

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

15996/17

CASE NO

In the matter between:

ORGANISATION UNDOING TAX ABUSE NRC

First Plaintiff

SOUTH AFRICAN AIRWAYS PILOTS' ASSOCIATION

Second Plaintiff

and



DUDUZILE CYNTHIA MYENI

First Defendant

SOUTH AFRICAN AIRWAYS SOC LTD

Second Defendant

AIR CHEFS SOC LTD

Third Defendant

MINISTER OF FINANCE

Fourth Defendant

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COMBINED SUMMONS

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To the Sheriff or his Deputy:

Inform:

DUDUZILE CYNTHIA MYENI, a businesswoman and director residing at 102 Kolsterkring, Meerensee, Richards Bay, Kwa-Zulu Natal ("the first defendant");

and

SOUTH AFRICAN AIRWAYS SOC LTD, a state-owned company duly established in terms of company laws of the Republic of South Africa and the South African Airways Act, 2007 ("SAA Act"), having its registered

office at Airways Park, 32 Jones Road, Kempton Park, Johannesburg  
("the second defendant");

and

**AIR CHEFS SOC LTD**, a state-owned company duly established in terms of the company laws of the Republic of South Africa, having its registered office at Airways Park, 32 Jones Road, Kempton Park, Johannesburg ("the third defendant");

and

The **MINISTER OF FINANCE**, a member of the National Cabinet who has his principal office at 40 Church Square, Pretoria, Gauteng. The Minister of Finance is, since 12 December 2014, the Cabinet member responsible for administering and regulating SAA under and in terms of the SAA Act ("the fourth defendant");

that

**ORGANISATION UNDOING TAX ABUSE NPC**, a non-profit company incorporated under the laws of the Republic of South Africa and having its registered office at 318 Oak Avenue, Randburg, Johannesburg ("the first plaintiff");

and

**SOUTH AFRICAN AIRWAYS PILOTS' ASSOCIATION**, a branch of the Air Line Pilots' Association of South Africa, which is a registered trade union in terms of section 96 of the Labour Relations Act 66 of 1995,

having its principal place of business at 10 Blockhouse Street, Kempton Park, Johannesburg ("**the second plaintiff**"),

hereby institute action against the first, second, third and fourth defendants, in which action the plaintiffs claim the relief on the grounds set out in the particulars annexed hereto.

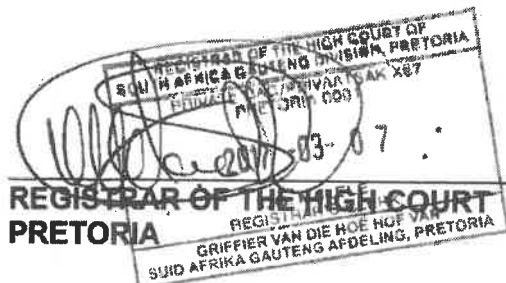
Inform each defendant further that if such defendant disputes the claim and the defendant wishes to defend the action, the defendant shall:

1. within one month of service on the defendants of this summons, file with the Registrar of this Court, notice of the defendants' intention to defend and serve a copy thereof on the plaintiffs' attorneys, which notice shall give the defendants' full residential or business address, and also an address (not being a post office box or *poste restante*) referred to in Rule 19(3) for the service on the defendants of all notices and documents in the action; and
2. thereafter, and within 20 days after filing and serving such notice of intention to defend, file with the Registrar and serve on the plaintiffs a plea, exception, notice to strike out, with or without a counterclaim.

Inform each defendant further that, if such defendant fails to file and serve such notice, judgment as claimed may be given against such defendant without further notice; or, if having filed and served such notice, the defendant fails to plead, except, make application to strike out or counterclaim, judgment may be given against the defendant.

Immediately thereafter serve on each defendant a copy of this summons and return the original to the Registrar with whatsoever you have done thereon.

Dated at Pretoria on the            day of March 2017



*M Hathorn*

**WEBBER WENTZEL**

Plaintiffs' Attorneys

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Sandton

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**C/O HILLS INCORPORATED**

**ATTORNEYS**

835 Jan Shoba Street

Brooklyn

Pretoria

Tel: 087 230 7314

Ref: A Engelbrecht

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## PARTICULARS OF CLAIM

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### PARTIES

1. The first plaintiff is the Organisation Undoing Tax Abuse NPC ("**OUTA**"), a non-profit company incorporated under the laws of the Republic of South Africa and having its registered office at 318 Oak Avenue, Randburg, Johannesburg.
2. The second plaintiff is the South African Airways Pilots' Association ("**SAAPA**"), a branch of the Air Line Pilots' Association of South Africa, which is a registered trade union in terms of section 96 of the Labour Relations Act 66 of 1995, having its principal place of business at 10 Blockhouse Street, Kempton Park, Johannesburg. SAAPA represents, 99% of the pilots in the employ of South African Airways SOC Ltd ("**SAA**").
3. The first defendant is Duduzile Cynthia Myeni ("**Ms Myeni**"), a businesswoman and director residing at 102 Kolsterkring, Meerensee, Richards Bay, Kwa-Zulu Natal.
4. The second defendant is South African Airways SOC Ltd, a state-owned company duly established in terms of the company laws of the Republic of South Africa and the South African Airways Act, 2007 ("**SAA Act**"), having its registered office at Airways Park, 32 Jones Road, Kempton Park, Johannesburg. SAA is an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 ("**Constitution**") and a

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public entity listed in Schedule 2 of the Public Finance Management Act, 1999 ("PFMA").

5. The third defendant is Air Chefs SOC Ltd ("**Air Chefs**"), a state-owned company duly established in terms of the company laws of the Republic of South Africa, having its registered office at Airways Park, 32 Jones Road, Kempton Park, Johannesburg. Air Chefs is a wholly owned subsidiary of SAA.
6. The fourth defendant is the **MINISTER OF FINANCE**, a member of the National Cabinet who has his principal office at 40 Church Square, Pretoria, Gauteng. The Minister of Finance is, and has been since 12 December 2014, the Cabinet member responsible for administering and regulating SAA under and in terms of the SAA Act.
7. No relief is sought against the second, third and fourth defendants, who are cited by virtue of such interests as they may have in the outcome of this matter.

## **DEFINITIONS**

8. The plaintiffs use, *inter alia*, the following abbreviations in these particulars:
  - 8.1 "**Airbus**" means Airbus Group SE;
  - 8.2 "**BAC**" means the SAA Bid Adjudication Committee;
  - 8.3 "**BnP**" means BnP Capital (Pty) Ltd;

- 8.4 **"the Board"** means the board of directors of SAA, which at all relevant times included Ms Myeni;
- 8.5 **"the Companies Act"** means the Companies Act 71 of 2008;
- 8.6 **"Emirates"** means the Emirates Group ;
- 8.7 **"Emirates MoU"** means a memorandum of understanding between SAA and Emirates;
- 8.8 **"EY"** means Ernst and Young Advisory Services (Pty) Ltd;
- 8.9 **"FAIS Act"** means the Financial Advisory and Intermediary Services Act 37 of 2002;
- 8.10 **"Mango"** means Mango SOC Ltd;
- 8.11 **"Mr Bezuidenhout"** means the erstwhile Acting Chief Executive Officer of SAA, Mr N Bezuidenhout;
- 8.12 **"Pembroke"** means Pembroke Aircraft Leasing 4 Ltd;
- 8.13 **"PFMA"** means the Public Finance Management Act 1 of 1999;
- 8.14 **"President Zuma"** means the President of the Republic of South Africa, Mr JG Zuma;
- 8.15 **"the RFI"** means the Request for Information on Transaction Advisory Services (GSM010/2016);
- 8.16 **"SCM Policy"** means SAA's Supply Chain Management Policy Version 2.0, dated September 2011, annexed marked **"POC1"**;

- 8.17 **"Section 54(2) application"** means an application in terms of section 54(2) of the PFMA.
- 8.18 **"the Transaction Advisor RFP"** or **"RFP"** means a Request for Proposals entitled: Appointment of a Transaction Advisor to Provide Financial Advice to **SAA (GSM021/16)**; and
- 8.19 **"Treasury Regulations"** means the Regulations in terms of the PFMA, Government Gazette No. 27388, March 2005.

#### **DIRECTORSHIPS**

9. Ms Myeni was appointed as a non-executive director of the Board on or about 28 September 2009. On or about 7 December 2012, Ms Myeni became the acting chairperson of the Board. In or about January 2015, Ms Myeni was appointed Chairperson. On 2 September 2016, Ms Myeni was reappointed as Chairperson of the Board. Ms Myeni continues to serve as a director and as the Chairperson of the Board.
10. Ms Myeni is also presently the head of SAA's Social and Ethics Committee and is a member of SAA's Finance, Investment and Procurement Committee, the Audit and Risk Committee as well as SAA's Remuneration and Human Resources Committee.
11. Ms Myeni is a member of the *"accounting authority"* of SAA, as contemplated in the PFMA by virtue of her membership of the Board.



12. Ms Myeni acted as a non-executive director of Air Chefs, a subsidiary of SAA, from or about 28 September 2009 to 8 March 2013 and then again from 28 May 2015 to 30 September 2016.
13. Ms Myeni is a director of SAA and Air Chefs for the purposes of section 162(2)(a) of the Companies Act.

### **JURISDICTION AND STANDING**

14. This Honourable Court has jurisdiction in respect of this action by virtue of section 21(1) of the Superior Courts Act, 2013.
15. OUTA has standing to bring, and does bring, this application:
  - 15.1 under section 157(1)(c) of the Companies Act; and
  - 15.2 in the public interest, with the leave of this Court, in terms of section 157(1)(d) of the Companies Act.
16. OUTA's interest and the public's interest arise from OUTA's primary objectives. These include:
  - 16.1 the protection and advancement of the Constitution as well as the promotion of effective, practical and enforceable taxation policies, which are free from corruption; and
  - 16.2 the proper management of all major public entities.
17. SAAPA has standing to bring, and does bring, this application:
  - 17.1 on behalf of and representing its members in terms of section 157(1)(a) of the Companies Act, by virtue of its status as an

employee representative in terms of section 162(2) of the Companies Act; and

17.2 in terms of section 157(1)(c) of the Companies Act.

18. SAA is:

18.1 a major public entity under Schedule 2 of the PFMA. The public has an interest in the proper management of all major public entities; and

18.2 the recipient of a shareholder guarantee loan of R19.1 billion issued by the state as at the date of this summons.

19. At all material times, SAA was technically insolvent.

20. Air Chefs is a state-owned entity and a wholly owned subsidiary of SAA.

21. OUTA seeks the leave of this Court in terms of section 157(1)(d) of the Companies Act to bring this application in the public interest.

22. Ms Myeni's conduct in the performance of her director's functions within and duties to SAA has breached:

22.1 the Constitution and in particular sections 195 and 217; and

22.2 the PFMA and the Companies Act, as detailed in these particulars of claim.

## **THE BNP CAPITAL DEAL**

- 2.1 The appointment of a transaction adviser
23. On 15 January 2016, the Chief Financial Officer of SAA sent a request for the approval of the appointment of a transaction adviser regarding SAA's R15 billion debt restructuring to the Board. The Board, led by Ms Myeni as Chairperson, authorised the publication of the RFI on Transaction Advisory Services.
24. On 7 February 2016, SAA published the RFI.
25. The RFI was an invitation to interested organisations and/or individuals to provide transaction advisory services, including:
- 25.1 analysing SAA's loan agreements;
  - 25.2 determining inefficiencies in SAA's R14 billion funding arrangements;
  - 25.3 advising SAA on the restructuring of its balance sheet;
  - 25.4 advising SAA on loans which appear to be inefficient but are actually strategic; and
  - 25.5 analysing and recommending options for restructuring of SAA's current leases.
26. The scope of the RFI did not extend to the sourcing of funds for SAA.
27. The bidding process for the RFI closed on 16 February 2016.
28. This RFI was published despite the fact that:

- 28.1 the SAA Treasurer advised the Board that SAA did not require a transaction advisor; and
- 28.2 SAA did not, in fact, require a transaction adviser.
29. The RFI was not advertised for 14 days before the closing day for submissions.
30. By 16 February 2016, SAA had received bids from seven entities including BnP.
31. The other entities who submitted bids included Deloitte & Touché, Regiments Capital (Pty) Ltd, Basis Point Capital Investment Holding (Pty) Ltd, Cinga Holdings (Pty) Ltd, Nisela Capital (Pty) Ltd and Nedbank Ltd.
32. On 11 March 2016, SAA sent out the Transaction Adviser RFP.
33. The RFI did not indicate that the RFP would be restricted to those who had responded to the RFI.
34. The Transaction Adviser RFP was only sent to those entities that responded to the RFI.
35. The scope of the Transaction Adviser RFP did not extend to the sourcing of funds for SAA.
36. The submission period for the Transaction Adviser RFP closed on 18 March 2016.
37. The RFP was not advertised for 14 days before the closing day for submissions.

