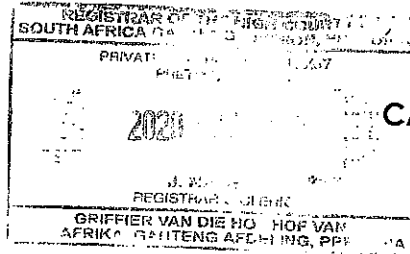


**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**



CASE NO: 42273/2020

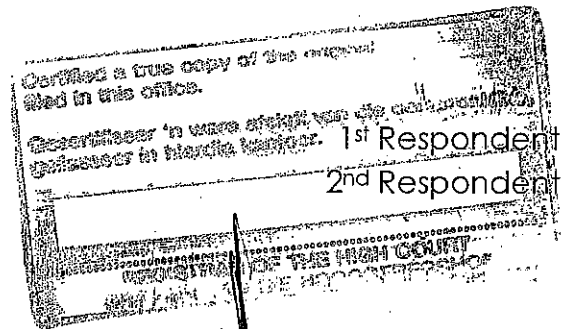
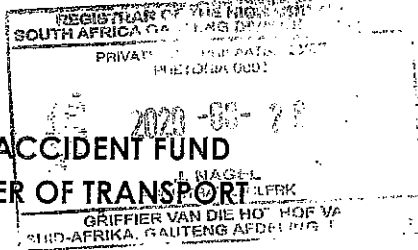
In the matter between:

MAPONYA (JOHANNESBURG) (PTY) LTD
(Registration Number 2001/024379/21)

Applicant

and

THE ROAD ACCIDENT FUND
THE MINISTER OF TRANSPORT

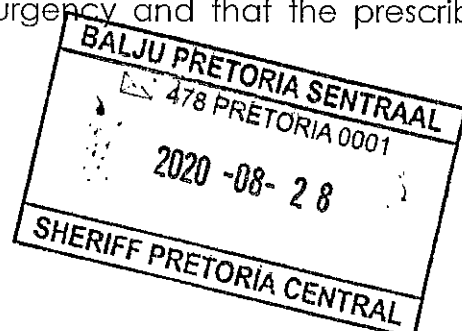


for the winding-up of the 1st Respondent

**NOTICE OF MOTION:
URGENT APPLICATION IN TERMS OF
RULE 6(12)(a)**

TAKE NOTICE THAT Applicant intends applying on **TUESDAY 13 OCTOBER 2020 AT 10H00**, or as soon thereafter as the matter may be heard:

1. That the matter be heard as one of urgency and that the prescribed forms and periods be dispensed with.



2. That the **ROAD ACCIDENT FUND** be wound up.
3. That the costs of this application, including the costs incumbent upon the employment of two counsel, be costs in the estate of the **ROAD ACCIDENT FUND**.
4. Further and/or alternative relief as the Court may deem fit.

KINDLY FURTHER NOTE that the founding affidavit of **ELIAS PHATUDI MAPONYA** will be used in support of this application.

TAKE FURTHER NOTICE THAT the Applicant has appointed **MAPONYA ATTORNEYS** as the address at which the applicant will accept notice and service of all processes in these proceedings.

AND FURTHER TAKE NOTICE THAT in the event of Respondents wishing to oppose the application:

- a) To notify the Applicants' attorney, **MAPONYA ATTORNEYS** at the below stated address, by no later than close of business on **WEDNESDAY 2 SEPTEMBER 2020**;

- b) To appoint an address for service of papers within 15 km from the seat of the Court; and,
- c) To deliver answering papers (if any) by no later than close of business on

MONDAY 28 SEPTEMBER 2020.

BE PLEASED TO ENROL THE MATTER ACCORDINGLY.

DATED AT TSHWANE THIS THE 24th DAY OF AUGUST 2020.


MAPONYA INC.
ATTORNEYS FOR APPLICANT
Maponya Building
Block C
536 Francis Baard Street
Arcadia
PRETORIA
GAUTENG PROVINCE
REF: MS A Griesel/so

TO : **THE REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA
PRETORIA**

AND TO : **THE ROAD ACCIDENT FUND**
THE FIRST RESPONDENT

Head Office:

2 Eco-Glades Office Park
420 Witch-Hazel Avenue
Centurion
GAUTENG

alternatively,

Per:

STATE ATTORNEY (PRETORIA)
SALU Building
316 Thabo Sehume Street
PRETORIA

AND TO : **THE MINISTER OF TRANSPORT**
THE SECOND RESPONDENT

Forum Building
159 Struben Street
PRETORIA

alternatively,

Per:

STATE ATTORNEY (PRETORIA)
SALU Building
316 Thabo Sehume Street
PRETORIA

AND TO : **THE MASTER OF THE HIGH COURT**
PRETORIA

AND TO : **THE SOUTH AFRICAN REVENUE SERVICES**
PRETORIA

AND TO : **THE EMPLOYEES OF THE ROAD ACCIDENT FUND**
Per: The Head Office of the Road Accident Fund:
2 Eco-Glades Office Park
420 Witch-Hazel Avenue
Centurion
GAUTENG

AND TO : **THE UNIONS FOR EMPLOYEES OF THE ROAD ACCIDENT FUND**

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:

In the matter between:

MAPONYA (JOHANNESBURG) (PTY) LTD
(Registration Number 2001/024379/21)

Applicant

and

THE ROAD ACCIDENT FUND
THE MINISTER OF TRANSPORT

1st Respondent
2nd Respondent

for the winding-up of the 1st Respondent

FOUNDING AFFIDAVIT

I, the undersigned

BAITSENG RAMAKGAHLELA RANGATA

do hereby declare under oath as follows:

lw

1.

DEPONENT:

- 1.1 I am an adult female person and duly admitted attorney with address at **MAPONYA ATTORNEYS**, Maponya Building, Block C, 536 Francis Baard Street, Arcadia, PRETORIA, GAUTENG PROVINCE.
- 1.2 I am a Director and Co-Chairperson of the Applicant (more fully cited below).
- 1.3 I am duly authorised to depose to this affidavit on Applicant's behalf, which is evidenced by an extract from the minutes of the Applicant, a true copy of which is attached as **Annexure "PM 1"**, the contents of which are incorporated as if specifically stated.
- 1.4 The contents of this affidavit are true, correct, and fall within my personal knowledge unless I state otherwise or so indicated by the context.

2.

THE APPLICANT:

- 2.1 The Applicant is **MAPONYA (JOHANNESBURG) (PTY) LTD** (Registration Number 2001/024379/21), trading as "MAPONYA ATTORNEYS",

"MAPONYA INCORPORATED" or "MAPONYA INC" (hereinafter referred to as "MAPONYA INC") a personal liability company duly registered and incorporated in accordance with the company laws of the Republic of South Africa, of Maponya Building, Block C, 536 Francis Baard Street, Arcadia, PRETORIA, GAUTENG PROVINCE.

2.2 In confirmation of the foregoing, I attach a true copy of an extract from the records of the Companies and Intellectual Property Commission, marked **Annexure "PM 2"**, the contents of which are incorporated as if specifically stated.

2.3 MAPONYA INC conducts business as a firm of attorneys, with its head office at Pretoria (as stated above) and branch offices at Mahikeng and Bloemfontein. For the reasons stated below, MAPONYA INC was compelled recently to close its offices down at Matlosana, Polokwane, Johannesburg and Mbombela.

3.

