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DAY 59

20

PROCEEDINGS HELD ON 1 MARCH 2019

CHAIRPERSON: Good morning Ms Norman, good morning everybody.

ADV THANDI NORMAN SC: Good morning Mr Chairperson thank you.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you. Morning Chairperson this morning we will be presenting the evidence Mr Andre Pillay who is the General Manager Treasury Eskom. His statement – the main statement is contained in the big bundle and both bundles are marked Volume U which is the – which is preserved for all the Eskom witnesses and Mr Chairperson you have Volume – you will File 6 and File 7 in front of you. In File 6 that
10 is where the main statement is contained and then in File 7 the supplementary statement is contained in that file.

CHAIRPERSON: So this is Exhibit U.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Then you have File 6.

ADV THANDI NORMAN SC: And File 7.

CHAIRPERSON: Have we – is the first U?

ADV THANDI NORMAN SC: No, no Mr Chairperson all the witnesses from Eskom have been using the U number.

CHAIRPERSON: Do we not have U1, U2 so earlier?

20 **ADV THANDI NORMAN SC:** We do this one...

CHAIRPERSON: Should we not be consistent and mark...?

ADV THANDI NORMAN SC: We have U6. If the Chairperson opens..

CHAIRPERSON: I see it is File 6 but I do not know whether that would be the same as U6?

ADV THANDI NORMAN SC: It is U6. It is U6 – if you open...

CHAIRPERSON: Okay then I think let us...

ADV THANDI NORMAN SC: The first page.

CHAIRPERSON: Let us mark it U6.

ADV THANDI NORMAN SC: U6. That is correct.

CHAIRPERSON: It would be U6. And then the – that is now – and then this one would be...

ADV THANDI NORMAN SC: That is..

CHAIRPERSON: Would be Exhibit U.

ADV THANDI NORMAN SC: File...

10 **CHAIRPERSON**: U7 [indistinct].

ADV THANDI NORMAN SC: It will be still U6 but in File 7 because U6 is preserved for this witness. We are locating them according to the witnesses.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So this one should be what?

ADV THANDI NORMAN SC: U6 in File 7.

CHAIRPERSON: U6 in File 7.

ADV THANDI NORMAN SC: In File 7 but if it might create confusion.

CHAIRPERSON: Ja.

20 **ADV THANDI NORMAN SC**: You can mark that U6(A) in brackets A.

CHAIRPERSON: Ja let us mark that and then it is –

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So can I?

ADV THANDI NORMAN SC: Mark it 6(A)

CHAIRPERSON: Exhibit U8. Must we retain the File 7 of or must we...

ADV THANDI NORMAN SC: That is – we retain that File 7.

CHAIRPERSON: We retain that ja.

ADV THANDI NORMAN SC: That is correct yes Mr Chairman.

CHAIRPERSON: But we will refer to it as Exhibit U8.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: Okay alright.

ADV THANDI NORMAN SC: Might I just ask Ms Rabisheli to just quickly go and mark the witness' before we commence?

CHAIRPERSON: Ja.

10 **ADV THANDI NORMAN SC:** Thank you.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. Mr Chairman this witness is going to testify about the Huarong Transaction. The Chairperson has been appraised of this transaction by my learned friend Mr Maleka when he first addressed the Chairperson as to what the evidence relating to Eskom would entail.

CHAIRPERSON: Yes.

20 **ADV THANDI NORMAN SC:** Briefly the Huarong Transaction is where a certain company called Tribus approached Eskom unsolicited with an unsolicited proposal and said to Eskom I will fund all your capital projects. And then it placed certain conditions to that. And then we will see how that then proposal evolved and became a proposal from Huarong Energy Africa which is the Huarong normally referred to as the Huarong Transaction.

CHAIRPERSON: Let me just make sure I have got everything that I should have here. In Exhibit U6 I expected to find the witness statement at the top but I am finding AP – Annexure AP1 and that might be because it has not been put back because I did take it

out.

ADV THANDI NORMAN SC: Oh.

CHAIRPERSON: But this morning I believe I asked the protectors to make sure it is put in. Do you know where it is? Oh is it supposed to be on U8?

ADV THANDI NORMAN SC: No, no, no there is no U8. There is...

CHAIRPERSON: No we have just done Exhibit U8 with you.

ADV THANDI NORMAN SC: No, no Chairperson we did not do 8. We said U6A in brackets (A).

CHAIRPERSON: Oh. [Laughing]

10 **ADV THANDI NORMAN SC:** I beg your pardon if I was not...

CHAIRPERSON: There must be some...

ADV THANDI NORMAN SC: Quite clear.

CHAIRPERSON: There must be some letters you swallowed. [Laughing].

ADV THANDI NORMAN SC: Oh my I could have, I could have. Thank you.

CHAIRPERSON: So this small one that is marked File 7 you say it should be UA?

ADV THANDI NORMAN SC: [A] in brackets yes. Small a 6 a in brackets. 6[a].

CHAIRPERSON: Okay. And this other one?

ADV THANDI NORMAN SC: That is U6 the main one.

20 **CHAIRPERSON:** Ja you see the one is in alpha – in alphabet another is [Laughing] a number.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: That is what may have – when you said a I thought you saying 8.

ADV THANDI NORMAN SC: Oh yes.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: No thank you.

CHAIRPERSON: But that ...

ADV THANDI NORMAN SC: Those are the two that we are going to refer to.

CHAIRPERSON: Those markings are fine.

ADV THANDI NORMAN SC: That is correct yes.

CHAIRPERSON: But the statement is supposed to be on the big file.

ADV THANDI NORMAN SC: The main statement is supposed to be on the main file because it goes with all those annexures in the bigger statement. Have you managed to locate Mr Chair? I could hand up...

10 **CHAIRPERSON**: I think I have seen this – no, no it is fine I think I have seen the supplementaries they may have put them together.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Yes they put the supplementaries together with the main statement.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: The supplementary should go with the main statement?

ADV THANDI NORMAN SC: No, no Mr Chairman.

CHAIRPERSON: Behind it?

ADV THANDI NORMAN SC: It goes into the small file.

CHAIRPERSON: It must be on the small file.

ADV THANDI NORMAN SC: In ja.

20 **CHAIRPERSON**: Okay.

ADV THANDI NORMAN SC: It goes into U6[a].

CHAIRPERSON: Okay no that is fine. And then the main one is supposed to be

ADV THANDI NORMAN SC: To go in there.

CHAIRPERSON: Just under the AP1.

ADV THANDI NORMAN SC: Under the...

CHAIRPERSON: File divider or not?

ADV THANDI NORMAN SC: Just under the file divider.

CHAIRPERSON: Just under the – before A

ADV THANDI NORMAN SC: Below File...

CHAIRPERSON: Before AP1?

ADV THANDI NORMAN SC: That is correct yes.

CHAIRPERSON: Okay. This file seems to be too full.

ADV THANDI NORMAN SC: We will attend to it during the tea break.

CHAIRPERSON: Maybe it might be – it might be fine – we might manage. Okay

10 alright.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chair.

CHAIRPERSON: I think we will manage ja.

ADV THANDI NORMAN SC: Yes thank you very much. I was just mentioning to the Chairperson that then this Huarong proposal was placed before Eskom and we will demonstrate how it was pursued throughout although it was very clear that the terms in the Huarong proposal were very onerous on Eskom and it was made quite clear to Eskom that even this Huarong Energy Africa was not going to be able to deliver on what it was promising but never the less it found its way and it got signed and we will show how those terms are onerous bypassing the processes that were supposed to

20 have been followed and we will demonstrate how all the rules and procedures were flouted.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. Mr Chairman the – this evidence will fall or we will address terms of reference 1.4 and 1.9. There are notice – notice – Yes.

CHAIRPERSON: I just think I must mention this.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And the whole legal team can remember as they deal with various procurement issues.

ADV THANDI NORMAN SC: Matters yes.

CHAIRPERSON: And witnesses. That where there has been non-compliance

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Non-compliance can be a bonafide error.

ADV THANDI NORMAN SC: Yes.

10 **CHAIRPERSON:** Or can be deliberate. It will be deliberate where the objective or the motive is corruption.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So it is important that as you lead witnesses you apply your mind to which one you are seeking to make out.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: That we will do thank you Mr Chairman.

CHAIRPERSON: Because there may be difficulty if during the evidence an issue is treated simply as a non-compliance without going a step further.

ADV THANDI NORMAN SC: That is correct.

20 **CHAIRPERSON:** To say it was not just non-compliance.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: The motive was corruption.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: To later on ask that a finding be made that is corruption.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: No thank you.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you Mr Chairman. The notices...

CHAIRPERSON: Of course – of course...

ADV THANDI NORMAN SC: Sorry.

CHAIRPERSON: That becomes much more important when we looking at an implicated person responding.

ADV THANDI NORMAN SC: That is correct.

10 **CHAIRPERSON:** Ja.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Thank you Chairperson the notices were served on the impeded persons but their fourteen days has not lapsed.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: We have had a reaction from a Mr – the representatives of Mr Shaun Maritz I believe that Mr Van Der Westhuizen or from his law firm someone is here but they are – they were requesting in their letter which they – which was brought to our attention yesterday seeking all the annexures to the affidavit of Mr Pillay
20 and we have made arrangements because they could not be emailed to them because of the – it is quite bulky document. But a copy we have been promised by Mr De Beer that it will be made available within the next hour to them,.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Of all those annexures yes.

CHAIRPERSON: No that is fine.

ADV THANDI NORMAN SC: Thank you Mr Chairman. If the Chairperson is satisfied then may I..

CHAIRPERSON: I guess you meant Mr Pedlar? You said Mr Divia I thought.

ADV THANDI NORMAN SC: De Beer.

CHAIRPERSON: Oh De Beer.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Oh somebody else.

ADV THANDI NORMAN SC: De Beer yes De Beer that is the only who attends to bundles. Yes.

10 **CHAIRPERSON:** Oh [Laughing] oh okay.

ADV THANDI NORMAN SC: De Beer thank you. Then Mr Chairman may then the witness be sworn in?

CHAIRPERSON: Yes thank you.

REGISTRAR: Please state your full names for the record?

MR ANDRE FRANK PILLAY: Andre Frank Pillay.

REGISTRAR: Do you have any objections to taking the prescribed oath?

MR ANDRE FRANK PILLAY: No.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR ANDRE FRANK PILLAY: Yes.

20 **REGISTRAR:** Do you swear that the evidence you will give will be the truth; the whole truth and nothing but the truth; if so please raise your right hand and say, so help me God.

MR ANDRE FRANK PILLAY: So help me God.

ADV THANDI NORMAN SC: Thank you Mr Chairman.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Mr Pillay. Thank you. Mr Pillay you have got two files in front of you. You must have listened when we were addressing the Chairperson about what is contained in the files. Your main statement is contained in the big file which is Exhibit U6. You will see – could you just page – go to that file. Do you recognise that statement?

MR ANDRE FRANK PILLAY: Yes. Yes Chair.

ADV THANDI NORMAN SC: Thank you. If you go to the last page, page 15 of that statement. Is that your signature that appears on there?

MR ANDRE FRANK PILLAY: Yes Chair.

10 **ADV THANDI NORMAN SC:** And was that commissioned on the 18 February 2019?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: And are the contents of that statement true and correct?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Thank you. And then if you go to the small file which is U6[a] next to you, next file. Thank you. There is another statement contained in there and it is marked supplementary affidavit. Do you see that?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Do you recognise it?

MR ANDRE FRANK PILLAY: Yes Chair.

20 **ADV THANDI NORMAN SC:** Is it your supplementary affidavit?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: If you go to page 11 of that it will be page 528 on the right hand corner is that your signature appearing there?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: And are the contents of that affidavit true and correct?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Thank you.

ADV THANDI NORMAN SC: Okay. We are going to start with your evidence in the main statement. Could you for the record tell the Chairperson in what capacity are you employ – are you – first employed by Eskom, am I correct?

MR ANDRE FRANK PILLAY: Yes I was initially employed in the capacity of Senior Manager of Funding and currently in the role of General Manager so responsible for the treasury of Eskom.

ADV THANDI NORMAN SC: Yes. How many years have you been with Eskom now?

10 **MR ANDRE FRANK PILLAY:** 7 years.

ADV THANDI NORMAN SC: Yes. Now before we deal with that can you just tell us about your qualifications?

MR ANDRE FRANK PILLAY: Chair I have a BSC in Mathematics and I have also done a couple of other courses but that is the main my qualification.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: A BSC in Mathematics.

ADV THANDI NORMAN SC: Yes. Now – now where you are now you General Manager treasury Eskom what are you responsibilities?

20 **MR ANDRE FRANK PILLAY:** Chair I am overall responsible for the treasury for the running and the operational functions of the treasury. But primarily responsible for the financing and the funding of Eskom. The risk management and also – excuse me – the risk management and also the operations being the back office responsibility of the treasury Chair.

ADV THANDI NORMAN SC: And then as a General Manager treasury Eskom who do you report to?

MR ANDRE FRANK PILLAY: I report to the CFO.

ADV THANDI NORMAN SC: Yes. And then who reports to you from the managers that serve within that treasury department?

MR ANDRE FRANK PILLAY: There are five that – colleagues that report into me.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: At the moment Sinendile Schweni, Mandla Malieka, Vincent Makuva, Francois Venter and Gertrude Malukwane.

ADV THANDI NORMAN SC: Yes. Now we as you know you are here to tell us about the Huarong Transaction am I right?

10 **MR ANDRE FRANK PILLAY:** Yes Chair.

ADV THANDI NORMAN SC: Yes. Could you please tell the Chairperson when for the first time were you approached by Tribus about this transaction?

MR ANDRE FRANK PILLAY: Chair in 2015 they approached me or my office when I was still the senior General Manager or the General – the senior manager in Funding Execution and they were referred to me by one of my colleagues to approach and to contact me with a potential financing solution.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And who is they?

MR ANDRE FRANK PILLAY: Tribus.

20 **CHAIRPERSON:** Oh.

MR ANDRE FRANK PILLAY: Tribus Chair yes.

CHAIRPERSON: Oh okay.

ADV THANDI NORMAN SC: Yes Chairperson.

MR ANDRE FRANK PILLAY: And in specific Rajeev Thomas Chair.

ADV THANDI NORMAN SC: Yes. Could you just explain to the Chairperson what –

what is it that was proposed by Tribus in full – what is it that they wanted to do – what is it that they were offering to Eskom?

MR ANDRE FRANK PILLAY: So Chair they – the Tribus team are engineers by training or largely engineers by training, they are engineers management consultants so they have the technical capacity. So they in the initial response they teamed up with a group called Mazi Capital and the combination would provide the technical solutions for the capex of Eskom and also the financing solution.

ADV THANDI NORMAN SC: Yes. And then you say in paragraph 2 of your statement that then later on instead of Tribus continuing then you were approached by Huarong Energy Africa?
10

MR ANDRE FRANK PILLAY: Yes Chair. So Chair from the initial meeting there was a couple of engagements with them and their relationship and partnership transitioned. They ended up coming to us with a consortium of Tribus and Huarong Energy Africa.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: Huarong Energy sorry.

ADV THANDI NORMAN SC: Yes in simple terms what was Huarong offering you?

MR ANDRE FRANK PILLAY: Huarong was offering again similar to the Mazi Capital proposal they were dealing with the financing. They are a Chinese company in – a Chinese company with both domiciled and located in China and in Hong Kong and they largely the parent company is responsible for asset management overseas and they then have a number of subsidiaries Chair.
20

ADV THANDI NORMAN SC: Yes. And then in paragraph 3 you allude to what Tribus the meeting between Tribus and the Minister of Public Enterprises at the time, could you just tell the Chairperson about that?

MR ANDRE FRANK PILLAY: Chair in one of the discussions that we have had with

the Tribus team they did not indicate who at the time but they said that it is part of their team they have someone that knows the Minister of Public Enterprises he has good political connections.

ADV THANDI NORMAN SC: And who was that Minister?

MR ANDRE FRANK PILLAY: Minister Lynne Brown at the time the Minister of DPE.

ADV THANDI NORMAN SC: Yes. And then tell us then after that now you are made aware that they say that they had met the Minister did you enquire as to what happened at the meeting with the Minister?

MR ANDRE FRANK PILLAY: Chair at the time one of the senior managers or senior
10 general managers in Eskom who was working in the office of the CEO Mr Brian Molefe at the time approached me to indicate that there is meeting. They got correspondence from the Minister's office so they were contacted by the Minister's office to indicate that there is a meeting and the meeting would take place in Cape Town. Mr Molefe was also invited to the meeting but he could not make it. He was represented at that meeting by Mr Freddie Ndou who left Eskom last year but so that is the meeting. I just had verbal feedback from him at the time following the meeting that the – it is basically an introducing meeting with the minister and the feedback was that the Minister said you must go and contact Eskom and follow Eskom processes.

ADV THANDI NORMAN SC: Yes and you cannot recall when exactly within your
20 timeline that happened?

MR ANDRE FRANK PILLAY: So it – if I – just on reflection on the timeline is that if I look at the timeline – so they met us in 2015 and it was around May that they met us. Mr Molefe left Eskom around end of 2016. So it was probably around middle of 2015 that this happened.

ADV THANDI NORMAN SC: Yes. And then in the same paragraph you deal with a

meeting that you attended with the Minister.

MR ANDRE FRANK PILLAY: Ja.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: Chair in that meeting there were some issues that the – at that stage we – and just for background Chair is that we secure funding from the World Bank and there was an issue with one of the projects that we – that Eskom is rolling out with regard to the World Bank. My relevance in that meeting is the World Bank given its responsibility, the treasury is the touch point. I joined that meeting accompanied – or I accompanied the Treasurer at the time to that meeting and to
10 elaborate Chair is that in the meeting when the Minister started the meeting she in passing mentioned that oh the – she met with the Tribus team and she informed them that they must follow Eskom processes. That was that – during that meeting Chair.

ADV THANDI NORMAN SC: Yes. And then in paragraph 4 you deal with how you looked at that proposal. The very first sentence. You looked at the proposal by Huarong how did you view it? Was it going to be beneficial to Eskom and if so why did you feel that it was going to be beneficial to Eskom?

MR ANDRE FRANK PILLAY: Chair the – what we deal with in paragraph 4 it is the comment that I make there is that in the initial discussions with both the – with the Tribus team and the Huarong Energy Africa there was nothing at the initial experiences
20 that raised alarm bells. It seemed as if it is a legitimate proposal. They seemed like business people. They had – they had previous dealings with Eskom in a different capacity. So at the initial impression I was not concerned about them and Chair I think given the course of the nature of our work we manage and we meet a variety of people and some you obviously meet and you realise this is something contentious and so that was not my impression at the time.

ADV THANDI NORMAN SC: Yes. I know this is out of sequence but you deal with your – the change of your attitude towards the approach in the same paragraph.

MR ANDRE FRANK PILLAY: Ja.

ADV THANDI NORMAN SC: Okay maybe you could just deal with it so that we do not have to come back to it.

MR ANDRE FRANK PILLAY: Ja Chair and I think also the reason for raising it here from my perspective was during the course of the discussions – so the discussion started in 2015 the first encounter then we had an engagement with them informally through an RFP process. And then it – things were still following the processes that we
10 – that we were used to. Up until a period where we realised that and also towards the end there were certain discussions that were happening with the Chairman at the time. He was – at that specific point he was not the chairman Mr Zethembe Khoza he only became chairman later in that year. And then towards the end of the process that followed Chair they had direct contact with Mr Shaun Maritz. I in the meetings that we had with them indicated that this is a problem for me. I also indicated to them that I will suspend all activity with them if they continue on this path. And I will elaborate on that at a later stage Chair.

ADV THANDI NORMAN SC: Yes. And let us move on. And then in paragraph 5 you repeat what you have said in paragraph 1 about the approach by Huarong. But then
20 you mention certain persons in that paragraph could you just have a look at that paragraph and tell the Chairperson the significance of you mentioning those persons in that paragraph?

MR ANDRE FRANK PILLAY: Ja. So Chair the – we received a formal unsolicited proposal from them in June of 2016 and this was – and as normal Chair when we do engage with external parties we try and impress upon them or we impress upon them

that there is a formal process with – that Eskom has to follow from that procurement perspective and we also indicated to them when we – they provided unsolicited proposal but was also important here Chair is that the particular individuals Mr Rajeev Thomas and his colleague Wim Terblanche they had dealings with Eskom prior – previously. They met with other people within Eskom so – and when I say other people would be in the – in the capital formation so our capex where we do our capital development programmes that is – those are the people and I specifically mention Mr Poobie Govender here. And a variety of things – and a number of people that they have met and spoken to. Even – I think even prior to meeting us that was the
10 impression that I got.

ADV THANDI NORMAN SC: Yes. And then you – then Eskom decided to issue a RFI. Could you just tell the Chairperson about that process what it entails?

MR ANDRE FRANK PILLAY: Yes. So Chair and this was also a given my period at Eskom a new process – not a new process but part of the commercial process normally we would issue RFP's this was an unsolicited proposal and we wanted to make sure that there is other better proposals that – because I think their impression also was Chair that we – this was an unsolicited bespoke proposal and we could just follow the un-bespoke route. We then wanted to make sure that there is no similar proposals or better proposals out there and we issued a RFP to the market Chair.

20 **ADV THANDI NORMAN SC:** Before you get to that what are the options that Eskom has? If you are approached by someone unsolicited and can you source for – from people without taking or following the procurement procedures or when you are approached as in the manner in which Huarong did then what is the best option to follow in those circumstances?

MR ANDRE FRANK PILLAY: The best option to follow would be the RFP process that

we have initiated here.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: And the other forms of funding that we do raise are normally market based so it is quite transparent it is in the capital markets. And this was when it is unique or different proposals we would then put it through a RFP process Chair.

ADV THANDI NORMAN SC: Yes. And you have in paragraph 6 just highlight it what are the requirements that you wanted anyone who was responding to your RFI to meet? Could you just highlight those for the Chairperson please?

10 **MR ANDRE FRANK PILLAY:** So Chair we highlighted that it should be innovative funding. At this stage Chair Eskom relied a lot on government guarantees to be able to secure its funding and so we were looking at funding that would not utilise government guarantees. And then the funding should be greater than 15 billion. The financing does not contravene any of our loan covenants that we have. Chair there we – currently we have a debt book of around 420 billion and we are – certainly want to make sure that we aligned to the covenant so that you do not trigger any untoward or events of default in relation to the existing book or debt. Eskom's solution does not require equity so because we are an state owned entity and we cannot do equity of specific or equity injection. Financing option is in line with Eskom's current costs or
20 better. The financing solution involved reputed organisation with funding track records. And then the funding term is attractive to Eskom. Funding solution can be implemented within a reasonable short period.

ADV THANDI NORMAN SC: Yes. Then in paragraph 7 you deal with the funding plan. Could you just tell the Chairperson why - what is a funding plan and who is responsible – which department within Eskom is responsible for creation of that plan?

MR ANDRE FRANK PILLAY: Yes. So Chair the funding plan is the responsibility of the Eskom treasury. We developed the plan. And the plan forms part of Eskom's overall corporate plan. And the plan is basically Chair the programme or the strategy that Eskom will embark upon over a five year period. We then in line with that developer funding plan given the organisational financing requirements, the capital requirements and also the business requirements. We develop a funding plan and this is the detail of such a funding plan that we have Chair.

ADV THANDI NORMAN SC: Yes. Could you just take us through that because it becomes relevant when we compare what was being offered and the financial situation
10 and position in which Eskom was at the time?

MR ANDRE FRANK PILLAY: Ja so Chair basically and this is largely the what we have seen over the number of years the combination of funding sources. So in the table Chair there is the domestic bonds and that is largely the bonds that are listed in our JSE, government bonds and there are similar other entities that also list these bonds. And Eskom has quite an extensive programme is raising funding in the local bond markets. Then we from time to time Chair would issue bonds or loans in the international capital markets where we would go and source funding and issue and list bonds in the international markets. What we also have Chair is our commercial paper programme and that is our end funding. So Money Market what is conventionally
20 known as Money Market those would be our commercial paper loans. We also approach and are engaging with development finance institutions like the World Bank African Development Bank. Some of the multilateral institutions and they also provide funding. Chair they have mandates obviously in Africa, in the energy sector, in the electricity sector so they have dedicated funding for that. And then we have export credit agencies. This is basically funding that governments provide to their export

orientated companies so that if a company exports to South Africa or is executing a project within South Africa in Eskom their government would provide a guarantee so that we can source the funding for that. And then lastly Chair is what we term structured products and that is a label that we give to what we would go out from time to time to secure funding from what is available in the market such as innovative funding sources.

ADV THANDI NORMAN SC: Yes. And then you give a total of all of that in the end, what was that amount?

MR ANDRE FRANK PILLAY: It was 43 billion.

10 **ADV THANDI NORMAN SC:** Yes. Thank you. And then – now then you have...

CHAIRPERSON: This was for a period of five years?

MR ANDRE FRANK PILLAY: For five years Chair.

CHAIRPERSON: Ja. Okay.

ADV THANDI NORMAN SC: Thank you and then you, then you deal with the responses then to the RFI, RFP Program that you embarked upon and you mention who responded to that, how many people were there? Could you just summarise that please?

20 **MR ANDRE FRANK PILLAY:** Chair in the RFI that we received we, we received about 12 responses and they are listed there under paragraph 8, Chair. So there was a variety of, of responses that we got from Absa, Deloitte Capital, Huarong, Wave, J P Morgan, Nedbank, Peu Capital Partners and Total Utilities Management Services, Regiments, Rand Merchant Bank, Standard Charters, Superstars Group, Afriset Investments Ltd.

ADV THANDI NORMAN SC: Just to, something that I did not clarify. Am I correct that Huarong was simply set, was a company established purely for the purposes of offering

the proposal to, to Eskom am I correct?

MR ANDRE FRANK PILLAY: That that was the, they proposed that this is a structure that they set up.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: And it would provide the service for Eskom.

ADV THANDI NORMAN SC: Yes. So it was a special vehicle set up for that proposal?

MR ANDRE FRANK PILLAY: It was a structure that they put in place and if, if I look at the, from 2015 to date it was something that they were working on. So it was to address a specific requirement of Eskom.

10 **ADV THANDI NORMAN SC:** Yes, thank you and then can just moving on to paragraph 9 where you now start dealing with some of the annexures attached to your, to your statement.

MR ANDRE FRANK PILLAY: Yes. So Chair in, this is the RFP, the RFI Process.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: And then towards the end of December Chair so part of the RFI response that we got there was a term sheet and a term sheet basically is just the high level of a framework with what would go into the main agreement that we would sign eventually and during December Mr Anoj Singh contacted me. So before I go there Chair is, I have the, the outcome of the RFP Process in my normal
20 engagements with him and reporting to him shared with him these responses. At this stage it was, I was not aware if he knew any of these in particular were wrong at this stage. It was unknown to me.

CHAIRPERSON: So you were reporting to Mr Anoj, Anoj Singh at the time?

MR ANDRE FRANK PILLAY: Anoj Singh, he, he was, he was the CFO at the time.

CHAIRPERSON: Yes, okay. Thank you.

ADV THANDI NORMAN SC: Yes, thank you. Could you turn to the, to the time, to the term sheet that appears at page 31? It is Annexure AP2. Could you just read what is there and the amount that was being offered and then we will go through some of the terms that are critical and that are relevant to the entire statement that that you have put up?

MR ANDRE FRANK PILLAY: So:

“19 December 2016 strictly privately and confidential term sheet asset finances for the purposes of providing a solution for the various capital projects at Eskom Holdings Ltd. Summary terms and conditions approximately US\$1.5 billion”.

And that was the heading of the term sheet.

ADV THANDI NORMAN SC: Yes and, and just the, what, what does it say was this a binding term sheet at the time and what is, what is, what is contained in that very, maybe the three lines, first three lines.

MR ANDRE FRANK PILLAY: The first three lines it was for discussion purposes and it was a non-binding term sheet.

ADV THANDI NORMAN SC: And then I would like you to turn over to some of the terms that are critical which you are going to have to refer to later on. If you go to page 34 there is a facility fee there. Could you just read out what, what was proposed as a facility fee?

MR ANDRE FRANK PILLAY: “Facility fee of 1.6 percent of the amount of the program value is payable by Eskom on signature of [indistinct].”

And [indistinct] refers to an asset lease finance agreement.

“This is for the development cost and arrangement cost and

cost of set up for the EPC Panels.”

And EPC Panels Chair is the Engineering Procurement and Construction Panels and, and the working of the solution.

ADV THANDI NORMAN SC: And that that 1.6 percent would be the 1.6 of the US\$1.5 billion?

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: And how much is that in Rands?

MR ANDRE FRANK PILLAY: In, in Rands it is roughly I think \$24 million.

ADV THANDI NORMAN SC: Yes and then the next one is annual fee, annual
10 commitment fee. How was that?

MR ANDRE FRANK PILLAY: That was eight, 0.8 percent.

ADV THANDI NORMAN SC: That would also be 8 percent of the billions that you are offering?

MR ANDRE FRANK PILLAY: 0.8 percent of 1.5.

ADV THANDI NORMAN SC: 1.5 billion, yes and then can you calculate how much that was?

MR ANDRE FRANK PILLAY: That is roughly I think off the top of my head probably I think 24, 25 million.

ADV THANDI NORMAN SC: And you have a cancellation fee. You could read that
20 paragraph please?

MR ANDRE FRANK PILLAY: “A cancellation fee of 0.2 percent of the amount of the program value shall be payable by Eskom. If Eskom repudiates, terminates or cancels the term sheets once the binding term sheet and the mandate letter are signed by both parties or accepted by both parties.”

ADV THANDI NORMAN SC: And your 0.2 percent would be how much?

MR ANDRE FRANK PILLAY: The, the 0.2 percent in this case would, of the 1.5 billion would be roughly I think 15 billion, \$50 million, sorry.

ADV THANDI NORMAN SC: 50?

MR ANDRE FRANK PILLAY: So it is 20, no sorry, 30 million, sorry.

ADV THANDI NORMAN SC: 30 million. Thank you and then we have that is the, those are the clauses and then so this was, this term sheet is what was being proposed, but before you finish with that could you turn to page 37 please Mr Pillay?

MR ANDRE FRANK PILLAY: Yes.

10 **ADV THANDI NORMAN SC:** Could you read 2.18 please?

MR ANDRE FRANK PILLAY: “Escrow account, if the lender so desires and without fee subject to the compliance with applicable regulations including but not limited to arbitrage regulations the proceeds of the loan will be deposited in an escrow account acceptable to the lender.”

ADV THANDI NORMAN SC: Okay. Could you just explain that? Was Eskom going to have control over that account?

MR ANDRE FRANK PILLAY: The proposal here was that Eskom would, they would control the account and the management of that account.

20 **ADV THANDI NORMAN SC:** Yes and then, sorry before we get to, to the signing of this term sheet could you just then tell the Chairperson what happened? Now you are at a point where you have it and you want to deal with it as to what are the processes that you followed at that point.

