

**DELIVERED BY EMAIL**

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The Administrator of PRASA  
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03 February 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 On 14 January 2020 I addressed a letter to you recording, inter alia –

"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."*

2 On 16 January 2020 you responded to that letter recording therein –

*"I have therefore engaged with the Group CFO to see what we can afford in the short term in order to show good faith to you and to assuage the predicament that you find yourselves in with your own suppliers that you have engaged to further the interests of PRASA. The Group CFO has assured me that in the next pay run (month-end) we will be in a position to pay all the disbursements that you have incurred with your suppliers in the matters that*



*you are seized with. We will make payment of the remainder of the fees by the end of February 2020.*

*I wish to assure you that PRASA values the relationship that it has with your firm over the years which relationship has been crucial in the clean-up campaign that PRASA has been engaged in over the past few years. The matter of Siyangena is very important to us and I have been advised by PRASA's Group Legal Services that PRASA has good prospects of success in it and that a number of PRASA employees who were implicated in the irregularities, fraud and corruption that led to the award of the contracts to Siyangena have been dealt with by PRASA. It would therefore not be in the best interests of PRASA for the matter not to proceed in February 2020. We also urge you to ensure that the appeal that is set down for 29 January 2020 also be saved to ensure that the rights of PRASA are protected."*

3 On the same day I responded to your letter recording therein –

"3. *I truly sympathise with the challenges which you have encountered since taking over the affairs of PRASA and, as appears from what is set out below, will endeavour to assist you in addressing these so as to ensure that Werksmans is placed in a position where it can again represent PRASA.*

4. ***Please let me have your written confirmation by close of business tomorrow*** that PRASA is in a financial position to (the Group CFO having confirmed this fact) and will –

4.1 *pay all disbursements that have been incurred with all suppliers in the matters in which Werksmans was retained to represent PRASA by the end of this month; and*

4.2 *make payment of all outstanding fees by the end of February 2020."*

4 On 17 January 2020 Martha Ngoye, Group Executive: Legal Risk and Compliance responded to Werksmans' letter of 16 January 2020 addressed to you, recording the following –

"2. *I can confirm as indicated in our previous letter that PRASA:*

2.1 *is in a financial position to pay all disbursements that have been incurred with all the suppliers in the matters that Werksmans is handling on behalf of PRASA; this payment will be made by 31 January 2020.*

2.2 *will make payment of currently outstanding fees by the end of February 2020.*

2.3 *has noted the above amounts as indicated in your letter of 16 January 2020"*.

5 Having regard to the agreement reached, I have, on an ongoing basis kept your team advised of developments as regards the matters where we have continued to represent and protect PRASA's interests at additional cost to our firm in accordance with your antecedent request.

6 In addition, on 27 January 2020 Werksmans delivered a complete set of all invoices which aggregate to the amount in respect of disbursements which PRASA had undertaken to pay on 31 January 2020, in the amount of R7 810 718.49 (inclusive of VAT) ("the disbursement amount").



- 7 On 28 January 2020 a meeting was arranged at your offices to discuss the Siyangena matter. The meeting was attended by you, several representatives of your offices, myself, two other Werksmans directors and senior and junior counsel.
- 8 The following, inter alia, transpired at the meeting –
  - 8.1 you reinforced the fact that the requisite approval had been obtained to allow the payments referenced above to be made timeously through what you termed the conversion of CAPEX amounts to OPEX amounts;
  - 8.2 we advised you of the information that we required to facilitate a substantive approach to the Deputy Judge President as regards a postponement of the hearing of the Siyangena matter and you undertook to let us have same by Friday, 31 January 2020;
  - 8.3 our senior counsel explained at a high level the manner in which Werksmans was required to conduct the Siyangena litigation on behalf of PRASA, the difficulties that had been encountered within PRASA and what was at stake in the event that Werksmans was compelled to withdraw both to the Country as a whole and to PRASA specifically. Evidence which had been discovered during the course of Werksmans' representation of PRASA was specifically highlighted by senior counsel.
- 9 We have not heard a word from your offices since that date and –
  - 9.1 payment of the disbursement amount, which as stated above was undertaken and approved by you, was not effected on 31 January 2020;
  - 9.2 we did not receive any explanation for the breach of this unconditional and irrevocable undertaking;
  - 9.3 no information relating to the Siyangena matter has been received notwithstanding your personal undertaking to let us have same by Friday 31 January 2020.
- 10 We are, in the circumstances, formally and finally withdrawing from all matters in which Werksmans has and continued to represent the interests of PRASA.
- 11 We will now commence formal steps to recover amounts due to Werksmans, and further reiterate that until all payments are received, Werksmans retains a lien on all work done in all matters .

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  
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