THE FIRST RESPONDENT:

3.1 The First Respondent is the **ROAD ACCIDENT FUND** ("RAF"), established as a juristic person in term of section 2(1) of the Road Accident Fund Act, 56 of 1996 (as amended) (the "RAF Act"), with head office at 2 Eco-Glades

Office Park, 420 Witch-Hazel Avenue, Centurion, GAUTENG, alternatively, per the STATE ATTORNEY (PRETORIA) at SALU Building, 316 Thabo Sehume Street, PRETORIA.

3.2 In terms of section 3 of the RAF Act, the object of the RAF is the payment of compensation in accordance with the said act for loss or damage wrongfully caused by the driving of motor vehicles.

3.3 The former Chairperson of the RAF was GALETLANE JULIANA RASETHABA (the "Chairperson"), who was recently succeeded by THEMBELIHLE N MSIBI, the current Acting Chairperson of the RAF.

3.4 COLLINS PHUTJANE LETSOALO, the former Acting Chief Executive Officer, was appointed as Chief Executive Officer with effect 7 August 2020 (the "CEO"). Actions by the CEO prior to 7 August 2020 had been taken in his capacity as Acting Chief Executive Officer.

4.

THE SECOND RESPONDENT

4.1 The Second Respondent is the **MINISTER OF TRANSPORT**, cited herein in his capacity as the nominal head of the National Department of Transport, Forum Building, 159 Struben Street, PRETORIA, alternatively, per the STATE

ATTORNEY (PRETORIA) at SALU Building, 316 Thabo Sehume Street,
PRETORIA.

- 4.2 By virtue of section 1 of the RAF Act, "Minister" is defined as the "Minister of Transport", the Second Respondent herein.
- 4.3 No relief is sought against the Second Respondent, who has been cited herein only to the extent that he might have an interest herein.

JURISDICTION:

5.

This Honourable Court has jurisdiction to entertain this application because the head office and principal place of business of the RAF is located within the jurisdictional area of this Honourable Court.

THIS APPLICATION

6.

- 6.1 This is an application by MAPONYA INC, brought as a creditor of the RAF, for the winding-up of the RAF.
- 6.2 The RAF has been established to compensate victims of motor vehicle accidents. As a result of mismanagement spanning over decades, the

RAF cannot pay its debts. It is hopelessly factually and commercially insolvent with no prospect of its financial woes improving.

6.3 This has led to creditors resorting to individual debt collecting remedies that include the issuing of writs of execution, in an attempt to obtain satisfaction of their debts (at the expense of other creditors).

6.4 It is urgently necessary for the RAF to be wound up to establish a *concursum creditorum* to substitute individual debt collecting remedies.

RELEVANT STATUTORY PROVISIONS

7.

7.1 Item 9 of Schedule 5 to the Companies Act, 2008 (the "New Act") provides that, despite the repeal of the Companies Act, 1973 (the "Old Act"), Chapter XIV of the Old Act continues to apply in respect of the winding-up and liquidation of companies under the New Act (save for exceptions not relevant to this application).

7.2 Section 337 of the Old Act, for purposes of the provisions of Chapter XIV of that act, defines a "company" as to include "a company, external company and any other body corporate". The RAF is such a *body corporate* and, accordingly, is a company for purposes off Chapter XIV of the Old Act.

- 7.3 Section 344(f) of the Old Act provides that a company may be wound up by the Court if, *inter alia*, it is unable to pay its debts as described in section 345 thereof.
- 7.4 Section 345 provides, *inter alia*, that a company or body corporate shall be deemed to be unable to pay its debts if it is proved to the satisfaction of the Court that the company is unable to pay its debts (section 345(1)(c)).
- 7.5 Section 346(1)(b) of the Old Act provides that an application to the Court for the winding-up of a company may, subject to the provisions of that section, be made, *inter alia*, by one or more of its creditors (including contingent or prospective creditors).

MAPONYA INC IS A CREDITOR OF THE RAF

8.

As alluded to above, it is incumbent upon MAPONYA INC to demonstrate that it is a creditor of the RAF in order to satisfy the relevant requirement in terms of Section 346(1)(b) of the Old Act.

9.

During 2014, and following the RAF's bidding process, MAPONYA INC was appointed to the RAF's Panel of Attorneys in the Gauteng Province. This appointment was subject to the terms and conditions of a Service Level Agreement ("SLA"). A true copy of the unsigned version of the SLA is attached hereto as **Annexure "PM 3"**, the contents of which are incorporated, as if specifically stated. Similar agreements were at the time also concluded between MAPONYA INC and the RAF in respect of certain MAPONYA INC's branch offices.

10.

The SLA provides, *inter alia*, that:

- 10.1 The RAF appointed MAPONYA INC to its panel of attorneys for a period of five years from the effective date (1 December 2014), to represent the RAF in respect of Magistrates' Court, Regional Court and High Court matters (clause 3.1 with clauses 7.2 and 9.1.1);
- 10.2 The fund will from time to time appoint MAPONYA INC to defend or institute actions arising out of, to lodge or oppose appeals, and to furnish advice on costs and/or tax or oppose taxation is of bills presented as a result of claims instituted in terms of the RAF Act (clause 9.1.1);

10.3 The RAF shall pay MAPONYA INC for the due, full and proper performance and fulfilment by MAPONYA INC of its obligations in terms of the SLA (clause 18.1), in accordance with the fixed pricing contained in annexure C and D is exclusive of VAT, inclusive of all other taxes and duties, exclusive of all disbursements (clause 18.2, read with clauses 18.3 and 18.4); and,

10.4 Payment of invoices shall be subject to the review and signoff (clause 18.5) and will be made to MAPONYA INC in accordance with the provisions of clause 19 (which clause number is incorrect and ought to have referred to clause 20) of annexure B (clause 18.7).

11.

Clause 20 of annexure B to the SLA provides, broadly speaking, for four different categories of invoicing, approval and payment of fees and disbursements, to wit, **i)** disbursements in respect of expert witnesses, counsel and assessors (clause 20.1); **ii)** disbursements incurred not exceeding R1,000.00 to other persons or entities (clause 20.2); **iii)** bills of costs in respect of Magistrates' Court Claims (clause 20.3); and, **iv)** bills of costs in respect of High Court Claims (clause 20.4).

12.

Assessment, approval, and payment of disbursements in respect of expert witnesses, assessors, and counsel (as envisaged by clause 20.1) were dealt with separately from bills of costs and disbursements less than R1,000.00.

13.

However, since or about end of 2018, the RAF prescribed a different invoicing/billing, approval, and payment process. To the best of my knowledge, these changes were caused by the administrative burden and cumbersomeness of the process under clause 20 of annexure B. The said revised process may be explained as follows:

- 13.1 Attorney bills of costs are generally no longer treated separately from invoices in respect of disbursements to expert witnesses, counsel, and assessors;
- 13.2 Upon finalisation of the matter (in Magistrates' and Regional Court matters), or upon finalisation of merits or quantum as separated issues (in High Court matters) bills of costs, and invoices in respect of expert witnesses, assessors and counsel are generally to be collated and submitted as combined billing pack in respect of a specific case;
- 13.3 It has been standard practice for the RAF's internal cost consultants, to allocate specific dates to specific panel attorneys, for the taxation of combined billing packs (in respect of up to 120 matters). In respect of

Pretoria matters, MAPONYA INC was allocated one day per month, in Johannesburg matters, one day every three months, and in Cape Town, Durban and East London, taxations took place on an *ad hoc*-basis ordinarily two to four times per year.

- 13.4 As would be the case with a Taxing Master at court, the RAF's cost consultant would also allow or disallow specific fees or cost items. It would signal its formal approval of bills of costs and disbursements on the last page of the bill of cost and on invoices and amounts so approved is confirmed by means of a so-called "Trigger Letter" issued by the RAF, examples of which shall be referred to below. This formal approval renders the approved amount (in respect of the panel attorney's costs and counsel's fees) due and payable to the said attorney, and the said letter "triggers" the process to effect payment thereof by the RAF.

