

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case number:

In the matter between

**DEMOCRATIC ALLIANCE**  
**GEORDIN HILL-LEWIS**

First Applicant  
Second Applicant

and

**MINISTER OF FINANCE**  
**DIRECTOR-GENERAL: NATIONAL TREASURY**  
**MINISTER OF PUBLIC ENTERPRISES**  
**DIRECTOR-GENERAL: PUBLIC ENTERPRISES**  
**SOUTH AFRICAN AIRWAYS SOC LIMITED**  
**SIVIWE DONGWANA N.O.**  
**LESLIE MATUSON N.O.**

First Respondent  
Second Respondent  
Third Respondent  
Fourth Respondent  
Fifth Respondent  
Sixth Respondent  
Seventh Respondent

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**NOTICE OF MOTION**

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**PART A**

**TAKE NOTICE THAT** the application will be made to the above Honourable Court on **TUESDAY 21 JULY 2020** at 10h00 or as soon thereafter as this matter may be heard for an order in the following terms:

- 1 The Applicants' non-compliance with the Uniform Rules of Court relating to forms, service, time periods is condoned and this application is dealt with as a matter of urgency under Uniform Rule 6(12).
- 2 Pending the final determination of the relief sought in Part B:
  - 2.1 the First and Second Respondents are interdicted from appropriating and/or withdrawing, disbursing and/or transferring any funds, including funds from the National Revenue Fund, pursuant to the First Respondent's authorisation under section 16(1) of the Public Finance Management Act 1 of 1999 relating to the Business Rescue Plan for the Fifth Respondent dated 16 July 2020 ("**business rescue funds**"); and
  - 2.2 the Fifth, Sixth, and Seventh Respondents are interdicted from utilising, disbursing and/or transferring any business rescue funds that have been, disbursed or transferred to the Fifth Respondent.
- 3 Any Respondent opposing the relief sought in Part A of this notice of motion must pay the Applicants' costs.
- 4 Granting the Applicants further and/or alternative relief.

**TAKE NOTICE THAT** the affidavit of **GEORDIN HILL-LEWIS** will be used in support of this application.

**TAKE NOTICE FURTHER** that the Applicants have appointed the offices of **MINDE SCHAPIRO SMITH INC** care of **KLAGSBRUN EDELSTEIN BOSMAN DU PLESSIS** below as the address at which it will accept notice and service of all process in these proceedings. The Applicants elect to receive electronic service at [elzanne@mindes.co.za](mailto:elzanne@mindes.co.za) and [ronie@kebd.co.za](mailto:ronie@kebd.co.za) and [karin@mindes.co.za](mailto:karin@mindes.co.za).

**TAKE NOTICE FURTHER THAT** if you intend opposing the relief in Part A of this Notice of Motion, you must:

- 1 Notify the Applicants' attorneys in writing on or before 12h00 on **SATURDAY, 18 JULY 2020.**
- 2 To appoint in such notification an address referred to in Uniform Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.
- 3 File an answering affidavit on or before 17h00 on **SUNDAY, 19 JULY 2020.**

### **PART B**

**TAKE NOTICE THAT** the application will be made to the above Honourable Court on a date to be arranged with the registrar for an order in the following terms:

- 1 The First Respondent's decision under section 16(1) of the Public Finance Management Act 1 of 1999 to authorise the use of funds from the National Revenue Fund to fund, in whole or in part, the government's funding obligations in the Business Rescue Plan for the Fifth Respondent dated 16 July 2020 is reviewed and set aside.
- 2 To the extent that section 16(1) of the Public Finance Management Act 1 of 1999 does authorise the use of funds from the National Revenue Fund to fund, in whole or in part, the government's funding obligations in the Business Rescue Plan for the Fifth Respondent dated 16 July 2020, section 16(1) is declared unconstitutional and invalid.
- 3 Any Respondent opposing the relief sought in Part B of this notice of motion must pay the Applicants' costs.

4 Granting the Applicants further and/or alternative relief.

**TAKE NOTICE FURTHER** that the First Respondent is called upon, in terms of Uniform Rule of Court 53(1)(a) to show cause why the decision(s) referred to in paragraph 1 of Part B of this Notice of Motion should not be reviewed, declared invalid and set aside.

**TAKE NOTICE FURTHER** that in terms of Rule 53(1)(b) of the Uniform Rules the First Respondent is required, within fifteen (15) days after the finalisation of the relief sought in Part A of this Notice of Motion, despatch to the Registrar:

- (i) all records, including internal memoranda, directives, policy documents, records of deliberations, minutes of meetings and any other documents relating to the decision(s) and referred to in paragraph 1 of Part B of this Notice of Motion;
- (ii) such full reasons for the decision(s) as the First Respondent can give in relation thereto.

**TAKE FURTHER NOTICE** that the Applicants may, within ten (10) days of receipt of the record from the Registrar, by delivery of notice and accompanying affidavit amend, add to or vary the terms of its notice of motion and supplement its founding affidavit, in terms of Rule 53(4) of the Rules of this Court.

**TAKE NOTICE FURTHER THAT** if the Respondents intend opposing the relief sought in Part B of this Notice of Motion they are required to:

- (b) notify the Applicants' attorneys of such opposition in writing within fifteen (15) days of the finalisation of the relief sought in part A of this Notice of Motion or any amendment thereof, and in such notice set out an address within 15

kilometres of the Court at which such respondents will accept notice and service of all the documents in these proceedings; and

- (c) within thirty (30) days of the time referred to in Rule 53(4) deliver any answering affidavits.

**TAKE NOTICE FURTHER THAT** if no such intention to oppose is given, the application will be set down for hearing at a date and time to be arranged with the Registrar of the above Honourable Court.

Kindly enrol this application accordingly.

