14,000,000.00.

5.2.17 The recommendation was approved by the Group CEO Mr Montana on the 19th of June 2015 subject to “a written explanation why disciplinary action should not be instituted against managers who gave a go ahead without first obtaining approval, as required by the Group SCM Policy.”

5.2.18 Mr Bopape said that this basically says that "I (the CEO, Mr Lucky Montana) confirm and agree with all that has been said in this document and I support and recommend that payment be made."

5.2.19 The witness then went on to confirm that the company "without any doubt" was entitled to be paid the amount of R14,000,000.00 by PRASA.

5.2.20 When I asked the witness what "regularising" the contract meant he said it meant the "signing" of the contract.

### 5.3 THE EVIDENCE OF MR AM VERMEULEN

5.3.1 Mr Vermeulen is an engineer employed by PRASA and is responsible for Infrastructure Operational Services PRASA Rail on a national basis.

#### RE: CONSULTANCY AGREEMENT FOR THE IMPLEMENTATION OF PRASARAIL INFRASTRUCTURE REHABILITATION PROGRAM – PHASE II: CONTRACT NUMBER HO/PR/INF(P)/201/04/2013

5.3.2 Mr Vermeulen is aware of the above agreement which was concluded between PRASA Rail and the company for the rehabilitation of certain infrastructure that needed to be attended to.

5.3.3 He explained that there were two contracts, one for phase 1, and another for phase 2 and that the amount due in terms of the contracts was R26 million and R28 million totalling R54 million of which about R54 million was paid.

5.3.4 After he had done a reconciliation his estimate was that R1.8 million was due but that the final amount will be determined "on some interpretation that both parties will agree on.

5.3.5 It was agreed at the Commission that Mr Vermeulen and Mr Mabunda would meet to calculate what amount was due to the company by PRASA in terms of the contract.

5.3.6 On the 8th of September 2017, I received a letter by e mail from PRASA's attorneys addressed to myself and the liquidators' representative Mr Boshoff in which they

confirm that their client Mr Vermeulen was requested, with the assistance of Mr Mabunda, to investigate if there were payments outstanding and due to the company.

5.3.7 In the letter, they say that in terms of their client's records PRASA overpaid the company by an amount of R1,191,530.00 and that they awaited the liquidator's response to their submissions.

#### 5.4 THE EVIDENCE OF MR V KOBUWE

5.4.1 Mr Kobuwe confirmed that he is still in the employ of PRASA and that he is the Executive Manager for Infrastructure.

#### RE: THE ACCELERATED INFRASTRUCTURE REFURBISHMENT PROJECT CONSULTING AGREEMENT: CONTRACT NUMBER HO/PT/(INFR)/017/06/2013

5.4.2 The witness confirmed that he was familiar with the agreement.

5.4.3 At the commission, it was agreed that Mr Kobuwe would engage with Mr Mabunda, the CEO the company, to compare his (PRASA) records with the records of the company *"insofar as instruction is concerned, and where there was communication to attend to what is contained in invoices 12,13 and 14 and to establish whether there was a lawful instruction and whether or not it was executed"*.

5.4.4 On the 6<sup>th</sup> of September 2017, I received a letter by e mail addressed to the liquidators' representative and myself from PRASA's attorneys in which they confirm that the their client Mr Kobuwe was requested, with the assistance of Mr Mabunda, to clarify whether *"Siyaya Consulting Engineers (Pty) Ltd (the company) additional works and invoices in respect thereof were in line with the existing contractual terms and/or instructions as the case may be."*

5.4.5 In the letter, they request that prior to any engagement between the parties a valid contract signed by both parties on the basis of which Siyaya Consulting Engineers (Pty) Ltd attended to additional works should be made available to their client,

alternatively, that "Siyaya Consulting Engineers (Pty) Ltd should make available to Mr Kibuwe express instructions, by or on behalf of PRASA, which directed that Siyaya Consulting Engineers (Pty) Ltd attends to such additional works".

5.4.6 The letter concludes by saying that the aforesaid requirements need to be complied with "before Mr Kibuwe can start engaging you further on this matter".

## 5.5 EVIDENCE OF MR MONTANA

5.5.1 Mr Montana confirmed that he was the former Group Chief Executive Officer of PRASA.

5.5.2 Mr Montana began by giving a summary of the importance of railway infrastructure in the economy of the country and how PRASA was established.

**RE: INTERNAL PRASA MEMORANDUM FROM DR JOSEPHAT PHULUNGULA (CHIEF PROCUREMENT OFFICER) TO MR TSHEPO LUCKY MONTANA (GROUP CHIEF EXECUTIVE OFFICER)**

**PROJECT DESCRIPTION: THE IMPLEMENTATION OF THE MATERIAL CODING PROJECT WHICH WAS INITIATED UNDER PRASA TECHNICAL FOR THE BENEFIT OF PRASA RAIL NATIONALLY.**

**REQUEST TO FACILITATE THE PAYMENT OF OUTSTANDING INVOICES TO SIYAYA DB.**

**DATED: 2ND JUNE 2016**

5.5.3 Mr Montana was familiar with the document which he had approved.

5.5.4 He confirmed that the work had been done and that the company was entitled to payment. By confirming this he corroborated the evidence of Mr Bopape mentioned in paragraph 5.2 of this report.

**RE: DEPOT PROGRAMME: TECHNICAL DESIGNS AND TENDER FOR BRAAMFONTEIN  
AND SALT RIVER CONSULTING AGREEMENT: CONTRACT NUMBER:  
HO/PT/(DM)/014//06//2013**

5.5.5 Mr Montana signed the contract on behalf of PRASA and gave the reason for its genesis.

5.5.6 He confirmed that the work was done by the company in terms of the contract was done, implemented and completed to the satisfaction of the End-User.

5.5.7 He also confirmed that the amount due and payable in terms of the contract was R15,371,793.87.

**RE: CONSULTANCY AGREEMENT FOR "TECHNICAL ADVISOR FOR THE NEW  
DIGITAL RAILWAY SIGNALLING RADIO NETWORK" CONTRACT NO: HO/INFRA(T)  
301/01/2013.**

5.5.8 Mr Montana said that the work was done and the amount (which could not be agreed upon with Mr Baltic) was due and payable.

#### **5.6 EVIDENCE OF DR MTHIMKULU**

5.6.1 Dr Mthimkulu was a formerly employed by PRASA as the Executive Manager Infrastructure and Rolling Stock.

**RE: PROJECT CHARTER- YEAR 1 MATERIAL MANAGEMENT AND CODING- ROLLING  
SOCK AND INFRASTRUCTURE (YEAR 1)**

5.6.2 Dr Mthimkulu confirmed that an amount of R16,999,322.00 was allocated to this project.

**RE: DATA CLEANSING PROJECT – ROLLING STOCK AND INFRASTRUCTURE**



- 5.6.3 Dr Mthimkulu confirmed unreservedly that the amount of R17,628,118.59 is due and payable in terms of the above two contracts because the company had successfully executed the Material Management Programme and the Data Cleansing Programme.

**RE: INTERNAL PRASA MEMORANDUM FROM DR JOSEPHAT PHULUNGULA (CHIEF PROCUREMENT OFFICER) TO MR TSHEPO LUCKY MONTANA (GROUP CHIEF EXECUTIVE OFFICER)**

**PROJECT DESCRIPTION: THE IMPLEMENTATION OF THE MATERIAL CODING PROJECT WHICH WAS INITIATED UNDER PRASA TECHNICAL FOR THE BENEFIT OF PRASA RAIL NATIONALLY.**

**REQUEST TO FACILITATE THE PAYMENT OF OUTSTANDING INVOICES TO SIYAYA DB.**

**DATED: 2ND JUNE 2016.**

- 5.6.4 Dr Mthimkulu is familiar with this document and aligned himself with what is said in it and knows of no reason why the R14,000,000.00 should not be paid.

**SIGNED AT PRETORIA ON 15<sup>TH</sup> SEPTEMBER 2017**

  
\_\_\_\_\_  
**NIEL KRIGE – COMMISSIONER**

**TO: The Registrar High Court Gauteng Division, Pretoria**

**TO: The Master of the High Court, Pretoria**

**TO: Crouse Inc – Attorneys for the Liquidators**

**TO: Mathopo Inc – Attorneys for the Liquidators**



# RECORD: INSOLVENCY ENQUIRY

SS4-PRASA-REF-616

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

In the matter between:

CASE NO: 23484/18

PASSENGER RAIL AGENCY OF SA

APPLICANT

AND

SIYAYA DB CONSULTING ENGINEERS  
(PTY) LTD (IN LIQUIDATION)  
Respondent

SIYAYA RAIL SOLUTIONS (PTY) LTD  
Respondent

SHERIFF (PRETORIA EAST)  
Respondent

JOHANNES ZACHARIS HUMAN MULLER  
Respondent

TSHIFHIWA PERSEVERANCE MUDZUS

5<sup>th</sup> Respondent

MASTER OF THE HIGH COURT, PRETORIA

6<sup>th</sup> Respondent

IN RE:

SIYAYA DB CONSULTING ENGINEERS  
(PTY) LTD (IN LIQUIDATION)

CASE NO: 2015/73933

APPLICANT

AND

PASSENGER RAIL AGENCY OF SA  
AND

RESPONDENT

IN RE:

CASE NO: 2015/73934

SIYAYA DB CONSULTING ENGINEERS  
(PTY) LTD (IN LIQUIDATION)

APPLICANT

AND

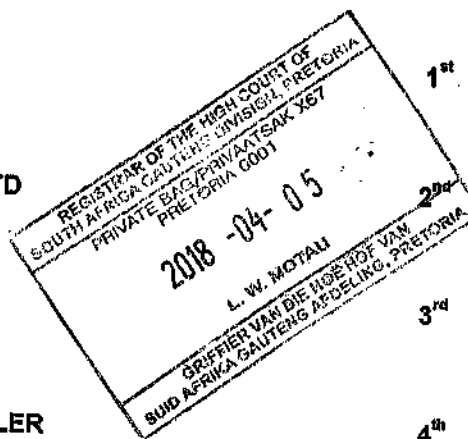
PASSENGER RAIL AGENCY OF SA

RESPONDENT

AND

IN RE:

CASE NO: 2016/47597





SIYAYA RAIL SOLUTIONS (PTY) LTD

APPLICANT

AND

PASSENGER RAIL AGENCY OF SA

RESPONDENT

AND

IN RE:  
SIYAYA DB CONSULTING ENGINEERS  
(PTY) LTD (IN LIQUIDATION)

CASE NO: 2015/47598

APPLICANT

AND

PASSENGER RAIL AGENCY OF SA

RESPONDENT

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FILLING-SHEET

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PRESENTED FOR FILING DOCUMENT: RECORD OF INSOLVENCY  
ENQUIRY.

DATED AT JOHANNESBURG ON THIS      DAY OF APRIL 2018.

---

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RESPONDENTS ATTORNEYS

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PRETORIA

AND TO: BOWMAN GILFILLAN INC

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BOSHOF INCORPORATED  
Received without prejudice

2018 -04- 05

*N. Nortje*

Received a copy hereof on this day  
of APRIL 2018.

FOR: APPLICANTS ATTORNEYS

Page 1 of 1  
2018-04-05 14:00:00  
100%

For: PRASA (Pretoria Branch) - The Municipality

2018-04-05

2018-04-05 14:00:00

2018-04-05

## ■ **CERTIFICATE** ■

I, THE UNDERSIGNED, CERTIFY THAT THIS TRANSCRIPT, SUBJECT TO THE AUDIBILITY OF THE RECORDING OF THE PROCEEDINGS ON TAPE, IS A TRUE AND ACCURATE TRANSCRIPTION OF THE PROCEEDINGS.

**SIYAYA CONSULTING ENGINEERS (PTY) LIMITED,  
IN LIQUIDATION**

**28 AUGUST 2017- VOLUME 1**

**31 AUGUST 2017 – VOLUME 2**

**1 SEPTEMBER 2017 – VOLUME 3**

SIGNED AT PRETORIA ON THE 9<sup>TH</sup> DAY OF SEPTEMBER OF 2017



TRANSCRIBER

ISSIE BEETGE





**28 AUGUST 2017:**

**Commissioner:**

The enquiry today is an enquiry in terms of Section 417 (1) read with Section 418 (2) of the Company's Act number 61 of 1973 as amended and read with Item 9 of Schedule 5 of the Company's Act, number 71 of 2008 in the matter of Siyaya Consulting Engineers (Pty) Limited in liquidation. Master's reference, T801/2017. The company was wound up by an order of the High Court of South Africa North Gauteng Division Pretoria on 25 July 2017 in terms of which order, the special resolution registered for the liquidation of the company was converted to a winding up by the Court. The enquiry is being held on Monday 28 August 2017 at the offices of Tshwane Trust, 1207 Cobham road, Colbyn road Pretoria. Presiding Officer is Mr DJ Krige who was appointed to act as the Commissioner in terms of the aforementioned order. Will the parties please place themselves on record?

**Adv FW Botes:**

Thank you, very much Mister Commissioner. My name is Francois Botes SC. I am a member of the Pretoria Society of Advocates. I have received instructions to represent the insolvent company which is Siyaya DB Consulting Engineers (Pty) Limited by two firms of attorneys. First of all, Matopo, M-a-t-h-o-p-o.

**Commissioner:**

M-a-t-h-o-p-o, yes?

**Adv FW Botes:**

Attorneys.

**Commissioner:**

Inc?

**Adv FW Botes:** Inc, yes as well as Krause Inc and I will lead the evidence of the witnesses who were subpoenaed to be present for the duration of this enquiry. On my left also present, is Mr Makhensa. M-a-k-h-e--n-s-a and his surname is Mabunda. Mabun, for Nellie ...

**Commissioner:** B-u-n, yes?

**Adv FW Botes:** D-a

**Commissioner:** D-a?

**Adv FW Botes:** He was at all relevant times the Chief Executive Officer of the company in liquidation and he was the person in charge of all the operational, logistical, financial and related affairs.

**Commissioner:** Siyaya. He was (indistinct) Siyaya?

**Adv FW Botes:** That is correct. So, we intend to call two witnesses today for the duration of the morning. It depends on how long they will be in examination. They are represented by Senior Council from the Johannesburg Bar being Advocate Kennedy-Tsatsawane SC.

**Commissioner:** Just take that slowly?

**Adv FW Botes:** Kennedy.

**Commissioner:** And his surname?

**Adv FW Botes:** Tsatsawane .

**Commissioner:** T-s-h?

**Adv FW Botes:** I am going to spell it for you. I just want to get his, if you will just allow me one minute? T-s-a.

**Commissioner:** Yes?



**Adv FW Botes:** T-s-a.

**Commissioner:** Yes?

**Adv FW Botes:** W-a-n-e.

**Commissioner:** W-a-n-e. T-s-a-t-s-a-w-a-n-e?

5 **Adv FW Botes:** Correct.

**Commissioner:** Johannesburg Bar?

**Adv FW Botes:** Johannesburg Bar. I have invited Advocate Tsatsawane SC, to be present when the witnesses are being lead. The reason being Mister Commissioner, ...

10 **Commissioner:** I wonder ... I wonder shouldn't he be sitting in while you are ...

**Adv FW Botes:** Very well. Yes, very well. Let us call him ... let us call him. Yes.

**Commissioner:** I do not want the perception here of ...

15 **Adv FW Botes:** Very well and Mr Baltac, as well. The first witness.

**Commissioner:** Ja, we will put them all on record and ...

**Adv FW Botes:** Yes.

**Commissioner:** Thank you.

**Adv FW Botes:** Hallo Mister (indistinct). Well and you?

20 **Adv K Tsatsawane:** I am good.

**Adv FW Botes:** Good, good. Mister Commissioner, just to where I have left off ...

**Commissioner:** You can just summarise what you have said?

**Adv FW Botes:** Yes.

25 **Commissioner:** What is on the record, just summarise that for Council, please?

**Adv FW Botes:**

What I have submitted to you before Advocate Tsatsawane entered into the room is that I have invited Advocate Tsatsawane together with his instructing attorney to be present when the evidence that I am about to introduce is lead. The reason being and I have also informed Advocate Tsatsawane prior during more than one telephonic discussion we had, is that this is not a Spanish inquisition. It is not a witch-hunt. The purpose of this enquiry is to establish the truth relating to the relationship between the relevant parties and I have no objection if either Advocate Tsatsawane or his instructing attorney or representatives of his instructing attorney are present, even if I lead the evidence of witnesses who are not represented by them and having said that I want everybody to understand very clearly that from our side, from my side as the leader of the evidence in this enquiry we have absolutely nothing to hide. There is no ulterior motive in this enquiry. The only motive is to get down to the bottom of the barrel in so far as the truth is concerned. Advocate Tsatsawane is present whilst I have conducted this to you. His instructing attorney is also present and subject to your leave Commissioner, I beg leave to call the first witness that was requested to present today and that is the gentleman sitting right opposite me.

**Commissioner:**

Okay, thank you. Just before you get there I would like a, I got on record you as appearing and as well as you, Sir

and I have also got on record Advocate Tsatsawane.

**Adv K Tsatsawane:** That is correct.

**Commissioner:** But may I have the details of your instructing attorney as well, please?

5 **Adv K Tsatsawane:** Mr Madipa Mogaswa, who is sitting there.

**Commissioner:** So, you are on behalf of, you are acting of behalf today of?

**Adv K Tsatsawane:** Of the witness.

**Commissioner:** Mr ... and your instructing attorney, how do you, just give me his full names, please?

10 **Adv K Tsatsawane:** Mogashoa.

**Commissioner:** Can you spell that for me?

**Adv K Tsatsawane:** Mo.

**Commissioner:** Mo?

**Adv K Tsatsawane:** Go.

15 **Commissioner:** Go?

**Adv K Tsatsawane:** Ga, sorry.

**Commissioner:** Sorry?

**Adv K Tsatsawane:** G-a?

**Commissioner:** G-a.

20 **Adv K Tsatsawane:** S-h.

**Commissioner:** S-h

**Adv K Tsatsawane:** O-a

**Commissioner:** O-a.

**Adv K Tsatsawane:** Oa.

25 **Commissioner:** Thank you, very much.

**Adv K Tsatsawane:** Yes.

**Commissioner:** That is his surname?

**Adv K Tsatsawane:** That is his surname.

**Commissioner:** Good, and what firm?

**Adv K Tsatsawane:** Diale. D-i.

5 **Commissioner:** D-i?

**Adv K Tsatsawane:** Ale

**Commissioner:** Yes?

**Adv K Tsatsawane:** Mogashoa.

**Commissioner:** Good.

10 **Adv K Tsatsawane:** Yes.

**Commissioner:** And the lady present?

**Adv K Tsatsawane:** (Indistinct).

**Commissioner:** Sorry?

**Adv K Tsatsawane:** I think she is going to spell that for you.

15 **Me Mbebe:** Miss M-b-e.

**Commissioner:** Mbe?

**Adv K Tsatsawane:** Yes.

**Me Mbebe:** Be. Another b-e.

**Commissioner:** What capacity are you in, Ma'am?

20 **Me Mbebe:** I am the candidate attorney to Mr ...

**Commissioner:** Candidate attorney, okay? Good and then I want to take the transcriber on record as well, please Ma'am?

**Me A Kruger:** Adele Kruger,

**Commissioner:** Thank you and may I have your phone number, please?

25 **Me A Kruger:** 0606.

**Commissioner:** 0606?

**Me A Kruger:** 927.

**Commissioner:** 436 and your firm?

**Me A Kruger:** Issie Beetge Transcribers

**Commissioner:** Thank you, and I see that we have got Mr Boshoff here as well from ...

**Adv FW Botes:** Ja, Mr Izak Boshoff. He is representing the liquidators. The liquidators so duly appointed by the Master of this Court is Tshwane Trust and Mr Boshoff is the person who in the employ of Tshwane Trust who is directly involved in the administration of the estate.

**Commissioner:** Okay, thank you. Good, just prior to our commencing, is there any point in limine that anyone wants to direct?

**Adv FW Botes:** No, there is nothing.

**Adv K Tsatsawane:** No, no.

**Adv FW Botes:** There is nothing. We can proceed without any further ado and what I have also indicated to Advocate Tsatsawane, we will accommodate him and his witnesses. The purpose is ~~not to cause any undue delay to get to the~~ issues concerning the estate, asap so that they can also be excused. (Indistinct).

**Commissioner:** Mister Baltac, do you have any objection to taking the oath?

**Mr S Baltac:** No, Commissioner.

**Commissioner:** Will you stand, please? Do you swear that the evidence that you will give will be the truth the whole truth and nothing but the truth? Raise your right hand and say, "so

help me God”?

**Mr S Baltac:** I do.

**Commissioner:** Say “so help me God”?

**Mr S Baltac:** Help me God.

5 **Commissioner:** Thank you.

**EVIDENCE OF MR S BALTAC:**

**Adv FW Botes:** Thank you. Thank you, Mister Commissioner. Good morning, Mister Baltac.

**Mr S Baltac:** Good morning.

10 **Adv FW Botes:** Mister Baltac, do I understand ... your pen, when you stood up, fell.

**Mr S Baltac:** Sorry, what is your name?

**Adv FW Botes:** My name is Botes, B-o-t-e-s. I think your pen fell, Mister Baltac.

15 **Mr S Baltac:** Okay, now it is here.

**Adv FW Botes:** Do you have it?

**Mr S Baltac:** No.

**Adv FW Botes:** I heard something fell, here, there you go. There is a pen... for your, I have extra pens.

20 **Mr S Baltac:** I have it, it is fine.

**Adv FW Botes:** You have it. My surname Sir, is Botes. It is spelled B-o-t-e-s. Without the “h”.

**Mr S Baltac:** E-s.

**Adv FW Botes:** Botes and the initials is “FW” for flat wheel. Mister Baltac, good morning.

25 **Mr S Baltac:** Goeie môre.

**Adv FW Botes:**

Am I correct that you are in the employ of the Passenger Rail Agency of Prasa ... o, of Africa also known as Prasa?

**Mr S Baltac:**

You are correct, Sir.

**Adv FW Botes:**

Can you indicate to Mr Commissioner what capacity you are holding at Prasa?

**Mr S Baltac:**

I am a general manager, signalling and telecommunications.

**Adv FW Botes:**

Just by way of introduction in a general manner just explain to the Commissioner what your duties, your responsibilities are?

**Mr S Baltac:**

I am responsible to the level signalling and telecommunication projects, big projects within Prasa.

**Adv FW Botes:**

Since when have you been in Prasa's employee?

**Mr S Baltac:**

I have been appointed ... appointed in, on the 18<sup>th</sup> of December 2010.

**Adv FW Botes:**

And since then you have been in Prasa's employ?

**Mr S Baltac:**

Yes, Sir.

**Adv FW Botes:**

Shortly after your employment and more specifically on the 31<sup>st</sup> of May 2011 an agreement was entered into and concluded between Prasa, your employer and the company in liquidation. I want to present you with a copy of that document and I want to ask you whether or not you have seen this document before? You will see on page 2 Mister Baltac, the scope? Page 2 the scope, paragraph one, the subject matter of this contract is the performance of services of technical assistance for the signalling ...

supervision of the national re-signalling project, stage one,  
phases one to five that falls within the (indistinct)(?) at  
Prasa, is that correct?

**Mr S Baltac:**

Yes, Sir.

5

**Adv FW Botes:**

And if you turn to page 4 of that document you will note right in the middle of the page that it was signed on behalf of consultant, that is the company by Mr Makhenza Babunda who is the Chief Executive Officer and Mr Lucky Montana, he was at that stage the group CEO of Prasa, signed the document on behalf of Prasa?

10

**Mr S Baltac:**

Yes, Sir. It was a question or?

**Adv FW Botes:**

Yes.

**Mr S Baltac:**

Okay, yes, Sir.

**Adv FW Botes:**

So, you confirm that this agreement was entered into and concluded and if I understand you correctly you are familiar with what is contained herein?

15

**Mr S Baltac:**

Yes, Sir.

**Adv FW Botes:**

Mister Commissioner, may I with you leave introduce this agreement as exhibit "A", please?

20

**Commissioner:**

Certainly.

**Adv FW Botes:**

Mister Baltac ...

**Commissioner:**

Okay just to say, how would you like to describe it, the contract of Prasa, it is (indistinct)?

**Adv FW Botes:**

Yes, I am going to describe it for you, Mister Commissioner. It is "The agreement for technical assistance for the supervision of the national re-signalling"

25



project".

**Mr S Baltac:** "Agreement for technical assistance for"?

**Adv FW Botes:** "for the supervision of the national"...

**Mr S Baltac:** Okay, just hang on?

5 **Adv FW Botes:** "re-signalling ... re-signalling project: contract for services".

**Commissioner:** And the date is the 31<sup>st</sup> of May?

**Adv FW Botes:** 2011.

**Commissioner:** 2011.

**Adv FW Botes:** 31 May 2011.

10 **Commissioner:** 31 May?

**Adv FW Botes:** Mister Baltac, will you confirm that the value of this agreement or this contract that we are busy dealing with if you turn to page 2 thereof, it seems to be R54,5 million?  
That is according to item 3 on page 2?

15 **Mr S Baltac:** Yes, Sir, I do confirm.

**Adv FW Botes:** In general, can you explain to the Commissioner what was the purpose of entering into this agreement?

20 **Mr S Baltac:** Yes, Mister Commissioner it is ... was having a contract for signalling works with the contractor called Ziemans and Prasa have decided to appoint a technical advisor and supervision in accordance with a Fidic rules.

**Commissioner:** Sorry?

**Mr S Baltac:** Fidic it is a ...

**Commissioner:** Fidic, spelling?

25 **Mr S Baltac:** I do not know how to spell it but it is ... it is for inter ... for international contracts.

**Commissioner:** Okay.

**Mr S Baltac:** Ja.

**Commissioner:** So, you say ...

**Mr S Baltac:** Either (indistinct) for international contracts.

5 **Commissioner:** So, they decided to appoint a supervisor for?

**Mr S Baltac:** For the re-signalling ...

**Commissioner:** Okay.

**Mr S Baltac:** ... of ...

**Commissioner:** Yes?

10 **Mr S Baltac:** ... of Gauteng.

**Commissioner:** Gauteng?

**Mr S Baltac:** Ja, of part of Gauteng.

**Commissioner:** Yes?

**Mr S Baltac:** Due to the fact that Prasa do not have internally ...

15 **Commissioner:** Okay.

**Mr S Baltac:** ... the resources for ... supervise and technically assist the contractor. I think the federation ... the Fidic means Federation International ... it is a French ...

**Commissioner:** Okay. Can you just give me the acronym ...

20 **Mr S Baltac:** Fidic, "F" for foxtrot.

**Commissioner:** Yes?

**Mr S Baltac:** India ...

**Commissioner:** Yes?

**Mr S Baltac:** Delta.

25 **Commissioner:** Yes.

**Mr S Baltac:** India.

**Commissioner:** Yes.

**Mr S Baltac:** Charlie.

**Commissioner:** Thank you.

**Adv FW Botes:** Fidic. Can the Commissioner accept Mister Baltac, that  
Siyaya and that is the company in liquidation I am just  
going to refer to it as Siyaya, was then duly appointed  
pursuant to the conclusion of this agreement to do or to  
conduct or to execute whatever it provided for in this  
agreement?

**Mr S Baltac:** Correct.

**Adv FW Botes:** Now, you if I understand it correctly, were personally  
involved and had personal knowledge of the manner in  
which this contract or this agreement was implemented  
and executed?

**Mr S Baltac:** That is correct, Sir.

**Adv FW Botes:** Will it then also be correct that you personally have  
knowledge of the scope, the ambit and the quantification  
of the works?

**Mr S Baltac:** Please, define for me "ambit"?

**Adv FW Botes:** The ... the ... the ...

**Mr S Baltac:** The ambient or ...?

**Adv FW Botes:** Now, the ambit, being the extent, exactly what had to be  
done in so far as this agreement was concerned?

**Mr S Baltac:** Was the scope?

**Adv FW Botes:** Yes.

**Mr S Baltac:** And the?

**Adv FW Botes:** The ambit and quantification. The quantification.

**Mr S Baltac:** Yes, Sir.

**Adv FW Botes:** In other words, the rand and cent?

**Mr S Baltac:** Ja, I do understand.

5 **Adv FW Botes:** Very well.

**Mr S Baltac:** The answer is, yes.

**Adv FW Botes:** Yes, good. Will it be correct and please tell me if my statement is not correct, will it be correct ...

**Mr S Baltac:** If you lie to me that, I will do that.

10 **Adv FW Botes:** Very well. Will it be correct for the Commissioner to accept that whatever responsibility or liability pursuing(?) to this agreement was that Siyaya has complied with?

**Mr S Baltac:** Can you please repeat the question?

15 **Adv FW Botes:** I will repeat it. Can the Commissioner accept on your evidence that Siyaya has complied with all its obligations referred to and contained in this agreement?

**Mr S Baltac:** Siyaya did comply with the conditions from ... of this agreement.

**Adv FW Botes:** Yes?

20 **Mr S Baltac:** According to my knowledge.

**Adv FW Botes:** Very well. Let us just re-inference(?) your answer? I am going to ask you this question, Mister Baltac, from your perspective, from your personal knowledge do you have any reason or basis to believe that Siyaya has not complied?

25 **Mr S Baltac:** I do not.

**Adv FW Botes:**

You do not? Very well. Now, let us cut through all other peripheral issues and I am going to hand the document to you. I have made enough copies. I can give Advocate Tsatsawane one as well. This is a statement that was prepared for purposes of today's enquiry. I have asked my instructing attorney and representatives of Siyaya yesterday to ... to prepare this document for purposes of today. It is a statement and this statement refers to what is contained in the agreement that we have just dealt with and Mr Baltac, you will see that there are, provision has been made in this statement for a date of invoices? Then there are invoice numbers? The amount which appears in the invoice?

**Mr S Baltac:**

Ja.

**Adv FW Botes:**

There is a Vat component?

**Mr S Baltac:**

Ja.

**Adv FW Botes:**

And then there is an amount including Vat...

**Mr S Baltac:**

Ja.

**Adv FW Botes:**

... and then there is provision for certain months and then in the balance column there is reference or there is ... that contains an indication when certain amounts were paid and so forth? I want to give you a minute to familiarise yourself with this statement ...

**Mr S Baltac:**

Ja.

**Adv FW Botes:**

... and whilst you do so, do you confirm that the invoices that since the since 6 August 2014 as provided for in

this statement starting off with "K00001" up until "K00046"  
were issued by Siyaya to Prasa?

**Mr S Baltac:**

It looks correct, yes.

**Adv FW Botes:**

And it seems that when one has regard to the month in so  
far as it starts off with mobilisation, it says that all these  
invoices were paid up until the third entry from the foot of  
the page, there where it is indicated "October 2016", do  
you see that? 31 ...

**Mr S Baltac:**

What about the one, November?

**Adv FW Botes:**

Ja, well just starting at October, it says everything went  
well and everything was paid for.

**Mr S Baltac:**

But I am asking, what about November?

**Adv FW Botes:**

Yes, ...

**Mr S Baltac:**

November as well?

**Adv FW Botes:**

And November as well?

**Mr S Baltac:**

Ja, I understand the full (indistinct)?

**Adv FW Botes:**

The full page. Very well. I understand. I understand, and  
then if one has regard to the second page from the 31<sup>st</sup> of  
December 2016.

**Mr S Baltac:**

Ja?

**Adv FW Botes:**

... certain shortfalls accrued as a result of what was  
provided for in the invoices referred to on page 1?

**Mr S Baltac:**

Yes.

**Adv FW Botes:**

Now, just in a nutshell, do you know personally what gave  
rise to the shortfall? In other words, why were invoices  
paid not in respect of the amounts they were issued for but

why was only partial payment made?

**Mr S Baltac:**

I think that was an enquiry in the entire Prasa at all the contracts (indistinct) ...

**Adv FW Botes:**

I understand.

5

**Mr S Baltac:**

... and there was many departments involved in to look into this one. (Indistinct) and finance were the general ... view of these contracts and I think that the payment have suffered and was not only these contract but majority of the contract that we had. It seem that I know that that were ... there were some delays in payment.

10

**Adv FW Botes:**

I understand. Will it be correct then to say to Mr Commissioner that the short payments as reflected in this statement were not as a result of any defective of insufficient performance delivered by Siyaya?

15

**Mr S Baltac:**

Correct.

**Adv FW Botes:**

Will that be good, very well. Mister Commissioner, may I ask you to accept in, this statement and mark it exhibit "B" for Bennie?

**Commissioner:**

Give me a description, please?

20

**Adv FW Botes:**

The description is, "Statement: Revision of technical assistance and supervision-signalling".

**Commissioner:**

Thank you. And the form has got a date on it, the date is 31 July?

**Adv FW Botes:**

31 July 2017, that is the date. You confirm that, Mr Baltac?

25

**Mr S Baltac:**

Yes, I do.

**Adv FW Botes:**

Now, what this document contains and the significance of this document when one has regard to page 2 is that the total amount which provision has been made if one has regard to the value of the contract is R67,658,019,73. You will see that on page 2 that is the first total. That is the total amount. Do you confirm that amount?

**Mr S Baltac:**

Ja.

**Adv FW Botes:**

And if one then adds Vat as provided for in item 3, clause 3 of exhibit "A" then the total amount in terms of this contract is R77,130,143,49, do you confirm that?

**Mr S Baltac:**

It looks like.

