



2<sup>nd</sup> floor, Hillside House  
17 Empire Road,  
Parktown  
Johannesburg  
2193

Tel (International): +27 (10) 214-0651  
Tel (Tollfree): 0800 222 097  
Email: [inquiries@sastatecapture.org.za](mailto:inquiries@sastatecapture.org.za)  
Web: [www.sastatecapture.org.za](http://www.sastatecapture.org.za)

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

---

**CHAIRPERSON'S DIRECTIVE IN TERMS OF REGULATION 10(6) OF THE  
REGULATIONS OF THE COMMISSION**

---

**TO : MR ANOJ SINGH**

**C/O : HANNES PEYPER INC  
3<sup>rd</sup> FLOOR, GREEN PARK CORNER  
3 LOWER ROAD  
SANDTON**

**TEL : 083 376 9566**

**EMAIL : [simone@peyperattorneys.co.za](mailto:simone@peyperattorneys.co.za)  
[hannes@peyperattorneys.co.za](mailto:hannes@peyperattorneys.co.za)**

1 By virtue of the powers vested in me in my capacity as Chairperson of the above-mentioned Commission by Regulation 10(6)<sup>1</sup> of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, I hereby direct you, **Mr Anoj Singh**, to:

1.1 deliver on or before 27 November 2019 to the Secretary or Acting Secretary of the Commission at the address given above an affidavit or affirmed declaration in which:

(a) you state whether you admit or deny the allegations made about, or against, you in the affidavit or statement or affirmed declaration of **Mr**

---

<sup>1</sup> Regulation 10(6) of the Regulations of the Commission reads: "For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person."

**Sincedile Ebenezer Shweni dated 15 February 2019** attached hereto which was submitted to the Commission for the purpose of its investigations and in the oral evidence which he gave before the Commission on 4 March 2019 (DAY 60) which can be accessed from the Commission's website being [www.sastatecapture.org.za](http://www.sastatecapture.org.za). The affidavit of Mr Sincedile Ebenezer Shweni is attached hereto as "A".

- (b) you state whether you deny or dispute any allegation or statement made about, or against, you in the said affidavit or statement or affirmed declaration, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered in that statement or affidavit which refer, or relate to you.
- 2 If you would like assistance from the Commission in order to prepare the affidavit or affirmed declaration, you must, within five days (excluding weekends and public holidays) of receipt of this directive, contact, or communicate with, the Secretary or Acting Secretary of the Commission and indicate that you would like such assistance in which case the Commission will provide someone to assist you with the preparation of the affidavit or affirmed declaration. In such a case you will not pay anything for such assistance. Should you have difficulty in reaching the Secretary or Acting Secretary or should the Secretary or Acting Secretary not return your call or respond to you letter or emails, you may contact Ms Natalie Lerato Chesi-Buthelezi at 060 773 9825 or at [leratob@commissionsc.org.za](mailto:leratob@commissionsc.org.za).
- 3 If, in order to prepare the affidavit, or affirmed declaration, you do not need any assistance from the Commission, you must, with or without the assistance of a lawyer of your own choice, prepare the affidavit or affirmed declaration and have it delivered to the Secretary or Acting Secretary of the Commission on or before the date given above for the delivery of the affidavit. If you make use of a lawyer of your own choice to assist you to prepare such affidavit or affirmed declaration, the Commission will not be responsible for the payment of your lawyer's fees or costs.
- 4 This directive is issued for the purpose of pursuing the investigation of the Commission.

5 Your attention is drawn to Regulations 8(2), 11(3)(a) and (b) and 12(2)(b) and (c) of the Regulations of the Commission. Regulation 8(2) reads:

- “8 (1) ...
- (2) A self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947).”

Regulation 11(3)(a) and (b) reads:

- “11 (1) ...
- (2) ...
- (3) No person shall without the written permission of the Chairperson-
- (a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or
- (b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.”

Regulation 12(2)(b) and (c) reads:

- “12 (1) ...
- (2) Any person who
- (a) ...
- (b) wilfully hinders, resists or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10; or
- (c) contravenes a provision of regulation 11, is guilty of an offence and liable on conviction –
- (i) in the case of an offence referred to in paragraph (a) to a fine, or to imprisonment for a period not exceeding six months; and

- (ii) in the case of an offence referred to in paragraph (b) or (c), to a fine, or to imprisonment for a period not exceeding 12 months.”

SIGNED IN JOHANNESBURG ON THIS 30<sup>th</sup> DAY OF Oct 2019.

  
**JUSTICE RMM ZONDO**  
**DEPUTY CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA**

and

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

**SHWENI**

**STATEMENT OF  
SINCEDILE EBENEZER SHWENI**

## **STATEMENT FOR THE STATE CAPTURE COMMISSION ON HUARONG**

I, **SINCEDILE EBENEZER SHWENI**, with Identity Number 6909175440086, office telephone number 011 800 3846 and e-mail address [ShweniS@eskom.co.za](mailto:ShweniS@eskom.co.za), make the following statement with respect to my involvement in the Huarong Asset Development Financing transaction. I have had regard to various documents at Eskom and I also rely on my recollection of the events as best as I can. The contents of this statement are true and correct.