Signed at Pretoria on this 17 day of July 2020

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**MINDE SCHAPIRO SMITH INC**

Attorneys for the Applicants

CARE OF: **KLGSBRUN EDELSTEIN BOSMAN DU PLESSIS INC.**

220 Lange Street

Nieuw Muckleneuk

Tel: 012 452 8984

Fax: 012 452 8901

Email: [ronie@kebd.co.za](mailto:ronie@kebd.co.za)

**TO: THE REGISTRAR**  
High Court of South Africa  
Gauteng Division  
**PRETORIA**

**AND TO: MINISTER OF FINANCE**  
First Respondent  
[Mary.Marumo@treasury.gov.za](mailto:Mary.Marumo@treasury.gov.za)  
Care of State Attorney, Pretoria  
Ref: [Ichowe@justice.gov.za](mailto:Ichowe@justice.gov.za)

**AND TO: DIRECTOR-GENERAL: NATIONAL TREASURY**  
Second Respondent  
Per email: [Dondo.Mogajane@treasury.gov.za](mailto:Dondo.Mogajane@treasury.gov.za)

**AND TO: MINISTER OF PUBLIC ENTERPRISES**  
**Third Respondent**  
Per email: [busi.sokhulu@dpe.gov.za](mailto:busi.sokhulu@dpe.gov.za)

**AND TO: DIRECTOR-GENERAL: PUBLIC ENTERPRISES**  
**Fourth Respondent**  
Per email: [DGOffice@dpe.gov.za](mailto:DGOffice@dpe.gov.za)

**AND TO: SOUTH AFRICAN AIRWAYS SOC LIMITED**  
**Fifth Respondent**  
**Care of Business Rescue Practitioners**

**AND TO: SIVIWE DONGWANA N.O.**  
**Sixth Respondent**  
Per email: [info@adamantem.co.za](mailto:info@adamantem.co.za); [plan@saabusinessrescue.co.za](mailto:plan@saabusinessrescue.co.za)

**AND TO: LESLIE MATUSON N.O.**  
**Seventh Respondent**  
Per email: [lmatuson@matusonassociates.co.za](mailto:lmatuson@matusonassociates.co.za)

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Fifth Respondent  
Sixth Respondent  
Seventh Respondent

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**PART A FOUNDING AFFIDAVIT**

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I, the undersigned,

**GEORDIN HILL-LEWIS**

state under oath that:

1 I am a member of the Democratic Alliance and a Member of Parliament. I  
depose to this affidavit on my own behalf and on behalf of the DA. The facts in  
this affidavit are true and, except where otherwise stated, within my personal



knowledge. Where I make legal submissions, I do so on the basis of advice from the DA's legal representatives

## THE PARTIES

- 2 The First Applicant is the DA, a political party and unitary national organisation and voluntary association governed in terms of its constitution. It is registered with the Independent Electoral Commission in terms of section 15A of the Electoral Commission Act. Its principal offices are at Theba Hosken House, corner of Breda and Mill Streets, Cape Town.
- 3 The DA brings this application in its own interest as the official opposition in the National Assembly, in the public interest, and on behalf of its members.
- 4 I am the Second Applicant. I am a member of the DA. I am also a Member of Parliament, where as I serve as the DA's Shadow Minister of Finance and on Parliament's Finance Standing Committee. I bring this application in my own interest as a member of Parliament and a concerned citizen, as well as in the public interest.
- 5 The first respondent is the **MINISTER OF FINANCE** and the second respondent is the **DIRECTOR-GENERAL: NATIONAL TREASURY**. They are cited in their official capacities, care of the State Attorney, Pretoria. Due to the extreme urgency of the matter, we shall send the Application to the Respondent's electronically to the email addresses set out in the Notice of Motion.





- 6 The third respondent is the **MINISTER OF PUBLIC ENTERPRISES** and the fourth respondent is the **DIRECTOR-GENERAL: PUBLIC ENTERPRISES**. They are cited in their official capacities, for whatever interest they may have in the relief sought, and care of the State Attorney, Pretoria.
- 7 The fourth respondent is **SOUTH AFRICAN AIRWAYS SOC LIMITED** and the fifth and sixth applicants are its appointed business rescue practitioners cited in their official capacities. The fourth, fifth, and sixth respondents are cited for whatever interest they may have in the relief sought.

### **INTRODUCTION AND THE FACTS**

- 8 This is an urgent application to interdict the implementation of the Minister of Finance's decision to authorise the use and withdrawal of funds from the National Revenue Fund to fund SAA in line with SAA's business rescue plan. In addition, the Applicants ask for an interdict to prevent SAA and its business rescue practitioners from using such funds if they have already been disbursed to SAA.
- 9 The relief sought in part A of the notice of motion is sought pending a review in part B of the Minister of Finance's decision. This affidavit is filed in support of the interdict in Part A as well as the founding affidavit in the review in Part B.
- 10 SAA's business rescue plan is available at: <https://tinyurl.com/yd6pd2c9>. The plan proposes that the government "fund or raise funding for" at least the following expensive items: a working capital injection (R2.8 billion), voluntary severance packages for SAA employees (R2.2 billion), payment of lenders (R16.4 billion), unflown ticket liability (R3 billion), a concurrent creditors



dividend (R600 million), and payment to lessors (R1.7 billion) (see paragraph 28 of the plan; the relevant pages are attached as “FA1”).

- 11 The plan is conditional on, amongst other things, “[c]onfirmation of Government’s support and commitment to providing the requisite funding for the various commitments stipulated in paragraph 28 the Business Rescue Plan” which was to be “evidenced by way of a letter of support from the Department of Public Enterprises with the concurrence of the Department of National Treasury.” The plan required this letter “to be received on or before 15 July 2020”. I attach the relevant page from the plan as “FA2”.
- 12 Late on 15 July 2020, National Treasury “commit[ed] [to] support and source funding for [SAA’s] business rescue plan”. I attach a copy of the Department of Public Enterprises’ media statement dated 16 July 2020 as “FA3”.
- 13 To the best of my knowledge, the government is sourcing, or is planning to source, the necessary funds from the National Revenue Fund pursuant to an authorisation by the Minister of Finance under section 16 of the Public Finance Management Act 1 of 1999 (“the PFMA”).
- 14 Section 16 of the PFMA allows the Minister of Finance to authorise the use of funds from the National Revenue Fund in “emergency situations”. Its purpose is to provide stopgap funding for emergency or unforeseen expenditure that has not been provided for during the ordinary budgetary process.
- 15 Using section 16 of the PFMA to fund SAA in the present circumstances for the purposes of facilitating its business rescue is unlawful. The government’s funding obligations under SAA’s business rescue plan do not amount to “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.”

