- Essentially, to get funding without immediately impacting Eskom's financials, a new balance sheet (potentially Huarong China) will need to be brought in.

Besides the advantages above, non-financial benefits to Eskom should also be recognized.

- World class EPC contractors. We will follow a strict process in selecting the EPC panel, which will ensure the quality of EPC companies to be world class.
- Quick turnaround tendering process. The mini-tendering process ensures a quick turnaround on the selection of the right EPC, in addition to the full funding allocation for the project.
- Better aligned interest by EPC. Our structure involves the direct investment into the assets by reputable EPCs.
- Hassle free, true turnkey approach. Our approach combines a financial turnkey solution with a turnkey EPC, which allows Eskom to achieve company goals with significantly less effort.
- Less construction/engineering risk. Eskom will take on less project risk as the implementation is part of our offering.
- Flexibility. Funding targets all types of projects, including coal based projects.

Pricing

Given the enormous benefits provided, it is obvious that our proposal is much more than an ordinary bank facility, and should never be compared to one. However, our pricing is competitive even when unfairly compared to senior unsecured bond issuance.

In February 2015, Eskom issued unsecured 10 year bonds at a rate that is roughly equivalent to Libor + 500bps. Since then, Eskom has unfortunately had a credit downgrade, which in today's market should easily add 100 to 150bps to the bond yield. Furthermore, with the established expectation of rise of interest rate and the increased expected market volatility, the global capital market, especially for emerging markets, has changed for the worse post 2016. Raising USD 1.5 to 6 billion funds, under the current market condition, would become increasing challenging. Thus, a liquidity premium of 75 to 100bps should be expected. Our offering also includes the execution of projects, which means Eskom would take on less construction risk. The engineering risk premium would be worth 150 to 200bps. Overall, our proposal is justifiable for a price of

Libor + 825bps to 950bps. However, we have only priced our offering conservatively at **Libor + 750bps.** Thus, we believe this price is both reasonable and favorable to Eskom.

During our discussion in Beijing, we highlighted the above to you and further made a final proposal with respect to this offering. That is HEA will offer a final rate of **Libor +720bps**, which is a discount of 30bps, if and only if the following conditions are met.

- All other fees and charges as described in the term sheet submission remain unchanged.
- We require a formal response from Eskom (after board decision) to our proposal by 27 January 2017.

Once again, our offering is of substantial volume and value to the Eskom's Capital program. We truly hope your team will consider all aspects of the structure, as specified above and make a decision as soon as possible.

We look forward to your response.
Many thanks,
Yours sincerely,

Mr. R Thomas
Chief Executive Officer
Huarong Energy Africa Pty. Ltd.
Mobile: +27 83 297 6638

Annexure “AP8”

ANNEXURE AP8

Eskom

Mr Rajeev Thomas
Chief Executive Officer
Huarong Energy Africa Pty. Ltd

e-mail:- Rajeev.thomas@tribus.co.za

Dear Mr Thomas

HUARONG ENERGY AFRICA PROPOSAL

Your letter dated 18 January 2017 ,refers

We thank you for hosting the Eskom delegation in Beijing, on 11-12 January 2017. The hospitality, generosity and arrangements made by Huarong Energy Africa (HEA), is highly appreciated.

Eskom has considered the range of benefits that this proposal presents and for these reasons we have resolved to pursue this proposal. We in-principle agree with the benefits you have listed, in the abovementioned letter and we comment as follows:

1. *Large commitment volume of US$ 1.5- 6 billion.* This provides a significant funding solution for Eskom and a diversification of the funding sources.
2. *Un-guaranteed funding.* This was certainly the objective of our Request for Information (RFI) issued in 7 October 2016, to which you responded. Therefore, it is a benefit that we have largely discounted in our analysis.
3. *Improved financial management of its projects by Eskom, but maintaining control of the asset. The created asset is held in a Special Purpose Vehicle (SPV) for the duration of the lease period, thereafter, transferred to Eskom.* The legal, accounting and governance implications of the SPV will have to be resolved
4. *Cash Flow: Minimal cash outflow prior to completion.* This is a considerable advantage of the proposal.
5. *Balance Sheet: No liability prior to completion.* These benefits will have to be tested with the accounting treatment of assets to be created.
6. *Long tenure, most likely for 10 years, as opposed to 3 to 5 years of a bank facility.* This is certainly a fair comparison but should rather be contrasted with the existing long-term un-guaranteed debt as Eskom does not rely on 3 to 5 year bank facilities for funding purposes.
7. *Project based fund allocation provide most efficient use of funds.* This issue was also addressed in comment 3 above.

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Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 4417 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

8. *Essentially, to get funding without immediately impacting Eskom's financials, a new balance sheet (potentially Huarong China) will need to be bought in.* Similarly, this was also addressed above
9. In addition to the benefits listed by HEA, this is a committed source of funding, coal related funding and with project cost containment.

Furthermore, Eskom recognizes the non-technical benefits of this proposal from HEA. Eskom is also acutely aware of the possible risk and structuring challenges that the proposal presents however, we are confident Eskom and HEA would be able to address this in our future engagements. It was clear from our abovementioned meeting that HEA will have to do significant work with the EPC contractors to formalize their participation in this proposal.

Pricing

During he our last meeting we have discuss the pricing extensively and Eskom also disaggregated the HEA pricing proposal and also apportioned the risks to the various participants in the proposal. As per your letter we can confirm that this overall pricing proposal is subject to all other fees remaining unchanged. Eskom will, based on its own analysis, evaluate the pricing and engage HEA.

Way forward

As you are aware that Eskom has signed the indicative Term-sheet with HEA on the 21 December 2016 that will be presented to the Eskom Board meeting scheduled for 2-3 February 2017, for consideration and approval for further negotiation and conclusion of a facility agreement. Therefore, based on the outcome of this Board meeting we will be granted the resolution and mandate to engage HEA, formally.

Based on the issues raised above Eskom has considered the merits of the HEA proposal and remain confident, that subject to the Board resolution, we will pursue this proposal.

We appreciate your willingness to support Eskom's funding and capital expansion programme.

Yours sincerely

Andre Pillay
GENERAL MANAGER, TREASURY
Date: 20170126

Annexure “AP9”

ANNEXURE AP9

Wawa Xaluva

From:	Matty, Stuart <smatty@whitecase.com>
Sent:	14 August 2017 11:19 PM
To:	Matty, Stuart
Subject:	FW: Huarong Term Sheet

Stuart Matty | Partner
T +44 20 7532 1430 M +44 7973 666 262 E stuart.matty@whitecase.com
White & Case LLP | 5 Old Broad Street | London EC2N 1DW

From: Lawrence, Adrian
Sent: 12 March 2017 22:22
To: Andre Pillay
Cc: Matty, Stuart
Subject: Huarong Term Sheet

Dear Andre,

It was great meeting you on Friday, and as mentioned please find below some initial thoughts on the Term Sheet.

As discussed, it would be helpful if you could provide details (e.g. business card scans) of the China Huarong / other personnel you have met, as this could give some better sense of China Huarong's / its subsidiaries' involvement. You will note below we have also suggested HEA be requested to provide further information in this regard also. Given this would appear to be the first/one of the first moves of China Huarong outside China/into Africa, senior involvement would be likely.

Please do let us know if anything further at this stage would be helpful.

Best, Adrian

Adrian Lawrence
T +44 2075322326 M +44 7903294957 E alawrence@whitecase.com
White & Case LLP | 5 Old Broad Street | London EC2N 1DW
WHITE & CASE

Term Sheet – Key Threshold / Structural Questions

As discussed, the Term Sheet is onerous on Eskom, and ambiguous at best as to what is being offered by HEA, and so our strong advice is not to sign at this stage. This is particularly the case given it is expressed to be binding and provides for a high cancellation fee, which is highly unusual.

Instead of looking to mark up the Term Sheet, it may make sense to consider/clarify certain key threshold queries at this stage, including:

- The Term Sheet states that HEA has been set up to provide asset finance solutions for Eskom. Further details should be requested on (i) the background to Huarong setting up a subsidiary before discussions with Eskom commenced, and (ii) what this subsidiary will be doing (if anything) other than dealing with Eskom.
- The Term Sheet states China Huarong is the "parent company of HEA". HEA should provide a structure diagram (showing all intermediate companies and shareholding percentages) and details of the background of its directors to justify this. Noted that HEA does not appear as a China Huarong subsidiary on its website.
- HEA is stated as the Lender for \$1.5bn/up to \$6bn. HEA should identify the source of these funds, and when/how they will be committed.

- The Term Sheet states "HEA has the interest of international funders and investors" including CDB – does this mean that China Huarong is not funding HEA? It seems unlikely e.g. CDB would fund through HEA for on-lending, and so then is HEA simply 'arranger'? Equally, would e.g. CDB accept the due diligence of HEA?

- Will China Huarong guarantee the obligations of HEA? Who will guarantee the obligations of the SPVs to EPC Contractors? Who will cover cost overruns, construction risk, delays etc.?

- To be closely examined what HEA brings to Eskom – e.g. (a) it appears any certainty of construction costs is through the arrangements with the specific EPC Contractor (turn-key, EPCM model mentioned in the Term Sheet) – and so will be priced in by the EPC Contractor; and (b) it is unclear that HEA will be bringing money to the structure. If HEA is simply providing 'arranger' services, it should be judged (including as to track record / in comparison to other arrangers) and priced on that basis.

- Eskom to consider carefully the involvement of HEA in EPC arrangements, given Eskom is ultimately paying for projects (and supervising the EPC Contractors) and it is Eskom's projects that are involved. In particular, noted that HEA looks to pre-approve EPC Contractors (and Eskom could have concerns with e.g. all Chinese EPC Contractor tenders), and then HEA reserves the right to take the final decision on selecting the EPC Contractor. Presumably the four EPC Contractors and one EPCM company HEA refer to would happily deal with Eskom directly, and so 'access' arranged by HEA replicates what Eskom can do also (?).

- The structure contemplated is effectively a limited recourse secured financing (with possessory security, in that HEA will hold the shares in the SPV that will hold the financed assets during the duration of the loan), with various other security features e.g. escrow accounts. To be considered further how such a secured financing will fit in with Eskom's undertakings with other lenders (e.g. under negative pledges).

- The Term Sheet appears to be a blend of various different concepts and ideas and terms from other sources, and does not fit together very well – past experience HEA and/or its personnel in banking such structures to be confirmed.

Term Sheet – Key Financial Terms

Financial terms appear onerous generally, including (based on $1.5bn, where applicable):

Term Sheet Cancellation Fee: $3m (0.2% of program value) payable on bad faith cancellation/repudiation/termination of the Term Sheet by Eskom before the Asset Loan Framework Agreement (ALFA) is signed. This should be compared to HEA have no obligations to fund etc. under the Term Sheet, with 'obligations' on HEA being subject to due diligence, documentation etc.

Signature Fee of ALFA: $24m fee (1.6% of program value) payable on signature of the ALFA, described as a 'Facility fee'. This is despite the ALFA not providing any commitment of funds by HEA, with that being subject to .e diligence etc.

Due Diligence Fee: aggregate circa $7.5m fee if full disbursement requested – for each project, it is an aggregate fee of 0.5% (for projects over $300m, different undisclosed pricing if under), and does not appear to be linked to successful approval/drawdown for such project.

Annual Commitment Fee: Annual fee of 0.8% of funds made available but unutilised. Unclear what this would apply to – no commitment on signing of ALFA.

Interest Rate: Interest rate appears to be "(100% of asset cost / years of asset life) + (LIBOR + 7.5%)". Elsewhere the Term Sheet speaks of loans being for 5, 10 or 15 years based on the life cycle of assets financed. This would lead to an interest rate of LIBOR + 27.5% / 17.5% / 14.2% for 5 / 10 /15 years? Difficult to understand intent, as is not a usual way of calculating interest for such a financing.

Security Deposit: Unclear what type of amount would be contemplated, but this would be leaving cash with HEA without interest during the loan period (i.e. economically, paying for a loan that Eskom does not receive) that HEA can use freely. If Eskom provided a letter of credit or guarantee (presumably government guarantee) to remove the security deposit requirement, this negates one of the key benefits of this structure (i.e. no government guarantee). Additionally, is HEA creditworthy enough to hold Eskom's money in this way?

Early Prepayment: If Eskom prepays a loan, it has to pay all the interest that would have been payable if the loan had not been repaid early (i.e. for the whole 5 / 10 /15 year term). This is unusual, and is effectively a potentially huge prepayment fee.

Annexure “AP10”

ANNEXURE AP10

STRATEGIC COOPERATION AGREEMENT

BETWEEN

CHINA HUARONG ASSET MANAGEMENT CO., LTD

AND

ESKOM SOC LTD

XIAMEN, SEPTEMBER 2017

CHINA HUARONG ASSET MANAGEMENT CO., LTD

Registered Office: 8 Jin Rong Da Jie, Beijing 100033

Legal Representative: Xiaomin LAI

ESKOM SOC LTD

Registered Office:

Legal Representative:

This Strategic Cooperation Agreement on potential power development opportunities (hereinafter referred to as "Agreement") is entered between China Huarong Asset Management Co., Ltd (hereinafter referred to as "China Huarong") and Eskom SOC Ltd (hereinafter referred to as "Eskom").

China Huarong and Eskom shall be referred to singularly as a "Party" and jointly as the "Parties".

WHEREAS:

1. China Huarong is a prominent provider of integrated financial services and the largest asset management company in China, incorporated on September 28, 2012 (Stock Code: 2799.HK). China Huarong is a state owned non-banking financial institution. The Company was previously known as China Huarong Asset Management Corporation and was established in 1999, as a financial asset management company. In October 2015, it was successfully listed on the Main Board of The Stock Exchange of Hong Kong Limited. With strong business synergy among subsidiaries and branches, China Huarong provides full-licensed, multi-functional, and packaged financial services including non-performing assets management, asset operation and management, banking, securities, trust, leasing, investment, futures, real estate.

2. Eskom is a South African state owned electricity public utility provider, who generates approximately 95% of the electricity used in South Africa and approximately 45% of the electricity used in Africa. Eskom continues to focus on improving and strengthening its core business of electricity generation, transmission, trading and distribution and has identified the requirement for creative and innovative funding solutions, with a view of increasing electricity generation capacity through the refurbishment of existing plants and creation of new assets.

3. As per Eskom's current group capital program for the short to medium-term, it is envisaged that it will require US$ 20 billion for its capital expenditure related to its power asset development and refurbishment ("Development Requirements").

4. An example of its Development Requirements, Eskom, commencing in October 2016, has followed a public, transparent process in the international market to procure funding solutions to finance the capital expenditure incurred for its power asset development and refurbishment.

5. In response to the procurement process described in paragraph 4, and with the purpose of offering an alternative and innovative funding solution to Eskom, China Huarong, via its corresponding offshore subsidiaries or its affiliated companies or entities (hereinafter referred to as "Huarong Subsidiaries"), has developed a unique funding program (hereinafter referred to as "the Program"). In particular, the Program constitutes of a fully-funded turnkey-type asset creation and refurbishment solution to Eskom.

6. With the purpose to establish and reinforce comprehensive business partnership between the Parties, and especially to facilitate cooperation in jointly delivering solutions to Eskom's Development Requirements (such as the Program), the Parties agree to record the terms of strategic cooperation relating to Eskom's Development Requirements. This Agreement, will govern the strategic principles contemplated between the Parties in relation to Eskom's Development Requirements, subject to definitive transaction documents being executed relating to the Program.

I. PRINCIPLES OF COOPERATION

In light of facilitating the social and economic development of African countries and strengthening the trade and economic cooperation between China and South Africa, the Parties agree to establish a strategic partnership in connection with Eskom's Development Requirements, on the basis of full compliance with laws, administrative regulations, procurement requirements, national policies and other relevant industry regulations in both China and South Africa.

This agreement will improve the commercial cooperation between China and South Africa. As part of its commitment to social economic development, both Parties acknowledge the importance of the need for job creation, localization, skills development and other local development initiatives, in South Africa. Eskom and China Huarong will endeavor to prioritize these initiatives in the pursuit of solutions to Eskom's Development Requirements.

The Parties agree to act in accordance with the principles of mutual benefit, good faith and long-term cooperation, and take joint measures to integrate respective resources, enhance complementary advantages and achieve win-win results.

II. SCOPE OF COOPERATION

In general, the Parties agree to establish comprehensive strategic partnership in the field of power and financial services, and enhance communications and coordination between the working level on a regular basis. Joint efforts will be made by the Parties to develop potential business opportunities, support existing business operation and finding solutions to difficulties and challenges in the process of business cooperation.

VI. MISCELLANEOUS

This Agreement shall have two (2) originals in English and each of the Parties shall hold one (1) original. All of the two originals together shall constitute one and the same document. Each of the Parties hereto has caused this Agreement to be executed by their duly authorized representatives as of the date written above.

SIGNED by the Parties and witnessed on the following dates and at the following places respectively:

SIGNED at ______________________ on ________________________

For and on behalf of

China Huarong Asset Management Co., Ltd

____

Name:

Capacity:

Who warrants authority

SIGNED at ______________________ on ________________________

For and on behalf of

Eskom SOC Ltd

____

Name:

Capacity:

Who warrants authority

Eskom

MEMORANDUM

To:	Mr Zethembe Khoza, Interim Chairman	Reference:	
From:	Mr Johnny A. Dladla, Interim Group Chief Executive	Version:	0
Date:	25 August 2017		

SUBJECT: **STRATEGIC CO-OPERATION AGREEMENT BETWEEN CHINA HUARONG AND ESKOM HOLDINGS TO BE SIGNED AT THE BRICS SUMMIT IN SEPTEMBER 2017**

PURPOSE

1. To request the Interim Chairman of Eskom to inform the DPE of the possible signing of a non-binding co-operation agreement with Huarong Asset Management China during the BRICS Xiamen Summit between the 3rd and the 5th of September 2017.

2. To request further that the DPE facilitate the necessary protocol and arrangements to allow for the signing of the agreement to take place.

BACKGROUND

3. China Huarong is a prominent provider of integrated financial services and the largest asset management company in the People's Republic of China, incorporated on 28 September 2012. The company is a state-owned non-banking financial institution and was previously known as China Huarong Asset Management Corporation, established in 1999 as a financial asset management company. It has assets under management in excess of USD 200 billion.

4. In response to Eskom Holdings' call for an innovative project funding structure for its Capital Programme, China Huarong, through its associated subsidiary, Huarong Energy Africa (HEA)

STRATEGIC CO-OPERATION AGREEMENT BETWEEN CHINA HUARONG AND ESKOM HOLDINGS TO BE SIGNED AT THE BRICS SUMMIT IN SEPTEMBER 2017

(a BEE company), offered a fully funded solution to Eskom Holdings to the value of USD 2 billion.

5. This was received favourably in Eskom Holdings, and a binding term agreement (term sheet) was signed between Eskom Holdings and HEA on 14 March 2017.

DECISION MAKING PROCESS

6. N/A

DISCUSSION

7. We are currently working on a funding facility with Huarong Asset Management (HAM), one of the largest asset companies from China. HAM has proposed this initiative with Eskom as a flagship project for the Chinese Government's "One Belt, One Road" strategy.

8. HAM, in a meeting with us on the 25th July 2017, have proposed that a non-binding cooperation agreement (in support of this relationship) (see Annexure 1) be signed at BRICS summit in Xiamen, September 2017 in the presence of both country presidents.

9. The attached cooperation agreement (Annexure 1) was reviewed and accepted by Eskom Legal (see Annexure 2).

10. Attached as Annexure 3 is a letter to be signed by the Eskom Interim Chairman to the Minister of Public Enterprises requesting the DPEs assistance to facilitate the signing arrangements between China Huarong and Eskom Holdings.

STRATEGIC CO-OPERATION AGREEMENT BETWEEN CHINA HUARONG AND ESKOM HOLDINGS TO BE SIGNED AT THE BRICS SUMMIT IN SEPTEMBER 2017

11. We would appreciate it if the protocol and timelines are discussed with the DPE through the office of the Interim Chairman.

FINANCIAL IMPLICATIONS

12. N/A

BUDGET IMPLICATIONS

13. N/A

RECOMMENDATION

14. It is recommended that the Interim Chairman:

14.1. Inform the DPE of the possible signing of a non-binding cooperation agreement with Huarong Asset Management China during the BRICS Xiamen Summit between the 3rd and the 5th of September 2017 by signing the attached letter (See Annexure 3).

14.2. Request further that the DPE facilitate the necessary protocol and arrangements to allow for the signing of the agreement to take place.

Compiled by:

Poobie Govender
PROGRAMME DIRECTOR PROJECT DEVELOPMENT DEPARTMENT (ACTING)
25 August 2017

STRATEGIC CO-OPERATION AGREEMENT BETWEEN CHINA HUARONG AND ESKOM HOLDINGS TO BE SIGNED AT THE BRICS SUMMIT IN SEPTEMBER 2017

Recommended/Not recommended

Andre Pillay
GENERAL MANAGER, TREASURY
Date:

Recommended/Not recommended

Calib Cassim
ACTING CHIEF FINANCIAL OFFICER
Date:

Recommended/Not recommended

Johnny A. Dladla
INTERIM GROUP CHIEF EXECUTIVE
Date:

Approved/Not approved

Zethembe Khoza
INTERIM CHAIRMAN
Date:

STRATEGIC CO-OPERATION AGREEMENT BETWEEN CHINA HUARONG AND ESKOM HOLDINGS TO BE SIGNED AT THE BRICS SUMMIT IN SEPTEMBER 2017

Annexure 1

Annexure 2

STRATEGIC CO-OPERATION AGREEMENT BETWEEN CHINA HUARONG AND ESKOM HOLDINGS TO BE SIGNED AT THE BRICS SUMMIT IN SEPTEMBER 2017

Annexure 3

Annexure “AP11”

ANNEXURE AP11

AFP-424

Eskom

Mr. C Nevuthanda
Deputy General Manager
Financial Surveillance Department
South African Reserve Bank
PO Box 427
PRETORIA
0001

Date: 31 July 2017

Enquiries:
Tel: +2711 800 4417
Andre Pillay

Dear Mr Nevuthanda,

EXCHANGE CONTROL APPLICATION

Authorised Dealer:	Eskom Holdings SOC Ltd
Eskom Reference:	201717TREAS208
Applicant's Name:	Eskom Treasury
Financing Currency:	US Dollar
Financing Amount:	US$ 2 billion
Purpose of Application:	**SEEKING PERMISSION TO ENTER INTO AN ASSET FINANCING ARRANGEMENT WITH RESIDENT AND NON-RESIDENT FINANCIAL INSTITUTIONS**

Financing Parties:
Arrangers and primary entity: Huarong Energy Africa Private Limited (SA Entity) (HEA)

Programme Development Fee receiving entity: IDEVA INTERNATIONAL GROUP LIMITED (British Virgin Island incorporated entity) (IDEVA)

Programme Development Fee receiving bank: HSBC Hong Kong

Beneficial or related entities: See companies listed in the annexure (Structure and a high level profile of the company)

Eskom

Purpose and high level structure of the Financial Arrangement:

To provide a fully funded "turnkey" asset creation solution for Eskom by way of a Asset Finance Loan. Under this arrangement Eskom and HEA will identify, assess the eligibility of and agree on the projects to be constructed and funded. HEA will, in consultation with Eskom, appoint using their own procurement processes an EPC to build the project through a special purpose entity that will be set up for a particular project construction. Funding will be fully arranged by HEA from the EPCs, parent companies and debt financiers. On completion of the construction of the project HEA will enter into a lease agreement with Eskom for a period of 10 years, which is an equivalent period for the amortisation of the Asset Finance Loan. The lease payments to be paid by Eskom in US$ over the period of the lease will include capital cost of the asset (including installation and guarantee costs) and finance costs. After the lease period the asset will be fully transferred by HEA to Eskom and HEA will be out of the system for that particular asset.

The arrangement is initiated under a development framework agreement where overarching and generic terms and conditions of this arrangement are provided for. This agreement is called an Asset Framework Development Agreement, which is primarily based on an agreed term sheet that was concluded in March 2017 (both documents are attached for your perusal). Various sub-agreements will flow from this Framework Agreement, which will include amongst others the Fee Letter, the Lease Agreement, Memorandum of Agreement between the HEA and the EPC contractors, Security Agreement, Project Documents, Commercial Loan Agreements etc. Most of these documents are in draft form and will be finalised as and when the projects are being developed.

Period of the financing:
The terms of the project loan will be determined on a project by project basis depending on the asset class being developed. It could range between 5 to 15 years, with 10 years being the preferred period of the finance and lease arrangements.

Availability period of the financing arrangement:
Once the project has been included in the approved project list, the project will be exclusively dedicated to this funding structure for a minimum period of 6 months, and the funds will be committed to that specific project until construction is completed. Committed funding would have been raised by HEA in a form of equity from parent companies and debt from commercial lenders and contractors. HEA will conduct, during the period between submission and approval of projects, a due diligence to assess the suitability of the project to the Fund and preselected EPC contractor. Eskom pays HEA to conduct such due diligence.

Interest rate:

Eskom

The rate of interest charged in addition to the capital cost of the project, which will be charges by HEA to Eskom in a form of a lease payment shall be the percentage rate per annum equal to the aggregate of 6 months Libor + marginal rate of 7.2%.
There is no government guarantee attached to this structure and the financing costs includes a premium that is attributable to higher cost of equity and the design, engineering, procurement and construction risk which will be shifted from Eskom to the Huarong Group of companies and EPC contractors.

FEES
This financing structure provides for the following fee arrangement:

Commitment fee:
The commitment fee will be computed at a rate of 0.8% per annum on the unallocated amount to projects. The total programme amount which will be committed to a fund is US$ 2 billion and the balance of this amount that has not been allocated to specific projects will attract a commitment from effectiveness date of the ADFA. The fee will be payable and calculated at each anniversary of the ADFA.

Programme Development fee:
A programme development fee of 1.6% of the programme value is charged and payable as follows: 60% on signing of the Fee Letter and the ADFA and 40% when the conditions precedent to the effectiveness of the ADFA has been fulfilled. This fee will be invoiced by HEA and will be payable to IDEVA as stated before in its HSBC Hong Kong branch.

Due diligence fee:
For projects in excess of US$ 300 million the fee paid to HEA for conducting the due diligence is payable follows:

- 0.1% of the project amount payable for preliminary assessment
- 0.2% of the project amount payable for the full due diligence work to be performed
- 0.2% of the project amount payable for the final approval of funds and legal agreements.

A different fee structure will be provided if the project is less than US$ 300 million.

Cancellation fee:
Should Eskom wish to cancel this financing arrangement, acting in bad faith, before the signing of the ADFA and the Fee Letter a cancellation fee of 0.2% of the program value will be payable.

Hedging strategy:
All the foreign currency payments including payments of lease payments, fees, costs and indemnities will be hedged with Foreign Exchange Contracts (FECs) and Cross Currency Swaps (CCSs).

Eskom

Payment obligations:

Payments including lease payments, fee payments and costs (which could include provisions for set off or counter claims, currency payments, early payment options, banking days, late payments, early payment options, calculation of interest etc.) will be provided and dealt with in the Master Lease Agreement.

We submit this application for the SARB's favourable consideration and approval.

