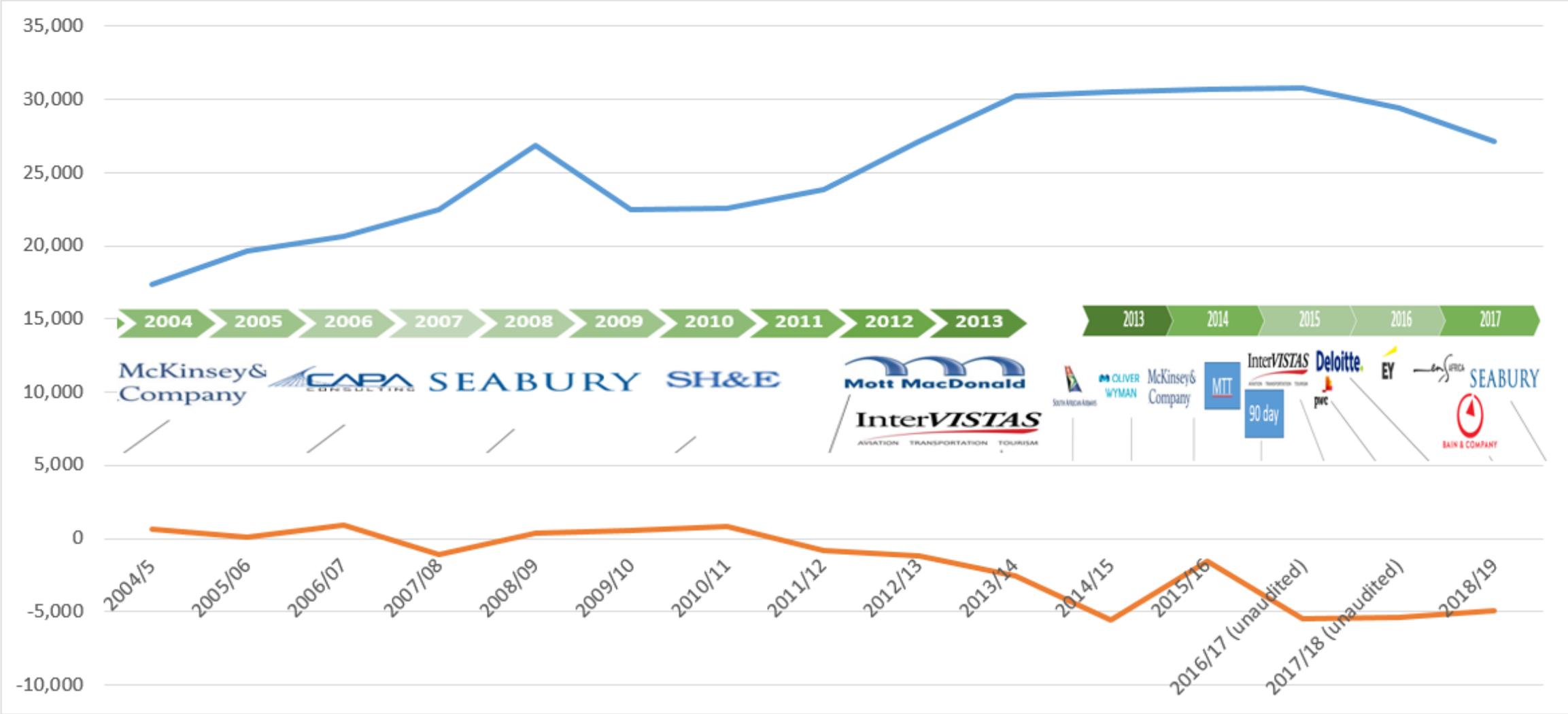
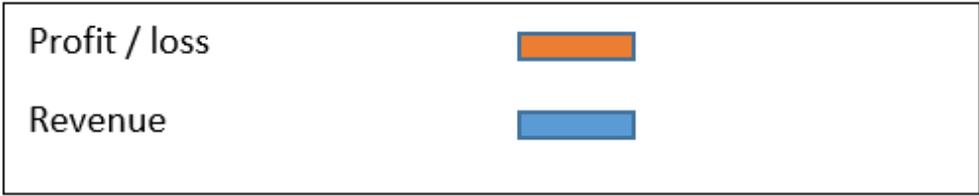