MR ANDRE FRANK PILLAY: Ja. Chair so in, in December 2016 Mr Anoj Singh indicated that he had a call from Rajeev Thomas and the discussion was that to sign

the non-binding term sheet and that would give him indications or comfort that he can give to his partners that that there is a good working relations and we can proceed with the, there is, there is common understanding, if I can call it that around some of the, the proposals and, and we can, but it was also important here Chair. It was obviously sent to us, to me to look at it. I was very uncomfortable with the fact that we are signing term sheets. It is, it is not common for us to sign term sheets in this way. I raised it with Mr Singh and he said it is just a non-binding sheet. What we did do Chair was to, to look at it to make sure that the non-binding nature of it is contained.

ADV THANDI NORMAN SC: And then?

10 **MR ANDRE FRANK PILLAY:** Then they processed, oh sorry Chair.

ADV THANDI NORMAN SC: Yes, oh sorry. They processed, sorry [intervenes].

MR ANDRE FRANK PILLAY: Just that they proceeded to sign both Mr Anoj and Rajeev Thomas signed. At this stage also Chair what was, what, what was also important is that we as part of the, the legal process that we follow that we need to get confirmation that the person who signs is duly authorised to sign. So it was a non-binding term sheet and I think we in that regard there was no formal indication and, of that.

ADV THANDI NORMAN SC: Yes and then you talk about a trip then to China. Who attended, who, who, who went to China and what was the reason?

20 **MR ANDRE FRANK PILLAY:** *Ja*. So Chair we.

CHAIRPERSON: Maybe before that.

MR ANDRE FRANK PILLAY: Hm.

CHAIRPERSON: You said you, you sort to satisfy yourselves that there was something that said it was not binding?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Where, where do I find that in, in the document?

MR ANDRE FRANK PILLAY: The first part that I read.

ADV THANDI NORMAN SC: If, if I may?

CHAIRPERSON: If you have got it Ms Norman you can just tell me.

ADV THANDI NORMAN SC: Yes, thank you. If I may just direct the witness. It, it will be at page 52. Page 52 Chairperson there is a non-binding clause in there. Thank you.

MR ANDRE FRANK PILLAY: Page 52 is the non-binding clause, yes Chair.

ADV THANDI NORMAN SC: Yes. Could you, could you read it to the Chairperson?

10 **MR ANDRE FRANK PILLAY:** “Non-binding, the term sheet is indicative only and not exhaustive and may require that further additions and amendments as advised by the respective legal tax and advisors it will not be legally binding on any party and it will not give rise to enforceable rights and obligates except the terms set out in paragraphs 17 and 18 which will be legally binding as set out in the last part in signing the term sheet.”

CHAIRPERSON: Okay, thank you.

20 **ADV THANDI NORMAN SC:** Thank you. Now at this point just in reference to what the Chairperson has asked you was the legal, internal Legal Department of Eskom involved?

MR ANDRE FRANK PILLAY: No. The, it was, we only relied on White & Case to, to advise us on this and obviously I for, for my own purposes also looked at it to ensure that the non-binding nature of it is contained.

ADV THANDI NORMAN SC: Is, is it, is it normal that you would sign things like these even if you say, I know that in your evidence you said it was not usual for Eskom to sign

term sheets, but this has got legal terms in it? Is it normal that you would not go to your internal Legal Section and say look at this is this appropriate can we sign it?

MR ANDRE FRANK PILLAY: Ja. So, so the, the, in our case to Ms, Chair the question is that we do not normally sign term sheets. It was not Eskom process to do that and it was certainly unprecedented to sign term sheets and we did not, we did not go to our legal. We relied on what White & Case the external legal advice gave us in reviewing this.

ADV THANDI NORMAN SC: We are going to deal extensively with that advice, because if, if unless there was another advice. The one that you are talking about is
10 where they advised Eskom not to sign?

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: And then I am just trying to understand how then you relied on it.

MR ANDRE FRANK PILLAY: So the, the, Chair the, the reliance on that was when we received this and even in the signing of this term sheet I updated as indicated earlier Mr Singh about the developments that White & Case had reservations around it and his view was it is non-binding so why worry.

ADV THANDI NORMAN SC: We will deal with that Mr Chairperson extensively with the.

20 **CHAIRPERSON:** Yes.

ADV THANDI NORMAN SC: White & Case opinion.

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: Thank you and then after then the signing of the term sheet then there is a trip to China. Could you tell Chairperson about that trip and who, who went?

MR ANDRE FRANK PILLAY: So, so Chair the signing of the term sheet happened in December. We were scheduled to go and to China, Mr Singh and I. We were in discussions with the China Development Bank to secure a facility. We had secured a facility of about 5 billion through the Chinese Government, China Development Bank and that was part of the negotiations that we embarked on and that trip was extended to, to go and meet the Huarong Team as well as an introductory meeting. Also accompanying us and I was part of the delegation or the group was Prish Govender and Poobie Govender.

ADV THANDI NORMAN SC: Yes and so the Andre Pillay referred to there in third
10 person that is yourself. Am I correct?

MR ANDRE FRANK PILLAY: Yes, yes Chair.

ADV THANDI NORMAN SC: Thank you and what happened then in China? You are there now. You have travelled all the way from South Africa. What, what was discussed and what was agreed?

MR ANDRE FRANK PILLAY: So Chair in the, in the discussion was obviously other than my sharing of the agreement and the facility with Mr Singh there he had first introduction to the Huarong Team and the proposal. So he met them personally as part of the meeting and they discussed the proposal Chair and what was, what was certainly shocking or surprising to me Chair was that he, he hated the transaction. It did not
20 make sense when they explained it to him. He was almost dismissive of it, but it, what was in the experience and in the meeting was also quite telling to me was the, the, the Chinese delegation on the other side was not fazed by his actions or reactions or the responses that he gave and, and, and only after reflection I realised that this was a concern or a red flag to me. Also in the meeting what was quite interesting Chair is this is the first time I am now exposed to the individual who from the Tribus Group that is

the political connection and a gentleman by the name of Rex Madida introduces himself as a political deployee at that meeting.

ADV THANDI NORMAN SC: Now before you went to China what was the attitude of Eskom towards the proposal? I would imagine you would not just travel to China without at least discussing and knowing exactly whether you are interested in it, whether you want to pursue it or you want to put an end to it. What, what was the attitude of Eskom before you travelled?

MR ANDRE FRANK PILLAY: It, it was certainly explorative and initialled introduction of Mr Singh. It was also the first time that other than the call that that I understand from
10 the discussions with Mr Rajeev the call in December it was the first time that he met Mr Singh. Similarly my colleague Mr Poobie Govender was also, he was also the first time that he met Mr Singh during that trip. So it, for me also Chair was that that is the impression, but that this is the first time that they meet each other and, and that is what they told me.

CHAIRPERSON: Well you, you said that somebody was introduced or introduced himself as a deployee?

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: And you said his name is Rex Madida?

MR ANDRE FRANK PILLAY: Rex Madida. He.

20 **CHAIRPERSON:** But you, you did not say everything that you seem to have been told about him when he was introduced. You want to include that if you look at that last sentence of paragraph 10 of your statement?

MR ANDRE FRANK PILLAY: Sorry Chair.

CHAIRPERSON: If you look at the last sentence of paragraph 10 of your statement I think you did not say everything that you are supposed to.

MR ANDRE FRANK PILLAY: Oh.

CHAIRPERSON: That you were told about him or that he told you.

MR ANDRE FRANK PILLAY: Ja. So he.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: He introduced himself Chair as a political deployee of the ANC in KZN. So deployed to Johannesburg.

CHAIRPERSON: Okay.

MR ANDRE FRANK PILLAY: And that is verbatim almost his words to, to us.

CHAIRPERSON: Ja, thank you.

10 **ADV THANDI NORMAN SC:** Thank you Mr Chairman. Then were there any agreements concluded in China either or, or otherwise?

MR ANDRE FRANK PILLAY: No. So, so, so Chair we had a discussion broadly about the structure, the nature, the, the entities that are involved and at the end of the day.

CHAIRPERSON: I am sorry, before you go, go there. This meeting was happening in China. Is that right?

MR ANDRE FRANK PILLAY: In Beijing China, Chair yes.

CHAIRPERSON: And Mr Rex Madida who says he is a, a deployee of the ANC in KZN. As far as you know how does he come to be part of that meeting?

MR ANDRE FRANK PILLAY: So, so Chair, he is part of the, the, the Tribus Group.

20 **CHAIRPERSON:** Yes.

MR ANDRE FRANK PILLAY: So he is part of the Tribus Group and they had also travelled to China for this meeting.

CHAIRPERSON: From South Africa?

MR ANDRE FRANK PILLAY: From South Africa.

CHAIRPERSON: So he had travelled with them as far as you know. He had not

travelled with the Eskom delegation?

MR ANDRE FRANK PILLAY: No, no. I was.

CHAIRPERSON: *Ja.* You found him there?

MR ANDRE FRANK PILLAY: We found him there.

CHAIRPERSON: *Ja.*

MR ANDRE FRANK PILLAY: Ours was internally approved Eskom paid trip.

CHAIRPERSON: Okay. Okay, thank you.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman. You will still answering the question on whether or not there was agreement with the agreement
10 reached.

MR ANDRE FRANK PILLAY: Chair so there were no agreements reached. We largely discussed the, the proposal. Towards the end of the day after the, the first day Mr Singh indicated that he is leaving the three of us there. He is going back to South Africa. He has go, he has been called back. We had subsequent meetings and we were still discussing the, the, the transaction in particular. They were trying to explain to us what is the, the financing and what the cost is. Just the cost of the financing and we, we had quite lengthy discussions around that and that was basically the discussion. We, we left them that day. Went back to our hotel rooms and then came back to the South Africa.

20 **ADV THANDI NORMAN SC:** Then you do in paragraph 12 with the proposal and your interactions with Mr Zethembe Khoza.

MR ANDRE FRANK PILLAY: So, so Chair what I [intervenes].

CHAIRPERSON: I am sorry again. I may have missed something. How did that meeting end in, in China?

MR ANDRE FRANK PILLAY: So, so Chair it was, it was a very cordial meeting. We

greeted and we left and, and important Chair is that subsequent to the meeting I received a letter in January from Mr Rajeev Thomas to basically confirm what their understanding was of the discussion. I responded to the letter and, and, and I think one of the elements that that I did highlight to him in the, in my response letter to him was firstly we will have to follow Eskom processes. We; that the pricing that we discussed is subject to our own internal analysis and, and approval processes and I also mentioned to him in, in that letter that we would have to secure Board approval for us to go forward on, on this, on this proposal or on this discussion.

CHAIRPERSON: But the purpose of your trip to China was it not to meet with the
10 funders you had, you had raised some money?

MR ANDRE FRANK PILLAY: *Ja.* So Chair the first, first day almost a whole day was dedicated.

CHAIRPERSON: *Ja.*

MR ANDRE FRANK PILLAY: To, to that meeting.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: And so the trip was then extended to accommodate a meeting with, with Huarong.

CHAIRPERSON: Oh and who initiated that meeting with Huarong? Was it Eskom, was it Huarong?

20 **MR ANDRE FRANK PILLAY:** So Huarong approached us. They understood I think in part of the discussions with us they, they learnt that we were travelling to China and then they raised; it was not the first time Chair.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: We were, we were also in earlier travelling to China they also wanted to have a meeting, but our program did not allow for that.

CHAIRPERSON: Oh. The people you were dealing with from this group Huarong they were based in South Africa, but they have their headquarters in China or what?

MR ANDRE FRANK PILLAY: So, so Chair the, the, the South African.

CHAIRPERSON: Why would they want to meet you in China when they are based in South Africa?

MR ANDRE FRANK PILLAY: So.

CHAIRPERSON: So that is my query.

MR ANDRE FRANK PILLAY: So Chair the, the South Africans are from the Tribus Group and they had a consortium with the Chinese partners and they are based in
10 China and in Hong Kong.

CHAIRPERSON: Oh the South African part of the group.

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Is based in South Africa, but the Chinese leg of the group is based in China?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Oh, okay. No, now I understand. Okay.

ADV THANDI NORMAN SC: Thank you Chair. Just following up on the Chairperson's question you mentioned the letters that were exchanged after the trip. Maybe let me take you there. If you could go to page 404 and that will be Annexure AP8, AFP8.

20 **MR ANDRE FRANK PILLAY:** Sorry Chair.

CHAIRPERSON: Did you say 404?

ADV THANDI NORMAN SC: 404 Mr Chairman. Yes, thank you.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So that will be towards the end of the bundle [intervenes]?

ADV THANDI NORMAN SC: Yes, it is towards the end yes.

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: Annexure AP8. There is an eight on the, on the, yes. You just turn there, thank you. Could you just read the first line of that letter and I will just take you basically to what we, what you agreed in principle. Okay. Could just read out the first sentence?

MR ANDRE FRANK PILLAY: *Ja.* So the, the first sentence:

“Thank you for your letter dated 18 January.”

The letter I referred to Chair.

10 “We thank you for hosting the delegation, the hospitality, generosity and arrangements made is highly appreciated.”

And then I deal with some of the principles of the, of the transaction and if, if I may.

20 “Eskom considered the range of benefits that this proposal presents and it is, and for this, these reasons we have resolved to pursue this proposal. We in principle agree with the benefits you have listed in the above mentioned letter and we comment as follows and then the large commitment volume of 1.5 to 6 billion provides a significant funding solution for Eskom and [indistinct] of funding sources, unguaranteed funding. This was certainly the objective of the request for information issued on 7 October to which you had responded. Therefore it is a benefit that would largely discount in our analysis. The improved financial management of this, of these projects by Eskom but maintaining control of the asset. Created asset is held in a SPV for the duration of the lease period thereafter

transferred to Eskom. The legal accounting and governance implications will have to be resolved.”

So that we did not resolve.

10 “The cash flow minimum, cash outflow prior to completion, this is a considerable advantage of the proposal, balance sheet. These benefits will have to be tested by the accounting treatment of the asset to be created. The long term tenure, basically the duration of the facility most likely for 10 years as opposed to three to 5 years of a banking facility. These are certainly fair comparisons, but should rather be contrasted with the exiting long term unguaranteed debt as Eskom does not rely on five to 3 year bank facilities for funding purposes. Project based fund allocation provided most efficient use of funds, the use were also addressed in comment three.”

ADV THANDI NORMAN SC: Yes and then in the way forward, because that is important.

MR ANDRE FRANK PILLAY: The way forward also Chair and if I may just touch on the pricing comment that I made earlier is that I highlighted; their view was the, we have agreed on the pricing and my response was Eskom will based on its own analysis
20 evaluate the pricing and engage HEA and then the way forward.

“As you aware Eskom has signed the indicative term sheet with HEA on 21 December that will be presented to the Board Meeting scheduled for the 3rd to 4 February for consideration and approval for further negotiation and conclusion of the facility agreement. Therefore based on the outcome of the

Board Meeting we will be granted the resolution and mandate to engage HEA formally.”

ADV THANDI NORMAN SC: Yes and that letter was a response to the letter that appears at page 400. Am I right?

MR ANDRE FRANK PILLAY: Hm.

ADV THANDI NORMAN SC: Marked AP7, which you received from Huarong Energy Africa.

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: And in that letter if I may just, the benefits that they were offering to you they highlight them. Could you just read those out?

MR ANDRE FRANK PILLAY: The benefits that they highlight is and it is in line with my letter that I responded to.

“A large commitment of 1.5 billion non-South African Government guarantee required. Better financial management for Eskom without giving up control of the asset created. Asset is held in an SPV for the duration of the lease period thereafter transferred to Eskom. Cash flow minimum, cash out flow prior to completion. Balance sheet no liability prior to completion. Long term tenure, most 10 years as opposed to 5 years of a bank facility. Project based fund allocation provide most efficient use of funds essentially to get funding without, immediately impacting Eskom’s financials and new balance sheet. Potentially Huarong China will need to be, be brought in.”

ADV THANDI NORMAN SC: Yes. If you turn to page 402 they seem to make a final

proposal and they tabulate what is it that would remain unchanged from their first proposal, page 402. The same, same, same letter that you are reading from, the next page.

MR ANDRE FRANK PILLAY: Sorry it is AP7?

ADV THANDI NORMAN SC: Yes, it is AP7.

MR ANDRE FRANK PILLAY: Sorry Chair, the question.

ADV THANDI NORMAN SC: The question is if you turn over the page they seem to make final proposals to you. If you read the paragraph:

“During our discussion...”

10 **MR ANDRE FRANK PILLAY:** “During our discussion in Beijing we highlighted the above to you and further made a final proposal with respect to this offer. HEA will offer a final rate of LIBOR plus 720 basis points which is a discount of three basis points if and only if the following conditions are met: all fees and charges are described in the term sheet, submissions remain unchanged. We require a formal response from Eskom to our proposal. Once again our offering is a substantial volume and value to Eskom’s capital program. We truly hope your team will consider all aspects of this structure as specified above and
20 make a decision as soon as possible.”

ADV THANDI NORMAN SC: And then the liable, could you just explain briefly what it means.

MR ANDRE FRANK PILLAY: So Chair.

ADV THANDI NORMAN SC: In simple language.

MR ANDRE FRANK PILLAY: Chair the, the LIBOR is the London Interbank Overnight

Rate that is basically in London at a rate at which banks lend money to one another and that is the rate. Currently it is about 3 percent and, and, and it is, so when you, when you look it, it could be at, at, at just that I, at an indicative level 3 percent plus 7.2 percent.

ADV THANDI NORMAN SC: Yes. Then, thank you Chair. Then you take us then to what then happened when all of these things came or presented before the BTC and the IFC which are the Committees of the Board. The Board Tender Committee and the, and the IFC. Could you just take the Chairperson through those?

MR ANDRE FRANK PILLAY: So Chair the submission to the Board and my, my
10 comments in the letter referring to the, the February date that was in discussions with Mr Singh that that is the meeting that will happen. I, I do not normally attend that meeting. So the, the Huarong submission amongst two other submissions was proposed and the, the instruction or request from him to submit it he, he said that he wanted to show, demonstrate to the Board what are the issues that we are dealing with to resolve some of Eskom's financing requirements.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: And, and also part of it Chair is the, if you look at the proposal it is not just a financing proposal that they lend money directly to Eskom. It is also linked to a, a capital program that this specific money would be used for the
20 expansion of that capital and that required as stated in, in that paragraph 12 Chair that it required the Board Tender Committee that is responsible for that. The IFC is just responsible for the financing part of it.

ADV THANDI NORMAN SC: Could you just tell the Chairperson whether the resolution by the IFC which is the Board Investment in Finance Committee, the one that that is appearing at page 058 whether that was the resolution that was taken in

response to the submission that you made at page, was made by, to it at page 054?

MR ANDRE FRANK PILLAY: Hm.

ADV THANDI NORMAN SC: That will be AP3 please, AP3 and.

MR ANDRE FRANK PILLAY: AP3?

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: So, so Chair the, the resolution, the resolution was that we are mandated to negotiate, but not conclude the Financing Agreement.

ADV THANDI NORMAN SC: And.

MR ANDRE FRANK PILLAY: With Huarong.

10 **ADV THANDI NORMAN SC:** Yes. Who mandated you to do it?

MR ANDRE FRANK PILLAY: That is the Board IFC.

ADV THANDI NORMAN SC: Yes and that was signed, if you look at the date?

MR ANDRE FRANK PILLAY: That was signed the 21st of the 6th 2017 and this is an extract of the minutes by Suzanne Daniels.

ADV THANDI NORMAN SC: Then your understanding then after that was that you were supposed to proceed with the proposal and conclude the proposal, what was your understanding of the resolution by the IFC?

MR ANDRE FRANK PILLAY: Chair my understanding was that we can start negotiations but we cannot conclude that this is an agreement that we can sign, that
20 was my understanding of proceed but not conclude.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So you would negotiate up to the level where you would feel confident that if this was signed it would be good for Eskom, but you would not sign?

MR ANDRE FRANK PILLAY: We would not sign.

CHAIRPERSON: Yes, okay.

ADV THANDI NORMAN SC: Thank you Chair. And then you deal then with the corporate plan which is AP4, could you just talk to what you say in that corporate plan and why was it necessary and what happened in the preparation of the, of that corporate plan.

MR ANDRE FRANK PILLAY: Yes Chair, so the corporate plan as explained earlier Chair was the five year plan for Eskom, we refer here to the corporate plan that was being prepared between January 2017 for submission to – sign off by the Board first and then submission to government during February. During that corporate plan submission Chair there was a slight change in what Eskom was doing, we then
10 introduced private sector participation programs and in the corporate plan Chair there was an allocation made to private sector participation programs in the order of 65billion of that program but only about 52billion in the corporate plan was allocated specifically to private sector participation Chair.

ADV THANDI NORMAN SC: So before we go further in paragraph 13 there's something that I missed in paragraph 12 you deal with the role that a Mr Themba Khoza was playing during the time that he presented the submission to the IFC and to the BTC, what was his role there?

MR ANDRE FRANK PILLAY: So Chair at the time and apologies for going back to what I indicated is that at the stage Mr Khoza is only an ordinary board member, he was
20 the Chair of the Board Tender Committee but he was also a member of the IFC and what was also from – I normally would not attend IFC, Mr Singh apologised and because of these particular items he requested that I participate in the meeting, but in that meeting Chair Mr Khoza made the comment that it's fine you can bring it to BTC but we will approve it.

CHAIRPERSON: We have approved?

MR ANDRE FRANK PILLAY: No we will approve it, it's fine.

ADV THANDI NORMAN SC: Yes, yes, so this was even before it was brought to the BTC?

MR ANDRE FRANK PILLAY: Even before it was brought to the BTC.

ADV THANDI NORMAN SC: Yes and then you were still dealing with what was happening then, the preparation of that corporate plan, in paragraph 13.

MR ANDRE FRANK PILLAY: Ja, so Chair during the preparation of the corporate plan there was the introduction of PSP's and this was new to Eskom, and the allocation was done but the PSP program Chair was also very interesting from my perspective
10 that it contained funding and engaging with funders and investors, certainly my colleagues raised a concern around it, I was concerned about it, I approached Mr Singh to ask so why is this outside of the Treasury. He made a comment to the extent that you are too busy with other things so he has allocated this to a newly formed role under the Prish Govender.

ADV THANDI NORMAN SC: And then who assisted Eskom in the preparation of the corporate plan?

MR ANDRE FRANK PILLAY: Chair at this stage, and I reflected on this comment if I may that at this stage it was McKinsey, it was the previous year that it was McKinsey and Trillion.

20 **ADV THANDI NORMAN SC:** McKinsey?

MR ANDRE FRANK PILLAY: It was McKinsey in 2017 but the McKinsey and Trillion assisted us in the corporate plan in 2016.

ADV THANDI NORMAN SC: Yes and why was it necessary for them to assist Eskom in drafting its corporate plan?

MR ANDRE FRANK PILLAY: They were there brought in as consultants and I think

Chair just from my own experience being within the organisation there was the impression created that we are not capable to do this so we will bring outside help in and it was also largely my experience of the time that these were the people that assisted Mr Singh at Transnet. They knew each other very well and I think that discussion happened, what was also if I may add Chair that the – we were never formally as a direct report set down and gave instructions to say these people will help you, that was never the experience.

ADV THANDI NORMAN SC: Yes, then this inclusive in the corporate plan is the funding plan, am I correct?

10 **MR ANDRE FRANK PILLAY:** Yes Chair.

ADV THANDI NORMAN SC: So how did you draft your funding plan?

MR ANDRE FRANK PILLAY: So Chair the funding plan that we drafted the – we as the Treasury so there's the funding plan in 2016, and the funding plan in 2017, the 2017 funding plan obviously at this stage we drafted that ourselves but the funding plan in 2016 was the funding plan that we were told by Mr Singh, or not told by Mr Singh, as I said earlier that he did not really share this with us, I was in a meeting, the Trillion and McKinsey representatives were in the meeting, we discussed the corporate plan and they arrived at our offices in the Treasury to say that they are assisting Mr Singh and they need certain information.

20 **CHAIRPERSON:** And was that the first time to your knowledge that you got to know that they were going to be involved in the preparation of the plan?

MR ANDRE FRANK PILLAY: It was – in the meeting it was clear when we had discussions with them in the room that broadly they are, they were basically helping us with everything Chair.

CHAIRPERSON: But at the first meeting where the preparation of the plan was

discussed did Mr Singh say I've brought them in for this or that reason or did they just rock up and nobody asked why are you here, what are you doing here?

MR ANDRE FRANK PILLAY: Yes Chair nobody asked and we get into the meeting and the meeting starts and we discuss what has to happen Chair.

CHAIRPERSON: And Mr Singh would have called that meeting?

MR ANDRE FRANK PILLAY: He would have called it, he would have chaired it Chair.

CHAIRPERSON: Yes I assume that being in the matter you would have taken it that he – they were coming with his knowledge or at is invitation?

MR ANDRE FRANK PILLAY: Yes Chair.

10 **CHAIRPERSON**: Because obviously being the Chairperson of the meeting if he didn't know about their coming he would have asked them to leave or something, or asked them what they were doing here.

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. And whose responsibility was it to draw up the corporate plan and the funding plan?

MR ANDRE FRANK PILLAY: So it is the Treasury and I would be largely responsible, not largely I would obviously have to sign it off for submission into the corporate plan following discussions with Mr Singh around that yes.

20 **ADV THANDI NORMAN SC**: And then is it correct that the funding plan is what appears at page – in fact the corporate plan as a whole is AP4 Mr Chairperson, it's that thick document and then the funding plan that you're referring to ...(intervention)

CHAIRPERSON: I saw the Corporate Plan starts at page 59

ADV THANDI NORMAN SC: That's correct at page 60 the actual plan and then it goes up to page 383 but reference is going to be made to certain portions of the funding

plan, thank you. Could you please Mr Singh just – Mr Pillay I beg your pardon, could you please turn to page 152.

CHAIRPERSON: She has apologised Mr Pillay.

MR ANDRE FRANK PILLAY: Chair I have been called worse Chair, I've been called Anjay Gupta as well.

ADV THANDI NORMAN SC: If you in fact if you start with page 60, what year, financial years are those, as they appear on that page?

MR ANDRE FRANK PILLAY: Chair it's for the financial year 2017/18 to 2021/22 Chair.

ADV THANDI NORMAN SC: So that's a five year plan?

10 **MR ANDRE FRANK PILLAY:** Yes Chair.

ADV THANDI NORMAN SC: Yes thank you. If you turn to page 152 that's where the funding plan is.

CHAIRPERSON: What page again?

ADV THANDI NORMAN SC: 152 Mr Chair.

CHAIRPERSON: Okay. Yes?

ADV THANDI NORMAN SC: What I would like to find out from you in the drafting of this funding plan ...(intervention)

CHAIRPERSON: Oh I think he's still looking for it.

ADV THANDI NORMAN SC: Are you still looking for it.

20 **CHAIRPERSON:** Ja, page 152.

ADV THANDI NORMAN SC: 152.

MR ANDRE FRANK PILLAY: Here we go, thank you Chair.

ADV THANDI NORMAN SC: That's the funding plan.

MR ANDRE FRANK PILLAY: Correct Chair.

ADV THANDI NORMAN SC: Thank you. Now in the drafting of this funding plan are

there areas where the wrong proposal was included?

MR ANDRE FRANK PILLAY: No we did not include that in our funding plan Chair.

ADV THANDI NORMAN SC: Yes, and then if you go to the page 153, this is where you deal with matters such as funding progress, could you just take the Chairperson to where what you said when you dealt with the liquidity reserves of Eskom? Just that paragraph.

MR ANDRE FRANK PILLAY: So the liquidity reserves Chair Eskom deems it prudent to maintain a liquidity buffer that covers the average three month organisation cash flow requirements as at 31 December 2016 Eskom had liquidity reserves of R27billion and
10 this excludes committed bank facilities of R6.2billion which serves as a further support to the liquidity buffer.

ADV THANDI NORMAN SC: Yes, and then if you go to page 155 you deal with the (indistinct) of government guarantees, and Eskom debt could you just highlight the areas that are relevant to your evidence to Your Chairperson please.

MR ANDRE FRANK PILLAY: So Chair the relevant and is that Government has allocated R350billion as part of guarantees, we at this stage of this report or the funding plan we have committed R253billion of that to specific funding and then we had available at that stage R97billion and what we were negotiating at the time was R82billion of that R97billion Chair.

20 **ADV THANDI NORMAN SC:** And then lastly under Eskom debt what did you convey there?

MR ANDRE FRANK PILLAY: Chair here we basically just give an overview of the debit of Eskom and if I may as at 31 December 2016 the total net interest bearing debt for the various domestic and international funding sources amounted to R340billion government guaranteed debt currently constitutes 54% of the Eskom total debt and

excludes only the drawn portion of the loans and outstanding government guaranteed bonds, the undrawn portions of the loans and unissued bonds are included in the committed government guarantee amount of R253billion, so we basically just wanted to give an overview of the status of the debt at that particular point in time Chair.

ADV THANDI NORMAN SC: And at that stage what was the financial position of Eskom, did it look good to you or did you feel that you didn't need any help or funding or was Eskom an ailing entity at that point?

MR ANDRE FRANK PILLAY: So Chair at this stage the – what happened was that we applied to the Regulator for 16% tariff increases from the period 2013 to 2018, the
10 regulator only awarded 8% tariff increases and that would have had a significant impact on the financial position of Eskom, 2016 I think from if memory serves Chair from 2015 onward it was a very difficult period for Eskom financially, and certainly the funding that we listed here or the liquidity that we list here of 27billion was fairly high it showed that in our funding activities we were doing fairly well.

ADV THANDI NORMAN SC: Thank you. Mr Chairperson I have noticed it's twenty past eleven, I don't know if the Chairperson would like to take the tea adjournment.

CHAIRPERSON: Okay we will take the short adjournment and we will resume at twenty five to twelve. We adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Yes you may proceed Ms Norman.

ADV THANDI NORMAN SC: Thank you Mr Chairperson. Mr Chairperson I have requested the witness I think the figures that he gave when we were dealing with the percentages on the term sheet are not correct. So with your permission I have requested him to recalculate them during the lunch break and just simply submit a

piece of paper.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: With all the calculations.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you Mr Chair.

CHAIRPERSON: Okay no that is fine.

ADV THANDI NORMAN SC: Thank you. Could you please proceed then Mr Pillay if you go to page 162? There is release of government guarantees. What does that mean and what is the effect of government guarantees being released, could you just
10 expand on what is it that you intended to convey there?

