

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

CASE NO: **15996/17**

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC	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

FIRST DEFENDANT'S SPECIAL PLEA

1. In paragraph 15 of the Particulars of Claim, Plaintiffs plead that OUTA has standing to bring, and does bring this application:
 - 1.1 Under section 157(1)(c) of the Companies Act; and
 - 1.2 In the public interest, with the leave of this Court, in terms of section 157(1)(d) of the Companies Act.
2. First Defendant denies that OUTA is acting as a member of, or in the interest of, a group or class of affected persons, or an association acting

in the interests of its members, as contemplated in clause 157(1)(c) of the Companies Act.

3. First Defendant denies that OUTA is acting with the leave of this Court and avers that OUTA required the leave of this Court before instituting these proceedings.
4. Accordingly, First Defendant avers that OUTA does not have standing to bring these proceedings.
5. In the premises First Plaintiffs' claims should be dismissed, with costs, insofar as First Plaintiff is concerned.

FIRST DEFENDANT'S PLEA

First Defendant pleads as follows to the Plaintiffs' Particulars of Claim:

1. **AD PARAGRAPHS 1 TO 5 THEREOF**

The contents of these paragraphs are admitted.

2. **AD PARAGRAPH 6 THEREOF**

- 2.1 Save to deny that Fourth Defendant is responsible for administering and regulating SAA under the South African Airways Act, 5 of 2007 ("the Act") the contents of this paragraph are admitted.

2.2 In amplification of this denial, First Defendant pleads that Fourth Defendant has the rights and obligations as set out in sections 3(1)(b) and 3(3)(b) of the Act and may make regulations regarding the matters provided for in section 8 of the Act.

3. **AD PARAGRAPH 7 THEREOF**

The contents of this paragraph are noted.

4. **AD PARAGRAPH 8 THEREOF**

4.1 The contents of these paragraphs are noted.

4.2 First Defendant uses the same abbreviations in this plea.

5. **AD PARAGRAPH 9 THEREOF**

The contents of this paragraph are admitted.

6. **AD PARAGRAPH 10 THEREOF**

Save to admit that First Defendant is presently a member of the Human Resources Committee, the contents of this paragraph are denied.

7. **AD PARAGRAPHS 11 TO 13 THEREOF**

The contents of these paragraphs are admitted.

8. **AD PARAGRAPH 14 THEREOF**

The contents of this paragraph are admitted.

9. **AD PARAGRAPH 15 THEREOF**

9.1 The contents of this paragraph are denied.

9.2 In amplification of this denial First Defendant refers to her Special Plea.

10. **AD PARAGRAPH 16 THEREOF**

First Defendant has no knowledge of the allegations contained in this paragraph, does not admit same and puts Plaintiffs to the proof thereof.

11. **AD PARAGRAPHS 17 TO 20 THEREOF**

The contents of these paragraphs are admitted.

12. **AD PARAGRAPH 21 THEREOF**

First Defendant avers, as she has in her special plea, that OUTA required the leave of this Court before instituting these proceedings and that without such leave, OUTA has no standing to bring these proceedings.

13. **AD PARAGRAPH 22 THEREOF**

13.1 The contents of these paragraphs are denied.

13.2 First Defendant avers that at all material times she performed her director's functions within and duties to SAA as is required by the Constitution, the PFMA and the Companies Act.

THE BNP CAPITAL DEAL

14. AD PARAGRAPH 23 THEREOF

Save to deny that First Defendant "led" the Board, the contents of this paragraph are admitted.

15. AD PARAGRAPH 24 THEREOF

15.1 On 7 February 2016, a document titled "REQUEST FOR INFORMATION (RFI)" with reference "RFI-GSM010/16 – Request for Information on Transaction Advisory Services" was published in certain newspapers at the request of SAA.

15.2 The document recorded that documents will be available for downloading from 8 February 2016 and furnished a link from which the documents could be downloaded.

15.3 First Defendant avers that the document published in the newspapers together with the documents available on the stipulated link, constituted the RFI.

16. AD PARAGRAPH 25 THEREOF

16.1 The contents of this paragraph are denied.

16.2 In amplification of this denial, First Defendant pleads as follows:

16.2.1 The RFI was an invitation to interested parties to provide information on transaction advisory services on options to augment funding proposals to grow SAA's business and deliver sustainable profitability and shareholder value in line with the Long Term Turnaround Strategy.

16.2.2 The transaction advisory services included:

16.2.2.1 Providing funding solutions for the debt consolidation programme;

16.2.2.2 Reviewing all the proposals including those received from the First RFP;

16.2.2.3 Reviewing SAA's balance sheet and advising on ways to optimally restructure it to consolidate its current debt portfolio;

16.2.2.4 Sourcing of funding for the SAA;

16.2.2.5 Appraising available funding options, which will entail the following tasks:

(a) Identifying all potential options and investors/funders;

- (b) Reviewing of all proposals received from potential investors/funders;
- (c) Evaluating and assessing each option against best criteria;
- (d) Recommending funding solutions for the debt consolidation programme;
- (e) Recommending a preferred option and investors/funders to SAA.

17. **AD PARAGRAPH 26 THEREOF**

17.1 The contents of this paragraph are denied.

17.2 In amplification of this denial First Defendant repeats the contents of sub-paragraph 16.2.2.4 above, here.

18. **AD PARAGRAPH 27 THEREOF**

The contents of this paragraph are admitted.

19. **AD PARAGRAPH 28 THEREOF**

The contents of this paragraph are denied.

20. **AD PARAGRAPH 29 THEREOF**

20.1 The contents of this paragraph are admitted.

20.2 First Defendant further pleads that:

20.2.1 The debt needed to be restructured urgently, since there was debt that would be maturing;

20.2.2 It is the function of management and the administrative staff to:

20.2.2.1 ensure that advertisements comply with the prescribed requirements for that particular type of advertisement.

20.2.2.2 if it is necessary to shorten the period for advertising, to ensure that that is properly and correctly done as provided for in clause 12.5 of the SCM Policy

21. **AD PARAGRAPH 30 THEREOF**

21.1 The contents of this paragraph are denied.

21.2 In amplification of this denial, First Defendant pleads that by 16 February 2016, SAA had received bids from fourteen entities, including BnP.

