

PoC	Plea	Proposed Amendment	Note
SPECIAL PLEA & GENERAL			
	<p>Special Plea</p> <p>1. In paragraph 15 of the Particulars of Claim, Plaintiffs plead that OUTA has standing to bring, and does bring this application:</p> <p>1.1 Under section 157(1)(c) of the Companies Act; and</p> <p>1.2 In the public interest, with the leave of this Court, in terms of section 157(1)(d) of the Companies Act.</p> <p>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.</p> <p>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.</p> <p>4. Accordingly, First Defendant avers that OUTA does not have standing to bring these proceedings.</p> <p>5. In the premises First Plaintiffs' claims should be dismissed, with costs, insofar as First Plaintiff is concerned.</p>	<p>First notice:</p> <p>1. By deleting of paragraphs 1 to 5 [of the special plea] and making no substitution thereof.</p> <p>Third notice (substituting proposed amendments to the special plea)</p> <p>AD PARAGRAPH 1 to 5</p> <p>1. By adding the following sub paragraph to Paragraph 2: OUTA does not fall into the category of persons defined under Section 162 and is specifically excluded under this category of persons.</p> <p>2. By adding to the following to Paragraph 3: OUTA has not applied to condone non-compliance with Section 157(1)(d)</p>	Special plea
P 8 - 9 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.	P 101 5. AD PARAGRAPH 9 THEREOF The contents of this paragraph are admitted.	First notice: 2. By deleting Paragraph 5 and substituting it with the following: It is admitted that the First Defendant was appointed a non-executive director, acting chairperson and chairperson on the said dates. It is denied that the First Defendant continues to Chairperson of the Board.	Unnecessary
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.	P 101 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.	3. By deleting Paragraph 6 and substituting it with the following: The contents of this paragraph are denied in as far as they are meant to be reflective of the current position of the First Defendant.	Unnecessary
P 8 - 9 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.	P 101 7. AD PARAGRAPHS 11 TO 13 THEREOF The contents of these paragraphs are admitted.	4. By deleting Paragraph 7 and substituting it with the following: The contents of this paragraph are denied in as far as they are meant to be reflective of the current position of the First Defendant.	Unnecessary
P 9 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.	P 101 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.	5. By deleting Paragraph 9 and substituting it with the following: The contents of this paragraph are admitted.	Special plea
P 10 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.	P 101 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.	6. By deleting Paragraph 12 and substituting it with the following: The contents of this paragraph are admitted.	Special plea

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BNP DEAL			
P 11 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.	P 102 14. AD PARAGRAPH 23 THEREOF Save to deny that First Defendant "led" the Board, the contents of this paragraph are admitted.	7. By deleting Paragraph 14 and substituting it with the following: It is denied that the board authorized the publication of the RFI on the direction or guidance of the First Defendant. The board in this instance passed a board resolution authorizing publication of the RFI after following the normal process of passing board resolutions. The First Defendant participated in the process in the course and scope of her role as Chairperson and played no further role beyond that.	Withdrawal of admission
P 11 - 12 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.	P 103 19. AD PARAGRAPH 28 THEREOF The contents of this paragraph are denied.	8. By deleting Paragraph 19 and substituting it with the following: The contents of this paragraph are denied. In amplification of this denial the First Defendant avers that the SAA CFO together with the executive management had written a motivation and recommended the appointment of a transaction advisor to the board. The SAA treasurer did not advise that SAA did not require a transaction advisor but instead was motivating for the appointment of a different transaction advisor as is corroborated by the allegation made at Paragraph 48.6 of the Particulars of Claim.	Elaboration of bare denial / change of defence
