SOUTH AFRICAN TOURISM

Ms. Patricia De Lille
Honourable Minister of Tourism
Tourism House
17 Trevenna Street
Sunnyside
0001

29 March 2023

Dear Minister De Lille

SOUTH AFRICAN TOURISM AND THE TOTTENHAM HOTSPUR FOOTBALL CLUB ("THFC/ TOTTENHAM HOTSPUR") TRANSACTION ("THE TRANSACTION")

1 INTRODUCTION

1.1 We refer to the above matter and your letter addressed to the Chairperson of the Board dated 22 March 2023. We further refer to our preliminary response of 23 March 2023.

1.2 We confirm that the Board has now had an occasion to consider the Honourable Minister's letter and provides its detailed response thereto.

1.3 Before addressing the legal issues raised by the Minister, and as advised in our preliminary response of 23 March 2023, we record that no contracts to give effect to the proposed Transaction have been drafted, negotiated or signed between the parties. As such, it is our understanding that we must respond to the Minister's queries on the basis whether the proposed Transaction as it stands would have met the legal prescripts raised by the Honourable Minister.

1.4 In responding to the legal issues raised by the Minister, we have prepared this response as follows:

1.4.1 First, we set out the Transaction description and rationale for the Transaction. We do this because we are of the considered view that we would be remiss if we did not encapsulate the rationale for the Transaction;

1.4.2 Second, we assess SA Tourism's ability to execute the Transaction including budgetary requirements;

1.4.3 Third, we delineate the procurement prescripts applicable to the Transaction;

1.4.4 Fourth, we analyse the Public Finance Management Act 1 of 1999 ("PFMA") prescripts pertaining to significant partnerships; and

1.4.5 Fifth, we respond to each of the questions posed by the Minister in turn.

2 THE PROPOSED TRANSACTION DESCRIPTION AND RATIONALE FOR THE TRANSACTION

SA Tourism's legislative Mandate

2.1 SAT is a juristic person established in terms of section 2 of the repealed Tourism Act 72 of 1993 and continues to exist in terms of section 9 of the Tourism Act 3 of 2014 ("the Tourism Act"). SAT is also a Schedule 3A Public Entity in terms of Schedule 3A of the Public Finance Management Act 1 of 1999 ("PFMA"). The provisions of the PFMA are accordingly applicable to the SAT.

2.2 Section 4 deals with the national tourism sector strategy, and provides *inter alia* that the Minister may adopt a tourism sector strategy to promote the objects of the Act.[1]

2.3 Section 10 of the Tourism Act deals with the functions of the Board, and these are specifically set out as follows:

> ***"10. Functions of Board.—***
>
> *(1) The functions of the Board are to —*
>
> *(a) market South Africa as a domestic and international tourist destination;*
>
> *(b) market South African tourism products and facilities internationally and domestically;*
>
> *(c) develop and implement a marketing strategy for tourism that promotes—*
>
> *(i) the objects of this Act; and*
>
> *(ii) the national tourism sector strategy;*
>
> *(d) advise the Minister on any other matter relating to tourism marketing;*
>
> *(e) with the approval of the Minister, establish a National Conventions Bureau to market South Africa as a business tourism destination by—*
>
> *(i) coordinating bidding for international conventions; and*
>
> *(ii) liaising with other organs of state and suitable bodies to promote South Africa as a business tourism destination; and*
>
> *(f) report to the Minister on the work performance of the National Conventions Bureau.*
>
> *(2) The Board must perform any function imposed upon it in accordance with a policy direction not in conflict with this Act issued by the Minister."*

(underlining added for emphasis)

Policy background to the Transaction

[1] Section 4(1) of the Tourism Act.

2.4 In line with the Board's legislative mandate as set out above, and as provided for in terms of section 4 of the Tourism Act, the Minister has published the National Tourism Sector Strategy 2016-2022 ("NTSS"), dated November 2017. The NTSS, *"focuses on inclusive growth, which must fundamentally be based on domestic and international tourist market growth and expenditure increases."*[2]

2.5 Furthermore, it sets out a vision for a "rapidly and inclusively growing tourism economy that leverages South Africa's competitive edge in nature, culture and heritage, underpinned by ubuntu and supported by innovation and service excellence."[3]

2.6 Importantly, its mission is "*[T]o increase the direct contribution of tourism to the economy <u>through partnerships</u>, research based collaborative planning, and the implementation of agreed priority actions.*"[4] (our emphasis)

2.7 SA Tourism's mandate, in terms of its approved 2020-2025 Strategic Plan, is aligned to various policy and institutional strategies. Some of the key elements which conceptualise SA Tourism's mandate are found in:

2.7.1 the National Development Plan, Vision 2030 (2012) ("NDP") which seeks to eliminate poverty and sharply reduce inequality and unemployment by 2030. The NDP recognises tourism as one of the main drivers of employment and economic growth;

2.7.2 the Medium-Term Strategic Framework 2019-2024 ("MTSF") which gives effect to the electoral mandate and is framed around seven national priorities for the period to 2024. South African Tourism contributes to three MTSF priorities, namely a capable, ethical, and developmental State (Priority 1), economic transformation and job creation (Priority 2) and a better Africa and world (Priority 7); and

2.7.3 the NTSS as captured above.

2.8 In response to the adverse impact of the Covid-19 pandemic on the tourism sector, the Tourism Sector Recovery Plan ("TSRP") was developed as a collaborative and iterative effort by key stakeholders in the tourism value chain to attract tourists to travel to South Africa. The TSRP focuses on three strategic themes to facilitate recovery of the tourism industry, namely:

2.8.1 protecting and rejuvenating supply;

2.8.2 re-igniting demand; and

2.8.3 strengthening enabling capacity.

2.9 In order to reach pre-Covid 19 tourism levels, SA Tourism's industry goal is to attract 15.3 million tourists by 2030, whilst its policy goal is to attract 21 million tourists by 2030. According to the SAT Annual Performance Plan ("APP") 2021/22 this policy goal arises from the State of the Nation Address by the President in 2019.[5] In order to achieve its policy goal, the industry requires an 18% compound annual growth rate.

---

[2] Page 1 of the NTSS.
[3] Ibid, at Page 16, par 7.1.
[4] Ibid, at par. 7.2.
[5] Page 52 of the SAT Annual Performance Plan 2021/22.

2.10 This requires a dynamically different approach to its policy goal and growth trajectory, to tap into audiences through direct marketing and the concomitant visible return on investment. SA Tourism's approved marketing campaign 2022/2023 puts forward a platform of exceptionalism to position South Africa as a unique destination in the world to drive travel to South Africa. The exceptionalism campaign rests on 2 pillars, namely exceptionalism as a country and activations on exceptional global platforms with a consistently high concentration of audiences.

2.11 Informed by the 2020-2025 Strategic Plan, SA Tourism's Annual Performance Plan for 2022/2023 ("APP") constitutes 5 different budget programmes to achieve its mandate. Programme 3 (Leisure Tourism Marketing) aims to create demand through travel acquisition and growing brand equity for South Africa as a leisure and business events destination in identified markets.

2.12 Programme 3 covers the work of two business divisions, i.e Brand and Marketing; and Tourism Execution. The purpose of the first is to "*grow brand equity to create tourism demand for South Africa as a leisure and business events destination in identified markets.*" The purpose of the second business division is to "*create demand through travel acquisition by working with the distribution channels to sell South Africa as a destination.*"[6]

2.13 Programme 3 envisages increasing the tourism sector's contribution to inclusive economic growth through:

2.13.1 <u>global tourism brand campaigns</u>; (emphasis added)

2.13.2 implementation of integrated destination brand marketing strategies;

2.13.3 global brand activations;

2.13.4 global advocacy programmes; and

2.13.5 in-market national and international campaigns.

2.14 It is further recorded that the campaign will be implemented during the 2022/23- 2024/25 MTEF targets. To be sure, an extract of the outcomes, outputs, output indicators and targets of the Global Tourism Brand Campaign shows the following:[7]

OUTCOME	OUTPUTS	OUTPUT INDICATORS	AUDITED PERFORMANCE			ESTIMATED PERFORMANCE	MTEF TARGETS		
			2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
1. Increase the tourism sector's contribution to	1.1. Global Tourism Brand Campaign	1.1.1. Global Tourism Brand Campaign Plan	N/A	N/A	New indicator	2021/22 Global Tourism Brand Campaign Plan launched	2022/23 Global Tourism Brand Campaign Plan	2023/24 Global Tourism Brand Campaign Plan	2024/25 Global Tourism Brand Campaign Plan

[6] Page 48 of the APP 2022/23 at par 1.3.1.
[7] See page 50 of the APP.

