



Part I - Text

"Minister Pravin Gordhan and Deputy Minister Mcebisi Jonas and Treasury Director General Lungisa Fuzilehis and timing of the trip. They will embark on a "international investor roadshow" to sell South Africa as an investment destination." They will spend two days in London (27 - 28 March), one day in Boston (29 March) and two days in New York (30-31 March). This is what they are really doing: Very prominent UK bankers and others have set up meetings with Banks and investment bankers in the UK and the USA to have official meetings to discuss the South Africa financial markets. They have also set up secret meetings to start what is called "Operation Check Mate". The bankers are going to be told that the Ministry of Finance and Treasury stand together against the President and the Corruption of the Gupta's. They will also be told that there is a movement to fire Minister Pravin Gordhan and Deputy Minister Mcebisi Jonas and Treasury Director General Lungisa Fuzilehis by the President. They will be given some proof



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RUBBISH INTELLIGENCE

This is what the report, supposedly raised by Jacob Zuma as one reason for firing Pravin Gordhan and Mcebisi Jonas in meetings with ANC leaders, actually said. The spelling and grammar is deliberately kept incorrect, as it was in the original message.

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The bankers are going to be told that the Ministry of Finance and Treasury stand together against the President and the Corruption of the Gupta's. They will also be told that there is a movement to fire Minister Pravin Gordhan and Deputy Minister Mcebisi Jonas and Treasury Director General Lungisa Fuzilehis by the President. They will be given some proof of what they are selling of the corruption by the Gupta's and how the investment banks need to stand to fight the President.

They will inform the banks that if they are fired the financial markets in South Africa will collapse and the rand will go to 18 to 20 to the dollar. They will also tell the banks that they have the support of the of many in ANC and other parties to force the President out. By having them all stand together they are attending to show unity so that the UK and USA banks will join in with the South African banks Against the President.

[Opening of Hearing // 12 September 2016]

Adv T Madonsela : ... we have heard that from one whistleblower and then I also heard it at a meeting that I happened to be sharing a platform with somebody, was who wasn't a witness, they were just talking about what happened. So he seemed to have known that this was coming from (*indistinct*). The Deputy Minister, as you know, has alleged that before Minister Nene was removed from office, he was offered the position at Saxonwold by one of the Gupta brothers who are in business with Mr Duduzane Zuma.

He also alleges that Mr Duduzane Zuma was part of that meeting that made an offer to him. In fact he is the person who invited him to this meeting and then took him over to that meeting. We tried to verify that within the broader allegation that the family, the Gupta Family, has captured the State, but that is a more crude way that they are putting it, but a more proper way is that they are just saying that the Gupta Family has a partnership with the Zuma Family, which allows it to have an unfair advantage in the State.

That unfair advantage manifests itself in influencing appointments of Ministers and members of Boards of State-owned enterprises. It also manifests itself in the Gupta Family having been given preference in State funding, State contracts and payments for contracts that have deviated from the (*indistinct*). That is basically then the broader allegation against the Gupta Family. Where we need your assistance is just to confirm the part about whether you ever spoke to the Deputy Minister after he allegedly got an offer to be

1 Minister of Finance, because he said he was given the offer around
2 October 2015?

3 **Mr I Naidoo** : 23rd of October 2015.

4 **Adv T Madonsela** : Yes, 23rd of October 2015 and we do know that the actual
5 appointment happened about 3 months later, the so-called 9/12.

6 **Minister Gordhan** : Okay, the answer is yes.

7 **Adv T Madonsela** : Okay, thank you, Minister. Did you speak at a meeting or was it a
8 telephone ... it doesn't really matter whether it was a telephone ...

9 **Minister Gordhan** : No, I met him. He came ... but it was after my reappointment here.
10 The first occasion might have been around that October time when
11 he was (*indistinct*), but didn't really get what was he was distraught
12 about. He was in grave distraught and then subsequently, probably
13 after my reappointment, he shared the details with me, which is
14 really much (*indistinct*) everything. Very much in line with what you
15 said, that he was approached by **Duduzane**.

16 I think **Fana Hlongwane** might have featured somewhere as
17 well, that he was invited into Saxonwold. One of the brothers then
18 spoke to him and said they would like to offer him the job. There
19 might have been (*indistinct*) a bag with money. In the process they
20 claimed that they have lots of influence. As I recall it, that they make
21 R6 billion a year, they want to increase it to 7 or R8 billion. That
22 **Lynne Brown** is paid a handsome monthly amount. I can't ... I don't
23 know whether the figure of about 600 000 features there and then
24 other names were mentioned in that process as well, clearly showing
25 off "all of the influences we have and can actually obtain. You say

1 yes, we can appoint you". So that was the interaction with him
2 subsequently and (*indistinct*), and obviously he turned all of that
3 down and (*indistinct*) going out of that meeting. When I met the
4 President on the evening of the 13th of December when I was asked
5 to come over to Mahlamba Ndlopfu, and he said he would like to take
6 ... he would like me to take this job, I said, "Why me?".

7 I was in the first instance quite surprised that he had moved me
8 from the finance position, but secondly what about others who could
9 take this job and in the process I mentioned the Deputy Minister's
10 name. He said no. I can't recall whether I mentioned other names,
11 but he indicated that no (*indistinct*) settled. Remember this is the
12 Sunday, I remember he was very worried about what would happen
13 on the Monday, having experienced events on the previous Friday
14 and yeah, so that led to my appointment or being informed about the
15 appointment on the 13th and the appointment being formalised on
16 the 14th, and Mr Van Rooyen being redeployed to (*indistinct*).

17 There are lots of stories. I'm not sure whether you have them,
18 around what happened ... that would be what, the Friday? That is
19 imperative when Mr Van Rooyen pitched up here, (*indistinct*) pitched
20 up with his advisors, who knew then (*indistinct*), so there is lots of ...

21 **Adv T Madonsela** : So he came here on the ... he was appointed on the 9th?

22 **Minister Gordhan** : The 9th. I know the 10th was when he was inducted or sworn in. I
23 think he came here on the morning of the 11th, but then the Senior
24 Managers will be able to share that (*indistinct*) and he was obviously
25 accompanied by the person who is now his Chief of Staff. What is his

1 name? But Jessie Duarte has (*indistinct*) and then like Mohamed
2 Bobat, who soon thereafter, after the introductory meeting was
3 poking his nose around who is dealing with SAA, with SAA and the
4 switch from the ... what is it, the A320 or 230s or something like that.
5 We can get you the details (*indistinct*) at the forefront, the first issue I
6 have to tell you.

7 **Mr I Naidoo** : It was the airbus swap deal, isn't it?

8 **Minister Gordhan** : The airbus swap deal.

9 **Adv T Madonsela** : That was for the ... what was his surname, Sir?

10 **Minister Gordhan** : Bobat. He is still there in (*indistinct*) poking his nose around.

11 **Adv N Kanyane** : He went with the Minister when (*indistinct*)?

12 **Minister Gordhan** : Yeah and then there was another gentleman. What was his name? I
13 can find out from the DG (*indistinct*), but then he disappeared. So
14 here is a classic example of somebody who was a Member of
15 Parliament two days before, would have had no office to speak of, no
16 advisors to speak about, but the minute he lands here he lands with
17 advisors and an office, a head. How does that happen? Jessie Duarte
18 (*indistinct*) all over the show and what (*indistinct*) and not this and
19 not that, but the son-in-law is pretty much part of the establishment
20 that Mr Van Rooyen runs.

21 **Adv T Madonsela** : Was he a Chairperson of a Portfolio Committee in Parliament, Mr Van
22 Rooyen?

23 **Minister Gordhan** : No, he was (*indistinct*) in the Finance Committee.

24 **Adv T Madonsela** : Okay.

25 **Minister Gordhan** : And then he belongs to the Veterans Associations. There is a link

1 between him and Ms Myeni at SAA.

2 **Adv T Madonsela** : What is the link, Sir?

3 **Minister Gordhan** : In fact they have been ... in that part of the year they were visiting MK
4 Veteran branches and talking about transformation, and potential
5 deals that SAA could be offered. So you see that is the culture that we
6 have all become subjected to and that is developing in the country,
7 and this takes us away from your main enquiry, *(indistinct)* unrelated
8 issues as well, so I'm widening your brief.

9 **Adv T Madonsela** : Okay. Sorry, Minister. Have we found Mr Van Rooyen's number?

10 **Mr I Naidoo** : No, not as yet.

11 **Minister Gordhan** : *(Indistinct)*.

12 **Adv T Madonsela** : Do you have his cell number, Sir?

13 **Minister Gordhan** : Yeah, *(indistinct)* it is in my phone.

14 **Adv T Madonsela** : May we that one?

15 **Adv N Kanyane** : Well, we have a number, but we are sure whether it is his number.

16 **Adv T Madonsela** : If we can have it confirmed and you obviously would have his
17 *(indistinct)*?

18 **Minister Gordhan** : Yes.

19 **Adv T Madonsela** : If we could just *(indistinct)* to get those cell numbers. I don't know if
20 the staff were able to ever get the cell numbers of the two gentlemen
21 that rocked up with him *(indistinct)* at the time *(indistinct)*.

22 **Minister Gordhan** : No, but *(indistinct)*.

23 **Adv T Madonsela** : But how do we get their cell numbers?

24 **Minister Gordhan** : Speak to the Chief of Staff in Mr Van Rooyen's office.

25 **Adv T Madonsela** : Okay, can we ask you guys, from your side to get those two cell

1 numbers today?

2 **Ms R Tee** : *(Indistinct)*?

3 **Minister Gordhan** : No, no, no. I will get it.

4 **Adv T Madonsela** : Right, we would appreciate ... we are running a bit out of time and
5 getting people's cell numbers has been a bit of a slow process.

6 **Minister Gordhan** : No, but you didn't *(indistinct)* Mr Van Rooyen, phone his office and
7 ask to speak to this Chief of Staff *(indistinct)* does he have a cell
8 phone number you know, the same with Mr Bobat.

9 **Adv T Madonsela** : Thank you. Well, when you had this meeting with the ... I just wanted
10 to confirm, the meeting with the Deputy Minister, you said you met
11 with him shortly after October, 23rd of October?

12 **Minister Gordhan** : No, there was an exchange ... he came to see me, but we didn't
13 exchange details at that time.

14 **Adv T Madonsela** : That was shortly after the 23rd of October?

15 **Minister Gordhan** : I can't remember the date.

16 **Adv T Madonsela** : Yes.

17 **Minister Gordhan** : Because we have known each other for a long time.

18 **Adv T Madonsela** : But earlier than ... long before the appointment of Minister
19 *(indistinct)*?

20 **Minister Gordhan** : But at that stage I didn't know what he was concerned about.
21 Subsequently, that is after December, we met and I got the details.

22 **Adv T Madonsela** : Okay. We want to know then by the time he told you the details,
23 were the details in the media or were the details before the media ...

24 **Minister Gordhan** : Before.

25 **Adv T Madonsela** : ... because for us it is crucial to know did he disclose this before there

1 was any media report?

2 **Adv N Kanyane** : He says before.

3 **Minister Gordhan** : So the media statement was made around ... by that time?

4 **Mr M Nkomfe** : By that time.

5 **Mr I Naidoo** : Just after (*indistinct*) March?

6 **Mr M Nkomfe** : It was just before, the day before.

7 **Minister Gordhan** : Yeah, it was like shortly before that. That was the 24th or thereabout
8 of February.

9 **Mr I Naidoo** : I'm sorry Minister, when you were first removed from the Minister of
10 Finance position in 2014 ...

11 **Minister Gordhan** : I wasn't removed.

12 **Mr I Naidoo** : Oh, you were just ...

13 **Minister Gordhan** : The term ended.

14 **Mr I Naidoo** : Yeah, the term ended. Do you remember the exact date?

15 **Minister Gordhan** : No, whenever the elections were in 2014.

16 **Mr I Naidoo** : 2014?

17 **Mr M Nkomfe** : It is in May.

18 **Adv T Madonsela** : It would be about March ... no, no, the elections were March, then
19 elections were ... I mean then the (*indistinct*) was in May?

20 **Minister Gordhan** : Yeah.

21 **Adv T Madonsela** : Okay. Minister, the next question is ... you have already answered
22 that. You said the President engaged you on the 13th. Obviously it is
23 not up to you to ask why has Nene been removed? You wouldn't ask
24 the President, "What is it that he did or failed to do, so that I don't
25 move or fail to do what he did?"?

1 **Minister Gordhan** : No, no, it wasn't a very long conversation.

2 **Adv T Madonsela** : He didn't indicate what is it that he needs from you as opposed to the
3 one he had removed?

4 **Minister Gordhan** : Settle the markets.

5 **Adv T Madonsela** : Settle the markets. Okay, thank you.

6 **Minister Gordhan** : And your former questions were covered in the public domain.

7 **Adv T Madonsela** : Thank you, Minister. Did any Gupta Family member ever approach
8 you before or after you became the Minister of Finance?

9 **Minister Gordhan** : They wouldn't dare.

10 **Adv T Madonsela** : Wow. Yeah, that is quite interesting, but I think some of us have a
11 sign on our head that says, "Don't even ask me". People then just
12 hate you, right.

13 **Minister Gordhan** : But relating to your question, what is fairly clear is that sometime in
14 mid-January onwards or early February onwards some people did
15 think that reappointing me was a mistake and so starts the Hawks
16 sage. So these are not unrelated matters, right. So there is a Hawks
17 letter. We can ... I'm not sure if our Attorney can give you all of the
18 details. The letter is received ... do you remember the letter?

19 **Mr I Naidoo** : I can tell you that.

20 **Mr M Nkomfe** : Again a few days (*indistinct*).

21 **Minister Gordhan** : A few days before, but either the Monday or the previous Friday, 22nd
22 or the 19th, thereabout, leaked to the media two days or three days,
23 or four, the budget. That is the (*indistinct*) and so starts the saga as
24 we have it now, attack after attack, leak after leak. Even the most
25 recent correspondence to me was leaked. I received it on day one, on

1 day two it is leaked out like a (*indistinct*). So obviously a set of
2 people who a particular set of interests were unhappy about my
3 appointment and you are aware of the public narrative, which says
4 basically (*indistinct*) this guy's character will finally (*indistinct*) to
5 arrest him. That will give us the basis upon which to ask him to leave
6 his position and it has taken different twists and turns, and
7 (*indistinct*) gone the last 6 months or so. I'm not clear on some of
8 those details.

9 **Adv T Madonsela** : Right, if you say some people think it was a mistake for you to come
10 back as the Minister of Finance, do you have an idea which people or
11 is there any ...

12 **Minister Gordhan** : Well, look you can see ...

13 **Adv T Madonsela** : ... indication, is there some kind of evidence that indicates it is not
14 normal law enforcement?

15 **Minister Gordhan** : The Denel exchange (*indistinct*) the most graphic and public ones.
16 The Denel Board is told ... so they submit a letter for example on the
17 10th of December, which ... the 10th of December and Mr Nene is
18 asked to leave on the 9th of December. He would say ask for approval
19 of the now famous Denel/VR Laser deal. That clearly is ... the first
20 thing is the change in Minister, there is all the (*indistinct*) that goes
21 with it. People go on holiday, soon thereafter the 30-day period
22 anticipated in the PFMA obviously can't apply over that kind of
23 holiday period. They assume the 30-day period has expired, which
24 means that they no longer wait for the Treasury response, they go
25 ahead and in turn in January the Treasury asks for further

1 information. They basically say, "Go to hell". So that is the only
2 Board in the country, to the best of my knowledge, of an SOE, which
3 is a Government entity, that publically attacks/challenges a Minister.

4 **Adv T Madonsela** : Was that the Denel Board?

5 **Minister Gordhan** : Yeah.

6 **Mr I Naidoo** : Especially the CFO has been very vocal on that.

7 **Adv T Madonsela** : How did it challenge the Ministers?

8 **Minister Gordhan** : Well, that we have got no business to ... as far as they are concerned
9 they are in the right, and it is all in the media.

10 **Adv T Madonsela** : From the Denel Board?

11 **Minister Gordhan** : Yeah.

12 **Adv T Madonsela** : Okay, you are saying ...

13 **Minister Gordhan** : And then similarly if you take Eskom, its CEO, I know we are not
14 going to sign the deal in respect of renewable energy and you will see
15 how they talk to (*indistinct*), which says you are not a policy maker,
16 but that is still the finding (*indistinct*) today, and that has been one of
17 our biggest sales points in our international (*indistinct*). Right, look
18 at their investment (*indistinct*) in the country, over a 100 and
19 something billion rands.

20 **Adv T Madonsela** : Okay, Minister, I'm going to come back to renewable energy, because
21 we would want to know who stands to gain then by us abandoning
22 renewable energy, but let's go back to Denel. Minister was appointed
23 on the 9th of December?

24 **Minister Gordhan** : No, 9th (*indistinct*), so Nene was asked to leave.

25 **Adv T Madonsela** : Okay, Minister was appointed ...

1 **Minister Gordhan** : Mr Van Rooyen is appointed on the 10th, he was (*indistinct*) on the
2 11th, but on the 11th is when the markets (*indistinct*) so to speak.

3 **Adv T Madonsela** : Okay and then a letter of approval from Denel came when?

4 **Minister Gordhan** : The 10th.

5 **Adv T Madonsela** : The same day the Minister was appointed?

6 **Minister Gordhan** : Uhm (*positive*).

7 **Adv T Madonsela** : But did he attend to it?

8 **Minister Gordhan** : Not that we know of.

9 **Adv T Madonsela** : Okay.

10 **Minister Gordhan** : Sorry, have you got something to add?

11 **Mr M Nkomfe** : I think ...

12 **Adv T Madonsela** : Because from their side they could have argued it was just a
13 coincidence, because these things happen.

14 **Ms R Tee** : Maybe we can make a call and ask how far they are, like (*indistinct*)
15 the calendar and (*indistinct*).

16 **Adv T Madonsela** : Okay.

17 **Minister Gordhan** : And there is a lot in the media about VR Laser itself and (*indistinct*)
18 Asia and so on.

19 **Adv N Kanyane** : Yeah, it is one of the contracts that we are looking at. It is one of the
20 contracts we are looking at.

21 **Minister Gordhan** : Okay.

22 **Adv T Madonsela** : Yes, I know ... I mean as I normally say to the team, we are now
23 battling to try and tie things to real evidence, that the media
24 (*indistinct*) they are at liberty sometimes to conclude with limited
25 evidence, but with us we are not allowed to conclude with limited

1 evidence. We have to tie things ... of course you can tell the story that
2 it is a strange coincidence, but you can't say with concrete certainty
3 that that sequence of events were sinister.

4 **Minister Gordhan** : There is a lot of formal and informal information floating around in
5 the marketplace, if I may put it euphemistically, about all of these
6 deals, how they are connected, what the intentions are, who is
7 Saranisa(?) is and who Trillion is, all of that stuff.

8 **Mr I Naidoo** : No, I think Denel and Eskom they go hand in hand, both of them, the
9 reasons for it I do think it goes hand in hand.

10 **Adv T Madonsela** : I know that is our assumptions, but okay, let's not argue here. My
11 team and I know we have a slightly different approach to evidence,
12 but since I'm the ultimate judge, I judge with the standards that I
13 would be judged with should this matter go on.

14 **Minister Gordhan** : Sure, sure.

15 **Adv T Madonsela** : Is that just because it smells bad or looks bad, I can't conclude that it
16 is bad.

17 **Minister Gordhan** : No, that is true.

18 **Adv T Madonsela** : So that is why we are asking for anybody who is assisting us
19 Minister, to also assist us with the cell phones, because the reasons
20 we are looking of the cell phones is that we can do our own work
21 then to concretely link people in terms of having conversations with
22 each other. That is the reason we are asking for cell phones.

23 **Minister Gordhan** : Yes.

24 **Adv T Madonsela** : I know the young ones think that (*indistinct*) jump, it really looks
25 bad.

1 **Ms R Tee** : (Indistinct) as Lawyers we have got to look at (indistinct), you know
2 the understanding (indistinct).

3 **Adv T Madonsela** : (Indistinct).

4 **Mr M Nkomfe** : There is a point that he didn't conclude, which speaks to ... it is not
5 only maybe hearing people, that perhaps it was the wrong decision,
6 but the President himself on a number of occasions publically saying,
7 "This person is my person", which is Mr Van Rooyen, "He is the most
8 qualified person".

9 **Mr I Naidoo** : I read that.

10 **Mr M Nkomfe** : Yeah and he said it more than three times.

11 **Minister Gordhan** : More than three times, publically (indistinct).

12 **Adv N Kanyane** : Yes, he is actually saying it in a comparative manner, that he is the ...
13 of all of the others he is the most experienced.

14 **Minister Gordhan** : (Indistinct).

15 **Adv T Madonsela** : Which is a perfectly legal statement to make.

16 **Minister Gordhan** : Yeah.

17 **Adv T Madonsela** : We may disagree with him about what it means to be suitably
18 qualified, that academics and Lawyers (indistinct).

19 **Minister Gordhan** : Yeah, yeah. No, no, but ...

20 **Adv T Madonsela** : But I'm saying it still doesn't necessarily suggest anything sinister.

21 **Minister Gordhan** : No, it does. If I keep saying she is more qualified than him, she is the
22 most qualified of all of you, but I'm responsible for his appointment,
23 but at the same time I say he is the most qualified, what am I doing
24 keeping him in his position?

25 **Mr I Naidoo** : Exactly.

1 **Minister Gordhan** : I must dismiss him, because I'm doing the country a disservice by
2 retaining him whilst the most qualified person is sitting here with
3 Local Government, you see, so I think it is much more than that. Why
4 am I then not fired, just like Mr Nene?

5 **Adv T Madonsela** : I understand, Minister.

6 **Minister Gordhan** : I don't know how and whether it helps you, but there is a
7 relationship between all of these issues and I think the way it works,
8 which you might have come to already, is that when certain forces
9 who have had or want access to the State have got interrupted ... I
10 will give the numbers now, so.

11 **Adv T Madonsela** : That will be extremely helpful.

12 **Minister Gordhan** : Des van Rooyen is 083 645 7888. Which other ones do you want?

13 **Adv T Madonsela** : Okay, you got it (*indistinct*) number?

14 **Adv N Kanyane** : Yeah, I got it.

15 **Adv T Madonsela** : You have got it, have you?

16 **Adv N Kanyane** : Yeah.

17 **Mr I Naidoo** : There is one number I had asked for of the (*indistinct*).

18 **Adv N Kanyane** : Madam, can I pause for a little while? Can I just pause a little?

19 **Adv T Madonsela** : Yes. You want to pause?

20 **Adv N Kanyane** : Yes, just for a little while.

21 **[Go off record // Back on record]**

22 **Adv T Madonsela** : ... had any engagement with the Guptas. Has anybody ever
23 approached you now as (*indistinct*) then Sir, other than the
24 innuendos that you are seeing in the media, has anybody approached
25 you to say can you retreat on the Denel issue or on the SAA matter?

1 **Minister Gordhan** : Nope.

2 **Adv T Madonsela** : Nobody ever approached you. You are informed by the ... okay,
3 *(indistinct)* only told you much later about this, what happened, but
4 before 9/12 were you aware that there were plans to shift the
5 Minister of Finance?

6 **Minister Gordhan** : I was never *(indistinct)* which said that the Treasury is too strong, it
7 is too ... how monitors the Treasury and Mr Nene himself will tell you
8 that he was subjected to ... I don't know, I can't really *(indistinct)*
9 linked to Cabinet meeting is a challenge, but he was subjected to an
10 amount of abuse.

11 **Adv T Madonsela** : Was it at informal meetings?

12 **Minister Gordhan** : Yeah, with *(indistinct)* yeah, we will talk later.

13 **Adv T Madonsela** : Right. Have you ever been offered a position by the Gupta Family?

14 **Minister Gordhan** : No, thank you.

15 **Adv N Kanyane** : He said they wouldn't dare. He said earlier they wouldn't dare.

16 **Adv T Madonsela** : Yes. Are you aware of any person who has been offered a position by
17 the Gupta Family, other than Minister ... the Deputy Minister?

18 **Minister Gordhan** : Yeah, it is a tough one. *(Indistinct)* I generally stay with *(indistinct)*
19 over networking, I like to stick to my job.

20 **Adv T Madonsela** : So you are not aware of anybody who *(indistinct)*?

21 **Minister Gordhan** : Not that I can really determine, but I mean the rumour *(indistinct)* as
22 you know, is very active on the one hand. On the other hand, if you
23 had to do some kind of media analysis, it is fascinating that today
24 there will be no narrative in the public domain. Tomorrow morning
25 all five of you say the same thing in different locations, right. For

1 example we are captured by ... we are controlled ... the Treasury is
2 controlled by the banks. Suddenly all five of you will say it, "I'm
3 captured by a white monopoly capital", all five of you will say it. "I
4 own shares", all five of you would say it. Where does it come from?
5 So clearly there is a highly orchestrated campaign involving both
6 State agencies and ... it is reputed that there is a PR company ... what
7 was it called, Pottinger or something like that in the UK, that is
8 coordinating all of this stuff. I mean it is remarkable that in our
9 democracy you have both the print media outlet and then the
10 electronic area outlet in the form of a (*indistinct*).

11 **Adv T Madonsela** : What is the name of the company, Minister?

12 **Minister Gordhan** : Which one?

13 **Adv T Madonsela** : In the UK?

14 **Minister Gordhan** : Is it Pottinger or something like that?

15 **Adv T Madonsela** : Pottinger?

16 **Minister Gordhan** : Yeah, but the marketplace is aware of it. So where does this extreme
17 level of coordination come from? So how come a (*indistinct*) would
18 do something or Moyane will say something and so on?

19 **Adv T Madonsela** : Well, they could argue the same though, Minister. I hate to play
20 devil's advocate. They would say they are being attacked from all
21 quarters ...

22 **Minister Gordhan** : Yes, there is the whole thing.

23 **Adv T Madonsela** : ... everyone is making the same allegations against the Guptas.

24 **Minister Gordhan** : Yeah. Well, equate the two. What we are saying we are saying
25 openly in an open forum, in Parliament or elsewhere or making

1 speeches, but you will never find the same narrative, except for the
2 words "It is State capture".

3 **Adv T Madonsela** : Yes.

4 **Minister Gordhan** : Right, but State capture is a conclusion arrived at after an analysis of
5 the same things that you are investigating.

6 **Adv T Madonsela** : But they would argue why are they being investigated by the Public
7 Protector, at the same time the banks suddenly decide to go on an
8 onslaught against them ...

9 **Minister Gordhan** : No, that is a separate matter.

10 **Adv T Madonsela** : ... and Treasury is investigating them, why is everyone doing this and
11 this (*indistinct*)?

12 **Minister Gordhan** : Well, we are investigating a particular transaction, which is ...

13 **Adv T Madonsela** : Yes. No, I was just saying, Minister ...

14 **Minister Gordhan** : No, no, no, I'm just ...

15 **Adv T Madonsela** : ... they also can argue that we are ganging up against them.

16 **Minister Gordhan** : Sure.

17 **Adv T Madonsela** : I know we are not ganging up against them as the Public Protector
18 South Africa. You probably know you are not ganging up, but I'm
19 saying they could also develop that narrative ...

20 **Minister Gordhan** : No, they could.

21 **Adv T Madonsela** : ... (*indistinct*) the timing of everything happening now.

22 **Minister Gordhan** : They could, but if there is public information about that transaction,
23 which means that public resources are being abused or misallocated,
24 then the procurement office here is obliged to investigate. So that is
25 number one. Number two, if we ... we are responsible for the fiscal

1 impact of State-owned enterprises, right. Now from the beginning of
2 this year in talking to rating agencies and investors, one of their big
3 concerns is precisely that issue, that those SOEs that receive big
4 guarantees or Eskom's R350 billion, SAA is R14.4 billion (*indistinct*)
5 of guarantees, which totals over half a trillion rand at the moment.
6 Right now ... you know what guarantees are, so I guarantee the fact
7 that you will pay, but you borrowed from him.

8 The day you don't pay I'm responsible to pay, but the day
9 SANRAL can't pay its R20/30 billion that it has borrowed from bond
10 holders, we stand guarantee as the State and what rating agencies
11 and those who watch our fiscal situation or whatever (*indistinct*), is if
12 one of these loans is called in for whatever reason ... you have just
13 seen the future growth issue over the last 10 days or so, right, is this
14 fiscus going to manage?

15 We own R2 trillion as a country at the moment. So look at the
16 debt numbers. We can get an official to take you through all of that.
17 It is R2 trillion, we borrowed a R154 billion this year, we paid
18 R124 billion in interest this year. Now that is a lot of money we are
19 talking about.

20 **Adv T Madonsela** : Just on that one then Minister, SAA, the narrative was that you are
21 saying ... or the narrative is that the Board hasn't performed well, but
22 Minister, you ...

23 **Minister Gordhan** : Reappointed the Chair.

24 **Adv T Madonsela** : You reappointed the Chair. Normally Donald Trump would fire the
25 Chair or the team leader, even he would fire the Chair or the team

1 leader if it was a project and then you have also given them 5 million
2 (indistinct).

3 **Minister Gordhan** : So on the Chair issue it has taken more than 6 months for us to get
4 the Board that we got on Friday (indistinct) taken 6 months, but for
5 other Boards it is a piece of cake. You will find ...