22. **AD PARAGRAPH 31 THEREOF**

First Defendant admits that the said parties submitted bids, but denies that the said parties were the only other parties that submitted bids.

23. AD PARAGRAPH 32 THEREOF

The contents of this paragraph are admitted.

24. AD PARAGRAPH 33 THEREOF

24.1 The contents of this paragraph are denied.

24.2 In amplification of this denial, First Defendant pleads that the RFI specifically stated in paragraph 9 as follows:

“Condition of the RFI

**NB: No award will be made following this RFI process;
however the subsequent request for Proposals (RFP)
will be confined to the RFI respondents from which an
award may be made.”**

[Original in bold]

25. AD PARAGRAPHS 34 TO 37 THEREOF

25.1 The contents of these paragraphs are admitted.

25.2 First Defendant further pleads that it is the function of management and the administrative staff to ensure that advertisements comply with the prescribed requirements pertaining to that particular type of advertisements or as agreed with the Head of Global Supply Measurement as provided for in clause 12.5 of the SCM Policy.

26. **AD PARAGRAPH 38 THEREOF**

The contents of this paragraph are denied.

27. **AD PARAGRAPH 39 THEREOF**

The contents of this paragraph are admitted.

28. **AD PARAGRAPH 40 THEREOF**

The contents of this paragraph are denied.

29. **AD PARAGRAPH 41 THEREOF**

29.1 Save to admit that on 21 April 2016 the Board resolved to approve Written Resolution 2016/B11 ("B11"), the contents of this paragraph are denied.

29.2 In amplification of this denial First Defendant pleads as follows:

29.2.1 In terms of B11, the Board approved the extension of the scope of the Transaction Adviser to include sourcing funding of R15 billion for SAA;

Resolution B11 was motivated and recommended to the Board by the Chief Executive Officer and Chief Financial Officer of SAA.

30. **AD PARAGRAPH 42 THEREOF**

30.1 The contents of this paragraph are denied.

30.2 Insofar as the Plaintiffs aver that First Defendant is responsible for decisions taken by the Board, of which she is the chairperson, First Defendant pleads that decisions of the Board are taken by majority vote, unless specifically otherwise required, each member of the Board, including First Defendant, has one vote and First Defendant cannot be held responsible for how other members of the Board voted on Written Resolution No 2016/B11 or with regard to any other decision of the Board.

31. **AD PARAGRAPH 43 THEREOF**

31.1 The contents of this paragraph are denied.

31.2 Insofar as the Plaintiffs aver that First Defendant is responsible for decisions taken by the Board of which she is the chairperson, First Defendant pleads that decisions of the Board are taken by majority vote, unless specifically otherwise required, each member of the Board, including First Defendant, has one vote and First Defendant cannot be held responsible for how other members of the Board voted on Written Resolution No 2016/B11 or with regard to any other decision of the Board.

32. AD THE INTRODUCTORY SENTENCE TO PARAGRAPH 44
THEREOF

32.1 Insofar as the Plaintiffs attempt to hold First Defendant responsible for the decisions of the Board, of which she was the chairperson at all relevant times, First Defendant pleads that:

32.1.1 The Board took the decisions referred to in paragraphs 23 to 41 of the particulars of claim by majority vote; and

32.1.2 First Defendant is not responsible for the decisions of the Board taken by majority vote, merely because she was the chairperson of the Board, as if these were her decisions.

33. AD SUB-PARAGRAPHS 44.1 TO 44.6 THEREOF

The contents of these sub-paragraphs are denied.

34. AD PARAGRAPH 45 THEREOF

First Defendant denies that the Plaintiffs are entitled to the relief sought herein.

**THE SECOND RESOLUTION EXTENDING THE TRANSACTION ADVISER
CONTRACT TO SOURCE FUNDING**

35. AD PARAGRAPH 46 THEREOF

35.1 The contents of this paragraph are admitted.

35.2 First Defendant pleads that she first became aware of the fact that BnP's Financial Services Provider licence had been suspended during July 2016.

36. AD PARAGRAPH 47 THEREOF

36.1 The contents of this paragraph are denied.

36.2 In amplification of this denial, First Respondent pleads as follows:

36.2.1 On 24 May the Board resolved by round robin resolution to approve the confinement and award of the contract for the sourcing of funds for the SAA Group, to BnP.

36.2.2 The resolution was motivated and recommended to the board by SAA's Global Supply Management, and in particular:

36.2.2.1 The Commodity Manager, Silas Matsaudza;

36.2.2.2 The Chief Procurement Officer (acting),
Lester Peter;

36.2.2.3 The Chief Financial Officer (interim),
Phumeza Nhantsi; and

36.2.2.4 The Chief Executive Officer (acting), Musa
Zwane.

36.2.3 In terms of the motivation and recommendation to the
Board, the signatories thereto, being the persons
referred to above, verified that the submission is in line
with the SCM Policy.

36.2.4 First Defendant, as she was entitled to do, accepted this
verification by SAA's Global Supply Management as
correct.

37. **AD SUB-PARAGRAPH 48.1 THEREOF**

37.1 The contents of this sub-paragraph are denied.

37.2 First Defendant pleads that the confinement and award of the
contract for the sourcing of funds were occasioned by urgency as
is provided for in clause 11.13 of the SCM Policy.

38. **AD SUB-PARAGRAPH 48.2 THEREOF**

38.1 The contents of this paragraph are denied.

38.2 In amplification of this denial, First Respondent pleads that the scope of the Transaction Adviser was extended by the Board in terms of B11.

39. **AD SUB-PARAGRAPH 48.3 THEREOF**

39.1 The contents of these paragraphs are admitted.

39.2 First Defendant further pleads that she, and as far as she is aware, the Board, had no knowledge during May 2016 that BnP's Financial Services Provider licence had been suspended.

40. **AD SUB-PARAGRAPH 48.4 THEREOF**

The First Defendant admits that a due diligence was not conducted in relation to BnP. The First Defendant avers that she had no knowledge at the time if a due diligence had been conducted and relied on information and recommendations furnished to the Board by the executive of SAA.

