

Public Notice

NOTICE TO CREDITORS OF ESKOM HOLDINGS SOC LTD PURSUANT TO SECTION 116(1)(a) OF THE SOUTH AFRICAN COMPANIES ACT, 2008

Notice is hereby given to creditors of Eskom Holdings SOC Ltd (“**Eskom**”) pursuant to section 116(1)(a) of the South African Companies Act, 2008 (“the **Act**”) of the proposed merger between Eskom and National Transmission Company South Africa SOC Ltd (“**NTCSA**”), details of which are set out below (“the **Merger**”).

Creditors will be aware that Eskom currently conducts business in three discrete and separate divisions, namely -

1. its transmission division, which conducts the transmission business (“the **Business**”);
2. its distribution division, which conducts the distribution business;
3. its generation division, which conducts the generation business.

In accordance with the roadmap issued by the Department of Public Enterprises (“**DPE**”) and/or the requirements of the Act,

1. Eskom, having obtained the necessary consents required in terms of the Public Finance Management Act, 1999 (“**PFMA**”), formed a wholly owned subsidiary, NTCSA, during 2021 for the purposes of acquiring the Business from Eskom,
2. Eskom and NTCSA entered into a merger agreement on 17 December 2021 (“the **Merger Agreement**”) and on the same day a subscription agreement (“the **Subscription Agreement**”). Eskom. The Merger Agreement provided for a consideration to be determined from the financial statements relating to the Business at 31 December 2021. That consideration was determined, and the Merger Agreement was amended and restated on 23 February 2024 (“the **Restated Merger Agreement**”) to record the consideration so determined and to provide for certain other aspects, including the conclusion of the Loan Agreement and the determination of the amount of the loan provided for in the Loan Agreement. A first addendum to the amended and restated Merger Agreement was concluded on 25 March 2024 to amend one of the suspensive conditions and certain other aspects. The Subscription Agreement was amended and restated on 23 February 2024 to record the subscription consideration determined (“the **Restated Subscription Agreement**”). Eskom and NTCSA entered into a loan agreement on 27 March 2024 (“the **Loan Agreement**”). The Restated Subscription Agreement and the Loan Agreement provide for the manner in which a portion of the consideration payable by NTCSA to Eskom in respect of the Business will be discharged, as more fully explained in paragraph 7.
3. The Restated Merger Agreement (as was the case with the Merger Agreement) is subject to the fulfilment or waiver of various suspensive conditions. It subsequently became clear that certain of the suspensive conditions stipulated had not been required, as the circumstances which they envisaged, had not come about. The remainder of the suspensive conditions were all fulfilled prior to 31 March 2024. If no creditor objects by approaching the courts within the time permitted by the Act, the Merger will be implemented on 1 July 2024 (“the **Expected Implementation Date**”). Should it eventuate that, despite Eskom’s reasonable expectation, the Merger will not be able to be implemented on the Expected Implementation Date, Eskom will publish a notice in the press in newspapers, and on its website, www.eskom.co.za not later than seven days prior to the Expected Implementation Date, notifying creditors of the new implementation date.
4. Once implemented, the Merger will result in:
 - 4.1. NTCSA becoming the sole owner of the Business including all its assets and NTCSA becoming liable for all the obligations of Eskom as regards the Business by operation of law pursuant to sections 113, 115 and 116 of the Act; and
 - 4.2. the generation and distribution businesses currently conducted by Eskom continuing to vest in Eskom.
5. The boards of Eskom and NTCSA passed the requisite resolutions on 25 March 2024 and 24 March 2024 respectively, concluding that Eskom and NTCSA will be solvent on the Expected Implementation Date and liquid for the twelve-month period from the Expected Implementation Date as required in terms of the Act.
6. Eskom as the sole shareholder of NTCSA passed a special resolution approving the Merger as required in terms of the Act, on 25 March 2024. The Minister of Public Enterprises as the sole shareholder of Eskom passed a special resolution approving the Merger as required in terms of the Act, on 28 March 2024.
7. The consideration payable by NTCSA for the Business is R80 542 560 256.83 (eighty billion five hundred and forty-two million five hundred and sixty thousand two hundred and fifty-six rand and eighty-three cents). The consideration was determined as being the aggregate of the net book values of the assets of the transmission business as reflected in the unaudited management accounts of Eskom at 31 December 2021 prepared in accordance with IFRS. It will be discharged:
 - 7.1. as to R19 934 558 188.77 (nineteen billion nine hundred and thirty-four million five hundred and fifty-eight thousand one hundred and eighty-eight rand and seventy-seven cents), by NTCSA accepting the liabilities of the Business on 31 December 2021,
 - 7.2. as to R39 854 803 589.43 (thirty-nine billion eight hundred and fifty-four million eight hundred and three thousand five hundred and eighty-nine rand and forty-three cents) from the loan to be made to NTCSA by Eskom pursuant to the Loan Agreement,
 - 7.3. as to the balance of R20 753 198 478.63 (twenty billion seven hundred and fifty three million 03one hundred and ninety eight thousand four hundred and seventy eight rand and sixty three cents) by Eskom subscribing for one share in NTCSA for that amount.
8. As NTCSA is a wholly owned subsidiary of Eskom, no warranties were given by Eskom to NTCSA in respect of the Business or the Merger.
9. The cost of the Merger is borne by Eskom.
10. Creditors’ attention is drawn to section 115(1)(b) of the Act in terms of which a creditor may seek leave to apply to a court for the review of the Merger only on the ground that that creditor will be materially prejudiced by the Merger. A creditor must seek that leave within fifteen business days of the delivery of a copy of this notice to the creditor in question. The Act when read with the regulations promulgated under the Act allows for delivery to creditors by post and provides that if the notice is sent by:
 - 10.1. electronic mail, the date of deemed delivery is the time recorded by the computer used by Eskom to deliver the notice, unless there is conclusive evidence to the contrary,
 - 10.2. registered post to the creditor’s last known address, it is deemed to be delivered on the 7th day after posting.
11. The Act further provides that a court may only give leave to review the Merger if satisfied that the creditor concerned is acting in good faith, that the Merger would materially prejudice the creditor concerned, and that there are no other remedies available to the creditor.
12. Should any creditor wish to discuss any aspect of this notice, it should address an email to Ms Liza Brown at creditorenquiries@eskom.co.za