P 12 29. The RFI was not advertised for 14 days before the closing day for submissions.	P 103 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	9. By deleting Paragraph 20 and substituting it with the following: The contents of this paragraph are denied. In amplification, the First Defendant pleads that as far as she knows the advertising of the RFI was done in line with SAA policy and in the event that it was not, it would have not immediately come to her knowledge as it was not a function of her role or the board to manage bids on behalf of the board.	Withdrawal of admission
P 12 30. By 16 February 2016, SAA had received bids from seven entities including BnP.	P 103 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.	10. By deleting Paragraph 21 and substituting it with the following: The contents of this paragraph are denied. In amplification thereof, the First Defendant pleads that she has no knowledge of how many bids were received as the process of adjudicating bids was an administrative function and the board had no role in the process of counting how many bids were received.	Elaboration of bare denial / change of defence
P 12 31. The other entities who submitted bids included Deloitte & Touche, Regiments Capital (Pty) Ltd, Basis Point Capital Investment Holding (Pty) Ltd, Cinga Holdings (Pty) Ltd, Nisela Capital (Pty) Ltd and Nedbank Ltd.	P 103 22. AD PARAGRAPH 31 THEREOF First Defendant admits that the said parties were the only other parties that submitted bids.	11. By deleting Paragraph 22 and substituting it with the following: The contents of this paragraph are denied. In amplification thereof, the First Defendant pleads that she has no knowledge of how many bids were received as the process of adjudicating bids was an administrative function and the board had no role in the process of counting how many bids were received.	Withdrawal of admission
P 12 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.	P 104 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.	12. By deleting Paragraph 25 and substituting it with the following: The contents of this paragraph are denied. In amplification thereof, the First Defendant pleads that the management of the bid process in its entirety was a management and administrative function. The board or its chairperson played no role in the bid processes or anything else that fell under the function of Supply Chain Management.	Withdrawal of admission
P 13 38. On or about 14 April 2016, the Board, led by Ms Myeni as Chairperson, resolved to award the Transaction Adviser contract to BnP.	P 104 26. AD PARAGRAPH 38 THEREOF The contents of this paragraph are denied.	13. By deleting Paragraph 26 and substituting it with the following: It is denied that the board resolved to award the Transaction Adviser contract to BnP on the direction or guidance of the First Defendant. The board in this instance followed the normal board procedures to pass the resolution that appointed BnP. The Board was in the circumstances performing its normal functions and there was nothing in law that prohibited that board from doing so. The First Defendant participated in the process in the course and scope of her role as Chairperson and played no further role in the process beyond what her role as chairperson entailed.	Elaboration of bare denial / change of defence

PoC	Plea	Proposed Amendment	Note
<p>P 13 - 14</p> <p>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:</p> <p>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);</p> <p>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);</p> <p>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);</p> <p>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);</p> <p>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</p> <p>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).</p>	<p>P 104</p> <p>30. AD PARAGRAPH 42 THEREOF</p> <p>30.1 The contents of this paragraph are denied.</p> <p>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.</p>	<p>14. By deleting Paragraph 30 and substituting it with the following:</p> <p>The contents of this paragraph are denied. The allegations made by the Plaintiffs do not contain clear and concise material facts that sustain any cause of action. The Plaintiffs fail to state with sufficient particularity the specific conduct of the board that forms the basis of the allegations made under this paragraph. The Plaintiffs also fail to state with sufficient particularity the actual impugned conduct that is attributable to First Defendant on her own. In essence, the allegations made in this paragraph are vague and embarrassing</p>	Exception