OUTCOME	OUTPUTS	OUTPUT INDICATORS	AUDITED PERFORMANCE			ESTIMATED PERFORMANCE	MTEF TARGETS		
			2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
inclusive economic growth		implemented				and implemented Approval of 2022/23 Global Tourism Brand Campaign Plan	implemented Approval of 2023/24 Global Tourism Brand Campaign Plan	implemented Approval of 2024/25 Global Tourism Brand Campaign Plan	implemented Approval of 2025/26 Global Tourism Brand Campaign Plan

2.15 Notably, the Global Brand Campaigns facilitated through the SAT's Brand and Marketing Business Unit have previously been embarked upon. The Annual Report 2021/2022, read with the APP 2021/2022, shows that numerous campaigns were implemented across the Africa, Europe, Asia, Australasia and Middle Eastern hubs. A few of the many examples include:

Africa Hub:

2.15.1 A new regional brand campaign, Come Journey with Us, was launched at the Africa Day;

2.15.2 Through the Ink global partnership, an activation with Ethiopian Airlines and the Ethiopian Holidays Campaign was achieved. It included on-board advertising through its inflight entertainment navigator system and through social media;

2.15.3 Three deal-driven and brand campaigns were executed for the three holiday cycles in the West Africa region (summer, the festive season and Easter). The campaigns were supported through a multi-channel media mix that included digital, television, out-of-home, radio and experiential activations;

2.15.4 The East Africa hub collaborated with Uganda Air through its Inflight Magazine, Nga'ali, in the June to August and September to December editions.;

2.15.5 SA Tourism leveraged the Lions Rugby Series by executing a tactical digital activation, Come Journey with Us #HowWeRugby, on Kenya and Zimbabwe social media-owned platforms with live radio reads on various stations;

Europe Hub:

2.15.6 The UK and Ireland Hub continued with #MeetYourSouthAfrica, which was used across numerous campaigns, such as:

2.15.6.1 the always-on brand rebuilding #MeetYourSouthAfrica Campaign was aimed at driving traffic to SouthAfrica.net;

2.15.6.2 the British and Irish Lions tour of South Africa in July and August 2021 specifically targeted rugby enthusiasts and leveraged the destinations in which matches were played;

2.15.6.3 the South Africa First youth campaign was aimed at driving traffic to www.southafrica.net and Contiki as a deal-driven campaign using new channels such as TikTok to test new audiences and mediums;

2.15.6.4 The Online Campaign with the Austrian web page www.oe24 incorporated an exclusive South Africa landing page to create awareness of South Africa's highlights among Austrian travellers;

2.15.6.5 Deal-driven campaigns included the execution of 13 marketing cooperations with the following trade partners; Abendsonne Africa, Berge & Meer, Boomerang Re-sen, DER Touristik, DIAMIR, Explorer, Gebeco, Select Holidays, TUI, Deutschland, Windrose, Dertour Austria and Private Safari, Switzerland;

<u>Australasia, and Middle East</u>

2.15.7 The #BeatYourBucketList Campaign was implemented in Australia. An activation was implemented from 21 to 24 March in the Sydney city hub of Martin Place. It featured an immersive 360° dome, entertainment, mini buckets of giveaways and an interactive photo booth competition. The results included over 2 500 participants, and 40 items of media coverage reaching approximately 5.36 million people, including a live cross to a free-to-air morning show studio, valued at almost AUD$75K;

2.15.8 South African Tourism India launched its More&More campaign with a localised adventure theme.

2.15.9 South African Tourism Middle East hosted a Ministerial round table at the Dubai Expo with 10 of the top trade representatives from the UAE and in 2021 participated in the Expo 2020.

2.16 The APP 2022/2023 shows that in so far as in-market international campaigns are concerned, 15 campaigns were delivered under Programme 3, as well as 4 global brand activation campaigns were implemented and delivered. This meets the MTEF targets for performance in these outputs.

2.17 The proposed THFC partnership Transaction is of a similar nature as those previously implemented under Programme 3. It is clear that the participation in global brand activations and campaigns falls within the strategic outputs under Programme 3 and that the proposed Transaction can accordingly be aligned with those outputs.

3 <u>ASSESSMENT OF SA TOURISM'S ABILITY TO EXECUTE THE TRANSACTION</u>

3.1 <u>Financial and socio-economic objectives of the Transaction and its impact on Government and SA Tourism</u>

3.1.1 THFC was identified to be a tier one partner of London's most valuable football brand and the 8th most valuable football brand worldwide. It must be noted that some Board members, including South Africa's High Commissioner in the United Kingdom ("the UK") have been on a tour at the Tottenham Hotspur Stadium to assess and verify the feasibility of this proposed Transaction.

3.1.2 Having authorised the overseas visit, on 6 January 2023 SAT reported in writing to former Minister, Ms Lindiwe Sisulu regarding the visit to the UK as part of the South African Tourism Global Advocacy Programme which was undertaken by SAT by a delegation of the Board and SAT's Executive Management which was led by Dr Aubrey Mhlongo. The report of 1 February 2023 as well as the acknowledgement of receipt from Ministry is attached. The visit was scheduled from 13 to 15 January 2023. The purpose thereof was threefold:

3.1.2.1 First, it was on the basis of the SAT's ordinary global advocacy working the UK, including matters relating to South Africa having been placed on the red list by various countries including the UK during the Covid-19 pandemic;

3.1.2.2 Second, it related to consideration of the relocation of the SAT hub office in the UK and Ireland from Wimbledon to Trafalgar Square; and

3.1.2.3 Third, it related to the discussion of a possible partnership with THFC.

3.1.3 The proposed landmark partnership opportunity will give SA Tourism a single property that will be able to fulfil the following key areas in the leveraging of a partnership:

3.1.3.1 Showcase South Africa as an 'exceptional' destination

3.1.3.2 Global Reach and visibility across a global audience

3.1.3.3 Year-round presence and leveragability

3.1.3.4 Impact measurability

3.1.3.5 Messaging and leveraging in global advocacy to a global audience

3.1.3.6 Reach and access to a travelling population

3.1.3.7 Anchored in key source markets

3.1 The partnership deal would help deliver against some of the following targets:

3.1.1 Industry goal of 15.3 million tourists by 2030;

3.1.2 Policy goal of 21 million tourists by 2030;

3.1.3 Creation of jobs; and

3.1.4 Contribution to South Africa's Gross Domestic Product (GDP).

3.2 The Transaction has a strategic fit that will deliver and lay the foundation for SA Tourism's imperatives and/or deliverables and outcomes linked to how we position South Africa as an exceptional destination. Moreover, THFC has strong links to South Africa as some of its former players include South Africa's Bennie McCarthy, Mbulelo Mabizela, Steven Pienaar and Bongani Khumalo. THFC would provide several rights to SAT as a tourism partner and sleeve partner.

3.3 The partnership would provide SAT with the perfect opportunity to kick-start [SAT's] efforts to attract tourists and travellers from around the world to South Africa again." The partnership was intended to help drive sustainable economic growth, raise awareness of South Africa as a tourism destination by leveraging the world's most popular sport, football, to change perception of an entire country through, *inter alia*, the pride in the country, driving employment, boosting internal travel, growing football development, and health and well-being.

3.4 It was initially envisaged that SAT would consider a four-year deal from the beginning of the 2023/2024 season of the English Premier League until the end of the 2026/2027 season. THFC would, in exchange, provide the following rights:

3.4.1 Kit Branding - this includes training wear sleeve, shirt sleeve wear for Tottenham Hotspur teams, including the men's, women's and academy.

3.4.2 Interview Backdrop Branding;

3.4.3 Match Day Advertising - which includes pitch side perimeter LED advertising;

3.4.4 Supporting In-Stadia Assets - through Stadium Promotion on Big Screens and Programmes;

3.4.5 Supporting Digital Rights - which includes social content threads;

3.4.6 Partnership Announcement - on the club's owned and operated channels such as Instagram, Facebook, Twitter and Club website.

3.5 Some of additional benefits to be leveraged from the proposed Transaction are as follows:

3.5.1 Tottenham Hotspur in Parliament and the power of Spurs' Premium Membership.

3.5.1.1 Tottenham Hotspur is said to have over 35 supporters in the UK Parliament, and that sixty nine percent (69%) of suite owners at Tottenham Hotspur's stadium are c-suite or founders. Furthermore, fifty-nine percent (59%) of premium members are regarded as affluent achievers.

3.5.2 Player and Ambassador Access

3.5.2.1 Tottenham Hotspur would provide access to four of its first team players at the training centre for a period not exceeding one hour three times a year for various activities including tv production and branded content production. There would also be access to two club ambassadors or legends twice a year.

3.5.3 Content Amplification

3.5.3.1 Tottenham Hotspur would create campaigns across its official channels, and two of the said campaigns would be player focused and the one campaign for a legend.

3.5.4 Targeted Digital Campaigns

3.5.4.1 Some of the following rights relating to digital campaigns would include paid social rights, access to Tottenham Hotspur's in-house performance marketing agency and inclusions in its newsletter, amongst others.