- 16 Despite requests (set out below), the Applicants do not yet know if the Minister of Finance has decided to authorise funding for SAA’s business rescue plan. The Department of Public Enterprises’ media statement implies that the Minister of Finance has done so (the statement notes that the Minister of Finance “signed” a “letter of support that commits government ‘to mobilise funding for the short, medium and long term requirements to create a viable and sustainable national airline’”).
- 17 This application proceeds on the assumption that the Minister of Finance has already decided to authorise the use of funds to fund SAA’s business rescue through section 16 of the PFMA. In part B, the Applicants seek to review and set aside that decision. In part A, Applicants seek, pending the final determination of part B:
- 17.1 an interim interdict to prevent the implementation of the Minister’s authorisation (and, in particular, the disbursement of funds to SAA or any other party pursuant to SAA’s business rescue plan); and
- 17.2 if such funds have already been disbursed to SAA, an interim interdict to prevent SAA and its business rescue practitioners from utilising, disbursing and/or transferring such funds.
- 18 SAA’s financial woes are well-known and a matter of public record. It has, in the past, been the recipient of several government bailouts and guarantees. For the past few years it has, for all intents and purposes, been entirely reliant on



government funding. According to media reports, the government has spent more than R16 billion on bailouts for SAA over the past decade. Some put the figure close to R57 billion since 1994. Testimony at the Zondo Commission has also unearthed allegations of mismanagement and maladministration. In this regard, I also refer to this Court's recent judgment declaring former SAA chairperson Dudu Myeni a delinquent director (the judgment is available at: <https://tinyurl.com/y7pka828>).

- 19 The government is SAA's sole shareholder and, in effect, controls the board of SAA. The government has repeatedly failed to exercise meaningful oversight over SAA's directors and its use of public funds. Ms Myeni is case in point of the government's failures. Regrettably, the government's abuse of section 16 of the PFMA is yet another example of its failure to ensure meaningful accountability and transparency regarding the use of public funds by state-owned entities directly and, in particular, SAA.
- 20 In December 2019, the board of SAA resolved to commence voluntary business rescue proceedings.
- 21 The business rescue plan was published on 16 June 2020. A month later, on 14 July 2020, a majority of SAA's creditors approved the plan under the relevant section of the Companies Act.
- 22 On 16 July 2020, the DA wrote an urgent letter, annexed marked Annexure **FA4** to the Minister of Finance requesting, amongst other things:



- 22.1 confirmation, by no later than 17:00 on Thursday, 16 July 2020, whether the Minister had authorised the use of funds from the National Revenue Fund for any purpose relating to SAA's business rescue plan in terms of section 16 of the PFMA and, if so, requesting that the Minister provide the DA with full details of the decision and all documents that served before the Minister when the decision was made;
- 22.2 confirmation, by no later than 17:00 on Thursday, 16 July 2020, whether any authorised funds have been disbursed to SAA or any other person for the aforesaid purpose and, if so, full details of such disbursements and any other planned disbursements;
- 22.3 if the Minister had not yet authorised the use of funds for the aforesaid purpose, a written undertaking by no later than 17:00 on Thursday, 16 July 2020 that the Minister would not do so pending an urgent application to be launched by the DA in due course; and
- 22.4 if the Minister had already authorised the use of funds for the aforesaid purpose, a written undertaking by no later than 17:00 on Thursday, 16 July 2020 that such funds will not be made available and disbursed to SAA or any other party pending an urgent application to be launched by the DA in due course.

The Minister of Finance failed to respond to the DA's reasonable requests by the stipulated deadline, necessitating the launching of this application.

A handwritten signature in black ink, appearing to be 'JMC', located in the bottom right corner of the page.

23 The failure on the part of the responsible decision-makers and heads of the relevant executive to be transparent and open in respect of the process and timing simply emphasises the lack of accountability and the use of section 16 of the PFMA for an unlawful and improper purpose. As detailed below, ordinary appropriation under the Constitution requires a money Bill to be tabled and debated in Parliament and, ultimately, enacted as an Act. This requires an open and democratic legislative process in accordance with the applicable constitutional and statutory process.

### **THE APPLICANTS MEET THE REQUIREMENTS FOR AN INTERIM INTERDICT**

#### The Applicants have a clear, alternatively prima facie, right to an interdict

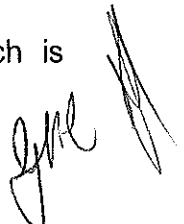
24 The use of section 16 of the PFMA is clearly unlawful, and the DA is entitled to interdictory relief on that basis alone. At very least, the DA is able to make out a prima facie right to interim relief.

25 Section 16(1) of the PFMA states:

“16 Use of funds in emergency situations

(1) The Minister [of Finance] 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.”

26 On the plain text of section 16(1), it is a mechanism for “emergency situations”. It allows the Minister of Finance to 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.”

27 Section 16 is an extraordinary deviation from the usual budget and appropriations process. It is, as its section title says, meant for true emergencies that simply cannot wait for the ordinary budgetary process (including the adjustment budgetary process, which itself gives the government some flexibility between financial years).

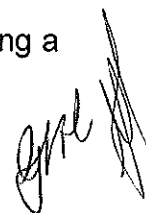
28 I am advised that given the constitutional imperatives of prudent and transparent management of public funds, section 16 must be interpreted narrowly. It must also be interpreted narrowly and used sparingly because it deprives the National Assembly of its obligation (and right) to scrutinise executive spending through the deliberative process of tabling and passing a budget. In this way, section 16 encroaches both on constitutional requirements relating to the management and spending of public funds, and also on the separation of powers.

29 None of section 16's strict requirements apply to the government's commitment to fund SAA.

29.1 There is no emergency. SAA's financial decline has taken place over several years, if not decades. It was placed in business rescue late last year. Nothing about SAA's decade-long decline or its current status in business rescue justifies an extraordinary short-circuiting of the usual appropriations process.



