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SOUTH AFRICAN AIRWAYS: STATUS OF THE AIRLINE

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1. INTRODUCTION

This paper provides an update on the current operations of South African Airways, known as SAA. The emphasis of this paper is on SAA's operations and governance, as well as the current governance and financial issues it is facing. This paper is aimed at providing the Portfolio Committee on Public Enterprises (hereafter, the Committee) with information on the company and the challenges it is currently facing. This is in preparation for the meeting to be held with the company on the 2nd of June 2021.

2. BACKGROUND

The last update the Committee received on SAA was on 03 February 2021 by the Department of Public Enterprises (henceforth, DPE or the Department). The Department advised the Committee on the following concerning SAA.

On 05 December 2019, SAA was placed under voluntary business rescue. On 16 June 2020, the business rescue (BR) plan was published to the public. The creditors meeting to vote on the BR plan was scheduled for 25 June 2020. However, on 24 June 2020 Airlink, National Union of Metalworkers of South Africa (NUMSA), South African Cabin Crew Association (SACCA) and South African Airways Pilots' Association (SAAPA) argued for adjournment of the creditors meeting until 14 July 2020, when 86 per cent of the creditors voted in favour of the BR Plan. On the 29 September 2020, SAA was placed in care and maintenance by the Business Rescue Practitioners (BRPs) due to the airline running out of funds and no clarity was provided on when funding would be available. During his Medium Term Budget Policy Statement on 28 October 2020, the Minister of Finance, Mr. Mboweni, announced the allocation of R10.5 billion to SAA for the implementation of the business rescue plan. This allowed an Interim Board to be appointed by the Minister of Public Enterprises, Mr. Gordhan, on 09 December 2020. Conditions to be fulfilled to establish Receivership and to allow for the exit of the BRPs was expected to be at the end of February 2021.

In the Medium-Term Budget, the Minister of Finance, confirmed that SAA will get the R10.5 billion as outlined in its business rescue programme. The Minister stated that the funds should not be considered a bailout as the funds allocated will help the airline meet its financial obligations and assist in finding private investors.

The Business Rescue Plan, concluded in line with section 151 of the Companies' Act, made the following recommendations:

- A payment of a compromise dividend to the Company's concurrent creditors of R600 million which would equate to approximately 7,5 (seven and a half) cents in the Rand) and payable over a three-years period;
- A payment of approximately R1.7 billion to aircraft lessors, which is an equivalent of six months aircraft rental payments, again, payable over a three-year period;
- The post-commencement creditors will be paid directly out of the working capital injection for the restart of the airline;
- The Lenders, inclusive of Post-Commencement Finance (PCF) lenders, will be paid as contemplated in the budget announced by the Minister of Finance on 26 February 2020; and
- Retrenchments, estimated to cost R2.2 billion, are contemplated which will result in one thousand employees being retained by the Company and such retrenchments will be pursued through either the Leadership Consultation Forum or section 189 process of the Labour Relations Act.[1]

The R10.5 billion will pave the way for the finalisation of the business rescue process and restructuring of the airline through the following activities:

- Appointment of an Interim Board;
- Appointment of an Interim Chief Executive Officer (CEO) and Interim Chief Financial Officer (CFO);
- Implementation of a Social Plan – a training layoff scheme which will be facilitated by the Transport Education Training Authority in partnership with the Department of Labour and Employment;

[1] Ministry of Public Enterprises (2020a)

- Selection of a suitable Strategic Equity Partner to strengthen the launch of the new airline;
- Settle the airline's legacy debt including voluntary severance packages to employees; and
- Begin preparations for the formation of a new customer-centric airline designed to be lean, technology capable, digitally modernised and agile to service all market segments.[2]

In response to the above considerations, the Department reported that the following had been done by 3rd February 2021, when it presented on the status of the airline to the Committee.

2.1. FUNDING

Of the R10.5 billion allocated for restructuring of SAA, R3.5 billion was made available immediately and allocations was made as follows:

- BRPs to confirm the outstanding activities list before filing for notice for substantial BR Plan Implementation at the meeting the Board which was to be held on 29 January 2021.

