

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 7955/21

In the matter between

ORGANISATION UNDOING TAX ABUSE NPC

Applicant

and

**SOUTH AFRICAN NATIONAL ROAD AGENCY SOC
LIMITED**

First Respondent

THE MINISTER OF TRANSPORT N.O.

Second Respondent

SKHUMBUZO MACOZOMA N.O.

Third Respondent

(In his capacity as Information Officer)

**BAKWENA PLATINUM
CONCESSIONAIRE (PTY) LTD**

CORRIDOR Fourth Respondent

FILING SHEET: FOURTH RESPONDENT'S ANSWERING AFFIDAVIT

PRESENTED HERewith FOR FILING:

FOURTH RESPONDENT'S ANSWERING AFFIDAVIT.

Signed at Johannesburg on 27 June 2023

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Per electronic service

IN THE HIGH COURT OF SOUTH AFRICA
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(In his capacity as Information Officer)

**BAKWENA PLATINUM
CONCESSIONAIRE (PTY) LTD**

CORRIDOR Fourth Respondent

FOURTH RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

SIMON EVERITT

do hereby state under oath as follows: -

1. I am an adult male and the Chief Executive Officer of Bakwena Platinum Corridor Concessionaire (Pty) Ltd, the Fourth Respondent in the matter ("**BAKWENA**").
2. I am duly authorised to depose to this affidavit on behalf of the Fourth Respondent.



3. The facts contained in this Affidavit are, unless the context indicates otherwise, within my personal knowledge and are to the best of my belief, both true and correct.
4. Where I make submissions of a legal nature, I do so based on the advice of BAKWENA's legal representatives, which advice I accept as being correct. Any reference to advice received, is a reference to legal advice received from BAKWENA's legal representatives.
5. Where I make use of headings in this Affidavit I do so for the purposes of convenience only and do not thereby intend to limit any facts stated under a particular heading only to the topic covered by such heading.

THE PARTIES

6. For the sake of convenience, I shall refer to the parties as referred to in the Founding Affidavit and adopt the following nomenclature:
 - 6.1 The Applicant, Organisation Undoing Tax Abuse NPC ("**OUTA**");
 - 6.2 The First Respondent, South African National Road Agency Limited ("**SANRAL**");
 - 6.3 The Second Respondent, the Minister of Transport ("**the Minister**"); and
 - 6.4 The Third Respondent, Skhumbuzo Macozoma, in his capacity as Information Officer ("**Mr Macozoma**").



THE RELIEF SOUGHT

7. I have read OUTA's Notice of Motion and Founding Affidavit deposed to by Stephanie Fick ("Ms Fick") on 12 February 2021. OUTA essentially seeks access to certain information and documents in terms of section 78(2)(c) read together with section 82 of PAIA, where the relief sought as against SANRAL is as follows:

- 7.1 That OUTA's non-compliance with the 180-day period referred to in section 78(2)(c) of Promotion of Access to the Information Act 2 of 2000 ("**PAIA**") is condoned;
- 7.2 Setting aside the deemed refusal of OUTA's request for access to the records of SANRAL in its request for information in terms of the PAIA and dated 8th June 2020 ("**the Request**");
- 7.3 Directing SANRAL to provide the requested records to OUTA within 15 (fifteen) days of the granting of this order;
- 7.4 Alternatively, to prayer 3 (paragraph 7.3), directing SANRAL to notify any third party of the request concerning records relating to them in accordance with section 47 of PAIA within 10 calendar days after service of this order on them, and
- 7.5 Thereafter to comply with the time periods and provisions in chapter 5 of PAIA.
- 7.6 Directing SANRAL to pay the costs of this Application;
- 7.7 Further and/or alternative relief.

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8. In responding to the Application, I will address the following topics in turn:

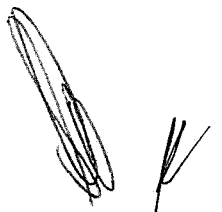
8.1 Firstly, I will deal with certain background facts which will contextualize BAKWENA's position and its interest in protecting the information sought from SANRAL;

8.2 Secondly, I will explain why I respectfully submit that OUTA's Application is fatally defective, and why the Court need not even consider the merits of the Application. In doing so, I will discuss the grounds upon which OUTA seeks the relief set out above and demonstrate that such grounds fail to sustain and justify the relief sought by OUTA. If the Application is dismissed on this basis, I will submit that a punitive costs order would be appropriate, having regard to what has already occurred in this Application.

8.3 Thirdly, in the event of the preliminary point being rejected, I set out the relevant and salient features of the applicable legislative framework pertaining to the mandatory right of BAKWENA to refuse the information sought by OUTA.

8.4 Fourthly, I will respond to the specific paragraphs of the OUTA founding papers ad seriatim, to the extent that it is necessary for me to do so.

9. Essentially, the grounds upon which OUTA seeks relief in this Application are as follows:



- 9.1 Firstly, OUTA contends that it seeks to exercise its constitutional right in terms of section 32 of the Constitution to establish whether a loan, in this instance the [BRICS Loan], sought by SANRAL is being utilized toward funding toll roads that are self – funded; and
- 9.2 Secondly, that "*irrespective of whether the [BRICS] loan had been allocated to BAKWENA, OUTA intends to conduct an analysis on whether the funding generated by BAKWENA is in excess to the funds required to maintain the toll road*".¹

10. In summary and in view of the above, BAKWENA will demonstrate that:

- 10.1 the Application discloses no cause of action, and lacks the necessary averments to justify the granting of the relief sought by OUTA in the Application;
- 10.2 OUTA has no entitlement or right to "*conduct an analysis*" of a private entity's financial affairs, on the basis alleged by OUTA or any basis at all;
- 10.3 OUTA has failed to comply with Section 50 of PAIA;
- 10.4 OUTA's request for access to information belonging to or relating to BAKWENA must in any event be refused in terms of the grounds of refusal prescribed by PAIA; and


¹ Paragraph 23 of the Founding Affidavit



10.5 the Application should therefore be dismissed with costs alternatively a punitive costs order (in the event of the *point in limine* succeeding).

BACKGROUND FACTS

11. On 21 November 2016, OUTA addressed a letter to BAKWENA in which it requested access, purportedly in terms of section 53(1) of PAIA to certain information from BAKWENA pertaining to the Concession Contract concluded between SANRAL and BAKWENA. OUTA's request for access to information also included a request for information relating to the commercial affairs of BAKWENA, including financial, governance and business information. A copy of the letter and annexures thereto, comprising the request, are attached hereto and marked as "**AA1**".
12. As appears from "**AA1**", OUTA sought information relating to, *inter alia*:
 - 12.1 Statements and/or documentation reflecting BAKWENA's maintenance costs, from 2000 to date;
 - 12.2 Statements and/or documentation reflecting tariff increases and decreases per vehicle category from 2000 to date;
 - 12.3 Statements and/or documentation reflecting annual revenue received by BAKWENA from 2000 to date;
 - 12.4 Statements and/or documentation reflecting expenditure incurred by BAKWENA relating to projects from 2000 to date;

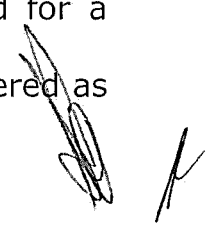


- 12.5 Statements and/or documentation reflecting changes in BAKWENA's shareholders from 2000 to date;
- 12.6 Statements and/or documentation reflecting projects related to SANRAL;
- 12.7 Statements and/or documentation reflecting annual turnover for each managed toll plaza from 2000 to date;
- 12.8 Statements and/or documentation reflecting annual payments made to SANRAL from 2000 to date;
- 12.9 BAKWENA's Annual Reports from 2000 to date;
- 12.10 All agreements between BAKWENA and SANRAL;
- 12.11 Statements and/or documentation reflecting detailed traffic volume (numerical breakdown) for each managed toll plaza from 2000 to date;
- 12.12 Construction Progress Reports;
- 12.13 Initial Construction Works Records from 2000 to date;
- 12.14 Upgrade, repair and replacement records from 2000 to date;
- 12.15 Maps and diagrams;
- 12.16 Asset records from 2000 to date;
- 12.17 Tender submission Files from 2000 to date;
- 12.18 All technical drawings from 2000 to date;
- 12.19 Q & A Files from 2000 to date;



12.20 Credit Rating Reports from 2000 to date; and

12.21 All financial closure correspondence from 2000 to date.

13. On 21 December 2016, BAKWENA sent a letter to OUTA in which it responded to OUTA's letter of 21 November 2016. In its response BAKWENA invited OUTA to, *inter alia*, specifically identify the right that OUTA sought to exercise and protect. OUTA was further requested to identify the right, in respect of each of the listed items of information that were requested, and how the information would assist with the exercise and protection of such a right. A copy of BAKWENA's letter to OUTA dated 21 December 2016 is attached hereto and marked as "**AA2**".
14. OUTA clearly realised that it had no legal basis or entitlement to seek the information from BAKWENA, and OUTA did not respond to BAKWENA's letter. OUTA also failed to pursue its request for access to information from BAKWENA in any manner.
15. However, on 8 June 2020, (approximately three and a half years later), OUTA addressed a letter to SANRAL, by way of e-mail, with a formal request for access to information, purportedly in terms of section 53(1) of PAIA. The letter together with the formal request for access to information and the covering e-mail are attached to OUTA's Founding Affidavit and marked as "SF3", "SF4" and "SF5" respectively.
16. On 22 July 2020, OUTA addressed an e-mail informing SANRAL that as no response was forthcoming, the 30-day period as prescribed for a response lapsed, and the absence of a response could be considered as
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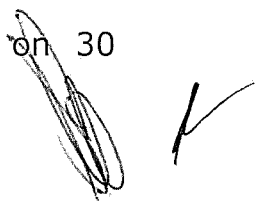
a deemed refusal. In the same e-mail OUTA informs SANRAL that as a courtesy it will extend the period to receive the reply until 29 July 2020.

17. On 30 July 2020, SANRAL responded to the Request, pointing out that the information sought related to BAKWENA, and referred OUTA to BAKWENA's request that it identify the right that OUTA seeks to exercise and protect, as set out in annexure "AA2". Given that OUTA had not responded its request could not be considered further. A copy of SANRAL's response is attached hereto and marked as "**AA3**".
18. On 22 February 2021, OUTA issued this Application against the First to Third Respondents for access to information belonging to or relating directly to BAKWENA, without citing BAKWENA as a party to the Application. In view of the facts set out above, it is rather strange that OUTA elected to exclude BAKWENA from the Application.
19. At the time of instituting the Application, OUTA also failed to take the Honourable Court into its confidence by disclosing the fact that prior to making the Request to SANRAL on 8 June 2021, OUTA had previously made a similar request to BAKWENA on 21 November 2016, which OUTA abandoned when it was requested to identify the right it sought to exercise and protect and was asked to indicate how such information would assist in the exercise and protection of such a right.
20. OUTA appears to have purposely sought to exclude BAKWENA from this Application, and continued to proceed with the relief sought without joining BAKWENA, in respect of the disclosure of information which

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belonged to BAKWENA, whilst OUTA ought to have been fully aware that BAKWENA should have been a party to this Application.

21. As a consequence, on or about 25 June 2021, BAKWENA instituted an Application to Intervene which was subsequently heard by the Honourable Madam Justice Potterill on 26 May 2022, following which BAKWENA was granted leave to intervene in the Application.
22. Having been joined as a Fourth Respondent to the Application, BAKWENA delivered its Notice of Intention to Oppose on or about 6 June 2022.
23. Subsequently, on or about 1 July 2022, BAKWENA delivered a Notice in terms of Rule 6(5)(d)(iii) of the Uniform Rules of Court and filed a founding affidavit in support thereof in terms of which BAKWENA raised a point of law to the effect that the Application discloses no cause action, alternatively discloses insufficient averments to sustain a cause of action that would justify the relief sought by OUTA ("the *In Limine* Application").
24. On or about 31 August 2022, OUTA delivered a notice in terms of Rule 30 and 30A of the Uniform Rules of Court for the setting aside of BAKWENA's *In Limine* Application on the basis that BAKWENA's filing of a separate self-standing application is irregular. The complaint raised by OUTA was of a procedural and the technical nature, which avoided dealing with merits of the *in limine* aspect raised by BAKWENA.
25. OUTA subsequently instituted an application in terms of Rules 30 and 30A of the Uniform Rules of Court ("the Rule 30 Application") on 30

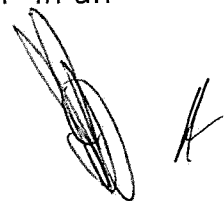
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September 2022. The Rule 30 Application was heard on 26 April 2023 before the Honourable Acting Justice De Beer and judgment was handed down on 9 May 2023, in terms of which BAKWENA's *In Limine* Application was set aside.

26. In delivering the judgment in the Rule 30 Application, the Acting Judge De Beer did not engage with the merits of the *In Limine Application* but found that the *in limine* aspect should be dealt with as part of BAKWENA's Answering Affidavit. The issues raised in the *In Limine* Application are accordingly raised herein, and have to be determined by the Court.
27. I will now proceed to deal with the *In Limine* aspect which, I am advised, is a fundamental and crisp legal point which will be dispositive of and f negate the need to hear or determine the merits of the Application.


POINT IN LIMINE: NO CAUSE OF ACTION

28. The *in limine* aspect arises from the fundamental misconception upon which the entire Application is premised. This factual misconception or material inaccuracy (which OUTA should certainly have aware of, and even if not, has been made aware of) leads to the inevitable consequence that no cause of action for the relief sought by OUTA has been set out or established in the Application.
29. In particular this relates to the BRICS National Development Bank Loan ("the BRICS Loan"), which OUTA has raised as its "cause of action" in an

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attempt to justify the relief it seeks, and particularly in order to obtain access to BAKWENA's confidential documents.

30. In this regard, OUTA contends that it seeks to exercise its 'constitutional right in terms of section 32 of the Constitution' to "establish whether the [BRICS Loan] is going towards the GFIP bonds (e-tolled roads) or other SANRAL managed toll roads that are supposed to be self-funding". To this end, OUTA premises its cause of action on the BRICS Loan having been granted and moreover, 'received' by SANRAL and partially allocated to BAKWENA.
31. It is important to point out that the Public Private Partnership which culminated in the conclusion of a concession contract and the BRICS Loan are poles apart and constitute two separate and entirely distinct methods of funding. These methods of funding are exclusive to their respective purposes and can never be diluted or used other than for the purpose for which they have been earmarked. OUTA must be aware of such distinction and restriction, and on its own version states that the Toll Roads are intended to be self-funding.
32. I will expand in further detail below in respect of these distinct funding mechanisms which are material to illustrating that no cause of action has been set out to justify the relief sought, but I have been advised that the Application falls to be dismissed on this basis alone.
33. In the absence of evidence, rather than a vague and unsubstantiated allegation, no cause of action has been set out.



34. In what follows, I address the following in turn –

- 34.1 Methods of Funding/Financing Government Infrastructure Projects;
- 34.2 The Basis upon which the relief is sought in the Application and the BRICS National Development Bank Loan; and
- 34.3 Abuse of Process.

Methods of Funding/Financing Government Infrastructure Projects

- 35. At the outset, it is necessary to briefly explain the relevant methods of funding available to the Executive Authority or State-Owned Entities such as SANRAL.
- 36. The explanation will cover two of the methods of funding, which are applicable and relevant to the Application and the Parties.
- 37. The first method being a Private Public Partnership and the second method being the BRICS Loan.
- 38. Public Private Partnerships are defined by National Treasury in National Treasury Regulation 16 as –

"an agreement between an institution and a private party in terms of which:–

(a) the private party undertakes to perform an institutional function on behalf of the institution for a specified or indefinite time;

(b) the private party receives a benefit for performing the function, either by way of:

(i) compensation from a revenue fund;

(ii) charges or fees collected by the private party from users or customers of a service provided to them; or

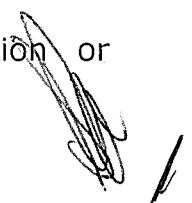
(iii) a combination of such compensation and such charges or fees;

(c) the private party is generally liable for the risks arising from the performance of the function, subject to paragraph 16.13.1; and

(d) depending on the specifics of the agreement, state facilities, equipment or other state resources may be transferred or made available to the private party."


39. The terms of a Public Private Partnership, and in particular the funding mechanisms differ from project to project and more so, the different industries. However, as published by National Treasury, *"PPPs are guaranteed by the Minister of Finance and create a contingent liability. Government incurs contingent liabilities only when a contract is terminated.... PPP agreements can also impose other fiscal obligations on government that are not defined as contingent liabilities. For example, where the private sector collects user charges from the public, government usually guarantees the minimum revenue..."*



40. A copy of National Treasury's explanation covering certain aspects of Private-Public Partnerships in terms of Annexure "E" of the National Budget Review 2021 is attached hereto and marked as "**AA4**".
41. The applicable Public Private Partnership relating to BAKWENA culminated in the conclusion of a Concession Contract between SANRAL and BAKWENA in respect of the N1/N4 Toll Road. In this regard, it must be noted that the national road network, which SANRAL is responsible for in terms of the development, improvement, maintenance and management thereof, is divided into two categories, namely, non-toll roads and toll roads. It is well known and published by SANRAL that non-toll roads are funded by a grant from Treasury and toll roads are funded by toll revenue.
42. Almost half of SANRAL's entire portfolio of toll roads is managed directly by SANRAL and half by private companies and/or concessionaires, such as BAKWENA. It is therefore important to point out the distinction between toll roads directly managed by SANRAL and toll roads that are 'under a concession' in terms of a Public Private Partnership.
43. The toll roads under a concession in terms of a Public Private Partnership are funded and operated by the private party concessionaire. The operating risk and/or profits and losses are all borne by the concessionaire with no 'external' funding or government grant being provided. In the event of any loss, alternatively, any capital requirements for the construction, improvement, rehabilitation or
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operation of the toll road arising, it is not a cost or liability to SANRAL, but is a cost for a the concessionaire, and, in this particular instance, in terms of the N1/N4 Toll Road, BAKWENA.

44. Funding mechanisms and/or loans such as the BRICS Loan are completely distinct to funding mechanisms relevant to Public Private Partnerships and/or concession contracts.
45. All risk, whether in terms of technical, financial or operational aspects, in respect of the N1/N4 Toll Road are to be borne by BAKWENA. Toll roads under a concession contract with SANRAL are accordingly self-funded. No external funding or loan is provided by SANRAL for the maintenance, improvement, operation and/or any other obligation under the concession contract.
46. Whilst it is noted that the alleged BRICS Loan was approved by the National Development Bank ("NDB") for the 'rehabilitation of the pavement for the existing toll sections of national roads, construction of additional lanes to widen such roads, and rehabilitation of related infrastructure, such as bridges and intersections,' there is a clear distinction between toll roads managed by SANRAL, and toll roads 'under a concession'.
47. Toll roads managed by SANRAL still require funding for operating costs, and moreover, capital costs, should any improvement, rehabilitation or expansion works be required.