### **Brief background about myself and Eskom**

- 1 I started working at Eskom on 1 April 2001 in Generation Finance department as a Senior Financial Advisor until June 2004. I then moved to the Treasury Department in 2004 in the Funding and Risk Management section as a Chief Advisor. While in the Treasury department, I was seconded to the Project Development Department for a year and afterwards I moved back to Treasury where I am currently employed as a Corporate Specialist, Funding Execution in the Treasury Department based at Eskom Head Offices in Megawatt Park in Sunninghill.

### **Eskom Broader Team**

- 2 Functionally I report to the General Manager (Treasurer) of Treasury Mr. Andre Pillay. On this transaction, I worked and interacted with the following individuals from Eskom:
  - 2.1 Mr. Anoj Singh (Chief Financial Officer, signatory of the Term Sheet);

- 2.2 Mr. Calib Cassim (Acting Chief Financial Officer; signatory of the Board IFC submission and participant in the Short Term funding discussion);
- 2.3 Old board members including Dr. Pat Naidoo and the then Chair of IFC and new Board members (presentation and or discussion at meetings);
- 2.4 Andre Pillay (initial and key Treasury point of contact from beginning to the end and issuer and initiator of Treasury related instructions/requests);
- 2.5 Ms. Kgathiso Goitsemodimo (involved in the procurement process that featured Huarong);
- 2.6 Mr. Poobie Govender: GM Special Projects (involved on the project / asset development aspects of the transaction);
- 2.7 Ms. Gabriela Palacious-Flusk (legal advisor with construction contract expertise);
- 2.8 Ms. Lerato Mashinini (Investor relations manager at Eskom Treasury, involved in various counterparty interface activities including meetings and trip arrangements);
- 2.9 Ms. Ithabeleng Hlapolosa (Member of the Funding Execution team that assisted in putting together some memoranda.)

### **First interaction**

- 3 My first involvement with the Huarong transaction started around June 2016 when I was asked to attend a meeting with Tribus. Heather van der Merwe (the front office

Personal Assistant), sent the meeting invite to me, Andre Pillay, Judy Raphael (Treasury Corporate Specialist), Poobie Govender, Prish Govender and Rajeev Thomas of Tribus. I attach the invite as Annexure "SS1". Heather sent the invite at Andre Pillay's request or instruction. This meeting request follows the meeting of 25 May 2016 that was scheduled by Heather van der Merwe but was subsequently cancelled. I attach the cancellation as Annexure "SS2". The invitees for the cancelled meeting are the same as the meeting of 1 June 2016. There are no minutes or any notes from the meeting of 1 June 2016, save for the date and party with whom I met (Tribus) on my notebook. The meeting was with Mr. Rajeev Thomas of Tribus and myself where Rajeev introduced the project concept. The feedback of the discussions was briefly shared with Mr. Andre Pillay after the meeting. The meeting took place at Megawatt Park in the Treasury Department.

#### **Second meeting with Tribus**

- 4 The second meeting with Tribus could have been around June, or July 2016 with Mr. Rajeev Thomas and Mr. Wim Terblanche of Tribus where Mr. Rajeev Thomas further explained the concept drawing on the flipchart how the structure would work. In that meeting, Mr. Poobie Govender, Mr. Prish Govender (General Manager Project Development Department) and Andre Pillay were part of that meeting. In that meeting it appeared as if Mr. Poobie Govender was not meeting the Tribus shareholders for the first time, furthermore Poobie's participation and line of questioning also did not suggest that he was hearing the concept for the first time. As it is normal with the meetings of this nature where unsolicited proposals are discussed, Andre would have concluded the meeting with the way forward, which

normally includes the signing, by both parties, of the non-disclosure agreement and procurement processes to be followed for proposals that Eskom Treasury receives on an un-solicited basis. There is no appointment for this meeting on my diary and I do not have any notes in my notebook relating to the meeting.

### Process for unsolicited proposals

5 Eskom Treasury usually receives a variety of unsolicited proposals on Treasury related instruments from time to time. The proposals range from foreign exchange hedging instruments to long term funding solutions and anything in between. The process that is followed for these transactions follows these steps:

5.1 The proposal is discussed with the relevant Treasury personnel, with most potential investors bringing to such discussions relevant discussion material (e.g. high-level presentation of the concept or proposal). No discussion material was made available at the time of the initial meetings with Huarong.