14.

Annexure "PM 4" (the "Trigger List") is a list of 436 matters in which:

- 14.1 The RAF has instructed MAPONYA INC to represent it, as envisaged by the SLA, which instructions had been duly carried out;
- 14.2 MAPONYA INC has lodged its bills of cost for fees and disbursements with the RAF; and,

14.3 The RAF's relevant provincial/regional office at Pretoria ("PTA"), Johannesburg ("JHB"), Cape Town ("CT"), Durban ("DBN") or East London ("EL") has formally approved of the bill of costs (including counsel's fees where so briefed) in the amount stated, and has confirmed the amount so approved in a relevant Trigger Letter.

15.

Attaching copies of the combined billing pack in respect of each of the above 436 matters, will unreasonably burden these papers. I shall nonetheless demonstrate the RAF's formal approval of combined billing packs with reference to the following examples:

15.1 In the matter of MC Sibanda v RAF (Johannesburg), Case Number, 25694/17, Reference Number NM0213(PL), I attach the entire bill of cost, including the last page indicating the approval on 21 February 2020 of a total amount of R196,040.58, together with the Trigger Letter dated 3 March 2020, are attached as **Annexure "PM 5.1"**;

15.2 Omitting the full bill of cost in each matter, I respectfully refer, as further examples to the relevant Trigger Letter supported by the last page of the relevant bill of cost, to the following matters:

15.2.1 Trigger Letter dated 27 February 2020 in respect of NL Nethengwe and last page of the bill of cost approved on 21

February 2020, in the total amount of R157,362.51, attached as **Annexure "PM 5.2"**;

15.2.2 Trigger Letter dated 27 February 2020 in respect of JF Mussacaruca, and last page of the bill of cost approved on 21 February 2020 in the total amount of R49,387.41, attached as **Annexure "PM 5.3"**;

15.2.3 Trigger Letter dated 27 February 2020 in respect of M Mawela, and last page of the bill of cost approved on 21 February 2020 in the total amount of R66,105.36, attached as **Annexure "PM 5.4"**;

15.2.4 Trigger Letter dated 27 February 2020 in respect of MT Shongwe, and last page of the bill of cost approved on 21 February 2020 in the total amount of R31,253.91, attached as **Annexure "PM 5.5"**; and,

15.2.5 Trigger Letter dated 27 February 2020 in respect of J Hlatswayo, and last page of the bill of cost approved on 21 February 2020 in the total amount of R19,797.09, attached as **Annexure "PM 5.6"**;

I confirm that in respect of each matter referred to in the Trigger List, the amount stated therein can be proven by the RAF's formal approval of MAPONYA INC's relevant bill of cost, all of which are omitted to avoid unreasonable prolixity. In the event of the RAF disputing its liability in any specific matter, it is invited to request copies of documents proving approval of the relevant amount, which will be made available in reply. Further, if the RAF contends that one or more of the amounts have been paid by it, it is similarly invited to provide proof thereof.

17.

The total of the amounts taxed and approved by the RAF, as set out in the Trigger List, amounts to **R20,590,864.50**, which is due and payable by the RAF to MAPONYA INC.

18.

Accordingly, MAPONYA INC is a creditor of the RAF and therefore has *locus standi* in terms of section 346(1)(b) of the Old Act to proceed with this winding-up application of the RAF.

~~14~~

CL

DP

THE RAF'S INABILITY TO PAY ITS DEBTS

Introduction

19.

The RAF, on its own version, is hopelessly factually and commercially insolvent. It is necessary to deal with the extent of the RAF's dire financial position in order to demonstrate the urgent need for a winding-up order and the establishment of a *concursum creditorum*.

20.

As will appear from what is stated below, the RAF's inability to pay debts does not only pertain to MAPONYA INC, but, so it would seem, a major portion of claimants' claims and/or those with court orders in their favour.

Inability to pay MAPONYA INC's claims

21.

As alluded above, the total of the amounts taxed and approved by the RAF, as set out in the Trigger List, amounts to **R20,590,864.50**, which is due and payable by the RAF to MAPONYA INC.

22.

On or about 19 March 2020, MAPONYA INC has issued a letter to the RAF, demanding payment of an amount of R59,327,535.10, which included an (estimated) amount of R32 million in respect of bills of costs. A true copy of this letter of demand is attached as **Annexure "PM 6"**, The contents of which are incorporated as if specifically stated.

23.

Ordinarily, the RAF would make payment in respect of a number of matters on one or more particular days of the month. MAPONYA INC has accordingly received substantial payments in respect of its approved fees and disbursements (including counsel's fees) on the following dates since August 2019: 1 August 2019, 26 August 2019, 25 September 2019, 24 October 2019, 12 November 2019, 26 November 2019, 23 December 2019, 28 January 2020, 4 February 2020, 25 February 2020, 25 March 2020.

24.

On an average during the period August 2019 to March 2020, payments by the RAF to MAPONYA INC amounted to R5 million to R6 million per month.

25.

However, the last payment that MAPONYA INC has received from the RAF in respect of its approved costs and disbursements (including counsel's fees but excluding experts and assessors) was on 25 March 2020. Since that date, the RAF has not paid one cent to MAPONYA INC in respect of approved costs and disbursements (including counsel's fees).

26.

To date, approved costs, and disbursements in the amount of **R20,590,864.50** remain outstanding, due, and payable.

27.

There is no apparent reason why the RAF would have ceased payments only to MAPONYA INC. The inescapable inference is that the RAF is unable to pay any of its (former) panel attorneys.

28.

It will be argued at the hearing of the matter, with reference to applicable authority, that payment of debts as and when they become due is the best proof of commercial solvency.

29.

I have alluded above to the taxation of bills of costs on specific taxation days, as had ordinarily been allocated by the RAF. **Annexure "PM 7"** is a list of taxation dates since March 2019. The attention of the honourable court is directed to the fact that the last taxation dates allocated to MAPONYA INC, were as follows:

- 29.1 Pretoria - 20 March 2020;
- 29.2 Johannesburg – 21 February 2020;
- 29.3 Durban and Cape Town – 18 November 2019; and,
- 29.4 East London – 25 September 2019

30.

Since these taxations, not one date has been allocated to MAPONYA INC in any of the centra referred to above, notwithstanding the fact that matters to be taxed are piling up in hundreds and notwithstanding numerous requests for the allocation of dates. The same applies to other (former) panel attorneys, who are also not allocated such dates. The failure by the RAF to allocate taxation dates, has nothing to do with the termination of SLA and the handing over of the files, other than the fact that the RAF is refusing to engage with the panel attorneys.

31.

The only plausible explanation why the allocation of taxation dates has come to a grinding halt in March 2020 is that the RAF avoids incurring further liability in respect of approved costs and disbursements which would have become due and payable.

32.

MAPONYA INC invited the RAF to provide an undertaking to pay amounts owing to it, upon which MAPONYA INC tendered to return the relevant files, which undertaking RAF refused or neglected to provide.

33.

I pause to state that the apparent inability of the RAF to pay MAPONYA INC's claims, has led to extreme hardship on the part of MAPONYA INC, in the sense that, as a direct consequence, it has had to close its offices in Matlosana, Polokwane, Johannesburg and Mbombela, which invariably lead to the retrenchment of numerous employees. It goes without saying that counsel briefed in RAF matters, who, but for singular exceptions, formed part of MAPONYA INC's transformation effort, were not spared the devastating impact of the RAF's non-payment of their fees. In many instances these advocates fell in arrears with payment of their bar accounts, their membership of the Pretoria Society of Advocates was terminated and ultimately closed down their practices.