3.5.5 Club Summer Tour

3.5.5.1 SAT would, amongst others, have the right to be a lead partner for official pre-season tours, prominent logo appearances on promotional materials relating to tours and the right to signage allocated to Tottenham Hotspur during tours.

3.5.6 Training Camps

3.5.6.1 SAT would be entitled to pre, mid or post-season training camps to take place in South Africa once during the term of the partnership.

3.5.7 Stadium Hospitality Ticketing

3.5.7.1 Tottenham Hotspur would provide a VIP private suite during home matches, a non-match days to be used as SAT's office, including stadium parking passes.

3.5.8 Customer Incentive and Rewards

3.5.8.1 Provision would be made to stadium and training centre experiences, including the use of the auditorium, football experience and meet and greets, and limited usage of the stadium.

3.5.9 The Lodge

3.5.9.1 Provision would also be made for rent-free usage of Tottenham Hotspur's accommodation facility for a limited period for corporate events.

3.5.10 Club Memorabilia and Merchandise

3.5.10.1 Tottenham Hotspur would provide 10 signed replica shirts signed by the first team, SAT would have the right *"to produce co-branded merchandise premiums"* and *"to purchase officials Club merchandise (less 10%)."*

3.6 Moreover, SAT would leverage from the following assets:

3.6.1 The English Premier League's 3.8 billion audience, 767 million total fanbase and 69 markets.

3.6.2 The UEFA Champions League's 1.7 billion total audience, 1.2 billion combined social following and 87 markets.

3.6.3 Tottenham Hotspur's global following which comprises of 616 million followers, 145 followers in key markets, 80.2 million social followers, 107.1 million cumulative social followers.

3.6.4 Its global visibility which comprises of 355 million global tv viewers and 122 million tv viewers in key markets.

3.6.5 403 official supporter clubs, which include 103 official supporter clubs in the USA and 4 in South Africa.

3.7 The tangible and quantitative results are as follows:

Increase in tourism revenue	8%/$726 Million
Increase in MICE tourism	40%
Global media value from key assets	£50 Million
Improve popularity perception (choice)	30% - 50%
Increase online tourism search traffic	+500%
Increase web traffic	+200%
Increase relevant international media	+200%
Increase social growth	+200%
Increase impressions - tourism content	+500%

3.8 It was submitted to the Board that as guided by the South African Medium Term Expenditure Framework ("MTEF"), which requires entities not to exceed a financial investment opportunity beyond a three-year term, the financial implications for the three-year period were set out as follows:

YEAR	YEAR RIGHTS FEE
Year 1 : 01 July 2023 - 30 June 2024	£6,5 Million
Year 2 : 01 July 2024 - 30 June 2025	£18 Million
Year 3 : 01 July 2025 - 30 June 2026	£18 Million
TOTAL	£42,5 Million

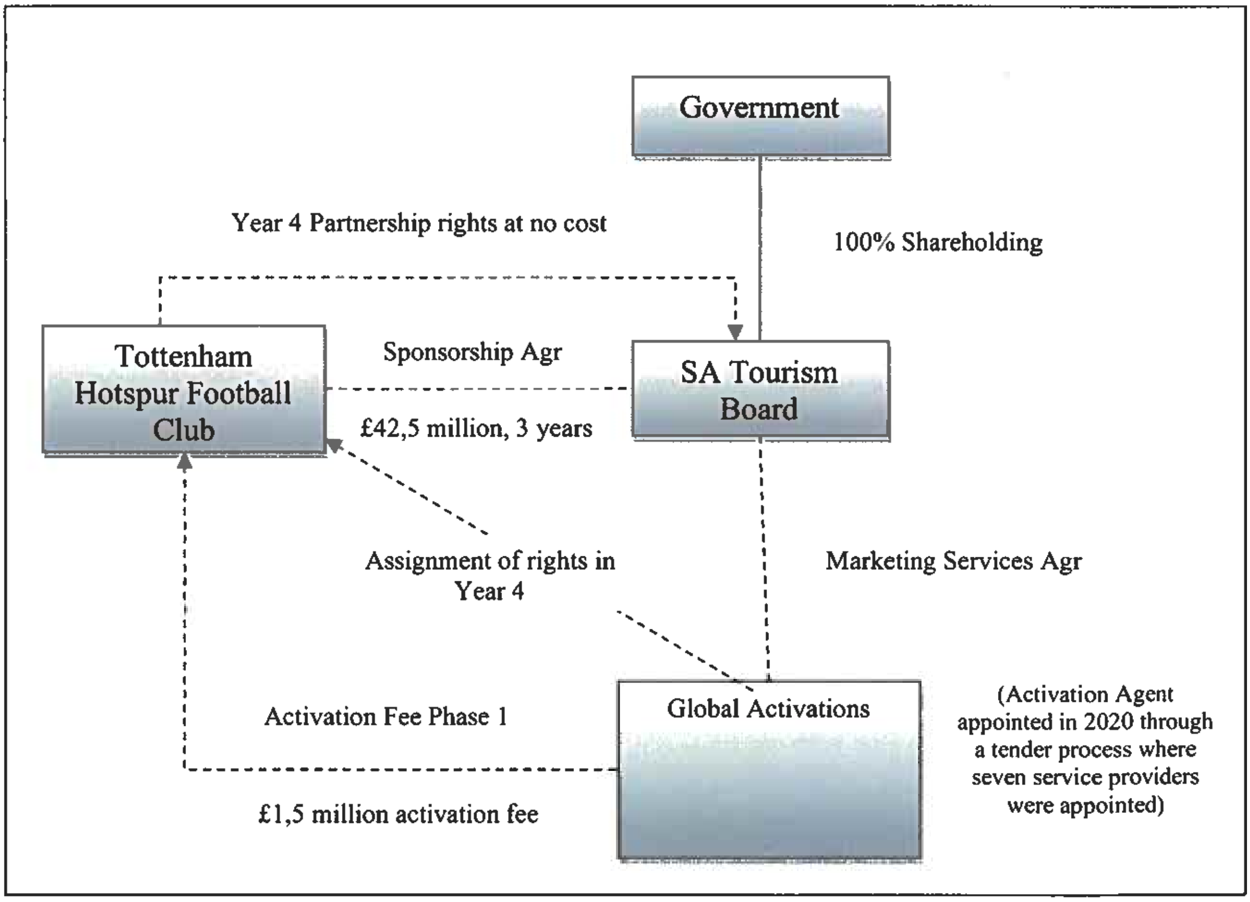
3.9 There would be a once-off cost of £1.5 million for origination/ initial costs for expenditure related to the main sponsorship agreement, which would have been payable by no later than 31 March 2023 to ensure that the project was ready to take effect by 1 July 2023. This amount would have been payable to a SAT service provider responsible for global activation. The once-off costs covers everything related to activation of the new global platform ranging from graphic designs for the campaign, all content material for the campaign, above the line media expenditure for initiation and kick off, electronic and other equipment required to launch the project, paraphernalia associated with activations of this nature, media broadcasting rights to be procured and other similar related costs of a global campaign. This service provider is part of a panel that was appointed in 2020 pursuant to a tender process, which was issued under request for proposal number SAT166/19 for the provision of Activations and Planning Management Services, Logistics and Production Management ("Services"). Seven service providers were appointed as panel members subsequent to this tender process in 2020.

3.10 The partnership would have been conceptualised in 3 distinct phases, as follows:

DESCRIPTION	PHASE 1	PHASE 2	PHASE 3
CONTRACTING FRAMEWORK	Pre-existing Marketing Services Agreement Contractual relationship between THFC and Activation Agent.	Sponsorship Agreement	Marketing Services Agreement Contractual relationship between THFC and Activation Agent, with rights assigned to SAT at no cost
CONTRACTUAL PARTIES	SAT and Activation Agent	THFC and SA Tourism	THFC and Activation Agent
CONTRACT PERIOD	01/02/2023 - 30/06/2023	01/07/2023 - 30/06/2024	01/07/2026 - 30/06/2027

DESCRIPTION	PHASE 1	PHASE 2	PHASE 3
		01/07/2024 - 30/06/2025 01/07/2025 - 30/06/2026	
FUNDING	£ 1,5 million (or Rand Equivalent)	£ 6,5 million (or Rand Equivalent) £ 18 million (or Rand Equivalent) £ 18 million (or Rand Equivalent)	£ Nil.
SOURCE OF FUNDING	Reallocated from savings within Programme 3	From MTEF allocation	n/a
RIGHTS	Activation and media rights linked to Programme 3 KPI's	Training kit, sleeve and other rights linked to Programme 3 KPI's	Sleeve and other media rights
CASH FLOW REQUIREMENTS	By 31/03/2023	25% per quarter	n/a

3.10.1 Schematically, the structure can be represented as follows:



3.11

3.12 The proposed Transaction partnership was subjected to SAT's Partnership Policy and supported SAT's mandate in terms of section 10 of the Tourism Act in that the EPL is a global sporting platform that is watched by billions of people around the world and that some of the audiences are global travellers. Moreover, fans tend to travel the world to watch the sport. As such, linking the SA Tourism / South Africa logo and identity to the EPL as a platform provides the global media exposure required to position South Africa favourably in the world.