<p>P 14 - 15</p> <p>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 a/ia, the following ways:</p> <p>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;</p> <p>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;</p> <p>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;</p> <p>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;</p> <p>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:</p> <p>43.5.1 clause 6.2.5.2, in that the BAC did not first recommend the award of the bid to the Board;</p> <p>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</p> <p>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</p>	<p>P 105</p> <p>31. AD PARAGRAPH 43 THEREOF</p> <p>31.1 The contents of this paragraph are denied.</p> <p>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.</p>	<p>15. By deleting Paragraph 31 and substituting it with the following:</p> <p>The contents of this paragraph are denied. The allegations made by the Plaintiffs cannot be attributable to the board or the First Defendant. All the allegations are of actions carried out by the executive management of SAA and were not functions of the board or the First Defendant. The allegations also lack particularity on how the board caused violation of SAA SCM policies or how that is specifically attributable to First Defendant on her own.</p>	Exception

PoC	Plea	Proposed Amendment	Note
<p>P 16 - 17</p> <p>44. In conducting herself in the manner described in paragraphs 23 to 41 above, Ms Myeni:</p> <p>44.1 knew, alternatively ought to have known, that she was acting unlawfully;</p> <p>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;</p> <p>44.3 grossly abused the position of director as contemplated in section 162(5)(c)(i) of the Companies Act;</p> <p>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:</p> <p>44.4.1 used the position of director to knowingly cause harm to SAA or SAA's subsidiaries;</p> <p>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</p> <p>44.4.3 did not have any rational basis for believing that her decision was in the best interests of SAA;</p>	<p>P 105</p> <p>33. AD SUB-PARAGRAPHS 44.1 TO 44.6 THEREOF</p> <p>The contents of these sub-paragraphs are denied.</p>	<p>16. By deleting Paragraph 33 and substituting it with the following:</p> <p>The contents of this paragraph are denied. The allegations made by the Plaintiffs are scandalous and vexatious in that there is not a single allegation made about specific conduct of the First Defendant that amounts to the alleged conduct. The allegations are in their wording defamatory and abusive of the First Defendant. There is nothing in the allegations that can lead to the conclusions of law as averred along the lines of:</p> <p>i. The First Defendant acting unlawfully</p> <p>ii. The First Defendant acting to gain advantage for herself.</p> <p>iii. Gross abuse of the position of director by First Defendant.</p> <p>iv. Intent or negligence that caused harm to SAA by First Defendant.</p> <p>v. Gross Negligence, wilful misconduct or breach of trust by First Defendant.</p> <p>vi. Specific conduct of the First Defendant that falls to be defined as conduct described under Section 77(3)(a) and (c) of the Companies Act.</p> <p>In essence all the allegations are a cut and paste of essential averments as prescribed in law but are not substantiated in any way or form by allegations of specific conduct of the First Defendant.</p>	Exception / Strike out
<p>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.</p>	<p>34. AD PARAGRAPH 45 THEREOF</p> <p>First Defendant denies that the Plaintiffs are entitled to the relief sought herein.</p>	<p>17. By deleting Paragraph 34 and substituting it with the following:</p> <p>The contents of this paragraph are denied. The Plaintiffs have not pleaded the cause of action that can lead a court to grant the relief sought. There are no facts pro banda that support the relief sought.</p>	Exception
<p>P 18</p> <p>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.</p>	<p>P 106</p> <p>35. AD PARAGRAPH 46 THEREOF</p> <p>35.1 The contents of this paragraph are admitted.</p>	<p>18. By deleting Paragraph 35 and substituting it with the following:</p> <p>The contents of this paragraph neither denied or admitted. The First Defendant has no knowledge on the truthfulness of that allegation in as far as the decisions and actions of the</p>	Withdrawal of admission
<p>48.4 SAA had not conducted a proper due diligence on BnP;</p>	<p>P 107</p> <p>40. AD SUB-PARAGRAPH 48.4 THEREOF</p> <p>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.</p>	<p>19. By deleting Paragraph 40 and substituting it with the following:</p> <p>The contents of this paragraph are denied. The First Defendant pleads that it was not a board function or that of its' Chairperson to conduct a due diligence on BnP.</p>	Withdrawal of admission