5.2 A high-level verification of the counterparty is conducted. *[White & Case and Eskom Business Intelligence conducted these checks at different stages of the process. White & Case started when they were providing the opinion on the terms sheet and again during the ADFA negotiation. I attach Adrian's email as "SS3", followed by the memo, "SS4". I also attach "SS5" being the memo on verification during the ADFA discussions.]*

- 5.3 Term sheet is requested from the counterparty for review and consideration of the terms and conditions of the proposal. I attach the Term Sheet for Huarong, which was the received as Annexure "SS6".
- 5.4 Where there is a requirement for exchange of information a non-disclosure agreement is concluded between Eskom and the counterparty. It does not appear that there was a need for a NDA to be signed at early stages of the process. The Eskom non-public information was shared on potential projects after the term sheet was signed and during the discussions on ADFA.
- 5.5 If the proposal is palatable to the Treasury needs and requirements, the counterparty is made aware of the commercial process that needs to be followed for his proposal. The process could follow an open tender RFP or sole source route, which requires special motivation to the National Treasury. The RFP route was followed, to which Huarong responded. I attach as Annexure "SS7".
- 5.6 Proposal will be evaluated and if it meets the requirements set out in the evaluation criteria it will be presented to Treasury Assets and Liabilities Committee (ALCO) for approval. I have checked with the ALCO secretariat the proposal/ term sheet was not presented to ALCO. Presentation to ALCO is meant to be made at various decision points. Not submitting to ALCO was not in accordance with Treasury governance processes.

5.7 ALCO approved proposals are presented to the CFO for his approval. The attached memorandum would, in this instance represent the approval of the term sheet/proposal. Furthermore, in the memorandum a request is made for the CFO to approve submission of the proposal to the Board. Such approval paves way for the subsequent submissions to various committees up to Board for approval. The unsigned memo for the term sheet is attached as Annexure "SS8". I do not have a signed memorandum, I do not know if it was ever submitted and signed.

5.8 Furthermore, depending on the nature and value of the proposal it will be presented to higher levels of approvals up to Board. The Huarong proposal was presented up to Board IFC and to Board Tender Committee. I attach as "SS9" and "SS10" the submissions to IFC and Board, respectively.

As indicated in brackets some of the abovementioned steps were followed for the Huarong transaction but some were missed.

## RFI

6 In September 2016, Kgatlhiso Goitsemodimo advised me of the funding related RFI that was issued, and in that regard she scheduled a meeting with me for 4 November 2016 to discuss the evaluation of the received proposals. I attach the meeting request as Annexure "SS11". The responses received included a proposal from Huarong, which came in a form of a term sheet attached hereto as Annexure "SS12". The evaluation meeting took place on the 16 November 2016. I attach the relevant documents in this regard as Annexure "SS13".

**Term Sheet**

- 7 The above meetings were followed by the review of the indicative term sheet that was given to me by Mr. Andre Pillay. I attach in this regard “SS6” and “SS14”, the e-mail from Andre forwarding the terms sheet. During the review of the term sheet, I had numerous (more than two) interactions with Mr Rajeev Thomas, Mr Poobie Govender and Mr Andre Pillay to discuss and clarify the terms and conditions contained in the term sheet especially pricing, costs and fee related aspects of the proposed structure). I attach the relevant correspondence in this regard as Annexure “SS15”.

**Contentious terms on term sheet**

- 8 My major concerns on the term sheet, which were shared by most, if not all, Treasury colleagues, were on the margin, fees (including facility, cancelation, commitment and appraisal fees) and security deposit. Mr. Poobie Govender played a very active part in explaining that these price and fee levels are standard in the project development environment where construction risks are not with the “borrower”. He went further to demonstrate this point on the margin by making an example of the “capital” costs incurred by Eskom, which more than doubled when Eskom assumed the construction risk. I attach it as Annexure “SS 16”. This was a different concept to pure financing that Treasury was unfamiliar with hence the discomfort. At the time of evaluating the term sheet the upfront fees of 1.6% that we charged by Huarong were 40 basis points to 60 basis points above to what Treasury has seen on pure “guaranteed” financing facilities from a syndicate of

lenders. Currently the upfront fees on pure financing transactions that has recently been concluded (at 30 January 2019) ranged, as quoted by the lenders, from 0.80 % points from local financiers to 1.5% from international financier. I attach the term sheet for the recently concluded guaranteed facility as Annexure "SS 17". Mr. Poobie Govender verbally explained to us (myself and Mr. Andre Pillay) that an upfront fee of 1.6% or more is what Eskom usually agrees to when awarding construction supply contracts, which a set up similar to the proposed structure by Huarong Energy Africa (HEA). I attach an e-mail where I refer to this fact as Annexure "SS18" on page 3 of the e-mail. After some iterations on the term sheet, that have been described above, I sent an e-mail to Mr. Rajeev Thomas copying Mr. Andre Pillay and Mr. Liugi van der Merwe (Assistant Officer -junior colleague in the Treasury Department) on the 14 December 2016 with remaining comments on the term sheet. I attach it as Annexure "SS19".