3.13 The proposed partnership supported SAT's business strategy, business plan and annual performance plan in that programme 3 of the APP refers to the development of brand content as a key deliverable. As such, the proposed partnership will enable SAT to reach audiences in a manner that is broader than classical tourism marketing and it properly enables the reconsideration of South Africa in the minds of millions of potential travellers across the world.

3.14 The partnership would achieve the minimum 1:1 investment ratio.

Return on Investment

3.15 3.75 billion people are interest in football globally and the cumulative audience of the English Premier League is 3.53 billion. Tottenham Hotspur is said to be London's most valuable football club, and it is in the top ten most valuable football brand worldwide representing a 397% increase in brand growth across the decade. Tottenham Hotspur has 616 million followers globally and 80 million on operated social channels.

3.16 The ROI considerations include that SAT seeks to, (i) drive sustainable economic growth, (ii) drive international tourism and employment, and (iii) a post pandemic reboot for South Africa as a global destination. SAT considers sports partnerships as the most successful platform for the tourism industry. In the first phase, which is the period February to June 2023, it would invest £1.5 million, and the total media value across the term would be £17 million. In the second phase, being July 2023 to June 2024, the total investment would be £6.5 million, and the total media value would be £36 million. The third phase commences in July 2025 to June 2027, the total investment would be £36 million, and the total media value £224 million.

Identification of risks pertaining to the proposed Transaction and strategies to mitigate those risks

3.17 Four risks had been identified in the course of the engagement by the Board with management on the proposal. These risks and the mitigation thereof are as follows:

3.17.1 Reputational risk - actions/ comments whether through players, officials, fans can pose reputational risks . These would be addressed through the contract. Moreover, in relation to the negative publicity around Rwanda's sponsorship partnership with Arsenal, the Board was advised that these centered entirely around Rwanda's internal human rights record and the negative approach of the Rwandan Government towards the LGBTQI+ community. It in fact has nothing to do with the benefits this 3-year sponsorship partnership as the subsequent extension of the first 3-year partnership into a second 3-year partnership (of which it is now in the 2nd year of a second 3-year sponsorship partnership agreement) alone should be confirmation of adequate benefits achieved by the Rwandese Government from this sponsorship partnership.

3.17.2 Current Exchange Risk - as the deal is in GBP, there will be currency fluctuations based on agreed payments date and the rate at the time. The high cost of forward cover simply makes it too expensive for a public entity to cover a three-year foreign currency liability. In order to mitigate this risk, SA Tourism would lobby National Treasury and the National Department of Tourism to make its entire UK office budget and the annual cost of this Transaction available upfront in the beginning of a financial year (April) so that SA Tourism can transfer this off-shore together with a portion of its current retained earnings; and

3.17.3 Delivery risk - getting the organisation to work together , current exchange rate and delivery risks.

3.17.4 The risk of Tottenham being relegated to a lower division during the 3-year sponsorship partnership agreement. While this is obviously unlikely given the historic performance of Tottenham Hotspur, raising this will undoubtedly bring into consideration a possible bonus payment to be made by SA Tourism should Tottenham Hotspur perform better than expected.

4 APPLICABLE PROCUREMENT PRESCRIPTS

4.1.1 The bedrock of the public procurement process in South Africa is the Constitution.[8] Section 217 thereof provides that when an organ of state contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

4.1.2 A number of statutes have been enacted by Parliament to give effect to the provisions of section 217 of the Constitution. In the national and provincial spheres of government, the PFMA through the National Treasury Regulations published thereunder amongst others, regulates the procurement by organs of state of goods and services. The detail of this regulatory scheme, however, is contained in Item 16A of the Treasury Regulations made by the Minister in terms of section 76 of the PFMA. Section 76 deals with Treasury Regulations and Instructions.

Invitation for bids and deviation

4.1.3 Treasury Regulation ("TR") 16A6.1 requires the procurement of goods and services, either by way of quotations or through a bidding process, must be within the threshold values as determined by the National Treasury. Those threshold values have been set by the National Treasury's PFMA SCM Instruction No. 02 of 2021/22 ("SCM Instruction No. 02") with effect from 01 July 2021 and it states in relevant parts as follows as regards Transactions with a value above R 1000 000.00:

> ***"3.3 ABOVE THE TRANSACTION VALUE OF R1 000 000 (INCLUSIVE OF ALL APPLICABLE TAXES)***
>
> *3.3.1. Accounting officers / authorities must invite open competitive bids for all procurement above R 1 000 000 (inclusive of all applicable taxes).*
>
> *3.3.2. Competitive bids must be advertised in at least the Government Tender Bulletin and the eTender Publication Portal. Accounting officer / authorities may also advertise competitive bids on their institutions website and in any other appropriate media should an accounting officer / authority deem it necessary to ensure greater exposure to potential bidders. The responsibility for advertisement costs will be that of the relevant accounting officer / authority.*

---

[8] Constitution of the Republic of South Africa, 1996.

3.3.3. Accounting officers / authorities must publish the awards of bids in the Government Tender Bulletin and eTender Publication Portal. Accounting officers / authorities may also publish awards of bids in any other media the bid was advertised in.

3.3.4. Accounting officers/ authorities must report, within ten (10) working days of approval of the award of the contract, to the relevant treasury and the Auditor-General all cases where goods and services above the Transaction value of R1 000 000 (inclusive of all applicable taxes) were procured in terms of Treasury Regulation 16A6.4. The report must include the description of the goods or services, the name/s of the supplier/s, the amount/s involved and the reasons for dispensing with the competitive bidding process." (Emphasis added)

4.1.4 In the event of a Transaction exceeding R1 000 000.00, accounting authorities and accounting officers must invite competitive bids. By its nature, a public call for tenders is open. It assists in the prevention of fraud or favouritism and ensures that the maximum number of contractors is approached to participate in government procurement procedures, thus affording an equal opportunity to all prospective contractors to contract with the government. An organ of state is also in a position to compare prices and quality and can choose to contract with whoever offers the best deal.

4.1.5 There are instances when the circumstances of a particular case make the use of a public call for tenders inappropriate, regardless of the value of the contract. The legislative framework thus makes provisions for exceptions to the prescribed use of tendering.

4.1.6 An organ of state may dispense with competitive procurement processes in the circumstances set out in TR 16A6.4, which provides that:

"16A6.4 If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority."

4.1.7 PFMA SCM Instruction No. 03 of 2021/22, titled 'Enhancing Compliance Transparency and Accountability in Supply Chain Management' makes provision for deviation from normal bidding process, and states that:

"4. DEVIATION FROM NORMAL BIDDING PROCESS

4.1 If in a specific case it is impractical to invite competitive bids, the AO/AA may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the AO/AA.

4.2 In this Instruction, procurement by "other means" includes-

(a) limited bidding

(b) written price quotations within the threshold determined by National Treasury Instruction; and

(c) procurement that occurs in emergency situations and urgent case

4.1.8 Limited bidding is defined as:

"a bidding process reserved for a specific group or category of possible suppliers through procurement by -

sole source where there is no competition in the market and only one supplier is able to provide the goods or services;

single source where a thorough analysis of the market and a transparent and equitable pre-selection process is used to decide on one supplier among a few prospective bidders to make a proposal;
..." (Emphasis added)

Goods and services

4.1.9 As stated above, the acquisition of goods and services by the state should be done in accordance with the principles laid out in section 217 of the Constitution, and the legislation enacted to give effect to section 217. Our Courts have considered in a number of cases the applicability of section 217 to various Transactions involving the state.