MR ANDRE FRANK PILLAY: Chair here based on the – apologies Chair. Based on the corporate plan that we were preparing that it showed that the financial position over the five year period would improve. Therefore there would be a less reliance on government guarantees to secure the funding. And also Chair the issue at the time certainly my impression given the time that we were doing this from a political perspective there was frustration particularly from Mr Singh that we are relying if we have to use the guarantees we have to go back to government every time and ask them. And I think it was also the norm at Transnet that they did not have to rely on guarantees so part of this was largely a frustration that we constantly we cannot just do
20 whatever we want to do. We constantly have to rely on guarantees. What we did in the treasury Chair under the government release programme was to look at in – as the corporate plan and the overall financial position of Eskom improves how would we be able to source funding on an unguaranteed basis? The difference Chair would be too specifically that you would get on a guaranteed basis it is easier because you know government is standing behind it and if do on a unguaranteed basis you might not get

the amounts you were looking for and at the price you were looking for. But that was certainly the move towards unguaranteed portions of that. Chair also just important here to note if I may that it was also a period where we were looking at where Eskom was looking at the Nuclear Project and guarantees would have been important to secure that. Also Chair was the at this particular point in time the guarantee programme that we had expired on the 31 March 2017. So it also expired and we would have to go to government and ask them to extend it so those were two critical points related to the release of government guarantees.

CHAIRPERSON: But release of government guarantees basically refers to a position
10 where you were given a government guarantee but you no longer need it.

MR ANDRE FRANK PILLAY: You do not need it and you do not utilise it.

CHAIRPERSON: Ja you do not – you are fine.

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: Financially for purposes of that particular project.

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you Mr Chairperson. Does not also having a
20 guarantee, a government guarantee also used as a safety mechanism because government knows exactly what you getting yourself into because it has provided guarantees. And what – and the risks that are attached to unsecured – unguaranteed lending because government does not know what you are doing? You go and you source funding it is – there is no guarantee. Government does not know how much debt you amassing at that point. Am I correct in my understanding of how they work?

MR ANDRE FRANK PILLAY: Chair if I may? The – so the use of the government guarantee obviously gives them a better credit quality that is basically standing behind you and Eskom has two ways – we are implicitly guaranteed because we are a state owned entity and we are explicitly guaranteed through this 350 so that is the. The issue on just going and doing what we want to do without the government guarantees we have a borrowing programme that we submit. Government has to sign that off. So the notion of just going and doing what you want is not really true because you still have to go to government and say we are encumbering government Eskom through this facility so...

10 **CHAIRPERSON:** Basically government guarantee to an entity such as Eskom is really for purposes of assuring lenders, potential lenders or investors or funders that the – if they give you loan they will be paid back.

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: And also I think important Chair is that government is also basically close the abuse of the guarantees is I can call it that that is – that it is specific just to our capital programme. So we cannot use the guarantees to go and raise money for operational purposes such as salaries. But you are correct Chair.

ADV THANDI NORMAN SC: Yes. Thank you Chair. And then – you then in paragraph
20 15 am I correct that you would like to correct the date there that appears in the first sentence of that? Instead of 2019 to read 2017.

MR ANDRE FRANK PILLAY: On my statement?

ADV THANDI NORMAN SC: Back to your statement please. Back to your statement paragraph 15.

MR ANDRE FRANK PILLAY: Sorry please which date?

CHAIRPERSON: I am – I think we should have a little bit of air conditioner.

ADV THANDI NORMAN SC: Yes [indistinct] been hot. [laughing] Thank you. Thank you Chair.

CHAIRPERSON: I think some will say more than a little bit but...

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Okay. Alright.

ADV THANDI NORMAN SC: Yes Mr Pillay?

MR ANDRE FRANK PILLAY: Chair just to reference which – the date Chair?

ADV THANDI NORMAN SC: The date 14 March 20 – did you – is it 2019 or 2107?

10 **MR ANDRE FRANK PILLAY**: No this is 2017 apologies.

MR ANDRE FRANK PILLAY: 2017. You would like to correct that date? Okay.

CHAIRPERSON: Well I have it correct on mine. So I must have corrected it when I was reading the statement.

ADV THANDI NORMAN SC: Yes. Thank you Chair.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Yes. Thank you. Here you deal with the signing of another term sheet, am I correct?

MR ANDRE FRANK PILLAY: Yes Chair.

20 **ADV THANDI NORMAN SC**: And why was it done and what were the reasons advanced for doing it?

MR ANDRE FRANK PILLAY: So Chair in this instance the – and this was in March you may recall Chair we travelled to China in – on – in January. We have the board meeting that says negotiate but do not conclude. They visit South Africa in the Huarong delegation visits South Africa – visits South Africa in March and there is a letter to Mr Singh that suggests they are here they would like to have a meeting and sign the term

sheet. And this was relayed to us Chair.

CHAIRPERSON: I mean at that stage are they still talking about the term sheet – signing the time sheet?

MR ANDRE FRANK PILLAY: Signing of a binding term sheet yes.

CHAIRPERSON: A – oh – binding one this one time. Okay.

MR ANDRE FRANK PILLAY: Yes. And Chair I think also the – so we were then given the term sheet. We looked at it. And we wanted to make sure that at least that there is the non-binding elements to it in that term sheet.

CHAIRPERSON: And who was giving – who was receiving the term sheet?

10 **MR ANDRE FRANK PILLAY**: So we were receiving the term sheet from Huarong.

CHAIRPERSON: Okay their proposed term sheet?

MR ANDRE FRANK PILLAY: Yes their proposed term sheet for signing.

CHAIRPERSON: Yes. Ja.

MR ANDRE FRANK PILLAY: And they have also tried in their attempt to water it down slightly so that it looks more binding in nature.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: We also – I mean – we received it and we were told by Mr Singh we are – he wants to sign the term sheet. So we again Chair if – we reviewed it, we looked at it with white and case and we were looking at some of the elements in
20 there that still suggest to us this is not – we – it is – there is some binding ele- non-binding elements to it.

CHAIRPERSON: So largely – was it largely similar or identical to the non-binding one that had been signed or was there a vast difference between the two?

MR ANDRE FRANK PILLAY: There was significant difference between the two Chair.

CHAIRPERSON: Yes. Okay. The difference is related to any issues of importance

that you want to highlight?

MR ANDRE FRANK PILLAY: Chair in particular they took out in the clause the non-binding conditions they took that out.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: What we – what we insisted on was that it still stipulates that the term sheet will be superseded by the signing of the terms would be superseded.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: There is also indications that the –it is only indicative
10 and that what we also insisted on Chair was that we maintain that we would need all the government approvals that is required for it.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Is the signing of a term sheet such as this a normal step prior to signing a contract?

MR ANDRE FRANK PILLAY: No Chair. It is certainly – yes.

CHAIRPERSON: Is it the term sheet actually it is called a term sheet not time sheet.

MR ANDRE FRANK PILLAY: Ja.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: It is certainly not normal to ask Chair.

20 **CHAIRPERSON:** Yes.

MR ANDRE FRANK PILLAY: And it is not as I have indicated Chair that it was – it was not something that we do as part of our process in the treasury that you would sign the term sheet that is binding.

CHAIRPERSON: And did you find out or did you understand what the need was to sign a so called binding term sheet if in any event there was still going to have to be a

contract to be signed?

MR ANDRE FRANK PILLAY: Chair the – it was quite clear that the signing of the binding term sheet suggest that if the – we sign the binding term sheet – if we sign the contract the fees as stipulated in the term sheet becomes payable.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: And that was...

CHAIRPERSON: But why not wait until you sign the contract?

MR ANDRE FRANK PILLAY: Exactly Chair.

CHAIRPERSON: Ja. Okay.

10 **MR ANDRE FRANK PILLAY:** That was our concern as well.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: And certainly at this stage Chair we relayed that to Mr Singh even the concerns of white and case we relayed that to him.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Following up on the Chairperson's questions maybe we should go to that term sheet at page 385.

MR ANDRE FRANK PILLAY: Excuse me Chair the?

ADV THANDI NORMAN SC: 385. That will be AP5 maybe if you look at the divider.

MR ANDRE FRANK PILLAY: Okay.

20 **ADV THANDI NORMAN SC:** Is that the one that you are referring to? And if you turn to page I just want to see where the signatures are – page 394.

MR ANDRE FRANK PILLAY: 394?

ADV THANDI NORMAN SC: Yes. Is that the area where there are signatures?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Who signed that document?

MR ANDRE FRANK PILLAY: It is signed by Mr Anoj Singh on the 14 March of the third month in 2017.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: And Mr Sathlaseelan Gounden of the Huarong the chairman of Huarong Energy Africa.

ADV THANDI NORMAN SC: Yes was it signed here in South Africa?

MR ANDRE FRANK PILLAY: It was signed in South Africa. It was signed in our offices.

ADV THANDI NORMAN SC: Yes. And if you go to this document just to highlight
10 certain things. You have told the Chairperson that you said it was indicative but if you
look at the – you read the very first paragraph just under the shaded area that has got
approximately \$1.5 billion. Could you just read that into the record please?

MR ANDRE FRANK PILLAY:

“ The parties agreed that this term sheet shall [indistinct] it legally
binding obligations on each party and shall be in full force in
effect upon its signature until such time as the asset loan
agreement and the other related definitive agreements are
concluded between the parties. Unless inconsistency with the
context or safe where the contrary is expressly indicated a
20 reference to a party includes the party’s successors entitled and
permitted assigned and nominees.”

ADV THANDI NORMAN SC: Yes and if you go to paragraph 5 on the same page what
does it read?

MR ANDRE FRANK PILLAY: It indicates in the introduction:

“Please note the terms and conditions set out in the term sheets

are indicative in nature and do not purport to summarise all the conditions covenants and other provisions that would be contained in the definitive legal document which shall be satisfactory to all parties.”

ADV THANDI NORMAN SC: Yes. Just above the signatures at page 394 could you just read what is contained in there? Kindly – beginning with kindly.

MR ANDRE FRANK PILLAY:

“Kindly sign the space provided thereby accepting the terms and conditions of the term sheet.”

10 **ADV THANDI NORMAN SC:** Yes. So what were the reasons given by Mr Singh when he wanted to have this signed?

MR ANDRE FRANK PILLAY: So Chair the reasons here was it is – I have explained the context and the concerns that we had and his view again was it is a non-binding term sheet they are here it shows our cooperation so we can sign.

ADV THANDI NORMAN SC: And when it was being signed or about to be signed was this referred to your internal legal department?

MR ANDRE FRANK PILLAY: No.

CHAIRPERSON: Well when he said that to you did you not point out that right at the beginning it says quite clearly it is binding?

20 **MR ANDRE FRANK PILLAY:** Ja he was aware of the – of that Chair. I mean – we..

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: From the first term sheet he was aware of our reservations and concerns around this.

CHAIRPERSON: But he still said it was non – not binding?

MR ANDRE FRANK PILLAY: Not binding he was comfortable with it Chair.

CHAIRPERSON: Did he explain to you the basis – his basis for saying it is non – it is not binding when it clearly says it is binding?

MR ANDRE FRANK PILLAY: No Chair.

CHAIRPERSON: He never explained? And you said your concerns with it were mainly that it still had non-binding fissures or what were your concerns again if you can articulate them again?

MR ANDRE FRANK PILLAY: My concerns were it is obviously the binding elements to it but the comfort that I took Chair was the non-binding commitments as indicated.

CHAIRPERSON: Yes. So the – those elements which you regarded as non-binding
10 the fact that they were non-binding was to Eskom's advantage because then Eskom was not going to be bound – legally by them?

MR ANDRE FRANK PILLAY: By them yes.

CHAIRPERSON: But is that – are you saying they were non-binding fissures because the document said so somewhere in regard to certain specific fissures or is it their nature that makes you say they were non-binding? Why do you say there were some non-binding fissures?

MR ANDRE FRANK PILLAY: So Chair certainly my understanding or interpretation of this the – it was as per paragraph 5.

20 “Please note that the terms and conditions set out in the term sheets are indicative in nature and do not purport to summarise all the conditions and covenants, warranties and other provisions.”

So there what was the concern was the – and we subsequently discontinued to engage Huarong on this in particular the fees related to this facility Chair.

CHAIRPERSON: I am sorry from what page were you reading?

MR ANDRE FRANK PILLAY: 385 Chair.

CHAIRPERSON: Right at the bottom?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Please note that the terms and condition set out in this term sheet are indicative in nature that is one and do not purport to summarise all the conditions, covenants, warranties and other provisions which would be contained in definitive legal documentation which shall be satisfaction to all parties. 2 are in respect of certain special conditions which are in addition to other standard terms and conditions typical of the transaction of this nature and remains subject to completion of requisite due
10 diligence constitute a statement of mutual intent of the parties with respect to the contemplative transaction. [laughing]. Well the last part I read seems to suggest that maybe this document may have been intended to be a document indicating a serious attention between the parties to conclude an agreement in the future. But that first – that opening portion which says it is binding then goes against that. So it seems to have some inconsistencies within itself. Okay but you say that what gave you comfort was what part what I read – part of what I have read?

MR ANDRE FRANK PILLAY: That Chair and also if I may the roman numeral three iii

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: That states:

20 “The constitute of statement of mutual intent of the parties with respect to the contemplated transaction and does not contain all matters upon the agreement which must be reached in order for any transaction to be consummated and therefore does not constitute a binding commitment with respect to the transactions although undertaking set forth in confidentiality and other will be binding upon the parties.”

CHAIRPERSON: So that last bit you have read seems to suggest that there are certain

parts of the document that are binding and other parts that are not binding? The ones are not confidentiality and other other are binding. Okay alright so maybe that is what Mr Singh also based his view on?

MR ANDRE FRANK PILLAY: I am not sure Chair it certainly that was...

CHAIRPERSON: It is possible?

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: It is possible that he also looked at what you looked at and for that reason – for the same reason as you thought well it is not binding. So that is possible it

10 seems to me.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you Mr Chairman. And then if you to page 386 of that same document paragraph 7 or clause 7 thereof if you read that what does it say?

MR ANDRE FRANK PILLAY:

20 “Notwithstanding the afore-going however in the event of cancellation of the proposed financing agreements after signing this term sheet the cancellation fee referred to below will immediately become due owing and payable by Eskom.”

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: What page is that? What clause?

ADV THANDI NORMAN SC: Page 386 Mr Chairman.

CHAIRPERSON: Oh number 7?

ADV THANDI NORMAN SC: Number 7 that is correct.

CHAIRPERSON: Okay alright.

ADV THANDI NORMAN SC: Yes. So it says the cancellation fee becomes due owing and payable after – if you cancel?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Yes. And the – then it goes back to the amounts that we have read earlier on the percentages that you were supposed to pay off the amount that was to be ...

Yes. And the – then it goes back to the amounts that we have read earlier on the
10 percentages that you were supposed to pay off the amount that was to be ...

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Yes because that – those amounts that is 0.2% that you spoke about earlier. Now you look at this – you are told that you must – we are going to sign this term sheet and you looking at these conditions you are concerned about them. Why did you not go to your legal department internally? I am not talking about outside legal advice I am talking about internally. Why did you not at that point say to legal Mr Singh says you must sign this thing I have got some concerns about it. It my – these terms might not be favourable to Eskom? Why did you not do that at that point?

MR ANDRE FRANK PILLAY: Chair so the – at this stage I admit that we relied on
20 white and case for that.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: The other aspect Chair that is also important at this stage the legal of Eskom also reports into Mr Singh largely and he was aware of the fact that we required this legal assistance. He agreed that we can rely on white and case for that.

ADV THANDI NORMAN SC: Yes. Thank you. We are going to deal with the white and case advice shortly. So then this gets signed and what was then the next step after the signing of the second term sheet now we have the first one that was signed in December now we have the second one that is also signed and the percentages if I am correct they remain the same on the clauses that we referred to earlier, am I correct? That is the percentages to be paid?

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: For due diligence, for cancellation, yes for commitment fees all of those remain the same?

10 **MR ANDRE FRANK PILLAY:** Yes.

ADV THANDI NORMAN SC: Okay thank you. And then thereafter what happened?

MR ANDRE FRANK PILLAY: So Chair the – it was signed. The process that was followed still based on the – the process that I followed based on the board resolution was negotiate and do not conclude. So even the term sheet Chair we discussed that even after the signing by Mr Singh there was still up until the last point unhappiness with some of these or discontent with some of the terms particularly the financing of that. And we raised it with white and – with Huarong at the time. So certainly from my perspective the board resolution was negotiate but no – do not conclude. That was my approach to it Chair.

20 **ADV THANDI NORMAN SC:** Yes.

MR ANDRE FRANK PILLAY: And I may Chair also just – if I may Chair?

CHAIRPERSON: Yes. Ja.

MR ANDRE FRANK PILLAY: Just context. The one thing that – and this is a personal being in the organisation at the time is a couple of points Chair is that Mr Singh was going to sign this thing regardless of what I say.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: That was my experience. What also an issue at the time Chair was I was responsible for the treasury. In that particular earlier that month he arrived in the office and I was sitting in a meeting with external people he arrive in the office and handed me an envelope and his words to me were “here is a love letter for you.” I concluded on the meeting but was quite anxious to see what is in the letter in the envelope. In the envelope was the financial profile of one of my colleagues called Marius Homewood. I read or I looked at it and went to his office to ask “What is the situation with this letter?” His words to me were: “Tell him to leave, you must get rid of
10 him.” And there was no basis for it.

CHAIRPERSON: That was somebody reporting to you?

MR ANDRE FRANK PILLAY: That reported to me at the time. And the instruction was “you must get rid of him”.

CHAIRPERSON: What was his name again?

MR ANDRE FRANK PILLAY: Marius Homewood.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: So he instructed that you must get rid of him. I took it quite serious Chair and I – and...

CHAIRPERSON: And from your – from your point of view this was like out the blue?

20 **MR ANDRE FRANK PILLAY:** It was out of the blue but I will give context Chair. It was part of what we saw in the organisation happening. My predecessor may have been in the same situation. There was another colleague that was – even though in the public domain we present this as if it is amicable and agreed to that people would leave because they are not willing to cooperate. And this was the similar situation with Mr Homewood. In an executive forum of probably 300 people at least Chair the discussion

around this corporate plan that we discussed now and there was a particular question around the release of government guarantees that we discussed earlier and he asked someone from treasury – I was unfortunately not there, he asked Mr Homewood to give response and Mr Homewood was quite clear that we can only achieve this if you as in my own words Chair “if you as the leadership fix this place” and that is my own words and I do not think that Mr Singh took it quite well and that was the basis of coming and saying to me “get rid”. So that was the environment that we were working in. It was also reflective of the – at some point – so when my predecessor left Chair the treasurer of Eskom would chair the alcohol the assets and liability committee. When Mr Singh

10 arrived he proposed to chair those meetings and in some of those meetings he would tell us as the treasury team if you cannot do this I will get other people do what I want. And that was the environment that we were in Chair. And just to give some context that he would sign it regardless of what we would say about it. And if you do not cooperate that might be your fate. So there was also consistently throughout that period an element of self-preservation and also Chair maybe a bit of over confidence from my side to think that if you leave they are going to bring people in that will do whatever they want to do. I just wanted to give that context Chair.

CHAIRPERSON: And what was the name of your predecessor?

MR ANDRE FRANK PILLAY: Her name was Caroline Henry Chair.

20 **CHAIRPERSON:** Ja okay.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman. We have dealt with annexures AP7 and AP8 those are the letters you exchanged between the Huarong group after your trip to China. If you go to paragraph 16 this is where we deal with white and case advise and I would like to go to that because of what is it that they communicated very clearly to Eskom. Am I correct that you met with these lawyers on

the – according what they say on the 12 March 2017 or you met with before that date?

MR ANDRE FRANK PILLAY: Yes Chair. [indistinct] reference.

ADV THANDI NORMAN SC: AP9 I beg your pardon. I beg your pardon it is AP9. AP9 that would be page 407.

MR ANDRE FRANK PILLAY: Yes Chair ...

ADV THANDI NORMAN SC: Where did you meet them?

MR ANDRE FRANK PILLAY: I met them in London and this was the introducing meeting. Mr Singh and I met and we had meetings to see investors in London. They came to the hotel that I was – where we were staying and to discuss this particular transaction.

10

ADV THANDI NORMAN SC: Yes. I you Chair.

ADV THANDI NORMAN SC: What...

CHAIRPERSON: What is that – the Huarong Transaction or another Transaction?

MR ANDRE FRANK PILLAY: This particular transaction and what they were work – assisting us on Chair.

CHAIRPERSON: Oh a different transaction?

MR ANDRE FRANK PILLAY: No, no this Huarong Transaction.

CHAIRPERSON: Oh okay.

MR ANDRE FRANK PILLAY: Yes Chair.

20 **ADV THANDI NORMAN SC:** Only the Huarong Transaction?

MR ANDRE FRANK PILLAY: Yes to my knowledge yes that is what ...

ADV THANDI NORMAN SC: Yes. On that page which is...

CHAIRPERSON: I am sorry.

ADV THANDI NORMAN SC: Oh sorry Chair.

CHAIRPERSON: Do they represent Huarong?

MR ANDRE FRANK PILLAY: No, no they were representing us Chair.

CHAIRPERSON: Oh they were representing you?

MR ANDRE FRANK PILLAY: Yes. Huarong was represented by Norton Rose at the time.

CHAIRPERSON: Oh okay.

MR ANDRE FRANK PILLAY: Assisted them.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Yes. Mr Chairman the comments that they make are very important to what you are going to be dealing with later on.

10 **CHAIRPERSON**: Yes.

ADV THANDI NORMAN SC: With your leave may I just ask the witness.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: To read most of those?

MR ANDRE FRANK PILLAY: That is fine.

ADV THANDI NORMAN SC: Thank you. Could you please read from what they say to you – this was written to you by Mr Adrian Lawrence.

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Yes. Could you just read out what he says in the – in that letter – in that email sorry.

20 **MR ANDRE FRANK PILLAY**: So in, the email was from Mr Lawrence on 12 March at 20 past, 22 minutes past 10 to Andre Frank Pillay and he cc'd his colleague, Stuart Matty, Huarong Term Sheet.

“Dear Andre, it was great meeting you on Friday and as mentioned please find below some initial thoughts on the term, term sheet. As discussed it will be helpful if you would provide

details of Huarong, other personnel you have met and this would give some better sense of Huarong China's subsidiary involvement. You will note below we have also suggested Huarong, HEA to suggest, to be requested to provide further information to this in this regard given this would appear to be a first one of the first moves of China Huarong outside of China into Africa. Senior involvement would be likely. Please do let me know if anything further at that stage would be helpful."

ADV THANDI NORMAN SC: Yes and following that they raise some concerns about it.

10 Could you just highlight what those were?

MR ANDRE FRANK PILLAY: Chair so, so they, when they looked at the, the term sheet Chair and this was if, if we look at the time. This was now before the signing of the, the term sheet.

20 "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 stge. 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 at the mark up of the term sheet it may make sense to consider clarifying certain key thresholds queries at this stage including the term sheet status by HEA has been set up to provide asset finance solutions for Eskom. Further details should be requested. The background to Huarong setting up a subsidiary before discussions with Eskom commenced and what is this subsidiary will be doing other than dealing with

Eskom. The term sheet states China Huarong is a parent company of HEA. HEA should provide a structured diagram and details of the background of its Directors to justify this. Note that HEA does not appear to be a China Huarong subsidiary on its website. HEA stated as the lender for the 1.5 billion up to 6 billion. HEA should identify the source of these funds and when and how they will be communicated.”

Should I continue?

ADV THANDI NORMAN SC: Yes please.

- 10 **MR ANDRE FRANK PILLAY**: “So 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 HEA CDB would fund through HEA for the on lending and so then is HEA simply an arranger equally? Would i.e. CDB accept a due diligence of HEA? Will China Huarong guarantee the obligations of HEA? Who will guarantee the obligations of the SPV to EPC Contractors? Who will cover costs overruns, constructions risk, delays? To be closely examined by what HEA brings to Eskom. It appears, a, it
- 20 appears any certainty of construction costs is through the arrangement of specific EPC Contractors, turnkey, EPC and model mentioned in the term sheet and so will be priced in that, by, by the EPC Contractor. It is unclear that HEA will be bringing money to the, to the structure. If HEA is simply providing arranger service it should be judged including as to

the track record in comparison to other arrangers and priced on, on that basis. Eskom to consider careful the involvement of HEA in EPC arrangement given Eskom is ultimately paying the projects and it is Eskom's projects that are involved. In particular noted that HEA looks at preapproved EPC Contractors and Eskom could have concerns with i.e. all Chinese EPC Contractor tenders and then HEA reserves the right to take the, the final decision on selecting the EPC Contractor. Presumably the four EPC Contractors and, and one EPC Company HEA referred to would happy deal with Eskom directly and so access arranged by HEA replicates what Eskom can do also. The structure contemplated is effectively a limited recourse structure financing with possessory security in HEA would hold the shares in the SPV and will hold the finance assets during the duration of the loan with various other security features i.e. escrow accounts to be considered further how much secured financing will fit in with Eskom's undertakings with other lenders i.e. negative pledge issues. 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. Passed experience HEA and/or its personnel in banking such structures to be confirmed. Term sheet key financial terms."

ADV THANDI NORMAN SC: Hm.

MR ANDRE FRANK PILLAY: "Financial terms appear onerous generally

including based on 1.5 billion were applicable.”

ADV THANDI NORMAN: Sorry. No, no I am just going to ask you to just highlight the concerns just in terms of topics.

MR ANDRE FRANK PILLAY: So, so.

ADV THANDI NORMAN SC: Because we have dealt already with the percentages. So if you just, the cancellation fee was one of the matters that they were concerned about.

MR ANDRE FRANK PILLAY: So, so Chair so the financial terms, the key financial terms.

10 **ADV THANDI NORMAN SC**: Yes.

MR ANDRE FRANK PILLAY: They raised concerns with that and the, the financial structure. They raised concerns with those.

ADV THANDI NORMAN SC: Yes. So and in fact they raised the cancellation fee expressly. They raised signature fee of the alpha, the due diligence fee, [indistinct] commitment fees, interest rates, security deposit. So all of, and early prepayment, so all of these matters are raised by White & Case?

MR ANDRE FRANK PILLAY: Case, yes.

ADV THANDI NORMAN SC: Yes. So this I see is two days before the signing of the.

MR ANDRE FRANK PILLAY: Yes.

20 **ADV THANDI NORMAN SC**: Term sheet, am I correct? So this was addressed to you?

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: So who did you give this document to when you received it?

MR ANDRE FRANK PILLAY: So, so Chair the, I mean it was cc'd to, to; so it was to

me. I, I; the term sheet I, I, I forwarded this to I think to my colleague [indistinct] the document. I may have sent this to him, but I have also discussed this document with Mr Singh. He was in London when we met with them. He joined the discussion, introductions took place and I raised that this are the concerns that that they were raising.

ADV THANDI NORMAN SC: Yes. Now from the reading of the White & Case summary as you have put it there is nothing in the term sheet that addresses these concerns. Am I right?

MR ANDRE FRANK PILLAY: At, at, at the term sheet.

10 **ADV THANDI NORMAN SC:** The signed one?

MR ANDRE FRANK PILLAY: The signed one, no.

ADV THANDI NORMAN SC: So what means is that although they had altered you and Mr Anoj Singh to these concerns the term sheet was signed in the manner in which it was and in the manner in which they were criticising?

MR ANDRE FRANK PILLAY: Yes and, and with those non-binding elements as indicated.

ADV THANDI NORMAN SC: No. No what, what I am trying to understand is where in this email from White & Case is it indicated that you could sign that or that term sheet could be signed, because you did not sign it, but where is it in here that it could be
20 signed?

MR ANDRE FRANK PILLAY: So, so not in this term sheet. There is, there is an email from them, correspondents from them that they have highlighted some of the, the changes to the term sheet.

ADV THANDI NORMAN SC: Yes. No, but in this one there is nothing [intervenes].

MR ANDRE FRANK PILLAY: No it is not here. It is not here.

ADV THANDI NORMAN SC: In fact in this one it is actually cautioning you, no.

MR ANDRE FRANK PILLAY: *Ja.* It is, it is certainly saying no, do not go head.

ADV THANDI NORMAN SC: Yes, but then two days later it was signed?

MR ANDRE FRANK PILLAY: Signed.

ADV THANDI NORMAN SC: Thank you and you say Mr Singh was at this meeting.

These concerns that they raised in the letter were those raised exactly the same?

MR ANDRE FRANK PILLAY: *Ja.*

ADV THANDI NORMAN SC: Concerns were raised at the meeting?

MR ANDRE FRANK PILLAY: At, at the meeting the high level concerns in terms of
10 conceptually what, what, what they were unhappy with, but these concerns I certainly
raised with him in terms of the specifics of what they were concerned about.

ADV THANDI NORMAN SC: Yes and, and at what point if any at any point was this
ever shared with your legal internal?

MR ANDRE FRANK PILLAY: It was shared with our legal internal at a, at a later stage.
So, so what happened Chair was the; so after the term sheet signing and again I refer
back to, I was in the IFC Board Meeting. The only and, and not even Mr Singh, the
Board for me is the, is the ultimate decision maker. The Board said to me I was in that
meeting. I represented, negotiate but not conclude.

CHAIRPERSON: Yes.

20 **ADV THANDI NORMAN SC:** Yes.

MR ANDRE FRANK PILLAY: And I took.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: I took that I agreed with Mr Singh even though there was
these concerns.

CHAIRPERSON: Hm.

MR ANDRE FRANK PILLAY: The Board said I must negotiate, but not conclude.

CHAIRPERSON: Hm.

MR ANDRE FRANK PILLAY: And the intention was to, to, to resolve some of these issues.

CHAIRPERSON: Hm.

MR ANDRE FRANK PILLAY: If we could not resolve it then we go back to the Board and say we cannot resolve certain issues. We are not happy to proceed.

CHAIRPERSON: Ja.

10 **ADV THANDI NORMAN SC:** Thank you. Now let us move forward then. You mention in paragraph 16.

CHAIRPERSON: Are you going back to his statement?

ADV THANDI NORMAN SC: To, to his statement. I beg your pardon, yes Mr Chair, page 6. You mention Mr Koko in the last sentence of that paragraph. What are you saying about him there?

MR ANDRE FRANK PILLAY: So Chair the, the, the situation at the time was we are going to, we are going to sign. It is not, it is non-binding it is just a show of the cooperation. At this stage Mr Koko was the CEO, the Interim CEO of Eskom.

CHAIRPERSON: That that is now you are talking about.

MR ANDRE FRANK PILLAY: At.

20 **CHAIRPERSON:** What you say in paragraph 16 of your statement?

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: 16, Chair towards the end.

CHAIRPERSON: Yes, okay right.

MR ANDRE FRANK PILLAY: So the.

CHAIRPERSON: Mr Singh's attitude was, Mr Anoj Singh his attitude towards the term

sheet was that it was to be signed? It was going to be signed?

MR ANDRE FRANK PILLAY: Be signed, yes, yes.

CHAIRPERSON: And Mr Koko's attitude was also that it was to be signed?

MR ANDRE FRANK PILLAY: To be signed.

CHAIRPERSON: *Ja*, okay.

MR ANDRE FRANK PILLAY: Chair and, and, and just for completeness is that after the review as I have explained I sent an email with this to Mr Singh to say given my, the looking at the non-binding nature he was going to sign it in any case regardless of my, my input. This is the term sheet for signing.

10 **CHAIRPERSON:** So in your memo that you are talking about are you saying you forwarded the term sheet to him?