8.1 An "Upfront Fee" in a pure financing transaction is the fee charged by the lender for arranging or structuring the transaction. This ranges from transaction to transaction and from lender to lender. For transactions where the lenders are not exposing their balance sheet (i.e. arranging funding from various investors the rate can go up to 0.30%. where lenders are arranging funding from their own balance sheets this can vary in today's environment from 0.80% to 1.5%. The fee is payable directly to the lender when the funding has been secured marked by the signing of the financing documents in a loan environment. Lenders usually give an option to the borrower to pay the fees either 30 days after signing of the loan agreement or from the

proceeds of the first drawdown. So the fee would be paid at the beginning of the term of the loan, perhaps hence it is called upfront. The major difference between the "normal" upfront fee and the Huarong's Facility Fee is that Huarong was payable at the signing of the Asset Development Framework Agreement, which is few milestones ahead of the signing of the loan or financing agreements. The other difference is that this would have been paid to an entity that is not providing the financing. This is due to the nature of the structure, which is completely different to the pure financing transaction. There have been instances where Eskom, for pure financing transactions, have procured the services of a financial advisor. The advisor is usually a bank that is experienced in that particular product that Eskom does not have experience on. The the last time Eskom Treasury utilised such services was in 2009 when we were entering a new market in this phase of our funding programme. The advisor would guides Eskom throughout the transaction until funding is secured, and an upfront fee payable to this entity is termed advisory fee. In all the examples mentioned above on pure financing the Huarong Facility Fee/ Programme Development Fee seems to relate to all the upfront structuring work by HEA for the entire asset development programme, which does not achieve the same milestones as the structuring of funding. As this was the uncharted territory for Eskom Treasury we could be comparing similar but different concepts regarding the upfront fees.

**December 2016 signing of the Term Sheet**

9 The commentary and review of the term sheet led to an initial signing of the indicative and not legally binding term sheet by Mr. Anoj Singh and Mr Rajeev Thomas on 19 December 2016 attached hereto as Annexure “SS20”. Considering that it was, and still is, not common practice for term sheets to be signed by Eskom, the signing of this term sheet would not have been initiated by Eskom. The circumstances under which and the drivers behind the signing of the indicative term sheet are not clear. It could have been a sign of good gesture before and a condition precedent to the trip to China. My involvement in the signing of the of the indicative term sheet is evidenced by the e-mail to Mr. Andre Pillay and Ms Glen Joubert stating that the term sheet seem ok and that Mr. Rajeev Thomas must “Ok” the suggested changes before it can be signed by Mr. Anoj Singh. The email was sent on the 19 December 2016 as Annexure “SS21” with the HEA Asset Financing Term Sheet Eskom dated 18 October 2016. A second e-mail with the corrected version of the term sheet was also sent on the same day to Mr. Andre Pillay and Ms. Glen Joubert. I attach HEA Asset Financing Indicative Term Sheet corrected version as Annexure “SS22”. I also compiled a signing memorandum at the verbal request of Andre, the unsigned version of which I sent to a colleague post the signing date. In the memorandum, I made the recommendation, in line with the request to sign a signing memorandum, that the term sheet can be signed and other terms to be discussed later. Annexure “SS8”. I was not present to witness the signing of the term sheet by Mr Anoj Singh on 19 December 2016. Rajeev and Andre subsequently sent the signed term sheet to me on 22 December 2016, and I can

only pick it up on the e-mail forwarded by myself to Ms. Lerato Mashinini. I attach as “SS23”, the signed HEA Indicative Term Sheet.

### Preparations for a trip to China

- 10 As mentioned above, the signing of the indicative term sheet on 19 December 2016 could have been a condition precedent to the trip to China to visit amongst other financial institutions, Huarong, the ultimate parent company of the South African special purpose company Huarong Energy Africa (HEA). On 20 December 2016, Lerato Mashinini forwarded a meeting invite that was sent to her by Mr. Rajeev Thomas to discuss the logistical arrangements for a trip to China. I attach “SS24” relating to HEA meetings in China. As I was not scheduled to go to China, I introduced Lerato to Rajeev and left them to finalise the trip arrangements for Andre and other colleagues that were travelling with (including Mr. Anoj Singh and Mr. Abram Masango, who was later replaced by Mr. Poobie Govender and Prish Govender). Andre mentioned the trip to me and the fact that it was going to be combined with a visit to China Development Bank for a transaction that was already underway. It was more appropriate for Judy Raphael (who was championing the transaction) to be part of the trip rather than myself, hence I did not raise my hand to Andre to be included in the delegation. I was copied on four subsequent e-mails between Ms. Lerato Mashinini and Mr. Rajeev Thomas regarding these arrangements for the trip. I attach documents relating to HEA meetings in China as Annexures “SS25” to “SS28”.