34.

I humbly submit that the only inference to be drawn from the RAF's failure to settle its obligations to MAPONYA INC, seen against the backdrop of what has been stated above with regard to the RAF's annual reports, is that the RAF is unable to settle debts as and when they become due.

THE RAF'S DETERIORATING FINANCIAL POSITION SINCE 2012

Introduction

35.

The financial difficulties of the RAF are no novelty. In order to properly contextualise the RAF's longstanding inability to pay its debts, as will be demonstrated below, the RAF's detrimental financial position must be seen against the backdrop of the period 2012 to 2019. In particular, reference will be made to the RAF's annual reports for the 2015 and 2019 financial years.

36.

Although the COVID-19 pandemic may have added to the RAF's financial misery, it has most certainly not caused the RAF's inability to pay its debts as and

when they fall due. It is apparent that the RAF was and would in any event have been unable to serve its debts, even if the pandemic had not broken out.

37.

It will be indicated below with reference to the RAF's available annual reports that the RAF's expenditure (including provision for outstanding claims) exceeded its revenue (at least) since the 2012 financial year. However, since the 2015 financial year, the RAF cash flow position has deteriorated dramatically in that the 2019 cash flow deficit has grown by approximately 150%, compared to the position in 2015.

The RAF's financial position up to 31 March 2019

38.

Section 13 of the RAF Act provides that:

- "(1) The Board shall publish an annual report containing—
- (a) the audited balance sheet of the Fund together with a report by the auditor, contemplated in section 14, in respect of such audit; and
 - (b) a report on the activities of the Fund during the year to which the audit relates.
- (2) The Minister shall lay upon the Table in Parliament a copy of the annual report within 30 days after receipt thereof if Parliament is then in session, or, if Parliament is not then in session, within 30 days after the commencement of its next ensuing session."

39.

The latest Annual Report as obtained from the RAF's website (<https://www.raf.co.za/media-center/annual%20reports/forms/allitems.aspx>) is for the RAF's 2018/2019 financial year (the "2019 Annual Report"). I shall also refer to the Annual Report for the 2014/15 financial year (the "2015 Annual Report"), obtained from the same website.

40.

The 2019 Annual Report and 2015 Annual Report comprise between 250 and 270 pages in each instance. I do not attach a full copy thereof in order to avoid burdening these papers unreasonably. In any event, given the provisions of section 13 referred to above, both the RAF and the Second Respondent will have the said report in their possession. MAPONYA INC nonetheless tenders full copies of these reports. Accordingly, the relevant pages of the 2019 Annual Report and the 2015 Annual Report to which I shall refer below, are attached hereto as **Annexure "PM 8"** and **Annexure "PM 9"**, the contents of which are incorporated as if specifically stated.

41.

By way of general introduction with regard to the affairs of the RAF, the following aspects appear from the 2018/2019 Annual Report:

- 41.1 Total revenue for 2019 was R43.24 billion compared to R37.34 billion during the 2018 financial year (see page 4), which represents a 16% increase in total revenue;
- 41.2 The RAF registered 328,173 new claims and finalised 229,534 claims (see page 4);
- 41.3 Claims liabilities increased by 27% to R272 billion during 2019 from R215 billion at the end of the previous financial year (see page 4);
- 41.4 The average value per claim amounts to R114,008 (see page 4) whilst the average claimant legal and other costs per claim amounts to R154,774 (see page 5) and the average RAF legal and other costs per claim amounts to R37,974;
- 41.5 The number of open claims amounts to 234,244 (see page 5);
- 41.6 Fruitless and wasteful expenditure amounted to some R18,2 million (2017/18: R17,7 million) (see page 203); and,
- 41.7 Irregular expenditure amounted to R6,8 million (2017/18: R342,3 million) (see page 204).

42.

The RAF's cash flow position takes into account a provision for outstanding claims. This provision is referred to in the 2015 Annual Report as "Provision for Outstanding Claims" (see page 42) and in the 2019 Annual Report as "Outstanding Claims Reported (OCR) and Incurred But Not Yet Reported (IBNR)" (see pages 8-9). This liability is an actuarial estimation of what it would cost to fund claims that are on hand and being attended to, as well as those which will still be registered in future for past periods.

43.

The grim financial position and prospects of the RAF at the time appear from the following excerpts from the 2019 Annual Report:

43.1 At page 21, under the heading "FINANCIAL TRENDS":

"The net deficit of the RAF continued to climb sharply during the 2018/19 financial year. Despite an increase of 30 c/l in the RAF Fuel Levy, the income required by the RAF for sustained settlement of claims is clearly not sufficient... Overall the deficit has increased substantially compared to the previous reporting period..."

43.2 At page 22 under the heading "FINANCIAL REVIEW":

43.2.1 *"The RAF continued to operate under trying financial circumstances. On average, the Fund was R11.3 billion in arrears per month with finalised claims that could not be paid due to cash constraints..."*

- 43.2.2 "The Fund managed the financial challenges that occurred, including 560 attachments of RAF bank accounts by the sheriff. These attachments adversely affected the Cash Management Plan and resulted in interruptions in our business operations and reputational damage..."
- 43.2.3 "...A net deficit of R262.1 billion was recorded for 2018/19. Attachments, threats of attachments and removal of movable property remain day to day operational challenges and attachments of the RAF bank accounts have been equally disruptive...";
- 43.2.4 "...The fund recorded a deficit of R55.8 billion in the year under review compared to a deficit of R26.4 billion in the previous year..."

43.3 At page 54, under the heading "SOLVENCY AND CAPITALISATION":

"... The RAF remains severely under-capitalised, with liabilities exceeding assets by R262.1 billion... The solvency ratio of the RAF is 0.04:1 (current ratio: 0.0.26:1). This, in sharp perspective, explains how unsustainable the current compensation system is in that the RAF has only 4 cents (current ratio: 26 cents) worth of assets for every R1 of its liabilities. Hence, the RAF does not have sufficient cash or near cash assets to cover its short-term liabilities..."
[Emphases added]

43.4 At page 55, second paragraph:

"... The current compensation system, with a R272 billion unfunded claims liability is completely unsustainable." [Emphases added]

Page 51 of the 2019 Annual Report and page 41 of the 2015 Annual Report, read together, indicates the RAF's STATEMENT OF FINANCIAL POSITION in terms of assets and liabilities of the period 2012 to 2019. The last line item on these pages styled "TOTAL NET ASSETS" or "Net Assets" (as the case may be) indicates the values over the 2012 to 2019 financial years. Significantly, these values are indicated in brackets meaning that the liabilities of the RAF exceeded its assets. The annual net asset/(liability) position of the RAF during the period 2012 to 2019 was as follows:

	<u>YEAR</u>	<u>R 'million</u>
44.1	2012	(65,088)
44.2	2013	(73,502)
44.3	2014	(90,798)
44.4	2015	(110,247)
44.5	2016	(145,252)
44.6	2017	(179,993)
44.7	2018	(206,341)
44.8	2019	(262,115)

45.

Page 52 of the 2019 Annual Report and page 42 of the 2015 Annual Report (under the heading "STATEMENT OF FINANCIAL PERFORMANCE"), read in conjunction, indicates the below cash flow position for the 2012 to 2019 financial years. The following column headings shall bear the corresponding meanings: i) "(DEF)/SUR" - the cash flow (deficit)/surplus (as the case may be) before

provision for claims; "PROV" – provision for outstanding claims or OCR and IBNR (as the case may be); and "DEFICIT" - the deficit for the financial year. All values are expressed as R'million.