MR ANDRE FRANK PILLAY: With, with the amendments.

CHAIRPERSON: With this amendments that you were suggesting?

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: Okay.

MR ANDRE FRANK PILLAY: Based on the White & Case advice.

CHAIRPERSON: Yes okay, but did you, did you say anything about what your attitude is to, at that stage, to it being signed? I know that earlier you had made your position clear, but when you were sending that memo did you?

20 **MR ANDRE FRANK PILLAY:** *Ja*.

CHAIRPERSON: Include that as well what your attitude was? Did you say well you sign if you?

MR ANDRE FRANK PILLAY: No, no, not yet.

CHAIRPERSON: Wanted to sign or.

MR ANDRE FRANK PILLAY: We.

CHAIRPERSON: I still say do not sign.

MR ANDRE FRANK PILLAY: *Ja.*

CHAIRPERSON: Or you just said nothing about signing or not signing?

MR ANDRE FRANK PILLAY: I, I said this is, for signing this is the, the term sheet.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: From, from, from what I can recall Chair.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: Also Chair what was my concern and maybe I must allow for the process Chair to, to deal with that element.

10 **CHAIRPERSON:** *Ja.* No, no, not that is fine but, but you, you say that as at that stage and probably earlier than that your understanding was that your view as to whether it should or should not be signed was not going to change anything?

MR ANDRE FRANK PILLAY: No, it was not going to change, sorry Chair.

CHAIRPERSON: Yes, yes okay, alright. Thank you.

ADV THANDI NORMAN SC: Thank you.

MR ANDRE FRANK PILLAY: And Chair to confirm if I may that my discussion and negotiations with White & Case was certainly to address all those issues.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: The concerns of White & Case our own concerns.

20 **CHAIRPERSON:** Yes.

MR ANDRE FRANK PILLAY: The structure of it.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: The, the process that followed was certainly to deal with that.

CHAIRPERSON: Yes, okay.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chair and then in paragraph 17 could you tell the Chairperson what you, then the next plan was?

MR ANDRE FRANK PILLAY: Huh-uh. So Chair the, the, again back to the, the resolution that I had this was the, the information that we took to the, to the meeting, the Board Meeting of, of February was the resolution negotiated, do not conclude and this was on an RFI basis. Eskom following its processes Chair does not conclude anything or I was, I was, it was introduced to me that you can contract from an RFI. I was very uncomfortable with it. I engaged with and, and with, with the commercial colleagues and I was very uncomfortable. I made it known to Mr Singh we are not
10 going to proceed until we do an RFP.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: And that was, and that was issued on, after the signing of this indicative term sheet. An RFP had still to follow the process.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: But then this, this follows a day after you had given, you were given the advice by White & Case?

CHAIRPERSON: Sorry, it looks.

MR ANDRE FRANK PILLAY: [Intervenes].

CHAIRPERSON: Nobody has done anything about the air con.

20 **ADV THANDI NORMAN SC:** That that is also my feeling Mr Chairperson. I do not know, but I see.

CHAIRPERSON: Hm.

[Chairperson talking to unknown person]

ADV THANDI NORMAN SC: Thank you Mr Chair.

CHAIRPERSON: Well I, I think there was a report back ready to be given to me as

soon as there was a break for me to be given.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: I am told that apparently there is no electricity now. We are operating on the basis of a generator and that apparently there is no air con when we operate like that. So [laughing] so.

[Laughing]

CHAIRPERSON: So I do not know whether Mr, Mr Pillay can do anything about that.

[Laughing]

MR ANDRE FRANK PILLAY: I have done my best during the break Chair.

10 **CHAIRPERSON:** Well it is interesting that we have not had load shedding for some time until when we are hearing witnesses from Eskom.

[Laughing]

CHAIRPERSON: Alright, we, we will make, make do with what we can.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Okay, alright let us proceed.

ADV THANDI NORMAN SC: Thank you Mr Chair. The question that I put to you was this proposal that you cannot contact without having an RFP happens a day after the meeting with White & Case?

MR ANDRE FRANK PILLAY: Yes.

20 **ADV THANDI NORMAN SC:** And apparently a day after you had received communication at least?

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: From White & Case?

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN: Now what, what, who did you intend at this point to contract

with?

MR ANDRE FRANK PILLAY: Sorry Chair, just clarify.

ADV THANDI NORMAN SC: At this point who did you intend to contact, to contract with?

MR ANDRE FRANK PILLAY: So at, at this stage Chair the RFP went out to the market again.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: So we, we received the, the initial RFIs.

CHAIRPERSON: Hm.

10 **MR ANDRE FRANK PILLAY:** And this was now to see what RFP responses we get back.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: And, and we certainly I think the, if, if the Huarong transaction was not part of the RFP from our process would not have been entertained, but it was for the wider market RFP, but not just bespoke for a particular; it was not a closed RFP.

CHAIRPERSON: But did, did the RFP mean that Huarong could also make proposals?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: It was just open to anybody?

20 **MR ANDRE FRANK PILLAY:** It was open to anybody Chair and my insistence was that they must submit even though they are now following this seemingly parallel process.

CHAIRPERSON: Hm.

MR ANDRE FRANK PILLAY: They must submit because our legal process.

CHAIRPERSON: Hm.

MR ANDRE FRANK PILLAY: Dictate that we should do that.

CHAIRPERSON: Hm.

MR ANDRE FRANK PILLAY: And they did so Chair.

CHAIRPERSON: Hm. So this feature of this, these steps that were taken relating to the signing of these term sheets created the impression at least that it was intended that a contract would be signed with them. Is that right? Would you say that is fair comment?

MR ANDRE FRANK PILLAY: That that was certainly their expectation Chair.

CHAIRPERSON: *Ja.*

10 **MR ANDRE FRANK PILLAY:** I do not know what Mr Singh's expectation was at the time.

CHAIRPERSON: *Ja.*

MR ANDRE FRANK PILLAY: As, as my superior.

CHAIRPERSON: *Ja.*

MR ANDRE FRANK PILLAY: But it is certainly not my expectation.

CHAIRPERSON: *Ja.*

MR ANDRE FRANK PILLAY: But I, we had to follow the due process.

20 **CHAIRPERSON:** Yes, but what I am saying is when one looks at the terms of the term, term sheet, term sheets it does not seem to me why you would sign the term sheet if you do not contemplate that you may or will sign a contract in due course with that entity. Do, do, do you understand that?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Any entity with whom you sign this type of term sheet, term sheet could legitimately say to somebody we are having discussions with Eskom with a view to signing a contract. Is it not or anyone who reads what is written there would be

justified in thinking that it looks like there is a contemplation at least that there might be a contract between the two depending on the discussions and negotiations that might follow and maybe other things?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Did you, do you think that is a fair?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Comment to make?

MR ANDRE FRANK PILLAY: Yes, yes Chair.

CHAIRPERSON: *Ja* and, and, and would you say that having that kind of arrangement
10 as expressed in that term, term sheet is inconsistent with a process where other people
are invited to make proposals unless they are also going to go through the same
process of term sheets?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: *Ja*.

MR ANDRE FRANK PILLAY: And, and as, if I may Chair it is also uncommon for us to
sign term sheets.

CHAIRPERSON: Yes, yes. Okay, thank you.

ADV THANDI NORMAN SC: Thank you Mr Chair, but I would like to Mr Pillay to read
the reasons why at this point you were suggesting that the must be an RFP that that
20 had to be issued, because you, it is, it is quite specific as to why you felt that a
particular, in fact please just read it without me putting words into your mouth. Could
you just read paragraph 17?

MR ANDRE FRANK PILLAY: Paragraph 17.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: “Eskom also maintained that it cannot

contract from an RFI process and that the proposal had to be subjected to an RFP process. I engaged Mr Singh on this matter and we issued an RFP to the market on 13 March 2017. Eskom's Treasury indicated that it established the appointment of a supplier of, for innovative finance solution could be made on the RFPs issued. Hence, hence the, the RFP was issued."

ADV THANDI NORMAN SC: Yes. Then whose proposal were you [intervenes]?

MR ANDRE FRANK PILLAY: Sorry, could not, sorry.

10 **ADV THANDI NORMAN SC:** Could not, yes. Whose proposal were you referring to in that paragraph?

MR ANDRE FRANK PILLAY: The process that that the proposal had to be, on, on this specific one Chair was the Huarong one.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: That.

ADV THANDI NORMAN SC: So in other words you are saying to them you cannot contract to Huarong.

MR ANDRE FRANK PILLAY: This is to Mr Singh.

ADV THANDI NORMAN SC: Yes, to Mr, you are saying to Mr Singh you cannot contract to Huarong until you have gone the RFP route?

20 **MR ANDRE FRANK PILLAY:** Yes. So.

ADV THANDI NORMAN: Is that what you, you are conveying there?

MR ANDRE FRANK PILLAY: What, what we wanted to convey that generally that the general process is that you cannot contract from an RFP, an RFI. That is my understanding of the, the, the [intervenes].

CHAIRPERSON: You must go through an RFP first?

MR ANDRE FRANK PILLAY: Everyone must go through.

CHAIRPERSON: *Ja.*

MR ANDRE FRANK PILLAY: Who does it; regardless of who you are and how you came in. You need to go through that process.

ADV THANDI NORMAN SC: Yes, but then the last sentence says:

“ET indicated they established that the appointment of a supplier for the innovative finance solution could not be made on the RFI issued. Hence the RF, RFP was issued.”

10 Now who were you referring to? Who was the supplier for the innovative finance supplier there?

MR ANDRE FRANK PILLAY: So the, the innovative finance solution there, remember the RFP was issued for innovative financing solution.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: *Ja.*

ADV THANDI NORMAN SC: And then does the proposal of Huarong fit in within that concept?

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: Okay. So everything that we have in that paragraph the proposal and we know the substance of that proposal.

20 **MR ANDRE FRANK PILLAY:** Proposal, yes.

ADV THANDI NORMAN SC: That fits in within what you were proposing that do an RFP.

MR ANDRE FRANK PILLAY: P, yes.

ADV THANDI NORMAN SC: Okay.

CHAIRPERSON: Following upon my earlier.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Question was it wrong for a term sheet to be, to be signed with anybody in terms of Eskom processes if ultimately the transaction is one that required an, an, an RFP?

MR ANDRE FRANK PILLAY: It, it, certainly Chair. I can confirm that. It is not Eskom process.

CHAIRPERSON: It was, it was wrong?

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: In, in that situation, okay. Thank you.

10 **ADV THANDI NORMAN SC:** Thank you and then what became of that RFP process?

MR ANDRE FRANK PILLAY: So the RFP process was, was issued. We received the responses and following from the responses the, the Huarong proposal was still in that. It was still one of the proposals Chair that the, the, the Board resolution, we did not go back to the Board. It was part of the proposals that was evaluated and shortlisted. So we continued as on the Board proposal to negotiate but not conclude.

ADV THANDI NORMAN SC: Now then in paragraph 18 you deal with the memorandum by Mr Calib Cassim. What was the purpose of that memorandum?

MR ANDRE FRANK PILLAY: The, Chair and, and, and just for clarification this is now a, a, a period from March. Mr Singh has now left the organisation. Mr Cassim is now
20 the Acting Financial Officer appointed at the end of July. So this is an initiative by Huarong and certainly one of those initiatives Chair that they, there was a, a Brics Summit happening in China. Our Interim CEO, Mr Johnny Dladla, and the Chairman, Mr Zethembe Khoza were scheduled to attend the Brics Summit and during, in the run up to the summit we were presented or discussed with Huarong. I also participated in the meeting. There was a scheduled meeting between myself and Mr Rajeev Thomas

to discuss this term, this binding, non-binding cooperation agreement, but certainly in his email as well Chair his, his emphasis was on the signing of the, the, the cooperation agreement, but also the signing of the, of the, the loan agreement. In, in our discussion I removed the fact, the signing of the loan agreement, because we have not gone through our full processes. The, also we looked at the, the cooperation agreement to make sure that it does not contain any commitment whatsoever. Our legal, our internal legal has looked at. White & Case has looked at it and they reviewed it to make sure that it does not bind anyone, because my personal experience in the term sheets would not want to be repeated here and we removed the insistence from them to sign the loan agreement. Also Chair important to, to highlight here is that during the trip and before 10 the trip Mr Johnny Dladla and Mr, Mr Singh it would have certainly been inappropriate for me to, to string them along. We, we highlighted to them the risks and the issues that we have been having with these transactions particularly the signing of the term sheets. Fortunately Mr Dladla and Mr Cassim at this stage agreed with us and, and when they got to China the process with these term sheets Chair they follow a diplomatic process or bureaucratic process where the term sheet that is agreed upon goes to the Department of International Relations and Cooperation. It makes its way formally to the various Presidents who would sign off on it, whatever form or whatever document it is and that was the intention and that was largely driven by the, the 20 Huarong Group. They were, were driving that whole process. Mr, Mr Dladla Chair in the, in the, in the process of departing we, we engaged with him and he was certainly in agreement with us. So this, this, this agreement ended up not being signed, this cooperation, Agreement of Cooperation Chair.

ADV THANDI NORMAN SC: Yes. From what you are saying then you said look because your processes that is the Treasury or Eskom processes had not been

completed therefore no agreement could be signed accept for the cooperation one that was proposed, but then there is correspondence marked AP11 where Eskom applied for exchange control approval from the Reserve Bank on 31 July 2017. Now this happens three days after the proposal of the cooperation agreement. At this point that is when the approval is sought from SAB.

MR ANDRE FRANK PILLAY: Huh-uh.

ADV THANDI NORMAN SC: Had all the processes that you referred to earlier in your evidence had they been, had they been completed?

MR ANDRE FRANK PILLAY: No. So Chair this is the, the with, with, with the, with
10 signing of international agreements with foreign currency we, we would have to seek SAB approval for that and that was part of the process as part of my initial Board resolution to sign and negotiate, not sign. We had to get SAB approval for that and that is normal for international transactions.

ADV THANDI NORMAN SC: Look, but my, my understanding is that you had not reached agreement on the transaction at that point?

MR ANDRE FRANK PILLAY: Yes, so it, what we.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: What, what we normally would do we would, we would
do a high level submission to the SAB basically to say this is the transaction. They
20 must review the transaction and they gave us the; that approval Chair.

ADV THANDI NORMAN SC: Yes. If you; that that approval did it have conditions?

MR ANDRE FRANK PILLAY: Yes. There, there were conditions to that Chair.

ADV THANDI NORMAN SC: What were the conditions?

MR ANDRE FRANK PILLAY: The conditions of that Chair was the, the fact the, it must be other conditions if I may read in paragraph 20:

“Amongst other conditions from the currency and exchange manual of the authorised dealers was that no upfront fee or commitment fee, raising free or other administration fees were payable by the borrower.”

Those were the, the conditions.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: And Chair.

ADV THANDI NORMAN SC: Sorry.

MR ANDRE FRANK PILLAY: No, no, please.

10 **ADV THANDI NORMAN SC:** Yes, yes you may proceed sorry.

MR ANDRE FRANK PILLAY: No, no it is.

ADV THANDI NORMAN SC: Now then you get the approval from SAB as in AP11. Was then paving the way for the signing of the agreement between Eskom and Huarong?

MR ANDRE FRANK PILLAY: No, certainly not Chair. We did not even have a legal review of the, this agreement. We did not have, because there were, were elements of this that would need Government approval. There was an SPV element, a Special Purpose Vehicle element. There was our, an internal sign off. We, we also in the Treasury had to review the, the, the cost of this facility. Even though in, in the Board
20 submissions I indicate at a high level that given the pricing, the specific pricing, not the, all the fees. I was fairly comfortable in my, my high level assessment of it, but those were certain steps that we still had to follow. Our process dictates that we, we, we negotiate, we conclude and then we go through our Assets and Liability Committee process that would then look at all the documents and then suggest to the CFO or who is delegated to sign or to say we are happy, we support, you can sign and that step did

not happen so the SAB was part of that process that we had to undertake.

ADV THANDI NORMAN SC: Yes, and then in paragraph 20 you deal with those conditions that SAB had placed.

MR ANDRE FRANK PILLAY: Ja.

ADV THANDI NORMAN SC: Could you just mention them without reading them

MR ANDRE FRANK PILLAY: So Chair the one was the – there has to be money has to flow into Eskom's account, the financing was based on a turnkey principle whereby Huarong Engineers constructed and provide financing with special purpose vehicle and that is set up, built and asset – the asset required by Eskom, therefore funds will flow

10 from the lenders to the investors as arranged by Huarong into the SPV.

ADV THANDI NORMAN SC: So in other words they're saying you can't – you must wait until you've got funds into your South African account?

MR ANDRE FRANK PILLAY: We would have to have funds in our account.

ADV THANDI NORMAN SC: Before you could conclude any agreement with Huarong?

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: And at that point no monies were paid?

MR ANDRE FRANK PILLAY: Monies were paid and certainly in my Chair, we did not review, we did not complete our processes from the RF process we did not complete our processes.

20 **ADV THANDI NORMAN SC:** Thank you. And then on the 14th of August you received a memo from Ms Gavella Palaschus Flask from your legal, internal legal which was addressed to Ms Suzanne Daniels. What were her concerns, we have it in AP12 and that's page 436. Maybe she gives a background, if you're there, about the transaction as a whole but in the end she makes certain recommendations, maybe you could just read those recommendations to the Chairperson, they will appear, they appear at page

440 to 441.

CHAIRPERSON: Thank you.

MR ANDRE FRANK PILLAY: So Chair the recommendation is that it is recommended that the Group Executive Legal and Compliance reviews the submission from Group Capital to the IFC regarding the Huarong Asset Management Project and oppose any approvals if such are against legal advice or set out in the memorandum. Request reasons from the relevant signatories and officials as to why the buy-in term sheet was signed without proper legal governance processes and request reasons as to why the Group Capital and Eskom Treasury persisted with the wrong transaction funding
10 despite legal advice regarding the terms and (indistinct) and the fee letter.

ADV THANDI NORMAN SC: Now what were the processes that she was talking about for the signing of the binding term sheet in paragraph 12.2?

MR ANDRE FRANK PILLAY: So Chair as I have indicated there is no process for signing a binding term sheet, I think at least you would have legal consideration of it but there was no formal process in our processes that would inform how do you sign a binding term sheet because it was unprecedented.

ADV THANDI NORMAN SC: Yes, and the matters that she was raising here did you find that there was merit in these recommendations or you felt that there was no reason to worry about them?

20 **MR ANDRE FRANK PILLAY:** Chair the – and certainly my view and the timing of this is also important because on the 15th of August we go to the committee again. I was – some of the responses from White & Case, White & Case raised their issues with me personally, I was comfortable that they in an independent way write to our legal to raise these issues, I was also comfortable with the review by our corporate finance on the structure, because in my mind that is the process that we need to follow. I was not –

we were not beholden to the transaction, we wanted the process to follow and come to a logical conclusion do we do it or not, so I was not concerned about it, I was comfortable with the comments that it shows people are applying their mind and if we agree to it there's no sense from – that we would create the wrong that we are dealing outside of process or we have agendas with their proposal Chair.

ADV THANDI NORMAN SC: Yes, and then the very next day you appear or you submit, make a submission to the IFC Board am I correct?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: And did you ask?

10 **MR ANDRE FRANK PILLAY:** Chair this was the ...(intervention)

CHAIRPERSON: Where are you now in the statement?

ADV THANDI NORMAN SC: I beg our pardon Mr Chair, in the statement we are on page 7, paragraph 22.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: And the reference is to AP13 that appears at page 443. Could you just read out to the Chairperson what is it that you sought from the Board, from the IFC Board.

MR ANDRE FRANK PILLAY: Excuse me Chair the reference ...(intervention)

ADV THANDI NORMAN SC: Page 443.

20 **MR ANDRE FRANK PILLAY:** Of AP13?

ADV THANDI NORMAN SC: 443, it's AP13, one three.

CHAIRPERSON: Well before you read there while you are checking may I confirm that the Chief Financial Officer would be the Head of Treasury at Eskom, or whether r he would be or she would be separate from Treasury?

MR ANDRE FRANK PILLAY: Chair the Head of Treasury would report into the Chief

Financial Officer Chair.

CHAIRPERSON Oh so there's a Head of Treasury?

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: And then there would be the Chief Financial Officer.

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: And at the relevant time you were the Head of Treasury.

MR ANDRE FRANK PILLAY: Head of Treasury yes.

CHAIRPERSON: And you still are?

MR ANDRE FRANK PILLAY: Yes Chair.

10 **CHAIRPERSON**: Okay, thank you.

ADV THANDI NORMAN SC: Thank you Chair, could you proceed then Mr Pillay.

MR ANDRE FRANK PILLAY: So Chair the resolution requested here Chair was IFC Board mandates Eskom Treasury to conclude a financing agreement with the associated agreements amounting to R1.5 to R6billion, delegate the power and authority to the Chief Executive Officer to – or equivalent.

ADV THANDI NORMAN SC: And what – this submission if you look at page 445 you prepared the submission, am I correct?

MR ANDRE FRANK PILLAY: Yes Chair.

20 **ADV THANDI NORMAN SC**: And it was signed by the Group Executive according to this on the 14th of August.

MR ANDRE FRANK PILLAY: The day before.

ADV THANDI NORMAN SC: 2017?

MR ANDRE FRANK PILLAY: Ja.

ADV THANDI NORMAN SC: Because the meeting was on the 15th, is that correct?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Yes, so ...(intervention)

CHAIRPERSON: The Group Executive there being Mr Anderson?

MR ANDRE FRANK PILLAY: No, no here it was – he was replaced Chair, he left the organisation on the 27th of July.

CHAIRPERSON: Oh, this was now?

MR ANDRE FRANK PILLAY: This is Mr Caleb Cassiem.

CHAIRPERSON: Who succeeded him during that period?

MR ANDRE FRANK PILLAY: Yes, yes.

CHAIRPERSON: So otherwise he would have been the one who had to sign here if he
10 had still been around?

MR ANDRE FRANK PILLAY: Yes, yes Chair.

CHAIRPERSON: Okay, alright.

ADV THANDI NORMAN SC: Could you go to page, of the same transaction, submission if you go to page 445 on top could you just read what you're motivating there?

MR ANDRE FRANK PILLAY: The approval of a transaction that will contribute towards the alternative funding initiatives as contemplated in corporate plan which includes the borrowing plan of R337billion for that particular period from 2017/18 to 2021/22.

ADV THANDI NORMAN SC: Yes. And then in paragraph 3.4 you indicate that due
20 diligence will be done on this company, or on the engineering companies.

MR ANDRE FRANK PILLAY: So Chair this is part of the process that we would need to follow, that we would still have to conclude still the loan agreement and facility agreement would be reviewed for our head of legal for sign off and his delegate the environmental issues and also that Eskom has not contracted with EPC Contractors and that is something that we would have to look at.

ADV THANDI NORMAN SC: And then thereafter you deal with your interactions then again with Mr Khoza which you had already mentioned earlier. Could you just briefly state to the Chairperson what you wanted to convey in that paragraph?

MR ANDRE FRANK PILLAY: Chair if I may Chair the outcome of this Board Resolution Chair is so in the – as was pointed out Chair that it was signed on the 14th, the meeting was on the 15th, there's two, I engaged with Caleb Cassiem who was the new CFO around this he was literally into is job probably more than two weeks. I was not comfortable with the transaction. We went to the Board and we indicted, we left with a resolution that says go and do a review of the process, follow process.

10 **ADV THANDI NORMAN SC:** Yes, in paragraph 22 you mentioned Mr Themba Khoza, why do you mention him there, at page 8 of your statement?

MR ANDRE FRANK PILLAY: So Chair what at this stage what is quite clear to me that Mr Khoza was quite involved in the process if I can call, refer to it respectfully as an invincible hand in this whole thing, he ...(intervention)

CHAIRPERSON: And at this stage he was still a member of the Board and not the chairperson.

MR ANDRE FRANK PILLAY: If memory serves he was the Chairman.

CHAIRPERSON: He was by this time?

MR ANDRE FRANK PILLAY: At this time.

20 **CHAIRPERSON:** Okay.

MR ANDRE FRANK PILLAY: So at this stage Chair if you look at the minutes there was a change in the Board, there was some replacements that the Minister effected so there's a couple of changes there was a new CEO, a new CFO and in this instance also a new Chair of the IFC Committee, Mr Simphiwe Dinga.

CHAIRPERSON: Now I know that in terms of what we have been told that there was a

time when Mr Brian Molefe came in and I think around the same time more or less Mr Arnoj Singh came in, the other who is the people you are talking about, or are referring to other people when you say there was a new CEO and a new CFO?

MR ANDRE FRANK PILLAY: So Chair this is in 2017 August, and in July Mr Singh left the employment of Eskom and Mr Molefe I think he left in if memory serves in November 2016 Chair.

CHAIRPERSON: Yes, yes, okay, okay no that's fine ,so as at this time that you are talking about who was the CEO or Acting CEO?

MR ANDRE FRANK PILLAY: At this specific point was Mr Johnny Dladla Chair.

10 **CHAIRPERSON:** Okay. And when Mr Arnoj Singh left then he was replaced I think you have mentioned the name?

MR ANDRE FRANK PILLAY: Caleb Cassiem Chair.

CHAIRPERSON: Yes okay, thank you.

ADV THANDI NORMAN SC: Thank you, we've already dealt with the White & Case matter, we're not going to refer to that again, but again Ms Pallashia writes again on the 22nd of August 201 raised similar concerns and they're relevant, they are similar to the ones that ones that you had raised in the earlier memo, is that correct?

MR ANDRE FRANK PILLAY: Yes Chair.

20 **ADV THANDI NORMAN SC:** Yes, and then on the 24th September Mr Mohamed Kahn also directed a memo where he raised various concerns from the funding side seeing that this was – this appeared to be very expense, it was going to be a very expansive for ...(intervention) Transaction for Eskom, is that correct?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Yes, and then when these matters were raised I would imagine that you had copied to these memo's and then did you bring them to the

attention of the persons that you are responsible for the signing of the contemplated agreements?

MR ANDRE FRANK PILLAY: Yes Chair so this was shared with Mr Cassiem and also importantly Chair was the – this was part of the process that had to follow, that Legal had to give their opinion and this was subsequently the meeting, the IFC meeting of the 15th that said go and follow your processes.

ADV THANDI NORMAN SC: Yes, and then in Mr Khan's memorandum which appears as AP16, but at page 471 he has some conclusions there, could you just take the Chairperson through those.

10 **CHAIRPERSON**: At what page?

ADV THANDI NORMAN SC: At page 471 Chair.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: At page 47, what are the matters that he highlights there?

MR ANDRE FRANK PILLAY: So he highlights the financial comparison of traditional funding options versus Huarong proposal indicates that Huarong proposal is more expensive relative to Eskom's traditional sources of funding, where Eskom can also contact a fully wrapped EPC on an EPC basis. High level review of the term sheet also indicates that certain provisions provide rights of Huarong that could result in risk being
20 born 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 the proposed Huarong solution is onerous and more expensive than Eskom's traditional sources of funding. It is therefore recommended that all funding options should be exhausted before the Huarong option is considered and that the detailed legal risk and regulatory and commercial due diligence be

performed prior to signing the ALFA, the asset loan framework agreement. It has been noted that IFC has requested that the full legal review be conducted before signing the ALFA.

ADV THANDI NORMAN SC: Yes and then after this then it is communicated what do you see happening then on the 6th of October 2017 as you deal with it paragraph 26?

MR ANDRE FRANK PILLAY: Paragraph 26, Chair then you may recall that I've indicated and things move so fast in Eskom that on the 6th of October Mr Johnny Dladla is removed and replaced by Mr Sean Maritz. He took office, Caleb Cassiem and I, so he then, it certainly Chair from the time that he took office in less than a month we had
10 a meeting with the Huarong individuals and I think a bit of background to that Chair is that the issue and my certainly my reluctance to advancing the ALFA or the ADFA was that, and hopefully in my supplementary I can cover that in a bit more detail Chair is that Eskom wasn't, this Huarong facility would not provide immediate liquidity to Eskom, it will not alleviate the liquidity challenges that we are facing. I made that abundantly clear to in my meeting and my last discussion with the Huarong team that this will not provide the solution that we are looking at, we are not even focusing on this transaction, they have had a meeting with Mr Maritz and then at a later stage on the 20th Mr Cassiem and I are invited to a meeting with them, they then suggested we should give them at least something to consider that they can look at a short term
20 liquidity facility that would assist Eskom, but it was also clear Chair that this was the entry into us getting to the long-term facility, this proposed shortened facility.

CHAIRPERSON: Now as you were meeting them now with Mr Sean Maritz and Caleb Cassiem where is the RFP process?

MR ANDRE FRANK PILLAY: So the FRP process has been concluded Chair.

CHAIRPERSON: Oh, okay.

MR ANDRE FRANK PILLAY: And we are still in discussions with them around the terms and the issues that was raised in the proposal and also doing the process that was indicated, Mr Mohamed Kahn's submission, the legal submission Chair.

CHAIRPERSON: But the RFP process as I understand only gets concluded when you sign an agreement is it?

MR ANDRE FRANK PILLAY: Yes Chair, so when you – that's the ultimate.

CHAIRPERSON: Ja, but you haven't signed an agreement present to the RFP process.

MR ANDRE FRANK PILLAY: No, no we haven't signed, no Chair.

10 **CHAIRPERSON:** So therefore it can't be concluded.

MR ANDRE FRANK PILLAY: No.

CHAIRPERSON: You have asked for proposals and you have received proposals, isn't it?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: So there is still a process of determining which one of these various proposals will be chosen?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Right, so that process hasn't been completed?

20 **MR ANDRE FRANK PILLAY:** Yes, and the Huarong one it was so we were looking at a couple of the proposals from the RFP Chair, the Huarong one was one of them.

CHAIRPERSON: Yes, now you are having this meeting with the Huarong representatives to discuss their proposal or to discuss their – ja their proposal I guess, isn't it, am I right, for all intents and purposes whatever you are discussing you are – they want you to reach an agreement with them.

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: And we know that you definitely don't want that but other people that are involved from Eskom their situation might be different.

MR ANDRE FRANK PILLAY: Different yes.

CHAIRPERSON: Ja, so now meeting with one entity which has made a proposal when there are other proposals, other entities that have, that are competing with that entity is that permissible in terms of Eskom's processes where there is an RFP process, in other words is it – are you allowed to meet with one and discuss their proposal and meet with another one or is there another process or meeting with them if they are part of those who have responded to the RFP is not a problem.

10 **MR ANDRE FRANK PILLAY:** So Chair what traditionally would happen is that we would go to the RFP process we would, there would be an independent evaluation that takes place, independent from us, that would be participating in the process, the – and they would then indicate, firstly they would say this is the proposed shortlist, then they would suggest this is the list or alternatively this is the list that we see that there's potential in, let's bring them in for a meeting and we normally refer to it as a beauty parade when they come and discuss the proposals that we interrogated and understand it better, so the reason for mentioning that's the process that we follow Chair and that is the discussion that we have with them, and then we would go into a negotiation phase with them around that Chair.