R2.8 billion has been transferred to the airline. On 20 January 2021, Act No. 21 of 2020: 2nd Adjustments Appropriation Act, 2020 was passed. The full balance could then be transferred to SAA.[3]

Concerning the Strategic Equity Partner (SEP), the Department and the Transaction Advisor have produced a shortlist from 30 plus Expression of Interest (EOIs) received. The OEIs received were at a Group and Subsidiary level. The shortlist has been presented to the Board for their consideration and advice. A decision was expected prior to the end of the 2020/21 financial year i.e. March 2021.

The Minister advised Parliament on 23 November 2020 that due to SAA being under business rescue, the Auditor-General has suspended the audit. The audit will be finalised once the airline recommences operations and the annual report and annual financial statements will thereafter be tabled.

2.2. RESUMPTION OF OPERATIONS

In February 2021, the Department stated that the aviation market had been adversely impacted by the COVID-19 pandemic and the emergence of the new variant of the virus in South Africa has had undesirable consequences for traffic flows. Mango airline was able to continue to retain its market share due to the resumption of domestic travel. Some of the key source markets for international passengers have restricted movement to and from South Africa. Once

[2] Ibid.
[3] Ibid.

the resumption plan has been agreed to, it will be communicated to all stakeholders. The focus will be on cargo opportunities.

As at 24 December 2020, four South African Airways based unions and three non-unionised workers formations have agreed on the payment of deferred salaries to employees. These unions and formations are:

- The South African Transport and Allied Workers Union (SATAWU),
- The National Transport Movement (NTM),
- Solidarity,
- The Aviation Workers Union of South Africa (AUSA),
- SAA non-unionised management,
- SAA non-unionised non-management, and
- SAA Wider Management (Union).[4]

The members of these unions and formations will also be paid a lumpsum of the 5.9 per cent increase back dated to April 2020, and their pro rata savings towards a 13th cheque.[5] SAA employees have not received salaries since April 2020.

By January 2021, NUMSA, SACCA and SAAPA had not accepted the offer made. The SAA BRPs have locked out the members of the union, SAAPA, after protracted negotiations failed to yield agreements on new conditions of employment for a future restructured airline. This means that 383 SAAPA members are not allowed entry to the airlines' premises and receive no salaries until an agreement is reached. The DPE was fully supportive of the lockout.[6]

In the meeting of the 3rd of February 2021 with the Committee, the DPE stated that SAA issued a letter of lock-out in terms of section 64(1)(c) of the Labour Relations Act 66 of 1995, until SAAPA agrees to:

- Termination of the Regulating Agreement, its annexures and all other collective agreement concluded between SAA and SAAPA;
- New terms and conditions of employment for pilots reflected in the proposed collective agreement, and a severance payment of one (1) week per each completed year of service, in accordance with the Basic Conditions of Employment Act 75 of 1997 which will apply to all pilots and to all future pilot positions in any restructured SAA given effect to in terms of section 189 read with section 189A of the LRA; and
- New salary scales for Captains and First Officers.

NUMSA and SACCA opened a court case to lodge dispute over the deferred salaries for 3 months being declared a full and final settlement.[7]

4 Ministry of Public Enterprises (2020b)
5 Ibid.
6 Robertson (2021)
7 Department of Public Enterprises (2021)

With regards to arrears salaries:

- 3 months unpaid salaries amounting to R600 million from June to August 2020 (months when the airline was operational)
- Some of the unions are demanding the full arear salaries; however, according to DPE this is unaffordable with limited funding and places the business rescue at risk.[8]

SAA received an amount of R142 million in Unemployment Insurance Fund's (UIF) special COVID-19 Temporary Employee/Employer Relief Scheme (TERS) benefits for the period 27 March 2020 to 15 October 2020.[9]

With regards to voluntary severance packages (VSPs), the airline received 3 250 applications, with 3 163 applications being processed. The first tranche payment for non-management was made on 12 February 2021, while the 2nd tranche payment for management was made on 19 February 2021.[10]

2.3. SOCIAL PLANS

In its presentation dated 03 February 2021, the Department stated that part of the business rescue plan was the re-skilling of retrenched employees to make them more attractive in the labour market. In terms of the Leadership Consultative Forum discussions during 2020 and as stated in the Leadership Compact, one of the strategic objectives of the Social Plan is to empower displaced employees with the skills, competence and confidence to enhance their employability. The Social Plan is also aimed at developing a skill based socio-economic model. The cornerstone of this plan is to support and empower displaced employees who have left SAA to, either find new employment or start their own business.