6 **Mr I Naidoo** : There was one name on the list that ...

7 **Minister Gordhan** : I beg yours, sorry?

8 **Mr I Naidoo** : There was a name on the list that somebody didn't want there or ...

9 **Minister Gordhan** : So there are 5 of you ... there are 4 of you or 5 of you that says, "Sorry,
10 we have got to go and do fishing, we don't want to be on this Board.
11 Three or four weeks later we will find somebody else to take your
12 place", so that is the first one. Secondly, some of these appointments
13 are the outcome of negotiations and compromises. So whilst
14 (indistinct) I'm responsible for appointing the Board, it is not entirely
15 my decision. Even if she as the Minister comes up to Cabinet with
16 the names of x-number of people for the Board of some entity,
17 Cabinet as a whole must then look at the names and must apply their
18 minds, although it happens very fast.

19 So retaining the Chair for a year, so that is all it is, but with the
20 full ... reasonably full (indistinct) the Board Members is the outcome
21 of all of these conversations and compromises. Now what you want
22 it proper corporate governance with the right committees, skilled
23 people on the Board and about half of them recently ... more than half
24 are people of integrity, they have professional reputations to defend,
25 we reminded them on Friday ...

1 **Adv T Madonsela** : You disagree that the temperature is set from the head?

2 **Minister Gordhan** : No, the temperature is set.

3 **Adv T Madonsela** : The temperature of everybody is set from the head?

4 **Minister Gordhan** : Agree, agree. Well, what I'm saying, the key word here is the
5 outcomes are compromised of these consultations. So that is the first
6 point. In relation to the second point, if we didn't give what is called
7 a going concern guarantee, SAA would be declared insolvent, which it
8 is at the moment, but it is a State asset and better run and given say 3
9 to 5 years, with the right management and the right Board, and the
10 right decisions and the right governance, it can recover.

11 **Adv T Madonsela** : But Minister, in terms of Section 237 you as Government are
12 required to give priority to Constitutional responsibilities. In other
13 words, before we find things that we would like to find, we have to
14 find the ones that are already a Constitutional promise, such as my
15 office is already a Constitutional promise, because it says this office
16 will be accessible to all persons in the community.

17 **Minister Gordhan** : *(Indistinct)* budget *(indistinct)* what we have in the *(indistinct)*.

18 **Adv T Madonsela** : No, Minister, I think that was a wrong one to use my office. I was just
19 giving you an example, but I'm having a greater point. Education, we
20 have a crisis of education at the moment ... no, I'm just saying
21 because the question is raised to us as the Public Protector South
22 Africa to say why are we bailing out parastatals, because they are
23 nice-to-have, some of them. Okay, the strategic ones, like Denel,
24 Eskom, the ones where you know you need that infrastructure,
25 otherwise if you sell it, then you will be in the control of strangers,

1 but SAA, what stops Government from selling SAA? I read in the
2 media where you say you want them to fly the national flag.
3 Countries do sell their national airlines and require the buyer to
4 never change the name, and to keep the national flag.

5 **Minister Gordhan** : We might get there in a few years then.

6 **Adv T Madonsela** : So why ...

7 **Minister Gordhan** : No, partly it is all part of things, partly it is our ideology, which says
8 we don't believe in prioritisation in South Africa. We have sort of
9 partly won ... *privatisation*

10 **Adv T Madonsela** : But then ...

11 **Minister Gordhan** : Let me just finish, against that argument by in the budget actually
12 saying let's restore SAA's (*indistinct*) and good health and then look
13 for a minority equity (*indistinct*). Secondly we are saying in the
14 budget you can't be running effectively four airlines, SAA, Mango, SA
15 Express on a special deal with SAA Airlink. At least the first three has
16 to be rationalised in some way.

17 What is the point in at ten o'clock (10:00) today there is a flight
18 leaving PE, but called "Mango", at eleven-thirty (11:30) there is
19 another flight leaving PE called "SAA" and at twelve-thirty (12:30)
20 there is another flight leaving PE called "SAA Express", but they all
21 belong to the same company. So what you have got to do is start
22 repackaging these entities and they have a vested interest in each of
23 them, their Board Members, their fuel suppliers, the food suppliers,
24 etcetera. Now at least with the new Board we need to get (*indistinct*)
25 ideas. Myeni has had what, two years of virtually free airtime, so to

1 speak, because she became an Executive Chairperson, which is not
2 what Government has (*indistinct*). When she came here on Friday,
3 the two guys standing in the corridors, "So who are you?". They said,
4 "No, (*indistinct*) bodyguards". Who is paying for that?

5 **Mr M Nkomfe** : Andile (*indistinct*). ~~Andile~~

6 **Minister Gordhan** : Who is paying for that?

7 **Adv T Madonsela** : It a bodyguard of?

8 **Minister Gordhan** : No, that is separate. That was the protesting. I'm talking about
9 upstairs.

10 **Mr M Nkomfe** : Oh, I'm sorry, yeah.

11 **Minister Gordhan** : (*Indistinct*) upstairs. Yeah and then she comes with Andile and
12 company, who would say, "No, we were with her yesterday" and that
13 was at about ten o'clock (10:00) (*indistinct*), but what for, to
14 intimidate us? They weren't allowed in at the end of the day, but let
15 me go back. So she flies as often as she likes, she makes executive
16 decisions, she can offer ...

17 **Adv T Madonsela** : You do know that you are whistle-blowing now, Minister?

18 **Minister Gordhan** : Well, I'm blowing air, that is for sure. ~~It's~~

19 **Adv T Madonsela** : Because that is what we then ... Dr Ben Ngubane for in the SAA ... the
20 South African Broadcasting Corporation, where he did not
21 understand that he was not the Executive Chairperson.

22 **Minister Gordhan** : Yeah, the same with Ben Ngubane, what he is doing now.

23 **Adv T Madonsela** : He only could operate based on Board decisions.

24 **Minister Gordhan** : Yeah. Right, so as the new Board takes over and (*indistinct*) is
25 established, the privileges of the Board Members, including the Chair,

1 must be examined. When she ... I once were on a flight with her to
2 Durban. Now in Durban you might know you get ... I get off in the
3 normal way, like any other passenger, but there is a protocol exit,
4 right, just as you leave the aircraft, but she is merely the Chair of the
5 SAA Board. She uses protocol facilities. Wow, how come?

6 **Adv T Madonsela** : Right.

7 **Minister Gordhan** : How come she can decide who gets what fuel contract? How much
8 does she interfere in procurement decisions at SAA? Why do so
9 many people get suspended in that (*indistinct*)? (*Indistinct*) when
10 they speak the truth, it would appear. I don't know.

11 **Adv T Madonsela** : Well, I think Minister, you can answer this question and you don't
12 have to answer it, because you are a Member of the Executive, but for
13 me as we are doing this investigation and we are looking into State
14 capture, we are finalising our investigation, there are other issues
15 that are emerging for us about just corporate governance and good
16 governance. That when we finalise on this occasion we will make
17 observations on other issues that are related though to good
18 governance and to the fault lines that we have seen and
19 recommendations.

20 One question ... and you don't have to answer that Minister, is
21 the question for me would be from a corporate governance point of
22 view is it proper that Ms Myeni is wearing two hats, the Chairperson
23 of the Jacob Zuma Foundation and the Chairperson of the SAA, given
24 the fact that when the President has to evaluate Ms Myeni's
25 performance, has to think about the fact that Ms Myeni is also

1 improving his (*indistinct*) by being the Chairperson of the Jacob
2 Zuma Foundation, and therefore it presents a conflict of interest for
3 him to not be able to deal with Ms Myeni as he would deal with an
4 ordinary Board Member who he doesn't have to see next week at the
5 foundation meeting, where she would have organised something that
6 improves his legacy, that supports his family and does those things?
7 Do you think she shouldn't wear those two hats?

8 **Minister Gordhan** : Yeah, I mean (*indistinct*) at the end of the day you first have the
9 foundation. In respect of the second hat any Board or Chairperson of
10 a Board accounts to an Executive Authority under (*indistinct*) of the
11 President, (*indistinct*) anything and so as far as ... as long as SAA
12 accounts to this Ministry, we want to ensure that the normal
13 corporate governance processes apply.

14 **Adv T Madonsela** : So you don't think it presents a difficulty?

15 **Minister Gordhan** : No, I'm saying that in the direct relationship between the Treasury
16 and SAA extraneous factors should not and will not apply.

17 **Adv T Madonsela** : Yes, so it doesn't apply, but what about the fact that all Executive
18 Authority in terms of the Constitution rests in the President and no
19 Minister exercises original authority, every Minister exercises a
20 portion of the Presidency ...

21 **Minister Gordhan** : Delegated Authority, yeah.

22 **Adv T Madonsela** : Delegated Authority, so basically anybody who contracts with a State
23 enterprise is contacting with President Zuma?

24 **Minister Gordhan** : Yes and no. Yes, in the sense that he can (*indistinct*).

25 **Adv T Madonsela** : Because all of them are agents of that business?

1 **Minister Gordhan** : Yeah, only insofar as he has the ability to withdrew your delegation
2 tomorrow morning or this afternoon, if he so wishes and reassign ...
3 well, the SAA used to report to Minister Gigaba when the was
4 Minister of Public Enterprises.

5 **Adv T Madonsela** : Because he is the only one who holds Executive Authority, so
6 effectively Sir, everybody who works for SAA works for President
7 Zuma, because ...

8 **Minister Gordhan** : Anybody works for any entity works for him.

9 **Adv T Madonsela** : Yes, but that is the point then, is to that extent then there isn't there a
10 conflict of interest? Okay, but I had said you don't have to answer
11 that question.

12 **Minister Gordhan** : Yeah, that is just an opinion.

13 **Adv T Madonsela** : That is something (*indistinct*) to answer.

14 **Minister Gordhan** : But I don't want to get into it.

15 **Adv T Madonsela** : Okay, but do you have any other information that can assist us in this
16 investigation, that you think we didn't ask the question, but we
17 should have asked it?

18 **Minister Gordhan** : No, I would be extremely concerned about the extent of influence
19 that the Gupta Family and its enterprises and those connected with
20 those enterprises have, but what I would also refer you to is an
21 interesting book written by Francis Fukuyama, it is the second
22 volume, "Political Order and Political Decay", in which he describes
23 how different political and economic systems ...

24 **Adv T Madonsela** : It is called "Political"?

25 **Minister Gordhan** : "Order and Political Decay".

1 **Adv T Madonsela** : And "Political Decay".

2 **Minister Gordhan** : In other words, patronage it is very much part of nation good(?) and
3 economic systems, they just take different forms at different stages.
4 So this whole narrative about change of Government and metros for
5 example doesn't mean that the new guys don't come with their own
6 clients, so (*indistinct*) 6 months later they would have their own set
7 of business people that they want to do business with, that they
8 would be approached by, and so on. So the structure of capitalism is
9 such that it lends itself to this kind of phenomenon.

10 The question is whether the levels of transparency and the
11 checks and balances that we have in our society ensure that we
12 minimise the negative effects of these sorts of influences on what
13 ordinary citizens should be getting out of the fiscal spend that we
14 engage in. That is the key issue, right. So for every million or
15 R10 million extracted from school nutrition programme means x-
16 number of children don't get nutrition that they should be entitled to.

17 **Adv T Madonsela** : Yes, absolutely.

18 **Minister Gordhan** : You can then apply that to anything, I mean to structure(?) projects
19 or to any other of the phenomena that you are actually examining.
20 So from that point of view the kind of influence that this family has
21 been able to extend and the networks it is able to create ...

22 **Adv T Madonsela** : But has the State lost anything then, Minister?

23 **Minister Gordhan** : I beg your pardon?

24 **Adv T Madonsela** : Has the State lost anything because of their influence or has it been
25 that they ...

1 **Minister Gordhan** : No, if you take the coal contract and I don't have the details of it here,
2 I don't have the details, but let's assume that you paid a million rand
3 more than you should have paid ...

4 **Adv T Madonsela** : Okay, so that would be the loss if you paid more than *(indistinct)*?

5 **Minister Gordhan** : Yeah and that multiplies many times over in ... there was the e.tv
6 insert if you remember ... was it just before or just after the elections,
7 where this glass cost R2.00, but Tshwane Municipality paid R20.00,
8 they had a whole lot of comparatives.

9 **Adv T Madonsela** : Yes, polish, cleaning.

10 **Minister Gordhan** : Yes, then we have 2009 we have been talking about, about the water
11 in a province, which you can buy in a *(indistinct)* shop for less than
12 R5.00, you are paying 20, 30, R40.00 or ... so there is ... our stage of
13 development in the economy and society is such that people are over
14 dependent on the State and therefore we *(indistinct)* time for our
15 own economic growth, because you now don't have to become an
16 entrepreneur.

17 All you have got to do is access the State through tenders or
18 whatever the case is. Now throughout history the States have played
19 and Governments have played an important role in compensating for
20 historical imbalances, but when historical ... the correction of
21 historical imbalances reaches a point of permanent patronage ...

22 **Adv T Madonsela** : Yes.

23 **Minister Gordhan** : ... then you are in serious trouble. So we are under attack from
24 certain business quarters, but some of those are dependent on the
25 State. So bottom line, I would be very worried about "State capture"

1 and its different forms.

2 **Adv T Madonsela** : Yes. Sir, is there a chance that Treasury could assist to look at ... we
3 had said we are going to look at that allegation that they said they
4 were at 6 billion, they want to have 8 billion and we wanted to check
5 whether ... their total value of contracts, if you count all of them,
6 including the small ones with the TMA, what really is their value
7 right now? Then secondly, we are also trying to ascertain what is the
8 extent of the revenue that the empire as a whole is getting from the
9 ~~State~~ *(indistinct)*? Incidentally this for us was a research point weeks ago,
10 but they already published a statement last week to say the State's
11 contribution is ...

12 **Minister Gordhan** : No, we are not *(indistinct)*.

13 **Mr I Naidoo** : When they refer to Government they are excluding the SOEs from
14 that statement. That is my personal opinion, is that I'm almost
15 hundred percent sure.

16 **Adv T Madonsela** : No, but okay, I don't want us to be hundred percent sure. I want us
17 to have the evidence, that is the ...

18 **Minister Gordhan** : We will check what we can assist with.

19 **Adv T Madonsela** : The exact amount that has been received by this *(indistinct)*.

20 **Mr F Lekubo** : We did speak to your guys *(indistinct)* and they said that ... only from
21 the business that they do with Government as a whole, but in terms
22 of the SOEs well it is almost impossible to figure that out.

23 **Adv N Kanyane** : Yes, we would have to go to the specific entities.

24 **Minister Gordhan** : For example the PRASA deal in terms of the locomotives, the
25 Transnet deal in terms of locomotives, where the origins go back to

1 China, who facilitated it, who gets paid?

2 **Adv T Madonsela** : Are they involved in PRASA?

3 **Minister Gordhan** : I think so, indirectly.

4 **Adv T Madonsela** : Are they involved ... okay, I wasn't aware of that.

5 **Minister Gordhan** : I think so. I can't speculate.

6 **Mr M Nkomfe** : There was a report last week.

7 **Minister Gordhan** : Yeah, there is some linkage.

8 **Adv T Madonsela** : Okay, let's check that. We were not aware of that.

9 **Adv N Kanyane** : Yes, but the National Treasury said they will be able to give us ...

10 **Adv T Madonsela** : The Government Departments.

11 **Adv N Kanyane** : ... the Government Departments, but not ...

12 **Adv T Madonsela** : SOEs.

13 **Mr I Naidoo** : Not SOEs.

14 **Adv T Madonsela** : But I do think with the SOEs we have to ask them a direct question
15 this week, maybe tomorrow write to them directly to request them
16 to give us the total budgetary expenditure on these companies since
17 2010.

18 **Mr I Naidoo** : Look, but we have it for one ... I think more or less we have for one
19 entity.

20 **Adv T Madonsela** : Yeah, I know, but recall that ... basically we are saying that they ... or
21 there is an argument that they are sponging on the State, that like
22 basically their entire empire building is based on patronage and you
23 can't make that based on instinct. We have to have raw evidence,
24 which means we have to have a totality of their revenue, every
25 revenue stream and then all ... not some, all of the Government

1 revenue streams and then come up with then a (*indistinct*).

2 **Minister Gordhan** : A very comprehensive way that you are looking at.

3 **Adv T Madonsela** : Yes.

4 **Minister Gordhan** : But now ... if looked at it 10 years ago, it might have been different
5 (*indistinct*).

6 **Mr I Naidoo** : We are looking at 300 companies or so, or more.

7 **Adv T Madonsela** : Yes. No, no, no, we are supposed to do the total revenue stream,
8 because the three or more companies is where we are looking at
9 specific tenders, that is a different story. This is the revenue bit ... but
10 it is fine. No, the suggestion was that we could get an Economist to
11 do it and I will give you a name of an Economist, and then we can
12 find out from him today if he can do it. If he can't do it, then it could
13 be phase two, because if you are accusing a person and saying we are
14 doing this, then we have to tie it up with concrete facts and all of that,
15 there is a billion that you generally (*indistinct*), because they will say
16 they are not ... their revenue from Government is no different from
17 any other company.

18 Because that is another thing, is that we haven't also done any
19 assessment to look at are they the only ones who have these many
20 tenders from Government and if they are not the only ones with
21 these many tenders from Government, why they (*indistinct*) State
22 capture, but of course there is also then the storylines about them
23 appointing people, which is the part that we are still trying to ...

24 **Mr I Naidoo** : I think when the released the financial statements last week they
25 said it is about R200 million of work that they do with the

1 Government. That is the statement they released.

2 **Adv T Madonsela** : They said it is 200 million?

3 **Mr I Naidoo** : Yeah.

4 **Adv T Madonsela** : Well, that is not true, if you just look at the ...

5 **Mr I Naidoo** : But that is why I'm saying, they are excluding the SOEs from that
6 statement, because they are not directly Government.

7 **Adv T Madonsela** : Well, in terms of definition of Government they are part of the State.

8 **Minister Gordhan** : They are.

9 **Adv T Madonsela** : But okay ... oh, no, no, that is fine that you got that information. We
10 will look at that and then would look at how ... Minister ...

11 **Adv N Kanyane** : Can I ask a question? One of the witnesses we interviewed Minister,
12 spoke a lot about interference, direct interference that she ... when
13 she was Minister she got from the President, in that the President
14 decided who would be appointed on specific Boards and pushed the
15 people that he wanted to see on Boards. Did you experience any of
16 that?

17 **Minister Gordhan** : No, from time-to-time you will get ... how should we say it, either
18 opposition to some names or suggestions of others, but the ANC is
19 also a complex organisation, as its Deployment Committee ... some
20 names come from there, some names come from elsewhere, so it is
21 not just with the President. There might be other figures in the ANC
22 also who would say (*indistinct*). It might not come directly to us, but
23 those who take these processes through some of these structures
24 might be subjected to some of that, yeah.

25 **Adv N Kanyane** : Okay, we also asked about the moving of the South African Airways

1 into Treasury, but I'm told that there is policy that allows for that,
2 that the President can move a certain entity into a different Ministry.
3 Has that happened in the past?

4 **Minister Gordhan** : Yeah, the Land Bank.

5 **Adv N Kanyane** : Oh, yeah, (*indistinct*) Land Bank as well, okay.

6 **Adv T Madonsela** : Right, is that all?

7 **Mr I Naidoo** : And after Mr Jonas told you the details of his offer, did you approach
8 anyone else in the ANC and told them about what had happened?

9 **Minister Gordhan** : It is not my business, but pretty soon thereafter we had the public
10 statement by Mr Jonas, so it became public knowledge (*indistinct*),
11 but he has also I think reported it, am I right, to the ANC (*indistinct*)?

12 **Adv N Kanyane** : Yes, he did, he did.

13 **Minister Gordhan** : And yourselves, yeah.

14 **Adv T Madonsela** : Okay, going forward what would be also helpful ... Minister, you have
15 been extremely helpful to us and we thank you. What would be
16 helpful is ...

17 **Minister Gordhan** : You can send me a box of chocolates later.

18 **Adv T Madonsela** : ... any information that we may not have asked that you think will
19 assist to concretise the allegations, because there is innuendos in the
20 media, but they are innuendos, but we need concrete information
21 that shows so and so was appointed because of this. If you know any
22 Minister who is prepared to talk to us and say, "I was either
23 approached by the Guptas before I got my post" or "After I got my
24 post, I was approached with a particular request", we would
25 appreciate that, or any Board Member who is prepared to talk to us

1 or somebody who knows someone else who is willing to report that
2 information.

3 **Minister Gordhan** : Sure.

4 **Adv T Madonsela** : And any other person who can assist us with anything. We are
5 pressed for time, we are now at a report writing stage, but we are
6 writing the report as we are collecting whatever information we
7 have.

8 **Mr I Naidoo** : We know time is of the essence, but we are trying. I think if anything
9 it is your departments that have been the most helpful to us.

10 **Minister Gordhan** : Okay.

11 **Adv T Madonsela** : Yes, I am interested ...

12 **Adv N Kanyane** : Yes, Mr Brown(?) has been very helpful in that (*indistinct*).

13 **Minister Gordhan** : "At your service", as they say.

14 **Adv N Kanyane** : Yes.

15 **Adv T Madonsela** : I hope you have got that name of that PR company?

16 **Adv N Kanyane** : Yeah, I got it.

17 **Adv T Madonsela** : There is an unrelated interest that we are looking into.

18 **Minister Gordhan** : Let me just find out (*indistinct*) know about. Yeah, it was also in the
19 newspaper (*indistinct*) a very conservative ...

20 **Mr M Nkomfe** : They (*indistinct*).

21 **Minister Gordhan** : Yeah, I mean the earlier period.

22 **Mr M Nkomfe** : Oh, earlier period.

23 **Adv T Madonsela** : Thank you, Minister.

24 **Minister Gordhan** : Okay, good, thank you and good luck.

25 **[Go off record // Hearing adjourned]**

34. I returned to Johannesburg from Port Elizabeth on Sunday 25 October 2015 at approximately 4.37pm. I spoke to Minister Pravin Gordhan and asked if I could see him to seek his advice and guidance. I went to his house in Pretoria and when I arrived, he was sitting with his wife. Given that his wife was present, I decided to provide him with a high level outline of what had happened. I told him that I had been invited to a meeting and that the individuals present at the meeting had told me that I would be made Minister of Finance and that they had offered me money and that I had refused their offer. I was still deeply shocked, angered and dispirited and I told him that I thought I should submit my resignation the following day.
35. Mr Gordhan suggested that I should not resign at that time, but should wait until we had some time to consider the matter further and get into more details and also to decide what would be in the best interests of the country. I told him that I would discuss the matter with Mr Nene, which he said was important. We agreed to keep the matter confidential.
36. I received three missed calls from Mr Hlongwane between 6.49pm and 7.57pm, as well as one missed call from Mr Duduzane Zuma at 8.18pm.
37. On Monday, 26 October 2015 at 6.58am, I sent Mr Duduzane Zuma a text message stating "Hi broer. Can we postpone today's session to Thursday. did not realise how hectic my official schedule is. Jonas". I did not meet him again.
38. At 8.22pm, on 25 October 2015, I received a text message from Mr Duduzane Zuma in which he stated: "Good evening Sir, I tried to call. Please return my call when you can".

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9 December 2015

7 MINISTER OF ENERGY**7.1 RECOMMENDATIONS ON THE NUCLEAR NEW BUILD PROGRAMME (NNBP) FINANCIAL IMPLICATIONS: PROPOSED FUNDING MODEL, RISKS IDENTIFICATION AND MITIGATION STRATEGIES**

(Cabinet memorandum 13 of 2015 dated 8 December 2015, file number E/2/5/9/3, Ministry of Energy. Refer to item 6.1 of the minutes dated 10 June 2015)

7.1.1 The discussion was attended by Messrs T Zulu, Director-General, Z Mbambo, Deputy Director-General from the Department of Energy and L Fuzile, Director-General of the National Treasury.

7.1.2 The Cabinet –

- (a) **requested** that the last sentence of the first paragraph under paragraph 9 be deleted;
- (b) **approved** that the Department of Energy issue the Request for Proposal (RPF) for a Nuclear New Build Programme (NNBP) of 9600 MW of nuclear power;
- (c) **approved** that the final funding model be informed by the response of the market to the RFP and thereafter be submitted to Cabinet for final consideration; and
- (d) **requested** that, where relevant, the exchange rates referred to in the memorandum, be adjusted to current values.

7.2 APPOINTMENT OF CANDIDATES TO SERVE AS MEMBERS OF THE CENTRAL ENERGY FUND ('CEF')

(Cabinet memorandum 12A of 2015 dated 7 December 2015, file number CEF/ba/2015, Ministry of Energy. Refer to item 3.4.4 of the minutes dated 4 November 2015 as well as item 3.3.6 of the minutes dated 19 February 2014)

The **Cabinet approved** the appointment of the following Members to the Central Energy Fund (CEF) Board for a period of 3 years with effect from 10 December 2015 to 9 December 2018, subject to the verification of qualifications and the relevant security clearance:

- (a) Dr X Mkwana (Chairperson);
- (b) Ms M Molope;
- (c) Ms L Mtunzi; and
- (d) Mr M Moagi.

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MINISTRY OF ENERGY

Private Bag X19, Arcadia, 0007

CABINET MEMORANDUM NO: 13 of 2015
 DATE : 08 December 2015
 FILE NUMBER : E/2/5/9/3

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1 SUBJECT

*Recommendations on the Nuclear New Build Programme (NNBP)
 Financial Implications: Proposed Funding Model and Risks
 Identification and Mitigation Strategies.*

2 PURPOSE

- 2.1 To report to Cabinet on the progress achieved by the Department of Energy and the National Treasury in developing a proposal and recommendations regarding the Financial Implications; Proposed Funding Model and Risks and Mitigation Strategies, and the Contributions by Countries as contained in the Intergovernmental Agreements

3 SUMMARY

- 3.1 During its seating of the 10th June 2015, Cabinet approved that the Minister of Energy must in consultation with Minister of Finance and Energy Security Cabinet Subcommittee, as matter of urgency submit a memorandum dealing with: (i) The Financial Implications, (ii) The Proposed Funding Model (iii) The Risks and Mitigation Strategies (iv) The contributions by countries as contained in Intergovernmental Agreements.
- 3.2 Several engagements have been held between the Department of Energy and National Treasury in order to consider and discuss matters related to the Cabinet approved Strategic Hybrid Procurement Process, financing and commercial proposals made by vendor countries during three nuclear vendor parade workshops concluded in March 2015 as well as Independent studies for the Cost of nuclear power, Owner Operator Financing structure, Assessment of Financing Options,

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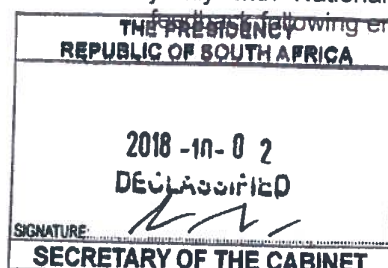
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Economic Impact of Localization for Nuclear New Build Programme commissioned by the Department of Energy.

- 3.3 The two Departments have developed recommendations covering the Nuclear New Build Programme Financial Implications; proposed Funding Model, and Risk Identification and Mitigation, for the consideration of Cabinet.

4 STRATEGIC FOCUS OF THE MEMORANDUM

- 4.1 South Africa's vision for nuclear power is based on the Nuclear Energy Policy of 2008 that provides a framework within which; prospecting, milling, mining, the use of nuclear materials and the development and utilisation of nuclear energy for peaceful purposes is to take place. Some of the key government objectives for the nuclear new build programme include: (a) Attainment of global leadership and self-sufficiency in the nuclear energy sector in the long term; (b) Contribution to the country's national programme of social and economic transformation, growth and development; and (c) Improvement of the quality of human life and to support the advancement of science and technology.
- 4.2 In March 2011, Cabinet approved a 20 year Integrated Resource Plan (IRP2010-30), Government's electricity plan that is currently being implemented, providing for an energy mix that allocates a nuclear capacity of 23% (9600MW) by 2030. In accordance with this plan it is intended that the first unit will be commissioned by 2023.
- 4.3 The National Development Plan (NDP), approved in 2012 enjoins us to conduct thorough investigations on various aspects of the Nuclear New Build Programme (NNBP) before a procurement decision is taken. In line with this policy prescript Government undertook detailed studies on various aspects of the nuclear fuel cycle value chain, including amongst other, costs, financing, funding model, skills development, and economic impact of localisation.
- 4.4 Guided by the relevant policy framework mentioned above, Government has undertaken various activities which have placed the country in a position where the procurement phase of the NNBP is now ready to proceed.
- 4.5 During its seating of the 10th June 2015, Cabinet was presented with four memoranda which covered; (i) the Inter-Governmental Framework Agreements, (ii) the pre-procurement phase, (iii) the proposed Nuclear New Build Procurement Process and (iv) State of Readiness to Implement Nuclear New Build Programme.
- 4.6 Prior to opening the procurement phase of the NNBP, Cabinet instructed that the Department of Energy look into financing matters jointly with National Treasury. This Cabinet memorandum provides feedback on the following engagements between the two Departments.

