



**MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

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Honourable M Hlengwa

Chairperson: Standing Committee on Public Accounts
P O Box 15
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Dear Hon Hlengwa

DISPOSAL OF SAA'S 51% SHARES TO A STRATEGIC EQUITY PARTNER

Your letter dated 24 March 2022, bears reference.

I note your request for clarification on the material facts and process followed by Government in the selection of the Strategic Equity Partner (SEP), including the conceptualization, negotiation and the finalization of the terms and conditions related to the transaction.

1. Government's Objectives regarding SAA

Government's objectives for SAA has always been to:

- i. Create a viable, agile and sustainable airline through a restructuring process,
- ii. Ensure that the restructured airline does not depend on the fiscus,
- iii. Build a model public private partnership,
- iv. Be a catalyst for growth showcasing skills, talent and diversity of all South Africans, and
- v. Create a foundation for the listing of SAA.

In order to achieve the set objectives, Government directed on 30 October 2019, that the Department of Public Enterprises (DPE) generate options for the repositioning of SAA, as Government was no longer in a position to fund operational losses at the airline. Some of the options that were considered by Government were restructuring, business rescue or liquidation.

On 3 December 2019, Government approved that SAA be repositioned and restructured with the introduction of a Strategic Equity Partner (SEP). This restructuring would have been undertaken by the Board of SAA.

2. Business Rescue Process

The restructuring option that Government had chosen required the banks to provide funding support with Government Guarantees. The banks refused to provide any further funding unless SAA is placed under Business Rescue (BR). Under business rescue, the airline could be fundamentally restructured into a viable entity.

On 5 December 2019, the Board of SAA decided to place the airline under BR and filed with the CIPC. A Business Rescue Practitioner was then appointed.

The objective of business rescue as set out in section 128(1)(b)(iii) of the Companies Act, 2008, is to develop and implement a rescue plan that restructures the affairs, business, property, debt and other liabilities of a company, in a manner that maximises the likelihood of the company continuing in existence on a solvent basis.

On 13 December 2019, the following was announced after the full Cabinet meeting:

- 1. "The SAA was this past week placed under Business Rescue. Cabinet is confident that this intervention will assist in repositioning the national airline into a stronger, competitive entity that with time will gain confidence of all South Africans and attract equity partners.*
- 2. Cabinet has welcomed the appointment of the Business Rescue Practitioner Mr Les Matuson from the Matuson Associates. He will work with the Black Partners that will be announced in due course.*
- 3. The SAA will receive an additional R2 billion in financial assistance from government to contribute towards the radical restructuring of the airline. Also, the existing SAA lenders will provide an additional R2 billion.*
- 4. Cabinet is confident that this intervention will restore the reputation of the airline and prevent the collapse which would have had a negative impact on passengers, suppliers and other partners in the aviation sector and importantly, the workforce.*
- 5. Minister Gordhan will report progress regarding this Business Rescue intervention to Cabinet on a regular basis."*

3. Post Commencement Finance

For a business rescue process to succeed a Post Commencement Finance (PCF) is required. Government provided R 5,5 billion of PCF for the business rescue process. These funds were to enable the operations of the airline during the restructuring process.

4. Covid Pandemic

In March 2020, the Covid pandemic had a major impact across the world and South Africa. The aviation industry was seriously affected and the BRPs decided to place SAA in “Care and Maintenance”. Nonetheless, several flights were undertaken to repatriate South Africans from certain parts of the world.

5. Business Rescue Plan

The Business Rescue Practitioners published the Business Rescue Plan (“Rescue Plan”) for SAA on 16 June 2020 and it was adopted by the Creditors on 14 July 2020.

6. Implementation of the BR Plan (Financial Obligations)

The financial obligations arising from the vote in favour of the Rescue Plan was R 14bn categorized as follows: SAA – R11.3bn and Subsidiaries – R2.7bn.

- i. **Payment of Creditors (R3.1bn):** The Pre-BR (R2.3bn) would be paid in three equal annual instalments starting in August 2021. These are monies owed to creditors before business rescue. The Post-BR creditors (R0.8bn) would be paid immediately. These are the creditors who are owed monies for services rendered during the business rescue process.
- ii. **SAA Employees (R2.8bn):** Central to the restructuring process is the decrease in the number of employees. This meant that the number of employees was reduced from 4800 to approximately 860 employees. The retrenchments and voluntary severance packages including the payment of arrear salaries was estimated at R2.8 bn. It is expected that as the airline once again expands, more employees will be brought on board.
- iii. **Interim flying (post business rescue) (R2.0bn):** Operational costs to restart the airline from hibernation and cover costs until an SEP is appointed.
- iv. **Subsidiaries (R2.7bn):** Even though the subsidiaries were not placed in BR with SAA, the BRPs advised that for SAA to succeed, these entities would also need to be restructured. Air Chefs and SAA Technical were restructured outside of BR. Mango is undergoing restructuring through a separate BR process.
- v. **Unflown tickets (R3.4bn):** The customers who have unused tickets are creditors of the airline. They would have a legitimate claim against the airline. Further, there is an IATA obligation for this amount to be provisioned for as part of its Billing and Settlement Plan, which facilitates payments and receipts within the aviation system across the world.

Currently every effort is being made by both Government and SAA to realise savings to reduce the funding required from the fiscus.

7. Expressions of Interest

On 3 December 2019, Government approved that the SAA be repositioned and restructured with the introduction of a SEP. The responsibility for the implementation of this decision was placed on the Shareholder Department.