### Trip to China and the outcomes

11 A visit to Huarong in China took place on the 11<sup>th</sup> and 12<sup>th</sup> January 2017 with the following Eskom personnel: Mr. Anoj Singh, Mr Prish Govender, Mr. Andre Pillay and Mr Poozie Govender. Following the trip Mr. Rajeev Thomas wrote and sent a final offer letter to Eskom addressed to Mr. Andre Pillay. I attach the letter as Annexure "SS29" and this formed the basis of signing the binding term sheet between Eskom and HEA. Mr. Rajeev Thomas sent the letter to me via e-mail annexed hereto as Annexure "SS30". Mr. Andre Pillay responded to the letter confirming benefits and stating that some of the terms will be subject to further analysis. I attach "SS31" being a response letter to HEA wherein it accepted the terms. As mentioned in the letter that the term sheet will be presented to Board to obtain approval to engage further with HEA, the submission to Board Investment and Finance Committee (IFC) was made on 03 February 2017. I attach it as Annexure "SS9". The submission requested a mandate to negotiate and conclude the transaction, however, the Board IFC granted a mandate to negotiate but not conclude. I attach the Board IFC extract for the 3 February 2017 meeting as Annexure "SS32".

#### Signing of "binding" term sheet

12 After the IFC approval to negotiate, the term sheet discussions continued and I reviewed the draft binding term sheet for comments. I made comments on the final term sheet, which I sent to Rajeev for consideration. I attach my comments as Annexure "SS33" as they related to a follow up discussions on the final term sheet. Mr. Thomas responded to the comments by referring me to the offer letter HEA made to Eskom in Annexure "SS29" and the response letter by Eskom mentioned

above as “SS31”. I refer in this regard to HEA offer to Eskom sent via an e-mail “SS30” relating to a follow up discussion on the final term sheet. In one of the meetings between myself and Mr. Thomas, where I was still negotiating these onerous terms he advised me to talk to Andre as most of the terms relating to pricing and fees were agreed upon in China. It is clear at this stage that the discussions were moving towards finalization of the “binding” term sheet. I would have been requested therefore by Mr. Andre Pillay to review term sheet and I included in the review exercise one of our new colleagues Ms. Ithabeleng Hlapolosa for exposure. This is evidenced by the exchange of e-mail with Ms. Hlapolosa annexed hereto as Annexure “SS34”, a HEA from Ithabeleng on request to review. I also attach Annexure “SS35” being an email from Ithabeleng giving brief responses on background information provided on the matter. Last minute reviews were made and sent to Andre, Poobie and Rajeev on the final term sheet as late as the 13 March 2017, a day prior to the execution of the final and binding term sheet. I attach “SS36” being HEA Asset Financing Term Sheet final dated 23022017 together with emails sent on 13 March 2017. I sent e-mails to Ithabeleng requesting her to prepare a signing memo to Mr. Anoj Singh, which is attached hereto as Annexure “SS37”. This is a Memo relating to the Second Signing – Huarong. The signing of the term sheet took place on 14 March 2017 at Eskom Megawatt Park.

#### **First advice by White & Case**

- 13 It is worth noting that the term sheet was signed after White & Case provided an advice against the conclusion of the transaction. Mr. Andre Pillay engaged White & Case and an e-mail with the advice was sent to Andre. Annexure “SS38” attached

hereto is a memorandum from Stuart Matty referring to an earlier advice given before the date of signing the "binding" term sheet. What is not known is whether White & Case's advice was communicated and considered by Mr Anoj Singh prior to signing the term sheet.

### RFP

- 14 The signing of the abovementioned legally binding term sheet was preceded by the issuance of RFP, following the advice from Commercial Department's Gloria Gaboo that Eskom cannot proceed with a transaction based on a RFI. This is based on the information I received from Kgatlhiso who was in charge of this process. Kgatlhiso mentioned that this was a verbal advice in a meeting and was not confirmed by email or a letter. I was not involved in the RFI and RFP process except during the evaluation phase of the RFP. The RFP was issued on the 13 March 2017 and closed on the 29 March 2017. Amongst the respondents was Huarong submitting the binding term sheet that was signed on the 14 March 2017 as their proposal that was similar to their submission on the RFI. I attach a copy thereof as Annexure **SS39**. At the time of issuing the RFP it is highly likely that there were other unsolicited proposals that were presented to Treasury at various times and to deal with them in accordance with acceptable commercial practices a RFP was issued. I attach a one proposal from JP Morgan, which was innovative in nature as Annexure "**SS40**". I was allocated to a team that evaluated proposals including Huarong Asset Development Financing structure. The Huarong proposal met most of the requirements of the RFP; however, during the evaluation process, it was difficult to determine how to deal with it since the proposal had progressed much further (with

a signed terms sheet and Board Approvals to negotiate) compared to other proposals. There were other proposals that were also set aside to be dealt with under separate processes (e.g. Bonds, ECAs and coal monetization (securitization of coal stockpiles for fundraising)).