	<u>YEAR</u>	<u>(DEF)/SUR</u>	<u>PROV</u>	<u>DEFICIT</u>
45.1	2012	3,882	(24,961)	(21,079)
45.2	2013	1,765	(10,230)	(8,465)
45.3	2014	(3,138)	(14,162)	(17,300)
45.4	2015	(7,023)	(12,429)	(19,452)
45.5	2016	(1,016)	(33,942)	(34,958)
45.6	2017	1,377	(36,119)	(34,742)
45.7	2018	400	(26,751)	(26,351)
45.8	2019	(1,338)	(54,442)	(55,780)

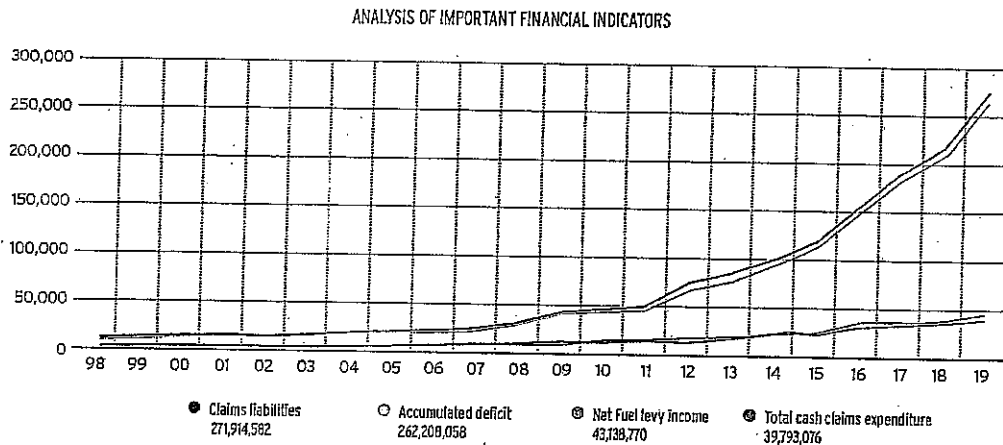
46.

GRAPH 6 under the heading "FINANCIAL POSITION" (page 54 of the 2019 Annual Report), shows the widening gap, at exponential rates, between the RAF's annual income and deficit over the period 1998 to 2019. I humbly pray that the Honourable Court has regard to GRAPH 6, shown hereinbelow for ease of reference, from which the widening of this gap at exponential rates since 2011 is apparent:

FINANCIAL POSITION

GRAPH 6: The widening gap between income and deficit

R'million and indicators



47.

The salient aspects of the above referred to annual reports, may be summarised as follows:

- 47.1 The financial position of the RAF relating to its cash flow and its balance sheet has deteriorated drastically since 2012;
- 47.2 Despite an increase of 30 c/l in the RAF Fuel Levy during 2018/19 and the RAF's revenue increasing by 16%, the income required by the RAF for sustained settlement of claims is clearly not sufficient, which deficiency grows exponentially;

- 47.3 On average, the RAF fell in arrears at an average amount of R11.3 billion in arrears per month with finalised claims that could not be paid due to cash constraints;
- 47.4 Attachments, threats of attachments and removal of the RAF's movable property, and the attachments of RAF bank accounts by the sheriff (560 of which occurred during the 2019 financial year), are daily occurrences and are disruptive of the RAF's operations; and,
- 47.5 Even if one were to ignore the provision for claims (OCR and IBNR) then the RAF's expenditure exceeded its revenue by R1,3 billion, which represents 3.1% of the RAF's total revenue.

48.

It is manifest from the foresaid 2019 Annual Report (read with the 2015 Annual Report) that, as at 31 March 2019, the RAF was unable to pay its debts as and when they became due.

The RAF's Financial Prospects

49.

On 18 and 20 February 2020, in view of the expiry of SLA's between the RAF and its panel attorneys, and further in view of the RAF's pending Tender process (prior to its cancellation on 28 February 2020, the RAF demanded from its (former) panel attorneys to hand over all unfinalized files (the "handover notices"). A copy of the handover notice given to MAPONYA INC is attached as **Annexure "PM 10"**, the contents of which are incorporated as if specifically stated.

50.

Consequently, the RAF consulted ADV LINDI NKOSI-THOMAS SC regarding the validity of the handover notices, who advised that the said notices had indeed been invalid and should be withdrawn. The RAF however did not follow the advice of senior counsel. This resulted in the institution of three applications against the RAF, which included an application issued on 10 March 2020 under Case Number 17518/20 by FOURIE FISMER INCORPORATED (and two other applicants), in which MAPONYA INC intervened as a fourth applicant (the "FOURIE FISMER Application"). A complete copy of the papers filed in the FOURIE FISMER Application is omitted to avoid burdening these papers unreasonably. Same is nonetheless tendered.

51.

The former Chairperson of the RAF deposed to an Answering Affidavit in the FOURIE FISMER Application. I attach copies of the relevant pages of the Chairperson's Answering Affidavit, to which I shall refer below, marked as **Annexure "PM 11"**, the contents of which are incorporated as if specifically stated.

52.

In paragraph 18 of the said answering affidavit, the Chairperson refers to a Meeting of the Board that was held on 12 December 2019, the minutes of which is attached to the Chairperson's Answering Affidavit as "GJR 1". Reference is further made to the presentation by the CEO, attached as Annexure "GJR2" (the "Presentation"). The Presentation has not been identified as "GJR2", but it appears to be the document at pages 004-328 to 004-367 of those papers. "GJR1" and "GJR2" is attached hereto as **Annexure "PM 12.1"** and **Annexure "PM 12.2"** respectively.

53.

Before dealing with the contents of the Presentation, I humbly direct the Honourable Court's attention to the minutes of the said meeting ("GJR1" to the Answering Affidavit), in particular to paragraph 2 thereof (at page 004-324 of that bundle), as referred to in paragraph 19 of the said affidavit. I pause to point

out that these minutes were approved as a fair reflection of the proceedings by virtue of the signature of the Chairperson affixed on 3 March 2020.

54.

The following is quoted from paragraph 2 of the minutes, dealing with the opening remarks of the Chairperson:

"... The first issue pertained to the legal basis, mandate, vision and mission of the Road Accident Fund. **The Road Accident Fund appeared not only to be technically but practically insolvent,** when taking cognisance of the outstanding claims liability of R274 billion, as at 30 June 2019 **as well as the amount of R17 billion due in lieu of claims payment due but not yet paid, as such it cannot be business as usual going forward.**

In addition, **a significant amount is paid in terms of writs in execution on a monthly basis.** Consideration must be given, to the revising of the Road Accident Fund's business plan as well as to putting an appropriate communication strategy in place." **[Emphases added]**

55.

I humbly emphasise that according to the Chairperson:

55.1 The RAF is not only technically insolvent but also practically insolvent;

55.2 The RAF's claims liability as at 31 March 2019 amounted to R262 billion, as set out above. In the space of only three months, this liability has grown by R12 billion;

55.3 The RAF has additionally failed to pay R17 billion that were due in respect of claims; and,

55.4 That "significant amounts" were paid monthly in terms of writs of execution. It seems that the RAF has not been able to resolve the dilemma of writs being issued against it, which had also been highlighted in the 2019 Annual Report.

56.