20 **CHAIRPERSON:** Yes, so meeting with them alone in this process wasn't by itself wrong, what may have been wrong is that this prior step that you say normally takes place, which is done independently, didn't take place, that's what made it wrong?

MR ANDRE FRANK PILLAY: This discussion yes Chair.

CHAIRPERSON: Ja, okay alright, thank you.

ADV THANDI NORMAN SC: Thank you Mr Chair. Just following on that you had said

that – did – are you aware that there was an evaluation process of the RFP tenderers?

MR ANDRE FRANK PILLAY: Yes there was an evaluation process to my understanding there was ja.

ADV THANDI NORMAN SC: Yes, and then who was the successful bidder, if I may put it that way?

MR ANDRE FRANK PILLAY: So there was a number of successful bidders, and we engaged the J P Morgan transaction amongst others, the Huarong transaction and there was a proposal posed from ABSA and R & B from memory that ended up being the proposals that we were pursuing.

10 **ADV THANDI NORMAN SC:** Yes and what ...(intervention)

CHAIRPERSON: I'm sorry – successful or shortlisted?

MR ANDRE FRANK PILLAY: Successful that we were going to pursue, or they were evaluated and they were ...(intervention)

CHAIRPERSON: They would receive further consideration.

MR ANDRE FRANK PILLAY: Consideration and we need to negotiate and understand that.

CHAIRPERSON: Ja, and ultimately there would be only one successful one?

MR ANDRE FRANK PILLAY: We might look at all of them again.

CHAIRPERSON: Oh, you might look at all of them, oh, okay.

20 **MR ANDRE FRANK PILLAY:** All of them, so they were not competing ...(intervention)

CHAIRPERSON: But successful in terms of moving to the next stage, okay, alright.

MR ANDRE FRANK PILLAY: The next stage.

ADV THANDI NORMAN SC: Thank you Mr Chair. And then in AP18 there is a memo at page 478, if you look at page 479 that's under your hand, am I correct?

MR ANDRE FRANK PILLAY: AP18?

ADV THANDI NORMAN SC: 479.

MR ANDRE FRANK PILLAY: Yes Chair, it's 478.

ADV THANDI NORMAN SC: Yes thank you, Mr Chairman I'm sorry, it has just been brought to my attention that it is one o'clock, may we adjourn for lunch?

CHAIRPERSON: Ja okay we will take the lunch adjournment, and we will resume at two o'clock. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed Ms Norman.

10 **ADV THANDI NORMAN SC:** Thank you Mr Chairperson. Just to state that Eskom has responded to your call and...

CHAIRPERSON: I suspect Mr Pillay has something to do with it.

ADV THANDI NORMAN SC: So there is – yes. And in fact Eskom's legal counsel is also here. I am – thank you very much.

CHAIRPERSON: Oh okay. Thank you. Thank you.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman. Mr Chairman could we just go back to page 34 so that Mr Pillay can give us the correct figures to those amounts that we dealt with in the morning before we forget that part. That would be at page 34 you will give us the amounts for the – for number 5, 6, 7 for all those
20 fees, the exact amounts.

MR ANDRE FRANK PILLAY: Thank you Chair. The facility fee in number 5 would amount to based on \$1.5 billion. The...

CHAIRPERSON: Alright let me get there.

MR ANDRE FRANK PILLAY: Sorry Chair.

ADV THANDI NORMAN SC: Page 34 Mr Chairman.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you. Let us start with the facility fee what is the amount there the 1.6% of the...

MR ANDRE FRANK PILLAY: 1.6 is 24 million US \$. The annual commitment fee is 12 million US \$ and the cancellation..

CHAIRPERSON: Sorry the second one is what 8%, 0.8%.

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: How much is that?

MR ANDRE FRANK PILLAY: 12 million US\$.

10 **ADV THANDI NORMAN SC:** And the cancellation

CHAIRPERSON: Okay.

MR ANDRE FRANK PILLAY: And the cancellation fee would be 3 million US\$ Chair.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Okay no that is fine.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Thank you.

CHAIRPERSON: So...

ADV THANDI NORMAN SC: Oh sorry.

CHAIRPERSON: The percentage figures are correct you just wanted to give us the exact amounts?

20 **MR ANDRE FRANK PILLAY:** What those amount to in relation to this facility, the indicative facility Chair.

CHAIRPERSON: Yes. Okay no it is just that I understood Ms Norman before lunch to have said that there were figures that were not correct and you were going to correct them.

ADV THANDI NORMAN SC: Yes Chair the ones that he gave earlier.

MR ANDRE FRANK PILLAY: Because in my [indistinct] response Chair.

ADV THANDI NORMAN SC: The figures that he gave earlier Mr Chairperson were not correct.

CHAIRPERSON: Oh he gave some figures oh okay, okay.

ADV THANDI NORMAN SC: Because – because – I had – yes because I had asked him to calculate quickly.

CHAIRPERSON: I missed them – those ja okay.

ADV THANDI NORMAN SC: Yes thank you. Thank you very much.

CHAIRPERSON: Okay.

10 **ADV THANDI NORMAN SC:** Thank you. Mr Pillay let us go back the Chairperson had asked you about your interaction with Huarong when the RFP process was in place and your answer to the question was that you had a couple of these companies. Can I just find out other than meeting with Huarong what other companies did you meet with who were involved or at least shortly stayed within the RFP process?

MR ANDRE FRANK PILLAY: So Chair the – as mentioned earlier it was J P Morgan they proposed a monetisation of our home loan – of our bad debt book and then there were two specific proposals from ABSA and RNB at the time.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: And we both – we engaged with those.

20 **ADV THANDI NORMAN SC:** Yes. Thank you. And then in your statement then you move on if you go back to paragraph 27 where we left off. You have – am I correct you still have the RFP process which is still proceeding and then you say then you were asked by Mr Shaun Maritz to prepare a short term facility proposal which you were going to address to Huarong.

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Yes. How does that happen if you have the RFP process and it is not complete and then you start with another proposal can you just explain to the Chairperson how did that happen?

MR ANDRE FRANK PILLAY: So Chair the recommendation here was and in light of my earlier response that Eskom was the long term facility would not address Eskom's short term facility and liquidity requirements and that is the engagement between Mr Maritz and the Huarong counterparties or the Huarong team. In the meeting on the 20th we discussed this and they then proposed should we not look at a short term facility. Mr Maritz' proposal was that can we not look at a proposal what would a term sheet
10 look like for a short term facility and then we can and later on as you will see Chair that we take that to the board to recommend that we take it – so this is outside of the RFP process now Chair.

ADV THANDI NORMAN SC: Okay so does that mean that then that process was abandoned or you simply introduced another proposal to Eskom?

MR ANDRE FRANK PILLAY: This was a recommendation that we should go to board and ask them given the emergency of the liquidity that we go – we do not issue another RFP for short term facilities we take this to the board and we recommend this.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: A short term facility.

20 **ADV THANDI NORMAN SC:** And then that short term facility appears at page 400 – proposal appears at page 478 and it is a memorandum prepared by yourself, am I correct?

MR ANDRE FRANK PILLAY: Apologies Chair just the...

ADV THANDI NORMAN SC: Yes 478 to 479.

MR ANDRE FRANK PILLAY: Sorry Chair.

ADV THANDI NORMAN SC: Yes you prepared that memorandum?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Is it correct that then you had incorporated in it some of the terms that are contained in the term sheet like your annual commitment fee and your cancellation fee?

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: In the same manner as they appear in the term sheet?

MR ANDRE FRANK PILLAY: Yes Chair as a – the proposal or recommendation – or the request was in aligning to the indicative term sheet and the alignment is there but I
10 obviously adjust the percentage and the prices in line with the short term facility proposal.

ADV THANDI NORMAN SC: Yes. And was a similar proposal extended to J P Morgan ABSA and all the other entities?

MR ANDRE FRANK PILLAY: No, no Chair this was – the recommendation was to directly provide this to the Huarong team the proposal for a date for them to consider a short term facility to a direct lending to Eskom.

ADV THANDI NORMAN SC: Now at this point let us just get our facts right. At this point we know that Huarong has not demonstrated that is Huarong Energy has not demonstrated any financial muscle to Eskom at this point we know that legal white and
20 case and legal internal had advised against this transaction and what then informed you and Eskom that is you because this is under your hand.

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: To decide that instead of following and finishing up the RFP process as you should or ought to have let us rather propose a short term facility now with the same company that you know has not demonstrated that it can even

deliver on the first promise that it made.

MR ANDRE FRANK PILLAY: Yes. Chair so the discussion at the meeting on the 20th that Mr Maritz arranged with the Huarong team the issue was that Eskom need short term liquidity. The other proposals that we had was still being discussed and it would not result in short term funding for Eskom immediately. So this was a process to – and hopefully we can demonstrate later on that Mr Maritz wanted to stabilise as his initiative of saying to government that he is controlling the liquidity challenges of Eskom.

ADV THANDI NORMAN SC: But why choose Huarong

MR ANDRE FRANK PILLAY: So they approached him – they approached him with
10 that facility and that is why I was – he was invited to that meeting.

CHAIRPERSON: So does this mean that while you were having a discussion with Huarong on a transaction that may be could be said to have been for a long term and while you were also waiting for the RFP process to run to its final conclusion in regard to a long term transaction an idea came up that a transaction should be made with Huarong for a short term – for a short term. Is that right?

MR ANDRE FRANK PILLAY: Yes Chair a short term facility.

CHAIRPERSON: Ja and that was necessitated by the aginate for liquidity on the part of Eskom as you understand it.

MR ANDRE FRANK PILLAY: Yes Chair.

20 **CHAIRPERSON:** Yes. And the long term transaction would have been for how long?

MR ANDRE FRANK PILLAY: It was our long term facilities Chair.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: Was largely for about a fifteen year transaction.

CHAIRPERSON: Okay, okay.

MR ANDRE FRANK PILLAY: But that is a long term facility.

CHAIRPERSON: Okay so a short term such as this one would be between three and seven years?

MR ANDRE FRANK PILLAY: Three to five.

CHAIRPERSON: Okay. Okay alright thank you.

ADV THANDI NORMAN SC: Yes thank you. And this proposal then as you would agree with me it still had some of the onerous terms that all the lawyers were complaining about that it was just including Mr Khan from finance that these terms were onerous. So this short term facility was still going to come back with [indistinct] commitment fee at 0.8% of that amount it was still going to come with the cancellation
10 fee of 0.2% of the 1.5 US billion US\$?

MR ANDRE FRANK PILLAY: So Chair the – my approach or because I signed it was certainly to go and look at the to align the cost one of the things that white and case raised that the fee seemed to be so high.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: We benchmarked that and look at what would the short term facility be value and the range at the time given where market was around 3 to 5%. The facility upfront fee it is convention for us to pay upfront fees for our facilities. They range between anything from 80 basis points so 1.8%. It is standard that we pay those upfront fees and the proposal here the indicative proposal – let me not use the
20 word indicative the proposal here was at the short – the lowest spectrum of that. Yes Chair.

ADV THANDI NORMAN SC: Yes thank you Mr Chairman. And then you say then Mr Maritz then you made the proposal and then what happened sorry I skipped one set.

MR ANDRE FRANK PILLAY: So Chair this proposal was submitted as requested to the Huarong team. Verbally they indicated that it is not achievable given if you – what

we have put in this proposal and what they came out with their long term facility in terms of fees.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: They indicated it is not achievable. They also for them to execute this in the discussion was they would need a government guarantee for that. Whilst the other proposal was not for a government guarantee.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: To enable them to.

CHAIRPERSON: But the idea of a short term transaction who did it come from?

10 **MR ANDRE FRANK PILLAY**: The idea so the..

CHAIRPERSON: The initiative to say let us have discussions that is Eskom and Huarong about a short term transaction did it come from Huarong or did it come from Eskom?

MR ANDRE FRANK PILLAY: So Chair the discussion with Huarong and this is at the time when I was still engaging with them the – they were agitating for signing the long term facility and I indicated to them that your funding is not our solution. We – our liquid – we were under severe liquidity constraints and Mr Maritz knew that as well. I think he was well aware of that. And that is where the discussion became between him and them and that is why that meeting came about Chair.

20 **CHAIRPERSON**: Oh okay.

MR ANDRE FRANK PILLAY: So I certainly did not propose to them give us short term money.

MR ANDRE FRANK PILLAY: Okay. Yes, yes. But from what you say it looks like it came from the meeting that you did not attend between Mr Shaun Maritz and Huarong?

MR ANDRE FRANK PILLAY: Yes Chair there was definitely a meeting prior to the

meeting of the 20th.

CHAIRPERSON: Yes okay.

ADV THANDI NORMAN SC: Yes. Thank you.

CHAIRPERSON: Would you – if you were talking about a short term transaction what was the applicability of a request for proposals route? Was it not applicable if it was a short term transaction?

MR ANDRE FRANK PILLAY: So the – it would have certainly – it would have competed with the ability to execute any of those proposals within the liquidity requirements that Eskom had Chair. So it would have been applicable. At this stage
10 we were still discussing as indicated earlier with the various institutions ABSA, RNB and J P Morgan at the time. There was no finalisation in terms of that.

CHAIRPERSON: So are you saying that where the – where there is urgency that the transaction be concluded then you do not have to go through that route of requesting proposals?

MR ANDRE FRANK PILLAY: No so Chair so we did not abandon the other proposals because...

CHAIRPERSON: Ja no I accept that you did not abandon them in regard to the long term transaction I am talking about the short term transaction so my question is whether if it is a short term transaction Eskom was free to just choose whoever they
20 were happy to conclude the transaction with without opening this up to other interested parties?

MR ANDRE FRANK PILLAY: Yes Chair and this was the indication that we would rather pursue a short term facility. I must also add Chair my recommendation in the discussion was that it is very easy you do not even have to do a proposal. If Huarong team are so convinced that they have money that they or funding that they can provide

to Eskom they can go into the market and buy our bonds. The bonds are guaranteed by government. There is no need for any process with a due diligence any process they abandoned that. They did not like that or they were not willing to do that. And they will much rather wanted to pursue a short term facility on a different basis.

CHAIRPERSON: I am not sure if I am following. The request for proposals route you have said it was applicable in terms of the long term transaction and you insisted that it should be followed when Mr Anoj Singh when you thought that he was maybe not so committed to following that, is that right?

MR ANDRE FRANK PILLAY: Yes that and we continued to do that Chair.

10 **CHAIRPERSON**: Ja and you – your position was that route should be followed namely the request for proposals?

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: Ja. So now in regard to a short term transaction you did not insist in the same way. So my question is, is that because that route is not applicable when you are dealing with a short term transaction or is that simply because it is not applicable if there are – there is urgency in the conclusion of the transaction?

MR ANDRE FRANK PILLAY: Yes Chair so the – my understanding would be that because of the urgency we would almost follow a bespoke process.

CHAIRPERSON: Okay alright.

20 **ADV THANDI NORMAN SC**: Thank you. Thank you Mr Chairman. So I am just trying to follow your answers to the Chairperson Mr Pillay. If Huarong had found the proposal on short term facility had found it to be favourable Eskom would have accepted that and you would have conclude an agreement?

MR ANDRE FRANK PILLAY: So it was a proposal.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: And if certainly and it was not cast in stone it would have obviously required negotiation. They wanted government guarantees it would have been quite a long process but it was not – this is a final basically term sheet for you to accept or not and it was basically for negotiating purposes.

ADV THANDI NORMAN SC: No, no, that is not the question. The question is you had made a proposal to them.

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: And if they found that proposal to be acceptable in every respect then you would have concluded an agreement based on that proposal with
10 them?

MR ANDRE FRANK PILLAY: Yes obviously we would have to negotiate the agreement yes.

ADV THANDI NORMAN SC: You would have conclude...

CHAIRPERSON: No what she means is you make a proposal with them. You are happy with the proposal.

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: If they say they are happy too there is nothing to negotiate.

MR ANDRE FRANK PILLAY: No exactly Chair.

CHAIRPERSON: You move to signing.

20 **MR ANDRE FRANK PILLAY:** Yes.

CHAIRPERSON: That – she is asking whether that is what would had happened..

MR ANDRE FRANK PILLAY: Yes, yes Chair and that...

ADV THANDI NORMAN SC: And then by doing so you would have avoided the RFP process that had commenced in so far as the long term is concerned and you would not have embarked on any other process other than what you would have initiated and

what would have been accepted by them?

MR ANDRE FRANK PILLAY: Ja as indicated to the Chair it would have not been – there would not have been a RFP process this would have been a proposal that would have done almost in a bespoke way that we would take to the board and say to the board, there is an urgent need for an emergency basis this is what we propose.

ADV THANDI NORMAN SC: Yes save that in your memorandum nowhere do you mention any emergency. There is nowhere in the memorandum that you submitted where you mentioned that this is an urgent situation and we need this facility.

MR ANDRE FRANK PILLAY: Look Chair I think it would have been very risky to say
10 that to the Huarong team.

CHAIRPERSON: You would have said it to the board when you sought the board's approval.

MR ANDRE FRANK PILLAY: Yes. Ja.

CHAIRPERSON: Okay.

MR ANDRE FRANK PILLAY: Yes Chair we would not have said that to Huarong.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: Then they would have said to us if you have a pressing matter or an emergency funding the terms would have been completely different the prices would have probably been double.

20 **CHAIRPERSON:** Ja they might have taken advantage of you.

MR ANDRE FRANK PILLAY: Yes, yes Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. But is there anywhere else where you raise the urgency of the matter with the board?

MR ANDRE FRANK PILLAY: So there is...

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: In the discussion Chair. So the board if in the – if memory serves Chair in all the board meetings the February board that we have reviewed the August board we give updates to the board around the liquidity. And Chair I think the – what was very important in this period particularly if I may Chair the period from July up until January of 2018 so it was a very difficult time for Eskom. We were literally and some may recall Chair that in the media there was the noise that Eskom will not be able to pay salaries. The board was fully aware of that. Of the fact that liquidity was a constraint.

- 10 **CHAIRPERSON:** okay so just – yes, no just to make sure that we make progress easily what Ms Norman has put as a – asked you is whether you at any stage mentioned the issue of urgency to the board in relation to this proposal for a short term transaction?

MR ANDRE FRANK PILLAY: No Chair.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: So there was a – after this proposal there was a board meeting.

CHAIRPERSON: Okay.

MR ANDRE FRANK PILLAY: Where this was ...

- 20 **CHAIRPERSON:** So at the time that you made the proposal to Huarong.

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: You had not approached the board as yet|?

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: For their approval of this proposal.

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: You were going to approach the board.

MR ANDRE FRANK PILLAY: Board.

CHAIRPERSON: If Huarong was amenable to this proposal?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: And that is when you would have mentioned why you were not following the RFP route?

MR ANDRE FRANK PILLAY: And the process yes Chair.

CHAIRPERSON: Ja okay.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Maybe just to follow up on that
10 could you please turn to page 488. The minutes of the board – of the IFC dated 27
October. That would be AFP I beg your pardon – 19.

MR ANDRE FRANK PILLAY: Chair 488?

ADV THANDI NORMAN SC: Yes 488.

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: That deals with it is an extract of the minutes of the
board. Am I correct?

MR ANDRE FRANK PILLAY: 488 is matters for committee approval yes.

ADV THANDI NORMAN SC: Yes and then.

MR ANDRE FRANK PILLAY: Resolved that yes.

20 **ADV THANDI NORMAN SC:** Yes and then what was resolved by the board?

MR ANDRE FRANK PILLAY: So – so what was resolved by the board is contained in
my statement.

ADV THANDI NORMAN SC: Yes. Yes could you read 4.1.2 please?

MR ANDRE FRANK PILLAY:

“That the short terms facility of up to 2 billion for six to twelve

months for execution and drawdown by 30 November 2017.

Short term facility will be based on the term sheet of the long term facility subject to amendments. The short term facility may be settled early in the event of Eskom's successfully incurring other funding."

ADV THANDI NORMAN SC: What did you understand when the board said the short term facility would be based on the term on the long term facility because we know that the long term from your evidence was going the RFP route? So what was meant by the fact that the short term facility would be based on the long term facility?

10 **MR ANDRE FRANK PILLAY:** So it was that the term sheet and the terms as I have detailed it in largely based on that terms that was detailed in the letter, the proposal letter.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: Those would be the terms.

ADV THANDI NORMAN SC: So at this point then had the RFP process con – been concluded?

MR ANDRE FRANK PILLAY: No. No Chair sorry.

ADV THANDI NORMAN SC: Yes I am just trying to understand then going forward what would have been the process? You have the RFP it is parked because you
20 following the short term facility. The board resolves that go and negotiate on the short term based on the long term. How would you have done that in the final adjudication of the RFP?

MR ANDRE FRANK PILLAY: So Chair the long term RFP process was continuing. It did not stop. We were still going through that process. This was a process just to secure the short term facility. And that is what – it was a direct submission to the board

to say to ask the board for the approval for that.

ADV THANDI NORMAN SC: Yes. Thank you. Let us move on Mr Pillay. Let us go to – you deal with Mr Shaun Maritz in paragraphs 29, 30 signing the agreement. Could you quickly tell the Chairperson what happened?

CHAIRPERSON: Maybe before that.

ADV THANDI NORMAN SC: Sorry.

CHAIRPERSON: Eskom chose to deal with Huarong in regard to the short term transaction only or chose to deal with Huarong only in regard to the short term transaction. Did it consider other proposals which related to long term by other entities
10 that had been made to see whether any of those could be used for a short term transaction on better terms compared to Huarong?

MR ANDRE FRANK PILLAY: So Chair at the particular period in time we were dealing with the liquidity risks within Eskom. Also important Chair there was also the governance related issues. So the financial institutions at the time were saying to us if you do not clean up your board, if you do not change your management of board, if you do not resolve certain issue do not even come and talk to us for funding we will not advance.

CHAIRPERSON: Oh the other entities?

MR ANDRE FRANK PILLAY: Other entities.

20 **CHAIRPERSON:** Oh that was their attitude.

MR ANDRE FRANK PILLAY: Generally that was their attitude in the markets.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: And hopefully in the supplementary I can touch on those Chair.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: That the investors and the investor community were reluctant to advance anything or any facilities to Eskom during that period Chair.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Could you please then take us through paragraphs where you deal with the signing of the agreement by Mr Shaun Maritz and how did that happen?

MR ANDRE FRANK PILLAY: So Chair there is also if I may at the board meeting so what happened in this particular period of time and I think it was on the 24th – 25th October there was a request from the board to do a Round Robin Resolution for the short term facility and the proposal that was made Chair. The – we were asked to submit a proposal – the – to update the board's submission Chair and our initial recommendation was to close down the Huarong facility. There was discussions so we sent this to the CFO who engaged Mr Maritz on it. He was adamant that we need to follow process with the long term facility and still pursue the short term facility. And in the submission that is what he ultimately signed and submitted to the board for this Round Robin Resolution Chair.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes. In paragraph 29 at the end you say that Mr Maritz was not duly authorised to sign the agreement. Why do you say that?

MR ANDRE FRANK PILLAY: So Chair what happened and if I may just a bit of detail around it is the meeting Round Robin Meeting was called. Some of the board members were quite uncomfortable with a Round Robin Resolution of this magnitude. They asked the company secretary to convene a meeting, a special meeting. That was done. When the meeting was convened or the meeting was to start Mr Maritz and Mr Khoza were not participating in the meeting at all. They were as per the feedback later

on they were on their way to go and see the Minister in Cape Town. Following the board meeting and certainly again Chair myself and the CFO were in the meeting. We understand the outcome of the meeting. It was clear do not proceed. You can proceed with the short term and there were certain conditions. Mr Maritz returned from Cape Town and he was quite adamant – he – he was – he sent a message through to say “prepare the long term facility I am going to sign.” But what is important Chair is that this also takes place on the – this is on the 27th Chair that this happens. On the 25th around about the 25th he sends an email to the CFO to say “why are we not signing this facility:” I am cc’d on the email and we respond with all the documentation, all the legal
10 comments. Mr Mohamed’s recommendation. All the white and case report everything and we say to him ‘we have not followed due process we cannot proceed.” His response was “I am going to sign.” So that is before the – implicitly saying or explicitly saying he is comfortable to proceed. That is on the 25th. Then the meeting happens on the 27th and then on the return from Cape Town he signs the facility. No short term facility just the long term facility.

CHAIRPERSON: As at that time the short term facility had not been – because it was rejected by Huarong?

MR ANDRE FRANK PILLAY: So Chair the board said we should continue and seek the short term facility.

20 **CHAIRPERSON:** Yes.

MR ANDRE FRANK PILLAY: So that was not even done. We did not even start that process.

CHAIRPERSON: So in effect he went against the board’s decision or advise, is that right?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: And then he immediately signed the long term transaction?

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: And at the time, when he signed the long term transaction how, how much time had lapsed since the Board had, had made the decision that there should be further negotiations?

MR ANDRE FRANK PILLAY: Chair from memory I think the meeting ended round about noon and they returned from Cape Town only later that day.

CHAIRPERSON: Yes and he signed the following day?

MR ANDRE FRANK PILLAY: He signed on, on that day if.

10 **CHAIRPERSON:** The same day?

MR ANDRE FRANK PILLAY: The same day if my memory is, Chair he signed.

CHAIRPERSON: Signing the long term transaction?

MR ANDRE FRANK PILLAY: Signing the long term facility Chair.

CHAIRPERSON: And the long term transaction had not been approved by the Board, because even if the process had not been completed.

MR ANDRE FRANK PILLAY: Had not been completed Chair.

CHAIRPERSON: And what were the other entities who had made proposals? What did they say about this or what was, what did Eskom tell them?

MR ANDRE FRANK PILLAY: Because we were still negotiating with them Chair.

20 **CHAIRPERSON:** Yes.

MR ANDRE FRANK PILLAY: This is the; we, we did not tell them that we are abandoning or we are stopping. That was.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: That was separate financial or funding activities that we were pursuing Chair.

CHAIRPERSON: Yes, but at some stage you must have gone back to them.

MR ANDRE FRANK PILLAY: We were still going to pursue that Chair.

CHAIRPERSON: Now I mean the long term transaction has been signed. Is it now by?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: By Mr Maritz?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: And they that is now those entities are still under the impression or were still under the impression that the process had not been completed?

10 **MR ANDRE FRANK PILLAY:** Yes. All processes were then, were not completed Chair.

CHAIRPERSON: Yes, but obviously they were still, they, they would know your process. Is it not?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Because if they make a proposal they must be interested in knowing what process will be followed until conclusion is reached. So they would know your, your processes?

MR ANDRE FRANK PILLAY: Yes, yes Chair.

20 **CHAIRPERSON:** So, so you would have had to go back to them and say something like well we have chosen Huarong or whatever.

MR ANDRE FRANK PILLAY: Chair if I may just clarify. We were going to pursue those because they were addressing a particular funding requirement.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: These, there proposals were not competing necessarily with one another. They were [intervenes].

CHAIRPERSON: Oh, they were not competing?

MR ANDRE FRANK PILLAY: No, no Chair.

CHAIRPERSON: Oh, okay alright. Okay.

MR ANDRE FRANK PILLAY: So we did not have to go to them and say to them we have concluded with Huarong. You, we, we have to suspend or conclude the discussions with you.

CHAIRPERSON: Okay. Well maybe, maybe Ms.

ADV THANDI NORMAN SC: Maybe I could just.

CHAIRPERSON: Maybe, maybe Ms Norman.

10 **ADV THANDI NORMAN SC:** Yes, thank you.

CHAIRPERSON: Ask you some questions. Maybe.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Through those questions there will be more clarity.

ADV THANDI NORMAN SC: Thank you. Mr Pillay initially I had used the word abandoned. That is the RFP process was abandoned and you said no. The process was not abandoned.

MR ANDRE FRANK PILLAY: Hm.

ADV THANDI NORMAN SC: The process was continuing.

MR ANDRE FRANK PILLAY: Hm.

20 **ADV THANDI NORMAN SC:** I am just trying to see is, is that how Eskom does its procurement processes? That it would have parallel processes running at the same time, because I am just trying to understand what is then that Eskom seeks to achieve when it does that.

MR ANDRE FRANK PILLAY: So, so Chair the, we go out to the market. We look at the funding plan as we have presented earlier and we, we ask the market for

responses. We then look at what is the, what of the funding requirements or the, the capital spend, spending requirements does the particular proposals address. We, we do not go out and say, necessarily go out and say we just want one proposal that we want to address one specific need. The proposal and that is why we say it is innovative funding solutions. So that we can address a number of things and, and also as I, I think what was mentioned earlier when we look at our funding plan and these address certain requirements in our funding plan we then adjust with approval, internal approval and Government approval we adjust our funding plan.

ADV THANDI NORMAN SC: But then that opens a door for Eskom to be able to favour
10 a particular company over others as is in this case, because correct me if I am wrong you have got other proposals. Let us say six or 12 responses that you have got and then you say I am going to evaluate these and they are evaluated according to, to your evidence, but then in the midst of all this you decide that you know maybe this company can actually give a short term facility and I am going to give this company a proposal. I am just trying to understand is that an acceptable procurement process?

MR ANDRE FRANK PILLAY: So Chair just too also just elaborate.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: Is that the, the proposals that we receive are very
20 different and distinct. So the one proposal if I may an example is that it details with our municipal debt problem that we have. The other facilities deal with our, our derivative book that we have. They are very different these proposals. So they were not competing with one another. The, the.

CHAIRPERSON: So your RFP would it have told the potential entities that would be interested to make proposals what your funding requirements were and asked them to address in effect anyone more of the requirements in their proposals. Is that how, how

in effect it would have been?

MR ANDRE FRANK PILLAY: So Chair.

CHAIRPERSON: In other words any entity reading your request for proposals would have been able to look at your funding requirements in terms of that request and then be able to say this is the requirement that I would like to have a transaction with, with Eskom and not that one and another one might say I want, I am interested in more requirements than one and another one might say I am interested in all of the requirements because I can meet all of them. Is that how it, it could be, it would be?

MR ANDRE FRANK PILLAY: Yes Chair, because they look at Eskom in total.

10 **CHAIRPERSON:** Yes.

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: But in that event in, at least in theory you could have some that are competing. Is it not?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: That are interested in the same requirements?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: And where you have to choose?

MR ANDRE FRANK PILLAY: Yes Chair.

20 **CHAIRPERSON:** Yes, but in this particular case are you saying having had regard to the proposals from the different entities that Eskom received there was no competition in regard to your funding requirements?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you Chair. Thank you Mr Pillay. So what it means is that Huarong was in, in a league of its own?

MR ANDRE FRANK PILLAY: They were, they were separate.

ADV THANDI NORMAN SC: Yes. So it, it could not even compete with Absa because of what it was offering?

MR ANDRE FRANK PILLAY: Offering, yes Chair.

ADV THANDI NORMAN SC: Yes, thank you. Now.

CHAIRPERSON: It is just quite, it is quite interesting but you know one is, one does not know much about Eskom other than Eskom and lights [laughing] so; but, because normally when you talk about request for proposals normally what you want is competition from different entities.