<p>P 18</p> <p>48.5 there was no evidence that BnP had the capability to source funds for SAA; and</p> <p>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.</p>	<p>P 107</p> <p>41. AD SUB-PARAGRAPHS 48.5 AND 48.6 THEREOF</p> <p>41.1 First Defendant has no knowledge of the contents of these sub- paragraphs and denies same.</p> <p>41.2 First Defendant further pleads that:</p> <p>41.2.1 The resolution was motivated and recommended to the board by SAA's Global Supply Management, and in particular:</p> <p>41.2.1.1 The Commodity Manager, Silas Matsaudza;</p> <p>41.2.1.2 The Chief Procurement Officer (acting), Lester Peter;</p> <p>41.2.1.3 The Chief Financial Officer (interim), Phumeza Nhantsi; and</p> <p>41.2.1.4 The Chief Executive Officer (acting), Musa Zwane.</p> <p>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.</p> <p>41.2.3 First Defendant, as she was entitled to do, accepted this verification by SAA's Global Supply Management as correct.</p>	<p>20. By deleting Paragraph 41 and substituting it with the following:</p> <p>The contents for this paragraph are neither denied or admitted as the First Defendant has no knowledge of what quotations the SAA treasurer had received. This allegation however corroborates what is stated at Paragraph 8 of the amended plea in that it proves the point that the SAA treasurer was in fact motivating for the appointment of a different service provider. This allegation contradicts the allegation made at Paragraph 28.1 of the Particulars of Claim in that it proves that the SAA treasurer's conduct is not that of a person who was not in support of the appointment of a transaction advisor. This allegation also demonstrates unlawful conduct on the part of the SAA treasurer in that it was not within her scope and function to source quotations for SAA. The sourcing of quotations is an SCM function and not the treasurer.</p>	Elaboration of bare denial / change of defence

PoC	Plea	Proposed Amendment	Note
<p>P 19</p> <p>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</p> <p>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:</p> <p>50.1 at an estimated total cost of R256,500,000.00 (inclusive of VAT);</p> <p>50.2 calculated at 1.5% of the funding sourced on behalf of SAA through BnP; and</p>	<p>P 107</p> <p>42. AD PARAGRAPHS 49 TO 50.2 THEREOF</p> <p>The contents of these paragraphs are admitted.</p>	<p>21. By deleting Paragraph 42 and substituting it with the following:</p> <p>The contents of this paragraph are admitted in as far as the First Defendant was the first director to cast a vote. The First Defendant further pleads that no inference can be drawn from that fact given that it was by virtue of her role as Chairperson that the convention was that she would always be the first director to vote on any resolution of the board.</p>	<p>Elaboration of bare denial / change of defence</p>
<p>P 19</p> <p>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:</p> <p>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);</p> <p>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);</p> <p>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);</p> <p>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</p> <p>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).</p>	<p>P 108</p> <p>44. AD PARAGRAPH 51 THEREOF</p> <p>The contents of this paragraph are denied.</p>	<p>22. By deleting Paragraph 44 and substituting it with the following:</p> <p>The contents of this paragraph are denied. The First Defendant pleads that the board acted on the recommendations of the CFO and other executive management of SAA. There is no legal basis upon which it can be concluded that the First Defendant ought to have known that voting in favour of the resolution would be unlawful. There is also no legal basis upon which her bona fides in voting in favour of the resolution can be brought into question. There is also no basis to conclude that her vote on it's own was a deciding vote or a vote that caused the board to act unlawfully.</p>	<p>Elaboration of bare denial / change of defence</p>
