

Circular Twenty-Two: To All Known Creditors and Other Affected Persons of Arnot Opco Proprietary Limited (Registration Number: 2019/072282/07) (in Business Rescue) (the “Company”)

09 January 2025

Dear Sir/Madam

1. The purpose of this circular is to update creditors and other affected persons on the latest developments in the business rescue proceedings of the Company and the purported cancellation of the Coal Supply Agreement (“CSA”) by Eskom.
2. On 20 November 2024, the Company received a notice of breach from Eskom in terms of clause 30.2 of the Terms and Conditions of the CSA calling upon the Company to rectify the breach and that should the Company fail to rectify the breach, Eskom will apply the remedies in the CSA.
3. Upon receipt of the breach notice, the BRP investigated all the breaches flagged by Eskom and immediately instructed management to rectify all the breaches. It is important to reiterate the following timeline which demonstrates the Company’s substantial compliance:
 - 3.1 On 24 July 2024 Eskom raised concerns about misalignment of rectification volumes from the approved rectification source relative to coal deliveries to Eskom.
 - 3.2 On 30 July 2024 and after several engagements with Eskom, the BRP initiated an investigation on the misalignment of rectification volumes from the approved source and tonnages delivered to Eskom.
 - 3.3 On 23 September 2024 the BRP submitted a detailed rectification volumes misalignment report addressing Eskom’s concerns.
 - 3.4 On 6 November 2024 Eskom imposed an offtake suspension, citing coal quality issues.
 - 3.5 On 13 November 2024 Eskom lifted the offtake suspension, acknowledging the Company’s corrective measures.
 - 3.6 On 20 November 2024 Eskom issued a breach notice with a 30-business-day rectification period ending on 7 January 2025.
 - 3.7 On 9 December 2024 Eskom imposes a second offtake suspension, citing coal quality issues.



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3.8 On 17 December 2024 the Company presented its investigation findings to Eskom and submits further information on 20 and 23 December 2024.

4. On 27 December 2024, Eskom issued a notice of cancellation of the CSA in terms of clause 30.2.2, citing contraventions of clause 1.1.42 of the Standard Terms and Conditions and clause 3.2 of the Coal Quality Management Procedure. The cancellation was purportedly effective immediately upon dispatch of the letter. Eskom further claimed that it had suffered damages of R262,328,534.33, which it alleged were due and payable by the Company.

5. On the same day, the Company responded to Eskom's cancellation notice, confirming that all flagged breaches had been rectified and requested an urgent meeting to discuss the cancellation notice.

6. Despite the Company's rectification efforts, Eskom maintained its damages claim of R262,328,534.33 as due and payable without substantiating the alleged damages.

7. It is critical to reiterate that Eskom issued a breach notice on 20 November 2024, granting the Company until 7 January 2025 to rectify the alleged breaches. However, Eskom unilaterally and prematurely issued its cancellation notice on 27 December 2024, before the rectification period expired, disregarding the Company's efforts to address the matter and/or rectify the breaches.

8. The Company made significant efforts to address the breaches outlined in Eskom's letter of 20 November 2024, and all flagged breaches were rectified prior to the expiration of the rectification period. The premature cancellation constitutes a repudiation of the CSA, which the Company has not accepted.

9. The Company wrote to Eskom on 5 January 2025 rejecting Eskom's damages claim as improper and unfounded under the CSA.

10. The Company is actively challenging Eskom's premature cancellation of the CSA and has invoked the dispute resolution mechanism as provided in the CSA. Eskom was initially given until 6 January 2025 to respond, with the date later extended to 8 January 2025 at Eskom's request. As of the date of this circular, Eskom has not formally addressed the Company's concerns but has advised the BRP that it intends to respond by next week.

11. As an organ of state, Eskom is bound by the Promotion of Administrative Justice Act, 2000 (PAJA) and must act lawfully, reasonably, and procedurally fairly when performing public functions. The CSA involves the procurement and supply of coal, a critical element of Eskom's public function of generating electricity.

12. Eskom has violated its obligations under PAJA as follows:

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- 12.1 Failure to Provide Procedural Fairness: Eskom failed to give the Company a reasonable opportunity to respond fully to the breach notice, particularly by refusing to disclose the investigative report it relied upon. This lack of transparency and meaningful engagement denied the Company its right to reply, rendering Eskom's actions procedurally unfair.
- 12.2 Irrational and Arbitrary Conduct: The cancellation notice was issued prematurely, contravening the CSA's terms. Eskom's reliance on an undisclosed investigative report, which may be flawed or biased, further underscores the unreasonableness of its actions.
- 12.3 Disregard for Proportionality: Eskom's decision to cancel the CSA entirely, despite the Company's substantial efforts to remedy the alleged breaches, is disproportionate to the issues raised.
13. Eskom's failure to adhere to PAJA principles invalidates the purported cancellation and exposes it to potential judicial review and accountability under PAJA.
14. The BRP has instructed its attorneys to challenge Eskom's unilateral and arbitrary cancellation of the CSA. Creditors will be kept updated on further developments regarding this matter.

Yours faithfully,

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Arnot Opco Proprietary Limited (in Business Rescue)

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