4.1.10 SAT has in place a Partnership Policy which seeks to *"regulate the participation of SAT in any Partnerships by providing clear governing principles relating thereto in order to ensure that such Partnerships further SAT's legislative mandate, are aligned to its strategic objectives, add value and are conducted in a consistent and fair manner."*[9] The Partnership Policy defines partnership as:

> *"a relationship of collaboration proposed or entered into between SAT and another juristic or natural person, in terms of which the parties have agreed to work together, based on trust, equality and mutual understanding, and focuses on the pursuit of common goals that cannot be accomplished by the partners on their own. Parties may make a financial or non-financial contribution towards a program or event organised by another, in exchange for a platform to conduct marketing activities."*[10]

4.1.11 The Partnership Policy states that partnerships *"may be entered into with various types of organisations and events, including domestic and international private companies, industry organisations, public sector organisations, bodies and departments, non-political civil society organisations, academic or research institutions, marketing organisations and sporting events."*[11]

4.1.12 Notably, paragraph 6.4 of the Partnership Policy states that *"[p]artnerships that involve a financial contribution are considered services and accordingly, the procurement thereof is subject to the processes established by the SCM Framework."* (Our emphasis)

SCM Policy

4.1.13 The SAT is still in the process of reviewing the SCM Policy to bring it in line with the latest legislative changes to the procurement prescripts in South Africa including the National Treasury Instruction Notes discussed above as well as the Public Procurement Regulations of 2022.[12]

4.1.14 According to the current SCM Policy, its objectives are *inter alia "to provide guidance on the measures prescribed by the National Treasury to prevent and combat abuse in the Supply Chain Management System"* and *"to ensure the uniform application of the Supply Chain Management Policy throughout the organisation."*[13]

4.1.15 Paragraph 13 of the SCM Policy provides for the procurement of goods and services and states that the SAT Board *"must ensure that procurement of goods and services, either by way of price*

---

[9] Partnership Policy, p. 5.
[10] Ibid, p. 4.
[11] Ibid, p. 6.
[12] GN 2721 of 4 November 2022: Preferential Procurement Regulations, 2022.
[13] SCM Policy, p. 3.

quotations or through a bidding process, must be within the monetary threshold values as determined by the National Treasury or as per special dispensation approved for SA Tourism."[14]

4.1.16 The SCM Policy makes provision for deviation from normal bidding processes, and it states in terms of paragraph 14 that:

> *"If in a specific case it is impractical to invite competitive bids, The SA Tourism Board may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded in writing and approved by The SA Tourism Board.*
> *The SA Tourism Board must only deviate from inviting competitive bids in cases of emergency and sole supplier status.*
> ...
> *Sole source procurement may occur when there is evidence that only one supplier possesses the unique and singularly available capacity to meet the requirements of the institution.*
> ...
> *Any other deviation will be allowed in exceptional cases subject to the prior written approval from the relevant treasury."* (Our emphasis)

4.1.17 According to the SCM Policy,[15] a sole supplier refers to:

"a supplier

(i) that can provide goods or services of a certain specification that are not offered by any other suppliers;

(ii) a supplier with exclusive rights to the distribution of specific goods or services in a particular area or country; or

(iii) that manufactures a specific brand of product which it sells either directly to the public or via other retail suppliers and where the price that it offers are cheaper than what the same product would cost if purchased from other suppliers."

Irregular and unauthorised expenditure

4.1.18 Section 1 of the PFMA defines "irregular expenditure" as follows:

"[m]eans expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including—

(a) this Act; or

(b) the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of that Act;"

4.1.19 Section 1 of the PFMA defines "unauthorised expenditure" to mean—

"(a) overspending of a vote or a main division within a vote;

[14] Ibid, p. 12.
[15] Ibid, p. 36.

(b) expenditure not in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division;"

4.1.20 We now consider the terms' industry use, in other words how the terms are understood within the financial and public management fraternity, and secondly, how the Courts have interpreted the terms.

4.1.21 In the Standing Committee on Public Accounts meeting dated 6 February 2014 ("SCOPA"), the Auditor-General of South Africa defined "irregular expenditure" as money that was spent without abiding by the appropriate legislation.[16] According to Moeti, irregular expenditure is authorised expenditure (as opposed to unauthorised expenditure) that is in contravention of other applicable legislation.[17] Pauw *et al* define irregular expenditure the same way as an authorised expenditure, which is incurred in contravention of, or that is not in accordance with, the requirements of any applicable legislation. Hence:

> *"It is clear that irregular expenditure is actually an authorised expenditure that is in violation of any procedural requirements. Thus, any conduct that falls within the parameters of the above definition of irregular expenditure, is an act that violates financial management or procurement prescripts. It is, therefore, incumbent upon the accounting officer to put measures in place to prevent such violation..."*[18]

4.1.22 SAT's SCM Policy deals with principles and condonation of irregular expenditure, and this is provided for in paragraph 28, which states in relevant parts as follows:

> *"For The SA Tourism Board to incur irregular expenditure, <u>the non-compliance must be linked to a financial transaction</u>. Although a transaction, condition or an event may trigger irregular expenditure, <u>The SA Tourism Board will only record irregular expenditure when a payment pertaining to the non-compliance is actually made (i.e. when the expenditure is recognized in accordance with the recognition principles contained in the Modified Cash Standard</u>.)*
> *If 'possible irregular expenditure' is determined prior to a payment being made, then such a transgression shall be regarded as a non-compliance matter until payment is made at which point irregular expenditure shall be recorded.*
> *Non-compliance corrected prior to any payment being made will not result in any irregular expenditure."* (Our emphasis)

4.1.23 National Treasury published an Updated Guideline on Irregular Expenditure in April 2015. The purpose of the updated Guideline is to provide clarity on the procedures to be followed when dealing with the identification and application of irregular expenditure, as defined in section 1 of the Public Finance Management Act (PFMA). The Guidelines states that *"an expenditure being incurred not in accordance with the purpose of the main division/vote or which results in the overspending of the main division/vote, such expenditure also meets the definition of unauthorised expenditure."*[19]

4.1.24 The Guideline provides that if a public entity such as SAT, as referred to in the provision of section 53(4) of the PFMA, exceeds its approved budget, it must be indicated that such a public entity has spent not in accordance with its approved budget and the non-compliance linked to

---

[16] Makwetu K 2014. Auditor General's report to Parliament on 2013/14 Financial reports. Cape Town: Auditor General.
[17] Moeti K 2007. Accounting and Finance. In Public finance fundamentals, eds. K. Moeti, T. Khalo, J. Mafunisa, S. Nsingo and T. Makondo. Cape Town: Juta.
[18] Phelelani Dlomo "The Impact of Irregular Expenditure in South African Public Finance with Specific Refence to the National Department of Public Works" 15.
[19] Guideline, p. 7 at para 18.

the Transaction, condition or event that lead to such a spending must be recognised as irregular expenditure. In this case, the amount to be disclosed as irregular expenditure will be the excess amount over the approved budget.[20]

4.1.25 According to the Guideline, based on the aforementioned, *"it is clear that even though public entities listed in schedules 3A and 3C to the PFMA will not incur unauthorised expenditure, when they overspend on their respective budgets, such an overspending must be recognised as irregular expenditure in the notes to the financial statements."*[21] The Guideline states that *"unauthorised expenditure is a concept that is only applicable to departments."*

5 DOES THE PROPOSED TRANSACTION AMOUNT TO PARTICIPATION IN A SIGNIFICANT BUSINESS ACTIVITY AS CONTEMPLATED UNDER SECTION 54(2)(B) OF THE PFMA AND/OR COMMENCEMENT OF A SIGNIFICANT BUSINESS ACTIVITY UNDER SECTION 54(2)(E) OF THE PFMA

Approvals required under Section 54(2) of the PFMA

5.1.1 Section 54(2) of the PFMA provides as follows:

"54(2) Before a public entity concludes any of the following transactions, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction:

(a) establishment or participation in the establishment of a company;

(b) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;

(c) acquisition or disposal of a significant shareholding in a company;

(d) acquisition or disposal of a significant asset;

(e) commencement or cessation of a significant business activity; and

(f) a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement."

5.1.2 In the context of the proposed Transaction, the enquiries arise whether the Transaction amounts to either:

5.1.2.1 the participation in a significant partnership or similar arrangement as contemplated in Section 54(2)(b); or

5.1.2.2 the commencement of a significant business activity in terms of Section 54(2)(e).

5.1.3 If so, the Transaction may not be implemented before the Minister, as executive authority, has approved the Transaction. To establish whether the Transaction falls within the parameters of being "significant" for purposes of Section 54(2) of the PFMA, regard must be had to the significance and materiality framework applicable to SA Tourism[22].

---

[20] Ibid, p. 7, at para 21.
[21] Ibid, para 22.
[22] Treasury Regulation 28.3.1.

5.1.4 National Treasury has developed a Practice Note on Applications under Section 54 of the Public Finance Management Act No. 1 of 1999 by Public Entities ("Practice Note 54").

5.1.5 Practice Note 54 provides guidance as to the interpretation of significant transactions, as well as the information which should be submitted by an accounting authority to its executive authority in support of a Section 54(2) application.

5.1.6 The following guiding principles apply to an application in terms of Section 54(2)(b) (establishment of a significant partnership or similar arrangement):

5.1.6.1 Significance is determined by Rand amount derived from the parameters outlined in par. 3.7 of the Practice Note[23].