**Adv FW Botes:**

Good, and then according to this statement, (indistinct) were issued and a total amount that was paid by Prasa to Siyaya amounts to R61,810,651,88, do you see that?

**Mr S Baltac:**

Yes.

**Adv FW Botes:**

Yes, and if you do then the calculation there seems to be a shortfall or a balance in the amount of R15,319,491,61?

**Mr S Baltac:**

Ja.

**Adv FW Botes:**

Do you confirm that that is the amount which is outstanding and due and payable by Prasa to Siyaya?

**Mr S Baltac:**

We need to confirm with the figure that I have, I do not have the figures but if you looks like this is the ...

**Adv FW Botes:**

We will for your benefit and for the Commissioner to be a 100% happy and satisfied that this is the correct figure that is due and payable by Siyaya, ag, by Prasa to Siyaya, will assist you Mister Baltac, if I give you 5 or 10 minutes just



to go through this and to familiarise yourself with what the correct outstanding amount due and payable is?

**Mr S Baltac:** Probably I need to go to the office to check the ...

**Adv FW Botes:** I understand.

5 **Mr S Baltac:** ... the file but it looks like that.

**Adv FW Botes:** I understand.

**Mr S Baltac:** Ja.

**Adv FW Botes:** I am going to allow you an opportunity to take that document with you.

10 **Mr S Baltac:** Okay.

**Adv FW Botes:** We are not hiding anything from anybody.

**Mr S Baltac:** Okay.

**Adv FW Botes:** And I am going to ask you to verify ...

**Mr S Baltac:** Ja?

15 **Adv FW Botes:** ... the figures contained in there to refer to any documents that you have in your office to enable you to verify and very importantly to confirm so as to be on the same page

...

**Mr S Baltac:** Ja.

20 **Adv FW Botes:** ... what the correct amount due and payable is.

**Commissioner:** Mister Botes, would you like ... would you like to have an order made or do we only accept the undertaking?

**Adv FW Botes:** It is not necessary, Mister Commissioner. I accept Mr Baltac's undertaking unconditionally. I have no reason to doubt Mr Baltac's honesty ...

25 **Commissioner:** Okay.

**Adv FW Botes:** ... *bona fides* or that he wil not do what he intended to do.

No, it is not necessary for you to make such an order.

**Commissioner:** Okay.

**Adv FW Botes:** Mister Baltac, just on this issue from a practical point ...

5 **Commissioner:** Okay, so, sorry, he will then revert to the liquidators?

**Adv FW Botes:** No, he will revert back to you, Mister Commissioner. I just want to make an arrangement with Mr Baltac if you will just allow me? Mister Baltac, from a practical, from a logistical point of view, I want to assist you. I do not want to inconvenience you. How long will it take you to verify this and to confirm either in writing or personally ...

**Mr S Baltac:** Ja?

**Adv FW Botes:** ... that this figure is correct or if it is not correct what the correct figure is?

15 **Mr S Baltac:** Ja, it is only to look on the ... on the computer. It is not taking more than half an hour I would say.

**Adv FW Botes:** No more than half an hour?

**Mr S Baltac:** Ja.

**Adv FW Botes:** Okay. Can I ask you to prepare an email then it is not necessary for you to attend, to come back to Pretoria ...

20 **Mr S Baltac:** Ja.

**Adv FW Botes:** ... and to submit that email to Mr Boshoff. He is the person who deals with the ... with the estate and also to the Commissioner. Mr Boshoff's email address is Izak?

25 **Mr N Boshoff:** I-z-a-k.

**Adv FW Botes:** I, for Izak, z-a-k?

**Mr N Boshoff:** Ja. @tshwanetrust, that is ...

**Adv FW Botes:** @tshwane. T-s-h-w-a-n-e, trust.

**Mr N Boshoff:** Trust. .co.za.

**Adv FW Botes:** It is all one letter and that is all ... it is all one word small letters.

**Mr S Baltac:** (Indistinct).

**Adv FW Botes:** Let me write it to you.

**Mr S Baltac:** Thank you.

**Adv FW Botes:** ... write for you ... it is Izak. I-z-a-k@tshwane ...

**Mr S Baltac:** Ja.

**Adv FW Botes:** ... trust. trust.co.za.

**Mr S Baltac:** Okay.

**Adv FW Botes:** And the Commissioner is? Mr Commissioner will give you.

**Commissioner:** I will give you my card but I will put it on record. It is Krige, K-r-i-g-e.

**Adv FW Botes:** Krige. K-r-i-g-e.

**Mr S Baltac:** Ja?

**Commissioner:** And then n

**Adv FW Botes:** N for Nellie.

**Mr S Baltac:** Ja.

**Commissioner:** @krige. K-r-i-g-e.

**Mr S Baltac:** Yes?

**Commissioner:** Consult with a "c". @krigeconsult.

**Mr S Baltac:** Ja?

**Adv FW Botes:** .co.za but I am going to give you my card as well.

**Mr S Baltac:** Okay.

**Commissioner:** Just so that you know (indistinct).

**Mr S Baltac:** Thank you.

**Adv FW Botes:** Thank you, Mister Commissioner.

5 **Commissioner:** So, I will just make a note here.

**Mr S Baltac:** Then the mail is to confirm that this amount ...

**Adv FW Botes:** The figure of R15,319,491 in respect of the services rendered pertaining to the signalling as envisaged and provided for in this contract.

10 **Mr S Baltac:** Ja.

**Adv FW Botes:** That that is the correct amount due and payable to Siyaya alternatively if that is not the correct amount you will just provide or communicate the correct amount to Mr Boshoff and to the Commissioner.

15 **Mr S Baltac:** Ja

**Mr S Baltac:** Mister Commissioner, with your leave, I am ... I want to excuse Mr Baltac. I do not have any further business of questions that I want to pose but I just need an instruction before I do that. Can I just ask for 2 minutes adjournment? I just want to stand down to obtain instruction. It is not necessary to adjourn, people can just sit as they are.

20

**\*SHORT BREAK**

**\*ENQUIRY CONTINUES**

25 **Adv FW Botes:** Thank you. Thank you, Commissioner, we are back on record. Mister Baltac, there is just one other small issue

that I would like to take up with you? May I ask Mr Boshoff, there is a file behind Mr Boshoff, just to hand you that file? It is open on a specific page. We dealt with signalling I am not going back to signalling.

5 **Mr S Baltac:** Thank you.

**Commissioner:** Sorry ...

**Mr S Baltac:** That is, ja it is that document in front of you, that Mr ...

**Commissioner:** Mr Boshoff?

10 **Adv FW Botes:** Mr Boshoff will provide you with a copy of that. This is a document that provides for certain ... certain additional work which has been done on request of Prasa and ...

**Commissioner:** Sorry, Mister Botes, sorry to interrupt you.

**Adv FW Botes:** Yes?

**Commissioner:** I wonder if we should not get this page on record and ...

15 **Adv FW Botes:** I will do so. I will do so now. Yes.

**Commissioner:** ... take it in as a bundle?

20 **Adv FW Botes:** Very well. Mister Baltac, what you have in front of you is a bundle of documents. I am going to ask the Commissioner to mark the entire bundle exhibit "C". But I am only going to refer to one page and that is the page in front of you.

**Commissioner:** We call it ... we call it what bundle of documents?

**Adv FW Botes:** We will call it ...

**Commissioner:** I assume there will be more?

25 **Adv FW Botes:** No. No, I am going to ... I am going to focus solely for purposes of today on the documents contained in this

bundle. There might be one document that I need solely to prepare which is on my email but you can call it, "A bundle of relevant documents Prasa/Siyaya".

**Commissioner:**

Then Prasa slash?

**Adv FW Botes:**

Siyaya.

**Commissioner:**

Okay, thank you.

**Adv FW Botes:**

Mister Commissioner, may I direct your attention and if the bundle is opened before Mr Baltac on page 397? Just for your peace of mind Mister Baltac, if you turn to page 398 right at the top you will note that the scope of the work in terms of this document right at the top pertains to, or gives reference to a certain contract, Siyaya / Quattron and to provide technical assistance services for the supervision of the following works:

1. Installation of all the digital radio system components

along the railway track of each region including the electrical design as well as the erecting of mast poles for the radio frequency components and associated buildings.

2. The assistance with the application to ICASA, the regulating authority in South Africa for the required licence and frequency spectrum for the digital radio system and lastly,

3. Associated civil, electrical and telecommunication works.

**Mr S Baltac:**

Yes.

**Adv FW Botes:**

Are you familiar with this?

**Mr S Baltac:**

I am familiar, yes.

**Adv FW Botes:**

Are you, and can you just by way of the general

introduction just explain to the Commissioner what this  
additional work entailed?

**Mr S Baltac:**

Yes. The GSM work as contracted at that time has  
excluded one of the regions. We have asked the  
contracted which is Huawei to provide the work for the  
other region as well and did ask Siyaya Quattron to  
support Prasa in the ... in having the right negotiations,  
configurations, supervisions and technical assistance for  
the region that remain was uncovered at that time.

**Adv FW Botes:**

Do I understand it correctly that what is provided for in this  
agreement in layman's terms is for the provision of an  
integrated communication system so to allow for all role  
players within the industry, the <sup>trains</sup> trails on the tracks, the  
control room, Prasa, whoever is linked to this very delicate  
grid to communicate with each other?

**Mr S Baltac:**

Ja, in layman's term it is about GSM but only for railways.  
It is only for railways in respect where Prasa will be able to  
communicate in this network. It is a network only for  
Prasa.

**Adv FW Botes:**

I understand.

**Mr S Baltac:**

That is where the "R" is come in. It is GSM-R, railways,

**Adv FW Botes:**

So, GSM is ...

**Mr S Baltac:**

Is what we have all on our cell phones. "R" will be only for  
railways.

**Adv FW Botes:**

Railways. Mr S Baltac.

**Mr S Baltac:**

It is a special frequency that is used only for railways.

**Adv FW Botes:**

I understand and that is why provision has been made in the agreement on page 398 for a specific radio frequency?

**Mr S Baltac:**

Correct.

**Adv FW Botes:**

I understand. I understand. So, once this technical equipment and components have been correctly configured so to speak, that will then enable on a specific railway frequency for people or for systems to interact, to communicate with each other whatever and for whatever reason?

**Mr S Baltac:**

Yes, it is specially done for communication between the traffic control officers...

**Adv FW Botes:**

I understand.

**Mr S Baltac:**

... and the drivers of locomotives but could include any other maintenance team or security or any worker that is contributing to the flow of traffic in Prasa.

**Adv FW Botes:**

I understand.

**Mr S Baltac:**

Of rail traffic in Prasa. If I am too technical, Mister Botes, please ...

**Adv FW Botes:**

No, no, no. I appreciate the manner in which you explain this because it is extremely technical in nature and for lay-people like us it is sometimes impossible to understand the nuts and the bolts and the veracity of the ... of how the system actually works. Based on your evidence now, can the Commissioner accept that Siyaya was duly appointed to attend to this additional works which forms the subject matter of this document which appears in exhibit "C" from



page 397 up until page 410? That is the entire document?

**Mr S Baltac:**

That is correct.

**Adv FW Botes:**

And then were you personally involved in the execution of these additional works that we are busy dealing with?

5

**Mr S Baltac:**

Yes, I was.

**Adv FW Botes:**

And according to your personal knowledge, did Siyaya comply with all the obligations or responsibilities as provided for and contained in this document which appears from page 397 up until page 410?

10

**Mr S Baltac:**

Siyaya Quattron have complied with requirements of this ... of our request.

**Adv FW Botes:**

Now, based on you evidence it seems that if one has regard to what is contained in this agreement and more specifically on page 405, 4-0-5, you will find a financial calculation or analyses. It says, "The estimated costs for the required approvals are as follows: The total needed budget for the scope extension of the technical advisor and supervision, the new digital railways signalling radio network project, is R21,626,138,00 and should be made available."

15

20

Now, on that score Mister Baltac, can the Commissioner accept that there was compliance from Prasa's point, point of view that this budget was made available for the specific project?

**Mr S Baltac:**

The amount, this is what Siyaya Quattron has requested.

25

I am not sure if this is the amount ...

**Adv FW Botes:**

Yes.

**Mr S Baltac:** ... ja, but this is the amount that have been requested by Siyaya Quattron.

**Adv FW Botes:** And this amount as it appears on page 405 was that also the amount which was approved and accepted by Prasa for the execution of the works?

**Mr S Baltac:** Prasa has disputed the amount requested by Siyaya and Siyaya Quattron has been asked to offer to Prasa the rates according to the Engineering Council of South Africa.

**Adv FW Botes:** Yes, and upon that request, was those rates as far as you know then submitted to or provided to Prasa?

**Mr S Baltac:** I think, yes.

**Adv FW Botes:** Yes.

**Mr S Baltac:** Yes, they have.

**Adv FW Botes:** Now, based on that evidence do you know from a personal perspective if you turn to page 405?

**Mr S Baltac:** Yes?

**Adv FW Botes:** If one has regard to the work which form part as part "A", step 1 to 5, R12,035,00,00 whether that work, 1. was executed successfully by Prasa?

**Mr S Baltac:** By Siyaya Quattron.

**Adv FW Botes:** Ag, sorry, by Prasa ... by Siyaya Quattron, can Commissioner accept that?

**Mr S Baltac:** Yes.

**Adv FW Botes:** Yes, and in so far as part "A", step 6 is concerned that Siyaya Quattron executed that part in respect of the scope of work also successfully and to the satisfaction of Prasa?

**Mr S Baltac:** Ja, they did.

**Adv FW Botes:** Part "B", your evidence being the same, can Commissioner accept that the scope of works were properly executed and attended to, to the satisfaction of Prasa?

**Mr S Baltac:** Yes, that is the same as provided.

**Adv FW Botes:** So, just in a nutshell and for your own benefit and to avoid any confusion can Commissioner then accept that all the work, the so called "deliverables" as provided for on page 405 and the entire agreement has been successfully attended to and completed by Siyaya Quattron to Prasa's satisfaction?

**Mr S Baltac:** The works have been completed by Siyaya Quattron to our satisfaction.

**Adv FW Botes:** Very well. Now, it seems on page 405 that his document or whatever is contained in this document on page 405 was approved by first of all Mr Hangi Hlamani and his signature appears right in the middle of the page against the date "29 October 2014", do you see that?

**Mr S Baltac:** Yes, I do.

**Adv FW Botes:** Who is Mr Hangi Hlamani?

**Mr S Baltac:** He (indistinct).

**Adv FW Botes:** O, CEO of Siyaya, I understand, and then beneath his name appears the name of Dr Manfred Sedelo and it says that he signed the document on the 28<sup>th</sup> of October 2014, so you know who Dr Manfred Sedelo is?

**Mr S Baltac:**

He is the CEO of Quattron.

**Adv FW Botes:**

The CEO of Quattron. Very well. Now, pursuant to the execution of works which we have already dealt with provided for in this additional work schedule and contract which appears from page 397 onwards, can you recall whether or not Siyaya Quattron has provided Prasa with an invoice for the works they have (indistinct)?

**Mr S Baltac:**

They have done that as I have mentioned the rates were considered excessively high and we have asked Siyaya Quattron to give us an invoice with rates accordingly ... according to the Engineering Council of South Africa which Siyaya did.

**Adv FW Botes:**

Upon receipt by Prasa of these rates and I assume there must have been some sort of an explanation as to how these amounts were calculated or compounded, was Prasa then satisfied with the rates so submitted by Siyaya Quattron to it?

**Mr S Baltac:**

For that work, yes.

**Adv FW Botes:**

Yes. Good. So, just to understand and just to avoid any confusion, upon receipt of Siyaya Quattron's invoice and after having proper and due regard to the applicable rates which were utilised for purposes of this quantification which appears on page 405, your evidence if I understand you correctly is that Prasa was indeed satisfied?

**Mr S Baltac:**

With rates provided, I do not know if they were the same but they ... it was an agreement, the contract has been

signed on those instructive rates.

**Adv FW Botes:**

I understand. I understand. Now, ... there is one document that caught my eye yesterday and I just want to establish well, I will make copies of this document but your evidence Mister Baltac, fall squarely and you are actually 100% correct, during preparation over the course of the weekend my eye fell on this document and I want to give you and Advocate Tsatsawane and your instructing attorney proper opportunity to consider this, I am going to introduce it into the record and this is a letter which was prepared by Siyaya and the date is 24 March 2015 and it is addressed to the general manager, signals and communications, Mr S Baltac, Prasa House 1040 Burnett street and it says, "After the first discussion by the Prasa Tender Commission, some more information has been requested". That is the information pertaining to the rates, "Please find attached a brief summary of the work which has been done and a detailed budget breakdown. In the case there are more information required, please let me know", and then over the span of 2, 3 pages a proper explanation and ... and analyses has been attended to or set out and then if you turn to page 404 there is a detailed budget breakdown for the additional work which has been done, I am going to hand you a copy of this letter. I am going to make copies now. Jus identify it for purposes of this enquiry and have you seen that document before?

**Mr S Baltac:**

Yes, I have seen this.

**Adv FW Botes:**

Ag take your time. You can just read through it. If you turn the page you will see provision has been made for clarification or a ... a submission of what information was still outstanding.

**Adv K Tsatsawane:**

I see your client is trying to poison us.

**Adv FW Botes:**

He already poisoned me. Mister Baltac?

**Mr S Baltac:**

Can you poison us with some water, poison us with some water, please?

**Adv FW Botes:**

Yes, yes. I will organise. Mister Baltac, I am going to take a short adjournment. I just want to ... to ... there is a tea adjournment in any event. We have already missed it. I just want to make sure you are familiar with the document which is in front of you?

**Mr S Baltac:**

Yes, I am familiar with that.

**Adv FW Botes:**

Very well.

**Mr S Baltac:**

Ja.

**Adv FW Botes:**

I am going to ask for a tea adjournment also to allow us an opportunity to make copies of that document because it is important for purposes of this enquiry. Mister Commissioner, is this an opportune time for us to take the tea adjournment and may I ask for a 10 ... a 15 minutes adjournment, please?

**Commissioner:**

Yes. That is convenient.

**Adv FW Botes:**

Thank you, very much.

**Commissioner:**

We adjourn for 15 minutes.

**Adv FW Botes:** Thank you, very much.

**\*SHORT BREAK**

**\*ENQUIRY CONTINUES**

**Commissioner:** Good Mister Botes, we are back on record.

5 **Adv FW Botes:** Thank you, Mister Commissioner. Thank you, Mister Baltac. Mister Baltac, what my instructing attorney did was to make a copy of the original document that we discussed prior to the adjournment that is the letter which was address to you dated the 24<sup>th</sup> of March 2015. Mister Commissioner, may I with your leave introduce this document to the evidence marked annexure "D" for Danny and it is called "Supplement".

**Commissioner:** Sorry, just letter of the 24<sup>th</sup> of March?

**Adv FW Botes:** Yes.

15 **Commissioner:** You are going to call it "Supplement"?

**Adv FW Botes:** "Supplement for our documentation: 24 March 2015".  
Mister Baltac, if I understand your evidence correct, you are familiar with what is contained in this document?

**Commissioner:** So sorry, Mister, this letter, and it is dated the 24 March?

20 **Adv FW Botes:** 2015.

**Commissioner:** And it is from Siyaya?

**Adv FW Botes:** Addressed to Prasa.

**Commissioner:** Ja.

**Adv FW Botes:** Sorry, Mister Baltac, as I do understand your evidence correct, you are familiar with the content of exhibit "D"?

25 **Mr S Baltac:** Yes, I am.



**Adv FW Botes:**

Now, the concern it seems all relates to the last page of exhibit "E" and there is a proper exposition of how this, the rates are compounded and calculated. You will see it is called, it is the last page of this document?

5

**Mr S Baltac:**

Ja.

**Adv FW Botes:**

It is a detailed budget breakdown for the additional work which has been done and there are various steps. Those are the same steps which appear on page 405 ...

**Mr S Baltac:**

Ja.

**Adv FW Botes:**

... in front of you, that 405 of exhibit "C". So, you will see all the tasks have been defined then there are provision for how many man-days it will consume to do all of this and then it is calculated or multiplied and the total of R18,970,297,00 is exactly that amount which appears on page 405. That is the total excluding Vat. R18,970,297,00. Do you confirm that, Mister Baltac?

15

**Mr S Baltac:**

I do confirm that the amounts are the same.

**Adv FW Botes:**

And this detailed budget breakdown, did Prasa receive this?

20

**Mr S Baltac:**

Yes.

**Adv FW Botes:**

And was Prasa satisfied, comfortable with the manner in which the total amount was compounded or calculated having regard to this detailed budget?

**Mr S Baltac:**

Siyaya has ... Siyaya Quattron has sent this breakdown as a result of the request of the Tender Committee. CPTC it is called. Capital Projects Tender Committee and they

25



have requested us to request Siyaya to, for the breakdown of the amount of R21 million and so ...

**Adv FW Botes:**

Yes?

**Mr S Baltac:**

... Siyaya has replied with this letter but the Tender Committee was not happy with the rates and they have asked for the rates to be in accordance with the Engineering Council of South Africa's recommendation.

**Adv FW Botes:**

I understand. So, just for our understanding and just to enable us to do a calculation, you are specifically referring to the average rate which appears on this document on page 4, do I understand you correct?

**Mr S Baltac:**

Correct. It is a day rate per expert.

**Adv FW Botes:**

I understand. I asked the question because I do not know the answer. What is the prescribed rate which is applied by the Engineering Council of South Africa, do you perhaps know?

**Mr S Baltac:**

I generally ~~do not know~~ but we have to compare apples with apples and ~~this is a breakdown of the tasks with the rate~~ for the tasks.

**Adv FW Botes:**

I understand.

**Mr S Baltac:**

Ja, and a breakdown of the experts is not here.

**Adv FW Botes:**

I understand. So, how do you propose, how should we go about to quantify or to determine from Prasa's point of view because this is Siyaya's ...

**Mr S Baltac:**

Number of rates multiply by number of rates of the respective experts and it is the compound of all the expert

that were part of this.

**Adv FW Botes:** (Indistinct).

**Mr S Baltac:** Plus the ...

**Adv FW Botes:** Expenses?

5 **Mr S Baltac:** Plus the expenses and plus mark up.

**Adv FW Botes:** I understand, so just to avoid any confusion and just to have clarity?

**Mr S Baltac:** Again this one is coming from the Tender Committee.

**Adv FW Botes:** Yes.

10 **Mr S Baltac:** Ja.

**Adv FW Botes:** So, what the Tender Committee advised Prasa to do is to embark on a investigation and to establish or determine the rate applicable multiplied by the number of experts who were engaged on the project and that will give us ...

15 **Mr S Baltac:** And the period.

**Adv FW Botes:** ... and the period.

**Mr S Baltac:** And the time that they were ...

**Adv FW Botes:** Yes.

**Mr S Baltac:** Ja.

20 **Adv FW Botes:** And that will give us a number?

**Mr S Baltac:** Ja, correct.

**Adv FW Botes:** Then added thereto if I understand your testimony correct should be added expenses in other words -- "as is expenses" actually incurred?

25 **Mr S Baltac:** Administration, transport and so on.

**Adv FW Botes:** Yes, and then there is also a mark up to which ...

**Mr S Baltac:** Correct.

**Adv FW Botes:** ... Siyaya is entitled to?

**Mr S Baltac:** Correct.

**Adv FW Botes:** Good. Now, whilst we are together in harmony, is it possible for somebody with the expertise, the knowledge, the know-how of yourself to sit with Mr Makhensa and to do this exercise, in actual ... in actual fact to ... to attend to this exercise so that we can establish exactly how much is due and payable to Siyaya?

**Mr S Baltac:** Ja, probably myself or Johan Edwards will be able to break down each activity and the contribution of each expert ...

**Adv FW Botes:** Good.

**Mr S Baltac:** ... and come with a result.

**Adv FW Botes:** Good. Just give us a broad time frame for Mr Commissioner, when can the Commissioner expect this quantification? This detailed quantification as eluded to by yourself? How long will it take to attend to that?

**Mr S Baltac:** Probably it will have a week.

**Adv FW Botes:** A week.

**Mr S Baltac:** A week will do in a week but it is, I do not think it is necessary because Siyaya already has sent us another proposal on this one.

**Adv FW Botes:** Is that so?

**Mr S Baltac:** Ja, I think.

**Adv FW Botes:** And that other proposal, what does that entail?

**Mr S Baltac:**

I think that that one was a proposal that at a project level has been studied and we did not have objection on that.

**Adv FW Botes:**

I saw the proposal in preparation. I just want to lay my hands on it and just to make sure that it is the correct document.

**Mr S Baltac:**

Then after this breakdown Siyaya has asked to by the Committee, by the Tender Committee to give the rates accordingly to Engineering Council South Africa and if I remember correctly Siyaya did a different calculation if I remember correctly.

**Adv FW Botes:**

I just want to see whilst you are here and I do not want to keep you, I just want to establish whether that recalculation was attended to.

**Mr S Baltac:**

Yes.

**Adv FW Botes:**

I recall that I saw a document which contained ... yes ... if you give me one second? On the 29<sup>th</sup> of September 2015, that is after exhibit "D" was dispatched, there is a document on this subject matter and I am going to give you the original. I have the original in front of me and I just want to give you an opportunity to familiarise yourself with what is contained in here and the important is the (indistinct)(?) which appears on the second last page.

Mister Baltac, just take your time and just look at that document and whether it is possible for you to recall what is contained in the document? Do you recall that letter, Mister Baltac?

**Mr S Baltac:**

Yes, I do.

**Adv FW Botes:**

I am going to ask ... the Commissioner to accept it as exhibit "E", I am going to make copies. Mister Commissioner, "E" is a clarification letter. Cla-ri-fi-ca-tion letter for additional work done and it is was prepared by Siyaya by Mr Hlomani addressed to Prasa and the date is 29 September 2015. That is exhibit "E". I will ask my instructing attorney just to make copies of this document? No, this letter, the so called "clarification for additional work done, rates used and plea for outstanding payment to be made", can you recall Mister Baltac, what was Prasa's attitude after they have received and analysed and studied the content of this letter?

**Mr S Baltac:**

I am not involved ... I was not involved in the Committee.

**Adv FW Botes:**

You were not involved in it?

**Mr S Baltac:**

I was not involved in the Committee.

**Adv FW Botes:**

Very well. Now, is there any reason that you know of; let me first ask you this question just to cover or close the gate, your evidence if I understand you correctly is that Siyaya Quattron did in fact comply with all its obligations and responsibilities as referred to and contained in the additional work document which forms part of exhibit "C" from page 397 up until page 417?

**Mr S Baltac:**

Correct.

**Adv FW Botes:**

Correct. Now, just to avoid any confusion or dispute, in so far as your personal knowledge is concerned, is there any

reason why Prasa should not pay Siyaya an amount of money?

**Mr S Baltac:**

No, I do not see a reason.

**Adv FW Botes:**

You do not see a reason? Good. If I understand your evidence correct ...

**Mr S Baltac:**

For the work that has been done, it should be matched with the rates, tied in with the agreement and ...

**Adv FW Botes:**

Actually you have answered my second question as well because if I understand you correctly what you submit to the Commissioner is, a rate comparison should be attended to for purposes of quantifying the amount which is due and payable by Prasa to Siyaya?

**Mr S Baltac:**

Ja, should be calculation, (indistinct) done and ...

**Adv FW Botes:**

Good, now may I ask you kindly to do the following? From your perspective, will you then based on the information that we have just identified, attend to the calculation in conjunction with Mr Mabunda and what you do is on your formula you calculate the rates applicable multiplied by the number of experts who were engaged on the project, add thereto the expenses incurred and an acceptable market related mark up so to achieve the correct amount which

Prasa should pay to Siyaya?

**Mr S Baltac:**

Okay.

**Adv FW Botes:**

Is that fair?

**Mr S Baltac:**

It is fair, yes.

**Adv FW Botes:**

Yes, and can we then place on record and it is not

necessary for the Commissioner to make any order to that effect, as I said I accept your *bona fides* and honesty unconditionally, will it be fair that that calculation will be submitted to Mr Izak Boshoff at the same email address and the Presiding Officer on or before next Wednesday? That will be Wednesday the 7<sup>th</sup> of September. 6<sup>th</sup> September. Wednesday 6<sup>th</sup> September 2017?

**Mr S Baltac:**

Can we please make it Monday?

**Adv FW Botes:**

Monday the 11<sup>th</sup>?

**Mr S Baltac:**

Yes, that is ... For that is I have other duties.

**Adv FW Botes:**

Yes, no, no, Mister Baltac, I accept that unconditionally. Monday 11 September 2017 and I invite you Mister Baltac to make contact with Mr Mabunda. Mr Mabunda assist the liquidators in the execution of the functions and the duties and it is important for this enquiry and for the Commissioner that we are all on the same page in so far

as the methodology is concerned how we are going to attend to it. You are comfortable with it?

**Mr S Baltac:**

Ja. Sake for transparency, can we ask Johan Edwards to be part of?

**Adv FW Botes:**

Yes, yes. You can engage Mr Johan Edwards and you are more than welcome. The more the merrier especially to determine.

**Mr S Baltac:**

Ja.

**Adv FW Botes:**

... and can ~~Mr~~ Commissioner then accept and in conclusion I ask this question that after you have verified

the amount which forms part of exhibit "B" and after you verified the calculation that we just attended to that payment would follow suit? Can we accept that?

**Mr S Baltac:**

Will you rephrase, please?

5

**Adv FW Botes:**

Yes, I will.

**Mr S Baltac:**

Which follows ...?

**Adv FW Botes:**

Yes. Once you have had an opportunity to verify the amount ...

**Mr S Baltac:**

Ja, ja.

10

**Adv FW Botes:**

... which is due and payable ...

**Mr S Baltac:**

Ja?

**Adv FW Botes:**

... that was to Siyaya ...

**Mr S Baltac:**

Ja?

**Adv FW Botes:**

... as it appears on exhibit "B" ...

15

**Mr S Baltac:**

Yes?

**Adv FW Botes:**

... the one leg, the other leg and after you have verified or established, calculated the amount which is due and payable by Prasa to Siyaya as a result of additional work ...

20

**Mr S Baltac:**

Yes?

**Adv FW Botes:**

... once that is being attended to say by next Monday the ...

**Mr S Baltac:**

Ja?

**Adv FW Botes:**

... 11<sup>th</sup> of September ...

25

**Mr S Baltac:**

Yes?

**Adv FW Botes:**

... that the liquidators can accept that there will not be any



quarrels or reasons why not to pay Siyaya from your point of view?

**Mr S Baltac:**

From my point of view I have no issues with that but Prasa might have issues and then it will be consulted.

5 **Adv FW Botes:**

Ja, no, but I am not ... I am not asking you to ...

**Mr S Baltac:**

Ja, if you do that I, from my point of view I will do all my best to have a ...

**Adv FW Botes:**

A verification.

**Mr S Baltac:**

A good verification.

10 **Adv FW Botes:**

Very well, because I accept that in the end analyses that you verify the work that has been done, compare it to the rates and ...

**Mr S Baltac:**

Ja.

**Adv FW Botes:**

... and then you determine the correct amount ...

15 **Mr S Baltac:**

Correct.

**Adv FW Botes:**

... that should be paid. But you are not the personal responsible for payment, that goes up into the hierarchy ...

**Mr S Baltac:**

That is correct.

**Adv FW Botes:**

... and then somebody sitting there at Head Office that needs to push the button ...

20

**Mr S Baltac:**

Correct.

**Adv FW Botes:**

... and when that person has a problem well now, only time will tell but you be ever ... you be witness, you were involved as an executive officer in the execution of the works and you do not have any reason why Siyaya should not to be paid?

25

**Mr S Baltac:**

Correct.

**Adv FW Botes:**

Correct. Thank you, very much for your attendance. I really appreciate it. If there is anything else that you need in order to do what you ... that you indicated that you will do, please do not hesitate to liaise with either Mr Boshoff or Mr ...

**Mr S Baltac:**

I will (indistinct).

**Adv FW Botes:**

... Mr Mabunda.

**Mr S Baltac:**

(Indistinct) on that and to calculate.

**Adv FW Botes:**

Thank you, so much. Thank you, Mister Baltac.

**Commissioner:**

So, we excuse the witness?

**Adv FW Botes:**

You can excuse the witness, thank you Mister Commissioner.

**Commissioner:**

I do not know you may need to recall him?

**Adv FW Botes:**

Yes. What we will do we will make that decision after we have received everything. Mr Baltac is, his office is in Pretoria so he is willing and an able witness that is what I gathered from his evidence and Mr Baltac, before Mr Commissioner excuse you, am I correct that we can then rely on your unconditional cooperation? You will assist the Commission on that?

**Mr S Baltac:**

I would.

**Adv FW Botes:**

Thank you.

**Commissioner:**

Maybe we should just excuse Mr Baltac on the basis that he will ... he will come to the Commission on the basis of a telephone call on reasonable notice?

**Mr S Baltac:**

Okay.

**Adv FW Botes:**

That is good. Thank you, so much Mister Baltac.

**Commissioner:**

Thank you, Mister Baltac, we appreciate your cooperation.

You are excused under those conditions.

5

**Mr S Baltac:**

Thank you, Sir.

**Commissioner:**

Thank you.

**Mr S Baltac:**

Mister Commissioner, may I call Mr Edwards?

**Commissioner:**

Would you just call Mr Edwards for me?

**\*SHORT BREAK**

**\*ENQUIRY CONTINUES:**

10

**Adv FW Botes:**

Thank you, Mister Commissioner, we subpoenaed 2 witnesses for today. I laboured under the misapprehension that it will take considerable more time to interrogate them. It seems that it took us less than what we anticipated. With your leave, may we postpone the meeting until 10:00?