The proposed programme guiding principles include the following:

- ✓ Maximum period of one year;
- ✓ Short courses or certificated programmes;
- ✓ Employees can apply to the Transport Education Training Authority (TETA) for Bursaries for programmes beyond a year;
- ✓ Courses from Labour is based on supply versus demand driven model, with input obtained from TETA.[11]

3. CURRENT OPERATIONS

[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Department of Public Enterprises (2021)

The following section details the developments with the airline since the presentation given by the Department on 03 February 2021.

3.1. FUNDING

During the 2020/21 financial year, an amount of R20.7 billion was allocated for SAA. An amount of R10.5 billion was allocated to implement its business rescue plan, while R6.5 billion was allocated for settling its guaranteed debt and interest. During the adjustment budget, a further R3.53 billion was allocated to the airline for the implementation of its business rescue plan. By the end of March 2021, the whole amount was transferred to the entity, save for R2.7 billion which was planned for the SAA subsidiaries but could not be disbursed under the business rescue plan. The Minister of Finance tabled a Special Appropriation Bill on 24 February 2021 in order to allocate the R2.7 billion to the SAA subsidiaries, South African Airways Technical (SAAT), Mango airlines, and Air Chefs. Of the R2.7 billion allocation, SAAT will receive R1.663 billion, Mango airlines R819 million, while Air Chefs will receive R218 million.

The subsidiaries were not able to receive funding without the Special Appropriation Bill as only SAA was under business rescue and not the subsidiaries, therefore the Business Rescue Practitioners were not legally mandated to spend any of the post-commencement finance to assist the subsidiaries.[12]

The lack of funding for the SAA subsidiaries and the adverse impact that the COVID-19 pandemic had on the aviation industry has left the three companies with a shortfall in their cash supply. The lack of funds saw Mango suspending its flights in April 2021 due to its failure to settle payments relating to passenger service charges and landing and parking fees with the Airports Company of South Africa (ACSA). The flights, however, resumed following funding discussions with the DPE, the SAA and Mango boards, and ACSA.

SAAT and Air Chefs were unable to pay full salaries to their staff during the hard lockdown in 2020. SAAT staff have only received between 25 per cent and 50 per cent of their salaries every month for the past year. Interim CEO of SAAT, Mr. Terrance Naidoo, said that revenue at SAAT declined by 83 per cent to R43 million, from R246 million at the same time in the previous year. He also stated that there was insufficient work for its employees. SAAT is chiefly responsible for maintenance and repair of aircraft fleets, including those of Mango, SAA and Comair. In April 2021, it was only servicing 34 fleets compared to 86 before the pandemic.[13]

In an interview with radio station Jacaranda FM on 25 May 2021, Public Enterprises Minister, Mr. Gordhan, stated that the future of SAA subsidiaries still hangs in the balance. “SAA Technical itself is undergoing restructuring, Mango is also in difficulty and we are currently working with the interim board to see how we manage Mango, Air Chefs is also quasi-dormant,”

[12] Maeko (2021)
[13] eNCA (2021)

he stated. He further stated that, “We will know in the next few weeks which subsidiaries will be part of any future deal that we are making and which one will have to be dealt with on a separate basis.”[14]

3.2. OPERATIONS

On 9 December 2020, the DPE announced the appointment of six non-executive directors to the interim Board of SAA. The Department stated that the appointments would restore proper governance and oversight of the airline during the implementation of a business rescue plan. It stated that the appointments would enhance the independence and balance of the board, whilst continuing the process of transformation and renewal.[15] Profile of the Interim Board Members are detailed below.

