INDEPENDENT POWER PRODUCER OFFICE

EVALUATION OF

SELLERS REFINANCING NOTICES

REVISED AND UPDATED REFINANCING PROTOCOL / GUIDELINES

JANUARY 2023

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The Republic of South Africa

Department of Electricity and Energy

IPP PROCUREMENT PROGRAMMES

EVALUATION OF SELLER REFINANCING NOTICES

REVISED AND UPDATED REFINANCING PROTOCOL/GUIDELINE

JANUARY 2023

GUIDANCE NOTE 2

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electricity & energy

Department:
Electricity and Energy
REPUBLIC OF SOUTH AFRICA

1. Introduction

1.1. The Department of Electricity and Energy issued the Revised Refinancing Protocol, dated January 2023 ("**the Protocol**").

1.2. This Guidance Note should be read together with the Protocol and Guidance Note 1 (*Change in Law*).

1.3. Unless otherwise expressly stated, or the context otherwise requires, words and expressions defined in the Protocol, Power Purchase Agreement ("**PPA**") and Implementation Agreement ("**IA**"), shall bear the same meanings in this Guidance Note.

2. Background and Rationale

2.1. The Johannesburg Interbank Average Rate (**"JIBAR"**) has historically served as the primary floating-rate interest benchmark in South African financial markets and is referenced extensively in the financing arrangements of project companies (the **"Sellers"**) contracted under the various IPP Programmes.

2.2. Following the global reform of interest rate benchmarks (most notably the discontinuation of LIBOR in 2021), the South African Reserve Bank (**"SARB"**), through the Market Practitioners Group (**"MPG"**), has confirmed that JIBAR will be discontinued and replaced by the South African Rand Overnight Index Average (**"ZARONIA"**) as the designated successor benchmark by 31 December 2026.

2.3. ZARONIA is a near risk-free reference rate based on actual overnight transactions in the South African money market. Because ZARONIA is an overnight, near risk-free rate, it does not embed the bank credit and term liquidity premia that are inherent in JIBAR. To preserve economic equivalence between JIBAR-referenced cash flows and their ZARONIA-referenced replacements, SARB, in consultation with the MPG, has provided guidance that requires the addition of a Credit Adjustment Spread (**"CAS"**), calculated in accordance with market-standard methodology. The CAS value corresponds to the JIBAR tenor being replaced.

2.4. The transition is a market-wide regulatory development and not a commercial decision of any individual party. The Department recognises that Sellers and their Lenders are required to amend their financing arrangements in order to give effect to the planned cessation of JIBAR.

3. Purpose of the Guidance Note

3.1. The purpose of this Guidance Note is to set out the Department's position on the treatment, under the Protocol, the relevant PPAs, and IAs of amendments to Sellers' financing arrangements that are required solely to give effect to the transition from JIBAR to ZARONIA plus the corresponding CAS (the **"Benchmark Transition"**).

3.2. In particular, this Guidance Note clarifies:

3.2.1. whether the Benchmark Transition constitutes a "Refinancing" capable of giving rise to a Refinancing Gain;

3.2.2. the procedural steps to be followed by Sellers and their Lenders in implementing the Benchmark Transition;

3.2.3. the Department's position on Termination Liabilities; and

3.2.4. the treatment of the new benchmark in any future Refinancing Gain calculations.

3.3. For the avoidance of doubt, Sellers are free to negotiate the transition from JIBAR to ZARONIA with their Lenders as they see fit. For any amendments to Financing Agreements not taking the form envisaged in paragraph 4.2 of this Guidance Note, the standard requirements applicable to a Refinancing as per the Protocol will apply.

3.4. Given the short timeline until the cessation of JIBAR Sellers are strongly encouraged not to conflate the transition from JIBAR to ZARONIA with other amendments to the Financing Agreements.

4. Economic Neutrality of the Benchmark Transition

4.1. The Department accepts the position adopted by SARB, in consultation with the MPG, that the replacement of JIBAR with ZARONIA plus the corresponding CAS is intended to be economically neutral between the parties to a JIBAR-referenced contract.