41. **AD SUB-PARAGRAPHS 48.5 AND 48.6 THEREOF**

41.1 First Defendant has no knowledge of the contents of these sub-paragraphs and denies same.

41.2 First Defendant further pleads that:

41.2.1 The resolution was motivated and recommended to the board by SAA's Global Supply Management, and in particular:

41.2.1.1 The Commodity Manager, Silas Matsaudza;

41.2.1.2 The Chief Procurement Officer (acting),
Lester Peter;

41.2.1.3 The Chief Financial Officer (interim),
Phumeza Nhantsi; and

41.2.1.4 The Chief Executive Officer (acting), Musa
Zwane.

41.2.2 In terms of the motivation and recommendation to the
Board, the signatories thereto, being the person referred
to above, verified that the submission is in line with the
SCM Policy.

41.2.3 First Defendant, as she was entitled to do, accepted this
verification by SAA's Global Supply Management as
correct.

42. **AD PARAGRAPHS 49 TO 50.2 THEREOF**

The contents of these paragraphs are admitted.

43. **AD SUB-PARAGRAPH 50.3 THEREOF**

First Defendant denies that there was any valid impediment, to her
knowledge and as far as she is aware, to the knowledge of the Board,

when the appointment of BnP was made and repeats the contents of paragraphs 37 to 41 above, here.

44. **AD PARAGRAPH 51 THEREOF**

The contents of this paragraph are denied.

45. **AD PARAGRAPH 52 THEREOF**

45.1 The contents of this paragraph are denied.

45.2 Insofar as the Plaintiffs attempt to hold First Defendant responsible for the decisions of the Board of which she was the chairperson at all relevant times, First Defendant pleads that:

45.2.1 The Board took the decisions referred to in paragraphs 46 to 51 of the particulars of claim by majority vote, each member of the Board having one vote, and;

45.2.2 First Defendant is not responsible for the decisions of the Board taken by majority vote, merely because she was the chairperson of the Board when these decisions were taken.

46. **AD PARAGRAPH 53 THEREOF**

The contents of this paragraph are denied.

47. **AD PARAGRAPH 54 THEREOF**

First Defendant denies that Plaintiffs are entitled to the relief sought herein.

THE CANCELLATION OF THE SOURCING OF FUNDS AGREEMENT

48. **AD PARAGRAPH 55 THEREOF**

48.1 The contents of this paragraph are admitted.

48.2 First Defendant pleads that the appointment was cancelled in a letter, a copy of which is attached hereto as "FD1".

49. **AD PARAGRAPH 56 AND 57 THEREOF**

The contents of these paragraphs are admitted.

50. **AD PARAGRAPH 58 THEREOF**

The contents of this paragraph are denied.

51. **AD PARAGRAPH 59 THEREOF**

Save to aver that the relevant resolution is No. 2016/B24, the contents of this paragraph are admitted.

52. **AD PARAGRAPH 60 THEREOF**

52.1 The contents of this paragraph are denied.

52.2 In amplification of this denial, First Defendant pleads that the payment of the cancellation fee was motivated and recommended to the board, in a written submission dated 4 July 2016, by the Acting Chief Executive Officer, Musa Zwane and the Interim Chief Financial Officer, Phumeza Nhantsi.

53. **AD PARAGRAPH 61 THEREOF**

Save to admit that she voted in favour of B24 and that B24 was not carried, First Defendant has no knowledge as to how the other Board members voted, and puts Plaintiff to the proof thereof.

54. **AD PARAGRAPHS 62 AND 63 THEREOF**

Save to plead that First Defendant accepted the submissions by the Acting Chief Executive officer and the Interim Chief Financial Officer, referred to in paragraph 52.2 above, the contents of these paragraphs are denied.

55. **AD PARAGRAPH 64 THEREOF**

First Defendant denies that Plaintiffs are entitled to the relief sought herein.

THE EMIRATES DEAL

56. **AD PARAGRAPH 65 THEREOF**

Save to admit that the commercial relationship between SAA and Emirates was one of the most profitable areas of SAA's business, the contents of this paragraph are denied.

57. **AD PARAGRAPH 66 - 67 THEREOF**

The contents of these paragraphs are admitted.

58. **AD PARAGRAPH 68 THEREOF**

Save to plead that a Corporate Plan is adopted every three years and reviewed every year, First Defendant has no knowledge of the allegations contained in this paragraph, does not admit same and puts Plaintiffs to the proof thereof.

59. **AD PARAGRAPH 69 THEREOF**

Save to admit that the Network and Fleet Plan forms an essential part of the Corporate Plan, the First Defendant has no knowledge of the allegations contained in this paragraph, does not admit same and puts Plaintiffs to the proof thereof.

60. **AD PARAGRAPH 70 THEREOF**

Save to aver that the proposal was presented on 19 January 2015 and not on 9 January 2015, the contents of this paragraph are admitted.

61. **AD SUB-PARAGRAPH 71 – 72 THEREOF**

The contents of these paragraphs are denied.

AD PARAGRAPH 73 THEREOF

The contents of this paragraph are admitted.

62. **AD PARAGRAPH 74 THEREOF**

62.1 The contents of this paragraph are admitted to the extent that they are consistent with what is pleaded in paragraph 62.2 below, otherwise they are denied.

62.2 On 2 April 2015, the Board passed a written resolution approving the Network Fleet Plan, subject to:

62.2.1 The plan being revised to more aggressively focus on African growth, in alignment with the Long Term Turnaround Strategy;

62.2.2 The Board receiving a greater understanding of the underlying planning model; and

62.2.3 An engagement is scheduled for the Board with Emirates, after a revised memorandum of understanding has been distributed to the Board for review.

63. **AD PARAGRAPH 75 THEREOF**

The contents of this paragraph are admitted.

64. **AD PARAGRAPH 76 THEREOF**

The contents of this paragraph are denied.

65. **AD PARAGRAPH 77 THEREOF**

65.1 The contents of this paragraph are denied.

65.2 In amplification of this denial, First Respondent pleads that after the Emirates proposal was approved in principle subject to concerns raised by the Board concerning the proposal being investigated, considered and addressed, the Board decided that a review committee assembled and headed by Dr John Tambi should review and advise the Board on the Emirates proposal.