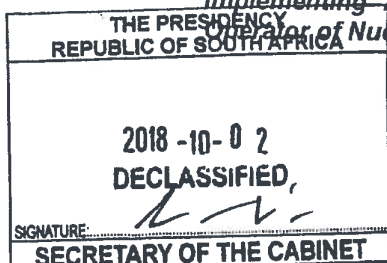
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- 4.7 Several meeting engagements have been held between the two Departments in order to engage on matters that relate to; (a) the Cabinet approved Strategic Hybrid Procurement Process, (b) financing and commercial offerings by vendor countries during three nuclear vendor parade workshops concluded in March 2015, (c) the financial implications of the NNBP, (d) the proposed funding model for the NNBP, (e) the risks identification and mitigation for the NNBP and (f) independent studies commissioned by the Department of Energy.

5 DISCUSSION

- 5.1 During its seating of the 10th June 2015, Cabinet instructed the Department of Energy (DoE) in consultation with National Treasury (NT) to develop a recommendation in the form of a Cabinet Memorandum dealing with (i) the Financial Implications, (ii) the proposed Funding Model (iii) Risks and mitigation strategies (iv) the contributions by countries as contained in the Intergovernmental Agreements.
- 5.2 A Joint Task Team, headed by Directors General of the DoE and NT and made up of members of the two Departments was established and its first meeting took place on 24 July 2015. To date, a total of eight engagements were held: 24 July, 7, 12, 20, 25, 28 August, 3 and 8 September 2015. Representatives from Nuclear SOE's (Eskom, NECSA and National Nuclear Regulator) were also called upon for support.
- 5.3 During these meetings, the two Departments considered the following: (a) the Cabinet approved Strategic Hybrid Procurement Process, (b) financing and commercial offerings by vendor countries during three nuclear vendor parade workshops concluded in March 2015, (c) the financial implications of the NNBP, (d) the proposed funding model for the NNBP, (e) the risks identification and mitigation for the NNBP and (f) independent studies commissioned by the Department of Energy amongst others.
- 5.4 The two Departments propose the following recommendations to Cabinet:
- 5.4.1 Funding Model in order to manage the economic impact as a result of implementing the NNBP, a model that takes into account multiple country objectives is attached as **Annexure A**.
- 5.5 South Africa is the member of the BRICS grouping of nations. It is important to note that the Department has put the Nuclear New Build Programme funding application to the BRICS Bank as a possible source of funding this infrastructure programme. This is expected to mitigate the funding impact on the fiscus.
- 5.6 Regarding structures relevant for the implementation of the NNBP the following is also noted:
- 5.6.1 Cabinet has made the following decisions: The **Procuring and Implementing Agency** for the NNBP is the DoE while the **Owner Operator of Nuclear Power Plants** is Eskom.



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- 5.6.2 The DoE is in the process of establishing and operationalising the Programme Management Office (PMO) under which the procurement process for the NNBP would be undertaken. The PMO is the relevant structure for overseeing that the NNBP is implemented in line with the approved strategies of the Energy Security Cabinet Subcommittee.
- 5.6.3 Capacity building within DoE and its nuclear entities is required to implement the NNBP. A Medium Term Expenditure Framework (MTEF) process to secure funds has been started and is on-going. Initial funding estimates for the structures to deliver on the expected NNBP objectives under the MTEF period is **R6 bn**.

6 IMPLEMENTATION PLAN

The PMO will, amongst other things, produce a programme implementation plan that will cover the following:

Procurement:

The following procurement governance committees will be put in place and operationalised:

Bid Specification, Bid Evaluation, Bid Adjudication, and, finalisation of the feasibility study on the procurement specification and implementation of the NNBP.

Siting:

Conclude the site readiness activities. Obtain site related permis. Securing pieces of land. Transmission integration.

Long lead items:

Identify and procure long lead items.

7 ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The Department of Energy has established and is operationalising the PMO in response to initially undertaking the NNBP procurement process. Any resultant personnel movements between SOE's both in the short and medium term will be managed within existing legislation while mitigating any associated risks.

8 FINANCIAL IMPLICATIONS

Initially for the MTEF period, an amount of **R6 bn** is envisaged in order to effect organisational readiness for the Department of Energy and its nuclear related entities to be well capacitated to manage the NNBP implementation (operational cost).

The experience in Asia shows a nuclear power overnight cost of as low as **\$2500/kW**, whilst the IRP-2010-30 estimates an upper limit of **\$6500/kW**. Utilising these numbers, the total cost for the **9600 MW**

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programme ranges between **R240 bn (\$2500/kW)** and **R624 bn (\$6500/kW)**.

National Treasury has modelled two scenarios that take firstly an aspirational figure of **\$5000/kW** which translates into **R480 bn** for the **9600 MW** and secondly the upper limit of **\$7500/kW** which translates into **R720 bn**.

The **9600 MW** fleet can be constructed in a phased manner, constructing two units at a time, while still maintaining the envisaged programme benefits (such as self-sufficiency, socio-economic benefit, advancement of research and development, mining and beneficiation of strategic mineral like uranium, manufacturing, etc.). The cost of constructing two units in a phased manner, with a capacity of **2400 MW** at a time will range between **R60 bn (\$2500/kW)** to **R156 bn (\$6500/kW)**.

The above scenarios are summarised in the table below.

Programme size	Experience-based Overnight Cost		National Treasury Modelled scenarios Overnight Cost Assumptions		
	\$2500/kW	\$6500/kW	\$2500/kW	\$5000/kW	\$7500/kW
9600 MW	R240 bn	R624 bn	R240bn	R480 bn	R720 bn
2400 MW	R60 bn	R156 bn	R60bn	R120 bn	R180 bn
* Assumed exchange rate is one dollar to 10 rands.					
** Overnight cost – the cost without any interest charges and other impacts.					

Except for a few outliers, world experience in nuclear new build programmes is within \$2500/kW to \$6500/kW. It is the intention to keep the overnight costs of the South African nuclear new build programme within this range.

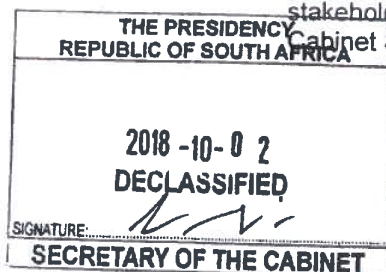
9 COMMUNICATION IMPLICATIONS

The worst case programme cost scenario should not be part of our communication strategy. Prices should not be communicated prior to the procurement process being complete in order to enable Government to achieve better pricing during this period. If any communication has to be done around the costs of the programme, it is better to talk about the low end of the range, whilst referencing where that price is applicable.

The NNBP has a dedicated long term nuclear communications and stakeholder engagement strategy under review in the Energy Security Cabinet Subcommittee structures. The strategy covers a broad range of

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communication tools to reach South Africans from all levels and ensure that the message about demystifying nuclear energy and benefits of implementing the NNBP is disseminated equitably.

10 CONSTITUTIONAL IMPLICATIONS

None.

11 IMPLICATIONS FOR VULNERABLE GROUPS

The involvement of South African companies and institutions in Nuclear New Build Programme will create industry and directly present jobs and business opportunities for designated groups and other previously disadvantaged groups.

12 SECURITY IMPLICATIONS

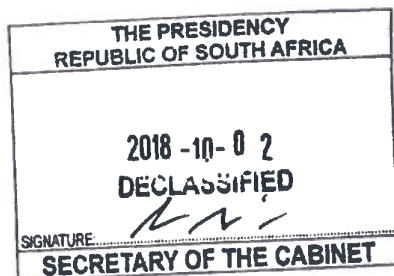
Due to commercial sensitive and intellectual property concerns, especially before the conclusion of the procurement process, relevant steps are taken to safeguard information related to the NNBP.

13 DEPARTMENTS AND PARTIES CONSULTED, RESPONSES AND COMMENTS

- 13.1 The NNBP implementation is still being conducted with the participation and consultation of various Government Departments and State Owned Companies. Department of Energy has consulted with National Treasury, NECSA, Eskom and National Nuclear Regulator.

14 RECOMMENDATIONS

- 14.1 It is recommended that:
- 14.2 The Cabinet approves that Department of Energy should issue the Request for Proposal (RPF) for Nuclear New Build Programme of 9600MW of nuclear power.
- 14.3 The final funding model will be informed by the response of the market to the RFP and be submitted to Cabinet thereafter for final approval and implementation.

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15 OFFICIAL RESPONSIBLE FOR THE MEMORANDUM

I declare that the memorandum adheres to the Guidelines dated November 2012 provided by the Cabinet Secretariat for the drafting of memoranda. The requirements in relation to electronic presentations were noted.

Name: Mr Zizamele Mbambo
 Designation: Deputy Director General: Nuclear
 Telephone: 012 406 7664
 Cellular: 079 529 5646
 E-mail: Zizamele.mbambo@energy.gov.za

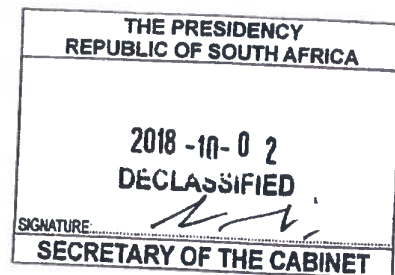
16 HEAD OF DEPARTMENTS

Mr Thabane Zulu

Director-General: Energy

Signature.....

Date... 08/12/2015



17 AUTHORISATION FOR PROCESSING THE MEMORANDUM

Ms Tina Joemat-Pettersson, MP

Minister of Energy


Signature.....

Date... 08/12/2015


Is there a need for an electronic presentation to be done in addition to the memorandum? Yes

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2018/10/02




**Presented by
Ministry of Energy
&
Energy Security Cabinet
Subcommittee
to
CABINET
9 December 2015
Union Building, Pretoria**


Energy Security Cabinet Sub-Committee


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Cabinet Decision

- During the seating of 10 June 2015, Cabinet
- **approved** that the Minister of Energy must, in consultation with the Minister of Finance and the Energy Security Cabinet Sub-Committee, as a matter of urgency submit a memorandum dealing with –
 - i. the financial implications;
 - ii. the proposed funding model;
 - iii. the risks and mitigation strategies; and
 - iv. the contributions by countries as contained in the Inter-Governmental Agreements.
- **approved** that South Africa should proceed with the procurement of the 9.6GW of nuclear power plants to realise its self-sufficiency policy objective



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OPENING REMARKS AND OBJECTIVES


1. To appraise Cabinet on the work and progress made by the Department of Energy and National Treasury with regards to Funding Model of Nuclear New Build Programme in response to Cabinet directive
2. To appraise Cabinet about benefit of nuclear to provide long term electricity solution as presented in the Cabinet endorsed Integrated Resource Plan 2010-2030.
3. To seek Cabinet approval of the Funding Model recommendation and to allow the Department of Energy to issue the Request for Proposal (RFP)

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AFRICAN COUNTRIES PLANNING TO EMBARK ON NUCLEAR NEW BUILD

Summary of Anticipated Nuclear Units

Name of Country	MWe (nuclear)	Year
Algeria	1200	2022
	2400	2027
Egypt	900-1650	2020-2026
Ghana	400-1000	2020-2025
Kenya	4000	2020-2030
Nigeria	1000-4000	2020-2030
Morocco	2000	2020
Sudan	4000	2030

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SOUTH AFRICA NUCLEAR LEADERSHIP ROLE AND SUPPORT TO THE AFRICAN CONTINENT

24 IAEA Fellows (including 7 women) from 9 African countries are receiving training in South African Institutions.

Countries: Namibia, Nigeria, Lesotho, Botswana, Zimbabwe, Uganda, Tanzania, Zambia and Ghana


Fields of Study: Primarily Nuclear Medicine but also Medical Imaging, Clinical Oncology, Radiation Oncology, and Plant Breeding & Genetic

Institutions: Wits University, UCT, Steve Biko Academic Hospital, Medunsa, Stellenbosch University, Agricultural Research Council, Tygerburg Hospital, CPUT, and Groote Schuur Hospital


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[5]



The 2030 Shortfall

Total expected demand by 2030	61 200 MW*
Current Nominal Capacity	43 500 MW
Current Eskom generation capacity	42 000 MW
Imports from Cahora Bassa	1 500 MW
Add:	17 880 MW
Current new build – Medupi/Kusile/Ingula	10 932 MW
Other new build	315 MW
Renewable Energy Independent Power (REIPP)	5 243 MW
Co-generation	1 390 MW
Less:	(26 100 MW)
Breakdowns (current 2015 levels)	(11 300 MW)
Projected decommissioned plants by 2030	(14 800 MW)
Total projected capacity by 2030:	35 280 MW
(43 500 + 17 880 - 26 100)	
Total projected shortfall using these assumptions:	25 920 MW

* Notes: Rev-2013 Update: Base-Case total projected installed nominal capacity will be 61 350 MW (see Table 2) with expected peak demand 60 500 MW (comparable to 61 200 MW)



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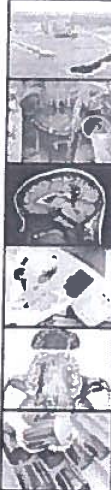
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NUCLEAR ARGUMENTS

AGAINST

- There are three main arguments against nuclear:
- Safety – Disasters at Three Mile Island, Chernobyl and Fukushima but less than 60 deaths in total (all at Chernobyl). At Fukushima, no one died but 20 000 died in the tsunami/earthquake.
- Nuclear Waste – but it does not just get dumped anywhere. The safety protocols are rigorous
 - A 1 000 MW nuclear power station produces about 27 tons of high-level waste per year, a 1 000 MW coal-fired power station will produce about 850 000 tons of ash in the same time. Nuclear waste is stored deep underground, while ash and other harmful gas from burning fossil fuel remains in the environment.
- Construction cost – A new nuclear build is more expensive than other forms of generation.


While Renewable Energy is becoming an increasingly vital part of the power mix it won't be able to address South Africa's baseload needs (without access to meaningful hydro).

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NUCLEAR ARGUMENTS continued

FOR

- The four main benefits of nuclear power would be:
- Environmental considerations – to limit global temperature increases to just 2°C by the end of the century, a halving of energy-related emissions is needed by 2050 and South Africa's baseload options are essentially coal or nuclear
- Reliability – nuclear power stations tend to run very reliably with strict adherence to maintenance programmes and monitoring procedures
- Ability to operate independently of fresh water – (unlike South African coal-fired power stations)
 - Medupi upon completion would require around 17 billion litres of fresh water per year to be consumed almost entirely (less than 10% of this amount would be recycled) compared to Koeberg which saves 22 billion litres of fresh water per year because it uses sea water.
- Low operating cost over the lifetime of the plant – In the second half of its life the cost of producing nuclear power is lowest compared to other forms of electricity. Koeberg is Eskom's most efficient and most profitable power station operating today.
- 2014 Operating cost: Coal - R192/MWh, Nuclear - R34/MWh, and Open Cycle Gas Turbine - R2886/MWh (nearly R10billion per year spent on diesel). Koeberg currently cross-subsidises coal generation.

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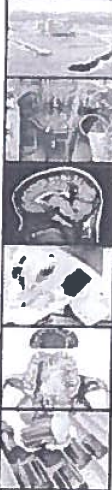
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Economic Investment - increased economic activity

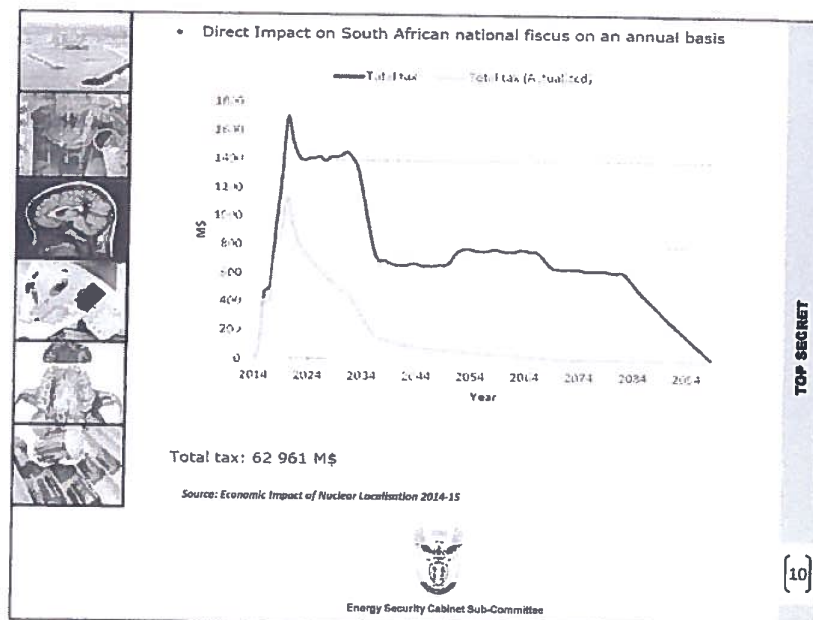
- Contribute positively to GDP **R40 billion** per annum during construction, and **R5 billion** during operation phase.
- Contribute positively to Fiscus – net positive return even with incentives
- Indirect effect on economy from low cost, reliable baseload electricity of nuclear is logically positive but cannot be easily assessed.
- *Dr Dawie Serfontein from UNW has estimated that nuclear new build programme is a **R650-billion** investment that will generate **R54-billion** profit each year for 60 years in a row. Thus our **R650-billion** investment is going to produce a total return of **R3.2-trillion** for South Africa*

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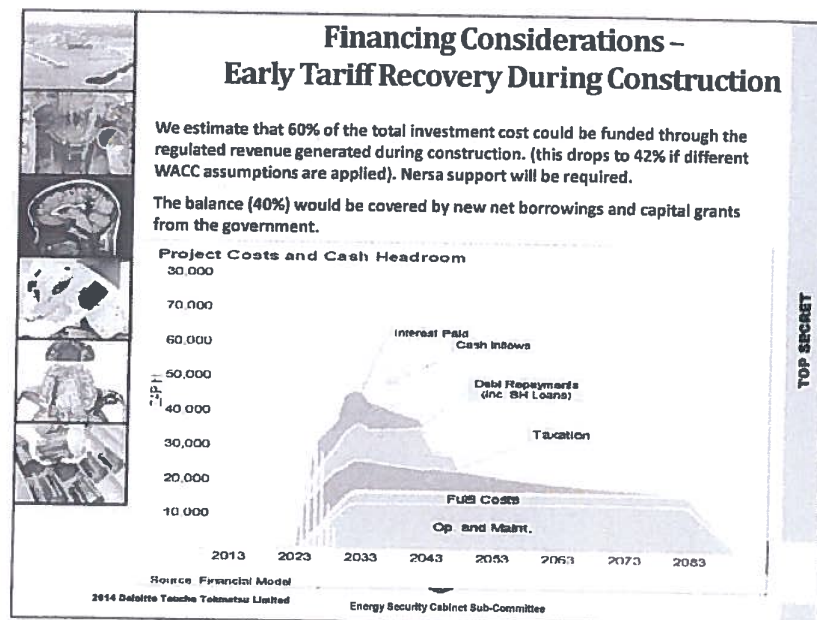
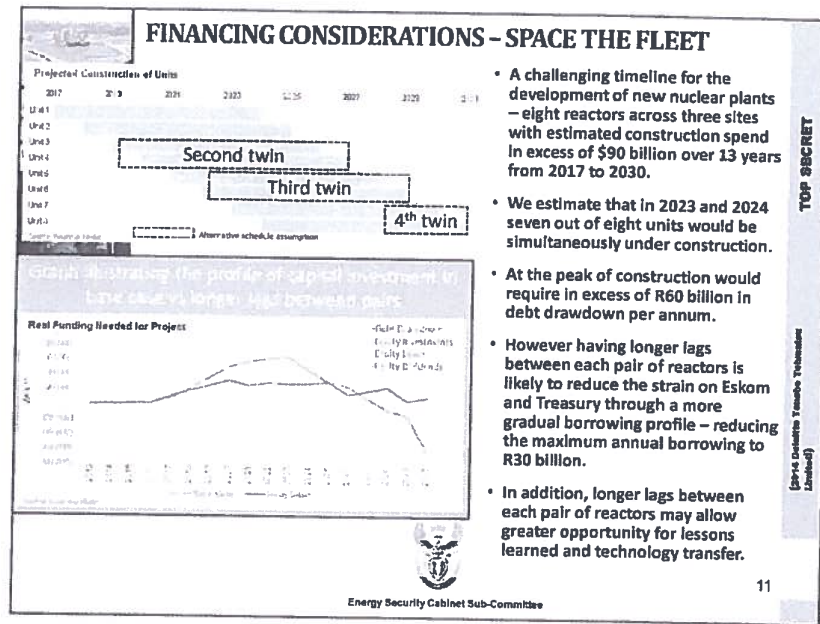
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FUNDING MODEL - SCOPE

The following elements of the funding model and their attendant risks need to be engaged holistically in designing the financial programme supporting the investment:

- Investment cost of the build programme
- Impact on the electricity tariff path
- Costs of developmental and ancillary objectives
- Financing structures, contracting models and procurement processes
- Macroeconomic impacts
- Fiscal context and consequences

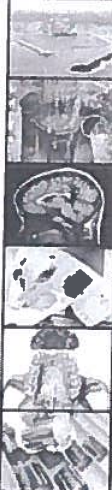
The constitutional, legal and regulatory framework will interact with and influence the funding model. This has not been fully addressed in the preliminary report.

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FUNDING MODEL - Financing Sources & Instruments

- The use of different financing structures (corporate finance / project finance) does not have a significant direct impact on the costs. However, it may have important implications for how risk is managed and mitigated to ensure that incentives are aligned to an efficient outcome. Government therefore should be open to considering different structures.
- Export Credit Agency (ECA) financing is likely to be the most cost-effective source to make up the bulk of the debt financing.
- Reliance on ECA financing will limit the extent of localisation as vendor countries seek to support their own exports. As the level of localisation increases, debt financing will increasingly need to be obtained from other sources, including the capital markets, commercial banks and multilaterals.
- Most of the debt financing will be foreign denominated, resulting in an exposure to a depreciation in the exchange rate. Where appropriate local financing should be encouraged.
- Local currency debt, hedging, insurance or other instruments to fully mitigate financial risks may not be available or the costs may be prohibitively high; reinforcing the need for government to limit the size of the initial commitment to retain flexibility to manage this risk.

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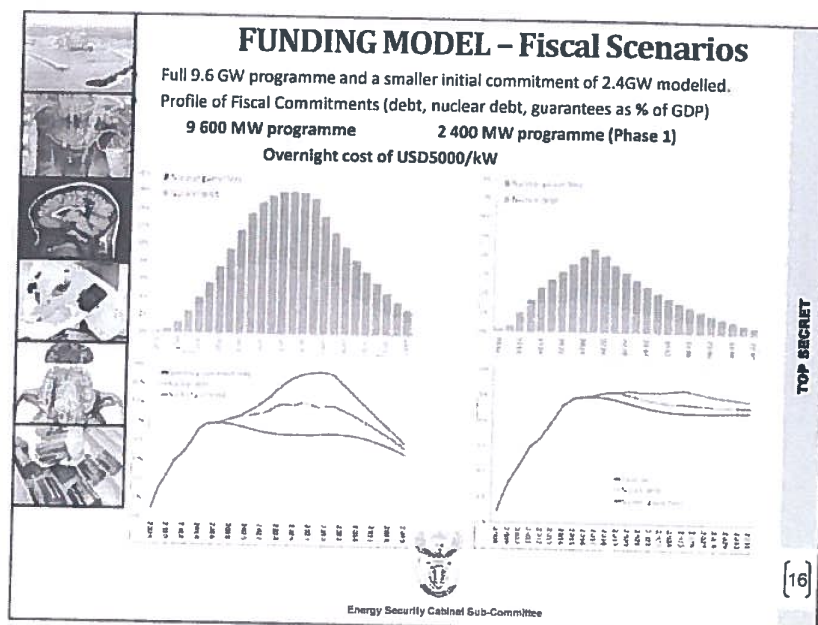
FUNDING MODEL – Fiscal Scenarios

- Full 9.6 GW programme and a smaller initial commitment of 2.4GW modelled
- Scenarios were then constructed in which the cost of the programme (\$/kW) and long run rate of economic growth are varied.
- The intention of the scenarios is to given an indication of the range of possible outcomes.

SCENARIO	COST	ECONOMIC GROWTH
A Low cost Moderate growth	The cost of the programme is very low (\$5300/kW)	Economic growth returns to its long run average, between 3 and 4 per cent per annum
B Low cost Low growth	The cost of the programme is very low (\$5300/kW)	Economic growth remains at current Reserve Bank estimates of potential output growth (2-3 per cent) over the life of the programme.
C Cost overrun Moderate growth	Cost overruns are 50% resulting in a \$7500/kW cost	Economic growth returns to its long run average, between 3 and 4 per cent per annum
D Cost overrun Low growth	Cost overruns are 50% resulting in a \$7500/kW cost	Economic growth remains at current Reserve Bank estimates of potential output growth (2-3 per cent) over the life of the programme.

Energy Security Cabinet Sub-Committee

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FUNDING MODEL

- Initially for the MTEF period, an amount of **R6 bn** is envisaged in order to effect organisational readiness for the Department of Energy and its nuclear related entities to be well capacitated to manage the NNBP implementation (operational costs)
- The experience in Asia shows a nuclear build cost of as low as **\$2500/kW**, whilst the **IRP-2010-30** estimates an upper limit of **\$6500/kW**.
- Utilising these numbers, the total cost for the 9600 MW programme ranges between **R240 bn (\$2500/kW)** and **R624 bn (\$6500/kW)**.
- National Treasury has modelled two scenarios that take firstly an aspirational figure of **\$5000/kW** which translates into **R480 bn** for the 9600 MW and secondly the upper limit of **\$7500/kW** which translates into **R720 bn**.



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FUNDING MODEL


- The 9600 MW fleet can be constructed in a **Phased Approach**, constructing two units at a time, while still maintaining the envisaged programme benefits (such as self-sufficiency, socio-economic benefit, advancement of research and development, mining and beneficiation of strategic mineral like uranium, manufacturing, etc.).
- The cost of constructing first two units in a **Phased Approach**, with a capacity of 2400 MW as Phase 1 will range between **R60 bn (\$2500/kW)** to **R156 bn (\$6500/kW)**.
- The construction of phase 2 (next two units) will be subject to supplier performance to meet specified contract conditions agreed upon during procurement negotiations.
- It is important for South Africa to implement to full programme to benefit from the economies of scale (with an expected 30% reduction on cost).
- It is important to note that the actual price can only be determined by starting the procurement process and testing the market.
- The above scenarios are summarised in the next slide:


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FUNDING MODEL						
Programme size	Experience-based Overnight Cost		National Treasury Modelled scenarios Overnight Cost			
	\$2500/kW	\$6500/kW	\$2500/kW	\$5000/kW	\$7500/kW	
9 600 MW (Full Programme)	R240 bn	R624 bn	R240 bn	R480 bn	R720 bn	
2 400 MW (Phase 1)	R60 bn	R156 bn	R60 bn	R120 bn	R180 bn	
* Assumed exchange rate is one US dollar to 10 rands						
** Overnight cost – the cost without any interest charges and other impacts.						
Except for a few outliers, world experience in nuclear new build programmes is within \$2500/kW to \$6500/kW. It is essential to keep the overnight costs of the South African nuclear new build programme within this range.						
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FUNDING MODEL - SUMMARY	
	<ul style="list-style-type: none"> The elements of the funding model that were considered in this report with National Treasury, include: <ul style="list-style-type: none"> A ring-fenced special-purpose vehicle financing structure the project (i.e. a project finance, not corporate finance approach) Equity amounting to 30% of the project cost is provided by government, financed by issuing bonds The remaining 70% is financed as far as possible by ECA-backed debt Government guarantees all debt issued by the SPV Debt is repaid through tariff with increases taking place on commissioning so that all financing can be repaid over a 20 year period, following which tariffs reduce to cover operational costs only.
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Strategic Decisions Impacting on Funding Model

- The modelling of fiscal implications was done in terms of the funding model summarised on the previous slide. However, a number of strategic decision points would affect the parameters of the model substantially.
- Each of these needs to be considered in further detail:
 - **Tariff path:** raising tariffs early would reduce fiscal costs by shifting some of the burden to electricity consumers.
 - **Phased or once-off commitment:** Should government commit in advance to the full 9.6GW, or make commitments in a phased manner?


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Strategic Decisions Impacting on Funding Model

- **Corporate or project finance:** Should the project be financed on the balance sheet of Eskom or another large state entity, or is the ring-fenced SPV approach preferred?
- **Equity partner:** Should government go-it-alone as an equity contributor or should an equity partner, prepared to share in the financial reward and risk of the project, be included?
- **Localisation and ECA-backed finance:** Vendor financing is cheaper and on easier terms, but limits the extent of localisation since vendors seek to promote their exports.
- **Affordability limits:** What limits should trigger a rethink of affordability and what range of variables should be included in "stop-go" decision making (e.g. exchange rate, economic growth, interest rate, construction cost, lead times, localisation performance...)