5.1.6.2 *However, participation in any partnership, trust, unincorporated joint venture or similar arrangement that is located outside the Republic of South Africa is to be regarded as significant, thus necessitating an application for approval, irrespective of the Rand amount involved*[24]. (our emphasis)

5.1.7 In so far as an application in terms of Section 54(2)(e) (commencement of a significant business activity) is concerned:

5.1.7.1 A business activity that falls within SA Tourism's core business need not be regarded as falling under this subsection; and

5.1.7.2 A business activity that falls outside SA Tourism's core business should be regarded as significant if its Rand value falls within the parameters outlined in par. 3.7 of the Practice Note[25].

5.1.8 Par.3.7 of Practice Note 54 provides guidance on the determination of acceptable levels of significance. For purposes of a value determination, regard must be had to a public entity's audited annual financial statements. A transaction will be significant if it, for purposes of Section 54(2)(b) and 54(2)(e) falls within the parameters of the following elements in the entity's annual financial statements:

5.1.8.1.1 1% - 2% of the total assets;

5.1.8.1.2 0.5% - 1% of the total revenue; or

5.1.8.1.3 2% - 5% of the profit after tax.

5.1.9 That being said, participation by a public entity in any partnership located outside the Republic will require an application for approval, regardless of whether or not the significance threshold is met or not[26].

5.1.10 In light of the above, it is clear that Ministerial approval for the Transaction would be required in terms of section 54(2)(b), independent of meeting any significance thresholds or the possible

[23] PN 54, par. 3.2.
[24] PN54, par. 3.2.2.
[25] PN54. Par. 3.5.2.
[26] PN54, par. 3.2.2.1.

application of section 54(2)(e). This renders a detailed analysis of SA Tourism's audited annual financial statements moot and we therefore do not deal with the calculations under par. 3.7 of the Practice Note 54 for the sake of brevity.

Information to be submitted to the Minister

5.1.11 Par 9 of Practice Note 54 provides details as to the information to be submitted to the executive authority in support of an application under Section 54(2).

5.1.12 PN 54 provides detailed guidance as to which information needs to be submitted to the Minister, including the following elements:

5.1.12.1 Transaction description and rationale;

5.1.12.2 Assessment of the public entity's ability to execute the Transaction; and

5.1.12.3 Transaction specific information.

Other prescripts under the PFMA

5.1.13 Section 66 of the PFMA deals with restrictions on entering into commitments, the relevant portions of which provide as follows:

*"66. **Restrictions on borrowing, guarantees and other commitments.**—(1) An institution to which this Act applies may not borrow money or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind that institution or the Revenue Fund to any future financial commitment, unless such borrowing, guarantee, indemnity, security or other transaction—*

(a) is authorised by this Act; and

(b) in the case of public entities, is also authorised by other legislation not in conflict with this Act; and

(c) ...

(2) ...

(3) Public entities may only through the following persons borrow money, or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind that public entity to any future financial commitment:

(a) ...

(b) ...

(c) Any other national public entity: The Minister or, in the case of the issue of a guarantee, indemnity or security, the Cabinet member who is the executive authority responsible for that public entity, acting with the concurrence of the Minister in terms of section 70.

(d) ..." (Underlining added for emphasis).

5.1.14 Considering that the proposed Transaction is one which would potentially bind SA Tourism to a future financial commitment to pay the monies under the Sponsorship Agreement, the added approval of the Minister would need to be procured under section 66(3)(c) of the PFMA.

6 LEGISLATIVE REQUIREMENTS FOR BUDGET APPROVALS

The Constitution

6.1 Section 215 of the Constitution deals with the budget processes of all of the three spheres of government: national, provincial and municipal. In terms of section 215(1) of the Constitution, *"National, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective management of the economy, debt and the public sector"*.

6.2 In terms of section 215(2) of the Constitution, national legislation ought to prescribe three matters, namely:

> *"(a) the form of national, provincial and municipal budgets;*
>
> *(b) when national and provincial budgets must be tabled; and*
>
> *(c) the budgets in each sphere of government must show the sources of revenue and the way in which proposed expenditure will comply with national legislation".*

6.2.1 Section 215(3) of the Constitution provides that budgets in each sphere of government must contain the following components:

> *"(a) estimates of revenue and expenditure, differentiating between capital and current expenditure;*
>
> *(b) proposals for financing any anticipated deficit for the period for which they apply; and*
>
> *(c) an indication of intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year".*

The PFMA and National Treasury Regulations

6.2.2 The legislation that Parliament has prescribed to achieve the Constitution's relevant objectives regarding budgetary processes is the PFMA. To be sure, section 53 of the PFMA, deals with annual budgets by non-business Schedule 3 public entities such as SA Tourism.

6.2.3 Section 53(1) provides as follows:

> *"The accounting authority for a public entity listed in Schedule 3 which is not a government business enterprise must submit to the executive authority responsible for that public entity, at least six months before the start of the financial year of the department designated in terms of subsection (2) or another period agreed to between the executive authority and the public entity, a budget of estimated revenue and expenditure for that financial year, for approval by the executive authority".*[27]

6.2.4 The budget must be submitted to the accounting officer for a department designated by the executive authority, who may make recommendations to the executive authority with regard to the approval or amendment of the budget.[28]

---

[27] Section 53(1) of the PFMA.
[28] Section 53(2) of the PFMA.

6.2.5 Section 53(5) provides that *"[t]he National Treasury may regulate the application of this section by regulation or instruction in terms of section 76."*

6.2.6 Section 55 of the PFMA deals with annual reports and financial statements. In terms of section 55(1)(b) and (d) of the PFMA, SA Tourism is obliged to prepare financial statements for each financial year, which must be submitted to the AGSA to audit. The financial statements must fairly present SA Tourism's state of affairs, its business, its financial results, its performance and its financial position in accordance with Standards of Generally Recognised Accounting Practice.

6.2.7 The Minister of Finance has published Treasury Regulations as provided for in section 76 of the PFMA ("the Regulations").[29] In terms of the application provision of the Regulations, the Regulations apply to to all public entities listed in Schedules 3A such as SA Tourism, but only to the extent as indicated in paragraph 6.1.2 and regulations 16, 16A, 24 to 28 and 30 to 33.[30]

6.2.8 Regulation 6 deals with budgeting and related matters. Regulation 6.1.2 provides that the accounting authority of a public entity which receives transfers appropriated by vote must provide such information as may be required by the accounting officer responsible for the vote for the purposes of complying with a budget circular.[31] A budget submission by such a public entity must be made through the accounting officer of the department responsible for transfers to that public entity.

6.2.9 Notably Regulation 6.2.1 which provides that the annual budget documentation, as presented to Parliament, must conform to the formats as determined by the National Treasury, is not listed as one of the provisions applicable to schedule 3A and 3C entities. This Regulation is in line with Section 27 of the PFMA which deals with National annual budgets, and provides *inter alia* for the Minister of Finance to table the national annual budget for a financial year. Such annual budgets must be in accordance with a format as may be prescribed.

6.2.10 Regulation 30 requires public entities such as the SA Tourism to annually submit a proposed strategic plan for approval by the relevant executive authority. Such a plan must be submitted at least six months before the start of the financial year of the designated department or another time period as agreed to between the executive authority and the public entity.[32] It must *inter alia*, cover a period of three years, include objectives and outcomes as identified by the executive authority.[33]

Medium-Term Expenditure Framework ("MTEF") Guidelines

6.2.11 National Treasury has published a Medium-Term Expenditure Framework ("MTEF") guideline on an annual basis. According to the 2023 Technical Guidelines ("the Guidelines"), South Africa adopted the MTEF to facilitate a more effective medium-term planning in 2000.[34] According to the guideline document published by National Treasury as the national budget review of the 1999 budget, "*[t]he MTEF sets out three-year spending plans of the national and provincial governments. It aims to ensure that budgets reflect Government's social and economic priorities and give substance to Government's reconstruction and development commitments. The MTEF*

[29] GNR.225 of 15 March 2005: Amendment of Treasury Regulations in terms of Section 76

[30] Paragraph 1.2.1(d) of the Regulations.

[31] A budget circular is issued by National Treasury – s Regulation 6.1.1

[32] Regulation 30.1.1.

[33] Regulation 30.1.3.

[34] MTEF Technical Guidelines 2023, page 2.

is one of the most important reforms of the budgetary process this Government has introduced."[35]

6.2.12 The Guidelines were issued to make such prescriptions and provide national government departments, as well as public institutions, with guidance on how to prepare their medium-term budget estimates for the 2023 Budget. The process works in such a manner that, the primary budget submission of a national department must be submitted by the Accounting Officer of the department and accompanied by a signed covering letter which confirms that the submission is the expression of the department's strategic direction with regards to any budget baseline changes that have resulted from budget deliberations of its executive management.[36]

6.2.13 Moreover, in cases where a department makes a transfer to or plays an oversight role to other government institutions, the submissions of these institutions should be prepared under the guidance of the accounting officer of the national department, in collaboration with all institutions that report to that executive authority. Where applicable an endorsement letter from the accounting officer of the executive department must be submitted.[37]

6.2.14 Components of a budget submission are also set out in the guideline. In accordance with the Guideline three components must be covered: narrative report, excel workbooks for data submissions and other submissions.