66. **AD PARAGRAPH 78 THEREOF**

66.1 The contents of this paragraph are denied.

66.2 In amplification of this denial, First Respondent pleads that Bezuidenhout was not the person communicating with the Board on behalf of the review committee.

67. **AD PARAGRAPHS 79 THEREOF**

The contents of this paragraph are denied.

68. **AD PARAGRAPH 80 THEREOF**

68.1 The contents of this paragraph are denied.

68.2 In amplification of this denial First Respondent pleads as follows:

68.2.1 The Board had grave concerns with regard to the Emirates proposal;

68.2.2 The Board was concerned that the alleged benefits did not clearly outweigh the negative implications and that the negative implications had not been properly considered and dealt with.

68.2.3 The Board was also uncomfortable with the motivation for the proposal furnished to the Board by the executive management which was not sufficiently detailed.

68.2.4 Accordingly the Board approved the transaction in principle, subject to the concerns being properly investigated and satisfactorily addressed.

69. **AD PARAGRAPH 81 THEREOF**

69.1 The contents of this paragraph are denied.

69.2 In amplification of this denial, First Respondent pleads that the CEO, Mr Bezuidenhout, wanted the transaction with Emirates to be concluded by 16 June 2015.

70. **AD PARAGRAPH 82 THEREOF**

The contents of this paragraph are admitted. The First Defendant avers that she instructed Mr Bezuidenhout on behalf of the Board. The First Defendant avers further that Bezuidenhout, as a member of the Board, knew that the Board had not yet fully approved the Emirates MoU and that he was not mandated by the Board to sign it.

71. **AD PARAGRAPH 83 THEREOF**

The contents of this paragraph are denied.

72. **AD PARAGRAPH 84 THEREOF**

The contents of this paragraph are admitted.

73. **AD THE INTRODUCTORY PART TO PARAGRAPH 85 AND SUB-PARAGRAPH 85.1 THEREOF**

Save to deny that First Respondent acted on President Zuma's wishes, the contents hereof are admitted.

74. **AD SUB-PARAGRAPH 85.2 THEREOF**

74.1 The contents of this sub-paragraph are denied.

74.2 In amplification of this denial, First Defendant repeats the contents of paragraph 68.2 above, here.

75. **AD PARAGRAPH 86 THEREOF**

The contents of this paragraph are denied.

76. **AD SUB-PARAGRAPH 87.1 THEREOF**

Save to admit that First Defendant knew that President Zuma did not have the authority to interfere with an operational matter of SAA, the contents of this sub-paragraph are denied.

77. **AD SUB-PARAGRAPHS 87.2 TO 87.5 THEREOF**

The contents of these subparagraphs are denied.

78. **AD PARAGRAPH 88 THEREOF**

The contents of this sub-paragraph are denied.

79. **AD PARAGRAPH 89 THEREOF**

First Defendant denies that Plaintiffs are entitled to the relief sought herein.

THE AIRBUS DEAL

80. **AD PARAGRAPHS 90 TO 97 THEREOF**

The contents of these paragraphs are admitted.

81. **AD PARAGRAPHS 98 TO 103 THEREOF**

The contents of these paragraphs are denied.

82. **AD PARAGRAPH 104 THEREOF**

Save to admit that the Board of SAA did not in July 2013 or at any other time overturn the Board's Pembroke resolution, the contents of this paragraph are denied.

83. **AD PARAGRAPH 105 THEREOF**

83.1 Save to admit that a special meeting of the Board was called in early 2014 and that First Defendant did not attend such a meeting, First Defendant has no knowledge as to the contents of this paragraph, does not admit same and puts Plaintiffs to the proof thereof.

83.2 First Defendant further pleads that the required notice for the meeting was not given.

84. **AD PARAGRAPH 106 THEREOF**

84.1 The contents of this paragraph are admitted.

84.2 First Defendant avers that the required notice for the meeting was not given.

85. **AD PARAGRAPHS 107 TO 110 THEREOF**

The contents of these paragraphs are denied..

86. **AD PARAGRAPH 111 THEREOF**

First Defendant denies that Plaintiffs' are entitled to the relief sought herein.

THE SWAP TRANSACTION

87. **AD PARAGRAPHS 112 TO 114 THEREOF**

Save to deny that the First Defendant "led" the Board, the contents of this paragraph are admitted.

88. **AD PARAGRAPH 115 THEREOF**

The contents of this paragraph are admitted, to the extent that they are consistent with the terms of the Swap Transaction.

89. **AD PARAGRAPH 116 THEREOF**

The contents of this paragraph are admitted.

90. **AD PARAGRAPHS 117 AND 118 THEREOF**

First Defendant has no knowledge of the allegations contained in these paragraphs, does not admit same and puts Plaintiffs to the proof thereof.

91. **AD PARAGRAPH 119 THEREOF**

91.1 The contents of this paragraph are denied.

91.2 In amplification of this denial, First Defendant pleads that the Swap Transaction was subject to ratification by the Board.

92. **AD PARAGRAPH 120 THEREOF**

92.1 The contents of this paragraph are denied.

92.2 First Defendant further pleads that she was not obliged to sign the execution documents in relation to the Swap Transaction.

93. **AD PARAGRAPH 121 THEREOF**

93.1 Save to admit that First Defendant wrote a letter to Airbus dated 17 September 2015, the contents of this paragraph are denied.

93.2 In amplification of this denial, First Respondent pleads that the letter stated that SAA wishes to test whether it is not to the ultimate benefit of SAA and South Africa to use a local leasing company and requested a 30 day extension for this purpose before signing off on the transaction.

94. **AD PARAGRAPH 122 THEREOF**

94.1 Save to admit that the Board had not decided to amend the terms of the Swap transaction, the contents of this paragraph are denied.

94.2 In amplification of this denial, First Respondent pleads that she did not indicate in her letter that the Board had decided to amend the terms of the Swap transaction.

95. **AD PARAGRAPH 123 THEREOF**

Save to admit that the Minister had not approved an amendment of the Swap transaction, the contents of this paragraph are denied.

96. **AD PARAGRAPHS 124 AND 125 THEREOF**

The contents of these paragraphs are denied.

97. **AD PARAGRAPH 126 THEREOF**

First Defendant denies that Plaintiffs are entitled to the relief sought herein.