48. Whilst funding for such capital costs associated with improvement, rehabilitation and expansion works are naturally also required for toll roads managed under a concession, such costs are however costs to the private concessionaire and not costs to SANRAL and/or the State.
49. There is accordingly a clear distinction between the various funding mechanisms for certain infrastructure projects, the composition of the national road network being divided into non-toll roads and toll roads, and toll roads managed by SANRAL and toll roads under concession.
50. It is therefore apparent that the BRICS loan, even if it had been granted (which it was factually not), would have been granted to SANRAL, and not to BAKWENA.
51. Consequently, the purported cause of action relied on by OUTA, based on the BRICS Loan, in order to seek relief granting access to BAKWENA's documents is entirely misconceived. Simply stated, no cause of action has been set out to justify the disclosure of BAKWENA's documents on the basis of the BRICS Loan and OUTA's Application should accordingly be dismissed.

The Basis Upon which the Relief is Sought and the Brics Loan

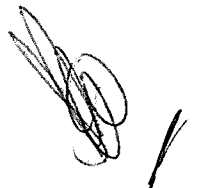
52. In the Application, OUTA seeks access to certain information and documents in terms of section 78(2)(c) read together with section 82 of PAIA.



53. As pointed out above, OUTA's cause of action for the relief sought, is premised upon and revolves around the alleged BRICS Loan of approximately R7 billion being granted to SANRAL.
54. OUTA seeks to exercise its 'constitutional right in terms of section 32 of the Constitution' to "*establish whether the [BRICS Loan] is going towards the GFIP bonds (e-tolled roads) or other SANRAL managed toll roads that are supposed to be self-funding*" (paragraph 23 of the Founding Affidavit). It is on this basis that it appears that OUTA submitted its Request for Access to Information in terms of PAIA on 8 June 2020, and moreover, it is the very same basis upon which it now seeks the relief sought in the Application.
55. In so doing, OUTA makes the following averments in its Founding Affidavit –
- 55.1 "*SANRAL received a loan of R7 billion from the Brics National Development Bank. The loan is payable over a period of fifteen years* (Paragraph 17);
- 55.2 *OUTA is concerned that SANRAL has taken out another R7bn loan....* (Paragraph 20); and
- 55.3 *Since the loan involves the use of public finances, SANRAL as a state organ is obliged to be transparent with Public Finances. OUTA wants to establish whether this loan was used to further fund the concessionaire agreements* (Paragraph 21)".



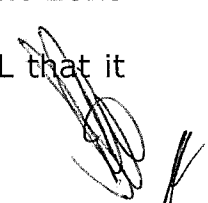
56. The quoted allegations presuppose, without any proof, that SANRAL has already received the BRICS Loan of R7 billion from the NDB. the allegation is however made in the face of public media releases and/or statements confirming that SANRAL has, in fact, not received the BRICS Loan, with the Loan having been refused or rejected by National Treasury.
57. To this end, it has been well publicised that on or about 12 September 2019 the Board of Directors of the NDB approved four infrastructure and sustainable development projects, which included a R7 billion loan to SANRAL and guaranteed by the Government of the Republic of South Africa. A copy of a press release of the NDB dated 16 September 2019 is attached as "**AA5**".
58. Following the NDB's press release, a number of media publications publicised various articles in regard to the alleged BRICS Loan, many of which presupposed that SANRAL had indeed received the R7 billion loan following the NDB Bank's approval. This is however incorrect.
59. Indeed, SANRAL, following the NDB's announcement clarified the position in that although the NDB Bank had approved the loan to SANRAL, it was nonetheless still subject to the approval of both the Minister of Transport and the Minister of Finance. This was so given that the 'caveat' to the BRICS Loan was that it would be 'guaranteed' by Government, and effectively, National Treasury. This would mean that any approval by

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National Treasury of the BRICS Loan would require approval of the loan and guarantee agreements.

60. This was furthermore made clear in SANRAL's Integrated Report 2020 which covered the period from 1 April 2019 to 31 March 2020 ("**the 2020 Integrated Report**"). In terms of the 2020 Integrated Report, the following was set out in respect of the BRICS Loan –

"SANRAL is currently pursuing a loan to be guaranteed by the Multilateral Investment Guarantee Agency of World Bank for R7 000 million. Half of this loan, R3 500 million, may be used for the refinancing of maturing debt. If successful, this amount will cover the cash requirements of the 2021 financial year as well as enable SANRAL to proceed with the toll-road projects proposed to MIGA with the other half of the loans. The application was made to the Minister of Transport which will require the concurrence of the Minister of Finance." (emphasis added)

61. A copy of the relevant extracts of the 2020 Integrated Report is attached as "**AA6**".
62. What the 2020 Integrated Report undoubtedly confirms apart from the purpose of the loan is that SANRAL, notwithstanding any approval by the NDB, was only pursuing the loan and moreover, that an application was made to the Minister of Transport which furthermore requires the approval of the Minister of Finance. At the time of the release of the 2020 Integrated Report, there was no claim or suggestion by SANRAL that it
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had actually received the BRICS Loan of R7 billion as stated by OUTA. To the contrary, it is clear that it had not been receiving, but was being pursued.

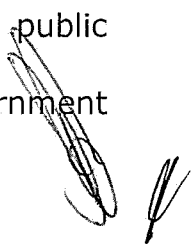
63. For the same period, namely for the year ended 31 March 2020, National Treasury made no mention of the R7 billion BRICS Loan to SANRAL in its 2020 Annual Financial Statements. In fact, National Treasury from a government guarantees perspective had recorded the following in its 2020 Annual Financial Statements –

"The explicit contingent liabilities of government consist mainly of government guarantees issued to state-owned enterprises...."

The explicit contingent liability portfolio of government exposes government to credit risk, in that, should the guaranteed entities fail to settle their government guaranteed financial obligations; government as the guarantor will have to settle the obligations in default on behalf of the entities.

As at 31 March 2020, guarantees to public institutions decreased by R3.3 billion.... This is mainly due to decreases in the guarantees issued to the... South African National Roads Agency Limited...."

(Emphasis added)

64. National Treasury's 2019/2020 Annual Financial Statements makes it abundantly clear that no government guarantee was approved to SANRAL, which in turn, would increase the total guarantees to public institutions (inclusive of SANRAL); but that the total government
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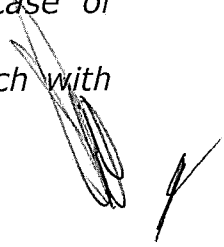
guarantee had in fact decreased as a result of *decreases* in guarantees issued to entities, such as SANRAL. National Treasury's reporting of the decrease in SANRAL's issued guarantees comes in the same period as the NDB's preliminary approval of the R7 billion BRICS Loan to SANRAL in September 2019.

65. A copy of the relevant extracts of the National Treasury's Annual Financial Report 2019/2020 is attached as "**AA7**".
66. In the subsequent reporting year ending 31 March 2021, National Treasury, once again, made no mention of any approval of the BRICS Loan and/or approval of any government guarantee in favour of SANRAL for the BRICS Loan.
67. What National Treasury did record in no uncertain terms in its Annual Report 2020/21 is that "*Government guarantee requests for the South African National Roads Agency SOC Ltd (SANRAL) and the Sedibeng Water Board was not concurred with.*" A copy of the relevant extracts of National Treasury's Annual Report 2020/21 is attached as "**AA8**".
68. In November 2021, following an article first published by Moneyweb, the alleged R7 billion BRICS Loan came under the spotlight again, where OUTA, once again, in founding papers in separate proceedings, alleged that SANRAL received the BRICS Loan. In response to such allegations, SANRAL made it abundantly clear through its Chief Financial Officer, Inge Mulder, that SANRAL "*did not receive any loan, of any amount, from the BRICS' New Development Bank at all*".



69. SANRAL further pointed out that it had received a letter from the Minister of Transport, Fikile Mbalula, on 12 February 2020 informing SANRAL of National Treasury's rejection of the request for the guarantee for the BRICS Loan. National Treasury had indeed confirmed that it had taken such a decision, to reject SANRAL's request for the guarantee, in December 2019.
70. I have been advised that once such clear and unchallenged information came to OUTA's knowledge, it should have retracted its Request for Information, and it should have withdrawn its Application.
71. BAKWENA has not been privy to the aforementioned correspondence, as firstly, such correspondence and confirmation of National Treasury's decision is between National Treasury, the Minister of Transport and SANRAL, and secondly, as the BRICS Loan was never intended to be utilised for toll roads operated by concessionaires. I do however attach a copy of the Moneyweb article, as reproduced in the Citizen, dated 25 November 2021 as "**AA9**".
72. The inaccurate reporting of the alleged R7 billion BRICS Loan received by Moneyweb was again criticised by SANRAL in a further media statement published by SANRAL on 3 March 2022, which recorded that Moneyweb had published further factually incorrect statements similar to that of the BRICS Loan –

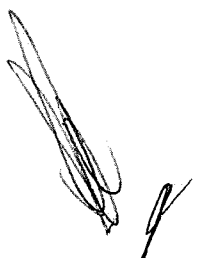
"Sometimes, though, there is no other side. In the case of SANRAL, the other side was there and had been in touch with

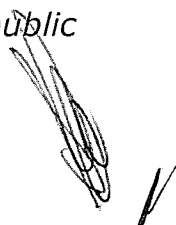


Moneyweb's journalist – not for the first time. He knows we always honour our commitment to respond to his questions. But this time around the facts might have gotten in the way of his innuendos dressed up as journalism.

Worse still, his effectiveness as a hired gun might have been blunted. This is also not the first time this journalist has published a factually incorrect statement, which after checking with SANRAL was proven to be inaccurate. We refer to the article published in November 2021 regarding SANRAL allegedly taking a loan from the New Development Bank of R7 billion."

73. A copy SANRAL's media release dated 3 March 2022 is attached as **"AA10"**.
74. Following BAKWENA's Intervention Application and the order of Her Honourable Madam Justice Potterill on 26 May 2022 granting BAKWENA leave to intervene, BAKWENA sought to engage with SANRAL in order to ascertain, definitively, whether or not the BRICS Loan was ever received by SANRAL.
75. In this regard, the Chief Financial Officer of SANRAL, Inge Mulder, addressed a letter dated 28 June 2022 to BAKWENA, stating in no uncertain terms that *"SANRAL did not obtain a loan from the New Development Bank (NDB) of any amount, currently or since the inception of the NDB."*

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76. The letter goes further and confirms that "Even though the NDB approved, from their side, that a loan of R7 billion could be granted to SANRAL..., this loan was never approved by the Minister of Finance, as required by the Public Finance Management Act."
77. A copy of SANRAL's letter dated 28 June 2022 is attached as "**AA11**".
78. It is accordingly clear, whether it be from media releases from SANRAL, press publications, the Annual Financial Statements or Annual Reports of Treasury (which OUTA ought to have ascertained from such publicly available documents), and moreover SANRAL itself, that SANRAL did not receive the R7 billion loan from NDB despite the NDB having approved the loan amount in September 2019.
79. In order to obtain and receive the loan amount from the NDB, SANRAL required the approval of the Minister of Transport and the Minister of Finance. With no such approval being granted by the Minister of Finance and National Treasury, no amount was ever received from the NDB as confirmed by SANRAL in its letter dated 28 June 2022.
80. Despite this, OUTA's application, and moreover, OUTA's entire cause of action as alleged in its founding papers, is premised upon the BRICS Loan having been granted and moreover, 'received' by SANRAL. It is based on such incorrect assumption of the alleged loan being 'received' that –
- 80.1 OUTA is allegedly 'concerned' with SANRAL "*entrenching itself into more debt*", and "*where the loan involves the use of public finances*";
- 

80.2 *"OUTA wants to establish whether this loan was used to further fund the concessionaire agreements;"*


80.3 *"It is important for OUTA and it will be in the best interest of the public for SANRAL to be transparent on the purpose of the loan, ... where OUTA needs to know whether loan amounts were allocated to the concessionaire tolled routes;" and*

80.4 *"OUTA would like to establish whether the abovementioned loan is going towards the GFIP bonds or other SANRAL managed toll roads that are supposed to be self-funding."*

81. The very purpose alleged and the entire cause of action upon which OUTA's Application is premised, is based on the fundamental misconception that the BRICS Loan was granted to and received by SANRAL.

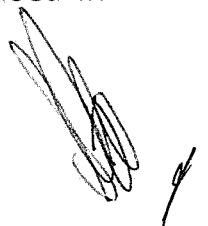
82. Consequently, I am advised and submit, that given the fact that the BRICS Loan of R7 billion was rejected by National Treasury, and never received by SANRAL (as alleged by OUTA), OUTA's application discloses no cause of action, and lacks the averments which are necessary to justify the granting of the relief sought in the Application.

83. The allegation that SANRAL received a loan of R7 billion, through the BRICS Loan is simply wrong, and is unsupported by any factual proof. OUTA has made such allegations without providing any evidence to substantiate the allegations. What has however been clearly established is that the BRICS Loan was not granted.



84. I am advised that it is quite astounding that in such circumstances OUTA persists with pursuing the Application, and rather than withdrawing the Application raises a Rule 30 Application resulting in the unnecessary incurring of legal costs.
85. It follows that the Application is entirely misconceived, and must fail. Moreover, it is clear from OUTA's own allegations that the BRICS Loan had nothing to do with any of the concessionaires, at least in respect of BAKWENA, as such tolls roads are self-funding.
86. OUTA's request for information in regard to the Concession Contract concluded with BAKWENA, based on the alleged funds received by SANRAL from the NDB is fundamentally flawed when the BRICS Loan was in fact never granted or received by SANRAL; nor was the purpose for which it was sought relevant to toll roads managed by concessionaires, nor did it relate to the Concession Contract with BAKWENA.
87. Moreover, SANRAL in an application filed for the rescission of an order taken by OUTA in default against SANRAL in this Division under case number 7954/2021, for disclosure of another Concessionaires' documents, being Trans African Concessionaires (Pty) Ltd ("TRAC"), also on the basis of the alleged BRICS Loan, stated the following:

"Finally, it is noted that the application is devoid of merit ex facie the founding affidavit. OUTA seeks to make out a case that the loan from the Brics National Development Bank is being used in

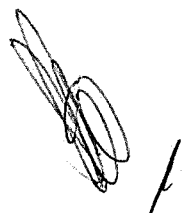
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order to fund the concessionaire agreements (FA paragraphs 14 and 15, CaseLines 005-5).

However, the information OUTA seeks has absolutely nothing to do with the alleged Brics Loan, nor would it be possible to establish the uses of the Brics Loan from the documents which OUTA has actually requested. It stands to reason that even if TRAC were prepared to disclose the requested documents to OUTA (which it is of course is not willing to do) the information sought would demonstrate only amounts generated by TRAC from the concessionaire contract, it would not demonstrate the allocation of the Brics Loan funds."

A copy of the abovementioned extract is attached marked "**AA12**".

88. This again illustrates that even if the BRICS Loan was received (which it clearly was not) the funding methods are separate, distinct and cannot be diluted, and the documents sought would not provide OUTA with the information it seeks. The alleged BRICS Loan is simply a smokescreen and an attempt to justify the unjustifiable conduct of OUTA and to procure documents it simply is not entitled to.
89. On this basis, not only does the application disclose no cause of action, but the allegations relating to the BRICS Loan are completely irrelevant and fail to establish any cause of action relating to BAKWENA and the N1/N4 Toll Road concession.



90. OUTA's Founding Affidavit clearly does not set out any cause of action at all, to sustain the relief sought. Consequently, I respectfully submit that OUTA's Application should be dismissed with costs.
91. Further legal argument will be presented at the hearing of the matter, if necessary.

Abuse of Process

92. It appears that OUTA's intentions amount to nothing more than a fishing expedition through the mechanisms of the Court, which I am advised constitutes an abuse of process.
93. OUTA, as already mentioned, sought to circumvent obtaining the information from BAKWENA, once faced with the hurdle of setting out a right to the information, but then rather sought to obtain the information indirectly from SANRAL, a public body, as a conduit to obtain such information and to avoid identifying the existence of a right entitling it to the information requested. This, I submit, constitutes an abuse of process as well.
94. In the circumstances, the conduct and manner in which the Application has been instituted by the Applicant amounts to an abuse of process and an attempt to secure documents and information without following the proper process.
95. To illustrate this, OUTA sought to secure documents relating to a third party, being BAKWENA, without even citing BAKWENA as a party to the proceedings.



96. When BAKWENA called upon OUTA to join it to the proceedings OUTA refused to do so, leaving BAKWENA with no choice but to incur the costs to intervene and launch a formal intervention application. This has been fully captured in BAKWENA's intervening application, to which reference will be made during argument.
97. The manner in which OUTA approached the Application to gain access to BAKWENA's documents, without BAKWENA being in a position to put its case forward to a court, and even worse, without a court having the full facts presented to it, is clearly mischievous and improper.
98. As an illustration of OUTA's conduct, under case number 7954/2021 referred to above, OUTA obtained a default order for documents relating to TRAC, another third-party concessionaire who was not cited as a respondent in that application. Although a rescission application has since been granted, a third party's right could have been severely prejudiced by not having had the opportunity to oppose relief which directly impacts on it.
99. The Application is structured in such a manner that it simply constitutes a fishing expedition. OUTA's conduct in such regard cannot be countenanced, as OUTA has failed to illustrate its rights or entitlement to the documents sought.
100. Having regard to the conduct of OUTA and moreover, the manner in which the Application has been instituted, and the events that transpired



following the Application, whether taken separately or cumulatively, it is submitted that the Application amounts to an abuse of process.

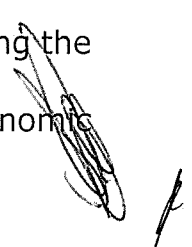
101. Should this Honourable Court deem it necessary to still consider the merits of OUTA's relief in regard to the PAIA request, I proceed to set out hereunder the reasons why such relief, together with the remainder of the heads of relief sought, should in any event still not be granted.

OUTA'S LACK OF AUTHORITY

102. As a desperate catch-all, OUTA alleges that "*irrespective of whether the [BRICS] loan had been allocated to BAKWENA, OUTA intends to conduct an analysis on whether the funding generated by BAKWENA is in excess to the funds required to maintain the toll road*".

103. This statement is completely vague and framed so broadly, as to be meaningless. I have been advised that this is an aspect that will be dealt with by way of argument at the hearing of the Application.