Reverting to the Presentation, the attention of the Honourable Court is directed to the contents of page 14 (page 004-342 of that paginated bundle) of the Presentation (styled "STATEMENT OF FINANCIAL PERFORMANCE"), from which the following financial position appears as at 30 November 2019:

56.1 Whilst the budgeted income amounted to R29,265 million, the actual income amounted to R28,645 million (see Line 1. thereof);

56.2 The actual total expenditure of R74,358 million, was 28% higher than budgeted expenditures of R58,031 million (see Line 2. thereof), apparently due to a growth in "Claims Expenditure" of R16,666 million (see Line 2.1); and,

56.3 The RAF had budgeted for a deficit over the six months period of R28,766 million, while the actual deficit of R45,713 million over that period was 59% higher than expected.

57.

Page 18 of the Presentation (paginated page 004-346 of that bundle) deals with CUMULATIVE CLAIMS EXPENDITURE for the first three quarters of the 2020 financial year. It is reported by the CEO that the ever-present problem of growth in unpaid claims were as follows (see "B. Increase in RNYP"): Quarter 1: R1,208 million; Quarter 2: R3,520 million and Quarter 3: R4,585 million. The reason for unpaid claims is described in the second last line as "*In the absence of cash, RNYP increased*".

58.

Page 19 of the presentation (paginated page 004-347 of that bundle) deals with Cumulative Claims Liability for the first three quarters of the 2020 financial year. "*Claims Requested But Not Yet paid*" (which is described under "NOTES" as "*This represents claims that are due and payable*") were reflected as follows (see Line "A"): Quarter 1: R 12,440 million; Quarter 2: R14,751 million and Quarter 3: R15,817 million.

59.

34

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The financial future of the RAF is depicted as part of the "FUNDING MODEL ... 2019—2022", in particular the two pages paginated in that bundle as 004-351 ("FUNDING") and 004-352 ("STATEMENT OF FINANCIAL PERFORMANCE"), the contents of which are incorporated as if specifically stated. For purposes of these projections, provision was not made for any fuel levy.

60.

The "FUNDING" page (004-351 in that bundle) of the Presentation reflects estimates, *inter alia*, for the financial years 2020, 2021 and 2022 (where amounts are indicated as (R 'billion), as follows:

<u>ITEM</u>	<u>2018/19</u>	<u>2019/20</u>	<u>2020/21</u>	<u>2021/22</u>
Deficit for the year	-35,3	-44,1	-56,2	-67,4
Accumulated surplus/deficit(-)	-241,7	-285,9	-341,2	-408,7
Claims Liability Provisions	252,5	297,1	352,5	420,1

61.

Referring to the above item "Deficit for the year", it appears from the page styled "STATEMENT OF FINANCIAL PERFORMANCE" (0004-352 of that bundle) that this value represents the amount by which the RAF's expenditure is expected to exceed its income. Furthermore, by the end of the 2022 financial year, the accumulated deficit was expected to amount to R408 million.

62.

The Minister of Transport deposed to an Answering Affidavit in the FOURIE FISMER Application. I do not attach a copy of the complete affidavit and its Annexures in order to avoid prolixity. The RAF and the Minister are in any event in possession of a copy of the full affidavit. I have already tendered to make available the court file in the FOURIE FISMER Application at the hearing of this matter. I do however attach copies of the relevant pages of the Minister's Answering Affidavit, to which I shall refer below. These are next copies is marked as **Annexure "PM 13"**, the contents of which are incorporated as if specifically stated.

63.

The Minister's version as far as the distressed financial affairs of the RAF is concerned, may fairly be summarised as follows:

- 63.1 The RAF's deficit worsened dramatically over the past five years (see paragraph 16);
- 63.2 As at December 2019, the fund had a current liability of R17 billion. This is liability made up of matters already settled and made an order of court in many instances (see paragraph 17);
- 63.3 The announcement of the increase in fuel levy by 9% will still not make a serious dent in the current financial affairs of the RAF. It will only increase

the RAF's revenue by approximately R1,5 billion *per annum* which equates to R125 million per month (see paragraph 18);

- 63.4 Because of the RAF's perilous financial situation, the Department of Transport has been forced to issue letters of comfort, to indemnify the Board from any liability that may arise from breach of the PFMA when signing off the financial statements. A copy is appended to the attached portion of the Minister's affidavit as "FM 3". The Minister however warns that the issuing of indemnities cannot continue indefinitely. It is for the RAF to bring its financial situation under control (see paragraph 19);
- 63.5 In paragraphs 20 to 26 of the Minister's affidavit reference is made to the Government's policy to turn State Owned Companies financially around. It will be argued at the hearing of this matter that these measures carries no redeeming features in terms of enabling the RAF to pay its debts as and when they fall due; and,
- 63.6 In paragraphs 27 to 36 of the Minister's affidavit, it is contended that CEO, assisted by the newly appointed board "*...made up of strong men and women with experience in inter alia finance and law...*", The building of internal capacity, the review of use of panel attorneys (who are to be substituted by the State Attorney) and the implementation of a five-year strategic plan (2020-2025) "*... Will ultimately lead to saving*

billions of rands for the Fund...". I repeat what has been stated above with regard to the contents of paragraphs 20 to 26.

64.

The CEO of the RAF also deposed to an Answering Affidavit in the FOURIE FISMER Application. I do not attach a copy of the complete affidavit and its Annexures in order to avoid prolixity. The RAF is in any event in possession of a copy of the full affidavit. I do however attach copies of the relevant pages of the CEO's Answering Affidavit, to which I shall refer below. These are next copies is marked as **Annexure "PM 14"**, the contents of which are incorporated as if specifically stated.

65.

The CEO makes the following statements that are relevant to the RAF's inability to pay the debts: In paragraph 10, the CEO points out that, at a time, an amount of R19 billion was due and payable to claimants in matters already settled, "*...but it simply could not pay...*". Further, actuarial liability amounted to R324 billion. I paused to emphasise that this amount of R19 billion has apparently increased by R2 billion from the R17 billion it stood at in December 2019. The actuarial loss increased up by some R50 billion from the amount of R274 billion as at 30 June 2019.

Annexure "PM 15" hereto is a copy of a letter dated 25 June 2020 by the newly appointed Acting Chief Financial Officer of the RAF, the contents of which are incorporated as if specifically stated. The following was, *inter alia*, stated therein:

- 66.1 During preceding months, in an attempt to cover the backlog of payments, the RAF's available funds have been depleted within a period of two weeks from receipt of the fuel levy allocated to it (paragraph 4.5);
- 66.2 Concern is expressed regarding the attachment of the RAF's bank account. This self - help approach has resulted in the RAF being unable to honour planned or scheduled payments due to a sudden unavailability of funds as a result of significant amounts of monies be paid directly by the Bank to the Sheriff (paragraph 5);
- 66.3 In the RAF's effort to manage this unfortunate situation and to ensure that funds are available to pay claims as scheduled, it strongly discourages the issuing of writs and rather encourage direct engagement with the RAF in committing to payment dates and terms (paragraph 6);
- 66.4 The legal rights of claimants are not disputed by the RAF. However, due regard must be taken that when all funds have been exhausted, then

none of the measures will ensure payment. On the contrary it only results in abrasive results, to the prejudice of other claimants who have been prepared to engage towards a constructive outcome with the RAF (paragraph 7);

66.5 With the reduction in fuel levy (consequent upon the lockdown), the RAF will not be able to honour all its financial commitments for the months of June 2020 to March 2021. Thus, the less than expected fuel levy at an average of about R743 million per month for the three months of June 2020 to August 2020 will only be able to pay critical services. The other categories of claims will not be met (paragraph 12); and,

66.6 The RAF reminds that the payment days it currently endeavours to honour are 180 days from the date of request for payment. Claims will be paid from the oldest to the newest in order to keep the ageing more current (paragraph 27).