15

**Commissioner:**

You want to come back 10:00?

**Adv FW Botes:**

10:00, please?

**Commissioner:**

And those witness who have been summoned to be here at 09:00?

20

**Adv FW Botes:**

Yes, yes. We will ... we will ... somebody will be here to ... to ask them to wait until 10:00 on Thursday the 31<sup>st</sup> of August 2017. The reason being that some of us are traveling from Johannesburg and our opponents also want to be in, want to sit in so to allow them an opportunity, a fair opportunity to travel to Pretoria we start at 10:00.

25

**Commissioner:**

So, all right then we postpone to the 31ste of August 2017  
at 10:00 am at the offices of Tshwane Trust, Pretoria.

**Adv FW Botes:**

Thank you, Mister Commissioner. Thank you, very much.

**\*ENQUIRY IS POSTPONED TO 31 AUGUST 2017**

**31 AUGUST 2017:**

**TSHWANE TRUST BOARDROOM:**

**Commissioner:**

The enquiry today is an enquiry in terms of Section 417 and 418 of the Company's Act in the matter of Siyaya Consulting Engineers (Pty) Limited in liquidation. Master's reference T801/2017 which is a wound-up by an order of the High Court South Africa North Gauteng Division, Pretoria, on the 25<sup>th</sup> of July 2017 in terms of which order the Special Resolution for a liquidation of the Company was converted to a wounding-up by the Court.

The enquiry is being held today, it is Thursday 31 August 2017 at the offices of Tshwane Trust, 1207 Cobham, Colbyn Pretoria. Presiding Officer is Mr DJ Krige. Now, if I can put the parties present on record?

**Adv FW Botes:**

Good morning, Commissioner. My name is Francois Botes. I appear on behalf of the liquidators in this matter and I have been instructed as such by Johan Crouse Attorneys and by Mathopo Attorneys, both firms.

**Miss M Seti'baza:**

Good Morning, Commissioner.

**Commissioner:**

Good Morning. We will get to you just now, Ma'am. What did you say, you are ... what was ... what was ... Johan Crouse Attorneys?

**Adv FW Botes:**

Johan Crouse Attorneys.

**Commissioner:**

The ... the other firm?

**Adv FW Botes:**

Mathopo and you spell it, M-a-t-h-o-p-o. Mathopo Attorneys. The reference there is Mr Tshepo Mathopo.

**Commissioner:** Okay. Good and then with you have Mr?

**Adv FW Botes:** I have got Mr Makhensa Mabunda. He was the erstwhile CEO of the company in liquidation.

**Commissioner:** Good. Sir, and you are?

5 **Mr M Bopape:** I am Maishe Bopape. M-a-i

**Commissioner:** M-a-i?

**Mr M Bopape:** S-h-e.

**Commissioner:** Yes?

**Mr M Bopape:** B-o.

10 **Commissioner:** Yes.

**Mr M Bopape:** P-a.

**Commissioner:** Ja?

**Mr M Bopape:** P-e.

**Commissioner:** P-a-p-e. I have it got, thank you.

15 **Adv FW Botes:** Mister Commissioner, ...

**Commissioner:** Sorry, in what capacity are you in, Sir?

**Mr M Bopape:** I have been invited by the ...

**Adv FW Botes:** He is our first witness for today.

**Commissioner:** Good.

20 **Adv FW Botes:** I have invited ...

**Commissioner:** Okay, you invited him?

**Adv FW Botes:** ... Advocate Kennedy Tsatsawane who appears on behalf and represents Prasa to sit in the enquiry in order for him and his client to understand the veracity of what we are trying to achieve ...

25 **Commissioner:** Okay.

**Commissioner:** Sorry, I can not ...

**Mr D Mogashoa:** M-o-g-a-s-h-o-a.

**Commissioner:** I have got it. I have got. I am just struggling with the pronunciation. Sorry about that.

5 **Mr K Tsatsawane:** And Miss Mbebe is also here as well.

**Commissioner:** Okay. So, your junior, please just give me your name?

**Miss M Seti'baza:** Mawande.

**Commissioner:** Miss?

**Miss M Seti'baza:** Mawande.

10 **Commissioner:** M-a.

**Miss M Seti'baza:** W.

**Commissioner:** W.

**Miss M Seti'baza:** A-n.

**Commissioner:** A-n.

15 **Miss M Seti'baza:** D-e.

**Commissioner:** D-e.

**Miss M Seti'baza:** Surname, S-e-t-i.

**Commissioner:** S-e-t-i.

**Miss M Seti'baza:** 'B-a-z-a.

20 **Commissioner:** B-a-z-a.

**Miss M Seti'baza:** Yes.

**Commissioner:** And you are junior Council for ...

**Miss M Seti'baza:** To, for Mr Tsatsawane.

**Commissioner:** Good. Is ... right, Mister ... Mister Botes?

25 **Adv FW Botes:** Thank you, Commissioner. May you swear Mr Bopape in, if you do not mind?

**Commissioner:** Mister Bopape, do you have any objection to taking the oath?

**Mr M Bopape:** Not at all, Sir.

**Commissioner:** Will you stand, please?

5 **Mr M Bopape:** Sure.

**Commissioner:** Do you swear that the evidence that you are going to give will be the truth, the whole truth and nothing but the truth? Raise your right hand and say, "so help me God"?

**Mr M Bopape:** So, help me God.

10 **Commissioner:** Thank you.

**Mr M Bopape:** Thank you, Sir.

**EVIDENCE OF MR M BOPAPE:**

15 **Adv FW Botes:** Thank you, Commissioner. Good morning, Mister Bopape. Welcome, to this enquiry. Can you explain to the Chairperson, what your involvement with Prasa was?

**Mr M Bopape:** Yes, Sir. I used to be the Senior Manager responsible for procurement at Prasa Rail. Prasa Rail which is a division of Prasa.

20 **Adv FW Botes:** So, Senior Manager responsible for procurement at Prasa Rail which is a division of Prasa Rail Agency of South Africa?

**Mr M Bopape:** Yes, Sir.

**Adv FW Botes:** Good. When were you appointed in this position, Mister Bopape?

25 **Mr M Bopape:** I was appointed on the 1<sup>st</sup> of November 2009.



**Adv FW Botes:** And up until when were you in the employ of Prasa?

**Mr M Bopape:** Up until the 31<sup>st</sup> August 2016.

**Adv FW Botes:** Last year?

**Mr M Bopape:** Yes.

5 **Adv FW Botes:** In broad overview, can you just explain to the Commissioner your fasience(?), your responsibilities, your duties? What did it entail?

10 **Mr M Bopape:** My core duties entailed ... I am responsible for facilitation and recommendation of prospective service providers at Prasa depending on the delegation depending on the value of the contracts that was supposed to be entered between Prasa and the prospective service provider. In a case where the contract for instance the prospect, the potential contract was to be signed between Prasa and the  
15 service provider if it amounted to R25,000,00, I will sit, R25,000,000,00 I am sorry, I will make sure that it got signed off by the Chief Executive Officer of Prasa and anything beyond that will then have to be signed by the  
20 Group Chief Executive Officer at Prasa level.

25 After the necessary procurement processes have been concluded successfully we will then put in a contract together with the End-User Department that will then monitor the implementation of whatever services needed to be required or delivered and we will then also facilitate the necessary payment as and when the work get done. We then

**Adv FW Botes:**

Yes? You may proceed?

**Mr M Bopape:**

We will then put the contract on SAP which is a system that we use, we use to load the value of the contract, the people responsible for the pay ... that are supposed to receive the payment or the banking details that are necessary for us to affect any payment that was due and make sure that we do not over spent on that contract. Ja.

**Adv FW Botes:**

Can I accept that Prasa had checks and balances in place to avoid a situation where a contract provides for a certain amount for the works to be conducted and if an invoice or invoices are rendered, there are checks and balances to make this project?

**Mr M Bopape:**

Certainly.

**Adv FW Botes:**

Balanced from a financial perspective?

**Mr M Bopape:**

Yes.

**Adv FW Botes:**

Just for clarity, I just want to understand you, I just want to understand you correctly, say for instance I enter into an agreement with Prasa and say for example I need to build a building, once the building has been constructed can the Commissioner accept that somebody from Prasa will conduct an investigation to establish whether or not the works had been done in accordance with whatever the specifications, whatever the scope of works, whatever the agreement provided for?

**Mr M Bopape:**

Ja. It is not possible for instance to have a situation where you would load a contract and a contractor would just go

haywire. It is not possible.

**Adv FW Botes:**

I understand.

**Mr M Bopape:**

First and foremost, there is an End-user Department. We procure services or products on behalf of the End-User.

5 **Adv FW Botes:**

I understand.

**Mr M Bopape:**

The End-User would be a relevant department for instance that would say, I would want for example a bridge constructed in a particular area. They would give out the specification. It would go out on tender as the Supply Chain Department who would procure the services after having gone through a vigorous appointment process which includes evaluation of the bids, recommendations and all those things.

15 Whilst that has been done we hand over the appointed, the appointed contractor to the service, to the ... to the End-User Department who must then monitor on a regular basis the implementation of whatever that he or she needed to confirm that indeed it has been done in line with the ... with my requirements ... their requirements meaning the End-User Department. If it comes to a point where it is not possible they are not implementing as per the agreement, End-User has got the right to recommend to the Supply Chair Department to have the contract terminated or we would impress upon the service ... the service provider to make good on what ... on what-ever deficiency that might ... that might be applicable at that

point in time.

**Adv FW Botes:**

It makes 100% sense. Just, let us take it just a little bit ...  
a step further? If the service provider for instance myself,  
after I have built and constructed the building, issue an  
invoice to Prasa, internally in Prasa, is there acceptable ...  
is there acceptable accounting principles which will then  
be implemen ... implemented to make sure that this  
invoice that the constructor, Botes, has provided Prasa  
with, are in accordance with whatever the scope of works,  
whatever the ... the mandate was and that the contractor  
in this case myself, in fact delivered what he was  
supposed to do?

**Mr M Bopape:**

Sure. Because the first entry point will be the End-User  
Department themselves. The person responsible for  
overseeing the project would have the invoice delivered to  
him or her. He will then sign on the invoice as  
confirmation that I am in agreement with this amount that  
has been quoted on this invoice. I am in agreement with  
the work that has been done as per the suggestion of the  
invoice and once that invoice has been signed off first by  
the ... by the End-User Department or a representative  
thereof, it would then be taken over to Finance who will  
then check on the system how much money are we still  
having as loaded on the server, the service, the value of  
the contract. For instance, if the value of the contract is  
R10 million and the invoice is R2 million it says we still

have got money through which we can pay that R2 million.

**Adv FW Botes:**

Yes?

**Mr M Bopape:**

So, they will then sign off and then physically sign off the invoice and capture the invoice on SAP to ... you know, to kick start the process of payment.

**Adv FW Botes:**

Is it possible or is it at all possible, listen to the following scenario, that I will be appointed by Prasa say for instance to do some maintenance work and once I have rendered or submitted an invoice that Prasa will be unaware of me say be instructed to conduct certain work? I just use the ... the example of maintenance.

**Mr M Bopape:**

That will be difficult because there ... it is not possible for any outsider to come into a Prasa environment and do some work without an expressed instruction from ... from an employee or a representative from Prasa.

**Adv FW Botes:**

I understand.

**Mr M Bopape:**

Ja. First and foremost, you need to gain access to ... to the rail environment. It is not everybody that goes there. There are safety precautions that needs to be taken into consideration. Compliance, someone needs to prepare him to get into that environment. Someone needs to give you approval to get into that environment. It is not like an open system where you can just go so, anybody that does work at Prasa must have the authority of some kind issued by a Prasa representative.

**Adv FW Botes:**

I understand. So, just using the same example, on your

**Adv FW Botes:** Yes, that is your bundle it is that "C". Exhibit "C", there we are. Page 124.

**Commissioner:** No, no. This is my personal bundle here.

**Adv FW Botes:** O. Maybe you have left your exhibit ...

5 **Commissioner:** There we go.

**Adv FW Botes:** Okay, very well. Sorry.

**Commissioner:** Maybe the instructing attorney would also like one?

**Adv FW Botes:** Yes.

**Commissioner:** Thank you, Mister Boshoff.

10 **Adv FW Botes:** On page 124 ... have you seen this document before, Mister Bopape? That is the "Accelerated Infrastructure Refurbishment Project Consulting Agreement"?

**Mr M Bopape:** Yes, I suppose I have seen it.

15 **Adv FW Botes:** Now, what this document provides for is that certain works need to be executed by the consortant, in this agreement is Siyaya DB Consulting Engineering, that is the insolvent company?

**Mr M Bopape:** Yes, Sir.

20 **Adv FW Botes:** And to cut through all the riff-raff you will find a comprehensive analyses and summary of the scope of services on page 147? Page 147? Mister Bopape, and just bear with me, and let us just see if we can navigate our way through this scope of services? There is an introduction and it says, "The scope of work is based on the findings of the 2011 / 2012 Infrastructure Assessment Report adopted by Prasa in 2012. Recommendation has

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developed from the basis through this Accelerated Infrastructure Refurbishment Program ... Project. The program recommendations are aimed at providing a detailed implementation methodology based on European norms for the Infrastructure Rehabilitation Program and introduce modernisation programs while keeping operations floating over the next 5 years and more. European norms introduced as a standard by the International Union of Railways, are regarded as current 'best practice' globally for passenger rail authorities and they are increasingly being adopted by others around the world", and then it says, "Prasa Tech Infrastructure" means "its component parts of permanent way information overhead traction equipment, substations, rail authorisation systems, signalling and telecommunication systems, rolling stop and rolling stop maintenance facilities", and then you will find a summary of the scope.

I am just going to high light 1 or 2, "updating of Prasa Design per perimeters to increase line speed development of standards X, development of finalisation of framework contract for suppliers of a (indistinct) material and rehabilitation works, development and finalisation of specs for light and heavy on-track machines", if you turn the page, "former contracts for new on-track machines and the development of suppliers, procurement workshop for failure, contract in linement(?) and then former contracts



for the realisation of the overall and refurbishment of the OHTE and substations", and 1.2 right in the middel Mister Bopape, there is an analyses of a detailed project scope which starts off with, "the development of standard specs for perma material of on-track machines and that is being divided under development of EU standards", that is European Standards, "specs for perma material, specification and acquisition of on-track machines for track maintenance and track renewal via the supply and development", and lastly if you turn the page, that is the bullet points that you find there and all of that is then supported by what you will find in the detailed analyses on page 150 read together with 151 and 152. What is your comment on that, is that what Siyaya was instructed or contracted to attend to?

**Mr M Bopape:**

Two things from ... from this contract. The first one being that you would appreciate that as based on the introduction this contracted was preceded by an assessment that was done ...

**Adv FW Botes:**

Yes.

**Mr M Bopape:**

... all right, and subsequent to that assessment there was a whole host of functions and work study that had to be done. Right, what we then did as Prasa, was to try to separate the functions roles and duties that would be done by Siyaya under Prasa Rail ...

**Adv FW Botes:**

I understand.



**Adv FW Botes:** I understand. So, the umbrella, the big umbrella's name is Prasa and under Prasa it is Prasa Tech, Prasa Rail and Prasa ...

**Mr M Bopape:** Cres.

5 **Adv FW Botes:** Cres?

**Commissioner:** How do you spell that? Cres?

**Mr M Bopape:** C-e ... c ... c-r-e-s.

**Commissioner:** C-r-e ... what is it, acronym for what?

**Mr M Bopape:** What does it stand for ... Prasa ...

10 **Commissioner:** Is it capital, is it an acronym for?

**Mr M Bopape:** Yes, it is an acronym, ja.

**Commissioner:** Never mind, we can come back to it later, thank you.

**Adv FW Botes:** Now, your involvement in so far as this agreement is concerned, it serves if I understand you correctly Mister Bopape, was limited?

15 **Mr M Bopape:** Limited yes, Sir.

**Adv FW Botes:** I understand. So, you are not in a position to confirm to the Commissioner whether or not the works which are highlighted and alluded to and which forms part of this agreement ~~was~~ ~~indeed~~ attended to and completed as provided for in this agreement?

20 **Mr M Bopape:** No, I cannot confirm that.

**Adv FW Botes:** I understand.

**Mr M Bopape:** Prasa Cres would be better positioned to confirm or deny that work had been done. I can only speak on what I used to do at Prasa.

**Adv FW Botes:**

I accept that. I accept that and I think it follows naturally that you are not in a position then to either confirm or deny whether or not an amount, whatever the amount is, is or is not due and payable by Prasa to Siyaya?

**Mr M Bopape:**

Under this contract?

**Adv FW Botes:**

Under this contract?

**Mr M Bopape:**

Yes, Sir.

**Adv FW Botes:**

Very well. I accept that. Now, let me just get my ... invoice thing ... Mister Commissioner, I see it seems that I have a different invoice in front of me. Can I just ask for a minute? I just want to lay my hand on the right invoice, can we just go off record for 1 minute, please? I want to see if I can stop that machine ...

**\*SHORT BREAK**

**\*ENQUIRY CONTINUES WITH EVIDENCE BY MR M BOPAPE:**

**Adv FW Botes:**

Thank you. Thank you, Mister Commissioner. Thank you, Mister Bopape. In the same bundle, may I ask you then just to turn on, onwards to page 180, 1-8-0? On page 180 you will find a consultancy agreement for the "Implementation of Prasa Rail Infrastructure Rehabilitation Program, phase 2", and that has been entered into between Prasa and Siyaya DG Consulting Engineering and the nature of the work is the engineering consulting work for the implementation of Prasa Rail Infrastructure Rehabilitation Program. Have you seen this document before?

**Mr M Bopape:**

Yes. I have seen it.

**Adv FW Botes:**

Just explain to the Commissioner your Department's involvement, a general perspective, what did that amount to in so far as this contract is concerned?

5 **Mr M Bopape:**

All right. Once the Infrastructure Rehabilitation Assessment Report was concluded we then identified together with Siyaya and the Senior Management, Executive Management of Prasa Rail and roles and functions and specific duties that would be performed by Siyaya under Prasa Rail ...

**Adv FW Botes:**

Yes.

**Mr M Bopape:**

... as part of us resolving some of those challenges that would have been identified ...

**Adv FW Botes:**

Yes

15 **Mr M Bopape:**

... in the assessment report. Subsequent to that we then cleaned from that report the functions, the works that needed to be done and concluded the standard contract ...

**Adv FW Botes:**

Yes

**Mr M Bopape:**

... which is a standard contract that normally gets signed between Prasa and the respective service providers as you can see if we were to make a comparison between this contract and that one there will be very similarities both in terms of language and the structure.

**Adv FW Botes:**

Ja.

25 **Mr M Bopape:**

The major difference will be the works that needed to be done and the values and thereof ...

**Adv FW Botes:**

I understand.

**Mr M Bopape:**

... but otherwise, all in all it just gets to be a generic contract that Prasa has through the legal department.

**Adv FW Botes:**

I understand.

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**Mr M Bopape:**

We then put this agreement together, send it over to Legal Services who endorsed it and then whilst they endorse it then it got to be a standing agreement concluded between the parties.

**Adv FW Botes:**

Yes.

10

**Mr M Bopape:**

Then we then loaded the amount on SAP so that they can run start commencing to do whatever that need to be done then I think .....

**Adv FW Botes:**

If you turn to page 184, clause 1.11, it seems that the amount that was provided for or budgeted for and loaded on SAP was R28,890,200,00?

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**Mr M Bopape:**

Yes, Sir. ^

**Adv FW Botes:**

I understand.

**Mr M Bopape:**

Ja.

**Adv FW Botes:**

It seems to me if I understand you correctly that the systems within Prasa are so developed in terms of the software, the computer, the IT Software availed by S-A-P, by SAP that it does not matter where you are within the organisation of Prasa you will always be able to keep track of exactly what is happening, where which stage a contract is, which stage payments are and whether a payment has been made for final completion etcetera?

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25

**Mr M Bopape:**

Certainly. Not only that but the system would even tell you when is a contract ending for instance suppose you had a balance of R5 million on a contract that was worth R28 million ...

5 **Adv FW Botes:**

Ja?

**Mr M Bopape:**

... and you loaded the contract, such as that it was going to end the 31<sup>st</sup> of August ...

**Adv FW Botes:**

Yes?

**Mr M Bopape:**

... and then you submit an invoice on the 2<sup>nd</sup> of September for instance and you wanted to be paid either a balance or part of what still remains ...

**Adv FW Botes:**

Yes?

**Mr M Bopape:**

... the system would not allow that to happen.

**Adv FW Botes:**

Is that so?

15 **Mr M Bopape:**

... until someone gives authorisation to get into the system, interface with the system and extend the validity of contract on the system so that the system can then accept that payment. Similarly, you have got suppose you have a contract that still ends on the 31<sup>st</sup> of ... of August ...

20 **Adv FW Botes:**

August.

**Mr M Bopape:**

... and then you have got a balance of R2 million in the contract, I mean in the system but the invoice says R5 million, there is no way that the system will accept R5 million because it will tell you that you only have got R2 million remaining on this contract.

25 **Adv FW Botes:**

Sure.

**Mr M Bopape:**

So, we would have to then do the normal approval processes, write a submission, request that the contract be extended by another R3 million for whatever reason ...

**Adv FW Botes:**

Ja, ja?

5

**Mr M Bopape:**

... to be able to justify it ...

**Adv FW Botes:**

Ja?

**Mr M Bopape:**

... and then once you get that approval then you can get into the system based on the approval to adjust the amount from 5, from 2 to 5 to allow that invoice to go through.

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**Adv FW Botes:**

It is very comforting to hear it because I think there is a perception by certain members of the public that in Prasa's operation it is possible just to "self-help" so to speak ...

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**Mr M Bopape:**

Ja.

**Adv FW Botes:**

... but if I understand you correctly that is most definitely not so?

**Mr M Bopape:**

It is not possible.

**Adv FW Botes:**

I understand. Now ...

20

**Adv K Tsatsawane:**

You seem exited by that, Mister Botes?

**Adv FW Botes:**

I am always exited. Now, Mister Bopape, now, it seems ... okay let me ask you if you turn to page 205, can the Commissioner accept that this agreement was duly entered into, signed off by Prasa's Group Chief Executive Officer and the managing director of Siyaya, that date seems to be the 8<sup>th</sup> of September if ... if I read correctly,

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2014?

**Mr M Bopape:**

Yes, this is the contract signed by the duly authorised official at Prasa and that to the best of our knowledge a representative duly authorised to represent Siyaya.

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**Adv FW Botes:**

I understand. Can, if you just turn the page, can the Commissioner accept that the scope of services are identified and theorised as which is reflected in annexure "A", page 206, 207, 208? Take your time, just have a look at it I am not going to repeat it? We can all read.

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**Mr M Bopape:**

Yes.

**Adv FW Botes:**

And can the Commissioner accept if you turn to page 209 that that is the actual payment schedule which form part of this agreement in other words, this is a break-down of how the R28,819,200,00 was made up off?

15

**Mr M Bopape:**

Ja.

**Adv FW Botes:**

Say for instance that evaluation is necessary on an agreement, is it possible for such a variation to be effected by way of a an amended scope of service or for instance an amended payment schedule in certain circumstances?

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**Mr M Bopape:**

Let us contextualise let us understand the variation, what is it exactly we mean by variation because there could be two confusing things in what you said. The variation for instance would apply, say for instance if this contract is worth R28 million and there is a need for us to vary the contract because we have received or came across unexpected things ...

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**Adv FW Botes:** Ja?

**Mr M Bopape:** ... (indistinct) implementing from page 207 to page 09, all those required work, then we then request for a variation ...

5 **Adv FW Botes:** I understand.

**Mr M Bopape:** ... to increase the contract from 28 to 30. That will be a variation ...

**Adv FW Botes:** Yes.

**Mr M Bopape:** ... it would cater for any other unexpected circumstances.

10 **Adv FW Botes:** Yes, I understand that.

**Mr M Bopape:** Ja. All right so that will be the first part of it.

**Adv FW Botes:** Yes.

**Mr M Bopape:** That is one variation.

**Adv FW Botes:** Yes.

15 **Mr M Bopape:** The other variation which I think you could be referring to is for instance when you are supposed to pay R5 million on a specific item but because you have not completed an entire item on its own ...

**Adv FW Botes:** Yes.

20 **Mr M Bopape:** ... you feel that you know you are pressed and then you negotiate that can I please be paid R2 million of the R5 million because I have already done work on this specific item. The totality of this item says to me if I were to do everything on it I could be paid R5 million.

25 **Adv FW Botes:** I understand.

**Mr M Bopape:** And given that I have not completed this task to this



entirety by I have done work to the value of R8 million, and then in the End-User is satisfied that indeed you have done work to that, that can be varied.

**Adv FW Botes:**

Yes.

5

**Mr M Bopape:**

As long as at the end of the day the total amount to be spend or to be paid is consistent with the value of the contract.

**Adv FW Botes:**

Yes. Now, that answer that you have just given the Commissioner is spot on in these circumstances. What it did and that is just for ... for to make things a little bit more comfortable and easy, if you take out page 208, 209 that is the payment schedule and you compare it with page 216, just take it out of ... you can open the lever arch file, just take it out, it is just more comfortable to do it so, ja, and you compare it to 216, 216 reflects what we say constitutes a variation on the ... on the contract price. Not the total price you will see the contract value remains

R28,819,200,00 ...

**Mr M Bopape:**

Ja.

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**Adv FW Botes:**

... and just for your piece of mind, just to contextualise the ... the time line, 209 was attached to the September 2014 agreement, the one that we have just dealt with and the 216 payment schedule, we say emanated in December 2014. But be that as it may, you will see part one provides for the aerial survey by appointment, aerial survey contractors, that was R6,580 million and that has been

increased on 209, R29,180,000,00, you see that, and then part two was for R4,150,000,00, that has been increased to R4,700,000,00? You see that?

**Mr M Bopape:**

Yes.

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**Adv FW Botes:**

And item or part three it was 5,000 ... ag 5,424,000,00 and that has been increased to R5,850 million, you see that?

**Mr M Bopape:**

Ja.

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**Adv FW Botes:**

And the project management fee it was R1,8 million and that was then increased to no, wait it stays the same, R1,8 million sorry, it should have been part four, part four, "Updating Prasa Rail Inspection", that was R2,2 million, it remained R2,2 million? You see that?

**Mr M Bopape:**

Yes, Sir.

**Adv FW Botes:**

Are you ... have you seen this updated or variation payment varied, payment schedule page 209?

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**Mr M Bopape:**

I ... I ... I cannot recall.

**Adv FW Botes:**

I understand.

**Mr M Bopape:**

I cannot lie. I cannot recall.

**Adv FW Botes:**

That is fine.

20

**Mr M Bopape:**

I can neither confirm nor deny it.

**Adv FW Botes:**

And what ... what was then also, what also formed part of the so called variation if you just turn back to page 210, turn back from page 210 to page 215? Siyaya submits that the scope of works were varied so to speak as what is highlighted and provided for in annexure "A", "Scope of services", page 210 up until page 215, and whilst you are

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going through this do you confirm what is contained in  
page 210 up until page 215 this is a Prasa document?

**Mr M Bopape:**

Yes.

**Adv FW Botes:**

This is an official Prasa document and what is contained  
on page 216, the document that we have just dealt with,  
that is an official Prasa document?

**Mr M Bopape:**

Certainly.

**Adv FW Botes:**

Ja. That is important. Very well. Now, do you know  
whether this agreement pertaining to the asset  
rehabilitation has been given effect to by Siyaya?

**Mr M Bopape:**

Yes, Sir. Yes. We have even gone out, I know for a fact  
that in Prasa Technical has gone out on tender based on  
the work that was done for Equesie for instance which is  
one of our stations and I think not only will I confirm but I  
think if we were to get hold of the end user a  
representative of the End-User of Prasa at that point in  
time we will confirm that indeed this work had been done  
otherwise the invoices if they were paid, if they were paid  
at any point in time they would not have been, they should  
not have been paid if there was no work done.

**Adv FW Botes:**

You see, on this specific contract, before I get to that, just  
explain to the Commissioner in your own words, we are  
lay-people what is meant by "asset rehabilitation"? what  
does it entail?

**Mr M Bopape:**

Prasa has got a very very old infrastructure network. For  
instance, I will try to give a few examples.

**Adv FW Botes:**

Yes?

**Mr M Bopape:**

One of those would include for instance the grinding and the straightening of the railway lines which has not been maintained over a period of time. That is why we had major, major accidents because we had, we were lacking behind in terms of our maintenance on the ... on the network. Number two, you had for instance power stations that were very very outdated that were no longer consistent with the current operations.

**Adv FW Botes:**

I understand. So, rehabilitation actually means, maintenance?

**Mr M Bopape:**

Maintenance.

**Adv FW Botes:**

I understand.

**Mr M Bopape:**

But over and above that I am not sure whether it happens or it happened only at Prasa but we could do some of the work that needed to be done because Prasa just did not have some of the maps that were required, your aerial photographs for instance that would give you a clear appreciation and status of the network.

**Adv FW Botes:**

Ja, ja.

**Mr M Bopape:**

So, that is why there were those aerial photographs...

**Adv FW Botes:**

Yes.

**Mr M Bopape:**

... that were needed, someone needed to go and hire an aeroplane to fly above so that Prasa can actually ultimately have those... those maps we did not have.

**Adv FW Botes:**

And then (indistinct).

**Mr M Bopape:**

It used to be there but I am not sure what happened to them ...

**Adv FW Botes:**

Ja.

**Mr M Bopape:**

... whether someone took them or they were misplaced but it was just not possible to do certain works at Prasa without having an aerial photography of some of the infrastructure.

**Adv FW Botes:**

And then within this aerial photography you get various specification and technicalities, I believe you get a 1:20,000, 1:30,000, 1:50,000 even, and that is depending on what type of detail you want to capture?

**Mr M Bopape:**

Certainly.

**Adv FW Botes:**

(Indistinct) within the mandate?

**Mr M Bopape:**

Ja.

**Adv FW Botes:**

Within the commission. SJoe, that is interesting.

**Mr M Bopape:**

Ja.

**Adv FW Botes:**

So, help me if I just want to understand it, if the power cables for instance on the railway line, if those cables are not maintained regularly they sag as I believe they do?

**Mr M Bopape:**

Ja.

**Adv FW Botes:**

And if they are not straightened and fastened regularly that may lead to serious damage?

**Mr M Bopape:**

Ja.

**Adv FW Botes:**

And all of this forms part of so-called "asset rehabilitation"?

**Mr M Bopape:**

Ja.

**Adv FW Botes:** SJoe. So, we know R28 million was provided for it, can I ask you to turn to page 217 ... it is called the "delivery note", have you seen these delivery ... 217 ...

**Mr M Bopape:** Where is that?

5 **Adv FW Botes:** 217, sorry Mister Bopape, 217. Have you seen these delivery notes before?

**Mr M Bopape:** No, I would not have seen them but the End-User representative would have seen them ...

**Adv FW Botes:** I understand.

10 **Mr M Bopape:** ... whilst they <sup>sign</sup> off they say if they are happy with anything and everything that had been submitted for payment.

**Adv FW Botes:** Now, this in ... this document on page 217 ...

**Mr M Bopape:** Yes, Sir.

15 **Adv FW Botes:** ... is for purposes of this enquiry of paramount importance because it is addressed to Mr Tony Vermeulen, he is from Prasa Rail.

**Mr M Bopape:** Ja.

20 **Adv FW Botes:** ... and then it refers to the implementation of Prasa Rail Infrastructure Rehabilitation with reference to certain invoices. Invoice 14, 17, 18, 19, 20, 21, 22 and then there is provision for a name of the originator who in this instance it was Mnr Hato Moweni and if you then look beneath that, that is confirmation that the documents were received in good order and signed off by "L. Rataba", do you know that person?

**Mr M Bopape:**

Yes, I do.

**Adv FW Botes:**

And who is that? Was that a representative of the End-User?

**Mr M Bopape:**

Yes, that ... that is the highest official within that End-User Department. Mister Tony Vermeulen used to report to this gentleman that is (indistinct) Rataba.

**Adv FW Botes:**

So, that gentleman confirms that whatever is contained in invoices 14, 17, 18, 19, 20, 21, 22, the Commissioner can accept that, that has been attended to, that has been investigated to be correct and the Commissioner can accept it to be correct?

**Mr M Bopape:**

Without any doubt. Basically, it is confirmation that we have received this invoices and this invoices are consistent with the implementation of the works that have been done as per the contract.

**Adv FW Botes:**

It there a methodology, a mechanism that from a physical point of view when the invoice is received that somebody will physically go and check and say, "come on, I mean this is a big (indistinct)", has the work been done or not?

**Mr M Bopape:**

Ja. You do not just necessarily submit an invoice and a paper but you have got a project manager that works on a day to day basis with a representative with Siyaya out in the field who do all these things just to make sure that the work it has been done. It has been done appropriately. People have got access. They put on safety key and all those kind of things so, Letsane for instance, Mr Rataba?



**Adv FW Botes:**

Ja?

**Mr M Bopape:**

Would not have signed this thing if he was not in consultation and have not having received confirmation from his people on the ground that indeed this work ...

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**Adv FW Botes:**

I understand.

**Mr M Bopape:**

... had been done.

**Adv FW Botes:**

I understand.