- 38. On or about 14 April 2016, the Board, led by Ms Myeni as Chairperson, resolved to award the Transaction Adviser contract to BnP.
- 39. On 20 April 2016, SAA sent a letter of award to BnP.
- 40. The letter of award recorded an all-inclusive cost to SAA that was higher than the cost proposed in BnP's bid.
- 41. On 21 April 2016, the Board, led by Ms Myeni as Chairperson, passed Written Resolution No 2016/B11 ("B11"):
  - 41.1 which purported to extend the scope of the Transaction Adviser contract with BnP to include the sourcing of funding;
  - 41.2 without any recommendation from the SAA Bid Adjudication Committee to extend the Transaction Adviser contract;
  - 41.3 without any competitive process;
  - 41.4 without a due diligence on BnP; and
  - 41.5 approving a fee for BnP which was significantly higher than the market related fee for such services.
- 42. In conducting in the manner described in paragraphs 23 to 41 above, the Board, led by Ms Myeni as Chairperson, failed, *inter alia*, to:
  - 42.1 exercise the duty of utmost care to ensure reasonable protections of the assets and records of SAA as a public entity (as contemplated under section 50(1)(a) of the PFMA);

- 42.2 act with fidelity, honesty, integrity and in the best interests of SAA as a public entity in the managing of its financial affairs (as contemplated under section 50(1)(b) of the PFMA);
- 42.3 take responsibility for the safeguarding of the assets and management the revenue, expenditure and liabilities of SAA (as contemplated at section 51(1)(c) of the PFMA);
- 42.4 ensure that SAA maintains an effective, efficient and transparent system of financial and risk management and internal control (as contemplated at section 51(1)(a)(i) of the PFMA);
- 42.5 ensure that SAA maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective (as contemplated at section 51(1)(a)(iii) of the PFMA); and
- 42.6 ensure that SAA takes effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure and expenditure not complying with the operational policies of SAA (as contemplated in section 51(1)(b)(ii) of the PFMA).
43. In conducting itself in the manner described in paragraphs 23 to 41 above, the Board, led by Ms Myeni as Chairperson, caused SAA to violate its SCM Policy in, *inter alia*, the following ways:
- 43.1 SAA published an RFI that did not indicate that the RFP would be restricted to respondents to the RFI, as contemplated in clause 11.3.2 of the SCM Policy;

- 43.2 SAA did not first endeavour to satisfy the tender through existing contracts, as set out at clause 11.1 of the SCM Policy;
- 43.3 SAA published an RFI and RFP which violated clause 12.5.1 of the SCM Policy as it was not advertised for 14 days;
- 43.4 SAA published an RFP which violated clause 11.12 read with clause 11.10 of the SCM Policy, which require a competitive open bid process for a transaction of this value;
- 43.5 SAA sought to extend the scope of the Transaction Adviser agreement unlawfully and in violation of the SCM Policy, especially in respect of the following clauses:
- 43.5.1 clause 6.2.5.2, in that the BAC did not first recommend the award of the bid to the Board;
- 43.5.2 clause 11.12, in that the extension of the scope of the transaction advisor agreement amounted to the granting of new services without an open and competitive tender process; and
- 43.5.3 clause 7.1.1 of the SCM Policy, in that SAA failed to ensure fair dealing and integrity in the conduct of all procurement activities;
44. In conducting herself in the manner described in paragraphs 23 to 41 above, Ms Myeni:

- 44.1 knew, alternatively ought to have known, that she was acting unlawfully;
- 44.2 used the position of director, or information obtained while acting in the capacity of a director to gain advantage for herself, or for another person other than SAA or a wholly-owned subsidiary of SAA, or to knowingly cause harm to SAA or a subsidiary of SAA, as contemplated in section 76(2)(a) of the Companies Act;
- 44.3 grossly abused the position of director as contemplated in section 162(5)(c)(i) of the Companies Act;
- 44.4 intentionally, or by gross negligence, inflicted harm upon SAA, contrary to section 76(2)(a) of the Companies Act, as contemplated in section 162(5)(c)(iii) of the Companies Act. In particular, Ms Myeni:
- 44.4.1 used the position of director to knowingly cause harm to SAA or SAA's subsidiaries;
- 44.4.2 failed to exercise the powers and perform the functions of director in good faith and for a proper purpose; in the best interest of SAA; and/or with the degree of care or skill and diligence that may reasonably be expected of a person carrying out the same functions as Ms Myeni and having the general knowledge, skill and experience of that director; and
- 44.4.3 did not have any rational basis for believing that her decision was in the best interests of SAA;



44.5 acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of her functions within, and duties to, SAA within the meaning of section 162(5)(c)(iv)(aa) of the Companies Act; and

44.6 acted in a manner described in section 77(3)(a) and (c) of the Companies Act, as contemplated in section 162(5)(c)(iv)(bb) of the Companies Act. In particular, Ms Myeni:

44.6.1 acted in the name of SAA, signed anything on behalf of SAA, or purported to bind the company or authorise the taking of any action by or on behalf of SAA, despite knowing that she lacked the authority to do so; and/or

44.6.2 acquiesced in the carrying on of the SAA's business despite knowing that it was being conducted in a manner that was reckless, *alternatively* with gross negligence, *further alternatively* for a fraudulent purpose.

45. Accordingly, this Honourable Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.

**The second resolution extending the Transaction Adviser contract to source funding**

46. On or about 26 April 2016, the Financial Services Board suspended BnP's Financial Services Provider licence in terms of section 9 of the FAIS Act.

47. Between 20 and 25 May 2016, the Board, led by Ms Myeni as Chairperson, resolved to extend BnP's Transaction Adviser contract:

47.1 by pursuing a tender process with BnP as a sole bidder,

47.2 to include long-term funding for SAA amounting to R15 billion ("**the BnP extension resolution**").

48. The Board passed the BnP extension resolution despite the fact that:

48.1 confining the bidding process to BnP as sole bidder breached the SCM Policy;

48.2 the scope of the Transaction Adviser services had never included the sourcing of funds;

48.3 BnP did not have a Financial Services Provider licence;

48.4 SAA had not conducted a proper due diligence on BnP;

48.5 there was no evidence that BnP had the capability to source funds for SAA; and

48.6 the SAA Treasurer had received quotations for the sourcing of funds at a lower cost than the quotation from BnP from three of South Africa's biggest banks, which were existing service-providers of SAA.

49. Ms Myeni was the first director on the Board to cast a vote in favour of the BnP extension resolution on or about 20 May 2016.

50. On or about 25 May 2016, and as a result of the BnP extension resolution, SAA formally appointed BnP to source funds for SAA:

50.1 at an estimated total cost of R256,500,000.00 (inclusive of VAT);

50.2 calculated at 1.5% of the funding sourced on behalf of SAA through BnP; and

50.3 despite the issues raised at para 48 above.

51. Ms Myeni knew, alternatively ought to have known, that by voting in favour of the BnP extension, she and the Board acted unlawfully in that they failed, *inter alia*, to:

51.1 take effective and appropriate steps to manage the available working capital efficiently and economically (as contemplated at section 51(1)(b)(iii) of the PFMA);

51.2 take responsibility for the safeguarding of the assets and management of the revenue, expenditure and liabilities of SAA (as contemplated at section 51(1)(c) of the PFMA);

51.3 exercise the duty of utmost care to ensure the reasonable protection of the assets and records of SAA as a public entity (as contemplated under section 50(1)(a) of the PFMA);

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51.4 act with fidelity, honesty, integrity and in the best interests of SAA as a public entity in managing SAA's financial affairs (as contemplated under section 50(1)(b) of the PFMA); and

51.5 take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure and expenditure not complying with the operational policies of SAA (as contemplated at section 51(1)(b)(ii) of the PFMA).

52. The conduct of the Board, led by Ms Myeni as Chairperson, as described in paragraphs 46 to 51 above, amounted to a failure *inter alia* to:

52.1 exercise the duty of utmost care to ensure the reasonable protections of the assets and records of SAA as a public entity (as contemplated under section 50(1)(a) of the PFMA);

52.2 act with fidelity, honesty, integrity and in the best interests of SAA as a public entity in the managing of its financial affairs (as contemplated under section 50(1)(b) of the PFMA);

52.3 maintain an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective (as contemplated at section 51(1)(a)(iii) of the PFMA);

52.4 take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of SAA (as contemplated at section 51(1)(b)(ii) of the PFMA);

52.5 take effective and appropriate steps to manage the available working capital efficiently and economically (as contemplated at section 51(1)(b)(iii) of the PFMA); and

52.6 take responsibility for the safeguarding of the assets and management of the revenue, expenditure and liabilities of SAA (as contemplated at section 51(1)(c) of the PFMA).

53. In respect of the BnP extension resolution and the conduct described in paragraphs 46 to 51 above, Ms Myeni:

53.1 knew, alternatively ought to have known, that she was acting unlawfully;

53.2 used the position of director, or information obtained while acting in the capacity of a director to gain an advantage for herself, or for another person other than SAA or a wholly-owned subsidiary of SAA, or to knowingly cause harm to SAA or a subsidiary of SAA, as contemplated in section 76(2)(a) of the Companies Act;

53.3 grossly abused the position of director, as contemplated in section 162(5)(c)(i) of the Companies Act;

53.4 intentionally, or by gross negligence, inflicted harm upon SAA, contrary to section 76(2)(a) of the Companies Act and as contemplated in section 162(5)(c)(iii) of the Companies Act. In particular, Ms Myeni:

- 53.4.1 used the position of director to knowingly cause harm to SAA or SAA's subsidiaries;
- 53.4.2 failed exercise the powers and perform the functions of director in good faith and for a proper purpose; in the best interest of SAA; and/or with the degree of care or skill and diligence that may reasonably be expected of a person carrying out the same functions as Ms Myeni and having the general knowledge, skill and experience of that director; and
- 53.4.3 did not have any rational basis for believing that her decision was in the best interests of SAA;
- 53.5 acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of her functions within, and duties to, SAA, within the meaning of section 162(5)(c)(iv)(aa) of the Companies Act; and
- 53.6 acted in a manner described in section 77(3)(a) and (c) of the Companies Act, as contemplated in section 162(5)(c)(iv)(bb) of the Companies Act. In particular, Ms Myeni:
- 53.6.1 acted in the name of SAA, signed anything on behalf of SAA, or purported to bind the company or authorise the taking of any action by or on behalf of SAA, despite knowing that she lacked the authority to do so; and/or
- 53.6.2 acquiesced in the carrying on of the SAA's business despite knowing that it was being conducted in a manner that was

reckless, *alternatively* with gross negligence, *further alternatively* for a fraudulent purpose.

54. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.

#### **The cancellation of the sourcing of funds agreement**

55. SAA cancelled the sourcing of funds agreement with BnP on 20 July 2016.

56. In July 2016, BnP sought a cancellation fee of R49.9 million for the cancellation of the sourcing-of-funds agreement.

57. The original agreement between SAA and BnP did not make provision for a cancellation fee.

58. In any event, the cancellation fee of R49.9 million was excessive and irregular in the circumstances.

59. On 7 July 2016, draft written resolution No 2016/B25 ("B25") was circulated to the Board by way of a round robin procedure in respect of the proposed cancellation fee of R49.9 million to BnP.

60. The following SAA officials advised the Board that the cancellation fee as proposed by B25 was irregular and unlawful:

60.1 the Chief Financial Officer; and

60.2 the chairperson of the audit and risk committee.

61. Each Board member voted against B25, except for Ms Myeni, who voted in favour of the resolution.
62. By voting in favour of B25, Ms Myeni failed, *inter alia*, to take effective and appropriate steps to:
  - 62.1 exercise the duty of utmost care to ensure the reasonable protection of the assets and records of SAA as a public entity (as contemplated under section 50(1)(a) of the PFMA);
  - 62.2 act with fidelity, honesty, integrity and in the best interests of SAA as a public entity in the managing of its financial affairs (as contemplated under section 50(1)(b) of the PFMA);
  - 62.3 prevent irregular expenditure, fruitless and wasteful expenditure and expenditure not complying with the operational policies of SAA as the public entity (as contemplated at section 51(1)(b)(ii) of the PFMA);
  - 62.4 manage the available working capital efficiently and economically (as contemplated at section 51(1)(b)(iii) of the PFMA); and
  - 62.5 take responsibility for the safeguarding of the assets and management of the revenue, expenditure and liabilities of SAA (as contemplated at section 51(1)(c) of the PFMA).
63. By voting in favour of B25, Ms Myeni :



- 63.1 knew, alternatively ought to have known, that she was acting unlawfully;
- 63.2 used the position of director, or information obtained while acting in the capacity of a director to gain advantage for herself, or for another person other than SAA or a wholly-owned subsidiary of SAA, or to knowingly cause harm to SAA or a subsidiary of SAA, as contemplated in section 76(2)(a) of the Companies Act;
- 63.3 grossly abused the position of director, as contemplated in section 162(5)(c)(i) of the Companies Act;
- 63.4 intentionally, or by gross negligence, inflicted harm upon SAA, contrary to section 76(2)(a) of the Companies Act, as contemplated in section 162(5)(c)(iii) of the Companies Act. In particular, Ms Myeni:
- 63.4.1 used the position of director to knowingly cause harm to SAA or SAA's subsidiaries;
- 63.4.2 failed exercise the powers and perform the functions of director in good faith and for a proper purpose; in the best interest of SAA; and/or with the degree of care or skill and diligence that may reasonably be expected of a person carrying out the same functions as Ms Myeni and having the general knowledge, skill and experience of that director; and

- 63.4.3 did not have any rational basis for believing that her decision was in the best interests of SAA;
- 63.5 acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of her functions within, and duties to, SAA within the meaning of section 162(5)(c)(iv)(aa) of the Companies Act; and
- 63.6 acted in a manner described in section 77(3)(a) and (c) of the Companies Act, as contemplated in section 162(5)(c)(iv)(bb) of the Companies Act. In particular, Ms Myeni:
- 63.6.1 acted in the name of SAA, signed anything on behalf of SAA, or purported to bind the company or authorise the taking of any action by or on behalf of SAA, despite knowing that she lacked the authority to do so; and/or
- 63.6.2 acquiesced in the carrying on of the SAA's business despite knowing that it was being conducted in a manner that was reckless, *alternatively* with gross negligence, *further alternatively* for a fraudulent purpose.
64. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.

## THE EMIRATES DEAL

65. At all material times, the commercial relationship between SAA and Emirates was the most profitable, *alternatively*, one of the most profitable, areas of SAA's business.
66. As of June 2015, SAA's relationship with Emirates generated a profit of approximately R170 million per annum for SAA.
67. At all material times, in terms of SAA's Shareholders Compact concluded in terms of Treasury Regulation 29.2, SAA and the Minister of Finance agreed that two of the key performance measures and indicators for SAA were commercial sustainability and governance compliance.
68. On or about February 2014, the Board of SAA, led by Ms Myeni as Chairperson, adopted a three-year Corporate Plan in terms of section 52 of the PFMA read with Treasury Regulation 29.1.
69. On or about February 2015, the Board of SAA, led by Ms Myeni as Chairperson, adopted a Network and Fleet Plan, which formed an essential element of the Corporate Plan.
70. On or about 9 January 2015, Emirates presented a proposal for an enhanced strategic partnership to SAA.
71. The Emirates proposal presented an opportunity for SAA to:

- 71.1 achieve the objectives of its Network and Fleet Plan; and
  - 71.2 contribute significantly to achieving and maintaining SAA's financial sustainability.
72. More particularly, the Emirates proposal presented an opportunity for SAA to:
- 72.1 protect and maintain the existing relationship between SAA and Emirates;
  - 72.2 ensure greater access and connectivity to global flight routes for SAA;
  - 72.3 widen SAA's markets;
  - 72.4 facilitate the expansion and growth of SAA; and
  - 72.5 create direct financial gain for SAA of approximately USD100 million per annum.
73. On or about 15 February 2015, the Minister of Finance informed Emirates, who in turn informed SAA, that the National Treasury regarded the Emirates proposal as an operational matter in which the executive branch of government could not interfere.
74. On or about 2 April 2015, the SAA Board, led by Ms Myeni as Chairperson, approved the Network and Fleet Plan, which included SAA meeting with the board of Emirates for the purpose of pursuing the

Emirates proposal, subject to, *inter alia*, the submission of a revised Emirates memorandum of understanding (MoU) to the SAA Board.