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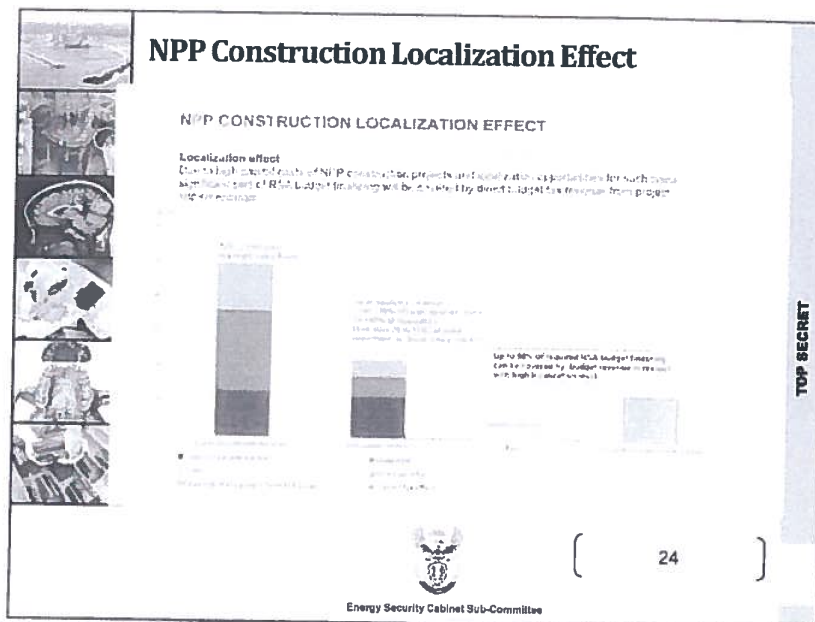
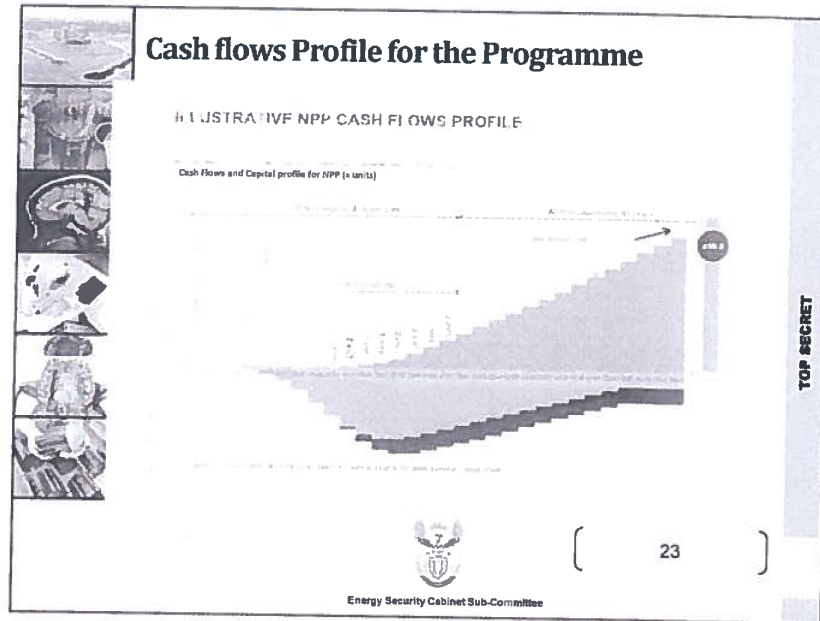
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Cabinet

18

31 August 2016

5 MINISTER OF FINANCE**5.1 BRIEFING ON THE FINANCIAL AND FISCAL COMMISSION (FFC)**
(No document)

- 5.1.1 The **Minister of Finance** made the Cabinet aware of concerns with regard to integrity matters related to certain individuals.
- 5.1.2 The **Cabinet noted** that the Minister of Finance would be providing a detailed briefing on the above matter in due course.

5.2 CREDIT RATING AGENCIES
(No document. Refer to [item 5.1](#) of the minutes dated 8 June 2016)

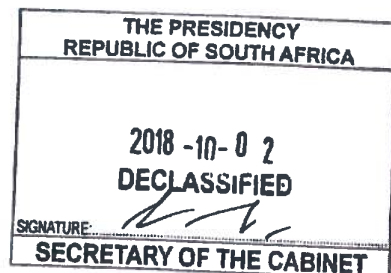
- 5.2.1 The **Minister of Finance** reminded the Cabinet that the credit rating agencies would be returning to South Africa to review and assign the relevant credit rating during September, November and December 2016.

- 5.2.2 The **Cabinet noted** the briefing by the Minister of Finance.

5.3 APPOINTMENT AND RE-APPOINTMENT OF DIRECTORS TO THE BOARD OF SOUTH AFRICAN AIRWAYS SOC LIMITED (SAA)
(Cabinet [memorandum 5](#) of 2016, dated 24 August 2016, file number M2/1/35, Ministry of Finance. Refer to [item 8.1](#) of the minutes dated 22 October 2014)The **Cabinet -**

- (a) **approved** the appointment of a permanent Board comprising of the following twelve non-executive directors to the Board of South African Airways (SAA) for a period of three years from 1 September 2016 to 31 August 2019, subject to annual review:

- (i) Ms D Myeni;
- (ii) Ms T Ramano;
- (iii) Ms BS Tshabalala;
- (iv) Ms T Mgoduso;
- (v) Ms N Moola;
- (vi) Mr AH Moosa;
- (vii) Ms G Sepamla;
- (viii) Mr S Buthelezi;



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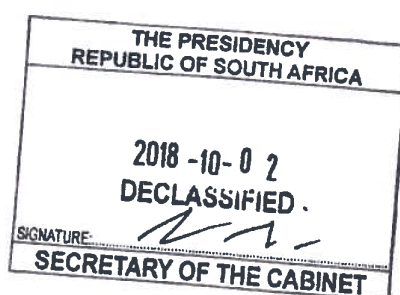
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Cabinet

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31 August 2016

- (ix) Mr PH Maluleka;
 - (x) Mr M Malunga;
 - (xi) Dr M Mbatha; and
 - (xii) Mr P Tshisevhe;
- (b) **approved** that Ms D Myeni be re-appointed as Chairperson of the board for a period of 1 year with a view to ensuring continuity and a seamless transition for the newly appointed board and Deputy Chairperson;
- (c) **approved** that Ms T Ramano be appointed as the Deputy Chairperson of the board for a period of three years from 1 September 2016 to 31 August 2019 subject to annual review; and
- (d) **noted** that the new board would be tasked to work on measures to be implemented with a view to placing SAA in a stronger position in terms of governance and improving the likelihood of possible financial recovery and **approved** that Cabinet be briefed in due course.



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MINISTRY OF FINANCE



CABINET MEMORANDUM NO : 5 of 2016
DATE : 24 August 2016
FILE NUMBER : M2/1/35

1. SUBJECT

Appointment and re-appointment of Directors to the Board of South African Airways SOC Limited (SAA) as part of the strategic package for the successful turnaround of the airline

2. PURPOSE

- 2.1 To request Cabinet to consider and approve the following interventions required for the successful turnaround of SAA:
- 2.1.1 Appointment of twelve non-executive directors (Ms Bajabulile Swazi Tshabalala, Ms Thandeka Mgoduso, Mr Stavros Nicolaou, Ms Nazmeera Moola, Mr Akhter Hoosen Moosa, Ms Gugu Sepamla, Mr Siphile Buthelezi, Mr Peter Holmes Maluleka, Mr Mzimkulu Malunga, Dr Martha Mbatha, Ms Tryphosa Ramano and Mr Peter Tshisevhe) to the Board of SAA for a period of three years from 01 September 2016 to 31 August 2019, subject to annual review.
 - 2.1.2 Appointment of the current Chairperson of the Board (Ms Duduzile Myeni) as non-executive director and Chairperson of the Board of SAA for a period of two years from 01 September 2016 to 30 September 2018, subject to annual review.
 - 2.1.3 Appointment of one of the non-executive directors (Ms Tryphosa Ramano) as the Deputy Chairperson of the Board for a period of three years from 01 September 2016 to 31 August 2019, subject to annual review.
 - 2.1.4 A package of further measures to be implemented to place SAA in a stronger position in terms of governance and improve the likelihood of possible financial recovery.

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3. SUMMARY

- 3.1 The financial health of the state owned company (SOC) portfolio has been highlighted as one of the major risks to South Africa's ability to deliver on its fiscal targets and hence for the sovereign credit rating over the medium term. To continue to operate, the airline is dependent on support from government and has requested a further R4.756 billion government guarantee. It would not be prudent for government to support the airline, without first mitigating the fiscal risk.
- 3.2 As a first step, it is proposed that the current Chairperson of the Board and an additional twelve new non-executive directors be re-appointed/appointed respectively, subject to annual review. The Board appointment is done in terms of Section 13.1 of the Memorandum of Incorporation (MOI) which states that the Board shall consist of minimum of five directors and maximum of fifteen directors, who are to be appointed by the Minister in consultation with Cabinet. Furthermore, the MOI states that the shareholder should ensure that the Board comprises of Executive Directors (EDs) and Non-Executive Directors (NEDs) and with no less than two EDs, being the Chief Executive Officer (CEO) and Chief Financial Officer (CFO).
- 3.3 Once appointed the Board will be tasked with implementing the following package of actions: appointing the CEO, CFO and other key executives; strengthening SAA's strategy to accelerate the turnaround of the airline and ensure alignment with the other state owned airlines; ensuring SAA secures funding to meet its liquidity requirements; putting in place the Air Traffic Liability guarantee; and considering providing additional government support to the airline.

4. STRATEGIC FOCUS OF THE MEMORANDUM

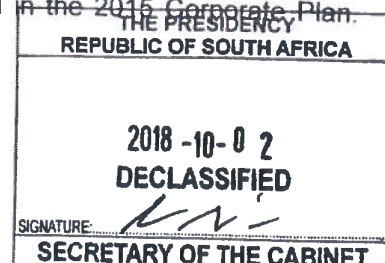
The aim is to strengthen SAA and government's airline businesses so that they can make a more meaningful and impactful contribution towards connecting South Africa to the continent and the continent to the world without posing any risk to the already pressurised public purse.

5. DISCUSSION

- 5.1 SAA has made some progress toward a turnaround. During the 2014/15 financial year the company implemented the 90-day Action Plan, to deliver R1.1 billion of savings. SAA's management accounts indicate that the airline has realised a provisional net loss of R1.8 billion for 2015/16 (about R400 million worse than budget) but considerably lower than in 2014/15. However, the 2016 Corporate Plan projects that the airline will only achieve a net profit in 2020/21 rather than in 2019/20 as projected in the 2015 Corporate Plan.

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The airline has applied for additional guarantees amounting to R4.756 billion to enable the it to sign off on its 2014/15 annual financial statements (AFS) and continue operating as a going concern.

- 5.2 It would not be prudent for government to support the airline, without first mitigating the fiscal risk. In fact, granting SAA another guarantee before the package set out in this Cabinet Memorandum is implemented would not only pose a serious fiscal risk, but would impair the reputation of government and risk a "contagion" effect on all guarantees which total over R400 billion.
- 5.3 A package of actions is required which include (1) appointing a full-strength Board; (2) appointing the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and other key executives; (3) strengthening SAA's strategy to accelerate the turnaround of the airline and ensure alignment with the other state owned airlines; (4) ensuring SAA secures funding to meet its liquidity requirements; (5) putting in place the Air Traffic Liability guarantee; and (6) considering providing additional government support to the airline.
- 5.4 **Appointment of the full-strength Board:** SAA's Board appointment is done in terms of Clause 13.1 of the Memorandum of Incorporation (MOI) which states that the Board shall consist of a minimum of five directors and maximum of fifteen directors, who are to be appointed by the Minister in consultation with Cabinet. Furthermore, the MOI states that the shareholder should ensure that the Board comprises Executive Directors (EDs) and Non-Executive Directors (NEDs) with no less than two EDs, being the CEO and CFO (**Annexure A**).
- 5.5 The appointment of the three existing NEDs that make up the interim Board, Ms D.C Myeni, Ms Y Kwinana and Dr J.E Tambi, is subject to annual review. At the Annual General Meeting (AGM) held on 30 January 2015, it was decided that the review of the appointment of the existing interim Board members and appointment of a full-strength Board be dealt with outside the AGM process. This was necessary to provide the new shareholder department (National Treasury) time to do a proper assessment of the Board requirements, e.g. Board size and skills required to steer the organisation's turnaround. Thus, the term of the Board was extended until such time as a new Board was appointed.
- 5.6 The skills within the current Board include Auditing, Finance and Aviation. With regard to other aspects of Board composition diversity, the current NEDs are 100 per cent black and 60 per cent females.
- 5.7 To ensure continuity whilst strengthening the current, under-capacitated Board, it is recommended that the current Chairperson of the Board and an

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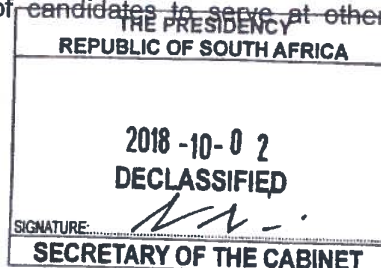
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additional twelve new Board members be re-appointed/appointed respectively subject to annual review.

- 5.8 Skills identified to strengthen the SAA's Board include Finance, Risk Management, Treasury, Investment, Project Management, Business Strategy, Marketing and Business Management, Legal, Banking, Stakeholder Management, Communications and Social Development
- 5.9 Therefore, the appointment of Ms Bajabulile Swazi Tshabalala, Ms Thandeka Mgoduso, Mr Stavros Nicolaou, Ms Nazmeera Moola, Mr Akhter Hoosen Moosa, Ms Gugu Sepamla, Mr Siphile Buthelezi, Mr Peter Holmes Maluleka, Mr Mzimkulu Malunga, Dr Martha Mbatha, Ms Tryphosa Ramano and Mr Peter Tshisevhe on the SAA Board for a period of three years, from 01 September 2016 to 2016 to 31 August 2019, subject to annual review is proposed. Curricula Vitae (CVs) of the proposed new appointments /re-appointments of candidates are attached as **Annexure B**.
- 5.10 The appointment of the current Chairperson of the Board (Ms Duduzile Myeni) as the NED and Chairperson of the Board of SAA will be for a period of two years from 01 September 2016 to 31 August 2018 subject to annual review. Clause 13.4.1 of the MOI stipulates that a NED shall not hold office for more than three consecutive terms (of three years each). Ms Duduzile Myeni was originally appointed to the SAA Board on 1 October 2009, therefore her nine years ends on 30 September 2018. It is therefore recommended that she be re-appointed for a period of two years from 01 September 2016 to 30 September 2018.
- 5.11 Clause 13.2.1 of the MOI stipulates that the Minister shall appoint the Deputy Chairperson. Taking into account that the Chairperson's term will be ending in two years' time, a succession plan is important to ensure continuity. It is against this background that Ms Tryphosa Ramano is recommended to be the Deputy Chairperson of the Board.
- 5.12 In effecting these appointments, the Board will comprise of thirteen directors (**Annexure C**). In compliance with Principle 2.18 of King III on Corporate Governance, the Board will comprise a majority of non-executive directors of whom 53 per cent will be females. In terms of race, the Board will comprise 77 per cent Black, 15 per cent Indian and 8 per cent White representation.
- 5.13 **Appointment of the CEO, CFO and other key executives:** The existing Board has shortlisted three candidates for appointment as CEO. However, a good rapport between the Board and CEO is essential for ensuring alignment in driving implementation of SAA's strategy. Moreover, there have been a number of changes that have taken place at the airline since the candidates were identified, including the appointment of candidates to serve at other

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companies. Therefore, the newly appointed Board should be provided with the opportunity to re-open the process, review candidates for the CEO appointment and submit recommendations to the Minister of Finance. A new CEO should take the lead in appointing the other executives, in consultation with the Board and Minister, to ensure that accountability lines are clear.

- 5.14 **Strengthen the strategy and ensure alignment with other state owned airlines:** The newly appointed Board will be required to strengthen the strategy to accelerate the turnaround of the airline and to ensure its robustness in the context of increasing competition and volatile movements in fuel and exchange rates. This requires more aggressive cost containment. Refinement of the network and fleet plan based on a sound business case demonstrating the profitability of the proposed changes and ensuring alignment with the other state owned airlines is required. The airline's strategy needs to better differentiate the airline, enabling it to continue to compete effectively, inter alia through addressing the customer value proposition. National Treasury will be working with the Department of Public Enterprises to give consideration to the realignment of government's shareholding in the airlines and the possible introduction of a strategic equity partner.
- 5.15 **Secure funding to meet the airline's liquidity requirements:** The Board will need to take immediate action to raise the finance required for the airline to meet its liquidity requirements during 2016/17, including the repayment of R4.5 billion of debt maturing between the end of September 2016 and January 2017.
- 5.16 Lenders are reducing their unguaranteed facilities with SAA and appetite to lend to SAA, even with the support of the government guarantees, is drying up. A range of stakeholders have raised concerns relating to the governance and financial position of SAA. The appointment of a capable, full-strength Board and experienced executives implementing a robust strategy are vital to enable the airline to raise the funding it requires to operate.
- 5.17 **Putting in place the Air Traffic Liability (ATL) Guarantee:** SAA applied for an ATL guarantee on 16 August 2016. This consumer protection guarantee is a precondition for the issuance of a domestic and international air traffic license. Without the licence, SAA will be unable to operate. The new guarantee requirement of R541 million for the 12 month period up until 30 September 2017 can be accommodated within existing guarantee facilities.
- 5.18 Additional requirements for the new Board to deliver on SAA's mandate as set out in its founding legislation and MOI will be captured in the Shareholder Compact, the key elements of which are summarised under **Annexure D**.

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- 5.19 Providing additional support to the airline:** SAA has applied for R4.756 billion in additional guarantees. Without the guarantees, the Board cannot sign off the 2014/15 Annual Financial Statements (AFS) as a going concern: the company is technically insolvent and would not be able to demonstrate that it is able to meet its liquidity requirements over the next 12 months. Instead the company would have to be placed into business rescue.
- 5.20** The financial health of the state owned company (SOC) portfolio has been highlighted as one of the major risks to South Africa's ability to deliver on its fiscal targets and hence for the sovereign credit rating over the medium term. It would not have been prudent for government to issue further guarantees to SAA without first taking steps to mitigate the fiscal risk, starting with appointing a full-strength Board.
- 5.21** Having appointed a full-strength Board tasked with executing the proposed measures, government can legitimately provide guarantee support to the airline. This will allow for SAA's 2014/15 AFS to be finalised and tabled in Parliament, as well as being made available to other stakeholders. Once demonstrable progress has been made with implementing the proposed measures, government could consider a range of other possible measures to support SAA's turnaround strategy which could include equity (from government and/or strategic equity partner) as may be deemed appropriate.

6. IMPLEMENTATION PLAN


The appointment of new members to make up a full-strength Board will be effective from 01 September 2016 to 31 October 2019, subject to an annual review. The reappointment of the Chairperson, Ms Duduzile Myeni, will be effective from 01 September 2016 to 30 September 2018. For continuity, Ms Tryphosa Ramano will be appointed as the Deputy Chairperson. The Board will be responsible for reviewing candidates for the appointment of the CEO and re-submitting recommendations to the Minister. The Board must take immediate steps to extend, roll over and refinance the debt that will mature from the end of September 2016 and review and strengthen SAA's strategy to accelerate the turnaround of the airline.

7. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

None for Government.

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8. FINANCIAL IMPLICATIONS

- 8.1 With regards to the non-executive directors, there is no financial implication for government: remuneration of directors from outside the public service will be paid by SAA. No remuneration will be paid to members of the public service.
- 8.2 Having appointed the full-strength Board tasked with executing the proposed measures, government can legitimately provide guarantee support of R4.756 billion to the airline.
- 8.3 Should SAA default on existing guarantees and short term facilities then Government would have to settle the R14.4 billion in guaranteed debt. The breach of the expenditure ceiling would likely trigger a sovereign downgrade.

9. COMMUNICATION IMPLICATIONS

Upon approval of the appointment of the permanent Board of Directors, the Chairperson of the Board and the appointed Board members will be informed of their appointments.

10. CONSTITUTIONAL IMPLICATIONS

None.

11. IMPLICATIONS FOR VULNERABLE GROUPS

None.

12. SECURITY IMPLICATIONS

None

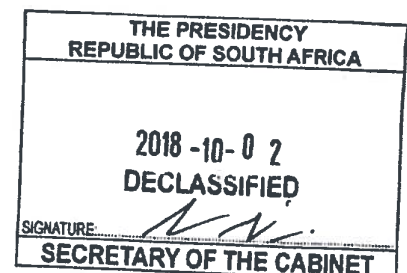
13. RESPONSES AND COMMENTS FROM DEPARTMENTS AND PARTIES CONSULTED AND CONSIDERATION BY THE RELEVANT DIRECTORS-GENERAL CLUSTER

None

14. RECOMMENDATIONS

- 14.1 It is recommended that Cabinet approves the following interventions required for the successful turnaround of SAA:

- 14.1.1 Appointment of a permanent Board comprising of twelve (Ms Bajabulile Swazi Tshabalala, Ms Thandeka Mgoduso, Mr Stavros Nicolaou, Ms



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Nazmeera Moola, Mr Akhter Hoosen Moosa, Ms Gugu Sepamla, Mr Siphile Buthelezi, Mr Peter Holmes Maluleka, Mr Mzimkulu Malunga, Dr Martha Mbatha, Ms Tryphosa Ramano and Mr Peter Tshisevhe) non-executive directors to the Board of SAA for a period of three years from 01 September 2016 to 31 August 2019, subject to annual review.

- 14.1.2 Appointment of the Chairperson of the Board (Ms Duduzile Myeni) as the non-executive director to the Board of SAA for a period of two years from 01 September 2016 to 30 September 2018, subject to annual review.
- 14.1.3 Appointment of one of the non- executive directors (Ms Tryphosa Ramano) as the Deputy Chairperson of the Board for a period of three years from 01 September 2016 to 31 August 2019, subject to annual review.
- 14.1.4 A package of the following further measures to be implemented to place SAA in a stronger position in terms of governance and improve the likelihood of possible financial recovery:
 - 14.1.4.1 Board to review and resubmit recommendations for the appointment of the Chief Executive Officer (CEO). The CEO will in turn be responsible for the appointment of the other executives.
 - 14.1.4.2 Board to review and strengthen SAA's strategy to ensure alignment with that of the other state airlines and that a turnaround is delivered by 2019/20.
 - 14.1.4.3 Board to take immediate steps to secure funding to meet the airline's liquidity requirements including extending, rolling over or refinancing the R4.5 billion in debt maturing between September 2016 and January 2017.
 - 14.1.4.4 Subject to the above steps being taken, government to consider a range of other possible measures to support SAA's turnaround strategy which could include a guarantee, equity (from government and/or strategic equity partner) as may be deemed appropriate.

15. OFFICIAL RESPONSIBLE FOR THE MEMORANDUM

I declare that the memorandum adheres to the Guidelines dated July 2015 provided by the Cabinet Secretariat for the drafting of memoranda. The requirements in relation to electronic presentations were noted.

Mr Anthony Julies
Deputy Director-General: Asset and Liability Management

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National Treasury
012 315 5415
anthony.julies@treasury.gov.za

16. HEAD OF DEPARTMENT



Mr Lungisa Fuzile
Director-General: National Treasury
Tel: 012 315 5151


17. AUTHORISATION FOR PROCESSING THE MEMORANDUM



MINISTER

PRAVIN GORDHAN, MP
MINISTER OF FINANCE

Is there a need for an electronic presentation to be done in addition to the memorandum? No

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MINISTER OF FINANCE
REPUBLIC OF SOUTH AFRICA

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Private Bag X916, Pretoria, 0001, Tel: +27 12 323 5011, Fax: +27 12 323 5262
PO Box 28, Cape Town, 8000, Tel: +27 21 461 5180, Fax: +27 21 461 5634

Mr MJ Zwane
Minister of Mineral Resources
Private Bag X69
PRETORIA
0001

Dear Minister Zwane

**INTER-MINISTERIAL COMMITTEE IN RESPECT OF ALLEGATIONS LEVELLED
AGAINST FINANCIAL INSTITUTIONS**

I refer to your letter dated 20 April 2016, emailed to my office at 11h48am on 22 April 2016.

As you are aware, I was not present at the Cabinet meeting you refer to but I have perused the Cabinet Secretariat on the matter.

The following emerges:

1. The Cabinet meeting was on the 13th April 2016 – not 16th April 2016 which was a Saturday.
2. No Inter-Ministerial Committee was established.
3. Three Ministers were nominated: Finance, Labour and Mineral Resources.
4. No one Minister was designated as convener.
5. The financial services sector is not "already distressed" as your letter indicates, and care must be taken not to compromise financial stability.

Whilst I appreciate the urgency of the matter for some, I must emphasise that the legal and regulatory environment has both global (BASEL III, Financial Action Task Force) and local (SA Reserve Bank, Financial Services Board, Financial Intelligence Centre, National Consumer Commission, etc) regulators and regulations.

I am currently seeking legal advice on what could be done in the present circumstances, given the intensive legislative framework we have governing the financial sector.

In the circumstances, it will be advisable for the three Ministers to first consult on the framework for any discussion with financial institutions. I prefer that this takes place on the

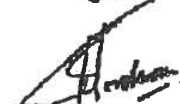
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margins of the Cabinet meeting of the 28th April 2018. You might also be aware that discussions of the nature envisaged have already taken place elsewhere.

Accordingly, I look forward to discussing the way forward next Tuesday.

Kind regards


PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 22-4-2018

cc. Ms MN Olliphant, MP
Minister of Labour



Nov 08, 2018

Mail & Guardian

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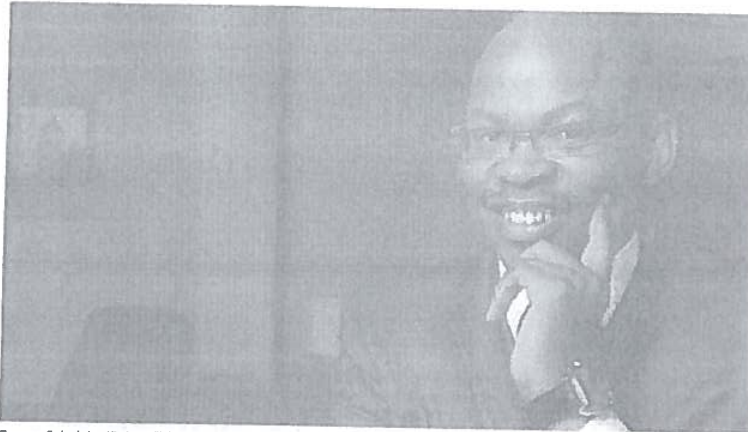
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Eskom board member resigns over conflict of interest in ICT contract

Sabelo Skiti (<https://mg.co.za/author/sabelo-skiti/>) 19 Oct 2018 16:13



George Sebelela. (Robert Tshabalala/Financial Mail)

(<https://mg.co.za/article/2018-10-19-eskom-board-member-resigns-over-conflict-of-interest-in-ict-contract>)

[PS://MG.CO.ZA/ARTICLE/2018-10-19-ESKOM-BOARD-MEMBER-RESIGNS-OVER-CONFLICT-OF-INTEREST-IN-ICT-CONTRACT#COMMENT_THREAD](https://mg.co.za/article/2018-10-19-eskom-board-member-resigns-over-conflict-of-interest-in-ict-contract#comment_thread)

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Struggling power utility Eskom has announced the resignation of one of its directors, over perceptions of a conflict of interest in a multi-billion rand information and communications technology (ICT) contract.

George Sebelela resigned on Friday after Eskom's board received a legal opinion on the matter. The board only became aware of it for the first time last week.

In announcing Sebelela's resignation, board chairman Jabu Mabuza did not disclose the contents of the opinion, saying only it was to determine whether there was a conflict.



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Shabby South Africa misses the boat at China trade fair
(<https://mg.co.za/article/2018-11-08-shabby-south-africa-misses-the-boat-at-china-trade-fair>)

The South African pavilion was a 'disservice to the people of China' as it could speak Mandarin

By Simon Allison (<https://mg.co.za/author/simon-allison>)

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hEPOJTUJr2ifWv46xs602NOH1mGhlcwWmjzGAOOPuZ_t6uf1Yl84vCP0mYnRjZg/////)

Sebulela tendered his resignation on Friday and Pravin Gordhan — the Minister of Public Enterprises — has been informed.

“Mr Sebulela resigned after considering legal advice on his continued role as an Eskom director after the Board was made aware of certain conflicts of interest.. Mr Sebulela made the correct decision to resign from the Board and to help ensure that acceptable standards of good corporate governance are maintained.

“The Board is aware that allegations are being peddled in the media that other directors had also resigned from the Eskom board today. Such information is patently false.”

Eskom said it could not reveal the value of the tender as that will be determined by the winning bidder, but the *Mail & Guardian* has established that Eskom has paid over R5-billion over the last 10 years for the service.

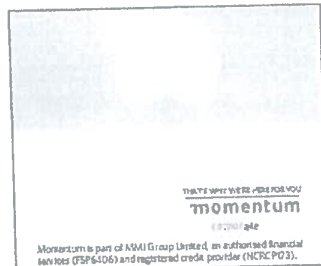
The *M&G* has further established Sebtech — Sebulela's company — is a supplier and development partner to IT giant EOH, one of two companies shortlisted for the award. The other company is T-Systems.