**Mr M Bopape:**

So, there is always a project manager coming from Prasa who works hand in glove with the representative of the End-User Depart ... I mean of the ... of the contractor.

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**Adv FW Botes:**

I understand and would your evidence be exactly the same if you turn to page 218 in so far as execution, methodology and acceptance that the work was indeed done as is reflected on this document, POC5?

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**Mr M Bopape:**

Ja. I would say the same even though this one is not signed by ... by Letsane, I am not sure who signed it.

**Adv FW Botes:**

It seems as if Wil ... Wilma Skinner?

**Mr M Bopape:**

Skinner, ja.

**Adv FW Botes:**

Do you know Wilma Skinner?

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**Mr M Bopape:**

Ja, Miss Skinner used to be ... she used to work in glove with the ... she was in Mr Tony Vermeulen's office.

**Adv FW Botes:**

Now, what this actually confirms and just, I just want to confirm it with you, Mister Bopape that what is contained in this document is that invoices 23, 24, 25, 26, 27 was submitted and based on what is reflected in this document, can the Commissioner accept that everybody

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was on board? Both from Prasa, the End-User and the contractor that whatever is provided for in those invoices were properly adequately attended to and the service was rendered to the satisfaction of all role players concerned?

5 **Mr M Bopape:**

Yes.

**Adv FW Botes:**

Undoubtedly?

**Mr M Bopape:**

Undoubtedly.

**Adv FW Botes:**

Unconditionally?

**Mr M Bopape:**

Unconditionally. Unconditionally.

10 **Adv FW Botes:**

Let us just see if we can cut all of this off ... I went through it. I have double checked it. I will double check it with you, page 219 that is invoice 19 so to speak. Can the Commissioner accept that the work as reflected in this invoice was sufficiently attended to and the amounts that appears herein are due and payable to Siyaya?

15 **Mr M Bopape:**

I think that question will be better answered in this case by the End-User Department. Remember in my ... in my earlier submission ...

**Adv FW Botes:**

Yes?

20 **Mr M Bopape:**

... I indicated that the first port of entry would be the End-User and representative of the ...

**Adv FW Botes:**

Yes.

**Mr M Bopape:**

... End-User will then confirm that certain works had been done.

25 **Adv FW Botes:**

I understand.

**Mr M Bopape:**

Once they, like ... like we did here and ... and then I think

maybe Mr Vermeulen if ... I have seen him around ...

**Adv FW Botes:**

Ja, he is my next witness.

**Mr M Bopape:**

... he will probably confirm with you.

**Adv FW Botes:**

Yes.

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**Mr M Bopape:**

Ja.

**Adv FW Botes:**

Very well.

**Mr M Bopape:**

I cannot confirm it.

**Adv FW Botes:**

Ja, ja, you either agree or disagree. If you disagree then I ask you why do you disagree. Good. Just ... there is just one last thing that I want to canvas with you, Mister Bopape, if you can assist me I think I am confused with what responsibilities and functions, technical (indistinct) and had to attend to and ...

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**Mr K Tsatsawane:**

And my responsibilities.

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**Adv FW Botes:**

... there is a document which is called and I which I have in front of me unfortunately I have not made copies of it, I will do so and I will provide it to everybody who is available, who is present, that it is the heading is "Implementation plan of the supply and contracted development program". Are you aware of that?

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**Mr M Bopape:**

Yes, I am aware of this.

**Adv FW Botes:**

Just ... just explain to the Chairperson what that ... what that entailed?

**Mr M Bopape:**

All right. As part of the ... the report on the asset rehabilitation program, there was the name, a strategic need that was identified by Prasa. Right at the highest

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level, Prasa Corporate ...

**Adv FW Botes:**

Yes. 

**Mr M Bopape:**

... to try to bring on board the previously disadvantaged individuals and companies ...

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**Adv FW Botes:**

Yes.

**Mr M Bopape:**

... we tried to partake in the rail infrastructure network.

**Adv FW Botes:**

Yes.

**Mr M Bopape:**

We then developed, Siyaya then assisted us in putting together a program that we use to call a "Supplier development program".

10

**Adv FW Botes:**

Yes.

**Mr M Bopape:**

The understanding or the strategic mandate of this particular program was to try where possible to merge well developed companies with those that are black owned and emerging.

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**Adv FW Botes:**

Yes.

**Mr M Bopape:**

That is number one. Where there was potential for those emerging companies to go all alone by them self, it was not necessary merging them with the smaller one with the bigger ones then we had to do that.

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**Adv FW Botes:**

Yes?

**Mr M Bopape:**

What then happened was that there was a specific number of companies, I am not sure how many at this point in time that were then identified as part of this "Supplier development program", so Siyaya helped us in identifying those, the strategic means what is it, an

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assessment of all those companies for instance I am saying company "A", its understanding of the rail environment at this level.

**Adv FW Botes:**

Yes?

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**Mr M Bopape:**

Company "B", their understanding of the railway network or the railway environment is at this level ...

**Adv FW Botes:**

Yes?

**Mr M Bopape:**

... company "C", their interest in the rail network, in the rail environment for instance would be the (indistinct) the others would be a (indistinct) the others would be electrical.

10

**Adv FW Botes:**

Yes?

**Mr M Bopape:**

We then did an assessment of each one of them so that they can be appropriately placed individually or together with those that were emerging and I am glad to indicate that through this program we currently have few black owned companies that never had an opportunity to take part in the rail environment currently in the system of Prasa and having rendered formidable work or remarkable work that assisted us in bringing to a better level of safety rail operations.

15

20

**Adv FW Botes:**

It is actually very good to hear.

**Commissioner:**

Mister Botes, can we take that document in as an annexure?

25

**Adv FW Botes:**

It is not ... ja, let us take it in as an annexure. Let us take it in as annexure ...

**Commissioner:** Annexure "F".

**Adv FW Botes:** "F", for Freddy let me just get my annexures ...

**Commissioner:** Describe it for me, please?

**Adv FW Botes:** I am going to, Commissioner. "F" is called the  
"Implementation plan ... Implementation plan of the  
supplier and contractor development program".

**Commissioner:** Is that the full name?

**Adv FW Botes:** That is the full name.

**Commissioner:** Does it have a date or anything like that?

**Adv FW Botes:** The date on this document ...

**Commissioner:** And it was drafted by whom?

**Adv FW Botes:** Do you know, Mister Bopape, who the draft person or  
entity of this document was? Who prepared it?

**Mr M Bopape:** This was done ... that is supposed to be true as DB  
programs. They are supposed to be a supply  
development program done under Prasa Rail ...

**Adv FW Botes:** Yes?

**Mr M Bopape:** ... and they are supposed to be a supply development  
program done under Prasa Technical.

**Adv FW Botes:** I understand.

**Mr M Bopape:** All right. We proceeded and went ahead with our own.  
The companies that have been talking about, the ones  
that I said they were previously not in the system but they are  
now, are the ones that we were exited to take on board. I

**Adv FW Botes:** Yes?

**Mr M Bopape:** ... they were previously not in the system but they are  
now, are the ones that we were exited to take on board. I

am not sure how far have Prasa Technical gone with the supply development program.

**Adv FW Botes:**

Yes.

**Mr M Bopape:**

But we went ahead.

5

**Commissioner:**

So, that supplier (indistinct) was for Prasa Rail?

**Mr M Bopape:**

Prasa Rail, Sir.

**Commissioner:**

Thank you.

**Mr M Bopape:**

Thank you, very much.

**Adv FW Botes:**

Let me just also make that note. Good. There is another document that I just need to canvas with you. It is called, "The proposed Prasa supplier development program implementation plan", have you seen that document before?

10

**Mr M Bopape:**

Yes. Yes, I have seen it.

15

**Adv FW Botes:**

"Proposed Prasa supply development program implementation plan", just in a nutshell, what was the ... what is the significance of that document?

**Mr M Bopape:**

The significance of this ... sorry, the significance of this thing was where Siyaya advised Prasa on the status of the companies that were identified for development, right, they indicated to us who was what and what needed to be done and what could be the key strategic areas and that we could concentrate on.

20

**Adv FW Botes:**

Yes?

25

**Mr M Bopape:**

To make sure that these guys came on board.

**Commissioner:**

Good, thank you. We are going to take that in as well?

**Adv FW Botes:** Yes.

**Commissioner:** Okay, Mister Botes.

**Adv FW Botes:** So, we then mark that ...

**Commissioner:** "G".

5 **Adv FW Botes:** Exhibit "G".

**Commissioner:** Okay, then I want a full description, please?

**Adv FW Botes:** I am going to give it to you, Commissioner. It is "Proposed Prasa supplier development program implementation plan".

10 **Commissioner:** Okay, "Supply ... Prasa supply development"?

**Adv FW Botes:** "program implementation plan".

**Commissioner:** Okay, and I take it was drafted by Siyaya?

**Adv FW Botes:** Let me ask the witness? Mister Bopape, can you recall who prepared or drafted that document?

15 **Mr M Bopape:** Yes, it was done by Siyaya.

**Adv FW Botes:** It was done by Siyaya. Before we go to the next subject matter ...

**Commissioner:** Sorry, ja ~~and that was for~~, this development program was done for who? Prasa Rail?

20 **Mr M Bopape:** Yes, like I said Commissioner, that we went ahead once we sat down with ... with Siyaya and we analysed the status quo, we went ahead because we were the ones that were feeling the pinch in terms of the ... the network not being ready and if there was going to be any license withdrawn by the Rail Safety Regulator, we were going to get fired. So, we ~~so~~, we could not wait for Prasa

25

Technical. We do not know what their issues were.

**Commissioner:**

Okay.

**Mr M Bopape:**

We were happy and we proceeded and we are glad that even today some of those companies are still in the system and rendering services to Prasa.

**Commissioner:**

That is good news.

**Mr M Bopape:**

But under separate contracts between themselves and Prasa, of course.

**Commissioner:**

Okay, thank you, very much.

**Adv FW Botes:**

Let me ask you this question, from Prasa Management's position which you form part of management, were there, was there in your time when you were there, were there any problems, fundamental issues pertaining to Siyaya in terms of service delivery, performance and the manner in which work was executed?

**Mr M Bopape:**

To the best of my knowledge, you know, things have always been hunky dory between Siyaya and Prasa. They have rendered very big and formidable projects to us. We are happy, included in that, in those projects will be for instance your signalling in KZN ...

**Adv FW Botes:**

Yes.

**Mr M Bopape:**

... your signalling in Eastern Cape, major, major massive programs and we have never doubted as far as I know their credentials, their competence and everything, we knew they worked with experts from Germany ...

**Adv FW Botes:**

Yes.



**Mr M Bopape:**

... in certain instances. So, everything was okay up to a certain point. Where there were issues I just do not know what were those issues.

**Adv FW Botes:**

You mentioned the German Engineers, you would have noted from the description of the company in liquidation, it is "Siyaya DB Consulting Engineers". The "DB" reference to the well know, Deutsche Bahn network in Germany?

**Mr M Bopape:**

Ja. I mean if ... if the contract has always provided for a clause and provision where in case of each, either party not being happy with the other, there will be a mechanism through which the other party would be able and be given an opportunity to raise whatever concerns.

**Adv FW Botes:**

Yes?

**Mr M Bopape:**

I being the senior manager responsible for procurement, no one ever brought anything to my attention that we are no longer going to be proceeding with Siyaya, please terminate this contract or do not appoint them on anything.

There has not been any know communication that I had that said as a company we had specific problems with Prasa, I mean, with Siyaya.

**Adv FW Botes:**

Siyaya. ~~Adv FW Botes.~~

**Commissioner:**

The part where you said there were issues, you did not elaborate?

**Mr M Bopape:**

Yes, some of the payments were not being effected. I ...

**Commissioner:**

(Indistinct). So, and if payment stopped, and you are wondering well, what is the cause of that?

**Mr M Bopape:**

Yes. Up to this date I do not think any one ... at least myself, I would not be able to tell you why is it that they were not paid up until the point where I left. But I can confirm that it was neither because someone was not happy with the work that had been done. It was just something that I do not know what.

**Commissioner:**

Okay. Could it have been an internal issue at Prasa?

**Mr M Bopape:**

Certainly. Without any doubt.

**Adv FW Botes:**

One thing we do know as a result thereof, Siaya were Liquidated, that we know, and that is why we are here. Lastly, may I ask you Mister Bopape, to turn to page 155 of exhibit "C", 155? This is a tax invoice, number 10 that was submitted to Prasa and what they first do, what the subject matter is, is "framework contract for permeable material on track machine supplies and contractor development Prasa Tech", that is where you come into the

play, that is your division?

**Mr M Bopape:**

No, Prasa Rail would be my division.

**Adv FW Botes:**

O, your division is Prasa Rail?

**Mr M Bopape:**

Yes, Sir.

**Adv FW Botes:**

I understand. So, have you seen this document before or is this the first time that you have seen this?

**Mr M Bopape:**

This ... I may have seen it but it would have been of no interest to me particularly or specifically because it ... it pertains to Prasa Technical.

**Adv FW Botes:**

I understand.

**Mr M Bopape:**

That is having said, Prasa Rail, it definitely would have meant that it came to my desk somehow ...

**Adv FW Botes:**

I understand.

**Mr M Bopape:**

I would have known about it and process the payment or had a problem with the payment which would then would have communicated to the ...

**Adv FW Botes:**

Yes?

**Mr M Bopape:**

... to the contractor.

**Adv FW Botes:**

So, if I understand you correctly, you were not, or you were not in a position to verify or to clarify whether this tax invoice is due and payable or not?

**Mr M Bopape:**

Yes, at this point, no.

**Adv FW Botes:**

I understand. I understand.

**Commissioner:**

Sorry, Mister Bopape, there is the Department like Prasa Tech, Prasa Cres, and so on? Each Department has a separate End-User Department or is there only one End-User Department in that Prasa that counts everything?

**Mr M Bopape:**

No. Each and every business unit it is...

**Commissioner:**

So, they would have had ... each own ... each own End-User unit?

**Mr M Bopape:**

We would have our own CFO, would have our own senior management, senior manager Procurement, the same would apply at Prasa Rail, Prasa Technical and Prasa Cres.

**Commissioner:**

Thank you.

**Mr M Bopape:**

And they would have separate departments which we call

End-User departments like your Service Customer, your ...  
your Customer Services Department. Your Train  
Operations Department. Your Engineering Department,  
under Engineering you would have Signalling, you would  
Engineering ... OAT, (indistinct) and all those kind of  
things, then they will be met by one senior, one Executive  
Manager.

**Commissioner:**

Thank you, very much. Sorry, I interrupted you Mister  
Botes.

**Adv FW Botes:**

No, you did not Mister Commissioner, it was a very  
important question flowing from that question and your  
answer, can the Commissioner then accept in so far as  
the asset rehabilitation program which was entrusted to  
Siyaya from Prasa's point of view, successfully properly,  
diligently executed and attended to?

**Mr M Bopape:**

(None verbal response).

**Adv FW Botes:**

Yes?

**Mr M Bopape:**

Yes.

**Adv FW Botes:**

As far as Prasa Rail is concerned. Mister Bopape, thank  
you, very much for attending and you assisted us or the  
Commissioner considerably and take care and hopefully ...  
is there something else? O, sorry. Let me just, sorry  
Mister Commissioner, there is one aspect that I need to  
canvas. The same bundle, Mister Bopape, can I ask you  
to turn to the first portion and more specifically to page 93,  
if you do not mind? Well the date of this document, well

let me first direct your attention to what it says right at the top of the page, it is "Rail Operations", it is a document created by Prasa, is that correct?

**Mr M Bopape:**

Yes.

5 **Adv FW Botes:**

Have you seen this document

**Mr M Bopape:**

Yes, I have seen this document.

**Adv FW Botes:**

It is dated the 2<sup>nd</sup> of June 2015 and in the project description is "Implementation of the material (indistinct) project", which was initiated under Prasa Technical for the benefit of Prasa Rail, there you come into the play?

**Mr M Bopape:**

Yes.

**Adv FW Botes:**

Prasa Rail?

**Mr M Bopape:**

Yes.

**Adv FW Botes:**

And it seems that the transaction which is evident from this document is a request to facilitate the payment of outstanding invoices to Siyaya? Just from a general perspective, what was your understanding regarding the implementation of the project, that is the material management and coding if my memory serves me correct and why was it necessary for Prasa Management to prepare a document of this nature?

**Mr M Bopape:**

Okay. I think first and foremost, let me confirm that not only do I know this document, I did this document.

**Adv FW Botes:**

You were the draftsman of this?

**Mr M Bopape:**

I drafted this document.

**Adv FW Botes:**

I nearly excused you. I nearly let you go ...

**Mr M Bopape:** Ja ...

**Adv FW Botes:** ... without canvassing this with you?

**Mr M Bopape:** I drafted this document and the reason why this document was done, as you can see it says "Prasa Rail"?

5 **Adv FW Botes:** Ja?

**Mr M Bopape:** But it says it comes from Joseph at Pongolo.

**Adv FW Botes:** Who was Doctor Joseph at Pongolo?

**Mr M Bopape:** He was the ... the what ... the Chief Procurement Officer at the time. All of the senior managers in all the business units of Prasa, Prasa Technical, Prasa Rail, Prasa Rail ... Prasa Cres, all the three senior managers, we reported dotted line to him who was, he was seated at Prasa Corporate.

**Adv FW Botes:** That was the line function that you ...

15 **Mr M Bopape:** That was the line function.

**Adv FW Botes:** ... referred to, yes.

**Mr M Bopape:** Because he was the Head of Procurement for the entire Prasa.

**Adv FW Botes:** Yes, yes.

20 **Mr M Bopape:** All right, so anything that was above R25 million for instance that needed to be procured by Prasa Rail, he will be initiator of ... of this thing from where he was seated at Hatfield.

**Adv FW Botes:** I understand.

25 **Mr M Bopape:** This document is a result of the contestation that was there between Prasa Rail and Prasa Technical, all right.

One of the functions that Prasa Technical had to do was the implementation of the material coding for our warehouses, the warehouses that belong to Prasa Rail but that function was supposed to be done by Prasa Technical in line with the asset rehabilitation agreement that had been concluded so it was identified that there was the need for this work to be done. This work was being done from budget of Prasa Technical for the benefit of Prasa Rail and it is not unusual. You would have for instance ... the improvement of any station, say for instance the Bosman station because we are not responsible for the maintenance and the cleaning of the stations. We would have Prasa Cres, expanding or developing the station. They would develop that from their budget but it is going to be for the benefit of Prasa Rail because it is Prasa Rail, the customers that are going to be using this thing, all right.

**Adv FW Botes:**

I understand.

**Mr M Bopape:**

So, the same applied with material coding. The benefiting entity was Prasa Rail but the function and budget it was for Technical.

**Adv FW Botes:**

Prasa Technical.

**Mr M Bopape:**

Ja.

**Adv FW Botes:**

I understand.

**Mr M Bopape:**

Ja, so they did the work to the satisfaction of Prasa Rail and I think the End-User if he were to be called in they

would confirm that they were satisfied or they were not satisfied but to the best of my knowledge they were satisfied with the work that had been done. Now, there were some reluctance on the part of Technical's side to pay.

**Adv FW Botes:**

Why?

**Mr M Bopape:**

I do not know. Up until we sat down they said there was no contract, there was no that, there was not that, we found that ultimately there was a contract that was subsequently signed.

**Adv FW Botes:**

O, there was a contract subsequently?

**Mr M Bopape:**

I think there was a contract subsequently signed between Prasa Tech ... Prasa Technical and Siyaya.

**Adv FW Botes:**

Ja?

**Mr M Bopape:**

But why the payment was not made, I do not know. I remember in one of the discussions that I had with the CFO who said, Masha, "I am reluctant to pay this".

**Adv FW Botes:**

Why?

**Mr M Bopape:**

"What I will do if you guys are satisfied with the work because you say the work had been done and you are the ones that can confirm that the work had been done, technically speaking I will transfer the money over to Prasa Rail for this payment to be made".

**Adv FW Botes:**

I understand.

**Mr M Bopape:**

Then there was a problem there but then under which jurisdiction would we be paying this because we are not



the contracting entity. What we will do if it will serve your purpose is for us to do a formal confirmation to you as Prasa Technical that this work had been done to our satisfaction and based on that letter or that confirmation you should then be able to pay because you are the contracting entity ...

**Adv FW Botes:**

I understand.

**Mr M Bopape:**

... with Prasa and Siyaya.

**Adv FW Botes:**

So, within Prasa then, there was let us call it a misunderstanding between Technical and Rail while the work was done but I mean who was going to pay?

**Mr M Bopape:**

Yes. Ja, and I ... would I say that this happened at the time when there was just some issues about Siyaya you know, internal issues within Prasa about Siyaya so everybody has you know, was a little bit reluctant to pay for ... for reason personal to themselves.

**Adv FW Botes:**

Ja?

**Mr M Bopape:**

Then we said, "let us bring this thing to rest."

**Adv FW Botes:**

Yes?

**Mr M Bopape:**

"Let us put this matter to rest".

**Adv FW Botes:**

The work was done?

**Mr M Bopape:**

Ja. I would do a submission. We would give it to the CPO. Write this submission on his behalf, give it to the Chief, to the Group Chief Executive Officer who will then give a ruling as to which should be the paying entity but I can bet it is not going ... he is not going to say Prasa Rail

because the contracting entity is Prasa Technical. So, we then did this submission as a matter, as an attempt to try to resolve the internal issues, the internal disagreement between Prasa Technical and Prasa Rail and it subsequently came authorising that Prasa Technical should actually pay the money and I asked the question for instance, "But if you are ready to pay, if you are ready to transfer the money over to Prasa Rail for the payment, it says the money is there, then by extension you are willing to pay. It is just that you do not want to pay direct, so why can you not pay direct to Siyaya and but you will then prefer that the money be sent over to Prasa Rail.", it is not going to be possible because the contract is between Prasa Technical and Siyaya. If we are going to accept that payment to come to us and we pay we will be found wanting by National Treasury and Auditors.

**Adv FW Botes:**

The squirrel will be on your case.

**Mr M Bopape:**

Thank you.

**Adv FW Botes:**

Within a minute.

**Mr M Bopape:**

Ja, so ...

**Adv FW Botes:**

How I understand this document and there is one paragraph that I think highlights everything, if you turn the page to paragraph 2.6? Or let me just lay the basis, 2.3, I am going to read it to you, Mister Bopape, it is on page 94, it says "Prior to Siyaya DB being appointed to assist with the material coding, Prasa had appointed Gijima

Technologies to introduce and implement SAP at Prasa network environment. Upon completion of the introduction of SAP by Gijima Technologies Siyaya DB (indistinct) to align the said (indistinct) to the material coding process to assist Prasa improve on its effectiveness and efficiency regarding the identification and handling of materials and assets on a computerised platform. Prasa Technical then proceed to appoint Siyaya to implement the material coding project using the basis of the SAP configuration as introduced into the system by Gijima Technologies". It just stops there. There are two very important aspects flowing from this. Can the Commissioner accept that Siyaya DB was indeed appointed by Prasa, either Technical or Rail to attend to the material management and coding?

**Mr M Bopape:**

Yes, Sir.

**Adv FW Botes:**

Just bear with me, is it at all possible for somebody to come on board in... within the Siyaya environment as sorry, within the Prasa environment, do certain things. Get people on, on-site without either an agreement whether it is written, whether oral, whether it is implied or with somebody's authorisation?

**Mr M Bopape:**

It is not possible.

**Adv FW Botes:**

Impossible? That is what I thought.

**Mr M Bopape:**

It would, just to put it in the simplest of things, you would not even gain access to any of the offices of Prasa. The physical office ...

**Adv FW Botes:** Yes?

**Mr M Bopape:** ... without someone not coming to fetch you from the ground floor to access my office ...

**Adv FW Botes:** I understand.

5 **Mr M Bopape:** ... unless you have got a card.

**Adv FW Botes:** I understand.

**Mr M Bopape:** The system is just ... simple entry into ... into Prasa is not possible.

**Adv FW Botes:** Let us see if we can short-circuit all of this with reference to what is contained in 2.6 on the same page? I am just reading to you, "In spite of the fact that the actual appointment of Siyaya was made by Prasa Technical, it stands to reason that the beneficiary of this initiative remains Prasa Rail. The appointment of Siyaya was not necessarily followed up by the conclusion of any contract between Prasa Technical and the Contractor. The contractor had submitted a signed copy of the contract to Prasa Technical but somehow Prasa Technical did not append any signatures on this copy. The reasons behind this are not clearly and readily available."

15 **Mr M Bopape:** Ja, that is my understanding at that point in time.

**Adv FW Botes:** Ja. But why on earth will the Contractor provide Prasa with the contract and Prasa well, it seems they just reluctance they ... they simply do not want to sign it? But the work has been done?

25 **Mr M Bopape:** Ja. I think that question would be better answered by the

Senior Manager Procurement at Prasa Technical as to why did he not see the contract through.

**Adv FW Botes:**

And if you then turn the page to page 95, 2.8, this is actually what I want to get at if I understand your evidence correctly, it is noted "To this end, no contract was signed and loaded on SAP by Prasa because of the fact that the Engineering Services Department had moved back into Prasa Rail. There was a debate that the process and the project had been handed over or transferred to Prasa Rail because it is advocate or owner had moved back to Prasa Rail. There is however no documentary evidence showing their (indistinct) transfer of the project from Prasa Technical to Prasa Rail. What is in dispute though is the fact that Prasa Rail remains the primary benefactor of the projects regardless of where the appointment and the implementation of the appointment of the project was or is being made"?

**Mr M Bopape:**

Ja.

**Adv FW Botes:**

But that hits the nail on the head?

**Mr M Bopape:**

Ja.

**Adv FW Botes:**

What you say is, it is of no concern whether Prasa Technical or Prasa Rail must pay Siyaya?

**Mr M Bopape:**

Ja.

**Adv FW Botes:**

Siyaya must be paid?

**Mr M Bopape:**

Siyaya must be paid. But what I said is that the payment in all fairness should be coming from Prasa Technical.

**Adv FW Botes:** Ja?

**Mr M Bopape:** But because we are disagreeing, that is why we subsequently wrote this submission.

**Adv FW Botes:** Yes?

5 **Mr M Bopape:** So, that we can then have someone at a higher level directing that the payment be made and by who.

**Adv FW Botes:** But that was done, if you turn to page 98?

**Mr M Bopape:** Ja.

10 **Adv FW Botes:** If you turn to page 98, what you have just said, that was exactly what transpired because you will see in paragraph 5 there is a recommendation by Dr Joseph at Pongola and what Dr Pongola recommended was this Group CEO that was the Lucky Montana should approve the regularisation of the appointment of Siyaya DB. What does it mean? I do not understand what is meant by regularisation of the appointment of Siyaya DB?

15

**Mr M Bopape:** Regularisation it basically says that they had proceeded to do work and someone have not signed the contract but they were directed to do the work.

20 **Adv FW Botes:** O, yes?

**Mr M Bopape:** So, as to regularise this appointment by making sure number one, whoever represented Prasa here needed to sign the agreement, have the contract loaded on SAP so that payment would be made.

25 **Adv FW Botes:** I understand:

**Mr M Bopape:** Ja. Does it make sense?

**Adv FW Botes:** No, it makes sense. Sorry, ...

**Mr M Bopape:** They were not going to be able to pay on SAP if the contract was not loaded.

**Adv FW Botes:** Yes?

5 **Mr M Bopape:** They were not going to be able to load the contract if the contract was not signed.

**Adv FW Botes:** Yes?

**Mr M Bopape:** So, regularise the process so ultimately Siyaya could be paid.

10 **Adv FW Botes:** O, for SAP purposes, so that is all for the general ...

**Mr M Bopape:** Ja.

**Adv FW Botes:** ... acceptable accounting principals and logistical measures within the Prasa, SAP environment?

15 **Mr M Bopape:** And those are just internal Prasa process that have got nothing to do with the service provider. The service provider for instance when they get appointment all they know is that there is a contract that gets signed and it finishes there. Apart from that it is the implantation of the work.

20 **Adv FW Botes:** Yes?

**Mr M Bopape:** But beyond that, there are internal processes that the End-User, I mean the contractor may be not aware of ...

**Adv FW Botes:** Yes?

**Mr M Bopape:** ... for instance the loading of the contract.

25 **Adv FW Botes:** Yes.

**Mr M Bopape:** That is an internal Prasa thing, you know?

**Adv FW Botes:**

The contract has got nothing to do with them it ..

**Mr M Bopape:**

Exactly. Who authorises the payment on the SAP it has got nothing to do with them. All that they need to do is to see their payment be made. Once they do not see their payment, then they start asking questions. But there are various levels of approval of payment. Internal Prasa processes ...

**Adv FW Botes:**

Yes?

**Mr M Bopape:**

... that have got nothing to do with them.

**Adv FW Botes:**

And in item 5.1.2 provides for the "Prasa Technical concludes and signs a contract with Siyaya to the tune of R14 million". Why R14 million, was that the amount that was identified that is due and payable to Siyaya?

**Mr M Bopape:**

It was the amount due and payable at that point in time.

**Adv FW Botes:**

O.

**Mr M Bopape:**

I would not be surprised ... I would not be surprised for instance if beyond this, there was still work that had been done subsequently meaning that the amount could be greater ...

**Adv FW Botes:**

Yes?

**Mr M Bopape:**

... than R14 million. So, this was the status quo as it stood as at on the 8<sup>th</sup> of May 2015.

**Adv FW Botes:**

Yes. There you will find, we do not need to turn to it but you are quite correct, subsequent to this recommendation additional work were attended to and effected and that is why the client in so far as material management and



coding is concerned is not R14 million but rather R17,6 million ... R17,6 million. That slots in with your testimony and anything have regard to item 5.1.3 "is provided for upon successful conclusion and signing of the contract, Prasa Technical effect payment R14 million owed to Siyaya ... to Siyaya as settlement for work done under the material coding project", and right beneath that, there is a tick made on top of the word "recommended", what should the Commissioner make of that, is that an official clarification or ... or ...

**Commissioner:**

Decision.

**Adv FW Botes:**

Ja, an official recommendation that was given effect to?

**Mr M Bopape:**

Yes. This basically says that I confirm and I agree with all that has been said in this document and I support and recommended indeed that payment be made.

**Adv FW Botes:**

Ja?

**Mr M Bopape:**

But there still had to be someone that needed to approve.

**Adv FW Botes:**

And that person is the Group ...

**Mr M Bopape:**

Yes.

**Adv FW Botes:**

... the Group.

**Mr M Bopape:**

CEO.

**Adv FW Botes:**

Chief Executive Officer at the time was Mr Lucky Montana.

**Mr M Bopape:**

Yes, Sir.

**Adv FW Botes:**

He will also grace us with his presence hopefully later this afternoon and what do you approve, now just ... just ... just take us through it? "Approval is subject to SM. Written

explanation why disciplinary action should not be made ...  
should not be instituted against Managers who gave a go-  
ahead without first obtaining approval as required by the  
Group SCM", that is Supply Chain ...

5      **Mr M Bopape:**      Supply Chain Management.

**Adv FW Botes:**      ... Supply Chain Management Policy?

**Mr M Bopape:**      Yes.

**Adv FW Botes:**      What does that mean? Does it mean that Siyaya should  
not be paid before effect is given to this?

10      **Mr M Bopape:**      No, basically it says this ... this is approval but someone  
has to account to him indicating to him why this happened  
in the first place. Not allowing Siyaya to go ahead to do  
the work without a signed contract because normally what  
will ...

15      **Adv FW Botes:**      Yes?

**Mr M Bopape:**      ... happen is that you would have a situation where for  
instance the signing of the contract precedes the  
commencement of the work but it does not necessarily  
mean that it is always that case. There are certain  
instances for instance where especially in a situation  
where there is a debate between the Legal Department  
representing Prasa and the End-User, I mean and the  
Contractor where there is still debating the issues of the  
contract. This clause and that clause, it shall, it may, all  
those legal things.

25      **Adv FW Botes:**      In the mean-time the work is being executed.

**Mr M Bopape:** The work has been done, yes.

**Adv FW Botes:** Yes.

**Mr M Bopape:** So, that is basically saying someone should have said to him, "We allowed this work to go whilst we are still busy discussing the contract" ...

**Adv FW Botes:** Yes?

**Mr M Bopape:** " ... because it was urgent, many other things relied on it", that explanation and it has been done in the past where people basically account and give reasons why they should not be disciplined or why certain things happen the way that they did.

**Adv FW Botes:** Ja.

**Mr M Bopape:** It does not however invalidate the contract in any way.

**Adv FW Botes:** And it does not invalidate the fact that the service of the contractor provided certain material services and it is entitled to be reimbursed accordingly?

**Mr M Bopape:** Ja, it does not invalidate that. This is just, they would not even know about all this things. The internal processes where someone would have to account to the (indistinct) or why this thing has happened the way that they did. You know, it ... it is a Prasa internal issue that has got nothing to do with the service provider. Apart following this approval what should have happened is that the contract should have been signed, loaded on SAP and the End-User, I mean the service provider, it paid and Prasa took its own internal house cleaning issues.

**Adv FW Botes:**

All things equal can the Commissioner accept whether (indistinct) whether there was compliance within Prasa if it is internal, technical or accounting processes that Siyaya is entitled to be paid by Prasa at least on what we have in front of us an amount of R14 million?

**Mr M Bopape:**

Without any doubt and I suppose the other colleague's fairness from Prasa itself if they were to come here they would confirm that material coding had been done. If the was going to be an inspection in (indistinct) it also confirm that this is the work that had been done by Prasa ... by Siyaya on behalf of ...