10 **MR ANDRE FRANK PILLAY:** Hm.

CHAIRPERSON: In order to make sure that you as a Government entity can get, can choose an entity that will give you the best value for as little as you, you, you can pay.

MR ANDRE FRANK PILLAY: Hm.

CHAIRPERSON: And that that is that is part of the requirement of procurement. So, so but you say that in this particular case when you look at the proposals each one was interested in a requirement that was different from those required by other people?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Okay.

20 **MR ANDRE FRANK PILLAY:** And we do also if I may Chair just add to your earlier point is that there are some RFPs that were issued that are very specific.

CHAIRPERSON: Yes,

MR ANDRE FRANK PILLAY: That says.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: We are going to the International Bond Market.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: And, and this would be the requirement.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: And then we would be specific and then they are competing with one another.

CHAIRPERSON: Okay, okay.

MR ANDRE FRANK PILLAY: Thank you.

ADV THANDI NORMAN SC: Thank you Chairman. You then in, in the following paragraphs you deal with your, with the, the trip that you did not join to, I think it was to China, to the USA, sorry between, on the 12th to 15 October 2017.

10 **MR ANDRE FRANK PILLAY:** So Chair.

ADV THANDI NORMAN SC: In paragraph 30.

MR ANDRE FRANK PILLAY: Paragraph?

ADV THANDI NORMAN SC: Paragraph 30.

MR ANDRE FRANK PILLAY: [Intervenues].

ADV THANDI NORMAN SC: So maybe before that, sorry we skipped an important aspect. After the signing of this agreement.

MR ANDRE FRANK PILLAY: Hm.

ADV THANDI NORMAN SC: Huarong sent an invoice.

MR ANDRE FRANK PILLAY: Yes.

20 **ADV THANDI NORMAN SC:** Is that correct?

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: So Chair before the invoice gets issued to us Chair what is important is the, the, the signing happened on that day of the long term facility by Mr Maritz. So the following day because I was in the Board Meeting I approached the

company secretary and indicated that based on the proceedings at the IFC Board Meeting which indicated that we should not proceed. Mr Maritz went ahead to proceed. There was an informal meeting by the company secretary convened with the Chairman Mr Zethembe Khoza, the Chairman of Audit and Risk Mr Sathiaseelan Gounden, Mr Caleb Cassiem the CFO, the Chairman of that IFC Board Mr Dinga Simphiwe and myself and the discussion was around the fact that Mr Maritz signed without the authority from the Board to sign and in the comment Chair when, when we discussed this and Mr Maritz indicated that he went to see the Minister and the Minister said it is okay if he can sign. My response was the Minister does not get involved in those things ordinarily. He does not have the delegation to do so. The Board has, has, has indicated that we should not proceed. I mentioned the fact that Chair that we were dealing with reportable irregularities in Eskom fruitless and wasteful expenditure. If we proceed with this it will amount to that Chair and then as indicated Chair was this, it is signed and approximately three days later we issued with a, an invoice to pay and, and Chair I think important here is the, is when we were served with the, with the invoice to pay upon receipt of the invoice this is where, where, where I took the step that this is now not, I would have to delegate the payment down and I took the decision and alerted all my colleagues in the Treasury to say no one must pay this invoice and if anyone enquires around the invoice they must approach me and I will deal with it, but no one, no one executes on this invoice and, and.

[Background noise]

CHAIRPERSON: I am sorry, before you proceed the, the amount to which Eskom was committed by Mr Maritz when he signed that transaction was how much? It was a; a financial commitment of how much?

MR ANDRE FRANK PILLAY: *Ja.*

CHAIRPERSON: And then after that you can tell us what the invoice, how much that invoice.

MR ANDRE FRANK PILLAY: [Intervenes].

CHAIRPERSON: Invoice was for that you were served with three days later.

ADV THANDI NORMAN SC: Yes, thank you. It is exhibit, it is Annexure 20. That would be at page 491 Mr Chairman. That is where the invoice is Mr Pillay or maybe start with the agreement, because the question from the Chair is that how much was, was, was Eskom supposed to pay and how much was the invoice.

MR ANDRE FRANK PILLAY: So the invoice Chair was based on a commitment of \$2
10 billion and [intervenes].

CHAIRPERSON: *Ja*, let us start with the.

ADV THANDI NORMAN SC: With the agreement.

CHAIRPERSON: Financial commitment arising from

MR ANDRE FRANK PILLAY: The fee.

CHAIRPERSON: The signing by.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Mr Sean Maritz. What was the financial commitment that went that went with that signature.

ADV THANDI NORMAN SC: That you will find Mr Pillay at page 492.

20 **MR ANDRE FRANK PILLAY:** Yes.

ADV THANDI NORMAN SC: 492 that is where the signed is, the signed agreement is.

MR ANDRE FRANK PILLAY: Chair and.

ADV THANDI NORMAN SC: *Ja*.

MR ANDRE FRANK PILLAY: If I may it is \$19.2 million.

CHAIRPERSON: \$19.2 million?

MR ANDRE FRANK PILLAY: Dollars.

CHAIRPERSON: Well I remember you said you have a BSc in Maths so you might be very good with converting that quickly.

MR ANDRE FRANK PILLAY: Chair it is, it is roughly a current exchange of 14 probably around R275/276 million.

CHAIRPERSON: Okay, okay. That was the, the whole transaction?

MR ANDRE FRANK PILLAY: That was the fee that would have been paid Chair.

CHAIRPERSON: And then, and then the invoice that you were served with three days later.

10 **MR ANDRE FRANK PILLAY:** Is.

CHAIRPERSON: Was for how much?

MR ANDRE FRANK PILLAY: Is this invoice Chair of 19 million.

CHAIRPERSON: Oh.

MR ANDRE FRANK PILLAY: This.

CHAIRPERSON: And the, the whole transaction in terms of financial commitments for, for Eskom was also the same amount?

MR ANDRE FRANK PILLAY: Sorry Chair.

CHAIRPERSON: In other words this, this transaction that Mr Maritz signed had financial commitment, obligations for Eskom. Is it not?

20 **ADV THANDI NORMAN SC:** Yes.

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Yes. Do you know how much?

MR ANDRE FRANK PILLAY: It, it is this. Immediately payable is the 19.2 million.

CHAIRPERSON: Oh, okay.

MR ANDRE FRANK PILLAY: Dollars.

CHAIRPERSON: So it is payable?

MR ANDRE FRANK PILLAY: *Ja.*

CHAIRPERSON: The same amount?

MR ANDRE FRANK PILLAY: *Ja.*

CHAIRPERSON: The whole amount?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Oh.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: I mean before these people could do anything?

10 **MR ANDRE FRANK PILLAY:** Chair and, sorry Chair.

CHAIRPERSON: No, no that is my question.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: So Chair this is the, the contentious part of this Chair.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: And certainly my, my frustrations with, with, with the Huarong Team and, and certainly do not want to be dramatic Chair, but I indicated to them that we as a State Owned Entity and as a public entity cannot pay and we do not even get a paperclip. Those were my exact words to them. We, I also indicated to them that we are going to pay your retirement and Eskom is going to get nothing. It, it,
20 it certainly was part of the build up to a very unpleasant relationship towards the end with the Huarong Team Chair.

CHAIRPERSON: But when you were having a meeting with the individuals that you mentioned a few minutes ago including Mr Sean Maritz and Mr Zethembe Khoza.

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: And I think two others and yourself.

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: You, these features of, this particular feature of the transaction that Mr Sean Maritz had already signed was discussed as well?

MR ANDRE FRANK PILLAY: No, it was not discussed Chair.

CHAIRPERSON: It was not discussed. What was the purpose of that meeting?

MR ANDRE FRANK PILLAY: The purpose of the meeting Chair was to, to confirm.

CHAIRPERSON: *Ja.*

MR ANDRE FRANK PILLAY: That the individuals other than Mr Zethembe and Mr Maritz were not authorised or Sean was not authorised based on the Board Meeting
10 of the previous day to sign.

CHAIRPERSON: Yes, but the, this feature of this transaction was known to the Board before and maybe that is part of the reason why they might, they said no you need to negotiate. They did not approve.

MR ANDRE FRANK PILLAY: Yes. It was certainly a.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: From, from, from this at the outset Chair.

CHAIRPERSON: Yes, but now Mr Sean Maritz was saying he had consulted with the Minister and the Minister had said he can go ahead.

MR ANDRE FRANK PILLAY: Go ahead.

20 **CHAIRPERSON:** And sign.

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: And he felt he could sign even though he knew that the Board was against that.

MR ANDRE FRANK PILLAY: The, the Board was against it Chair and the CFO submitted to him.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: In email correspondence.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: Advising him not to sign based on the, the process.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: That [intervenes].

CHAIRPERSON: Oh, on the process.

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: Not necessarily on, because of this clause. Maybe it might have
10 been one, one, one of them, but it was based on the process?

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: But from your side this was one of the issues that you had a problem
with?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: This.

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: Payment?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Okay, thank you.

20 **ADV THANDI NORMAN SC:** Thank you Mr Chair. Just to follow up on that point you
see at page 492 Mr Pillay that the, the 60 percent program development fee within
three, payable within three days after signature date. So that is what the, the invoice
seems to relate to?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Yes, thank you.

CHAIRPERSON: Now, so did Mr Sean Maritz say that the Minister said he could go ahead and he could or should go ahead and sign this transaction. Did he say this in the presence of all the people who you mentioned in that meeting or was he mentioning that to you separately?

MR ANDRE FRANK PILLAY: No. Certainly Chair.

CHAIRPERSON: Hm.

MR ANDRE FRANK PILLAY: It was in the presence and.

CHAIRPERSON: Ja.

10 **MR ANDRE FRANK PILLAY:** And, and also that was my response in the presence of all.

CHAIRPERSON: Of all those people?

MR ANDRE FRANK PILLAY: Of all the people, yes Chair.

CHAIRPERSON: Okay, thank you.

ADV THANDI NORMAN SC: Thank you. Then we.

CHAIRPERSON: And, I am sorry.

ADV THANDI NORMAN SC: I beg your pardon, Chair.

CHAIRPERSON: You, you will know this bundle I think much better than I do.

ADV THANDI NORMAN SC: Yes.

20 **CHAIRPERSON:** Because it is a, it is your statement, statement and annexures. Is there, is there any document maybe an email or a memo that you might have sent to somebody within Eskom where you may have recorded that this is what you were told by Mr Maritz?

MR ANDRE FRANK PILLAY: No, no, no Chair. Unfortunately not.

CHAIRPERSON: There is nowhere. Okay, no that is fine.

ADV THANDI NORMAN SC: Thank you. Thank you Chair.

CHAIRPERSON: And that meeting did it have minutes that were taken that are available?

MR ANDRE FRANK PILLAY: No, Chair. It was basically an informal meeting as I indicated.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: I alerted the company secretary. He convened.

CHAIRPERSON: Yes, okay.

MR ANDRE FRANK PILLAY: This meeting Chair.

CHAIRPERSON: Okay, alright.

10 **ADV THANDI NORMAN SC:** Thank you and then you deal briefly with the relationship between you and Mr Maritz where he had shown you a particular report saying that that you had a house in Plettenberg Bay. You want to quickly to, to that paragraph.

MR ANDRE FRANK PILLAY: Chair this is in the, in the lead up to the signing and, and some of the, the issues that I list here were, were certainly my experiences. So on, on a particular day and, and I think it arose from the fact that I, I did not seemingly or did not cooperate with the process or wanted to assist with, with the Huarong long term facility and this I viewed as a, as a way of trying to, to put pressure on me or to intimidate me Chair. He called.

CHAIRPERSON: I am sorry. Where are, where are you now Ms Norman?

20 **ADV THANDI NORMAN SC:** Paragraph 31.

MR ANDRE FRANK PILLAY: 31, Chair.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Paragraph 31?

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Okay, alright.

MR ANDRE FRANK PILLAY: Chair and, and he called me to his office and pulled out a piece of paper that was a folded piece of paper. I could not read on the paper, but it was, there were a few lines typed on the piece of paper and he indicated to me that there is a whistle blower your report that indicated that I have taken a bribe from a particular Russian company for a facility that we have concluded.

CHAIRPERSON: Who, who, who is that saying that to you now?

MR ANDRE FRANK PILLAY: Mr Maritz Chair.

CHAIRPERSON: Okay, right.

MR ANDRE FRANK PILLAY: And this is, this is before the signing Chair.

10 **CHAIRPERSON:** Oh, okay.

MR ANDRE FRANK PILLAY: This is now.

CHAIRPERSON: Right.

MR ANDRE FRANK PILLAY: Before the signing.

CHAIRPERSON: Hm.

MR ANDRE FRANK PILLAY: So I, I, I said to him at the time that I would cooperate with the investigation if any. I also invited him that it is, it is very easy to assess.

CHAIRPERSON: Hm.

MR ANDRE FRANK PILLAY: If we have signed a transaction with the Russians, because there was nothing on our books.

20 **CHAIRPERSON:** Hm, hm.

MR ANDRE FRANK PILLAY: That; so it is a very easy, I, I, I was not worried about the Russian transaction *per se*, but I was more concerned about what appears to be him trying to intimidate me.

CHAIRPERSON: Hm, hm, hm.

MR ANDRE FRANK PILLAY: And, and I did not even read the piece of paper, what

was written on the piece of paper Chair.

CHAIRPERSON: Hm, hm.

MR ANDRE FRANK PILLAY: And that is the, the one that I deal with in, in, in that paragraph 31. The other Chair was also roundabout the same period. I was called to the office of the Chairman and he mentioned to me that you must be very careful that Sean does not want to work with you. Basically indicating you are a problem. That and, and, and it certainly alerted me and I became very concerned about my own career and my own time at Eskom because of, of, of these. I do not sit, I think you can call them threats or signals that was given to me Chair.

10 **ADV THANDI NORMAN SC:** Thank you and is it correct that you did participate in a disciplinary enquiry that Eskom initiated against Mr Sean Maritz?

MR ANDRE FRANK PILLAY: Yes Chair. I participated in the Bowmans enquiry that was initiated in, in I think in February 2018.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: To deal with Mr Maritz's, the particular transaction Chair.

ADV THANDI NORMAN SC: Then you had testified that SAB had given conditional approval to the transaction with Huarong, but on the.

CHAIRPERSON: I am sorry Ms Norman.

ADV THANDI NORMAN SC: Sorry Chair, yes.

20 **CHAIRPERSON:** Did you cover there is some important things in paragraph 30 towards the second half of the paragraph.

ADV THANDI NORMAN SC: [Intervenues].

CHAIRPERSON: Did you cover those?

ADV THANDI NORMAN SC: Must be careful, yes.

CHAIRPERSON: About, about the pressure.

ADV THANDI NORMAN SC: He said I must be careful.

CHAIRPERSON: The pressure from.

ADV THANDI NORMAN SC: From the Chairman.

CHAIRPERSON: From the Chairperson.

ADV THANDI NORMAN SC: He.

CHAIRPERSON: And other people.

ADV THANDI NORMAN SC: He has just mentioned now Chair that the Chairperson called him and said.

CHAIRPERSON: Oh, okay.

10 **ADV THANDI NORMAN SC:** He must be careful.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Because unless there is an.

CHAIRPERSON: Well there is also the question of Mr Madida that he mentions there. Did he mention?

ADV THANDI NORMAN SC: On page.

CHAIRPERSON: Well he is not saying Mr Madida mentioned, put pressure on him.

ADV THANDI NORMAN SC: Are we in paragraph Mr Chairman?

CHAIRPERSON: I am at, I am at.

MR ANDRE FRANK PILLAY: Paragraph 30.

20 **CHAIRPERSON:** Paragraph 30, paragraph 30.

ADV THANDI NORMAN SC: Oh yes, yes oh you missed that last paragraph. Could you please talk to that Mr Pillay? Thank you. I am indebted to you Mr Chairperson. I simply looked at the date for the meeting to the U, USA, yes. Could you just talk to what you are referring to there?

MR ANDRE FRANK PILLAY: Chair in, in following the signing of, by Mr Maritz Chair I,

I personally, this was very unsettling the signing of this transaction Chair. One, because it, I was linked to it and also Chair I asked him why are you doing what you have done and he indicated to me that the Chairman is putting pressure on him to do that.

CHAIRPERSON: That is Mr Zethemba Khoza?

MR ANDRE FRANK PILLAY: Zethemba Khoza.

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: *Ja.*

CHAIRPERSON: *Ja.* That is what Sean Maritz said to you?

10 **MR ANDRE FRANK PILLAY:** He said to me over and above the Minister said I can sign.

CHAIRPERSON: Hm.

MR ANDRE FRANK PILLAY: He said the Chairman is putting pressure on me to sign this facility. It was also as part of what I deal with here Chair is that Mr, Mr Khoza and Mr Rex Madida had quite a, a, it appeared a relationship. There was some interaction. I recalling coming to the World Bank IMF Meetings and Mr Zethembe Khoza or we accompanied Mr or I accompanied Mr Zethembe Khoza and the phone, his phone was basically on the desk between the two of us and the phone rang and I could see that it was Mr Madida. They had a conversation in vernacular and after the call he
20 immediately wanted to enquire about the status of this deal and when are we signing it.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. Then we covered paragraph 31 Mr Chairman. Could you proceed then to paragraph 32? Why did then SAB after it had given conditional approval why did it suspend that that approval on 4 August 2018?

MR ANDRE FRANK PILLAY: The SABS.

CHAIRPERSON: Wait before you do that you, you confirm that nothing ever came out of that suggestion or allegation about you receiving a bribe from a China, a Chinese group or something?

MR ANDRE FRANK PILLAY: The, the Russian group Chair.

ADV THANDI NORMAN SC: Russian.

CHAIRPERSON: The Russian group, *ja*.

MR ANDRE FRANK PILLAY: Chair the, the, the; I, I in preparation for this I enquired with our Head of Audit and Forensics just to in preparation for this to confirm the, they confirm that there were no such allegations or process that that was followed Chair.

10 **CHAIRPERSON:** And you, you never heard, heard about that allegation after, after the time when it was raised by him?

MR ANDRE FRANK PILLAY: No, no Chair certainly not.

CHAIRPERSON: *Ja, ja*. Okay, thank you.

ADV THANDI NORMAN SC: Thank you. Yes, you may proceed then and answer the question of the suspension of the approval by SAB.

MR ANDRE FRANK PILLAY: So Chair a number of things happened. At this stage Chair after the signing the National Treasury was fully aware of these developments. They were also concerned about what was happening at the governance and a leadership issue. I think also important to mention here Chair when I became aware
20 that Mr Maritz was going to sign that transaction given that email correspondence and that is where I, I have raised it with National Treasury. I, I, the only, because in the organisation I could not go to the Chairman. I could not go to Board Members. I, the only remedy I had was to speak to the CFO or take other steps Chair. I, I on that, on the day roundabout that period Chair I got into my car and I drove to the National Treasury. I sat at the, waited for the DG in his office and when he had a few minutes I

alerted him to the fact that this thing will happen. He immediately responded and drafted a letter to the Director-General of DPE to say, to give him, say, to instruct that we must not proceed or to inform him that as the shareholder Minister he must intervene Chair and, and also important after that I, I remember a subsequent meeting after that event going to National Treasury to the Director-General. Mr Maritz in a meeting was suggesting that quite annoyed with the fact that who is speaking to Government and who is telling Government what we are doing and that was the comment that he made. So I was convinced that it was in relation, I do not think he knew who it was, but I think it was in relation to that act, because at that I did not know
10 who to approach to say this thing is coming Chair.

CHAIRPERSON: And who was the DG of Treasury at that time? Was it Mr Fuzile?

MR ANDRE FRANK PILLAY: No, it was Dondo Mogajane Chair.

CHAIRPERSON: Oh, okay, okay.

ADV THANDI NORMAN SC: Thank you and you then deal.

CHAIRPERSON: And, and I am sorry Ms Norman.

ADV THANDI NORMAN SC: Oh I beg your pardon Mr Chair.

CHAIRPERSON: And when you went to National Treasury and you spoke to the DG there about this transaction that was about to be signed. How long thereafter was the, was the transaction signed by Mr Maritz? How long did it take after that?

20 **MR ANDRE FRANK PILLAY:** I think it was a few days Chair. I think.

CHAIRPERSON: *Ja.*

MR ANDRE FRANK PILLAY: If memory serves it was roundabout, when this email correspondence.

CHAIRPERSON: *Ja.*

MR ANDRE FRANK PILLAY: It was clear that he was, intends to sign.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: Roundabout that period. So it was probably three or four days later Chair.

CHAIRPERSON: Oh, okay. No that is fine.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you Chair and then following that then you deal with the exchange of correspondence between SAB and Eskom.

MR ANDRE FRANK PILLAY: So Chair at, at this stage the, the, the and this is now a
10 period I think in, in January that we deal with here Chair that the National Treasury is fully aware of what has happened at Eskom. We have also and I will hopefully get Chair in my supplementary explain National; the SAB is also aware of what is happening within Eskom and for that reason they responded to say the approval that we gave you in August we suspend that.

ADV THANDI NORMAN SC: And, and then.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: You deal with what you have put before, a letter from the National Treasury, the letter to the National Treasury, sorry written by Eskom. Could you just deal with those? In fact Eskom wrote to two DGs. To the DG of DPE and to
20 Mr Dondo Mogajane. Now those letters are contained at pages 503 and 504, the first one, but there's a duplication of the one to Seseleke, you will find that these are written by Mr Caleb Cassiem on the 11th of January 2018.

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: These letters they seem to still request for approval of the sort-term funding?

MR ANDRE FRANK PILLAY: So Chair this was part of the process as I've indicated that we would have to go through to Government to say, as part of the due diligence process, so we're concluding on that process that closes it out that says we have approached Government with this proposal that we received and Government responded by saying you do not have the authority to proceed, and that was the spirit of that, of that or the intention of that letter.

ADV THANDI NORMAN SC: Yes, so is it correct that these letters are written at the time when now there is also a demand for payment?

MR ANDRE FRANK PILLAY: So what happened Chair the letters are dated the 11th of
10 January 2018 so what ...(intervention)

CHAIRPERSON: I'm sorry what page do the letters appear on?

MR ANDRE FRANK PILLAY: Page 50.

ADV THANDI NORMAN SC: I beg your pardon, the first one Mr Chairman appears at page AP23 at page 502, 503, then all the letters right up to 506 but there's just one duplication and 507, it's a duplication so they go up to 506.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you. Mr Pillay you were still answering, you were
20 still talking about now these requests to the DG of DPE and the DG of National Treasury happens at a time when you already have now the invoice from Huarong, am I right?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Yes, so you are still requesting short-term facility with Huarong?

MR ANDRE FRANK PILLAY: So basically Chair what we have done is to write to National Treasury and indicate to them everything that we are considering in relation to Huarong, but at this stage Chair the discussions with Government was quite clear, we are not going to proceed with this so we basically to complete so if I think if anyone had to come and say to us did you follow process, there was the Legal that did not support it, internal was not supported, even Government said do not proceed, and this was to close that process.

ADV THANDI NORMAN SC: Could you just read what the final request by Cassiem is, that is the very last paragraph from page 503 but the last paragraph that appears at
10 page 504, just to see what is it that he was actually requesting from the Director General of the National Treasury?

MR ANDRE FRANK PILLAY: So Chair he request – in the light of the above, so Eskom requested the Director General to consider the merits and provide comments to the transactions in the context of utilisation of Government Guarantees for both the long-term ADFA and the short term facility within the approved borrowing limits. Formal application for utilisation of the Government Guarantee and PFM representation to the Minister and to the Minister of the Department of Public Enterprises and the Minister of Finance will be lodged following the response from the DG to this letter. We remain available for further engagements to these transactions.

20 **ADV THANDI NORMAN SC:** Yes, can you please explain to the Chairperson if then the purpose was to close now because Government doesn't want to deal with this, Government doesn't want to proceed with the agreement, why was it necessary then for the long-term ADFA agreement to be part of the request that was being made to National Treasury at this point?

MR ANDRE FRANK PILLAY: Chair the – so we have not formally as Eskom gone to

Government to close this out and that was the intention of this, was to go to government and say this is what we are dealing with, we would have to get your approval if you want to proceed and we just wanted to close that process that in the event that we are enquired why did we arrive at not signing we can demonstrate that Chair.

ADV THANDI NORMAN SC: But how are you closing it if you are applying to use Government Guarantees, because here formal application for utilisation of the Government Guarantee and PFMA applications would be made, how then is that closing the issue?

10 **MR ANDRE FRANK PILLAY:** So Chair we did not go to Government and say to Government we don't want these transactions anymore.

CHAIRPERSON: You knew that they would say no?

MR ANDRE FRANK PILLAY: We were in discussions with them ...(intervention)

CHAIRPERSON: Ja, privately, informally.

MR ANDRE FRANK PILLAY: Privately, informally we were in discussions.

CHAIRPERSON: So you knew that they would not approve?

MR ANDRE FRANK PILLAY: We knew that they would not approve.

20 **CHAIRPERSON:** But you had to approach them at a formal level so that they could formally say no, and that would enable you to say we can't sign, is that what you are saying?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: But then following on the Chairperson's question but the agreements have already been signed?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: So this happens after the agreement has been signed by Sean Maritz, after the invoice has been issued and then you approach the National Treasury to say can we utilise – we will make an application to utilise the guarantees.

MR ANDRE FRANK PILLAY: Chair to clarify the questions somewhat?

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Yes this is after the signing of the agreement, this is not happening prior to the signing, it's after the signing an invoice has been issued and then this request says to Government, that is to National Treasury we are going to, we want to utilise Government Guarantees for both the long term, ADFA, and the short-
10 term facility.

MR ANDRE FRANK PILLAY: Yes, Chair this is I suppose I need probably to explain it.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: I'm not explaining it well probably Chair. Is the – Mr Maritz signed, the Board said no.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: And that was to close out the Board saying no process. Mr Maritz did what he did, it was not part of our process otherwise he would not have signed, so we were closing out our process.

CHAIRPERSON: What do you mean you were closing it out?

20 **MR ANDRE FRANK PILLAY:** So we were going to Government and saying to Government we would have ordinarily come to you and asked for you to approve it, that was the ...(intervention)

CHAIRPERSON: I think Ms Norman's question you know goes to what purpose would that have served when the agreement had already been signed, in other words I mean it's known that the Board had not given approval for the signing, okay, so if an issue

were to arise about why that agreement was signed those who were against the signing of the agreement who did not support the signing of the agreement didn't have to approve anything other than simply saying well Mr Maritz decided it upon himself to sign, ask him. So what was the point of asking for a guarantee from Government when the agreement had already been signed, what purpose would that have served. I think that's the thrust of her question.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: So Chair my understanding of it was it would certainly we knew that there was the possibility that Huarong would come back to us to say we
10 need the cancellation fee, we were frustrated and repudiated, so we wanted to demonstrate that we followed our process and that would, and I understand what you are saying Chair.

CHAIRPERSON: But how do you follow your process by asking Government for a guarantee after the transaction has been concluded because your process is that you ask for a guarantee before the transaction is concluded.

MR ANDRE FRANK PILLAY: Mmm.

CHAIRPERSON: So when you asked for the guarantee after you are not following your process.

MR ANDRE FRANK PILLAY: So Chair I think your earlier comment, the issue here
20 was we've had discussions with Government in that period, from January to when it was signed again. Government wanted – and in our discussions with Government, with National Treasury at the time was let's close out this process, tell us what you wanted to do with this transaction and then we will formally respond and say to you no we don't have the authority to continue that was the spirit of that.

CHAIRPERSON: It still doesn't make it clear, what purpose would it serve? A

transaction has been made and when you talk about government in this context I think you talk about National Treasury, National Treasury knows because you spoke to the DG, knows that they said no to that transaction, and the transaction, and you know that the transaction has been signed. One would expect you to go back to – to go to National Treasury not to ask for a guarantee because the transaction has been signed, but to tell them, confirm to them that actually it's been signed without any guarantee, so if you were approaching them to tell them that then one would understand, because then you would be saying I came to you DG to tell you that there was a transaction to which was about to be signed, which was wrong for Eskom and that should not be
10 signed and you did what you did but it was signed and so any discussion of guarantees is water under the bridge, you understand that?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Do you agree with that or ...

MR ANDRE FRANK PILLAY: No, no I certainly agree Chair, I think our intention at this time was just to get that confirmation from Government that they would not support this.

CHAIRPERSON: And up to that stage you didn't have anything in writing that they didn't support it?

MR ANDRE FRANK PILLAY: No Chair.

CHAIRPERSON: Yes.

20 **ADV THANDI NORMAN SC:** Thank you Mr Chair. But maybe just lastly the attractiveness of the Huarong proposal was the fact that it did not require any guarantees, what then changed for you now to say to Government we would like guarantees because I mean it defeats the whole purpose of having pursued that proposal in the first place.

MR ANDRE FRANK PILLAY: Chair if I may the – upon reading it appears as if we're

asking Government for a short-term and a long-term guarantee, and I think it was misstated here, because that was certainly not the case, we were only asking for a guarantee on the short-term and not on the long-term, so that was certainly an error on our side, in that letter.

ADV THANDI NORMAN SC: But all in all both letters worded in a similar fashion, both to DG Seleke and to DG Mogajani?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Yes thank you. Now just to tie up then on the conclusions that you say I think this also relates still to the letter by Mr Maritz, where
10 you list the governance and legal processes that were not followed at page 36, at paragraph 36 I beg our pardon.

MR ANDRE FRANK PILLAY: Paragraph 36?

ADV THANDI NORMAN SC: Yes you highlight what was not complied with and that the ALFA and the ADFA are distinct documents, there was no legal transition that's what we are saying so what sort of transition would have happened to move from the loan agreement to the Development Fund Agreement?

MR ANDRE FRANK PILLAY: Chair and just based on my reading of the issue of the situation at the time is that in my mind there was no legal from the term sheets that were signed there was no legal indication that this now moves from an ALFA to an
20 ADFA and so that was contained in the signed it was certainly my impression that there was no indication that it's not an ALFA anymore, it's an ADFA and it may be some legal wording that would suggest how that transition happens but it was certainly my reading and there was the – there were in my mind two distinct documents, because the term sheet suggest that the conditions in the term sheet were being incorporated into the ALFA not the ADFA and that was what was signed by Mr Singh at the time. That was

just a comment with regards to my observation or my testimony Chair.

CHAIRPERSON: May I just take you back to this transaction that was signed by Mr Maritz. He signed the long-term transaction is that right?

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: As you understood the position once the long-term transaction was signed did the short-term transaction fall away, or did it become redundant? They made to sign the short-term transaction would it still have been there after the long-term transaction had been signed?

MR ANDRE FRANK PILLAY: Chair an important question is the – so Mr Maritz signed,
10 and there was still this process with the Huarong to pursue the short-term facility into December, up until they came back and indicated that they are not able to do that.

CHAIRPERSON: But when Mr Maritz signed the long term transaction the short-term discussions with Huarong in regard to the short-term transactions had not been concluded or had – they had not been concluded?

MR ANDRE FRANK PILLAY: No, nothing Chair.