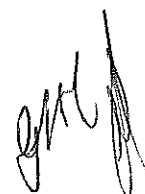
- 29.2 There is nothing exceptional about the proposed expenditure. SAA is a state-owned entity like any other. It is subject to the same constitutional and statutory obligations as any other state-owned, PFMA-listed entity. Nor is there anything exceptional in a state-owned entity being in financial distress or even in business rescue.
- 29.3 I am advised that SAA's funding needs could have been catered for during the ordinary appropriations process, where it would have been subject to the usual parliamentary scrutiny and oversight. In this regard, I note that SAA was already in business rescue before the 2020 main budget was finalised (and before the corresponding Appropriation Act was enacted). In addition, SAA's business rescue plan was published about two weeks before the Minister of Finance presented his supplementary budget on 24 June 2020. As far as I am aware, the corresponding Adjustments Appropriation Act for the supplementary budget has not yet been enacted. The government is SAA's sole shareholder, a substantial creditor, and in control of SAA's board. It must have known that business rescue would require government funding. It should not be allowed to shore up a case for emergency appropriations when it had ample opportunity to earmark funding during the ordinary appropriation process.
- 29.4 Postponing the funding of SAA will not seriously prejudice the public interest. The public interest favours accountability and transparency. Using emergency measures like section 16 of the PFMA is anathema to those constitutional values, which should be the guiding lights for the management of public funds. Even if there is some benefit to having a





national airline (which the Applicants deny), there is no pressing need to return SAA to business (if at all), especially not during the Covid-19 lockdown with its associated travel restrictions. There is also no reason why funds cannot be appropriated through the usual budgetary process (including, if necessary, the adjustment budgetary process or even a special appropriation).

- 30 Parliament's legal advisor seems to agree with this interpretation of section 16. I attach an opinion from a Senior Parliamentary Advisor from October 2017 on this issue as "**FA5**".
- 31 It follows that the Minister of Finance's decision to authorise the use of funds under section 16 of the PFMA is ultra vires and unlawful.
- 32 The Applicants have a right to review the Minister's decision, which will be done in part B. This right requires interim protection because the relief sought in part B is likely to become moot if funds are disbursed to SAA (or to any other party pursuant to the business rescue plans). Even if the Applicants succeed in the review, once funds are disbursed, it is unlikely that we will obtain effective relief. This will irreparably harm the public purse and the rule of law.
- 33 If, properly interpreted and despite the constitutional requirements that apply to the management and use of public funds, section 16 does permit the use of funds in this way and under these circumstances, then section 16 is unconstitutional. It is unconstitutional because it fails to provide sufficient oversight over government appropriations and impermissibly undermines the separation of powers by bypassing constitutional safeguards and the National



Assembly's role in appropriations. In that event, the DA will seek an appropriate declaration of invalidity in part B.

- 34 Finally, there is a possibility that funds from the National Revenue Fund have already been disbursed to SAA. SAA and its business rescue practitioners should be interdicted from utilising and further disbursing these funds pending the final determination of part B. In this regard, as a state-owned and PFMA-listed entity, SAA is under special constitutional and statutory duties to manage public funds in a lawful manner.
- 35 For these reasons, the Applicants have a clear, alternatively prima facie, right to an interdict.

#### The balance of convenience favours interim relief

- 36 According to the Department of Public Enterprises' media statement, the government will fund SAA's business rescue to the tune of R10.1 billion. It is a price tag our country can ill afford.
- 37 The Applicants deny there is any intrinsic value to having a national airline. But even the government will agree that R10.1 billion should not be spent on a whim. Nor should it be spent while questions about the lawfulness of its appropriation linger.
- 38 If the Applicants ultimately succeed in its review but the unlawfully appropriated funds have already been spent, then the country and the public purse will be irreparably harmed. In short, there will be no way to make right what the government did wrong, and no way to recoup the funds for the public fiscus. There would also be irreparable harm to the rule of law and the separation of



powers. A constitutional wrong would go without remedy, and the National Assembly would be robbed of its constitutional role when it comes to the tabling and passing of budgets and the scrutiny of executive spending.

39 Weighed against that, interim relief causes no irreparable harm to the government or to SAA. If the government's funding does not come through, the business rescue plan will not be implemented. There is nothing irreparable about that. The possibility is already built into the plan. Paragraph 42.2 of the plan states that if the plan's funding conditions are not fulfilled by 15 July 2020, the plan will be "deemed unimplementable and a meeting of Creditor will be convened on 17 July 2020 for Creditors to consider amended [the plan]". The usual rules of business rescue proceedings under the Companies Act will also kick in. Nothing would stop the government from convincing SAA's creditors to give the government the space and time to follow the ordinary appropriations process.

40 I am advised that harm to the separation of powers is also relevant to the balance of convenience. Section 16 short-circuits the usual appropriations process, leaving no room for the National Assembly's role in the tabling and approval of the budget and the scrutiny of executive spending. At best, section 16 gives the National Assembly an after-thought report. This far-reaching harm to one of the National Assembly's most important oversight functions should call for pause.

41 For these reasons, the balance of convenience favours interim relief.

A handwritten signature in black ink, appearing to be 'JML', located in the bottom right corner of the page.

Irreparable harm to the Applicants to the citizens of South Africa, to the public purse, and to the separation of powers

42 Without interim relief, success in part B may be hollow. Once funds are disbursed to SAA (or to any other party pursuant to the business rescue plan), it would be difficult, if not impossible, to secure their return to the National Revenue Fund. In short, there may well be no practical and effective remedy for the Minister of Finance's unlawful conduct.

The Applicants have no alternative remedy

43 For similar reasons, an interim interdict is the only way to secure adequate redress for the unlawful use of section 16 of the PFMA.

#### **THE MINISTER OF FINANCE'S DECISION TO AUTHORISE FUNDING THROUGH SECTION 16 OF THE PFMA IS UNLAWFUL AND IRRATIONAL**

44 The Minister of Finance's decision to authorise funding through section 16 of the PFMA is ultra vires, unlawful, and irrational. This decision is the subject of the review in part B. I am advised the Minister's decision is reviewable under the principle of legality, and is unlawful for the reasons already outlined in this affidavit. The Applicants reserve their right to supplement their grounds of review against this decision after receipt of the Rule 53 record.

#### **URGENCY**

45 The Applicants are not able to obtain substantial redress in a hearing in the ordinary course. Given SAA's precarious position, it is reasonable to believe that funds will be disbursed imminently. It is thus likely that the unlawfully



appropriated funds would be fully dispersed by the time this application comes back to court in the ordinary course.

