

DELIVERED BY EMAIL

The Administrator of PRASA
Mr Bongisizwe Mpondo
Email: Bongisizwe.mpondo@prasa.com

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Bag 10015
Sandton 2146
Docex 111 Sandton
Tel+27 11 535 8000
Fax+27 11 535 8600

YOUR REFERENCE:

OUR REFERENCE: Mr D Hertz/lf/SARC0001.786/#6625911v2
DIRECT PHONE: +27 11 535 8283
DIRECT FAX: +27 11 535 8683
EMAIL ADDRESS: dhertz@werksmans.com

16 January 2020

URGENT

Dear Mr Mpondo

PRASA'S FAILURE TO DISCHARGE INDEBTEDNESS IN BREACH OF TREASURY REGULATIONS AND INSTRUCTIONS IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT

- 1 The above matter and the letter addressed to you by Werksmans' Head of Litigation, Mr Manaka, on 20 November 2019 refers and is attached for your ease of reference ("our letter").
- 2 It is of grave concern that notwithstanding the dire urgency of the matter traversed in our letter, we have not received an acknowledgement of receipt, let alone a substantive response thereto. Werksmans has not received any formal communication from PRASA since being placed under administration.
- 3 It is with regret that I, as the Chairman of Werksmans, am compelled to address this correspondence to you in the context of what has been a mutually beneficial and highly successful working relationship which Werksmans and PRASA have enjoyed over many years.
- 4 As at the date hereof, PRASA's outstanding indebtedness (in excess of 180 days) in respect of the various matters being conducted by various partners within this firm, is in excess of some R19 million. Included in this amount are numerous disbursement charges for the respective counsel (both senior and junior) whose services have been retained in these matters.
- 5 PRASA's failure to discharge our invoices for services rendered on the express instruction of PRASA either in compliance with the statutory requirements of the PFMA or at all is unlawful. It is all the more disheartening viewed in the context of the fact that Werksmans has continued to achieve tremendous success in PRASA's fight against corruption aggregating to in excess of R4 billion thusfar. Notwithstanding the non-payment of our invoices, but in discharge of our ethical duty to both the court and our client, we were successful in defeating the fake "Doctor"

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham C Andropoulos JKOF Antunes DA Arteiro T Bata LM Becker JD Behr AR Berman MNM Bhengu Z Blieden HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Driman D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes S July J Kallmeyer A Kenny R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Meiring H Michael SM Moerane C Moraitis PM Mosebo KO Motshwane NPA Motsiri A Ngidi JJ Niemand BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman S Sinden DE Singo JA Smit JS Smit BM Sono CI Stevens PO Steyn J Stockwell JG Theron PW Tindle SA Tom JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Wegierski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies **Consultant** DH Rabin



Mtimkulu's application for leave to appeal on Friday, 6 December 2019, with costs. We have also ensured that all of the affidavits in the Siyangena matter were filed in accordance with the prescribed time table. **As you are aware, this matter involves in excess of R6 billion which PRASA is being called upon to pay pursuant to the conclusion of contracts tainted by corruption.** This matter has been set down for hearing by the Deputy Judge President before three judges on 24 February 2020 to 27 February 2020.

- 6 We draw to your attention that as a result of the non-payment of our invoices, the counsel acting in the Siyangena matter have been released from their respective briefs. Consequently, we will not be in a position to comply with the Deputy Judge President's directive regarding the filing of supplementary heads of argument which are due on Friday, 17 January 2020. The disastrous effect of this will be that the Siyangena matter will not proceed on an opposed basis on the allocated dates with the result that PRASA's application will in all likelihood be dismissed by default. Ultimately, PRASA will be called upon to pay in excess of R6 billion to the very persons and entities who have been identified as the key role players in the corruption frenzy at PRASA which was highlighted both by the former Public Protector and in Werksmans' investigations which precipitated PRASA taking this matter to court.
- 7 It bears mentioning that the principal role player behind Swifambo, Mr Auswell Mashaba, has launched an application against the Master, the Joint Liquidators and PRASA to set aside the liquidation process thusfar undertaken. A failure by PRASA to oppose this application may result in PRASA losing an interim dividend of approximately R80 million.
- 8 Regrettably, and in discharge of our ethical duties, we have no alternative but to file notices of withdrawal as attorneys of record in all of the PRASA matters presently being handled by Werksmans.
- 9 There are several hundred matters being handled out of our Western Cape offices which will be affected by our unavoidable decision to withdraw as PRASA's attorneys of record. In one of these matters there is a full bench appeal set down for hearing on 29 January 2020 where PRASA will no longer be represented. The claims in these matters (relating to our Western Cape offices) aggregate to approximately R1 billion for which PRASA remains exposed in circumstances where it will no longer be legally represented. Similarly in these matters Werksmans has incurred disbursements for counsel who Werksmans is obliged to pay and has paid. Werksmans has not been reimbursed by PRASA in respect of these disbursements. The briefs for these counsel have similarly been withdrawn to avoid any further costs being incurred.
- 10 Whilst Werksmans remains committed to representing PRASA in all matters, we simply cannot continue to do so in circumstances where our accounts are not discharged with scant regard to the devastating financial impact this has on the numerous professionals who have dedicated themselves to successfully representing PRASA over the years.
- 11 Unless **ALL** of our accounts which are already overdue, owing and payable are discharged within 5 days from date hereof, we will also regrettably have to institute appropriate proceedings against PRASA for the recovery of all amounts owing. Werksmans will exercise its *lien* over all files pending payment.
- 12 We require your **urgent** reply hereto. In the interim, Werksmans' rights remain strictly reserved.



13 This letter is copied to the President of the Republic of South Africa, the Minister of Transport, the Minister of Finance and the Director General of National Treasury, all of whom have an interest in the matter referred to above.

Yours sincerely

DAVID HERTZ

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

c.c. The President of the Republic of South Africa
President Cyril Ramaphosa
Email: bonganik@presidency.gov.za
geofrey@presidency.gov.za
angeline@presidency.gov.za
sello@presidency.gov.za

c.c. The Minister of Transport
Mr Fikile Mbalula
Email: GroepeZ@dot.gov.za

c.c. Minister of Finance
Mr T Mboweni
Email: Tito.Mboweni@treasury.gov.za

c.c. Director General of National Treasury
MD Mogajane
Email: Dondo.Mogajane@treasury.gov.za

c.c. Japhtalina Lesibana Fosu
GCFO
Email: Lesibana.Fosu@prasa.com

c.c. Martha Ngoye
Email: martha.ngoye@prasa.com

c.c. Fani Dingiswayo
Email: fani.dingiswayo@prasa.com

c.c. Tokollo Mahlake
Email: tokollo.mahlake@prasa.com

c.c. Hurbert Makhubela
Email: hmakhubela@prasa.com

c.c. Mark Horne
Email: mhorne@prasa.com

c.c. Vicky Cairncross
Email: vcairncr@metrorail.co.za

c.c. Richard Walker
Email: richard.walker@prasa.com