104. OUTA is however not an empowered body entitled to regulate the governance of private bodies, neither does OUTA have any authorisation to conduct any investigations into a private entity's financial affairs. Such conduct of OUTA is not only a complete disregard to a private entity's commercial and financial sensitivity, but it also unlocks a danger, which limits a company's ability from competing fairly in the open market, but even worse such scrutiny allows for abuse, the long term effect being the lack of investment for much needed infrastructure projects and economic

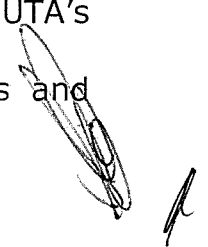


downturn, if companies are harassed into disclosing commercially sensitive information in relation to its business operations, which can then be accessed by competitors.

105. OUTA simply has no entitlement or right to "*conduct an analysis*" of a private entity's financial affairs. I have been advised that no court of law would grant any relief for such "analysis" without a proper case being made out as to why a third party would be entitled to conduct such an analysis. OUTA has not made out any case at all, but more importantly, OUTA has no authority to conduct any analysis.

106. In any event BAKWENA in submitting its bid to SANRAL has already participated in a substantive and rigorous bidding process which involved an analysis of BAKWENA's technical and financial capability in respect of managing the project and to ensure that the procurement is done in such a manner that value for money is obtained. This process eventually resulted in BAKWENA concluding a Concession Contract to design, build, finance, operate and maintain the BAKWENA N1/N4 toll road with SANRAL.

107. Moreover, it should be pointed out that SANRAL being a state-owned entity is subject to an annual audit process by the Auditor-General. As such it begs the question on what basis and authority OUTA believes it can conduct such an audit as it does not have the wherewithal and appreciation for understanding a Concession mechanism. In fact, OUTA's agenda in requesting information past and present is spurious and



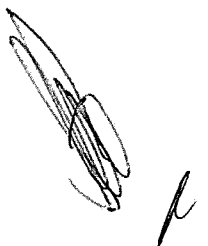
directed to create a misconception to the public as regards to tolling as a mechanism for funding road networks which are critical assets and investments to the South African economy.

108.SANRAL has its own processes in place to oversee the conduct of BAKWENA.

109.In operating the N1/N4 toll road, BAKWENA takes on the funding, maintenance, development, management and operation of the toll road, and as such is entitled to receive a benefit as clearly appears from the Treasury Regulation quoted above. BAKWENA is not a non-profit organisation, and is clearly entitled to make a profit, as is every other commercial corporate entity.

110.It must however be pointed out that the profit that BAKWENA makes is capped in terms of the Highway Usage Fee. There are accordingly sufficient checks and balances in place, and OUTA's unauthorized meddling is not only unnecessary, but totally unwarranted.

111.In any event if OUTA did have such an entitlement or right (which it clearly does not), the Request for Information, and the relief sought in the Application, would have to be directed at BAKWENA, and not SANRAL. Outa is clearly aware of such requirement, as evidenced by its initial request to BAKWENA.

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THE REQUIREMENTS OF SECTION 50 OF PAIA HAVE NOT BEEN MET

112. Although the position held here is not strictly related to the Request directed to SANRAL, it bears reference to the request indirectly directed to BAKWENA.

113. I am advised that in terms of Section 50 of PAIA, a "*requester*" must be given access to any record of a private body if, *inter alia*:

113.1 the record is required for the exercise or protection of any rights;
and

113.2 the person complies with the procedural requirements in PAIA relating to a request for access to that record.

114. As appears from annexure "**AA1**" hereto, OUTA recorded that the "rights" it seeks to exercise or protect, is the right of "*access to information*" and the right to "*just administrative action*".

115. It is clear that such vague and generalised allegations of rights, without any substantiation, are not compliant with what PAIA requires. I have been advised that such allegations amount to legal conclusions without any basis being set out for the reaching of such conclusions.

116. In addition, in respect of the provision of an explanation as to why the information is required, OUTA recorded that it is "*To justify the relationship between yourself and SANRAL to our members*". The allegation does not set out any basis for the exercise of an alleged right, and is not only vague, but meaningless. The "relationship" between



SANRAL and BAKWENA is based on contractual obligations, and there is no reason for OUTA to seek to "justify" such relationship.


117. Whoever they may be, are certainly not entitled to instruct OUTA to "justify" the relationship between BAKWENA and SANRAL, and the "members" have no right to investigate a contractual relationship.

118. It is clear that no proper right has been set out by OUTA, and that no proper and adequate explanation was provided, as required by the provisions of PAIA. The PAIA request as received from OUTA is clearly defective, and does not comply with the provisions of PAIA. BAKWENA was perfectly within its rights to seek clarity. OUTA failed to respond.

119. The only inference that can be drawn from OUTA's conduct in this regard is that OUTA does not have any particular right that it wishes to protect, and that this Application is simply spurious, and a fishing expedition.

120. As already set out above, OUTA previously sought the documents from BAKWENA and are now seeking essentially the same documents from SANRAL subsequent to OUTA's failure to meet the applicable threshold when requesting documents from a private body. The mere fact that OUTA is now seeking the documents in relation to BAKWENA from SANRAL does not transpose the ownership of the documents.

121. Similarly, the intention of seeking the documents of a private body through a public body does not relieve it from the obligation of meeting the PAIA thresholds for a private body.

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122. The documents sought by OUTA belong to BAKWENA, a private body, and not SANRAL.

GROUNDINGS OF REFUSAL IN TERMS OF PAIA

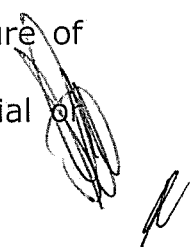
123. I am advised that:

123.1 In terms of section 9(b)(i) of PAIA, the right to access to information, although fundamental, is subject to justifiable limitations, including limitations aimed at reasonable protection of privacy and commercial confidentiality;

123.2 Section 36 of PAIA stipulates that an information officer of a public body must refuse a request for access to a record of the body if the record contains financial, commercial, scientific or technical information other than trade secrets of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party;

123.3 Section 45 of PAIA provides that the information officer of a public body may refuse a request for access to a record of the body if the request is manifestly frivolous and/or vexatious, or if the work involved in processing the request would substantially and unreasonably divert the resources of the public body; and

123.4 Section 68 of PAIA requires the head of a private body to refuse a request for access to a record of the body if the record contains financial, commercial information of the body, the disclosure of which would be likely to be cause harm to the commercial or



financial interests of the body, information, the disclosure of which could reasonably be expected to put the private body at a disadvantage in contractual or other negotiations or prejudice the body in commercial competition.

124. OUTA has sought the following records in respect of upgrade of the N1/N4 route from Tshwane northwards towards Bela – Bela(N1) and the N4 route running from Tshwane westwards through Rustenburg and Zeerust to the Botswana border (N4):

124.1 In respect of PART A of the request for information-

124.1.1 A copy of the Concession Contract in respect of the route described in paragraph 124;

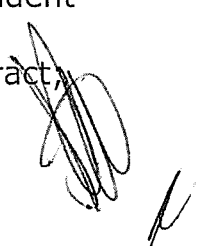
124.1.2 A copy of all Annexures and Addenda to the BAKWENA Concession Contract;

124.1.3 A copy of all Amendments and Addenda to the BAKWENA (if any) to the BAKWENA Concession Contract;

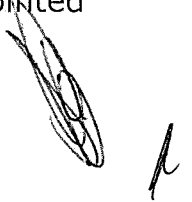
124.1.4 A copy of all Operation and Maintenance contracts entered into between the Concessionaire and the O&M Contractors, relating to the BAKWENA Concession Contract;

124.1.5 A copy of the Operational and Maintenance Manual pertaining to the BAKWENA Concession Contract;

124.1.6 A copy of the contracts entered into with the Independent Engineer(s), pertaining to the BAKWENA Concession Contract;

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- 124.1.7 A copy of all the Independent Engineer(s) Reports submitted to SANRAL, pertaining to the BAKWENA Concession Contract
- 124.1.8 A copy of all the Construction Work contracts entered into by the Concessionaire relating to the BAKWENA Concession Contract
- 124.1.9 A copy of all "Performance Certificates" issued, relating to the Construction Works contracts entered into by the Concessionaire (as referred to in item 8 above)
- 124.1.10 A copy of "Taking Over certificates" that have been issued in terms of the BAKWENA Concession Contract
- 124.2 In respect of Part B of the request: -
 - 124.2.1 Copies of BAKWENA's complete financial statements for each fiscal year, submitted to SANRAL in terms of the BAKWENA Concession Contract (as from 1999/2000 financial year to present);
 - 124.2.2 Copies of all reconciliations of BAKWENA's Profit & Loss Accounts, together with their proposed budgets for each fiscal year, submitted to SANRAL, from 1999/2000 fiscal year to present in terms of the BAKWENA Concession Contract;
 - 124.2.3 Copies of all Annual Reports submitted to SANRAL, pertaining to the BAKWENA Concession Contract (as from the 1999/2000 financial year to present), issued by BAKWENA's appointed

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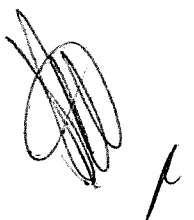
auditors, certifying that the computation of the Highway Usage Fee for the previous year was correctly calculated;

124.2.4 Copies of the lists, submitted to SANRAL in terms of the BAKWENA Concession Contract (as from 1999 to present), of BAKWENA's lenders and creditors to which BAKWENA owes a sum in excess of the equivalent of R 10 000 000 (ten million Rand), including the amounts due to each of them.

125. I am advised that OUTA is not entitled to the information sought in this Application for *inter alia* the following reasons:

125.1 There are documents which are not even in SANRAL's possession. Moreover there is no basis for disclosure of such documents.

125.2 The documents sought from SANRAL contain financial, commercial, and or technical information of a third party (BAKWENA, Contractors, Shareholders) and the disclosure thereof will cause serious harm to commercial and financial interests of BAKWENA and its Stakeholders in negotiations, contractual or otherwise and will prejudice BAKWENA and its Stakeholders in their ability to compete fairly financially and commercially. Consequently, the documents sought fall strictly within the ambit of commercially sensitive information, which ought to be protected from disclosure.



125.3 Disclosure would compromise other third-party rights such as BAKWENA's contractors which would also amount to a breach of a duty of confidence owed to such third parties by BAKWENA;

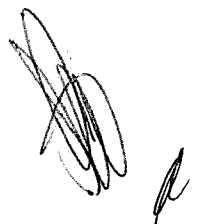
125.4 OUTA has failed to demonstrate any entitlement to the documents. As such, OUTA's conduct in seeking such information is frivolous, vexatious, without merit and constitutes nothing more than a fishing expedition. Moreover, the rights as set out in the Application do not warrant the disclosure of BAKWENA's documents.

125.5 There is no public interest that would be served in the disclosure of BAKWENA's documents. No basis, reason or any evidence has been set out to justify disclosure for any alleged public interest.

126. Notwithstanding OUTA's failure to follow proper procedure, BAKWENA has substantive reasons as set out above, of which OUTA has been aware of for a considerable period of time, to refuse the documents requested in this Application. Hence OUTA's attempt to circumvent the requirements to obtain documents of a private body.

127. Moreover it is imperative for BAKWENA to protect its documents given that OUTA has:

127.1 not hesitated to publish or cause to be published in the media information provided to it by SANRAL in connection with the proposed toll roads; and

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127.2 shown that it is opposed to the tolling of the relevant roads as a matter of principle and has consequently not limited itself to legal attacks.

128. Such refusal is important to protect the integrity and commercially sensitive and proprietary trade information of BAKWENA, its Contractors and its Stakeholders, which should not be made known to its competitors.


129. Disclosure of BAKWENA's and its Stakeholders' information will inevitably disadvantage BAKWENA (and its Stakeholders) in contractual and other commercial negotiations -

129.1 in an oligopolistic market such as this, the release of confidential and sensitive documents is likely to restrict competition;

129.2 the release of sensitive information, especially price-related information, in such a concentrated market will be more likely to be anti-competitive than in a more competitive market, and may facilitate collusion and price fixing;

129.3 the release of price information is particularly problematic, as it makes it possible for business entities to monitor the behaviour of their competitors.

130. Permitting the disclosure of documents for a Project that has already been awarded does in no way detract from the fact that the information is commercially sensitive in that it contains trade secrets, financial, commercial and technical information, the disclosure of which will harm BAKWENA, its Contractors and its Stakeholders from a commercial and



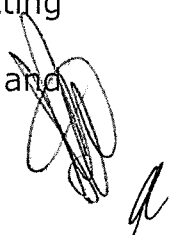
financial perspective in contract negotiations on other future projects. Such information has a market value and is fundamental to the profitability and viability of the commercial operation of BAKWENA, its funders and Stakeholders. The disclosure will destroy and diminish the value of the commercial operation in the industry. As such information that reveal BAKWENA's profit margin simply cannot be disclosed as competitors would be able to accurately calculate its future bids and pricing structure from information relating to its profit rate, actual loss, general and administrative expenses.

131. In putting together the technical information, significant effort, time and money has been invested, the disclosure of which would allow a competitor to make use of the information for free, which would be fundamentally prejudicial.

132. Moreover, such disclosure could not only be promoting anti-competitive practices and market collusion, but as there is a concentrated market, the access by competitors to each other's respective bids could result in less competition for future tenders as the pricing and strategy of competing tenders will be shared.

133. The market in which SANRAL operates and any successful Contractors will lose confidence in SANRAL's ability to protect confidential information handed over to it during any tender process.

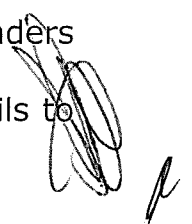
134. Overall public disclosure will discourage companies from submitting commercially sensitive information during a bid process and



consequently undermine the ability of SANRAL to procure best value for its future projects and to conduct a fair tender competition in the future. Insofar as OUTA seeks to claim its entitlement to the information on the basis of a public interest override principle, no case has been set out for such justification. There is no contention of a breach of law or evidence of an imminent and serious public safety or environmental risks that warrant the disclosure of BAKWENA's information.

135. This also holds true for BAKWENA, who, in procuring goods and services from Contractors, also conducts rigorous tender processes. During the processes the bidders submit information such as business strategy, project lists, pricing, commercial and financial commitments, personal information. Disclosure of such information would harm and prejudice the Contractors in other bidding opportunities and compromise its ability to compete fairly in an already saturated market because of insight into pricing, rates and strategies. As a consequence, Contractors would be hesitant to submit bids to BAKWENA for reasons of a potential breach of duty of confidence, which in turn harms BAKWENA's ability to secure services and goods at a fair and competitive value.

136. As regards financial information and supported by what I have already stated above, most private toll roads are undertaken on a project finance basis, whereby investors rely on the performance of the project for payment rather than the credit of the sponsor. This arrangement is also referred to as limited recourse financing, which indicates that lenders have limited recourse to the sponsors for payment if the project fails to



generate adequate returns. A primary benefit of project finance structures is that they allow sponsors to leverage their resources and expertise with outside capital in order to undertake projects that they otherwise would not be able to finance on the strength of their own balance sheet. In addition, project finance allows sponsors to share project risks with lenders and maintain the project debt off their balance sheet. Governments also seek to limit the recourse of investors to their credit.

137. Toll road project financing normally involves detailed studies by engineering experts and financial advisers, including traffic and revenue projections, construction cost estimates, design documents for the project, and financial feasibility studies.

138. This information plays a role in the development of a financial model which contains project costs, construction costs, traffic projection, equity raised, debt servicing, revenue and dividends.

139. The financial model developed for the Project is specialized and requires significant investment, research and expertise, it is not static and has to be reviewed and continuously updated on account of amongst others traffic projection and market and economic volatility.

140. The financial model is BAKWENA's intellectual property and is inextricably linked into BAKWENA's operation and financial projections and cannot under any circumstances be disclosed. Disclosure will destroy BAKWENA's business operations as regards its design, operational and



construction costs, traffic and financing projection and make it difficult if not impossible for its Contractors and Stakeholders to participate in an already saturated market and industry.

141. It will be extremely unfair for a competitor to have information such as the financial model which BAKWENA has spent years developing and updating just so another competitor can improve their business case having had sight of highly sensitive commercial, technical and financial information, which is otherwise not readily available in the free market space.

AD *SERIATIM* RESPONSE TO THE FOUNDING AFFIDAVIT

142. I will now turn to deal with the specific averments in the Founding Affidavit. In doing so, I will seek to avoid repeating myself and ask that my responses be read together with the earlier portions of this affidavit. To the extent that I do not deal with each and every allegation contained in the Founding Affidavit, and these allegations conflict with the version set out herein, such allegations are expressly denied.

143. In the light of the above, I do not intend addressing the specific allegations in the Founding Affidavit by referring to each individual paragraph number under which they appear in any detail. I intend to highlight only certain aspects relevant to BAKWENA and, as indicated



above, my failure to do deal with every allegation should not be construed as an admission thereof for any purpose.

AD PARAGRAPH 1

144. whilst I have no personal knowledge as regards Ms Fick or her position within OUTA, I accept the contents of this paragraph.

AD PARAGRAPH 2

145. I deny that all of the allegations in the Founding Affidavit are true and correct for the reasons I have already set out above, and for the additional reasons set out below.

AD PARAGRAPH 3

146. The contents of this paragraph are noted.

AD PARAGRAPH 4

147. Whilst I note the vague allegations made in this paragraph, I will respond to any reliance based on third party statements as and when raised. I have been advised that the mere belief that third party statements are correct is insufficient for the purposes of an application, and that any factual averments made must be substantiated, particularly when such averments emanate from third parties.

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AD PARAGRAPH 5

148. The contents herein are noted. I have been advised that this Honourable Court will ultimately determine whether legal averments are correct or not.

AD PARAGRAPHS 6 TO 10

149. Save to admit the identity of the Applicant, the First Respondent, the Second Respondent and the Third Respondent, I bear no knowledge of the remaining allegations contained in these paragraphs.

AD PARAGRAPHS 11 TO 12

150. The contents of these paragraphs are not within my knowledge.

AD PARAGRAPH 13

151. Save to admit that the Application is brought in terms of section 78(2)(c) read with section 82 of PAIA, for the reasons I have set out above OUTA is not entitled to the relief sought particularly as the relief relates to information that belongs to BAKWENA.

152. SANRAL's response to OUTA's request was not unlawful or in conflict with PAIA. In fact, SANRAL pointed out to OUTA that section 36 of PAIA placed an obligation upon SANRAL to protect the commercial information of third parties and as such it sought BAKWENA's permission to release the information, to which BAKWENA responded that it required to know what rights OUTA sought to exercise or protect, which was not forthcoming



under the earlier request made to BAKWENA and as such, the request could not be evaluated in the absence of the information sought.

153. Additionally, the basis on which the cause of action is pleaded as regards the BRICS Loan does not justify the relief sought and OUTA is not entitled to the information.

154. Consequently, I deny that OUTA is entitled to the relief sought.

AD PARAGRAPH 14

155. The contents of this paragraph are admitted.

AD PARAGRAPH 15

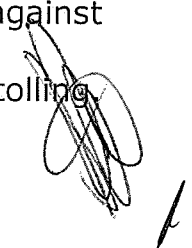
156. The contents hereof are noted.