Yours sincerely,

Andre Pillay
General Manager,
Treasury
Date: 20170730

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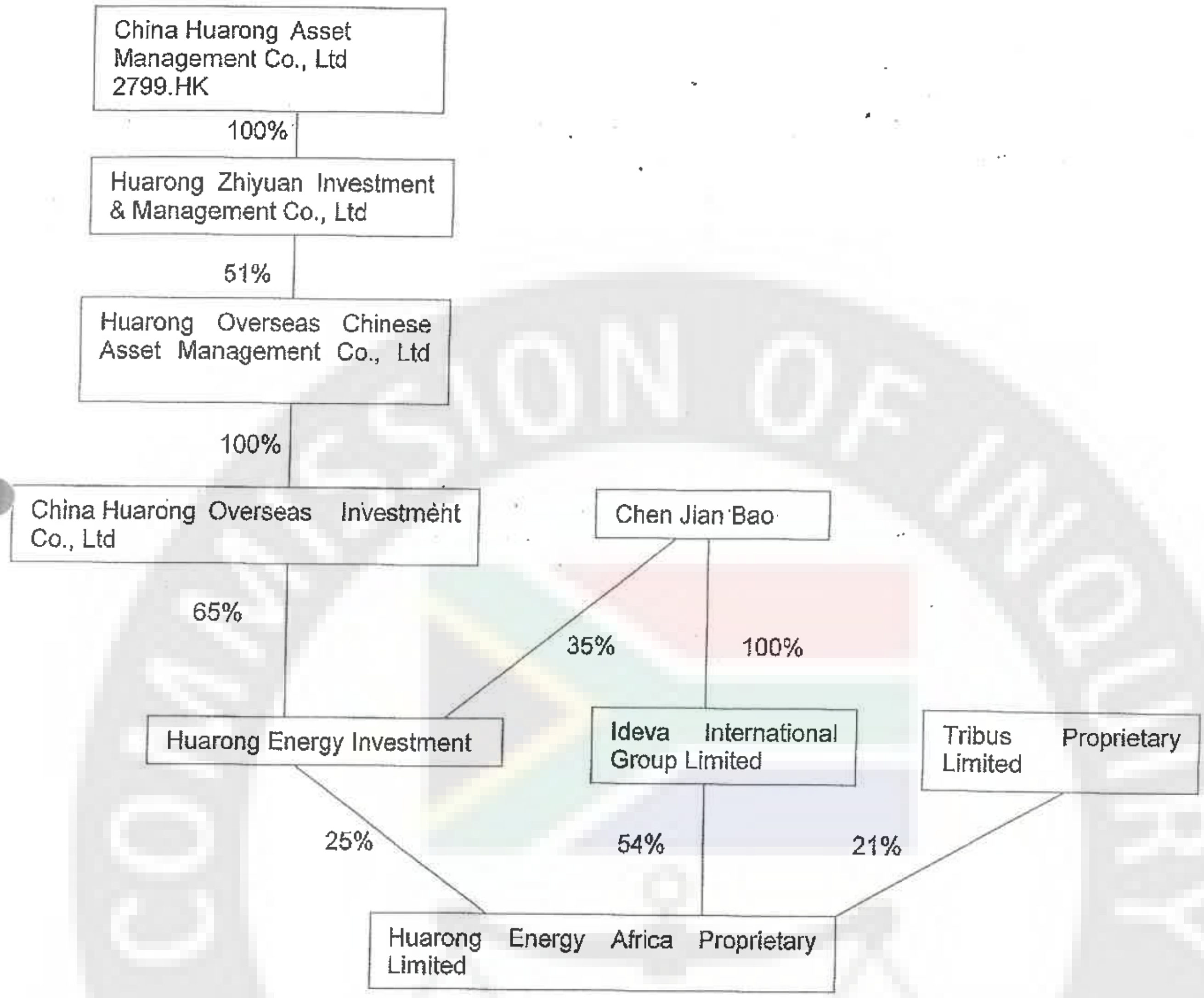
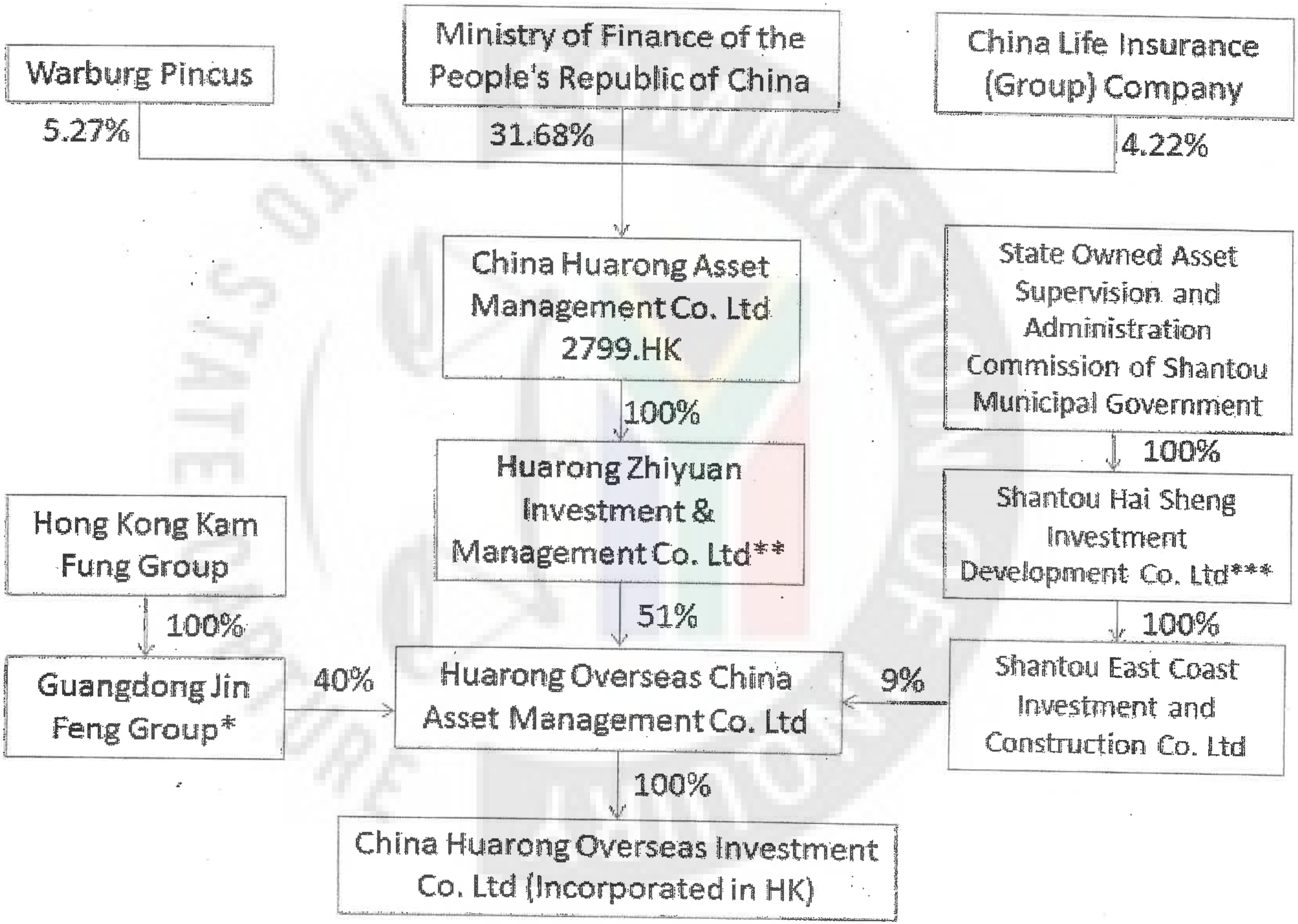
Tel +27 11 800 4585 Fax +27 11 800 5803 www.eskom.co.za

Eskom Holdings SOC Ltd Reg No 2002/015527/30

Group Structure of Huarong Energy Africa Proprietary Limited




Warburg Pincus
5.27%
Ministry of Finance of the People's Republic of China
31.68%
China Life Insurance (Group) Company
4.22%
China Huarong Asset Management Co. Ltd 2799.HK
100%
Huarong Zhiyuan Investment & Management Co. Ltd**
51%
State Owned Asset Supervision and Administration Commission of Shantou Municipal Government
100%
Shantou Hai Sheng Investment Development Co. Ltd***
100%
Shantou East Coast Investment and Construction Co. Ltd
9%
Hong Kong Kam Fung Group
100%
Guangdong Jin Feng Group*
40%
Huarong Overseas China Asset Management Co. Ltd
100%
China Huarong Overseas Investment Co. Ltd (Incorporated in HK)

Fund over view and high level profile of companies within the Group structure

1) **The FUND (as mentioned in the ADFA):** The fund is a Partnership being formed and finalised, whereby Huarong Overseas Investments will be the Majority Shareholder and the fund manager. The total project cost as given in the ADFA will be paid ultimately to the Fund. The fees payable as in the fee letter will be payable to HEA (HEA is in the process of opening an offshore account for the fees). The Program Development Fee is payable to IDEVA on behalf of HEA because HEA has not yet opened an offshore account. Reserve Bank processes are being followed for this.

2) **China Huarong Asset Management Company Limited**: China Huarong is a prominent provider of integrated financial services and the largest Asset Management Company in China, incorporated on September 28, 2012 (Stock Code: 2799.HK). China Huarong is a state owned non-banking financial institution. The Company was previously known as China Huarong Asset Management Corporation and was established in 1999, as a Financial Asset Management Company. In October 2015, it was successfully listed on the Main Board of The Stock Exchange of Hong Kong Limited. With strong business synergy among subsidiaries and branches, China Huarong provides full-licensed, multi-functional, and packaged financial services including non-performing assets management, asset operation and management, banking, securities, trust, leasing, investment, futures and real estate.

3) **Huarong Zhiyuan Investment & Management Company Limited:** Is a wholly-owned subsidiary of China Huarong and focuses on real estate investment and management. China Huarong also uses this subsidiary as a holding company for some other subsidiaries and Huarong Overseas Chinese Asset Management Company is one of these subsidiaries. This is however only a legal structure detail, from management perspective, Huarong Zhiyuan Investment & Management and Huarong Overseas Chinese Asset Management are both first level subsidiaries.

4) **Huarong Overseas Chinese Asset Management Company Limited:** Established in December 2015, Huarong Overseas Chinese Asset Management Co., Ltd. (hereinafter referred to as HROC) was primarily initiated by China Huarong, and joint venture

invested by Guangdong Jinfeng Group Co., Ltd and Shantou East Coast Investment Construction Co., Ltd. as well as China Huarong. Currently, HROC has already set up two wholly-owned subsidiaries, which are Huarong Overseas Chinese Investment Co., Ltd and China Huarong Overseas Investment Holdings Co., Ltd respectively in Shantou and Hong Kong.

As a leading overseas investment platform of China Huarong, HROC mainly conducts proprietary investment and private equity fund management to fully develop "investing plus investment banking" activities across borders, while expanding international business focusing on overseas mergers, acquisition and assets management, etc.

5) **China Huarong Overseas Investments Company Limited**: China Huarong Overseas is an indirect non-wholly-owned subsidiary of China Huarong, one of the four asset management companies approved for establishment by the State Council of China. Their principal businesses include distressed asset management, investment, financial services and asset management .Its H shares were listed on The Stock Exchange of Hong Kong in October 2015. Sino Energy has been actively transforming its business in recent years, exploring investment opportunities with strong potential. It started developing gas station operations in China through acquisitions in the first half of the year and the new business has begun to contribute profit. With national policies favouring and helping to drive long-term development of natural gas and related energy businesses, the investment made by China Huarong Overseas in Sino Energy will enable the latter to hasten business transformation. With an extensive business network and abundant resources, China Huarong Overseas will actively assist Sino Energy in exploring opportunities for expanding energy-related business and generate better returns for shareholders. The resources required by China Huarong Overseas Investments are primarily provided through the holding company resources.

6) **Huarong Energy Investments Company**: Is a subsidiary of China Huarong Overseas Investments and has been formed as a holding company for overseas acquisitions and joint ventures that represent the interests of China Huarong Overseas Investments.

7) **IDEVA International Group Limited:** Is a holding company by nature for investments.

8) **Tribus Proprietary Limited:** Is a company that develops and funds infrastructure projects. The company was formed in 2014 and has been focusing on building a Chinese fund. Currently apart from significant investments from its shareholders its real value comes from its shareholding in HEA and the Fund to be created.

CONFIDENTIAL

2017-24724

South African Reserve Bank
Financial Surveillance Department

2017-08-04

Mr Andre Pillay
General Manager
Treasury
Eskom Holdings SOC Limited
P O Box 1091
Johannesburg
2000

Dear Sir

Seeking permission to enter into an asset financing arrangement with resident and non-resident financial institutions

I acknowledge receipt of your letter dated 2017-07-31 and thank you for the information furnished.

In reply, I advise that we are agreeable to the acceptance of the foreign loan on the basis outlined and for the purpose stated, subject to the provisions outlined in section I.3(B)(iv)(a)(ee) – (ii) of the Currency and Exchanges Manual for Authorised Dealers.

We note that the interest rate applicable to the foreign denominated loan will be 6 month Libor plus marginal rate of 7.2 per cent.

With regard to the reporting of draw downs and repayments, kindly refer to section I.3(B)(vi) and (viii) of the Currency and Exchanges Manual for Authorised Dealers.

O Box 3125 Pretoria 0001 · 370 Helen Joseph Street (formerly Church Street), Pretoria, 0002 · South Africa · Tel +27 12 3133911 0861 12 7272 · Fax +27 12 3133771 · www.reservebank.co.za

The following reference number should be quoted for all future correspondence in this regard: 30120170247241.

Yours faithfully

Divisional Head

Annexure "AP12"

ANNEXURE AP12

Eskom

MEMORANDUM

To: Suzanne Daniels, Group Executive: Legal & Compliance

From: Gabriela Palacios-Flusk, Corporate Specialist: Legal & Compliance

Date: 14 August 2017

SUBJECT: HUARONG ASSET FINANCING

PURPOSE:

1. The aim of this submission is to brief the Group Executive: Legal & Compliance of the Huarong asset financing arrangement as well as the possible signing of a non-binding co-operation MOU with Huarong Asset Management China during the BRICS Xiamen Summit between the 3rd and the 5th of September 2017.

2. It is the writer understands that a briefing memorandum was compiled and sent by Group Capital to the IGCE. I have only been provided a draft of such memorandum which is attached herein as annexure "**A**".

BACKGROUND:

3. Eskom is currently working on an Asset Development Framework Agreement (ADFA) which includes a funding facility with Huarong Energy Africa Proprietary Limited (HEA), which is a special purpose vehicle (SPV) created for this asset finance project which is a subsidiary of Huarong Asset Management (HAM), one of the largest asset companies from China.

4. This project has a history prior to Eskom Legal becoming involved. I herein set out the chronology of events to the best of my knowledge and according to the advices of

members of the Eskom Treasury team as well as attorneys from White & Case LLP (W&C).

5. THE BINDING TERM SHEET

5.1. A binding term sheet was signed by Eskom in regard to the ADFA and other related issues. I was not part of the team advising on the binding term sheet, and was only given a copy of the signed term sheet tonight;

5.2. The binding term sheet was signed by Anoj Sing on 14 March 2017, in his capacity as Group Chief Financial Officer. Such is attached as annexure "**B**";

5.3. As this document binds Eskom contractually and financially, such should have had at least the support and/or approval by the Acting Head (GM): Eskom Legal & Compliance. I have not seen any documentation in this regard;

5.4. W&C were on brief through Eskom treasury for this term sheet. It seems, from emails from W&C, that they were brought in a day or two before the singing of the term sheet. My understanding is that W&C had advised Eskom against signing the term sheet because of its binding nature and the severity of the binding conditions to the detriment of Eskom, namely but not limited to:-

5.4.1. " Key Financial Terms

Financial terms appear onerous generally, including (based on US$1.5bn, where applicable):

<u>Term Sheet Cancellation Fee</u>: US$3m (0.2% of program value), as referred to above under 'Term Sheet – Binding Nature'.

<u>Signature Fee of ALFA</u>: US$24m fee (1.6% of program value) payable on signature of the ALFA, described as a 'Facility fee'. This is despite the ALFA not providing any commitment of funds by HEA, with that being subject to due diligence etc.

<u>Due Diligence Fee</u>: aggregate circa US$7.5m fee if full disbursement requested – for each project, it is an aggregate fee of 0.5% (for projects over US$300m, different undisclosed pricing if under), and does not appear to be linked to successful approval/drawdown for such project.

<u>Annual Commitment Fee</u>: Annual fee of 0.8% of funds made available but uncommitted by Eskom from the 'closing date', which links into CP satisfaction under the ALFA, but it is not clear if it involves any actual commitment to proceed by HEA, and so may not be analogous to a facility agreement's commitment fee.

Interest Rate: Interest rate is 6 months LIBOR plus 7.2%."

5.5. Key emails from W&C on the term sheet are attached as annexure **"C"**

5.6. The term sheet was signed despite W&C's advices against accepting the terms.

6. THE ASSET DEVELOPMENT FRAMEWORK AGREEMENT and FEE LETTER

6.1. Eskom Legal was instructed by Eskom Treasury (although Poobie Govender is leading the project) to assist with reviewing the ADFA (drafted by Norton Rose: attorneys for Huarong) during May 2017. At this time, W&C had already done most of the reviewing work and some of W&C's material comments were dealt with and incorporated by Norton Rose into the ADFA.

6.2. Nonetheless, some of the main issues of contention were the issue of the fee arrangement and the ownership of the intellectual property. Originally the view from the legal team was that a facilitation fee should be paid upon the completion of a milestone or for a certain deliverable. At one point the parties agreed to have the terms of the facilitation fee being part of the Condition Precedent of the ADFA. Soon after, the legal team was advised that the fee structure was moved to a "Fee letter". It was clear that the parties were keen in signing the agreement during late May/early June 2017.

6.3. W&C persisted with its advice regarding some of the commercial terms but most importantly about the facilitation fee. The latest email from W&C regarding the ADFA is hereby attached as annexure "D". Although such was moved to the Fee letter, such letter still bound Eskom to pay an entity that:

6.3.1. Had no links to the transaction (so there was no value provided for the payment which Eskom was bound to make) and;

6.3.2. Ideva International Group Limited (Ideva) appears in the Huarong Asset financing documentation only in the context of the fee letter. The Ideva incorporation documents, as provided by Norton Rose, seem to be standard company registration documentation from the British Virgin Islands. These did not reveal the identity of directors or shareholders.

6.4. Moreover, I advised Eskom treasury to task Eskom's Business Intelligence department to provide information regarding the parties to the project. The email containing the information from Business Intelligence is part of the email chain under annexure "E"

6.5. I addressed an email to Andre Pillay and Sincedile Shweni on 14 June 2017, setting out my discomfort regarding Ideva's role in the project as well as agreeing with W&C advices on the matter. The email is herewith attached as annexure "E".

6.6. Since the emails referred to above, neither W&C nor myself received any other correspondence regarding the ADFA or the Huarong Asset finance project, until the request for legal sign off by Poobie Govender on the non-binding MOU between Eskom & Huarong Asset Finance.

7. NON-BINDING MOU- STRATEGIC COOPERATION AGREEMENT

7.1. On 26 July 2017 Jeany Lekganyane was requested by Poobie Govender to review the MOU and provide legal sing off to a non-binding MOU, pursuant to a meeting between the Chinese delegation from HAM and Eskom representatives (which includes Poobie Govender and Andre Pillay) on 25th July 2017, wherein HAM proposed that a non-binding co-operation agreement (in support of this relationship) be signed at BRICS summit in Xiamen, September 2017 in the presence of both country presidents.

7.2. Jeany, being aware that I had been dealing with the Huarong ADFA, asked Poobie to refer the matter to myself and White & Case.

7.3. W&C and I reviewed the MOU and due to the non-binding nature of the terms, we were *ad idem* that there would be no harm in signing the proposed MOU. Herewith attached as annexure "F" is the W&C advice and as annexure "G" is the email from Poobie Govender to a HAM representative, sending the approved version of the MOU together with a press release in connection with Eskom/China/BRICS projects.

DISCUSSION:

8. The Huarong asset financing submission is before the Investment Finance committee (IFC), to be tabled on Tuesday 15th August 2017. At the time of writing this memorandum, I have no indication on the reason why a non-binding MOU is being presented for authorization at IFC as the MOU does not bind Eskom to any commercial, technical or

financial commitments.

9. It is recommended that the submission be carefully scrutinized to understand the reason for this project being tabled at IFC in light of the fact that:

   9.1. The ADFA has not been finalized as there are still legal issues which remain unresolved therefore Eskom Legal has not provided legal sign off as required;

   9.2. Similarly, the fee letter, due to the nature of the parties proposed to be compensated has not been signed off by Eskom Legal; and

   9.3. The only document singed off by Eskom Legal is non-binding MOU which has no binding effect on Eskom therefore it should not be before IFC.

FINANCIAL IMPLICATIONS:

10. Should Eskom be in breach of the Huarong term sheet, Eskom may be liable to pay the cancellation fee as set out in the binding term sheet. W&C has advised that due to the nature of the parties to the deal, it is unlikely that Eskom will be sued for this cancellation fee.

BUDGET IMPLICATIONS:

11. n/a

RECOMMENDATION:

12. It is recommended that the Group Executive: Legal & Compliance:

    12.1. reviews the submission from Group Capital to the IFC regarding the Huarong Asset funding project and oppose any approvals if such are against legal advise as set out in this memorandum;

    12.2. requests reasons from the relevant signatories and senior officials as to why the binding term sheet was signed without following proper legal and governance processes; and

12.3. requests reasons as to why Group Capital and Eskom Treasury is persisting with the Huarong Asset funding project despite legal advice regarding the terms of the ADFA and the fee letter.

Compiled by:

____

Name: Gabriela Palacios-Flusk
Title: Corporate Specialist
Date:

Approved/ Not Approved

____

Suzanne Daniels
Group Executive: Legal and Compliance
Date:

Annexure "AP13"

Eskom	SUBMISSION DOCUMENT	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary	

EXECUTIVE SUMMARY

SUBMISSION TO IFC BOARD ON 15 August 2017

1. **TITLE OF THE SUBMISSION**
   HUARONG ASSET FINANCING

2. **RESOLUTION REQUIRED**
   It is required that
   2.1 The IFC Board mandates Eskom Treasury to conclude a financing arrangement with associate agreements with Huarong Energy Africa Limited (HEA) amounting to between US$ 1.5 billion and US$ 6 billion.
   2.2 Delegate the power and authority to give effect to the above to the Chief Financial Officer or equivalent.

3. **SUMMARY OF FACTS**

   3.1 Salient Facts

On the 3 February 2017, IFC Board gave Eskom Treasury the Mandate to negotiate but not enter into a financing agreement between Eskom Holdings SOC Ltd and HEA (See Annexure A). Eskom has since negotiated the terms and conditions of the Asset Development Framework Agreement (ADFA) and that have resulted in this framework agreement being in a final and agreed form. The ADFA provides for the payment of fees, the terms of which are contained in a separate fee letter (See Annexure B). Eskom Treasury is requesting the Mandate to conclude this financing arrangement.

Following the IFC Board approval, Eskom Treasury engaged in negotiations that resulted in the signing of the Term sheet on the 14 March 2017 (See Annexure C).

On the 17 May 2017, Eskom Treasury received an approval from the Board Tender Committee to conclude a financing agreement (See Annexure D). The approval was sought to validate the procurement process followed to obtain and proceed with the proposals for innovative funding that do not require use of government guarantees.

The funding provided will form part a fully funded "turnkey" type asset creation structure to assist Eskom's capital expansion programme. The structure includes an overarching ADFA which will be concluded between Eskom and HEA, and will provide for the following activities to be in place to give effect to the asset finance arrangement:

i. Provision and approval of project list;
ii. Approval of funding for a specific project;
iii. Selection of the EPC contractors from the panel;
iv. Finalization of SPV Company;
v. Construction by the selected EPC company and
vi. Leasing of the asset to Eskom.

The projects listed in the project schedule will be made up of projects built by a panel of Engineering Procurement and Construction (EPC) companies chosen by Eskom and HEA based on the designs and specifications provided by Eskom.

Upon creation of the project asset, it will be placed in a Special Purpose Vehicle (SPV), in which HEA has a 100% share and once Eskom has repaid the corresponding loan in full in a form of lease payments, the asset will then be transferred to Eskom. The repayments of the corresponding loan will commence once the project asset in completed and commissioned to the satisfaction of Eskom, and is held by the SPV as security or collateral over the loan.

The corresponding loan may be repaid over 5 years, 10 years or 15 years, based on the useful life of the Asset, more detail provided the attached Term sheet (Annexure A).

The costs associated and considerations with the financing to be provided are as follows:

- Pricing: Libor plus Spread
- Spread: 720 basis points (bps)
- Fees:
    - Programme Development Fees: 160 bps (once off), which will be paid in two separate installments, the first being upon signing date of the ADFA and the second will be payable after the effective date of the ADFA, which is after fulfilment of the Conditions Precedents.
    - Annual Commitment Fee: 80 bps on uncommitted funding
    - Cancelation fees: 20 bps (once off), should Eskom not proceed before signing the ADFA
    - Due Diligence Fee-
        - Prelim Assessment: 10 bps
        - Full work: 20 bps
        - Final approval: 20 bps
- More details provided in the Fee letter (Annexure B)

It should be noted that the terms in the technical term sheet are superseded by the terms in the attached fee letter and ADFA.

3.2 Financial implications

Eskom	SUBMISSION DOCUMENT	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary	

- The approval of the transaction will contribute towards alternative funding initiatives that are contemplated in the Corporate Plan which includes a Borrowing Plan of R 337 billion for 2017/18 – 2021/22 financial years.

3.3 Human Resource implications
There are no human resource implications.

3.4 Risks (including Environment, Legal or Contractual risks):

- All Loan and Facility Agreements are reviewed and co-signed or approved by the Head of Legal and Compliance or his delegate. Environmental and social conditions and related covenants will be signed off by Senior Manager – Environmental Management on a project by project basis. Where required other specialist functions such as Tax Department or Corporate Finance will be consulted.

- Eskom has not contracted Chinese EPC contractors extensively for its goods and services. A due diligence of these contractors will be conducted by Eskom Engineering to ascertain their capabilities and quality.

3.5 Verification by independent party (if applicable)
N/A

4. OTHER APPROVALS REQUIRED
Parties to be consulted/ informed of decision or further approvals needed:

IFC Board approval.

SIGNED

14-8-2017

GROUP EXECUTIVE **DATE**
Who hereby represents that the above
Information is correct.

Submission prepared by: Andre Pillay
Contact Number: x 4417

Annexure "AP14"

WHITE & CASE

Memorandum

Date: 18 August 2017

To: Suzanne Daniels
Group Company Secretary
Acting Head of Legal
Eskom Holdings SOC Limited

From: White & Case LLP

Summary of discussions to date re. Huarong Energy Africa ("HEA") Asset Financing Program (the "Program")

Please find below a brief summary of discussions that White & Case have been involved in.

1. **Discussions regarding the Program Term Sheet**

1.1 On 9 March 2017, we received a draft of a term sheet for the Program (the "**Program Term Sheet**"), that was described in its title as 'final' and dated 22 February 2017.

1.2 On 10 March 2017, we had an initial meeting with Eskom Treasury to receive some background on the Program Term Sheet. Treasury had indicated that while the concept of the type of turnkey arrangement was potentially attractive, the terms were unfamiliar and they instructed us to look at the Program Term Sheet and provide our high-level thoughts. Based on a preliminary review of the same W&C advised that the Program Term Sheet should not be signed prior to further negotiations and amendment, given it included onerous binding terms for Eskom and was ambiguous as to what was being offered by HEA and who the parties were.

1.3 On 12 March 2017, we provided initial written thoughts on the Program Term Sheet, repeating our advice to not sign in the current form, and further proposing instead of looking to mark up the Program Term Sheet, that first it made sense to consider/clarify certain key threshold queries, including:

(a) Background on HEA. We proposed that further detail on HEA be provided, given that, amongst other things, the Program Term Sheet stated China Huarong Asset Management Co. Ltd ("**China Huarong**") as the "parent company of HEA", but HEA did not appear as a subsidiary on China Huarong's website. We noted HEA should provide a structure diagram (showing all intermediate companies and shareholding percentages) and details of the background of its directors to explain this.

18 August 2017

(b) Source of Funds. We noted HEA is stated as the lender for $1.5bn/up to $6bn, and noted HEA should identify the source of these funds, and when/how they would be committed.

(c) Guarantees, construction etc. risks. We queried the details of if China Huarong would guarantee HEA's obligations, how construction risks (e.g. cost overruns, construction risk, delays etc.) would be allocated between Eskom, HEA and EPC contractors, and related issues.

(d) Financial terms. We flagged that financial terms appeared onerous generally, including (based on $1.5bn, where applicable):

(i) Term Sheet Cancellation Fee: $3m payable on bad faith cancellation/repudiation/termination of the Term Sheet by Eskom before the Asset Loan Framework Agreement ("**ALFA**") is signed (compared to HEA having no obligation to fund).

(ii) Signature Fee of ALFA: $24m fee payable on signature of the ALFA, described as a 'Facility fee' (despite no commitment of funds by HEA as that was subject to due diligence etc.).

(iii) Due Diligence Fee: aggregate circa $7.5m fee if full disbursement requested, not clearly linked to successful approval/drawdown for projects.

(iv) Annual Commitment Fee: Annual fee of 0.8% of funds made available but unutilized (unclear intent as no commitment on signing of the ALFA).

(v) Interest Rate: Interest rate appeared to be "(100% of asset cost / years of asset life) + (LIBOR + 7.5%)" – based on loans being for 5, 10 or 15 years based on the life cycle of assets financed, this would lead to interest rate of LIBOR + 27.5% / 17.5% / 14.2% for 5 / 10 /15 years possibly (intent unclear).

(vi) Security Deposit: Uncertain amount to be left on deposit with HEA (or letter of credit / guarantee provided) - this would be leaving cash with HEA without interest during the loan period that HEA could use freely.

(vii) Early Prepayment: If Eskom prepays a loan, it has to pay all the interest that would have been payable if the loan had not been repaid early (i.e. for the whole 5 / 10 /15 year term). This is unusual, and is effectively a potentially huge prepayment fee.

1.4 We did not hear anything further on the Program Term Sheet until the following month.

1.5 On 11 April 2017, we received an updated word version of the Program Term Sheet (dated 14 March 2017), noting Eskom wanted to proceed with the Program. A number of our queries set out above were clarified (e.g. interest rate set as LIBOR plus a set interest rate), but the majority were not addressed.

1.6 On 12 April 2017, we had a call with Eskom on which, amongst other things, we understood the Program Term Sheet had already being signed, and that Norton Rose Fulbright ("**NRF**") acting on behalf of HEA was drafting the ALFA and would deliver a draft in the week commencing 24 April

2017. On 13 April 2017, we were provided with some further background materials, including a 'HEA Term Sheet Discussion' PowerPoint deck dated 11 January 2017.