75. The revised Emirates MoU was circulated to the Board on or about 2 May 2015.
76. The Emirates MoU was designed to achieve the objectives set out in paragraphs 71 and 72 above.
77. On or about 30 May 2015, Ms Myeni instructed the then CEO, Mr Nico Bezuidenhout, to appoint the Operational Review Committee to advise the Board on the Emirates proposal.
78. On 7 June 2015, Mr Bezuidenhout:
  - 78.1 informed the SAA Board that the Operational Review Committee recommended that SAA conclude the deal with Emirates on the basis of a revised MoU; and
  - 78.2 reiterated that the scheduled date for concluding the MoU with Emirates was 16 June 2015.
79. The executive of SAA handled the Emirates MoU and kept the Board apprised of all developments.
80. The Board approved the Emirates MoU by way of electronic communication.
81. SAA executives confirmed a signature date of 16 June 2015 for the MoU with Emirates with Board approval.

82. On or about 16 June 2015, and hours before Mr Bezuidenhout was due to sign the Emirates MOU, Ms Myeni instructed him not to sign the MoU.
83. Ms Myeni's reason for this instruction was that President Zuma had reservations about the Emirates MoU.
84. As a result of Ms Myeni's instruction to Mr Bezuidenhout, Mr Bezuidenhout did not sign the Emirates MoU.
85. Ms Myeni acted on President Zuma's wishes for SAA not to conclude the Emirates MOU in circumstances where she knew, *alternatively* ought to have known, that:
- 85.1 President Zuma did not have the authority to interfere with the signing of the MoU; and
- 85.2 The Board had expressed approval for the signing of the MoU.
86. As a result of Ms Myeni preventing Mr Bezuidenhout from signing the Emirates MoU:
- 86.1 SAA's relationship with Emirates was severely compromised;
- 86.2 SAA forfeited significant financial and strategic benefits, including those benefits listed at paragraphs 71 and 72 above;
- 86.3 SAA suffered significant reputational harm internationally; and
- 86.4 Emirates threatened to reconsider the entire strategic cooperation agreement signed between Emirates and the South African Minister of Tourism in mid May 2015.

87. Ms Myeni knew, *alternatively* ought to have known, that:

- 87.1 her adherence to the dictate of President Zuma was unlawful as he did not have the authority to interfere with an operational matter such as SAA concluding the MoU;
- 87.2 she was obliged to act in accordance with the Board's resolution to adopt the Network and Fleet Plan;
- 87.3 she was obliged to act in accordance with the Board's approval of the signing of the Emirates MoU;
- 87.4 by following the dictate of President Zuma, she failed to exercise her independent and unfettered discretion as she was obliged to do; and
- 87.5 preventing Mr Bezuidenhout from signing the Emirates MoU would lead to the harm outlined at paragraph 86 above.

88. As a result of:

- 88.1 failing to exercise her independent and unfettered discretion by following the unlawful dictate of President Zuma;
- 88.2 disregarding the Board's approval of r the Emirates MoU; and
- 88.3 preventing Mr Bezuidenhout from signing the Emirates MoU;

Ms Myeni:

- 88.4 failed to exercise the duty of utmost care and to ensure reasonable protections of the assets and records of SAA as a public entity (as contemplated under section 50(1)(a) of the PFMA);

- 88.5 failed to act with fidelity, honesty, integrity and in the best interests of SAA as a public entity in the management of its financial affairs (as contemplated under section 50(1)(b) of the PFMA);
- 88.6 failed to take effective and appropriate steps to manage the available working capital efficiently and economically (as contemplated at section 51(1)(b)(iii) of the PFMA);
- 88.7 failed to take responsibility for the safeguarding of the assets and management of the revenue, expenditure and liabilities of SAA (as contemplated at section 51(1)(c) of the PFMA);
- 88.8 acted in a way that is inconsistent with the responsibilities assigned to a member of an accounting authority (as contemplated in terms of section 50(2)(a) of the PFMA);
- 88.9 grossly abused the position of director, as contemplated in section 162(5)(c)(i) of the Companies Act;
- 88.10 used the position of director, or information obtained while acting in the capacity of a director to gain advantage for herself, or for another person other than SAA or a wholly-owned subsidiary of SAA, or to knowingly cause harm to SAA or a subsidiary of SAA, as contemplated in section 76(2)(a) of the Companies Act;
- 88.11 intentionally, or by gross negligence, inflicted harm upon SAA, contrary to section 76(2)(a) of the Companies Act and as contemplated in section 162(5)(c)(iii) of the Companies Act. In particular, Ms Myeni:



- 88.11.1 used the position of director to knowingly cause harm to SAA or SAA's subsidiaries;
- 88.11.2 failed exercise the powers and perform the functions of director in good faith and for a proper purpose; in the best interest of SAA; and/or with the degree of care or skill and diligence that may reasonably be expected of a person carrying out the same functions as Ms Myeni and having the general knowledge, skill and experience of that director; and
- 88.11.3 did not have any rational basis for believing that her decision was in the best interests of SAA;
- 88.12 acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of her functions within, and duties to, SAA within the meaning of section 162(5)(c)(iv)(aa) of the Companies Act; and
- 88.13 acted in a manner described in section 77(3)(a) and (c) of the Companies Act, as contemplated in section 162(5)(c)(iv)(bb) of the Companies Act. In particular, Ms Myeni:
- 88.13.1 acted in the name of SAA, signed anything on behalf of SAA, or purported to bind the company or authorise the taking of any action by or on behalf of SAA, despite knowing that she lacked the authority to do so; and/or
- 88.13.2 acquiesced in the carrying on of the SAA's business despite knowing that it was being conducted in a manner that was

reckless, *alternatively* with gross negligence, *further  
alternatively* for a fraudulent purpose.

89. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.

## **THE AIRBUS DEAL**

### **The 2002 Agreement**

90. In or about February 2002, before Ms Myeni's tenure as a board member, SAA entered into a purchase agreement with Airbus for fifteen A320-200 aircraft.

### **The 2009 Revised Agreement**

91. In or about October 2009, and after Ms Myeni had been appointed to the Board, SAA approached Airbus to revise the 2002 Agreement.

92. One of the reasons SAA approached Airbus to revise the 2002 Agreement was that it had become unaffordable and threatened to undermine the going concern assessment of SAA.

93. On or about 2 October 2009, SAA and Airbus concluded the 2009 Revised Agreement, subject to the approval of the SAA Board and the Minister of Public Enterprises.

94. The 2009 Revised Agreement included the following terms:

94.1 SAA would increase its order from fifteen to twenty aircraft; and

94.2 in exchange, Airbus would agree to postpone the pre-delivery payments to Airbus.

95. On or about April 2010:

- 95.1 the Minister of Public Enterprises formally approved the 2009 Revised Agreement of October 2009; and
- 95.2 the Board, including Ms Myeni, resolved to approve the 2009 Revised Agreement.

### **The 2013 Pembroke Agreement**

96. On or about 8 May 2013, the Chief Financial Officer of SAA requested approval by the Board, led by Ms Myeni as Chairperson, of a draft application to the Minister of Public Enterprises in terms section 54(2) of the PFMA:
- 96.1 for the delivery of the first ten of the twenty A320-200 aircraft in terms of the 2009 Revised Agreement; and
- 96.2 with Pembroke financing the first ten of the twenty A320-200 aircraft.
97. On or about 27 May 2013, the SAA Board, led by Ms Myeni as Chairperson, approved the Board's Pembroke resolution, which included:
- 97.1 the draft section 54(2) application; and
- 97.2 the fact that Pembroke would finance the first ten of the twenty new Airbus A320-200 aircraft,
98. Notwithstanding the Board's Pembroke resolution, Ms Myeni wrote to the company secretary of SAA on or about 2 June 2013 and requested her to record in the minutes of the Board meeting of 27 May 2013 that the Board had resolved that only two aircraft were to be financed by Pembroke.

99. The company secretary refused to amend the minutes according to Ms Myeni's request.
100. On or about 23 June 2013, Ms Myeni submitted a section 54(2) application to the Minister of Public Enterprises.
101. In the section 54(2) application, and notwithstanding the Board's Pembroke resolution, Ms Myeni recorded, *inter alia*, that the Board had resolved to finance only two aircraft with Pembroke.
102. In July 2013, Ms Myeni requested the other non-executive Board members of SAA to overturn the Board's Pembroke resolution.
103. All of the directors, except Ms Y Kwinana, refused.
104. Accordingly, the Board of SAA did not (in July 2013 or at any other time) approve the overturning of the Board's Pembroke resolution.
105. A special meeting of the Board was called in early 2014 in order to discuss Ms Myeni's attempts to undermine the Board's Pembroke resolution.
106. Ms Myeni did not attend the special meeting of the Board.
107. Ms Myeni knew, *alternatively*, ought reasonably to have known that:

- 107.1 her request to the company secretary to amend the minutes as alleged at para 98 above amounted to an attempt unlawfully and unilaterally to amend a board resolution; and
- 107.2 her representation to the Minister of Public Enterprises as alleged at paragraph 101 above was fraudulent, *alternatively* false.
108. In requesting the company secretary to amend the minutes of the Board meeting as alleged at para 98 above, Ms Myeni:
- 108.1 failed to exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity (as contemplated in section 50(1)(a) of the PFMA);
- 108.2 failed to act with fidelity, honesty, integrity and in the best interests of SAA as the public entity in managing the financial affairs of SAA (as contemplated in section 50(1)(b) of the PFMA);
- 108.3 acted in a way that is inconsistent with the responsibilities assigned to a member of an accounting authority in terms of the PFMA (as contemplated in section 50(2)(a) of the PFMA);
- 108.4 used her position as a member of an accounting authority to improperly benefit another person (as contemplated in section 50(2)(b) of the PFMA); and
- 108.5 failed to take responsibility for the safeguarding of the assets and the management the revenue, expenditure and liabilities of SAA (as contemplated at section 51(1)(c) of the PFMA).

109. In making material misrepresentations in the section 54(2) application to the Minister of Public Enterprises as alleged at para 101 above, Ms Myeni failed to:

109.1 exercise the duty of utmost care to ensure reasonable protection of the assets and records of SAA as a public entity (as contemplated under section 50(1)(a) of the PFMA);

109.2 act with fidelity, honesty, integrity and in the best interests of SAA as a public entity in the managing of its financial affairs of SAA (as contemplated under section 50(1)(b) of the PFMA); and

109.3 take responsibility for the safeguarding of the assets and management the revenue, expenditure and liabilities of SAA (as contemplated at section 51(1)(c) of the PFMA).

110. In respect of the conduct alleged at paragraph 98 and paragraph 101 above, Ms Myeni:

110.1 knew, *alternatively* ought to have known, that she was acting unlawfully;

110.2 used the position of director, or information obtained while acting in the capacity of a director to gain advantage for herself, or for another person other than SAA or a wholly-owned subsidiary of SAA, or to knowingly cause harm to SAA or a subsidiary of SAA, as contemplated in section 76(2)(a) of the Companies Act;

- 110.3 grossly abused the position of director as contemplated in section 162(5)(c)(i) of the Companies Act;
- 110.4 intentionally, or by gross negligence, inflicted harm upon SAA, contrary to section 76(2)(a) of the Companies Act and as contemplated in section 162(5)(c)(iii) of the Companies Act In particular, Ms Myeni:
- 110.4.1 used the position of director to knowingly cause harm to SAA or SAA's subsidiaries;
- 110.4.2 failed exercise the powers and perform the functions of director in good faith and for a proper purpose; in the best interest of SAA; and/or with the degree of care or skill and diligence that may reasonably be expected of a person carrying out the same functions as Ms Myeni and having the general knowledge, skill and experience of that director; and
- 110.4.3 did not have any rational basis for believing that her decision was in the best interests of SAA;
- 110.5 acted in a manner that amounted to gross negligence wilful misconduct or breach of trust in relation to the performance of her functions within, and duties to, SAA within the meaning of section 162(5)(c)(iv)(aa) of the Companies Act; and
- 110.6 acted in a manner described in section 77(3)(a) and (c) of the Companies Act as contemplated in section 162(5)(c)(iv)(bb) of the Companies Act. In particular, Ms Myeni:



110.6.1 acted in the name of SAA, signed anything on behalf of SAA, or purported to bind the company or authorise the taking of any action by or on behalf of SAA, despite knowing that she lacked the authority to do so; and/or

110.6.2 acquiesced in the carrying on of the SAA's business despite knowing that it was being conducted in a manner that was reckless, *alternatively* with gross negligence, *further alternatively* for a fraudulent purpose.

111. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.

### **The Swap Transaction**

112. On or about 31 March 2015, the SAA Board, led by Ms Myeni as Chairperson, unanimously, *alternatively* duly, resolved to approve the Swap Transaction between SAA and Airbus in terms of Written Resolution 2015/B27: Approval of the Airbus A320 Swap Transaction".

113. The main terms of the Swap Transaction amended the 2009 Revised Agreement as follows:

113.1 SAA's purchase of the remaining ten A320 aircraft from Airbus would be cancelled;

113.2 SAA would instead lease five Airbus A330-300s on an operating lease basis from Airbus for twelve years; and

- 113.3 should SAA default on the Swap Transaction, SAA would be subject to a cross default clause with regard to all of its transactions with Airbus.
114. The Swap Transaction would, *inter alia*:
- 114.1 alleviate SAA's liquidity problems associated with the 2009 Revised Agreement; and
- 114.2 allow SAA to procure A330-300 aircraft instead of A320 aircraft.
115. A condition of the conclusion of the Swap Transaction was that SAA would obtain the necessary governance approvals.
116. On or about 30 July 2015, the Acting Chief Executive Officer and the Chief Financial Officer of SAA signed the execution documents in terms of SAA's Delegation of Authority Framework, 2012.
117. On or about 30 July 2015, the Minister of Finance conditionally approved the Swap Transaction in terms of section 54(2) of the PFMA.
118. On or about 11 September 2015, the Minister of Finance unconditionally approved the Swap Transaction in terms of section 54(2) of the PFMA.
119. The Swap Transaction could not, however, be executed until Ms Myeni signed the execution documents mentioned in paragraph 116 above.
120. Ms Myeni failed and/or refused to sign the execution documents promptly.
121. On or about 29 September 2015, and in a letter dated 17 September 2015, Ms Myeni sent a letter to Airbus in which she stated

that SAA had decided to amend the terms of the Swap Transaction in order, *inter alia*, to involve an African aircraft leasing company.

122. The SAA Board had not, in fact, decided to amend the terms of the Swap Transaction on the terms set out in Ms Myeni's letter or at all.

123. The Minister of Finance had not approved the amendment of the Swap Transaction on the terms set out in Ms Myeni's letter or at all.

124. In representing to Airbus that the proposed amendments to the Swap Transaction had been approved by the SAA Board, Ms Myeni:

124.1 failed to exercise the duty of utmost care to ensure the reasonable protection of the assets and records of SAA as a public entity (as contemplated under section 50(1)(a) of the PFMA);

124.2 failed to act with fidelity, honesty, integrity and in the best interests of SAA (as contemplated in section 50(1)(b) of the PFMA);

124.3 acted in a way that is inconsistent with the responsibilities assigned to a member of an accounting authority in terms of the PFMA (as contemplated in section 50(2)(a) of the PFMA); and

124.4 used her position as a member of an accounting authority to improperly benefit another person (as contemplated in section 50(2)(b) of the PFMA).