<p>P 21</p> <p>53. In respect of the BnP extension resolution and the conduct described in paragraphs 46 to 51 above, Ms Myeni:</p> <p>53.1 knew, alternatively ought to have known, that she was acting unlawfully;</p> <p>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;</p> <p>53.3 grossly abused the position of director, as contemplated in section 162(5)(c)(i) of the Companies Act;</p> <p>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:</p> <p>53.4.1 used the position of director to knowingly cause harm to SAA or SAA's subsidiaries;</p> <p>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 SM; 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</p> <p>53.4.3 did not have any rational basis for believing that her decision was in the best interests of SAA;</p>	<p>P 108</p> <p>46. AD PARAGRAPH 53 THEREOF</p> <p>The contents of this paragraph are denied.</p>	<p>23. By deleting Paragraph 46 and substituting it with the following:</p> <p>The contents of this paragraph are denied. The allegations made by the Plaintiffs do not contain clear and concise material facts that sustains any cause of action. The Plaintiffs fail to state with sufficient particularity the actual impugned conduct that is attributable to First Defendant on her own. In essence the allegations made in this paragraph are vague and embarrassing.</p> <p>The allegations are in their wording defamatory and abusive of the First Defendant. There is nothing in the allegations that can lead to the conclusions of law as averred along the lines of:</p> <p>i. The First Defendant acting unlawfully ii. The First Defendant acting to gain advantage for herself. iii. Gross abuse of the position of director by First Defendant. iv. Intent or negligence that caused harm to SAA by First Defendant. v. Gross Negligence, wilful misconduct or breach of trust by First Defendant. vi. Specific conduct of the First Defendant that falls to be defined as conduct described under Section 77(3)(a) and (c) of the Companies Act.</p> <p>In essence all the allegations are again a cut and paste of essential averments as prescribed in law but are not substantiated in any way or form by allegations of specific conduct of the First Defendant.</p>	<p>Excepton</p>

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<p>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, SM, within the meaning of section 162(5)(c)(iv)(aa) of the Companies Act; and</p> <p>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:</p> <p>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</p> <p>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.</p>			
<p>P 23</p> <p>54. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.</p>	<p>P 108</p> <p>47. AD PARAGRAPH 54 THEREOF</p> <p>First Defendant denies that Plaintiffs are entitled to the relief sought herein.</p>	<p>24. By deleting Paragraph 47 and substituting it with the following: The contents of this paragraph are denied. The Plaintiffs have not pleaded the cause of action that can lead a court to grant the relief sought. There are no facta pro banda pleaded that support the relief sought.</p>	Exception
<p>P 23</p> <p>58. In any event, the cancellation fee of R49.9 million was excessive and irregular in the circumstances.</p>	<p>P 108</p> <p>50. AD PARAGRAPH 58 THEREOF</p> <p>The contents of this paragraph are denied.</p>	<p>25. By deleting Paragraph 50 and substituting it with the following: The contents of this paragraph are denied. The First Defendant pleads that the cancellation fee paid was agreed to on the recommendation of the executive management as being a market related fee in the context. It is further pleaded that the underlying rationale that guided the decision of the board in approving the cancellation was to avoid legal liability that would have arisen had the contract been cancelled in a way that breached the provisions of the contract.</p>	Elaboration of bare denial / change of defence
<p>P 24</p> <p>61. Each Board member voted against 825, except for Ms Myeni, who voted in favour of the resolution.</p>	<p>P 108 - 109</p> <p>53. AD PARAGRAPH 61 THEREOF</p> <p>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.</p>	<p>26. By adding to paragraph 53 the following: The First Defendant further pleads that no negative inference can be drawn from the First Defendant voting as she was entitled to. It is already pleaded at paragraph 52.2 that the decision to pay the cancellation fee had been motivated by the then Acting CEO and the Interim CFO.</p>	Elaboration of bare denial / change of defence