1.7 On 18 April, we provided to Eskom a summary of points to be discussed with HEA prior to receipt of the ALFA (and advised that Eskom could, where appropriate, request these points be clarified in the ALFA to the extent possible prior to receipt of the first draft), including:

(a) Program Term Sheet binding. We noted the Program Term Sheet was expressed to be binding on its face, and key areas to note in this regard were:

(i) Cancellation Fee: Noted that a cancellation fee of US$3 million (on the basis of an initial 'program value' of US$1.5 billion) would be payable by Eskom where Eskom has acted in bad faith, by preventing or frustrating the negotiation and conclusion of the ALFA.

(ii) Confidentiality: Noted that, on its face, permitted disclosure appeared to be extremely restricted (i.e. to employees of Eskom only).

(b) Key Structural Term Sheet Points. We provided commentary on a number of areas under the following headings:

(i) Identity of HEA;

(ii) Source / split of funds for projects;

(iii) Role of HEA;

(iv) Identity of EPC contractors;

(v) Identity of Projects;

(vi) Structural Issue – Fit with other Financings;

(vii) Structural Issue – Operating / Maintenance of Assets;

(viii) Regulatory / Structural Issue – Accounting/Tax/Other;

(ix) Key Financial Terms, with subheadings dealing with (a) Term Sheet Cancellation Fee, (b) Signature Fee of ALFA, (c) Due Diligence Fee, (d) Annual Commitment Fee, (e) Interest Rate, (f) Security Deposit, and (g) Early Prepayment.

We can provide a summary of these discussion points if required.

1.8 On 20 April 2017, we had a call with Eskom to discuss the summary we provided on 18 April 2017, and on 21 April 2017 we provided a draft email to Eskom for Eskom to consider sending to HEA asking that the first draft ALFA address a number of points that we identified in our summary of 18 April 2017 (i.e. to ensure that the draft ALFA covered all key concerns).

18 August 2017

2. **Negotiation of the Asset Development Funding Agreement (ADFA)**

2.1 There was a call with Eskom scheduled for 26 April and an all-party video conference scheduled with NRF, HEA and Eskom on 28 April 2017, but both of these were postponed as the initial draft of the ALFA/ADFA was not yet available from HEA.

2.2 On 3 May 2017, we received a first draft of the Asset Development Funding Agreement (“**ADFA**”) prepared by NRF.

2.3 The ADFA was expressed to be the ALFA contemplated in the Program Term Sheet. There were a number of structural issues which were unclear and/or of concern in the draft ADFA.

2.4 The key issues identified were largely still those contemplated in paragraphs 1.3 and 1.7 above. Once again, for ease of reference, these included:

(a) **Fee Structuring:** The manner in which the fees were to be paid to HEA was not consistent with what we expected to see in an agreement or transaction of this nature, given that the Program Development Fee of approximately ZAR400 million was to be paid to HEA on an up-front basis. We would typically expect these fees to become payable only once funding had actually been committed by banks and financial institutions and it seemed more appropriate for the fees to be paid on a milestone structure (ie. against progress by HEA in actually developing and finalizing the Program, the Program structure and the individual projects under the Program).

(b) **Construction risk:** The ADFA provided no clarity on how Eskom will be protected from construction-period and, where relevant, operations-period risks in relation to each project contemplated to be funded under the ADFA;

(c) **Total Project Cost and EPC Contract Price:** The procedures stipulated in the ADFA did not clarify how Eskom would get comfortable with the finalization of the Total Project Cost applicable to each project to be funded under the ADFA.

2.5 This is not a comprehensive list and the original advice can be supplied if required.

2.6 The crux of our concerns was that the draft ADFA provided clarity on how, when and how much HEA would get paid by Eskom (which payment structure seemed unusual and out-of- market) but provided very little concrete detail on how the Program itself would work for Eskom’s benefit without further clarification of the terms and structure of the overall program.

2.7 On 9 and 10 May 2017, W&C prepared a table of issues for Eskom identifying the material perceived risks contained in the ADFA.

2.8 It was agreed with Eskom that given these high-level structural issues, it would be best to progress by way of an initial meeting with NRF to see whether the NRF team could provide a degree of clarity on some of the issues which W&C identified, before drilling down into more detailed drafting issues on the ADFA.

2.9 W&C met with NRF on 11 May 2017 to discuss the ADFA. The meeting was not particularly fruitful as there was little clarity from NRF as to how some of the bigger issues identified would be addressed (other than to assure W&C that these would be set out in various transaction master agreements and that the delivery of drafts of these agreements was imminent).

2.10 Following this meeting, on 11 May 2017 we emailed the full table of issues to Eskom.

2.11 Eskom acknowledged the table of issues needed to be addressed in order to proceed on 12 May 2017 and emailed the table of issues to HEA in the form received from W&C advising HEA that the intention from Eskom's side would be for the respective legal teams to meet to resolve as many of these issues as possible by Monday 15 May 2017.

2.12 On 15 May 2017, based on the table of issues, HEA provided a revised ADFA and a set of responses to the table of issues. There was very little movement on any of the key issues W&C had identified. NRF also provided a draft term sheet for the master lease agreement contemplated in the ADFA.

2.13 We had a call with Eskom to discuss these responses on 16 May 2017.

2.14 W&C also prepared a detailed mark-up to the ADFA setting out the changes W&C proposed be made to the agreement, based on the table of issues. W&C also provided a mark-up of the master lease agreement term sheet received from NRF. W&C sent all of these documents through to Eskom on 17 May 2017.

2.15 On 18 May 2017, Eskom provided input in response to our mark-ups, agreeing with all of the issues identified.

2.16 Consolidated comments including feedback from Eskom were sent to NRF on 18 May 2017 in anticipation of a call with HEA and NRF on 19 May 2017.

2.17 To date, there has been no further feedback on or revision of the master lease agreement term sheet from HEA or NRF.

2.18 Following a conference call on 19 May 2017, NRF distributed a revised draft of the ADFA on 21 May 2017. This revised draft was discussed between NRF and W&C on 22 May 2017. W&C sent through additional comments on the ADFA on 22 May 2017, following this meeting.

2.19 By this stage the issues in the ADFA had been reduced to the following (largely because it was agreed that most of the broader structural issues would not be dealt with under the ADFA but would instead be dealt with under the individual master transaction documents and that these would be negotiated and finalized as conditions precedent to the ADFA becoming effective to protect Eskom's position in light of the binding nature of the Program Term Sheet):

(a) **Program Structure:** There was still no clarity on some of the structural issues relating to the Program although the ADFA had been amended to provide Eskom with sufficient oversight on how these items would be developed to reduce the degree of risk related to these items (by making it clear that these items were still required to be settled in the various transaction documents to Eskom's satisfaction). Some customary protections were included in the draft ADFA by way of concession from HEA;

(b) **Fee Structuring:** It was clear that the issue of fee structuring would not be resolved between the legal teams and, as a consequence, we suggested removing the fee payment provisions from the ADFA and negotiating these directly between HEA and Eskom. HEA continued to insist that the Program Development Fee be paid on signing of the ADFA and yet the ADFA by itself did not provide clarity on the structure of the program, which appeared to W&C to be inappropriate;

(c) **Intellectual Property:** HEA wanted the form of Program to be protected as intellectual property of HEA. This, in our view was very unusual, potentially onerous to Eskom (as it could allow HEA to prevent Eskom entering into comparable transactions with third parties in the future) and ultimately unworkable.

2.20 NRF distributed a revised ADFA on 23 May which included the same fee provisions and also provided that the fees would be payable to a nominee of HEA, Ideva International Group Limited (**"Ideva"**).

2.21 It was not clear to W&C how Ideva was related to HEA and W&C requested customary due diligence information from HEA and NRF to investigate Ideva. The preliminary company documentation we received and a very simplified structure chart did not provide any real clarity on the relationship between China Huarong, HEA and Ideva.

2.22 On 3 June 2017, NRF distributed a further revised ADFA which removed the fee payment provisions, on the understanding that these would be separately addressed in a fee letter to be signed between Eskom and HEA.

2.23 W&C provided comments on this document and a further draft of the ADFA was issued by NRF on 5 June 2017. The ADFA was now largely in agreed form, subject to two material caveats:

(a) all of the issues relating to the fees payable under the Program remained outstanding; and

(b) clarity on the full program structure would only be agreed in the detailed master transaction agreements, of which only a single term sheet for a single agreement had to that date been issued by HEA and NRF (and no further progress has been made in relation to that document since the W&C comments of 18 May 2017).

3. **Fee Letter, HEA Corporate Structure and Ideva**

3.1 On 5 June 2017, Eskom sent W&C a copy of the signed Program Term Sheet (until this time, W&C had been working with the final draft Program Term Sheet in Word format) as well as a draft fee letter which had been prepared by HEA and sent to Eskom.

3.2 W&C provided Eskom with comments on this draft fee letter on 6 June 2017. The most material issues identified by W&C were the following (consistent with our equivalent comments on the fee provisions in the ADFA):

(a) **Program Development Fee:** The program development fee should not be payable by Eskom to HEA in full and on an up-front basis. We proposed a back-ended milestone payment structure which would give Eskom a greater degree of control over the fees and greater ability to confirm that the program was being successfully developed by HEA. The bulk of the fees (75% in total) in the W&C proposal would become payable on approval of funding by the lenders (25%), actual payment of loan proceeds to the project SPV (25%) and the issue of notice to proceed under the first EPC Contract (25%). Only 5% of the Program Development Fee would be payable upon signature of the ADFA;

(b) **Commitment Fee:** The available Commitment definition needed to reflect actual committed and available funding amounts not yet drawn by Eskom, not merely program value not yet received as funding under the Program (in other words, no commitment fees should become payable unless there was actual committed but undrawn funding available to Eskom under the Program);

(c) **Non-refundable fees:** It was not acceptable that the fees were being paid on a "non-refundable" basis, where there was no assurance that HEA would ever successfully develop the Program;

(d) **Identity of Payee:** The fees were payable to a nominee of HEA (Ideva, contemplated above) and it was unclear to W&C what relationship, if any, this entity had to the transaction, to HEA and to China Huarong.

3.3 NRF and HEA were asked to provide further information on the unknown payee entity, Ideva, but ultimately what was provided reduced W&C's level of comfort with this payee and the HEA group structure generally:

(a) HEA was only incorporated in South Africa in February 2017;

(b) Ideva was the majority shareholder in HEA, Ideva itself being a shelf company registered in the British Virgin Islands and holding a bank account in Hong Kong, having no direct link to China Huarong and having no trading history (indeed, no financial statements were available and when requested, very generic and uninformative financials were provided);

(c) China Huarong itself only indirectly held a minority stake in HEA (25%) (which only owned a minority stake in HEA through three other subsidiaries, including by way of Huarong Real Estate Co. Ltd's 51% shareholding in the Huarong Overseas Chinese Asset Management Co. Ltd.).

3.4 According to the due diligence documentation provided by NRF and internal investigations carried out by W&C:

(a) HEA is a newly-formed (28 July 2015), South African-incorporated company that has six directors:

(i) Chen Jian Bao (also Chairman and Chief Executive Officer of Sino Energy International Holdings Group Limited ("**SEIH**") and sole shareholder and director in Ideva International Group Limited ("**Ideva**"));

(ii) Fu Qu;

(iii) Kwan Siu;

(iv) Yan Sui;

(v) Bhekizenzo Rex Madida (also Executive Director: Business Development of Tribus (Proprietary) Limited ("**Tribus**"); and

(vi) Rajeev Thomas (also Managing Director and co-founding partner of Tribus).

(b) According to the structure chart sent to us by NRF, HEA has three shareholders:

(i) Tribus (21% of HEA);

(ii) Ideva (54% of HEA); and

(iii) Huarong Energy Investment Company Limited ("**HEIC**") (25% of HEA).

3.5 The structure chart initially provided no clarity on the respective shareholding in HEA of each of these entities but this was subsequently clarified. It also emerged that Chen Jian Bao had a 35% shareholding in HEIC which provided some link to China Huarong but the nature of the relationship remained unclear.

3.6 W&C had previously (through resources from our Hong Kong and Beijing offices) prepared an internal corporate structure chart from publicly available information attempting to trace how China Huarong could be classified as the 'parent' of HEA, and the information that was available from initial public searches (with no verification) was as follows:

(a) China Huarong Overseas Investment Holding Co Limited ("**China Huarong Overseas**") is a indirect non-wholly owned subsidiary of China Huarong;

(b) HEIC is 65% owned by China Huarong Overseas;

(c) SEIH is 29% directly owned by HEIC;

(d) SEIH is 45% directly and indirectly owned by China Huarong Overseas (i.e. including the 29% owned via HEIC), and this is a controlling interest;

3.7 We previously assumed that HEA was owned/controlled by/via SEIC, but this turned out not to be the case in light of the more detailed second structure chart received from NRF.

3.8 In any event, it appears clear from what has been provided that HEA is not in fact ultimately controlled by China Huarong as stated in the Program Term Sheet. It was also noted that HEA does not appear to be specified as one of China Huarong's subsidiaries on China Huarong's website.

3.9 Tribus appears to have three directors (Rajeev Thomas, Wim Terbblanche and Bhekizenzo Rex Madida). It is unclear whether these directors are also the sole shareholders in Tribus. Tribus itself is incorporated in South Africa and was only registered on 3 February 2014. Its website states that Tribus provides three key services: project development, project funding and SME funding. Rajeev Thomas and Wim Terblanche are also co-founders of EON Consulting, a South African Management Consulting and Engineering company specializing in the utilities and infrastructure business and one of the largest utility management consulting firms in Africa.

3.10 W&C was unable, through its own independent investigations in Hong Kong, to verify what had been supplied by HEA and NRF.

3.11 Various follow up questions were asked to clarify the relationship of Ideva to HEA and it eventually emerged that Ideva was wholly owned by Chen Jian Bao. To date, the relationship between Chen Jian Bao and China Huarong is not clear. We advised Eskom of our concerns about the payment structure and this nominated payee, Ideva (particularly given that (a) the fee payments were expressed in the fee letter to be paid on a non-refundable basis and (b) the fees were supposed to be paid into an offshore bank account of a shelf-company registered in the British Virgin Islands).

3.12 W&C comments on the fee letter were discussed with Eskom on 19 June 2017. The Eskom team agreed that many of the issues identified were very problematic and would have to be appropriately addressed before the fee letter could be signed or any funds paid out by Eskom.

3.13 It was agreed that Eskom would enter into direct negotiations with HEA on the fee letter to try to resolve these issues.

3.14 On 23 June 2017, W&C received feedback from Eskom that the negotiations with HEA were not going well and that no progress had been made on the bulk of the issues raised in our mark-up. HEA was not prepared to deviate from what HEA perceived to be the agreed terms of the Program Term Sheet.

3.15 The feedback W&C received from Eskom suggested that Eskom was prepared to consider entering into a milestone payment structure in terms of which 60% of the program development fee was to be paid on signing the ADFA and the remaining 40% would be paid upon fulfilment of the conditions precedent to the ADFA becoming effective. Whilst ultimately a commercial decision, we advised that this did not fully mitigate the program development risks W&C had identified in its comments on the ADFA and the fee letter, respectively, and that the feedback from the meeting did not address W&C concerns about the fee letter, including those relating to the identity of the payee entity and the manner in which the fees were payable by Eskom to HEA.

3.16 The Eskom team further confirmed that the identity and connection with the various parties needed to be fully investigated to Eskom's satisfaction before the fee letter was signed or any payment made.

3.17 There has been no further feedback or instructions from Eskom on the fee letter since 23 June 2017 (until W&C was asked to provide a form of sign-off on the ADFA, fee letter and the Group structure on 16 August 2017).

4. **Strategic Cooperation Agreement ("SCA")**

4.1 There was no further feedback on the Program from Eskom until 26 July 2017 when Eskom forwarded the draft Strategic Cooperation Agreement ("**SCA**") that China Huarong was proposing to conclude with Eskom, ostensibly as a symbol of China Huarong's commitment to the Program.

4.2 As this was not expressed to be a legally binding document, W&C had minimal comments on the SCA (these were primarily aimed at reinforcing the non-binding nature of the document). W&C advised Eskom that subject to our comments being accepted by HEA, execution of the SCA presented a low risk from a legal perspective. However, W&C once again advised Eskom that the SCA did not address any of the concerns raised by W&C in relation to the fee letter.

Annexure "AP15"

ANNEXURE AP15

Eskom

MEMORANDUM

To: Suzanne Daniels, Group Executive: Legal & Compliance

From: Gabriela Palacios-Flusk, Corporate Specialist: Legal & Compliance

Date: 22 August 2017

SUBJECT: HUARONG ASSET FINANCING

PURPOSE:

1. The aim of this submission is to brief the Group Executive: Legal & Compliance of the:-

2. Huarong asset financing arrangement as well as the possible signing of a non-binding co-operation MOU with Huarong Asset Management China during the BRICS Xiamen Summit between the 3rd and the 5th of September 2017; and
3. the submission by Eskom Treasury to the Investment Finance Committee ("IFC") regarding the singing of the Asset Development Framework Agreement and associated documents.

4. It is the writer understands that a briefing memorandum was compiled and sent by Group Capital to the IGCE. I have only been provided a draft of such memorandum which is attached herein as annexure "**A**". The memorandum only deals with the signing of the non-binding MOU.

BACKGROUND:

5. Eskom is currently working on an Asset Development Framework Agreement (ADFA) which includes a funding facility with Huarong Energy Africa Proprietary Limited (HEA), which is a special purpose vehicle (SPV) created for this asset finance project, which is a

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subsidiary of Huarong Asset Management (HAM), one of the largest asset companies from China.

6. This project has a history prior to Eskom Legal becoming involved. I herein set out the chronology of events to the best of my knowledge and according to the advices of members of the Eskom Treasury team as well as attorneys from White & Case LLP (W&C).

7. White & Case, at the request of Eskom Legal has provided a summary of their involvement on the matter, which is herewith attached and marked annexure "**B**"

8. Aziz Laher has been asked, in the last two weeks, to give Eskom treasury his view in regard to PFMA compliance regarding this transaction. At face value, he has verbally advised that this transaction, at best would require PFMA approval.

9. THE BINDING TERM SHEET

9.1. A binding term sheet was signed by Eskom in regard to the ADFA and other related issues. I was not part of the team advising on the binding term sheet, and was only given a copy of the signed term sheet on 14 August 2017;

9.2. The binding term sheet was signed by Anoj Sing on 14 March 2017, in his capacity as Group Chief Financial Officer. Such is attached as annexure "**C**";

9.3. As this document binds Eskom contractually and financially, such should have had at least the support and/or approval by the Group Executive: Eskom Legal & Compliance. I have not seen any documentation in this regard. I have reviewed the various submissions to Board tender Committee and IFC in this regard; and none give a mandate to Eskom treasury or the Chief Group Financial Officer ("GCFO") to enter into a binding term sheet. At a high level this is a potential breach of the PFMA, as this would be committing Eskom to non-value add and unauthorized expenditure;

9.4. W&C were on brief through Eskom treasury for this term sheet. They were brought in on 9 March 2017 to review the draft term sheet. W&C had advised Eskom against signing the term sheet because of its binding nature and the severity of the binding conditions to the detriment of Eskom. Their advice is recorded in their memorandum attached herein.

10. THE ASSET DEVELOPMENT FRAMEWORK AGREEMENT and FEE LETTER

10.1. Eskom Legal was instructed by Eskom Treasury to assist with reviewing the ADFA (drafted by Norton Rose: attorneys for HEA) during May 2017. The extent of the advice and involvement of W&C is set out in the attached memorandum. Nonetheless, some of the main issues of contention, as per the last draft of the AFDA were the issues of the:

10.1.1. Program structure;
10.1.2. Fee arrangement and
10.1.3. Intellectual property.

10.2. Originally the view from the legal team was that a facilitation fee should be paid upon the completion of a milestone or for a certain deliverable, in order to derive value for the moneys being disbursed by Eskom. At one point the parties agreed to have the terms of the facilitation fee being part of the Condition Precedent of the ADFA. Soon after, the legal team was advised that the fee structure was moved to a "Fee letter". It was clear that the parties were keen in signing the agreement during late May/early June 2017.

10.3. W&C persisted with its advice regarding some of the commercial terms but most importantly about the facilitation fee. Although such was moved to the Fee letter, such letter still bound Eskom to pay an entity that:

10.3.1. Had no links to the transaction (so there was no value provided for the payment which Eskom was bound to make) and;

10.3.2. Ideva International Group Limited ("Ideva") appears in the Huarong Asset financing documentation only in the context of the fee letter. The Ideva incorporation documents, as provided by Norton Rose, seem to be standard company registration documentation from the British Virgin Islands. These did not reveal the identity of directors or shareholders.

10.4. Moreover, Eskom's Business Intelligence department provided information regarding the parties to the project. The email containing the information from Business Intelligence is part of the email chain under annexure "D"

10.5. I addressed an email to Andre Pillay and Sincedile Shweni on 14 June 2017, setting out my discomfort regarding Ideva's role in the project as well as agreeing with W&C advices on the matter. The email is herewith attached as annexure "**D**".

10.6. Since the emails referred to above, neither W&C nor myself received any other correspondence regarding the ADFA or the Huarong Asset finance project, until the request for legal sign off by Poobie Govender on the non-binding MOU between Eskom & Huarong Asset Finance.

11. NON-BINDING MOU- STRATEGIC COOPERATION AGREEMENT

11.1. On 26 July 2017 Jeany Lekganyane was requested by Poobie Govender to review the MOU and provide legal sing off to a non-binding MOU, pursuant to a meeting between the Chinese delegation from HAM and Eskom representatives (which includes Poobie Govender and Andre Pillay) on 25th July 2017, wherein HAM proposed that a non-binding co-operation agreement (in support of this relationship) be signed at BRICS summit in Xiamen, September 2017 in the presence of both country presidents.

11.2. Jeany, being aware that I had been dealing with the Huarong ADFA, directed Poobie to refer the matter to myself and White & Case.

11.3. W&C and I reviewed the MOU and due to the non-binding nature of the terms, we were *ad idem* that there would be no harm in signing the proposed MOU. W&C advice is set out in their memorandum in paragraph 4. Annexure "E" is the email from Poobie Govender to a HAM representative, sending the approved version of the MOU together with a press release in connection with Eskom/China/BRICS projects.

DISCUSSION:

12. IFC SUBMISSION – 15 AUGUST 2017

12.1. The Huarong asset financing submission was before the IFC, on Tuesday 15th August 2017. It was not approved by the IFC. Eskom Treasury is seeking to place the submission before the IFC as soon as practically possible but before the next schedule meeting in September 2017.

12.2. It is recommended that the submission be carefully scrutinized to understand the reason for this project being tabled at IFC in light of the fact that:

12.2.1. The ADFA has not been finalized as there are still legal issues which remain unresolved therefore Eskom Legal has not provided legal sign off as required;

12.2.2. Similarly, the Fee letter, due to the nature of the parties proposed to be compensated has not been signed off by Eskom Legal;

12.2.3. The only document singed off by Eskom Legal is non-binding MOU which has no binding effect on Eskom therefore it should not be before IFC; and

12.2.4. There seems to be a number of PFMA issues in this transaction which have not been clarified and/or signed off by Eskom Legal & Compliance.

12.3. Subsequent to the matter being tabled at IFC Eskom legal requested further documentation from Eskom treasury to further understand the underlying nature of the transaction as well as to verify the statements made in the submission to IFC. Such request to Treasury is marked annexure "**F**". Only one of eight documents/ information requested has been forwarded to the writer, despite repeated requests.

13. IFC Minutes of 3rd February 2017 and submission of 15th August 2017 (annexure "**G**")

13.1. In the IFC submission, Eskom treasury indicates that on the 3 February 2017, IFC Board gave Eskom Treasury the mandate to negotiate but not enter into a financing agreement between Eskom and HEA.

13.2. It is clear from the minutes of 3rd of February that :

13.2.1. Eskom treasury team was given a mandate to negotiate but not conclude with HEA. If such is the case, why then did the GCFO sign a binding term sheet, binding Eskom to a number of onerous provisions? In the submission of 15 of August 2017, such signed term sheet is mentioned, but what is not mentioned is the fact that such was a binding term sheet;

13.2.2. The mandate includes the requirement that:

13.2.2.1. "*...with a full disclosure of the names of the shareholders and the value/percentage of each shareholding being presented to the Committee as part of the feedback report;*". This is stressed by several members of the committee as recorded in the minutes. The current structure presented to Eskom by HEA provides for names of companies with very little detail as to who physically is behind these companies;

13.2.2.2. Andre Pillay, Eskom treasurer, represented to IFC that the HEA proposal was part of an RFI issued to the market. He indicated that: -" *An RFI had been issued into the market resulting in the three tabled proposals. In terms of the Huarong proposal it was noted that the submission addressed the Board's and Corporate Plan's initiatives in respect of public partnerships*". It is unclear why Eskom would conclude binding agreements pursuant to an RFI.

13.3. There was an RFP issued on 13 March 2017 (which seems to be pursuant to the RFI), which HEA tendered for on 27 March 2017. The RFP closed on 29 March 2017. It is inexplicable why then was the binding term sheet signed by the GCFO on 14 March 2017. Incidentally, the binding term sheet was part of HEA's tender of 27 March 2017.

13.4. Moreover, Eskom Treasury referred the shortlisted tenderers of the RFP to Eskom's Assurance & Forensics ("A&F") to review the evaluation process. HEA was not amongst the shortlisted tenderers which were reviewed by A&F. Once again this is inexplicable on the facts and documents presented to me, absent a plausible explanation from Eskom Treasury, which has been requested but not forthcoming.

FINANCIAL IMPLICATIONS:

14. Should Eskom be in breach of the Huarong term sheet, Eskom may be liable to pay the cancellation fee as set out in the binding term sheet. W&C has advised that due to the nature of the parties to the deal, it is unlikely that Eskom will be sued for this cancellation fee.

BUDGET IMPLICATIONS:

15. n/a

RECOMMENDATION:

16. It is recommended that the Group Executive: Legal & Compliance:

16.1. reviews the submission from Group Capital to the IFC regarding the Huarong Asset funding project and oppose any approvals if such are against legal advice as set out in this memorandum;

16.2. requests reasons from the relevant signatories and senior officials as to why the binding term sheet was signed without following proper legal and governance processes; and

16.3. requests reasons as to why Group Capital and Eskom Treasury is persisting with the Huarong Asset funding project despite legal advice regarding the terms of the ADFA and the fee letter and possible PFMA implications.

Compiled by:

Name: Gabriela Palacios-Flusk
Title: Corporate Specialist: Legal & Compliance
Date: 23.8.2017

we shouldve progressed reason? Do you have the updated information?

Approved/ ~~Not Approved~~

Suzanne Daniels
Group Executive: Legal and Compliance
Date: 7/9/2017.

Annexure "AP16"

Eskom

MEMORANDUM

To:	Mr Poobie Govender (GM Strategic Projects Department and Acting Programme Director PDD)	Reference	
Cc:	Calib Cassim (Acting CFO)		
From:	Mr Mohamed Khan (Acting GM Corporate Finance)	Version:	
Date:	06 September 2017		

SUBJECT: ANALYSIS OF A FULLY FUNDED TURNKEY OPTION COMPARED TO AN ESKOM EPC PROJECT FUNDED THROUGH TREASURY TYPICAL FUNDING SOURCES

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1. PURPOSE

The purpose of the analysis is to compare the financial impact of a project contracted on a turnkey basis and funded by non-SA government guarantees from traditional funding sources to the Huarong Energy Africa (HEA) option.

In addition, a high level review of the HEA term sheet signed by Eskom on 14 March 2017 was done to identify other risks that Eskom could be exposed to.

2. SCOPE AND ASSUMPTIONS

Please note that the Term Sheet is at high level and certain assumptions have been made as part of the analysis as details would differ depending on specific project negotiations.

- Three scenarios were analysed and each scenario is based on information available as of 31 August 2017.
- As part of the financial analysis we have assumed that the cost of the capital project is the same under all funding scenarios as the contracting for the construction would be on a turnkey basis thereby transferring execution risk, cost overrun and other risks to the EPC contractor.

Analysis of a fully funded turnkey option compared to an Eskom EPC project funded through Treasury typical funding sources

2.1. Scenario 1: Eskom Self Funds via a bond issue

- Eskom conducts the procurement process to identify the EPC contractor and enters into a fully wrapped EPC arrangement (turnkey basis) and provides its own funding through issuing an unguaranteed international bond through it's 'business as usual' Treasury processes,
  - US$2bn capital project cost estimate (including a premium for a fully wrapped option) is used for illustration purposes,
  - Upfront facility fees of 1.1%
  - Annual fee of 1% on the amount of the funds made available but uncommitted by Eskom The bond issue is for 15 years,
- The coupon interest is paid over 15 years semi-annually with the face value being paid at the end of the 15 years,
- The bond proceeds are received on date of the bond issuance, and since the construction is assumed to be over a 5 year period, the unused cash is placed on deposit. Payment to the EPC contractor is based on achievement of key milestones.
- Interest is earned (on the unused cash available) on the basis that the money is spent evenly over the 5 year construction period,
- Interest is earned at US$ Semi-annual rate of 1.47%, and
- The bond is issued at a cost of 6 months Libor +520 to 570 basis points,

2.2. Scenario 2: ECA funding

- Eskom conducts the procurement process to identify the EPC contractor and enters into a fully wrapped EPC arrangement (turnkey basis) and ECA funding is used,
- US$2bn capital project cost estimate (including a premium for a fully wrapped option) is used for illustration purposes,
- The ECA is over a 15 year period (5 year drawdown and 10 year repayment) to be repayable semi-annually,
- The ECA loan is raised at a cost of 6 months Libor +470 to 520 basis points (fixed rate and includes a premium for guarantees),

Analysis of a fully funded turnkey option compared to an Eskom EPC project funded through Treasury typical funding sources

- The ECA rates are less than the Eskom issued bonds as the banks would look at the Country ECA risk in their credit assessments. The ECA is guaranteed by the country providing the ECA as the ECA country government takes the risk and therefore the rates are dependent on the specific country risk. (This form of funding implies that SA and Eskom does not need to provide any explicit guarantees), and
- Invoices are paid directly by the ECA to the EPC contractor, based on achievement of set milestones and verification by Eskom.
- During construction, interest is capitalised and only paid post construction completion.