**Adv FW Botes:**

Mister Bopape, I nearly let you off the hook prematurely. Thank you, so much for attending once again. There is nothing else that we need from you. Thank you, for making the time and good luck with your future and you are excused. Thank you.

**Mr M Bopape:**

(Indistinct)

**Adv K Tsatsawane:**

Mister Commissioner, I just want to, there is an issue that may assist you in your enquiry and there is a point of clarification because if it gets clarified it... it may assist quite a lot.

**Commissioner:**

Thank you, very much, I will appreciate that.

**Adv K Tsatsawane:**

Because this ... this letter that witness has just given the evidence about is ... forms part of the papers in the ... in the arbitration. I am sure you are now aware of the litigation that is happening between them?

**Commissioner:** The arbitration?

**Adv K Tsatsawane:** Yes, the arbitration, yes.

**Commissioner:** Yes. Yes.

**Adv K Tsatsawane:** I think to understand and to have said that a contract was eventually concluded but he also seems to be saying that a contract was not concluded. Because if a contract was eventually concluded as I said, it is something that ... we at Prasa must look at seriously and ... and then decide on the basis of what it says whether or not we should not investigate why payment has not been made but I did need clarify that. Has the contract been concluded or has it not been concluded and if it has been concluded, where can we find it?

**Mr M Bopape:** All right. To the best of my ... as at the time when this document was done the contract was not signed.

**Adv K Tsatsawane:** Okay.

**Mr M Bopape:** But I seem to recall that post what the Group Chief had said, which was basically confirm or getting direction to the regularisation of this appointment, it is a given that there should be a contract that should be included as part of the regularisation. I cannot personally say I have it, or I do not have it but I think Prasa Technical, someone at my level at my space, my peer, my equivalent at Prasa Technical would subsequently confirm whether this instruction as directed or given by the Group CEO was ultimately executed and the execution thereof, part of it would

include the contract being concluded and signed and ...  
and loaded on SAP.

**Adv K Tsatsawane:** Yes, so ... so, you do not know if a contract was eventually  
concluded after this memorandum?

5 **Mr M Bopape:** No. No.

**Adv K Tsatsawane:** Okay. No, that is all.

**Commissioner:** Good so we need to get someone from Prasa Technical ...

**Mr M Bopape:** Ja.

**Commissioner:** ... to come and confirm that?

10 **Mr M Bopape:** Yes.

**Commissioner:** Whether there was a contract or whether the work was  
done?

**Mr M Bopape:** Well basically whether this instruction had been executed,  
yes.

15 **Commissioner:** Okay.

**Adv FW Botes:** Was given effect to, ja.

**Adv K Tsatsawane:** Was given effect to.

**Adv FW Botes:** But does it detract from the liability and from the fact that  
Siyaya is entitled to payment?

20 **Mr M Bopape:** No. Because Prasa is even using the material coding  
principals and system that had been put by ... by Siyaya,  
why would you use someone else's IT... IP if you are not  
in need of them?

**Adv FW Botes:** Ja.

25 **Mr M Bopape:** And if you are using them why not pay for them?

**Adv FW Botes:** Ja, no, to address the Commissioner's concern regardless

even if call somebody from Prasa Technical or not, I mean that does not detract from the fact that somebody should push the button, the payment button ...

**Mr M Bopape:**

Ja.

5 **Adv FW Botes:**

... for at least R14 million and then they can go and suss it out and fight it out internally, why, why not, who, ha, boo, baa, low, high, whatever. It has got nothing to do with the Commissioner and most definitely it has got nothing to do with me.

10 **Mr M Bopape:**

Sure.

**Adv FW Botes:**

As leading the evidence.

**Mr M Bopape:**

Ja.

**Adv K Tsatsawane:**

What about me?

**Mr M Bopape:**

Thank you. Kennedy, it has got everything to do with you.

15 Thank you, Mister Bopape.

**Adv K Tsatsawane:**

Just again, Mister Commissioner, again just to help you, it is one of the reasons why this amount has not been paid

is because we ~~we~~ we do not have this contract that is

recommended that it must be signed and that is why I said

20 if there is ~~such a~~ contract it would change our position

completely. But he says he cannot say if it was signed but

hopefully one of the witnesses will tell us if it was signed

by (indistinct - talking simultaneously).

**Commissioner:**

I think there is one thing that is clear, the work was done.

25 The work was done;

**Adv K Tsatsawane:**

But that is what he says.

**Commissioner:** The money is due.

**Adv K Tsatsawane:** That is what he says.

**Commissioner:** Money is due. It is just a question now that it was, there needs to be regularisation. Is that what you call it?

5 **Mr M Bopape:** Yes.

**Commissioner:** In other words that means signing of a contract?

**Mr M Bopape:** Yes.

**Commissioner:** That is a signing, once that is done, well then you regularised it. But as it stands now, the money is due. That is your evidence?

10 **Mr M Bopape:** Yes, and for that money to be paid, Commissioner, under the circumstances it does not necessarily have to have a contract because you can still pay ... Prasa through a system what do they call it ...

15 **Commissioner:** Okay.

**Mr M Bopape:** ... a once off payment.

**Commissioner:** Okay.

**Mr M Bopape:** Ja, ja.

20 **Commissioner:** So, there is like a pool of money because I think you did explain that on each contract there is a certain amount, remember you spoke about 2,000, 2,000,000,00 and 5,000,000,00 that if it gets over 5,000,000,00 the system kicks in immediately there is no money for that?

**Mr M Bopape:** Yes.

25 **Commissioner:** So, for this this there is a ... there is another fund somewhere within Prasa that can pay this?



**Mr M Bopape:** A system called Sundries.

**Adv FW Botes:** Sundries?

**Mr M Bopape:** Sundries. So, there is a payment that you can make through a contract ...

5 **Commissioner:** Okay.

**Mr M Bopape:** But you can also make a payment through Sundries.

**Commissioner:** Okay.

**Mr M Bopape:** So, if this million were to be paid, it can still be paid as Sundries without necessarily a contract because what will then, you will reconcile the amount, pay it through Sundries and the invoices so they will speak to one another.

**Commissioner:** Okay.

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15 **Adv FW Botes:** Ja, I think what ... what the Commissioner actually wants to establish that is in the light of Advocate Tsatsawane's question, if I am just using an example, if Prasa wants to play hard-ball internally they can just say, "Ag well there is no contract internally. We cannot lay our hands on it.". I mean we can call this Commission can call each and every person in Prasa. If there is no contract I mean if somebody can hide the contract or can just throw it away, we will not know?

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25 **Mr M Bopape:** Ja, certainly. I think the Commissioner could potentially say, Well there is no contract but we accept that work had been done.

**Adv FW Botes:** Yes.

**Mr M Bopape:**

Money needs to be paid. How we pay is not ...

**Commissioner:**

So, as far as you are concerned, look, Advocate ...  
Advocates will advise me on this, as I understand a  
contract does not have to be written?

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**Mr M Bopape:**

Ja?

**Commissioner:**

In other words, it is a meeting of minds, am I right?

**Mr M Bopape:**

Yes. Yes.

**Commissioner:**

Or according to your internal regulations must ... must all  
work be done in terms of a contract that is signed and  
written (indistinct)?

10

**Mr M Bopape:**

Preferably but it does not mean that if there is no contract,  
money cannot be paid. I can be paid through Sundries  
which is a once-off payment that can be made once we  
resolve any other issue for instance Commissioner, if we  
have got a service provider that has done work for over a  
month and work has been ongoing because of the  
urgency of work and we are still busy negotiating the  
contract, there are overheads to be met by the service  
provider so we can, the CFO can authorise for a Sundry  
payment to be made, say of 5,000,000,00 so the  
5,000,000,00 can be made and once the contract has  
been loaded, once the contract issues have been resolved  
it gets loaded you will then offset the first payment that you  
have made already from the balance so if the value of the  
contract was 25,000,000,00 you will say, 5,000,000,00  
had already been paid through Sundries. All I am saying

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is that it cannot be fair to hide behind the pen and say there is no contract therefore payment cannot be made.

**Adv FW Botes:**

That is the point. That is exactly what we ... so Prasa cannot hide behind the pen and say, "Okay we cannot find the contract. ha, ha, ha, that is why we are not going to pay Siyaya". I mean it is ridiculous. It does not make sense, do you agree?

**Mr M Bopape:**

Yes, I do.

**Adv FW Botes:**

Thank you, Mister Bopape.

**Adv K Tsatsawane:**

(Indistinct).

**Adv FW Botes:**

Thank you, Mister Bopape.

**Commissioner:**

Thank you, Mister Bopape for your excellent evidence.

You have been a great help to us and I also want to thank your Council for throwing light on this issues for us and helping us, we really appreciate that, thank you.

**Adv FW Botes:**

Thank you, Mister Bopape.

**Mr M Bopape:**

Thank you, so much.

**Adv FW Botes:**

Mister Commissioner, can we take a tea break, Pease?

**Commissioner:**

Yes.

**Adv FW Botes:**

Ten minutes?

**\*SHORT BREAK**

**\*ENQUIRY CONTINUES:**

**Adv FW Botes:**

Thank you, Mister Commissioner. Thank you, for the tea adjournment. I beg leave to call the second witness for today is Mr Tony Vermeulen.

**Commissioner:**

Goed. Council, we must decide if we are going to proceed

in Afrikaans or English, Mister ... Mister Vermeulen?

**Mr AM Vermeulen:**

(Indistinct) English (indistinct).

**Commissioner:**

Okay, thank you, Mister Vermeulen. Do you have any objection to taking the oath?

5 **Mr AM Vermeulen:**

No problem.

**Commissioner:**

Will you stand, please? Do you swear that the evidence that you will give will be the truth, the whole truth and nothing but the truth, raise your right hand and say, "so help God"?

10 **Mr AM Vermeulen:**

I swear the evidence will be the whole truth, so help me God.

**Commissioner:**

Thank you, very much.

**Adv FW Botes:**

Thank you, Mister Commissioner. Thank you, Mister Vermeulen.

15 **Commissioner:**

Sorry, I just want to get your full names, Mister Vermeulen?

**Mr AM Vermeulen:**

The full name is Antonie. A-n-t-o-n-i-e.

**Commissioner:**

Yes.

**Mr AM Vermeulen:**

Let say there is a second name, N and then Vermeulen.

20 **Commissioner:**

Can you just give us that "N", just for the record?

**Mr AM Vermeulen:**

Michiel. M-i-c-h-i-e-l.

**Commissioner:**

Okay. Thank you, very much Mister Vermeulen. Sorry, Council, do you act for Mr Vermeulen as well or are you just sitting in as an observer here?

25 **Adv K Tsatsawane:**

Well I act for him.

**Commissioner:**

You act for him as well?

**Adv K Tsatsawane:** Yes.

**Adv FW Botes:** Mr Tsatsawane ... Mr Tsatsawane acts for Prasa.

**Commissioner:** Okay. Good.

5 **EVIDENCE OF MR AM VERMEULEN:**

**Adv FW Botes:** Thank you, Commissioner. Thank you, Mister Vermeulen.  
Mister Vermeulen, you are in the employ of Prasa, is that correct?

**Mr AM Vermeulen:** Correct, ja.

10 **Adv FW Botes:** And since when have you been in Prasa's employ?

**Mr AM Vermeulen:** Let us say ... you see you are taking me long time back you know, ...

**Adv FW Botes:** Take your time.

**Mr AM Vermeulen:** It is roughly ... say roughly '95. 1995.

15 **Adv FW Botes:** 1995. 22 years?

**Mr AM Vermeulen:** Hmm.

**Adv FW Botes:** It is a long time.

20 **Commissioner:** Sorry, sorry I am interrupting. It is just that I see on the Return of Service it says that Mr Vermeulen no longer works for Prasa, according to the Sheriff's Return of Service?

**Mr AM Vermeulen:** It is almost like Chair.

**Adv K Tsatsawane:** He is supposed to have retired.

25 **Commissioner:** Okay. Okay that is why I was confused about you, if you are representing Mr Vermeulen. Thank you.

**Adv FW Botes:** Your resignation, Mister Vermeulen?

**Mr AM Vermeulen:** Look it all depends on the ... on the structure but at this very moment it is Infrastructure Operational Services on a national basis. Infrastructure, Engineering, nè?

**Adv FW Botes:** Ja.

5 **Commissioner:** Just repeat that, please? Infrastructure?

**Mr AM Vermeulen:** Engineering, Operational Services, Prasa Rail. Oaky, Prasa Rail it was. But let us say it is still in the Prasa family, ja.

**Adv FW Botes:** Ja.

10 **Commissioner:** From an (indistinct) basis?

**Mr AM Vermeulen:** Head office based.

**Commissioner:** Thank you.

**Adv FW Botes:** From a general perspective, what should one understand does the phrase, "asset rehabilitation" means? "Asset rehabilitation"?

15 **Mr AM Vermeulen:** Asset rehabilitation is a broad concept in the sense that in the first place you must understand what is the asset that you are talking about. If you do not know, you can just stop?

20 **Adv FW Botes:** Ja.

**Mr AM Vermeulen:** Number one, number two, you must know what you must do to those things so in other words you must understand what is ... what is the condition. That was number two, what is the condition of that specific asset. If you have the condition based on that, you can say, listen here, there are some work load to take this asset back to a state of

condition that is an acceptable norm for the business number one, and or what the client need at that stage. By client I mean the type of train.

**Adv FW Botes:**

Ja.

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**Mr AM Vermeulen:**

(Indistinct) remember I am talking infrastructure. I am talking ... I am talking not the trains here, hey?

**Adv FW Botes:**

No.

**Mr AM Vermeulen:**

I am talking ...

**Adv FW Botes:**

Infrastructure.

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**Mr AM Vermeulen:**

I am talking infrastructure, that means the rail ...

**Adv FW Botes:**

Yes.

**Mr AM Vermeulen:**

... the electrical equipment ...

**Adv FW Botes:**

Yes.

**Mr AM Vermeulen:**

... and the robots next to the rail.

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**Adv FW Botes:**

Yes.

**Mr AM Vermeulen:**

The signal system.

**Adv FW Botes:**

Yes.

**Mr AM Vermeulen:**

So, you look at that technical tunnel.

**Adv FW Botes:**

Yes. Which is to a large extent very specified because it only relates to whatever is not moving on top of a track, so

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to speak? the fixed asset.

**Mr AM Vermeulen:**

It is a fixed asset.

**Adv FW Botes:**

Ja.

**Mr AM Vermeulen:**

If you can (indistinct).

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**Adv FW Botes:**

Ja. A fixture.

**Mr AM Vermeulen:**

It is a fixed asset, it is not a moveable asset.

**Adv FW Botes:**

Yes.

**Mr AM Vermeulen:**

It is a fixed asset. You know I have so many times said to the guys, if there is a problem with the rolling stop, the train will go and stand. But if that track is a problem, the train is next to the track. You get the message? So, the whole principal of rehabilitation is to make sure that the condition of the asset is in such a state that it is number, it is safe at a specific speed.

**Adv FW Botes:**

I understand.

**Mr AM Vermeulen:**

In other words, if you ... if you talk about a speed of 60 kilometre per hour it is another story, compared to whether you talk about a 120 kilometres per hour. Two different, totally different stories. So, and if we are talking about this project was to bring back certain sections or a bulk of the sections to a state that we can say with confidence, this thing we can now allow trains here at speed of what we refer to as the section speed, maximum a 100 at this stage but we are working on a project, we work with Siyaya to take that to a 120 kilometres per hour for certain sections of the network.

**Adv FW Botes:**

I understand.

**Mr AM Vermeulen:**

Now, the network total kilometres, is in the order of 2,000 kilometres.

**Adv FW Botes:**

Sjoe. It says that you are aware of the agreement that was entered into and concluded between Prasa and Siyaya for the rehabilitation of certain infrastructure that



needed to be attended to at this stage?

**Mr AM Vermeulen:**

The answer is, yes.

**Adv FW Botes:**

Have you seen the agreement? Where you part and party to what let up to the conclusion of the agreement?

5 **Mr AM Vermeulen:**

The answer is, yes. Phase one and two.

**Adv FW Botes:**

Phase one and two, that is important.

**Mr AM Vermeulen:**

It is very important. Very, very important if I use those two things but it is, yes. Phase one and there were two ... two distinct processes.

10 **Adv FW Botes:**

Ja. Can you explain to the Commissioner what the distinct differences between phase 1 and phase 2 was? In layman's terms?

**Mr AM Vermeulen:**

Look if you will allow me I am just going to look here on ... I have certain things here in terms of ... of let us say, phase ... phase ... phase 1. It is ... it is ... it is basically ... have a look what we discuss now, the condition.

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**Adv FW Botes:**

Yes.

**Mr AM Vermeulen:**

What is it, what is ... what is going on. So, that we can at least determine ... determine the work load.

20 **Adv FW Botes:**

Yes?

**Mr AM Vermeulen:**

What is necessary to put up and together with ... together with Siyaya they did ... they did the hard work they went ... they out there and you know identify certain needs in terms of drainage, in terms of CIP activity, CIP is Capital Intervention Program activities to be done that is necessary.

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**Adv FW Botes:**

We understand.

**Mr AM Vermeulen:**

For the rehabilitation ... rehabilitation of the ... of the ... of the (indistinct) of the network and then there were also a couple of ... a couple of bridge ... bridge inspections and that ... that whole thing went ahead in terms of phase ... phase 2 as a matter of fact it was sort of integrated. I think the core issue, if we want to go at 120 kilometres an hour, you must make sure in terms of the geometry of the track that the train can do it against that specific speed in other words there is a difference in terms of the layout of the track ...

**Adv FW Botes:**

Yes?

**Mr AM Vermeulen:**

A 100 versus 120 k's. okay. So, for that reason we had to take as part of the end of phase 1, part of phase 2, we had to take some survey measurements, fly etcetera, they had to ... to ... to do some information in terms of the detail of the formation so that we can know what we are talk ... what must we do with the information, is it suitable for a 120 again, the whole thing in terms of the bridges and assets I mentioned already them so it caused a lot of work that are done was related to ... to do all of these things there are certain standards and with them together with them we review the existing and we have ... we have done some new recommendations as a matter of fact they ... they have completed that one specifically and then, ja, ag I think Chair, that is basically ... that is the core.

**Commissioner:** Okay.

**Mr AM Vermeulen:** Then there were add-ons here but is the core to say, there is the network, this is the condition. What is the recommendation? What we must do about this?

5 **Commissioner:** Okay. I am just (indistinct) on, what is the distinction if you could just repeat that, please, what is the exact distinction between phase 1 phase 2 because you said these are two distinct processes?

**Mr AM Vermeulen:** What I meant with that it was ... it was basically two contract documents.

**Commissioner:** Two contracts?

**Mr AM Vermeulen:** Yes.

**Commissioner:** For the same type of work?

**Mr AM Vermeulen:** Same ...

15 **Commissioner:** More or less?

**Mr AM Vermeulen:** The same type of work but different ... different activities.

**Commissioner:** Okay.

**Mr AM Vermeulen:** Ja, different ... different ... activities in terms of ...

**Commissioner:** So, the one did follow on the other?

20 **Mr AM Vermeulen:** Yes, they did.

**Commissioner:** They do?

**Mr AM Vermeulen:** Ja, it ... it did in terms of ... which example can I now use ... in terms of the ... the standards. A por ... a portion was done on the one and another portion was done on the two. They could not finish everything under one contract. It was too established.

**Commissioner:**

Thank you. Now, Mister Vermeulen, you have got a document in front of you there. What is that document?

**Mr AM Vermeulen:**

This is for me a summary. If I look at this summary I can look this guy in the eyes and I can say to him, this is exactly what he did and this is the way I understand it and if we ... if we ... if we cannot reach an agreement on ... this is a basis for arbitration or whatsoever, I will use this document to kick off with.

**Adv FW Botes:**

Can I ask you the following, what is the upshot of your analyses in front on you? What is your last line in your document provide for?

**Mr AM Vermeulen:**

No, I do not understand you question, Sir? Upshot?

**Adv FW Botes:**

The upshot? What is the ... what is the result? What is the...

**Commissioner:**

Uitkoms.

**Adv FW Botes:**

Uitkoms in Afrikaans? Upshot is uitkoms? What do you say? Is Siyaya entitled to payment of the amount of money or not?

**Mr AM Vermeulen:**

Siyaya ... look we received all the invoices.

**Adv FW Botes:**

Yes?

**Mr AM Vermeulen:**

In terms of phase 1 as well as phase 2, right. So, as ... as a result of certain shall we say, implications that happened you know some of the work was paid under shall we say phase 2 so, if there is going to come a document to me to say, listen here, strictly according to phase 2 where they pay the contract value of phase 2 and the answer will be,

yes. If ... if you ... if you ask me ... if you ask me this, if there is ... if there is certain invoices still outstanding, the answer will also be, yes and I think the issue is to agree on what is that outstanding issue. We ... we ... we will not agree with the ... with the ... with the invoice amount that is in front of us. I ... I think that is what we must sort out.

**Adv FW Botes:**

Ja, that is why I asked you the question Mister Vermeulen, what do you say as you sit in that chair and with the information that you have in front of you, what from your investigation, from your knowledge, from your perspective, is the amount that is due and payable to Siyaya?

**Mr AM Vermeulen:**

Chair, I have my amount but then I must ask our legal colleague, must I do that?

**Adv FW Botes:**

Yes, you can do. This is an insolvency enquiry. We are going to establish the truth. What do you say?

**Mr AM Vermeulen:**

Okay let me ... let me put it to you like this, I ... I think the total, the two contracts the value is something in the order of R54 million?

**Adv FW Botes:**

Yes, R28 million and R28 million.

**Mr AM Vermeulen:**

No. R26 million and R28 million.

**Adv FW Botes:**

Good.

**Mr AM Vermeulen:**

Okay. R26 million and R28 million of ... of which they paid plus minus R54 million. The money that was paid was roughly 54 ... R54 million so, there were some others that ... that was done that I think over and above what that was in the document we also owe them ... owe them some

money.

**Adv FW Botes:**

You can give us the figure, from your perspective?

**Mr AM Vermeulen:**

Originally, I worked it out plus minus between 5 and R7 million but when I did the recon of this whole thing, the answer is between 2 and R3 million.

**Adv FW Botes:**

I understand. So, can the Commissioner accept that from your investigations, your calculations which you have prepared for purposes of this enquiry that the amount due and payable by Prasa to Siyaya is anything between 2 and R3 million? In so far as infrastructure and rehabilitation is concerned?

**Mr AM Vermeulen:**

Again, I would say we must sit around the table. If I go strict to my amounts now, and I can tell you know, my amount is R1,8 million.

**Adv FW Botes:**

R1,8 million? Just give us ...

**Mr AM Vermeulen:**

But then again it will be based on some interpretation that both parties will agree upon. That is my opinion.

**Adv FW Botes:**

No, I understand you Mister Vermeulen. Help me if I understand you correct, you say that might be scope to sit around the table yourself and Mr Makhensa Mabunda to go through all of these calculations and documents and to see whether or not you can find some common ground as a point of departure for calculation purposes?

**Mr AM Vermeulen:**

A 100%

**Adv FW Botes:**

Are you prepared, are you available to do so because Mr Mabunda is and what Mr Mabunda and from my

instructing attorney's point of view, that is exactly what we want to achieve. We want to establish an amicable conducive environment for that to be attended to because of the end result it is mathematics and it is calculations between two or three people who are level headed and on the same page?

**Mr AM Vermeulen:**

And it is interpretation, ja. No, look I also said that to my legal team, I said, "Guys I am willing to look at this thing. I must be able to live with it".

**Adv FW Botes:**

Yes.

**Mr AM Vermeulen:**

I am a professional Engineer and I will see to it that the correct thing is been done.

**Adv FW Botes:**

Yes.

**Mr AM Vermeulen:**

For that matter, I say yes, there is ... there is money (indistinct) but we must agree.

**Adv FW Botes:**

Mister Vermeulen, what you just said, that is exactly what I also, what my principals are in life. If we are professionals and we agree that there is room for interaction for interpretation like you have put it and to do some method of calculation to resolve an issue that is far more better than to waste resources in litigation or arbitration for that ... for that matter. You agree with me?

**Mr AM Vermeulen:**

Ja.

**Adv FW Botes:**

You agree with me?

**Mr AM Vermeulen:**

I have done it already.

**Adv FW Botes:**

Can I ask you this, subject to the Commissioner's approval

from a logistical perspective your availability, when will it be convenient for you to meet in the privacy of your own office or where ever. We are not going to be present, the legal eagles. We do not ... in any event we do not know anything about the technicalities in so far as Engineering is concerned, what is your availability to ... to have a meeting with Mr Mabunda and somebody maybe to assist him who has more knowledge on these aspects to see if you can indeed reach some sort of ...

**Mr AM Vermeulen:**

Chair, as long as it is within the next two weeks ...

**Adv FW Botes:**

Yes?

**Mr AM Vermeulen:**

... any time, even till 10:00 at night. But after that, two weeks, sorry Sir, then I am not available for some very specific reasons.

**Adv FW Botes:**

Mister Vermeulen, you are not going to escape us in this two weeks, we need you. Mister Commissioner, may I propose the following, will you allow me subject to Advocate Tsatsawane's ... what his submission on this issue is, to provisionally excuse Mr Vermeulen, for Mr Vermeulen and Mr Mabunda, Mr Mabunda indicated to me he is more than willing to meet with Mr Vermeulen for them to sit together and to see if they cannot resolve the issue? Mister Vermeulen, can I leave it in your capable hands between you and Mr Mabunda to engage with each other on this specific topic and to make an appointment within the next week to sit together to meet, to have a cup



of coffee, get your working documents in a line and see if you can resolve this?

**Mr AM Vermeulen:**

As long as it is within our legal team's guidelines I do not have a problem, Chair.

5

**Adv FW Botes:**

Thank you, Mister Commissioner.

**Commissioner:**

I just want to hear that Mr ... Advocate has any submissions to make on this arrangement agreement?

**Adv K Tsatsawane:**

No, no, no. Not at all.

**Commissioner:**

So, you are in favour?

10

**Adv K Tsatsawane:**

Ja, they can, look they can ... as he has tendered to do.

**Commissioner:**

As ... as the Advocate has said, you know, these are very technical matters and I come blind and I just need to clear up something from your evidence. Look you said there was a phase 1 and phase 2 and there were two contracts, one for R24 million and one for R28 million?

15

**Mr AM Vermeulen:**

Huh-huh. One for 26 and 28.

**Commissioner:**

And R54 million was paid? Then you said that some was paid under phase 2. Now, I take it that everything was paid in terms of phase 1?

20

**Mr AM Vermeulen:**

No.

**Commissioner:**

Still outstanding? So, this is to resolve what is outstanding, the meeting of you is to resolve what is outstanding in terms of the ... the contracts, in terms of phase 1 and phase 2?

25

**Mr AM Vermeulen:**

It all depends again on interpretation. There were some issues paid under phase 2 of work that was done against

phase 1, also on practical purposes in terms of cash flows etcetera, etcetera.

**Commissioner:**

Okay, but just to get to the (indistinct) so the purpose of your meeting is to try and resolve this issue, what is still outstanding in terms of phase 1 and two?

**Mr AM Vermeulen:**

There is one and two, there is no ways to go from phase 1 to phase 2 and all things separately. These two things are talking to each other.

**Commissioner:**

Okay, good. Now, you have cleared that up for me, so now we know what the purpose of the meeting is and I must say I appreciate your co ... we appreciate cooperation. It has been very helpful and we have very hope that his is going to be resolved between the two of you, Mr Mabunda en Mr Vermeulen. On that note I think we can excuse Mr Vermeulen?

**Adv FW Botes:**

Yes, please Mister Commissioner.

**Commissioner:**

Thank you, Mister Vermeulen.

**Adv FW Botes:**

Thank you, Mister Vermeulen, we excuse. Thank you, so much.

**Mr AM Vermeulen:**

Thank you very much.

**Commissioner:**

So, we are going to take that document in as an (indistinct).

**Adv FW Botes:**

It is not necessary. I ... I assume that is Mr Vermeulen's private notes that he has prepared to refresh his memory to give him the benefit of the doubt and I think that is what he is going to use when he meets with Mr Mabunda so

that the two of them and I take, I accept Mr Vermeulen's integrity, his ... his ... his honesty unconditionally and I do not have any reason to doubt it. Thank you, Mister Vermeulen.

5      **Mr AM Vermeulen:**      Thank you, Chair.

**Adv K Tsatsawane:**      Is it expected of us to come up with a final solution, what to do ...

**Adv FW Botes:**      Yes.

**Adv K Tsatsawane:**      ... what makes sense and the work that has been done?  
Is that what is expected?

**Adv FW Botes:**      Yes. You are going to settle.

**Commissioner:**      In other words, you are going to agree what amount is due and what amount is not due.

**Adv K Tsatsawane:**      Okay.

15      **Commissioner:**      You are going to say, "okay this was paid, this was not paid, this is the amount that is owed". I assume that is what it is going to be?

**Adv FW Botes:**      Ja.

20      **Mr AM Vermeulen:**      We have all that information Chair, but we can just talk and we must say to each other, "Listen here, this did not happen. No, not paid. This happened, yes we will pay". That is as simple as I think we must do.

**Commissioner:**      Okay but then I assume this agreement that you will come to Council ...

25      **Adv FW Botes:**      Yes?

**Commissioner:**      Will that be ... will that be outside the scope of this

Commissioner?

**Adv FW Botes:**

No. It is still inside the scope of the Commission. We will, once the gentleman have prepared a report, we will (indistinct) whether they agree or not agree, that will be submitted to you. We will hand it in as a ... as an exhibit ...

**Commissioner:**

Exhibit.

**Adv FW Botes:**

... and we will then consider whether it is necessary or not to take it any further to further investigate it or how to attend to it. But I have every reason to believe that we are dealing with two level headed honest gentleman with the highest standard of integrity and that they will be ... that they will be successful in achieving some sort of midway.

**Commissioner:**

Okay, well we look forward to that agreement.

**Adv FW Botes:**

Thank you. Thank you, Mister Vermeulen. Can I just ask for 5 minutes, please?

**\*SHORT BREAK**

**\*ENQUIRY CONTINUES**

**Adv FW Botes:**

Thank you. Mr Commissioner, we are back after the lunch adjournment, I beg your leave to call the next witness, it's Mr Vincent Kobuwe.

**Commissioner:**

Can I put the witness under oath?

**Adv FW Botes:**

Yes.

**Commissioner:**

Mr Kobuwe do you have any objection to taking the oath?

**Mr V Kobuwe:**

No.

**Commissioner:**

Will you stand please. Do you swear that the evidence

that you will give will be the truth, the whole and nothing  
but the truth, raise your right hand and say so help me  
God.

**Mr V Kobuwe:** So help me God.

5 **Commissioner:** Thank you.

**\*EVIDENCE OF MR V KOBUWE**

**Adv FW Botes:** Thank you Mr Commissioner, good afternoon Mr Kobuwe.

**Mr V Kobuwe:** Good afternoon.

**Adv FW Botes:** You were in the employ of PRASA is that correct?

10 **Mr V Kobuwe:** I am still in the employ of PRASA.

**Adv FW Botes:** Still, and when did you – did your employment with  
PRASA commence?

**Mr V Kobuwe:** I started working for PRASA on the 1<sup>st</sup> of March 2012.

**Adv FW Botes:** 1<sup>st</sup> of March 2012.

15 **Mr V Kobuwe:** Ja.

**Adv FW Botes:** And ever since you still you were and you're still in  
PRASA's employ?

**Mr V Kobuwe:** I am still in PRASA's employ yes.

**Adv FW Botes:** Mr Kobuwe your designation in PRASA?

20 **Mr V Kobuwe:** I am the Executive Manager for Infrastructure.

**Adv FW Botes:** Executive Manager for Infrastructure. Were you the most  
suitable person to testify in regard to infrastructure  
rehabilitation I assume?

25 **Mr V Kobuwe:** Ja, it depends on which parts because there are a lot of  
parts within the project so some areas will fall outside my  
area of responsibility.

**Adv FW Botes:**

I understand, I understand. Now what I actually want to refer to is we know that an agreement was entered into and concluded between PRASA and the insolvent company, Siyaya DB Consulting Engineers, and that subject matter of that agreement was the accelerated infrastructure refurbishment project which had everything to do with the infrastructure rehabilitation, do you recall that agreement?

**Mr V Kobuwe:**

Yes I do.

**Adv FW Botes:**

Just to refresh your memory Mr Kobuwe there's a document in front of your, if you turn to page 124 you will find a copy of 124.

**Mr V Kobuwe:**

124?

**Adv FW Botes:**

Yes 124.

**Mr V Kobuwe:**

Sorry Mr Botes I see you have given me two microphones.

**Adv FW Botes:**

I think one is not working.

**Ms A Kruger:**

No both are working but the witness's voice doesn't transfer very well.

**Adv FW Botes:**

Mr Kobuwe if you can just raise your voice a little bit for me for the record.

**Mr V Kobuwe:**

Okay.

**Adv FW Botes:**

That's better. Page 123 EXHIBIT C that is the agreement that you are familiar with.

**Mr V Kobuwe:**

Yes.

**Adv FW Botes:**

Just in broad terms Mr Kobuwe if you may – we're all lay people – just explain to the commissioner what was the

scope, the ambit of that agreement?

**Mr V Kobuwe:**

I just have to refer to the actual scope which is – it was the end ...(intervention)

**Adv FW Botes:**

It's on page 147, that's 147 there we are.