<p>P 24</p> <p>62. By voting in favour of 825, Ms Myeni failed, inter alia, to take effective and appropriate steps to:</p> <p>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);</p> <p>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);</p> <p>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);</p> <p>62.4 manage the available working capital efficiently and economically (as contemplated at section 51(1)(b)(iii) of the PFMA); and</p> <p>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).</p> <p>63. By voting in favour of 825, Ms Myeni</p> <p>63.1 knew, alternatively ought to have known, that she was acting unlawfully;</p> <p>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;</p> <p>63.3 grossly abused the position of director, as</p>	<p>P 109</p> <p>54. AD PARAGRAPHS 62 AND 63 THEREOF</p> <p>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.</p>	<p>27. By adding to paragraph 54 the following: The Plaintiffs fail to state with sufficient particularity the actual impugned conduct that is attributable to First Defendant on her own. In essence the allegations made in this paragraph are vague and embarrassing. The allegations are in their wording defamatory and abusive of the First Defendant. There is nothing in the allegations that can lead to the conclusions of law as averred along the lines of: i. The First Defendant acting unlawfully ii. The First Defendant acting to gain advantage for herself. iii. Gross abuse of the position of director by First Defendant. iv. Intent or negligence that caused harm to SAA by First Defendant. v. Gross Negligence, wilful misconduct or breach of trust by First Defendant. vi. Specific conduct of the First Defendant that falls to be defined as conduct described under Section 77(3)(a) and (c) of the Companies Act. In essence all the allegations are again a cut and paste of essential averments as prescribed in law but are not substantiated in any way or form by allegations of specific conduct of the First Defendant. The Plaintiffs only allege that the First Defendant voted in favour of certain decisions. There is nothing beyond that which the Plaintiffs allege which can be said to constitute any irregularity on the part of First Defendant as is being alleged throughout the particulars of claim. AD PARAGRAPH</p>	Exception
<p>P 26</p> <p>64. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.</p>	<p>P 109</p> <p>55. AD PARAGRAPH 64 THEREOF</p> <p>First Defendant denies that Plaintiffs are entitled to the relief sought herein.</p>	<p>28. By deleting Paragraph 55 and substituting it with the following: The contents of this paragraph are denied. The Plaintiffs have not pleaded the cause of action that can lead a court to grant the relief sought. There are no facta pro banda pleaded that support the relief sought.</p>	Exception

PoC	Plea	Proposed Amendment	Note
EMIRATES			
P 30 83. Ms Myeni's reason for this instruction was that President Zuma had reservations about the Emirates MoU.	P 111 71. AD PARAGRAPH 83 THEREOF The contents of this paragraph are denied.	29. By deleting Paragraph 71 and substituting it with the following: The contents of this paragraph are denied and the Plaintiffs are put to the proof thereof. The First Defendant further pleads that the allegation is not only scandalous and vexatious but is without any merit whatsoever.	Exception / Strike out
P 30 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.	P 112 75. AD PARAGRAPH 86 THEREOF The contents of this paragraph are denied.	30. By adding to Paragraph 75 the following: The Plaintiffs are put to the proof thereof. The First Defendant further pleads that Mr. Bezuidenhout did not have the authority or mandate to sign the MOU on behalf SAA. In the circumstances Mr. Bezuidenhout was acting outside of his delegation of authority and the First Defendant could not authorize him to sign the MOU as she too had no authority or mandate to give such authorization.	Elaboration of bare denial / change of defence
P 31 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	P 112 78. AD PARAGRAPH 88 THEREOF The contents of this sub-paragraph are denied.	31. By adding to Paragraph 78 the following: The allegations made are again a cut and paste of essential averments without any facta pro banda to sustain them.	Exception

PoC	Plea	Proposed Amendment	Note
AIRBUS: PEMBROKE DEAL			
<p>P 36 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:</p> <p>96.1 for the delivery of the first ten of the twenty A320-200 aircraft in terms of the 2009 Revised Agreement; and</p> <p>96.2 with Pembroke financing the first ten of the twenty A320-200 aircraft.</p> <p>97. On or about 27 May 2013, the SAA Board, led by Ms Myeni as Chairperson, approved the Board's Pembroke resolution, which included:</p> <p>97.1 the draft section 54(2) application; and</p> <p>97.2 the fact that Pembroke would finance the first ten of the twenty new Airbus A320-200 aircraft,</p>	<p>P 112 80. AD PARAGRAPHS 90 TO 97 THEREOF</p> <p>The contents of these paragraphs are admitted.</p>	<p>Second notice: 1. By deleting of paragraph 81 and substituting it with the following: The contents of this paragraphs are denied as if specifically traversed.