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TO: ALL MEDIA

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RE: SUPREME COURT OF APPEAL UPHOLDS AFU CONFISCATION OF R59.8M FROM TRIFECTA

In a judgment handed down yesterday, Justice Tshiqi (JA) penned (with full support of Justices Petse DP, Sedulker, Swain and Molemea JJA), the Supreme Court of Appeal (SCA) upheld the NPA's Asset Forfeiture Unit confiscation of R59.8m of the Trifecta Group of Companies to the State.

The SCA further dismissed/struck off the roll Trifecta's application for leave to appeal and condonation against the Kimberly High Court's decision on the basis that there was no proper explanation for the lengthy delay of approximately 10 months before such applications were launched and that there were no prospects of success.

The judgment emanates from a conviction of Alfeus Christo Scholtz and his six companies for corruption and money laundering at the Kimberly High Court. This was followed by the granting of a confiscation order of over R6m on 6 December 2016, in respect of profit Trifecta derived and retained from six corruptly acquired lease agreements and over R53m pertaining to an added advantage gained due the fact that no competitive tender procedures were followed when such leases were awarded. The confiscation process followed the provisions of section 18 of the Prevention of Organised Crime Act (POCA) 121 of 1998, which targets the fruits of unlawful activities. Before the High Court, the AFU argued that Trifecta had not furnished all the financial statements pertaining to the benefit it corruptly received. Justice Phatsoane directed the parties to meet and agree the sum to be confiscated i.e. R59.8m.

At the SCA, Trifecta unsuccessfully attempted to renege from such an agreement. Justice Tshiqi (JA) held that the agreement reached by the parties about the R59.8m was clear and there was no legal basis for interpreting it in any different fashion. The judgment brings finality to both criminal and financial investigations commenced in 2011,

criminal prosecution that exceeded 5 years and the asset forfeiture process of almost 6 years, in which the joint strategy approach was successfully utilized in combatting corruption and money laundering. The R59.8m will be returned to National Treasury.

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