



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

**National Assembly**  
**Member of Parliament**

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Hon. Yunus Carrim  
Chairperson  
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Parliament  
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Dear Yunus

**LEGAL OPINION ON THE USE THE PFMA SECT 16 BY THE MINISTER OF FINANCE TO PAY R 3,0 BILLION TO SAA**

I believe that the decision by the Minister of Finance to use section 16 of the Public Finance Management Act No. 1 of 1999 (the PFMA) in order to pay South African Airways (SAA) an amount of R 3,0 billion on or about the 30<sup>th</sup> of September 2017 may not have been what the drafters of the PFMA intended when they drafted the circumstances, copied in hereunder, under which the use of funds in this way would be permissible;

*“The Minister may authorise the use of funds from the National Revenue Fund to defray expenditure of an exceptional nature which is currently not provided for and which cannot, without serious prejudice to the public interest, be postponed to a future parliamentary appropriation of funds.”*

National Treasury are on record as having stated that the payment of R 3,0 billion to SAA was made in order to enable SAA to pay R 1,8 billion due to Citibank on or before the 30<sup>th</sup> of September 2017 and to use R 1,2 billion as working capital.

It is our contention that section 16 of the PFMA may not have been intended to be used under circumstances where the requirement for funds was foreseen and where the normal provisions for the appropriation of funds could be used in order to seek the approval of parliament in advance of the payment to SAA.

The lenders of R 6,783 billion to SAA that was due to be repaid by the 30<sup>th</sup> of June 2017 and who had shortly before the 30<sup>th</sup> of June 2017 agreed to extend the repayment date of these loans to SAA to the 30<sup>th</sup> of September 2017, it must be assumed, did so on the basis that they required payment on or before the 30<sup>th</sup> of September 2017.

At a meeting of the Standing Committee on Finance on the 27<sup>th</sup> of June 2017, at which National Treasury was present, SAA presented a 12 month cash flow analysis (copy attached hereto) that indicated that SAA would, for the 12 month period, continue to run at a loss and that SAA would not have sufficient cash to be able to pay its suppliers in full for the months of July, August and September 2017. SAA informed the Standing Committee on Finance that it had made arrangements with some suppliers to delay payments in full for the months of July and August 2017 on the basis that SAA had been assured by National Treasury of a cash injection of R 750,0 million during September 2017. This was a full 95 days in advance of the 30<sup>th</sup> of September 2017 when the section 16 payment of R 3,0 billion was apparently made to SAA. It was also in advance of the entire third term of parliament during which a special appropriation bill could have been passed, or rejected, by parliament.

The SAA Five Year Corporate Plan presented to the Standing Committee on Finance on the 4<sup>th</sup> of August 2017, at the very beginning of the parliamentary third term, clearly indicated that it relied on funding of R 6,0 billion to be obtained from the PIC during the 2017/18 financial year, see “**External funds – PIC**” in table below. This was confirmed by the Minister of Finance at the said meeting.

Sources of funds -A	FY18	FY19	FY20	FY21	FY22
Cash from operations	-	0,45	2,28	1,96	2,35
Extension of bank loans	6,90	-	2,00	-	-
External funds - PC	6,00	-	-	-	-
External funds - other	-	3,00	2,00	2,00	-
External funds - RCF	0,50	0,50	0,50	0,70	0,70
<b>Total (R' billions)</b>	<b>13,40</b>	<b>3,95</b>	<b>6,78</b>	<b>4,66</b>	<b>3,05</b>
Use s of funds -B	FY18	FY19	FY20	FY21	FY22
Cash from operations	0,96	-	-	-	-
cash flow from investing activities	0,50	1,62	1,14	1,20	1,29
Interest expense	1,54	1,16	0,85	0,70	0,70
Capital repayment	9,10	-	3,50	1,50	-
Cash buffer	1,00	1,00	1,00	1,00	1,00
<b>Total</b>	<b>13,10</b>	<b>3,78</b>	<b>6,49</b>	<b>4,40</b>	<b>2,99</b>

In a memo to cabinet dated the 22<sup>nd</sup> of August 2017, the Minister of Finance stated that Citibank had declined to extend the repayment date for the R 1,8 billion owed to it by SAA, and that was guaranteed by the South African Government, beyond the 30<sup>th</sup> of September 2017. Thus, it was apparently known not only to the Minister of Finance but to the entire Executive that funding would have to be found in order to meet its guarantee obligations to enable SAA to repay Citibank by the 30<sup>th</sup> of September 2017.

In the Memo, the Minister of Finance also clearly pointed out that the Government could not renege on its guarantee obligations to a lender to SAA, and this case Citibank, as this would lead to cross-default calling in of lenders of other Government guaranteed loans to SAA.

It was thus clearly foreseen by both the Minister of Finance as well as the Executive as early as the 24<sup>th</sup> of August 2017 that there would have to be a cash payment by Government of R 1,8 billion rand to SAA to enable SAA to repay its loan from Citibank by the 30<sup>th</sup> of September 2017 due date. This allowed a full month in order for the Minister of Finance to table a special appropriations bill and for parliament to consider such bill.

In summary;

1. The SAA cash shortfall and the SAA expectation of an unbudgeted payment of R 750,0 million by National Treasury was known by National Treasury and the Minister of Finance at least 90 days before the PFMA section 16 payment of R 3,0 billion to SAA on or about the 30<sup>th</sup> of September 2017. Indeed it is apparent that both National Treasury and the Minister of Finance had agreed to this September payment of R 750,0 million to SAA.
2. The refusal by Citibank to extend the repayment date of its R 1,8 billion loan to SAA beyond the 30<sup>th</sup> of September 2017 was known to National Treasury and to the Minister of Finance at least 90 days before the PFMA section 16 payment of R 3,0 billion to SAA on or about the 30<sup>th</sup> of September 2017.
3. The need for a special appropriation of funds for SAA to use to repay R 1,8 billion to Citibank and for at least R 750,0 million to pay overdue supplier amounts was apparently known by the entire executive at least 37 days before the PFMA section 16 payment of R 3,0 billion to SAA on or about the 30<sup>th</sup> of September 2017.
4. A special appropriation bill designed to meet the government guarantee obligations as well as to provide cash to fund the losses already incurred and to be incurred by SAA was drafted and presented to the Executive on or before the 24<sup>th</sup> of August 2017. The Executive apparently failed to act as requested in the cabinet memo presented to it by the Minister of Finance.

Given the circumstances that I have outlined in this letter, I request that an opinion on the legality of the use by the Minister of Finance of section 16 of the PFMA to pay an amount of R 3,0 billion to South African Airways on or about the 30<sup>th</sup> of September 2017 be obtained from the parliamentary legal advisors.

I look forward to your favourable consideration of this request.

Yours faithfully,

**RA (ALF) LEES MP**

Deputy Shadow Minister of Finance

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