Mr. Qhena is a qualified Chartered Account and a seasoned finance executive, a former CEO of the Industrial Development Corporation, where he was at the helm for 13 years. He has been appointed as the Chairperson of the board.[16]

Mr. Tshisevhe is a mergers and acquisitions lawyer with extensive experience in transaction advisory services. He is a director and partner at TGR Attorneys, a leading commercial law firm in Johannesburg; and a part time lecturer at Wits University Law School. He is retained from the previous board to provide continuity.[17]

Ms. Crawford leads the Aviation Working Group of the South African Business Council, is a leading aviation and tourism leader and professional. She has been the CEO of the Board of Airlines Representatives of South Africa, director at the Air Traffic and Navigation Services and Deputy Chairperson of the Tourism Council of South Africa.[18]

Ms. Zwane is an aviation entrepreneur who is a part-owner in an aviation training solutions provider, a car rental business and an aviation logistics business. She is a former executive at Imperial Logistics and Equity Aviation.[19]

Prof. Van Harte is an academic and former dean of the faculty of Military Science at the South African National Defence Force's military academy at Saldanha Bay and former Chairperson of the Defence Service Commission. She has served on various boards and commissions.[20]

Mr Fadugba is an aviation professional with many years consulting and promoting aviation development on the African continent, including leading the African Airlines Association. He

[14] Mntambo (2021)
[15] Department of Public Enterprises (2020)
[16] Ibid.
[17] Ibid.
[18] Ibid.
[19] Department of Public Enterprises (2020)
[20] Ibid.

has served as the Chairperson of African Business Aviation Association and has been involved in discussions on a Single African Air Transport Market (SAATM).[21]

SAA exited business rescue at the end of April 2021 with the rescue practitioners saying the airline is now “solvent and liquid”.[22] The business rescue practitioners had filed a notice of substantial implementation earlier in April, signalling their exit from the airline.[23]

On the 13 April 2021, the interim board appointed the interim CEO, Mr. Thomas Kgokolo for the airline. Mr. Kgokolo is a chartered accountant and holds an MBA from the Gordon Institute of Business Science. He is also a director at the Air Traffic Navigation Services (ATNS). He previously served as both CFO and Chief Risk Officer at the Competition Commission. He has been mandated to oversee the airline’s smooth transition from the business rescue process to its re-entry into the market and bring fresh leadership to the airline.[24]

In addition to Mr. Kgokolo, the interim board has appointed three interim executives, namely Fikile Mhlontlo as interim CFO, Mpho Letlape as interim Human Resources Executive and Captain Sakhile Reiling as Executive: operations. Unions welcomed the appointment of the interim executives.[25] SATAWU stated that it hoped that the interim executives and interim board would prioritise the payment of staff salaries at SAA and its subsidiaries.

SAAPA applied to the Labour Court to prevent “irreparable harm” to its members due to the use of so-called scab labour by SAA. SAAPA sought to interdict the airline from engaging replacement pilots. SAAPA members have been locked out since 18 December last year and later took further step of going on strike to prevent scab labour from being used by the airline. In April this year, SAAPA approached the court on a similar issue, but was postponed until 15 June 2021 as SAA denied the use of scab labour and that SAAPA members faced imminent harm. In the latest application, SAAPA sought urgent interim relief ahead of the main hearing on 15 June 2021. SAAPA claimed that SAA has engaged replaced labour in order to fulfil the vital training function ordinarily rendered by members of SAAPA, who are currently on strike in response to SAA’s lockout.[26]

On the 25 May 2021, the Labour Court ruled that SAAPA did not establish that “irreparable harm” would be caused to its members if the interim relief were not granted regarding the use of so-called scab labour. The court ruled that SAA is permitted to employ replacement labour even if it had initially instituted the lock-out.[27]

Mr. Kgokolo, the interim CEO, states that while the airline welcomes the latest Labour Court decision, SAA remains committed to finding a workable solution to end the impasse with

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[21] Ibid.
[22] Maeko (2021)
[23] Mntambo (2021)
[24] Carin (2021)
[25] Smith (2021a)
[26] Smith (2021b)
[27] Ibid.