EOH confirmed that the company had submitted its bid about four months before Sebulela's appointment to the board. EOH also declared, via Eskom's normal declaration processes, Sebulela's directorship on the sub-contracting entity in March of this year. This was after Eskom notified bidders the tender was going ahead.

The potential conflict only became an issue last week after EOH was named preferred bidder by Eskom's executive tender committee and the board tender committee.

Lwanda Zingitwa, Mabuza's chief of staff, said the board then found out that Sebulela had not declared the conflict. Zingitwa however, could not confirm whether EOH had too.

It is understood EOH submitted a bid for the work last year, several months before Sebulela was appointed to the board, and that once he was appointed it had notified Eskom that he was a sub-contractor.



Sebulela said his resignation was in the interest of Eskom and that the board had collectively agreed that issues of conflict would not be tolerated.

He refused to be drawn on speculation that he had initially refused to resign because the bid was submitted before his became a board member.

Sebulela — a former executive at Absa — is the president and chief executive of Sebvest Group, the owner of Sebtech Technologies (<https://sebtech.co.za/>), and secretary-general of the Black Business Council.

He was one of eight new board members announced by the power utility on January 20 following a meeting between President Cyril Ramaphosa and former ministers Lynne Brown (public enterprises) and Malusi Gigaba (finance).



(<https://mg.co.za/article/2018-11-08-gordhan-calls-public-protector-subpoena-a-misuse-of-public-powers>)

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The public protector's spokesperson insists the investigation is into misadministration

By Gemma Ritchie
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(<https://mg.co.za/article/2018-11-08-25-south-africa-has-a-new-poet-laureate>)

The work of acclaimed writer Mongane Wally Serote reveals the point at which poetry meets politics

By Arts Desk (<https://mg.co.za/Author/Arts-Desk>)



(<https://mg.co.za/article/2018-11-08-former-mail-guardian-editor-detained-in-tanzania>)

(<https://mg.co.za/article/2018-11-08-former-mail-guardian-editor-detained-in-tanzania>)

At the time government said the "intervention", which was ratified by cabinet later, would address urgent challenges at the company.

Eskom had been facing a financial and reputational crisis related to massive losses driven by rampant corruption which cost the parastatal billions of rands. Because of public perception of Eskom's 'capture', lending institutions were no longer willing to extend credit to the energy supplier.

The new board included chairman Jabu Mabuza, former MTN chief executive Sifiso Dabengwa, Dr Rod Crompton, and Mark Lamberti. Lamberti has since resigned after being embroiled in a discrimination incident (<https://mg.co.za/article/2018-04-06-00-my-victory-should-help-all-women>) that emanated from his time at Associated Motor Holdings.

In the statement government said: "Eskom is critical to the South African economy. As a key enabler of economic growth and social transformation, any further deterioration of Eskom's financial and operational conditions could have a severe impact on the country.

"The company has been facing several challenges, including a weak financial position, declining revenues and governance failures, which are threatening the sustainability of the company going forward," the statement continued.

Sabelo Skiti



Sabelo Skiti is an investigative journalist.

Read more from Sabelo Skiti
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Hawks, NPA and Sars all attempted to frustrate the former finance minister's fight against state capture, Gordhan to tell Zondo Commission

By Sabelo Skiti (<https://mg.co.za/author/Sabelo-Skiti>)



(<http://bhokisisa.org/article/2018-10-26-00-the-high-cost-of-being-yourself-transgender-healthcare-and-private-medical-aids>)

00-the-high-cost-of-being-yourself-transgender-healthcare-and-private-medical-aids)

For transgender people, gender-affirming care can be a matter of life and death. But medical aids still see it as a choice rather than a necessity.

By Naliniwa Moomi (<https://mg.co.za/author/Naliniwa-Moomi>)



(<https://mg.co.za/article/2018-11-08-de-lille-lays-fraud-defamation-charges-against-da-members>)

(<https://mg.co.za/article/2018-11-08-de-lille-lays-fraud-defamation-charges-against-da-members>)

Patricia de Lille says she has also laid a formal party complaint regarding the distribution of a forged post on social media



JOHANNES SEBULELA (7006195362082)

CIPC Director

Suite G01, Waterview 2, Waterview Close, Century City
Tel: +27 86 044 3333
Website: <https://www.searchworks.co.za>

SEARCH INFORMATION

Summary

Search Type	CIPC DIRECTOR
Search Description	JOHANNES SEBULELA (7006195362082)
Reference	20181108
Date	08/11/2018

DIRECTOR INFORMATION

Summary

Forename(s)	JOHANNES
Surname	SEBULELA
ID Number	7006195362082
Date of Birth	19/06/1970
Gender	MALE
Age	48

IN BUSINESS

Company Name	Registration Number	Director Status
SANLAM PRIVATE WEALTH	2000/023234/07	ACTIVE
SEBVEST HOLDINGS	1999/016570/07	ACTIVE
SEBVEST TREASURY	2018/205226/07	ACTIVE
BLACK BUSINESS COUNCIL	2012/157732/08	ACTIVE
SEBVEST WEALTH	2015/365840/07	ACTIVE
SEBTECH TECHNOLOGIES	1999/007164/07	ACTIVE
ARRIBA TECHNOLOGIES	2009/008629/07	RESIGNED
SEBVEST FINANCIAL SERVICES	2015/365836/07	ACTIVE
AEC CAPITAL	2016/376645/07	ACTIVE
SEBGRO	2018/035844/07	ACTIVE
RUUVHUTE INVESTMENT CORPORATION	2012/131248/07	ACTIVE
TONGZHOU CONSTRUCTIONS SA	2015/043844/07	ACTIVE
ESKOM HOLDINGS	2002/015527/30	ACTIVE
SEBVEST BLOCKCHAIN	2018/388603/07	ACTIVE
ASCENDIS HEALTH	2008/005856/06	ACTIVE
SEBVEST PRIVATE EQUITY	2018/205134/07	ACTIVE
MSG HOLDINGS	2012/158353/07	RESIGNED
SEBVEST CAPITAL	2015/365829/07	ACTIVE
AVUKE PETROLEUM	2016/376636/07	ACTIVE
AVUKE ENERGY	2016/286779/07	ACTIVE
SOUTH AFRICAN UNITED BUSINESS COUNCIL	2018/291441/08	ACTIVE
SHUTHUKA HOLDINGS	2017/312369/07	ACTIVE

IN BUSINESS

Company Name	Registration Number	Director Status
SEBVEST DEVELOPMENT AFRICA	2010/000754/07	ACTIVE
CAPRIVI CAPITAL	2017/097475/07	ACTIVE
AVUKE PETROLEUM INTERNATIONAL	2017/199997/07	ACTIVE
BLUEWIN AUTOMOTIVE	2004/007704/07	ACTIVE
SEBVEST VCC	2018/246588/07	ACTIVE
SEBVEST STRATEGIC INVESTMENTS	2018/384587/07	ACTIVE
SEBVEST TRADE AND ASSET FINANCE	2018/384639/07	ACTIVE
GREY FOUR GROUP	2015/226001/07	ACTIVE
SEBULELA AND ASSOCIATES	2018/039290/07	ACTIVE
AEROSUD HOLDINGS	1992/006752/07	ACTIVE
SEBMATLA	2018/490747/07	ACTIVE
SEBVEST VAT SERVICES	2018/384558/07	ACTIVE
SEBVEST ENGINEERING	2012/133157/07	ACTIVE
SKYCO MEDIA SOLUTIONS	2015/295982/07	RESIGNED
BBC CAPITAL	2017/030972/07	RESIGNED
MEDIQUIP SA HUB	2012/075534/07	ACTIVE
AFRICAN ENTREPRENEURS COUNCIL	2015/343411/08	ACTIVE
SEBVEST INSURANCE	2018/375585/07	ACTIVE
SEBVEST 12J	2018/218215/07	ACTIVE
STRYKER SPECIAL SECURITY PROJECTS	2009/002451/07	ACTIVE
SEBVEST FUND MANAGERS	2018/205102/07	ACTIVE
SEBVEST GLOBAL ADVISORS	2018/384522/07	ACTIVE
BBC CAPITAL PROJECTS	2017/191205/07	RESIGNED

CONVERSION CO/CC OR CC/CO

Company Name	Registration Number	Director Status
No information available.		

DEREGISTRATION PROCESS

Company Name	Registration Number	Director Status
INSPUR SA	2013/058605/07	ACTIVE
SEBVEST ENTERPRISES	2013/175108/07	ACTIVE
BUPE CAPITAL	2012/221037/07	ACTIVE
HANHE CABLE INTERNATIONAL SOUTH AFRICA	2015/016749/07	ACTIVE
YEI ESA MOODS	2012/135514/07	RESIGNED
SEBVEST COMMODITIES AND CHEMICALS	2012/032393/07	ACTIVE
SEBVEST PROPERTIES	2013/230221/07	ACTIVE
GENER8 POWER PROJECTS AFRICA	2014/080755/07	ACTIVE
MARANDA CONSULTING	2013/044161/07	ACTIVE
SEBVEST FOUNDATION	2012/040318/08	ACTIVE
GREY FOUR CREATIVE	2014/190654/07	ACTIVE
SEICO INSURANCE	2015/085773/07	ACTIVE
MIXOSPARK	2012/214741/07	ACTIVE
SEBVEST ENERGY	2015/016716/07	ACTIVE
MARANDA CONSULTING	2013/044161/07	ACTIVE
SEBVEST FOODS	2014/191770/07	ACTIVE

DEREGISTRATION FINAL

Company Name	Registration Number	Director Status
SEBMAT INVESTMENT GROUP	2008/000416/07	ACTIVE
SEBMAT CONSTRUCTION GROUP	2008/000262/07	ACTIVE
NEW DAWN CAPITAL	2003/008943/07	RESIGNED
MEG IMPORT AND EXPORT	2009/003536/07	ACTIVE
SEBCAPITAL	2008/000340/07	ACTIVE
KWANZA RESTAURANT	2007/006611/07	ACTIVE
PLACE ME RECRUITMENT	2002/009316/07	RESIGNED
VITALSPORT	1998/007697/07	ACTIVE
POTLAICO CONSULTANTS RECRUITMENT AND TRAINING SERVICES	1996/001231/23	RESIGNED
EXECUTIVE MODELS 28	2000/032139/23	ACTIVE
RIVERSIDE PARK TRADING 262	2007/033008/07	DISQUALIFIED
WISCONSIN INVESTMENT HOLDINGS	2004/018772/07	RESIGNED
AMR POTLAKE	1999/005968/07	ACTIVE
POTLAKE CONSOLIDATED HOLDINGS	1998/014738/07	ACTIVE
SEBFIN FINANCE	1999/023276/07	ACTIVE
WISCONSIN TRADING	2002/023778/07	RESIGNED
SEBTECH INFRASTRUCTURE SOLUTIONS	2010/000768/07	ACTIVE
SEBMAT PETROLEUM AND FERTILIZERS	2008/014608/07	ACTIVE
TENGA BROAD-BASED BEE FUND	2008/023796/07	ACTIVE
POTLAKE DIGITAL SOLUTIONS	1999/023921/07	ACTIVE
SEBMAT SECURITY AND DEFENCE	2006/027222/23	ACTIVE
WISCONSIN AUTO	2004/015925/07	RESIGNED



NDLOVU INVESTMENT HOLDING COMPANY (2014/268470/07) CIPC Company

Suite G01, Waterview 2, Waterview Close, Century
City
Tel: +27 86 044 3333
Website: <https://www.searchworks.co.za>

SEARCH INFORMATION

Summary

Search Type CIPC COMPANY
Search Description NDLOVU INVESTMENT HOLDING COMPANY (2014/268470/07)
Reference 20181108
Date 08/11/2018

COMPANY INFORMATION

Summary

Name NDLOVU INVESTMENT HOLDING COMPANY
Registration Number 2014/268470/07
Type PRIVATE COMPANY (PTY) LTD
Status IN BUSINESS
Registration Date 15/01/2015
Average Age of Director 60

SARS VERIFICATION MATCHES

Trading Name	VAT Registration Number	Area
--------------	-------------------------	------

No information available.

ACTIVE DIRECTOR(S)

Director Name	ID Number	Status	Type	Appointed
RAYMOND SIFISO NDLOVU DABENGWA	5804055939086	ACTIVE	DIRECTOR	15/01/2015

RESIGNED DIRECTOR(S)

Director Name	ID Number	Status	Appointed	Resigned
---------------	-----------	--------	-----------	----------

No information available.

DECEASED DIRECTOR(S)

Director Name	ID Number	Status	Appointed
---------------	-----------	--------	-----------

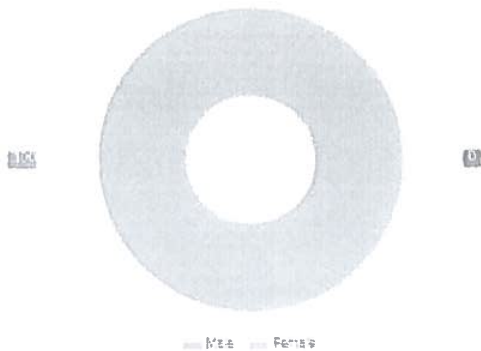
No information available.

DIRECTOR TIMELINE



DIRECTOR GENDER

Gender Breakdown (%)



AUDITOR(S)

Auditor Name	Profession Code	Status	Start Date
No information available.			

COMPANY INFORMATION

Summary

Name	NDLOVU INVESTMENT HOLDING COMPANY
Short Name	-
Translated Name	NDLOVU INVESTMENT HOLDING COMPANY (2014/268470/07)
Registration Number	2014/268470/07
Old Registration Number	-
Type	PRIVATE COMPANY (PTY) LTD
Short Type	(PTY) LTD
CIPC Company Act Type	COMPANY (REGISTERED ACCORDING TO NEW 2008 CO ACT)
Status	IN BUSINESS
Tax Number	9339185184
Type Date	15/01/2015
Registration Date	15/01/2015
Start Date	15/01/2015
Status Date	*
Principal Description	BUSINESS ACTIVITIES NOT RESTRICTED.
Details Withdrawn From Public	NO
Standard Industrial Classification	-
Financial Year End	FEBRUARY
Financial Effective Date	*
Registered Address	BLOCK A GROUND FLOOR COACHMANS CROS, 4 BRIAN STREET, LYME PARK BRYANSTON, GAUTENG, 2021
Postal Address	PO BOX 454, SUNNINGHILL, JOHANNESBURG, GAUTENG, 2157
Region	*
Country of Origin	*
Country	SOUTH AFRICA
Authorised Capital	-

COMPANY INFORMATION

Issued Capital	-
Authorised Shares	1000
Issued Shares	-
Form Received Date	-
Date on Form	-
Conversion Number	-

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DIRECTOR(S)

Director 1 of 1

First Name	RAYMOND SIFISO NDLOVU
Surname	DABENGWA
ID Number	5804055939086
Date of Birth	05/04/1958
Gender	MALE
Age	60
Residential Address	11 KILLARNEY ROAD, SANDHURST, JOHANNESBURG, GAUTENG, 2196
Postal Address	PO BOX 1552, WITKOPPEN, JOHANNESBURG, GAUTENG, 2068
Type	DIRECTOR
Status	ACTIVE
Appointment Date	15/01/2015
Resignation Date	-
Member Contribution	0%
Member Size	0%

AUDITOR(S)

No information available.

CAPITAL INFORMATION

Type	Capital Amount	Capital Premium	Number of Shares	Parri Value
No information available.				

CHANGE HISTORY

History 1 of 7

Effective Date	26/01/2018
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 5101054369

History 2 of 7

Effective Date	26/01/2017
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 561975600

History 3 of 7

Effective Date	04/02/2016
Change Type	CO/CC ANNUAL RETURN
Memo	COMPANY / CLOSE CORPORATION AR FILING - WEB SERVICES : REF NO. : 532159307

History 4 of 7

Effective Date	-
Change Type	PAYMENT IS DUE
Memo	PLEASE DEPOSIT MONEY TO ALLOW FOR ENTERPRISE REGISTRATION, INSUFFICIENT FUNDS AVAILABLE TO FINISH REGISTRATION

History 5 of 7

Effective Date	-
Change Type	PAYMENT IS DUE
Memo	PLEASE DEPOSIT MONEY TO ALLOW FOR ENTERPRISE REGISTRATION, INSUFFICIENT FUNDS AVAILABLE TO FINISH REGISTRATION

History 6 of 7

Effective Date	-
Change Type	PAYMENT IS DUE
Memo	PLEASE DEPOSIT MONEY TO ALLOW FOR ENTERPRISE REGISTRATION, INSUFFICIENT FUNDS AVAILABLE TO FINISH REGISTRATION

History 7 of 7

Effective Date	-
Change Type	PAYMENT IS DUE
Memo	PLEASE DEPOSIT MONEY TO ALLOW FOR ENTERPRISE REGISTRATION, INSUFFICIENT FUNDS AVAILABLE TO FINISH REGISTRATION

4

How the capture of the state is structured: A brief note

Introduction

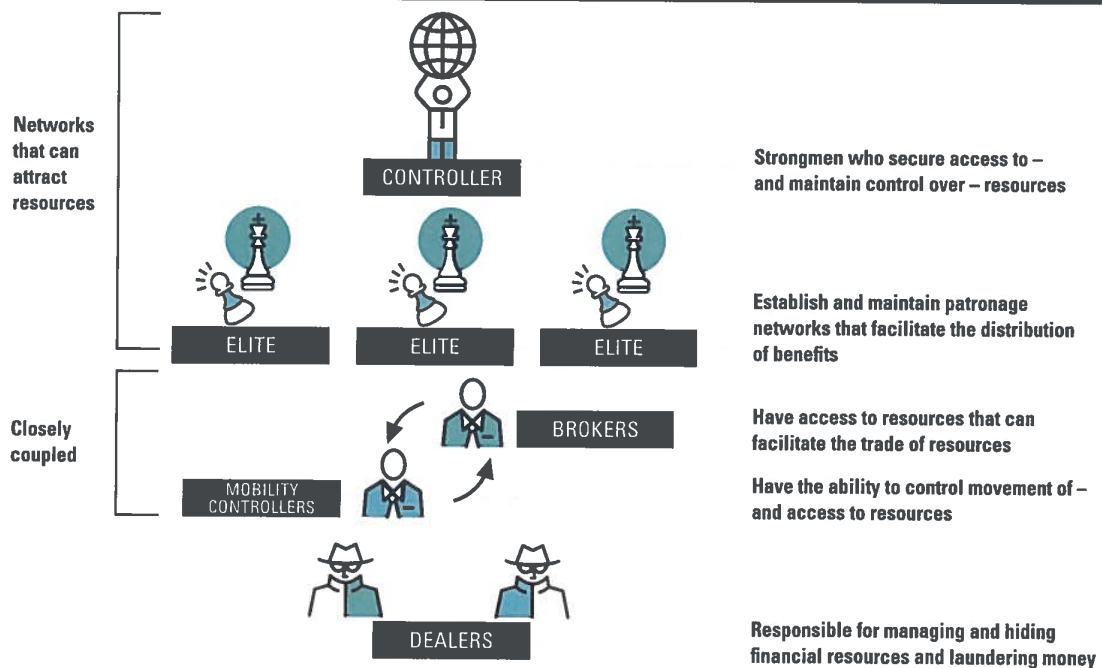
The symbiotic nexus between the constitutional and shadow state requires the integration of a range of skillsets similar to what exists in most international corporations. The composition of the Zuma-centred power elite is in many respects highly organised, following the structure of what in academic terms is called a 'war economy'.¹ In a war economy, the 'shadow state' establishes a number of informal structures (see below), which produce systems of "profit, power and protection",² and which, in turn, serve to further their operations making it possible to have continued preferential access to resources and power through an exploitative economic system. The cycle can, therefore, continue.

One of the key requirements in establishing these shadow structures

is the ability to secure a system of command and control over how the resources are accessed, moved and distributed. At the outset, control must be established over the sources of extraction, including the ability to flexibly respond to any changes in the operating environment.³ Once access to the source of extraction is secured, networks of middlemen or brokers must be established that can move resources within the network to sustain loyalty (this is critical to ensuring the survival of the network) and externally, usually transnationally. The ability to transact within this network is facilitated through the establishment of political market places, where support is traded through the provision of access to resources.

The skillsets of this patronage network is localised within a number of groups. These are indicated in the following figure and expanded on below.

Figure 2: Generalised model of a patronage network that extracts and administers rents



¹ Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University. Pg.3.

² Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University. Pg.3.

³ Liebenberg, S. 2014. A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University. Pg.121.

- **The controllers:** These, also known as patrons of resources (e.g. Zuma and the Guptas), sit at the apex and are usually the strongmen directly responsible for predation and exploitation. Their function is to secure access and maintain control over resources.⁴ A patron or controller typically favours one group over another (or others), resulting in the exclusion of those out of favour and the inclusion of those within favour. This sets up a competitive set of nodes with the network around the patron or controller, which has the ultimate effect of rendering elites (the next layer down) unable to cooperate effectively as they fear being ousted by their partners, or falling out of favour with the patron.
- **The elites:** The elites (e.g., Ace Magashule, Faith Muthambi, Malusi Gigaba, Brian Molefe, Mosebenzi Zwane and Anoj Singh) are responsible for establishing and maintaining patronage networks, which facilitate the distribution of benefits.
- **The entrepreneurs:** These are also known as brokers (e.g., Iqbal Sharma, Eric Wood, Salim Essa and Ashok Narayan). Broker networks consist of middlemen who facilitate the movement of funds, information and/or goods both domestically and across transnational networks, and make use of "recruitment networks, lending networks, remittance networks and smuggling networks" to do so.⁵ The following requirements are necessary for broker activity:
 - Networks of brokers are required to secure domestic and cross-border networks through which resources can be moved to international clearing hubs and enter legitimate trade activities.
 - Brokers are often of a different nationality or ethnicity – usually a minority – so that they cannot mount a significant challenge to the controller or patron.
 - Brokers have commercial ties to different clusters of communities through which they are able to achieve networked competence.
 - Brokers have access to ports of entry.
 - Brokers and ports are 'choke points' for intervention in patronage networks.⁶ If brokers are identified and their ability to operate is significantly reduced, then the patronage network is weakened and may collapse.
- **The dealers:** Groups that are able to move the money transnationally (e.g., the professional money laundering syndicates in Hong Kong, the United Arab Emirates and elsewhere).⁷

Securing and establishing cross-border networks is an essential requirement of this network to navigate illicit proceeds into international clearing hubs where it enters the legitimate trade and accrues value to the members of the network.⁸ In many instances

these networks use clandestine methods to mask the origins of resources in order to protect its members from external scrutiny.⁹

From an operational perspective, these networks of brokers and dealers must perform a number of functions, including:

- Collusion with customs or corrupt officials to create false records pertaining to the types of goods traded, quantities and the identities of parties involved in the transactions.
- Providing licences for others to obtain illicit goods in violation of the law.
- Laundering cash generated from illicit activities in collusion with formal financial institutions in order to establish legitimate business entities that can generate funds.
- Using shell companies in order to hide ownership details and move assets offshore (e.g., the Gupta entities: Homix, Regiments Asia, Morningstar International, etc.)
- Exchanging one potentially traceable commodity, such as oil or timber, for another less traceable one – also known as trade misinvoicing.
- Purchasing legitimate goods outside of the country with the proceeds of illicit activities, and then importing the legitimate goods back into the country to generate 'clean revenues'.¹⁰ The R200 million temple the Guptas are building in India and their R448 million villa in Dubai, reportedly the most expensive house in the United Arab Emirates, may fall into this category.

Ultimately, the key to realising the full potential of control over resources is the ability to strip assets and convert them into monetary resources – typically through money-laundering – that can fund the patronage operations.¹¹

The conversion of such assets also requires the existence of an appropriate infrastructure for handling and moving such assets, including banking, "alternative remittance systems ... import-export firms that participate in false invoicing schemes, precious metal markets, and the use of trusts, international business companies, and non-transparent jurisdictions as mechanisms to hide funds"¹²

Money-laundering procedures

Money laundering is the process of transforming illicit money into ostensibly legitimate assets. Thus money laundering through formal channels typically follows a three-stage process: placement, layering and integration. Placement involves moving funds into activities or accounts from where they can be legitimised through layering (i.e. blended with legitimate funds, recycled through

⁴ IPIS. 2002. *Supporting the War Economy in the DRC: European Companies and the Coltan Trade*. Antwerp: International Peace Information Service.

⁵ Sandoval, G. 2013. *Shadow Transnationalism: Cross-Border Networks and Planning Challenges of Transnational Unauthorized Immigrant Communities*. *Journal of Planning Education and Research*, 33(2):1–18.

⁶ Liebenberg, S. 2014. *A proposed theory of war economies and a supporting policy framework for dismantling war economies in Sub-Saharan Africa*. Unpublished Doctoral Thesis, Nelson Mandela Metropolitan University.

⁷ Le Billion, P. 2008. *Diamond Wars? Conflict Diamonds and Geographies of Resource Wars*. *Annals of the Association of American Geographers*. 98(2):345–371.

⁸ Le Billion, P. 2008. *Diamond Wars? Conflict Diamonds and Geographies of Resource Wars*. *Annals of the Association of American Geographers*. 98(2): 361.

⁹ Le Billion, P. 2008. *Diamond Wars? Conflict Diamonds and Geographies of Resource Wars*. *Annals of the Association of American Geographers*. 98(2):361.

¹⁰ Winer, J.M., Roule, T.J. (2003). 'Follow the Money: Finance of Illicit Resource Extraction,' In *Natural Resources and Violent Conflict: Options and Actions*, Ian Bannon and Paul Collier (Eds), World Bank, Washington.

¹¹ Winer, J.M., Roule, T.J. (2003). 'Follow the Money: Finance of Illicit Resource Extraction,' In *Natural Resources and Violent Conflict: Options and Actions*, Ian Bannon and Paul Collier (Eds), World Bank, Washington.

¹² Winer, J.M., Roule, T.J. (2003). 'Follow the Money: Finance of Illicit Resource Extraction,' In *Natural Resources and Violent Conflict: Options and Actions*, Ian Bannon and Paul Collier (Eds), World Bank, Washington.

How the capture of the state is structured: A brief note

cash-based operations, moved into 'legitimate companies', or moved around in complex transactions, etc.). These funds are then integrated back into the revenue stream of the money launderer (i.e. often through purchasing property and other goods).

The laundering process often necessitates financial systems with lax regulation and controls. Rents are also often distributed in cash, and indeed this may be preferable in many instances, but there are likely limits to how beneficiaries can make use of cash in formal transactions because large cash dealings can trigger high-risk alerts with banks. The benefit of cash is that it can be moved overseas, through both formal and informal channels, including the use of diplomatic immunity to traffic large sums of cash across borders (which could raise further questions over the Gupta's seeming preferential access to the Waterkloof Airforce Base) and the use of informal money exchange networks such as the hawala network, respectively.

The broker network in action: Transnet and Hong Kong transactional flows

With the patronage network model in mind, the Gupta's apparent access to lucrative Transnet work and the subsequent movement of related funds, both domestically and transnationally, is instructive.

Controller/patron and elite stages

Zuma appointed Gigaba as Minister of Public Enterprises in November 2010 about 18 months after he became president. This was after he had removed Barbara Hogan from the position in October 2010, coincidentally following her pushback against alleged presidential interference in state-owned company board appointments, and after Vytjie Mentor refused an offer for the position thereafter, apparently made to her at the Gupta's Saxonwold home on condition she would drop the SAA flight route to Mumbai.

Brokers established

In December 2010, Gigaba appointed Iqbal Sharma to the Transnet. His proximity to the family is by now, in our view, indisputable (see Chapter 2). In February 2011 Gigaba appointed Molefe as CEO of Transnet. In about June 2011, Gigaba wanted Sharma appointed Transnet Board chair, but the Cabinet apparently vetoed this on the grounds that he was too close to the Guptas. Seemingly to circumvent Cabinet's veto, Transnet later created a new structure, called the Board Acquisitions and Disposals Committee, to supervise the planned pipeline of future large-scale infrastructure spending (all tenders worth more than R2.5 billion). Sharma became chair of this committee. It was at this point that Gupta-linked entities began benefitting from Transnet tender opportunities.

Brokers at work: extracting the resources

- **R51 billion locomotives deal:** While he chaired the Board Acquisitions and Disposals Committee, Sharma oversaw the adjudication of the R51 billion tender for the purchase of 1 064 locomotives, which was ultimately split between four companies:

China North Rail (232 diesel locomotives at R7.8 billion), China South Rail (359 electric locomotives at R14.6 billion), General Electric (233 diesel locomotives at R7.1 billion) and Bombardier (240 electric locomotives at R10.4 billion).