6.2.15 With regard to the narrative report component, the report ought to explain the context for the budget, set out costing of mandates and policies, indicate where expenditure reductions can be implemented and the impact of this on service delivery indicators.[38] In addition, the report should provide the department's rationale for expenditure recommendations over the medium term and must be clear as it is aimed at assisting decision makers in reaching conclusions based on the evidence and the evaluation of performance.[39] The report ought to be comprehensive and must incorporate the following elements: A detailed budget baseline analysis done mainly through spending reviews, composition of spending, and strategic reallocations.

6.2.16 On detailed budget baselines analysis, an explanation must be provided pertaining to the rate of efficiency realisation that informed the budget impact contained in the excel workbook.[40] Also, the actions plans must be identified, as well as the associated timelines that must be implemented to ensure to ensure that the efficiency gains are indeed realised.

6.2.17 The strategic reallocations aspect requires that an explanation must be provided on "*the proposals to reallocate spending between programmes or economic classifications with a view of addressing cost pressures or better aligning resources with identified priorities in line with the Budget Prioritisation Framework*."[41] It is also required that the budget implications be quantified and a rationale must be provided for the source of funding. (our emphasis)

6.2.18 In terms of the METF guideline, public institutions including schedule 2 public entities are required to:

"adhere to the principles of 2023 MTEF as articulated in section 3 above.

---

[35] https://www.treasury.gov.za/documents/national%20budget/1998/review/chapter_05.pdf accessed 25 March 2023.
[36] MTEF (Technical Guidelines 2023), par 4.2.
[37] Ibid, par. 4.4
[38] MTEF (Technical Guidelines 2023), par 5.1.
[39] MTEF (Technical Guidelines 2023), par 5.1
[40] *Ibid.*
[41] MTEF (Technical Guidelines 2023), page 5.

provide narration of functions performed by the institution, financial commitments and the human resource plan. They must give a summary of the financial status and policy imperatives in respect of the public institutions receiving transfers from the department.
demonstrate how they will address any cost pressures within existing baselines - given that there are no additional funds available for allocation.
Submit their budget templates in the formats provided.
Schedules 1, 3A and 3C entities must seek National Treasury approval in instances where the institution intends spending from reserves."[42]

6.2.19 The second component is that of excel workbooks for data submissions. In essence, the information contained in the department's budget explanatory narrative report must be supported by the relevant data workbooks.[43] The three workbooks are: 2023 MTEC Submission workbook for the national government departments, 2023 Human Resource Budget Plan workbook, and 2023 MTEC Budget Planning Baseline tool for public institutions.[44]

6.2.20 The third and last component deals with separate submissions which were to also be considered in 2023 budget process. These are elements dealing with large infrastructure projects, conditional grants change proposals as well as budget programme structure change proposals.[45]

<u>GRAP 24</u>

6.2.21 We have considered <u>GRAP 24</u> which also deals with how entities should disclose budget adjustments in their financial statements.

6.2.22 An approved budget as defined by GRAP 24 reflects the anticipated revenues or receipts expected to arise in the annual or multi-year budget period based on current plans and the anticipated economic conditions during that budget period, and expenses or expenditures approved by a legislative body, being Parliament.[46]

6.2.23 Paragraph .09 of GRAP 24 provides that "*<u>The budget for a financial year is usually approved before the start of that financial year</u> ... Subsequent to this initial budget being approved, <u>it might become necessary to revise the initial estimates of revenue and expenditure due to</u> increased collection of revenue, unforeseen and unavoidable expenditure being incurred, <u>the reallocation of funds between activities or types of expenses</u>, the, use of savings generated, or the roll-over of unspent funds from prior years. These revised budgets (often called adjustment budgets or adjustment estimates) are usually required by legislation to be approved again by Parliament, the legislatures, ... or other relevant authority responsible for the approval of the budget.*"

6.2.24 Paragraph .23 provides that "*[b]udget documents may provide great detail about particular activities, programmes or entities. <u>These details are often aggregated into broad classes under common "budget classifications", or "budget headings" for presentation to, and approval by, Parliament</u>, the legislatures, municipal councils or other relevant authority responsible for approving the budget. The disclosure of budget and actual information consistent with those broad classes and budget classifications or headings will ensure that comparisons are made at the relevant level of oversight set by Parliament, the legislatures, municipal councils, or other relevant authority approving the budget, and identified in the budget documents.*"

---

[42] *Ibid.*
[43] Medium term Expenditure Framework (Technical Guidelines 2023), page 6.
[44] MTEF (Technical Guidelines 2023), page 6.
[45] *Ibid*, at par 5.3.
[46] GRAP 24, par .07.

(our emphasis)

6.2.25 *Paragraph .25 states that "[i]n some cases, the detailed financial information included in approved budgets may need to be aggregated for presentation in financial statements in accordance with the requirements of this Standard. Such aggregation may be necessary to avoid information overload and to reflect relevant levels of oversight by Parliament, the legislatures, the municipal councils, or other relevant authority approving the budget. Determining the level of aggregation will involve professional judgement. That judgement will be applied in the context of the objective of this Standard..."*

7 QUESTIONS POSED BY THE MINISTER

Has the Tottenham deal been formally cancelled? If so, provide written proof of same

7.1 When resolving to approve the Transaction at its Board meeting of 31 January 2023, the Board was cognisant of the approvals that are required from both the Minister of Tourism and National Treasury prior to the Transaction being consummated and becoming legally binding. Accordingly, the Board's resolution was conditional. In this regard, the Board approved the Transaction, "*subject to due consultation with the Minister of Tourism, the Department of Tourism, National Treasury and other relevant stakeholders.*" The conditions were imposed by the Board because the Transaction legally required the approval of the identified stakeholders.

7.2 As recorded earlier, no contracts to give effect to the proposed Transaction have yet been drafted, negotiated or signed between the parties. As such, the Transaction cannot be cancelled as it does not exist.

Does the Board regard the Tottenham deal to be a form of sole source procurement? If so, explain how the requirements for such a form of procurement have been met

7.3 We have set out the principles underpinning the procurement of goods and services by organs of state. SAT is a public entity and it is an entity to which the PFMA applies.

7.4 SAT is further required to procure services in a manner that accords with the principles laid out in section 217 of the Constitution. As set out above, there are other legislative prescripts which regulate compliance with section 217. Regulation 16A6.1 requires the procurement of services to take place by way of written price quotations or a bidding process in accordance with thresholds determined by the National Treasury. These thresholds are contained in SCM Instruction No. 2 which states that in the case of procurement with a threshold value of above R1 000 000.00, accounting officers / authorities are required to invite open competitive bids for the said procurement.

7.5 Notwithstanding the aforesaid, SAT is entitled to deviate from normal procurement processes in accordance with Treasury Regulation 16A6.4 as set out above. In such circumstances, SAT is required to provide reasons for such deviation, and that the said deviation be approved by its accounting authority. The process relating to deviation is set out in Instruction No. 3, which makes provision for procurement through other means. 'Other means' includes limited bidding, which is procurement from a sole source or a single source. 'Other means' also includes emergency situations or an urgent case. Deviation is further provided for in terms of the SCM Policy.

7.6 The Partnership Policy makes plain that with regard to partnerships which have a financial contribution, such as in the case of the Transaction, these are regarded as a provision of services and SCM processes should be followed in that regard. Therefore, SAT is required to follow procurement prescripts to conclude the Transaction. This includes calling for bids, alternatively, procurement by deviation in the event that such deviation is justifiable.

7.7 SAT did not invite bids for the proposed Transaction. SAT considered THFC as a sole source in relation to the partnership in accordance with the deviation process provided for in Instruction No. 3 and the SCM Policy. Therefore, procurement in this case was intended to be done through a limited bidding process. We set out hereunder an assessment of whether the procurement of Tottenham Hotspur through deviation would meet the stated criteria.

7.8 Tottenham Hotspur was the only highest-ranking club with a shirt sleeve available. As set out above, a sole source involves a situation where there is no competition in the market and only one supplier is able to provide the goods or services. A single source, on the other hand, relates to the selection of one supplier among a few prospective bidders to make a proposal, following a market analysis.

7.9 With regard to the sole source requirement, Tottenham Hotspur is in the top 10 of the most valuable football clubs globally and it is one of the best performing clubs in the English Premier League. There were no other top-ranked football clubs which could provide SAT with the type of platform it required. Therefore, on this basis procurement on the basis of a sole source would be sustainable for the proposed Transaction.

7.10 The procurement could also take place on a single-source basis in that according to a study undertaken by SAT through its global activation agency, Tottenham Hotspur is the only high-ranking football club amongst the most valuable football clubs globally with a sleeve available. Therefore, SAT would be justified in selecting Tottenham Hotspur from a few prospective suppliers.

