



MINDE SCHAPIRO & SMITH

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Our Ref: DEM16/0732/ELZANNE JONKER/ks | **Your Ref:** 2281/20/Z32 and 2281/20/Z18 | **Date:** 20 July 2020

THE STATE ATTORNEY

Per email: ZZenani@justice.gov.za; DScrooby@justice.gov.za; dnscreoby@gmail.com

Dear Sir

DEMOCRATIC ALLIANCE AND ANOTHER / MINISTER OF FINANCE AND OTHERS - CASE NUMBER 31456/20

1. We refer to your client's answering affidavit sent to us at 13:26 on Monday, 20 July 2020. We note that, according to the notice of motion, your client's answering affidavit was due to be filed by 17:00 on Sunday, 19 July 2020.
2. In his affidavit, amongst other things, your client confirms that he has not decided to authorise funding for SAA's business rescue under section 16 of the PFMA. Your client also states that a decision to use section 16 of the PFMA is not imminent.
3. Your client could have avoided the need for this litigation with a simple response to our clients' letter dated 16 July 2020. There, as you know, our clients asked for, amongst other things, "confirmation, by no later than 17:00 on Thursday, 16 July 2020, whether you have authorised the use of funds from the National Revenue Fund for any purpose relating to SAA's business rescue plan in terms of section 16 of the PFMA".
4. In his answering affidavit, your client claims he was too busy to respond to that letter by the stipulated deadline. Regrettably, your client fails to explain why he could not have confirmed at any time before Monday, 20 July that no decision in terms of section 16 of the PFMA had been made. Your client had every opportunity to do so. The first intimation of this was in a letter by you on the evening of Sunday 19 July 2020.
5. It is also not true that the Democratic Alliance "sent one letter to [your client] dated 16

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July 2020", as is alleged in your client's answering affidavit. As you are aware, on 15 July 2020, Mr Hill-Lewis wrote to your client on this very issue.

6. It is regrettable that your client stubbornly refused to provide clear answers to our clients and the court until the afternoon before this application was set down for hearing. Had your client simply and timeously confirmed that no decision had been made, this litigation could have been avoided.
7. Given your client's late-breaking confirmation that he has not decided to use section 16 of the PFMA to fund SAA's business rescue, the relief sought in our clients' application can no longer proceed on the merits. Our clients suggest that the application be removed from the roll with costs reserved.
8. Your client has now stated on oath in his answering affidavit that "there are a number of options which government may explore" in order to "mobilise" funding for SAA's business rescue plan. Your client then lists several of these "options" in paragraph 12 of his answering affidavit. Section 16 of the PFMA is not listed as one of these "options".
9. The reasonable inference to be drawn from your client's answering affidavit, in the context of this application is that he has no intention of using section 16 of the PFMA to fund SAA's business rescue. Your client states expressly that such decision is not imminent.
10. We trust that should your client change his mind for whatever reason, and should he intend to authorise expenditure in terms of section 16 of the PFMA, adequate notice will be given to our clients to enable them to re-enrol this application for an urgent hearing for interim relief. Given your client's insistence that government litigants be given at least 72 hours' notice of any application for urgent interim relief, we trust that our clients will be afforded at least that same amount of notice before your client decides to authorise any expenditure under section 16 of the PFMA to fund SAA's business rescue.
11. You will appreciate that these are issues of significant public importance and it is in the public interest than any legal or constitutional implications of your client's actions be appropriately ventilated. Should your client authorise such expenditure without affording our clients adequate notice of its intention to do so, this letter will placed before a court in due course as evidence of an intention to frustrate the full and proper ventilation of the matter. We trust this will not be necessary.

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Yours faithfully

MINDE SCHAPIRO & SMITH INC.

(Electronically sent, therefore unsigned)

AND TO: ENS AFRICA
Attorneys for SAA and BRPs
kkotze@ensafrika.com; nmakena@ensafrika.com

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