

## Annexure 6 (a)

### Legal

a. **Forensic investigations – 3 cases completed – what happened to the culprits?**

- Two (2) former employees were convicted of fraud and were sentenced to two (2) years in prison, wholly suspended for five (5) years.
- The case of the one (1) employee was provisionally withdrawn from the Court Roll.

Table of Closed Criminal Cases

| Criminal Case No | Forensic Case Number | Case Category      | Criminal Case Outcome   |
|------------------|----------------------|--------------------|---|
| 92/4/2018        | 69/07/2017           | Alleged Corruption | Provisionally withdrawn from the court roll.  |
| 183/01/2018      | 25/03/2018           | Alleged Fraud      | The former employee was convicted for Fraud and sentenced to 2 years imprisonment which was wholly suspended for 5 years. |
| 183/01/2018      | 25/03/2018           | Alleged Fraud      | The former employee was convicted for Fraud and sentenced to 2 years imprisonment which was wholly suspended for 5 years. |

b. **Concerned that not a single person has been sent to jail for the mess in Eskom – is it a case of the wheels of justice turning slowly?**

Eskom, through its **Assurance and Forensics Division (A&F)** has, and continues to report criminal matters involving employees and suppliers to the South African Police Service, the Directorate for Priority Crime Investigation (DPCI/Hawks), the State Capture Commission of Inquiry and the Special Investigating Unit (SIU). It is important that investigations are conducted properly, water tight evidence gathered, witnesses are tracked and statements obtained from them, competent and experienced prosecutorial team is appointed.

When the investigations are finalised and statements are received from witnesses charge sheets will be drawn by the Prosecuting Team. The suspects will be arrested and their trials will commence. As Eskom, we are pleased with the preparatory work that is under way by the SIU, the DPCI and the National Director of Public Prosecutions.

**c. Lifestyle audits – certain cases referred to SIU – why not deal with them yourselves?**

The first batch of lifestyle audits was targeted at the Senior Management of Eskom, task grades F-bands and E-bands (370 pax). In order to obviate any potential conflict of interests and also to ensure confidentiality and data credibility, an independent third party, ENS Africa Inc (ENS), was appointed through an open competitive bid process to conduct the lifestyle audits.

The employees were required to provide their bank statements including their spouses' bank statements for a period of five (5) years. The bank statements were then analysed by ENS looking at inflows and outflows of funds against the salary employees received from Eskom, other declared sources of income. Deed searches and CIPC searches including eNatis searches were also conducted.

During the lifestyle audit, ENS would contact the employees and their spouses to explain certain transactions that appear on their bank statements. After the investigation a report was prepared which indicated whether the employee was a low, medium or high risk. This information was communicated by Eskom to the affected employees.

Recurring deposits of funds into employee's bank accounts (over and above their salary) without any plausible explanation would be classified as high risk. It is such matters that have been referred to the SIU (40pax) due to the fact that the SIU has powers to subpoena the bank statements directly from the Banks to ascertain the source of the recurring funds deposited into the employees' bank accounts.

Eskom and A&F do not have these powers hence the referral to the SIU.

**d. High-ranking officials failing to disclose business interests – this is worrying**

Information regarding the Eskom employees, Executives and Board compliance with the Declaration of Interests (DOI) Policy. Level of compliance or in the converse, non-compliance.

- 1) Rate of completion of the employee, Director and Exco declaration of interest forms (Quantitative); and
- 2) Compliance of the information submitted to our Eskom's Conflict of Interest (COI) policy and DOI procedure:
  - a. Have all interest been disclosed?
  - b. Have all actual, perceived or potential conflicts of interests for employees and Director as well as related and inter- related parties been disclosed?
  - c. Are there any links with suppliers?

**1) Rate of Completion**

At the beginning of each financial year, all employees and Directors are required to review and submit their annual declaration of interest ("DOI") irrespective of their task grade, previously this requirement was limited to certain task grade T09 and above only, but the change was implemented in 2019, when the Conflict of interest Policy ("COI") was revised. The risk that the change in policy is aiming to address is that a large category of employees did not disclose this resulted to conflicts of interests not being identified and managed effectively.

Current employee disclosure rate and compliance to submission of annual disclosure process:

- Employees at all levels : 94 %
- Exco and including extended Exco : 100%
- Eskom Board : 100%

2) Quality of information

Board and Exco compliance

A&F is currently busy with a review of the declared interests made by the members of Board and EXCO.

e. Allowing people to resign when implicated in wrongdoing – why is that? How much was lost and what exactly did they do?

The employer and employee relationship is a contractual relationship which affords either party the right to terminate the relationship on notice or with immediate effect in terms of the dictates of the Basic Conditions of Employment Act (BCEA) and the Labour Relations Act (LRA). The BCEA contains no provision that prevents an employee from resigning when faced with disciplinary action, and similarly the BCEA contains no provision giving employers the power to refuse to accept a resignation.

Some employees resigned on the face of allegations of impropriety, others during investigations of allegations of impropriety whilst others resigned before disciplinary proceedings commenced.