- 46 There can be no question of self-created urgency. The DA has repeatedly asked for relevant information, as set out above, but relevant government officials have declined even the courtesy of a response. SAA's business rescue plan was published in mid-June 2020. There was no indication then that the government planned to use section 16 of the PFMA as a way to secure funding for SAA. The plan was then only approved on 14 July 2020, and the Minister of Finance seems to have decided to grant authorisation under section 16 of the PFMA late the next day, on 15 July 2020.
- 47 Confirmation of this came only on 16 July 2020 in the Department of Public Enterprises' media statement. The statement says, amongst other things, that the government has committed to "mobilis[ing] funding for the short, medium and long term requirements" of SAA. This implies disbursement is imminent.
- 48 The Applicants tried to avoid the need for an urgent application by requesting reasonable undertakings from the government in its letter dated 16 July 2020. The government did not respond. It was not possible to prepare this Application before the 12:00 deadline as required by the Practice Directives of the Honourable Court. The Applicants will distribute signed but unissued copy of this Application during the evening of 16 July 2020.
- 49 The looming threat of funds being disbursed—and the irreparable harm that would cause—means the Applicants have no choice but to set this application down for hearing on highly truncated timelines. These are reasonable in the circumstances. Nonetheless, it remains open to the government to give the DA



the undertakings sought in its letter dated 16 July 2020. If so, the DA may be willing to consider agreeing to a different timetable for the hearing of this application.

50 Finally, I note that the Applicants are not able to comply with this Court's usual rule that all affidavits be filed by the Thursday before a Tuesday hearing. Given the time frames outline above, this was not possible. Due to the urgency of the relief sought, condonation is in the interests of justice.

## CONCLUSION


51 The Applicants ask for the relief in part A of the notice of motion. Costs should follow.

52 If unsuccessful, the Applicants would be entitled to *Biowatch* protection from an adverse costs order. The DA and I both litigate in the public interest and in good faith vindication of the constitutional values of accountability, transparency, and the prudent management of public funds.



**GEORDIN HILL-LEWIS**

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at Bothasig on this the 16<sup>th</sup> day of July 2020, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

HENDRIK TALJAARD  
04540913 W/O  
**COMMISSIONER OF OATHS**

SAA RESTRUCTURE	
1	Government Consents and Exemptions
2	Government Funding
3	Management process and procedures must be implemented to effectively and efficiently manage SAA Restructured.
4	Employees reduced and terms and conditions of employment changed and consented to by Trade Unions by way of collective agreements concluded with all of the Trade Unions, or those Trade Unions representing the majority of the Company's employees.
5	Flying Operations optimised – Route Closures and Fleet Optimisation
6	Contracts concluded by the Company must be assessed to ascertain whether such contracts are material to the conduct of the Restructured Business. The material contracts must be on terms which are viable for SAA Restructured; and in compliance with the statutorily prescribed procurement processes. The remaining contracts will be cancelled, either by way of agreement or by way of application in terms of section 136 of the Companies Act.
7	Investment in an Optimised IT infrastructure

- 26.5. The Lenders will be paid out of the Government appropriation detailed in paragraph 30.3.
- 26.6. The General Concurrent Creditors will be paid out of the Concurrent Allocation detailed in paragraph 31.2.
- 26.7. The Restructure Proceeds will vest in and be dealt with by the Receivers in accordance with paragraph 36.4.

## 27. ONGOING ROLE OF THE COMPANY

As required in terms of section 150 (2) (b) (iii) of the Companies Act, if the Proposed Restructure is implemented, the restructured Company will continue operating as SAA.

## 28. GOVERNMENT APPROPRIATION AND FUNDING

- 28.1. Government, as the sole shareholder of the Company and acting through DPE, supports a Business Rescue which results in a viable and sustainable national flag carrier that provides international, regional and domestic services.
- 28.2. The Proposed Restructure seeks to achieve, *inter alia*, the aforesaid result.
- 28.3. Consequently, and subject to the adoption of this Business Rescue Plan, it is proposed that Government fund or raise funding for :
- 28.3.1. the Proposed Restructure starting with a working capital injection that is needed to restart the airline post the COVID-19 related travel bans and the ramp up of operations as the activity increases due to further relaxation of all the other travel bans including opening the borders. We estimate that the initial working capital injection needed would not be less than R2.8 billion (two billion and eight hundred million Rand). This amount would cover the following costs:

- 28.3.1.1. Post commencement creditors of approximately R800 million (eight hundred million Rand); and
- 28.3.1.2. Restarting costs of approximately R2 billion (two billion Rand). The working capital requirements would be constantly monitored based on the operational requirements. Details about the phased restart are contained in paragraph 29;
- 28.3.2. The Employees have been consulting in the Leadership Consultative forum that has been convened by the DPE. It is anticipated that a voluntary severance agreement will be concluded as a result of these consultations, it is anticipated that 1000 jobs will be retained, these Employees will be retained under new terms and conditions of employment. The above process will either be achieved by mutual agreement or through a S189 process. Based on the anticipated number of employees to be retrenched it is estimated that cost of the severance package will be in the amount of R2.2 billion (two billion and two hundred million Rand). This amount would be payable a month after the conclusion of such agreements or the conclusion of the S189 process;
- 28.3.3. R16.4 billion (sixteen billion and four hundred million Rand) towards payment of the Lenders, more fully dealt with in paragraph 30.3;
- 28.3.4. the unflown ticket liability in the amount of approximately R3 billion (three billion Rand);
- 28.3.5. General Concurrent Creditors Dividend in the amount of approximately R600 million (six hundred million Rand);
- 28.3.6. The Lessors in the amount of approximately R1.7 billion (one billion and seven hundred million Rand) (this amount is the equivalent of 6 months rental payments less any letters of credit and/or cash deposits held by the Lessors); and
- 28.3.7. to support the business during the post ramp up period until it is profitable and self-sustaining, this quantum is set out in Annexure C of the Business Rescue Plan.

## 29. RESTART OF DOMESTIC TRAVEL

- 29.1. The restart initiatives of the airline will commence under level 3 of the COVID-19 lockdown restrictions with domestic travel in June 2020 and international travel anticipated to restart under level 1. The domestic operations of the airline will consequently restart with the opening of all economic activity in the country.