2.3. Scenario 3: Huarong option

- The Funder identifies the EPC contractor and provides a fully funded 'turnkey' type asset creation solution.
- US$2bn capital project cost estimate (including a premium for a fully wrapped option) is used for illustration purposes,
- Upfront facility fees of 1.6% ($32m – ZAR416m)
- Annual fee of 0.8% ($16m – ZAR208m based on $2 000m) on the amount of the funds made available by HEA but uncommitted by Eskom
- Due diligence fees of 0.5% ($10m – ZAR130m based on $2 000m project value) of the project value consisting of costs for a preliminary assessment, full due diligence work and legal agreements
- No sovereign guarantees required
- The project construction period is 5 years
- The loan is available at a cost of Libor +720 basis points
- HEA pays the contractor directly during the 5 year period, and the completed project is handed over to Eskom after the 5 year period.
- The loan is repayable over 10 years semi-annually after the 5 year construction period, and
- During construction, interest is capitalised and only paid post construction completion.

Analysis of a fully funded turnkey option compared to an Eskom EPC project funded through Treasury typical funding sources

3. RESULTS

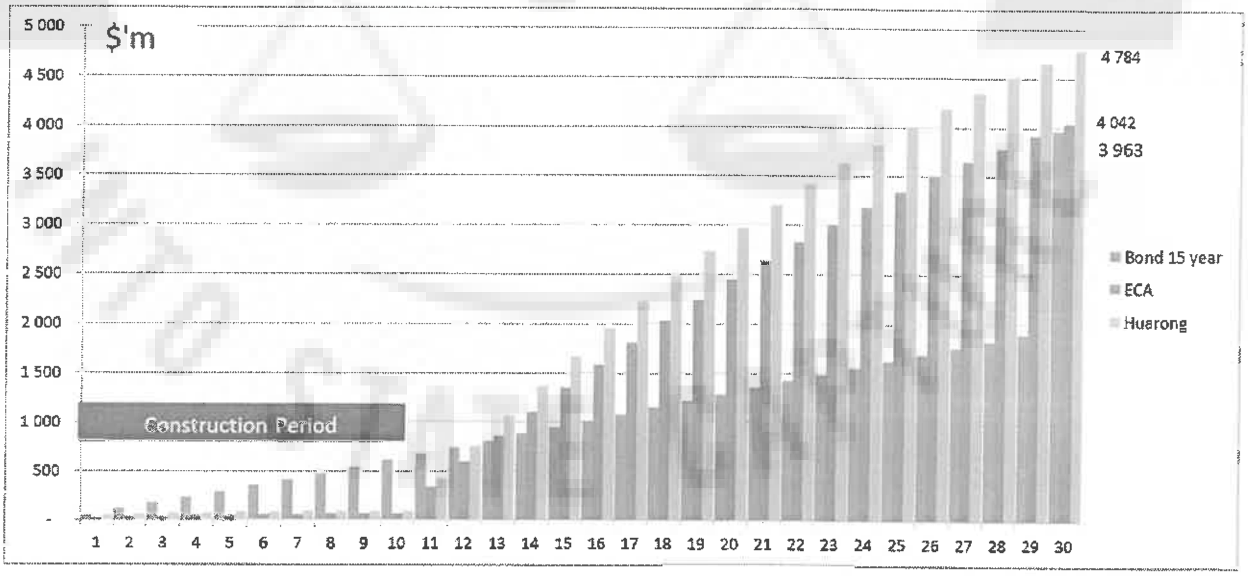
3.1 The table below represents the net present value ($'m) of the three scenarios:

	Scenario		
	1	2	3
Spread	Eskom Bond	ECA	Huarong
Libor + 470bps		2 686	
Libor+ 520bps	2 568	2 806	
Libor + 570bps	2 682		
Libor + 720bps			3 339

The results indicate that the traditional Eskom funding sources even at the upper range of their pricing is more favourable than the Huarong option, which is further illustrated by the graph below.

3.2 The graph below illustrates the cumulative nominal cash flow/payment profile **($'m)** of each of the 3 scenarios.

Please note that the repayments are semi-annual, as such the cash flows below represent 30 periods over 15 years.



Analysis of a fully funded turnkey option compared to an Eskom EPC project funded through Treasury typical funding sources

3.3 Break even analysis

The table below shows the point at which the bond and ECA would be comparable to the Huarong option.

	Scenario		
	1	2	3
	Eskom Bond	ECA	Huarong
To achieve the equivalent NPV as the Huarong loan of $3 339m	Libor + 860 bps	Libor + 770 bps	Libor +720 bps
% increase in basis points from current quoted rates (at the top end)	51% (from 570 to 860 bps)	40% (from 520 to 770 bps)	
% increase in basis points from current quoted rates (at the bottom end)	65% (from 520 to 860 bps)	55% (from 470 to 770 bps)	

3.4 ADDITIONAL POINTS TO CONSIDER

- The upfront facility fees are payable as soon as the Asset Loan Framework Agreement (ALFA) is signed. This does not work in Eskom's favour as the duration it takes to go out to the market and to create the SPV will not be in a short time-span and Eskom would incur this cost upfront without any guarantees of a successful fully wrapped solution.

- The above also applies to the annual fees of 0.8% which Eskom would start incurring from first day of signing the facility but due and payable by Eskom at the end of each year commencing from closing date of the ALFA.

- The total cost that Eskom will incur on the date of signing is $32m (ZAR416m). This fee is payable in two instalments, $16m (ZAR208m) on the date of signing and a further $16m (ZAR208m) after 6 months. It is unclear whether Eskom will be refunded the costs if the project does not go ahead or if the project is not successfully completed.

Analysis of a fully funded turnkey option compared to an Eskom EPC project funded through Treasury typical funding sources

- As per Treasury, It should be noted that Huarong have indicated that they would be raising funding via 70% debt and 30% Equity. The debt would be raised through bond issues, DFi's and ECA's which come at a relatively lower rate. The rate applicable is fixed Libor +7.2% which does not allow for adjustments to the rate where Huarong are able to secure more favourable terms. The rate should have been negotiated with a fixed and variable portion so that the Eskom is able to benefit from the down swing in rates and is hedged through having limited exposure in times of an upswing in rates.

- If Huarong approaches the funding markets as indicated above (Bonds, DFi's and ECA's) then they will be cannibalising lenders that Eskom can access directly at potentially lower costs.

- The term sheet does not cover aspects such as what criteria will be used to choose projects, what the costs of the project will be and whether the EPC contractor will be selected on a fair, transparent and competitive basis, in line with Eskom procurement policies.

- It is unclear what Eskom's recourse will be in case of an unsuccessful execution of a project.

- The review of the provisions contained in the term sheet indicate that in certain instances Huarong has final decision making rights and control over certain issues. This is likely to result in risks being borne by Eskom which could lead to cost overruns and possible disputes.

- While the comparison has been done against Eskom traditional sources of funding, we recommend that Treasury takes a holistic view of the full Eskom borrowing programme to understand what sources of funding are still available and how the Huarong option measures up against other options available.

- A cancellation fee of 0.2% of the amount of the program value is payable if Eskom cancels the term sheet. Assuming this fee is based on the indicated $2bn, this would amount to four million dollars ($4 million). With the addition of the cancellation fee being paid, the Eskom traditional sources remain more cost effective than the Huarong option.

4. CONCLUSION

- The financial comparison of traditional funding options versus the Huarong proposal indicates that the Huarong proposal is more expensive relative to Eskom's traditional sources of funding where Eskom can also contract on a fully wrapped EPC basis.
- The high level review of the term sheet also indicates that certain provisions provide rights to Huarong that could result in risks being borne by Eskom that Eskom is unable to mitigate.
- Given the cost implications, risks and uncertainty around the legal, commercial and regulatory aspects, as detailed in 3.4 above, the overall conclusion is that the proposed Huarong solution is onerous and more expensive than Eskom's traditional sources of funding.
- It is therefore recommended that all other funding options should be exhausted before the Huarong option is considered and that a detailed legal, risk, regulatory and commercial due diligence be performed prior to signing the Asset Loan Framework Agreement (ALFA). It has been noted that IFC has requested that a full legal review be conducted before signing of the ALFA.

Analysis of a fully funded turnkey option compared to an Eskom EPC project funded through Treasury typical funding sources

- It should be noted that the conclusion of this analysis is solely based on the Huarong proposal (not private sector participation in general) and the comparison of the costs & risks associated with their proposal compared with other sources of funding available to Eskom Treasury.

Compiled by

Mohamed Khan
CORPORATE FINANCE GENERAL MANAGER (ACTING)
Date: 6 September 2017

Annexure "AP17"

ANNEXURE AP17

Andre Pillay

From:	Andre Pillay
Sent:	Thursday, 26 October 2017 09:38
To:	Calib Cassim; Sean Maritz
Subject:	FW: IFC request : Huarong

Sean

Apologies mistakenly send the response, in the process of finalising the response.

Thanks
Andre

From: Andre Pillay
Sent: 26 October 2017 09:32 AM
To: Sean Maritz
Subject: RE: IFC request : Huarong

From: Sean Maritz
Sent: 25 October 2017 10:13 PM
To: Calib Cassim
Cc: Andre Pillay; Wawa Xaluva
Subject: RE: IFC request : Huarong
Importance: High

Hi Caleb

After applying my mind the following :

1) ~~SPV: Eskom will not own or create an SPV,~~ SPV has not been legally formed
Eskom will lease asset once it is built and is productive.
Most likely be reflected on Eskom's Balance Sheet, IFRS as this asset will be created for Eskom. In the ADFA, should the project fail HEA will sit with an asset they can do nothing with, so legally they would want recourse therefore it is an SP that will require NT approval (even if we just want to ensure governance).
The asset will transfer to Eskom when loan is repaid.
No, after it is completed it will transfer to Eskom
This is a built own transfer model and is common in the construction industry. Probably the first for Eskom.
A crude example is the formation of of joint ventures at Medupi or Kusile for delivery of civil works.
Agreed
The formation of such a spv did not require pfma approval as Eskom was not involved with this relationship. If still required, PFMA clarity can be inserted as a CP in ADFA.
Yes, want if not granted you have paid the comment fee and you are back a F&W expenditure

2) The ADFA fund facility is R2bn and can be increased at Eskom discretion. This is a loan facility and should be with board IFC, CE and CFO delegation. I understand the CE and CFO can sign facilities up to USD5bn. Each project that uses the facility will still go through the normal approval process and PFMA will be sought for each investment depending on value. Also before any full loan agreement is signed Eskom will get a legal opinion as this is a term sheet. Loan agreement is a big agreement for each full loan. Term sheet is fixed

3) Cancellation fee is only payable if we do not proceed with the AFDA and could be regarded as fruitless and wasteful expenditure especially if Eskom had no intent to continue with the transaction (bad faith). The reason why a funder requires it is due to expenditure they would incur to raise funds. No , they have not raised any funding.
4) All shareholders relationships where provided
   Please see the W&C report

Calib please provide your thoughts on the matter. And once again I ask what other options are on the table as a matter of urgency.
I need to give the board and shareholder comfort we are not in a liquidity crisis

Regards
Sean

From: Sean Maritz
Sent: Wednesday, 25 October 2017 7:48 PM
To: Calib Cassim <CassimC@eskom.co.za>
Cc: Andre Pillay <PillayAn@eskom.co.za>; Wawa Xaluva <XaluvaMC@eskom.co.za>
Subject: RE: IFC request : Huarong

Dear Calib

I understand and will apply my mind and also discuss with legal to understand if there is a workable solution or if we should just abandon the transaction.

Caleb/Andre in meantime please provide me a list of other options on the table now as liquidity is a major issue right now.

Thanks

Sean

From: Calib Cassim
Sent: Wednesday, 25 October 2017 6:15 PM
To: Sean Maritz <MaritzSa@eskom.co.za>
Cc: Andre Pillay <PillayAn@eskom.co.za>; Wawa Xaluva <XaluvaMC@eskom.co.za>
Subject: IFC request : Huarong

Hi Sean,

Please find supporting documents on the Huarong proposal :

1. Corporate Finance memo
2. Treasury memo
3. Legal (internal) memo – Wawa has not yet reviewed
4. White & Case (external) advise received on the proposal
5. Term sheet
6. Eskom short term facility proposal

Sean my understanding of the sum of these documents indicates several areas of concerns and that the risks would need to be resolved.

From a PFMA perspective:

- The financing arrangement will require PFMA approval on account of SPV formations as well as envisaged project values
- The signing of a binding term sheet for a financing arrangement of between 1.5-billion and 6-billion USD, may very well be regarded as a future financial commitment envisaged in section 66 of the PFMA – this requires BOARD approval (IFC limit is 250-m rand) – if there is no evidence of the required approval, then signing would amount to a breach of section 51 which would be an act of financial misconduct, and furthermore is also a criminal offence in terms of section 86(3)
- If the main agreement is not signed then a cancellation fee becomes payable, which may be regarded as fruitless & wasteful expenditure

Furthermore, in terms of recent FICA amendments the beneficial owners of all counterparties must be known – subject to confirmation this indeed applies to Eskom, then payment of a facilitation fee to Indeva cannot be made until the beneficial owners (natural persons) are known, which is not the case currently.

Special note should be taken of Para 1.3 (d) of White & Case's memo, dealing with financial terms, which they flagged as onerous

In summary this could lead PFMA contraventions, irregular expenditure and charge of financial misconduct against the Board.

Calib

Annexure “AP18”

ANNEXURE AP18

Eskom

Mr. Rajeev Thomas
Chief Executive Officer
Huarong Africa Energy
Johannesburg
2001

Dear Rajeev

Short-term Facility of US$1.5 billion

The meeting of 20 October 2017 refers

As indicated in the discussion during the above metioned meeting, that Eskom would like to utilize the Huarong Africa Energy (HEA) Facility that is currently being considered by Eskom for shortterm funding purposes. However given our assessment of the termsheet currently under discussion between Eskom and Haurong Eskom would like to propose the following :

Term sheet

	Features of the Loan	To fully fund Capital program (in respect of approved projects) with favourable terms. No sovereign guarantees required No security in favour of HEA over Eskom's existing plant and/or assets.
	Proposed loan amount	The Proposed loan amount is US$ **1.5billion**.
	Interest Rate	Loan interest costs shall be calculated as follows: London Interbank Offered Rate (LIBOR) plus **[2.5% - 3.5%]** per annum over the Loan term
	Upfront fee	A once off Facility fee of **[0.5-0.8%]** of the amount of the
	Annual Commitment fee	An annual fee of 0.8% on the amount of the funds made available by HEA but undisbursed by Eskom will be due and payable by Eskom at the end of each year.

Head Office
Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 3649 Fax +27 11 800 5843 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

	Cancellation fee	A cancelation fee of the 0.2% of the amount of the facility shall be payable by Eskom if Eskom repudiates, terminates or cancels this term sheet.
	Currency of the loan	US Dollar.
	Tenor	3-7 years
	Facilty Amount	US Dollar 1.5 billion

Eskom would appareciate it if HAE would consider these terms for the shortterm facilty. The relevant Eskom team is available to to engage you on the proposed terms and the overall facilty.

Andre Pillay
GENERAL MANAGER : ESKOM TREASURY
Date: 2017/02/25

Eskom

Yan Sui
Director Industrial Investment
China Huarong Overseas Investment Holdings Co., Limited
27/F, AIA Central, 1 Connaught Road Central,
HONG KONG

Dear Sui Yan

Your e-mail correspondence dated 12 December 2017 has reference.

I appreciate your consideration for our proposals for direct bond investment. I would want to reiterate that this would be a very seamless process for Eskom to secure the proposed funding.

Eskom has also proposed a term sheet for the short term facility, your response to this and further negotiations would allow Eskom to seek Board and necessary Government approval for the facility. This would enable Eskom to negotiate and finalise a proposed mandate letter as required by you.

I would also like to register that the short term facility is subject to mutually agreed terms and conditions and that Eskom will only proceed with any other previously considered proposals subject to the finalization and execution of the short term facility.

Kind regards

Sean Maritz
INTERIM GROUP CHIEF EXECUTIVE
Date: 1212/2017

Cc Rajeev Thomas

Annexure “AP19”

Eskom	SUBMISSION TO ESKOM BOARD INVESTMENT & FINANCE COMMITTEE	Template Identifier	240-43921804	Rev	5
		Document Identifier	240-123782330	Rev	1
		Effective Date	06 February 2017		
		Review Date	February 2020		

EXECUTIVE SUMMARY

SUBMISSION TO THE BOARD INVESTMENT AND FINANCE COMMITTEE (IFC)

1. TITLE OF THE SUBMISSION

HUARONG ASSET FINANCING (HEA)

2. RESOLUTION REQUIRED

The Board IFC is requested to:

2.1. Approve the Huarong Asset Financing Facility subject to the finalisation of all Eskom internal governance and relevant Government approvals;

2.2. Approve that Eskom Treasury negotiate with HEA the following:

2.2.1. Short-term facility $2 billion for 6-12 months for execution and drawdown by 30 November 2017;

2.2.2. Short-term Facility will be based on the term sheet of the long-term facility subject to amendments;

2.3. Approve that the US$4 billion long term Asset Development Framework Agreement (ADFA) be based on the signed term sheet;

2.4. Approve that facility fee is paid by Eskom once confirmation and drawdown of the short term facility as noted in 2.2 is agreed by HEA.

2.5. Delegate the power and authority to give effect to the above to the Interim Group Chief Executive.

3. SUMMARY OF FACTS

3.1. Salient Facts

3.1.1. On the 3 February 2017, IFC Board gave Eskom Treasury the mandate to negotiate but not enter into a financing agreement between Eskom Holdings SOC Ltd and HEA *(See Annexure A)*.

3.1.2. Eskom has since negotiated the terms and conditions of the Asset Development Framework Agreement (ADFA) and that have resulted in this framework agreement being in a final and agreed form.

3.1.2.1. The ADFA provides for the payment of fees, the terms of which are contained in a separate fee letter (See Annexure B).

3.1.3. Following the IFC Board approval, Eskom Treasury engaged in discussion that resulted in the signing of the Term sheet on the 14 March 2017 *(See Annexure C)*.

3.1.4. On the 17 May 2017, Eskom Treasury received an approval from the Board Tender Committee to conclude a financing agreement *(See Annexure D)*.

3.1.4.1. The approval was sought to validate the procurement process followed to obtain and proceed with the proposals for innovative funding that do not require use of government guarantees.

3.1.5. On the 15 August 2017 submitted a request for a mandate to negotiate and conclude the financing arrangement and associated agreements. The Board requested Treasury to provide an update with sign-off from various areas of the business including legal (to ensure that due process was followed), Corporate Finance (to ensure that the financial viablity of the structure). Treasury also engaged their Portfolio Management to evaluate the pricing based on the latest bond prices.

3.1.6. The funding provided will form part a fully funded "turnkey" type asset creation structure to assist Eskom's capital expansion programme. The structure includes an overarching ADFA which will be concluded between Eskom and HEA, and will provide for the following activities to be in place to give effect to the asset finance arrangement:

3.1.6.1. Provision and approval of project list;

3.1.6.2. Approval of funding for a specific project;

3.1.6.3. Selection of the EPC contractors from the panel;

3.1.6.4. Finalization of SPV Company;

3.1.6.5. Construction by the selected EPC company and

3.1.6.6. Leasing of the asset to Eskom.

3.1.6.7. Transfer of the asset to Eskom at the end of the lease period.

3.1.7. The projects listed in the project schedule will be made up of projects built by a panel of Engineering Procurement and Construction (EPC) companies chosen by HEA in consultation with Eskom based on the designs and specifications provided by Eskom.

3.1.8. Upon creation of the project asset, it will be placed in a Special Purpose Vehicle (SPV), in which HEA has a 100% share and once Eskom has repaid the corresponding loan in full in a form of lease payments, the asset will then be transferred to Eskom.

3.1.9. The repayments of the corresponding loan will commence once the project asset in completed and commissioned to the satisfaction of Eskom, and is held by the SPV as security or collateral over the loan.

3.1.10. The corresponding loan may be repaid over 5 years, 10 years or 15 years, based on the useful life of the Asset, more detail provided the attached Term sheet *(Annexure A)*.

3.1.11. The costs associated and considerations with the financing to be provided are as follows:

3.1.11.1. Pricing: Libor plus Spread • Spread: 720 basis points (bps)

3.1.11.2. Fees:

- Programme Development Fees: 160 bps (once off), which will be paid in two separate instalments, the first being upon signing date of the ADFA and the second will be payable after the effective date of the ADFA, which is after fulfilment of the Conditions Precedents.

- Annual Commitment Fee: 80 bps on uncommitted funding o Cancelation fees: 20 bps (once off), should Eskom not proceed before signing the ADFA
- Due Diligence Fee
    - Prelim Assessment: 10 bps
    - Full work: 20 bps
    - Final approval: 20 bps

3.1.11.3. More details provided in the Fee letter *(Annexure B)*

3.1.12. It should be noted that the terms in the technical term sheet are superseded by the terms in the attached fee letter and ADFA.

3.1.13. The evaluation of the fees and the pricing shows that the financing structure is priced at twice the levels that Eskom would pay for one of their expensive financing instruments (international bond), and fees could run between R450 million to R800 million.

3.2. Financial Implications

3.2.1. The transaction will contribute towards alternative funding initiatives that are contemplated in the Corporate Plan which includes a Borrowing Plan of R 337 billion for 2017/18 – 2021/22 financial years.

3.2.2. This transaction however, comes at a high costs and fees as noted above.

3.3. Human Resource Implications

3.3.1. There are no human resource implications.

3.4. Risks (Including Environment, Legal or Contractual risks):

3.4.1. All Loan and Facility Agreements are normally reviewed and co-signed or approved by the Head of Legal and Compliance or his delegate. External legal has been engaged on the development of the ADFA and the Fee structure. They advised Eskom on the milestone based fee payment to secure the Eskom's cash and ensuring that Eskom obtains the value for money paid.

3.4.2. Environmental and social conditions and related covenants will be signed off by Senior Manager – Environmental Management on a project by project basis.

3.4.3. Where required other specialist functions such as Tax Department or Corporate Finance will be consulted.

3.4.4. Eskom has not contracted Chinese EPC contractors extensively for its goods and services. A due diligence of these contractors will need to be conducted by Eskom Engineering to ascertain their capabilities and quality.

3.4.5. The way ADFA is structured is such that it is not clear how the projects would be submitted to HEA for consideration in line with Eskom Procurement Guidelines.

3.4.6. The ADFA does not provide for projects to go through the market as per the Eskom's procurement policy. To fulfil the conditions of the ADFA and avoiding payment of high commitment fees the projects could be submitted directly without going through the open tender policy.

3.5. Verification by independent party (if applicable)

3.5.1. N/A

4. OTHER APPROVALS REQUIRED

4.1.1. Department and Public enterprises and National Treasury

SIGNED

Eskom	SUBMISSION TO ESKOM BOARD INVESTMENT & FINANCE COMMITTEE	Template Identifier	240-43921804	Rev	5
		Document Identifier	240-123782330	Rev	1
		Effective Date	08 February 2017		
		Review Date	February 2020		

26/10/2017

GROUP EXECUTIVE

DATE

Who hereby represents that the above Information is correct.

Submission prepared by: Andre Pillay
Eskom Treasurer

Contact Number : 011 800 4417

26-10-17

Acting CFO

HEA – 26 October 2017

EXTRACT FROM THE FINAL MINUTES OF THE INVESTMENT AND FINANCE COMMITTEE MEETING NO. 06-2017/18 HELD AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK ON TUESDAY, 27 OCTOBER 2017 AT 10H40

4. MATTERS FOR COMMITTEE APPROVAL

4.1 GROUP FINANCE

Huarong Asset Financing ("HEA")

Reference document tabled at the meeting

IT WAS RESOLVED THAT:

4.1.1. the Huarong Asset Financing for Short Term Facility for Liquidity Management is approved subject to the finalisation of all Eskom internal governance and relevant Government approvals and a report from the Chairman of the Audit and Risk Committee ("ARC") stating that ARC is comfortable with the risk associated with this facility;

4.1.2. it is approved that Eskom Treasury negotiate with HEA for the following:

4.1.2.1. a short-term facility up to a maximum of US$2 billion (two billion dollars) for 6 to 12 months for execution and drawdown by 30 November 2017;

4.1.2.2. the short-term facility will be based on the term sheet of the long-term facility subject to amendments; and

4.1.2.3. the short-term facility may be settled early in the event that Eskom is successful in securing other funding;

4.1.3. the US$4 billion (four billion dollars) long-term Asset Development Framework Agreement ("ADFA") is approved in principle based on the signed term sheet and subject to PFMA and Shareholder approval, and also subject to a due diligence and all technical, financial, legal and other governance issues being addressed.

4.1.4. the facility fee in relation to the short-term facility is approved and to be paid by Eskom once confirmation and drawdown of the short-term facility as noted in 4.1.2 above is agreed by HEA and subject to the agreement that the fees would only be paid once the money is in Eskom's bank account;

4.1.5. Management to approach HEA to consider setting off the facility fee from the payment of the drawdown into Eskom's bank account; and

4.1.6. the Interim Group Chief Executive is delegated with the power and the authority to give effect to the above.

CERTIFIED AS A TRUE EXTRACT

NE

N Ebrahim (Mr)

ACTING GROUP COMPANY SECRETARY

Date: 20/02/2018

Annexure “AP20”

ANNEXURE AP20

HUARONG ENERGY AFRICA

TAX INVOICE

Huarong Energy Africa (HEA) Proprietary Ltd.

Lynnwood Bridge, 4 Daventry Street
Lynnwood Manor
Contact No: 27832976638

PO Box 12389
Vorna Valley
Gauteng
1686

INVOICE NO. INV0001
DATE October 30, 2017
CLIENT ID ADFA ESKOM
HEA VAT No 4620279630
Customer VAT No 4740101508

Customer: Eskom Holdings SOC Limited
Attention: Mr C Cassim
Chief Financial Officer
Eskom, Megawatt Park
Maxwell Drive, Sunnnghill
27828705594

Eskom Head Office
PO Box 1091
Johannesburg
2000

CONTRACT	PROJECT	PAYMENT TERMS	DUE DATE
ADFAESK271017	Master Agreement	3 Days	02 Nov 2017

QUANTITY	DESCRIPTION	UNIT PRICE	LINE TOTAL
1	HEA Eskom Program Development Fee (60% of 1.6% for $2bn)	$ 19 200 000,00	$ 19 200 000,00
	All Payments in US Dollars		

Authorised Signature:

R THOMAS

SUBTOTAL	$	19 200 000,00
VAT		2 688 000,00
TOTAL	$	21 888 000,00

BANKING DETAILS: IDEVA International Group Limited, HSBC Hong Kong, Swift Code: HSBCHKHHHKH, Account no. 023-175078-838, Branch: HSBC, Causeway Branch, 1/F, Causeway Bay Plaza II, 463-483 Lockhart Rd, Causeway Bay, Hong Kong.

Huarong Energy Africa

Johannesburg: North East Suite, Floor 8, 11 Alice Road, Sandton, Johannesburg, Tel: +27 83 297 6638
Beijing: Suite 1902, West Tower, World Financial Center, Chaoyang District, Beijing Tel: +86 10 8587 8658,
Hong Kong: Suite 27, AIA Centre, 1 Connaught Road, Central District, Hong Kong Tel: +852 2275 1838

To: **Eskom Holdings SOC Ltd**

Megawatt Park

Maxwell Drive

Sunninghill 2157

Republic of South Africa

Attention: **Mr Sean Maritz,**

Interim Group Chief Executive Officer

27 October 2017

Dear Sir/Madam,

Asset development framework agreement between Huarong Energy Africa Proprietary Limited (HEA) and Eskom Holdings SOC Limited (Eskom) (the Agreement)

1 We refer to the Agreement. This is the Fee Letter as defined in the Agreement. Defined terms used in this Fee Letter are as defined in the Agreement, and in addition:

1.1 **Available Commitment** means from time to time the amount of the Available Facility less the aggregate amount of the Project Development Costs of the Approved Projects at that time;

1.2 **Available Facility** means an amount of two billion United States Dollars (USD2 000 000 000) or such higher amount as determined in writing by HEA and Eskom; and

1.3 **Program Development Fee** means the fee payable for the development and setup of the Program as stipulated in the Agreement, which primarily includes the intellectual property rights of the Program developed and owned by or attributable to HEA, the formation of the EPC Panel and the costs and fees associated therewith, determined in accordance with the terms of the Fee Letter.