CHAIRPERSON: Ja, but my question is whether you are dealing with a situation where if the long-term transaction has already been signed there would be no need to still pursue a short-term transaction or whether there would still be a need to pursue a short-term transaction, because my understanding was that maybe you needed the
20 sort-term transaction urgently to sign it urgently because negotiating the long-term one might take long so – and there was a need for liquidity urgently but then that would give me the impression that once we have signed the long-term transaction then you might not really be needing the sort-term transaction because the long-term transaction has suddenly not taken as long as you thought it would take.

MR ANDRE FRANK PILLAY: So the signing of the long-term facility Chair that did not

result or will not result, or would not have resulted in immediate liquidity coming in. There would have been a long period in terms of identifying the projects and – so it would – the long – the signing of the long-term facility did not ...(intervention)

CHAIRPERSON: Do away with the need for the ...(intervention)

MR ANDRE FRANK PILLAY: ... cancelled the need for the short-term facility.

CHAIRPERSON: Ja, would it be correct to say that compared to the short-term transaction that was being pursued there was actually – I mean pursuing the short-term transaction was more urgent than pursuing the long-term transaction would that be correct?

10 **MR ANDRE FRANK PILLAY:** Correct Chair.

CHAIRPERSON: Ja okay.

ADV THANDI NORMAN SC: Thank you Mr Chairman. You raised in paragraph 37 right to paragraph, up to the end of your statement matters that you regard as important matters, some of them you've already testified to, for example for example what's contained in paragraph 40 you've already dealt with, maybe you could just – you also testified to the fact that your fears that the signing of the agreement would trigger payment of upfront fees. Do you want to just comment on what you say in paragraph 37 about what DG Richard Seleke had said?

20 **MR ANDRE FRANK PILLAY:** So Chair this is also in October before the signing of the long-term facility. There was a meeting, we have regular quarterly update meetings with the Department as Eskom, those are scheduled and obviously changes subject to availability but we had a regular meeting, Mr Caleb Cassiem and I were in the meeting, and towards the end of the meeting we were called to the DG's office, and we were not aware of what the purpose of that meeting or discussion was, we joined the meeting and we found that Mr Maritz was in the meeting, and there were a number of

discussions around funding and one of the comments that was made is – by Mr Seleke at the time was that, and he made a comment to the effect of - to Mr Maritz that your problem is your people, they must stop looking to the West for funding, they must go to the East.

CHAIRPERSON: And who was saying that?

MR ANDRE FRANK PILLAY: Mr – the DG at the time, Richard Seleke.

CHAIRPERSON: Okay, and this is now at Mineral and Resources Department?

MR ANDRE FRANK PILLAY: This Department of Public Enterprises.

ADV THANDI NORMAN SC: Public Enterprises.

10 **CHAIRPERSON:** Oh, Public Enterprises.

MR ANDRE FRANK PILLAY: DPE, so he was DG at the time, and the reason for raising this here Chair is that my sense was that the Huarong transaction is from the East, there is probably something in this comment here that would signal that you should move away from the conventional Western investor community, you should rather focus on what's happening in the East, and that is the reason for commenting on that Chair.

ADV THANDI NORMAN SC: Thank you. And you've dealt with the invoice in paragraph 39, you've dealt with your interactions with the DG before the signing, when you approached DG to say he must advise, he must stop the signing by Mr Maritz. In
20 paragraph 41 you raise matters where you were being threatened and could you tell the Chairperson who threatened to you that he would come to Eskom and sort you out, and under what circumstances were you threatened.

MR ANDRE FRANK PILLAY: So Chair if I'm allowed to Chair, there's a reporting point in 39 that I would like to cover as well.

CHAIRPERSON: Yes do that.

ADV THANDI NORMAN SC: Yes, yes.

MR ANDRE FRANK PILLAY: If I may Chair. So the signing happened at the end of October Chair, end of October we were served with an invoice we did not pay, so the loan agreement required certain conditions precedent to be fulfilled and that was not met, because we did not sign and we – based on our understanding the Board did not approve so we did not engage Huarong on the conditions. I mean there was no need to do that, the Board said no. The agreement technically lapsed and we were then sent with an addendum to the agreement in December Chair. And then Mr Maritz signed the addendum yet again and the fee letter yet again, knowing full well the discussions that preceded that in October the discussions that he was not allowed to sign and the Board Resolution so he signed it again in December and we were served with an invoice in January again Chair.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes, thank you Mr Chair. Thank you for that Mr Pillay, you just have to highlight where I miss an important point to raise it.

MR ANDRE FRANK PILLAY: And then 41 Chair is the issue that I discussed here Chair was the there were two particular points that's important in 41 Chair, is the fact that in the discussion, I think it was roundabout August before the signing Chair I raised the concern in a telephonic conversation with Mr Rajeev that I as said to him previously that I don't agree with these parallel processes of them engaging with our Executive, it compromises what we are doing through this process to complete it, the conversation became very heated and he made a comment that I am frustrating the process and he would come to Eskom and sort me out. So that where I come from Chair that means something drastic. It means ...(intervention)

CHAIRPERSON: And this is around what, August?

MR ANDRE FRANK PILLAY: It was around August/September Chair, that period.

CHAIRPERSON: Ja, 2017?

MR ANDRE FRANK PILLAY: 2017 Chair, that he would come to Eskom and sort me out. At that stage I abandoned all discussions with him, Mr Rex Madida intervened he came to the Eskom offices to try and manage and he indicated that they have taken Mr Rajeev away from this transaction and the Eskom engagement and tried to have a conversation with me to say I must forgive and move on, or reconcile with. At that stage I realised that we are not just busy with people wanting to do funding, there's certainly concern from my side Chair.

10 **ADV THANDI NORMAN SC:** Thank you.

MR ANDRE FRANK PILLAY: The other issue in that paragraph that I also raised Chair and during the process throughout the year Chair there was also a very concerning conversation with the gentleman that manages Sambesi Capital, a Ven Zibanda Chair. He also indicated to me that in a conversation with Mr Singh that apparently there was an introduction between the Huarong team and the Trillion team, that was also, I raised that with Mr Rajeev at that point in time, he indicated that it's not the case. I also in this conversation with him, the last conversation I had with him and it certainly unsettled him or frustrated him, or he became very furious about that point, and that, all of those things were very concerning for me, those linkages and connections Chair.

20 **ADV THANDI NORMAN SC:** Thank you. And you deal with something which I believe to be important in paragraph 44 as well, you jump to 46, and in paragraph 44 you mention some figures there.

MR ANDRE FRANK PILLAY: Chair there I just broadly mention what would be the fees at the point in time I think it was – and unfortunately I didn't include it, so the issue was that it immediately the signing immediately triggers, without Chair earlier comment

that Eskom does not get a paperclip, a R4million fee, and of which R240million was payable immediately.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Well you said R400million fee, but I guess you have now clarified that is 400million.

MR ANDRE FRANK PILLAY: I've converted that already Chair.

CHAIRPERSON: Ja, okay.

ADV THANDI NORMAN SC: And you mentioned something about Huarong acting in a particular manner in paragraph 45.

10 **MR ANDRE FRANK PILLAY:** So Chair here was an instance where there was – and I think it was at the outset as well, that they wanted to send correspondence and just suggest you can put it on a letterhead of Eskom and sign it and send it back.

CHAIRPERSON: How, when did that happen?

MR ANDRE FRANK PILLAY: So there was an instance in I think the date now is in 2016 and I will confirm that Chair, so there was this intention to say why don't you just put this in a letter and send and sign it back. Sometimes it was ...(intervention)

CHAIRPERSON: In other words preparing and drafting letters for Eskom officials to put on Eskom letterheads and sign?

MR ANDRE FRANK PILLAY: Yes the one letter that I remember Chair it was fairly, if I
20 can call it that, benign, it was just thanking us for the – and even that I found worrying Chair.

ADV THANDI NORMAN SC: Did you at any point sign letters as they suggested and put them on your letterhead and just sign them?

MR ANDRE FRANK PILLAY: The one that alarmed me was the letter that we discussed because if you look at the letter it's almost the same as their letter but I did

not sign a letter no.

ADV THANDI NORMAN SC: You didn't sign any letter?

MR ANDRE FRANK PILLAY: No.

ADV THANDI NORMAN SC: And then would you want to move to paragraph – you've dealt with Mr Ven Zibanda is there anything else in that paragraph you wish to point out to the Chairperson?

MR ANDRE FRANK PILLAY: 46 no Chair, I think I've covered that.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: 47, Chair can I proceed to 47?

10 **ADV THANDI NORMAN SC:** Yes.

MR ANDRE FRANK PILLAY: So 47 Chair I just mention the fact that during the time when there was discussions and just prior to the exit of Mr Arnoj Singh it appeared to me that the Chairman would be able to control this process because at this point in time Chair it was quite clear that we – the governance of Eskom was a problem, the implicated individuals would include him were of concern to the markets and it appeared that Mr Zethembe was protective of Mr Arnoj and did not want to take the decisions to either suspend him and take corrective measures Chair.

ADV THANDI NORMAN SC: Yes, earlier on you did indicate about the involvement of Trillian, I think when this corporate plan drafting, but could you just elaborate and tell
20 the Chairperson what you mean in paragraph 48 about what is their involvement within Eskom?

MR ANDRE FRANK PILLAY: Chair in paragraph 48 I just indicate that following the arrival of Mr Molefe and Mr Singh at Eskom we did McKinsey was working for Eskom and doing work for Eskom at the time, but when they arrived there were increased numbers of McKinsey people, they were doing all sorts of things with Eskom and also

similarly with regiments that then transitioned into Trillion at the time Chair.

ADV THANDI NORMAN SC: And you talk about the R30billion loan facility between Eskom and Goldman Sacks, what do you want to highlight there?

MR ANDRE FRANK PILLAY: Chair here is an example of the – a transaction that we pursued, it was also again an RFP process that we followed, we identified this particular funding and it was clear that the intention was to incorporate or impose Trillion onto this transaction. This transaction particularly Chair was also for around two billion dollars at the time, amounting to R30billion and Goldman Sacks made it clear to Mr Singh that they would not proceed with collaborating or partnering with Trillion with
10 transactions of this nature, but there was no process followed for that Chair.

ADV THANDI NORMAN SC: And you talk about Goldman Sachs and its demands about Mr Arnoj Singh in paragraph 50.

MR ANDRE FRANK PILLAY: So Chair I mentioned the point that I also admit here that when they joined Trillion particularly had the capacity or the competency in the treasury related activities so I did meet with him a number of occasions and in one of the occasions I recall Chair that he made a comment to me that I can do anything in the Treasury for you, Arnoj Singh find a way of paying you, and that was certainly – unfortunately Chair I was alone in the conversation but it was certainly something that I was not – following that Chair I did not have further engagements with him at all.

20 **CHAIRPERSON:** Yes, and he was talking about Treasury, the Eskom Treasury?

MR ANDRE FRANK PILLAY: Eskom Treasury but he indicated you can give me anything to do, Arnoj will find a way of paying you.

CHAIRPERSON: Was it your experience that Mr Anoj Singh could get anything done at Treasury, at Eskom Treasury?

MR ANDRE FRANK PILLAY: No Chair I think it was just generally that...

CHAIRPERSON: Oh.

MR ANDRE FRANK PILLAY: The payment to him was probably well would have happened somewhere else.

CHAIRPERSON: Oh

MR ANDRE FRANK PILLAY: But if we can agree and I would agree that he would do some work for us.

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: Mr Anoj Singh will find a way of paying me.

CHAIRPERSON: Oh okay.

10 **ADV THANDI NORMAN SC:** Just as a matter of interest would as head of treasury would you – would there be a situation where you do not know of any of the payments that are made within – within Eskom?

MR ANDRE FRANK PILLAY: So yes Chair. So the organisation is structured such that there is a customer service area that would deal with the regular payments. We predominantly focus on the payments of our loans and our debt and the foreign debt payments. The other payments are consequences how the rest of the business is conducted. So there would be payments that I am not aware of. They would come through either through our customer service area and be incorporated in the budgets of those departments and get paid in that way.

20 **ADV THANDI NORMAN SC:** Yes thank you. You have dealt already in your evidence about the corporate plan and how it was drafted with the inclusion of McKinsey and Trillian that is repeated in paragraph 51. If you agree with me in that score you could perhaps just deal with how much was paid then to Trillian by Eskom for its participation in the corporate plan?

MR ANDRE FRANK PILLAY: Chair I must admit the reference to the 30 million was

what I picked up in the public domain. So I believe that that was paid and the point that we wanted to make here Chair was the – we drafted the corporate plan and we submitted the corporate plan. Towards the end and the finalisation of this corporate plan Mr Eric Wood was summoned to the office. We went to see Mr Singh. There was a debate on drafting issues Chair and that was it. The financial plan was conclude – the funding plan was concluded but it was drafted by us.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: And I learnt later in the public domain that they were paid 30 million for work that we have done.

10 **CHAIRPERSON:** Did you ever have occasion to check whether what you found out in the public domain was actually true?

MR ANDRE FRANK PILLAY: No Chair.

CHAIRPERSON: As somebody in treasury?

MR ANDRE FRANK PILLAY: No Chair the – I did not pursue that it was basically in the public domain.

CHAIRPERSON: Yes, yes. But if you wanted to find out whether there was such an amount paid out from Eskom being head of treasury would you not be able to find out?

MR ANDRE FRANK PILLAY: I would be able to..

CHAIRPERSON: Yes.

20 **MR ANDRE FRANK PILLAY:** Yes Chair I would be able to go through the organisation and draw records and try and find it Chair.

CHAIRPERSON: Ja. Do you know how long it might take you to find out?

MR ANDRE FRANK PILLAY: No I think it would be – should be fairly quick Chair that we can...

CHAIRPERSON: Oh.

MR ANDRE FRANK PILLAY: We can establish that.

CHAIRPERSON: Okay thank you.

ADV THANDI NORMAN SC: We will follow up thank you Mr Chair.

CHAIRPERSON: Ja, ja I think it should be followed up.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So that we know as a fact whether it happened or not.

ADV THANDI NORMAN SC: Thank you. And then in paragraph 53 which is the last paragraph in your main statement you deal with the payment made to Trillian in the amount of 4 million, what was that for?

10 **CHAIRPERSON**: Well I am sorry Ms Norman!

ADV THANDI NORMAN SC: Yes Mr Chairman.

CHAIRPERSON: Mr Pillay the only thing I am thinking of is whether as head of nat – of treasury when you picked up something like that especially when it was said that somebody had been paid by Eskom such a lot of money for work that you did and they did not do whether it was not – you were not obliged to check whether that was true because if it was true should not – would there not be steps that would need to be taken to follow up who authorised that payment and on what basis they authorised it when those people had not done the work?

20 **MR ANDRE FRANK PILLAY**: Chair certainly it would have been for me to follow up on that. At the time Mr Anoj Singh was still part of the organisation Chair and I certainly did not want to probe at something that – at the hornet's nest Chair.

CHAIRPERSON: But of course he left?

MR ANDRE FRANK PILLAY: So he was still there Chair.

CHAIRPERSON: No I mean afterwards he left?

MR ANDRE FRANK PILLAY: Yes but afterwards I mean to compile this I certainly

should have Chair.

CHAIRPERSON: Ja. Because that is a lot of money that could be money that – taxpayer's money that should not have been paid out and somebody if it was paid out should be held responsible.

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: If it was paid out for no value. Thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Thank you and...

CHAIRPERSON: So that should be followed up to check.

ADV THANDI NORMAN SC: For each yes.

10 **CHAIRPERSON**: And then let the commission know what the position is. A supplementary statement can be made where you say you have checked and this is what you found. Okay?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman. And then you were talking in paragraph 53.

20 **ADV THANDI NORMAN SC**: Chair paragraph 53 just relates an instance where we in the treasury were busy negotiating with China Development Bank at the time. As part of the negotiations we technically got stuck on a particular clause it was a negative pledge clause and I – in my discussions in giving updates to Mr Singh in terms of the progress on it I raised this with him. He asked me to send him an email to say what are the issues, He then took that and sent it onto Trillian and they responded almost with what I in my understanding told him what could be the possible solution and I also again Chair I was – I also learnt and that they were paid almost 4 million for that. And

again Chair in line with your earlier comment just also just follow up on that.

CHAIRPERSON: Follow up and check ja.

ADV THANDI NORMAN SC: Thank you. Thank you very much Mr Chairman. Mr Singh could you then before we conclude just go to your...

MR ANDRE FRANK PILLAY: Mr Singh.

ADV THANDI NORMAN SC: To your supplementary statement.

MR ANDRE FRANK PILLAY: Chair I am being referred to as Mr Singh Chair.

ADV THANDI NORMAN SC: Did I say Mr Singh again?

CHAIRPERSON: Oh second time.

10 **ADV THANDI NORMAN SC**: I – now you must fine me for doing that. Thank you I apologise. Thank you. In your supplementary statement you capture matters that in fact you actually deal with the atmosphere and the environment that it prevailed within Eskom at – during certain times a period between May 2017 to January 2018. And the position of Eskom financial situation at Eskom at that time. Could you without really just going paragraph by paragraph because you know what you – what is contained.

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: In – during that period could you just summarise exactly what was prevailing at Eskom during that period?

20 **MR ANDRE FRANK PILLAY**: Chair the essence of and in preparing for this was I wanted to give a perspective Chair that this was not a situation of mere funds that can be drawn out of the South African economy or if I can use the word looting Chair. The risk of what we were facing at Eskom we stood the risk of collapsing the South African economy. That in the event that Eskom was allowed based on these activities to default on its debt it would have defaulted almost 400 billion of debt. It would have triggered a default into the government debt and it was certainly something that was

quite clear as a result of these activities would have amounted to that. So it was – sorry Chair.

CHAIRPERSON: No, no continue I am listening.

MR ANDRE FRANK PILLAY: I – the point that we wanted to – that I wanted to make here Chair is – was this was not just trying to get money out of the system the risk was we would have collapsed the South African economy. We would have had a depreciation in our currency. We would have our capital and equity markets deteriorate. We would have a collapse in the growth of our economy. It is just unimaginable what could have happened in that event. So I am giving a picture that if

10 the consequences of these activities was ...

CHAIRPERSON: A default on the part of...

MR ANDRE FRANK PILLAY: A default would have been ...

CHAIRPERSON: Disastrous for the economy.

MR ANDRE FRANK PILLAY: It would have been disastrous for the South African economy and it would have been these – these activities or contracts that we signed it would have resulted in that default Chair.

CHAIRPERSON: As I understand the position with regard to guarantees as explained to the commission by various witnesses from or attached to National Treasury at one stage or another it is that if an entity such as Eskom or any SOE well maybe it is not
20 about a guarantee but if – ja no if there is a guarantee, a government guarantee and the entity defaults then it is not a matter of just that particular lender or funder that is connected with that transaction that can then demand the whole repayment of the – of what they are owed but other lenders too may do the same in regard to I think if I understand correctly in regard to other entities and government so ...

MR ANDRE FRANK PILLAY: So Chair the way...

CHAIRPERSON: Is my understanding more or less correct?

MR ANDRE FRANK PILLAY: More or less yes Chair. And I can – if I may Chair

CHAIRPERSON: Ja. Yes.

MR ANDRE FRANK PILLAY: Just clarify.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: So the way it – things are stand now Chair so if Eskom had to default government – the government guarantee framework is such that government steps into Eskom shoes and service the debt that is guaranteed.

CHAIRPERSON: Yes, yes.

10 **MR ANDRE FRANK PILLAY:** And that is only if government has the ability to do so Chair.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: So the point that I am sharing here Chair is that if you look at the context of 400 billion.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: And where we are from a national treasury fiscal position.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: It is unlikely that government would either...

20 **CHAIRPERSON:** Yes.

MR ANDRE FRANK PILLAY: Assume all that debt.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: Or step into Eskom's shoes.

CHAIRPERSON: Yes, yes.

MR ANDRE FRANK PILLAY: And that could trigger a default into the government as

well.

CHAIRPERSON: Yes, yes.

MR ANDRE FRANK PILLAY: Because – and that is the point I am making Chair.

CHAIRPERSON: Yes and then it would mean that not only would government not be able to borrow but other lenders who might demand payment as well.

MR ANDRE FRANK PILLAY: Yes Chair.

CHAIRPERSON: Ja so it is actually it would be quite disastrous for the economy?

MR ANDRE FRANK PILLAY: Chair disastrous oh indeed. The only example that I can think of now would be the Argentinian.

10 **CHAIRPERSON**: Yes.

MR ANDRE FRANK PILLAY: Situation Chair.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: So we could technically worst case scenario if government is unable to arrest the situation trigger a default into the sovereign as well so our government would be defaulting.

CHAIRPERSON: Yes. Yes. Okay let us go back to the transaction that Mr Maritz signed. You instructed people at treasury at Eskom not to execute on the invoice that was put up?

MR ANDRE FRANK PILLAY: Yes Chair.

20 **CHAIRPERSON**: Where did that end? I do not think I heard that. What happened? Was it never paid or what happened?

MR ANDRE FRANK PILLAY: Chair still even after the second signature we were still serve – again served with an invoice to almost the most quantum or amount. We still did not pay and it is also Chair if you look at the time, the passage of time this is when the new leadership, the new CEO and the board walk in.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: And they then found this situation. Obviously our reporting into the organisation.

CHAIRPERSON: Yes, yes.

MR ANDRE FRANK PILLAY: That this event happened.

CHAIRPERSON: Oh this is when now the new board...

MR ANDRE FRANK PILLAY: New board came in Chair.

CHAIRPERSON: Came in. This is now early 2018.

MR ANDRE FRANK PILLAY: Yes Chair.

10 **CHAIRPERSON:** Yes.

MR ANDRE FRANK PILLAY: And then there was formal communication between Eskom and Huarong they approached Eskom and I think to the comment of the – our chairman last week Chair that Eskom basically said to them this thing was not signed ...

CHAIRPERSON: Oh yes now I remember ja. He said they were not going to pay and the chairperson of Huarong asked for ...

MR ANDRE FRANK PILLAY: Confirmation...

CHAIRPERSON: A meeting over coffee or something and your chairman said no I am not going to have coffee with you.

20 **MR ANDRE FRANK PILLAY:** Yes.

CHAIRPERSON: If you want to sue us, sue us. Is that – that is where the whole position is?

MR ANDRE FRANK PILLAY: Yes Chair and that is the process.

CHAIRPERSON: Ja okay and Mr Maritz was dismissed?

MR ANDRE FRANK PILLAY: He was – he – during that disciplinary process I think

towards the end of January, February there was this Bowman's investigation.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: And during that process he resigned Chair.

CHAIRPERSON: Yes okay.

MR ANDRE FRANK PILLAY: that is what I ...

CHAIRPERSON: Okay that – okay alright.

ADV THANDI NORMAN SC: Thank you Mr Chairman. And then you deal in that supplementary affidavit with the – the qualified audit of Eskom and the consequences that that had on Eskom and its debt to its lenders. Could you just deal with that?

10 **MR ANDRE FRANK PILLAY**: So Chair the issue that we had was the under the qualification in some of our loan agreements particular two Chair and I ask Chair that the sensitivity of the name be kept that...

CHAIRPERSON: Ja.

MR ANDRE FRANK PILLAY: Of those particular lenders Chair that if you do not deal with the qualification and the default, event of default under those loan agreements Eskom would technically default and we would not be able to release our results at a point in time. We would not be able to secure funding and so those matters that resulted in the qualified audit was certainly at that point in time linked to the transactions, the contentious transactions that is in the public domain they were linked
20 to those that resulted in the qualification of Eskom's side Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you and that qualified opinion is in Annexure AP25 at page 530. There the auditors identified the basis for that qualified opinion. Can you recall what that basis is you can go to page 530 and just summarise under Basis for Qualified Irregular Expenditure. Page 530.

MR ANDRE FRANK PILLAY: Sorry Chair. In our opinion if I may Chair?

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY:

“That the basis of the qualification Chair is basically the irregular expenditure and it relates to in this Section 55(2)(B)i of the PFMA that requires disclosure in a note to the consolidated and separate financial statements particulars of the irregular expenditure that has occurred during the financial year”

10 And that Chair I think what we dealt or what we dealt with here was the auditors could not in the Eskom’s audit at the time that it was conducted find and in particular at a point in time the matters relating to McKinsey, Trillian and I think it was Impulse at the time. And for that reason the auditors qualified the audit.

ADV THANDI NORMAN SC: Yes thank you and then at page ...

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: 535 they identify matters under procurement and they comment on that – could you just quickly briefly summarise what they say there?

MR ANDRE FRANK PILLAY: So Chair over and above the – those particular contracts Chair they were also irregularities in our procurement so it ranges from invoices, foreign
20 tax invoices that was not available for foreign suppliers. There is quite a number of them Chair that relates to that. There was also non-compliance with the construction industry certification that we needed as part of our procurement so there was a – but those were probably the – what I can recall the issues that we dealt with that resulted in the non-compliance from a procurement perspective.

ADV THANDI NORMAN SC: Thank you. I am not sure whether you want to – are you

satisfied with your answer to the Chairperson when you were dealing and the Chairperson was putting to you the scenario about guarantees and with Eskom having a qualified audit what that had on Eskom's debts having to lenders calling up debt and with Eskom defaulting. Do you want to just quickly briefly elaborate on that?

MR ANDRE FRANK PILLAY: So Chair the qualified audit would result in an event of default. If you are not able to cure that or waiver the event of default or remedy it it would certainly result in a pre-payment of those facilities and that would – there are some cross default triggers into our other loan facilities and there was a number of them Chair and that would result in almost a default on our total debt if you go through
10 the waterfall of our debt portfolio. So the qualification was quite material if we were not able to remedy that or waiver that Chair.

CHAIRPERSON: Do you have a recollection of what Eskom's total debt was more or less around that time if you had defaulted. What government could have been called upon to sort out?

MR ANDRE FRANK PILLAY: Chair from memory I think it was the order of magnitude of about 395 billion at the time Chair.

CHAIRPERSON: Okay thank you.

ADV THANDI NORMAN SC: Thank you. I – we seemed to have covered everything I am not sure whether you really want to go – I think you have covered the gist of what
20 you wanted to convey in your supplementary.

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: The situation at Eskom at the time and how the audit itself had affected Eskom as an entity and how maybe you could just talk to the steps that you took in order to make sure that you did not have a situation where all lenders were calling up debt.

MR ANDRE FRANK PILLAY: So Chair the – what we then – the process that was followed is obviously to deal with the issues that give rise to the qualification and address that with a particular lender. We engaged the lender and the lender then indicated what – what Eskom would have to deal with is obviously the issues around the concerns that the investor community and not the lender particularly had was the procurement issues at Eskom. What is in the public domain around governance and people implicated into some of the – also again what was in the public domain the behaviour of certain individuals within Eskom and those were some of the discussions that we had with lenders at the time Chair.

10 **ADV THANDI NORMAN SC:** Thank you. And then you have an important period as well in your supplementary between April 2015 and June 2017. Could you please just talk to that and also to the conversations with Mr Brian Molefe ...

MR ANDRE FRANK PILLAY: So Chair in...

ADV THANDI NORMAN SC: In paragraph 16 and 16.

MR ANDRE FRANK PILLAY: Chair the – I think I have largely covered what the issues on 15 was in terms when after Mr Molefe and Mr Singh arrived at Eskom from Transnet and the presence of McKinsey and Trillian at Eskom and then in 16 Chair there was also a request when we were Chair you may recall when we referred to the public sector participation programme there was the suggestion or the proposal or
20 recommendation from Mr Singh to say that we should go and Transnet look at their policy and basically use that as a reference for our PSP programme Chair.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: And then also Chair and I mentioned in my statement Chair that there was a particular point in time where the then treasurer Caroline Henry indicated that and it was a verbal conversation Chair so it was not a formal meeting that

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: That Mr Molefe suggested that if we are sitting with surplus cash can we not reinvest that with Transnet given their liquidity requirements. I think we – oh not I think I know that we responded by saying our policies does not allow for that. But I think it is just worth noting that Chair. It was not an instruction it was not basically insisting just mention that Chair.

ADV THANDI NORMAN SC: And then you say that both Ms Henry and Mr Homewood their contracts were not renewed?

MR ANDRE FRANK PILLAY: So Ms Henry she and that is again Chair my
10 understanding at the point in time she was at the time where she had to renegotiate her contract and it was renewed and the indications was that she does not fit in with the new leadership of the organisation. That was certainly my impression and I have explained what happened to Mr Homewood in terms the instruction to me to say I must exit him from the...sation. That was certainly my impression and I have explained what happened to Mr Homewood in terms the instruction to me to say I must exit him from the...

CHAIRPERSON: Actually at some stage I was going to come back to you on that that you were given instructions by Mr Anoj Singh to get rid of him and how you – whether you ultimately got rid of him yourself or and if so how you went about that because from
20 what you indicated earlier on it seemed you not in agreement with this instruction.

MR ANDRE FRANK PILLAY: Ja so Chair the – it worked out in a quite an interesting way. So I went back to Mr Singh and asked why do we need to do this. I suggest to him that I am not comfortable to go and say listen you need to leave. I proposed that I know that he wanted to leave when Ms Henry left so I wanted to suggest to him can we not say to him that he wanted to leave and this is an opportunity for him to consider.

But by the time that I – after a couple of days delay because I found it quite difficult to do that Chair when I called him to have the discussion with him Chair to explain to him what was happening he already in the organisation found out that there was this plan of [indistinct]. So before I could even engage him he said to me he is comfortable just show me what is on the table and what you propose and I will – I am willing to go. So there was no need for a conversation that you need to leave and this is almost – there was no need for that conversation Chair.

CHAIRPERSON: Well you see one of the problems that – one of the problems that have been seen in government departments and in parastatals from what one picks up
10 simply from the media is that there may well be certain funds, taxpayer's money that gets used to get rid of officials or employees that have done nothing wrong just because somebody senior does not want them. Sometime does not want them for personal reasons, sometimes because that person is a stumbling block to things that the senior one wants to have done and to then want to put in somebody that is not going to be stumbling block. That cannot be certainly where it is done for oh purposes of getting somebody else in who will be pliable to issues of corruption that is not the way how taxpayer's money can be used and certainly what you said earlier on when you testified it seems that you did not think that there was a valid reason for Mr Singh to want that member of your staff to be – to leave.

20 **MR ANDRE FRANK PILLAY:** No certainly not Chair.

CHAIRPERSON: Yes and despite whatever Mr Singh might have told you you remained unpersuaded that there was a good reason?

MR ANDRE FRANK PILLAY: No, no still not Chair to this day not convinced Chair.

MR ANDRE FRANK PILLAY: Yes. Okay.

ADV THANDI NORMAN SC: Yes. Thank you Mr Chairman and then you deal with the

issue of delegation of authority in 2015 which you – you refer the commission to AP27 which appears at page 557. What is it that you want convey about the delegations of authority?

MR ANDRE FRANK PILLAY: Chair the – what I wanted to share here in terms of what were the limits that certain committees were able to sign off on and certainly the understanding that or the sign off of the long term facility by Mr Maritz was not part of his delegation. At least the approved delegation by government DOA.