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PART C – ASSUMPTIONS AND CONDITIONS

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42. **CONDITIONS FOR THE BUSINESS RESCUE PLAN TO COME INTO OPERATION AND BE FULLY IMPLEMENTED**

42.1. As required in terms of section 150 (2) (c) (i) (aa) of the Companies Act, the Business Rescue Plan will come into operation upon the conditions listed below having been fulfilled:

42.1.1. The approval and adoption of the Business Rescue Plan in terms of section 152 of the Companies Act;

42.1.2. Approval of the Minister of Public Enterprises and the Minister of Finance (to the extent necessary), as executive authority for SAA, for the implementation of those aspects of the Business Rescue Plan which involve transactions requiring such approval in terms of section 54(2) of the PFMA, read with the Significance and Materiality Framework for SAA;

42.1.3. Approval of the Minister of Public Enterprises, as representative shareholder of SAA, for the implementation of those aspects of the Business Rescue Plan which involve transactions requiring such approval in terms of the Mol;

42.1.4. An agreement is reached with the employees, their respective Trade Unions and SAA on the reduction of headcount and revised terms and conditions as set out in paragraph 33;

42.1.5. Confirmation of Government's support and commitment to providing the requisite funding for the various commitments stipulated in paragraph 28 the Business Rescue Plan. This is to be evidenced by way of a letter of support from the Department of Public Enterprises with the concurrence of the Department of National Treasury. Such letter is to be received on or before 15 July 2020; and

42.1.6. The Government has provided confirmation satisfactory to the DBSA, PCF Bank Lenders and the Pre-commencement Lenders that the Guarantees issued to them in respect of the Pre-commencement Claims and the PCF provided by them to the Company (collectively, the **Lender Claims**) shall continue in full force and effect until the Lender Claims are discharged in full as contemplated in this Business Rescue Plan.

42.2. Should the conditions set out in paragraph 42.1 not be fulfilled by 15 July 2020, the Business Rescue Plan will be deemed unimplementable and a meeting of Creditors will be convened on 17 July 2020 for Creditors to consider amending the Business Rescue Plan, failing which

for the BRPs to discharge the Business Rescue. Such meeting will be convened in terms of section 151 of the Companies Act.

42.3. Prior to the meeting contemplated in paragraph 42.2 the BRPs will publish a report on the conditions fulfilled, if any, and the status of the conditions not yet fulfilled.

42.4. As required in terms of section 150 (2) (c) (i) (bb) of the Companies Act, Substantial Implementation will be deemed to have occurred upon fulfilment of the conditions as set out in paragraph 42.1 above.

#### 43. **EFFECT OF THE BUSINESS RESCUE PLAN ON EMPLOYEES**

As required in terms of section 150 (2) (c) (ii) of the Companies Act, the effect of the Business Rescue Plan on Employees is set out in paragraph 33.

#### 44. **CIRCUMSTANCES IN WHICH THE BUSINESS RESCUE WILL END AND THE DURATION OF BUSINESS RESCUE**

44.1. As required in terms of section 150 (2) (c) (iii) of the Companies Act, the Business Rescue Plan will end upon the occurrence of one of the events listed in paragraph 44.2.1.

44.2. In terms of section 132 (2) of the Companies Act, the Business Rescue will end when –

44.2.1. the Business Rescue Plan is:

44.2.1.1. proposed and rejected and the BRPs and Affected Person/s do not take any action to extend the Business Rescue in any manner contemplated by the Companies Act; or

44.2.1.2. adopted and implemented (with the conditions fulfilled) and the BRPs have filed a notice of substantial implementation of the Business Rescue Plan with the CIPC (i.e. on the Substantial Implementation Date); or

44.2.2. a High Court orders the conversion of the Business Rescue into liquidation proceedings; or

44.2.3. the BRPs file with the CIPC a notice of termination of the Business Rescue.



FA3



**public enterprises**

Department:  
Public Enterprises  
REPUBLIC OF SOUTH AFRICA

## **MEDIA STATEMENT**

### **DPE WELCOMES COMMITMENT TO SOURCE FUNDING AND SUPPORT NEW SAA**

**PRETORIA 16 July 2020** - The Department of Public Enterprises (DPE) welcomes the commitment by National Treasury that the government will support and source funding for a business rescue plan for South African Airways (SAA), which will result in the emergence of a new viable, sustainable, competitive national airline.

In terms of the business rescue plan that was published by the Business Rescue Practitioners (BRPs) for SAA, government, as the sole shareholder of SAA, is required to provide a letter of support for funding the plan *"where it results in a viable and sustainable national flag carrier that provides international, regional and domestic services"*.

A letter of support that commits the government *"to mobilise funding for the short, medium and long term requirements to create a viable and sustainable national airline"* was signed by the Ministers of Finance and Public Enterprises on 15 July 2020 and provided to the BRPs.

The funding commitment gives effect to Cabinet's endorsement of a business rescue plan for SAA and Cabinet's position that *"it supports the proposal for a new airline and the concerted effort to mobilise funding from various sources, including from potential equity partners for the uptake of the new airline."*

Cabinet also said it *"maintains that a positive vote from creditors to finalise the business rescue process is still the most viable and expeditious option, for the national carrier to restructure its affairs, which include its business, its debt and other liabilities and... believes a restructured airline will pursue the transformational agenda such as the lack of opportunities for the advancement of black pilots after 26 years into our democracy."*

In the rescue plan, it is projected that an amount of R10.1 billion will be required to fund the rescue plan, clean up and stabilise the balance sheet of SAA, restructure the rest of the Group entities that are not in business rescue, provide working capital for the rest of the group's entities, and to create a stable and viable platform for a new restructured national airline. Different tranches of money will be required as different aspects of the restructuring takes effect.

A handwritten signature in black ink, appearing to be 'G. M. M.' or similar, located in the bottom right corner of the page.

The restructuring will include severance packages to about 2 700 SAA employees who will be retrenched, which packages meet the minimum requirements of the Labour Relations Act, and the provides incentives to those employees at the lower rung of the remuneration scale to ensure that they are not worse off.

The DPE is cognisant that airlines across the world are in turmoil due to the COVID-19 pandemic. There are possibilities for airline partnerships to improve the scale and scope of the aviation industry and ensure continuity of value creation to the South African economy.

While maintaining a certain level of presence in the ownership of the new carrier, the DPE welcomes the attraction of a mix of local and international investor groups to provide the new airline with technical, financial, and operational expertise to ensure significant South African ownership whilst diversifying the investor base.

**For Media Inquiries: Sam Mkokeli 0820842051**

**Issued by: The Department of Public Enterprises  
16 July 2020**

A handwritten signature in black ink, appearing to be 'S.M.', located in the bottom right corner of the page.