5

**Mr V Kobuwe:**

Ja, you see there's a better summary of scope because it covered whole events of things that needed to be done, but then when you go towards the end of the document.

**Adv FW Botes:**

Yes.

**Mr V Kobuwe:**

Do you have it?

10

**Adv FW Botes:**

Are you referring to page 153 perhaps?

**Mr V Kobuwe:**

Ja, now when you look on page number 147 where it gives a summary and then 153 now narrows the scope to activities that needed to be completed and yes it talks about the actual activities now aligned to the scope is for example where it talks about the main contract, which is upgrade of track, alignment for speeds, station track layout and then the lines that needed to be rehabilitated was basically for areas where we had to go to 120 kph; and also talks about development of specifications and then it talks about firmer contracts for suppliers and contractors.

15

**Adv FW Botes:**

Yes. ~~Mr V Kobuwe:~~

**Commissioner:**

So this is 153? ~~Adv FW Botes:~~

**Mr V Kobuwe:**

153 yes. ~~Adv FW Botes:~~

**Commissioner:**

Thank you. ~~Adv FW Botes:~~

25

**Adv FW Botes:**

So if I understand your evidence correct on a proper analysis and interpretation of the schedule which appears

on page 153 the scope of the works were classified or identified in various phases so to speak.

**Mr V Kobuwe:**

I don't understand you.

**Adv FW Botes:**

Just explain what is your interpretation of 153?

5

**Mr V Kobuwe:**

153 the scope is clear on what needed to be done.

**Adv FW Botes:**

Yes.

**Mr V Kobuwe:**

And it lists those items on the main contract which is – we will use bullets 1, 2, 3, 4.

**Adv FW Botes:**

And the total of 1, 2, 3 and 4 bullet points that amounts to R21 910 000?

10

**Mr V Kobuwe:**

Ja, and then with that – with us we use that, with that it will work out to 24 978.

**Adv FW Botes:**

I understand. I understand. Now in your position as the designated officer are you in a position to clarify what work was in actual fact attended to by Siyaya on this project?

15

**Mr V Kobuwe:**

The work that they were supposed to do was as item 2.1 which talks about the main contract and for the first four bullets.

**Adv FW Botes:**

I understand. Now did you or somebody within your Department or PRASA verify the extent of the work that was conducted by Siyaya?

20

**Mr V Kobuwe:**

We worked on a particular document for that, we have what you call a payment schedule, now with a payment schedule it will define each and every milestone and then we said that for every milestone we would pay a certain amount.

25



**Adv FW Botes:** I understand.

**Mr V Kibuwe:** So the milestones were such that they were aligned to items 1 to 4.

**Adv FW Botes:** I understand. And so if I understand you correct you were then as certain milestones were achieved you then receive an invoice, you will then examine, you will establish whether the work was in actual fact performed within the system that you were operating from?

**Mr V Kibuwe:** Yes.

**Adv FW Botes:** I understand. Did you receive any invoices from Siyaya pursuant to the conclusion of the agreement?

**Mr V Kibuwe:** I don't understand. Are you saying for services rendered?

**Adv FW Botes:** Yes of course, I mean you ...(intervention)-

**Mr V Kibuwe:** Yes one year after this contract was concluded work was done and then as per milestones defined a report was generated and then the first invoice was processed.

**Adv FW Botes:** Good, is that perhaps the invoice that you find in front of you on page 155?

**Mr V Kibuwe:** 155?

**Adv FW Botes:** 155.

**Mr V Kibuwe:** No. Normally a bit before I would draw my statement. No that's not an invoice.

**Adv FW Botes:** It's not an invoice. What is the invoice that you received, what does that invoice say?

**Mr V Kibuwe:** The invoice it says here invoice number EEE00001, and its dated 28/06/2013, and there it says the implementation

of PRASA per assessment rehabilitation program with (indistinct) sub-stations by PRASA Tech 25% completion for progress report.

**Adv FW Botes:**

And what was the amount of that invoice, sorry Mr Kibuwe?

**Mr V Kibuwe:**

R6 244 500.

**Adv FW Botes:**

I understand.

**Commissioner:**

Sorry, can we take that invoice in as an exhibit?

**Adv FW Botes:**

Not now I will get back to it Mr Commissioner.

**Commissioner:**

I just want to make sure then, so we're looking at the scope of the work here on page 153. Now we have four bullet points there, the first bullet point was that the first milestone?

**Mr V Kibuwe:**

I need to align with you now.

**Adv FW Botes:**

153.

**Mr V Kibuwe:**

Ja it basically relate to this item here.

**Commissioner:**

Okay, so in other words the first invoice was the first milestone on the main contract.

**Mr V Kibuwe:**

Yes.

**Commissioner:**

The upgrading?

**Mr V Kibuwe:**

The upgrading yes.

**Commissioner:**

Okay, good and that invoice that you had does it relate to that milestone?

**Mr V Kibuwe:**

Ja, it relates to – okay as I've explained activities it relates to the milestones in terms of payment, so when they complete about 25% of the work they will invoice us for

that work, so that will be linked yes to ...(intervention)

**Commissioner:**

The upgrading of the track alignment?

**Mr V Kibuwe:**

Not upgrading, I think this one would relate probably to item number 4.

5

**Commissioner:**

Okay so when you see ...(intervention)

**Mr V Kibuwe:**

When you tie up 2.1 and that case that we were receiving there were soft of, it was the time when they had done whatever activity, so we say when you complete whatever, 25% of the full scope of work invoice us, so it's linked to probably item number 4 of ...(intervention)

10

**Commissioner:**

So we're going to take that invoice in as Annexure H.

**Adv FW Botes:**

It's not necessary Mr Commissioner.

**Commissioner:**

Ja, but I just want to link it you see so that I know ...(intervention)

15

**Adv FW Botes:**

There's no dispute about it, I will just clarify for you.

**Commissioner:**

But for the purposes of my report.

**Adv FW Botes:**

Okay, for the purposes of your report, let me just clarify with the witness first, if you will allow me, that invoice that you received, that you direct the Commissioner's attention to, that's the so-called invoice number 1. In your file you also have ~~listen~~ listen carefully – invoices 2, is that correct?

20

**Mr V Kibuwe:**

2 yes.

**Adv FW Botes:**

Invoice 3.

**Mr V Kibuwe:**

I don't have invoice 3 here.

25

**Adv FW Botes:**

Invoice 4?

**Mr V Kibuwe:**

I don't have invoice 4. Okay hang on a bit before I say I

don't have it.

**Adv FW Botes:**

Take your time.

**Mr V Kobuwe:**

I've got 2, right, that's invoice 2, okay I've got invoice 3.

**Adv FW Botes:**

Invoice 5?

5

**Mr V Kobuwe:**

I don't have invoice 4.

**Adv FW Botes:**

Which invoice is in front of you now?

**Mr V Kobuwe:**

The one that I have is invoice 8.

**Adv FW Botes:**

8, do you have 5 or 6, what's the next one you have?

**Mr V Kobuwe:**

Oh sorry, that's 4, the sequence is not right. That's invoice number 4, and then I've got invoice 7 and then invoice 8.

10

**Adv FW Botes:**

Yes, and all those invoices were paid?

**Mr V Kobuwe:**

They were paid yes.

**Adv FW Botes:**

Yes, why were they paid?

15

**Mr V Kobuwe:**

Because services were rendered.

**Adv FW Botes:**

I understand... I understand. Now invoice 9 - you can accept was also paid.

**Mr V Kobuwe:**

Ekskuus, what is invoice 9?

**Adv FW Botes:**

Our claim only starts from invoice 10, so I give you the benefit of the doubt, listen carefully to what I'm saying to you, I say invoices 1 to 9, to 8, 1 to 8 were submitted and paid.

20

**Mr V Kobuwe:**

Yes.

**Adv FW Botes:**

Is that - that's according to your ...(intervention)

25

**Mr V Kobuwe:**

According to my records here ja.

**Adv FW Botes:**

Yes. Now my understanding is invoice number 9 and I'm

going to give you a copy of invoice number 9, there's invoice number 9 that was replaced by invoice 12, can you recall that?

**Mr V Kokuwe:**

What is invoice 12?

5 **Adv FW Botes:**

Let me get – don't you have a copy of invoice 12 in front of you there?

**Mr V Kokuwe:**

No I don't have invoice 12.

**Adv FW Botes:**

Let me just find a copy of invoice 12 quickly. Whilst we're looking for invoice 12 Mr Kokuwe just bear with me, if you turn to page 155 that's invoice number ...(intervention)

10

**Mr V Kokuwe:**

Sorry, you're going too fast, can you – there's invoice number 10.

**Adv FW Botes:**

Invoice number 10, have you ever received invoice number 10 or not?

15 **Mr V Kokuwe:**

Yes I did receive it.

**Adv FW Botes:**

You did receive it. Now do you know from your records whether or not a credit note was issued in respect of this invoice number 10?

**Mr V Kokuwe:**

Yes, it was issued.

20 **Adv FW Botes:**

It was issued. Is this perhaps credit note 2 that's in front of you?

**Commissioner:**

Sorry Mr Botes all these documents you pull I need them for ...(intervention)

**Adv FW Botes:**

I'm going to give it to you now.

25 **Mr V Kokuwe:**

Ja, credit note 2 yes, it's the same one.

**Adv FW Botes:**

Okay, now let's do the following ...(intervention)

**Commissioner:** You understand my suggestion?

**Adv FW Botes:** Yes, yes.

**Commissioner:** Okay because simply what I want to know is the invoices that were issued and the amounts that were paid in terms of those invoices and whether the witness agrees that the amount was paid or not, if it was not paid if it is due and payable, that's what I need and I need a summary of that.

**Adv FW Botes:** Yes Mr Commissioner I will do that for you. On the Commissioner's – the issue raised by the Commissioner can the Commissioner accept that invoices 1, 2, 3, 4, 5, 6, 7 and 8 were issued by Siyaya to PRASA and paid by PRASA?

**Mr V Kibuwe:** Yes.

**Adv FW Botes:** Yes, and you say the reason being the work was properly attended to and executed?

**Mr V Kibuwe:** Yes.

**Adv FW Botes:** Good, now I'm going to make a bundle of those invoices, 1, 2, 3, 4, 5, 6, 7 and 8 and I'm going to submit it to the Commissioner as EXHIBIT H, invoices.

**Mr V Kibuwe:** You know what before ... (intervention)

**Adv FW Botes:** 1 to 8.

**Mr V Kibuwe:** I don't have so-called invoice number 10, invoice number 10 was fine.

**Adv FW Botes:** Ja, we will prepare from our records.

**Mr V Kibuwe:** I can really tell you about invoices that I have.

**Adv FW Botes:** Okay, let me then show you ... (intervention)

**Mr V Kobuwe:** When I read out to you the number of invoices that I have, it's 1 ...(intervention)

**Adv FW Botes:** Okay let's – Mr Kobuwe let's just make a list of and then we're going to submit it to the Commissioner in that order.

5 **Commissioner:** Sorry I just want to know – I will see the contract number and all that on the invoices?

**Adv FW Botes:** Yes you will. Now let's deal with the invoices that you have.

**Mr V Kobuwe:** Can I talk?

10 **Adv FW Botes:** Yes please.

**Mr V Kobuwe:** What I can confirm to you is that I have six invoices number 1, 2, 3, 4, 7 and 8.

**Adv FW Botes:** Invoice number 1 in which amount was that?

**Mr V Kobuwe:** Invoice number 1 the amount was R6 244 500.

15 **Adv FW Botes:** Invoice number 2?

**Mr V Kobuwe:** Invoice number 2 was R6 244 500.

**Adv FW Botes:** Invoice number 3?

**Mr V Kobuwe:** Invoice number 3 R6 244 500.

**Adv FW Botes:** Invoice number 4?

20 **Mr V Kobuwe:** Now this is where it gets messed around, invoice number 4 is R4 900.

**Adv FW Botes:** R4 900?

**Mr V Kobuwe:** No invoice number it's R4.9million, and then invoice number 7 it was R400 000, and then invoice number 8 R944 500.

25 **Adv FW Botes:** R944 500?

**Mr V Kobuwe:** R944 500.

**Adv FW Botes:** Very well, very well. Unfortunately it seems you don't have invoices 5 and 6.

**Mr V Kobuwe:** Invoices number 5 and 6 I didn't get that ja.

5 **Adv FW Botes:** Can we accept or don't you know whether those invoices were paid or not?

**Mr V Kobuwe:** They would – I don't know.

**Adv FW Botes:** Very well, now let's get back to the invoices that we're busy dealing with. Invoice number 10, you recall it's the one on page 155.

**Mr V Kobuwe:** You want me to compare with what I have here?

**Adv FW Botes:** Yes, you've got it in front of you?

**Mr V Kobuwe:** Yes.

**Adv FW Botes:** Your testimony if I understand you correctly that was done away with credit note 002.

15 **Mr V Kobuwe:** Yes.

**Adv FW Botes:** Good, now I'm going to hand in credit note 002, and I'm going to mark it ANNEXURE I for Isaac, that is credit note 002.

20 **Commissioner:** Sorry Mr Botes?

**Adv FW Botes:** Yes Commissioner?

**Commissioner:** Can I just ask you those invoices 1, 2, 3, 4, 7 and 8 they're all relate to contract HOTT, that's the contract on page 124?

25 **Adv FW Botes:** Yes Mr Commissioner.

**Commissioner:** Now this invoice you just mentioned, number 10, I don't



see a contract number on here or am I missing it?

**Adv FW Botes:**

Invoice number 10 on page 155 is that invoice – does that relate to the contract under discussion Mr Kibuwe?

**Mr V Kibuwe:**

Which invoice?

5

**Adv FW Botes:**

10 on 155?

**Mr V Kibuwe:**

I don't know.

**Adv FW Botes:**

You don't know?

**Mr V Kibuwe:**

Ja.

**Adv FW Botes:**

Good and how are we going to establish it, I see it's in your file under this contract number. Can we accept, although we know it's been replaced, that it was in terms of – it was issued in terms of this agreement.

10

**Mr V Kibuwe:**

No.

**Adv FW Botes:**

Why not?

15

**Mr V Kibuwe:**

Because I don't know what the invoice was about.

**Adv FW Botes:**

Read it.

**Mr V Kibuwe:**

No, can I finish, that's the reason I queried the invoice and that's the reason I was issued with a credit note.

**Adv FW Botes:**

Alright, that explains it. Now the invoice on page 11, 156 there's invoice 11.

20

**Mr V Kibuwe:**

Ja.

**Adv FW Botes:**

Did you receive this invoice?

**Mr V Kibuwe:**

I did receive it.

**Adv FW Botes:**

Did you query this invoice?

25

**Mr V Kibuwe:**

I queried the invoice yes.

**Adv FW Botes:**

Were you issued with a credit note?

**Mr V Kobuwe:** Yes I was issued with a credit note.

**Adv FW Botes:** Is that credit note number 1?

**Mr V Kobuwe:** Yes, that's credit note number 1.

**Adv FW Botes:** I'm going to submit credit note number 1 as EXHIBIT J, now it seems that we're now all on the same insofar as 10 and 11 is concerned. Do you know whether invoices 10 and 11 were substituted with other invoices?

**Mr V Kobuwe:** Can you rephrase your question?

**Adv FW Botes:** Do you know whether invoices 10 and 11 in which credit notes were issued were substituted with other invoices?

**Mr V Kobuwe:** Not that I'm aware of.

**Adv FW Botes:** Good now let's see do you recall tax invoice number 12?

**Mr V Kobuwe:** I don't.

**Adv FW Botes:** Never seen it before?

**Mr V Kobuwe:** I may have seen it but I don't recall.

**Adv FW Botes:** Is it possible for you to establish the scope of the works to which invoice number 12 relates to?

**Mr V Kobuwe:** Ja, it sounds familiar, the wording sounds familiar.

**Adv FW Botes:** Now is it possible for you to establish or to ascertain whether that specific work which forms the subject matter of invoice 12 was indeed executed?

**Mr V Kobuwe:** I don't know. Sorry which is which here? There's an invoice – oh there's invoice 9, which one are you referring to sorry?

**Adv FW Botes:** 12.

**Mr V Kobuwe:** Okay could it be what, can you repeat?

**Adv FW Botes:** Is it possible for you to establish (indistinct) whether the work which invoice 12 refers to was factually executed?

**Mr V Kobuwe:** I don't know.

**Adv FW Botes:** You don't know if it's possible?

5 **Mr V Kobuwe:** That it was executed?

**Adv FW Botes:** Ja.

**Mr V Kobuwe:** I don't know.

**Adv FW Botes:** No, is it possible for you to establish, emphasis on the word establish.

10 **Mr V Kobuwe:** What am I going to establish, how do I ...(intervention)

**Adv FW Botes:** Find out.

**Mr V Kobuwe:** How do I find out?

**Adv FW Botes:** To send somebody to verify whether that work was done or not? Sorry, you can't ask Advocate Tsatsawane the answer, he doesn't know.

15

**Commissioner:** Sorry, I think the question is quite an easy question, all we need to know we need to verify whether the work was done in respect of the invoice, and we want to know ...(intervention)

20 **Adv Tsatsawane:** Sorry, I don't know if you want to give him an opportunity to go and find out ...(intervention)

**\*Parties speaking simultaneously**

**Adv Tsatsawane:** I told you to meet me here. Advocate can I repeat your statement?

25 **Adv FW Botes:** Ja.

**Adv Tsatsawane:** I think they want to know if you can go away and then find

out if the work relevant to this invoice has actually been done, because you are now saying you don't know if it was done. Can you go and investigate and you obviously want him to report back?

5

**Adv FW Botes:**

Yes.

**Commissioner:**

Look we have an option here, we can make an order in terms of Section 418(2) of the Act that the witness provides us with that information by a certain time and date. Would you like a formal order Mr Botes in that regard or just an undertaking?

10

**Adv FW Botes:**

I accept our learned friends and their clients and their witnesses would all undertake unconditionally.

**Commissioner:**

Okay.

**Adv FW Botes:**

What we need to establish or what we try to establish is what effort will it take from you or your team to physically establish – let me use a better word, investigate whether that work was executed or not.

15

**Mr V Kobuwe:**

It will be difficult, and I'll tell you why.

**Adv FW Botes:**

Yes?

20

**Mr V Kobuwe:**

I cannot really relate to this kind of work, now if I go and verify how am I going to verify, against what? Remember that verification you need it against a set of parameters, predetermined parameters.

**Adv FW Botes:**

Where do we find that?

25

**Mr V Kobuwe:**

Come again?

**Adv FW Botes:**

Where do I find that, that's a very important document.

**Mr V Kibuwe:** Why?

**Adv FW Botes:** The parameters, where are those?

**Mr V Kibuwe:** I don't know.

**Adv FW Botes:** It must be somewhere in your office.

5 **Commissioner:** So the parameters relating to this particular work and relating to this particular invoice. But can't you just keep it simple, I mean was the work done or was it not done, or am I over-simplifying it?

10 **Mr V Kibuwe:** I think you are over-simplifying it, because you know it's not like a product whereby it's tendered that something was to be done and whether now someone is going to say I can verify whether this product was delivered as well and what is the product that I we wanted that I am unable to confirm.

15 **Adv FW Botes:** I understand 100%, it's very simple and straightforward. How did you verify whether or not the work was done in terms of invoices 1, 2, 3, 4, 7 and 8?

20 **Mr V Kibuwe:** I've got experts that when we receive the invoices reports were attached and then they would go and verify and then once they've verified they will certify the invoice, and on my side I will take it to the next level for payment on that basis.

25 **Adv FW Botes:** I understand. So can't we do exactly the same in respect of invoice number 12, take it to your experts, give it to them and say to them gents we are confronted with this invoice, we've got all the expertise, all the know-how, go

out, you know exactly what the scope of works provides for in terms of the agreement, give me feedback, was it executed yes or no.

**Mr V Kobuwe:**

Who do I give it to, because any project that we do – I think maybe I need to take you through that process, for any project that we do we get predetermined parameters.

**Adv FW Botes:**

Where are those?

**Mr V Kobuwe:**

The scope, to say ...(intervention)

**Adv FW Botes:**

Where are those?

**Mr V Kobuwe:**

It will cover the following ...(intervention)

**Adv FW Botes:**

Where are those predetermined parameters?

**Mr V Kobuwe:**

They will be in the form of a proposal that we will receive from the service provider, and then those terms of reference they will indicate what's going to be covered, they will sign off and become part of the contract.

**Adv FW Botes:**

Where do we find those?

**Mr V Kobuwe:**

What – in the contract? Yes you will find it in the contract.

**Adv FW Botes:**

Show me, I want to read it.

**Mr V Kobuwe:**

But I don't have it, what contract are you talking about?

**Adv FW Botes:**

You referred to a specific proposal which contains the parameters and scope of work.

**Mr V Kobuwe:**

Yes.

**Adv FW Botes:**

I just want to see it, I'm not fighting with you.

**Mr V Kobuwe:**

Ja, okay I think that (indistinct) use this term of reference of the contract here, this one here right, when you look at this contract here.

**Commissioner:**

On what page is it, just take us back there.

**Mr V Kobuwe:**

Contract number – when you look at this contract, the one  
HO ...(intervention)

**Commissioner:**

HOPT? The one on page 124?

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**Mr V Kobuwe:**

Ja, I'm looking, ja this page 124 ...(intervention)

**Commissioner:**

Is that the contract?

**Mr V Kobuwe:**

Ja, that's the contract. What we received prior to this was  
a technical proposal, based on the technical proposal we  
generated a contract which is this one here.

10

**Adv FW Botes:**

Page 124?

**Mr V Kobuwe:**

Page 124, and then activities will be defined in terms of  
page 153.

**Adv FW Botes:**

Okay.

**Mr V Kobuwe:**

15

Now after – once now this proposal this contract has been  
signed off then I put to a project team, now that project  
team now when they – when a project gets executed they  
will sit down. (Indistinct) they will say okay fine they want  
this thing to be put together, and then they will go away,  
and then thereafter that's when invoices are received then  
we will get a report that goes with that, and then that  
project team is the one that will actually do that  
assessment and certify the invoices. Now you have asked  
a question to say that here's an invoice will I be able to  
verify it. Based on that process that we were to follow I  
won't be able to verify.

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**Adv FW Botes:**

Who will be able to verify? Before you answer it listen to

my following proposal.

**Mr V Kibuwe:**

Ja?

**Adv FW Botes:**

When you get the (indistinct) for you and Mr Mabunda to sit together and to provide him with an opportunity to provide you with whatever documents he has got in his possession so to enable you to implement a procedure of verification, so that we can see – because there are three invoices which forms the subject matter of what we're busy with, it's 12, it's 13 and it's 14, 12, 13 and 14, only those three invoices.

**Mr V Kibuwe:**

Look it's possible that can be done but I don't have authority to – what's the word I'm looking for – to can say it can happen, it's possible but I don't have that authority.

**Adv FW Botes:**

So who can we get the authority from? Maybe Advocate maybe this is where you can assist us to – on behalf of your client to say this is the information that we require at this commission and we need to know whether invoices, those invoices were in fact paid or not or the work was done and your client doesn't have the authority to provide us with that information and use your influence maybe to take it to a higher level.

**Adv Tswatsawane:**

Alright, sorry, sorry, maybe just to understand if I am understanding correctly he's saying he doesn't have authority to do something, but I just want to understand from him what is it that you are saying you don't have authority to do.



**Mr V Koboewe:**

Remember if I'm going to verify that a certain service was provided right, am I going to be able to say to the business this is how this service was commissioned and this is what PRASA required and then I also need to say why was this thing not paid. Now from where I'm sitting we only pay against the contract, so here are invoices that are not linked to this contract, so based on the work I do I cannot link it to any of the activities that I'm responsible for.

**Commissioner:**

Sorry Mr Boshoff I know you're not the witness but you provided us with the invoices, so invoices were sent to your client?

**Mr Boshoff:**

My client or the insolvent company.

**Commissioner:**

The insolvent company.

**Mr Boshoff:**

Sent the invoices to PRASA.

**Commissioner:**

The insolvent company sent it to PRASA; now those invoices must have been generated as a result of that contract.

**Mr Boshoff:**

Correct.

**Commissioner:**

Which your client must have.

**Mr Boshoff:**

Correct.

**Commissioner:**

So can you provide us with that contract?

**Mr Boshoff:**

Ja, this is the contract, 124.

**Commissioner:**

Okay, we're not there yet, because so what you're saying is those invoices that are generated are in relation to the contract on page 124?

**Adv FW Botes:**

Yes, that's my understanding, if I can just have a look at

invoice number 12, you say Mr Kibuwe I just want to understand you correctly this invoice is not related to this agreement on page 124?

**Mr V Kibuwe:**

I will say it again, I've said it, when you go to page number – when you go to page number 153.

**Adv FW Botes:**

I'm there.

**Mr V Kibuwe:**

Contract that's written HOPT whatever that ends with (indistinct) allows me to pay only for items in terms of bullet 1 to 4.

**Adv FW Botes:**

I understand that.

**Mr V Kibuwe:**

Yes.

**Adv FW Botes:**

I understand that.

**Mr V Kibuwe:**

So anything that is not part of the bullet 1 to 4 I cannot pay on this contract.

**Adv FW Botes:**

That makes 100% sense, I understand that. So is your evidence, I just want to understand your evidence correctly, is your evidence that tax invoices 12, 13 and 14 has no relation to the agreement which appears on page 124 and further?

**Mr V Kibuwe:**

(Indistinct) does not actually worry me.

**Adv FW Botes:**

No just (indistinct) sense.

**Mr V Kibuwe:**

There's no relation.

**Adv FW Botes:**

There's no relation.

**Mr V Kibuwe:**

No there's no relation.

**Adv FW Botes:**

So if you try to marry these three invoices to this agreement your evidence is that's impossible to do.

**Mr V Kobuwe:** That's impossible.

**Adv FW Botes:** I understand. Very well, so what you say is, and may I just take you back to invoice number that you find on page 155 you say that invoice also does not relate to the agreement on page 124?

**Mr V Kobuwe:** Ja, the two are not related.

**Adv FW Botes:** And your evidence in terms of the next invoice, that's invoice 11 on page 156 that's exactly the same, it does not relate to the agreement.

**Mr V Kobuwe:** Exactly the same, yes.

**Adv FW Botes:** I understand. I understand, and that's why you said – just allow me I want to understand you 100% - that's why you said it's virtually impossible for you to go and see if you can find a needle in a haystack because it's just impossible to do so; the agreement provides for a certain scope of work with a related payment schedule or payment mechanism and if you take these three invoices and you try and to relieve them with this agreement you are not comparing apples to apples.

**Mr V Kobuwe:** No, I'm not.

**Adv FW Botes:** I understand, now I understand 100%. Mr Commissioner – can i have two minutes please, I just want to get – lay my hands on two other invoices, just two minutes please.

**Commissioner:** Let's just go off record.

**\*SHORT BREAK**

**\*ENQUIRY CONTINUES**

**Adv FW Botes:**

Thank you Commissioner, thank you for the indulgence, Mr Kibuwe how must we determine page 153, that's the page right in front of you, option 2, it appears right there in the middle of the page, can you see that?

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**Mr V Kibuwe:**

Yes I do.

**Adv FW Botes:**

And the third entry is simulation traction system, do you see that?

**Mr V Kibuwe:**

Yes.

**Adv FW Botes:**

What does that mean in layman's terms?

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**Mr V Kibuwe:**

It's a simulation of the electrical system focusing on the traction on the DC traction system.

**Adv FW Botes:**

And do you know whether that was attended to ... (intervention)

**Commissioner:**

Sorry, she can't hear you.

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**Mr V Kibuwe:**

Oh, okay simulation traction system is basically the power system simulation of the DC traction system, for the line system.

**Adv FW Botes:**

And what was Siyaya supposed to do deliver in terms of this item, simulation traction system?

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**Mr V Kibuwe:**

In terms of what?

**Adv FW Botes:**

In terms of what is provided for here, that is a deliverable — you'll agree with me.

**Mr V Kibuwe:**

It is a deliverable. I think we need to explain something before I can answer that.

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**Adv FW Botes:**

Yes. **SHORT BREAK**

**Mr V Kibuwe:**

What you see as option one up to five it's that, it's nothing

else but an option. The process that we followed here was to say to Siyaya we need for them (indistinct) and we knew that because we were working with Siyaya on a whole lot of projects (indistinct) and how we unpack it was to say look we want to do certain activities now based on the project that's available. In the event we want to exercise other activities give us the pricing because we were trying to run away from this thing of saying we want to do this give us a price for this, I want to do that, give me the price for that, so we said this is a list of options that we will execute at some point and you give us how they will be priced, and then this is how these options, this is why you are seeing this thing here.

**Adv FW Botes:**

Yes.

**Mr V Kibuwe:**

Ordinarily you wouldn't see it. Now the reason it is showing here is that in the event we want to say exercise option 1 we would easily instruct Siyaya to say that exercise option 2 and they will follow the process to exercise that option. I think I needed to clarify that first.

**Adv FW Botes:**

Yes, that I understand, now the only aspect that I need to ... (intervention)

**Mr V Kibuwe:**

The reason I'm saying that it's because now you are starting to talk about an invoice linked to this service and the point I'm trying to make is that the contract and the invoice are not linked.

**Adv FW Botes:**

I understand that, I'm trying to canvas something totally

different.

**Mr V Kobuwe:**

Okay.

**Adv FW Botes:**

Now what I see in option two is simulation traction system.

**Mr V Kobuwe:**

Agreed.

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**Adv FW Botes:**

And I just want to find a way with your cooperation to establish on ground floor level whether or not that has been attended to by Siyaya or not.

**Mr V Kobuwe:**

As I said I don't know.

**Adv FW Botes:**

You don't know?

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**Mr V Kobuwe:**

Ja.

**Adv FW Botes:**

Okay let me help you, that's invoice number 12, that's the invoice that I'm referring to now.

**Commissioner:**

Sorry Mr Botes, I'm sorry to interrupt you, but I think tax invoice number 12 can we take that in as (indistinct)?

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**Adv FW Botes:**

Yes, yes, I am going to do that Commissioner. Yes, K is invoice E000012, just let your eye go over tax invoice 12, what you'll find there falls within what is provided for in option two, simulation traction system, is that correct?

**Mr V Kobuwe:**

Yes, that's true.

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**Adv FW Botes:**

Now let's take the following scenario, if I say to you Mr Kobuwe that work was factually attended to as it is reflected in invoice 12, would you be able to say to the Commissioner yes Mr Commissioner it was finalised, attended to or no, it was definitely not done?

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**Mr V Kobuwe:**

As I said I don't know.

**Adv FW Botes:**

You don't know.

**Mr V Kobuwe:**

And as I've explained the process that I could have followed and without that process I wouldn't have done anything, we had determined to execute some of the activities on option one to five, and there's never been a secret, it was a question of timing and it was also a question of getting the right (indistinct)

**Adv FW Botes:**

Yes, now based on that answer, which I submit is the correct answer, how do you propose from this commission's point of view to establish with your assistance and this is what I want to achieve, I want to achieve a verification process to link invoice two with what option two line three provides for, in actual fact to establish, to verify...(intervention)

**Commissioner:**

Sorry that was you link invoice 12?

**Adv FW Botes:**

12, invoice 12 to line number three of option two. Give us a piece of your mind, help us?

**Mr V Kobuwe:**

You cannot do that, as I've explained in terms of the process what option one up to five it gives me – it gave me an indication of how I would be charged for these services when I require them and in the event I required such services I would have followed a certain process. Now it would not link that option with this contract, the two are not linked, so I cannot answer your question.

**Adv FW Botes:**

Come again, you can't link the option to the contract?

**Mr V Kobuwe:**

To the contract yes.

**Adv FW Botes:**

What does that mean?

**Mr V Kobuwe:**

It means exactly that, the invoice yes it was – there is an invoice but this invoice you cannot link it to this, to this contract, you can't.

**Adv FW Botes:**

Why not?

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**Mr V Kobuwe:**

Because they are not linked.

**Adv FW Botes:**

How do you link something, explain that to me?

**Mr V Kobuwe:**

Well it's like when you buy a car and then they say there's an option for a motor plan, when your motor plan expires you can't be saying to the dealership that no this is in the option, I'm going to exercise it, there is a way of activating the motor plan, so even this thing, treat it like a motor plan that as much as you had an idea of how the motor plan would be activated (indistinct) it doesn't automatically imply that the motor plan is active, it means that – it gives an indication of what, how the motor plan will be activated, what charges will apply, under what circumstances and then you follow a certain process to have that activated; so now what you are telling me now is to take this contract and then link it to this invoice, I can't. That I cannot do.

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**Adv FW Botes:**

Who can within PRASA? Can we call that person? – It seems that in your position where you sit it's difficult for you to do but there must be somebody who can do it. Give me that person's name, then we will subpoena him or her.

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**Mr V Kobuwe:**

The only thing that I can think about is if someone issued an instruction, because if there was an instruction issued



then we will trace it by that instruction.

**Adv FW Botes:**

But who is going to tell that to us because we're not in PRASA, we don't know, I mean ...(intervention)

**Mr V Kibuwe:**

Ja look I think that the way we had, what we have done in the past is that we will issue certain instructions, (indistinct) will issue certain instructions so if this comes from an instruction I issued I take the responsibility for it, if it comes from any of my team members we will also take responsibility for it, so if there's a an individual within PRASA that said to Siyaya execute this (indistinct) if it's within my space I will ensure that I follow up with that individual. Some of the individuals may have already left PRASA but what I can assure you is that if it's an instruction that was issued within PRASA (indistinct) that we can follow up because then if it is an instruction that was issued there's a totally different process to can accept the services and verify, but in terms of the process that I am aware of which is this contract you cannot link the two, the two are not linked, you have to cut that umbilical cord.