CHAIRPERSON: Okay what paragraph – what page is that?

ADV THANDI NORMAN SC: It is page 558 Mr Chairman.

10 **CHAIRPERSON:** 585?

ADV THANDI NORMAN SC: 558. 558.

CHAIRPERSON: 558 okay.

ADV THANDI NORMAN SC: Yes thank you Mr Chairman. Where would Mr Maritz fall within those categories if you could just direct the Chairperson to the relevant one?

MR ANDRE FRANK PILLAY: So Chair if I may page 565. So it would be largely linked to – so this is specific on – under the but just a guide Chair is that if you look at paragraph 232 it gives you a sense of what the – sorry Chair.

CHAIRPERSON: Yes I have got it now.

20 **MR ANDRE FRANK PILLAY:** So 56 – 532 highlights at least finance director and not even the CEO. That is the limits that they have so it says:

“The following designations may on behalf of Eskom and up to the following limits negotiate, conclude and approve transactions in foreign currency exchange interest rates and commodity derivatives.”

ADV THANDI NORMAN SC: Let us have a – take an example you would be...

CHAIRPERSON: No I am sorry I thought I found it. Did you say 562?

ADV THANDI NORMAN SC: 565.

MR ANDRE FRANK PILLAY: 565.

CHAIRPERSON: 565.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Yes. I have got 565 I was here earlier on.

ADV THANDI NORMAN SC: Paragraph 232.

CHAIRPERSON: 23

ADV THANDI NORMAN SC: 2 paragraph 232 Mr Chairman. Yes.

CHAIRPERSON: Oh yes alright.

10 **ADV THANDI NORMAN SC:** Yes.

CHAIRPERSON: Ja the following designation may on behalf of Eskom and up to the following limits negotiate, conclude and approve transactions and foreign exchange foreign interest rate and commodity derivative instruments. Okay alright.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: That is the – just for the finance director Chair and if I – may – if I can refer you to 558 Chair.

CHAIRPERSON: 55?

MR ANDRE FRANK PILLAY: 558.

CHAIRPERSON: Yes.

20 **MR ANDRE FRANK PILLAY:** So there Chair if you look at the resolution resolved that under two financial limits and we refer here to the IFC Chair. General transactional limits is increased from 500 million to 750 million.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: So the point that we wanted to – that I wanted to highlight here Chair that even the IFC.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: That we took that transaction to according to this delegation Chair.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: Did not have the authority to even...

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: The IFC was compelled.

MR ANDRE FRANK PILLAY: Yes.

MR ANDRE FRANK PILLAY: To elevate it to the board.

10 **CHAIRPERSON:** Yes. So and being acting group CEO are you saying that Mr Maritz would certainly have known the limit of his delegations?

MR ANDRE FRANK PILLAY: I think not necessarily know, but probably followed up on it.

CHAIRPERSON: *Ja.*

MR ANDRE FRANK PILLAY: And I think also Chair the, the, the reason for raising it here is that in that email that he responded to the CFO to say that he is going to sign.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: He indicated a number of 5 billion that he is delegated to sign.

20 **CHAIRPERSON:** Yes.

MR ANDRE FRANK PILLAY: But this.

CHAIRPERSON: Okay.

MR ANDRE FRANK PILLAY: Somehow suggests something different.

CHAIRPERSON: *Ja, okay.*

MR ANDRE FRANK PILLAY: That we need to confirm.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you and, and at page 565 the General Manager Treasury just below 2.3.2 that would be yourself.

MR ANDRE FRANK PILLAY: 56?

ADV THANDI NORMAN SC: 565.

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Yes. At, at what point then did you realise that the IFC did not have authority to look into the proposal?

MR ANDRE FRANK PILLAY: It is at, at the time when, when this email came back that
10 Sean Maritz indicated that he is going to sign. That is when I looked at the, the, the delegation.

ADV THANDI NORMAN SC: But, but is, I think I referred you to a memorandum that you had prepared to the IFC?

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: Yes. If then IFC did not have authority why would you forward a memorandum to it for it to look into the proposal?

MR ANDRE FRANK PILLAY: No Chair so the, the request was for it to go to the IFC.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: And, and, and only afterwards did I also pick this up but
20 the limit of that was only for the IFC. So it was certainly from my side as well that it had to go to all.

CHAIRPERSON: Oh, okay, okay.

ADV THANDI NORMAN SC: Thank you and then.

CHAIRPERSON: And to that, are you, are you saying to that extent Mr Maritz might also have been unaware of that limit?

MR ANDRE FRANK PILLAY: He may have been unaware of that limit Chair.

CHAIRPERSON: *Ja*, okay.

ADV THANDI NORMAN SC: Thank you Chair. Just to wind up then on the Huarong transaction action. Huarong was, as you have already testified in your evidence, Huarong was just a vehicle set up purely for the purposes of Tribus interacting with Eskom. Am I right?

MR ANDRE FRANK PILLAY: [Intervenes].

ADV THANDI NORMAN SC: To facilitate the, the, the.

MR ANDRE FRANK PILLAY: They, they were.

10 **ADV THANDI NORMAN SC:** The funding.

MR ANDRE FRANK PILLAY: From the high fund to the, the, the success, the, the, the following discussions or the follow up discussions that we had.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: That was always conceptually what they wanted.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: They wanted to do. The only difference Chair was that they were with Huarong. They were now able to get bigger funding volume to be able to do, so.

ADV THANDI NORMAN SC: Yes.

20 **MR ANDRE FRANK PILLAY:** So it was always part of their structure that they followed.

ADV THANDI NORMAN SC: Yes and was Huarong registered on the database of Eskom as a supplier?

MR ANDRE FRANK PILLAY: No.

ADV THANDI NORMAN SC: Is that how Eskom does business? You do not have to

register as a supplier? You can do business with Eskom without being on, on its database?

MR ANDRE FRANK PILLAY: So Chair this is part of that process that had to be followed. That if we, we do not register them without having concluded or agreed or signed off on agreement that would say they are now a supplier in this format and again Chair back to the, the issue that transaction apart from the IFC it still had to go to the BTC to, to, to deal with those issues according to my understanding at the time Chair.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: But I think the.

10 **ADV THANDI NORMAN SC:** Sorry.

CHAIRPERSON: The question is whether you register a company in your database when you have concluded a contract with them or it is a requirement that they should be on the database before you can conclude a contract with them.

MR ANDRE FRANK PILLAY: I am not sure Chair. I.

CHAIRPERSON: Oh, thank you.

MR ANDRE FRANK PILLAY: *Ja*, I am certainly not sure of that at this stage.

CHAIRPERSON: *Ja*, so, so it might not be a strict requirement that you must be, you must be on the database before a contract can be concluded?

MR ANDRE FRANK PILLAY: Yes.

20 **CHAIRPERSON:** It might not be a strict requirement or it might not be a requirement at all?

MR ANDRE FRANK PILLAY: I am certainly not sure Chair.

CHAIRPERSON: *Ja*.

MR ANDRE FRANK PILLAY: *Ja*.

CHAIRPERSON: But, but you have been there for seven years. Probably if it was a

strict requirement you would know?

MR ANDRE FRANK PILLAY: I would know Chair.

CHAIRPERSON: *Ja.*

MR ANDRE FRANK PILLAY: *Ja.*

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Can you just follow up on that Mr Pillay? I even as lawyers you would not be able to do work with Government if you do not appear on the Treasury database. Is that, is that, is that something that, maybe they are just abusing lawyers. It is something that we can, we can do without being on the database and just
10 do business with, with, with Government?

MR ANDRE FRANK PILLAY: Sorry, Chair the, is the question that if they are not on the database?

ADV THANDI NORMAN SC: Yes. That you cannot do business with them.

MR ANDRE FRANK PILLAY: So in, in our case what, if you use the example of the lawyers we have a legal panel.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: That is established and then you would obviously if you are qualified and on the panel you would be on the database on the Eskom.

ADV THANDI NORMAN SC: Yes and then only then will Eskom contract you to do
20 work for it?

MR ANDRE FRANK PILLAY: That that and so there would be a contracting period obviously to bet you onto the panel and for you to be on that is that is certainly my understanding of it.

ADV THANDI NORMAN SC: Alright. That there must be a contract first before you are on the panel? Before you are, you are [intervenes].

MR ANDRE FRANK PILLAY: I am not; that is the part that I am not sure Chair of which comes first. The.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: You have a contract and then you are registered or are you registered then you have a contract.

ADV THANDI NORMAN SC: But it is your section not a custodian of that information as Treasury Eskom?

MR ANDRE FRANK PILLAY: Of, of the legal panel?

ADV THANDI NORMAN SC: No, no, no. Not necessarily the legal. Of.

10 **CHAIRPERSON:** Of.

ADV THANDI NORMAN SC: Of the database for suppliers for Eskom.

MR ANDRE FRANK PILLAY: So the, we have a general database.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: So what we do with and in this case there was an RFP. We have issued that RFP to the whole market. We did not say if you are not on the Eskom database or you can only.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Yes, alright okay and then and then just on that RSP, RFP scope you said how many people reacted to that?

20 **MR ANDRE FRANK PILLAY:** I, sorry Chair I am not sure, but there was a [intervenes].

ADV THANDI NORMAN SC: [Intervenes].

MR ANDRE FRANK PILLAY: I think indicative I mean I, from memory I remember there were the ones that I mentioned earlier was the, the J P Morgan Municipal Debt Securitisation. There was the Absa, RMP Facilities. Sorry, I do not have off the top of my head.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: The whole complete list.

ADV THANDI NORMAN SC: And then what, what, how do you make sure, the Chairperson did indicate this when he put one of the questions to you that in order to make sure that your procurement processes you know constitutionally compliant how do you make sure that for instance like in this case of Huarong where you have cast the net wide and you said anyone who has got a funding proposal who is going to, not going to require Government.

MR ANDRE FRANK PILLAY: Guarantees.

10 **ADV THANDI NORMAN SC:** Guarantees, please offer your services to us. How do you then make sure that that process is fair? It is competitive and it is, it is costs effective?

MR ANDRE FRANK PILLAY: So Chair based on the criteria the, the, the team or the Committee that evaluates that would then say this is the responses that we got, but I do not, sorry I think it is in line with the responses that we get as the RFP that we put out for the request for the information. Then we would assess if it is, it is transparent, does it comply with all the requirements of the RFP.

ADV THANDI NORMAN SC: Yes and then am I correct to say that in your answers to the Chairperson you did not have a successful bidder from the RFP process in your
20 answers to the Chairperson there was not a successful bidder to that RFP process?

MR ANDRE FRANK PILLAY: To the RFP process?

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: The ones that we were dealing with so the [intervenes].

ADV THANDI NORMAN SC: The Huarong situation.

MR ANDRE FRANK PILLAY: Ja.

ADV THANDI NORMAN SC: Yes.

MR ANDRE FRANK PILLAY: Yes and, and the, the ones the examples that are used, the J P Morgan, the, the Absa and the RMP proposals. They were certainly of one that I can recall.

ADV THANDI NORMAN SC: Yes and then.

CHAIRPERSON: I am sorry.

ADV THANDI NORMAN SC: Sorry.

CHAIRPERSON: Is, is the answer that you concluded that process and there were entities or suppliers that service providers that you elect, you appointed?

10 **MR ANDRE FRANK PILLAY:** So we, we, we did not conclude with that. So we were.

CHAIRPERSON: You left it hanging?

MR ANDRE FRANK PILLAY: We identified the list.

CHAIRPERSON: *Ja.*

MR ANDRE FRANK PILLAY: And we were continuing with discussions with them Chair.

CHAIRPERSON: But was that discussion concluded at any stage or it was abandoned after the signing of the agreement?

20 **MR ANDRE FRANK PILLAY:** No Chair. So we, we concluded the, the particularly the J P Morgan one we could not conclude because of the, the state within Eskom particularly around the municipal debt. The other two from memory the J, the Absa transaction and we have concluded on an RMP transaction Chair.

CHAIRPERSON: Okay and, and those were entities that responded to the RFP that you told us about?

MR ANDRE FRANK PILLAY: RFI, RFP Chair.

CHAIRPERSON: Okay, alright. Thank you.

ADV THANDI NORMAN SC: That is Absa and RMP you said those are concluded?

MR ANDRE FRANK PILLAY: That is from memory that I can recall Chair.

ADV THANDI NORMAN SC: Yes. Those were concluded. Just, just one other thing. Let us just talk about this Huarong and the iDiva entity that was going to receive the money. Were you aware when White & Case, you know in some of the matters that you had raised that iDiva they had found that iDiva was actually a shoe company that was registered in the Virgin Islands. Were you aware of that information?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: And being a person who then is entrusted with you know
10 public funds within Eskom Treasury, did you not see that as a risk of saying look I do not even want to touch this people in this company and this proposal?

MR ANDRE FRANK PILLAY: So Chair I think the, obviously the, it raises the red flags the Virgin Isles and we raised this issue of, of iDiva Chair, but we wanted to conclude our process so that we can go back and say to them we have concluded. It was not midstream that we have, we have seen iDiva and we do not like it. We wanted to complete our process so that we can go back to them comprehensively and indicate to them what it is that we, we did not want and why we did not conclude the term. That was certainly my understanding or approach to it.

ADV THANDI NORMAN SC: Yes and the, the, what is called the parent company of,
20 of, of Huarong and you had seen the structure and in that structure which appears in your statement maybe I will just take you back just slightly you would find that even within that structure Huarong Energy Africa only has a stake of about 8.2 percent, if you look at it.

MR ANDRE FRANK PILLAY: I think.

ADV THANDI NORMAN SC: Is it 25.08? I just, I just want to take you to that please.

If you like, if you could just bear with me Mr Chairperson.

MR ANDRE FRANK PILLAY: Sorry Chair, the page?

ADV THANDI NORMAN SC: Sorry. I am going to take you to that page just quickly a second. Sorry, I just want to find the diagram. Just, just talking about that maybe, what, what investigations did you as Treasury do to make sure that if a company says I personally I do not have the money, but my parent company will fund this process. What measures or systems do you have within Treasury that you must employ or in order to make sure that not just one fly by night can come to you and say I can actually fund you and in fact it does not have funds. Thank you, thank you. I found the page
10 Chairperson. It is page 428, thank you, of the, of U6. The big bundle. 428, sorry. As you can see the, the, what is called as a parent company, China Huarong Asset Managing Company on top.

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: Yes and you can see Huarong Energy Africa is right down there.

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: With a 25 percent stake in Huarong Energy Investment.

MR ANDRE FRANK PILLAY: 65 percent stake in Huarong Energy Investment and that has been 25 percent stake in Huarong Energy Africa Chair.

20 **ADV THANDI NORMAN SC:** Yes. Now 65 percent is for China Huarong.

MR ANDRE FRANK PILLAY: China Overseas Investment in, into Huarong Energy Investment.

ADV THANDI NORMAN SC: Yes, but we are talking about the Huarong that you were, you were dealing with.

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: Yes what is the percentage for that one?

MR ANDRE FRANK PILLAY: The Huarong, we were dealing with Huarong Energy Africa.

ADV THANDI NORMAN SC: Yes and how, please can you try and relate that to the very first management company that is on top?

MR ANDRE FRANK PILLAY: So the, the, the management top company on top is 100 percent owned. It has 51 percent stake. So there is obviously the, the funding would, would, would be structured and, and from the Huarong Overseas Chinese Asset Management that has 100 percent stake in China Huarong Overseas Investment and
10 that 65 percent in Huarong Energy Africa with a 25 percent stake in Huarong Energy Africa.

ADV THANDI NORMAN SC: So all of this is what you were told by Huarong Energy Africa?

MR ANDRE FRANK PILLAY: Yes Chair.

ADV THANDI NORMAN SC: And on your own as, as, as Treasury you never checked whether in fact even Huarong Management would be prepared to put up funds to assist in this transaction?

MR ANDRE FRANK PILLAY: This, this was based on the proposal and I, and we did do some a due diligence on or just an assessment of the; and, and, and you will recall
20 Chair that we, we did in that discussions with them meet the individuals from Huarong Energy and they provided a profile of the company to us. So, and, and, and obviously linked to that was the, the involvement of White & Case to do that assessment for us Chair. So we did do that.

ADV THANDI NORMAN SC: Yes, but then you see we keep on going back to White & Case and, and this troubles me because White & Case is very clear there is no grey

area in their memorandum.

MR ANDRE FRANK PILLAY: Yes.

ADV THANDI NORMAN SC: They are simply saying that everything about these people is suspect. These companies, get more information before you do business with them, but then you, you, Eskom continued to just engage them and do business with them. Who really stood to benefit from this transaction?

MR ANDRE FRANK PILLAY: Chair the, the, the; so the process we had to follow our, our legal process and, and we could not just suspend it in between because we do not like iDiva or we, we, we had to complete our process so that we can conclude it and
10 say to them based on a comprehensive review these are the reasons that we do not want to continue with you, because it would certainly in, in just thinking of it Chair result in Huarong saying to us as per this term sheet you were frustrated and you, you have, you have basically compromised the negotiations to get to the alpha.

ADV THANDI NORMAN SC: But again if you say to them iDiva is a shoe company.

MR ANDRE FRANK PILLAY: They were aware. We told them that.

ADV THANDI NORMAN SC: Yes, but.

MR ANDRE FRANK PILLAY: We indicated that to them.

ADV THANDI NORMAN SC: Yes, but I am, what I would like to know from you
Mr Pillay there was legal advice against this transaction. There was financial advice
20 from Mr Khan against this transaction.

MR ANDRE FRANK PILLAY: Hm.

ADV THANDI NORMAN SC: And nothing was happening in the sense that nobody was actually saying here is money into your South African bank to show commitment on their part. How was this transaction going to benefit Eskom?

MR ANDRE FRANK PILLAY: So Chair the, the, the, there would not be money going

into Eskom if you do not have an agreement that is signed and, and certainly the discussions around August was clear that there was following our process the legal advice is clearly there and not to continue. The, the evaluation from Mr Khan is clearly there. So there was sufficient reason now to say based on a process that we followed that we can go back to them and say to them we have followed our processes. We cannot continue with you.

ADV THANDI NORMAN SC: Then at what point then just before Mr Maritz had signed at what point did you raise these matters with Huarong and say they there are these concerns please rectify them or satisfy us that in fact these matters which are crucial
10 towards the conclusion of the agreement even if it was not going to be, but if you were anticipating concluding one, at what point were these matters raised with them?

MR ANDRE FRANK PILLAY: It was, it was raised throughout the discussion around the, the agreement.

CHAIRPERSON: Alright.

MR ANDRE FRANK PILLAY: That that we had concerns with all of these [intervenes].

CHAIRPERSON: Is not the position that you as Treasury raise them with those to whom you reported, but those to whom you reported did not share the same view as you with regard to what the attitude should be to Huarong?

MR ANDRE FRANK PILLAY: Chair it may be an easy yes out Chair, but certainly.

20 **CHAIRPERSON:** Hm.

MR ANDRE FRANK PILLAY: We engaged them.

CHAIRPERSON: Huarong?

MR ANDRE FRANK PILLAY: *Ja.* We raised it.

CHAIRPERSON: Ys.

MR ANDRE FRANK PILLAY: Internally Chair, but.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: There was the process that we are unfolding and developing.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: The, and, and, and the proposal or engaging or negotiating this proposal [intervenes].

CHAIRPERSON: Including with Mr Anoj Singh or when he was not there?

MR ANDRE FRANK PILLAY: No, just with them Chair, because the Board's resolution was negotiating and [indistinct].

10 **CHAIRPERSON:** Yes.

MR ANDRE FRANK PILLAY: And conclude. He has to be [intervenes].

CHAIRPERSON: No, no what, what I mean is, from what you have told us at least from a certain stage Mr Anoj Singh seemed to be, to have no problems dealing with them or even concluding signing some agreements of one kind or another with them, but you as Head of Treasury at Eskom from quite early you had serious reservations to say the least with regard to proposals from Huarong. So what I thought might be the position is that what you told to Huarong depended on what Mr Anoj Singh's attitude was because he would be I would, I, I thought he would be the leader of any group from Eskom discussing with Huarong, but I may be mistaken in that regard, because you say
20 you did raise these issues with Huarong.

MR ANDRE FRANK PILLAY: Yes we did.

CHAIRPERSON: And would Mr Anoj Singh have been present when you raised them or he would have been?

ADV THANDI NORMAN SC: No Chair.

CHAIRPERSON: Not have been present?

MR ANDRE FRANK PILLAY: No he was not, he was not present when we engaged with him.

CHAIRPERSON: Oh, okay.

MR ANDRE FRANK PILLAY: In, in that process.

CHAIRPERSON: Anyway the answer is that you did raise them.

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: Prior to the signing?

MR ANDRE FRANK PILLAY: Prior to the signing and throughout the process.

CHAIRPERSON: *Ja.*

10 **MR ANDRE FRANK PILLAY:** That we were going through with that Chair.

CHAIRPERSON: Okay, okay.

ADV THANDI NORMAN SC: Yes, thank you and, and raising them, did you raise them in, in writing?

MR ANDRE FRANK PILLAY: So there, there is evidence of just particularly the, the fee issue and the structuring of the fees. We raised those with, with Huarong.

ADV THANDI NORMAN SC: Yes, but I am talking about matters that are structural that are raised by White & Case. They raised structural matters and matters relating to the terms. The structural issues about the composition of the various entities did you ever raise those in writing?

20 **MR ANDRE FRANK PILLAY:** No, no not in writing Chair.

ADV THANDI NORMAN SC: Yes, thank you.

MR ANDRE FRANK PILLAY: But it is, it is in the part of the negotiations and the discussions we had with them.

ADV THANDI NORMAN SC: Yes, thank you. Lastly Mr Pillay from the correspondence I have taken you through the submissions and everything else that you

had prepared. It appears that there was a point when you were in support of this transaction. Am I right?

MR ANDRE FRANK PILLAY: Chair the, the, the only reference to it in terms of the support of the transaction was in particular the questions at the various Boards and it was specific to the fee, the LIBOR plus 2.7 and I remarked that given my high level assessment of it, it should not be unfair. I am comfortable, but I must also admit Chair that that was in the absence of having to go to [indistinct] and having a firm discussion and discussion around that Chair. There was certainly never an, an, an express [background noise] to say I support this. I want to do this.

10 **CHAIRPERSON:** *Ja*, okay.

ADV THANDI NORMAN SC: So in other words from everything that you have written that indicates that you were moving the Board, the IFC or the PTC to support whatever it is that you were requesting about the transaction. The Chairperson must not regard that as your support of the transaction?

MR ANDRE FRANK PILLAY: No. So it, it is, I mean I took it to the process.

ADV THANDI NORMAN SC: What does that mean? Please [intervenes].

MR ANDRE FRANK PILLAY: So I, I presented it to the Board, because I, I, I cannot go to the Board in my personal capacity and say trying to convince the Board to support it. It was based on a RFP/RFI process that we followed.

20 **ADV THANDI NORMAN SC:** I am just trying to understand.

CHAIRPERSON: Well.

ADV THANDI NORMAN SC: Sorry.

CHAIRPERSON: Well maybe let us put it this say.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Did you ever say anything to the Board that did not; that may have

showed that you were supportive of this transaction when in fact you were not supportive of it?

MR ANDRE FRANK PILLAY: So Chair to, just back to the, the only discussion.

CHAIRPERSON: [Intervenes], *ja*.

MR ANDRE FRANK PILLAY: Was, was particularly around that pricing.

CHAIRPERSON: Yes, *ja*.

MR ANDRE FRANK PILLAY: Hm.

CHAIRPERSON: *Ja*.

MR ANDRE FRANK PILLAY: Even from the Board minutes there was never an
10 instance where I expressly said to the Board we have to do this and it is.

CHAIRPERSON: *Ja, ja*.

MR ANDRE FRANK PILLAY: *Ja*. There is also unfortunately not recorded that I said we have to go through our process. That is what we were following.

CHAIRPERSON: Yes, *ja*.

MR ANDRE FRANK PILLAY: From the, the.

CHAIRPERSON: *Ja*.

MR ANDRE FRANK PILLAY: February meeting Chair.

CHAIRPERSON: *Ja, okay*.

ADV THANDI NORMAN SC: But then with, with all of that you kept on moving the
20 process forward, because your, your answers today were that we wanted to comply and we wanted to do things right. You wanted to prove, to move forward a process that you were not support involved as Head of Treasury.

MR ANDRE FRANK PILLAY: So Chair what I, what I, so part of the negotiations we wanted to conclude the negotiations with them and obviously follow our process so that when we come to a position where it says this thing is not doable and it is not my

specific view. It is the process that was followed. That is certainly what I, I think we did.

CHAIRPERSON: So if it was to happen you wanted to make sure that the right processes were followed?

MR ANDRE FRANK PILLAY: Followed, yes Chair.

CHAIRPERSON: but whether or not it was to happen or to be approved was a decision that would be taken at the end of the process?

MR ANDRE FRANK PILLAY: Process, yes Chair.

CHAIRPERSON: Is, is that right?

10 **MR ANDRE FRANK PILLAY:** Yes, yes Chair.

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: Thank you very much Mr Chair.

CHAIRPERSON: Well are you satisfied?

ADV THANDI NORMAN SC: That is that is all from. I am satisfied Mr Chair.

CHAIRPERSON: Yes, fine. You can, you can still clarify it.

ADV THANDI NORMAN SC: Could I? I am just worried about, it is 25 past five and I have not even indicated to the Chair.

CHAIRPERSON: Well let me give you a five minutes.

ADV THANDI NORMAN SC: Five minutes?

20 **CHAIRPERSON:** *Ja.*

ADV THANDI NORMAN SC: Thank you Mr Chair

CHAIRPERSON: So half past.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: [Laughing].

ADV THANDI NORMAN SC: Thank you Mr Chair. Just as the Head of Treasury

Mr Pillay this is now I am not trying to say I doubt the answer that you have just given to, to, to a question that I asked you. I am just trying to understand the situation where you are heading an institution, a department within that institution and certain things happen and you move forward with the process in the manner in which you did and then you come at the tail end now in 2018 three years down the line and you say to the Chairperson I did not support this process. I was just going through the motions.

MR ANDRE FRANK PILLAY: I think going through the motions Chair is as going through the process.

CHAIRPERSON: *Ja, ja.*

10 **MR ANDRE FRANK PILLAY:** And, and I also think what, so we were going through the process completing the process so that we can arrive at a point where it says.

CHAIRPERSON: Hm.

MR ANDRE FRANK PILLAY: It is not doable and for that reason Chair I, I indicated that in the August meeting it was agreed we need to follow process.

CHAIRPERSON: Hm.

MR ANDRE FRANK PILLAY: And then in the October meeting we took it to the Board to say we are still continuing. We have to complete our processes.

CHAIRPERSON: Was it open to you to refuse to let it go through the, the process?

20 **MR ANDRE FRANK PILLAY:** I think I, I, I may have had that opportunity to say let us stop it, but I think then it would have resulted in them coming back to say the personal issue that I have frustrated the process Chair.

CHAIRPERSON: *Ja.* What I am asking you in terms of Eskom's rules and regulations and policies and processes did you have power or a right to say this one must not go through the process or we must not go through the process here. I will make a decision now or the decision must be made before the process is finalised?

MR ANDRE FRANK PILLAY: Chair I, I think in, in; yes I probably could have.

CHAIRPERSON: Yes.

MR ANDRE FRANK PILLAY: But the, the; I wanted certainly wanted the process to conclude.

CHAIRPERSON: Hm, if, if.

MR ANDRE FRANK PILLAY: And, and this to come to a logical conclusion.

CHAIRPERSON: *Ja*, if, if you could have what would be the, would what, what kind of situation would need to exist for you to be able to do that?

MR ANDRE FRANK PILLAY: Chair the, towards the end of the transaction it was
10 certainly clear that this was a problematic transaction.

CHAIRPERSON: No, no you are saying now towards the end of the transaction. By which I understand you to say towards the end of the process?

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: *Ja*.

MR ANDRE FRANK PILLAY: The process around October.

CHAIRPERSON: Now if you do not go to the end of the process, much earlier as I understand you are saying that it was open to you to stop the whole process and I imagine reject it.

MR ANDRE FRANK PILLAY: I, I do not think the process allows me to reject it Chair,
20 but I mean.

CHAIRPERSON: Well that is what I was asking.

MR ANDRE FRANK PILLAY: Even my.

CHAIRPERSON: Earlier on.

MR ANDRE FRANK PILLAY: *Ja*.

CHAIRPERSON: If there is a proposal whether the position is not that there is a

process through which it must go before a final decision is taken whether it is approved or not approved that is the question I was asking earlier on and your answer was you did have the power to stop it earlier as I understood you.

MR ANDRE FRANK PILLAY: I think as I sit here Chair I think I, I, I could have stopped it maybe and suggest abandon the process, but then we would have had to deal with the consequence of why did we come to that and how do we respond to them after we have, we have followed, should have followed the process.

CHAIRPERSON: But would, would you have had grounds, acceptable grounds, to stop it before the process was finalised?

10 **MR ANDRE FRANK PILLAY:** If, if I realise that there was certainly we are not going to get to a conclusion. I mean certainly the advances that we made or motivations that we made for certain of the issues that were not we were not happy with, so I think.

CHAIRPERSON: Okay.

MR ANDRE FRANK PILLAY: Yes.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you Mr Chair. Maybe just one last question following on from that. Did you at any stage from 2015 right up to 2018, January see any benefit for Eskom in the transaction?

20 **MR ANDRE FRANK PILLAY:** Chair certainly given the, the quantum of the funding the diversification of the funding it was a, a new innovative way of dealing getting funding and project execution. So those were the elements that certainly seemed elements that could have looked like a doable transaction or a transaction that we could consider.

CHAIRPERSON: That would have given Eskom some benefit?

MR ANDRE FRANK PILLAY: The benefit would be.

CHAIRPERSON: Because the question is whether in this transaction throughout the

time that you had, you were dealing with it whether you ever saw any benefit that would flow to Eskom if it was conclude.

MR ANDRE FRANK PILLAY: So Chair if it was concluded within the, the cost that that we were trying to, were willing to negotiate to, if we were able to get a quantum of funding it would have certainly been significant and it would have certainly assisted us with our capital program if that was successful. So those were the initial elements that we, we found.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you very much Mr Chairman and thank you.

10 **CHAIRPERSON:** Your time is up.

[Laughing]

ADV THANDI NORMAN SC: There is still, we are finished with the statements thank you Mr Chairman.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That is the evidence then of this witness.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Okay. Now thank you very much Mr Pillay for coming to give evidence. I will release you now. If a need arises for the Commission to ask you to
20 come back you will be contacted and be asked to come back, but for now you have finished your evidence and you are excused.

MR ANDRE FRANK PILLAY: Thank you very much Chair.

CHAIRPERSON: Thank you.

CHAIRPERSON: Yes, we, we will adjourn and resume on Monday at 10 o' clock.

INQUIRY ADJOURNS