Presentation to the Standing Committee on Public Accounts on South African Airways SOC Limited Business Rescue

Date: 19 February 2020

Introduction

- SAA has been facing challenges over many years
- Financial and strategic interventions were provided over years
 - Governance - board changes
 - Operational
 - Financial
 - Strategic
- Interventions have not yielded results over time
- Corruption and state capture – Zondo Commission, CIPC Hearings, and Pretoria High Court (OUTA and SAPA Application against former Chairperson)
- Performance deteriorated in FY2019/20 leading to business rescue – liquidation was an option
- Airline had to be placed under business rescue
- BRP finalizing business rescue plan inclusive of restructuring
- In the interim Government providing PCF to sustain operations



EVENTS LEADING TO BUSINESS RESCUE AT SAA

- Options considered and which were presented in Cabinet in November 2019:
 - Leave the airline “as is”;
 - Business Rescue process commencement;
 - Place SAA into voluntary or involuntary liquidation; and
 - Radical restructuring of the airline (preferred option)
- Subsequent to the Cabinet meeting, the airline liquidity position deteriorated
- The Board was placed in an invidious position (reckless trading):
 - Unable to meet commitments and government to provide liquidity
 - SAA could not pay salaries for the month of November 2019 due to liquidity challenges.
- The Board had no other choice but to place SAA under business rescue.
- Resulted in the stabilisation of the airline in the immediate
- The focus is on the transformation of the current operating model into a much leaner, agile and efficient airline (business rescue plan)

EVENTS LEADING TO BUSINESS RESCUE AT SAA

- The radical restructuring option was chosen informed by the understanding that the airline could still be resuscitated.
- SAA was financially distressed – it was not able to pay its obligations when they are due and payable.
- The Banks were unable to lend to SAA without Government Guarantee.
- Government was unable to provide guarantee to SAA.
- Top Travel insurers withdrew cover benefit for SAA tickets
- The International Air Transport Association (IATA) also requested a Government Guarantee to cover billing service provision
- Flight Centre (largest Travel Management Company) also withdrew selling SAA tickets
- To avoid trading recklessly, the Board took a resolution to place SAA under Business Rescue
- Mr. Les Matuson and Mr. Siviwe Dongwana were appointed as Joint BRPs.

Implications Of Liquidation

- No further funding required by the airline
- Cut the losses (not required to take a risk on the ability of airline to recover)
- Positive break with past in terms of government no longer automatically bailing out SOCs
- Promote growth of private sector to come in and offer competitive services on the majority of the routes (risk that a limited number of airline may benefit)
- Loss of jobs
- It may have a confidence impact on other guarantees
- Relationship consequence with all creditors and lenders that have unguaranteed exposures
- Relationship consequence with OEMs
- Relationship consequences with other countries to which SAA flies related to outstanding amounts owed by the airline
- Loss of bilateral route rights allowing other airlines to apply to take up the rights
- Political impact of approx. 10000 job losses at the airline.
- Impact to SA Express and Airlink as airline partners whose systems are integrated into SAA
- Reputational risk for SAA
- Loss of connectivity with consequent implications for trade and tourism (in a minority of cases other airlines may not take up the routes)
- Reputational risk for government and its ability to manage the SOCs

WHAT IS BUSINESS RESCUE

- If a company is ‘financially distressed’ and unable to pay its debts when they are due”, it can be put into business rescue.
- Business rescue can be done voluntarily by a resolution by the Board or compulsory by application to Court by a shareholder or creditor or union or any employee.
- For business rescue to succeed, post-commencement finance (PCF) is required which will serve as additional ‘oxygen’ for the business operations to continue. Without PCF the company will be liquidated.
- Whilst in business rescue, there is a moratorium on legal proceedings against the company, obligations (other than employment obligations) may be suspended and the company directors continue to exercise their functions, but in accordance with the instructions of the business rescue practitioner.
- The business rescue practitioner is required to develop a plan for rescuing and operating the company, which is voted on by the creditors and, if adopted, the practitioner is responsible for implementation.