125. In respect of her misrepresentations in her letter to Airbus dated 17 September 2015, Ms Myeni:

125.1 knew, *alternatively* ought to have known, that she was acting unlawfully in the manner outlined in para 124 above;

125.2 used the position of director, or information obtained while acting in the capacity of a director to gain advantage for herself, or for another person other than SAA or a wholly-owned subsidiary of SAA, or to knowingly cause harm to SAA or a subsidiary of SAA as contemplated in section 76(2)(a) of the Companies Act;

125.3 grossly abused the position of director as contemplated in section 162(5)(c)(i) of the Companies Act;

125.4 intentionally, or by gross negligence, inflicted harm upon SAA, contrary to section 76(2)(a) of the Companies Act, as contemplated section 162(5)(c)(iii) of the Companies Act. Act In particular, Ms Myeni:

125.4.1 used the position of director to knowingly cause harm to SAA or SAA's subsidiaries;

125.4.2 failed exercise the powers and perform the functions of director in good faith and for a proper purpose; in the best interest of SAA; and/or with the degree of care or skill and diligence that may reasonably be expected of a person carrying out the same functions as Ms Myeni and having the general knowledge, skill and experience of that director; and

- 125.4.3 did not have any rational basis for believing that her decision was in the best interests of SAA;
- 125.5 acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of her functions within, and duties to, SAA within the meaning of section 162(5)(c)(iv)(aa) of the Companies Act; and
- 125.6 acted in a manner described in section 77(3)(a) and (c) of the Companies Act, as contemplated in section 162(5)(c)(iv)(bb) of the Companies Act. In particular, Ms Myeni:
- 125.6.1 acted in the name of SAA, signed anything on behalf of SAA, or purported to bind the company or authorise the taking of any action by or on behalf of SAA, despite knowing that she lacked the authority to do so; and/or
- 125.6.2 acquiesced in the carrying on of the SAA's business despite knowing that it was being conducted in a manner that was reckless, *alternatively* with gross negligence, *further alternatively* for a fraudulent purpose.
126. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.

**Ms Myeni's amended section 54(2) application**

127. In or about October 2015, Airbus sent letters to Ms Myeni warning that the delays occasioned by her proposed amendments to the Swap Transaction might lead SAA to incur contractual penalties.

128. On 10 October 2015, a meeting was held between Airbus and certain SAA Board members, including Ms Myeni, in which Ms Myeni:

128.1 proposed amending the Swap Transaction with Airbus to include an African aircraft leasing company; and

128.2 falsely represented that this proposed amendment had been approved by the Board.

129. Ms Myeni's proposed amendments to the Swap Transaction caused the delay of the conclusion of the Swap Transaction.

130. On or about 15 October 2015, the Chief Financial Officer of SAA informed the Director-General of the National Treasury that the delay occasioned by the SAA Board's failure to sign-off on the Swap Transaction was impairing SAA's ability to meet its cash flow obligations.

131. On or about 6 November 2015, Ms Myeni received legal advice to the effect that:

131.1 SAA was obliged to perform in terms of the Swap Transaction; and  
that

131.2 SAA would be prejudiced by further delays of the Swap Transaction.

132. On 16 November 2015, Ms Myeni submitted an application to amend the section 54(2) approval of the Minister of Finance of 11 September 2015.
133. In her section 54(2) application of 16 November 2015, Ms Myeni:
- 133.1 stated, *alternatively* implied, that the Board had duly approved the proposed amendments she requested of the Minister;
  - 133.2 failed to say that the Board had already unanimously approved the original Swap Transaction, as alleged at paragraph 112 above.
  - 133.3 stated, *alternatively* implied that, in approving the proposed amendments, SAA had followed due processes under the Significance and Materiality Framework in terms of National Treasury Regulation 28.3;
  - 133.4 requested approval to amend the Swap Transaction by *inter alia* involving an African aircraft leasing company;
  - 133.5 relied on an unsolicited proposal Ms Myeni had received from Mr M Mngadi of Nedbank in respect of the financing and leaseback of five aircraft from Airbus;
  - 133.6 failed to include the contents of the legal opinion of 6 November 2015 to the effect that SAA was required to execute the Swap Transaction without the proposed amendments;
  - 133.7 failed to inform the Minister of Finance of the advice of senior SAA management that the delay of the Swap Transaction caused by the

proposed amendments threatened SAA's solvency and liquidity as well as its Network and Fleet Plan; and

133.8 failed to inform the Minister of Finance that Airbus did not agree to the proposed amendments.

134. Notwithstanding the contents of Ms Myeni's application to amend the section 54(2) approval of the Minister of Finance:

134.1 the Board had never duly approved the proposed amendments; and

134.2 SAA had not followed due process in terms of the Significance and Materiality Framework in terms of National Treasury Regulation 28.3 with regard to the proposed amendments.

135. The Minister of Finance declined the request for approval on 3 December 2015.

136. On 21 December 2015, the Minister of Finance directed the Board to conclude the Swap Transaction with Airbus in line with the section 54(2) approval which had been granted in July 2015.

137. By not following proper process in applying to amend the section 54(2) approval of the Minister of Finance of 11 September 2015, Ms Myeni caused SAA to breach the Significance and Materiality Framework in terms of National Treasury Regulation 28.3.

138. In respect of Ms Myeni's application to amend the section 54(2) approval of the Minister of Finance of 11 September 2015, as alleged at para 132 above, Ms Myeni failed to:



- 138.1 exercise the duty of utmost care to ensure the reasonable protection of the assets and records of SAA as a public entity (as contemplated in section 50(1)(a) of the PFMA);
- 138.2 act with fidelity, honesty, integrity and in the best interests of SAA as a public entity in managing its financial affairs (as contemplated in section 50(1)(b) of the PFMA);
- 138.3 disclose all the material facts, including those reasonably discoverable, which in any way may have influenced the Minister of Finance's decision (as contemplated under section 50(1)(c) of the PFMA);
- 138.4 take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure and expenditure not complying with the operational policies of SAA as the public entity (as contemplated at section 51(1)(b)(ii) of the PFMA);
- 138.5 take effective and appropriate steps to manage the available working capital efficiently and economically (as contemplated at section 51(1)(b)(iii) of the PFMA); and
- 138.6 take responsibility for the safeguarding of the assets and management of the revenue, expenditure and liabilities of SAA (as contemplated at section 51(1)(c) of the PFMA).

139. In respect of Ms Myeni's application to amend the section 54(2) approval of the Minister of Finance of 11 September 2015, as alleged at para 133 above, Ms Myeni:

- 139.1 grossly abused the position of director as contemplated in section 162(5)(c)(i) of the Companies Act;
- 139.2 used the position of director, or information obtained while acting in the capacity of a director to gain advantage for herself, or for another person other than SAA or a wholly-owned subsidiary of SAA, or to knowingly cause harm to SAA or a subsidiary of SAA, as contemplated in section 76(2)(a) of the Companies Act;
- 139.3 intentionally, or by gross negligence, inflicted harm upon SAA, contrary to section 76(2)(a) of the Companies Act, as contemplated in section 162(5)(c)(iii) of the Companies Act. Act In particular, Ms Myeni:
- 139.3.1 used the position of director to knowingly cause harm to SAA or SAA's subsidiaries;
- 139.3.2 failed exercise the powers and perform the functions of director in good faith and for a proper purpose; in the best interest of SAA; and/or with the degree of care or skill and diligence that may reasonably be expected of a person carrying out the same functions as Ms Myeni and having the general knowledge, skill and experience of that director; and
- 139.3.3 did not have any rational basis for believing that her decision was in the best interests of SAA;
- 139.4 acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of the

director's functions within, and duties to, SAA within the meaning of section 162(5)(c)(iv)(aa) of the Companies Act; and

139.5 acted in a manner described in section 77(3)(a) and (c) of the Companies Act, as contemplated in section 162(5)(c)(iv)(bb) of the Companies Act. In particular, Ms Myeni:

139.5.1 acted in the name of SAA, signed anything on behalf of SAA, or purported to bind the company or authorise the taking of any action by or on behalf of SAA, despite knowing that she lacked the authority to do so; and/or

139.5.2 acquiesced in the carrying on of the SAA's business despite knowing that it was being conducted in a manner that was reckless, *alternatively* with gross negligence, *further alternatively* for a fraudulent purpose.

140. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.

141. Ms Myeni's conduct in attempting to renegotiate the Swap Transaction delayed its implementation.

142. By delaying the implementation of the Swap Transaction, Ms Myeni exposed SAA to the following risks:

142.1 defaulting on its guarantee repayments as well as the breach of the Swap Transaction itself;

142.2 triggering of cross-defaults on other leasing arrangements; and

142.3 the breach of warranties and exposure in respect of acceleration clauses.

143. Due in part to the failure to conclude the Swap Transaction timeously, SAA:

143.1 was prevented from finalising SAA's 2014/15 financial statements as it was not a going concern;

143.2 could not hold the Annual General Meeting; and

143.3 could not table SAA's audited financial statements in Parliament timeously.

144. In respect of her conduct described at paragraph 141 above, Ms Myeni failed to:

144.1 exercise the duty of utmost care to ensure reasonable protection of the assets and records of SAA as a public entity (as contemplated in section 50(1)(a) of the PFMA);

144.2 act with fidelity, honesty, integrity and in the best interests of SAA as a public entity in managing its financial affairs (as contemplated in section 50(1)(b) of the PFMA);

144.3 disclose all the material facts, including those reasonably discoverable, which in any way may have influenced the Minister of Finance's decision (as contemplated under section 50(1)(c) of the PFMA);

- 144.4 take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure and expenditure not complying with the operational policies of SAA as the public entity (as contemplated at section 51(1)(b)(ii) of the PFMA);
- 144.5 take effective and appropriate steps to manage the available working capital efficiently and economically (as contemplated at section 51(1)(b)(iii) of the PFMA); and
- 144.6 take responsibility for the safeguarding of the assets and management of the revenue, expenditure and liabilities of SAA (as contemplated at section 51(1)(c) of the PFMA).

145. In respect of her conduct alleged at para 141 above, Ms Myeni:

- 145.1 grossly abused the position of director as contemplated in section 162(5)(c)(i) of the Companies Act;
- 145.2 used the position of director, or information obtained while acting in the capacity of a director to gain advantage for herself, or for another person other than SAA or a wholly-owned subsidiary of SAA, or to knowingly cause harm to SAA or a subsidiary of SAA as contemplated in section 76(2)(a) of the Companies Act;
- 145.3 intentionally, or by gross negligence, inflicted harm upon SAA, contrary to section 76(2)(a) of the Companies Act, as contemplated in section 162(5)(c)(iii) of the Companies Act In particular, Ms Myeni:

- 145.3.1 used the position of director to knowingly cause harm to SAA or SAA's subsidiaries;
- 145.3.2 failed exercise the powers and perform the functions of director in good faith and for a proper purpose; in the best interest of SAA; and/or with the degree of care or skill and diligence that may reasonably be expected of a person carrying out the same functions as Ms Myeni and having the general knowledge, skill and experience of that director; and
- 145.3.3 did not have any rational basis for believing that her decision was in the best interests of SAA;
- 145.4 acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of the director's functions within, and duties to, SAA within the meaning of section 162(5)(c)(iv)(aa) of the Companies Act; and
- 145.5 acted in a manner described in section 77(3)(a) and (c) of the Companies Act, as contemplated in section 162(5)(c)(iv)(bb) of the Companies Act. In particular, Ms Myeni:
- 145.5.1 acted in the name of SAA, signed anything on behalf of SAA, or purported to bind the company or authorise the taking of any action by or on behalf of SAA, despite knowing that she lacked the authority to do so; and/or
- 145.5.2 acquiesced in the carrying on of the SAA's business despite knowing that it was being conducted in a manner that was

reckless, *alternatively* with gross negligence, *further  
alternatively* for a fraudulent purpose.

146. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.

## THE ERNST & YOUNG REPORT

147. In or about 28 July 2015, SAA instructed EY to conduct an investigation into the procurement and contract management practices at SAA and its subsidiaries.
148. In or about 10 December 2015, EY sent a draft report to SAA, including to the Board.
149. The EY Report identified, *inter alia*, the following concerns:
- 149.1 overpayment in respect of SAA's contract with Kintetsu World Express South Africa (Pty) Ltd ("KWE"), concluded informally in 28 August 2014, as well as evidence of possible collusion between SAA officials and KWE;
  - 149.2 overpayment in respect of SAA's contract with Societe Internationale de Telecommunications Aeronatiques, concluded in September 2013;
  - 149.3 failure to follow correct tender processes and overpayment in respect of Air Chefs' contract with ADJ Maintenance CC in August 2013;
  - 149.4 failure to follow correct tender processes and overpayment in respect of Air Chefs' contract with Vizzini Motors (Pty) Ltd;
  - 149.5 failure to follow correct tender processes and overpayment in respect of Air Chefs' contract with First Garment Rental (Pty) Ltd ("First Garment") concluded in September 2012;



- 149.6 overpayment under, and questionable existence of, Air Chefs' informal "consultancy agreement" with First Garment;
- 149.7 a conflict of interest and overpayment in respect of South African Airways Technical SOC Ltd's ("SAAT's") contract with Mtha Aviation (Pty) Ltd;
- 149.8 overpayment in respect of SAAT's contract with Savuka Property Care Services CC;
- 149.9 failure to manage expenditure in respect of SAAT's contract with KWE as well the questionable nature of some of the services paid for by SAAT; and
- 149.10 informal and suspicious nature of SAAT's contract with AAR Corporation, which contract appears to have been prompted by SAA and resulted in the resignation of Mr Parsons from the Board.
150. The draft EY report recommended that SAA should take immediate steps to remedy each of the above issues.
151. From December 2015, Ms Myeni had knowledge of the draft EY Report.
152. 154. The final report was not materially different to the draft report.
153. 155. As Chairperson of the Board, Ms Myeni knew, *alternatively* ought to have known, that each of the concerns the EY Report identified had a negative impact on the operational and/or financial success of SAA and its subsidiaries.

154. Ms Myeni knew, *alternatively* ought to have known, that the Board ought to have taken steps to protect the interests of SAA within a reasonable period of time with regard to each of the concerns the EY Report identified.
155. To date, Ms Myeni and the Board have taken no material steps to address or remedy any of the issues and concerns raised in the EY Report.
156. By failing to take material steps to address or remedy any of the issues and concerns raised in the EY Report, Ms Myeni failed to:
- 156.1 exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity (as contemplated in section 50(1)(a) of the PFMA);
  - 156.2 take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure and expenditure not complying with the operational policies of the public entity (as contemplated at section 51(1)(b)(ii) of the PFMA);
  - 156.3 take effective and appropriate steps to manage the available working capital efficiently and economically (as contemplated at section 51(1)(b)(iii) of the PFMA); and
  - 156.4 take responsibility for the safeguarding of the assets and management of the revenue, expenditure and liabilities of SAA (as contemplated at section 51(1)(c) of the PFMA).