#### Asset Development Framework Agreement (ADFA)

- 15 Parallel to the above-mentioned evaluation process, on 12 April 2017 discussions and engagement with Eskom, HEA and legal representatives for the negotiation of the Asset Development Framework Agreement (ADFA) started in earnest. A meeting was scheduled for 12 April 2018 by White & Case with Andre, Poobie and myself being invited to the first preparation discussion of ADFA. I attach as Annexure "SS41" the HEA Asset Financing Term Sheet 20170317 call for ADFA. I participated on few calls on the ADFA discussions, as it was mainly asset developmental in nature and not so much on finance. I also requested internal legal representation via a telephonic conversation with Ms. Gabriella Palacios-Flusk. I requested her to participate in various calls that were set up by HEA's legal representatives. Mr. Poobie Govender was very active on these discussions, which continued until June/ July 2017. There are numerous e-mail exchanges between the parties on this part of the transaction over the two to three month period. I attach the correspondence as Annexure "SS42".

#### Fees

- 16 Due to the commercial nature of the fees, relating to the proposal, it was agreed that the fee discussions will be held separately with Eskom Treasury and will not form

part of the bigger ADFA discussion. At this stage the cancelation fee was considered to be irrelevant in the broader scheme of things since the intention from Eskom was to proceed with the transaction. The most contentious issue at this stage relating to the fees was how the 1.6% Facility Fee was structured. The second most contested fee was the commitment fee. The appraisal fee, though it was also high, was not so much the subject of discussion. Numerous discussions, based on wise counsel from White & Case, were held on this topic with HEA pushing for the fee to be paid upfront on signing of the ADFA and Eskom advocating for a milestone based payment.

16.1 These discussions took months and ended up in very intense arguments between HEA (Rajeev, Wim and Rex Madida) and Eskom Treasury (Andre and myself). The arguments, which could be categorized as fights in certain instances, resulted in Andre narrating how Rajeev had threatened him. There was a stage where we were informed that Eskom will deal directly with Head Office officials of Huarong and they were pulling Rajeev out of the transaction. At some point Mr Rex Madida approached me to mediate between Andre and Rajeev as they were not on good terms. It is at this stage that Mr. Rex Madida suggested that we meet outside of Eskom as brothers to talk about life. I agreed but never followed up on that conversation with Mr. Rex Madida.

16.2 The other fees other than Facility Fee or Programme Development that were in the term sheet, which Eskom Treasury had to take a view on, were the following:

- 16.2.1 Cancellation fee of 0.2%. This is very unusual in the pure funding environment. This was contested initially due to its unusual nature, however as there was no intention at early stages of the process not to proceed with the transaction this was considered a moot point. Furthermore if for any reason we had to exit the transaction it would not have been out of bad faith.
- 16.2.2 Due diligence fees. This is common when the funders are conducting the due diligence of the company or and the project that they will be investing in. It is normally expenses incurred by the funder, which includes flights accommodation and paying for the experts (if they are outsourced). Usually it is not quoted as a percentage of the project value. The view was that this could have been because of the construction and asset development element of the proposal, which is not prevalent in the pure financing proposals.
- 16.2.3 Commitment Fee: This is normal in any financing however it can be structured differently. The fee is charged by the lenders to compensate them for reserving the funding for the borrower and is calculated as a percentage of undrawn funds. The aspect of the proposal that would have not been clear in this regard would be the assurance to Eskom of when the funds have been committed and set aside by the Huarong funders, due to the lack thereof of the funding activities in this asset creation funding structure.

16.3 The following factors and activities were used by me and Andre as means to buy time and not finalise the Fee structure of the proposal, with the hope that HEA will agree to a milestone based structuring of fees. When HEA was pushing for finalization we advised them of the below that remain outstanding items. I attach hereto an unsigned memo on fee letter giving reasons for not rushing the conclusion of the Fee discussion as Annexure **"SS43"**

16.3.1 Interrogation of the structure and verification of the entities and companies involved. Some background checks on the companies including request for financial information was made. One of the entities, IDEVA, to which the funds were going to be paid had a financial statements that had a qualified audit. I pointed this out to Rajeev and the next day he furnished me with set of statements for the same period that had an unqualified opinion. I attach the two sets of financial statement for the entity that was going to be used to receive the Facility Fee as Annexure **"SS44"**. My role was to request information from HEA and also requested colleagues from Business Intelligence area to do background checks of the entities that were in the structure. I attach hereto the Eskom HEA verification of entities by BI as Annexure **"SS4"**.

16.3.2 I put together an application to the South African Reserve Bank on the 31 July 2017, detailing the complex structure that was presented to Eskom and to our surprise the application was

conditionally approved on 4<sup>th</sup> August 2017. I attach the SARB application and SARB approval as Annexures “SS45” and “SS46”, respectively.

