



15 July 2020

Mr Tito Mboweni MP  
Minister of Finance  
Republic of South Africa

Per email: [Mary.Marumo@treasury.gov.za](mailto:Mary.Marumo@treasury.gov.za)

**Dear Minister Mboweni,**

**Use of Section 16 of the PFMA to fund the “new SAA” will be illegal**

Every South African should be united in our stance against pouring public money into state owned companies with little or no public benefit. I have admired the way in which you have repeatedly made this point, in strong language, and have refused to extend further bailouts despite pressure from your party to do so – this is particularly true in the stance you have taken on South African Airways (SAA).

I write to you today to encourage you not to renege on your earlier commitments, and to refuse any additional funding requests for SAA. I also wish to make it clear that any attempt to invoke Section 16 of the Public Finance Management Act to fund SAA now very likely would be illegal. If Section 16 is used, please consider this letter fair notice that we will consider legal action to stop this transfer of funds.

Now is the time for you to draw a line in the sand and refuse to fund the “new” SAA. To cave to pressure now would be to cave to all future requests as well. Then those who see no problem with the waste of public money through bailouts will know that they have defeated you, and resistance to future bailouts will be futile. If this happens, I imagine you will have to seriously reconsider your position in the government.

As you know, Section 16 allows for spending of money that is unbudgeted in “emergency” situations which are “exceptional” and “unforeseen”. It is impossible to argue that those conditions apply to a bailout (again) for SAA, after it entered business rescue in December 2019, well before the 2020 budget. There was also the opportunity to include an additional allocation to SAA in the Emergency Adjustment Budget, by which time the business rescue process was far advanced.

SAA has required nearly R50 billion in bailouts and guarantees over the last decade. It is simply not plausible to argue that an additional bailout was unforeseeable.

In 2017, a legal opinion obtained by Parliament with regards to a R3 billion bailout that the then Finance Minister Malusi Gigaba had extended to SAA, found that the use of section 16 was likely illegal. Treasury is the custodian of the PFMA, and should conduct itself according to the letter and spirit of that Act.

We further hold the view that extending a multi-billion rand bailout to SAA, in light of South Africa’s precarious fiscal position, would be grossly irresponsible.

Our position on not extending further bailouts to SAA is in line with what you and Treasury officials have said in the past. In a presentation before the Standing Committee on Finance and the Select Committee on Finance earlier this month, Treasury recommended that SAA should be closed and that:

*“no further action required in terms of bailouts except settle guaranteed debt as entity is insolvent and BRPs have not released turnaround plans”*

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It is our strong belief that Treasury should bring finality to this issue and prevent any further abuse of taxpayers money to fund vanity projects, such as a new state airline. South Africa has urgent and pressing problems to attend to, from the hundreds of thousands of South African's who have lost their jobs due to the lockdown, and the many dire shortages and needs in our public healthcare system which is battling to respond to Covid-19.

Now is the time to make a stand and draw a line in the sand, by refusing to fund SAA. You will have our full support in doing so, and it is the right thing to do for South Africa.

Kind regards,



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