FA4



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Our Ref: DEM16/0732/E Jonker/ks | Your Ref: | Date: 16 July 2020

**THE MINISTER OF FINANCE**  
**MR TITO MBOWENI**  
**PER EMAIL: [Mary.Marumo@treasury.gov.za](mailto:Mary.Marumo@treasury.gov.za)**

**URGENT**

Dear Minister Mboweni,

**APPROPRIATION OF FUNDS TO SAA IN TERMS OF SECTION 16 OF THE PUBLIC FINANCE MANAGEMENT ACT**

1. We act on behalf of the Democratic Alliance.
2. Our client has been made aware that the government plans to issue a letter of commitment to South African Airways' business rescue practitioners, and/or to the Department of Public Enterprises, committing to the provision of public monies to fund SAA in line with its business rescue plan; and that this commitment may be based on the planned use of section 16 of the Public Finance Management Act 1 of 1999 ("the PFMA") to disburse these funds.
3. Using section 16 of the PFMA for this purpose is unlawful, and any letter of commitment based on this section would also be unlawful. Section 16 is a mechanism for "emergency situations". It allows the Minister of Finance to 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."
4. None of section 16's requirements apply to the government's commitment to fund SAA.
  - 4.1. There is no emergency. SAA's financial decline has taken place over several years. It was placed in business rescue late last year. Nothing about SAA's decade-long decline or its current status in business rescue justifies this extraordinary short-circuiting of the usual appropriations process.

---

Minde Schapiro & Smith Incorporated | Attorneys Notaries & Conveyancers since 1926 | Registration number 2010/025182/21

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MINDE SCHAPIRO & SMITH

- 4.2. There is nothing exceptional about the proposed expenditure. SAA is a state-owned entity like any other. It is subject to the same constitutional and statutory obligations as any other state-owned, PFMA-listed entity. Nor is there anything exceptional in a state-owned entity being in financial distress or even in business rescue. SAA's funding needs could have been catered for during the ordinary appropriations process, where it would have been subject to the usual parliamentary scrutiny and oversight.
- 4.3. Postponing the funding of SAA will not seriously prejudice the public interest. The public interest favours accountability and transparency. Using emergency measures like section 16 of the PFMA is anathema to those constitutional values, which should be the guiding lights for the management of public funds. Even if there is some benefit to having a national airline (which our client does not accept), there is no pressing need to return SAA to business, especially not during the Covid-19 lockdown and associated travel restrictions. There is also no reason why funds cannot be appropriate through the usual budgetary process (including the adjustment budgetary process). In this regard, our client points out that SAA's business rescue plan was published on 16 June 2020. A supplementary budget was delivered on 24 June 2020. Funds could have been appropriated for SAA during that process.
5. For these reasons, and for the further reasons outlined in the opinion of Senior Parliamentary Legal Advisor Adv F S Jenkins dated 16 October 2017, the use of section 16 of the PFMA to fund SAA's business rescue would be unlawful.
6. If you intend to proceed to authorise funding under section 16 of the PFMA, our client will have no choice but to approach the High Court for urgent interdictory relief pending a review of your decision.
7. To that end, we accordingly request:
  - 7.1. confirmation, by no later than **17:00 on Thursday, 16 July 2020**, whether you have authorised the use of funds from the National Revenue Fund for any purpose relating to SAA's business rescue plan in terms of section 16 of the PFMA and, if so, we request that you provide us with full details of your decision and all documents that served before you when you made your decision;

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- 7.2. confirmation, by no later than **17:00 on Thursday, 16 July 2020**, whether any authorised funds have been disbursed to SAA or any other person for the aforesaid purpose and, if so, that you provide full details of such disbursements and any other planned disbursements;
  - 7.3. if you have not yet authorised the use of funds for the aforesaid purpose, that you provide our client with a written undertaking by no later than **17:00 on Thursday, 16 July 2020** that you will not do so pending an urgent application to be launched by our client in due course; and
  - 7.4. if you have already authorised the use of funds for the aforesaid purpose, that you provide our client with a written undertaking by no later than **17:00 on Thursday, 16 July 2020** that such funds will not be made available and disbursed to SAA or any other party pending an urgent application to be launched by our client in due course.
8. Please also indicate whether, in light of the urgency of the contemplated litigation, your office will accept service of court processes by email (and indicate an email address for that purpose).
  9. Finally, we note that our client addresses this letter to you, and will approach a court for necessary relief, in its own interest as the official opposition in Parliament, on behalf of its members, and in the public interest.

Yours faithfully

**MINDE SCHAPIRO & SMITH INC.**

Per

*(Electronically sent, therefore unsigned)*

CC: THE MINISTER OF PUBLIC ENTERPRISES  
PER EMAIL: [busi.sokhulu@dpe.gov.za](mailto:busi.sokhulu@dpe.gov.za)

CC: THE BUSINESS RESCUE PRACTITIONERS OF SAA  
PER EMAIL: [lmatuson@matusonassociates.co.za](mailto:lmatuson@matusonassociates.co.za)

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Val registration number: 4580257428 | \*At Greenacres, Port Elizabeth

## Elzanne Jonker

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**From:** Elzanne Jonker  
**Sent:** Thursday, 16 July 2020 09:30  
**To:** Mary.Marumo@treasury.gov.za  
**Cc:** busi.sokhulu@dpe.gov.za; Imatuson@matusonassociates.co.za  
**Subject:** Funding to SAA  
**Attachments:** Letter to Minister of Finance.pdf

Dear Minister Mboweni

We attach hereto an urgent letter for your attention.

Kindly acknowledge receipt.

Yours faithfully





FA5



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

**LEGAL SERVICES**

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**TO:** Chairperson, Standing Committee on Finance [Mr Y Carrim, MP]

**FROM:** Constitutional and Legal Services Office

**DATE:** 16 October 2017

**SUBJECT:** Advice on the use of section 16 of the PFMA to capitalise SAA

**Purpose**

1. To advise the Standing Committee on Finance (SCoF) on the legality of using section 16 of the Public Finance Management Act 1 of 1999 (PFMA) to capitalise South African Airways (SAA).