16.3.3 In the discussions we held with HEA on the progress of the fee discussion we mentioned that the focus of the business and Treasury was to deal with our qualified annual financial statements, which affected some of our existing loan covenants and the ability for us to raise funding in the market. That did not deter HEA to proceed and they insisted on closing the transaction regardless of the circumstances. See point 9.6 on “SS43”

16.3.4 When the market was closed to Eskom as result of its audit qualification and negative publicity, an urgent separate discussion for a short term financing of around US\$ 2 billion commenced. This was initiated at Calib's and Mr. Sean Maritz's level, I participated in few meetings and the review of the mandate letter. “SS47”. The discussions on this facility did not deter HEA in pursuing the finalization of the Fee Letter discussion.

16.4 It appears as if Huarong used all the avenues possible to exert pressure for the Fee letter and ADFA to be signed in its current form. This is based on the following:

16.4.1 Andre mentioned in passing that the request for a submission to the 1<sup>st</sup> Board IFC, to obtain mandate to negotiate and conclude

came from Mr. Singh and not from Treasury. This perhaps explains why the ALCO discussion did not take place to consider the term sheet. Mr. Singh was the Chairman of the ALCO as per the terms of reference of ALCO.

16.4.2 At one stage when I took the documents for signing to the CFO, Mr. Anoj Singh, he asked when are we signing Huarong. In all honesty, he was not pushy, he accepted the explanation without poking holes into it. This could have been from being milestone and execution driven, as he was, or he was facing or putting pressure on the deal team.

16.4.3 Later on HEA had direct access to the third floor and there was an interest and instructions driven from the third floor to move the transaction to finality (e.g. the circumstances around the Round robin of the last IFC recommendation and signing of ADFA and Fee Letter).

16.4.3.1 Mr. Poobie Govender used to come down from his office almost every 3rd day to find out when are we resolving the issues on the Fees. As alluded to all financially related challenges that we had on pricing and fees he had a ready answer for them. His responses were very much aligned to HEAs, you could swear that he is one of them. I attach an e-mail from

Poobie as an example and illustration of this as Annexure "SS48"

16.4.3.2 The rushed signing of the ADFA and term sheet by the then Interim Chief Executive, Mr Sean Maritz

16.4.4 The frequency the intensity of the meetings (turning out into very ugly arguments with the Treasury deal team) that HEA had with Eskom is countless.

16.4.5 Mr Chen, who signed the "binding" term sheet, paid a visit to Eskom in person when the transaction was stalling to push the transaction to closure.

#### **Other activities and signing of the ADFA and Fee Letter**

17 During the period where Eskom and HEA were discussing the fees and up to the signing of the ADFA and Fee Letter by the then Acting Chief Executive, there were other activities relating to this transaction that took place. They are as follows:

17.1 A submission was made to the Board Tender Committee (BTC) on 17 May 2017 requesting approval to conclude the transaction. I attach the submission as Annexure "SS10". Mr. Poobie Govender and some of his colleagues, Ms Kgathiso Goitsemodimo were very instrumental in putting together this submission. It is not normal for any of our pure financing transactions to be routed to BTC. This could have been done due to the peculiar nature of the transaction, which includes the construction element

amongst others for the submission to be tabled at BTC to ensure that proper commercial processes relating to the award of construction supply contracts are adhered to. It is argued that the transaction should have been approved at the Board level and not by IFC or BTC, in accordance with the operational delegations of authority (DOA) at the time. Attached is a DOA (Treasury related activities) that were operational at the time as Annexure "SS 49"

- 17.2 Lot of work went into the preparation, drafting and concluding a strategic cooperation agreement that included ADFA as one of the areas of cooperation between Eskom and Huarong. This cooperation was meant to be signed at the BRICS summit. Due to changes in the programme, this fell by the way side. I sat in the first meeting and this stream (which included DPE, DIRCO, Eskom Legal, HEA and White & Case) turned out to be a non-transaction focussed but biased towards a Huarong Public Relations requirement. I attach hereto the Draft Cooperation Agreement as Annexure "SS50". The arrangement is similar to the China Development Bank (CDB) MOU that was signed at the FOCAC meeting in 2015 between Eskom and CDB. I attach the CDB MOU as Annexure "SS51". Attached is Cooperation Agreement that was negotiated but not signed between Eskom and Sinosure for Export Credit Agency related funding as Annexure "SS52". From all of the abovementioned agreements the initiative and arrangements to conclude these agreements during the big events is always coming from the Chinese, perhaps to show to their superiors that there are real transaction in the pipeline.