7.11 With regard to approvals, the Partnership Policy requires a motivation to be submitted to EXCO for approval. Thereafter, the approval processes as set out in the DoA matrix would then be followed. According to the DoA matrix, the Board is required to approve partnerships exceeding R10 million in value. Treasury Instruction No. 3 requires that the Board approve the reasons for any such deviation. Instruction 3 has taken away the prior approval by National Treasury. The only requirement is that once the procurement by other means is finalised, it must be reported to National Treasury and the AGSA. Moreover, the procurement event must be recorded in the SAT's annual report.

<u>Does the Board regard the Tottenham deal to be a significant Transaction which triggers the need for my prior approval? If so, will the Board request my approval and when?</u>

7.12 Yes, the proposed Tottenham deal does trigger the need for the Minister's prior approval in terms of Section 54(2)(b) of the PFMA.

7.13 The Minister's approval would also be required in terms of section 66(3)(c) of the PFMA, as the proposed Tottenham deal is one which will bind SA Tourism to a future financial commitment through the payment of sponsorship fees over the MTEF period.

7.14 On the basis that the proposed deal would be concluded with THFC, being an entity located outside the Republic in the United Kingdom, the level of significance of the Transaction does not influence the question on whether or not ministerial approval must be obtained.

7.15 Practice Note 54 sets out the detailed requirements for an approval application. The Board would have to follow such requirements when making the submission for approval by the Minister.

7.16 The board has, however, been publicly advised by the Minister not to proceed with the proposed Transaction, and on this basis the Board has resolved not to approach the Minister with a request to approve the deal in terms of section 54(2) or section 66(3) of the PFMA.

<u>Has the Tottenham deal been budgeted for in the 2022/23 budget? If not, why is expenditure on the deal not unauthorised or irregular within the meaning of those terms in the PFMA?</u>

7.17 Programme 3 of the SAT is Leisure Tourism Marketing. The purpose thereof is to create demand through travel acquisition and growing brand equity for South Africa as a leisure and business events destination, in identified markets. The institutional outcome under Programme 3 is to increase the tourism sector's contribution to inclusive economic growth. This is facilitated through the Brand and Marketing Business Unit through participation in global brand campaigns, advocacy programmes and domestic and international events and campaigns.

7.18 The SAT Annual Report 2021/2022 records that through the Brand and Marketing business unit, (being one of the business divisions of Programme 3: Leisure Tourism Marketing), several key deliverables were executed in the period under review including the Global Brand Campaign. The objective of the Global Brand Campaign is to reposition South Africa globally from a tourism standpoint in preparation for the reopening of global travel markets.[47]

7.19 The proposed THFC partnership Transaction is of a similar nature as those implemented under Programme 3. It is clear that the participation in global brand activations and campaigns falls within the strategic outputs under Programme 3 and that the proposed Transaction can accordingly be aligned with those outputs.

7.20 During the presentation by the SAT's Marketing and Commercial Committee "MARCOMM" and Audit and Risk Committee ("ARCO") ARCO to the Board on 31 January 2023, the Board was advised that the source of funding of the Transaction would be "*Reallocated from savings within ... Programme 3*". This was in relation to Phase 1 of the proposed Transaction. The remainder of the phases would have been funded from the normal MTEF allocation for the relevant MTEF period under Programme 3.

7.21 The APP for 2022/23 projected expenditure for the 2022/23 MTEF in respect of Programme 3 as follows:

Name of the Programme		2018/19	2019/20	2020/21	2021/22			2022/2
		Audited	Audited	Audited	Approved Budget	Special Adjustments	Revised Budget	Budge
		(R'000)	(R'000)	(R'000)	(R'000)	(R'000)	(R'000)	(R'000
3	Leisure Tourism Marketing	1,075,625	948,603	382,469	1,120,443	0	1,051,113	1,072,6

7.22 On 28 February the MTEF allocation letter from the Department for the MTEF period 2023/24 to 2025/26 was allocated as follows:

[47] SAT AR 2021/22 at page 45.

Financial Year	Corporate Support R'000	Business Enablement R'000	Leisure Tourism Marketing R'000	Business Events R'000	Visitor Experience R'000	Total R'000
2023/24	147 445	80 617	979 829	87 858	48 923	1 344 872
2024/25	154 066	84 237	1 023 835	91 803	51 121	1 405 061
2025/26	160 985	88 020	1 069 661	95 926	53 416	1 468 008

7.23 In essence, entering into a sponsorship partnership with Tottenham Hotspur will likely result in a disproportional contribution (of more than 36%) towards the achievement of primary objective (21 million tourist arrivals), it would therefore be completely justifiable for SA Tourism spending a disproportional percentage of its annual marketing budget (36%) on the proposed Tottenham Hotspur partnership while having in place a risk management strategy to properly manage all risks associated with that. This can in no way be construed to a scenario of "putting all your eggs in one basket.

7.24 The MTEF Technical Guideline and GRAP 24 require that there be additional approval by Parliament for reallocation of budgets. This relates to instances where the reallocation related to spending between programmes, activities or types of expenses.

7.25 At the time when the Transaction was leaked to the media, (notably, based on a submission which had not been approved by the Board) the relevant processes of the reconfiguration of the budget had yet to be embarked upon. These processes would have been embarked upon in the ordinary course of the SAT's business operations. The SAT Budget Council would have considered the submission, and allocated the funding based on the redistribution of the typically smaller marketing activities that make a smaller contribution towards the achievement of its primary objective of 21 million tourist arrivals to this Transaction under Programme 3. Notably, based on the current MTEF allocation letter, the funds under Programme 3 would have been available for the proposed Transaction.

7.26 As such, based on the 2022/23 approved APP and the MTEF allocation letter of 2022/23, it appears that Programme 3 and the expenditure as projected in the 2022/23 APP would have covered the proposed Transaction, as its nature falls squarely within the outputs of Programme 3.

7.27 Given that the Transaction was on the above factual recordal not yet implemented, no irregular or unauthorised expenditure arises. The Transaction would have had to go through Section 53, 54 and 66 PFMA approvals to make it an authorised and regular expenditure/Transaction. These approvals were overtaken by events and accordingly, they did not take place. The Board's conditional approval required these approvals to be sought beforehand and is accordingly of no legal force and effect as the Transaction was not implemented.

8 CONCLUDING REMARKS

8.1 The Board wishes to state that it engaged with the proposed Transaction on several occasions. In doing so, the Board applied its mind. It should be noted that:

8.1.1 Management presented the proposed Transaction to it on 27 January 2023. The Board engaged robustly with management on its proposal. The Board did not approve the proposed Transaction as presented to it as it raised several issues which were not considered in the proposal including governance issues around consultation processes with relevant stakeholders, due diligence processes, the source and availability of the budget, Return on investment, and associated risks.

8.1.2 The Board proposed that the MARCOMM and the ARCO convene a special joint meeting with a view to review the business case and to take into cognisance the concerns which were raised by the Board.

8.1.3 MARCOMM and ARCO convened the special joint meeting on 31 January 2023, and addressed the concerns raised by the Board.

8.1.4 The Board convened a meeting on 31 January 2023, wherein the matter was robustly debated again. It was on the basis of such debates that the Board resolved to approve the proposed Transaction conditionally.

8.2 It is the Board's considered view that in light of the Minister's public pronunciation that she advises the Board not to proceed with the transaction, the anticipated budget adjustment and approval as well as application for Ministerial approval of the Transaction is now moot. The Board will accordingly no longer proceed with the Transaction, nor will it seek the concomitant requisite approvals for the proposed Transaction. This is so because based on the statements made by the Honourable Minister in the media, she has already pre-empted the response to the relevant required approvals as she has advised the media that the Transaction ought to be cancelled.

8.3 The Board wishes to record that it would have expected that the Minister would have engaged it directly on the matter, including considering this response before expressing her views on the matter publicly. Be that as it may, the Board hopes that in the spirit of adhering to the consultative processes of the Protocol on Corporate Governance in the Public Sector, the Minister will still engage with it on this response and any other issues arising from the matter going forward.

8.4 It is the Board's sincere hope that the Minister will grant the Board an audience to discuss this matter. It is at that occasion that the Board will seek to obtain a renewed strategic trajectory for SA Tourism from the Minister that will underpin the exceptionalism campaign to South Africa's global tourism brand in a similar manner to the Transaction. The Board is further concerned that the Minister is yet to meet with the Board in order that we can gain the Minister's insight into strategic imperatives that the Board should focus on. The Board members wish to express their commitment to serving the mandate of the entity and urges the Minister to give an indication that she supports members continued service to the entity.

9 We trust that you find the above in order.

Yours sincerely

Dr Thozamile Botha
Chairperson of the Board of South African Tourism