MS MYENI'S ALLEGED AMENDED SECTION 54(2) APPLICATION

98. **AD PARAGRAPH 127 THEREOF**

98.1 The contents of this paragraph are admitted.

98.2 First Defendant further pleads that SAA was still within the stipulated timelines and had not defaulted. It also subsequently did not default.

99. **AD PARAGRAPH 128 THEREOF**

99.1 First Defendant admits that:

99.1.1 On or about 10 October 2015, a meeting was held between representatives of Airbus and certain SAA Board members, namely Dr John Tambi, Wolf Meyer, Tony Dixon and Yakhe Kwinana and later, First Defendant.

99.1.2 The purpose of the meeting was to consider and discuss possible amendments to the Swap Transaction, in the interests of SAA.

99.1.3 During the meeting it was agreed, *inter alia*, that:

99.1.3.1 Airbus would provide a written response to SAA's proposal.

99.1.3.2 Airbus would not demand payment in terms of the Swap Transaction or charge any penalties.

99.1.4 On 14 October 2015, Airbus responded to SAA's proposal stating that Airbus was willing to consider the amendments proposed by SAA.

99.2 First Defendant avers further that prior to the meeting referred to and on 26 September 2015, Dr John Tambi and Yakhe Kwinana met with representatives of Airbus and proposed the same possible amendments to the Swap Transaction.

99.3 Save for the aforesaid, the contents of this paragraph are denied.

100. **AD PARAGRAPH 129 THEREOF**

The contents of this paragraph are denied.

101. **AD PARAGRAPH 130 THEREOF**

The contents of this paragraph are admitted to the extent that they are consistent with the letter dated 15 October 2015 from the Chief Financial Officer of SAA to the Director-General of the National Treasury, a copy of which is attached hereto marked "FD2".

102. **AD PARAGRAPH 131 THEREOF**

First Defendant has no knowledge as to the allegations contained in this paragraph, does not admit same and puts Plaintiffs to the proof thereof.

103. **AD PARAGRAPHS 132 AND 133 THEREOF**

103.1 First Defendant admits that on 16 November 2016 she wrote a letter to the Minister of Finance on behalf of the Board to request the Minister to consider approving proposed amendments to his original approval.

103.2 First Defendant pleads further that the writing of the letter was supported by the Board.

103.3 The letter indicated what the objections were to the originally approved transaction and why the proposed amendments were favoured by the Board.

103.4 The executive of SAA was also in favour of the letter being written.

103.5 Save for the aforesaid, the contents of these paragraphs are denied.

104. **AD PARAGRAPH 134 THEREOF**

The contents of this paragraph are denied.

105. **AD PARAGRAPH 135 THEREOF**

The contents of this paragraph are admitted.

106. **AD PARAGRAPH 136 THEREOF**

The contents of this paragraph are admitted.

107. **AD PARAGRAPHS 137 TO 139 THEREOF**

The contents of these paragraphs are denied.

108. **AD PARAGRAPH 140 THEREOF**

First Defendant denies that Plaintiffs are entitled to the relief claimed herein.

109. **AD PARAGRAPHS 141 TO 145 THEREOF**

The contents of these paragraphs are denied.

110. **AD PARAGRAPH 146 THEREOF**

First Defendant denies that Plaintiffs are entitled to the relief claimed herein.

THE ERNST & YOUNG REPORT

111. **AD PARAGRAPHS 147 AND 148 THEREOF**

The contents of these paragraphs are admitted.

112. **AD PARAGRAPH 149 THEREOF**

The allegations made in this paragraph are admitted to the extent that they are consistent with the contents of the EY Report referred to, otherwise they are denied.

113. **AD PARAGRAPH 150 THEREOF**

The contents of this paragraph are denied.

114. **AD PARAGRAPH 151 THEREOF**

The contents of this paragraph are admitted.

115. **AD PARAGRAPH 152 THEREOF**

First Defendant does not admit the allegations contained in this paragraph and puts Plaintiff to the proof thereof.

116. **AD PARAGRAPH 153 THEREOF**

The contents of these paragraphs are denied.

117. **AD PARAGRAPHS 154 AND 155 THEREOF**

117.1 Save to admit that First Defendant knew that the Board had to address some of the concerns raised in the EY report and that the Board has not to date addressed these concerns, the contents of these paragraphs are denied.

117.2 First Defendant, however, pleads that she has on several occasions raised with the members of the Board and with management of SAA, the concerns raised in the EY Report and the implementation of the recommendations and requested the Board to discuss the EY Report and the executive to implement

the recommendations, but the Board and executive has resisted the First Defendant's efforts.

118. **AD PARAGRAPHS 156 AND 157 THEREOF**

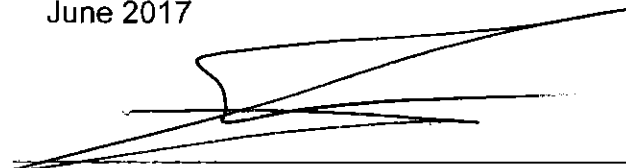
The contents of these paragraphs are denied.

119. **AD PARAGRAPH 158 THEREOF**

First Defendant denies that Plaintiffs are entitled to the relief sought herein.

WHEREFORE First Defendant pleads that Plaintiffs' claims be dismissed with costs.

Dated at Cape Town on 20th June 2017



Attorney certified in terms of Section 4(2) of Act 62 of 1995

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W Timm/JCoyle/K Tulsi/3012163)
c/o **HILLS INCORPORATED ATTORNEYS**
835 Jan Shoba Street
Brooklyn
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Served via email
in terms of Rule
4A(1)(c)



South African Airways
Office of the CEO
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Jones Road
Kempton Park
1627
Tel: 27 11 978-6088

Email: FundiswaGoduka@flysaa.com
20 July 2016

BNP CAPITAL (PTY) LTD

Dear Mr Mahlangu,

BID NUMBER RFP GSM 021/16

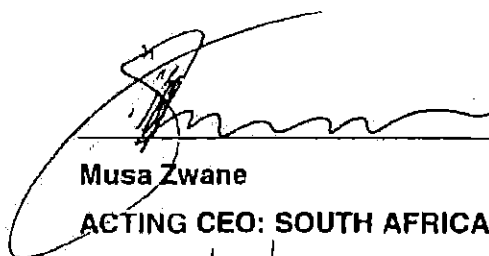
We refer to the above matter and to our letter dated 13 July 2016.