It is important to clarify at the outset that the disposal of shares transaction is not a procurement process as envisaged in section 217 of the Constitution. Section 217 of the Constitution applies when an organ of state contracts for goods and services. The disposal of SAA shares is a merger and acquisition transaction. Notwithstanding the distinction between procurement and this type of transaction, the Department undertook a fair, equitable, transparent and competitive process. The overall objective was to obtain the best outcome for the airline and the country.

When SAA was placed under business rescue, the Department started receiving Expression of Interests (“EOI”) for the acquisition of SAA and/or parts thereof. In order to ensure an accountable, competitive and fair process, the Department appointed Rand Merchant Bank (RMB) as a transaction advisor. The appointment process was supported by National Treasury (NT). After the appointment of RMB, there were adequate opportunities for any interested parties to submit EOIs. Furthermore, RMB itself interacted with several major airlines/entities in order to establish whether there was an interest in taking a stake in SAA.

Government’s conditions for the sale of SAA were that: the airline must be restructured, SEP should be minority partner, there should be no funding from the fiscus and that the airline should be restructured.

RMB interacted with the SEPs and they indicated that they have the following requirements: full control of SAA, appointment of own management team, no political interference and that the SEP should be majority shareholder.

Toward the end of 2020 and beginning of 2021, it became clear that the pandemic had impacted the aviation industry very badly and that there was dearth of potential SEPs in the market. Government was not in a position to impose its initial conditions and had to accede to the requirements of potential SEPs.

RMB assessed and evaluated the EOI’s of potential SEPs. However, there were no suitable SEPs that could be identified as none of the potential SEPs had an offer that could be accepted by the Department, as these entities were not showing evidence of immediate funding to restart operations. At this stage, the mandate of RMB ended and the Shareholder Department took over the process.

A proposal by Harith General Partners, which had been engaged in the RMB process, and Global Aviation which later became the Takatso Consortium (“Takatso”) was

made to the Department. This offer satisfied the Department's requirements including the ability to provide the funding needed to restart operations. Takatso was then appointed as the preferred SEP. Takatso had the requisite combination of financial and operational capabilities required for the successful relaunch of SAA. Their composition would advance the transformation agenda. The preferred SEP was thereafter approved by Cabinet.

8. Terms and conditions of the Transaction

The Department entered into a Memorandum of Understanding with Takatso Consortium focusing on ownership, funding, operational capability, Board and management representation, Golden Share, pre-emptive rights, historical liabilities and subsidiaries.

Subsequently, the Department entered into a Sale of Shares Agreement which is subject to certain conditions precedent such as approval by the regulatory authorities and Government providing the balance of the R14 bn, i.e R3.5 billion, for SAA to complete the business rescue plan implementation.

The proposed transaction with Takatso has been structured in a manner that provides SAA with the greatest chance of success and allows for appropriate risk and reward sharing between the public and private partners of the new SAA on a continuing basis.

In terms of the proposed transaction, Takatso has undertaken to provide SAA with the future working capital necessary to finance its future operations in an amount of R3 billion. This funding will allow SAA to complete the repositioning of its operations and relaunch as a significant participant in the Southern African airline industry. Furthermore, this transaction meets the objectives set out by Government.

9. Consultations with the National Treasury

Internal Legal advice indicated that the transaction does not fall within the provisions of Section 54 of the PFMA as the Shareholder and not SAA is disposing the shares. However, the Department informed the NT of the transaction, seeking the Minister of Finance's concurrence. This was not because of a requirement of the PFMA but an attempt to keep the Minister of Finance informed of the transaction. As a result, the Minister of Public Enterprises wrote a letter to Minister of Finance on 27 August 2021, formally informing Minister of Finance of the transaction and requesting his concurrence. Although this was not an application in terms of Section 54 of the PFMA, as a courtesy the concurrence of the Minister of Finance was sought.

Intensive consultations on the matter of Section 54 took place between officials of DPE and NT.

However, the Minister of Finance indicated in the letter dated 4 February 2022 that *"Section 54(2) of the PFMA does not find application in this instance as it is the government, as the shareholder selling its stake in SAA. Section 54(2) of the PFMA only finds application where a public entity concludes any of the transactions mentioned under Section 54(2) of the PFMA. In other words, Section 54(2)(c) would apply in an event whereby SAA was seeking to dispose a significant shareholding in any of its subsidiaries or was seeking to acquire significant shareholding in another*

company. The disposal of a majority shareholding in SAA has already been approved by Cabinet and thus no approval, concurrence or noting is required from the Minister of Finance in terms of the PFMA.”

In the circumstances outlined above, we respectfully disagree with the sentiments in the NT’s letter to SCOPA wherein NT indicated that: *“It is important that the committee notes that [National Treasury] NT has played no role in the selection process of the preferred Strategic Equity Partner (SEP) including the conceptualisation, negotiation and the finalisation of the terms and conditions relating to the transaction.”*

In the letter to SCOPA, NT indicates that it was not involved in the selection process for the SEP. The letter from the Minister of Finance to the Minister of Public Enterprises referred to above clearly contradicts this view.

In any event, there have been numerous meetings pertaining to the SAA transaction which NT was part of. The transaction milestones were considered by Cabinet and the Inter-Ministerial Committee on SAA (IMC on SAA), which are forums the Minister of Finance is a member of.

10. Conclusion

In the event, it is the Department’s view that due process was followed in achieving the objectives set by Government and in the selection of the SEP for SAA. When completed, this transaction will be an imminent example of a partnership between the public and private sector in an important industry in South Africa. For years to come, the fiscus and South Africans will benefit from the dividends that will flow from the new SAA once it reaches full commercial viability. Government is unanimous in this regard.

Regards,



PJ GORDHAN, MP
MINISTER
DATE: 07-04-2022