4.2. Accordingly, where the only amendment to a Seller's Financing Agreements is the substitution of JIBAR with ZARONIA plus the corresponding CAS (calculated using the market-standard methodology endorsed by SARB), and the same replacement rate is applied consistently to both:

4.2.1. the underlying debt facilities; and

4.2.2. any associated interest rate hedging or swap arrangements,

the Department will not treat the Benchmark Transition as a qualifying Refinancing giving rise to a Refinancing Gain for the purposes of the Protocol. Accordingly, the Benchmark Transition will not be subject to the Refinancing Notice or prior approval requirements of the Protocol, provided the procedural steps in paragraph 5 are followed.

4.3. This position reflects the expectation that the Benchmark Transition will be materially cash-flow neutral such that the Base Case Equity IRR as contained in the Financial Model (as defined in the IA and as may have been updated in accordance with the Protocol) is not expected to change.

4.4. For the avoidance of doubt, the Benchmark Transition shall not result in any adjustment to the tariff under the applicable PPA.

4.5. The treatment described in paragraph 4.2 applies only to amendments that are strictly required to give effect to the Benchmark Transition. Any other amendment to the Financing Agreements concluded contemporaneously with the Benchmark Transition (including, without limitation, changes to margins, tenor, repayment profile, covenant package, security, hedging strategy, or sponsor arrangements) will be subject to assessment under the Protocol and must be notified in accordance with the Protocol as a separate submission.

5. **Procedural Requirements**

5.1. The Department requires Sellers to follow the procedural steps set out in this paragraph 5 in order to maintain transparency and an accurate record of project documentation, and to approve amendments to the Financing Agreements in the IA.

5.2. The Seller must submit to the IPP Office, for reference, record-keeping and contractual compliance purposes, a complete set of the amended or amended-and-restated Financing Agreements giving effect to the Benchmark Transition, first in final draft form and subsequently, upon receipt of the countersigned instrument contemplated in paragraph 5.5, in final executed form.

5.3. The submission referred to in paragraph 5.2 must be accompanied by a letter (the **"Confirmation Letter of Economic Equivalence and Neutrality"**), co-signed by

(i) the Seller and (ii) the Mandated Lead Arranger warranting and confirming that:

5.3.1. the only amendment effected to the Financing Agreements is the replacement of JIBAR with ZARONIA plus the corresponding CAS;

5.3.2. the corresponding CAS has been calculated in accordance with the market-standard methodology endorsed by SARB including, where applicable, a methodology consistent with internationally accepted approaches to benchmark transition (such as historical median spread methodologies);

5.3.3. the same replacement rate (ZARONIA plus corresponding CAS) has been applied consistently to both the debt and any associated hedging arrangements, and the Seller remains hedged to a substantially equivalent extent and structure as prior to the Benchmark Transition;

5.3.4. the Benchmark Transition will have no impact on the cost and tariff structures under the PPA and IA;

5.3.5. the Benchmark Transition is expected to result in substantially equivalent cash-flows such that the Base Case Equity IRR remains unchanged;

5.3.6. accordingly, no Refinancing Gain is expected to arise from the Benchmark Transition; and

5.3.7. the signatories to this confirmation letter have been duly authorised and granted full legal power and authority to sign this confirmation and bind the Seller and the Lenders as evidenced by the delegated authority documentation submitted with this Letter.

5.4. Following receipt of the documentation contemplated in paragraphs 5.2 and 5.3, the Department shall determine the appropriate process and contractual mechanism for recording the replacement of the existing Financing Agreements with the Financing Agreements giving effect to the Benchmark Transition under the applicable Implementation Agreement.

5.5. Where the Department is satisfied that the required documentation as contemplated in paragraphs 5.2 and 5.3 above have been submitted in full and substantially in the form contemplated in paragraphs 5.2 and 5.3, the Department will record the Benchmark Transition by means of a countersigned instrument in writing acknowledging the updated Financing Agreements and updating Schedule

6 (*Project Documents*) of the Implementation Agreement.