2 The fees are payable by Eskom to HEA as follows:

2.1 Program Development Fee

(1) Eskom must pay to HEA or its nominee the Program Development Fee computed at the rate of one point six percent (1.6%) on the Available Facility as at the Signature Date of the Agreement, in two instalments as follows:

a. sixty percent (60%) of the Program Development Fee within three (3) Business Days after the Signature Date; and

b. the remaining forty percent (40%) of the Program Development Fee within three (3) Business Days after the Effective Date.

(2) If the Available Facility is more than two billion United States Dollars (USD2 000 000 000) then Eskom must in addition to the Program Development Fee pay to HEA an additional fee (**the Program Development Fee Increment**).

(3) The Program Development Fee Increment will be computed at the rate of one point six percent (1.6%) of the amount in excess of two billion United States Dollars (USD2 000 000 000) or such lesser amount as HEA may notify to Eskom in writing, at the time of conclusion of each Project Certificate and shall be payable on the date listed in the Project Certificate.

2.2 Commitment Fee

(1) Eskom must pay to HEA a fee (**Commitment Fee**) computed at the rate of zero point eight percent (0.8%) on the Available Commitment.

(2) The Commitment Fee is payable on each anniversary of the Effective Date with reference to the amount of the Available Commitment on the day immediately preceding that anniversary.

2.3 Due Diligence Fee

(1) Eskom must pay to HEA a fee (**Due Diligence Fee**) to conduct due diligence reviews as part of HEA internal approval processes.

(2) The Due Diligence Fee will be payable per Project and as follows:

a. if the Eskom Project Budget is three hundred million United States Dollars (USD300 000 000) or more, then:

(i) the first part of the Due Diligence Fee computed at the rate of zero point one percent (0.1%) of the Eskom Project Budget must be paid on the submission of the Project List in accordance with clause 4 of the Agreement;

(ii) the second part of the Due Diligence Fee computed at the rate of zero point two percent (0.2%) of the Eskom Project Budget of the Approved Projects must be paid on the date of completion of the due diligence review undertaken in terms of clause 6.1(2) of the Agreement;

(iii) the third part of the Due Diligence Fee computed at the rate of zero point one percent (0.1%) of the Project Development Cost of the Approved Project(s) must be paid on the date that the Fund's funding is approved in terms of clause 6.1(4) of the Agreement; and

(iv) the fourth part of the Due Diligence Fee computed at the rate of zero point one percent (0.1%) of the Project Development Cost of those Approved Projects must be paid on the date that the Project Mandate is signed in terms of clause 6.1(5) of the Agreement; and

b. if the Project Development Cost is less than three hundred million United States Dollars (USD300 000 000) then HEA will determine a fee in consultation with Eskom before concluding the Project Mandate in relation to that Project.

3 This Fee Letter and any non-contractual obligations arising out of or in connection with it are governed by South African law.

4 The fees in paragraph 2 must be paid into the following bank account:

Bank:	HSBC HONG KONG
SWIFT Code:	HSBCHKHHHKH

Account number:	023-175078-838
Branch Address:	HSBC, Causeway Bay Branch, 1/F, Causeway Bay Plaza II, 463-483 Lockhart Road, Causeway Bay, Hong Kong
Account Name:	IDEVA INTERNATIONAL GROUP LIMITED,
Reference:	Eskom HEA Program Development Fee

or such other bank account nominated in writing by HEA to Eskom.

5 The provisions of clauses 8, 14, 18, 20 and 21 of the Agreement are incorporated into this letter with necessary changes required by the context, and apply as if recorded in full herein.

If you agree to the above, please sign where indicated below.

Yours faithfully,

For and on behalf of

Huarong Energy Africa Proprietary Limited

Name: **Jianbao Chen**

Capacity: **Chairman of Huarong Energy Africa Proprietary Limited**

Who warrants authority

Signed at Johannesburg on this 27 day of October 2017.

Accepted by Eskom Holdings SOC Limited

For and on behalf of

Eskom Holdings SOC Limited

Name: **Sean Maritz**

Capacity: **Interim Group Chief Executive Officer**

Who warrants authority

Signed at Johannesburg on this 27 day of October 2017

Annexure "AP21"

CONFIDENTIAL

2017-24724

South African Reserve Bank
Financial Surveillance Department

2017-08-04

Mr Andre Pillay
General Manager
Treasury
Eskom Holdings SOC Limited
P O Box 1091
Johannesburg
2000

Dear Sir

Seeking permission to enter into an asset financing arrangement with resident and non-resident financial institutions

I acknowledge receipt of your letter dated 2017-07-31 and thank you for the information furnished.

In reply, I advise that we are agreeable to the acceptance of the foreign loan on the basis outlined and for the purpose stated, subject to the provisions outlined in section I.3(B)(iv)(a)(ee) – (ii) of the Currency and Exchanges Manual for Authorised Dealers.

We note that the interest rate applicable to the foreign denominated loan will be 6 month Libor plus marginal rate of 7.2 per cent.

With regard to the reporting of draw downs and repayments, kindly refer to section I.3(B)(vi) and (viii) of the Currency and Exchanges Manual for Authorised Dealers.

The following reference number should be quoted for all future correspondence in this regard: 30120170247241.

Yours faithfully

Divisional Head

Annexure "AP22"

Eskom

Mr. C Nevuthanda
Deputy General Manager
Financial Surveillance Department
South African Reserve Bank
PO Box 427
PRETORIA
0001

Date: 02 February 2018

Enquiries:
Tel: +2711 800 4417
Andre Pillay

Dear Mr Nevuthanda,

EXCHANGE CONTROL RESPONSE

Authorised Dealer:	Eskom Holdings SOC Ltd
Eskom Reference:	30120170247241
Applicant's Name:	Eskom Treasury
Financing Currency:	US$
Financing Amount:	US$ 2 billion
Purpose of Application:	SEEKING PERMISSION TO ENTER INTO AN ASSET FINANCING ARRANGEMENT WITH RESIDENT AND NON-RESIDENT FINANCIAL INSTITUTIONS – REFERENCE 30120170247241

Reference is made to the letter dated 2018-01-26 in relation to the above mentioned application which was approved by the Financial Surveillance Department on 2017-08-04.

The structure of the financing for which the application was made is such that there is no inflow of funds to Eskom. The financing structure is based on a turn-key principle whereby Huarong engineers, constructs and provides financing to the special purpose vehicle (SPV), that is set up to build the assets required by Eskom. Therefore funds will flow from the lenders and investors as arranged by Huarong into the SPV

AFP-501

Eskom

We hereby confirm that no funds have been received by Eskom from Huarong or any of its affiliates in relation to the Asset Financing Agreement in terms of the authorisation granted.

The agreed terms and conditions of the Asset financing agreement provide for payment of the following items:

1. Fees, which include cancellation fee, facility development fee, commitment fee, due diligence fee,
2. Lease payments

None of the above mentioned items have been paid for as there is no duly authorized contract that obligates Eskom to pay these amounts. Furthermore necessary government approvals have not been obtained as one of the conditions for proceeding with the transaction. The payment of fees without any inflows of funds first would be in contravention of the condition of approval obtained from the Finance Surveillance Department of the South African Reserve Bank (SARB) on the 2017-08-04, hence no payments of whatever nature have been effected by Eskom in favour of any party, including but not limited to Ideva International Group Limited.

Kindly find attached as per request the following documentation:

- Term sheet
- Signed Fee letter
- Signed Addendum to the ADFA

Yours sincerely,

Andre Pillay
General Manager,
Treasury
Date: 20/8/2020

Head Office
Megawatt Park Maxwell Drive, Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 4585 Fax +27 11 800 5803 www.eskom.co.za

Eskom Holdings SOC Ltd Reg No 2002/015527/30

Annexure "AP23"

ANNEXURE AP23

Eskom

Mr Dondo Mogajane
Director-General
National Treasury
Private Bag X115
PRETORIA
0001

Dear Mr Mogajane

HUARONG SHORT TERM FACILITY AND LONG TERM ADFA

Eskom Holdings SOC Ltd (Eskom) and China Huarong Overseas Investment Holdings Co. Limited (Huarong) have been in discussions since 2016 regarding the procurement of possible financing of Eskom's CAPEX and OPEX by providing a Long Term Asset Development Framework Agreement (ADFA), see Annex 1, and Short Term Facility, see Annex 2, respectively.

These discussions are ongoing.

Given Eskom's current funding constraints, Eskom is exploring additional funding sources that include, amongst others, the issuance of an international bond and Huarong short-term facilities.

Huarong is a Chinese asset management company based in Beijing, owned by the government of the People's Republic of China. It had total assets of 1.411.97 billion RMB (China Yuan Renminbi, approx. 6.55 US$/RMB) as at the end of 2016, making it one of the largest asset management companies in China. Discussions with Huarong were initiated in the 2016 financial year and the envisaged funding formed part of the Eskom's 2017 Borrowing Programme and Corporate Plan which was approved by Eskom's Boards and submitted to both the National Treasury and Department of Public Enterprises in terms of the PFMA.

The initial long-term facility was for US$ 2.2 billion and was based on a turn-key structure, whereby the projects required for Eskom's CAPEX programme will be structured and financed by Huarong. The repayments in the form of lease payments would commence once the projects are completed to Eskom's specifications. The assets would be transferred to Eskom at the end of the lease periods. Under this structure, the engineering, procurement construction and

supply of the eligible projects will be undertaken by the Chinese EPC companies that will be selected by Huarong, using their own procurement system.

The structure was particularly attractive given that Eskom would only repay the financing when construction had been completed which would greatly improve Eskom's liquidity position. The major financial downside of the structure is its exorbitant fees and expensive pricing when compared to other forms of financing, even taking into consideration the construction risk that Huarong would be taking. Another challenge with respect to the long-term financing was the condition of the exchange control of the South African Reserve Bank – see Annex 3, which in essence requires inflows to take place before the payment of any fees to the Huarong. The facility development fees of US$ 32 million are payable upfront, on fulfilment of the conditions for effectiveness of the ADFA.

Given these drawbacks, negotiations took longer than anticipated to finalise and Eskom's liquidity position worsened over time. This resulted in discussions on a separate shorter term US$ 500 million facility to assist with liquidity, while fulfilling conditions for effectiveness of the long-term Asset Development Framework Agreement.

This form of funding structure is unconventional to Eskom's existing fund raising instruments and therefore requires approval from Government.

Attached are annexures that contain the indicative terms of the long-term ADFA and short-term facility and the SARB approval.

In light of the above, Eskom requests the Director-General (DG) to consider the merits of, and provide comments to, these transactions in the context of utilisation of the government guarantee for both the long-term ADFA and the short-term facility within the approved foreign borrowing limits. Formal application for utilisation of the government guarantee and PFMA application to the Minister of the Department of Public Enterprises and to the Minister of Finance will be lodged following a response from the DG to this letter.

We remain available for further engagements on these transactions.

Yours sincerely

Calib Cassim
ACTING CHIEF FINANCIAL OFFICER
Date: 11-1-2018

Eskom

Mr Richard Mogokare Seleke
Director-General
Department of Public Enterprise
Private Bag X15
HATFIELD
0028

Dear Mr Seleke

HUARONG SHORT TERM FACILITY AND LONG TERM ADFA

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Yours sincerely

Calib Cassim
ACTING CHIEF FINANCIAL OFFICER
Date: 11-1-2018

Eskom

Mr Dondo Mogajane
Director-General
National Treasury
Private Bag X115
PRETORIA
0001

Dear Mr Mogajane

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We remain available for further engagements on these transactions.

Yours sincerely

Calib Cassim
ACTING CHIEF FINANCIAL OFFICER
Date: 11-1-2018

Annexure “AP24”

ANNEXURE AP24

Eskom

Huarong Energy Africa

Dear Sirs

YOUR LETTER DATED 24 JANUARY 2018

1. We refer to your letter of 24 January 2018 ("your Letter"). You are no doubt aware, at least from the media, that we have been dealing with a number of pressing issues. Indeed, the ADFA (as defined in your Letter) and the linked Fee Letter (dated 27 October 2017) form part of those issues.

2. For the purposes of this letter, no useful purpose will be served in dealing with and responding to every statement, allegation or request in your Letter. Our failure to do so is not to be construed as an admission of any kind. If it becomes necessary to respond to any of those matters we will do so.

3. Your Letter appears to have been drafted without regard to, or in apparent unawareness of, a number of material developments, investigations and the like at Eskom which not only impact upon the ADFA and the Fee Letter but also on much wider and unrelated circumstances. Most certainly since your letter there have been further important developments, which you will have gleaned at least from the media, including the bringing of serious disciplinary charges against Mr Sean Maritz and his resignation from Eskom on 28 February 2018.

4. As you know Mr Maritz purported to sign the ADFA and Fee Letter on behalf of Eskom.

5. There are enormous concerns surrounding the conduct of Mr Maritz (and others) in his dealings with you and the signing of, inter alia, the ADFA, an addendum to the ADFA and the Fee Letter which include, but are certainly not limited to, his complete lack of authority to bind Eskom.

6. We consider ourselves compelled to advise you that we are, inter alia, investigating or will ask the appropriate authorities to investigate the conduct of certain individuals associated with Eskom and third parties regarding their influence of, or complicity in, serious fiduciary duty transgressions, unauthorized acts, attempts to bind Eskom to irregular, fruitless and wasteful expenditure and financial misconduct as defined in the Public Finance Management Act, 1999 all of which were calculated to cause, or would have resulted in causing, enormous loss to Eskom which, as you know, is a State owned institution. The enormous loss is accordingly one which would be sustained by the South African Government. There are obviously criminal implications to these events which are being investigated.

7. In the circumstances it should not come as a surprise to you that the "fee" to which you refer has not been, and will not be, paid at this time, if at all.

8. We do not believe that a meeting at this stage on the status of the transaction will be useful.

9. It is not the intention of this letter to jeopardise any relationship between you and Eskom in the broader sense and it is our earnest wish that, whatever transpires, this should not occur, if possible.

10. We must, of necessity, reserve all our rights.

Yours faithfully

Yours sincerely

Phakamani Hadebe
INTERIM GROUP CHIEF EXECUTIVE
Date: 18/03/2018

Huarong Energy Africa

Beijing: Suite 1902, West Tower, World Financial Center, Chaoyang District, Beijing Tel: +86 10 8587 8658,
Hong Kong: Suite 27, AIA Centre, 1 Connaught Road, Central District, Hong Kong Tel: +852 2275 1838

To:
Mr P Hadebe
Interim Group Chief Executive
ESKOM Holdings (SOC) Ltd

And to:
Mr A Pillay
The General Manager (Treasury)
ESKOM Holdings (SOC) Ltd

On this 23 May 2018

Dear Sirs

ASSET DEVELOPMENT FRAMEWORK AGREEMENT BETWEEN ESKOM HOLDINGS (SOC) LTD AND HUARONG ENERGY AFRICA (PTY) LTD DATED 27 OCTOBER 2017

We acknowledge receiving your letter dated 16 March 2018 dealing with the aforesaid agreement.

As you have indicated in your letter, we are very much aware, through the media, of what is transpiring in Eskom. Our engagement with Eskom on the agreement started in 2015 with engagements with your Treasury department and extensive amounts of work and resources have been spent prior to and after the first engagement in 2015.

We are also well aware of the deteriorating financial situation in Eskom (through the media) and the various credit downgrades that Eskom has suffered since 2015. As previously presented to Eskom, our innovation and business model, as set out in the agreement, allows for us to absorb more financial risk and, as such, we remain able to assist ESKOM with its financial needs. However, it also requires a committed, willing and trustworthy counter party.

Since the signing of the agreement and accompanying fee letter, more than 6 months has elapsed during which we have shown concern, understanding and restraint, as Eskom goes through its governance transition. We appreciate that the agreement probably forms part of a number of transactions that are being subjected to ongoing governmental scrutiny. Kindly inform us of the outcome as soon as you are able to do so.

We remain confident that we have been transparent in all our dealings with Eskom, that this transaction does not involve any corrupt activity and that Eskom has duly followed its required processes as represented to us at the relevant time. We have also taken legal advice pertaining to this issue and we are satisfied that our claims under the agreement and the fee letter are legally binding and enforceable. We will continue to assert those claims.

We confirm that we are still committed to the execution of the agreement and the fee letter, and, whilst we recognise the importance of the scrutiny to which Eskom is presently subjected, we cannot lose sight of the fact that these delays are leaving us and our partners in a position where we stand to suffer considerable financial loss. In this regard, we remind you that the various conditions precedent to the agreement need to be fulfilled by 31 May 2018 in order continue with the agreement in its present form. It appears unlikely that ESKOM will be able to fulfil its obligations under the agreement by 31 May 2018. In so far as our own compliance with the conditions precedent is concerned, such compliance will necessitate us spending further time and financial resources on the matter. Whilst we remain willing and able to do so, we are of the view that it is unreasonable to expect us to comply with these conditions precedent in light of Eskom's anticipated non- compliance. We therefore undertake to fully comply with our obligations as aforesaid, once we have received a written assurance from Eskom that it intends to continue as envisaged in the agreement.

Based on the aforesaid we suggest that, pending the outcome of your enquiry, and to mitigate the potential loss that might well be suffered by all parties concerned if the agreement is allowed to potentially lapse, that Eskom consider extending the date for fulfilment of the conditions precedent to the agreement. Since the agreement will potentially lapse on 31 May 2018, we request that we receive your answer to the above by close of business on Monday, 28 May 2018, in order to provide sufficient time for the formal extension of the relevant time period in the agreement.

Please note that this letter is written in a sincere attempt to rescue the contractual relationship between us. However, we write this letter to you on the basis that nothing contained herein will be admissible against us in a court of law, should our attempt not succeed. All of our rights remain strictly reserved.

We look forward to your urgent response.

For and on behalf of

Huarong Energy Africa Pty. Ltd.

Name: Jianbao Chen

Capacity: Chairman of Huarong Energy Africa Proprietary Limited

Who warrants authority

Huarong Energy Africa

Johannesburg: North East Suite, Floor 8, 11 Alice Road, Sandton, Johannesburg, Tel: +27 83 297 6638
Beijing: Suite 1902, West Tower, World Financial Center, Chaoyang District, Beijing Tel: +86 10 8587 8658,
Hong Kong: Suite 27, AIA Centre, 1 Connaught Road, Central District, Hong Kong Tel: +852 2275 1838

To: **Eskom Holdings SOC Ltd**
Megawatt Park
Maxwell Drive
Sunninghill 2157
Republic of South Africa

Attention: Mr Calib Cassim
Chief Financial Officer

05 January 2018

Dear Calib,

RE: **Asset development framework agreement (ADFA) and Fee Letter between Huarong Energy Africa Proprietary Limited (HEA) and Eskom Holdings SOC Limited (Eskom)**

We have received the signed ADFA amendment from Eskom and have forwarded you the fully signed ADFA Amendment version on 29 December 2018.

As per the ADFA signed on 27 October 2017, we were to have launched the ADFA program immediately thereafter and 60% of the Program Development fee payment (1.6% of the Available Facility) was due and payable by Eskom on 30 October 2017. This payment and the launch of the ADFA has not occurred and is now critical if, jointly with Eskom, we are to identify, finalize and fund projects as per the intent of the ADFA in the year 2018.

Kindly inform us when the Program Development Fee payment will be made so that we can resume the processes as stated within the ADFA and formally launch the ADFA with teams both from Eskom and HEA.

Calib, as you have also rightfully acknowledged, we would like to build on our relationship with Eskom as we believe that the ADFA offers significant benefit to Eskom. Furthermore our relationship will lead to other potential investments in Eskom once the ADFA is being implemented.

We look forward to your urgent communication in the above matter. My team and I will be available from next week and would request that we meet urgently to discuss the above issues so that we can reach a mutually acceptable conclusion.

I would like to take this opportunity to wish you and your family a blessed new year in 2018.

Yours Sincerely,

Mr. Rajeev Thomas
Chief Executive Officer
Huarong Energy Africa (HEA)
Tel: +27 83 297 6638

Huarong Energy Africa

Beijing: Suite 1902, West Tower, World Financial Center, Chaoyang District, Beijing Tel: +86 10 8587 8658,
Hong Kong: Suite 27, AIA Centre, 1 Connaught Road, Central District, Hong Kong Tel: +852 2275 1838

To:

Chairman of the Board

Eskom Holdings SOC

Megawatt Park

Maxwell Drive

Sunninghill 2157,

Republic of South Africa

Attention: Mr J Mabuza

Copied:

Interim Eskom CEO,

Acting Eskom CFO,

Head of Eskom Treasury,

24 January 2018

Dear Sir,

Re: REQUEST FOR URGENT MEETING BETWEEN ESKOM AND HUARONG ENERGY AFRICA (HEA)

We refer to the Asset Development Framework Agreement (ADFA) concluded late last year between us together with the fee letter in connection therewith. We also refer to our recent engagements regarding the extension of certain dates in the ADFA.

Huarong Energy Africa (HEA) is backed by the Chinese State owned Company China Huarong Asset Management Company (CHAMC), the largest Asset Management Company in China under the Ministry of Finance China. CHAMC is a Multibillion Dollar organization of impeccable reputation in the market. Furthermore, through CHAMC, we had offered Eskom a Short Term loan of USD $500million, which is in the process of being approved. Together with the ADFA (USD 2 Billion) and the Short Term Loan (USD 500 million), Huarong Energy Africa and our parent companies under CHAMC have tried to assist Eskom in this dire time.

We were therefore dismayed by Friday's article in the Business Day regarding this project.

We have not seen any formal response from Eskom relating to the article, nor have we heard from you to discuss the contents and veracity thereof. We would accordingly appreciate your initial response to, and views on, the article; it goes without saying that we would expect Eskom to hold similar views on the contents of the article and the unfortunate publication thereof.

We are also concerned regarding the confidentiality of sensitive information regarding the transaction making its way into the public domain. Our concern goes further to the suggestion in the article that Eskom's due process were not followed. This is contrary to the representations we have received from Eskom's representatives over the last [year or more] and upon which we have acted in connection with the ongoing development of the unique funding proposition put forward by us.

The fee, which is the subject matter of the Business Day article, has not been paid despite being due and payable in [November 2017]. The accommodation made by HEA in connection with not exercising its rights to take steps to ensure payment thereof took into account Eskom's circumstances and the understanding that Eskom remained committed to pursuing the project on the basis recorded in the ADFA and the fee letter.

Given the publicity, we think that it is important for the benefit of HEA and Eskom to demonstrate that the transaction has been duly approved and will be implemented in accordance with the agreements reached between the parties following that due process. We would welcome a meeting to discuss the status of the transaction and a joint response to clarify any inaccuracies or suspicions surrounding the transaction. We think that such a meeting and joint response could avoid damage and losses, including but not limited to our reputation on account of unauthorized disclosures in contravention of the ADFA.

In preparation for that meeting we think it is imperative that Eskom provide us with verification in support of the representations made on its behalf in connection with the due compliance by it or the relevant legislation, including the Public Finance Management Act relating to the procurement process pursuant to which HEA has been appointed.

We look forward to hearing from you.

Yours faithfully,

Mr C Jianbao

Chairman of the Board

Huarong Energy Africa

Contact: +861 381 834 8595

Signed in Johannesburg on this 24th day of January 2018.

Supplementary Affidavit & Annexures of Andre Pillay

SUPPLEMENTARY AFFIDAVIT SUBMITTED TO THE STATE CAPTURE COMMISSION

I, the undersigned,

ANDRE PILLAY

do hereby state under oath that the facts deposed to herein are true and correct and are within my personal knowledge except where the context indicates otherwise. I have already submitted an affidavit to the Commission. This statement deals with matter that I have not dealt with in the initial affidavit.

<u>Period May 2017 – January 2018</u>

1 The focus in this particular period is to highlight a different perspective on the outcome or consequences of State Capture in Eskom on South Africa. During the 2017/18 financial year Eskom planned to issue a bond in the international markets to raise US$1 billion, this process required a management due diligence (MDD) as part of the preparations. During this MDD the Chief Financial Officer, Anoj Singh confirmed that Eskom would release its Annual Results for March 2017, with a qualified Audit opinion, see Annexure "**AP25**". The participants in the MDD process were ABSA, JP Morgan, Standard Bank and their respective BEE partners. The legal teams comprised of White and Case (W&C) and Allen and Overy and their local partners.

2 During the run-up to the MDD it was rumored that Eskom would release a qualified set of financial results. I discussed this matter with Anoj Singh, and he trivialized the issue. On a subsequent occasion, I was told that this was actually confirmed that the results will be qualified. I shared a copy of a loan agreement that contains a clause that stipulated that should Eskom's financial statements be qualified, this would result in an event of default for this specific loan. Furthermore, this would also have cross-default implications on other loan agreements. Anoj Singh appeared very concerned but again down played my concerns. Before, he was placed on special leave on 26 July 2017, during a special Board meeting where this matter was discussed, he maintained no knowledge of it, and consequently blamed me for not alerting him to this issue.

3 Following the confirmation of the qualified audit, we in the Eskom Treasury immediately arranged to inform affected lenders of this and initiated a process to seek waivers under these agreements to prevent the events of default. One of the lenders was not in a position to provide a waiver without the consent of its Board and Executive. Following engagements with the lender it was clear that the waiver will not be granted before the governance related matters in Eskom were addressed; such as the individuals implicated in irregularities being exited from the company. During one of the meetings to discuss the issues regarding the event of a default with the Lender, we concluded the discussion and I

indicated that we will invite some of our Eskom executives to join that meeting. This was immediately rejected by the lender, who indicated they did not want to meet with Anoj Singh. I quickly realized that we were not just dealing with a mere waiver request; this was something much bigger – it translated to lender activism which sought to deal with the much reported corruption at Eskom.

4 Eskom required this waiver from the lender to enable it to release its annual results scheduled for 10 July 2017. Eskom did not deliver or commit to the requests of the Lender to secure the waiver. Therefore, the release of the results had to be cancelled. I communicated this to Anoj Singh and also discussed this with Johnny Dladla, in his office. They wanted to know what we must do, and I recommended the postponement of the results announcement. Johnny Dladla requested Chose Choeu to join the meeting and we prepared a media release to communicate the decision to postpone the release of the results. This would give Eskom time to continue the engagements with the Lender to seek the waiver.

5 The Lender requested a meeting with Eskom Executives and Government and 10 Banks (banks include local and international banks). The purpose of the meeting was for the Lender and the Banks to secure a commitment from the Eskom Executives and Government, amongst others, that the people implicated in corruption are exited from the organization and good corporate governance be restored. During the period 10 – 19 July 2017,

there was a series of meetings with the Lender and representatives from National Treasury and the Department of Public Enterprises (DPE). The Lender still insisted on the meeting with Eskom, National Treasury, the DPE and the Banks. I sensed a reluctance from Eskom, and in particular Zethembe Khoza, Johnny Dladla and Anoj Singh to commit to this meeting. My impressions were that they were not willing to agree to the demands of the Lender and Banks as this could have major implications, even political interventions.

6 The Lender provided Eskom a conditional waiver to release its results. One of the conditions to the waiver was to convene a meeting with the Lender, Banks and Government Departments as mentioned above. I engaged Anoj Singh and Johnny Dladla on this matter and I was not given clear directions, appreciating the situation and mounting speculation in the markets, I indicated that I will arrange the meeting for 19 July 2017. I proceeded and the Eskom Treasury team contacted the relevant people to confirm the meeting. There were delays with starting the meeting and Zethembe Khoza and Johnny Dladla had outside meetings and arrived late. When they did arrive they appeared not willing to start the meeting.

7 During the meeting the concerns of the Lender and Banks were raised, as mentioned above. Importantly, the participants to the meeting did not really want Anoj Singh to participate in the meeting. The meeting was brutal and very difficult. I was also aware of separate meetings with

Zethembe Khoza, Johnny Dladla, and representatives from National Treasury and the Department of Public Enterprises, which were represented by their Directors- General, Dondo Mogajane and Richard Seleke, respectively. From these meetings I could only infer that the request was for Eskom to demonstrate actions against the implicated executives.

8 Following the meeting with the Lender and Banks on 18 July 2017, Eskom was granted the conditional waiver by the Lender and this enabled Eskom to release its results. The results release presentation was on 19 July 2017. The results were less about the financial performance of the company but more about the governance and corruption issues; i.e. the Tegeta contracts and a focus on the alleged implicated executives. I recall during the question and answer session I actually left the auditorium as I could not deal with how embarrassing it was to be associated with Eskom and what was discussed at the results presentation and that Eskom and the country were in the midst of a crisis.

9 If we were not able to resolve this crisis, that could potentially default Eskom under its debt obligations and this is a systemic risk to the Country debt – a potential default on our Government debt. The implications of all of this was that we were running the risk of collapsing the entire economic system of the country. In my view, we would have seen a rapid depreciation of our currency, a collapse in the equity and capital markets

and economic growth. The consequences would have been dire, with high unemployment levels and civil unrest.

10 Therefore this was not just an allegation of corruption and the stealing of billions of Rands; we were at the edge of a collapse of our economy. I did explain the consequences in the submission to the Board, see Annexure "**AP26**". The behavior of the Board as a collective was unsettling; in that if they understood the implications of what was playing out they would have stopped at nothing to engage at least the Minister of DPE. Again, there appeared to be an element of brinkmanship to see who would blink first; the Lender or the Eskom Board by demonstrating commitment to take action against implicated executives and restore good governance at Eskom.