157. In respect of her failure to take material steps to address or remedy any of the issues and concerns raised in the EY Report, Ms Myeni:

- 157.1 grossly abused the position of director as contemplated in section 162(5)(c)(i) of the Companies Act;
- 157.2 used the position of director, or information obtained while acting in the capacity of a director to gain advantage for herself, or for another person other than SAA or a wholly-owned subsidiary of SAA, or to knowingly cause harm to SAA or a subsidiary of SAA, as contemplated in section 76(2)(a) of the Companies Act;
- 157.3 intentionally, or by gross negligence, inflicted harm upon SAA, contrary to section 76(2)(a) of the Companies Act, as contemplated in section 162(5)(c)(iii) of the Companies Act In particular, Ms Myeni:
- 157.3.1 used the position of director to knowingly cause harm to SAA or SAA's subsidiaries;
- 157.3.2 failed exercise the powers and perform the functions of director in good faith and for a proper purpose; in the best interest of SAA; and/or with the degree of care or skill and diligence that may reasonably be expected of a person carrying out the same functions as Ms Myeni and having the general knowledge, skill and experience of that director; and
- 157.3.3 did not have any rational basis for believing that her decision was in the best interests of SAA;
- 157.4 acted in a manner that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of her

functions within, and duties to, SAA, within the meaning of section 162(5)(c)(iv)(aa) of the Companies Act; and

157.5 acted in a manner described in section 77(3)(a) and (c) of the Companies Act, as contemplated in section 162(5)(c)(iv)(bb) of the Companies Act. In particular, Ms Myeni:

157.5.1 acted in the name of SAA, signed anything on behalf of SAA, or purported to bind the company or authorise the taking of any action by or on behalf of SAA, despite knowing that she lacked the authority to do so; and/or

157.5.2 acquiesced in the carrying on of the SAA's business despite knowing that it was being conducted in a manner that was reckless, *alternatively* with gross negligence, *further alternatively* for a fraudulent purpose.

158. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.

**WHEREFORE:**

(a) the first plaintiff asks this Honourable Court to:

- i. grant leave in terms of section 157(1)(d) of the Companies Act to bring this application; and

(b) the plaintiffs ask this Honourable Court to grant an order in the following terms:

- i. Ms Myeni is declared a delinquent director in terms of section 162(5) of the Companies Act;
- ii. all defendants who oppose the relief herein, jointly and severally, the one paying the others to be absolved, are to pay the costs of suit on an attorney and own client scale, including the costs of two counsel;
- iii. any and all costs incurred by Ms Myeni in the course of these proceedings, but which were in fact paid by another defendant or any public entity on behalf of Ms Myeni, will be repaid to that defendant or entity by Ms Myeni in her personal capacity;
- iv. Further and/or alternative relief.



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**C Steinberg**  
Plaintiffs' Counsel



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**TO: THE REGISTRAR**  
High Court  
**PRETORIA**

"POC1"



**SOUTH AFRICAN AIRWAYS**

A STAR ALLIANCE MEMBER 

# **Supply Chain Management Policy**

September 2011  
This policy contains 36 pages  
SAA SCM Policy Version 2.0

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## 1. DOCUMENT DEFINITION

Version

Date February 2011

Summary

This document is the Supply Chain Management Policy applicable to South African Airways (Pty) Ltd and its subsidiaries, where applicable.

Proposed

Date:

\_\_\_\_\_  
HEAD OF GLOBAL SUPPLY MANAGEMENT (SAA)

Recommended

Date:

\_\_\_\_\_  
CHIEF EXECUTIVE OFFICER

Approved by the  
SAA Board of  
Directors

Date:

\_\_\_\_\_  
Resolution

Effective date

Next revision date

### 1.1 DISTRIBUTION OF THE SUPPLY CHAIN MANAGEMENT POLICY AND AMENDMENTS

- 1.1.1 The Supply Chain Management policy and amendments shall be available to all the employees of SAA via the intranet or on request from the Global Supply Management unit.

## 1.2 AMENDMENT HISTORY

No	Version	Effective date	Amended section	Amendment reference
1	Version 1.0	1 March 2011	Total review	
2	Version 2.0	September 2011		1
3				
4				
5				
6				

## 1.3 THIS SUPPLY CHAIN MANAGEMENT POLICY DOCUMENT

1.3.1 This policy document gives effect to the legislation and the overall objectives stated, as it pertains to supply chain management (SCM).

## 1.4 POLICY REVIEW

1.4.1 The Head of Global Supply Management (GSM) is the accountable custodian of this policy document, except for section 25 for which the Head of Supply Chain SAAT is the custodian.

1.4.2 The SAA Board of Directors (the Board) is the principal owner and approver of this policy.

1.4.3 This document will be reviewed periodically for any possible amendments.

## 2. TERMINOLOGY

### 2.1 ABBREVIATIONS

AA	Accounting Authority
BAC	Bid Adjudication Committee
BBBEE	Broad-Based Black Economic Empowerment
BEE	Black Economic Empowerment
CEO	Chief Executive Officer
DOA	Delegation of Authority
DTI	Department of Trade and Industry
GSM	Global Supply Management
HDI	Historically Disadvantaged Individual
LCC	Life Cycle Costing
NIPP	National Industrial Participation Programme

<b>OEM</b>	Original Equipment Manufacturer
<b>PFMA</b>	Public Finance Management Act (Act 1 of 1999, as amended)
<b>PPPFA</b>	Preferential Procurement Policy Framework Act (Act 5 of 2000)
<b>RFB</b>	Request for bid
<b>RFI</b>	Request for information
<b>RFP</b>	Request for proposal
<b>RFQ</b>	Request for quotation
<b>SAA</b>	South African Airways (Pty) Ltd
<b>SARS</b>	South African Revenue Services
<b>SAAT</b>	South African Airways Technical (Pty) Ltd
<b>SCM</b>	Supply Chain Management
<b>SITA</b>	State Information Technology Agency (Pty) Ltd
<b>SMME</b>	Small, Medium and Micro Enterprise
<b>TCO</b>	Total Cost of Ownership
<b>TOR</b>	Terms of Reference

## 2.2 DEFINITIONS

<b>ACCOUNTING AUTHORITY</b>	Body or person mentioned in section 49 of the PFMA.
<b>ASSET</b>	It is movable and immovable resources controlled by an entity as a result of past events and from which future economic benefits or service potential are expected to flow to the entity.
<b>COLLABORATIVE BUSINESS RELATIONSHIPS</b>	An exchange of commercial or other privileges.
<b>END-USER</b>	The end-user is the person requiring a product/service from GSM.
<b>DELEGATED OFFICIAL</b>	The person delegated powers in terms of the approved Delegation of Authority.
<b>FRUITLESS AND WASTEFUL EXPENDITURE</b>	Expenditure which was made in vain and would have been avoided had reasonable care been exercised.
<b>HIS</b>	Refers to and includes both genders.
<b>HISTORICALLY DISADVANTAGED INDIVIDUAL</b>	Historically Disadvantaged Individual (HDI) means a South African citizen – who had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 10 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) ("the Interim

	Constitution"); and/or who is a female; and/or who has a disability; provided that a person, who obtained South African citizenship on or after the coming into effect of the Interim Constitution, is deemed not to be an HDI.
<b>IRREGULAR EXPENDITURE</b>	Expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation.
<b>LIFECYCLE COSTING</b>	Lifecycle costing is a technique developed to identify and quantify all costs, initial and ongoing, associated with a project or installation over a given period. Thus, it is a tool that forecasts the total cost of a purchase throughout its predetermined lifecycle.
<b>PFMA</b>	The Public Finance Management Act, 1999 (Act No 1 of 1999) as amended, as well as the National Treasury Regulations.
<b>PROCUREMENT</b>	Procurement is the process of purchasing of goods, works and services.
<b>PUBLIC PRIVATE PARTNERSHIP</b>	A Public Private Partnership (PPP) means a commercial transaction between an institution (public entity) and a private party as defined in Treasury Regulation 16.
<b>RESPONSIBILITY</b>	The obligation imposed on an individual to properly exercise the authority vested in him/her.
<b>RISK MANAGEMENT</b>	Risk management may be defined as the identification, measurement and control of risks that threaten the assets and earnings of a business or enterprise.
<b>SMALL MEDIUM AND MICRO ENTERPRISE (SMME)</b>	SMME is as defined in the National Small Enterprise Act, 102 of 1996, as amended.
<b>SUPPLIER</b>	A supplier is the juristic person or legal entity that provides goods, services or works to SAA.
<b>SUPPLY CHAIN MANAGEMENT</b>	The function that collaborates or integrates : Demand management. Acquisition management (including document management). Logistics management. Disposal management. Procurement risk management. Procurement performance management.
<b>SUPPLY CHAIN MANAGEMENT PRACTITIONER</b>	A person who practises supply chain management as a profession or any other official practising or involved with supply chain management.
<b>VALUE FOR MONEY</b>	Best value for money means the best available outcome when all relevant costs and benefits over the procurement cycle are considered.

*9 d*



### **3. LEGISLATIVE/REGULATORY ENVIRONMENT**

#### **3.1 GENERAL**

- 3.1.1 SAA is committed to applying relevant legislative and regulatory requirements as they pertain to SCM.

#### **3.2 THE CONSTITUTION**

- 3.2.1 SAA shall apply section 217 of the Constitution of the Republic of South Africa, (Act No 108 of 1996, as amended) by contracting for goods and services in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. SAA shall also implement a preferential procurement system.

#### **3.3 THE PUBLIC FINANCE MANAGEMENT ACT (PFMA)**

- 3.3.1 SAA shall apply the Public Finance Management Act, Act 1 of 1999 as amended by Act 29 of 1999 as it pertains to SCM, as applicable to a Schedule 2 Public Entity.

#### **3.4 TREASURY REGULATIONS ISSUED IN TERMS OF THE PFMA**

- 3.4.1 SAA shall apply the Treasury Regulations to the extent required by a public entity listed in Schedule 2 of the PFMA.
- 3.4.2 In terms of Chapter 16A of the Treasury Regulations pertaining to SCM, only the principles contained therein will be applied and not the letter of the regulations.

#### **3.5 THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT (PPFA) AND ITS REGULATIONS**

- 3.5.1 SAA shall apply the Preferential Procurement Policy Framework Act, (Act No 5 of 2000) and its regulations applicable to a Schedule 2 Public Entity.

#### **3.6 BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT**

- 3.6.1 SAA will adhere to the directives contained in the BBBEE Act, Act No 53 of 2003, and its Codes of Good Practice as it pertains to the procurement process.

#### **3.7 THE NATIONAL SMALL ENTERPRISE ACT**

- 3.7.1 SAA shall use the guidelines in The National Small Enterprise Act, Act No 102 of 1996, as amended, in promoting small enterprises in the Republic.

#### **3.8 STATE INFORMATION TECHNOLOGY AGENCY (SITA) ACT**

- 3.8.1 The State Information Technology Agency (SITA) Act, Act No 88 of 1998, as amended, requires that SITA may act as the procurement agency for public entities' information technology requirements should the public entity so wish. SAA shall not be obliged to utilise this service but may do so when deemed necessary.

### **3.9 THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT**

- 3.9.1 SAA shall adhere to the prescripts in the Prevention and Combating of Corrupt Activities Act, Act 12 of 2004 as it affects the supply chain process.

### **3.10 OTHER RELEVANT PIECES OF LEGISLATION**

- 3.10.1 Cognisance shall be taken of the following pieces of legislation that will have an impact on the supply chain environment:
- 3.10.2 Promotion of Access to Information Act (PAIA), Act 2 of 2000.
- 3.10.3 Promotion of Administrative Justice Act (PAJA), Act No 3 of 2000.
- 3.10.4 The Competition Act, Act No 89 of 1998.
- 3.10.5 The Protected Disclosures Act, Act No 26 of 2000.
- 3.10.6 All other common law provisions relating to procurement.

### **3.11 OTHER GOVERNANCE GUIDELINES**

- 3.11.1 Cognisance shall be taken of The King Reports on Corporate Governance for South Africa, as amended, as it impacts on the procurement environment.

## **4. SCOPE AND OBJECTIVES**

### **4.1 SCOPE**

- 4.1.1 Unless otherwise stated SAA's SCM policy, as contained in this document, is applicable to SAA and its subsidiaries.
- 4.1.2 It covers all purchasing of goods, services (tangible and intangible) and works covering capital and operational expenditure, fixed assets and the appointment of consultants as well as the disposal and selling of obsolete items.
- 4.1.3 Mango Airlines (Pty) Ltd is excluded from this policy.

### **4.2 EXCLUSIONS**

- 4.2.1 The following are inter alia excluded from the SCM policy:
- 4.2.1.1 Petty cash purchases which are subject to instructions as issued in terms of the applicable financial policy.
- 4.2.1.2 Professional memberships and subscriptions.
- 4.2.1.3 Water and electricity.
- 4.2.1.4 Income generating transactions, where no outlay of funds are required.
- 4.2.1.5 Rates and taxes and other levies raised by local authorities or provincial administrations.

- 4.2.1.6 Landing and navigation services fees.
- 4.2.1.7 Goods/services provided by SAA Divisions/BU's/Subsidiaries.
- 4.2.1.8 Letting and hiring; and acquisition and alienation of land and fixed property where the bidding process cannot be utilised.
- 4.2.1.9 Sponsorships and donations.
- 4.2.1.10 Studies through specific institutions.

**4.3 PURPOSE**

- 4.3.1 The purpose of this policy is to set guidelines for SAA personnel engaged in the SCM process in order to ensure compliance with governance requirements and to ensure SAA achieves its objectives.
- 4.3.2 The implementation of the policy shall be effected through communication, guidelines, strategies, directives, processes and procedures.