We have not received the information from you as requested in our previous letter stated above. In particular, we have not received a copy of your valid license and the confirmation of good standing from the Financial Services Board as requested in our letter. As indicated both in our Request for Proposals and subsequent communication on 13 July 2016, a valid FSB license was a critical criteria for the award and material condition for the provision of the required services.

Accordingly, we hereby terminate your appointment to provide SAA with financial advisory services and to source funds on behalf of SAA.

We reserve all our rights in the matter.

Sincerely,



Musa Zwane
ACTING CEO: SOUTH AFRICAN AIRWAYS

Date: 20/07/2016

Directors

DC Myeni* (Chairperson), M Zwane (Acting Chief Executive Officer), P Nhantsi (Interim Chief Financial Officer), Y Kwinana*, JE Tambl* (Sierra Leonean)

*Non-Executive Director

Company Secretary - Ruth Kibuuka

South African Airways SOC Ltd

Reg. No. 1997/022444/30

A STAR ALLIANCE MEMBER 



SOUTH AFRICAN AIRWAYS

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Mr. Lungisa Fuzile
Director-General
National Treasury
Private Bag X115
Pretoria
0001

15 October 2015

Dear Director General

SOUTH AFRICAN AIRWAYS' INABILITY TO MEET ITS CASH FLOW OBLIGATIONS

In terms of clause 7.14 of the Guarantee Framework Agreement SAA is obliged to inform National Treasury if SAA is, in all likelihood, not able to make due and punctual payments in terms of its obligations.

DG, as you are aware, SAA presents its cash flow forecasts to National Treasury on a daily basis and, until now, one of the major assumptions contained in these forecasts was that the A320 swap transaction would be concluded by the end of July 2015. This transaction, having been approved by the Minister, contains far reaching benefits to the airline, one specifically being the termination of all future pre-delivery payments (PDP's) required in terms of the original A320 purchase contract. The total cash flow benefit to SAA was calculated at circa USD140 million. This benefit was also contained in one of the going concern scenarios in the Going Concern Report to the Minister.

Unfortunately this transaction is now at risk due to one of the final conditions precedent (CP) not having been met, i.e. the final sign-off by the Board, and the reason being that some Board members have now expressed an intention to Airbus for an outright purchase transaction of the A330 aircraft by SAA, instead of the approved swap lease transaction. We understand that such change will require a new business case and Section 54 application.

As a gesture to accommodate such change, Airbus is willing to consider a direct sale to SAA as an alternative to leasing the aircraft. However, as a result of this intended change,

Directors

DC Myeni* (Chairperson), WH Meyer (Chief Financial Officer), Y Kwinana*, JE Tambi* (Sierra Leonean), AD Dixon*

*Non-Executive Director

Company Secretary – Ruth Kibuka

South African Airways SOC Ltd

Reg. No. 1997/022444/30

A STAR ALLIANCE MEMBER

SAA will no longer be exempt from future PDP's relating to this transaction and is now liable for immediate PDP's amounting to USD18.9 million, and further PDP's amounting to USD100.0 million in one month's time – at "execution date".

The total amount therefor payable to Airbus within one month will be USD118.9 million – a ZAR equivalent of approximately R1.6 billion. (Refer to the attached letter from Airbus to the Chair)

SAA currently does not have the liquidity available to meet the above-mentioned PDP obligations by the required dates, given the time constraints of SAA's and PFMA governance processes. As such, and in terms of clause 7.14 of the Guarantee Framework Agreement, we are informing National Treasury that SAA will, in all likelihood, not be able to make due and punctual payments in terms of its obligations.

As you are aware, most lease and loan agreements contain "cross default" clauses, which mean that, should SAA default on any debt, it could activate or trigger these clauses with the consequence that all future lease and loan repayments become payable with immediate effect. SAA will be unable to meet such obligations which, in turn, could trigger payment claims against the current government guarantees.

The attached cash flow forecast for the remainder of the financial year has been updated, which now includes the new PDP obligations. The impact on SAA's cash position is clear. With the delays experienced with the current funding RPF, SAA will already need to revert to bridge funding to meet its normal working capital requirements until the successful completion of the funding tender.

I have therefore instructed the Treasury Team to secure "Bridging Finance" on an unsecured basis. As per the Financial Risk Management Policy (FRMP), the FRSC members may borrow short-term funding up to a maximum of R2.5 billion from Board approved banking institutions. Current short-term facilities equate to R1.3 billion and hence there is still headroom of approximately R1.2 billion to borrow on short term basis. There are currently no indications that the abovementioned R1.2 billion can be raised without government guarantees.

Given the complexity of SAA's funding process and past experience, it is not envisaged that any funding will be concluded before mid-December 2015 and, as such, short-term funding assistance would most likely be required from National Treasury.

Yours Sincerely



Wolf Meyer
Chief Financial Officer

Cc: Ms Avril Halstead: Chief Director: Sector Oversight
Cc: Mr Ravesh: Director: Transport



Hadi Akoum

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Our Reference: M15017487

14 October 2015

Ms. Duduzile Myeni
Chairperson South African Airways
6th Floor
A Block, Airways Park
O.R Tambo Airport

Cc:
Thuli Mpshe
Chief Executive Officer

Wolf Meyer
Chief Financial Officer

Ruth Kibuuka
Board Secretary

Subject : A320 / A330 swap transaction

Dear Dudu,

With reference to the letter sent to SAA from the Airbus CEO and our meeting with the SAA Board last week, we note your request to Airbus to sell down the A330 lease transaction to a South African aircraft leasing company. We further note your comment that such lessor has R6bn ready and available for this transaction.

As highlighted by the Airbus CEO, Airbus has strict compliance regulations and therefore cannot accept that finalisation of the A330 swap is now predicated on Airbus selling down the lease transaction to a specific party. However Airbus is open to the inclusion of such lessor in the sell down RFP process, subject to relevant due diligence requirements, and would welcome their bid.