11 Ultimately, the pressure exerted by the Lender and Banks, resulted in Anoj Singh being placed on special leave. This announcement was followed by the appointment of Calib Cassim as acting Chief Financial Officer. This appointment, and that of Johnny Dladla, at least allowed us the re-engage with financial markets stakeholders. The markets were still not comfortable with the Board, as the financial markets participants performed their own Due Diligence on these board members. Importantly, the various boards of these financials market entities were exposed to the same information flow that was in the public domain regarding Eskom. Therefore, they were risk averse and not willing to invest in Eskom and

these entities were unsure of the outcome of the crisis and they did not want to be seen to be supporting an assumed corrupt Eskom.

12 This was a very challenging period, as investors were not willing to invest in Eskom, even investors and lenders that had already committed to do so were reconsidering their positions. Therefore, when we approached investors to confirm their commitment to invest, it was clear the situation had changed drastically and the investment or commitments to Eskom were not merely an economic, commercial or strategic decision. These investments now were purely on a moral basis and the reputational risk of such investments. The liquidity risk of Eskom was a major concern. Simply put, the risk of Eskom running out of cash was exacerbated by the inability to issue bond in the international capital markets. We started to deplete our cash reserves and were in dire need for new investments. We were able to secure some funding/investments and we scraped through during the period July 2017- January 2018.

13 If I focus on the period July 2017 (when Anoj Singh was put on special leave) to December 2017, as mentioned above. This was a very difficult period for Eskom and this was amplified by the removal of Johnny Dladla who was replaced by Sean Maritz, on 6 October 2017. This appointment of Mr Maritz was as total shock to the organization and even a number of investors and bankers were underwhelmed by both him and Zethembe Khoza. This period was also exploited by the advancement of the Huarong

transaction. The Minister of DPE also appointed additional board members during December 2017. This was also seen in very negative light and the financial markets expected the Minister to remove the entire Board. Eskom was also unable to release its interim results and the external auditors, SNG, were unable to sign-off on the interim results in November 2017. Again, this was in my view, a situation of Russian roulette with the South African economy by the Eskom Board, in particular Zethembe Khoza and Sean Maritz. As they were not willing to assist the auditors SNG and the DPE on these matters, this resulted in yet another Audit Qualification of the interim results for the period ended 31 September 2017 and this would have triggered the event of default on the Eskom Loan agreements as explained above.

14 It was very clear the political focus was the ANC conference on 22 December 2017. The attention was on the ANC election outcome that would maintain the current status quo at Eskom or a shift in leadership that would result in a clean-up at Eskom. The outcome of the ANC conference certainly spelt trouble for the Eskom Board. In early January 2018, Calib Cassim and I engaged with the National Treasury Director General, Dondo Mogajane, regarding the External Auditors sign off on the Interim Results and issues raised by the investors. Central to the investors' issues were the changes in the Board of Eskom and appointment of a new Chief Executive Officer and a new Chief Financial

Officer. One of the first priorities of the Deputy President of the country, at the time, was the appointment of a new Board and interim Chief Executive Officer. This has paved the way for Eskom to secure much needed funding for it liquidity purposes. Eskom was also able to release its interim results in January 2018. The release of the interim results were crucial as the Johannesburg Stock Exchange (JSE) would have suspended Eskom's trading of its listed bonds.

April 2015 – June 2017

15 This was the period when Brian Molefe and Anoj Singh arrived at Eskom from Transnet. Importantly, the time prior to this, McKinsey was working with Eskom, however, when these executives arrived, we technically became a subsidiary of McKinsey. There was a large contingent of McKinsey representatives running around the Eskom building. Similarly, during this period, Regiments, and later Trillian, was also working with Eskom. Historically, Eskom did not work with Regiments as they were not appointed for any project at Eskom, certainly not from the time I joined Eskom. It was public knowledge that McKinsey and Regiments were very involved with Transnet.

16 During this period, we were requested to copy the Transnet format of the report on the Public Sector Participation (PSP), as also mentioned in my main statement. Transnet was also struggling to access the capital

markets for funding and we were requested by Brian Molefe via my predecessor, Caroline Henry, to invest some of the Eskom surplus cash with Transnet to which we (myself and Marius Homewood) objected by indicating that Eskom's investment policy does not allow for this. The environment was very tense, and we noted a few people technically being fired; however it was done in a way that appeared as if this was mutually agreed. Here I refer to Caroline Henry whose contract was not renewed, and Marius Homewood. They were both from the Eskom Treasury. It was also clear to the Eskom staff that Anoj Singh was running Eskom and this was certainly my impression too.

17 Eskom also embarked on a process of updating its Delegation of Authority (DOA) in 2015. According to Treasury, The revised DOA was intended to take away the authority that was delegated to the Treasury. This was not limited to Treasury but the rest of the organization. Refer Annexure "**AP27**".

18 Eskom issued an RFP to the market in 2016 for the disposal of the Eskom Finance Company (Home Loan Book), but this was unsuccessful. The major reason for its failure was the fact the Trillian was assisting Eskom on these projects. Following the expiry of the RFP, I received calls from banks indicating their unwillingness to partner with Eskom given the involvement of Trillian.

Declaration

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

Signature of deponent

I certify that the deponent has acknowledged that he knows and understands the contents of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at Sunninghill, Sandton on 25 February at 16h30

Commissioner of Oaths

ALBERT SCHOLTZ
Chartered Accountant (SA)
SAICA No. 04923552
COMMISSIONER OF OATHS
Eskom Holdings - Treasury Services
Maxwell Drive Sunninghill Sandton

Annexure "AP25"

Independent auditor's report to Parliament and the shareholder – Minister of Public Enterprises

Report on the audit of the consolidated and separate financial statements

Qualified opinion

We have audited the consolidated and separate financial statements of Eskom and its subsidiaries (the group) set out on pages 28 to 116, which comprise the consolidated and separate statement of financial position at 31 March 2017, and the consolidated and separate statement of profit or loss and other comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, as well as the notes to the consolidated and separate financial statements including a summary of significant accounting policies.

In our opinion, except for the possible effects of the matter described in the basis for qualified opinion section of our report, the consolidated and separate financial statements present fairly, in all material respects, the consolidated and separate financial position of the group as at 31 March 2017, and the group's financial performance and cash flows for the year then ended in accordance with International Financial Reporting Standards (IFRS) and the requirements of the Public Finance Management Act of South Africa (PFMA) and the Companies Act of South Africa (Companies Act).

Basis for qualified opinion

Irregular expenditure

Section 55(2) (b) (i) of the PFMA requires the entity to disclose in a note to the consolidated and separate financial statements particulars of all irregular expenditure that has occurred during the financial year. The group did not have an adequate system for identifying and recognising all irregular expenditure and there were no satisfactory alternative procedures that we could perform to obtain reasonable assurance that all irregular expenditure had been properly recorded in note 52 to the consolidated and separate financial statements. Consequently, we were unable to determine whether any adjustment was necessary to the balance of irregular expenditure stated at R2 996 million (2016: R348 million) in the consolidated and separate financial statements.

We conducted our audit in accordance with the International Standards on Auditing (ISAs). Our responsibilities under those standards are further described in the auditor's responsibilities for the audit of the consolidated and separate financial statements section of our report.

We are independent of the group in accordance with the Independent Regulatory Board for Auditors' *Code of professional conduct for registered auditors* (IRBA code) and other independence requirements applicable to performing audits of financial statements in South Africa. We have fulfilled our other ethical responsibilities in accordance with the IRBA code and in accordance with other ethical requirements applicable to performing audits in South Africa. The IRBA code is consistent with the International Ethics Standards Board for Accountants' *Code of ethics for professional accountants* (parts A and B).

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified opinion.

Key audit matters

Key audit matters are those matters that, in our professional judgement, are of most significance in our audit of the consolidated and separate financial statements of the group for the year ended 31 March 2017. These matters were addressed in the context of our audit of the consolidated and separate financial statements as a whole and forming our opinion thereon. We do not provide a separate opinion on these matters.

Key audit matter	How the matter was addressed in the audit
Valuation of property, plant and equipment Property, plant and equipment comprise 83% of the total assets and have been disclosed in note 8. The group has significant capital expenditure that is currently being invested in. Capital expenditure, especially assets constructed by the group, requires significant consideration on the nature of the costs in order to adhere to the relevant applicable standard. The board of directors conduct the annual assessment on the depreciation method, useful lives, residual values and impairment of items of property, plant and equipment. The annual assessment involves judgements which include determining the useful lives and residual values of assets where there is no comparable asset in the market and the discount rate applied in discounting future cash flows (and the future cash flows themselves). The significant consideration on the nature as well as the quantum of the capitalised costs make the valuation of property, plant and equipment a key audit matter. In addition to this, the assessment of the depreciation method and estimation of the useful lives, residual values and impairment of property, plant and equipment carry elements of judgement making them key audit matters.	Our audit work included the following: • assessing the nature of costs capitalised to property, plant and equipment to test the validity of amounts • evaluating whether the costs capitalised to property, plant and equipment meet the recognition criteria of the applicable standard • consideration on whether capitalisation of costs to property, plant and equipment ceased when the asset was ready for use as intended by the board of directors • consideration of the appropriateness of the disclosure of property, plant and equipment We challenged the assumptions made by the board of directors in assessing the depreciation method, useful lives, residual values and impairment of the items of property, plant and equipment. Our audit work included: • critical evaluation of the process to assess the depreciation method, useful lives, residual values and identification of impairment indicators, and in particular, that the depreciable amount appears appropriate for assets not yet fully depreciated • review the process to identify items of property, plant and equipment carried at zero or R1 book value and their consideration whether or not to adjust accumulated depreciation and appropriateness of the depreciation policy to that class of asset • assessed the future projected cash flows presented to us with particular reference to the price and quantity of coal, operating costs as well as the discount rates to determine whether they are reasonable and supportable given the current economic climate and expected future performance of the cash generating units • key assumptions challenged include those relating to the level that impairment is assessed, being the smallest identifiable group of assets for which independent cash inflows can be identified We did not identify material issues with the assumptions applied by the directors in assessing the depreciation method, useful lives, residual values and impairment of items of property, plant and equipment.

Key audit matter	How the matter was addressed in the audit
Valuation and completeness of assets transferred from customers	
Assets transferred from customers form part of property, plant and equipment disclosed in note 8. The prior year consolidated and separate financial statements have been restated as disclosed in note 49. The restatement is as a result of a prior year error arising from a lack of standard operating proceduresd for the accounting of certain distribution assets that were developed by third parties and transferred to the group in prior periods. Assets transferred from customers are significant and are recognised at fair value. The retrospective fair value determination of assets transferred from customers is impacted by the availability of historical information. Thus assets transferred from customers are a key audit matter.	Our audit work included the following: • assessed the reasonability of the fair value used to account for assets transferred from customers • performed substantive procedures to test the completeness of assets transferred from customers • considered the appropriateness of the disclosure We did not identify material issues relating to the assets transferred from customers.
Valuation of future fuel supplies	
Future fuel supplies are disclosed in note 10. Future fuel supplies are accounted for by the board of directors based on their judgement of the most relevant applicable accounting standard. The accounting of future fuel supplies is unique as it relates to the group's contractual right to coal arising from the agreement with the coal mines. Future fuel supplies include the costs of mine development, equipment and rehabilitation. The board perform an annual assessment of impairment of future fuel supplies. The annual assessment involves judgements on the discount rate applied in discounting future cash flows. Accordingly, the capitalisation of costs and the estimation of the impairment of future fuel supplies, is a key judgement area and thus a key audit matter.	We critically assessed the basis of recognition of future fuel supplies as well as the evaluation by the board of directors of the standard appropriate to account for the contractual right to future coal arising from the agreements with the coal mines. In addition our audit work included the following: • substantive test of costs capitalised • analysed the projected cash flows to determine whether they are reasonable and supportable given the current economic climate and expected future performance of the cash generating units • obtained evidence on the appropriateness of the discount rate used to discount future cash flows • consideration of the appropriateness of the disclosure of future fuel supplies Where necessary we engaged an independent actuarial specialist to evaluate the work performed by the board's expert which included: • subjecting key assumptions to sensitivity analysis The actuarial specialist's independence and competence was assessed when engaged. We did not identify material issues relating to the capitalisation of costs nor the estimation of impairment of future fuel supplies.
Valuation of trade and other receivables	
Trade and other receivables are disclosed in note 19. There is uncertainty relating to the recoverability of some of the municipalities and Soweto debt. The municipalities and Soweto debt have increased along with the allowance for impairment in comparison to the prior year. Accordingly the estimation of the allowance for impairment of municipalities and Soweto debt is a judgement area and thus a key audit matter.	We assessed the validity of material long outstanding municipalities and Soweto debt by considering payments received after year-end and past payment history. The assessment of the appropriateness of the allowance for impairment for municipalities and Soweto debt comprised: • challenged the appropriateness and reasonableness of the impairment loss indicators and assumptions applied by management • consideration of the duration of outstanding debt • consideration and concurrence of the agreed payment terms • verification of security held • consideration of the completeness and accuracy of the disclosures We did not identify material issues with the valuation of trade receivables and assessment of impairment indicators.

Independent auditor's report to Parliament and the shareholder – Minister of Public Enterprises (continued)

Report on the audit of the consolidated and separate financial statements (continued)

Key audit matters (continued)

Key audit matter	How the matter was addressed in the audit
Completeness of provisions Provisions are disclosed in note 29 and are determined by discounting the expected future cash flows using a pre-tax discount rate that reflects current market assessments of the time value of money and, where appropriate, the risks specific to the liability. In addition the following are inputs applicable in the determination of provisions: • estimation of decommissioning costs of nuclear and other generating plants • estimation of expenditure required to settle present obligation • exchange rate fluctuations • discount rates applied to the projected future cash flows Accordingly provisions are considered a key audit matter.	We challenged the assumptions made in determining the provisions amount. Our audit work included: • analysing the future projected cash flows to determine whether they are reasonable and supportable given the current economic climate and expected future performance • obtained evidence on the appropriateness of the discount rate used to discount future cash flows Where necessary we engaged an independent actuarial specialist to evaluate the work performed by the board's expert which included subjecting key assumptions to sensitivity analysis. The actuarial specialist's independence and competence was assessed. In addition to the aforementioned, our audit work included the following: • testing the effectiveness of controls around the identification and evaluation of the legal proceedings • obtaining external legal confirmation for significant legal proceedings • review of minutes and contractual commitments to identify completeness of provisions • consideration of the adequacy of the disclosure for provisions We did not identify material issues on completeness of provisions.
Valuation of complex instruments The disclosure associated with the valuation of complex instruments is set out in note 6.2 – Fair value measurement and disclosure. Fair value measurement of financial instruments significantly affects profit and loss and disclosure in the consolidated and separate statements. Valuation of some financial instruments requires greater judgement and estimation to determine the appropriate valuation techniques and to source relevant and reliable inputs. Due to the complexity of the actuarial assumptions applied and the quantum of some of these financial instruments, this is considered a key judgement area and thus a key audit matter.	We obtained an understanding of the relevant controls in place to evaluate that correct independent market inputs are used in the valuation models. We applied our valuation expertise to a sample of financial instruments and assessed the appropriateness of the valuation models with reference to approaches commonly used. We assessed the judgements and estimates applied by the board against our understanding of current market practice and conditions. We also obtained independently sourced inputs where available. Where necessary, we engaged an independent actuarial specialist to evaluate the work performed by the board's expert, including: • assessing the appropriateness of the financial model used • testing the reasonableness of the inputs into the financial models • assessing the appropriateness of the amount recognised by comparing the model used to industry-models for similar derivatives The actuarial specialist's independence and competence was assessed. We assessed key assumptions and modelling approaches in estimating credit value adjustments and funding value adjustments against current market practice. We evaluated gains or losses on significant settled deals to assess calibration of mark-to-model values, and found management's estimates to be within reasonable ranges.
Going concern Eskom's consolidated and separate financial statements are prepared on the going-concern basis as disclosed in note 3.2. The calculations are based on estimates of future performance and are fundamental to assessing the suitability of the basis adopted for the preparation of the financial statements. The following key judgement areas were considered by the board in determining the appropriateness of the going-concern basis: • the group's and South Africa's credit rating • availability of funding • the group's revenue determination by NERSA • cash flow, budgets and forecast Accordingly, the assumptions used for assessing the applicability of preparing the financial statements on the going-concern basis are considered significant and thus a key audit matter.	We challenged the board's assumptions used to support the preparation of the consolidated and separate financial statements on the going-concern basis. Our assessment included the following audit work: • critically analysed the projected cash flows from the board to determine whether they are reasonable and supportable given the current economic climate and expected future performance of the cash generating units • we tested the veracity of the forecast process with reference to previous forecasts compared to actual performance • we inspected the board's assessment of compliance with debt covenants in light of recent downgrades • we inspected loan agreements to identify any modification of repayment terms • we reviewed the board's planned submissions to and general correspondence with NERSA • we considered the government guarantees provided by National Treasury We did not identify material issues relating to going concern.

Emphasis of matter

We draw attention to the matters below. Our opinion is not modified in respect of these matters.

Restatement of corresponding figures

As disclosed in note 49 to the consolidated and separate financial statements, the corresponding figures for the prior periods have been restated to correct an error as a result of not accounting for certain distribution assets that were developed by third parties and transferred to the group in prior periods at, and for the year ended, 31 March 2017.

Material losses – non-technical revenue losses

As disclosed in note 52.3(c) to the consolidated and separate financial statements, material electricity losses of R1 268 million (2016: R1 217 million) were incurred. These arise mainly from meter tampering and bypasses, illegal connections to the electricity network and illegal vending of electricity.

Accounting authority's responsibilities for the audit of the consolidated and separate financial statements

The board, which constitutes the accounting authority, is responsible for the preparation and fair presentation of the consolidated and separate financial statements in accordance with IFRS and the requirements of the PFMA and Companies Act and for such internal controls as the accounting authority determines are necessary to enable the preparation of consolidated and separate financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated and separate financial statements, the accounting authority is responsible for assessing the group's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going-concern basis of accounting unless the accounting authority either intends to liquidate the group or to cease operations or has no realistic alternative but to do so.

Auditor's responsibilities for the audit of the consolidated and separate financial statements

Our objectives are to obtain reasonable assurance about whether the consolidated and separate financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated and separate financial statements.

As part of an audit in accordance with the ISAs, we exercise professional judgement and maintain professional scepticism throughout our audit of the consolidated and separate financial statements, and the procedures performed on reported performance information for selected key performance areas and on the public entity's compliance with respect to the selected subject matters.

We also:

- identify and assess the risks of material misstatement of the consolidated and separate financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal controls
- obtain an understanding of internal controls relevant to the audit to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the public entity's internal controls
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting authority
- conclude on the appropriateness of the accounting authority's use of the going-concern basis of accounting in the preparation of the financial statements. We also conclude, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the group's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify the opinion on the financial statements. Our conclusions are based on the information available to us at the date of the auditor's report. However, future events or conditions may cause a public entity to cease to continue as a going concern
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation
- obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities within the group to express an opinion on the consolidated financial statements. We are responsible for the direction, supervision and performance of the group audit. We remain solely responsible for our audit opinion
- communicate with the accounting authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal controls that we identify during our audit
- confirm to the accounting authority that we have complied with relevant ethical requirements regarding independence, and communicate all relationships and other matters that may reasonably be thought to have a bearing on our independence, and where applicable, related safeguards

Report on other and regulatory requirements

In accordance with our responsibilities in terms of sections 44(2) and 44(3) of the Auditing Profession Act, we report that we have identified reportable irregularities in terms of the Auditing Profession Act. We have reported such matters to the Independent Regulatory Board for Auditors. The matter pertaining to the reportable irregularities have been described in note 48 to the financial statements.

Independent auditor's report to Parliament and shareholder – Minister of Public Enterprise (continued)

Report on the audit of the annual performance report

Introduction and scope

In accordance with the Public Audit Act of South Africa (PAA) and the general notice issued in terms thereof we have a responsibility to report material findings on the reported performance information against predetermined objectives for selected key performance areas presented in the *performance in terms of the shareholder compact* section of the directors' report. We performed procedures to identify findings but not to gather evidence to express assurance.

Our procedures address the reported performance information which must be based on the approved performance planning documents of the public entity. We have not evaluated the completeness and appropriateness of the performance indicators established and included in the planning documents. Our procedures also did not extend to any disclosures or assertions relating to planned performance strategies and information relating to future periods that may be included as part of the reported performance information. Accordingly our findings do not extend to these matters.

We evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected key performance areas presented in *performance in terms of the shareholder compact* section of the directors' report for the year ended 31 March 2017:

- improve operations
- deliver capital expansion
- compliance capital investments
- reduce environmental footprint in existing fleet
- ensure financial sustainability
- economic impact

We performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. We performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the usefulness and reliability of the reported performance information to determine whether it was valid, accurate and complete.

The material findings in respect of the usefulness and reliability of the selected key performance areas are as follows:

Economic impact

Local content contracted: Eskom-wide

We were unable to obtain sufficient appropriate audit evidence for the reported achievement of local content contracted: Eskom wide. This was due to limitations placed on the scope of our work and the lack of sufficient and appropriate audit evidence. We were unable to confirm the reported achievement by alternative means. Consequently, we were unable to determine whether any adjustments were required to the reported achievement of 73.37%.

Local content contracted: new build program

We were unable to obtain sufficient appropriate audit evidence for the reported achievement of local content contracted: new build program. This was due to limitations placed on the scope of our work and the lack of sufficient and appropriate audit evidence. We were unable to confirm the reported achievement by alternative means. Consequently, we were unable to determine whether any adjustments were required to the reported achievement of 85.78%.

Other key performance areas assessed

We did not identify any material findings on the usefulness and reliability of the reported performance information in the remainder and the key performance areas assessed.

Other matters

We draw attention to the matters below. Our opinions are not modified in respect of these matters.

Achievement of planned targets

Refer to the *performance in terms of the shareholder compact* section of the directors' report on pages 7 to 9 for information on the achievement of planned targets for the year and explanations for the under achievement of targets. This information should be considered in the context of the material findings on the reliability of the reported performance information discussed earlier in this report.

Adjustment of material misstatements

We identified material misstatements in the *performance in terms of the shareholder compact* section of the directors' report submitted for auditing. These material misstatements were on the reported performance information of economic impact. As management subsequently corrected only some of the misstatements, we reported material findings on the reliability of the reported performance information discussed earlier in this report.

Report on the audit of compliance with legislation

Introduction and scope

In accordance with the PAA and the general notice issued in terms thereof we have a responsibility to report material findings on the compliance of the public entity with specific matters in key legislation. We performed procedures to identify findings but not to gather evidence to express assurance.

The material findings in respect of the compliance criteria for the applicable subject matters are as follows:

Expenditure management

Effective steps were not taken to prevent irregular expenditure, as required by section 51(1)(b)(ii) of the PFMA. The full extent of the irregular expenditure could not be quantified as indicated in the basis for qualification paragraph.

Effective steps were not taken to prevent fruitless and wasteful expenditure amounting to R547 million, as disclosed in note 52 to the annual financial statements, in contravention of section 51(1)(b)(ii) of the PFMA.

Procurement and contract management

Goods, works or service were not always procured through a procurement process which is fair, equitable, transparent and competitive, as required by section 51(1)(a)(iii) of the PFMA.

Contracts were awarded to and quotations accepted from bidders based on preferential points that were not calculated in accordance with the requirements of the Preferential Procurement Policy Framework Act and its regulations.

Contracts and quotations were awarded to suppliers whose tax matters had not been declared by the South African Revenue Services to be in order as required by Treasury Regulations 16A9.1(d) and the Preferential Procurement Regulations.

Other information

The accounting authority is responsible for the other information. The other information comprises the information included in the directors' report, the audit committee's report and the company secretary's certificate as required by the Companies Act, the other information does not include the consolidated and separate financial statements, the auditor's report thereon and those selected key performance areas presented in the *performance in terms of the shareholder compact* section of the directors' report that have been specifically reported on in the auditor's report.

Our opinion of the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and we do not express an audit opinion or any form of assurance conclusion thereon.

In connection with our audit, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the consolidated and separate financial statements and the selected key performance areas presented in the *performance in terms of the shareholder compact* section of the directors' report, or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on the work we have performed, on the other information obtained prior to the date of this auditor's report, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Internal control deficiencies

We considered internal control relevant to our audit of the consolidated and separate financial statements, *performance in terms of the shareholder compact* section of the directors' report and compliance with legislation, however the objective is not to express any form of assurance thereon.

The matters reported below are limited to the significant internal control deficiencies that resulted in the basis for the qualified opinion, the findings on the *performance in terms of the shareholder compact* section of the directors' report and the findings on compliance with legislation included in this report:

Leadership

The public entity experienced instability in leadership in the last few years as a result of a number of suspensions, dismissals and resignations in key leadership positions. Instability in top leadership has contributed to the overall decline in the internal control environment.

The accounting authority did not exercise adequate oversight responsibility regarding compliance with applicable legislation and related internal controls.

Financial and performance management

The accounting authority did not implement proper record keeping in a timely manner to ensure that complete, relevant and accurate information is accessible and available to support financial and performance reporting.

Other reports

We draw attention to the following engagements conducted by various parties that have or could potentially have an impact on the matters reported on the public entity's financial, performance and compliance related matters. The reports noted do not form part of our opinion on the financial statements or our findings on the reported performance information or compliance with legislation.

Investigations

During the financial year under review the group conducted investigations into alleged irregularities, fraud and corruption within the procurement environment. At the reporting date, certain investigations were still ongoing. The material findings that were identified relating to those investigations completed during the year were as follows:

- an independent consultant investigated allegations of mismanagement and allegations of irregularities in the quality management department as referred to in note 52.1(h) to the consolidated and separate financial statements

Agreed-upon procedure engagements

The following agreed upon procedures engagements were performed:

- National Treasury consolidation template. The report covered the period from 1 April 2016 to 31 March 2017
- Eskom's generation, transmission and distribution activities regulatory financial report. This agreed-upon procedure is performed on behalf of NERSA

Aaron Mthimunye
SizweNtsalubaGobodo Inc.
Director
Registered auditor

23 June 2017

20 Morris East Street, Woodmead 219

Eskom	SUBMISSION DOCUMENT	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary	

EXECUTIVE SUMMARY

SUBMISSION TO BOARD ON 27 JULY 2017

1. TITLE OF THE SUBMISSION

DEVELOPMENT BANK OF SOUTHERN AFRICA (DBSA) WAIVER

2. RESOLUTION REQUIRED

It is required that Board:

2.1. Note the impact of the outstanding DBSA waiver on Eskom's liquidity and financial sustainability.

3. SUMMARY OF FACTS IF THE DBSA MATTER IS NOT RESOLVED

3.1. The outcome of the matter is binary, should Eskom not resolve the matter we will default on outstanding DBSA debt with a cross default across its debt portfolio with negative implications on Eskom liquidity. Should Eskom resolve this matter the going concern status will not be compromised, however Eskom will have to convince the lenders and investors of its ability to address all concerns as a result of the qualified audit finding.

3.2. If the required waiver by DBSA is not granted, Eskom will *default* under its loan agreements and will be unable to drawdown on any of the secured funding nor negotiate any new funding for the 2017/18 Financial Year, see attached **Annexure A**.

3.3. As at 26 July 2017, Eskom had R19.8 billion available cash. The potential default will constrain the ability to raise funding, this will result in a projected R1 billion cash available as at 30 September 2017 with **negative cash balances of R6 billion** at 31 October 2017. **Annexure A** has been updated with the most recent cash flows.

3.4. Given the constrained cash balances, Eskom will not be able to service its interest and debt commitments and as a result suspend its capital programme. The situation will compromise the ***Going Concern*** status of Eskom and will have negative implications on its financial and operational sustainability.

3.5. A portion of Eskom's debt has been secured with government guarantees amounting to R267 billion. The potential default will result in a call on the Government Guarantee and further deterioration in the fiscal ratios and possible ratings downgrade.

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3.6. WAY FORWARD

DBSA stipulated conditions attached to the granting of the waiver for Eskom to meet. These conditions have to be met to the satisfaction of the DBSA and have been communicated in writing and verbally to the executives. Furthermore, Eskom is required to engage directly with the affected lenders once Eskom understands DBSA's final position regarding the waiver and/or any conditions subsequent.

<u>In our view, there is a relatively simple legal solution to the problem</u>. If DBSA unconditionally waivers the default with respect to the 2016/17 qualified audit report prior to the deadline on 28 July 2017, we believe that the legal consequences and potential fallout can be contained and Eskom Treasury will be able to proactively engage with those affected lenders to deal with any residual issues.

3.7. FINANCIAL IMPLICATIONS

If DBSA conditions are not met and the conditional waiver expires, the default will remain a continuing event and the R361 billions of total debt could become due and payable before its specified maturity. The prepayment of the debt will then trigger the R267 billion government guaranteed debt which will become payable by the Government to the guaranteed lenders.

4. OTHER APPROVALS REQUIRED

Parties to be consulted/ informed of decision or further approvals needed:

Board approval.