**Adv FW Botes:**

Now what you've just said is exactly what we want to achieve. We don't want to achieve anything more, all that we – because understand where the Commissioner is coming from, and where I am coming from, we are literally standing outside in the cold, we don't know what transpired within the privacy of your office or your officials offices or even in Siyaya's offices, we certainly don't know,

So we are entirely dependent upon your integrity, your honesty and professionalism, and I say it again that neither myself nor the commission has any reason to doubt your honesty, your integrity and your professionalism.

**Mr V Kibuwe:**

Okay.

**Commissioner:**

Look Mr Botes I don't know – may I just ask the witness a question? All these options I think you told us there was a process by which they would be activated if there was a request for it.

**Mr V Kibuwe:**

Ja.

**Commissioner:**

Can you recall any of these – can you recall any instance where there was a request to implement any of these actions?

**Mr V Kibuwe:**

I would have to go back to my records and what I can tell you is that I know that after we had done the last item, in terms of invoice number eight there were certain activities that were required here and then we did indicate that you know considering activity in those and we were about to start with the process.

**Commissioner:**

Okay thank you, well then you have – if they were, if some of these options were implemented then there's a possibility that the simulation traction system could – the invoice could relate to that, it's a possibility.

**Mr V Kibuwe:**

I think that document as I said we indicated which ones were (indistinct) immediately after the first phase was

done because the first phase basically was to determine now to say after you do that with the (indistinct) assessment then you're going to start zooming in and then from these reports we knew exactly that look after the next phase is which option and we did indicate and we would have started that process.

**Adv FW Botes:**

That we accept, we accept that unconditionally, so what you're actually saying to the Commissioner is if you go back to your records and your systems, how I understand PRASA's system, the SAPS system I mean it literally provides for everything, I mean it's so integrated and it's so comprehensive that you will be able to follow or to trace whatever instruction were given, whatever follow ups occurred and whatever reports were issued because this falls all within the realm of the SAPS system.

**Mr V Kibuwe:**

No the process I have explained has got nothing to do with SAPS, it's just process flow from when we start appointing the service provider to deliver a service to the time when we start receiving the business, so the process I was explaining has got nothing to do with SAPS, SAPS is just the tool that is being used to manage ... (intervention)

**Adv FW Botes:**

Ja, to tick boxes and access it, let's see if we can't resolve it as follows; are you available to meet with Mr Mabunda only insofar as invoices 12, 13 and 14 is concerned. Mr Commissioner may I ask that invoice 12 be handed in as EXHIBIT K.

**Commissioner:** Yes.

**Adv FW Botes:** Invoice 13 as EXHIBIT L and invoice 14 as EXHIBIT M for Mary.

**Mr V Kibuwe:** So will it be fine (indistinct).

5 **Adv FW Botes:** Yes.

**Commissioner:** And we can have copies made.

**Adv FW Botes:** No we have copies here, we've got copies, these are the ten invoices, so can you ...(intervention)

10 **Mr V Kibuwe:** But for the purposes of clarification tell me what you want me to do?

**Adv FW Botes:** To engage with Mr Mabunga to compare your records with his records insofar as instruction is concerned, and where there was communication to attend to what is contained in invoices 12, 13 and 14 and to establish whether there was a lawful instruction and whether or not it was executed. Is that fine with you?

15 **Mr V Kibuwe:** Okay, it's fine, ja that's fine.

**Adv FW Botes:** Thank you Mr Kibuwe I think that will — once that has been attended to I mean we have an answer and allow me — just the following, if the answer is yes it's yes, if the answer is no it's no, I mean there's no magic in it.

20 **Mr V Kibuwe:** Okay.

**Adv FW Botes:** On that undertaking your availability from a time perspective just give us an indication when it be best suitable to meet up with Mr Mabunda to conduct that exercise?

**Mr V Kobuwe:** I'm available next week except for Monday.

**Adv FW Botes:** Except for Monday.

**Mr V Kobuwe:** I will prioritise my diary for us to attend to this.

**Adv FW Botes:** With Advocate Tsatsawane's blessing.

5 **Adv K Tsatsawane:** Just to be heard, I'm (indistinct).

**Adv FW Botes:** ... comfortable, no it doesn't have to be, I am not going to be there, you are two level-headed professionals. Can I ask Mr Mabunda to make contact with you to schedule that meeting next week?

10 **Mr V Kobuwe:** Sure.

**Adv FW Botes:** Sure, you don't have a problem to sit with him in the privacy of your office or his office, there's no animosity between the two of you.

**Mr V Kobuwe:** No, no.

15 **Adv FW Botes:** You're not going to hit each other or assault each other. You support the same soccer team.

20 **Mr V Kobuwe:** No. Look (indistinct) me and Mr Mabunda is – if I can get a pertinent instruction that we can sit in advance so that will be my side, if the instruction did not come directly from my office I will follow up with the relevant individual so that I am part of the discussion because the last thing that I would want is to say come through and then we still have to run around looking for documents, it will make life a little bit simpler if we have notes to compare. If it's acceptable I can send in an image and relating to the people who were involved directly with those invoices concerned, because

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that can help us to refresh our memory how the whole thing transpired.

**Adv FW Botes:**

Ja, I think ...(intervention)

**Mr V Kibuwe:**

I think the instruction that was issued first I think that will help a lot because that's where it starts. Once we've got an instruction then we are able on our side also to get random people preparing the documentation so that when the meeting happens then we are able to compare notes.

**Adv FW Botes:**

It makes 100% sense. Thank you so much.

**Adv K Tsatswane:**

So as I understand it he must forward to him an email or whatever it is showing the instruction you know from PRASA, from whoever it is within PRASA that they must do the work.

**Adv FW Botes:**

The line of communication yes, and how it all transpired. Comfortable with that?

**Mr V Kibuwe:**

Yes.

**Adv FW Botes:**

Thank you so much, I really appreciate it. Thank you for your attendance. If there's anything else Mr Commissioner, it's not necessary to formally warn Mr Kibuwe like we said in the past we rely completely and exclusively on our learned friends and PRASA's *bona fides*, their integrity, their professionalism and their honesty, there is no reason for us to doubt it at all and we believe that what we've agreed upon now will be attended to and it will be executed, is that correct Mr Kibuwe?

**Mr V Kibuwe:**

Yes.

**Adv FW Botes:**

Mr Commissioner you can excuse Mr Kobuwe.

**Commissioner:**

We will excuse you, and may I just make an arrangement, give you the option there that if we need you as the Commission you will be available on reasonable notice on a phone call?

**Mr V Kobuwe:**

Ja, at least 24 hour notice please.

**Commissioner:**

No, no it will be more than that.

**Adv FW Botes:**

You will have more than, 24 hours in our view is not reasonable.

**Commissioner:**

Thank you very much, we appreciate you being available today.

**Adv FW Botes:**

Mr Commissioner then I beg leave to call Mr Lucky Montana, my next witness.

**Commissioner:**

Yes.

**Mr Tsatsawane:**

Are you going to take a two minute adjournment?

**Adv FW Botes:**

More than two minutes, can we take...(intervention)

**Commissioner:**

Let's take ten minutes

**\*SHORT BREAK**

**\*ENQUIRY CONTINUES**

**Adv FW Botes:**

Thank you Mr Commissioner, thank you for the indulgence. I beg leave to call my next witness, it's Mr Lucky Montana.

**Commissioner:**

Right, Mr Montana do you have any objection to taking the oath?

**Mr L. Montana:**

No, not at all.

**Commissioner:**

Okay, will you stand please. Do you swear that the

evidence you will give will be the truth the whole truth and nothing but the truth, raise your right hand and say so help me God.

**Mr L Montana:**

So help me God.

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**Commissioner:**

Thank you. And please to loudly or clearly, into that little microphone in front of you.

**Mr L Montana:**

Okay.

**Commissioner:**

Now Mr Montana in the commission of this you are entitled to legal representation and I'm obliged in terms of the law to advise you of that right. Now do you wish to be represented today?

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**Mr L Montana:**

No, (indistinct).

**Commissioner:**

Do you know what this commission is all about? Let me explain to you the law. This is a fact finding exercise, it's not a court of law; you're not going to be found guilty and we're not going to make a finding against you. All we need to know is we're looking for facts and we need you to answer them fully and completely. If you can't recall we will give you a chance to go and research it and come back with an answer for us. Now at any stage if you're uncomfortable or you're not sure you can address me and I will try and assist you to put your mind at ease about any issue. Thank you.

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**\*EVIDENCE OF MR L MONTANA**

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**Adv FW Botes:**

Thank you Mr Montana, firstly from my side thank you for the effort that you made to be present this afternoon, we



really appreciate it, we know that you are also a busy person and that you have various other – Mr Montana you were the erstwhile chief, the Group Chief Executive Officer of the Passenger Railway Agency of South Africa, is that correct?

**Mr L Montana:**

That's correct.

**Adv FW Botes:**

Can you indicate to the Commissioner when you were appointed in that position?

**Mr L Montana:**

I was – I started firstly in – I was appointed to the Board of the former South African Railway Commuter Corporation, that was in 2005 and of course a year later I then became, I think in terms of the Act the Legal Succession Act or what we call the legal succession to the South African Transport Services Act of 1989, the Board could get one of its members to become CEO so in 2006 the then Board of the South Africa Rail Commuter Corporation went and approached the Minister of Transport seeking that I be appointed to act in that position and that was done, I was appointed on an 18 month contract, but a year later in October 2007 my permanent appointment was approved by the cabinet and that was for the South African Rail Commuter Corporation and of course in 2009 we brought in quite a number of entities, the South African Rail Commuter Corporation itself, the SARCC, Metrorail which was part of Transnet, Shosholoza Main what you call mainline passengers actually the proper name is Mainline

Passenger Services but popularly known as Shosholoza Main. The Intersite which was the property arm of the South African Rail Commuter Corporation and Intersite, we brought them in together. The Legal Succession Act was amended in 2008 and in March 2009 we then formally launched the Passenger Rail Agency of South Africa and of course my contract was accordingly amended by the Board and from the South African Rail Commuter Corporation so effectively because PRASA takes the South African Rail Commuter Corporation so I had the nine and a half years in charge of the entity.

**Adv FW Botes:**

So you started in 2009?

**Mr L Montana:**

2005.

**Adv FW Botes:**

Ja, but PRASA, when PRASA ...(intervention)

**Mr L Montana:**

Ja, 2009 ja.

**Adv FW Botes:**

Okay, and your appointment if I understand you correctly that is endorsed by cabinet?

**Mr L Montana:**

That is a cabinet appointment yes.

**Adv FW Botes:**

Quite a responsibility on your shoulders?

**Mr L Montana:**

Well considering the size of the railways in the country, the important role they play, I mean if you look at railways a lot of people see just trains, but you know when you talk about uniting the country in 1910 one of the major things about how do you bring the different provinces the Free State and the Cape and the Transvaal all together and you recognise the important role that the railways had to play

in connecting this together, railways were very important so from a national point of view they are quite crucial, and because of the technical nature of the business, of its capital intensive one of the major things is that it is a major producer of skills, I think not only for railways but for other sectors, mining, for the aviation sector, for the roadside as it were, when you talk about safety it's also very important because there are certain things that you may want to move on the roadside, you want them on the (indistinct) so railways in many parts of the world in fact have been quite a key player in social economic development and you know in the country of course they facilitated the unity of the country. I think for many years to come there will still be a lot of - particularly a lot of interest from the national perspective about railways. Of course there's a big debate in the world about who must all railways, who must run them, must it be publicly owned, must it be privately owned and all those things have got major consequences for the citizens in the country so that is a long story about the - I mean South Africa has got almost 160 years of railways and I think that they are quite fascinating indeed,

**Adv FW Botes:**

And how many kilometres of rail track would you say forms part of this national network in South Africa, is it possible to determine it?

**Mr L Montana:**

Yes, no, no South Africa has got over I think about almost 35 000 kilometres of railway network around the

country but I think that over the years, particularly since if you look since 1992 the country is almost using 22 000 kilometres of rail and the other parties (indistinct) utilise and if you compare also all of that the bulk of our railways is owned by Transnet and of course the commuter side of our network is owned by PRASA and so those are the two main operators and then the other private operators like Rovers Rail they do not own the network they lease either from Transnet or from PRASA to use that network.

**Adv FW Botes:**

So PRASA focuses on passenger rail transportation.

**Mr L Montana:**

Indeed, in 2004 in fact let me go back to 2001/2002 the then Minister of Transport and I think the late Dallah Omar as well as the Minister of Public Enterprises at that time, Jaftha David, they established a team to look at the future of the railways, to look at official Transnet and having been a member of that team and the at heart of it, it was what do we do with railways, and there was ideas, but things were changing in the world, the British had just privatised the railways or part of the network, so there was pressure that South Africa must sell particularly the most profitable lines, one was the coal link the one that moves the coal particularly Richards Bay, and the other one was IMO which is (indistinct) line and so it started a big, big process and the outcome of that was that because of the pressures in the world, because of the need to move goods efficiently we needed to restructure the freight side

of the business.

**Adv FW Botes:**

Yes.

**Mr L Montana:**

And now if you know the freight side of the business it was under Spoornet at that time, which is called Transnet Freight Rail, what you have there is that you've got mainly three types of businesses, the main profitable businesses is the IMO line as well as the coal line. But then there's what you call the general freight business, now this moves all sorts of cupboards, including cars from different parts like Roslyn to the port and from East London and all of those things. Now one of the major things is that when we're looking at that we then came to the conclusion as a team that was set up by the Ministers if we were to sell these two the State will be left with a loss making entity and it's not in the interest of the country to do that.

**Adv FW Botes:**

You're selling the cream off.

**Mr L Montana:**

We're selling the cream off and we're left with that and then of course we took a decision that when you look at Passenger Services the Passenger Services by their very nature all over the world they are subsidised. And this has to do with the one fundamental issue, the cost of putting the rail infrastructure and I always say to South Africans, many friends I say people do not understand that we have the Gautrain and it's a concession, it's run by the private sector, it cost almost R30billion but people do not know that the State paid R27billion of the R30billion and when

5 you get into the Gautrain let's say from Pretoria, you know  
going to the airport, your ticket you are not paying for the  
calls that R27billion but you're paying for only the  
operational cost which is the R3billion that the private  
sector has invested. And the reason for that because if  
you had to pay the full cost of both infrastructure, the  
rolling stock and the maintenance and everything the cost  
of the Gautrain would be far higher than what it is and then  
no one would use the train but they will stick to their cars  
because it is more cheaper to do that, and that's a model  
that generally around the world has been developed that  
the public sector would then invest in the infrastructure  
and then get the private sector to come into operation.  
The Gautrain model is based on that and of course it's  
determined by quite a number of factors, one of those  
whether you have I mean in Europe their models that they  
separated ~~what they~~ call operations from the  
infrastructure. The reason why Europe was able to do that  
is because it's linked to the nature of the cities that they  
have, their volumes are too heavy so it means they have  
got enough volumes to sustain the system.

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20  
25 In our own country because of the dispersed nature it is not – if you were to privatise  
it means that the private sector that will be lying there will  
actually be operating the system (indistinct) because the  
volumes do not allow that happen. So you see that is why  
every time we talked to government about should we

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privatise Transnet or PRASA they say whoa-whoa-whoa because the cost of travelling, the cost of moving goods will just simply go up, and so that's what we're managing – we've been managing in the country for the last ten years, but there was a lot of pressure with privatising, we will have gravy for you and everything, but the volumes between Johannesburg and Durban to the ports do not support that, there's just no reason because you'll just increase the costs.

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**Commissioner:**

**Adv FW Botes:**

Thank you for that Mr Montana, for that background. Adv Mr Montana having regard to that how important is maintenance, upkeep and development within this very delicate system, how important is it?

15  
**Mr L Montana:**

Well I'll tell you that the maintenance agreements is like when you say run a business that cash is king, particularly your railways is very old, if you don't put quite a lot of emphasis on maintenance you will not be able to run the trains, and you have a lot of accidents, one of the major things as you know and it's not only on the rolling stock side, the trains themselves, particularly the infrastructure, if you don't maintain and you don't get things right on the infrastructure side and you come with a train running there (indistinct) and so maintenance is very key for safe operations and also to getting the best out of your assets.

20  
**Adv FW Botes:**

25  
Thank you. Let's see if we can get to the nub of things, there's a file in front of you, that's EXHIBIT C, I want you



to turn to page 93, and what the Commission has heard under oath earlier, this very page 93, on 93 what this Commission heard is that it's common cause that this document relates to rail operation, it was addressed to you Mr Montana, Group Chief Executive Officer and it says on the document that it was prepared by Dr Joseph Phungula, we had a witness earlier today Mr Bupapwe who told the Commissioner that he did the majority of the work insofar as this document is concerned and he confirmed each and every allegation or averment contained herein. Just give Mr Commissioner just a brief background what the significance of this document is.

**Mr L Montana:**

Well I think that there are two things, the first one of course the document reflect if you understand the structure of PRASA, PRASA is structured the way – it has got a group office and it has got divisions and subsidiaries.

Now if you look at this document Dr Phungula was the Chief Procurement Officer of PRASA, but when you look at what the document says it talks about firstly of course what our division, the PRASA Technical Division was doing on the material coding and this of course came as a direct result of the asset assessment that we had; so it was a direct product of that kind of process.

The second one of course was that we had the particular policy and I think if you look at my remarks at the end of that document we had a particular system and policy, our supply chain



management policy basically established that whenever we had a deviation for example people will come and they have to motivate to the Group CEO, so the policy stated that very specifically, to say look because of the challenges we face, or maybe the cost of tendering or because you don't want different technologies and all those things so basically when it's not practical to do certain things or we've got emergencies people will then have to motivate that to him and I think this document basically would capture some of that, or people will say we had the project, this project was given this result, we want continuity in the implementation of that project, we are asking to either change or increase the scope and they will change, they will come back and they will – sometimes of course the guys will accede and not ask for the full thing and you will see for example on our profile it will then say approach subject to one, two, three and I think that's my comments around that.

**Adv FW Botes:**

Yes what you approved and what you wrote as the approval is subject to SM written explanation why disciplinary action should not be instituted against managers who gave the go-ahead without first obtaining approval as required by the Group Supply Chain Management Policy and you signed there on the 19<sup>th</sup> of June 2015 which is evident on page 98. What would your comment be if I ask you this straightforward and in your

face, according to your knowledge, your expertise, the investigations that were conducted the insolvent company, Siyaya, is it entitled to pay the amount recommended by you being R14million or not?

**Mr L. Montana:**

Well indeed I think that the – Siyaya has done the work I think that that work was done at two levels, in fact at the beginning there was a lot of confusion between our PRASA Rail Division and our PRASA Technical Division about the – who was coordinating the work and all of those things and I said that stop all these things, the work has been done, pay and then once you have paid you then have an accounting process about how to allocate that work. So there has never been a dispute, the former CEO of the PRASA Technical Division I think that's Mr Sakkie Zimpaka, who was dealing with the matter together with the former CEO of the PRASA Rail Division, they met with me and I said but I don't understand, the work gets done why do you because of your own internal programs, you want the contractor to be punished for the work that has been done. Has the work been done? And we knew anyway that this work was fitting within modernisation projects that we had. We have seen the engineers from Siyaya, we agreed a lot of work, and some of their work and their reports were going directly into the vault and they would come to me, so we know the work was done and we've seen the people there. I've met with engineers from

5 Siyaya, local engineers as well as engineers from  
Germany, I flew many times to meet with them in DP when  
we were looking at the memo that we signed with them,  
and it was a major part of our modernisations so that we  
move, we have a transition from our old railway system  
into the modern railway system we're trying to do so yes I  
can confirm Siyaya was entitled to payment for the work  
they had done and the R14million that you see was not  
even, it's very interesting that it hasn't been changed, I  
thought it had been paid long time ago, I'm surprised that  
is a subject.

**Adv FW Botes:**

Would you say that this payment is subject to any  
conditions or is it straightforward it needs to be paid?

**Mr L. Montana:**

15 No, no, no it was a straightforward payment, it was not – if  
it was I would have indicated for example the times when  
for example you have a request for payment and you find  
that the money has not even been budgeted for, I would  
say for example approval subject to the Group CFO's  
confirming that we've got that money or approved subject  
20 that those who bring it forward the proper processes are  
disobeyed because the most important thing we wanted  
things to happen, we didn't want the contractors – unless it  
was something that the Commission would view it as  
completely unlawful then we will say no we cannot do it.

**Commissioner:**

25 Okay so this was recommended, that means pay, that  
means pay, that means pay, subject is just a disciplinary

now that R14million what would that have got paid out of, sundries?

**Mr L Montana:**

No, no the – what we had we had a if I remember correctly we had two types of budget, now we've broken down our capital budget in a number of ways, what we had in our rails division was a budget that we called capital – let me just explain that, then I will come back. We had big projects and we had projects that had to do with you know urgent day to day interventions and that amount was there, it was called capital, we used to call it CIP, capital intensive program, that's where this money was motivated, had to be paid from.

**Commissioner:**

So the money could have been paid out of that?

**Mr L Montana:**

Ja, no so it was meant to be paid out of that, now of course the complication that came is that when we restructured and separated and created a new division, so you find the situation where a program was placed in one division but the initial work was done in a different division, so somebody would say the work is accounted that side, how do I pay, so there was an accounting issue there, but there was never a problem with the fact that we needed to pay, even the two CEO's of the two divisions were in total agreement that the payment was due.

**Adv FW Botes:**

I understand. Thank you Mr Montana. --Do you know perhaps for what reason payment wasn't forthcoming?

**Mr L Montana:**

No, I was never told the reasons, except that at various

5 stages we had Siyaya complaining that as a business they  
are being put in a very difficult position, Siyaya's problems  
do not start with this hearing Commissioner, I think that  
there are a couple of issues, if I remember well that Siyaya  
wrote to us and said look but we are an emerging  
business, we are not being paid on time or there's always  
all sorts of things, we work with an international company,  
in fact I had to (indistinct) to ensure them that look we will  
pay Siyaya so that their obligations towards them – so all  
those kind of things, but organisations have got their own  
politics and sometimes you have to come in and I think  
PRASA was not there, was not separate there because  
people say look I'm not running that project, so I'm not  
going to pay, things like that, so there are those kind of  
15 things. Some of them were – amounted to absolute  
jealousy that you see a guy running a company, and he's  
working, I mean we saw recently even in the newspapers  
people tried to say DB says in the statement we know  
nothing about Siyaya but DB was meeting – I mean I met  
20 with even the managing director in Germany, we signed,  
we discussed business together and I was surprised, but  
again when politics in an organisation change every  
organisation wants to be in the good books with the new  
leadership and they tend to forget what they previously  
25 agreed, I've got documentary proof of all of that.

**Commissioner:**

To put it in a nutshell then Mr Montane is it your evidence

then that the project description in this contract is - the material coding project in terms of this project was done, the work was done, it was completed to your satisfaction and the R14million is owed in respect of this contract.

5      **Mr L Montana:**      Yes, it was in 2014/2015 yes.

**Commissioner:**      Thank you very much.

**Adv FW Botes:**      May I ask you to turn to page 271 of that EXHIBIT C, 271 please Mr Montana, that's an agreement. This agreement is what is called the depot modernisation program technical designs and tender, designed for Braamfontein and Salt River, it's a consultancy agreement and also a design agreement and you will find from page 271 up until 299. Who signed this agreement on the 30<sup>th</sup> of July 2013 on behalf of PRASA?

15      **Mr L Montana:**      It was me.

**Adv FW Botes:**      It was yourself. Now just in a nutshell, a brief nutshell what was the purpose or the subject matter of this agreement, why was this agreement entered into?

**Mr L Montana:**      Well there's something that of course we never dealt with but there is firstly a memorandum of understanding signed between PRASA, DB and Siyaya.

20      **Adv FW Botes:**      Yes.

**Mr L Montana:**      Now at the heart of that memo and it was related directly to this, at the heart of that was because when we started with our massive modernisation program, buy new trains, in August 2017 I went to the Board, I said we have done

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5 everything for 2010, we've done – we united and brought  
these organisations together, what we need now is that we  
need to ensure that we get into an asset recapitalisation  
program, buy new trains, new signalling system and all of  
those things. Now PRASA didn't have the capacity  
internally, you would remember that because of the level  
of investment a lot of engineers and technical skills had  
either left the country or people had gone on retirement.  
Now we had to solve that problem, how are you going to  
manage this modernisation program without having the  
capacity and we said but it's not practical for us that each  
and every way, step of the way we then have to go out on  
tender, we are going to have thousands of tenders that we  
can't even manage. We need to buy skills and then we  
also said we don't – we cannot appoint a partner to  
PRASA who was a manufacturer because they will sell us  
their product, their technology, and we looked around the  
world and we realised that the Germans had the right  
people to work with so they can support us;

20 **Adv FW Botes:**

Deutsche Bahn?

**Mr L Montana:**

Deutsche Bahn which runs one of the biggest railway  
networks in the world.

**Adv FW Botes:**

Yes.

**Mr L Montana:**

25 So it – so that gave rise to the memorandum. In the  
memorandum we are very clear that we will share  
experiences, and secondly that for all the resources that



DB and Siyaya, Siyaya was the BEE partner of DB, for all their resources that they will utilise in the country they will be properly compensated for their work, because you can't bring engineers from Germany who come and stays here, DB carries the cost but it is for our benefit. So we had agreed, that memorandum was signed by me in the presence of Board members of PRASA in Berlin, so it is a – and it was discussed in the north by the Board of PRASA, well of course you read the newspapers it was like oh it was a one man show – so it was done by the Board. Now one of the key interventions that we required during that time was for the depots to be upgraded, because when you buy new trains the old depots are not designed for the new trains, so you have to build new depots, which must have the right kind of technology, the right kind of skills, when you bring the new train the pits for people to work under the train must be designed at the right specification and all of those things, and by the way we went out – initially we went out on tender, and the first tender that we got – responses rather to the tender was one where it was not even suitable to what we wanted, we had a lot of construction companies who have a knowledge and understanding of railways who viewed a depot as a bin, now a depot that has a train for maintenance that train will need more than that, it must go and join the network, there are safety issues involved, so



we had to cancel the tender and we then had to go to DB and say in line with our memo can you help us to design this issue. This memo was given effect, this contract was given effect to that particular agreement.

5      **Adv FW Botes:**

Let's just direct the Commissioner's attention to the memorandum of understanding. Can I ask you turn to page 265, is that the memorandum of agreement that you referred to the Commissioner to. 265 Mr Commissioner, and if you turn to page 270 can you just identify the signatures on page 270.

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**Mr L Montana:**

This was signed in Germany, that is my signature at the top, and I think the Siyaya/DB one I think it was signed by Mr Mabunda was part of that meeting, and the DB International which is the consulting arm of DB they signed, so we signed, we had that session there. Our delegation was led by me, it involved Ms Brigitte Gazo was the Chair of the Procurement Committee of the Board, then it involved them and (indistinct) as well.

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**Commissioner:**

What is the relation – so Siyaya DB is that a German company?

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**Mr L Montana:**

Ja, this is the DB, Deutsche Bahn, the company that runs the German Railway system.

**Commissioner:**

Okay but Siyaya DB what's the relationship between Siyaya, the company in liquidation and Siyaya DB?

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**Mr L Montana:**

Well Siyaya and DB entered into an agreement, because DB wanted to come and do work and they said look we

want a BEE partner in South Africa because we need to have South African partners, that's what they agreed to.

**Commissioner:**

Siyaya DB was created in Germany just ...(intervention)

**Adv FW Botes:**

Siyaya DB Consulting is the company ...(intervention)

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**Commissioner:**

Is it a South African company.

**Adv FW Botes:**

Yes, yes.

**Commissioner:**

Thank you.

**Adv FW Botes:**

Yes, now if one has regard to the agreement can you – are you in a position to indicate to the Commissioner whether or not there was – effect was given to the agreement and whether or not Siyaya DB executed the agreement?

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**Mr L Montana:**

Well as I said at the beginning they've executed, we've had engineers, engineers from Siyaya, engineers from DB who were here and I'll tell you that even as recent as 2015 all the drawings for our depots when we went on a – the first depot to go out on tender was the Braamfontein depot, all the documents were put together by a Siyaya DB team to do that work. So it was done, we went out on tender, and the tender went out to the Board itself and it was discussed, it was cancelled subsequent to that, but the basis of the work was done by Siyaya DB.

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**Adv FW Botes:**

And if you turn to 305 you'll find a document which was dispatched by Siyaya to PRASA and the long and the short of this document Mr Montana is if you turn to page 306 under item 4, paragraph 4, there is a financial

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implication and a title of this what is provided for herein is R3 330 899,78 and if you then turn to page 307, it's a similar document but the significance is on page 308 also under item 4 there the cost is reflected as R12 337 840,09, and combined if one combines or add those two amounts you then get a total which is R15 371 793,87. In your view and in your understanding is this the amount which is due and payable by PRASA to Siyaya?

**Mr L Montana:**

Yes, remember part of the issue if you want to understand how these costs were done, we for example approved an overall budget for the project, but we had these steering committees in the different regions, in Cape Town for the Salt River Depot; in Gauteng for the Braamfontein Depot, in Durban we had – I can't recall the name of that depot, so effectively and then of course Wolmategen, Pretoria, so those depots were designed and what will happen in that case is that the steering committee will sit and remember that there was a big issue that Cape Town people, for example I think it was Mr Louis, the engineer there, what was Louis surname, I don't remember the surname now, Louis Beukes is the engineer, was the engineer for Metrorail then, and they complained that the designs didn't adequately meet for example what they wanted for their system, for the new trains, and they made amendments to that. Now when the user makes the requirement remember I can approve and say that we approve

R800million and do something, the user at the bottom still has to say or sometimes say look we find that the soil conditions are not right, we want to make shifts, now when those costs are adjusted they are not for the company that is doing the work, they are the cost of the company, because the use who says we don't think that for example the size or the height of this depot must be – we require additional material, so there's a bill of quantities change, they're not for the account of the service provider, so in this case the designs were done and I think that they were due to Siyaya.

**Adv FW Botes:**

Sorry – can you just help me, this is a contract between – are we talking about the contract on page 271, the contract between PRASA, right and Siyaya DB Engineers, and Siyaya DB is not the company in liquidation. It's the same company?

**Commissioner:**

Ja, same company.

**Mr L Montana:**

And then for information this related invoice was related to the (indistinct) issue so it was additional out of scope work from the initial contract where the people in Salt River wanted additional stuff, so that committee recommended that we do additional works, so we had done additional works and that works that was done it was part of the tender documents for the construction company to be appointed to deliver the service.

**Adv FW Botes:**

Okay, so I see – so in other words Siyaya DB is like a –

it's part of Siyaya as like a sub-division?

**Mr L Montana:**

Siyaya DB Engineers is the company, in the process around 2014/2015 DB requested as Siyaya, DB Engineers removed that DB thing which resulted into Siyaya Consulting Engineers. So Siyaya DB Engineers and Siyaya Consulting Engineers is the same company, it was only the name change to the one of DB.

**Adv FW Botes:**

Okay thank you for that. So the insolvent company before you Mr Commissioner is indeed Siyaya DB Consulting Engineers.

**Commissioner:**

I don't understand, what is the first company?

**Mr L Montana:**

Siyaya DB Engineers.

**Commissioner:**

Okay, that's it and that incarnated or changed into?

**Mr L Montana:**

Siyaya Consulting Engineers.

**Commissioner:**

Okay. So then Siyaya Consulting Engineers is the company before me and it is (indistinct) with Siyaya DB.

**Adv FW Botes:**

Ja, exactly like that. Now what PRASA submits in their plea in the arbitration proceedings stands on two legs, one they say that the work wasn't executed, it wasn't done and two, if one has regard to what is contained in the agreement, page 271 and further, there was a cut-off period, a cut-off date and it wasn't competent for a variation or addition to be added after that date?

**Mr L Montana:**

I think that the – my former colleagues they probably forgot either the facts around the issues that were there, you know PRASA didn't even have the drawings, because

5 the drawings were with Siyaya DB so the consulting  
engineers designed the work, when we went out our job  
was to ensure that after they had done the designs for all  
these depots our internal team would review all that work  
and they would then take it out on tender, when that work  
comes back, when we evaluate as PRASA the technical  
support for our team to be able to do that because  
remember on signalling, on depots on the new trains we  
never had – our guys dealt with trains that were designed  
in the seventies. We were having modern trains, we were  
having modern signalling so we had guys, I mean to give  
you a practical example, one of the areas they dealt with  
was on signalling, okay, now if they're dealing with  
signalling the Rail Safety Regulator will not allow PRASA  
for example to implement a signalling system without  
having a top signalling engineer.

**Adv FW Botes:**

Yes.