SAAPA members. The hiring of the replacement labour is not allowed in terms of the long-standing Regulating Agreement between the airline and SAAPA. SAA and the Department has indicated that SAAPA's Regulating Agreement would make SAA less attractive to a potential strategic equity partner. SAAPA's regulating Agreement – which, although amended, originally dates back to the apartheid era – has been an issue between the pilots and SAA for same time. It governs the pilots' terms and conditions of employment, and in the view of SAA and the DPE, is needlessly onerous given the airline's precarious financial position. Recent private arbitration proceedings found that the regulation agreement could not be terminated on notice, unless explicitly rescinded by a subsequent agreement.[28]

Central to SAAPA's demands were that SAA must agree that the regulating agreement should only be terminated on the date on which the last of its members leave the employ of SAA pursuant to a retrenchment process. SAA must also pay all its members who are to be retrenched three months' remuneration in lieu of notice.[29]

The interim CEO also stated that the airline is expected to resume flights in July 2021 or at the latest mid-August. The plan is to focus initially on profitable local and regional routes. The lucrative Johannesburg-Cape Town route will most likely be among the first on a new and slimmed down timetable. He acknowledged that the restart of the airline is contingent on ongoing negotiations with pilots regarding their severance packages. He stated that this process was positive, and that regular engagements were taking place.[30]

He further stated that SAA's international service will likely take up to two years to resume as the airlines new management team has limited operating capital. Furthermore, a strategic decision has been taken to focus initially on local and regional operations.[31]

With respect to the Strategic Equity Partner for the airline, Minister Gordhan, in his Budget Vote speech, stated that negotiations were at an advanced stage and could be concluded in the next 4 – 6 weeks. He also stated that a decision regarding the future of the subsidiaries will also be made at the same time.[32]

In an interview with the South African Broadcasting Corporation (SABC) on 19 April 2021, the interim CEO, stated that his immediate priorities would be the following:

i. Retraining of pilots, as they have not flown for some time.
ii. Ensure aviation compliance is in place.
iii. Ensure marketing of SAA is in place.
iv. Ensure at a corporate level all compliance issues are addressed.

[28] Smith (2021c)
[29] Smith (2021c)
[30] Ibid.
[31] Ibid.
[32] Gordhan (2021)

v. Fill all vacancies, especially at the executive level.

He also stated that the staff numbers had been reduced from approximately 4 000 employees to just under 1 000 employees. With the reduced staff numbers, the airline will look to embed a new corporate strategy focusing on multi-skilled employees. He stated that the entity would approach resuming flights cautiously, testing the assumptions of the restart plan. They were looking at a draft route plan focusing on profitable routes, locally and regionally.[33]

4. KEY ISSUES FOR CONSIDERATION BY PARLIAMENT

- The Committee should request the airline to update the Committee on how far negotiations are with the South African Airways Pilots Association with respect to their severance packages.
- The Airline should advise the Committee if all severance packages across all unions and employees been finalised? If not, which ones have not been finalised?
- The Airline should update the Committee on the Social Plans and reskilling of retrenched employees.
- The Committee should request the airline to forward to the Committee the details of the Regulating Agreement.
- The Airline should inform the Committee on the details of the demands being made by SAAPA.
- The Airline should outline how the funding received by government is being put to use. A breakdown of these funds should be given.
- The interim CEO should outline his mandate and period of employ.
- The Airline should share its restart plan with the Committee. What routes will the airline be flying?
- How will the airline ensure that it is compliant with COVID-19 regulations?
- The airline should update the Committee on what fleet it will be using in the resumption of flights. Will the fleet be bought or leased? And from whom?

5. CONCLUSION

South African Airways exited business rescue at the end of April 2021. The airline received R10.5 billion from government in order to implement its business rescue plan. Of this amount, R2.7 billion has been set aside for the subsidiaries of SAA which are also facing financial difficulties due to the impact of the COVID-19 pandemic. On 13 April 2021, the SAA interim board appointed Mr. Thomas Kgokolo to oversee the airlines smooth transition from the business rescue process to its re-entry into the market and to bring fresh leadership to the airline. The airline has tentatively set July to mid-August 2021 as the date for its resumption of domestic and regional flights. This will be based on its restart plan which they are testing to ensure a successful restart of the airline. The entity hopes that its new streamlined business

[33] SABC (2021)

will be successful in attracting a strategic equity partner who will be able to provide much needed capital into the business.

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