AD PARAGRAPH 16

157. Whilst that may be the objectives of OUTA, I deny that such objectives are in any way relevant to this Application.

158. OUTA's agenda has been to mischaracterize the concept of private funding via tolling as a mechanism for building major infrastructure assets such as a road network, which is much needed in the current economic climate. It is a fact that the absence of key economic infrastructure has been the main contributor to the fall of GDP growth rates. OUTA's unwarranted "challenges" are not in any way of any benefit to any community.

159. What is evident is that OUTA's conduct is based on its own agenda against the concept of funding a road network by a mechanism such as tolling



However, and regardless of OUTA's personal views and agenda, the South African National Roads Agency Act, 2 of 2000 legislatively provides for funding by means of tolling.

AD PARAGRAPH 17

160. The allegations contained in this paragraph are denied.

161. I repeat what I have stated above in respect of the point *in limine*, in which I have dealt in detail with the fact the BRICS Loan was in fact refused and rejected by National Treasury and was not received by SANRAL.

162. This fact has been well documented and supported by media releases from SANRAL, press publications, the Annual Financial Statements and the Annual Reports of the National Treasury.

163. In fact,, the Chief Financial Officer of SANRAL, Inge Mulder, addressed a letter dated 28 June 2022 to BAKWENA, following my engagement with her wherein she stated that "*SANRAL did not obtain a loan from the New Development Bank (NDB) of any amount, currently or since the inception of the NDB.*"

164. The letter confirms that "*Even though the NDB approved, from their side, that a loan of R7 billion could be granted to SANRAL, this loan was never approved by the Minister of Finance, as required by the Public Finance Management Act.*"

165. This is the letter attached hereto as "**AA11**".

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AD PARAGRAPH 18

I deny that the purpose of the loan is unknown and as pointed out above, in terms of the 2020 Integrated Report ("AA6"), the following was set out in respect of the BRICS Loan –

"SANRAL is currently pursuing a loan to be guaranteed by the Multilateral Investment Guarantee Agency of World Bank for R7 000 million. Half of this loan, R3 500 million, may be used for the refinancing of maturing debt. If successful, this amount will cover the cash requirements of the 2021 financial year as well as enable SANRAL to proceed with the toll-road projects proposed to MIGA with the other half of the loans. The application was made to the Minister of Transport which will require the concurrence of the Minister of Finance." (emphasis added)

166. The loan if granted was certainly not going to be used or allocated to BAKWENA as suggested by OUTA.

167. OUTA attaches no proof in support of the allegation that it was "reported" that the loan facility would be used for new projects relating to the existing tolls as per SANRAL's project plan, and does not provide any information as to the alleged reports, who provided the report, where it appeared, or how it came to knowledge of OUTA.

168. It is a hallmark of OUTA's Founding Affidavit that the allegations made in support of the relief sought are vague and unsubstantiated.



AD PARAGRAPH 19

169. I have no knowledge of the contents of this paragraph, suffice to say that the allegations made therein by OUTA in respect of its enquiry to SANRAL regarding the purpose of the BRICS Loan, are vague and devoid of any detail.

170. I can only assume that SANRAL will respond to this allegation in my Answering Affidavit that it files.

171. In any event I refer to the 2020 Integrated Report referred to above wherein the purpose of the BRICS Loan is discussed.

AD PARAGRAPH 20

172. Once again, OUTA makes vague allegations that are not substantiated or based on any facts.

173. OUTA has not set out why it believes that SANRAL has taken out "another" R7 billion loan.

174. Consequently, apart from the BRICS Loan not having been granted which should allay OUTA's "concerns" raised, OUTA has in no way illustrated that the BRICS Loan had it been granted would result in increased taxes which negatively impact the lives of ordinary taxpayers. There is no evidence or facts to support the statement and conclusion reached by OUTA in respect thereof.

175. As such I deny the allegations contained in this paragraph.

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AD PARAGRAPH 21

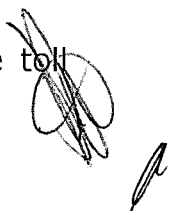
176. There was no loan made, and all of the concerns raised by OUTA are entirely irrelevant.

177. As dealt with in detail above there are different funding mechanisms applicable to toll road portfolios. For purposes of this Application two distinct funding mechanisms have been discussed. Loans such as the BRICS Loan are completely distinct to funding mechanisms under a Public Private Partnership and/or concession contract.

178. Toll Roads under a concession contract with SANRAL such as the BAKWENA Toll Project are self – funded with no provision of a loan by SANRAL for any obligation under the concession contract. Funding for capital costs associated with improvement, rehabilitation and expansion works required for toll roads managed under a concession are costs for the concessionaire and not costs to SANRAL or the state.

179. Toll Roads managed by SANRAL however still require funding for operating costs and capital costs should any improvement, rehabilitation and expansion works be required. The BRICS Loan was approved by the NDB for amongst others the rehabilitation of the pavement of the existing toll sections of the national road, managed by SANRAL and not managed under concessionaire agreements.

180. It is therefore apparent that if the BRICS Loan had been granted (which it was not), it would have been granted to SANRAL for purposes of road networks as regards toll roads managed by SANRAL, and not the toll



roads which are managed under concessionaire agreements and self-funded, as is the case with BAKWENA.


181. Consequently, no purpose would be served in securing BAKWENA's information to establish if the loan was used to fund the concessionaire agreements as the loan was not granted and concession contracts are in any event self – funded.

182. OUTA's relief is entirely academic and its persistence in proceeding with the Application, despite being advised on numerous occasions that there was no loan as alleged, is a clear indicator that its request for information is frivolous and driven by a personal interest to further its ulterior motive to disrupt tolling as a funding mechanism.

AD PARAGRAPH 22

183. Save to admit that the concessionaire toll roads are self-funded and that no funds are allocated for that very reason, I reiterate that neither did ANRAL nor BAKWENA received the R7 billion loan from NDB which is evident from what has been stated above. In fact, as is further evident from the above, National Treasury refused and reject the BRICS Loan.

184. Moreover, the purpose of the BRICS LOAN had been published as early as 2020 in the 2020 Integrated Report, which I discussed earlier in the affidavit. Given OUTA's investigative and research capabilities it is odd that OUTA did not come across the 2020 Integrated Report which contains the purpose of the BRICS Loan. Needless to say, OUTA pursued this Application on the basis of the BRICS Loan having been granted



despite the clear indicators that that is not the factual position but it continues to persist with this Application despite all these facts having been set out in the *in limine* Application which was launched on 1 July 2022, and in prior correspondence.

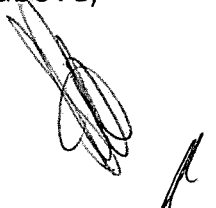
185. Consequently, in view of the 2020 Integrated Report, SANRAL was transparent as to the purpose of the loan and cannot be criticized in any manner.

AD PARAGRAPH 23

186. The BRICS Loan was refused and rejected by National Treasury and as such not granted to SANRAL. Consequently, the exercise OUTA wished to embark on as regards the allocation of such a loan by SANRAL as regards its toll portfolio is entirely irrelevant and has fallen away. Simply stated, the exercise has been rendered academic.

187. On this basis, not only does the Application disclose no cause of action, but the allegations relating to the BRICS Loan are completely irrelevant and fail to establish any cause of action relating to BAKWENA and the N1/N4 Toll Road concession.

188. To the extent that OUTA alleges, as a throwaway line, that "*irrespective of whether the loan had been allocated to BAKWENA, OUTA intends to conduct an analysis on whether the funding generated by BAKWENA is in excess to the funds required to maintain the toll road*", it is of no assistance to OUTA. In this regard, I repeat what I have stated above,



dealing with this aspect.. The alleged 'intention' of OUTA does not create any cause of action for the relief sought in this Application.

189. Even if OUTA were entitled to conduct an analysis of funding generated by BAKWENA, which it clearly is not entitled to do, such request should have been addressed to BAKWENA, and not SANRAL.

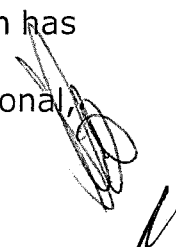
190. Furthermore, in addition to the grounds of refusal I set out above, I am further advised that PAIA makes provision for mandatory disclosure (also referred to as the "public interest override") in the event where the disclosure would reveal evidence of:

190.1 a substantial contravention of, or failure to comply with the law;

or

190.2 an imminent and serious public safety or environmental risk, if the public interest in the disclosure of the record clearly outweighs the harm contemplated under the grounds for refusal.

191. OUTA has however not set out any basis or evidence as to whether or why the "*public interest override*" principle would apply, or why the public interest would be served in the disclosure of the information. In fact, it appears that the intended conduct is to serve OUTA's private interest based on an ulterior motive, to the detriment of the economy and not for the benefit the economy. I say so because later in the Founding Affidavit and particularly at paragraphs 67 and 68, OUTA records that it intends to challenge the legality of the BAKWENA Concession Contract, which has been in place for many years. The irony is that there is a functional,

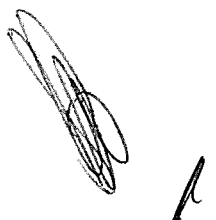


operational and efficient road network managed by BAKWENA for the benefit of the public and the economy, yet OUTA seeks to disrupt such network without any legitimate or valid basis.

192. In any event, OUTA has failed to set out any basis for mandatory disclosure in the public interest, namely where there is reason to believe that the disclosure of the various documents belonging to or relating to BAKWENA would reveal a substantial contravention of, or failure to comply with the law or demonstrate an imminent and serious public safety or environmental risk. Instead, OUTA makes vague and unsubstantiated allegations that create an impression that the BRICS Loan was received, which would in any event, even if received not have been utilized towards any concession contract.

193. The disclosure of the requested documents will cause irreparable harm to BAKWENA's financial and commercial interests, and will have serious competitive ramifications as BAKWENA's sensitive commercial information will be in the public domain.

194. No public interest could ever be served by conducting such an analysis. BAKWENA is a private entity and a company that operates the N1/N4 Toll Road having secured the right to do so through a competitive bid process. It is certainly not a public entity that should be subjected to scrutiny or policing by OUTA, or even questioned about its revenue or profits made from operating the N1/N4 Toll Road. The delivery, maintenance, upkeep,



improvement and subsequent handover of a toll road (managed by concessionaires) are guaranteed by concessionaires, such as BAKWENA.

195. It is simply astounding that OUTA thinks it is entitled to audit the business affairs and operations of a private company, such as BAKWENA, where it clearly has no authority or basis to do so.

AD PARAGRAPH 24

196. I deny that OUTA is entitled to the information as sought in the Request.

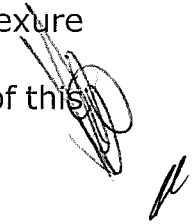
I point out further however that a similar request was made to BAKWENA in 2016 which was abandoned when BAKWENA responded to OUTA seeking to know what right OUTA was seeking to exercise and protect.

197. The request to SANRAL was clearly an attempt to secure BAKWENA's information "through the backdoor" and undermine BAKWENA's rights. This conduct is clearly evident from the manner in which this Application was launched, to the exclusion of BAKWENA. BAKWENA had to intervene in the proceedings despite various engagements with OUTA to join BAKWENA to the proceedings.

198. I must point out that OUTA places substantial reliance on transparency but fails to show the same courtesy when called upon to do so, that is that it never responded to fundamental questions regarding the right it sought to exercise and protect.

AD PARAGRAPH 25

199. Save to admit that the records requested are contained in the annexure attached to annexure "SF4" of the Founding Affidavit, the contents of this

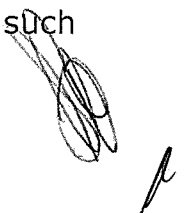
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paragraph are denied. In amplification of such denial, I repeat what I have already set out above, in such regard.

200. As pointed out above, the Request was not the first occasion that OUTA had sought such information, as it had, almost three and a half years earlier (on 21 November 2016), delivered a letter directly to BAKWENA in terms of section 53(1) of PAIA, requesting access to certain information. BAKWENA, at that stage, had requested OUTA to identify the right OUTA sought to exercise and protect, and more specifically, to identify the right in respect of each of the listed items of information that was being requested. As mentioned above, no response was forthcoming from OUTA to BAKWENA's letter and OUTA did not pursue the Request, and clearly abandoned its request for access to information from BAKWENA. OUTA presumably abandoned such request, as it was aware that it had no right that it was entitled to protect or exercise.

201. OUTA then in June 2020 sought essentially the same documents from SANRAL, presumably on the basis that seeking information from a private entity posed more obstacles than seeking information from a public entity. OUTA was clearly well aware that there was in fact no legal basis or entitlement to seek the information from BAKWENA, a private entity, otherwise it would have pursued its initial request for information directly from BAKWENA.

202. It is however indeed apparent, given the difficulties in seeking information from a private entity, that OUTA sought to obtain such

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information "via the backdoor" by approaching SANRAL, a public body. In doing so, OUTA is seeking to circumvent the requirement that it provides a specific right to have access to the documents sought from BAKWENA, by directing its request for information to SANRAL rather than BAKWENA in terms of its 8 June 2020 request.

203. BAKWENA opposes the disclosure of all the documents and information requested and listed in paragraph 124, for, *inter alia*, the following reasons:

203.1 OUTA is not entitled to these documents;

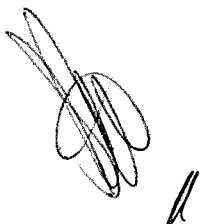
203.2 disclosure will cause irreparable harm to BAKWENA's financial and commercial interests;

203.3 disclosure will put BAKWENA at a disadvantage in contractual and/or other negotiations;

203.4 disclosure will constitute a breach of confidence owed to other contractual third parties; and

203.5 disclosure will prejudice BAKWENA's competitive advantage.

204. As I have previously mentioned, OUTA's Application arises from a fundamental misconception of the purported BRICS Loan. Should the documents be disclosed based on the "cause of action" set out by OUTA, this would be a complete disregard of the very essence and provisions of PAIA.

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205. I point out further that SANRAL's response to OUTA sought clarification on what right it was exercising and sought to protect following its engagement with BAKWANA.

206. The allegation that the Request "*stems from the right to demand transparency*" is completely vague. No basis of any kind is set out in support of the Request.

207. It is of course ironic that OUTA repeats twice in this paragraph that it is not a fishing expedition, when it is abundantly clear that that is precisely what OUTA is doing, in circumstances where it has no "fishing license".

AD PARAGRAPHS 26 AND 27

208. Save to admit that an e-mail was addressed to SANRAL on 22 July 2020, requesting a formal response to OUTA's request as illustrated by "SF6", the remainder of the allegations are denied.

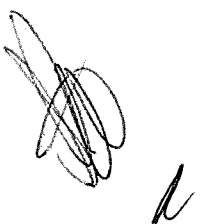
209. OUTA in fact provided SANRAL with an extension within which to respond until 29 July 2020. SANRAL responded a day later on 30 July 2020.

AD PARAGRAPH 28

210. I note the allegations contained herein.

AD PARAGRAPH 29

211. I admit the allegations herein but point out that an extension of the period for a further 30 days can be sought in terms of section 26 of PAIA.

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AD PARAGRAPHS 30 TO 32

212. The contents herein are noted, and will presumably be responded to by SANRAL.

AD PARAGRAPHS 33 TO 35

213. Save to admit the allegation that a response to OUTA's request was requested by 8 July 2020, the remainder of the allegations are denied.

214. I point out that OUTA did pursue the request following 8 July 2020 and when OUTA eventually engaged with SANRAL on the request, OUTA extended the time period for a response until 29 July 2020.

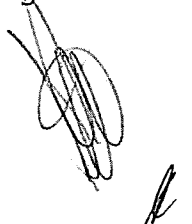
215. An extension in terms of section 26 of PAIA can be provided for a further 30 days.

216. SANRAL responded on 30 July 2020, a day later than allowed for by OUTA but within the 30-day period allowed for in terms of section 26.

217. Consequently, SANRAL's response was not a deemed refusal but one arrived at in terms of section 25(3)(a).

218. OUTA failed to respond to and provide clarity in respect of which right it sought to exercise and protect.

219. In any event if the Honourable Court is inclined to find that SANRAL's refusal is a deemed refusal in terms of section 27 then it should exercise its discretion not to set aside the decision on the basis that this Application does not justify OUTA's entitlement to the information sought in the Request, which is the subject matter of this Application.



220.I however assume that SANRAL will respond to these allegations in its Answering Affidavit.

AD PARAGRAPHS 36 TO 40

221.The allegations contained in these paragraphs are admitted to the extent that they correctly reflect the contents of the sections as set out in PAIA.

AD PARAGRAPHS 41 TO 43

222.Whilst the contents of these paragraphs appear to me to be correct, I assume that SANRAL will respond to such allegations, as it is better placed to deal with allegations relating to it.

AD PARAGRAPHS 44 TO 47

223.I am advised that the contents of these paragraphs constitute legal interpretation and legal arguments, and will be dealt with by way of legal argument at the hearing of the Application, should it become necessary to do so.

AD PARAGRAPHS 48 TO 62

224.In view of OUTA's extensive experience in Applications relating to PAIA, the explanation provided does not warrant a court granting it condonation for the delay in launching the proceedings. If one were to merely conduct a cursory search on OUTA's website, it contains a number of proceedings which involves PAIA application.

225.Should the Court however be inclined to condone the delay, BAKWENA will not detain the Court with any opposition in respect thereof.



AD PARAGRAPHS 63 TO 66

226.The contents of these paragraphs are denied for the reasons set out above.

227.Moreover, OUTA has failed to set out a cause of action, or make the necessary averments that entitle it to the relief sought in the Application.

228.On this basis the Application is academic and doomed to fail.

229.There is no prospect of success on the basis of the averments pleaded by OUTA which are vague and unsupported by facts or evidence.

AD PARAGRAPH 67

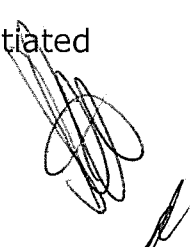
230.The allegations contained herein are denied for the reasons already set out in detail above.

231.OUTA has no authority to conduct such an evaluation. There are legislative structures in place to conduct audits.

232.BAKWENA has clearly outlined the basis upon which it objects to the disclosure of the documents requested by OUTA.

233.As appears from this paragraph, OUTA alleges that it "*has reason to believe*" that the funding generated by BAKWENA is "*excessive*". No basis for the alleged "*reason*" is set out. It is entirely insufficient to simply allege a "*reason to believe*" without any basis at all for the alleged belief.

234.The nature of the fishing expedition undertaken by OUTA is clearly illustrated by the fact that OUTA relies on a completely unsubstantiated and intended "hypothesis", and a fanciful implication.