The Gupta's proximity to China South Rail is documented in former Prasa CEO Lucky Montana's letter (see Chapter 2) in which he lays out how they apparently aggressively represented China South Rail (one of seven bidders then vying to supply Prasa with 600 commuter trains). Such representatives often earn large success fees, sometimes described as commissions. While they were not successful in their bid to position the rail company in this instance, the Chinese company's success in the Transnet locomotives deal appears to have benefitted the Guptas. Transactions seen by this group of researchers suggest that the Chinese company, now called China South Locomotive & Rolling Stock Corporation Limited following a merger with China North Rail, has been paying large sums of money into Gupta-linked entities based in Hong Kong. Our research in this regard is ongoing, but the circumstantial evidence of a triangulated link between China South Rail winning a portion of the tender, the Gupta's apparent brokering of the rail company in South Africa, and the offshore transactional flows from the rail company to Gupta-linked entities, is compelling. Just before the successful bidders of the locomotives tender were announced, Sharma emerged as a buyer of VR Laser Property, which owns the property upon which VR Laser Services is situated (owned by the Guptas and Duduzane Zuma) and which was arguably in a highly advantageous position to benefit from supplying component parts to the successful bidders in the locomotives deal (which were required by state procurement policy to source a large proportion of their components from South African subcontractors). Additionally, the size of the locomotive deal meant that financial arranging and corporate structuring advice was necessary. As explained in Chapter 2, after a series of highly questionable events, a Gupta-linked company, Trillian Asset Management, ultimately benefitted from this opportunity to the value of at least R170 million.

- **Information technology:** Chapter 2 details how a national multi-billion Rand telecoms company, Neotel, benefitted from significant Transnet work, but seemingly only as a result of an obscure Gupta-linked entity, Homix, which acted as a broker between Neotel and Transnet. Additionally, global software giant SAPS, was strongly encouraged by Transnet to partner with a Gupta entity, Global Softech Solutions, in order to win Transnet work (Chapter 2).
- **Procurement:** German maker of cranes and Transnet supplier Liebherr Africa was reportedly pressured by Transnet to partner with Burlington Strategy Advisors, which is a subsidiary of Regiments Capital (see Chapter 2), and which also ultimately paid money into a Gupta-linked entity (Homix).

Brokers at work: moving the resources

In July 2015, the first detailed analysis of how the Guptas allegedly launder the proceeds of their business activities was presented by

amaBhungane. Their operation in this regard centres on a Gupta-controlled shell company called Homix. Shell companies, by virtue of the ownership anonymity that they provide, are classic vehicles for money laundering and other illicit financial activity. According to the Financial Crimes Enforcement Network:¹³

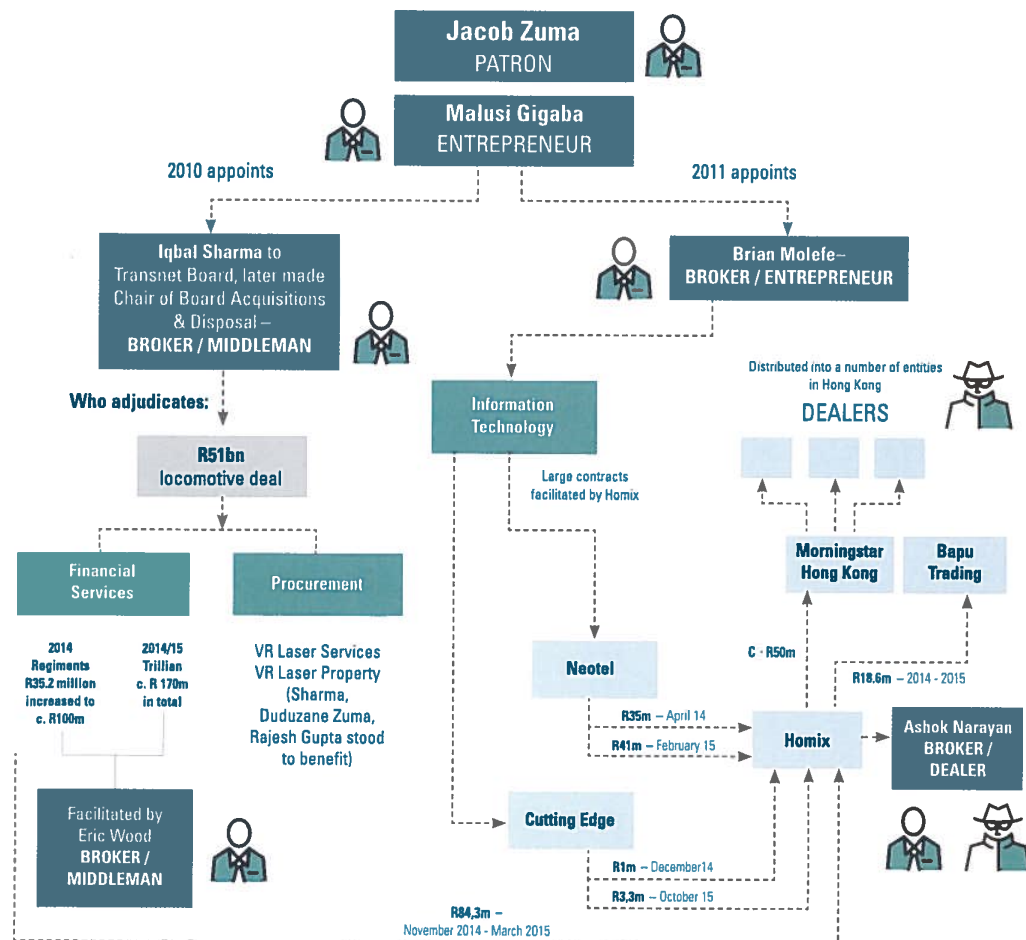
The term 'shell company' generally refers to limited liability companies and other business entities with no significant assets or ongoing business activities. Shell companies – formed for both legitimate and illicit purposes – typically have no physical presence other than a mailing address, employ no one, and produce little to no independent economic value.

Between 2014 and 2015, Homix moved R166 million through its accounts, primarily from five companies, mostly linked to Transnet work, according to an amaBhungane investigation.¹⁴ As is

characteristic of shell companies, Homix has no discernible office infrastructure or staff commensurate with a company processing such large sums of money. Bank records obtained by amaBhungane, and other bank records observed by this group of researchers, show that as the money came into the Homix bank account, it went straight out again, to an equally obscure entity called Bapu Trading.

This pattern displays the three classic money laundering characteristics of placement, layering and integration where placement is the movement of cash from its source (the five companies), followed by placing it into circulation (layering) through, among other mechanisms, financial institutions and other businesses (for example Homix), and finally integration, the purpose of which is to make it more difficult to detect and uncover by law enforcement.

The Broker Network in Action: Transnet



¹³ Department of the Treasury Financial Crimes Enforcement Network. 2006. The role of domestic shell companies in financial crime and money laundering: Limited Liability Companies. [Online] Available: https://www.fincen.gov/sites/default/files/shared/LLCAssessment_FINAL.pdf.

¹⁴ Brümmer, S., Comrie, S., McKune, C. & Sole, S. 2016. State capture - the Guptas and the R250 million "kickback laundry". [Online] Available: <http://amabhungane.co.za/article/2016-10-29-state-capture-the-guptas-and-the-r250-million-kickback-laundry-unpacked-in-full>.

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FOREWORD

The roles and responsibilities of the Ministry of Finance are distinctly different from all others. Firstly, the functions are performed through a number of discrete departments and a series of agencies. Secondly, there is the reality that even the tasks of the National Treasury alone are sufficiently diverse for the department to be considered an amalgam of different, but interrelated functions. Unfortunately, the official handover report follows a set template for all departments that does not adequately capture the complexity of the tasks. The alternative therefore is to provide a political handover report – this is not that report. I operate from the premise that the person appointed as Finance Minister will have sufficient political experience and, because the tasks require the frequent exercise of political judgement, it would be highly presumptuous to try and prejudge the situation or believe that my successor would be required to exercise the same judgement as I have in past situations.

This report is a narrative, designed to provide texture to the functions of the Ministry. Yet, in drafting this, we have found that the tasks are too multi-layered to even do justice to that. This narrative will, I am sure, be found to be exceedingly useful. The style of drafting is intentionally discursive. I opted to bring in a writer with some experience of government, but who has no axes to grind or positions in any of the departments to defend. His remit was to read up on the departments, to discuss his observations, to prod the Deputy Minister, senior management and I, and to feel comfortable about writing up his observations. This approach affords this narrative a freshness that I hope you will find useful.

I leave, believing that we have a cluster of sound institutions and a reasonably developed practise. These become your responsibility to live with, alter and refocus. I said earlier that I do not wish to write reams of my political observations. Whilst offering you the freedom to arrive at your own conclusion, I hope that I do not leave here as “the enemy” with whom engagement is ill-advised. I have had the distinct privilege of having been part of the evolution of this cluster over the past 13 years – I have no intention to rule from the grave, yet I will offer my friendship, collegiality and comradeship available as and when this is required.

I invite you to enjoy this wonderful opportunity to work with some of the nation’s finest minds, who are also exceedingly committed public servants focussed on the task of improving the quality of life of the majority of South Africans. I advise that they are often strong-willed and opinionated – it is this which makes the assignment so wonderfully challenging.

Enjoy

TWO

THE JOB DESCRIPTION OF THE MINISTER OF FINANCE

Introduction

The Ministry of Finance is undoubtedly a tough assignment.

Even in the best of economic times – and these are not the best of times – being the Minister of Finance means playing a role in government that will not always lead to unqualified popularity. This is partly a result of the role of the Minister of Finance in the budget process and all the expenditure management tasks that go with that. In this role, the Minister of Finance must advise Cabinet about what is affordable, and just as controversially, must recommend which of the contending priorities needs immediate resourcing and which might have to wait. Inevitably, this means that the Minister of Finance is sometimes cast in the role of an obstructionist or scrooge, and becomes the obvious target for blame if and when delivery agencies appear to fall short of their aims and objectives.

Another reason for the unpopularity has to do with the fact that the policy role of the Ministry abuts those of a number of other ministries. This means that there may sometimes be contestation between the Minister of Finance and other members of Cabinet about the appropriateness of particular policies which fall outside the formal domain of the Minister of Finance.

There are other kinds of policy issues which can become messier. What, if anything, is the Minister of Finance to do if a Cabinet minister proposes a policy change that may affect the competitiveness of the economy and, therefore, its long-term growth path? Or what if the issue of contention is ‘merely’ a question of the effectiveness of one or another department? In circumstances such as these, the basis on which the Minister of Finance engages with other Ministers is less clear. Nevertheless, this is unquestionably part of the responsibility of the office. This is partly because the Minister of Finance is a minister and

shares collective responsibility for the consequences of government policy. It is also however the consequence of the specific responsibilities of the Minister of Finance. The Minister of Finance has a mandate which one might characterise broadly as one of custodianship for the long-term prosperity of the country, and he or she cannot be indifferent to the effects of any policy that seems likely to impact negatively on its long-run growth potential. It is incumbent on the Minister of Finance to engage with Cabinet colleagues whose policies seem likely to reduce economic growth and job creation.

It is also necessary to spend some time setting out the key elements of the role as defined in the Constitution and various pieces of legislation. One needs to distinguish between first tier domestic responsibilities (associated with the political and policy management of the core institutions for which the Minister of Finance is responsible) and second tier domestic responsibilities (associated with an array of other institutions which fall within the domain of the Minister of Finance). It is also necessary to address those responsibilities regarding the Minister of Finance's role in a range of international institutions.

Core responsibilities of the Minister of Finance

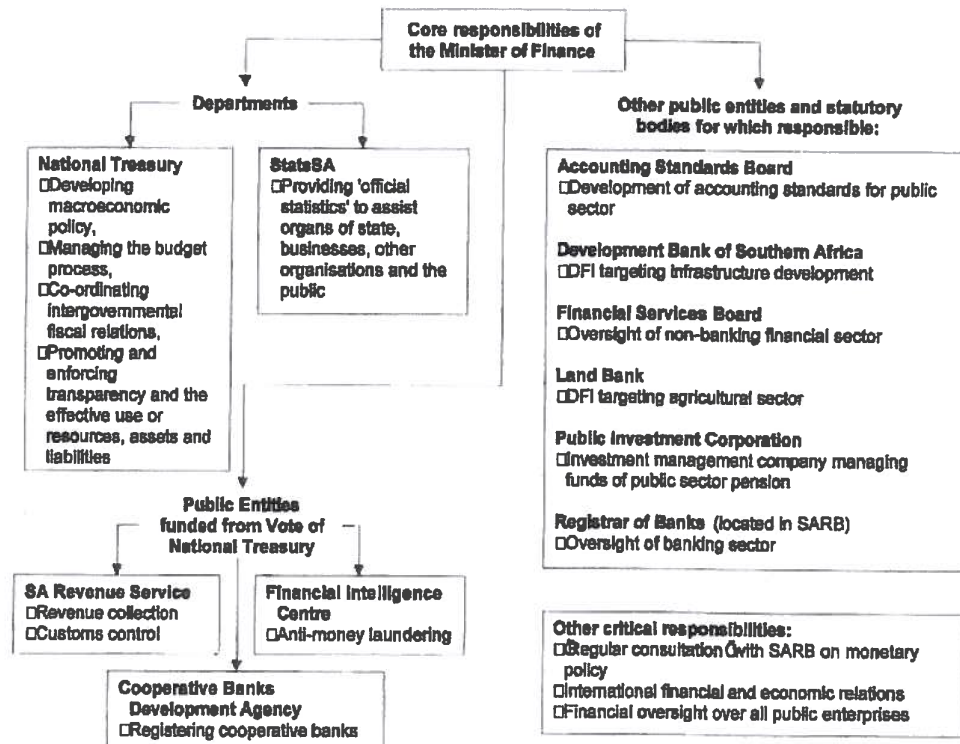
The most significant entities for which the Minister of Finance is politically responsible are the two national departments for which the Minister is the executive authority (the National Treasury and the South African Revenue Services), and three regulatory entities (the Financial Services Board, the Financial Intelligence Centre and, most recently established, the Cooperative Banks Development Agency). He or she is also responsible for two state-owned entities: the Development Bank of Southern Africa, and the Land Bank. The Minister is also responsible for StatsSA.

Between them, these institutions are responsible for forecasting macroeconomic variables and developing macroeconomic policies for consideration by Cabinet, collecting revenue and enforcing tax laws, raising new loans (in both domestic and international capital markets), managing the stock of public debt, advising Cabinet on the allocation of resources between contending policy priorities, allocating resources from the National Revenue Fund to government, implementing public finance management reforms to ensure greater transparency and accountability, regulating and overseeing the financial sector of

the economy, playing a quasi-law enforcement function in relation to flows of money through financial institutions, collecting data about South African society and the economy so that policy-makers can make informed decisions, and investing in or making loans to the providers of public infrastructure. In addition to these roles, the Minister also consults regularly with the Governor of the Reserve Bank about the co-ordination between fiscal and monetary policy, and about banking supervision, exchange controls, and management of reserves.

In addition to all of this, the Minister of Finance is also the 'face' of the South African economy, and it is his or her responsibility often to 'sell' the viability and attractiveness of the economy to ratings agencies, investors and other constituencies. Some of these audiences are tough and well-informed, and it is critical that the Minister of Finance has a high degree of credibility in order to deliver on this responsibility. He or she must also represent the country (and, sometimes other countries in the region or in the developing world) in international and multilateral policy processes.

As the present summary suggests, the responsibilities of the Minister of Finance are wide-ranging and complex. Graphically, a summary of the responsibilities of the Minister of Finance might be depicted like this:



The Ministry of Finance

The complexity of the responsibilities of the Minister of Finance raises a question about the structure and location of the Ministry of Finance. This is not an issue which is prescribed in legislation, but present practice is informed by a number of considerations.

Firstly, there is a sense in which the responsibilities of the Minister of Finance do all speak to each other, and need to be managed holistically. While the Minister of Finance's time and energy is not consumed equally by all official responsibilities, he or she is not just the 'Minister of the National Treasury'. In practical terms, this means that current practice has the Minister holding bi-weekly meetings with the management of the National Treasury, SARS, StatsSA and the FIC. There are also regular but less frequent meetings with the management of the other entities, such as the FSB. In addition, if and when circumstances dictate that more frequent meetings with one or other entity is required – as is the case during the present financial crisis, with issues relating to the regulation of the financial services sector being a central issue – these are arranged.

The National Treasury

Section 216 of the Constitution establishes the National Treasury. Section 216 provides that the National Treasury should be created by legislation and that it 'must prescribe measures that ensure both transparency and expenditure control in each sphere of government, introducing (a) generally recognised accounting practices, (b) uniform expenditure classifications, and (c) uniform treasury norms and standards.' S213 also creates the National Revenue Fund, into which virtually all money received by the national government is paid. It is the Public Finance Management Act (PFMA) that defines the role of the National Treasury and which provides that the Minister of Finance is the 'Head' of the National Treasury and must make policy decisions for it. It lists as the Treasury's principal functions:

- Promoting government's fiscal policy framework and coordinating macroeconomic policy,
- Managing the budget process,
- Coordinating intergovernmental financial and fiscal relations (meaning the flow of national funds to the provinces and local government, and the flow of information about resource needs from those spheres to national government), as well as monitoring the implementation of provincial budgets,
- Controlling the implementation of the annual budget (i.e. ensuring the passage of the relevant legislation through Parliament, including the Division of Revenue and Appropriation Acts and any adjustment budgets), and
- Promoting and enforcing transparency and effective management of revenue, expenditure, and assets and liabilities of departments, public entities and constitutional institutions.

It should be noted that many of the reforms on budgeting and public management (as enacted in the Public Finance Management Act), together with greater transparency and accountability, were introduced during the first five years of the new democratic government, under President Mandela. These reforms remain a legacy of both the Constitution and the presidency of Nelson Mandela.

While the functions of SARS officials may be complex, they all proceed from the most straightforward of organisational mandates: the efficient and effective collection of revenue. As a result, SARS's role is less that of policy-making and more one of administering tax and trade policies. The Act thus provides that most of the key decisions giving effect to the SARS mandate are to be made by the Commissioner, to whom the Act gives wide authority for running the organisation. It is, however, the Minister of Finance who appoints the Commissioner after consulting Cabinet. The Minister also appoints an Advisory Board to advise him or her on a range of matters relating to the management of SARS.

While SARS and the Commissioner are reasonably independent of the Minister on operational matters, the Act also provides that SARS is 'under the policy control of the Minister' and 'subject to any directives and guidelines on policy matters issued by the Minister.' Therefore, although SARS collects and analyses tax data essential for drafting tax policy, it is an implementation and enforcement agency. Policy processes relating to taxation are driven by the Minister, who typically tasks analysts in the National Treasury and SARS with assessing policy options.

This is not to undermine SARS. It is doubtful that there is any single agency in government whose operational performance is more critical to the work of government than SARS's. The rigorous focus on improving administrative efficiency is the most important policy process in SARS, and its performance in gathering revenues is the most important issue likely to exercise the Minister of Finance's mind in relation to this entity. In practice, that means continuous engagement with SARS about its performance and ways to overcome problems in enforcing relevant laws, developing appropriate outreach activities, and improving levels of service received by tax-payers.

This is not an absolutely straightforward task: despite the fact that people complain about the quality of public services, no tax-payer anywhere in the world relishes paying their taxes. Even before one thinks about the challenges presented by those seeking to profit by gaming the tax system, the free-rider problem among tax-payers is immense. Everywhere in the world, people attempt to minimise, defer, avoid and evade their tax obligations.



national treasury

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MINISTER OF FINANCE
26 SEP 2012
FILE NO: 2661-12
MINISTER OF FINANCE

MEMO

21 September 2012

PRAVIN J GORDHAN
MINISTER OF FINANCE

REQUEST BY SOUTH AFRICAN AIRWAYS' ("SAA") FOR A LETTER OF SUPPORT AND A R5 BILLION GUARANTEE FOR GOING CONCERN PURPOSES

PURPOSE

1. The purpose of the memorandum is to request the Minister of Finance ("Minister") to:
 - Concur to SAA's request for a R5.006 billion guarantee for the period 01 September 2012 to 30 September 2014; and
 - Sign the attached letter addressed to the Minister of Public Enterprises ("MoPE"), (*Annexure A*), should he concur with the contents thereof to support the guarantee request.

BACKGROUND

Ministers Bilateral Meeting of 25 May 2012

2. On 25 May 2012, the Minister held a bilateral meeting with the MoPE where SAA's financial challenges were discussed. SAA has been experiencing cash flow challenges. The airline was initially expected to run out of cash by 31 May 2012 as it had been burning cash of around R200 million per month since March 2011, when its cash position was around R2.2 billion (*Annexure B*).
3. In order to resolve SAA's cash flow challenges in the short term, the Ministers agreed that SAA should be allowed to borrow up to R500 million against the existing R1.6 billion perpetual guarantee granted in 2009, as an interim measure to ensure that the airline has sufficient cash to operate until 31 August 2012.
4. The following options were considered to meet SAA's liquidity requirements in the immediate short term:
 - Guarantee R500 million of the borrowing against a Standard Chartered facility;

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REQUEST BY SOUTH AFRICAN AIRWAYS' ("SAA") REQUEST FOR A LETTER OF SUPPORT AND A R5 BILLION GUARANTEE FOR GOING CONCERN PURPOSES

- SAA to raise funding of R500 million against the existing R1.6 billion perpetual guarantee from another financial institution; and
 - Government to provide R437 million for the Air Traffic Liability ("ATL") guarantee against the existing R1.6 billion perpetual guarantee. This guarantee is required to satisfy the Domestic and International Air Services Councils' consumer protection guarantee requirements.
5. After evaluating the most cost effective and feasible option, Asset and Liability Management ("ALM") recommended that R437 million of the existing R1.6 billion guarantee be re-allocated for the purpose of the ATL from 01 July 2012 to 30 September 2013. This released R437 million in bank facilities for SAA which had previously been used to secure a bank guarantee for the ATL.
6. The Minister concurred to the re-allocation of R437 million of the existing R1.6 billion guarantee on 19 July 2012 (*Annexure C*). This has enabled the airline to have sufficient cash flow liquidity whilst DPE and SAA resolve the airlines going concern challenges.

SAA's Long term strategy

7. The MoPE further indicated in the bi-lateral of 25 May 2012 that SAA would require an additional guarantee of R8.9 billion in order for the Board and Auditors to sign off the 2011/12 AFS as a going concern. However, in the most updated analysis this requirement has been revised to a minimum amount of R5 billion.
8. The Ministers agreed that this guarantee would only be considered once a long term strategy has been finalised, with the Minister outlining prior to the bi-lateral, that the strategy must include the following elements:
- Rationale and business case for the consolidation of the domestic aviation sector;
 - Potential opportunities, advantages and disadvantages of bringing in a Strategic Equity Partner;
 - Assessment of the economic impact of specific routes, particularly the loss making routes; and
 - Funding plan including financial projections (at least 10 years) for ensuring the airline's return to financial sustainability.
9. The Minister should note that the long term strategy for SAA has not been finalised. The Department of Public Enterprises ("DPE") has indicated that this will only be completed by the end of January 2013. That said, it is recognised that, it would take more time than has been available to SAA and DPE at this stage to come up with a well thought out comprehensive strategy. However, DPE has undertaken a diagnostic review of the financial position of the airline with the assistance of consultants Mott and McDonald. As part of this review, attention was drawn to a number of key areas, including the current ability of the airline to operate as a going concern; the performance of the long haul route network; the current and future fleet; and the potential funding mechanisms that could be used in order to help the airline move forward as a business.

³
REQUEST BY SOUTH AFRICAN AIRWAYS' ("SAA") REQUEST FOR A LETTER OF SUPPORT AND A R5 BILLION
GUARANTEE FOR GOING CONCERN PURPOSES

10. ALM was disappointed with the review as it highlighted issues which both the DPE and NT are already aware of and did not address the issues highlighted in paragraph 8 above adequately.
11. DPE have since indicated that the diagnostic review will form the basis of finalising SAA's turnaround plan and long term strategy.
12. In addition, the Minister should note that DPE have submitted an MTEF submission requesting funding of between R2.5 billion and R5.006 billion which would replace the guarantee, should it be issued. That said, on 20 September 2012, Minister Gigaba was quoted in the press saying that no support should be provided to SAA until a long term strategy is in place. This application for funding is still to be considered through the Budget process.

DISCUSSION

13. National Treasury ("NT") received a letter dated 09 September 2012 from the MoPE, (*Annexure D*) requesting the Minister to consider SAA's request for a Letter of Support ("LoS") and a R5.006 billion guarantee to ensure that SAA continues operating as a going concern. In his letter, the MoPE indicated that SAA requires a LoS in the short term, a R5.006 billion guarantee in the medium term and a recapitalization which will be considered once the long term strategy for SAA has been finalised.

Current financial position of SAA

14. Table 1 below shows the financial position of SAA as at 31 July 2012.

Table 1: Year to date financial summary

Key Financial Indicators (amounts in Rand/m)	Actual 2011/12	Budget	Actual Year-to-Date July 2012	Variance	Status
Income Statement					
Total Revenue	23,661	9,070	8,871	-469	
Cost of sales					
Operating costs	-25,172	-9,561	-8,765	806	
Net Profit (Loss)	-453	-769	-645	102	
Profitability and Efficiency					
Operating expenses to Revenue %	106%	105%	102%	-3%	
Operating profit margin %	-2%	-8%	-7%	1%	
Net Profit margin %	-2%	-8%	-7%	1%	
Balance Sheet					
Total Equity	453	1,338	-241	-1,579	
Total Debt	14,613	10,180	12,342	2,242	
Solvency					
Gearing ratio % (Interest bearing debt)	69%	122%	-601%	-671%	
Interest cover (times)	2.85	N/A	-25.82	N/A	
Liquidity					
Current ratio	0.7	0.2	0.8	2.2	
Cash flow statement					
Closing cash balance	-4,421		-361	4,070	

Source: SAA's July 2012 Monthly Report

15. SAA's financial position at the 2011-2012 year end was extremely weak with net assets decreasing by 7% to R443 million, including the subordinated shareholder loan. The company had a negative net asset value of R857 million as at 31 March 2012. The airline was technically insolvent¹, and the balance sheet position continues to deteriorate with negative year to date equity of R241 million.

¹ Technical insolvency occurs when a company has a negative net asset value: its liabilities are greater than its assets. It is possible to be technically insolvent, while still being able to repay debt. This is because

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REQUEST BY SOUTH AFRICAN AIRWAYS' ("SAA") REQUEST FOR A LETTER OF SUPPORT AND A R5 BILLION GUARANTEE FOR GOING CONCERN PURPOSES

16. The cash position also declined mainly due to less revenue earned, the weakening of the ZAR as well as volatile Brent crude oil price. SAA only has sufficient liquidity to last until the end of November 2012. In terms of the Companies Act (2008), Boards are "trading recklessly" when they do not know how the company will meet its commitments over the next six months. In terms of this provision, in the absence of a LoS or guarantee, the Board of SAA will be required to place the company into Business Rescue.
17. The total revenue for the period ending 31 July 2012 is R8.6 billion. As at 31 March 2012 revenue increased by 6% to R23.9 billion (2011: R22.6 billion). The growth stems from a 16% increase in fuel levy recoveries due to the increase in the fuel expense and growth in SAA Technical and Voyager income that recorded significant increases of 73% and 48% respectively. The Group's operating expenses increased by 17% to R25.1 billion (2011: R21.6 billion). These were primarily driven by a R2.2 billion increase in fuel cost and an 18% increase in regulatory costs such as navigation, landing and parking fees. The company made a loss of R843 million for the year.
18. The airline has recorded a year to date net loss of R648 million, compared to the budgeted loss of R750 million. Passenger revenue had an unfavorable variance of 8% for the month compared to a favorable variance of 17% for the prior month.
19. SAA plans to implement various cost saving initiatives that are expected to result in cost savings of R1.304 billion. These initiatives are intended to reduce the budgeted loss for 2012/13 to R192 million. However, SAA's costs are mainly energy/fuel costs (R3.017 billion - 34%), labour (R1.573 billion - 18%) and aircraft leases costs (R887 million - 8%). These are largely outside of SAA's control or relatively fixed in the medium term. Therefore in the absence of a substantial improvement in the oil price, operational cost savings are unlikely to make a meaningful contribution toward addressing SAA's challenges and the company will continue to be loss making. The implication is that SAA would struggle to repay any financing raised with the support of the government guarantee. Table two below shows SAA's top 10 expenses as at 31 July 2012.

technical insolvency is based only on the balance sheet and ignores cash flows. A technically insolvent company is free to keep trading as long as the directors reasonably believe that the company will be able to pay its debts.