67.

Objectively viewed, this is yet another desperate attempt by the RAF to delay meeting its obligations, colloquially referred to as "kicking the can down the road". It is also apparent that the effects of the Covid-19 pandemic has worsened the already desperate financial position of the RAF.

68.

It is however necessary to remark that the RAF's inability to pay has not been caused by the Covid-19 pandemic. As has been illustrated above, the inability of the RAF to pay its debts has been prevalent over many years.

69.

Based on the foregoing, it is submitted that the RAF is hopelessly factually and commercially insolvent. It does not have any chance of paying its debts as they are due at present or as they will become due in future.

Attachments

70.

I have alluded above that the 2019 Annual Report recorded 560 instances of attachment by the sheriff of the RAF's bank account during that reporting period. As part of the CEO's Presentation, under the page heading "Bank Account Attachments" (paginated page 004-358 of that bundle), the CEO reported the number of bank account attachments, per month from April to October 2019. Whilst no exact number and Rand value of these attachments can be extracted from this table, the following appear to be not far off the mark:

<u>MONTH</u>	<u>ATTACH- MENTS</u>	<u>VALUE</u> (R 'million)
70.1 April	570	280
70.2 May	440	250
70.3 June	700	290
70.4 July	910	400
70.5 August	780	400
70.6 September	400	220
70.7 October	<u>1,680</u>	<u>1,000</u>
TOTAL	5,480	2,840

71.

The total number of attachments during the first 7 months of 2019 amounts to approximately 5480, which dwarfs the number of 560 attachments recorded for the whole of 2018/19.

72.

Based on the above inferred Rand values, it appears that the value of bank account attachments during the said period amounts to some R2,84 billion. It therefore comes as no surprise that the CEO stated on the next page of the Presentation (page 004-359 of the bundle) that:

72.1 "... The attachment of our bank accounts presents the biggest risk for the RAF in the short term..."; and,

72.2 "... With a monthly income averaging R3.6 billion, if the value of these attachments increase to just over R3 billion, RAF would not be able to pay staff salaries and other suppliers..."; and,

72.3 "... Duplicate payments and fraudulent WRITS and court orders have also exacerbated this risk...".

73.

A number of Plaintiff Attorneys, armed with court orders in favour of their clients, recently endeavoured to enforce the 175 orders against the RAF (for a total value of R97,178,587.00), through attachment and sale in execution of movables seized at the Menlo Park office of the RAF. Sales in execution in 174 of these orders would initially have taken place during March, April, and May 2020. A date for the sale in execution had then been set for 4 August 2020 but was postponed to 25 August 2020.

74.

On or about 3 August 2020, the RAF launched an urgent application against 25 firms of attorneys to interdict the envisaged sale in execution pending finalisation of review proceedings to have the relevant warrants of execution and/or notices of attachment reviewed or set aside. The RAF contended in that application that the conduct of the sheriff constitutes administrative conduct by an organ of state, as envisaged by the Promotion of Administrative Justice Act, 3 of 2000. A copy of the Notice of Motion and Founding Affidavit this application is attached as Annexure "PM16", the contents of which are

incorporated. I omit the annexures to the founding affidavit to avoid burdening these papers unreasonably.

75.

The bases of the challenge to the validity of the warrants of execution and/or notices of attachments include the sheriff's failure to have identified the amount of movables which was necessary to satisfy the writs; the failure to have prepared an inventory immediately upon demand, pointing out or search; the failure to have given the judgment debtor written notice of the attachment and inventory made; the failure to provide the Registrar and/or plaintiffs copies of the return and inventory; the failure to satisfy herself that there had been due advertisement of the auction; and, the failure to forward the notice contemplated by Rule 45(7)(c) to all other sheriffs appointed in the area in accordance with the Rules.

76.

As far as I know, on 21 August 2020, his Lordship Mr Justice Raulinga granted an order suspending the warrants of execution and envisaged sale of in execution *pendente lite*.

77.

In essence, the RAF is relying on procedural non-compliance by the Sheriff in executing the relevant writs. Whether or not the RAF ultimately succeeds in delaying the inevitable outcome of this tranche of executionary steps, the fact of the matter remains that successful litigants against the RAF are now in rapidly increasing numbers resorting to individual debt collecting remedies to satisfy their judgment debts. Inevitably, some will be paid and others not.

78.

It appears from page 54 of the 2019 Annual Report that the RAF has only 4c worth of assets for every R1 of its liabilities. It follows that the value of the assets of the RAF capable of being realised by creditors in satisfaction of their claims, is negligible.

79.

I pause to draw the attention of the honourable court to the contents of page 53 of the 2019 Annual Report from which it appears that the RAF has earned investment revenue and other income in the following amounts: 2019- R100 million; 2018- R90; 2017- R112 million; 2016- R93 million; and 2015- R66 million. Cash holdings as at 31 March 2019 amounted to R908 million (2017/18: R1.57 billion) (see page 60 thereof).

80.

Although I am not privy to the relevant information, it appears that these investments are made pursuant to the provisions of Section 4(2)(c) of the RAF Act, which provides that the Fund may "(c) invest any money not immediately required for the conduct of its business and realise, alter or re-invest such investments or otherwise deal with such money or investments".

81.

As a side remark, it is difficult to comprehend, given the RAF's onerous financial position, how having an investment account is justifiable in view of the restriction on the relevant power afforded by the above section namely that "...money not immediately required for the conduct of its business..." may be investment. It is apparent that all funds to which the RAF may possibly have access, are immediately necessary for the conduct of the RAF's business, in particular as defined in section 3 of the RAF Act.

82.

Be it as it may, one shall be surprised if creditors of the RAF do not in the very near future make the attachment of these cash investments their primary line of execution in order to enforce payment of orders in their favour, at the obvious expense of others who left these steps too long.

83.

46

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The number and values of attachments since October 2019 are not publicly known to the best of my knowledge. One may however reasonably assume that the rate at which the number of these attachments have grown, must have been drastic and exponential. The RAF if challenged to demonstrate some transparency by disclosing in answer, the numbers, and values of attachments of movables and its bank account since the end of October 2019 to date.

84.

Given the RAF's deteriorating financial position, the number of these instances of individual debt collections, at the expense of other creditors is set to rise dramatically in the near future, as has been the case in recent months. I humbly submit that it is more than likely that these attachments are set to paralyse the RAF operationally, and for the business of the RAF to come to a grinding halt.

85.

Inevitably, the RAF is destined to reach a point (if it is not there already) where it will not be able to pay compensation to the greater part of claimants. Further legal argument will be advanced with regard to the consequence of the RAF's inability to pay any compensation to victims who suffered loss or damage resulting from bodily injury to or the death of any person caused by or arising from the driving of a motor vehicle. Reference will in this regard be made to the provisions of section 21(2)(a) of the RAF Act.

Management Problems

86.

It is widely known that the RAF is, as matters stand, plagued with corruption, fraud and the like, and the RAF has on many occasions raised its concern in this regard. It now appears, on the RAF's own version, that criminals has even discovered new avenues to siphon public funds through fraudulent writs and court orders.

87.

In paragraphs 82 to 95 his foresaid affidavit, the CEO contends that the current business model of the RAF is riddled with irregularities, fraud, and corruption, which adds RAF's financial misery.

88.

The foresaid remark furthermore suggests that losses are not only sustained at the hands of criminals, but also through duplicate payments that are seemingly made as a result of managerial deficiencies.

89.