235.The Request and Application is a clear abuse of the Court process.

AD PARAGRAPH 68

236.OUTA is not entitled to conduct any analysis. It is clear from this paragraph also that OUTA is simply seeking documents and information in the hope that it may stumble across something improper. No relief can, with respect, be granted on such a vague and improper basis.

AD PARAGRAPH 69

237.Whilst SANRAL is indeed a public entity, the alleged non-compliance is once again a wild, yet vague and unsubstantiated statement.

AD PARAGRAPH 70

238.Whilst the contents of this paragraph are noted, OUTA has not set out any "reason" as alleged, in order to enable OUTA to haul out its fishing rods and hope for the best.

AD PARAGRAPHS 71 AND 72

239.Every constitutional right, including the provisions of PAIA, is limited. PAIA and the Constitution are not intended to be license for any person or entity to ride roughshod over the rights of any other person or entity.

240.The exercise and protection of OUTA's right, if such right exists, must be balanced against BAKWENA's rights to protect the disclosure of documents and information which OUTA are not legally and statutorily entitled to, and the harm of such disclosure to BAKWENA.

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241. In any event, it is denied that OUTA is entitled to access to the information sought in this Application for the reasons already set out above.

AD PARAGRAPH 73

242. The contents of this paragraph are denied for the reasons set out in detail above.

243. OUTA has failed to disclose what right it seeks to exercise and protect in respect of seeking BAKWENA's documents and information.

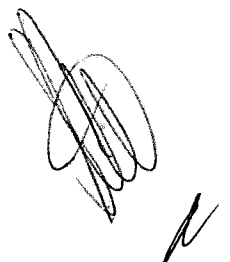
244. There is no cause of action pleaded which entitles OUTA to the information. In fact, OUTA's Application is littered with vague and sweeping statements unsupported by facts and evidence to illustrate its entitlement to the information.

245. The Application is entirely academic. OUTA's constitutional rights have not been infringed given that the SANRAL never received the BRICS Loan. Moreover, had it received the BRICS Loan, such loan was earmarked for existing toll roads managed by SANRAL and not those that are self-funded under a concession contract managed by a concessionaire, in this instance, BAKWENA.

AD PARAGRAPHS 74 TO 76

246. The contents of these paragraphs are denied.

247. SANRAL did oppose the application on or about 5 May 2021.

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a series of loops and a final flourish.

248. As set out above, there can be no doubt that BAKWENA will be severely prejudiced if it is ordered to provide access to the documents belonging to, and relating to, BAKWENA, which would:

248.1 reveal trade secrets of BAKWENA;

248.2 disclose confidential commercial, technical and scientific information of BAKWENA,

248.3 prejudice BAKWENA in normal commercial and business competition, and

248.4 disadvantage BAKWENA in contractual and business negotiations.

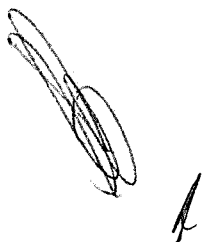
249. The allegations relating to "prejudice" and "importance" are simply conclusions without any basis or justification.

AD PARAGRAPHS 77 TO 79

250. The contents of these paragraphs are denied.

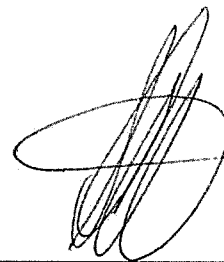
251. This Application is academic and could never be in the interest of justice.

No basis has been set out as to why it would allegedly be "*in the interests of justice*". Moreover, no cause of action has been set out which justifies the relief sought.



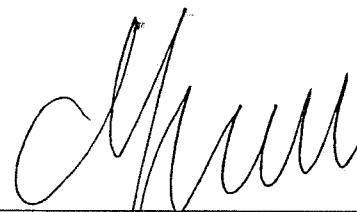
CONCLUSION

252. For the reasons set out above, I pray that the Application be dismissed with costs, including the costs of two counsel.



SIMON EVERITT

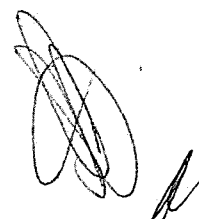
I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Centurion on this the 27th day of June 2023, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

#5149825 v1

ANNERIE DELPORT
COMMISSIONER OF OATHS
EX OFFICIO PRACTICING ATTORNEY
SUITE 1, GROUND FLOOR,
SOUTHDOWNS RIDGE OFFICE PARK
CNR NELLMAPIUS AND JOHN VORSTER AVE
IRENE EXT 54, 0157





ORGANISATION UNDOING TAX ABUSE
(Formerly- Opposition to Urban Tolling Alliance)
Co Reg: 201206421308 Non-Profit Organisation - Reg #: 124381NPO

21 November 2016

Attention: The Information Officer
Bakwena Platinum Corridor Concessionaire (Pty) Ltd
24 Sunninghill Office Park
Peltier Road
Sunninghill
Johannesburg
2157

Dear Sir/Madam,


**RE: REQUEST FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF ACCESS TO
INFORMATION ACT 2 OF 2000 – FORM C (SECTION 53(1))**

1. We refer to the above.
2. Kindly find attached hereto our request for access to information in terms of section 53(1) of the Promotion of Access to Information Act 2 of 2000.
3. Kindly contact our Ms Govender at lerissa.govender@outa.co.za or Mr Slade at brendan.slade@outa.co.za in the event of any queries.
4. We trust that you find the above in order and look forward to hearing from you.

Yours Sincerely,

ADDRESS:
P O Box 2627, Northriding, 2162
E-Mail: info@outa.co.za
NPO REGISTRATION: 124381NPO
Co Reg: 2012/064213/08
WEB SITE: www.outa.co.za

DIRECTORS:
Wayne L Duvenage (Chairman)
Oya Hazel Gumede
Robert N Hutchinson
Leopold J J Pauwen





Brendan Slade

OUTA: Legal Research Analyst

E-Mail: brendan.slade@outa.co.za

Received a copy hereof on:

Date: _____

Name: _____

Capacity: _____

Signature: _____

Number of pages: _____





J752

REPUBLIC OF SOUTH AFRICA

FORM C
REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY
(Section 53(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))
[Regulation 10]

A. Particulars of private body

The Head:

BAKWENA PLATINUM CORRIDOR CONCESSIONAIRE (PTY) LTD
24 SUNNINGHILL OFFICE PARK
PELTIER ROAD
SUNNINGHILL
JOHANNESBURG
2157

B. Particulars of person requesting access to the record

- (a) The particulars of the person who requests access to the record must be given below.
(b) The address and/or fax number in the Republic to which the information is to be sent must be given.
(c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname: BRENDAN CHARLES SLADE

Identity number:

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 9 | 1 | 0 | 3 | 1 | 6 | 5 | 0 | 8 | 2 | 0 | 8 | 5 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|

Postal address:

Telephone number: (087) 170 0639

Fax number: ()

E-mail address: brendan.slade@outa.co.za

Capacity in which request is made, when made on behalf of another person:

LEGAL RESEARCH ANALYST FOR THE ORGANISATION UNDOING TAX ABUSE ("OUTA")

C. Particulars of person on whose behalf request is made

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname:

Identity number:

| | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|--|--|

FORM C: REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY

D. Particulars of record

- (a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.
- (b) If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

1. Description of record or relevant part of the record:

SEE ATTACHED "ANNEXURE A"

2. Reference number, if available:

3. Any further particulars of record:

E. Fees

- (a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.
- (b) You will be notified of the amount required to be paid as the request fee.
- (c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
- (d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

Reason for exemption from payment of fees:

N/A

FORM C: REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 below, state your disability and indicate in which form the record is required.

| | |
|---|-----------------------------------|
| Disability: Mark the appropriate box with an X. NOTES: (a) Compliance with your request for access in the specified form may depend on the form in which the record is available. (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form. (c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested. | Form in which record is required: |
|---|-----------------------------------|

| | | | | | |
|---|---|---|--|---|--|
| 1. If the record is in written or printed form: | | | | | |
| X | copy of record* | | inspection of record | | |
| 2. If record consists of visual images - (this includes photographs, slides, video recordings, computer-generated images, sketches, etc.): | | | | | |
| | view the images | X | copy of the images* | | transcription of the images* |
| 3. If record consists of recorded words or information which can be reproduced in sound: | | | | | |
| X | listen to the soundtrack (audio cassette) | | transcription of soundtrack* (written or printed document) | | |
| 4. If record is held on computer or in an electronic or machine-readable form: | | | | | |
| | printed copy of record* | | printed copy of information derived from the record* | X | copy in computer readable form* (stiffy or compact disc) |

| | | | |
|--|-----|----|---|
| *If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? Postage is payable. | YES | NO | X |
|--|-----|----|---|

G. Particulars of right to be exercised or protected

If the provided space is inadequate, please continue on a separate folio and attach it to this form.
 The requester must sign all the additional folios.

1. Indicate which right is to be exercised or protected:

RIGHT OF ACCESS TO INFORMATION ITO SEC 32 OF THE CONSTITUTION

RIGHT TO JUST ADMINISTRATIVE ACTION ITO SEC 33 OF THE CONSTITUTION

2. Explain why the record requested is required for the exercise or protection of the aforementioned right:

To justify the relationship between yourself and SANRAL to our members.

FORM C: REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY

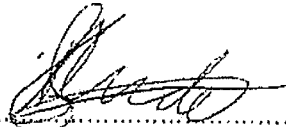
H. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved / denied. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

EMAIL / TELEPHONE

Signed at RANDBURG this day 21ST of NOVEMBER year 2016



.....
SIGNATURE OF REQUESTER /
PERSON ON WHOSE BEHALF REQUEST IS MADE

"ANNEXURE A"

Information sought:

PART A

1. Statements and/or documentation reflecting maintenance costs from 2000 to date;
2. Statements and/or documentation reflecting tariff increases and decreases per vehicle category from 2000 to date;
3. Statements and/or documentation reflecting annual revenue received by Bakwena Platinum Corridor Concessionaire (Pty) Ltd from 2000 to date;
4. Statements and/or documentation reflecting expenditure incurred relating to projects from 2000 to date;
5. Statements and/or documentation reflecting changes in shareholders from 2000 to date;
6. Statements and/or documentation reflecting projects related to South African National Roads Agency Limited;
7. Statements and/or documentation reflecting annual turnover for each managed toll plaza from 2000 to date;

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of initials and a surname.

8. Statements and/or documentation reflecting annual payments made to South African National Roads Agency Limited from 2000 to date;
9. Annual Reports from 2000 to date;
10. All agreements between Bakwena Platinum Corridor Concessionaire (Pty) Ltd and South African National Roads Agency Limited;
11. Statements and/or documentation reflecting detailed traffic volume (numerical breakdown) for each managed toll plaza from 2011 to date;

PART B

12. Construction Progress Reports;
 13. Initial Construction Works Records from 2000 to date;
 14. Upgrade, repair and replacement records from 2000 to date;
 15. Maps and diagrams;
 16. Asset records from 2000 to date;
 17. Tender submission Files from 2000 to date;
 18. All technical drawings from 2000 to date;
 19. Q & A Files from 2000 to date;
 20. Credit Rating Reports from 2000 to date;
- 

21. All financial closure correspondence from 2000 to date.

Handwritten signature and initials in the bottom right corner.



Bakwena Platinum Corridor Concessionaire (Pty) Ltd
Company Reg No: 1998/004523/07

Physical Address
Southdowns Ridge Office Park
Second Floor, Unit 1A
Cnr John Vorster and Neilmapius Drive
Irene, Ext 54, Centurion, 0157
South Africa

Postal Address
Postnet Suite 234
Private Bag X32
Highveld Park, 0169
South Africa

Tel: +27 11 519 0400 Fax: +27 11 519 0414
Email: info@bakwena.co.za www.bakwena.co.za

Organisation Undoing Tax Abuse

21st December 2016

PO BOX 2627

Northriding

2162

Attention :- Mr Brendan Slade

Per Email: Brendan.slade@outa.co.za

Dear Sir,


**Re: Request for Access to Information in terms of the Promotion of Access to Information Act 2 of 2000 –
Form C (Section 53)(1))**

1. We refer to your request for access to information in terms of Section 53(1) of the Promotion of Access to Information Act 2 of 2000 ("the Act") dated 21 November 2016 ("PAIA Request").
2. In terms of section 53(2)(d) of the Act read together with section 32 of the Constitution of South Africa Act 108 of 1996, you are required to identify the right you seek to exercise or protect, provide an explanation of why the requested record is required and how it will assist you in exercising or protecting that right.
3. Your PAIA Request fails to identify the right you seek to exercise or protect, and moreover, fails to provide an explanation as to why each item listed (items 1 – 21) in Annexure "A", Part A and B, of your PAIA Request is required and how it will assist you.
4. In addition, given the generic nature of your PAIA Request, we are unable to ascertain what information you seek as well as to whom it relates or what the information may contain. The nature of your PAIA Request, and in particular the manner of the items listed therein, does not provide us with the details required to consider which third parties the information may relate to.

Directors: C. Williams, D. Msibi, M. Edington (British), R. Andrews (Gambian)
R. Harley, T. Plaistowe (British), V. Raseroka
Chief Executive Officer: G. Blewitt

5. In the circumstances, your PAIA Request does not comply with the provisions of the Act and is consequently defective.
6. Having said that, in order for us to be in a position to consider any request for access to information, the right you intend to exercise or protect must be clearly identified in respect of each of the listed items of information to which you require access as well as how it will assist you in the exercise and protection of such right.
7. In addition, we would also require you to provide us with details of the information listed in your Annexure "A" and explain why any of the information requested therein is required to *"justify the relationship between SANRAL"* to OUTA's members. As your PAIA Request stands it appears to be vexatious. To this end, an ideological and abstract interest in the information does not pass muster for purposes of the Act.
8. Consequently, we are unable to consider your PAIA Request.

Yours faithfully,



Graeme Blewitt

Chief Executive Officer

For and behalf of BAKWENA PLATINUM CORRIDOR CONCESSIONAIRE (PTY) LTD



Reference: #6389037
 Date: 29 July 2020
 E-mail: louw@nra.co.za

Fax Number: +27 (0) 12 844 8200
 Direct line: +27 (0) 12 844 8001
 Website: www.nra.co.za



ORGANISATION UNDOING TAX ABUSE NPC
 O'KEEFFE & Swartz Building,
 318 Oak Avenue,
 Randburg

Per email: andrea.korff@outa.co.za

Attention: Andrea Korff

**RE: REQUEST FOR ACCESS TO INFORMATION IN TERMS OF THE PROMOTION OF
 ACCESS TO INFORMATION ACT, 2000 ("PAIA")**

1. We refer to your request for access to information in terms of section 18(1) of the PAIA (Ref TR1712/-016/A).
2. Section 36 of the PAIA places a mandatory obligation upon SANRAL to protect the commercial information of third parties.
3. Consequently, SANRAL sought Bakwena's approval for the release of third-party information.
4. Bakwena has confirmed that OUTA has been notified of the information that ought to be provided for purposes of evaluating the right that OUTA seeks to exercise or protect in terms of section 53(2)(d) of the PAIA read together with section 32 of the Constitution of South Africa, 1996.
5. A copy of Bakwena's notification to OUTA is attached hereto as Annexure A.
6. To date OUTA has not submitted the information that would facilitate the evaluation of the right that it seeks to protect or exercise in law.
7. In these circumstances, we have been advised by Bakwena to not consider your PAIA request.

Yours Faithfully

SKHUMBUZO MACOZOMA
 CHIEF EXECUTIVE OFFICER



Bakwena Platinum Corridor Concessionaire (Pty) Ltd
Company Reg No: 1998/004523/07

Physical Address
Southdowns Ridge Office Park
Second Floor, Unit 1A
Cnr John Vorster and Nellmapius Drive
Irene, Ext 54, Centurion, 0157
South Africa
Tel: +27 11 519 0400 Fax: +27 11 519 0414
Email: info@bakwena.co.za www.bakwena.co.za

Postal Address
Postnet Suite 234
Private Bag X32
Highveld Park, 0169
South Africa

Organisation Undoing Tax Abuse

21st December 2016

PO BOX 2627

Northriding

2162

Attention :- Mr Brendan Slade

Per Email: brendan.slade@outa.co.za

Dear Sir,

Re: Request for Access to Information in terms of the Promotion of Access to Information Act 2 of 2000 –
Form C (Section 53)(1))

1. We refer to your request for access to information in terms of Section 53(1) of the Promotion of Access to Information Act 2 of 2000 ("the Act") dated 21 November 2016 ("PAIA Request").
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3. Your PAIA Request fails to identify the right you seek to exercise or protect, and moreover, fails to provide an explanation as to why each item listed (items 1 – 21) in Annexure "A", Part A and B, of your PAIA Request is required and how it will assist you.
4. In addition, given the generic nature of your PAIA Request, we are unable to ascertain what information you seek as well as to whom it relates or what the information may contain. The nature of your PAIA Request, and in particular the manner of the items listed therein, does not provide us with the details required to consider which third parties the information may relate to.

Directors: C. Williams, D. Moko, M. Edington (British), R. Andrews (Gandian)
R. Hurley, T. Poldosow (British), V. Rosenko
Chief Executive Officer: G. Bennett

5. In the circumstances, your PAIA Request does not comply with the provisions of the Act and is consequently defective.
6. Having said that, in order for us to be in a position to consider any request for access to information, the right you intend to exercise or protect must be clearly identified in respect of each of the listed items of information to which you require access as well as how it will assist you in the exercise and protection of such right.
7. In addition, we would also require you to provide us with details of the information listed in your Annexure "A" and explain why any of the information requested therein is required to "justify the relationship between SANRAL" to OUTA's members. As your PAIA Request stands it appears to be vexatious. To this end, an ideological and abstract interest in the information does not pass muster for purposes of the Act.
8. Consequently, we are unable to consider your PAIA Request.

Yours faithfully,



Graeme Blewitt
Chief Executive Officer

For and behalf of BAKWENA PLATINUM CORRIDOR CONCESSIONAIRE (PTY) LTD

E

Public-private partnerships

■ Introduction

To revitalise the economy and meet the goals of the National Development Plan, South Africa needs to establish a more competitive infrastructure base. However, government capital budgets have come under significant pressure in recent years due to weak economic growth and competing priorities, such as funding for higher education and compensation of employees. Greater use of well-managed public-private partnerships (PPPs) can improve planning and feasibility studies, resulting in more rigorous project assessment and accountability, and draw in private financing for public infrastructure projects.

The Infrastructure Fund, first announced in 2018, creates an opportunity for more partnerships between government and the private sector through the use of blended finance. A pipeline of economic and social projects, most of which are expected to be PPPs, is being developed with the private sector. The fund is discussed in more detail in Annexure D.