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REQUEST BY SOUTH AFRICAN AIRWAYS' ("SAA") REQUEST FOR A LETTER OF SUPPORT AND A R5 BILLION GUARANTEE FOR GOING CONCERN PURPOSES

Table 2: SAA's Top 10 Expenses as at 31 July 2012

Energy	34%	3,017
Labour	18%	1,573
Aircraft lease costs	8%	687
Aircraft maintenance	7%	635
Navigation, landing and parking	8%	582
Distribution costs	5%	438
Accommodation and refreshments	5%	406
Purchase of capacity	4%	317
Electronic data costs	2%	182
Ground, catering and ramp handling	2%	169

Source: SAA July Monthly Report

Going Concern Guarantee and Letter of Support (LoS) Requirement

20. SAA's external auditors have affirmed that they would require a LoS or guarantee to provide an unqualified audit opinion on the airline's 2011/12 AFS for adoption at the AGM scheduled for 25 September 2012. DPE is striving to have the financial statements signed off by this date in order for SAA to comply with Section 56(3) of the PFMA which requires that SAA submit the AFS to the Executive Authority to table the statements in Parliament.
21. In addition, the auditors have indicated that a LoS would need to be replaced with a guarantee of R5.006 billion to ensure that the airline remains a going concern and has sufficient liquidity to operate post November 2012, when it is expected to run out of cash. Alternatively, this guarantee could be provided up front instead of the LoS. The external auditors have furthermore indicated their preference for guarantee with a two year term.
22. The external auditors indicated that in the absence of a LoS or guarantee, they would have to sign off the financial statements with an emphasis of matter. Moreover, they would be required to report this matter to their statutory body the Independent Regulatory Board for Auditors ("IRBA"). This would be likely to lead to creditors putting the company into business rescue.
23. The R5.006 billion is inclusive of working capital requirements of R1.544 billion whilst the remaining R3.4 billion is included to act as a buffer against any of the risk adjustments or sensitivities that may arise. Even though SAA may not need to utilise the full guarantee, the facility needs to be available in order to demonstrate that the airline has the capacity to meet potential commitments, i.e. that it is a "going concern". An amount of R1.102 billion has been provided for risk adjustments. These are included mainly to assist SAA in the event that it does not achieve up to 50% of its planned cost savings/cost reductions. The savings to achieve SAA's budgeted net loss of R192 million for the 2012-2013 financial period were factored into the assumed cost saving. The legal contingency of R120 million is included should the Competition Commission rule against SAA on historical claims from a local airline. Given SAA's liquidity crisis, the company would not be able to meet this amount should there be a ruling against SAA. The remaining R2.360 billion is a provision for sensitivities related

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REQUEST BY SOUTH AFRICAN AIRWAYS' ("SAA") REQUEST FOR A LETTER OF SUPPORT AND A R5 BILLION GUARANTEE FOR GOING CONCERN PURPOSES

to the unfavourable fluctuations in the exchange rate, fuel prices or passenger numbers. Table 3 below provides a summary of the going concern guarantee request.

Table 3: Going Concern Calculation

Going Concern requirement		R'm
Working Capital required net of available facilities		1,544
Risk adjustments:		
At Risk Cost Savings Not Materialising	524	
Legal Contingency of R120m	120	
Interest effect of all the above	58	
		1,102
Sensitivities:		
-5% decline in Passenger numbers	1,217	
Brent at \$125	822	
Fuel Levy recoveries with Brent at \$125	(588)	
5% ZAR deterioration against major currencies	707	
		2,380
Going Concern amount required *		6,006

Source: SAA going concern report

24. The above sensitivity analysis assumed a Brent Crude oil price of USD125 per barrel against SAA's budget of USD 117 per barrel and a 5% deterioration against the budgeted ZAR:USD exchange rate of R8.16 for the period April 2013 to August 2013. These oil price and exchange rate are currently at USD114.7 and R8.18 respectively, and it seems that SAA is well within the base assumptions. However, any unfavorable movement of these drivers above the current assumptions could require SAA to utilise the risk provisions.
25. The Minister should note that the R5 billion guarantee request does not include the R2.8 billion that SAA would require for "strategic growth capital expenditure" related to growth investment projects on its long haul fleet to compete with its competitors. Projects include increasing business class sizes, introducing lighter and newer in-flight entertainment and a premium economy class. This is not included in the going concern guarantee application as the business cases and related cost benefit analysis have not been finalised. The R2.8 billion would be used to provide an interim solution to improve the economics of SAA's current wide body or long haul aircraft. However SAA intends replacing these next 5 to 7 years and therefore it is not clear that they would recoup the upfront investment.
26. The guarantee request also does not make provision for the replacement of the wide body fleet. Rough forecasts at this stage suggest that replacing the long haul fleet could cost anything between R10 billion and R15 billion. This amount could potentially be financed through a range of mechanisms including Export Credit Agency financing, leases etc. That said, given SAA's weak financial position, there is a strong possibility that further Government support may be required to secure such financing.

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REQUEST BY SOUTH AFRICAN AIRWAYS' ("SAA") REQUEST FOR A LETTER OF SUPPORT AND A R6 BILLION GUARANTEE FOR GOING CONCERN PURPOSES

CONCLUSION

27. Both Ministers agreed that funding support should only be considered on the conclusion of a long term strategy for the airline. This was to ensure that there was an understanding of the long term support required by SAA. However, this strategy will still take at least another four months (end January 2013) to be developed. In the meanwhile there is an urgent requirement to sign off SAA's financial statements.
28. The MoPEs main rationale for applying for the LoS was to enable the external auditors to provide an unqualified audit opinion for the 2011-2012 AFS to be signed off and released at the 25 September 2012 AGM.
29. DPE had assumed that a LoS would not need to be tabled at the FLC and thus be a faster route than the guarantee requirement. Section 70(1) of the PFMA specifies that Cabinet members may only issue a guarantee which binds the National Revenue Fund ("NRF") with the written concurrence of the Minister of Finance. A LoS could be a very broad commitment which could be interpreted as not being binding on the NRF. However, ALM is concerned that it is still a strong indication of Government support especially when approved by the Minister of Finance, and Government's credibility could suffer if support were not provided to SAA in the event of a crisis. In effect this would make the LoS a guarantee or, as proposed by DPE, that it be converted into a guarantee, which suggests that it is appropriate for it to be considered by the FLC upfront. Moreover, if issued, this would be the first such letter of support authorised by the Minister of Finance, which therefore required that the FLC members consider the principle. Therefore, ALM recommended that, similarly to a guarantee, this request for a LoS should be considered by the FLC. Consequently, ALM further proposed as the application was considered by the FLC in any event, the FLC should in fact focus on the request for the guarantee.
30. ALM has also considered other repercussions of the AGM and sign off of the financial statements being postponed from 30 September 2012 until the end of January 2013 when the long term strategy is expected to be finalised by the DPE.
31. Minister should note that SAA has contravened Section 55(1)(d) of the PFMA which requires the airline to submit its Annual Report and audited AFS to DPE and NT within five months (by 31 August 2012) of the end of financial year. The MoPE has outlined in a letter, dated 31 August 2012 (*Annexure E*) the reasons for non-compliance and that a LoS is required for the external auditors to sign off and release the unqualified 2011-2012 AFS by 25 September 2012.
32. Section 65 of the PFMA requires DPE to table the AFS in the National Assembly within one month (by 30 September 2012) after the accounting authority has received the audit report. If DPE fails to table the AFS by this date, the department will then be required to table a written explanation in Parliament setting out reasons why the AFS were not tabled. DPE is therefore trying to avert a similar situation to that of South African Express's as its 2012 AFS will not be

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REQUEST BY SOUTH AFRICAN AIRWAYS' ("SAA") REQUEST FOR A LETTER OF SUPPORT AND A R5 BILLION GUARANTEE FOR GOING CONCERN PURPOSES

tabled in Parliament by 30 September 2012. In addition, DPE wants to avoid the potential negative publicity.

33. Delaying the AGM beyond 30 September 2012 would require that the sign off of the financial statements by the external auditors and Board also be delayed so as to avoid the emphasis of matter. Moreover, the Minister would have to allow SAA to raise additional financing against the remaining R1.1 billion of the R1.6 billion guarantee facility that has already been provided to SAA in order to provide the company with the liquidity to meet its commitments over the next few months. There is considerable risk associated with this approach in that the Board or auditors could become concerned by the delays that no guarantee will in fact be forthcoming and proceed with steps that will push SAA into business rescue.
34. As already highlighted should the R5 billion guarantee not be provided (or be delayed too much), business rescue proceedings will be initiated either by the creditors or the board. A business rescue practitioner will be appointed and the board and shareholder will be forced to relinquish their control over the entity, i.e. SAA will be beyond the control of Government. The business rescue process can last for a period of up to six months whilst the business rescue practitioner evaluates whether or not the business can be rescued. If the business cannot be rescued, the airline will be liquidated. Operations will be discontinued. The assets will be valued at the current market and all liabilities become immediately payable. In addition, the directors could face charges of reckless trading. The sudden, disorderly closure of all of SAA's routes would be likely to have a negative economic impact. Moreover, this approach (business rescue / liquidation) could result in investors reevaluating the implied support assumed in respect of the other SOCs leading to an increase in their borrowing rates. Should SAA's request for a guarantee not be supported then it is recommended that Cabinet be informed regarding this decision and the implications thereof.
35. Whilst it may take four months (end January 2013) to develop a strategy it could take more than five years to turnaround the performance of SAA. Therefore, in considering the requested guarantee, the Minister should be cognisant that additional support is likely to be required to implement the long term strategy. In the short term, in the absence of a considerable fall in the oil price, there are limited steps that can be taken to improve SAA's performance. Savings from cost cutting can make some contribution, but will not resolve the airline's business model. Closing the international routes will result in aircraft being grounded on which leases will still have to be paid. The capital costs of reconfiguring the cabins may be difficult to recoup over the relatively short 5-7 year period for which the aircraft will still be operated. Moreover, in the meanwhile the continued losses will need to be financed.
36. In the long term it would be possible to replace SAA's aircraft with a more fuel efficient fleet. However, it is estimated that SAA could require financing amounting to from R10 billion to R20 billion. Shareholder support is likely to be required to assist SAA in securing this financing. The fiscus cannot be expected to provide such support and therefore it is recommended that in the development of the long term strategy consideration be given to involving Strategic Equity

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REQUEST BY SOUTH AFRICAN AIRWAYS' ("SAA") REQUEST FOR A LETTER OF SUPPORT AND A R5 BILLION GUARANTEE FOR GOING CONCERN PURPOSES

Partners, Mergers and Joint Ventures to ease the financial burden on Government, improve the commercial discipline of SAA and enhance the company's management and technical capacity.

37. It is critical that there is strong commitment from all stakeholders and especially the board and management of SAA to the implementation of the long term strategy.

FLC Recommendations

38. The FLC convened on 20 September 2012 and deliberated on SAA's application. The FLC concluded that there was no financial basis on which SAA's request for either a Letter of Support (LoS) or a R5.006 billion guarantee could be supported. Moreover, it was not anticipated that the turnaround strategy the company would return to financial health over the medium term. There were also concerns about whether SAA's board and management would implement the turnaround strategy if developed by Government as well as their capacity to implement. In addition, the FLC is concerned that any Government support provided will be merely subsidizing SAA's high cost structure.
39. Nevertheless, the FLC recognised that other considerations needed to be taken into account. These included the potentially negative economic implications of a disorderly failure of SAA as well as the impact this would have on other entities with guarantees in the event that no guarantee was provided.
40. Should a guarantee be provided, the FLC recommended that a R5.006 billion guarantee be extended for the period 01 September 2012 to 30 September 2014 to ensure that the external auditors provides an unqualified opinion for the 2012 AFS and that SAA continues to operate as a going concern. Moreover, the FLC recommended that the guarantee should be structured in two parts. The first part to cover the anticipated working capital requirements of SAA amounting to R1.544 billion. The second part, for the remaining R3.462 billion, to be provided but capital raising against this portion on the guarantee to be contingent on the identified risks materialising.
41. The guarantee should be subject to the following additional conditions:
- SAA to report on the utilization of the guarantee with regards to the working capital, risk adjustments and sensitivities components as outlined in the going concern report;
 - SAA to require NT approval of the terms of the financing raised against the guarantee before concluding any agreements;
 - Any transactions undertaken in terms of Section 54 of the Public Finance Management Act (PFMA) to be subject to approval of the Minister of Finance as well as the Minister of Public Enterprises;
 - SAA to deliver the Board and Shareholder approved turnaround strategy to NT by 31 January 2013;
 - A monitoring committee comprising representatives from NT and DPE to be established to monitor SAA's financial position, progress with

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REQUEST BY SOUTH AFRICAN AIRWAYS' ("SAA") REQUEST FOR A LETTER OF SUPPORT AND A R5 BILLION GUARANTEE FOR GOING CONCERN PURPOSES

- developing and implementing the turnaround strategy and compliance with the conditions of the guarantee; and
- SAA to provide both Ministers with the funding plan for both the short and long haul fleet.

RECOMMENDATION

42. It is recommended that the Minister:

- Concurs to SAA's request for a R5.006 billion guarantee for the period 01 September 2012 to 30 September 2014 subject to the conditions in paragraph 40 and 41; and
- Sign the attached letter addressed to the Minister of Public Enterprises ("MoPE"), (Annexure A), should he concur with the contents thereof to support the guarantee request.

Compiled by



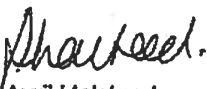
Nolwazi Dlungwane
Senior Financial Analyst: Asset Management
Date: 21/09/2012

Recommended/ Not Recommended



Ravesh Rajlal
Director: Sector Oversight
Date: 21 September 2012

Recommended/Not Recommended



Avril Halstead
Chief Director: Sectoral Oversight
Date: 21/9/2012

REQUEST BY SOUTH AFRICAN AIRWAYS' ("SAA") REQUEST FOR A LETTER OF SUPPORT AND A R5 BILLION
GUARANTEE FOR GOING CONCERN PURPOSES

Recommended/Not Recommended



Thulo Shomang
Head: Asset and Liability Management
Date: 21/09/2012

Recommended/Not Recommended



Lungisa Fuzile
Director General
Date: 26/9/2012

Approved/Not Approved



Pravin J Gordhan
Minister of Finance
Date: 26-09-2012

I would have preferred
another discussion with the
MOF and SAA before
getting to this point



**MINISTRY: FINANCE
REPUBLIC OF SOUTH AFRICA**

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Ref. M4/1/1 (2661/12)

**Mr MKN Gqaba, MP
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028**

Dear Malusi,

RE: REQUEST FOR A R5 BILLION GUARANTEE FOR SOUTH AFRICAN AIRWAYS (SAA)

I refer to your letter dated 09 September 2012 regarding the above mentioned matter.

I note that your short term intent is for SAA's external auditors to provide an unqualified opinion for the 2012 Annual Financial Statements (AFS) which will enable your Department to meet the tabling requirements of the statements in Parliament by 30 September 2012 as per Section 65 of the Public Finance Management Act.

I would have preferred to only consider Government support upon completion and approval of a long term strategy as agreed at our meeting on 25 May 2012. However, given that the strategy will only be finalised by January 2013 and the fact that SAA will be experiencing liquidity before then, some form of Government support is required to ensure that the company remains a going concern.

Your proposal of providing a Letter of Support (LoS) to sign off on the AFS is not supported as this would still have to be replaced by a guarantee of R5.006 billion in the next few months given that SAA is facing a liquidity crisis as it is expected to run out of cash and would therefore not be a going concern.

Instead I concur to providing a R5.006 billion guarantee for the period 01 September 2012 to 30 September 2014 to ensure that the Board are able to sign off the AFS as a going concern, the external auditors provide an unqualified opinion for the 2012 AFS and that SAA continues to operate as a going concern. However, this is subject to SAA only drawing down R1.544 billion for working capital. Draw downs against the remaining R3.362 billion will be contingent on the identified risks materialising and SAA providing evidence in this regard.

The guarantee is subject to the additional conditions:

1. SAA to report on the utilization of the guarantee with regards to the working capital, risk adjustments and sensitivities components as outlined in the going concern report;
2. SAA to require NT approval of the terms of the financing raised against the guarantee before concluding any agreements;
3. Any transactions undertaken in terms of Section 54 of the Public Finance Management Act (PFMA) to be subject to approval of the Minister of Finance as well as the Minister of Public Enterprises;
4. SAA to deliver the Board and Shareholder approved turnaround strategy to NT by 31 January 2013;
5. A monitoring committee comprising representatives from NT and DPE to be established to monitor SAA's financial position, progress with developing and implementing the turnaround strategy and compliance with the conditions of the guarantee; and
6. SAA to provide both Ministers with the funding plan for both the short and long haul fleet.

I trust that you will find the above to be in order.

Kind regards



PRAVIN J GORDHAN
MINISTER OF FINANCE
Date: 26-09-2012

HP LaserJet M2727nf MFP

Fax Confirmation Report

Cpt

HP LASERJET FAX

2012-Sep-27 6:33AM

Job	Date	Time	Type	Identification	Duration	Pages	Result
1626	2012/ 9/27	6:31:41AM	Send	0214652381	1:17	2	OK



MINISTRY OF FINANCE
REPUBLIC OF SOUTH AFRICA

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Ref: M4/11 (2881/12)

Mr MQI Gqoba, MP
Minister of Public Enterprises
Private Bag X15
HAYFIELD
0000

Dear Minister:

RE: REQUEST FOR A R1 BILLION GUARANTEE FOR SOUTH AFRICAN AIRWAYS (SAA)

I refer to your letter dated 09 September 2012 regarding the above mentioned matter.

I note that your short term intent is for SAA's external auditors to provide an unqualified opinion for the 2012 Annual Financial Statements (AFS) which will enable your Department to meet the tabling requirements of the statements in Parliament by 30 September 2012 as per Section 65 of the Public Finance Management Act.

I would have preferred to only consider Government support upon completion and approval of a long term strategy as agreed at our meeting on 25 May 2012. However, given that the strategy will only be finalised by January 2013 and the fact that SAA will be experiencing liquidity before then, some form of Government support is required to ensure that the company remains a going concern.

Your proposal of providing a Letter of Support (LoS) to sign off on the AFS is not supported as this would still have to be replaced by a guarantee of R5,000 billion in the next few months given that SAA is facing a liquidity crisis as it is expected to run out of cash and would therefore not be a going concern.

Instead I concur to providing a R5,000 billion guarantee for the period 01 September 2012 to 30 September 2014 to ensure that the Board are able to sign off the AFS as a going concern. The external auditors provide an unqualified opinion for the 2012 AFS and that SAA continues to operate as a going concern. However, this is evident in SAA only drawing down R1,564 billion for working capital. Draw downs against the remaining R3,332 billion will be contingent on the identified date materialising and SAA providing evidence in this regard.

HP LaserJet M2727nf MFP

Fax Confirmation Report

Pta

HP LASERJET FAX

2012-Sep-27 6:31AM

Job	Date	Time	Type	Identification	Duration	Pages	Result
1625	2012/ 9/27	6:29:46AM	Send	0124311039	1:26	2	OK



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Ref: M47/M (2001/12)

Mr MON Glabe, MP
 Minister of Public Enterprises
 Private Bag X15
 HATFIELD
 0001

Dear Minister,

RE: REQUEST FOR A R5 MILLION GUARANTEE FOR SOUTH AFRICAN AIRWAYS (SAA)

I refer to your letter dated 09 September 2012 regarding the above mentioned matter.

I note that your short term intent is for SAA's external auditors to provide an unqualified opinion for the 2012 Annual Financial Statements (AFS) which will enable your Department to meet the listing requirements of the statements in Parliament by 30 September 2012 as per Section 66 of the Public Finance Management Act.

I would have preferred to only consider Government support upon completion and approval of a long term strategy as agreed at our meeting on 25 May 2012. However, given that the strategy will only be finalised by January 2013 and the fact that SAA will be experiencing liquidity before then, some form of Government support is required to ensure that the company remains a going concern.

Your proposal of providing a Letter of Support (LoS) to sign off on the AFS is not supported as this would still have to be replaced by a guarantee of R5,000 million in the next few months given that SAA is facing a liquidity crisis as it is expected to run out of cash and would therefore not be a going concern.

Instead I concur to providing a R5,000 billion guarantee for the period 01 September 2012 to 30 September 2014 to ensure that the Board are able to sign off the AFS as a going concern, the external auditors provide an unqualified opinion for the 2012 AFS and that SAA continues to operate as a going concern. However, this is subject to SAA only drawing down R1,544 billion for working capital. Draw down against the remaining R3,456 billion will be contingent on the identified risks materialising and SAA providing evidence in this regard.

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MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

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PO Box 29, Cape Town, 8000, Tel: +27 21 464 6100, Fax: +27 21 461 2934

Ref. M3/16/21 (1877/12)

Mr MKN Gigaba, MP
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028

Dear Minister,

**APPLICATION TO UTILIZE R500 MILLION OF THE SOUTH AFRICA AIRWAYS
(SAA) R1.6 BILLION GUARANTEE TO RAISE FUNDS FOR ITS OPERATIONS**

I refer to your letter dated 03 June 2012 concerning the above mentioned matter as well as I note the immediate financial pressures facing SAA as discussed in our meeting of 25 May 2012.

The officials from the Department of Public Enterprises and the National Treasury have jointly evaluated various options and the most cost effective and feasible solution for SAA is to reallocate R437 million of the existing R1.6 billion perpetual guarantee to meet the Domestic and International Air Services Councils' consumer protection guarantee requirements from 01 July 2012 to 30 September 2013. This will release banking facilities of R437 million earmarked for the consumer protection requirements for SAA. It will still be important for your department to engage with the Department of Transport to provide a transparent and equitable process in determining the requirements for these guarantees.

SAA's financial pressures require an additional going concern guarantee in order for the Board and the Auditors to sign off the company's financials as a going concern for the 18 month period ending 31 August 2013. A formal guarantee application will need to be submitted. Moreover, as agreed in our bilateral meeting, we will require that this submission be supported by a long-term strategy for SAA before any guarantee support can be considered. The strategy must include the following components, amongst others:

- Rationale and business case for the consolidation of the domestic aviation sector;
- Potential opportunities, advantages and disadvantages of bringing in a Strategic Equity Partner;
- Assessment of the economic impact of specific routes, particularly the loss making routes; and

2

- Funding plan including financial projections (at least 10 years) for ensuring the airline's return to financial sustainability.

I trust you will find the above to be in order.

Kind regards



PRAVIN J GORDHAN
MINISTER OF FINANCE
Date: 18-7-2012



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MINISTER OF FINANCE
85
12 SEP 2012
FILE No: M 4/11
MINISTER OF FINANCE
2661-12

Mr Pravin Gordhan
Minister of Finance
Department of National Treasury
40 Church Square
Pretoria
0001

Tel: 012 323 8911
Fax: 012 323 3262

Dear Colleague

Request for a R5, 006 Million Guarantee for South African Airways (SAA)

My letter dated 31 August 2012 bears reference.

I wish to advise that the following are SAA's requirements:

- In the short term, SAA requires a letter of support to enable the auditors to give an unqualified audit opinion and for the annual financial statements to be adopted and released at the Annual General Meeting.
- In the medium term, SAA requires a guarantee amounting to R 5, 006 million to ensure that the airline continues operating as a going concern. The amount of R5, 006 million is based on the assessment made by SAA and reviewed by auditors, PricewaterhouseCoopers and Nkonki Inc (going concern report attached as ANNEXURE A).
- In the long term, SAA will require a recapitalisation. The application for a recapitalisation will be submitted after the long term strategy for SAA is finalised.

I understand from our earlier engagements that a long term strategy is required before any further funding support may be granted to the airline.

As an initial step towards developing the long term strategy, the Department commissioned a study through consultants to perform a diagnostic review on SAA to fully understand the challenges faced by the airline. The study was conducted by a reputable firm of consultants, Mott MacDonald and identified the following amongst other challenges:

- The current losses on international routes impacted by high fuel prices, inappropriately configured aircraft having a small business class cabin and a larger economy class, are a cause for concern.
- Clear long term objectives need to be made about the airline including the replacement of long haul fleet.
- There is a need to determine the optimal capital structure.
- SAA and DPE need to develop long term goals for the airline.

The findings of the diagnostic review will form the basis of the long term strategy and we expect that National Treasury will be involved in shaping and guiding the work to this end. Our preliminary assessment indicates that an exercise of this nature projecting 10 years ahead will require 3 to 4 months to complete. The long term strategy for the airline will therefore be completed by the end of January 2013.

I will appreciate it if you could give urgent consideration to a letter of support for SAA to enable the auditors to give an unqualified audit opinion ahead of the AGM, scheduled for 25 September 2012. Further, a guarantee application is being prepared for an amount of R5, 006 million in order to ensure that the company operates as a going concern.

I trust that the request will receive your favourable response.

Yours sincerely



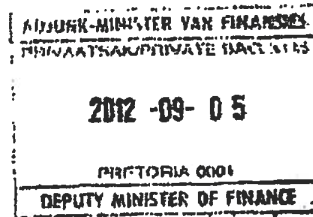
MR. MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES

DATE: 2012/09/10



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2661-12

Mr Pravin Gordhan, MP
Minister of Finance
Private Bag X 115
Pretoria
0001

Tel: 012 3238911/5372
Fax: 012 323 3262

Dear Colleague

The statutory obligation (section 55(1)(d) of the PFMA) of South African Airways SOC limited ("SAA") to submit its Annual Report and Annual Financial Statements ("AFS")

Further to our meeting on Wednesday, 29 August 2012, I write to draw your attention to the statutory obligation that applies to the matters we discussed regarding the financial position of SAA, as well as the report of the SAA's external auditors to the Department of Public Enterprises, National Treasury and the office of the Auditor-General.

As you are aware, in terms of the PFMA, SAA is required to submit its annual report and AFS to Public Enterprises, National Treasury and the Office of the Auditor-General on or before 31 August 2012. To date, SAA and the Department have employed their best endeavors to complete all the work required to achieve compliance with the provisions of section 55(1) (d) of the PFMA. Since April 2012, our two Departments have been made aware of the financial challenges faced by SAA and the fact that its auditors raised concerns regarding SAA's going concern and liquidity position which require resolution prior to the issuing of an unqualified audit. In order to address these concerns, SAA applied to the Department for a Letter of Support. In our view, the Letter of Support would satisfy the concerns of the auditors and enable the issuing of an unqualified auditor's report. This application and the discussions thereon are still underway as directed by you and I at our abovementioned meeting.

In accordance with SAA's obligations under section 55(1)(d) of the PFMA and the Company's commitment to compliance, I have agreed with its Board of Directors that SAA should proceed to submit its Annual Report and Annual Financial Statements to the Auditor-General, National Treasury and the Director-General of my Department today. As SAA's Executive Authority, I will continue to engage with you to expedite the Letter of Support to enable the submission of an unqualified external auditor's report as well as compliance with the tabling of all required documents to Parliament by my Department in terms of section 55(3) of the PFMA.

In addition, I have taken a decision to postpone the SAA AGM to 25 September 2012 in anticipation of the Letter of Support. I believe that this will afford our respective officials sufficient time to engage in order to ensure achievement of the commitments given at our meeting on the 29 August 2012.

I trust that you will find the above in order.

Yours sincerely



MR. MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2012/08/31

cc: Ms Cheryl Carolus
Chairperson: South African Airways
Fax: 011 978 2520
Email: Pulane.Baloyi@flysaa.com

cc: Mr. Terence Nombambe
The Auditor-General of South Africa
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SOUTH AFRICAN REVENUE SERVICE ACT 34 OF 1997

(Afrikaans text signed by the President)

[Assented To: 28 August 1997]
[Commencement Date: 1 October 1997]

as amended by:

Proclamation R58 of 2002
South African Revenue Service Amendment Act 46 of 2002
Proclamation 74 of 2009
Tax Administration Act 28 of 2011
[Proc. 51 / GG 35687 / 20120914 w.e.f. 1 October 2012 - except for any provisions relating to interest]
Proclamation 13 / GG 36509 / 20130529
Employment Tax Incentive Act 26 of 2013
[with effect from 1 January 2014]
Tax Administration Laws Amendment Act 44 of 2014
Proclamation 17 / GG 38653 / 20150330

ACT

To make provision for the efficient and effective administration of the revenue-collecting system of the Republic and the control over the import, export, manufacture, movement, storage or use of certain goods; and, for this purpose, to reorganise the South African Revenue Service and to make provision for the establishment of advisory committees; and to provide for incidental matters.

[Long title substituted by s. 17 of Act 46/2002]

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- [Schedule 1 - Legislation administered by commissioner](#)
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- [Schedule 3 - Amendment of legislation affected by this Act](#)

1. Definitions

In this Act, unless the context indicates otherwise -

“Board”

[Definition of “Board” deleted by s. 1 of Act 46/2002]

“Commissioner” means the Commissioner appointed in terms of [section 6](#);

“financial year” means a financial year defined in [section 1](#) of the Public Finance Management Act, 1999;
[Definition of “financial year” substituted by s. 1 of Act 46/2002]

“Minister” means the Minister of Finance;

“Public Finance Management Act, 1999” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
[Definition of “Public Finance Management Act, 1999” inserted by s. 1 of Act 46/2002]

“Public Service Act” means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“recognised trade union” means a trade union registered in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), and recognised by SARS as a collective bargaining agent of SARS employees;

“revenue” means income derived from taxes, duties, levies, fees and any other moneys imposed in terms of legislation, including penalties and interest in connection with such moneys;
[Definition of “revenue” substituted by s. 271 of Act 28/2011 w.e.f. 1 Oct 2012]

“SARS” means the South African Revenue Service established by [section 2](#); and

“this Act” includes any rules made or directives issued in terms of this Act.

PART 1

SOUTH AFRICAN REVENUE SERVICE

2. Establishment

The South African Revenue Service is hereby established as an organ of state within the public administration, but as an institution outside the public service.