As discussed with the SAA Board last Saturday, Airbus is willing to consider a direct sale to SAA as an alternative to leasing the aircraft. The delay in finalising the swap has meant that there is significant industrial pressure to close this transaction (one way or another) within the next month. To do so, we see the following steps required:

- Airbus to prepare and submit the offer by way of an amendment to the A320 PA with a swap of the 10 A320 to 5 A330-300 (the number of A330-300 can be increased if this is required)
- Such offer to be fully executed by SAA and Airbus no later than 30 days after being received by SAA.

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Airbus SAS
Société par actions simplifiée
au capital de 2 704 375 Euros
RCS Toulouse 383 474 814

Registered office
1, rond-point Maurice Béthune
31700 Blagnac, France



- SAA to provide a legal opinion from external legal counsel stating, amongst others, that an unconditional board approval has been obtained including government/Section 54 approval where relevant.
- In the interim SAA to make immediately a payment equivalent to the current past due on the A320 contract (around 17m\$)
- At full execution of this amendment an additional PDP in the amount of 100m\$ will be required, any received A320 PDPs will be transferred to the A330 contract and additional PDPs will be required at later dates until the A330 last delivery.

I trust this clarifies Airbus' position and I am sure you agree that this demonstrates Airbus willingness to go this extra mile to exceptionally accommodate this SAA's request.

I look forward to your response which must be received no later than this Friday (16 October 2015).

Kind regards

A handwritten signature in black ink, appearing to read "Hadi Akoum", with several horizontal strokes underneath.