**4.4 OBJECTIVES**

The objectives of this policy are to:

- 4.4.1 Ensure a fair, equitable, transparent, competitive and cost-effective SCM process;
- 4.4.2 Achieve continuous improvement on all SCM transactions;
- 4.4.3 Promote Broad-based Black Economic Empowerment (BBBEE); and
- 4.4.4 Achieve value for money in all SCM activities;

**4.5 SCM PRINCIPLES**

- 4.5.1 SAA subscribes to the SCM principles as noted hereunder:

<b>Transparency</b>	The SCM process shall be open within the confines of the law.
<b>Equal treatment</b>	All bidders and suppliers shall be treated equally throughout the whole SCM process within the context of this policy.
<b>Effectiveness</b>	SAA shall strive for SCM system effectiveness and shall carry out its SCM processes as cost-effectively as possible.
<b>Efficiency</b>	SAA shall strive to standardise and simplify procedures where appropriate to enhance SCM system effectiveness.
<b>Competitiveness</b>	SAA shall satisfy its requirements through competition unless there are justifiable reasons to

	the contrary.
<b>Fairness</b>	All bidders and contractors shall be dealt with fairly and without unfair discrimination.
<b>Ethics</b>	All SAA's employees and suppliers will subscribe to the highest ethical standards. Employees will comply with the SAA Code of Ethics and Conduct.
<b>Equity</b>	SAA shall strive to promote BBBEE.
<b>Uniform application</b>	SAA shall ensure that the application of its SCM policy and process is uniformly applied.
<b>Accountability</b>	Each practitioner shall be accountable for their decisions and actions relative to their SCM responsibilities.
<b>Value for money</b>	SAA shall achieve value for money through the optimum combination of life cycle cost and quality.
<b>Commitment to safety, health and the environment</b>	SAA is committed to the health and safety of its personnel; suppliers and the public in the application of its SCM process.

## 5. AUTHORITY TO EXECUTE

### 5.1 DELEGATION OF AUTHORITY (DOA)

- 5.1.1 All SCM activities shall be executed in accordance with pre-established levels of authority through delegations, as approved by the Board and delegated to the Chief Executive Officer (CEO) to ensure control and division of responsibilities.

## 5.2 DETERMINATION OF THRESHOLDS

- 5.2.1 The determination and review of SCM thresholds shall be considered and approved in line with the DOA.

## 5.3 RESPONSIBILITIES OF SCM PRACTITIONERS

- 5.3.1 Each official shall carry out his SCM activities within his line of responsibility and take appropriate steps to prevent any unauthorised, irregular, fruitless and wasteful expenditure.

## 5.4 PARTICIPATION OF EXTERNAL ADVISORS/CONSULTANTS

- 5.4.1 Specialist advisors/consultants may assist in the execution of the SCM function.
- 5.4.2 No advisor/consultant may form part of the final decision-making process regarding the award of a bid.

## 6. ROLES AND RESPONSIBILITIES

### 6.1 SCM FOCUS

- 6.1.1 The roles and responsibilities of all structures hereunder are defined only from the perspective of SCM.

### 6.2 ROLES OF GOVERNANCE STRUCTURES

- 6.2.1 The Head of GSM together with line management may establish ad hoc governance structures to manage the SCM process to assist in making recommendations to the relevant award authority.

#### 6.2.2 BOARD OF DIRECTORS

- 6.2.2.1 The Board should ensure that SAA is fully aware of and complies with applicable laws, regulations, governance, policies and codes of business practice as it pertains to SCM.

- 6.2.2.2 Notwithstanding the above the Board shall remain vested with all powers relating to SCM matters.

- 6.2.2.3 The Board will approve all SCM transactions in line with the DOA and on request, any other transactions of lower value as it deems fit.

- 6.2.2.4 The Board will refer transactions of materiality and significance to the shareholder for approval in line with the DOA.

#### 6.2.3 PROCUREMENT AND TENDER PROCESSES COMMITTEE (PTPC)

The PTPC has the responsibility to:

- 6.2.3.1 Review procurement and tender policies and make recommendations to the Board on matters over which the Board has decision-making powers;

6.2.3.2 Recommend the SCM policy to the Board for approval;

6.2.3.3 Review bid awards as it deems fit prior to Board approval; and

6.2.3.4 Review and recommend bid awards in line with the PTPC charter.

#### 6.2.4 THE CHIEF EXECUTIVE OFFICER (CEO)

6.2.4.1 The CEO shall:

- Take all reasonable steps to ensure that SAA implements a SCM policy taking into account any treasury and other guidelines.
- Take all reasonable steps to ensure that proper mechanisms, delegation (through sub-delegation) and separation of duties in the SCM environment are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices.
- Exercise utmost care to ensure reasonable protection of the SCM records of SAA.
- Appoint members to the Bid Adjudication Committee (BAC).
- Approve recommendations for bid awards within delegated authority.
- May at any time refer bid recommendations back for further clarification from bidders or any other award authority.

6.2.4.2 The CEO or delegate is responsible for the preparation and submission of the draft SCM policy as well as amendments thereof to the Board for adoption.

#### 6.2.5 BID ADJUDICATION COMMITTEE (BAC)

6.2.5.1 The BAC is a standing cross functional committee, constituted by the CEO, and comprising key business representatives, with the objective to review, ratify, approve or reject supplier selection recommendations made by the Cross Functional Sourcing Team (CFST) in line with the delegation of authority.

6.2.5.2 The BAC performs, among other, the following main functions as contained in the BAC charter:

- Ensure that proper governance was followed during the tender process.
- Award bids within its delegated authority.
- Recommend bid awards in excess of its delegated authority to the applicable award authority.
- Consider all other matters as delegated from time to time.
- May override recommendations from the CFST provided that due motivation is provided.
- May refer bid submissions back for clarification from bidders and the CFST.
- The BAC operates under specific terms of reference (TOR) that is reviewed regularly.

## **6.2.6 CROSS FUNCTIONAL SOURCING TEAM (CFST)**

- 6.2.6.1 The CFST is a team, constituted by the Head of GSM in consultation with line functions, that comprise individuals, preferably at management level and above, who are specialists from different functional areas brought together to achieve procurement related tasks. The team will pursue purchasing or sourcing goals and decisions for purchases above the quotation threshold, in line with the DOA.
- 6.2.6.2 The composition of the CFST will vary depending on the nature and complexity of the specific procurement project and will always include a representative from GSM and the business unit concerned. A representative from Enterprise Risk Management must be included in high value and high profile bids.
- 6.2.6.3 Members of the CFST must place themselves under the authority of the Head of GSM for the duration of the bid evaluation on matters pertaining to procurement and may not withdraw without prior approval by the Head of GSM.
- 6.2.6.4 The CFST shall be responsible for various functions including but not limited to the following:
- Developing selection criteria for tenders.
  - Compilation and issuing of the RFQ/RFI/RFP/RFB documents.
  - Facilitate briefing sessions.
  - Perform bid evaluations
  - Conduct site visits when applicable.
  - Conduct negotiations with suppliers.
  - Perform due diligence evaluations on prospective suppliers (if required).
  - Make procurement related decisions.
  - Promote Broad-based Black Economic Empowerment.
  - Make recommendations in line with the Delegation of Authority.

## **6.2.7 HEAD OF GSM**

- 6.2.7.1 The Head of GSM and the SCM team, upon such request have the authority to procure on behalf of the SAA end users in line with this policy and the DOA.
- 6.2.7.2 The Head of GSM will recommend the draft SCM policy to the PTPC.
- 6.2.7.3 The Head of GSM in consultation with relevant line functions will appoint members of the respective CFSTs.

## **6.2.8 GLOBAL SUPPLY MANAGEMENT (GSM)**

### **6.2.8.1 GSM shall have the following SCM responsibilities:**

- Manage the material/service and vendor master.
- Manage the procurement function.
- Quotation/bid management.
- Evaluations and recommendations.
- Facilitate adjudication.
- Recommend the award of bids in line with the DOA.
- Contract conclusion and administration.
- Administration of contracts.
- Logistics management.

- Disposal management.
- SCM risk management.

### 6.2.9 END-USER

6.2.9.1 The end-users shall have the following SCM responsibilities:

- Take ultimate responsibility for the provision of specifications/terms of reference and demand determination.
- Assist with evaluations and recommendations.
- Ensure availability of approved funding and/or business case before procurement.
- Contract and SLA management.

### 6.2.10 AWARD AUTHORITIES

6.2.10.1 The following are the award authorities in SAA:

The delegated official	<input type="checkbox"/> Award quotations up to and including the quotation threshold within delegated powers.
Bid Adjudication Committee	<input type="checkbox"/> Award bids within its delegated powers. <input type="checkbox"/> Recommend bids in excess of its delegation in line with the DOA.
CEO	<input type="checkbox"/> Award bids within delegated powers. <input type="checkbox"/> Make recommendations to the PTPC and Board on bids over which the Board has decision-making powers.
PTPC	<input type="checkbox"/> Award bids within delegated powers. <input type="checkbox"/> Make recommendations to the Board.
Board of Directors	<input type="checkbox"/> Award all bids not delegated. <input type="checkbox"/> Obtain approval from the shareholder on material and significant matters.

## 7. ETHICS IN PROCUREMENT

### 7.1 ETHICAL STANDARDS

- 7.1.1 SAA commits itself to a policy of fair dealing and integrity in the conducting of its SCM activities.
- 7.1.2 SAA shall conduct business with suppliers in a manner that encourages good supplier relations within an environment that promotes competition and in compliance with the law.
- 7.1.3 In conducting SCM activities all staff (including SCM practitioners) should adhere to the SAA Code of Ethics and Conduct. Violations may result in disciplinary action.



## **8. DEMAND MANAGEMENT**

### **8.1 RESPONSIBILITY FOR DEMAND MANAGEMENT**

8.1.1 Demand Management involves activities associated with managing the type and volumes of SAA's external procurement. The objective is to ensure that the correct quantities of the correct products or services are procured from suppliers. Effective demand management in SAA will ensure that:

- The correct level of customer service is delivered to internal customers in terms of the right product, service, quality, cost and quantity of goods required.
- SCM activities are better planned.
- Optimum levels of inventory are achieved.
- Resources are allocated effectively during the SCM process.
- Unnecessary demand is avoided.

8.1.2 Heads of business units must, annually, align activities in their strategic plan, operational plans and approved budget allocations with goods, services and asset requirements of SAA in order to develop their demand plans. These plans must inform the procurement requirements.

## **9. PREFERENTIAL PROCUREMENT**

9.1.1 Preferential Procurement in SAA will be implemented in line with the PPPFA and its regulations applicable to Schedule 2 Public Entities; the BBBEE Act and the Codes of Good Practice.

9.1.2 SAA will actively promote the increase in procurement from BBBEE enterprises and SMMEs.

9.1.3 The increase in BBBEE procurement will be achieved through the application of several strategic interventions, which may include but are not limited to:

- Setting of minimum weightings for BBBEE as an evaluation criterion for all supplier selection initiatives.
- Developing a database for BBBEE enterprises which will be updated regularly.
- Demanding BBBEE accreditation of suppliers.
- Setting of BBBEE development plans with suppliers where appropriate.

9.1.4 The minimum BBBEE weightings will not be applicable to procurement for fleet acquisition and leasing; aircraft spares; procurement from regional and overseas suppliers and petty cash purchases. The Industrial Participation Programme (IPP) as prescribed by the DTI is applicable to international suppliers.

## **10. MANAGEMENT OF SUPPLIERS**

### **10.1 SUPPLIER SELECTION**

10.1.1 SAA will do business with suppliers who best meet the set evaluation criteria.

### **10.2 ESTABLISHMENT OF THE DATABASE OF PROSPECTIVE SUPPLIERS PER COMMODITY**

- 10.2.1 SAA shall during its SCM process establish and maintain a database of prospective suppliers per commodity for the purpose of obtaining quotations.
- 10.2.2 The database of prospective suppliers shall be used effectively to promote BBBEE as well as the promotion of businesses owned by Historically Disadvantaged Individuals (HDI) and SMMEs.
- 10.2.3 Prospective suppliers will be assessed in terms of predetermined evaluation criteria. Supplier credentials shall comply with verification requirements of BBBEE.

### 10.3 SUPPLIER RELATIONS

- 10.3.1 SAA shall maintain and practice the highest possible standards of business ethics, professional courtesy, and competence in all its dealings with suppliers.
- 10.3.2 Suppliers are considered important partners in the supply chain of SAA.

### 10.4 COLLABORATIVE BUSINESS RELATIONSHIPS

- 10.4.1 SAA shall ensure that all suppliers are given equal and fair treatment. Suppliers that are already procuring from or supplying to SAA will:
- Be afforded the opportunity to submit proposals for SAA's requirements, provided that they meet the set evaluation criteria.
  - Be awarded the business based on equal treatment and competitiveness.
  - Where evaluation scores on the set evaluation criteria are equal, collaborative business relationships may be a decisive factor in the award.

### 10.5 SUPPLIER PERFORMANCE

- 10.5.1 The SCM team will evaluate performance of major suppliers against agreed contractual deliverables at least annually.

### 10.6 SUPPLIER RESTRICTION

- 10.6.1 Suppliers may, under the below-mentioned circumstances, be restricted from current and future business with SAA for a term determined by the Board or as provided for in legislation:
- Non-compliance with legislation such as the Prevention and Combating of Corrupt Activities Act (restricted from current and future business).
  - Proven non-performance/non-compliance with contractual obligations when stipulated as a condition of bid and contract (restricted from future business).
  - Proven unethical actions and behaviour and abuse of the SCM system (restricted from current and future business).

### 10.7 SUPPLIER COMMUNICATION DURING THE BID PROCESS

- 10.7.1 The channel for all communication during the bid process shall be through the GSM contact person as indicated on the tender document.

### 10.8 SUPPLIER SAMPLES

10.8.1 Samples of commercially available products may be requested from bidding suppliers.

10.8.2 SAA shall not pay for samples provided and samples damaged/destroyed as a result of testing.

10.8.3 SAA shall not be obliged to endorse any products/services provided by suppliers.

10.8.4 SAA will provide feedback on the results of tested samples, however, due procurement process should be followed before entering into contracts.

#### **10.9 SUPPLIER FACILITIES**

10.9.1 Visits by the CFST members to supplier facilities should only be to evaluate a supplier's capabilities and should be undertaken as part of the functions of the CFST.

#### **10.10 SUPPLIER VISITS TO SAA**

10.10.1 Supplier representatives may have access to SAA's staff to deal with their services and products, however, all tender enquiries should go through the GSM unit's relevant delegate.

#### **10.11 PURCHASES FROM EMPLOYEES**

10.11.1 It shall be SAA's policy not to purchase any goods or services from any employee or a business with material ownership by an employee. The relevant declarations should be compiled with in line with the SAA Code of Ethics and Conduct.

### **11. SYSTEM OF PROCUREMENT MANAGEMENT**

#### **11.1 HIERARCHY FOR SATISFYING REQUIREMENTS**

11.1.1 Before satisfying requirements through a procurement process, the requirements must first be endeavoured to be satisfied through existing contracts; items in stock and from subsidiaries, where appropriate.

#### **11.2 PROCUREMENT OF GOODS, SERVICES AND WORKS**

11.2.1 Goods, services and works shall only be procured in accordance with authorised policy.

11.2.2 Procurement of goods, services and works, either through quotations or through a bidding process, shall be within the threshold values, in line with the DOA.