Submission prepared by: Andre Pillay
Contact Number: x 4417

ANNEXURES

Annexure 1 - Board submission 24 July 2017
Annexure 2 - Impact on Eskom's liquidity due to the delay of the DBSA Waiver 25 July 2017

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EXECUTIVE SUMMARY

SUBMISSION TO BOARD ON 24 JULY 2017

1. TITLE OF THE SUBMISSION

IMPACT OF QUALIFIED AUDIT OPINION ON THE FINANCING AGREEMENTS AND REMEDIAL ACTION TAKEN TO MITIGATE THE ADVERSE EFFECTS

2. RESOLUTION REQUIRED

It is required that Board:

2.1. Note the impact of a qualified audit opinion on the financing agreements relating to the existing loans.

2.2. Consider and resolve to the satisfaction of the DBSA, the conditions of the DBSA waiver.

2.3. Engaging the European Investment Bank (EIB) and all other affected lenders with whom Eskom has active transactions under the International Swaps and Derivative Association (ISDA).

2.4. Provide feedback to DBSA on the outcomes of the Board discussions.

2.5. Approve that the IGCE/Interim Chair, be authorised with the power to take all necessary steps to give effect to the above.

3. SUMMARY OF FACTS

3.1. BACKGROUND

The company's financial statements for the year ended 31 March 2017, which were prepared in accordance with IFRS and Public Finance and Management Act (PFMA), have been audited as required by the Companies Act and the Auditor General for compliance with the above mentioned standards and legislation.

The audit has been conducted in accordance with the new International Audit Standards (IAS), the result of which is a qualified audit opinion with respect to issues relating only to the PFMA. The qualification arises as a result of the auditor being unable to conclude that the irregular expenditure as disclosed in note 52 of the financial statements includes all the irregular expenditure incurred by the entity in the 2016/17 financial year.

The impact of a qualified opinion on the loan agreements is as follows:

- The qualified opinion is provided to the lenders as part of the financial statements which must be delivered within 120 days after year end.

- The qualified opinion has triggered an event of default on two loan facilities that total to R17, 2 billion. Following awareness by Eskom of the event of default, Eskom is obliged to inform the lenders about the event.

- The effect of an event of default if not cured or waived could result in:
  - Cancellation of undrawn amount of the facility
  - Acceleration by the lenders
  - Cross default being triggered on other credit agreements
  - Cross acceleration being triggered on other agreements

Most cross default clauses have a minimum threshold above which a cross default will be triggered and the threshold levels range between R100 million to R500 million and in certain instances, are expressed as a percentage of Net Asset Value of the business.

The total amount of debt will ultimately be triggered by cross default and acceleration provision which have to be due and payable immediately is approximately R361 billion of which R267 billion is guaranteed by Sovereign.

3.2. ENGAGEMENT WITH LAWYERS TO ASCERTAIN THE IMPACT

Due to the nature of the qualification and the fact that it was for the first time an audit opinion has been qualified, an extensive consultation took place to understand the impact on the credit agreements.

The first engagements were internal to Eskom on details of the qualification. This was followed by consultation with White and Case (W&C) to establish if this qualification and its basis trigger any of the covenants in all Eskom's credit agreements.

W&C was provided with all categories of credit agreements from similar Export Credit Agency (ECA), all Development Financing Institution (DFI), Domestic and International Bonds programme and credit agreements under ISDA. Events of defaults cross defaults and cross acceleration clauses were identified and analysed in relation to the qualification.

3.3. RESULTS OF W&C ANALYSIS

White and Case produced a list of all agreements with summarised wording relating to event of default, cross default and acceleration.

Of the loan agreements that are currently in place, only two had a provision that had a qualified opinion as a trigger to an event of default. The two agreements related to AFD and DBSA with the following clauses in the agreements:

AFD: (par13.3) In accordance with clause 12.5 (information –miscellaneous),the Borrower shall promptly notify the Lender upon becoming aware of any event which is or is likely to be an Event of Default and inform the Lender of all the measures contemplated by the Borrower to remedy it

DBSA: (par 16.1.14) A qualified audit report is issued in respect of the Borrower's financial statements and/or the auditors of the Borrower notes that a reportable irregularity has occurred in respect of the Borrower's financial statements

All agreements provide for notification to the lenders of an event of default.

Agreements with EIB and banks under ISDA provide for a cross default provision. This means that if the lender that trigger a default has not cured or waived its right, even if they do not take action by issuing notice of default, these lenders can trigger a cross default. The remedy for these lenders is the removal of the clause or for them to waive their right of entitlement to trigger cross default.

Other agreements have a cross default provision that are triggered only in the DBSA and AFD issue a notice of default to Eskom. This means that these loans will not trigger a cross default if DBSA and/or AFD do not act or waiver the rights to call a default. Most ECA, DFI and Bonds agreements fall under this class and do not pose any risk if DBSA and AFD decide not to act.

Other agreements provide for a cross acceleration, which means that should any of the lenders accelerate due to an event of default, then that action will also bring them to the table so that they are not excluded when loans are repayable. This class does not pose a risk as long as DBSA and AFD or any other lender does not accelerate as result of an event of default.

These results called for an engagement with AFD and DBSA whose loans were triggered by the qualification to try and find an amicable solution to the problem.

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The tables below details loan agreements that provide for cross default:

A. ISDA Agreement 'evergreen' cross default affected counterparties

Counter Party	Cross Currency Swap (CCS) Exposure[1] (million)	ISDA Version	Cross Default	ISDA – Cross Default Trigger	Cross Default Threshold Amount
BNP Paribas	ZAR 492	1992	Yes	3% of Shareholder's Equity	ZAR 5 billion
Citibank	(ZAR 13)	1992	Yes	ZAR 50 million	ZAR 50 million
Deutsche Bank	ZAR 292	1992	Yes	3% of Shareholder's Equity	ZAR 5 billion
JP Morgan	ZAR 2 706	2002	Yes	USD 50 million	USD 50 million
Bank of America Merrill Lynch	(ZAR 68)	2002	Yes	USD 100 million	USD 100 million
ABSA Bank	(ZAR 4,763)	2002	Yes	3% of Net Asset Value	R5 billion
FirstRand Bank	ZAR 4 797	1992	Yes	3% of Net Asset Value	R5 billion
Investec Bank	(ZAR 135)	2002	Yes	3% of Shareholder's Equity	R5 billion
Nedbank	(ZAR 197)	1992	Yes	ZAR 1 million	ZAR 1 million
Standard Bank	ZAR 5 192	2002	Yes	3% of Shareholder's Equity	R5 billion

1. Amounts denoted in () indicate exposure Eskom owes to counterparties. Positive amount indicates exposure counterparties owes to Eskom.

B. DFI 'evergreen' cross default - Government Guaranteed

Counter Party	Nominal Loan Amount (million)	Maturity	Cross Default	Cross Default Threshold Amount (million)
EIB – A	EUR 80	2031	Yes	EUR 35
EIB – B	EUR 88	2032	Yes	EUR 35
EIB (renewables)	EUR 75	2034	Yes	EUR 35

3.4. ENGAGEMENT WITH TWO LENDERS AND OUTCOME

3.4.1. AFD

When W&C confirmed that the qualification constitutes an event of default, AFD was engaged first. They confirmed W&C analysis and conclusion that the opinion of PFMA non-compliance is an event of default.

AFD agreed to amend their agreement so as to have only refusal by the Auditor to certify annual financial statements as an event of default. This agreement meant that AFD does not have an event of default resulting from this qualification of opinion and the lenders with an evergreen are also unable to exercise their entitlement. A letter to this effect was send and receipt and co-signing was appended by Eskom.

Letter and amendment to the agreement are included in Annexure A

3.4.2. DBSA

DBSA was engaged in a meeting and this was followed by a formal request to amend its loan terms and conditions in line with the AFD's terms and conditions. After numerous discussions with DBSA and relevant stakeholders, DBSA was prepared in principle only, to agree to a waiver of its rights under clause 16.1 and specifically clause 16.1.14 of the agreement, subject to the following conditions being met by Eskom:

- Eskom providing the DBSA with full disclosure of the events that led to the event of default;
- Eskom enabling the DBSA, through the provision of adequate information and/or documents to independently conclude that any decision to waive its rights is rational and reasonable in the circumstances;
- Eskom convening a meeting of other lenders under other financing instruments to which Eskom is a party, to inform them of the event of default and the DBSA's intended waiver of rights. DBSA had in mind those lenders which might have vested rights under financing instruments pursuant to the event of default and/or those lenders whose position might otherwise be adversely affected by any decision taken by the DBSA (other lenders). The DBSA requested to be present at such meeting;

- Eskom providing proof to the DBSA that Eskom adequately consulted with the Department of Public Enterprises and National Treasury on this matter;

- Eskom providing DBSA with a detailed plan of mitigating measures. Eskom proposes to implement as to effect remedial actions. Eskom proposes to address the events that led to the event of default and to ensure that Eskom's audited financial statements will not again be qualified;

- The DBSA's board approval of Eskom's response letter and proposal to the DBSA and

- Acceptance of the above proposal by the board of Eskom

The above were succeeded by the engagements that took place and correspondence letter received on the 16th, 17th, 18th and 19th July 2017 as detailed below.

3.4.3. OTHER ENGAGEMENTS

Eskom also engaged the Ministry of Public Enterprises and National Treasury to make them aware of the qualification and the impact on Eskom's debt book and guaranteed debt. The departments indicated an intention to join forces with all parties to find a solution.

Johannesburg Stock Exchange (JSE):

The JSE was notified by the Independent Regulatory Board of Auditors (IRBA) that SizweNtsalubaGobodo reported two irregularities related to management.

Eskom debt listed on the JSE is regulated according to the JSE Debt Listing Requirements whereby issuers are required to publish information that could have an impact on the pricing of the listed instruments. The JSE had by Friday 8 July 2017 not seen any information related to the finding published by Eskom on the official Stock Exchange News Service (SENS) from Eskom.

The JSE on the same day requested Eskom to inform them, before close of business 12 July 2017, if such information will be published to the market or not, and if not what our motivation would be to withhold the information.

On Tuesday 11 July 2017 the press released information regarding the irregularities as reported by Eskom auditors following communication with Eskom spokesperson. Eskom Treasury followed up with communication to the market through SENS with the same information as that contained in the press.

On Thursday 13 July 2017 the press reported on Eskom meeting with lenders regarding discussions related to loan covenant. The JSE enquired as to the relevance of these discussions on the likelihood of defaults and the impact on trading in Eskom bonds in the domestic market. Consideration was given to a trade hold in Eskom bonds whereby all trading in Eskom bonds in the market would have been halted until clarity is reached on the exact nature of the impact of the discussions with investors. Following deliberation with Eskom external lawyers it was clear that there is no default on the Domestic Eskom bonds in relation to discussion with lenders on the technical default situation and the JSE was informed that no default exist in the bonds and no trade halt is required.

3.4.4. FURTHER ENGAGEMENTS WITH DBSA, LENDERS AND GOVERNMENT

On Sunday 16 July 2017, a meeting was held with Eskom's Group Chief Executive, Group Chief Financial Officer, Treasurer, Director General – DPE, Director General – NT, DPE and NT Officials, DBSA's Chief Executive, Head of Legal and Head of Funding.

The meeting was to discuss the impact of the qualification on the financing agreements, the necessary steps to remedy and the commitment from the Interim Chairman and Group Chief Executive to find a solution to the matter.

The above meeting was followed by a meeting on Monday 17th July 2017 at the DBSA with Eskom, its legal representatives, DBSA and Norton Rose Fulbright. The main focus of the discussion was the waiver of rights subject to suspensive or resolute conditions.

As discussed and requested by the DBSA, the meeting with the affected lenders took place on Tuesday 18 July 2017 with the following parties present:

- Eskom (Chair, IGCE, CFO, Officials and White & Case as legal counsel)
- DBSA (CE, Head of Legal, Risk and Funding with Norton Rose Fulbright as legal counsel)
- Investec
- ABSA – Barclays
- JP Morgan
- RMB
- BNP Paribas
- Standard Bank
- Reserve Bank
- NT (DG, and officials)
- DPE (DG, DDG and officials)
- Nedbank

- Bank of America Merrill Lynch
- European Investment Bank (who joined via telephone line)
- Deutsche Bank

The banks were represented by their Chief Executives, Heads of Credit and their relationship personnel. The qualification and the nature of it, the impact on credit agreements of the DBSA and the affected lenders who were called into the meeting were also discussed. A green-light to announce Eskom annual financial results on the 19th July was granted.

Lastly the DBSA's in principle waiver was discussed and confirmed that such was in placed as of the 18th of July 5pm and that such is valid for in 7 days and subject to all the conditions being met to the satisfaction of the DBSA within the 7 days.

The discussion and DBSA's position was confirm by a letter from the DBSA dated the 19th July 2017, confirming the waiver, the period of the waiver and the final conditions relating to the waiver. Letter attached, and the response has been drafted.

All the other affected lenders will be engaged when Eskom has resolved on meeting the conditions set by the DBSA, and this should be followed by communication (cleansing statement) to all the other lenders who are not directly affected by the DBSA default provision, to the effect that what could have been an event of default has been cured.

Material and ever-escalating risks resulting from the DBSA's loan agreement and its position on waiving the default provision have been highlighted to the CFO and IGCE which include inability of Eskom Treasury to trade, make payments and receive loan disbursements.

3.5. WAY FORWARD

Eskom is required to meet the conditions of the DBSA, to their satisfaction as communicated in writing and verbally to senior Eskom executive. Furthermore, Eskom is required to engage directly with the affected lenders once Eskom understands DBSA's final position regarding the waiver and/or any conditions subsequent.

The straightforward legal solution to the problem may be articulated as follows: If DBSA unconditionally waives the default with respect to the 2016/17 qualified audit report prior to the deadline on 25 July, we believe that the legal consequences and potential fallout can be contained and Eskom Treasury will be able to proactively engage with those affected lenders to deal with any residual issues.

3.6. FINANCIAL IMPLICATIONS

If DBSA conditions are not met and the conditional waiver expires and the default therefore continues, the R361 billion of total debt could become due and payable before its specified maturity depending on the actions of all the lenders, of which R267 billion is guaranteed by the government and the government will have to make good to the guaranteed creditors.

3.7. HUMAN RESOURCE IMPLICATIONS

No implications

3.8. RISKS (including Lenders, Media, Speculation, Bonds and Currency)

- The Media running with a story on breach of covenants. Such information on public domain may have an influence on the market which may affect spreads and currency adversely.

- Eskom's funding will be negatively affected if DBSA does not waive and amend the agreement. ***Going Concern risk***

- Cross default could minimise our chances of executing the funding planned for the short to medium term.

- The impact of the default as a result of the DBSA facility unless waived or cured:
  - South African Government will likely have to step-in and assume the guaranteed debts of Eskom as primary obligor resulting in a sovereign ratings downgrade
  - Eskom and sovereign may have to follow debt restructuring that will have and detrimental impact of the South African economy
  - Eskom and the Government will be downgraded by all rating agencies probably to SD (selective default) while the situation remains
  - Negative implications for the currency
  - A possible run on the equity markets
  - Compromise the financial sustainability of the country
  - Deepening of the weak GDP growth of the country with negative consequences on issues such as unemployment.
  - This will compromise the financial sustainability of Eskom.

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- A further risk arising from this situation is that we are now also restricted in prudently conducting our treasury activities, due to the following:
  - Until the situation with DBSA is resolved, Eskom may, as of today, have knowledge of a potential event of default with regard to DBSA loan agreement and we are obliged to represent and warrant that no such event has or will occurred in order to access funding or to explain to the lenders that Eskom is in default;
  - Where such a representation is found not to be true Eskom has an added obligation to indemnify the lender as a result of any loss they may suffer due to our misrepresentation. This has the risk of leading to further violations under the PFMA, deepening of the nature and size of the losses suffered by Eskom as a result of this. An assessment of the potential implication of such loss on the Eskom directors, in terms of Companies Act, is also risk that will need to be considered;
  - No lender (with this knowledge) is likely to extend further credit to Eskom or leave credit lines open;
  - The same knowledge restricts our ability to trade our securities (buying or selling) as we are in possession of material non-public information which may be an offence;
  - By virtue of the meeting in which DBSA required us to have with the SA-based lenders, these lenders have all been made insiders as they now have material non-public information, which likely prevents them from trading our paper in the market or extending further credit to Eskom.

4. OTHER APPROVALS REQUIRED

Parties to be consulted/ informed of decision or further approvals needed:

Board approval.

Submission prepared by:	Andre Pillay
Contact Number:	800 4417

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		Revision	0
		Revision Date	July 2015
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ANNEXURE A

1. Draft AFD Letter
2. Letter from Eskom to DBSA
3. DBSA Response
4. Letter to Director General of National Treasury
5. Letter to Director General of Public Enterprises
6. Attendance register of the 18th July 2017
7. Letter from the DBSA sent on 19th July 2017

Annexure "AP26"

Eskom

MEMORANDUM

To:	Mr Johnny A Dladla, Interim Group Chief Executive Mr Anoj Singh, Chief Financial Officer	Reference:	
From:	Mr Andre Pillay, General Manager Treasury	Version:	01
Date:	25 July 2017		

SUBJECT: IMPACT ON ESKOM'S LIQUIDITY DUE TO THE DELAY IN DEVELOPMENT BANK OF SOUTHERN AFRICA (DBSA) WAIVER

PURPOSE

1. To inform the Interim Group Chief Executive (IGCE) and Chief Financial Officer (CFO) of the impact of the delay in the DBSA waiver on Eskom's liquidity and funding

BACKGROUND

2. The company's Annual Financial Statements (AFS) for the year ended 31 March 2017, which were prepared in accordance with IFRS and Public Finance and Management Act (PFMA), have been audited as required by the Companies Act and the Auditor General for compliance with the above mentioned standards and legislation.

3. The audit has been conducted in accordance with the new International Audit Standards (IAS), the result of which is a qualified audit opinion with respect to issues relating only to the PFMA. The qualification arises as a result of the auditors being unable to conclude that the irregular expenditure as disclosed in Note 52. Information required by the PFMA, of the AFS includes all the irregular expenditure incurred by the entity in the 2016/17 financial year.

4. The impact of a qualified opinion on the loan agreements is as follows:
   - The qualified opinion will be provided to the lenders as part of the financial statements, which is required to be delivered within 120 days after year end.

IMPACT ON ESKOM'S LIQUIDITY DUE TO THE DELAY IN DEVELOPMENT BANK OF SOUTHERN AFRICA (DBSA) WAIVER

- The qualified opinion has triggered an event of default on two loan facilities that total to R17.2 billion (bn). Following awareness by Eskom of the event of default, Eskom has an obligation to inform the lenders about the event. The effect of an event of default if not cured or waived could result in:
  - Cancellation of undrawn amount of the facility
  - Acceleration of repayment by the lenders,
  - Cross default being triggered on other credit agreements
  - Cross acceleration being triggered on other agreements.

- Most cross default clauses have a minimum threshold above which a cross default will be triggered and the threshold levels range between R100 million (m) to R500 m and in certain instances are expressed as a percentage of Net Asset Value of the business. The total amount of outstanding debt will ultimately be triggered by cross default and acceleration provisions which have to be due and payable immediately amounts to approximately R361 bn, of which R267 bn is guaranteed by Sovereign.

DISCUSSION

5. Eskom's projected liquidity for 31 July 2017 is expected to be approx. R17 bn as at ***30 June 2017*,**

Cash Flow Report: as at June 2017

Exclude all risks	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Zar million	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18
Opening Liquid Assets (A)	13 639	16 636	7 085	7 853	3 523	(3 963)	(5 174)	(9 917)	3 289
Cash flows from group activities	2 303	(4 104)	4 633	(1 501)	(5 444)	(1 857)	(3 118)	(3 037)	190
Loans & Interest	(2 548)	(5 447)	(3 865)	(2 533)	(3 233)	(847)	(3 185)	(6 434)	(5 616)
Funding Requirement	(245)	(9 551)	768	(4 034)	(8 677)	(2 704)	(6 303)	(9 471)	(5 427)
Debt Raised	3 242	0	0	0	1 475	1 751	1 579	22 724	10 251
Committed & Signed	2 558	0	0	0	18	1 701	79	0	332
Total DFI's Foreign	0				0	1 310	0	0	329
Total ECA's	2 558				18	390	79	0	4
Signed documentation in place	684	0	0	0	1 457	0	1 500	15 600	1 900
Local Bonds (Gov Guaranteed)	200				1 000	0	600	1 000	1 000
Commercial Paper	484				457	0	900	900	900
International Bonds	0	0	0	0	0	0	0	13 700	0
Other Funding:	0	0	0	0	0	0	0	0	0
Swap Restructured	0	0	0	0	0	0	0	0	0
Unsecured	0	0	0	0	0	50	0	7 124	8 018
Commercial Paper issued and mature same fin year	0	0	0	(296)	(284)	(258)	(19)	(47)	(247)
(Risks)/ Opportunities:	0	0	0	0	0	0	0	0	0
Net surplus/ (requirement)	2 997	(9 551)	768	(4 330)	(7 486)	(1 211)	(4 743)	13 205	4 577
Liquid assets (bought)/ sold (B)	(2 997)	9 551	(768)	4 330	7 486	1 211	4 743	(13 205)	(4 577)
Closing Liquid Assets (C) (A-B)	16 636	7 085	7 853	3 523	(3 963)	(5 174)	(9 917)	3 289	7 866
Closing Liquid Assets EXCL. UNSECURED FUNDING	16 636	7 085	7 853	3 523	(3 963)	(5 224)	(9 967)	(3 885)	(7 326)

IMPACT ON ESKOM'S LIQUIDITY DUE TO THE DELAY IN DEVELOPMENT BANK OF SOUTHERN AFRICA (DBSA) WAIVER

Should the DBSA matter delay funding over the next three months Eskom will be unable to drawdown on its secured funding over the next three months the liquidity will drop to R3.5 bn with a projected year-end negative closing balance of R7.3 bn, (see table above).

6. Impact on signed and committed funding also see table below :

Funding Committed	R bn	Funding at risk	Comment
CDB	20 000		Signed facilities, Eskom will be required to provide additional Representations and Warranties in order to drawdown
AfDB	4 169		
World Bank	2 386		
AFD	800		
Total DFI's	**27 355**		
KFW	1 392		Signed facilities, Eskom will be required to provide additional Representations and Warranties in order to drawdown
Other ECA's	778		
Total ECA's	**2 170**		
CPB's	1 600		Drawdown already
Domestic Bonds	1 800		Drawdown already
Structured Products	2 500		Drawdown already
Funding Secured	**35 425**		
Available Liquidity			
Liquidity Reserves	13 600		
Committed Facilities	6 200		
	19 800		
Total Committed +Liquidity	**55 225**	**77% Secured of Funding Plan**	

6.1. Eskom would be unable to drawdown on any of its committed facilities, see Annexure1, under its Representations and undertakings and events of default.

6.2. Therefore, R33.6 bn of the R35.4 bn will not be accessible

6.3. Approximately R11 billion has already been drawdown to date

6.4. The *Effects of Default* also compromises the committed bank facilities of R6.2 bn

IMPACT ON ESKOM'S LIQUIDITY DUE TO THE DELAY IN DEVELOPMENT BANK OF SOUTHERN AFRICA (DBSA) WAIVER

7. Impact on funding under negotiation:

Funding under Negotiation	R bn	Funding at risk	Comment
Domestic Bonds	**6 200**		Negotiations on hold, executions of which is expected to delayed
International Bonds	**7 000**		
CPBs	**5 900**		
CDB Long term (Kusile)	7 594		
AFDB	2 967		
AFD	236		
New Development Bank	1 335		
Total DFI's	**12 132**		
Total ECA's	**5 023**		
Total Funding Under Negotiation	**36 255**		
Total Funding Plan	**71 680**		

7.1 The outstanding matter with the DBSA has required Eskom to postpone the negotiations and executions of the R36.3 billion of it R71.7 billion funding requirement. This will have a ripple effect on Eskom's five year funding plan.

8. Other funding initiatives that will be compromise the FY2017/18 funding plan :
   - Huarong facility of US$1.5 billion
   - Monetisation of the Municipal debt approximately R6 billion
   - ECA framework R5 billion
   - All the un-guaranteed funding initiatives of between R5 - 20 billion
   - Sukuks bond R7 billion.
   - Bridge facility due to the delay in the international bond

9. Treasury activities in relation to the hedging activities will be damagingly impacted as well as the settlement or payment both principal and interest obligations, as this will require Eskom to make ***Representations*** regarding amongst others compliance with all applicable laws and no event of default has occurred.

IMPACT ON ESKOM'S LIQUIDITY DUE TO THE DELAY IN DEVELOPMENT BANK OF SOUTHERN AFRICA (DBSA) WAIVER

LIQUIDITY RISKS

10. If Eskom were unable to raise the required funding, business operations and capital expansion projects would have to be delayed, resulting in penalties related to contractual agreements with suppliers.

11. Reporting of low liquidity levels to ratings agencies will result in potential ratings downgrade.

12. The worst case scenario of an acceleration of payment under the continued event of default will result in required prepayment of R94 billion by Eskom for debt not guaranteed and a call on Government to step in for the servicing of R267 billion of guaranteed debt.

13. This matter will have a systemic impact on the Sovereign and South African economy

RECOMMENDATION

14. That the IGCE and CFO note of the impact of the DBSA waiver on Eskom, which are as follows:

    14.1 Projected liquidity of ***negative*** R4 billion by 30 November 2017.

    14.2 The inability to execute its funding plan and Treasury operations

    14.3 Eskom may have to proactively engage and inform Government , Ratings Agencies, investor and Lenders

Compiled by:

Andre Pillay
GENERAL MANAGER TREASURY
Date: 20170725.

IMPACT ON ESKOM'S LIQUIDITY DUE TO THE DELAY IN DEVELOPMENT BANK OF SOUTHERN AFRICA (DBSA) WAIVER

Noted:	Noted:
Mr Anoj Singh	Mr Johnny A. Dladla
CHIEF FINANCIAL OFFICER	**INTERIM GROUP CHIEF EXECUTIVE**
Date: 28/07/17.	Date:

- Discussed with GCE + NT + DPE meeting 26/07/17.
- Discussed @ Alco meeting 24/07/17.

AFP-556

DTC 2 FY17/18 Delta view – excl. all future funding activities

Eskom

Cash Flow Report: as at June 2017

Forecast

Zar million	Actual Apr-17	Actual May-17	Actual Jun-17	Forecast Jul-17	Forecast Aug-17	Forecast Sep-17	Forecast Oct-17	Forecast Nov-17	Forecast Dec-17	Forecast Jan-18	Forecast Feb-18	Forecast Mar-18	Forecast FY18
Opening Liquid Assets (A)	26 312	18 111	17 649	13 639	15 952	6 401	7 169	2 839	(6 122)	(9 083)	(15 405)	(24 924)	26 312
Cash flows from group activities	(7 448)	(176)	(4 221)	2 303	(4 104)	4 633	(1 501)	(5 444)	(1 857)	(3 118)	(3 037)	190	(23 781)
Revenue	14 316	15 195	15 107	22 067	14 501	22 213	17 056	15 280	16 957	15 093	15 843	16 163	199 792
Payments from divisions	(21 792)	(15 753)	(19 466)	(19 070)	(17 995)	(17 127)	(18 576)	(20 657)	(18 750)	(18 128)	(19 071)	(20 295)	(226 680)
Loans & Interest	(3 398)	(4 396)	(1 680)	(2 548)	(5 447)	(3 865)	(2 533)	(3 233)	(847)	(3 185)	(6 434)	(5 616)	(43 182)
Interest Received & Paid	(1 965)	(2 063)	(555)	(2 277)	(4 070)	(2 978)	(2 075)	(2 209)	(551)	(2 358)	(4 557)	(4 308)	(29 968)
Loan Repayments (excl CPB's)	(384)	(1 124)	(313)	(252)	(1 097)	(731)	(477)	(1 121)	(288)	(358)	(1 117)	(774)	(8 036)
CPB Repayments	(705)	(997)	(619)	(215)	(420)	(457)	(382)	(155)	(188)	(416)	(499)	(441)	(5 493)
Swap Cashflows on FEC's (Debt)	(344)	(212)	(193)	196	140	301	402	252	179	(53)	(260)	(93)	315
Funding Requirement	(10 846)	(4 573)	(5 901)	(245)	(9 551)	768	(4 034)	(8 677)	(2 704)	(6 303)	(9 471)	(5 427)	(66 963)
Debt Raised	1 950	3 830	1 715	2 558	0	0	0	0	0	0	0	0	10 054
Committed & Signed	179	824	638	2 558	0	0	0	0	0	0	0	0	4 200
Total DFI's Foreign	0	744	489	0									1 233
Total ECA's	179	81	149	2 558									2 967
Signed documentation in place	1 771	506	1 077	0	0	0	0	0	0	0	0	0	3 354
Local Bonds (Gov Guaranteed)	1 118	16	661										1 795
Commercial Paper	653	490	416										1 559
Other Funding:	0	2 500	0	0	0	0	0	0	0	0	0	0	2 500
Swap Restructured	0	2 500	0	0	0	0	0	0	0	0	0	0	2 500
Unsecured	0	0	0	0	0	0	0	0	0	0	0	0	0
Commercial Paper issued and mature same fin year	694	281	176	0	0	0	(296)	(284)	(258)	(19)	(47)	(247)	0
(Risks)/ Opportunities:	0	0	0	0	0	0	0	0	0	0	0	0	0
Net surplus/ (requirement)	(8 202)	(462)	(4 010)	2 313	(9 551)	768	(4 330)	(8 961)	(2 962)	(6 322)	(9 519)	(5 673)	(56 910)
Liquid assets (bought)/ sold (B)	8 202	462	4 010	(2 313)	9 551	(768)	4 330	8 961	2 962	6 322	9 519	5 673	56 910
Closing Liquid Assets (C) (A-B)	18 111	17 649	13 639	15 952	6 401	7 169	2 839	(6 122)	(9 083)	(15 405)	(24 924)	(30 597)	(30 597)

Annexure "AP27"

ANNEXURE AP27

Eskom

FOR COLLECTION

Date:
23 January 2015

To Whom It May Concern
Eskom Holdings SOC Ltd

Enquiries:
W Venner
+27 11 800 3250

Dear Sir/Madam

EXTRACT OF THE APPROVED MINUTES
The APPROVED minutes of the ESKOM BOARD MEETING (B04-2006/07) held on 07 December 2006:

"21. OFFICE OF THE CE:

DELEGATION OF AUTHORITY

- **Changes to the Decision Making Document of Eskom**

The submission was tabled by the CE for approval.