3. Objective

SARS’s objectives are the efficient and effective-

- (a) collection of revenue; and
- (b) control over the import, export, manufacture, movement, storage or use of certain goods.
[S. 3 substituted by s. 2 of Act 46/2002]

4. Functions

(1) To achieve its objectives SARS must -

- (a) secure the efficient and effective, and widest possible, enforcement of -
 - (i) the national legislation listed in [Schedule 1](#); and
 - (ii) any other legislation concerning the collection of revenue or the control over the import, export, manufacture, movement, storage or use of certain goods that may be assigned to SARS in terms of either legislation or an agreement between SARS and the organ of state or

institution concerned; and

(b) advise the Minister on -

(i) all matters concerning revenue; and

(ii) the exercise of any power or the performance of any function assigned to the Minister or any other functionary in the national executive in terms of legislation referred to in paragraph (a); and

(c) advise the Minister of Trade and Industry on matters concerning the control over the import, export, manufacture, movement, storage or use of certain goods.

[Sub-s. (1) substituted by s. 3 of Act 46/2002]

(2) SARS must perform its functions in the most cost-efficient and effective manner and in accordance with the values and principles mentioned in [section 195](#) of the Constitution.

(3)

[Sub-s. (3) deleted by s. 3 of Act 46/2002]

5. Powers

(1) SARS may do all that is necessary or expedient to perform its functions properly, including to -

(a) determine its own staff establishment, appoint employees and determine their terms and conditions of employment in accordance with [section 18](#);

(b) bargain collectively with the recognised trade unions representing SARS employees;

(c) obtain the services of any person, including any state department, functionary or institution, to perform any specific act or function;

(d) acquire or dispose of any right in or to movable or immovable property which may include ownership;

(e) open and operate on its own bank accounts;

(f) insure itself against any loss, damage, risk or liability;

(g) perform any specific act or function within its competence on behalf of any other person, including any state department, functionary or institution;

(h) impose fees or charges when performing an act or function in terms of paragraph (g);

(i) perform legal acts, or institute or defend any legal action in its own name;

(j) engage in any activity, whether alone or together with other organisations in the Republic or elsewhere, to promote proper, efficient and effective tax administration, including customs and excise duty administration; and

(k) do anything that is incidental to the exercise of any of its powers.

(2)

[Sub-s. (2) deleted by s. 4 of Act 46/2002]

PART 2

COMMISSIONER

6. Appointment

- (1) The President must appoint a person as the Commissioner for the South African Revenue Service.
- (2) The person appointed as the Commissioner holds office for an agreed term not exceeding five years, but which is renewable.

[S. 6 substituted by s. 5 of Act 46/2002]

7. Acting Commissioner

- (1) When the Commissioner is absent or otherwise unable to perform the functions of office, or during a vacancy in the office of Commissioner, the Minister may designate another SARS employee to act as Commissioner.
- (2) No employee may be designated as acting Commissioner for a period longer than 90 days at a time.

8.

[S. 8 repealed by s. 6 of Act 46/2002]

9. Responsibilities

- (1) The Commissioner -
 - (a) is responsible for the performance by SARS of its functions;
 - (b) takes all decisions in the exercise by SARS of its powers;
 - (c) performs any function and exercises any power assigned to the Commissioner in terms of any legislation or agreement referred to in [section 4](#) (1) (a); and
 - (d) is the chief executive officer and also the accounting authority for SARS.
[Para. (d) substituted by s. 7 of Act 46/2002]
- (2) As chief executive officer the Commissioner is responsible in particular for -
 - (a) the formation and development of an efficient administration;
 - (b) the organisation and control of the staff;
 - (c) the maintenance of discipline; and
 - (d) the effective deployment and utilisation of staff to achieve maximum operational results.
- (3) As accounting authority, the Commissioner is responsible for -
 - (a) all income and expenditure of SARS;
 - (b) all revenue collected by SARS;

- (c) all assets and the discharge of all liabilities of SARS; and
- (d) the proper and diligent implementation of the Public Finance Management Act, 1999.

[Para. (d) substituted by s. 7 of Act 46/2002]

[Sub-s. (3) amended by s. 7 of Act 46/2002]

- (4) The Commissioner must perform the functions of office as required by this Act.

10. Assignment of powers and duties

- (1) The Commissioner may -
 - (a) assign management or other duties to employees with appropriate skills to assist the Commissioner in the management, and the control over the functioning, of SARS;
 - (b) delegate any of the Commissioner's powers in terms of this Act to a SARS employee; or
 - (c) instruct a SARS employee to perform any of the Commissioner's duties in terms of this Act.
- (2) An assignment, delegation or instruction under subsection (1) -
 - (a) may be issued subject to any conditions the Commissioner may impose; and
 - (b) does not divest the Commissioner of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) This section applies only to the Commissioner's powers and functions contained in this Act.

PART 3

ADVISORY COMMITTEES

11. Establishment

- (1) The Minister may appoint one or more specialist committees to advise the Commissioner and the Minister on any matter concerning the management of SARS's resources; including asset management, human resources and information technology, subject to subsection (2).
- (2) The specialist committee responsible for human resources must advise-
 - (a) the Minister on matters concerning the terms and conditions of employment of any class of employees in the management structure of SARS, as agreed between the Minister and the Commissioner; and
 - (b) the Commissioner on matters concerning the terms and conditions of employment of all employees of SARS, other than employees contemplated in paragraph (a).

[S. 11 substituted by s. 8 of Act 46/2002]

12. Constitution

- (1) A specialist committee established under [section 11](#) must perform its functions impartially and without fear, favour or prejudice.
- (2) A specialist committee contemplated in [section 11](#) must consist of-

- (a) not more than eight persons who are independent from SARS and are appointed by the Minister; and
 - (b) not more than two senior employees of SARS designated by the Commissioner.
- (3) A person appointed as a member of such a committee must-
- (a) be a fit and proper person;
 - (b) have appropriate expertise or experience; and
 - (c) have the ability to perform effectively as a member of that committee.
- (4) The members of such a committee must not-
- (a) act in any way that is inconsistent with subsection (3) or expose themselves to any situation in which the risk of a conflict between their responsibilities and private interests may arise; or
 - (b) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.
- (5) A member ceases to be a member if-
- (a) he or she resigns from the specialist committee;
 - (b) the Minister terminates his or her membership because the member no longer complies with subsection (3) or has contravened subsection (4);
 - (c) the term for which the member was appointed has expired.
- [S. 12 substituted by s. 8 of Act 46/2002]

13. Powers

- (1) The Minister may assign specific powers to the members of a specialist committee for the purposes of performing any function contemplated in [section 11](#).
- (2) The powers of a specialist committee to give advice may not be construed as interference with the powers assigned to the Commissioner in terms of any legislation or agreement referred to in [section 4](#)(1)(a), in so far as those powers of the Commissioner relate to-
- (a) the interpretation of that legislation or agreement;
 - (b) the exercise of a discretion conferred on the Commissioner by that legislation or agreement; or
 - (c) the determination of the liability of a person for any revenue.
- [S. 13 substituted by s. 8 of Act 46/2002]

14. Procedures

A specialist committee may determine its own procedures.

[S. 14 substituted by s. 8 of Act 46/2002]

15. Disclosure of interest

A member of a specialist committee who has a personal or financial interest in any matter on which such committee gives advice must disclose that interest and withdraw from the proceedings of the specialist committee when that matter is discussed.

[S. 15 substituted by s. 8 of Act 46/2002]

16. Remuneration

SARS must remunerate a member mentioned in [section 12](#)(2)(a) and compensate the member for expenses, as determined by the Minister.

[S. 16 substituted by s. 8 of Act 46/2002]

17. Vacation of office

A member mentioned in [section 12](#) (1) (a) ceases to be a member if -

- (a) that person resigns from the Board; or
- (b) the Minister terminates that person's membership for a sufficient reason.

PART 4

EMPLOYEES

18. Terms and conditions of employment

- (1) SARS employees, other than employees contemplated in subsection (3) are employed subject to terms and conditions of employment determined by SARS-

- (a) after collective bargaining between SARS and the recognised trade unions; and
- (b) with the approval of the Minister.

[Sub-s. (1) substituted by s. 9 of Act 46/2002]

- (2)
 - (a) The terms and conditions of employment of employees contemplated in subsection (1) who are subject to any collective bargaining process in the SARS bargaining unit must be determined after collective bargaining between SARS and the recognised trade unions has taken place.

- (b) The collective bargaining referred to in paragraph (a) must be conducted in accordance with the procedures agreed on between SARS and the recognised trade unions.

[Sub-s. (2) substituted by s. 9 of Act 46/2002]

- (3) The Minister must approve the terms and conditions of employment for any class of employees in the management structure of SARS.

[Sub-s. (3) added by s. 9 of Act 46/2002]

- (4) The Commissioner must submit a copy of the terms and conditions of employment determined by SARS in terms of subsection (1) to the Minister.

[Sub-s. (4) added by s. 9 of Act 46/2002]

19. Pension rights

- (1) Subject to the Government Employees' Pension Law, 1996 (Proclamation No. 21 of 1996), a person appointed by SARS as an employee-

- (a) becomes a member of the Government Employees' Pension Fund mentioned in [section 2](#) of the Government Employees' Pension Law, 1996; and
 - (b) is entitled to pension and retirement benefits as if that person were in service in a post classified in a division of the public service mentioned in [section 8\(1\)\(a\)\(i\)](#) of the Public Service Act.
- (2) If the Commissioner becomes a member of the Government Employees' Pension Fund, he or she is entitled to the pension and retirement benefits calculated on the same basis as those of a head of department in the public service.

[S. 19 substituted by s. 10 of Act 46/2002]

20. Training and education

SARS -

- (a) must provide for appropriate internal training of its employees; and
- (b) may grant bursaries and loans to employees and other suitable candidates for educational purposes within its field of operation.

21. Existing staff

Items 1 to 5 of [Schedule 2](#) apply to all persons in the public service who occupied posts on, or were additional to, the staff establishment of the Department: South African Revenue Service immediately before this Act took effect, and item 6 applies to both those persons and persons appointed by SARS after this Act took effect.

PART 5

FINANCIAL MATTERS

22. Accountability

As accounting authority for SARS, the Commissioner must comply with the Public Finance Management Act, 1999, in respect of-

- (a) all income and expenditure of SARS;
- (b) all assets, liabilities and financial transactions of SARS; and
- (c) all revenue collected by SARS.

[S. 22 substituted by s. 11 of Act 46/2002]

23.

[S. 23 repealed by s. 12 of Act 46/2002]

24. Funds

- (1) The funds of SARS consist of -
 - (a) money to which it is entitled in terms of [section 25](#);
 - (b) any government grants made to it;

- (c) any fees and charges mentioned in [section 5](#) (1) (h); and
- (d) any other money legally acquired by it.

(2)

- (a) SARS may accept donations and bequests, but only with the approval of the Minister.
- (b) Particulars of each donation or bequest accepted by SARS must be given in SARS's annual report.

25. Chief source of income

- (1) SARS is entitled to money appropriated annually by Parliament for its services mentioned in [section 4](#) (1) (a) (i) and (b).
- (2)
 - (a) The amount of the money to be appropriated must-
 - (i) be calculated in accordance with the estimates of income and expenditure as contemplated in [section 53](#) of the Public Finance Management Act, 1999; or
 - (ii) be determined in such other manner as may be agreed between the Minister and the Commissioner and approved by Cabinet;
 - (b) Once appropriated, the money must be paid to SARS in amounts determined in accordance with an agreement between SARS and the Minister, subject to the Public Finance Management Act, 1999.
[Sub-s. (2) substituted by s. 13 of Act 46/2002]
- (3) For services mentioned in [section 4](#) (1) (a) (ii) SARS may charge the organ of state or institution concerned at an agreed rate.

26.

[S. 26 repealed by s. 14 of Act 46/2002]

27.

[S. 27 repealed by s. 15 of Act 46/2002]

28. Audits

The Auditor-General must audit the accounts and financial records of SARS, including those relating to the collection of revenue.

29.

[S. 29 repealed by s. 16 of Act 46/2002]

PART 6

MISCELLANEOUS

30. Restrictions on names implying connection with SARS

- (1) No person may -
 - (a) use the name or abbreviated name of SARS in an unlawful manner;

- (b) use any logo or design of SARS without its authorisation;
- (c) falsely represent any material or substance as emanating from SARS;
- (d) use any name or description which implies some association or connection between the person or any corporate entity, body, firm, business or undertaking and SARS; or
- (e) register or use a domain name which incorporates the name or description 'South African Revenue Service' or 'SARS' or the name or description of any of its subsidiaries.

[Subs. (1) substituted by s. 35 of Act 44/2014 w.e.f. 20 January 2015]

- (2) Any person who contravenes subsection (1) is guilty of an offence and on conviction liable to a fine or to imprisonment not exceeding 10 years or to a fine and imprisonment.

31. Protection of confidential information

Nothing in this Act affects provisions in other legislation prohibiting or regulating disclosure of information in the possession of the Commissioner.

32. Exemption from transfer and stamp duty

No transfer duty is payable by SARS in respect of the acquisition of any property by SARS, and no stamp duty is payable by SARS in respect of any instrument if the stamp duty thereon would be payable by SARS in terms of the applicable legislation.

33. Amendment of Schedule 1

The President may amend Schedule 1 by proclamation in the Gazette.

34. Amendment of legislation affected by this Act

- (1) The legislation mentioned in Schedule 3 is hereby amended to the extent set out in the third column of the Schedule.
- (2) A reference in any other legislation to the Commissioner for Inland Revenue, the Secretary for Customs and Excise or the Commissioner for Customs and Excise must be construed as a reference to the Commissioner in terms of this Act.

35. Short title and commencement

- (1) This Act is called the South African Revenue Service Act, 1997, and takes effect, subject to subsection (2), on a date fixed by the President by proclamation in the Gazette.
- (2) The amendment to Schedule 1 of the Public Service Act, 1994 (Proclamation 103 of 1994), in terms of Schedule 3 of this Act, takes effect on the date on which the Department: South African Revenue Service is abolished in terms of item 2 of Schedule 2 of this Act.

Schedule 1

LEGISLATION ADMINISTERED BY COMMISSIONER

1. Union and Southern Rhodesia Death Duties Act, 1933 (Act No. 22 of 1933)

2. Transfer Duty Act, 1949 (Act No. 40 of 1949)

3. Estate Duty Act, 1955 (Act No. 45 of 1955)
4. Income Tax Act, 1962 (Act No. 58 of 1962)
5. Customs and Excise Act, 1964 (Act No. 91 of 1964)
6. Value-Added Tax Act, 1991 (Act No. 89 of 1991)
7. Section 39 of the Taxation Laws Amendment Act, 1994 (Act No. 20 of 1994)
8. Sections 56 and 57 of the Income Tax Act, 1995 (Act No. 21 of 1995)
9. Skills Development Levies Act, 1998 (Act No. 9 of 1999)
10. Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002)
11. Sections 4 and 28 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 (Act No. 12 of 2003)
12. Small Business Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 9 of 2006)
13. Second Small Business Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 10 of 2006)
14. Diamond Export Levy (Administration) Act, 2007 (Act No. 14 of 2007)
15. Diamond Export Levy Act, 2007 (Act No. 15 of 2007)
16. Securities Transfer Tax Act, 2007 (Act No. 25 of 2007)
17. Securities Transfer Tax Administration Act, 2007 (Act No. 26 of 2007)
18. Mineral and Petroleum Resources Royalty Act, 2008 (Act No. 28 of 2008)
19. Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29 of 2008)
20. Voluntary Disclosure Programme and Taxation Laws Second Amendment Act, 2010 (Act No. 8 of 2010)
21. Tax Administration Act, 2011 (Act No. 28 of 2011)
22. Employment Tax Incentive Act, 2013 (Act No. 26 of 2013)
23. Merchant Shipping (International Oil Pollution Compensation Fund) Administration Act, 2013 (Act No. 35 of 2013)
24. Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Act, 2013 (Act No. 36 of 2013)
25. Any regulation, proclamation, government notice or rule issued in terms of the abovementioned legislation or any agreement entered into in terms of this legislation or the Constitution.

[Schedule 1 amended by Proc. 58/2002, Proc. 74/2009, Proc. 13/2013, s. 13 of Act 26/2013 and Proc. 17/2015]

Schedule 2

TRANSITIONAL PROVISIONS**1. Definitions**

In this Schedule, unless the context indicates otherwise -

“Department” means the Department: South African Revenue Service;

“departmental employee” means a member of the public service who occupied a post on, or was additional to, the staff establishment of the Department immediately before the effective date; and

“effective date” means the date on which this Act took effect.

2. Abolition of Department

The Department is abolished on the effective date.

3. Commissioner

(1) The person who occupied the post of Commissioner for Inland Revenue and Commissioner for Customs and Excise immediately before this Act took effect, must be regarded as having been appointed as the Commissioner in terms of section 6 for a term of five years.

(2) The term of the person referred to in subitem (1) runs from the date this Act took effect, and that person may be reappointed when the term expires.

4. Persons in service of Department.

(1) A departmental employee becomes an employee of SARS on the effective date.

(2) The transfer of departmental employees to SARS must be effected in accordance with -

(a) section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995); and

(b) any collective agreement reached between the State and the trade union parties of the Departmental Chamber of the Public Service Bargaining Council: SARS, before the effective date.

5. Persons becoming employees of SARS

(1) When a departmental employee becomes an employee of SARS, the Commissioner must appoint that employee in a post on the establishment of SARS.

(2) A person mentioned in subitem (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before the effective date. Any proceedings against such a person which were pending immediately before the effective date, must be disposed of as if this Act had not been enacted.

6. Collective bargaining

(1) There is established a collective bargaining forum for SARS employees on the effective date.

(2) The constitution of the forum is, subject to any changes required by the context, the same as the constitution of the Departmental Chamber of the Public Service Bargaining Council: SARS.

- (3) The trade union parties to the forum are those that were parties to the Departmental Chamber of the Public Service Bargaining Council: SARS. The employer representatives must be appointed by the Commissioner.
- (4) The constitution may be amended only by agreement of all the parties to the forum.
- (5) For the purposes of section 18 of this Act -
 - (a) the trade union parties to the forum are regarded as having been recognised by SARS as recognised trade unions; and
 - (b) the procedures contained in the constitution of the forum must be applied as if they were the agreed procedures for the negotiations on terms and conditions of employment.

7. Assets and liabilities

- (1) Immovable property of the state used by the Department immediately before the effective date remains at the disposal of SARS on terms and conditions as may be agreed on between SARS and the responsible Cabinet member.
- (2) All movable assets of the state which were used by or which were at the disposal of the Department immediately before the effective date, except those assets excluded by the Minister, become the property of SARS.
- (3) As from the effective date all contractual rights, obligations and liabilities of the Department are vested in SARS.

8. Financial and administrative records of Department

All financial, administrative and other records of the Department, including all documents in the possession of the Department immediately before the effective date, must be transferred to SARS.

Schedule 3

AMENDMENT OF LEGISLATION AFFECTED BY THIS ACT

NUMBER AND YEAR OF LAW	SHORT TITLE	EXTENT OF REPEAL OR AMENDMENT
Act No. 32 of 1948	Marketable Securities Tax Act, 1948	<p>Section 1 is hereby amended-</p> <p>(a) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“ ‘Commissioner’ means the Commissioner for Inland Revenue the South African Revenue Service;”;</p> <p>and</p> <p>(b) by the insertion after the definition of “member” of the following definition:</p> <p>“ ‘<i>South African Revenue Service</i>’ means the South</p>

		<i>African Revenue Service established by section 2 of the South African Revenue Service Act, 1997;”.</i>
Act No. 40 of 1949	Transfer Duty Act, 1949	<p>Section 1 is hereby amended-</p> <p>(a) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“ ‘Commissioner’ means the Commissioner for Inland Revenue the South African Revenue Service;”; and</p> <p>(b) by the insertion after the definition of “registration officer” of the following definition:</p> <p>“ ‘South African Revenue Service’ means the South African Revenue Service established by section 2 of the South African Revenue Service Act 1997; “.</p>
Act No. 45 of 1955	Estate Duty Act, 1955	<p>Section 1 is hereby amended-</p> <p>(a) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“ ‘Commissioner’ means the Commissioner for Inland Revenue the South African Revenue Service;”; and</p> <p>(b) by the insertion after the definition of “relative” of the following definition:</p> <p>“ ‘South African Revenue Service’ means the South African Revenue Service established by section 2 of the South African</p>

		<i>Revenue Service Act 1997;</i> ”.
Act No. 58 of 1962	Income Tax Act, 1962	<p>Section 1 is hereby amended-</p> <p>(a) by the deletion of the definition of “Chief Executive Officer”;</p> <p>(b) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“ ‘Commissioner’ means the Commissioner for Inland Revenue the South African Revenue Service;”;</p> <p>(c) by the insertion after the definition of “South African company” of the following definition:</p> <p>“ ‘<i>South African Revenue Service</i>’ means the <i>South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997;</i>”.</p> <p>2. Section 2 is hereby amended by the deletion of subsection (2).</p> <p>3. Section 4 is hereby amended-</p> <p>(a) by the substitution for paragraph (a) of the proviso to subsection (1) of the following paragraph:</p> <p>“(a) any information obtained by the Commissioner in the performance of his duties under the provisions of this Act or any previous Income Tax Act may be used by him for the purposes of the provisions of any other fiscal</p>

law administered by him
or he may, if he is
satisfied that any such
information is required
for the purpose of
preventing or combating
evasion of any tax, duty
or levy imposed under any
fiscal law administered by
the Commissioner for
Customs and Excise, supply
such information to the
lastmentioned
Commissioner; “;

(b) by the deletion of
 paragraph (c) of the
 proviso to subsection (1);

(c) by the deletion of
 subsections (1A) and (1B);

(d) by the substitution
 for paragraph (a) of
 subsection (2) of the
 following paragraph:

“(a) Every person so
 employed **and the Chief**
Executive Officer shall,
 before acting under this
 Act, take and subscribe
 before a magistrate or
 justice of the peace or
an officer of the South
African Revenue Service
who is a commissioner of
 oaths, such oath or solemn
 declaration, as the case
 may be, of fidelity or
 secrecy as may be
 prescribed.”; and

(e) by the substitution
 for subsection (3) of the
 following subsection:

“(3) Any person who
 contravenes the provisions
 of subsection (1) **(1A),**
(1B) or (2A) shall be
 guilty of an offence and
 liable on conviction to a
 fine not exceeding R5000

		or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”.
Act No. 91 of 1964	Customs and Excise Act, 1964	<p>1. Section 1 is hereby amended-</p> <p>(a) by the substitution for the definition of “Commissioner” in subsection (1) of the following definition: “ ‘Commissioner’ means the Commissioner for Customs and Excise mentioned in section 1B <i>the South African Revenue Service</i>;”; and</p> <p>(b) by the insertion after the definition of “ship” of the following definition:</p> <p>“ ‘<i>South African Revenue Service</i>’ means the <i>South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997</i>;”.</p> <p>2. Sections 1A and 1B are hereby repealed.</p> <p>3. Section 4 is hereby amended-</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Subject to the laws governing the public service officers employed in the Office <i>Officers</i> shall act under the control and direction of the Commissioner.”;</p> <p>(b) by the deletion of paragraph (c) of subsection (3); and</p>

		<p>(c) by the insertion after subsection (3A) of the following subsection:</p> <p><i>“(3B) The provisions of subsection (3) shall not be construed as preventing an officer from using any information obtained by him in the exercise of his powers or the performance of his duties under this Act for the purposes of any other law administered by him.”.</i></p> <p>4. Section 43 is hereby amended by the substitution for the word “Office” wherever it occurs in subsection (3) of the word “Commissioner”.</p> <p>5. Section 82 is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p><i>“(a) which is used in the Office under the authority of the Commissioner;”.</i></p> <p>6. Section 114 is hereby amended by the substitution for the word “Office” wherever it occurs in subsection (1) of the word “Commissioner”.</p>
Act No. 77 of 1968	Stamp Duties Act, 1968	<p>Section 1 is hereby amended-</p> <p>(a) by the substitution for the definition of “Commissioner” of the following definition:</p> <p><i>“ ‘Commissioner’ means the Commissioner for Inland Revenue the South African Revenue Service;”;</i> and</p>

		<p>(b) by the insertion after the definition of “regulation” of the following definition:</p> <p>“ ‘<i>South African Revenue Service</i>’ means the <i>South African Revenue Service established by section 2 of the South African Revenue Service Act 1997</i>;”</p>
Act No. 89 of 1991	Value-Added Tax Act, 1991	<p>1. Section 1 is hereby amended-</p> <p>(a) by the deletion of the definition of “Chief Executive Officer”;</p> <p>(b) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“ ‘Commissioner’ means the Commissioner for Inland Revenue the <i>South African Revenue Service</i>;”; and</p> <p>(c) by the insertion after the definition of “Share Blocks Control Act” of the following definition:</p> <p>“ ‘<i>South African Revenue Service</i>’ means the <i>South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997</i>;”.</p> <p>2. Section 4 is hereby amended by the deletion of subsection (2).</p> <p>3. Section 6 is hereby amended-</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p>

“(1) **The Chief Executive Officer or A** person employed in carrying out the provisions of this Act shall not-

(a) disclose to any person or his representative any matter in respect of any other person that may **in the case of the Chief : Executive Officer, in the performance of his duties as Chief Executive Officer, or in any other case** in the exercise of his powers or the performance of his duties under the said provisions come to his knowledge; or

(b) permit any person to have access to any records in the possession or custody of the Commissioner,

except **in the case of the Chief Executive Officer, in the performance of his duties as Chief Executive Officer, or in any other case** in the exercise of his powers or the performance of his duties in terms of this Act or by order of a competent court: Provided that **the Chief Executive Officer, in the performance of his duties as Chief Executive Officer, or the Auditor-General** in the performance of his duties in terms of section 3 of the Auditor-General Act, 1995 (Act No. 12 of 1995), shall have access to all records and documents in the possession or custody of the Commissioner for the purposes of this Act.”;

(b) by the deletion of

paragraph (b) of subsection (2);

(c) by the substitution in subsection (3) for the words preceding the proviso of the following words:

“No person shall in any manner publish or make known to any other person (not being an officer performing his duties under the control, direction or supervision of the Commissioner **or the Commissioner for Customs and Excise** or the Postmaster-General) the contents or tenor of any instruction or communication given or made by the Commissioner **or the Commissioner for Customs and Excise** or the Postmaster-General or any such officer in the performance of his or their duties in terms of this Act for or concerning the examination or investigation of the affairs of any person or class of persons or the fact that such instruction or communication has been given or made, or any information concerning the tax matters of a person or class of persons:”;

(d) by the substitution for paragraphs (b) and (c) of the proviso to subsection (3) of the following paragraphs:

“(b) subject to the provisions of subsections (1) and (4), as in any way limiting the duties or powers of the Commissioner **or the Commissioner for**

Customs and Excise or the Postmaster-General or any such officer; or

(c) as preventing any person from publishing or making known anything which has been published or made known by that person or his representative as contemplated in paragraph (a) or by the Commissioner **or the Commissioner of Customs and Excise** or the Postmaster-General or any such officer in the exercise of his duties or powers.”; and

(e) by the deletion of subsection (4)

4. Section 7 is hereby amended by the deletion of paragraph (c) of subsection (3).

5. Section 13 is hereby amended by the substitution in subsection (5) for the words preceding paragraph (b) of the following words: “Except as contemplated in subsection (4), the Commissioner **the Commissioner for Customs and Excise** and the Postmaster-General may make such arrangements as they may deem necessary-

(a) for the collection (in such manner as they may determine) by the **Commissioner for Customs and Excise and the** Postmaster-General on behalf of the Commissioner of the value-added tax payable in terms of this Act in respect of the importation of any goods

		into the Republic; and”.
Proclamation No. 103 of 1994	Public Service Act, 1994	Schedule 1 is hereby amended- (a) by the deletion of the expression “South African Revenue Service” in Column I; and (b) by the deletion of the expression “Director-General: South African Revenue Service” in Column II.

PetroSA

The value claimed by DOE - R18.68 billion

True market value - R12 - 14 billion

Sonangol gets 49%

PetroSA gets 51%

Together, they pay 80% of purchase price

Which amounts to R14.4 billion

Guarantee says R9.5 billion

If PetroSA finds R5.6 billion

And Sonangol finds R5.4 billion

(= R9.5 billion)

plus the lender's R4.1 billion = R14 billion (approx value of 80%)

Status of the ZAR/\$ exchange rate as at December 2015

On Wednesday 9 December 2015 at 20h00 the ZAR/\$ exchange rate was R14.59/\$.

The former President of South Africa, Mr Jacob Zuma announced shortly after 23h00 that the then Minister of Finance Mr Nhlanhla Nene would be replaced with Mr Des van Rooyen.

On Thursday 10 December 2015 at 00h00 the ZAR/\$ exchange rate was R15.25/\$.

On Thursday 10 December 2015 the prevailing ZAR/\$ exchange rate was R15.27/\$.

On Friday 11 December 2015 the prevailing ZAR/\$ exchange rate was R15.90/\$.

Members of the National Nuclear Energy Executive Coordinating Committee as at August 2013

The President - Mr Jacob Zuma (chairperson)

The Minister of Energy - Mr Ben Martins

The Minister of Public Enterprises - Mr Malusi Gigaba

The Minister of Finance - Mr Pravin Gordhan

The Minister of State Security - Siyabinga Cwele

The Minister of Defence - Ms Nosiviwe Mapisa-Nqakula

The Minister of International Relations and Cooperation - Ms Maite Nkoana-Mashabane