- 17.3 On 15 August 2017 an update and request to conclude the transaction was made to the Board IFC and the IFC requested that all necessary internal and external sign-offs (these include Legal, Corporate Finance and PFMA) and approvals must be put in place. I annex the update as Annexure “SS53” I was not involved in this update. It seems to me that the Board IFC officials were following up on the action items of the last Board IFC meeting. There could have been a request to provide update based on the new dealings that Huarong had with the senior members of the entity. It appears to us that Huarong established a direct line of communication with our principals. At some stage I was verbally notified by Andre that the then Chairman wants to go to China on the 8 October 2017. Andre asked me if I have Chinese visa for this Chinese trip with the Chairman for a meeting with Huarong, as he was not going to attend. I responded with a resounding no especially considering the manner in which this question was asked (i.e. in a very discouraging manner).
- 17.4 Legal and Corporate Finance conducted their independent analyses, the results of which did not support Eskom proceeding with the transaction. I attach hereto Annexures “SS54” and “SS55” being a signed Memo by SD dated 07 September 2017 and the 2017 Huarong Briefing Note from Corporate Finance, respectively.
- 17.5 At my own initiative, on 25 October 2017, I sent an e-mail to Mr. Andre Pillay with a memo giving progress on the status of the discussion and recommendation that Eskom should not proceed with the transaction in its

current form. I realized that Huarong are relentless in their pursuit for conclusion of the fee letter in its current form, which we were not comfortable to do. I attach hereto a memorandum on Huarong sent to Andre dated 25 October 2017 as Annexure “SS56”.

- 17.6 On 25 October 2017, I was verbally requested by Mr. Andre Pillay to update the 15 August 2017 submission with milestones achieved and discussion on short term facility and the new recommendation to IFC for a round robin approval as the then Acting Chief Executive (Mr. Sean Maritz) was keen on signing the ADFA and the Fee Letter. We agreed on the recommendation in the submission that all approvals and conclusions by various experts must be considered before proceeding with the transaction. This was the first version of the submission. The request by Andre was that the submission to Calib must be in pdf format. I attach the submission that was changed a day later as Annexure “SS57”. A day later, I was requested by Andre to convert the submission to word and make amendments to it. The recommendation on the amended submission was different to the first version. In essence, for the ADFA, it was recommending approval by IFC subject to internal and external signoffs being and approvals. I refer in this regard to Annexure “SS59”, which contains the details of the new recommendation. I had to change the document from pdf to word to allow the amendments to be effected. The request was sent to IT to assist with the conversion. I annex hereto my email to the IT section as Annexure “SS58”. The document was changed to what it is currently a submission to

IFC Board 25 to AP and CC annexed hereto as Annexure “SS59”. The submission was considered and approved by way of round robin and the ADFA and Fee Letter were signed.

17.7 Subsequent to the signing of the ADFA and the by the then Interim Chief Executive, HEA sent an invoice to be paid and the invoice was delivered by hand to Eskom Treasury office by Ms. Maya Bhana (who was the General Manager in the CFO’s office), insisting that the invoice must be paid. Usually such requests or instructions are sent via email from the office of the CFO to the Treasurer for his action with no pressure put to him to deal with such. Maya came and spoke to the colleagues that deal with payments short of giving them instruction to process the payment immediately. Andre, who was on leave at the stage, gave telephonic instructions that the invoice must not be paid. When the Treasury settlement section that deals with foreign payments reviewed the conditions of SARB approval it was clear that the payment could not have been made in any event based on the structure of the transaction. The condition stated that there must be inflows into South Africa before foreign payments can be made.

18 A month after signing of the ADFA and Fee Letter, I prepared a PFMA approval letter for National Treasury and Department of Public Enterprises’ consideration and approval, as this was one of the conditions of the Board IFC. The letters were sent in January 2018. I attach the letter as Annexure “SS60”.

- 19 The new Board was appraised about the transaction after HEA wrote a letter to the current Chairman. I attach the letter as Annexure "SS61". The Board took a decision not to proceed with the transaction. I was involved in the presentation to the Board on this matter. I attach hereto slides as Annexure "SS62". An interesting comment was made by one of the Board members (it could have been the Chairman) highlighting the fact the Board IFC did not and does not have the delegated authority to approve but to recommend to the Board for approval. It was on that basis and terms that the Board felt they were onerous that Eskom must not continue with this transaction in its current form. Much to the contrary of the previous senior leadership who appeared to be desperate to conclude the transaction at all costs.
- 20 SARB followed up on their approval with a letter suspending the approval following lack of information on inflows that they anticipated. I attach the letter from SARB as Annexure "SS63".
- 21 National Treasury responded to the letter by not granting approval for the transaction. I attach the letter as Annexure "SS64".
- 22 I believe that the Huarong concept with all its balance sheet, cash flow and project implementation benefits, volume of amount that "funding" that came with the proposal would have been beneficial for Eskom on different and better terms and conditions.



---


**SINCEDILE EBENEZER SHWENI**

**Declaration**

**I know and understand the contents of this declaration.**

**I have no objection to taking the prescribed oath.**

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



**Signature of deponent**

22 I certify that the deponent has acknowledged that he knows and understands the contents of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at MWF Sunninghill on 15 February at 2019



**Commissioner of Oaths**

**KELEBOGILE J LEFIFI**  
**Chartered Accountant (SA)**  
**SAICA No. 20055293**  
**COMMISSIONER OF OATHS**  
**Eskom Holdings - Treasury Services**  
**Maxwell Drive Sunninghill Sandton**