The CE indicated that Exco had considered this matter and recommended the item for approval.

Corporate Counsel explained that certain amendments had been inserted into the Delegation of Authority to align the document with the approval of the Minister of Finance, permitting the Board to delegate certain powers in terms of section 66 of the Public Finance Management Act [PFMA]. In addition certain financial limits had been increased. A comprehensive review of the limits would be carried out once the external members had been appointed to the committees. The treasury delegation had also been amended but was subject to the outcome of a review to be conducted by the National Treasury.

RESOLVED that:

1. The amendments to the Delegation of Authority as set out in the attached 'Annexure 1' are approved.

2. The financial limits are increased as follows:

   2.1 <u>Investment Finance Committee (IFC)</u>

   2.1.1 The general transactional limit is increased from R 500m to R 750m

   2.1.2 The authority for investment decisions when establishing infrastructure and additional capacity is increased from R 750m to R 1bn.

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2.2 Board Tender Committee (TC)

2.2.1 The general transactional limit is increased from R 500m to R 750m.

2.3 Executive Management Committee (EXCO)

2.3.1 The general transactional limit is increased from R 100m to R 200m.

2.3.2 The authority for investment decisions when establishing infrastructure and additional capacity is increased from R 100m to R 200m.

2.3.3 The authority for procurement when establishing infrastructure and additional capacity is increased from R 500m to R 750m.

2.3.4 The authority for procurement for operations, maintenance and refurbishment is increased from R 500m to R 750m.

"Annexure 1"

Delegation of Authority
Summary of Amendments

Shareholder Approval, Consultation and Reporting

Section	**Nature of Amendment**	**Rationale**
Shareholder Approval Consultation and Reporting		
1.1.4	Amend clause 1.1.4 by deleting the words **'with regards to borrowing of money"** at the end of the paragraph and adding the following words: **"In the circumstances , the authority to issue guarantees, sureties, indemnities, securities or any other transactions that binds the company to any future financial commitment, is delegated as per the terms and conditions of Appendix 4:"** The new paragraph 1.1.4 will then read as follows: **In terms of Section 66(6) of the PFMA, the Board may not delegate a power relating to the borrowing of money, issuing of guarantees, indemnities or securities, or enter into any such transaction that binds or may bind Eskom to any future financial commitment, except with prior written approval of the Minister of Finance. It is**	Align the document with approval obtained from the Minister of Finance dated 19 October 2006- attached hereto and marked Annexure A"..

	hereby recorded that the Minister of Finance has furnished the necessary approval. In the circumstances, the authority to issue guarantees, sureties, indemnities, securities or any other transactions that bind the company to any future financial commitment, is delegated as per the terms and conditions of Appendix 4:	
Key of Abbreviations	Insert a new key to abbreviation, namely **"Div Excom" – "Divisional Executive Committee "** Delete all references to Divisional Board and its key to abbreviation and replace same with Divisional Executive Committee throughout the document.	Update and align with current practise

Table – Delegation of Authority

Section	**Nature of Amendment**	**Rationale**
Overall General Contractual Period Item 4	Insert the words **"See note 40"** in the first column.	Update
Writing off bad debts **Item 11**	To remove the words **"cumulative annual maximum"**	To provide clarity and to align this item with the policy for writing off of bad debts as approved by the Board Audit Committee.
Item 15	Insert the words **"See note 40"** in the first column.	Update
15.1.2(b)	Delete the words **"unlimited"** and insert in its place the words: - **"up to the maximum of the investment decision, and"**	Align with current practice.
15.1.2.3	Delete the words **"unlimited"** and insert in its place the words: - **"up to the maximum of**	Align with current practice.

	approved budgeted amount, and"	
19(c) and (d)	Add the words **"See Appendix 4"** in the columns	Align the document with the Changes introduced by the approval obtained from the Minister of Finance.

Notes – Delegation of Authority

Section	**Nature of Amendment**	**Rationale**
Note 12	Delete the words **"larger than 5% of the total combined hedged and unhedged exposure"** and substitute same with the words **"in accordance with the prescriptions and limits in Appendix 2."** **New note 12 to read as follows:** • **The Finance Director shall report to EXCO quarterly on the risk inherent in any unhedged foreign currency exposure in accordance with the prescriptions and limits in Appendix 2.**	To align and reflect the current practice
Note 16	Delete the word " **Group"** from the paragraph and replace it with the word **"Divisional"**	Align with current practice
New Note Note 40	To insert a new note 40 that will read as follows **The head of the tax department or his/her delegate shall approve from a tax perspective all contracts of values between R10m and up to R 35m per contract** **The head of the tax department or his/her delegate shall approve from a tax perspective and also be involved in the negotiation of contracts of a value above R35m per**	Align with the **EXCO** approval dated 6 June 2006

	contract **The head of the tax department or his/her delegate shall approve from a tax perspective and also be involved in the formulation of all proposals, negotiations, signoff and financing of all capital projects.**	

Appendix 2

Detailed Authorities in respect of Specific Treasury Activities

Section	Nature of Amendment	Rationale
Delegation of Authorities in respect of Specific Treasury Activities	Amend Appendix 2 as is set out in the attached revised Appendix 2	Align the document with present practises within the Treasury Department

Appendix 3

Special Pricing Agreement and Customer Products – KSACS and Distribution

Section	Nature of Amendment	Rationale
Special Pricing Agreement and Customer Products KSACS and DISTRIBUTION	Delete the entire Appendix 3 and substitute same with a new Appendix 3. See attached revised Appendix 3.	To align the document with special pricing practices in both KSACS and Distribution

Appendix 4

Section 66 of the Public Finance Management Act Transactions

Section	Nature of Amendment	Rationale
New Appendix 4	Insert a new Appendix headed **"Appendix 4"** which deals with the authority to issue Guarantees , Sureties , Indemnities , Securities or any other transaction that bind Company in any future Financial commitment . See attached **Appendix 4**	To align document with the approval obtained in terms of Section 66 (3) of the PFMA. Letter of Approval by the Minister of Finance dated 19 October 2006.

Appendix 2

APPENDIX 2: DETAILED AUTHORITIES IN RESPECT OF SPECIFIC TREASURY ACTIVITIES

A. In terms of Section 66(6) of the PFMA, the Board may not delegate a power relating to the borrowing of money, issuing of guarantees, indemnities or securities, or enter into any such transaction that binds or may bind Eskom to any future financial commitment, except with prior written approval of the Minister of Finance. It is hereby recorded that the Minister of Finance has furnished the necessary approval, with regard to borrowings.

B. Once the Board has approved the borrowing programme and all other relevant approvals have been provided, and subject to the Treasury mandate approved by the Board from time to time, the Chief Executive and/or the Finance Director are hereby authorized to take all steps necessary or incidental to implement the borrowing programme as approved and are authorized to sign any agreement or documentation to give effect thereto provided that any agreement is signed after approval by Corporate Counsel or General Manager (Legal) or their delegate. Further authority is hereby delegated to the Chief Executive and/or the Finance Director and other Delegees as set out below, together with conditions for implementation.

1. *IN TERMS OF FUNDING:*

1.1 In implementing the approved borrowing programme, if any individual transaction exceeds **US$500 million** or the equivalent in another currency in respect of foreign borrowings and an amount **up to R 2000 million** per agreement in respect of local borrowings approval shall be obtained from the Risk Management Committee prior to the implementation of such transaction.

1.2 Officials in the Treasury Department are authorized to implement the approved borrowing programme in terms of conditions determined by the Chief Executive and/or the Finance Director and in particular the General Manager (Treasury) is hereby authorized to enter into transactions of up to **US$25 million** or the equivalent in another currency in respect of foreign borrowings and **up to R350 million** per agreement in respect of local borrowings per individual transaction.

1.3 LISTING OF NEW BONDS

1.3.1 The Chief Executive and/or the Finance Director are hereby authorized to issue or list new Eskom bonds in the implementation of the approved borrowing programme as set out above, subject to any strategy and conditions set by the Risk Management Committee.

1.4 INVESTMENT IN SURPLUS FUNDS

1.4.1 In implementing the approved borrowing programme, the Chief Executive and/or the Finance Director are hereby authorized to invest surplus funds. In investing surplus funds, if any individual transaction exceeds **US$ 500** million or the equivalent in another currency in respect of foreign investments and up to **R 2000** million per transaction in respect of local investments approval shall be obtained from the Risk Management Committee prior to implementation of such transaction.

1.4.2 Officials in the Treasury department are authorized to implement the approved borrowing programme in terms of conditions determined by the Chief Executive and/or the Finance Director and in particular the General Manager (Treasury) is hereby authorized to invest surplus funds up to **US$ 20 million** or the equivalent in another currency per transaction in respect of foreign investments and up to **R350 million** per transaction in respect of local investments.

1.5 For the purpose of effective ***funding*** and for effectively ***managing*** **surplus cash**, interest rate risk and liquidity risk on the debt raised, the authorized designations in the Treasury Department may ***enter*** into transactions by buying and selling approved capital market and money market securities subject to:

a) the maintenance of a ***minimum daily call*** balance of R300 million cash, and;

b) ***minimum credit quality*** of investment counterparties be maintained at AA and A1 National Credit Rating, and;

c) **the maximum effective portion of the debt portfolio exposed to an interest rate reset within the next 12 month period shall be limited to 40%, and;**

d) **the debt portfolio shall have a minimum duration of 5 years should Eskom's net debt exceed R10 billion.**

e) the authorised designations in paragraphs 2.1.1.3, 2.1.2 e), 2.2.1 b) and 2.3.2 up to their respective indicated maximum ***transaction limits***, negotiate and conclude the transactions, on behalf of Eskom;

f) Documentation and/or Agreements pertaining to the above transactions shall only be signed after approval by Corporate Counsel or General Manager Legal.

1.6 INDEMNITIES, LETTERS OF CREDIT, GUARANTEES AND SURETYSHIPS

1.7 MAINTENANCE OF EXISTING CROSS-BORDER LEASE AGREEMENT-MAJUBA

2 IN TERMS OF DEBT AND RISK MANAGEMENT:

2.1 MARKET MAKING AND JOBBING RISK

2.1.1 ***in the Domestic Capital Market,*** the Finance Director or the General Manager (Treasury) may ***enter*** into buying and selling transactions with investors in approved capital market securities subject to all such actions being within the hedging policies and limits and the following restrictions/authorisations:

2.1.1.1 that the approved instruments shall have a National Credit Rating of AA or better for market making and AAA for jobbing and A1 or better for money market instruments and fixed deposits not exceeding 2 months;

2.1.1.2 that ***sensitivity to price movements:***

a) on the market making portfolio be limited so that the maximum potential loss due to a 25 basis point parallel shift in the yield curve shall not exceed R3 million;

b) on the jobbing portfolio be limited so that the maximum potential loss, due to a 25 basis point parallel shift in the yield curve, shall not exceed R 1m, the maximum net intra-day position shall also be limited to R50m nominal value in **R157** or equivalent bonds and the maximum loss shall be limited to R1 million per annum;

2.3 MANAGEMENT OF CURRENCY RISK, INTEREST RATE RISK AND COMMODITY PRICE RISK

2.3.1. the Finance Director or the General Manager (Treasury) may approve **hedging strategies** to manage the currency risk, the interest rate risk and the commodity price risk pertaining to Eskom's debt, foreign contracts and Eskom's tariff linked agreements subject to the following restrictions / authorisations:

2.3.1.1 **duration mismatches** between forward exchange cover contracts and the underlying currency exposure shall be limited to a total nominal value of the Business Areas' exposures at any given time;

2.3.1.2 exposure to unhedged movements in **spot exchange rates** will be limited to R100 million **except during Eskom's borrowing and investment period, where vendors are reasonably anticipated in the procurement plan, when there will be no limit on the open (unhedged) foreign exchange position subject to the following:**

(i) **the sum position be maintained within the South African Reserve Bank approved volume, and**

(ii) **the Finance Director monitors the opportunity cost versus the benefit. Value at risk (V@R) be maintained within the existing overall 1 month 95% confidence interval V@R limit, i.e. 5% of annual budgeted earnings before tax;**

2.3.1.3 **As part of the R100 million limit in 2.3.1.2 above** the Trading Manager (Foreign Markets) may conduct dealing activities to implement the approved hedging strategy and may conduct trading limited to an overnight unhedged spot position of R20 million, a duration mismatch of 12 months and subject to an overall maximum loss of R5 million per annum;

2.3.1.4 **the maximum un-hedged commodity exposure shall be limited to R50 million of the current year's volume;**

2.3.2 the following designations may, on behalf of Eskom and up to the following limits, negotiate, conclude and approve transactions in foreign exchange, foreign interest rate and commodity derivative instruments:

	USD Millions				
	SPOT	**≤3 mths**	**≤6mths**	**≤1yr**	**>1yr**
Finance Director	1000	1000	1000	1000	1000
General Manager (Treasury)	500	400	350	300	250
Trading Manager (Foreign Markets)	400	350	300	250	200
Chief Dealer (Foreign Trading)	350	300	250	200	150
Senior Dealer (Foreign Trading)	200	175	150	100	50
Dealer (Foreign Trading)	100	75	50	25	10
Junior Dealer	50	40	25	15	5
Trainee Dealer (Foreign Trading)	25	20	15	10	0

APPENDIX - 3

SPECIAL PRICING AGREEMENTS – KSACS and DISTRIBUTION

POWER OF ESKOM	**EXCO**	**CE**	**FD**	**DIV Executive Committee**	**DMD**	**OTHER**
KSACS/DISTRIBUTION						
1 **SPECIAL PRICING**						

AGREEMENTS WITHIN RSA						
a) Negotiated prices (Including Short Term Agreements) for **national, <u>selling</u>** of electricity (See notes 1, 2 and 5) [Subject to Long Term Pricing Framework]	*E* ≤R75m p.a *E*≤7 years (all values reflect value at risk and not contract values)	≤R35m p.a ≤5 years a/ DMD (G) (all values reflect value at risk and not contract values)		(KSACS)✓ ≤R35m p.a ✓≤5 years a/ DMD (G) (all values reflect value at risk and not contract values)	✓ DMD (KSACS) ✓ DMD (D) ✓≤R15m p.a ✓≤5 years a/ DMD (G) (all values reflect value at risk and not contract values)	
b) Negotiated prices for **national <u>purchasing</u>** of electricity (see notes 2 and 3) (see note 4)	*E* ≤R75m (R100m) (contract value) *E*≤5 years	≤R35m (contract value) ≤5 years a/ DMD (G)		KSACS value)✓ ≤R35m (contract value) ✓≤5 years a/ DMD (G)	✓ DMD (KSACS) ✓≤R15m (contract) ✓≤5 years a/ DMD (G) **✓ DMD (D)** ✓≤R15m p.a. **✓≤50MW** ≤5yrs a/ DMD (G)	
2. INTERNATIONAL AGREEMENTS [Subject to International Pricing Framework] a) Negotiated prices (Including Short Term Agreements) for **international**	*E* ≤R75m p.a *E*≤7 years (all values reflect value at	≤R35m		(KSACS)✓ ≤R35m p.a ✓≤5 years a/ DMD (G) (all values	✓ DMD (KSACS) ✓≤R15m p.a ✓≤5 years a/ DMD (G)	

selling of electricity (see notes 1,2 and 5)	risk and not contract values	p.a ≤5 years DMD (G) (all values reflect value at risk and not contract values)		reflect value at risk and not contract values)	(all values reflect value at risk and not contract values)	
b) Negotiated prices for **international purchasing** of electricity (see notes 2,3 and 5) [Subject to Long Term Pricing Framework]	E ≤R75m (R100m) (contract value) E≤5 years	≤R35m (contract value) ≤5 years DMD (G)		(KSACS)✓ ≤R35m (contract value) ✓≤5 years DMD (G)	✓ DMD (KSACS) ✓≤R15m (contract value) ✓≤5 years DMD (G)	

1. The values reflected herein refer to the financial risk as set out and calculated in terms of the Eskom guidelines for calculating Financial Risk.
   - For National Selling Contracts the risk shall be the difference between standard tariff and the contract tariff;
   - For International Selling Contracts the risk shall be the difference between Eskom's marginal cost and the contract price.
2. If the transaction requires new infrastructure the matter will be referred to the relevant committee for approval as set out in the section(s) of Appendix 1A, dealing with Infrastructure and Capital Investment.
3. Purchase agreements must comply with the principles as set out in the Power Purchase Agreement Framework approved by IFC.
4. Purchasing of energy from Embedded Distributed Generators [subject to the Policy on purchases from Distributed Generators], shall not be greater than 50MW and not centrally dispatched.
5. Please note that the International Pricing Framework and the Long Term Pricing Framework are still being developed and the contents of Appendix 3 will be subject to the International Pricing Framework and the Long Term Pricing Framework once approved.

APPENDIX 4

The Authority to issue guarantees, sureties, indemnities, securities or enter into any other transactions that bind the Company to any future financial committment, as contemplated in terms of section 66 of the Public Finance Management Act (hereinafter referred to as section 66 transactions) , is delegated as follows:

1. **Board Investment and Finance Committee** - up to a maximum delegated authority of R250m per transaction for ordinary transactions, and an amount of R500m per transaction, for transactions related to the Capacity Expansion Programme, operational refurbishment or maintenance.

2. **Board Tender Committee** - up to a maximum of R250m per transaction but restricted to performance guarantees, bid bonds and indemnities that are required in relation to procurement matters: the purchase or sale of electricity, fuel, equipment or services.

3. **Board Executive Management Committee (Exco) and Investment and Finance Sub - Committee of Exco and Exco Procurement Committee** – up to a maximum of R100m per transaction.

4. **Divisional Executive Committees and Divisional Procurement Committees** – up to a maximum of R1m per transaction subject to a cumulative limit of R10m per annum.

5. **CE/FD** – in accordance with the limits of transactions that are incidental to or related to the borrowing powers already delegated for borrowings; and up to a maximum of R10m per transaction for other matters.

6. **Legal - Corporate Counsel/GM (Legal)** - up to a maximum of R1m per transaction for legal matters relating to security or indemnities for legal costs. Any higher amounts would be referred to Exco.

7. **With regard to an indemnity that forms part of a contract:** The delegee that has the transactional authority to conclude the contract shall be delegated the authority to provide the indemnity, security or guarantee.

8. The additional conditions that will be applicable include the following:

   8.1 No further delegation shall be permitted other than specified above.

   8.2 All guarantees, indemnities and securities must be reported to the Finance Director and Board.

   8.3 The above authority is limited to guarantees, indemnities, securities or any other transactions that bind the company to any future financial commitment, in relation to the Eskom Group's ordinary course of business and within the functional accountability of delegees.

   8.4 Only the Treasury department, and CE/FD shall have the power to issue guarantees, indemnities and securities related to trading in financial markets.

9. The delegations herein regarding section 66 transactions are subject to the underlying transaction being part of a pre-approved budget and approved Corporate Plan

MHPhukubje

M Phukubje (Mr)
Company Secretary

7. Treasury

DOA Ref.	Powers & Authority	Recommend	Support	Approve	Additional requirements or considerations
7.1	Borrowing programme	GCFO & GCE	Capital Committee and Investment & Finance Committee	Board	
7.2	**"Subject to section 66(6) of the PFMA, implement the Borrowing Programme in line with the Board approved Corporate Plan.** **With regard to funding, borrowing of money , listing/ issuing of new bonds, risk management and debt management including investment of surplus funds (Domestic markets and foreign markets):** **1. The GM Treasury and delegated Treasury Officials may implement the Borrowing programme and effect all transactions necessary or incidental thereto subject to the delegation, conditions and limitations specified by the GCFO and in accordance with the Board approved Borrowing programme and the approved Treasury Mandate.**				
7.2.1	Transactions less than $1000m (Foreign currency or equivalent in other currency or less than R8000m (local currency)	GM Treasury	N/A	GCFO	
7.2.2	Transactions greater than $1000m (Foreign currency or equivalent in other currency or greater than R8000m (local currency)	GM Treasury	GCFO	GCE	
7.2.3	Signing of any document relating to loan agreements or anything related or incidental thereto, including listing of bond notes or commercial paper.	GM Treasury	GM Legal GCFO	GCE	
7.2.4	Signing of any document relating to Treasury activities, credit and trading agreements or anything related or incidental thereto, Treasury domestic market deposit	GM Treasury	N/A	GCFO	

	accounts, bank accounts related to financing/ loan facilities; replacement/new securities certificates, electronic signatures, Central Securities Depository requirements and/or deeds.				
7.2.5	Treasury Mandate	GM Treasury & GCFO	Capital Committee	Investment & Finance Committee	
7.3	**Issue of guarantees**				
7.3.1	Issue of guarantees, sureties, indemnities, securities as contemplated in terms of sect 66 of PFMA up to a max R1m per transaction for legal matters relating to security or indemnities for legal costs, any higher amounts must be referred to Exco.	GM/SGM	N/A	GM Legal	
7.3.2	Issue of guarantees, sureties, indemnities, securities as contemplated in terms of sect 66 of PFMA Up to a max of R1m per transaction to cumulative R10m pa.	GM/SGM/DE		GE	
7.3.3	Issue of guarantees, sureties, indemnities, securities as contemplated in terms of sect 66 of PFMA In accordance with limits of transactions that are incidental to or related to borrowing powers already delegated and up to max of R10m per transaction for other matters.	N/A	N/A	GCFO	
7.3.4	Issue of guarantees, sureties, indemnities, securities as contemplated in terms of sect 66 of PFMA Up to R100m per transaction	GM/SGM/DE/GE	N/A	Capital Committee	
7.3.5	Issue of guarantees, sureties, indemnities, securities as contemplated in terms of sect 66 of PFMA Up to max R250m per transaction (ordinary transactions) including indemnities or bonds for purchasers or sale of electricity and R500m per transaction (capacity expansion programme, op refurbishment or maintenance)	GCE	Capital Committee	Investment & Finance Committee	

Eskom	DELEGATION OF AUTHORITY	TREASURY

Title: **Treasury Delegation of Authority**

Document Identifier: **320-29**

Area of Applicability: **F2000**

Functional Area: **Treasury**

Revision: **10**

Total Pages: **5**

Next Review Date: **March 2020**

Disclosure Classification: **Controlled Disclosure**

COMPILED	RECOMMEND	AUTHORISED
D ADAMS	A PILLAY	A SINGH
COMPLIANCE OFFICER	GENERAL MANAGER	CHIEF FINANCIAL OFFICER
Date: 24/04/2017	Date: 20170425	Date: 08/05/17

This Treasury Delegation of Authority document has been accepted and approved by the following managers.

Name	Position
Mandla Maleka	Senior Manager: Market Analysis & Portfolio Management
Marius Homewood	Senior Manager: Liquidity Management
Vincent Makhuvha	Senior Manager: Portfolio Assessment
Gertrude Molokoane	Acting Senior Manager Operations and Support

1. INTRODUCTION

The Eskom Holdings SOC Limited (Eskom) Delegation of Authority Framework, as approved by the Eskom Holdings SOC Ltd Board of Directors on the 27 October 2016, sets out the powers and authorities delegated by the Board. It prescribes the scope, conditions and parameters within which the powers can be exercised by executives and all employees.

The Principles set out the principles and conditions upon which the Delegation is based, whereas the Delegation records the nature, extent and financial limits of the authorities delegated by the Eskom board of directors ("the Board") to Delegees.

2. TREASURY MANDATE

The mandate of the Treasury Department shall be to meet the ongoing liquidity needs of the Eskom Group, and to protect it against financial market risks in the most cost effective manner, within an appropriate control framework.

3. GENERAL CONDITIONS

3.1 In terms of the provisions of the Eskom Delegation of Authority document, a delegee can delegate further any powers and authority so delegated to such Delegee to an officer, employee, any person or committee and to allow the sub delegation of such powers in exceptional cases only once and where necessary, in terms of the needs of the business.

3.1.1 To impose any limits or conditions in such Further Delegation to ensure good governance and controls with regard to the exercising of such power

3.2 The delegates exercising powers and authorities delegated in terms hereof, shall act,

- Lawfully
- Within the mandate of the division and the scope and powers of their delegated authority and subject to the Eskom Delegation of Authority Framework, Delegation of Authority Principles
- Subject to and in compliance with any limitations, conditions, policies and/or directives that may be applicable from time to time.

4. DELEGATION

4.1 The powers delegated to me in terms of the Eskom Delegation of Authority are hereby delegated further as set out below:

BORROWING PROGRAMME	APPROVED BY BOARD
Subject to section 66(6) of the PFMA, Implement Borrowing Programme in line with the Board Approved Corporate Plan.	

BORROWING OF MONEY/FUNDING AND LISTING /ISSUING BONDS, RISK MANAGEMENT AND DEBT MANAGEMENT INCLUDING INVESTMENT OF SURPLUS FUNDS FOR DOMESTIC MARKETS AND FOREIGN MARKETS.

THE (GM) TREASURY AND DELEGATED TREASURY OFFICIALS MAY IMPLEMENT THE BORROWING PROGRAMME AND EFFECT ALL TRANSACTIONS NECESSARY OR INCIDENTAL THERETO SUBJECT TO THE DELEGATION, CONDITIONS AND LIMITATIONS SPECIFIED BY THE GCFO AND IN ACCORDANCE WITH THE BOARD APPROVED BORROWING PROGRAMME AND THE TREASURY MANDATE.

TREASURY ACTIVITIES	AUTHORITY LEVELS
Signing of any document relating to Treasury activities, credit and trading agreements or anything related or incidental thereto, Treasury domestic market deposit accounts, bank accounts related to financing/ loan facilities; replacement/new securities certificates, electronic signatures, Central Securities Depository requirements and/or deeds	General Manager (Treasury)

FUNDING	AUTHORITY LEVELS
≤$500m(foreign) or equivalent in other currency	General Manager (Treasury)

TREASURY TRANSACTIONS	
ZAR CAPITAL MARKET INSTRUMENTS	AUTHORITY LEVELS
≤R2000m	General Manager (Treasury)
≤R500m	Head of Liquidity Management
≤R300m	Trading Manager Domestic Markets
≤R200m	Chief Dealer Domestic markets
≤R100m	Senior Dealer Domestic Markets
≤R50m	Dealer Domestic Markets
≤R10m	Trainee Dealer

ZAR MONEY MARKET INSTRUMENTS (INCLUDING CARRIES)			AUTHORITY LEVELS
Up to 3 months	**3 – 12 months**	**1 – 3 years**	
≤R5000m	≤R5000m	≤R5000m	General Manager (Treasury)
≤R2000m	≤R2000m	≤R2000m	Head of Liquidity Management
≤R1000m	≤R300m	≤R150m	Trading Manager Domestic Market
≤R400m	≤R150m	≤R75m	Chief Dealer Domestic Market
≤R300m	≤R100m	0	Senior Dealer Domestic Market
≤R100m	≤R20m	0	Dealer Domestic Market
≤R20m	-	-	Trainee Dealer Domestic Market

ZAR INTEREST RATE DERIVATIVES E.g. (option/ future/ FRA/)				AUTHORITY LEVELS
≤1yr	**≤3yrs**	**≤5yrs**	**>5yrs**	
≤R5000m	≤R5000m	≤R5000m	≤R5000m	General Manager (Treasury)
≤R1000m	≤R1000m	≤R1000m	≤R1000m	Head of Liquidity Management and Head of Portfolio Management
≤R500m	≤R400m	≤R300m	≤R250m	Trading Manager Domestic Market
≤R250m	≤R250m	≤R200m	≤R150m	Chief Dealer Domestic Market
≤R200m	≤R200m	0	0	Senior Dealer Domestic Market
≤R100m	≤R100m	0	0	Dealer Domestic Market

CURRENCY AND COMMODITY INSTRUMENTS AND DERIVATIVES			AUTHORITY LEVELS
SPOT/ O to 3 months	**3-12 months**	**>1yr**	
≤$750m	≤$750m	≤$750m	General Manager (Treasury)
≤$500m	≤$500m	≤$500m	Head of Portfolio Management
≤$400m	≤$300m	≤$200m	Trading Manager Foreign Market
≤$350m	≤$250m	≤$150m	Chief Dealer Foreign Market
≤$200m	≤$150m	≤$50m	Senior Dealer Foreign Market
≤$100m	≤$50m	≤$10m	Dealer Foreign Market
≤$50m	≤$25m	≤$5m	Junior Dealer Foreign Market
≤$25m	≤$15m	0	Trainee Dealer Foreign Market