The difference between PPPs and traditional government infrastructure projects

A PPP is defined as a contract between a public-sector institution and a private party, where the private party performs a function that is usually provided by the public sector and/or uses state property in terms of the PPP agreement. Most of the project risk (technical, financial and operational) is transferred to the private party. The public sector pays for a full set of services, including new infrastructure, maintenance and facilities management, through monthly or annual payments. In a traditional government project, the public sector pays for the capital and operating costs, and carries the risks of cost overruns and late delivery.

■ Reviewing the regulatory framework for PPPs

To date, 34 PPP projects valued at R89.3 billion have been completed. PPPs have been successful in South Africa, although a number of challenges have arisen over the years. New PPP transactions have been declining, from an estimated R10.7 billion in 2011/12 to R5.6 billion in 2019/20, in part because these projects are perceived to involve high costs. In September 2019, the National Treasury initiated a review of the PPP regulatory framework to address these challenges and recommend changes to the framework to improve its effectiveness and encourage private-sector participation. With support from the World Bank, the National Treasury worked with experts on this review, which is nearing completion.

The regulatory framework includes PPPs regulated by the Public Finance Management Act (1999) and the Municipal Finance Management Act (2003). The public and private sectors have contributed important suggestions, which, alongside lessons learnt, have been incorporated into the draft final recommendations report. The National Treasury will present the recommendations at a validation workshop in March 2021 to stakeholders and PPP practitioners before formally adopting the recommendations. After the workshop, the approved recommendations will be published on the National Treasury website. These recommendations will be implemented in 2021/22.

The recommendations include:

- Integrating PPP policies into the infrastructure delivery management systems.
- Amending regulations and legislation to exempt smaller projects from onerous requirements, taking specific conditions into consideration.
- Centralising and improving the screening and assessment of projects and proposals.
- Establishing a PPP regulator, and country- and sector-specific benchmarks for cost and efficiency.
- Standardising project preparation requirements for certain smaller projects and contract templates across sectors.
- Building PPP capacity across government institutions including contract management practices.
- Setting out clear timeframes for different project phases to reduce the PPP project planning cycle.
- Building and retaining the skills required in the public sector to improve the planning and management of PPPs.
- Implementing measures that facilitate market consultation to obtain feedback on projects and inform the procurement strategy.
- Simplifying value-for-money assessments and introducing economic valuations of all projects above a certain threshold.
- Streamlining the procurement evaluation process for PPPs to reduce the time it takes to appoint a preferred bidder.
- Installing a system that monitors and evaluates projects to draw lessons for better project planning and implementation.

Most of these recommendations, focused on national and provincial PPPs, also apply to municipalities. In addition, the review of the municipal PPP framework specifically recommended reducing the number of public consultations, increasing the involvement of the Municipal Infrastructure Support Agency and simplifying the unsolicited proposal framework in line with municipal regulations.

■ Contingent liabilities

Most national and provincial PPPs are guaranteed by the Minister of Finance and create a contingent liability. Government incurs contingent liabilities only when a contract is terminated. PPP projects where a public-sector institution makes a unitary payment have contingent fiscal obligations to compensate the private sector if the contract is terminated before its expiry date. PPP agreements can also impose other fiscal obligations on government that are not defined as contingent liabilities. For example, where the private sector collects user charges from the public, government usually guarantees the minimum revenue, which imposes a fiscal obligation and requires budget allocations.

The National Treasury uses a four-stage approval process to ensure that contingent liabilities arising from contracts are acceptable and monitors these liabilities on an ongoing basis. There are various categories of contingent liabilities, depending on whether the termination is the result of private-sector default, government default or *force majeure* – an event beyond either party's control. Compensation depends on the reason the contract ended, but termination due to government default usually results in the greatest compensation. Table E.1 shows potential termination amounts per sphere of government.

Table E.1 Contingent liabilities by category

| R million | Termination private party default | | Termination force majeure | | Termination government default | |
|----------------------------------|-----------------------------------|----------------|---------------------------|----------------|--------------------------------|----------------|
| | 2019/20 | 2020/21 | 2019/20 | 2020/21 | 2019/20 | 2020/21 |
| National departments' exposure | 3 324.5 | 2 878.8 | 3 536.8 | 3 663.6 | 5 002.4 | 4 707.3 |
| Provincial departments' exposure | 3 159.3 | 2 649.3 | 1 889.1 | 1 263.4 | 4 514.0 | 4 151.2 |
| Public entities' exposure | 415.8 | 353.4 | 352.6 | 299.7 | 522.2 | 443.9 |
| Total | 6 899.6 | 5 881.5 | 5 778.5 | 5 226.7 | 10 038.6 | 9 302.4 |

Source: National Treasury

Estimated contingent liabilities for PPPs that are likely to accrue to government as a result of contracts terminating due to government default amount to R9.3 billion in 2020/21 – decreasing from R10 billion in 2019/20. This slight decrease was expected as government continues to pay off debt and equity owed to the private sector. Of the three spheres of government, national departments account for the greatest exposure, amounting to R4.7 billion in 2020/21. Head office accommodation projects and the Gautrain Rapid Rail Link project are the biggest contributors to government's exposure to contingent liabilities. Government manages the risk emanating from PPP contingent liabilities by closely monitoring each party's performance against their contractual obligations and enforcing regulatory requirements.

Impact of COVID-19 on PPPs

In late March 2020, government imposed strict restrictions on activities to contain the COVID-19 pandemic. These restrictions significantly affected revenues for several PPP projects. In April 2020, the National Treasury – supported by the World Bank – engaged with key stakeholders to assess potential PPP risks and contingent liabilities, and identify solutions to mitigate the effects of restrictions. The stakeholders included the Gautrain Management Agency, the Western Cape Department of Transport and Public Works, the Independent Power Producers (IPP) Office, the South African National Roads Agency Limited (SANRAL) and the PPP Unit in the Government Technical Advisory Centre.

At the moment, the effects on risks to the fiscus and contingent liabilities are considered manageable. Operational PPPs such as the Gautrain Rapid Rail Link project, SANRAL toll roads and Chapman's Peak have lost revenue. Other operational concessions such as the Renewable Energy IPP Programme¹ have not been affected by the pandemic and there is no risk that they may affect the fiscus. The project terms of IPPs that are in the construction stage have been extended, while PPPs in the planning stage may face delays in reaching financial closure as a result of the pandemic.

Gautrain

In November 2020, passenger demand was 30 per cent of pre-COVID-19 levels after a slow recovery from the shutdown of all rail transport during the strict lockdown. The Gautrain has a patronage guarantee² as part of the PPP agreement signed with the private operator, Bombela Concession Company. The private operator is partly liable for losses if revenue drops below a certain amount. In 2020/21, the private operator is expected to lose about R700 million and the provincial government's patronage guarantee is expected to exceed its current budget by R400 million. The Gauteng Department of Roads and Transport is expected to absorb this amount. The number of people using public transport is projected to remain below pre-COVID-19 levels for some time as a result of slow economic growth and the probability that more people will continue to work from home. The overall impact of COVID-19 on projects such as the Gautrain is unknown and will need to be assessed and quantified in future.

¹ Renewable energy independent power producers are not strictly PPPs. They are guaranteed by the fiscus and may pose a contingent liability if not managed.

² A patronage guarantee is a subsidy provided when the private operator's total revenue is below a contractually agreed amount.

Chapman's Peak toll road

Traffic volumes along Chapman's Peak toll road in Cape Town declined by 99 per cent in April 2020 compared to April 2019, recovering to 70 per cent of December 2019 levels by December 2020. The Western Cape Department of Roads and Transport, which guaranteed the private-sector debt payment, has had to pay about R14 million more to the private sector than budgeted for in 2020 as lower traffic volumes affected revenue collection.

Moreover, the department estimates that it will pay about R10 million more in 2021 due to reduced traffic. The decrease in tourism and increase in remote working will continue to affect traffic volumes and revenue. This is likely to increase the Western Cape's debt payments to the private sector. However, loans are expected to be fully repaid by 2023, after which the provincial government is expected to earn revenues from this road.

SANRAL toll roads

SANRAL is currently operating three PPPs: the N3 toll road, the N4 East toll road and the N4 West toll road. The effect of lower traffic volumes and revenue due to restrictions varies; however, all the PPP agreements specify that any loss emanating from traffic volumes is borne by the private operator.

Revenue collection on the N3 toll road (between Cedara interchange in KwaZulu-Natal and Heidelberg South interchange in Gauteng) has been affected by restrictions on interprovincial travel and the hospitality industry. Revenue losses have not yet been quantified. The private operator will claim these losses from its insurer.

Traffic volumes at N4 East toll plazas (between Pretoria and Maputo) dropped to 18 per cent of pre-COVID-19 levels during the strict lockdown imposed in March 2020 compared to the same period in 2019. Between March 2020 and January 2021, total traffic volumes were about 80 per cent compared to March 2019 and January 2020 levels, showing a gradual resumption of activity. Additional COVID-19 regulations imposed at borders caused delays and a reduction in traffic movement between South Africa and Mozambique during 2020, and the December 2020 closure of border posts is significantly affecting toll revenue collections. Between August 2019 and July 2020, the private operator estimated a revenue loss of R298.7 million.

Revenue for the N4 West Bakwena toll road (between Pretoria and Rustenburg) is estimated to have dropped to 20 per cent of pre-COVID-19 estimates in March and April 2020 compared to the same period in 2019. Between March and September 2020, revenue losses amounted to R371.3 million. The private operator is pursuing this claim from its insurer.

Improving the quantification of contingent liabilities

The 34 PPPs in operation account for 2 per cent of the total public-sector infrastructure expenditure budget, and therefore do not pose significant risks to the fiscus. Over the medium term, it is anticipated that this share will increase as projects are developed in partnership with the private sector through the Infrastructure Fund.

In anticipation of this increase, the National Treasury has partnered with the World Bank to improve the methodology used to quantify contingent liabilities. At present, institutions submit their contingent liabilities report as part of the process of obtaining approval before a PPP can be implemented. The National Treasury monitors these liabilities annually. Improvements that are being explored during 2021 include designing a guideline and template to help public-sector institutions report on contingent liabilities, as well as formulating measures to evaluate the private sector's ability to deliver on its contractual obligations and debt repayments.



PPP projects completed

Table E.2 shows a list of 34 concluded PPP projects undertaken since this type of partnership was first introduced in South Africa in 1998. The total value of all projects amounts to R89.3 billion. These projects are in the health, transport and roads, and tourism sectors, as well as for head office accommodation. They have been funded through a combination of equity, debt and, in some instances, government capital contributions. Most of these projects are operational, with a few having reached the end of their project term. In some instances, project durations have been extended.

Table E.2 List of PPP projects concluded in South Africa

| Project name | Government institution | Type | Date of close ¹ | Duration | Financing structure | Project value R million | Form of payment |
|---|---|--------------------|----------------------------|----------|---------------------------------------|-------------------------|--------------------------------------|
| Transport | | | | | | | |
| SANRAL N4 East Toll Road | SANRAL | DFBOT ² | Feb 1998 | 30 years | Debt: 80% Equity: 20% | 3 200 | User charges |
| SANRAL N3 Toll Road | SANRAL | DFBOT | Nov 1999 | 30 years | Debt: 80% Equity: 20% | 3 000 | User charges |
| SANRAL N4 West Toll Road | SANRAL | DFBOT | Aug 2001 | 30 years | Debt: 80% Equity: 20% | 3 200 | User charges |
| Northern Cape fleet | Northern Cape Department of Transport, Roads and Public Works | DFO ³ | Nov 2001 | 5 years | Equity: 100% | 181 | Unitary payment |
| Chapman's Peak Drive Toll Road | Western Cape Department of Transport | DFBOT | May 2003 | 30 years | Debt: 44% Equity: 10% Govt: 46% | 450 | User charges and guarantee |
| Fleet management | Eastern Cape Department of Transport | DFO | Aug 2003 | 5 years | Debt: 100% | 553 | Unitary payment |
| National fleet management | Department of Transport | DFO | Sep 2006 | 5 years | Equity: 100% | 919 | Service fee |
| Tshwane fleet management | City of Tshwane | DFO | Nov 2015 | 5 years | Equity: 100% | 1 612 | Service fee |
| Water and sanitation | | | | | | | |
| Gautrain Rapid Rail Link | Gauteng Department of Public Transport, Roads and Works | DFBOT | Sep 2006 | 20 years | Debt 11% Equity: 2% Govt: 87% | 31 800 | User charges and patronage guarantee |
| SANRAL Gauteng Freeway Improvement Plan Toll Road | SANRAL | DFBOT | Oct 2007 | 20 years | Debt: 100% | 20 000 | User charges |
| Dolphin Coast water and sanitation concession | KwaDukuza Local Municipality | DFBOT | Jan 1999 | 30 years | Debt: 21% Equity: 18% Govt: 61% | 130 | User charges |
| Mbombela water and sanitation concession | Mbombela Local Municipality | DFBOT | Dec 1999 | 30 years | Debt: 40% Equity: 31% Govt: 29% | 189 | User charges |
| Correctional services | | | | | | | |
| Mangaung and Makhado maximum security prisons | Department of Correctional Services | DFBOT | Aug 2000 | 30 years | Debt: 88% Equity: 12% | 3 600 | Unitary payment |
| Information technology | | | | | | | |
| Information systems | Department of Labour | DFBOT | Dec 2002 | 10 years | Equity: 100% | 1 500 | Unitary payment |
| Social grant payment system | Free State Department of Social Development | DFO | Apr 2004 | 3 years | Equity: 100% | 260 | Unitary payment |
| Office accommodation | | | | | | | |
| Head office accommodation | Department of Trade and Industry | DFBOT | Aug 2003 | 25 years | Debt: 80% Equity: 8% Govt: 12% | 870 | Unitary payment |
| Head office accommodation | Department of International Relations and Cooperation | DFBOT | Jan 2005 | 25 years | Debt: 81% Equity: 19% | 1 959 | Unitary payment |
| Head office accommodation | Department of Education | DFBOT | Aug 2009 | 27 years | Debt: 90% Equity: 10% | 512 | Unitary payment |
| Head office accommodation | Department of Environmental Affairs | DFBOT | May 2012 | 25 years | Debt 49% Equity: 15% Govt: 36% | 2 731 | Unitary payment |
| Head office accommodation | Statistics South Africa | DFBOT | Mar 2014 | 24 years | Debt 54% Equity: 9% Govt: 37% | 2 533 | Unitary payment |
| Head office accommodation | City of Tshwane | DFBOT | Mar 2015 | 25 years | Debt: 86% Equity: 14% | 2 005 | Unitary payment |
| Head office accommodation | Department of Rural Development | DFBOT | May 2017 | 27 years | Debt: 54% Equity: 10% Govt: 36% | 3 991 | Unitary payment |

Table E.2 List of PPP projects concluded in South Africa (continued)

| Project name | Government institution | Type | Date of close ¹ | Duration | Financing structure | Project value R million | Form of payment |
|---|---|-----------------------|----------------------------|---------------|---|-------------------------|------------------------------|
| Health | | | | | | | |
| Inkosi Albert Luthuli Hospital | KwaZulu-Natal Department of Health | DFBOT | Dec 2001 | 15 years | Debt: 70% Equity: 20% Govt: 10% | 4 500 | Unitary payment |
| Universitas and Pelonomi Hospitals co-location | Free State Department of Health | DFBOT | Nov 2002 | 16.5 years | Equity: 100% | 81 | User charges |
| State Vaccine Institute | Department of Health | Equity partnership | Apr 2003 | 4 years | Equity: 100% | 75 | Once-off equity contribution |
| Humansdorp District Hospital | Eastern Cape Department of Health | DFBOT | Jun 2003 | 20 years | Equity: 90% Govt: 10% | 49 | Unitary payment |
| Phalaborwa Hospital | Limpopo Department of Health and Social Development | DFBOT | Jul 2005 | 15 years | Equity: 100% | 90 | User charges |
| Western Cape Rehabilitation Centre and Lentegeur Hospital | Western Cape Department of Health | Facilities management | Nov 2006 | 12 years | Equity: 100% | 334 | Unitary payment |
| Polokwane Hospital renal dialysis | Limpopo Department of Health and Social Development | DBOT ⁴ | Dec 2006 | 10 years | Equity: 100% | 88 | Unitary payment |
| Port Alfred and Settlers Hospital | Eastern Cape Department of Health | DFBOT | May 2007 | 17 years | Debt: 90% Equity: 10% | 169 | Unitary payment |
| Tourism | | | | | | | |
| SANParks tourism projects | SANParks | DFBOT | Apr 2000 | Various years | Equity: 100% | 270 | User charges |
| Eco-tourism Manyeleti three sites | Limpopo Department of Finance, Economic Affairs and Tourism | DFBOT | Dec 2001 | 30 years | Equity: 100% | 25 | User charges |
| Cradle of Humankind Interpretation Centre Complex | Gauteng Department of Agriculture, Conservation, Environment and Land Affairs | DBOT | Oct 2003 | 10 years | Equity: 100% opex Govt: 100% capex | 39 | User charges |
| Western Cape Nature Conservation Board | Western Cape Provincial Government | DFBOT | Jul 2005 | 30 years | Equity: 100% | 40 | User charges |

1. Refers to a phase in which all contract conditions of the financing established between government, private party and lenders are closed

2. Design, finance, build, operate and transfer

3. Design, finance and operate

4. Design, build, operate and transfer

Source: National Treasury


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PRESS RELEASES

NDB BOARD OF DIRECTORS CONVENES ITS 21ST MEETING IN SHANGHAI, APPROVES PROJECTS WITH LOANS AGGREGATING TO USD 1.4 BLN

16-Sep-2019

On September 12, 2019, the 21st Meeting of the Board of Directors (BoD) of the New Development Bank (NDB) was held in Shanghai, China. At the Meeting, the Board approved four infrastructure and sustainable development projects with loans aggregating to approx. USD 1.4 billion, bringing the Bank's portfolio to 42 projects with loans aggregating to USD 11.6 billion.

South African National Toll Roads Strengthening and Improvement Programme

The Board of Directors approved a loan of ZAR 7 billion guaranteed by the Government of the Republic of South Africa to South African National Roads Agency SOC Limited for National Toll Roads Strengthening and Improvement Programme.

The Project is designed to improve key national roads in South Africa with the objective of reducing transportation costs in the country. The scope of the Project includes rehabilitation of the pavement for the existing toll sections of national roads, construction of additional lanes to widen such roads, and rehabilitation of related infrastructure, such as bridges and intersections.

Renewable Energy Sector Development in Russia Project

The Board of Directors approved a loan of USD 300 million to Eurasian Development Bank for Renewable Energy Sector Development in Russia. The objective of the Project is to facilitate investment in renewable energy generation plants that will contribute to Russia's power generation mix in line with the country's Energy Strategy 2030, and to avoidance of carbon dioxide emissions. The proposed NDB loan will be used by EDB for on-lending to sub-projects using wind, solar, and small hydropower (less than 25 MW) energy generation technologies.