#### **11.3 REQUEST FOR INFORMATION (RFI)**

11.3.1 If sufficient information is not readily available with which to draft terms of reference/specifications, a RFI process may be followed in order to obtain more market information in order to prepare the specification.

11.3.2 No award can be made following a RFI process, however, the subsequent request for bid (RFB) may be restricted to respondent suppliers provided that it was so specified in the RFI document.

#### 11.4 REQUEST FOR PROPOSAL (RFP)

11.4.1 This method should be followed where the tender functionality is clear but supplier bids will be in the form of proposals that will differ in the achievement of the set functionality/requirement. Selection is based on the quality of the proposal, its cost and other criteria through a competitive process.

#### 11.5 REQUEST FOR BID (RFB)

11.5.1 A RFB is generally used when the specification of the product/service as the case may be is well defined and specific bid responses are required rather than creative responses. Selection is based on compliance to the requirement, cost and other criteria through a competitive process.

#### 11.6 REQUEST FOR QUOTATION (RFQ)

11.6.1 The RFQ process should be followed for all requirements up to the quotation threshold. A minimum of three quotes should be obtained if possible, verbal or written based on the value of the purchase.

#### 11.7 NEGOTIATIONS

11.7.1 Direct negotiations with single or sole source suppliers shall only be permitted after approval by the delegated authority.

11.7.2 Negotiation sessions shall be held with short-listed suppliers during the normal course of the procurement process as-and-when required.

11.7.3 Information required for clarification purposes may be requested from short-listed and other bidders during negotiations or during the normal course of the procurement process provided it does not prejudice any other bidder.

#### 11.8 BUILDING, ENGINEERING OR CONSTRUCTION WORKS

11.8.1 In case of construction works, it shall be done according to known provisions of the construction industry. The Construction Industry Development Board (CIDB) may be consulted.

#### 11.9 APPOINTMENT OF CONSULTANTS

11.9.1 The delegation to appoint consultants shall reside with the CEO in line with the DOA. All other award authorities will only have recommendation powers.

#### 11.10 SAA PROCUREMENT THRESHOLDS (AS AMENDED FROM TIME TO TIME)

Threshold	Mechanism	Pre-requisite	Evaluation	Award
Up to R1500/Purchase	Petty cash	Available budget	Business Unit	Business Unit

Threshold	Mechanism	Pre-requisite	Evaluation	Award
Between R1500 and R30 000 per request	Verbal three quote system	Available budget and purchasing requisition	Purchasing Officer	Head of GSM or delegate
Up to R500 000 per request	Written three quote system	Available budget, purchasing request and specification	Purchasing Officer	In line with DOA
Above R500 000 per request	Competitive tender	Business Case/ budget approval and specification	CFST	In line with DOA

- The thresholds include VAT.
- It is a contravention of this policy to split requisitions in order to circumvent the approved thresholds and delegations of authority.
- For Outstations and applicable subsidiaries the procurement of goods and services with an estimated value of less than R500 000; the relevant outstation or subsidiary will follow the quote process and approval will be in line with the relevant DOA.
- SAA Technical (SAAT) has its own thresholds relating to the purchase of aircraft, spares, parts, services and tooling (refer Par. 25)

#### 11.11 REVERSE AUCTIONS UP TO THE QUOTATION THRESHOLD (VAT EXCL.)

11.11.1 The process of reverse auctions may be applied for procurement of goods up to the quotation threshold and where the requirement is not complex provided that the Enterprise Resource Management system is able to facilitate such transactions in a secure environment.

#### 11.12 PROCUREMENT PROCESS ABOVE THE QUOTATION THRESHOLD

11.12.1 Competitive open bidding shall be used for procurement above the quotation threshold.

11.12.2 SAA may apply the two stage bidding process in cases of certain contracts or works of a specialised nature, where it is impractical to prepare exact technical specifications in advance or where it becomes more practical to do so. This will involve a pre-qualification process to establish a panel of bidders.

11.12.3 Pre-qualifications should be based entirely upon the ability of prospective bidders to meet the evaluation criteria of SAA for the particular contract.

11.12.4 Where goods or services of a specialised nature are required on a recurring basis, a list of approved providers may be established through the competitive bidding process. The award for specific projects under this arrangement will follow a close bidding process to the panel and the recommendation to award will be approved in terms of the DOA.

### 11.13 LIMITED/CONFINED BIDDING

11.13.1 SAA shall use limited bidding only in the following exceptional circumstances:

11.13.1.1 In cases of where it becomes impossible or impractical to follow the standard procurement process.

11.13.1.2 In cases of emergency which are defined as serious, unexpected and potentially dangerous circumstances requiring immediate rectification such as a threat or interruption in SAA's ability to execute its mandate or an immediate threat to the environment or human safety.

11.13.1.3 Multiple source bidding where there is proven limited competition in the market and there is good reason to restrict it to only those few bidders such as standardisation on a certain brand/product.

11.13.1.4 Single source bidding where, after a thorough analysis, there is good and justifiable reason to restrict the process to only one bidder such as where you enter into a maintenance contract with only the bidder who supplied the product otherwise the product loses its guarantee.

11.13.1.5 Sole source bidding where no competition exists and it is proven that only one bidder exists.

11.13.1.6 ~~Bad planning shall not be acceptable as justification for the use of limited bidding.~~

11.13.1.7 Such exceptions with the justification thereof by line, below the bidding threshold shall be approved by the Head of GSM. Exceptions above the bidding threshold with proper motivation and justification should be approved by the BAC prior to issuing of tenders. The normal approval process for award will follow in line with the DOA.

### 11.14 EMERGENCY PURCHASES

11.14.1 An emergency situation is defined as one that is serious, unexpected and potentially dangerous where significant financial loss may occur or a serious disruption of business may result. In these instances the established procurement policy may be circumvented. Poor planning on behalf of business is not deemed to be an emergency.

11.14.2 The following are examples of emergency situations:

- Disasters (e.g. damage from cyclones, floods, fire, etc).
- Customer service impacting conditions.
- System failures.
- Aircraft on ground or potential on ground situations.
- Jeopardising the safety and health of others.

11.14.3 The order to proceed in engaging a supplier can be issued, preferably via the GSM unit and all the necessary paperwork for the emergency purchase should be completed following the incident to ensure a proper audit trail. The ratification must be signed off in line with the DOA provisions for approval of an expense incurred and by the Head of GSM.

11.14.4 Approved suppliers or those previously used by SAA should be used whenever possible for emergency situations.

#### 11.15 ONE QUOTE PROCESS

11.15.1 It is not feasible to apply the quotation or tender process for certain requirements for example:

- Specific training.
- Venues and conference facilities.
- Catering in a specific area.
- Tender and promotional adverts in newspapers.
- Participation by SAA in partner marketing events.

For the above mentioned requirements only one quote has to be obtained by the end-user with the circumstances duly motivated and submitted to the relevant SCM official to complete the approval process in line with the DOA.

#### 11.16 ACQUISITION AND LEASES OF AIRCRAFTS

Due to the limited number of aircraft manufacturers for the type of aircraft required by SAA, the bidding process for aircraft lends itself to a closed tender process. The following policy shall apply:

11.16.1 The Fleet Committee shall appoint a CFST comprising of representatives from all areas directly involved in the operations of the SAA fleet, SAAT and Legal Services.

11.16.2 The CFST and Fleet Committee shall be responsible for the tender preparation, evaluation, negotiation, recommendations and contracting.

11.16.3 Closed bids will be issued to aircraft suppliers and no prior BAC approval is required.

11.16.4 Recommendations from the Fleet Committee are submitted to the BAC for onward approval to the CEO, PTPC and the Board in line with the DOA.

The Board will seek approval from the shareholder prior to the award of the contract to the supplier.

#### 11.17 CONDONEMENTS

Condonement for any irregular purchases, where due process has not been followed, can only be approved by the CEO up to the delegated approval level and by the Board in excess of such delegated authority, provided due motivation is furnished.

### **11.18 CONTRACT EXTENSIONS**

Contract extensions in terms of scope, value and term will be performed in line with the approved DOA.

### **11.19 INTERNATIONAL PURCHASES**

SAA may procure from abroad provided that the Treasury unit is consulted for advice. The Treasury unit must approve all currency related transactions.

## **12. QUOTATION/BID COMPILATION**

### **12.1 LANGUAGE OF QUOTATION/BID DOCUMENTS**

12.1.1 SAA shall compile all bid documentation in English.

### **12.2 CALLING FOR BIDS/QUOTATIONS**

12.2.1 Bids and quotations shall be invited by the GSM unit.

### **12.3 ADVERTISING OF BIDS**

12.3.1 All open tenders shall at least be advertised in the Government Tender Bulletin and/or a newspaper with national coverage.

### **12.4 CLOSING TIME OF BIDS/QUOTATIONS**

12.4.1 Tenders/quotations of SAA shall close at a time and on the day indicated in the tender/quotation documents.

### **12.5 DETERMINING THE CLOSING PERIOD**

12.5.1 Bids shall be advertised for at least 14 days before closing time, except in urgent cases when bids may be advertised for such shorter periods as agreed with the Head of GSM or delegate.

### **12.6 DETERMINING THE VALIDITY PERIOD**

12.6.1 The validity period should allow SAA sufficient time to finalise the evaluation and award process of the tender/quotation but the minimum period is 120 days from the closing date of the tender. The chairperson of the CFST may request extension of the validity period from all bidders prior to its expiry.

### **12.7 AVAILABILITY OF TENDER DOCUMENTS**

12.7.1 Tender documents shall be ready and available before the requirement is advertised.

### **12.8 SALE OF BID DOCUMENTS**

12.8.1 SAA shall, where so decided, make its bid documents available, at a predetermined cost.



## **12.9 ELEMENTS FOR INCLUSION IN BID DOCUMENTS**

- 12.9.1 Bid documentation shall at least include a terms of reference/specification, evaluation and adjudication criteria as well as relevant contractual conditions.

## **12.10 SPECIFICATIONS/TERMS OF REFERENCE**

- 12.10.1 Specifications and terms of reference shall be compiled with the help of the internal technical expertise in the relevant requirement field. It shall be comprehensive and clear to allow bidders sufficient information to address the requirement in detail.

## **12.11 PRE-BID INFORMATION SESSIONS**

- 12.11.1 Details of bid information sessions shall be indicated in the bid documents as well as in the advertisements and it shall be indicated whether they are compulsory or not.

## **13. RECEIVING AND OPENING OF RESPONSES**

### **13.1 GENERAL GUIDELINES**

- 13.1.1 A fair and transparent process shall be followed for the closing, receiving, opening and processing of quotations/bids.
- 13.1.2 Bidders shall be allowed to submit bids by mail or by courier or by hand as specified in the tender document.
- 13.1.3 A bid box shall be visible on the premises of the SAA and shall be accessible to all bidders.

### **13.2 CONFIDENTIALITY**

- 13.2.1 After opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning awards should not be disclosed to bidders or other persons not officially concerned with the process, until the successful bidder is notified of the award.
- 13.2.2 Any breach in confidentiality may result in disciplinary action.

### **13.3 BIDS RECEIVED LATE**

- 13.3.1 Bids are late if they are received at the address indicated in the bid documents after the closing date and time. Bidders who have submitted late bids that were not admitted, shall be contacted to collect the unopened bids.
- 13.3.2 Where no bid or no acceptable bid has been received on time, SAA reserves the right to admit late bids for consideration. The BAC will approve admission of such late bids.

### **13.4 DEALING WITH UNSOLICITED BIDS**

- 13.4.1 SAA is not obliged to consider unsolicited bids received outside a normal bidding process.

## **14. EVALUATION PROCESS**

### **14.1 GENERAL**

- 14.1.1 SAA shall evaluate a proposal based on the content of the documentation and the evaluation criteria stipulated.
- 14.1.2 Relevant internal technical expertise must be applied in the evaluation. Where a value-based judgement has to be made in the case of professional services, evaluations must be performed by more than one evaluator and the average score achieved will be used for evaluation purposes.

### **14.2 REASONS FOR REJECTION**

SAA shall:

- 14.2.1 Reject a proposal for the award of a contract if the recommended bidder has committed a proven corrupt or fraudulent act in competing for the particular contract.
- 14.2.2 Reject any bid from a supplier who fails to provide written proof from SARS that the supplier either has no outstanding tax obligations or has made arrangements to meet outstanding tax obligations at the time of bid submission or as allowed by SAA.

### **14.3 NEW AND UNPROVEN PRODUCTS**

- 14.3.1 A bid may not be rejected summarily simply because the bidder or the product offered is unknown.

### **14.4 ALTERNATIVE OFFERS**

- 14.4.1 Regardless of whether a bidder submits an offer conforming strictly to specification, alternative offers may be considered and accepted provided that the other bidders are not prejudiced.

### **14.5 IMPROVEMENT ON SPECIFICATION**

- 14.5.1 A quotation/bid received which offers an improvement on the specification may be accepted provided that the other bidders are not prejudiced.

### **14.6 SUBCONTRACTING AND JOINT VENTURES**

- 14.6.1 It is incumbent upon SAA to take care that subcontractors and partners in joint ventures are engaged in fair and reasonable conditions of contract.

### **14.7 CLEARANCE OF BIDDERS PRIOR TO THE AWARD OF A CONTRACT**

#### **14.7.1 RESTRICTED PERSONS**

- 14.7.1.1 GSM should ensure that a supplier has not been restricted in terms of SAA's restriction policy prior to contract award.

## 14.7.2 NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

- 14.7.2.1 SAA shall assist in obtaining clearance for a recommended bidder from the Department of Trade and Industry (DTI) in respect to contracts which are subject to the National Industrial Participation Programme (NIPP).

## 15. AWARD SYSTEM

- 15.1 All requests for quotation shall be finally awarded by the delegated individual in SAA.
- 15.2 All tenders will be awarded by the relevant award authority. The relevant recommendation submissions will at least be co-signed by the chairperson of the recommending award authority together with a level 1 signatory for the unit requiring the goods or services and the relevant manager. All recommendations shall clearly state the availability of budgeted funds.
- 15.3 Where the relevant award authority finds that the recommendation is not correct or not in SAA's best interest, more clarification information may be requested from bidders or the relevant procurement structure before approval; or the award recommendation can be changed or rejected with reasons properly furnished for auditing purposes.

## 16. CONTRACTUAL COMMITMENTS

- 16.1 The acceptance of a successful bid or quote must be in writing. It is advisable that a contract be entered into with suppliers for goods or services in excess of the quotation threshold where an open bidding process was followed. However, for procurement of a once-off nature in excess of the quotation threshold a purchase order may be placed in terms of the standard terms and conditions as contained in the specific tender document. For such procurement the purchase order would constitute the contract. The onus resides with the respective CFST to determine upfront whether a contract would not be required.