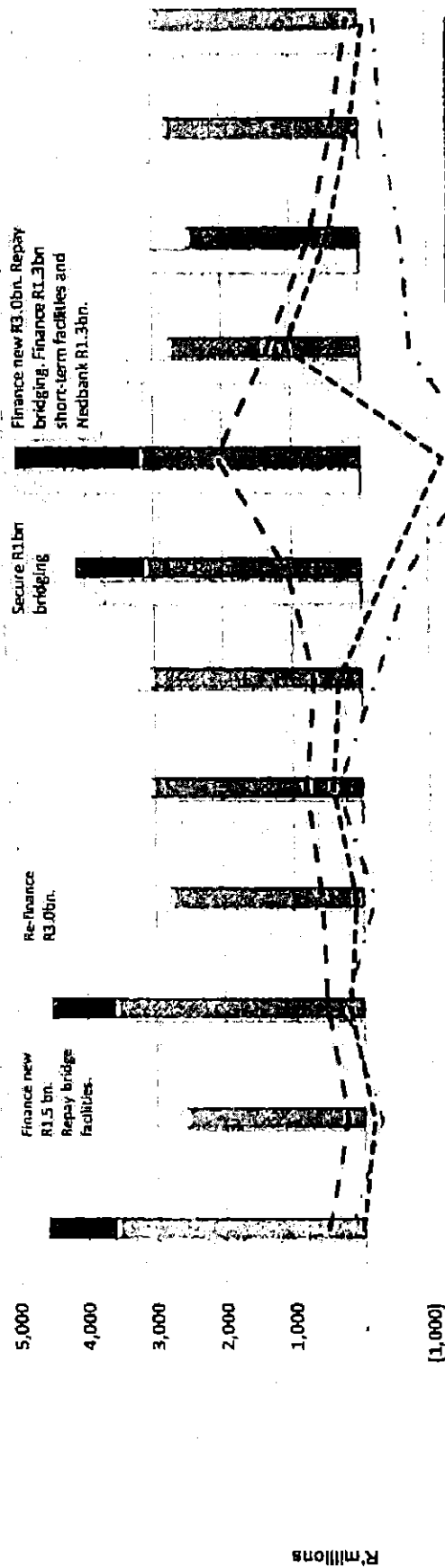
Hadi Akoum
Vice President Sales Africa

ICE Brent \$60/bbl

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	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34	2034-35	2035-36	2036-37	2037-38	2038-39	2039-40	2040-41	2041-42	2042-43	2043-44	2044-45	2045-46	2046-47	2047-48	2048-49	2049-50	2050-51	2051-52	2052-53	2053-54	2054-55	2055-56	2056-57	2057-58	2058-59	2059-60	2060-61	2061-62	2062-63	2063-64	2064-65	2065-66	2066-67	2067-68	2068-69	2069-70	2070-71	2071-72	2072-73	2073-74	2074-75	2075-76	2076-77	2077-78	2078-79	2079-80	2080-81	2081-82	2082-83	2083-84	2084-85	2085-86	2086-87	2087-88	2088-89	2089-90	2090-91	2091-92	2092-93	2093-94	2094-95	2095-96	2096-97	2097-98	2098-99	2099-00	2100-01	2101-02	2102-03	2103-04	2104-05	2105-06	2106-07	2107-08	2108-09	2109-10	2110-11	2111-12	2112-13	2113-14	2114-15	2115-16	2116-17	2117-18	2118-19	2119-20	2120-21	2121-22	2122-23	2123-24	2124-25	2125-26	2126-27	2127-28	2128-29	2129-30	2130-31	2131-32	2132-33	2133-34	2134-35	2135-36	2136-37	2137-38	2138-39	2139-40	2140-41	2141-42	2142-43	2143-44	2144-45	2145-46	2146-47	2147-48	2148-49	2149-50	2150-51	2151-52	2152-53	2153-54	2154-55	2155-56	2156-57	2157-58	2158-59	2159-60	2160-61	2161-62	2162-63	2163-64	2164-65	2165-66	2166-67	2167-68	2168-69	2169-70	2170-71	2171-72	2172-73	2173-74	2174-75	2175-76	2176-77	2177-78	2178-79	2179-80	2180-81	2181-82	2182-83	2183-84	2184-85	2185-86	2186-87	2187-88	2188-89	2189-90	2190-91	2191-92	2192-93	2193-94	2194-95	2195-96	2196-97	2197-98	2198-99	2199-00	2200-01	2201-02	2202-03	2203-04	2204-05	2205-06	2206-07	2207-08	2208-09	2209-10	2210-11	2211-12	2212-13	2213-14	2214-15	2215-16	2216-17	2217-18	2218-19	2219-20	2220-21	2221-22	2222-23	2223-24	2224-25	2225-26	2226-27	2227-28	2228-29	2229-30	2230-31	2231-32	2232-33	2233-34	2234-35	2235-36	2236-37	2237-38	2238-39	2239-40	2240-41	2241-42	2242-43	2243-44	2244-45	2245-46	2246-47	2247-48	2248-49	2249-50	2250-51	2251-52	2252-53	2253-54	2254-55	2255-56	2256-57	2257-58	2258-59	2259-60	2260-61	2261-62	2262-63	2263-64	2264-65	2265-66	2266-67	2267-68	2268-69	2269-70	2270-71	2271-72	2272-73	2273-74	2274-75	2275-76	2276-77	2277-78	2278-79	2279-80	2280-81	2281-82	2282-83	2283-84	2284-85	2285-86	2286-87	2287-88	2288-89	2289-90	2290-91	2291-92	2292-93	2293-94	2294-95	2295-96	2296-97	2297-98	2298-99	2299-00	2300-01	2301-02	2302-03	2303-04	2304-05	2305-06	2306-07	2307-08	2308-09	2309-10	2310-11	2311-12	2312-13	2313-14	2314-15	2315-16	2316-17	2317-18	2318-19	2319-20	2320-21	2321-22	2322-23	2323-24	2324-25	2325-26	2326-27	2327-28	2328-29	2329-30	2330-31	2331-32	2332-33	2333-34	2334-35	2335-36	2336-37	2337-38	2338-39	2339-40	2340-41	2341-42	2342-43	2343-44	2344-45	2345-46	2346-47	2347-48	2348-49	2349-50	2350-51	2351-52	2352-53	2353-54	2354-55	2355-56	2356-57	2357-58	2358-59	2359-60	2360-61	2361-62	2362-63	2363-64	2364-65	2365-66	2366-67	2367-68	2368-69	2369-70	2370-71	2371-72	2372-73	2373-74	2374-75	2375-76	2376-77	2377-78	2378-79	2379-80	2380-81	2381-82	2382-83	2383-84	2384-85	2385-86	2386-87	2387-88	2388-89	2389-90	2390-91	2391-92	2392-93	2393-94	2394-95	2395-96	2396-97	2397-98	2398-99	2399-00	2400-01	2401-02	2402-03	2403-04	2404-05	2405-06	2406-07	2407-08	2408-09	2409-10	2410-11	2411-12	2412-13	2413-14	2414-15	2415-16	2416-17	2417-18	2418-19	2419-20	2420-21	2421-22	2422-23	2423-24	2424-25	2425-26	2426-27	2427-28	2428-29	2429-30	2430-31	2431-32	2432-33	2433-34	2434-35	2435-36	2436-37	2437-38	2438-39	2439-40	2440-41	2441-42	2442-43	2443-44	2444-45	2445-46	2446-47	2447-48	2448-49	2449-50	2450-51	2451-52	2452-53	2453-54	2454-55	2455-56	2456-57	2457-58	2458-59	2459-60	2460-61	2461-62	2462-63	2463-64	2464-65	2465-66	2466-67	2467-68	2468-69	2469-70	2470-71	2471-72	2472-73	2473-74	2474-75	2475-76	2476-77	2477-78	2478-79	2479-80	2480-81	2481-82	2482-83	2483-84	2484-85	2485-86	2486-87	2487-88	2488-89	2489-90	2490-91	2491-92	2492-93	2493-94	2494-95	2495-96	2496-97	2497-98	2498-99	2499-00	2500-01	2501-02	2502-03	2503-04	2504-05	2505-06	2506-07	2507-08	2508-09	2509-10	2510-11	2511-12	2512-13	2513-14	2514-15	2515-16	2516-17	2517-18	2518-19	2519-20	2520-21	2521-22	2522-23	2523-24	2524-25	2525-26	2526-27	2527-28	2528-29	2529-30	2530-31	2531-32	2532-33	2533-34	2534-35	2535-36	2536-37	2537-38	2538-39	2539-40	2540-41	2541-42	2542-43	2543-44	2544-45	2545-46	2546-47	2547-48	2548-49	2549-50	2550-51	2551-52	2552-53	2553-54	2554-55	2555-56	2556-57	2557-58	2558-59	2559-60	2560-61	2561-62	2562-63	2563-64	2564-65	2565-66	2566-67	2567-68	2568-69	2569-70	2570-71	2571-72	2572-73	2573-74	2574-75	2575-76	2576-77	2577-78	2578-79	2579-80	2580-81	2581-82	2582-83	2583-84	2584-85	2585-86	2586-87	2587-88	2588-89	2589-90	2590-91	2591-92	2592-93	2593-94	2594-95	2595-96	2596-97	2597-98	2598-99	2599-00	2600-01	2601-02	2602-03	2603-04	2604-05	2605-06	2606-07	2607-08	2608-09	2609-10	2610-11	2611-12	2612-13	2613-14	2614-15	2615-16	2616-17	2617-18	2618-19	2619-20	2620-21	2621-22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CONSOLIDATED CASHFLOWS (Mar 16 Forecast) 30 Sep 15 (Incl. funding initiatives, PDPs)



	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Total Capex	17	124	17	25	8	11	50	50	50	50	50	50
Total Operational Outflows	3,386	2,700	3,323	2,932	2,701	3,267	3,810	4,964	3,450	3,054	3,110	3,174
Funding Initiatives	990	-	920	-	-	-	1,000	3,000	-	-	-	-
Total Ops Inflows	3,607	2,570	3,606	2,789	3,065	3,061	3,142	3,219	2,766	2,494	2,830	2,993
Net Cash Flow	205	(254)	266	(169)	355	(217)	(719)	(1,796)	(734)	(610)	(330)	(232)
ST Banking Facilities	(1,305)	(1,305)	(1,305)	(1,305)	(1,305)	(1,305)	(1,305)	(1,305)	(1,305)	(1,305)	(1,305)	(1,305)
Group Cash Balance	16	(152)	187	85	419	326	(393)	(1,189)	1,077	466	136	(95)
Available Cash (Ex buffer)	521	234	521	586	800	686	1,062	2,066	1,332	721	391	160