Andhra Pradesh Roads and Bridges Reconstruction Project and Andhra Pradesh Mandal Connectivity and Rural Connectivity Improvement Project

The NDB will provide two loans of USD 323 million each (aggregating to USD 646 million) to the Republic of India for on-lending to Government of Andhra Pradesh for the Andhra Pradesh Roads and Bridges Reconstruction Project (APRBRP) and the Andhra Pradesh Mandal Connectivity and Rural Connectivity Improvement Project (APMCRICIP) respectively.

The two projects will address the road network issues in the state of Andhra Pradesh by widening roads and widening and reconstructing weak and narrow bridges to provide all-weather road network connectivity. APRBRP comprises widening of about 1,600 km of state highways from single/intermediate lanes to double lanes and reconstructing 269 bridges on the state highway network. APMCRICIP comprises widening of about 1,400 km of district roads from single/intermediate lanes to double lanes and reconstructing 206 bridges on the district road network.

During the BoD Meeting, the Board also received an update on the Bank's robust pipeline of infrastructure and sustainable development projects in all member countries of the NDB and project implementation and disbursement. The Board approved a Policy on Loans to International Organisations and also approved revisions to the Revised Policy on Loans with Sovereign Guarantee and the Revised Staff Compensation and Benefits Policy. The Board considered the tentative workplan for the upcoming year.

The Management also provided updates on the NDB Funding Programme, the credit rating process, local currency non-sovereign loan financing and other matters pertaining to NDB's work.

On September 11, 2019, Audit, Risk and Compliance Committee of the NDB BoD, considered Audited Financial Statements for the New Development Bank for the period ended June 30, 2019, and Audited Financial Statements for the Project Preparation Fund of the New Development Bank for the period ended June 30, 2019. The Management also provided the Committee on updates concerning internal audit and compliance related matters. The Committee also discussed matters pertaining to the risk management of the Bank.

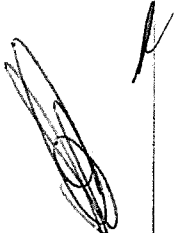
The Budget, Human Resources and Compensation Committee also met on September 11, 2019. The Committee was updated on the Bank's budget utilisation for the period ended June 30, 2019. Furthermore, the BHRC Committee discussed several matters pertaining to human resources and compensation, including a report on recruitment and diversity in the Bank. An update on Ethics was also provided to the Committee.

Background Information

The NDB was established by Brazil, Russia, India, China and South Africa to mobilize resources for infrastructure and sustainable development projects in BRICS and other emerging economies and developing countries, complementing the existing efforts of multilateral and regional financial institutions for global growth and development. To fulfill its purpose, the NDB will support public or private projects through loans, guarantees, equity participation and other financial instruments. According to the NDB's General Strategy, sustainable infrastructure development is at the core of the Bank's operational strategy for 2017-2021. The NDB received AA+ long-term issuer credit ratings from S&P and Fitch and AAA foreign currency long-term issuer rating from Japan Credit Rating Agency (JCR).

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AA6

2020

INTEGRATED REPORT

VOLUME TWO

LEADER IN
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DEVELOPMENT

SANRAL



BUILDING SOUTH AFRICA
THROUGH BETTER ROADS

The South African National Roads Agency SOC Limited

Integrated Report 2020

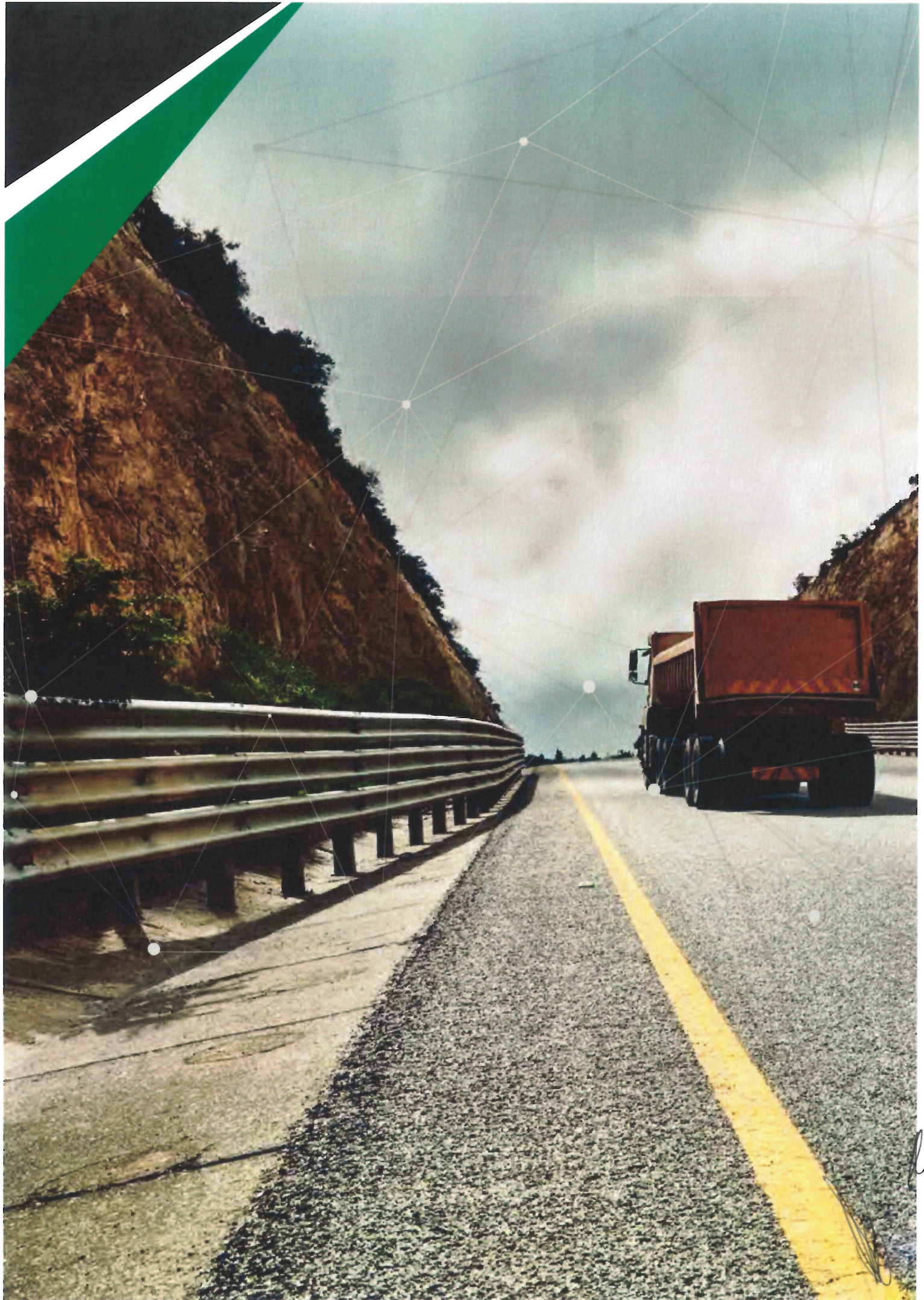
The 2020 Integrated Report of the South African National Roads Agency SOC Limited (SANRAL) covers the period 1 April 2019 to 31 March 2020 and describes how the Agency gave effect to its statutory mandate during this period.

The report is available in print and electronic formats and is presented in two volumes:

- **Volume 1:** Integrated Report is a narrative and statistical description of major developments during the year and of value generated in various ways.
- **Volume 2:** Annual Financial Statements and the Corporate Governance Report.

In selecting qualitative and quantitative information for the report, the Agency has strived to be concise but reasonably comprehensive and has followed the principle of materiality—content that shows the Agency's value-creation in the short, medium and long term.





THE SOUTH AFRICAN NATIONAL ROAD AGENCY SOC LTD

INTEGRATED REPORT

Volume Two

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Government has indicated its preparedness to provide financial to SANRAL while a political solution is found for GFIP (e-toll). SANRAL has therefore included a budgetary transfer of R 2 530 million from non-toll to toll, in each of the financial years 2019/20, 2020/21 and 2021/22 respectively. This transfer was approved for 2019/20 and 2020/21. While the 2021/22 is yet to be approved by Parliament, it has been tabled by the Minister of Transport in the SANRAL Approved Performance Plan for 2020/21 as well as in the Transport budget tabled in Parliament for the MTEF period of 2020/21 to 2022/23.

On the toll portfolio, projections were reduced to include an expectation of reduced traffic flow, i.e. reduced revenue from toll operations, under lockdown levels five through to level three normalising expecting these to normalise by December 2020. The cost projections were also reduced in line with the construction slow down during lockdown, however costs were added for potential claims due to standing time. Toll revenue for March 2020 was not materially affected. However, from April 2020 toll revenue reduced to 25 percent under level five lockdown, but steadily increased back to an average of 80 percent under level three in June 2020.

Cash flow projections at end of June 2020 indicated that SANRAL's cash reserves for the toll portfolio remain cash positive until February 2021. This period includes the maturing HWAY20 bond of R3 900 million and two promissory notes amounting to R1 200 million as well as repayments of R37 million on the amortising EIB loan. Discussions will however be entered into with the investor to establish their intention to extend the R1 200 million investment, as they have done in the previous two years.

The non-toll portfolio remains cash positive even though the Supplementary Budget of the Minister of Finance reduced SANRAL's allocation by R1 096 million. The level five lockdown, which postponed all construction, reduced the expenditure during that period as well as the slow return to full construction during the further levels of lockdown. The reduction in the allocation will therefore not have a significant impact on the portfolio's financial reserves. The Supplementary Budget also allowed for a transfer of R309 million from the capital portion of the non-toll grant to operational expenditure. This was done to compensate for additional expenditure due to COVID-19, such as Personal Protective Equipment (PPE).

Funding actions during the year are summarised below:

SANRAL is currently pursuing a loan to be guaranteed by the Multilateral Investment Guarantee Agency of the World Bank (MIGA) for R7 000 million. Half of this loan, R3 500 million, may be used for the refinancing of maturing debt. If successful, this amount will cover the cash requirements of the 2021 financial year as well as enable SANRAL to proceed with the toll-road projects proposed to MIGA with the other half of the loan. The application was made to the Minister of Transport which will require the concurrence of the Minister of Finance. Both guarantor and lender have agreed to provide the loan, subject to their due diligence process which is underway. This will be MIGA's first local currency denominated loan. SANRAL will have no currency risk.

SANRAL is pursuing to raise R2 000 million in the 3rd quarter through issuing a combination of HWAY bonds and 3-year notes. There is currently interest in HWAY33 and HWAY34 bonds.

From the evidence of approved transfers of funds from non-toll and toll in the past years, it is clear that the lines between toll and non-toll are less severe, even though legislative requirements must still be followed. Government views national roads as a single portfolio. It would therefore make sense to evaluate the financial status of the entity as a single entity for going concern purposes.

Even though a significant portion of SANRAL's debt is guaranteed by Government, Government has elected on several occasions to avert a default by providing funding to SANRAL, pending the outcome of the e-toll decision by Cabinet. It is therefore fair to assume that Government will continue to do so in the foreseeable future. Furthermore, SANRAL may not be placed under judicial management or in liquidation except by an act of Parliament (section 10 of the South African National Roads Agency and National Roads Act). This is an implied guarantee from the Government.

The Board of Directors therefore supports management's assessment that SANRAL will remain a going concern in the foreseeable future. The Board of SANRAL is fully aware of the liquidity risk it faces in the short-term and is actively engaging with Government to resolve the matter.

NOTES TO THE ANNUAL FINANCIAL STATEMENTS FOR THE PERIOD ENDED 31 MARCH 2020

44. Going concern (continued)

The non-toll portfolio remains cash positive even though the Supplementary Budget of the Minister of Finance reduced SANRAL's allocation by R1 096 million. The level five lockdown, which postponed all construction, reduced the expenditure during that period as well as the slow return to full construction during the further levels of lockdown. The reduction in the allocation will therefore not have a significant impact on the portfolio's financial reserves. The Supplementary Budget also allowed for a transfer of R309 million from the capital portion of the non-toll grant to operational expenditure. This was done to compensate for additional expenditure due to COVID-19, such as Personal Protective Equipment (PPE).

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45. EVENTS AFTER THE REPORTING PERIOD

On 15 March 2020, the President of South Africa, in a national address, announced the declaration of the COVID-19 (also known as the Coronavirus) pandemic as a "national disaster". This announcement was made through the legislation that permits the declaration of a national disaster and the majority of the consequential actions that have followed, is the Disaster Management Act, 2002. This declaration was made in terms of an Act of Parliament. The initial set of regulations issued on 18 March 2020 made provision for the first wave of Coronavirus restrictions.



CONSOLIDATED
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for the year ended 31 March 2020



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for the year ended 31 March 2020

Published by National Treasury

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is also available on www.treasury.gov.za

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DISCLOSURE NOTES TO THE ANNUAL FINANCIAL STATEMENTS

For the year ended 31 March 2020

28.3 Refinancing risk

Refinancing risk is the possibility that money cannot be borrowed to refinance maturing debt or that these borrowings take place at unfavourable rates. This risk is manifested in the concentration of large volumes of debt that needs to be repaid.

One of the aims of government's debt management strategy is to maintain a smooth debt maturity profile. Refinancing risk is reduced through an active switch programme whereby short dated bonds are exchanged for longer-term bonds.

Refinancing risk benchmarks

| Indicator | 31 March 2020 | 31 March 2019 |
|--|---------------|---------------|
| Treasury bills as % of domestic debt | 11.76% | 12.46% |
| Long-term debt maturing in 5 years as % of bonds | 15.32% | 14.40% |
| Weighted term-to-maturity of fixed-rate bonds plus Treasury bills (in years) | 12.49 | 13.34 |
| Weighted term-to-maturity of inflation-linked bonds (in years) | 13.66 | 14.20 |

28.4 Credit Risk

Credit risk exposure from explicit contingent portfolio

The explicit contingent liabilities of government consist mainly of government guarantees issued to state-owned companies (SOCs), Public-Private Partnerships (PPPs) as well as Independent Power Producers (IPPs).

The explicit contingent liability portfolio of government exposes government to credit risk, in that, should the guaranteed entities fail to settle their government guaranteed financial obligations; government as the guarantor will have to settle the obligations in default on behalf of the entities.

As at 31 March 2020, guarantees to public institutions decreased by R3.3 billion, from R487.7 billion in 2018/19 to R484.4 billion. This is mainly due to decreases in the guarantees issued to the Development Bank of Southern Africa, South African National Roads Agency Limited, South African Post Office and South African Express. The total amount borrowed, revaluation adjustments due to inflation rate movements, and accrued interest against the guarantees, was approximately R385.3 billion (2018/19: R368.1 billion).

Counterparty risk exposure from investment of government surplus cash

Government's surplus cash is invested with four South African commercial banks, namely: Standard Bank, First National Bank, ABSA and Nedbank. As at 31 March 2020, the total surplus cash invested with the banks amounted to R44.5 billion (2018/19: R63.4 billion).

The risk that emanates from government's surplus cash investments with the banks is the possibility that as a result of these banks being in financial distress; government will not be able to access its deposits when needed.

The amount of government surplus cash invested with each of the four banks is based on government's risk assessment of each bank. The bank with the highest risk out of the four banks is allocated the lowest amount of surplus cash while the bank with the lowest risk is allocated the highest amount of surplus cash. As at 31 March 2020, government's risk exposure to the banks was equal and therefore the surplus cash was allocated equally between the banks

28.5 Sovereign risk

Sovereign credit ratings play an important role in a country's ability to access capital markets, as they influence investor perceptions of the quality of its debt. Credit rating agencies carry out annual reviews of South Africa's credit-worthiness. However, since the inception of the European Union's Credit Regulation Act 3 in 2013, European-based credit rating agencies are obliged to review their credit ratings every six months. South Africa continues to solicit ratings from four major rating

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5. REPORT OF THE ACCOUNTING OFFICER - Cont

the next reporting period. The Land Bank, after approval by the Minister and due to current challenges, has submitted neither a corporate nor an annual plan. The process of stabilising the financial position of the Land Bank is continuing with ongoing negotiations with its lenders to address its default status.

The financial performance of SOEs continues to deteriorate, compounded by the emergence of the COVID-19 pandemic and its implications on business, leaving them unable to effectively deliver on their mandates without significant government backing. A process has been underway to appoint new boards for the Public Investment Corporation (PIC) and Land Bank. Key activities undertaken during this reporting period included Denel SOC Ltd being issued with an additional government guarantee of R2.5 billion. Government guarantee requests for the South African National Roads Agency SOC Ltd (SANRAL) and the Sedibeng Water Board was not concurred with. In terms of section 70 of the PFMA, government settled guaranteed obligations which were in default of R267 million and R137 million for South African Airways (SAA) and South African Express (SAX) respectively. Various Section 54 PFMA applications were finalised for the Airports Company of South Africa (ACSA), SAX, the Industrial Development Corporation (IDC), SAA, Mango Airlines, Eskom, Central Energy Fund (CEF), and the South African Bureau of Standards (SABS). Tariff submissions from all nine water boards were reviewed and responded to. Recapitalisation of R23 billion was provided to Eskom for 2019/20 and 2020/21 as allocated in the 2019 budget and the 2019 Special Appropriation Act provided Eskom with an additional R26 billion in 2019/20 and R33 billion in 2020/21 to assist the entity to settle debt and interest payments. Recapitalisation requests for ACSA, Denel, Land Bank, South African Post Office (SAPO), South African Broadcasting Corporation (SABC), SAA and SAX were reviewed and analysed and inputs provided. The Land Bank repaid debt of R2.7 billion thereby reducing government guarantee exposure. Shareholder compacts with PIC, South African Special Risk Insurance Association (SASRIA), SAA, Land Bank and DBSA were concluded. Implementation of SOC reforms through inclusion of key reform initiatives as conditionalities to recapitalisations and guarantees provided by government was pursued. Denel and SABC consequently made provisions for the disposal of non-core assets, strategic equity partnerships and the costing of developmental mandates.

By the end of the financial year and after a number of downgrades, Moody's and Fitch had downgraded the sovereign's credit ratings to 'Ba2' and 'BB-' respectively. Both agencies maintained a negative outlook. S&P affirmed the country's foreign and local currency ratings at 'BB-' and 'BB' respectively, and maintained a stable outlook. According to the agencies, lack and/or slow pace of structural reform implementation aimed at reviving economic growth and lack of a clear path towards government's debt stabilisation remain the main credit constraints. Further, the impact of the COVID-19 pandemic shocked the already deteriorating public finances and exacerbated pressure on the country's ratings. Although the debt portfolio has grown from a gross loan debt of R2.0 trillion in March 2016 to an estimated gross loan debt of R3.9 trillion in March 2021, none of the strategic risk benchmark indicators were breached. The government successfully financed the gross borrowing requirement of R619.5 billion. This was financed through net issuance of domestic short-term loans (R95.3 billion), domestic long-term loans (R523.4 billion) and foreign loans of R91.9 billion (US\$5.6 billion). In addition, cash and other balances increased by R91.2 billion mainly on the back of improved revenue collections. During the reporting period, R6.8 billion of short-dated bonds were exchanged for long-dated bonds.