**Background**

2. A letter dated 28 September 2017 from the Minister of Finance (the Minister) to the Speaker to the National Assembly (NA) advised that the Minister authorised the use of funds from the National Revenue Fund (NRF) in terms of section 16 of the PFMA. The notice indicated that the funds were to defray expenditure in respect of SAA's debt obligation of R1,761 billion to Citybank and to provide for immediate working capital requirements of R1.2 billion.
3. Attached to the letter is a report to Parliament that deals in detail with the requirements provided for in section 16.
4. On 12 October 2017 the Minister submitted the Report to Parliament authorising the settling of SAA debt obligation to Citibank Bank and to provide for immediate working capital requirements of R1,2 billion, tabled in terms of section 16(5) of the PFMA.

5. On 13 October 2017 the Report was referred to the Standing Committee on Appropriations for consideration. In other words, the Standing Committee on Appropriations is not required to report to the NA on it.
6. A similar report from the Minister was tabled in Parliament on 20 July 2017 and referred to the Standing Committee on Appropriations on 27 July. I am not aware of any findings that that Committee made in respect of the compliance with section 16.

## Section 16

7. Section 16 of the PFMA provides as follows:

**16. Use of funds in emergency situations.—(1) 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.**

*(2) The combined amount of any authorisations in terms of subsection (1), may not exceed two per cent of the total amount appropriated in the annual national budget for the current financial year.*

*(3) An amount authorised in terms of subsection (1) is a direct charge against the National Revenue Fund.*

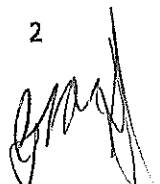
*(4) An amount authorised in terms of subsection (1) must—*

*(a) be reported to Parliament and the Auditor-General within 14 days, or if the funds are authorised for the deployment of the security services, within a period determined by the President; and*

*(b) be attributed to a vote.*

*(5) A report to Parliament in terms of subsection (4) (a) must be submitted to the National Assembly for tabling in the Assembly and made public.*

*(6) Expenditure in terms of subsection (1) must be included either in the next adjustments budget for the financial year in which the expenditure is authorised or in other appropriation legislation tabled in the National Assembly within 120 days of the Minister authorising the expenditure, whichever is the sooner.*



8. The legality of the use of funds in terms of section 16 should be evaluated against this provision.

### **Analysis**

9. In light of the requirements of subsection (1), the Report indicates that the funds are meant 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. I return to this issue below.
10. Compliance with subsection (2) requires that the total combined amount of authorisations in the financial year may not exceed two per cent of the total amount appropriated in the annual national budget for this financial year. This is an issue that should be determined at the end of the financial year. Only then will the combined amount of authorisations in terms of section 16 be certain.
11. From the notice the amount appears as a direct charge against the NRF, in compliance with subsection (3).
12. It is further clear, with reference to subsection (4) that the Minister submitted the Report within 14 days and the Report indicates that the funds will be allocated to Vote 7: National Treasury.
13. The Report was submitted to the NA and should be made public, in terms of subsection (5).
14. The intention, according to the Report, and the requirement, in terms of section 16, is to include this allocation in the adjustments appropriation Bill to be tabled in October 2017. This will be sooner than the 120 days allowed in terms of subsection (6).

### **Nature of the allocation**

15. Subsection (1) of section 16 requires a three stage analysis:
- (a) The funds allocated by the Minister must not be provided for in the current budget.
  - (b) The allocation cannot, without serious prejudice to the public interest, be postponed to a future parliamentary appropriation of funds.

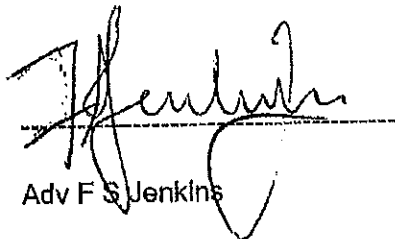
(c) The funds are "to defray expenditure of an exceptional nature".

16. Logically, the allocated funds are not presently budgeted for.
17. The crisp issue is therefore whether the funds allocated to SAA cannot, without serious prejudice to the public interest, be postponed to a future parliamentary appropriation of funds; and whether the funds are to defray expenditure of an exceptional nature.
18. In my view, the Report provides a strong argument that the allocation could not wait for a future appropriation. Central to this was the partial success in renegotiating the debt obligations of SAA to a future maturity date. The risks of defaulting on those maturity dates that could not be rolled over is set out in the Report [at para 4.7].
19. The remaining question is whether the settlement of debt and provision for immediate working capital requirements constitute "expenditure of an exceptional nature"?
20. The ordinary meaning of "exceptional" is "unusual" or "not typical" (Concise Oxford Dictionary). However, the words must be read in context and having regard to the purpose of the provision [*Natal Joint Municipal Pension Fund v Endumeni Municipality* (920/2010) [2012] ZASCA 13].
21. The object of the PFMA is set out in section 2. It is to secure accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions to which the PFMA applies, which includes SAA and National Treasury.
22. The financial situation of SAA is highlighted in the Report [at para 4.2]. The shortfall was anticipated and the solution was projected to be the adjustments budget process. It appears that the strategy has been to manage the capitalisation of SAA in a manner suited to enable fruitful negotiations with creditors. Intervening events such as economic growth forecasts and credit rating changes necessitated an urgent response, according to the Report [at para 4.5]. However, these events speak to the fact that the allocation could not wait for a future appropriation by Parliament. The question remains whether this allocation was exceptional in nature – i.e. unusual or not typical in the context of budgeting for the entity's debt obligations and working capital requirements?
23. The exceptional nature of the debt obligation could possibly come from the fact that a minority of creditors refused to roll over the maturity date of the debt. In respect of the

working capital / liquidity, there is no evidence in the Report to ascertain whether the expenditure is exceptional.

## Conclusion

24. Reading section 16 with the object of the PFMA, it appears that section 16 is intended for use where good financial planning and management could not avert the need for unusual expenditure.
25. In my respectful view it appears that the expenditure was foreseeable and as such, not unusual or atypical. It would not have been the first time such expenditure had to be effected.
26. Notice must be taken of the requirement that the amount authorised in terms of section 16 must also be referred to the Auditor-General (AGSA) within 14 days (subsection(4)(a) of section 16). It would be for the AGSA to make a finding of whether the allocation is in compliance with section 16 of the PFMA.



Adv F S Jenkins

Senior Parliamentary Legal Adviser