Under the heading "Other Challenges" (paginated page 004-360 of that bundle), the CEO lists a number of factors that, according to him, contribute to the "unsustainable financial position of the RAF". These factors are: i) An ineffective and unsustainable business model; ii) Legislators framework - based on common law principles; iii) Poor claims management; iv) Unnecessary and tedious litigation, poorly managed; v) Poor ICT systems and old infrastructure; vi) High levels of potential fraud and corruption; vii) Decreasing fuel sales volume as a result of fuel efficient, electric and gas propelled cars; and, viii) Increase in diesel rebates, reducing the revenue.

90.

The RAF has recently appointed, as Acting Chief Financial officer, Ms BOITUMELO MABUSELA. This person holds a Bachelor of Arts (BA) Communications Science, Communication Organisation and Media Studies. In all fairness, if this appointment is indicative of the nature of measures implemented by the RAF to turn the financial affairs around, then there is no reasonable hope of the RAF achieving the desired outcome.

91.

It is not only the appointment of the said Acting Chief Financial Officer, that is highly contentious and questionable for the reasons stated. It also appears that no advertisement has been placed in respect of the filling of the vacancy which

she ultimately filled. In this regard, MAPONYA INC accordingly addressed a letter to the RAF dated 13 August 2020, a copy of which is attached as **Annexure "PM17"**, the contents of which are incorporated, asking for certain information regarding her said appointment, including copies of any advertisements relating to the appointment of an Acting Chief Financial Officer. Unsurprisingly, the CEO has not responded to the said letter.

92.

It is widely rumoured that no advertisements have been published with regard to the filling of vacancies to which six persons were appointed as senior executives. MAPONYA INC accordingly addressed a letter to the RAF dated 19 August 2020, a copy of which is attached as **Annexure "PM18"**, the contents of which are incorporated, asking for certain information regarding the six appointments referred to in **Annexure "PM18"**, including copies of any advertisements relating to the said six individuals. No response has been received from the RAF.

93.

I submit that the only plausible inference to be drawn from the RAF's failure to respond to the said letters is that indeed, no advertisements have been published regarding these appointments. If I am wrong in this regard, then the RAF is invited to demonstrate that it has complied with due process, which is in line with the Constitution of the Republic of South Africa and the Public Finance

Management Act, in making these appointments by providing copies of these advertisements in answer.

94.

Lastly, in terms of Annexure "PM18", the RAF was requested to provide details regarding its investments referred to above. MAPONYA INC did not have any response to this letter.

95.

I humbly submit that the importance of these managerial inadequacies ought not to be underestimated. Not only have these factors cited by the CEO as having contributed to the "...*unsustainable financial position of the RAF...*", but it is apparent from the nature of these issues that they all point towards systemic and operational deterioration in the RAF, compounded by managerial inefficiencies. Even if there were to be a cashflow injection bringing some financial relief, it will not result in any long-term financial improvement unless the foresaid organisational and operational problems are solved.

URGENCY:

96.

It has been demonstrated above with reference to the RAF's own documents that the total number of attachments during the whole of 2018/19 of 560, has grown to approximately 5480 during the first 7 months of 2019, which amounts to the value of attachments during this period of some R2,84 billion. Relying on spurious grounds in the above urgent application, the RAF has managed to buy some time in respect of those attachments.

97.

The rapidly growing number of attachments is of obvious concern to the RAF, as is evident from the CEO stating that "... *The attachment of our bank accounts presents the biggest risk for the RAF in the short term...*" and "... *With a monthly income averaging R3.6 billion, if the value of these attachments increase to just over R3 billion, RAF would not be able to pay staff salaries and other suppliers...*"

98.

When a financial institution, such as a bank, descends into financial distress, it often happens that concerned accountholders start, what is colloquially referred to as a "run on the bank", in order to withdraw their deposits.

99.

It is self-evident that panic has set in amongst the creditors of the RAF and that a frenzy has started amongst those, to execute against the RAF's limited and inadequate assets to satisfy their claims before others do. This, to the apparent detriment to those who are not fortunate enough to enforce their claim in time before no assets are left.

100.

The financial difficulties of the RAF are irreversible and therefore, the longer the RAF is allowed to conduct its business, the more instances of attachment will occur.

101.

If this application is brought in the ordinary course, then it is likely to be heard only towards the end of the second term in 2021. It stands to reason that by then, the proverbial horse would already have bolted.

102.

It is objectively urgent for the RAF to be wound up to establish a *concursum creditorum* to substitute individual debt collecting remedies, for the assets of the RAF to be realised and for the proceeds to be distributed equally among creditors of the RAF in terms of the relevant provisions of the Insolvency Act, 24 of 1936.

FORMAL REQUIREMENTS

103.

This application will duly and timely be lodged on the Master of this Honourable Court, in compliance with the provisions of section 346(4)(a) of the Old Act.

104.

A certificate issued by the Master as envisaged by the provisions of section 346(3) of the Old Act, will be filed before the hearing of this matter.

105.

A copy of the application will, as required by the relevant sections of the Old Act, duly be served on:

105.1 Every relevant trade union as is required by section 346(4A)(a)(i);

105.2 The employees of the RAF as envisaged by section 346(4A)(a)(ii);

105.3 The South African Revenue Service as is required by section 346(4A)(a)(iii); and,

105.4 The RAF in terms of section 346(4A)(a)(iv).

CONCLUDING REMARKS

106.

It will be submitted at the hearing of the matter, in the event of the Honourable Court granting the order as prayed, that it will be imperative for an independent person to take immediate control of the affairs the RAF. MAPONYA INC will accordingly request the Honourable Court to direct the Master to appoint **SUMAIYA ABDOOL GAFAAR KHAMMISSA** as the/a provisional liquidator. I humbly refer to her company profile attached as **Annexure "PM 19"**, the contents of which are incorporated herein, and submit that she is duly qualified and experienced for such appointment.

WHEREFORE I HUMBLY PRAY FOR THE GRANTING OF AN ORDER IN TERMS OF THE NOTICE OF MOTION TO WHICH THIS AFFIDAVIT IS ATTACHED.



.....
B R RANGATA

The Deponent acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to before me at 1660 Lina on 26 AUGUST 2020, the regulations of Government Gazette Notice No. R1258 of 21/7/72 as amended and Government Gazette Notice No. R1648 of 19/8/77 as amended having been complied with.


.....
COMMISSIONER OF OATHS

THABO LEONARD PHOSHOKO
PRACTISING ATTORNEY OF
HIGH COURT OF SOUTH AFRICA
COMMISSIONER OF OATHS
308 HILL STREET
ARCADIA, PRETORIA
TEL: (012) 343 6364 / 6351 FAX: (012) 343 6106

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P.L.

"PM 1"

EXTRACT FROM THE MINUTES

MAPONYA (JOHANNESBURG) (PTY) LTD

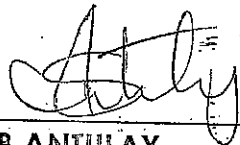
(REGISTRATION NUMBER 2001/024379/21)

AT A MEETING OF THE BOARD OF DIRECTORS

HELD ON 24 AUGUST 2020

It was resolved that the Company:

1. Institutes an application, on an urgent basis, for the winding-up of the **ROAD ACCIDENT FUND**, together with ancillary relief.
2. Authorises **MAPONYA INC** to institute and to represent the applicant in this application and any further and/or ancillary processes; and,
3. Authorises **BAITSENG RAMAGHALELA RANGATA** to depose to any and all affidavits and/or to sign any other documents necessary to give effect to this resolution, and to take any and all steps necessary to until the matter has been finally disposed of.



T B ANTULAY
DIRECTOR / CHIEF EXECUTIVE OFFICER
Board of Directors
24 August 2020