**Mr L Montana:**

20 So I had to get one of our old engineers who had  
relocated to Scotland, because we needed to ensure that  
we comply with the Rail Safety Regulator and then we can  
use the resources of Siyaya DB, so I think that the issue  
that is there is the fact that I think that after they've made  
in the different steering committees they made changes,  
remember that is not Siyaya but it is PRASA people who  
had to follow their own internal process and in most  
instances they won't follow that process, to make sure that

that supply chain management policy that we spoke about earlier Commissioner is complied, and people realise the work has moved on, there are costs to be incurred and because they are trying to protect themselves because the first question that is going to arise for me okay I see you have incurred another R20million, how was it approved, okay. Now the company have done the work so every person who acts on behalf of PRASA whether in the Western Cape is an officer of PRASA who is able to do that, they have a duty to make sure that they follow policy, but if it's not done you can't blame Siyaya and say that work was not done, it was done actually all the reports, in fact at my own house I still have the reports of the work that has been done, which I can present as evidence before this Commission.

**Commissioner:**

Okay so look at the moment we're dealing with this contract that starts on page 271.

**Mr L Montana:**

Yes.

**Commissioner:**

I think the question was, was the work done?

**Mr L Montana:**

It was done.

**Commissioner:**

Was it implemented?

**Mr L Montana:**

It was done, it was implemented.

**Commissioner:**

Was that completed?

**Mr L Montana:**

It was, well what has happened the work completed

..(intervention)

**Commissioner:**

To your satisfaction was it signed off, did the end user look



at it?

**Mr L Montana:**

The end users were happy with it, our procurement team was happy with it, what was not completed was the procurement process which has nothing to do with Siyaya, it's a PRASA matter, because when the new Board of PRASA came in it started saying look let's change, let's review all of that, but the work that is recorded here was performed by Siyaya.

**Commissioner:**

Okay, so tell me something, what is the amount due in terms of this contract?

**Mr L Montana:**

I can't recall ...(intervention)

**Commissioner:**

Mr Botes?

**Adv FW Botes:**

The invoices are the two documents Mr Commissioner that I have referred to, if you have regard to what is contained, let me just get to it, just a moment, that's on page 305 and 306.

**Commissioner:**

Those two amounts that came to R15million?

**Adv FW Botes:**

Yes.

**Commissioner:**

So that is the amount due in terms of this contract number HOPTDN, okay.

**Adv FW Botes:**

Quite correct.

**Commissioner:**

You've got no objection ...(intervention)

**Mr L Montana:**

No, not at all, not at all, I'm happy with the numbers I see.

**Adv FW Botes:**

Very well, can I just then briefly deal with signalling and ask you it's right towards the end of your bundle Mr Montana, it is 343.



**Commissioner:**

So this is a new contract for signalling?

**Mr L Montana:**

For signalling yes.

**Adv FW Botes:**

No, this is first the consultancy agreement and this document was entered into and concluded on the 20<sup>th</sup> of March 2014, and the document that has everything to do with what I want to clear this with Mr Montana is the document on page 397. Now this document emanates from a request that additional work should be conducted at PRASA's request in respect of the GSMR system for railway operation. Can you recall this Mr Montana?

**Mr L Montana:**

Yes, the GSMR project was awarded to the Chinese company, I think Who are We.

**Adv FW Botes:**

Who are We yes.

**Mr L Montana:**

And the amount I think at that time was R560million, or R480million and then what happened is that we then realised that – and just to explain it fully the reason what we call this kind of radio system, now the radio system was found not to be a reliable system, particularly when you go through tunnels and bridges, you find that the driver of a train will not then be able to talk, to communicate with the control system. The second issue was that of course from a safety point of view it was regarded as a major problem. We then had to come with the GSMR technology and we had an open tender system and Who are We was appointed. Now Siyaya was our – remember every time we appoint the companies to bring

5 technology we needed the Siyaya engineers to be able to  
help us supervise (indistinct) the resources inside which  
means that people who have implemented that kind of a  
network. Now the work was done, the amount changed  
and again I can recall we in fact wanted a variation on the  
– from 480 the amount went to, it as an additional  
R100million that was required, was it R100million, so I  
think that – what is it called – Who are We had wanted  
that if they were to implement this system fully the R480  
will not do that, we had signed a contract with them for  
R480.

**Adv FW Botes:**

There will be an increase?

**Mr L Montana:**

But that will be an increase ...(intervention)

**Adv FW Botes:**

Dramatic.

**Mr L Montana:**

15 Well no it was usually in contracts like we accept that  
anything between 10 and 15% you can live with, that will  
be a variation, but it must be justified and broken down so  
that the people don't come and do arbitrary changes to the  
variation, so there was a big word to say if we are  
20 replacing this radio system that we have and one of the  
major things was to cut down costs, because the radio  
system was not reliable many of our drivers had to rely on  
using cell phones. Now one of the major things about cell  
phones is that the voice recording in an event of an  
25 accident we don't have the recording, the data as well as  
well as the voice recording to be able to track what is – so

effectively you don't have the black box to be able to pick up that information. So we then wanted Who are We says this is the work that needs to be done. The person at PRASA who as managing this particular project was a Mr Sorrin Baltac, Sorrin is the engineer that I went to fetch from Scotland to come and manage that work, and he then said look we're not going to get the benefit of this work and we need to ensure that we expand it and the reason why I was briefed is because it was not only an implementation issue, if we had to adjust the amounts remember that anything over R100million at PRASA, anything up to R100million I could approve, anything beyond R100million had to go to the Board, so if the Board approves R480million and there's a variation, whether it's one cent, because that was beyond my R100million authorisation I had to go back to the Board, so they had to come and explain each and every change that was required, and we then had to get the — our transition advisor on this issue was the DB guys. When Sorrin came to brief me he came with the engineers from DB and on the work that needed to be done and it was effected and done.

**Adv FW Botes:**

What Mr Baltac testified to in this regard, if you turn to page 405 he said from a financial perspective Mr Montana there is a financial or a budget breakdown referring to part A steps one to five, part A step 6, part B and that all

amount to R21 626 138, and he was completely satisfied and that the work as provided for in the additional variation was indeed attended to by Siyaya, he testified in so many words to this commission.

5 **Mr L Montana:**

Well he was the project manager so as the project manager he would be able to know all the relevant details, you would recall that when they want that variation they must motivate it to me, I'm not the project manager, my job is to run the business, to run the strategy but all the other details the work that they do, so if Sorrin Baltac who was managing the project was satisfied with the breakdown I think that will be fair, that would have been recommended to me and that's what I would have approved.

15 **Commissioner:**

So the consultancy agreement on page 243.

**Mr L Montana:**

Yes.

**Commissioner:**

I see it's called a contract on page 343 it says, there contract number so and so, so this is the contract?

**Adv FW Botes:**

That is a consultancy agreement and there what the basis of the claim before you is premised on the additional work on page 397.

**Commissioner:**

Okay.

**Adv FW Botes:**

So that is your point of departure, or your course of action so to speak Mr Commissioner, is all premised on page 397, that's the additional work, which runs up until page 410, that's one document.

**Mr L. Montana:**

But to respond to you Commissioner indeed it is a contract, the reason why it's called consultancy agreement is because of the nature of the services, they are of a consulting nature in supervising the guys who were implementing the kind of project that is there, so the consultancy agreement is a contract itself.

**Adv FW Botes:**

And just on that point Mr Montana the scope of services in respect of that consultancy agreement is that the scope of services the Commissioner will find on page 381, 381, that's the document?

**Mr L. Montana:**

That is correct, that is the scope there.

**Adv FW Botes:**

It's quite voluminous and comprehensive and it goes up until page 388, but I think the important aspect of 381 is the three bullet points right in the middle of page, it's highlighted, it says installation of all the digital radio system components along the railway track of each region including the electrical design as well as the erecting of mast poles for RF, radio frequency, components and associated buildings, the assistance with the education to ICASA, the regulating authority in South Africa for the required license and frequency spectrum for the digital radio system associated civil electrical and telecommunications, I think that sums it up quite well.

**Mr L. Montana:**

That I spoke about, well their contract, this is what if you look at the first part deals with what's here that the engineers had to do, which is the supervision, so that was

the consultancy service on the works, but the installation, the assistance with ICASA as well as the civil electrical and telecommunications work was work that was done by Who are We.

5 **Commissioner:** Okay so now in terms of this how much money was due in terms of this contract?

**Mr L Montana:** Well I didn't see, I'm seeing the documents for the first time after two years, so in terms of the – when I see the actual I'm just seeing the file now, so I do not see the actual amounts and so on.

**Commissioner:** This amount on page 405 it's mentioned here?

**Adv FW Botes:** That's the amount we've canvassed, that Mr Montana said that is what Mr ...(intervention)

**Commissioner:** What he says?

15 **Adv FW Botes:** Yes, and he says he confirms if Mr Baltac says that is what was executed he is comfortable with it.

**Commissioner:** Okay, so are we satisfied then that that's the amount due in respect of this contract?

**Mr L Montana:** Well more or less I think that ja.

20 **Commissioner:** And you agree with Mr Baltac that the services were provided and done?

**Mr L Montana:** I will agree with him, a man with integrity and ethics, there is no reason why I wouldn't ...(intervention)

**Commissioner:** So you're ~~ad idem~~ with him, you two agree 100%, this is the amount owed and the work was done.

25 **Mr L Montana:** The work was done, he briefed me on all this.

**Commissioner:** So if you can assist me, how should I word this Mr Botes, the amount of this R21million is due.

**Adv FW Botes:** R21million.

**Commissioner:** R21million, is it due in terms of the consultancy agreement plus the document on page 397?

**Adv FW Botes:** Yes.

**Commissioner:** How should we word, how should we get those two together to say that in terms of this contract so much is due?

**Adv FW Botes:** What you say is that the consultancy agreement was entered into and concluded on the 20<sup>th</sup> of March 2014.

**Commissioner:** Just – I must write this down. Yes?

**Adv FW Botes:** The total contract value of that agreement is R61 390 380 plus VAT and as a result or subsequent to the conclusion of the consultancy agreement additional work had to be effected to ...(intervention)

**Commissioner:** Slow down please, I must write this down. Subject to the conclusion of the?

**Adv FW Botes:** No problem. Consequent following the conclusion of the consultancy agreement PRASA required additional work to be done on the same project and the scope of that additional work (intervention)

**Commissioner:** Okay, the extent of the scope or the scope – and the scope was increased?

**Adv FW Botes:** Ja, is encapsulated in the document which appears on page 397 up until page 410, 397 to 410.

**Commissioner:** Just a second, sorry, on what's it?

**Adv FW Botes:** 397 to 410 and the quantification of the additional work.  
The quantification appears on page 405.

**Commissioner:** Okay, so the quantification was what – that R21million?

5 **Adv FW Botes:** Correct.

**Commissioner:** So the combined amount due, what is that?

**Adv FW Botes:** R21 626 138.

**Commissioner:** Is that the total amount?

10 **Adv FW Botes:** Total amount, and that's the amount that you will find on  
page 505.

**Commissioner:** And as I recall that's what Mr Baltac ...(intervention)

15 **Adv FW Botes:** This is what Mr Sorrin Baltac also testified to. In his  
defence what he submitted to you is that he just would like  
an opportunity just to go and verify and very much to the  
same tune of what Mr Montana just testified, that's more  
or less the amount but he will go and verify, that's exactly  
what Mr Baltac testified.

**Commissioner:** You've corroborated what he said?

**Mr L Montana:** Ja.

20 **Commissioner:** That counts.

**Adv FW Botes:** Thank you Mr Commissioner. Mr Montana thank you,  
thank you for the effort. We know you're a busy man, we  
know you're a man with a lot of responsibilities, you've  
contributed.

25 **Mr L Montana:** No, I'm an unemployed man, I just do my things. Thank  
you very much.



**Adv FW Botes:** Thank you for coming.

**Commissioner:** Mr Montana you have been a great help, we really appreciate your evidence, and you can now be excused.

**Adv FW Botes:** Thank you Mr Montana.

5 **Adv K Tsatsawane:** I think we're left with Mr (indistinct).

**Adv FW Botes:** For two minutes? You want to call him for two minutes?  
Ja, call him.

**Commissioner:** Doctor do you have any objection to taking the oath?

**Dr D Mthimkhulu:** No.

10 **Commissioner:** Will you stand please. Do you swear that the evidence that you will give will be the truth, the whole truth and nothing but the truth, raise your right hand, say so help me God.

**Dr D Mthimkhulu:** So help me God.

15 **Commissioner:** Thank you.

**\*Evidence of Dr D Mthimkhulu**

**Commissioner:** Mr Mthimkhulu just before we begin in enquiries of this nature you are entitled to legal representation, do you wish to be represented by a lawyer today?

20 **Dr D Mthimkhulu:** No I'm okay.

**Commissioner:** In that case I just want to explain to you what the nature and the purpose of such an enquiry is, we don't sit as a court of law, we're not going to make any finding against you. All we require from you is to answer the questions which are put to you fully and completely. If you can't remember an answer we will give you an opportunity to

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research the answer and come back with your reply. If at any time you're uncomfortable or you're not quite sure of anything you can address me and I will try and assist you.

**Dr D Mthimkhulu:**

Okay, thank you.

5

**Adv FW Botes:**

Dr Mthimkhulu good afternoon and welcome to this enquiry. You were previously in the employ of the Passenger Rail Agency of South Africa, called PRASA?

**Dr D Mthimkhulu:**

That's correct.

**Adv FW Botes:**

When were you appointed in PRASA?

10

**Dr D Mthimkhulu:**

I started in 1998 as the – through the (indistinct) program and I grew within the ranks and I also pursued my studies then I was appointed as an Executive, actually as (indistinct) in 2005, and then subsequently in that year, 2005 the position was changed to the Executive Engineering, so I was responsible for the rolling stock, that is called the trains and also the infrastructure.

15

**Adv FW Botes:**

Okay, so eventually you were Executive Manager Infrastructure and Rolling Stock?

**Dr D Mthimkhulu:**

Yes.

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**Commissioner:**

Is that the description?

**Dr D Mthimkhulu:**

That's correct yes.

**Adv FW Botes:**

Now just on that score what were your responsibilities within this position?

**Dr D Mthimkhulu:**

Well number one I was responsible for the maintenance and the services of the infrastructure as well as the trains or rolling stock which it is commonly known as and also

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responsible for design and as well as engineering.

**Adv FW Botes:**

Sjoe quite a responsible position Dr Mthimkhulu.

**Dr D Mthimkhulu:**

Absolutely.

**Adv FW Botes:**

Well if one has regard, there's a document or a bundle before you that is EXHIBIT C, sorry I want you to turn to page 20, that's right at the beginning, right in the beginning, page 20, yes. Yes, right from the beginning, sorry.

**Commissioner:**

Doctor I'm being inquisitive here (indistinct) what was in?

**Dr D Mthimkhulu:**

Well I was actually assisting quite a few railway (indistinct) encounters and did quite a lot of (indistinct) so I was focusing on (indistinct) of maintenance and resource (indistinct) because in railway we did not really have that engineering you know component where there's quite a lot of you know work that were in fact let's say there was no science, everything was just trial and error so that's where (indistinct).

**Commissioner:**

So your doctorate that you did, did you do it in Germany?

**Dr D Mthimkhulu:**

Well I did it with a lot of the German companies as part of the (indistinct) system, that's what they called in.

**Commissioner:**

Thank you.

**Adv FW Botes:**

I understand, and doctor on page 20 of the document in front of you that is a project charter relating to material management and coding, just explain to the Commissioner what is to be understood by material management and coding?

**Dr D Mthimkhulu:**

Okay, when we talk about material management we're referring to the process of or an official process of actually drawing the spare parts from the warehouse into the train (indistinct) so there's whole lot of logistics you know behind that goes with that process, that's what we mean on the material management side. And on the coding side we are referring to the capability to be able to track that spare part or that inventory that you have taken out from the warehouse right to account for its cost and also to realise its efficiency into when the train's running out there or when the infrastructure is available.

**Adv FW Botes:**

I understand. Now insofar as the costing perspective is concerned may I ask you to turn to page 49, you will find on page 49 and 50 a costing spreadsheet. Are you familiar with this document?

**Dr D Mthimkhulu:**

Yes.

**Adv FW Botes:**

And if you turn to page 50 you will find there's a total, item number 20 and the total is for the amount of R16 999 322, do you see that?

**Dr D Mthimkhulu:**

Correct.

**Adv FW Botes:**

Do you confirm that that was the costing that was allocated by PRASA to this project?

**Dr D Mthimkhulu:**

That's correct.

**Adv FW Botes:**

Now the next document on page 51 that is a different subject matter now, that relates to data cleansing, just explain to the Commissioner what is meant by data

cleansing?

**Dr D Mthimkhulu:**

Data cleansing in its simplest form we are referring to the work, and coming from the history where PRASA used to be from Transnet, or it was within Transnet, there has been quite a lot of the material at the time now the material was also including some of the old infrastructure parts which were discontinued. For example there's a system that's called Van Schoor where rails used to be controlled by hand, so we – data cleansing means that we go through every line item, we remove those old items that are no longer applicable, almost 50 years later, so we had to go through that data cleansing, in other words make the data reliable and also that we are able to become (indistinct) that this data will be able to provide meaningful information, you know to management.

**Adv FW Botes:**

Yes. Can I ask you bluntly where you're sitting whether or not Siyaya has successfully executed the material management program and the data cleansing as provided for in the two documents that we've just directed the Commissioner's attention to?

**Dr D Mthimkhulu:**

I will say without a shadow of doubt that absolutely they have done beyond what I expected because I was the one who was getting very frustrated because there was so much confusion between what the man on the floor is asking and what the cost is showing, so there was just a mess, so what they did was really, really outstanding work

from where I'm sitting. If I compare someone who could give me the data that I was able to rely on which was almost 50 year data that nobody could tell exactly what items because you had to physically go there, make sure that what is written there, what it is what you see it is indeed, so from where I'm sitting as far as that data cleansing is concerned yes and as far as the material coding is concerned yes.

**Commissioner:**

Sorry before I get there, now for number two the management and coding there is that amount of R16 999 322, that was the cost? What amount is that?

**Dr D Mthimkhulu:**

The R16million?

**Commissioner:**

Ja, that's on page 50.

**Dr D Mthimkhulu:**

Yes.

**Commissioner:**

So just help me there.

**Dr D Mthimkhulu:**

It was the amount which was actually including the whole project in resources.

**Commissioner:**

So was that the amount due to the consultants?

**Dr D Mthimkhulu:**

Yes.

**Commissioner:**

That R16million?

**Dr D Mthimkhulu:**

Yes.

**Commissioner:**

And you say this contract was executed fully, absolutely to your satisfaction and the money is due and payable.

**Dr D Mthimkhulu:**

Absolutely.

**Commissioner:**

Okay, so that regards the contract on page 20 which is the management and coding project. Then you went over to

the next project, which was the data cleansing project,  
page 51. We were there, now sorry I interrupted you there  
Mr Botes.

**Adv FW Botes:**

The qualification from a financial perspective was that ever  
attended to expressly provided for in the data cleansing  
project charter?

**Dr D Mthimkhulu:**

Can you repeat your question?

**Adv FW Botes:**

Was the budget ever indicated or provided for in this  
document with specific reference, I want you to turn to  
page 77, and answer the question there. On page 78, you  
can take the document out, yes do it like that doctor,  
there's a description for consulting fees, project expenses  
and that has to do from April, May, June, July, August,  
September, October, November, and that is a total amount  
of R10 682 705 do you see that?

**Commissioner:**

Now where do you get the months from? The months, oh  
on top here, sorry, it's gone blank here.

**Adv FW Botes:**

April, May, June, July, August, September, October,  
November and December and then the total is R10 682  
705, is that what was budgeted for this project?

**Dr D Mthimkhulu:**

Absolutely.

**Adv FW Botes:**

I'm trying to short-circuit your evidence, from page 78 and  
just bear with me, 78 we know that invoices one and two  
were paid on page 78 we're confronted with invoice three.  
So invoices one and two were paid and invoice number  
three is the one that you will find on page 78. It was not

paid. Invoices one and two are not attached to the documents before the Commissioner, we don't have it. Those were paid ...(intervention)

**Commissioner:**

But three and four, one and two was paid?

5

**Adv FW Botes:**

Ja, but not three, from three up until invoice 17 Mr Commissioner ...(intervention)

**Commissioner:**

But you say here, one and two were paid and then you said from three to 17?

**Adv FW Botes:**

17 yes, that's on page 92.

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**Commissioner:**

Yes?

**Adv FW Botes:**

Were not paid. So invoice number three Mr Commissioner you will find on page 78, that's not paid.

**Commissioner:**

Do these – where do we see that these invoices relate to this contract, is there a number on the invoice?

15

**Adv FW Botes:**

No, they all relate, let me ask the witness. Can you confirm that tax invoice number 3 relates to what it says, the original tax invoice mobilisation fee for locomotives and infrastructure, is that in accordance with this agreement?

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**Dr D Mthimkhulu:**

Yes, yes absolutely.

**Adv FW Botes:**

Mr Commissioner you asked me where is it reflected that one and two was paid, if you turn to page 17, that's a summary of what is due and outstanding. Page 17. So you will see on page 17, so there are – provision has been made on page 17 invoice – item 1 is invoice 1 up until item 17 which is invoice 17.

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**Commissioner:** Okay just let me see. Thank you very much Mr Botes.

**Adv FW Botes:** And the amount at the foot of page 17 that is the amount which is currently due and payable, R17 628 118,59. Now that's ...(intervention)

5 **Commissioner:** And that is in respect of invoices three to 17?

**Adv FW Botes:** Quite correct. Do you confirm that Dr Mthimkhulu?

**Dr D Mthimkhulu:** Absolutely, absolutely.

**Adv FW Botes:** And do you confirm that this R17 628 118,59 is indeed the amount which is due and payable to Siyaya by PRASA?

10 **Dr D Mthimkhulu:** I confirm that it is correct like that yes.

**Commissioner:** Okay so just if you can assist me here, there's been a summons issued for this amount.

**Adv FW Botes:** Yes.

15 **Commissioner:** And this summons relates to this contract, these two contracts?

**Adv FW Botes:** Yes, both of them.

**Commissioner:** That we've just mentioned. Sorry, just make it clear that on the particulars of claim is the contract mentioned?

**Adv FW Botes:** Yes, paragraph 4 it's material management and coding.

20 **Commissioner:** I've got it.

**Adv FW Botes:** And on page 15 paragraph 7 is data cleansing. So you have both, material management and coding and data cleansing.

25 **Commissioner:** So these were the two contracts we looked at just now and what was the amount, I just want to compare the amount that they've got admissions on the basis of the

contracts.

**Adv FW Botes:**

Yes.

**Commissioner:**

Which the witness has just testified to, and does that match the amount here of R17million?

5

**Adv FW Botes:**

Yes.

**Commissioner:**

So I can say that the amount due in terms of these two contracts as well as in terms of the summons the witness has acknowledged that it is due and payable.

**Adv FW Botes:**

He has confirmed and conceded and agreed that R17 628 118,59 is legally due and payable by PRASA to Siyaya. Is that Dr Mthimkhulu?

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**Dr D Mthimkhulu:**

Absolutely that is correct.

**Adv FW Botes:**

And you say this unconditionally without any reservations?

**Dr D Mthimkhulu:**

I am saying it unconditionally without any reservation because it was at the time when the organisation needed to renew itself, there was no way that we could have run the system based on the 50 year data and our stock levels they were so abnormal the man on the floor he does not have the stock to get the trains going, so there was such a huge confusion and after this process everything was tagged, set aside, we had a clear document, everybody knew that the line item X number could rely, we knew that two days with the electrical it was so clear, so for me from where I am sitting it is beyond what I was actually expecting, because the ultimate thing was to make sure the customer when he gets to the train he knows that this

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train is safe, because at the end of the day the stockholding was all about the safety of you know the public. Thank you.

**Adv FW Botes:**

Mr Montana testified before you and in this regard he directed the Commissioner's attention to page 93 of this document. 93, do you recognise this document?

**Dr D Mthimkhulu:**

Yes I do.

**Adv FW Botes:**

And this has everything to do with what is associated to material management encoding and data cleansing and data cleansing and his recommendation or the recommendation by Dr Joseph Phungula, which you will find on page 98, was to effect payment of an amount of at least R14million.

**Dr D Mthimkhulu:**

Correct.

**Adv FW Botes:**

And do you agree with what is contained in this document and do you align yourself with what is expressed there?

**Dr D Mthimkhulu:**

Absolutely yes I do, because the request to Dr Phungula is from my side, requesting that he urgently attend to this request, yes indeed I do confirm.

**Adv FW Botes:**

And do you know for whatever reason the R14million was not paid?

**Dr D Mthimkhulu:**

I don't know, because from our side technically we were very much happy and as I speak the information that was done or was produced it is still in use as we speak in 2017. All the documents that were produced by this – by Siyaya it is in use as we speak now, PRASA at that time

they went through a process what we call SAP-Blueprint, what is in SAP as we speak in 2017 is exactly what came out of this process, because really this we initiated as part of the SAP blueprint, we did not want to transfer the garbage into the new set up or onto the new system.

**Adv FW Botes:**

Thank you Dr Mthimkhula. Thank you Commissioner, I don't have any further questions.

**Commissioner:**

Thank you Dr Mthimkhula, we really appreciate your evidence, you have been a great help to us and we are excusing you and we wish you well in your business.

**Adv FW Botes:**

Thank you Dr Mthimkhula you are excused.

**Dr D Mthimkhulu:**

Thank you. Thank you Commissioner, that's our business for today.

**Commissioner:**

Okay, so what's happening tomorrow? There are some questions I just want to ask. If you can just help me, I want to go back to the evidence of Dr Bobape.

**Adv FW Botes:**

Yes, Mr Bobape

**Commissioner:**

Mr Bobape, now we dealt with – we dealt with some contracts there that he was involved in, right?

**Adv FW Botes:**

Yes.

**Commissioner:**

And that, they were contracts which I think it started, I'll tell you now ... (intervention)

**Adv FW Botes:**

Page 124.

**Commissioner:**

That contract on page 124.

**Adv FW Botes:**

Yes.

**Commissioner:**

And he confirmed, and his evidence is similar to the

evidence of later witnesses.

**Adv FW Botes:**

Yes.

**Commissioner:**

And his evidence was that that contract and all the invoices relating to that contract were due and able and completely the work was done and it was payable.

**Adv FW Botes:**

Quite correct.

**Commissioner:**

And those invoices, can we just look at the invoices that we refer to there please?

**Adv FW Botes:**

We referred to the invoices on pages 155, and 156.

**Commissioner:**

Yes, just hold on. Invoices paid 155?

**Adv FW Botes:**

And 156.

**Commissioner:**

Those were just the two invoices?

**Adv FW Botes:**

Ja, but just let me assist you Mr Commissioner, then the subsequent evidence was by Mr Kobuwe, Vincent Kobuwe, that these two invoices were or credit notes, two credit notes were issued against these two invoices, those credit notes are EXHIBITS J and H.

**Commissioner:**

Yes.

**Adv FW Botes:**

And those two invoices were substituted with invoices numbers 12, 13 and 14, and those were handed in as EXHIBITS K, L and M.

**Commissioner:**

Correct, correct.

**Adv FW Botes:**

And he said his evidence was Mr Mopabe's evidence was that as a result of those invoices and the amounts which are contained therein, are according to him due and payable.

**Commissioner:** And what was the total amount?

**Adv FW Botes:** The total amount is R8 095 950.

**Commissioner:** Okay that is an exhibit, those are the first two invoices that we have, plus the 18, the R1.8million.

5 **Adv FW Botes:** That's correct.

**Commissioner:** Now that's tax invoice number 10, tax invoice number 11?

**Adv FW Botes:** Yes.

**Commissioner:** We have evidence, I didn't know if I missed it, these relate to these first contract?

10 **Adv FW Botes:** Correct, yes, yes.

**Commissioner:** Thank you very much. Now – thank you very much for helping me there, now what I just want to know is look we've got witnesses tomorrow, I'll tell you who they are.

15 **Adv K Tsatsawane:** Yes, it's tomorrow these witnesses are no longer in the employ of PRASA and they are not coming.

**Commissioner:** Let me just check on this, okay Marinus we issued as subpoena return of service says he doesn't work there anymore.

**Adv K Tsatsawane:** That's what I said I'm not sure of ...(intervention)

20 **Commissioner:** Ja, I've got the return of service.

**Adv K Tsatsawane:** Quentin Marinus?

**Commissioner:** Ja, it says no longer ...(Intervention)

**Adv FW Botes:** So it couldn't be served on him.

**Commissioner:** Ja.

25 **Adv FW Botes:** So he's not coming.

**Commissioner:** ... signed and received

**Adv K Tsatsawane:** (Indistinct) is coming)

**Commissioner:** Well he signed, he got the subpoena and he signed the –  
so he will come.

**Adv K Tsatsawane:** Ja, he must come.

5 **Commissioner:** Then Mr Thabo Mashaya he I think we served the  
summons on him in Johannesburg, and then we found out  
that he in fact works at the PRASA offices in Pretoria but i  
don't know, I've got no evidence that the subpoena was  
ever served on him in Pretoria, because it was too short  
notice at that stage.

**Adv K Tsatsawane:** Ja.

**Commissioner:** And then Letsane Lethaba, I assume that's a female?

**Adv K Tsatsawane:** No it's a male.

**Commissioner:** A man, okay, a summons was served on him by the  
Sheriff.

**Adv FW Botes:** Letsane?

**Adv K Tsatsawane:** Letsane it's supposed to be ...(intervention)-

**Commissioner:** Lethaba.

**Adv K Tsatsawane:** ... for the ...(intervention)-

20 **Commissioner:** Hang on a moment.

**Adv FW Botes:** Letsane who?

**Commissioner:** Lethaba.

**Adv FW Botes:** He signed some documents, he is (indistinct) the evidence  
today, didn't he.

25 **Commissioner:** Look (indistinct) she signed approval - for some and  
Lethaba was the guy who signed the other one.

**Adv FW Botes:** Let me just – let's just – just a moment, give me one second.

**Commissioner:** So let's see ...(intervention)

**Adv FW Botes:** I just want to get those documents, just give me one second. Page 218, let's start first 217, 217 that's Letsane Lethaba's signature, 217.

**Commissioner:** That's right.

**Adv FW Botes:** And Skinner is 218, Wilma Skinner.

**Commissioner:** Right, so we will have some business tomorrow.

**Adv K Tsatsawane:** Yes.

**Adv FW Botes:** It seems like it.

**Commissioner:** I just want to confirm, look I've got the returns of service here, let's go through it.

**Adv FW Botes:** Ja, let's go through it.

**Commissioner:** I just want to look ...(intervention)

**Adv FW Botes:** It seems like it's Tino Gabrake.

**Commissioner:** Just hold on.

**Adv FW Botes:** Thabo Moshea.

**Commissioner:** Just give me a minute please. I will get you his return of service, okay and then the next one was?

**Adv FW Botes:** Letsano Retaba.

**Commissioner:** Yes. Also served on the witness.

**Adv FW Botes:** It seems like it.

**Commissioner:** So it's only those two tomorrow.

**Adv FW Botes:** Only those three.

**Commissioner:** Gabrake?



**Adv FW Botes:** Moshea ...(intervention)

**Commissioner:** No, no, Moshea we didn't serve.

**Adv FW Botes:** Okay, then I take out Moshea.

**Commissioner:** Let me just have a look here what my notes are here on Moshea. We were advised by the receptionist at PRASA Johannesburg that the witness is now based in Pretoria office, so we have to ...(intervention)

**Adv FW Botes:** And it wasn't served?

**Commissioner:** It wasn't served. So I've got returns on all of them in my file.

**Adv FW Botes:** Very well, it seems it's only Tino and Letshane.

**Adv K Tsatsawane:** Ja, can I confirm? Tino will be relevant on the material coding so if he comes, Letshane Lethabo also material coding. What I wanted to request was on the depot because our two witnesses who was to be PRASA officials they have not confirmed and subsequent to that I managed to confirm with one of the client who was at this stage where he said the replacement people is a lady by the name Lische Sithole and Mr Ashrief (indistinct) because they're the (indistinct) so all three we can ask our PRASA senior counsel so they can find a way to call those two witnesses because they are the ones ...(intervention)

**Commissioner:** Maybe you can phone him now?

**Adv FW Botes:** You can phone him, I won't be able to phone him.

**Commissioner:** I mean maybe you can phone the instructing attorney.

**Adv FW Botes:** Ja, he's not going to tell me anything.

**Commissioner:** You can phone the instructing attorney, maybe the liquidator ...(intervention)

**Adv FW Botes:** It's not necessary to do this on record hey.

**Commissioner:** Okay we can go off record now, we're just doing our homework.

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**\*ENQUIRY ADJOURNED**



**1 SEPTEMBER 2017:**

**TSHWANE TRUST BOARDROOM:**

**Commissioner:** The enquiry today is a continuation of an enquiry in terms of Section 417 and 418 of the Companies Act into the trade, dealings, affairs and property of Siyaya Consulting Engineers (Pty) Limited in liquidation. This enquiry commenced on the 28<sup>th</sup> of August 2017 and is continuing today on the 1<sup>st</sup> of September 2017. The enquiry is being held at the same venue, Tshwane Trust, in Cobham road, Colbyn Pretoria. Presiding Officer, Mr DJ Krige. The parties present are Mr Mabunda, the former CEO of the company in liquidation and the representative of the liquidators, Mr Isak Boshoff. Of course, the transcriber is also here, that is Me Adele Kruger. My instruction or instruction from the liquidator's representative is to postpone the matter *sine die* which I do now. Mister Mabunda, is there anything you would like to say, like to add? Mister Boshoff?

**Mr I Boshoff:** No.

**Commissioner:** Okay, postponed *sine die*. Thank you very much.

**\*INSOLVENCY ENQUIRY POSTPONED SINE DIE**