Powers of Shareholder, Board and Business Rescue Practitioner

Powers of BR Practitioners

- The practitioners have the following powers (section 140):
 - Full management control of the company in substitution for its Board and pre-excising management.
 - May delegate any powers to the Board and pre-existing management.
 - May appoint or remove from office any person forming part of the pre-existing management.
 - Develop a business rescue plan.
 - Implement business rescue plan
- The practitioners are officers of the Court and must report to the Court during the business rescue process. They also have responsibilities, duties and liabilities of a director of a company. (Section 140 (3))
- **Duties of Directors**
- Section 137 (2) of the Companies Act provides that during business rescue, the directors of the company:
 - must continue to exercise their functions subject to the authority of the practitioner,
 - have a duty to exercise management control of the company in accordance with the express instructions and direction of the practitioners, to the extent that it is reasonable to do so.
- Furthermore, the directors must attend to the requests of the practitioner at all times and provide the practitioner with any information about the company's affairs.
- The directors must also co-operate and assist the practitioners.

Powers of Shareholder, Board and Business Rescue Practitioner

Powers of Shareholders

- The shareholders are entitled to (Section 146):
 - **Notice** of each court proceeding, **decision**, meeting or other relevant event concerning the business rescue.
 - Participate in any court proceeding arising during business rescue.
 - Formally participate in a company's business rescue proceedings
 - Vote or reject a proposed business rescue plan, if the plan would alter the rights associated with the class of securities (shares)
 - If the rescue plan is rejected:
 - propose the development of an alternative plan
 - present an offer to acquire the interests of any or all creditors or other shares.
- Section 137 (1) provides that an alteration in the classification and status of shares of a company other than by transfer in the ordinary course of business, is invalid unless the court directs otherwise or the business rescue plan provides so.
- The shareholders rights still stands even in business rescue. Therefore, the Minister is still the executive authority and provisions of PFMA still applies unless the Minister grants exemption.

End of Business Rescue

End of Business Rescue Plan

- Business rescue proceedings end when:
 - The court sets aside:
 - the resolution or order that began business rescue, or
 - has converted the proceedings to liquidation.
 - the practitioner has filed with the CIPC a notice of termination of business rescue proceedings.
- Business rescue plan has;
 - Proposed and rejected and no affected person has acted to extend the proceeding in accordance with section 153.
 - Adopted and the practitioner has subsequently filed a notice of substantial implementation of that plan.
- If the business rescue proceedings have not ended within 3 months after the start of the proceedings, the practitioner must:
 - Prepare a report on the progress of the business rescue proceedings and update at the end of each subsequent month.
 - Deliver the report and each update to each affected persons (including the shareholder) and to the Court (if the proceedings is by way of Court order) or CIPC.

Way Forward

Adoption of Business Rescue Plan (section 150-153)

- The practitioners after consulting the creditors, other affected persons (shareholder, creditor, trade union, employees or representatives) and management of the company, prepare a business rescue plan for consideration at a meeting.
- The plan must be published and within 10 days of publishing the plan convene a meeting of creditors to consider the plan.
- The notice of the meeting must be delivered to affected persons (including shareholder) including a summary of rights of affected persons to participate in and vote at the meeting.
- The practitioners will then introduce the plan, indicate that there are reasonable prospect of rescuing the company, give opportunity for employees' representatives to address the meeting. Furthermore, the practitioners will invite discussion and entertain and conduct a vote on any motions to:
 - Amend the proposed plan in a manner moved and seconded by holders of creditors' interest.
 - Direct the practitioner to adjourn the meeting in order to adjourn the meeting in order to revise the plan for further consideration
 - The practitioners will then call for a preliminary approval of the proposed plan (or as amended). The plan can be approved on a preliminary basis if:
 - (a) it is supported by 75% of voting creditors.
 - (b) 50 % of independent creditors.
 - If the plan alter the rights of holders of securities (shares) the practitioners must immediately hold a meeting of shareholders and call for a vote to approve the adoption of the plan. The shareholders can approve or reject the plan.
- If the plan is rejected by creditors or shareholders (where it alters shareholding), the practitioners must seek a vote of approval from holders of voting interests to prepare and publish a revised plan or advise the meeting that the company will apply to a court to set aside the result of the vote by the holders of voting interest or shareholders on the ground that it was inappropriate. If the practitioners does not take this action, any affected person can do so.
- The revised plan will then be tabled for a voting.