## 17. MANAGEMENT OF CONTRACTS CONCLUDED

- 17.1 The management of contracts as it pertains to the procurement transactions shall be a shared responsibility in SAA.
- 17.2 Legal will be responsible to assist in drafting of contracts, legal advice on contracts and vetting of all contracts before signing of the contract and safekeeping of the original contract document.
- 17.3 The GSM unit together with the CFST is responsible to facilitate contract negotiations, renewals, extensions and terminations.
- 17.4 The GSM unit is responsible for contract administration and holding of a copy of the contract.
- 17.5 The end-user will ensure supplier compliance with the contract and SLA and will report any deviations to the GSM unit.

## 18. ACCESS TO BIDDING INFORMATION

- 18.1 All bidding information remains strictly confidential and shall not be disclosed to any other bidder. The release of information shall be done in line with the relevant Acts.
- 18.2 It is the sole discretion of SAA to provide information to suppliers on request.
- 18.3 The successful bidder shall be notified in writing of the acceptance of their bid within the validity period of the bid.
- 18.4 On written request, any bidder shall be provided with the reasons why his / her own bid was unsuccessful.
- 18.5 Bids are not available for perusal by the public. When divulging information, a balance shall be stricken between one party's right to access of information and the right to confidentiality of the other party.
- 18.6 Where no bid has been accepted, particulars of the bids received shall not be made public.
- 18.7 SAA can withhold information if the release or publication of the information will:
- Impede law enforcement; or
  - Be contrary to the public interest; or
  - Harm the legitimate interests of SAA; or
  - Hinder fair competition between bidders by revealing any proprietary information of any bidder.

## 19. RECORDING AND REPORTING OF INFORMATION

- 19.1 The Head of GSM shall submit to the Board and the Executive Committee (EXCO) such procurement information as they may require from time to time and in such format and at such intervals as specified.
- 19.2 SAA shall implement an information gathering, recording and reporting mechanism to facilitate the above and to promote good governance.

## 20. LOGISTICS MANAGEMENT

- 20.1 In SAA Logistics Management defines the stock/stores management function.
- 20.2 Logistics Management involves the efficient and effective management of stock held in warehouses.
- 20.3 SCM should ensure that stock items are properly identified/codified; set and manage inventory levels; receive and issue stock items; implement control measures and take decisions around the disposal of stock.

## 21. DISPOSAL MANAGEMENT

- 21.1 Disposal Management is the final process when the Company needs to do away with unserviceable, redundant or obsolete items.

- 21.2 The relevant Commodity Manager within GSM or Line Manager will make recommendations with regard to disposal of assets to the Disposal Committee.
- 21.3 The Disposal Committee is constituted by the Head of GSM in consultation with the Chief Financial Officer.
- 21.4 The Disposal Committee is an ad hoc committee comprising the Head of GSM; Financial Manager responsible for Asset Management and the Head of the relevant business unit.
- 21.5 The recommendations of the Disposal Committee must be approved in line with the DOA before implementation.

## 22. DISPOSAL OF AIRCRAFT

Due to the uniqueness of aircraft disposal the following process will apply when it is agreed to dispose of aircraft:

- 22.1 A Fleet Committee will be constituted by the CEO.
- 22.2 The Fleet Committee may appoint a Cross Functional Team (CFT) comprising representatives from functional areas involved in fleet and asset management.
- 22.3 The CFT together with the Fleet Committee will be responsible for determining the process to be followed for the disposal of any aircraft, document preparation, evaluation, negotiation and recommendations.
- 22.4 The Fleet Committee will make recommendations on the final disposal to the CEO, PTPC and the Board for approval.
- 22.5 The shareholder will have to approve all disposal of fleet transactions prior to its implementation.

## 23. RISK MANAGEMENT

- 23.1 The procurement of goods and services will be performed in line with the provisions of the SAA Enterprise Risk Management policy to ensure the identification, consideration and avoidance of potential risks in the procurement system. A representative from Risk Management will form part of the CFST for high value and high profile bids.
- 23.2 Relevant stakeholders shall identify risk on a case-by-case basis, allocate risk to the party best able to manage such risk and ensure optimum risk mitigation on the part of SAA.
- 23.3 Tender and contract documentation shall endeavour to clearly state the responsibility of the different parties in order to allocate any risk associated with the procurement of goods and services appropriately.

## **24. PERFORMANCE MEASUREMENT OF SCM**

- 24.1 The CEO shall measure and monitor the implementation of the SCM policy and any SCM process regularly through a performance measurement system to ascertain whether governance objectives have been achieved.

## **25. ACQUISITION OF AIRCRAFT SPARES, PARTS, SERVICES AND TOOLING**

### **25.1 SAAT PROCUREMENT SYSTEM**

The supply chain process for aircraft spares, parts, service and tooling is performed by South African Airways Technical (SAAT), a subsidiary of SAA. The SCM policy in respect of the requirements for SAAT follows below:

#### **25.1.1 THRESHOLDS FOR SAAT PROCUREMENT**

Thresholds for SAAT are defined in the Delegation of Authority as approved by the SAAT Board of Directors.

#### **25.1.2 ACQUISITION OF AIRCRAFT SPARES, PARTS, TOOLING, REPAIRS AND SERVICES**

The purchase of aircraft material and specialist aircraft maintenance services often requires a deviation from the open tender process as these can only be acquired from Airlines, approved surplus suppliers, approved OEM distributors and OEMs. In all instances the relevant supplier is specified in aircraft documentation and suppliers are to be approved by the Civil Aviation Authorities or the SAAT Quality Assurance unit as approved manufacturers or suppliers for aircraft parts.

The normal tender process will apply in all instances where no OEMs or statutory requirements are applicable.

The following policy applies in respect of the purchase of aircraft spares, parts, tooling, repairs and services:

- 25.1.2.1 These items can only be purchased from the OEM, suppliers approved by the Civil Aviation Authority or SAAT Quality Assurance.
- 25.1.2.2 For items with only one approved suppliers, orders may be placed after confirmation of pricing and the update of the ERP system. No BAC approval is required and the SAAT delegation of authority will apply. The BAC will be notified for information purposes on an annual basis or any other agreed set interval.
- 25.1.2.3 For items where more than one approved supplier exist, the end user will obtain price quotations from approved suppliers and the approval will be in line with the delegation of authority for SAAT and the set thresholds.

### **25.1.3 GENERAL PRINCIPLES**

#### **25.1.3.1 TERMS AND CONDITIONS**

The standard SAA terms and conditions are not applicable to OEMs and orders are placed via the Electronic Data Interchange (EDI) system of the OEMs. In terms of this process orders are subject to the terms and conditions of the OEMs.

#### **25.1.3.2 OPENING OF BIDS**

Where applicable, for the opening of the SAAT bid box for bids under R500 000, one independent representative from SAAT will be present.

#### **25.1.3.3 SUBMISSION OF LATE BIDS**

Any late bids (for values less than R500 000) received in the SAAT bid box, will be submitted to the Head of Supply Chain with substantiating motivation for acceptance.

#### **25.1.3.4 PAYMENT CENTRALISATION**

Standard SAA payment terms are applicable and buyers are encouraged to negotiate discounts for more favourable terms.

#### **25.1.3.5 CONTRACT ADMINISTRATION**

All contracts in value of R1 000 000 or more should have a valid contract and no payment will be effected if no contract is in place. This rule may be relaxed if an emergency purchase was made. This excludes purchases from OEMs or approved suppliers where these suppliers are covered under the purchase agreement of the aircraft manufacturer (Boeing/Airbus) i.e. SPSA Supplier Purchasing Support Agreement (SPSA).

#### **25.1.3.6 INVENTORY MANAGEMENT**

Inventory will be managed in line with the SAAT Stores procedure and manual.

#### **25.1.3.7 VALIDATION OF DELIVERY**

It is the responsibility of the designated person to validate the order and delivery quantities.

#### **25.1.3.8 GENERATION OF RECEIPT**

Quantities delivered must be verified by the stores receiving office against the order and forwarded to Technical Finance where the original order has been delivered.

Part orders can also be receipted but orders can only be closed when the full quantity had been delivered or the user (Level 3 approval) requests that the order be closed.

#### **25.1.4 SALE OF SERVICES BY SAAT SUPPLY CHAIN**

##### **25.1.4.1 PURCHASING FOR THIRD PARTY CUSTOMERS**

SAT sells the services of supply chain and is often required to purchase spares or services for customers on request and customer instructions on supplier selection and price will apply.

##### **25.1.4.2 PURCHASING OF BFE AND IPE**

SAT will purchase all recommended Buyer Furnished Equipment (BFE) and Initial Provisioning Equipment (IPE) as requested by and on behalf of SAA.

##### **25.1.4.3 PURCHASING ON BEHALF OF AIRCRAFT MANUFACTURERS OR OEMs**

SAAT will from time to time receive compulsory modification bulletins to be implemented from the OEMs and will purchase according to the instructions submitted on the official SAAT engineering unit documentation and in line with the SAAT DOA.

#### **25.1.5 EMERGENCY ORDERS**

An emergency situation is defined as one that is serious, unexpected and potentially dangerous where significant financial loss may occur or a serious disruption of business may result. In these instances the established procurement policy may be circumvented. Poor planning on behalf of business is not deemed to be an emergency.

The following are examples of emergency situations:

- Disasters (e.g. damage from cyclones, floods, fire, etc).
- Customer service impacting conditions.
- System failures.
- Aircraft on ground or potential on ground situations.
- Jeopardising the safety and health of others.
- Work stoppages on the line.
- Request to arrange for a hire loan.
- Request to convert hire loans into either a sale or a purchase.
- Request to arrange for an advance exchange component.

All decision pertaining to an emergency situation must be well documented by the CFST or user. If the purchase is above R500 000 the decision must always have the approval of the SAAT Head of Supply Chain and the BAC must be notified for information purposes on an annual basis or any other defined interval specified.

#### **25.1.6 OVERSEAS REPAIRS**

Any aircraft components, tooling or equipment where SAAT does not have in-house repair capability will be forwarded to an approved station for repair and the process will comply with this procurement policy. The following types of repairs exist:



### **25.1.7 WARRANTY REPAIRS**

The duly authorised department is responsible for warranty management and will identify spares and tooling to be repaired under warranty.

25.1.7.1 The duly authorised unit is responsible for warranty management and will identify spares and tooling to be repaired under warranty.

25.1.7.2 Warranty repairs will be sent to the respective vendor by the relevant repair administrator.

25.1.7.3 Warranty repair orders will be loaded and controlled on the Enterprise Resource Planning (ERP) system.

25.1.7.4 A repair register must be kept to ensure control over repair items for audit purposes.

25.1.7.5 Any cost approval will be in line with the approved SAAT DOA.

### **25.1.8 OUT OF WARRANTY REPAIRS**

25.1.8.1 Under normal repair conditions the relevant repair administrator will obtain and evaluate quotes from approved repair stations as per the procurement process.

25.1.8.2 Urgently required repairs will be sent directly to the OEM or last approved repair station previously used to perform repairs.

25.1.8.3 All quotes will be obtained electronically.

25.1.8.4 Initial repair pricing will be loaded on the ERP system to place formal order in order to proceed with the repair.

25.1.8.5 The initial pricing will be updated once a strip down report has been received from the repair vendor.

25.1.8.6 Any cost approval will be in line with the approved SAAT DOA.

### **25.1.9 AIRCRAFT TOOLS AND EQUIPMENT**

The following types of tools are used by SAAT:

- General tools
- Aircraft specific tools

#### **25.1.9.1 GENERAL TOOLS**

General tools are those tools required for the daily functioning of the technical unit e.g. toolboxes and spanners. The purchasing process is as follows:

25.1.9.1.1 A purchasing request from the relevant cost centre owner needs to be completed.

25.1.9.1.2 Supplier selection can be in the form of a call-off from a contract or a three quote/open tender process should be followed.

25.1.9.1.3 The buyer will obtain and evaluate quotes from approved suppliers.

25.1.9.1.4 BBEE must be included as an evaluation criterion.

25.1.9.1.5 Cost approval will be in line with the approved SAAT DOA.

#### 25.1.9.2 AIRCRAFT SPECIFIC TOOLS AND EQUIPMENT

Aircraft specific tools refer to tools that can only be used on specific aircraft.

25.1.9.2.1 Only approved/certified suppliers can be approached to submit quotations.

25.1.9.2.2 Supplier selection will be in line with prescribed process (Refer per. 25.1.3).

25.1.9.2.3 Cost approval will be in line with the approved SAAT DOA.

#### 25.1.10 DISPOSAL MANAGEMENT

Disposal of material within SAAT can take place by means of any of the following processes:

- Sale of scrapped material.
- Sale of redundant and surplus material.
- Ad-hoc individual sales.

##### 25.1.10.1 SALE OF SCRAP METALS

25.1.10.1.1 The process is initiated by a scrap note completed by the duly authorised department.

25.1.10.1.2 Both the SAAT Finance and Sales office will be responsible for deletion of sold items from the ERP system.

25.1.10.1.3 The applicable workshop and sales office are jointly responsible for the demolishing of aircraft related components or parts.

25.1.10.1.4 Scrapped items in the scrap yard will be disposed of in terms of standing contracts with scrap dealers; using a competitive quotation system or auction.

25.1.10.1.5 The Sales unit is responsible for updating and maintaining the disposal register.

25.1.10.1.6 Cost approval will be in line with the approved SAAT DOA.

##### 25.1.10.2 EXCESSIVE/SURPLUS AND REDUNDANT MATERIALS

25.1.10.2.1 The Material Management unit is responsible to identify and document excessive surplus or redundant material.

25.1.10.2.2 The list of identified material must be signed-off by the duly authorised unit.

25.1.10.2.3 The list of identified material will be advertised and evaluated according to pre-defined criteria by the Disposal Committee of SAAT.

25.1.10.2.4 Both the SAAT Finance and Sales office will be responsible for deletion of the sold items from the ERP system.

25.1.10.2.5 The Sales unit is responsible for updating and maintaining the disposal register.

25.1.10.2.6 Cost approval will be in line with the approved SAAT DOA.

#### 25.1.10.3 AD-HOC INDIVIDUAL SALES

25.1.10.3.1 SAAT Sales office receives on a regular basis requests to sell material.

25.1.10.3.2 Approval to sell this material need to be obtained from the duly authorised departments.

25.1.10.3.3 Cost approval will be in line with the approved SAAT DOA.

#### 25.1.11 SAAT SPECIFIC PURCHASES

For all purchases specific to SAAT, in order to meet SAAT business requirements, the GSM procurement policy will apply, but controlled and managed by SAAT Procurement and approval will be in line with the SAAT DOA.

##### 25.1.11.1 SAAT PROCUREMENT (SAATP)

SAATP shall have the following procurement responsibilities:

- Manage the procurement function.
- Quotation/bid management.
- Evaluations and recommendations.
- Facilitate adjudications.
- Recommend the award of contracts.
- Contract conclusion and administration.
- Logistics management
- Disposal management
- Procurement risk management.