5.6. Where the Department determines that the amendments to the Financing Agreements extend beyond the Benchmark Transition contemplated in this Guidance Note, or where the Seller has introduced any additional commercial amendments to the Financing Agreements, the Department may require compliance with the Refinancing Protocol and, where appropriate, the conclusion of a formal amendment to the Implementation Agreement.

5.7. No updated financial model is required to be submitted in respect of the Benchmark Transition. The Financial Model (as defined in the IA and as may have been updated in accordance with the Protocol) shall remain the reference Financial Model for the project.

5.8. Sellers are encouraged to submit the required documentation as contemplated in paragraphs 5.2 and 5.3 above as soon as possible in order to allow the Department reasonable opportunity to verify the completeness and substance of the submission pack against the requirements of this Guidance Note after which the Department will issue its Notice of no objection.

5.9. Each party shall bear their own costs in connection with the Benchmark Transition.

5.10. The Department reserves the right to challenge any submission made in accordance with this paragraph 5, including the right to request additional information, and request the Seller to submit a Refinancing Notice as per the Protocol, should the Department determine, acting reasonably, that the Seller did not adhere to the requirements of the Benchmark Transition as per this Guidance Note.

5.11. Consistent with the Department's broader contractual obligations, the IPP Office will respond to submissions made under this paragraph 5 in good faith and without undue delay. The IPP Office will not link its acknowledgement of a Benchmark Transition submission to the resolution of unrelated commercial matters therefore a submission in respect of the Benchmark Transition must be submitted separately to any other commercial or qualifying Refinancing submission.

6. Termination Liabilities

6.1. In the same spirit as paragraph 3.1.4 of the Protocol, the Department's position is that the Benchmark Transition must not result in any increase in the Termination

Liabilities owing by the Department or the Buyer under the PPA or related Implementation Agreement.

6.2. For the avoidance of doubt:

6.2.1. Termination Liabilities (including any cap or schedule of compensation amounts) cannot exceed the level established in the original Financial Model, as the same may have been updated in accordance with the Protocol; and

6.2.2. The IPP Office will not consent to any uplift in compensation on termination, swap break costs, or other contingent liability of the Department or the Buyer attributable to the Benchmark Transition.

7. Treatment in Future Refinancings

7.1. For Sellers that applied the Benchmark Transition the following will apply for the first Refinancing notified under the Protocol after the Benchmark Transition has been effected:

7.1.1. the pre-Refinancing Financial Model shall reference ZARONIA plus the corresponding CAS (as defined and calculated for the purposes of the Benchmark Transition) in place of JIBAR, for the purposes of the calculation of Refinancing Gain in accordance with Section 4 of the Protocol; and

7.1.2. the Benchmark Transition shall not, of itself, be treated as a change to the financing terms giving rise to (or contributing to) a Refinancing Gain.

7.2. The "Adjustable Terms" referred to in the Protocol shall be read, with effect from the date of the Benchmark Transition, as referring to ZARONIA (assumed to change across the entire curve) in place of JIBAR. All other Adjustable Terms remain unchanged.

7.3. The sensitivity analysis required to be provided by the Seller in any future Refinancing Notice (i.e. the +/- 5, 10, 25 and 50 bps tables) shall be prepared on the basis of movements in ZARONIA.

8. Interaction with Change in Law

8.1. For the avoidance of doubt the discontinuation of JIBAR and the implementation of ZARONIA is not considered to be a Change in Law.

9. Effective Date and Review

9.1. This Guidance Note takes effect on the date of issue set out above and applies to all Benchmark Transitions effected on or after that date.

9.2. The Department may amend or supplement this Guidance Note from time to time, in particular to reflect any further guidance issued by SARB, or to address market practice as it develops in relation to the Benchmark Transition.

9.3. The Department may review and revise the implementation process contained in this Guidance Note should market practice, regulatory guidance or contractual considerations require.