The Office of the Accountant-General (OAG) continued to facilitate accountability and transparency in the management of the country's financial resources. A memorandum of understanding (MoU) with CoGTA was signed, which, once finalised, will support the streamlining and consolidation of operations. The financial grant was transferred to all municipalities. An annual MFMA compliance report was issued highlighting progress made and emphasising areas where remedial action is required to address challenges. The municipal helpdesk facility and MFMA circulars continue to be effective tools for providing guidance and assistance to local government. Further proactive support was provided and preventative strategies engaged through sessions of the Chief Financial Officer forum. A draft Unauthorised Irregular, Fruitless and Wasteful Expenditure (UIFW) reduction strategy for municipal spheres was developed and is being consulted. An automated, electronic and web-enabled audit action plan has been developed and will be piloted in 2021. It is envisaged that once fully deployed, this will set the standard and uniform measure for all municipalities as well as facilitating effective in-year monitoring and oversight by provincial treasuries and the

4. PERFORMANCE INFORMATION BY PROGRAMME - Cont

Strategy and Risk Management

This sub-programme develops and maintains a risk management framework for the debt and contingent liabilities of government and monitors the implementation of strategies to ensure that risks remain within tolerance thresholds and that the risk of an adverse sovereign credit rating is mitigated.

SERVICE DELIVERY OBJECTIVES AND INDICATORS

Recent outputs

During the reporting period, the Minister approved the minimum criteria that must be met by state-owned entities (SOEs) and government departments when submitting requests for government guarantees. The minimum criteria seeks to reduce the volume of guarantees issued and improve the quality of the contingent liability exposure from guarantees issued to SOEs. These minimum criteria were published through a practice note in December 2020 and have been discussed with relevant departments so that they can ultimately be presented to Cabinet. When fully implemented, they will ensure that guarantees are issued only to SOEs that can clearly demonstrate their ability to service the debt of the guarantees.

Annual reviews of the corporate plans of all public entities listed in Schedule 2 and 3B of the PFMA were conducted during the reporting period. In addition to assessing their alignment with government's priorities, financial sustainability and soundness of governance, the reviews aim to proactively identify possible risks so that appropriate mitigating actions can be taken. Similarly, public entities' performances were evaluated through a review of their annual reports. Due to the COVID-19 pandemic, some SOEs revised and resubmitted their corporate plans to reflect the anticipated impact on their business plans, while annual report submissions were delayed beyond the PFMA stipulated deadline for submission. During the reporting period, 100 per cent of submissions due were completed, while some annual reports that were submitted late can only be finalised in the coming financial year. The Land Bank, after approval by the Minister, had not submitted its corporate plan and annual report in accordance with legislative timelines, due to its current financial challenges. The process of stabilising the financial position of the Land Bank is continuing. Since April 2020, the bank has been negotiating with its lenders to cure its default status. The audit report by the AGSA showed significant deficiencies in internal controls and governance processes in the bank.

The financial performance of SOEs continues to deteriorate. This is compounded by the COVID-19 pandemic and its implications on business, leaving them unable to deliver effectively on their mandates without significant government backing. The process of appointing the Public Investment Corporation (PIC) board is still under way in order to align the board with the Public Investment Corporation Act, 2004 (Act No. 23 of 2004). In addition, the appointment of the Land Bank board is also underway, to ensure that its composition is in line with the skill gaps identified by the Institute of Directors during the last board evaluation.

Denel SOC Ltd was issued with an additional government guarantee of R2.5 billion. Government guarantee requests for the South African National Roads Agency SOC Ltd (SANRAL) and the Sedibeng Water Board were reviewed but were not approved. The failure by South African Express Airways (SAX) SOC Ltd to settle government guaranteed obligations as they became due for payment gave rise to demands from creditors. During the reporting period, government received demands for the settlement of government guaranteed obligations which were in default of R267 million and R137 million for South African Airways (SAA) and SAX respectively. Government settled these obligations in terms of section 70 of the PFMA.

CROVE KWAZI NT

Sanral's R7 billion 'Brics bank' loan stopped by National Treasury

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By Moneyweb
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25 Nov 2021

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One condition for the issuance of the loan was that it would be guaranteed by the government. Image: Moneyweb

Concerns about low e-toll collection rates on the Gauteng Freeway Improvement Project (GFIP) were a major reason for National Treasury rejecting a request for a government guarantee of R7 billion to cover a loan to the South African National Roads Agency (Sanral) by the New Development Bank (NDB) of the Brics (Brazil, Russia, India, China, SA) economic bloc.

The request to National Treasury was made by Transport Minister Fikile Mbalula in October 2019.

This has emerged after Sanral chief financial officer Inge Mulder disputed allegations made by the Organisation Undoing Tax Abuse (Outa) in an [article](#) published by Moneyweb last Tuesday (November 16).

The article referred to a judgment handed down by Judge J van der Schyff in the North Gauteng High Court last week setting aside Sanral and former CEO Sikhumbuzo Macozoma's refusal of Outa's request for information about Trans African Concessions (TRAC), one of Sanral's long distance toll concessionaires, through a Promotion of Access to Information Act application.

“ Judge van der Schyff directed Sanral to provide Outa with the requested records within 15 days of the order being served on the agency.

Outa's application, which is an attempt to obtain more transparency from the Sanral about possible “excessive profits” being made by the agency's long distance toll concessionaires, was unopposed.

Outa's accountability division executive head Advocate Stefanie Fick confirmed on Wednesday (November 24) that the order has been served on Sanral.

Statements disputed

Mulder disputed statements by Fick in a founding affidavit to the application, and reported by Moneyweb, that Sanral received a R7 billion loan from the NDB (popularly referred to as the Brics Bank)

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that is repayable over a period of 15 years but the purpose of the loan is unknown.

"The aforementioned allegation, contained in a Moneyweb article dated 16 November 2021 and titled 'Court order could expose 'excessive profits' by Sanral long distance toll concessionaire', is incorrect," she stated.

"Sanral wishes to place on record that it did not receive any loan, of any amount, from the Brics' New Development Bank at all.

"The New Development Bank approved a loan from their side, but the loan was never approved by the SA Government, through National Treasury, and has therefore not been taken up," said Mulder.

"No loan agreement has been signed between Sanral and the NDB either, which would constitute a facility which could be used."

The approval by the NDB of the loan to Sanral, based on a statement issued by NDB, was widely reported in the media in September 2019.

The directors' report in Sanral's 2020 Integrated Report for the year to March 31, 2020, mentioned the NDB loan.

It said: "During the year, the New Development Bank (NDB) approved a R7 billion loan to Sanral's Toll programme, which will be used to fund various recently completed toll projects and toll projects currently in construction."

However, Sanral's 2021 Integrated Report did not mention that National Treasury had rejected the request for a R7 billion guarantee to cover the NDB loan.

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Clarity

Mulder said the letter from Mbalula informing Sanral of National Treasury's rejection of the request for the guarantee is dated February 12, 2020.

National Treasury confirmed it took this decision in December 2019.

Mulder said for Sanral to utilise the NDB loan, it required National Treasury's approval for the loan and guarantee agreements "even though Sanral would utilise the existing government guarantee of R31.91 billion for this loan".

"National Treasury, through the Department of Transport, indicated that the GFIP/e-toll issue must be resolved before National Treasury would agree to this or any other loan," she said.

"National Treasury was more forthright in explaining why it rejected the request for a guarantee to cover the R7 billion NDB loan."

It said the Minister of Finance (National Treasury) does not approve loan facilities to state-owned companies, adding that the specific terms and conditions of the loan agreement are determined by the lender concerned and the state-owned company, in this case NDB and Sanral respectively.

Risk to the fiscus

One of the conditions for the issuance of the loan from the NDB to Sanral was that the R7 billion loan would be guaranteed by the government, according to National Treasury.

"A guarantee by the government results in government guaranteeing payment to the NDB from the fiscus, if Sanral were to default on any of the principal or interest payments under the R7 billion NDB loan.

"Therefore, the issuance of a guarantee to Sanral for the purposes of raising a loan with the NDB has the potential of binding the National Revenue Fund (NRF) for any default of Sanral under the repayment terms of the loan.

"Sanral would then utilise the guarantee granted by the state to raise the R7 billion loan from the NDB and thereby meet the condition agreed to between Sanral and NDB for the issuance of the loan.

"Having considered the relevant information provided by Sanral and the Department of Transport, the then Minister of Finance did not concur to the issuance of a guarantee for Sanral," it said.

'Issues'

Treasury said several issues were identified in the decision not to concur with Mbalula's request.

It said the most salient of these was that "given the low toll collection rates on the GFIP, there was uncertainty regarding Sanral's ability to generate sufficient operational revenues that would enable the entity to repay the principal and interest amounts due under the NDB loan so as to not trigger a default, which would then require government to settle the guaranteed obligation on Sanral's behalf".

Mulder said the intended purpose of the NDB loan was to fund large capital projects on existing toll routes, which were urgently required, such as the N3 and N2 in KwaZulu-Natal.

She added that Sanral has sufficient capacity available under its R31.91 billion guarantee to fund these projects, but that the NDB loan would have been more cost effective and more accessible than the capital markets at that time.

“ Moneyweb asked Sanral why it applied for a loan facility for toll roads when these roads are supposed to be funded and maintained with the income from the toll fees received.

Mulder said all large infrastructure projects are funded through borrowing because public entities do not have access to large sums of cash to apply on capital projects upfront.

"This is called the J-curve, where Initial Capital Costs are borrowed and paid back over time," she said.

"Sanral (Roads Board previously) has been issuing bonds in the capital markets to fund its toll road programme since the 1990s. Sanral has also previously done loans with the European Investment Bank as well as an Export Credit Agency loan with a local bank.

"To expand (capital works) existing infrastructure, the initial construction cost is borrowed and repaid with existing toll revenue. This is called the Loan Supportable by Revenue (LSR) model.

"Prior to commencing with capital works, it must be proven that the costs can be repaid with the existing revenue, given that maintenance must also continue," she said.

“ Mulder added that Sanral has tapped its existing bonds to ensure the cash is available once construction commences on the projects that were earmarked for funding through the NDB loan facility.

"The R7 billion loan would have been released during construction and not as a single lump sum," she said. "Effectively, the bond issuance is doing the same, the rate is just more expensive."

Why no update?

Outa CEO Wayne Duvenage said Sanral should have provided an update and disclosed that it had not taken up the NDB loan.

“It’s frustrating that they [Sanral] are not transparent. But they aren’t. They keep you in the dark,” he said.

Fick said the fact that Sanral did not take up the NDB loan does not change the reasons why Outa wants specific information about the concessional contracts.

“These roads are supposed to support themselves but the toll fees keep going up. They [the concessionaires] are in the business of making money but not to the detriment of taxpayers.

“At some point they are breaking even and everything they earn, they put in their pocket.

“Shouldn’t the toll fees then become less, not more?” she asked.

By Roy Cokayne

This article first appeared on Moneyweb and was republished with permission. Read the original article [here](#).

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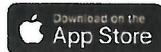
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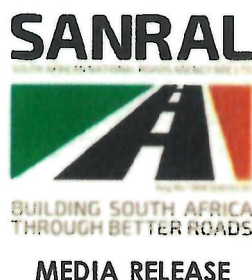
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SANRAL's response to a Moneyweb article

Pretoria, 3 March 2022 – The story titled "Sanral delays awarding tenders worth at least R16bn" which appeared in Moneyweb on 3 March 2022 refers.

Before we respond to the substantive issues raised in the article, let us point out that Moneyweb had sent us a list of questions on 2 March 2022 and published the article the same day at midnight. In email exchanges between SANRAL and Moneyweb, the latter acknowledged receipt of our request to delay publication as our responses were going through internal approval processes. This was not a breaking a story and ours was a reasonable request, we thought, and to which Moneyweb did not object.

But Moneyweb could not resist the possibility of facts getting in the way of a juicy story and so it decided to go ahead and publish without a response from SANRAL, or verifying facts. One of the first things any rookie journalist learns in the profession is how important it is to be fair. Reporters must always include the other side.

Sometimes, though, there is no other side. In the case of SANRAL, the other side was there and had been in touch with Moneyweb's journalist – not for the first time. He knows we always honour our commitment to respond to his questions. But this time around the facts might have gotten in the way of his innuendos dressed up as journalism.

Worse still, his effectiveness as a hired gun might have been blunted. This is also not the first time this journalist has published a factually incorrect statement, which after checking with SANRAL was proven to be inaccurate. We refer to the article published in November 2021 regarding SANRAL allegedly taking a loan from the New Development Bank of R7 billion.

Here are the facts responding to the substantive issues raised in the Moneyweb article.

SANRAL is dealing with a significant backlog in procurement, which is widely known and published, caused by the following:

- a. The clarification process of the 30% subcontracting between SANRAL and National Treasury took 18 months to complete, including the interpretation of "local", which led to the stalling of 64 SANRAL projects caused by community disruptions.
- b. The rollout of the Supply Chain Management (SCM) reform to comply with the Treasury Regulations on Procurement, issued under the PFMA.

A handwritten signature, possibly 'A. [unclear]', is written in blue ink in the bottom right corner of the page. To the right of the signature, there are some handwritten initials or a mark.

- c. COVID-19 lockdown required changes to tender procedures, which had to be considered and published.

All the above conspired to create a significant backlog which resulted in 258 projects (R31.7 billion), planned to be awarded in 2020/21, being rolled over to the current Annual Procurement Plan of 2021/22. The 2021/22 plan included a further 312 projects (R30 billion) to commence with the procurement process in this financial year.

To provide perspective on the impact the SCM reform has on the administrative processes that must be concluded, it is noteworthy that in 2020/21, 212 contracts were awarded. However, this represents 4 180 tender submissions, which had to be checked for compliance in terms of eligibility criteria and the Regulations, before they could be evaluated for functionality, price and preference.

One must bear in mind that any administrative error will result in the award being declared irregular.

We can confirm that the delay is not due to a lack of funding, as projects will not be planned until the funding is secured.

We can also confirm that the delays had nothing to do with the SANRAL Board. As a matter of good governance, the Board does not get involved in the procurement process. The Board only reviews an award, post evaluation and adjudication by Management, when a tender exceeds the threshold of R750 million, as per the SANRAL Delegation of Authority. In such instances, the Board must satisfy itself that all due processes have been followed. Otherwise, all other bids are finalised and awarded at the Management Bid Adjudication Committee (MBAC) level. The Board does not sit at MBAC.

Since 1 April 2021 to 28 February 2022, 267 contracts have been awarded, which represent R33 billion. Some 69 contracts have been evaluated, and are in various stages of adjudication/award. A further 148 projects are currently under evaluation, of which 35 closed more than 6 months ago. Of the total of 570 listed in the Annual Procurement Plan for 2021/22, 256 advertisements have closed and 16 are currently advertised.

It must also be indicated that the majority of projects are not delayed between adjudication and award, but rather between closing of advertisement and completing of the evaluations.

For 2021/22, 267 awards have already been made – Bid Adjudication Committees meet on a weekly basis to consider recommendations from the various Bid Evaluation Committees and continue to make awards. These awards are published on the SANRAL website and others, as per the requirements.

As for the suggestion or advice by WBHO Group CEO Wolfgang Neff that the SANRAL Board "may not have the correct experience to determine whether a bid is competitive or not and whether the contractor will be able to compete the work" we find such remarks unfortunate and revealing about his understanding of how SANRAL procurement works. These issues are determined through an extensive

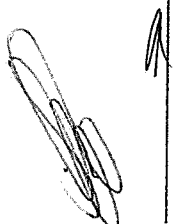


evaluation and adjudication process, which includes many specialists in engineering, procurement and legal fields. The Board merely seeks clarity where it has any concerns on the award made by MBAC.

Thus, Mr Neff's suggestion about the role that consulting engineers must play is, unfortunately, incongruent with SANRAL's corporate governance position on the matter of conflict of interest. But it does shed light about why this article might have been rushed for publication.

//Ends

Issued on behalf of SANRAL by FTI Consulting. For editorial content or additional information contact: pressoffice@nra.co.za

Handwritten signature and initials in the bottom right corner of the page.

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Mr S Everitt
Chief Executive Officer
Bakwena Platinum Corridor Concessionaire (Pty) Ltd

Dear Mr Everitt

SANRAL: NEW DEVELOPMENT BANK LOAN (BRICS BANK)

As Chief Financial Officer of the South African National Roads Agency SOC Limited (SANRAL), I confirm that SANRAL did not obtain a loan from the New Development Bank (NDB) of any amount, currently or since the inception of the NDB.

Even though the NDB approved, from their side, that a loan of R7 billion could be granted to SANRAL for specific capital projects on its toll portfolio, this loan was never approved by the Minister of Finance, as required by the Public Finance Management Act.

SANRAL applied for the loan through the Minister of Transport in 2019 and received a response from the Minister of Transport in February 2020, indicating that the application was not successful. There has not been any further applications by SANRAL for any loan from the NDB.

Regards

A handwritten signature in black ink, appearing to read "Inge Mulder".

INGE MULDER

CC:
Adv S Linda SANRAL: Head of Legal

- 58 Section 42 of PAIA provides for the protection of commercial activities of public bodies. The disclosure of the requested information is protected by this section, as it could potentially prejudice SANRAL in further negotiations of concessionaire contracts, as contemplated in section 42(3) of PAIA.
- 59 Finally, it is to be noted that the application is devoid of merits *ex facie* the founding affidavit. OUTA seeks to make out a case that the loan from the Brics National Development Bank is being used in order to fund the concessionaire agreements (FA, paragraphs 14 and 15, CaseLines 005-5).
- 60 However, the information OUTA seeks has **absolutely nothing** to do with the alleged Brics loan, nor would it be possible to establish the uses of the Brics loan from the documents which OUTA has actually requested. It stands to reason that even if TRAC were prepared to disclose all of the requested information to OUTA (which it is of course not willing to do) the information sought would demonstrate only the amounts generated by TRAC from the concessionaire contract, it would not demonstrate the allocation of the Brics loan funds.
- 61 There is no indication in the founding affidavit as to why it is in the public interest to divulge the details of the Brics loan or how it could possibly be in any way related to TRAC. Section 46 of PAIA is accordingly not engaged.
- 62 I point out the above in order to demonstrate that no case for an order was in fact made out in the Founding Affidavit.