</p> <p>In amplification of this denial the First Defendant pleads as follows: It is stated in the 30 October 2014 review report of the Chief Audit Executive that "the board had on 23 June 2013 changed its decision of accepting the 10 aircraft offer from Pembroke and decided to take only 2 aircrafts". There is also no truth in the allegation that the company secretary refused to amend the minutes as the resolution dated 18 July 2013 under the heading Project Description/ Purpose it inter alia states the following: "... SAA is currently negotiating with Pembroke and Standard Chartered Bank in relation to the first two aircraft. Thus there is no truth in the allegation that it was First Defendant who unilaterally decided to change the number of aircraft in the transaction from 10 to 2. The First Defendant further pleads that in an e-mail dated 26 May 2013 from Wolf Meyer (CFO) to Raisibe Lepule (SAA Board member), Wolf Meyer states the following: " The Acting Chair of the Board indicated that only the financing of the first first two deliveries will be approved tomorrow due to time constraint of these deliveries and that the Minister explicitly instructed that, for the balance of the transaction, we should only pursue such funding through South African SOC's or entities." This provides further evidence that as early as May 2013, the approval of only 2 aircraft was already being discussed at board level. It is thus denied that the Board of SAA did not in July 2013 or at any other time approve the overturning of the Board's Pembroke decision.</p>	Withdrawal of admission
<p>P 37 104. Accordingly, the Board of SAA did not (in July 2013 or at any other time) approve the overturning of the Board's Pembroke resolution.</p>	<p>P 112 82. AD PARAGRAPH 104 THEREOF</p> <p>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.</p>	<p>2. By deleting Paragraph 82 and substituting it with the following: It denied that the Board of SAA did not overturn the Pembroke decision.</p> <p>The board resolution of 18 July 2013 clearly states that the Pembroke transaction was only for the first two aircraft, namely with the manufacturer's serial number 5637 (the first aircraft) and 5680 (the second Aircraft ..). This resolution makes no mention of 10 aircraft but instead goes as specifying the serial numbers of the two aircraft to be purchased. This clearly demonstrates that the purchase of only two aircraft was not a fabrication of the First Defendant as alleged but was in fact something approved by the board to the detail of specifying the serial numbers of the two aircraft that would be in the transaction.</p>	Withdrawal of admission

PoC	Plea	Proposed Amendment	Note
<p>P 37 107. Ms Myeni knew, alternatively, ought reasonably to have known that:</p> <p>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</p> <p>107.2 her representation to the Minister of Public Enterprises as alleged at paragraph 101 above was fraudulent, alternatively false.</p>	<p>P 113 85. AD PARAGRAPHS 107 TO 110 THEREOF</p> <p>The contents of these paragraphs are denied.</p>	<p>3. By deleting Paragraph 85 and substituting it with the following: It is denied that the First Defendant attempted to unlawfully and unilaterally amend a board resolution. The Plaintiffs do not state with sufficient particularity the board resolution that the First Defendant is alleged to have attempted to unlawfully and unilaterally amend. It is denied that the First Defendant made a fraudulent or false representation to the Minister of Public Enterprises but stated the true and correct position of the board as is reflected in the board resolution of 18 July 2013. All the allegations pertaining to the request to the company secretary are denied as if specifically traversed. The allegations made by the Plaintiffs are scandalous and vexatious in that they are patently false and misleading. The allegations are in their wording defamatory and abusive of the First Defendant. There is nothing in the allegations that can lead to the conclusions of Jaw as averred along the lines of: i. The First Defendant failing to exercise the duty of utmost care. 11. The First Defendant failing to act with fidelity, honesty and integrity. iii. The First Defendant acting in a way that is inconsistent with responsibilities assigned to an accounting authority. iv. The First Defendant using her position to improperly benefit another person. (The Plaintiffs do not identify the alleged other person) v. The First Defendant failing to take responsibility for the safeguarding of assets, revenue, expenditure and liabilities of SAA. vi. Intent or negligence that caused harm to SAA by First Defendant. vii. Gross Negligence, wilful misconduct or breach of trust by First Defendant. viii. The First Defendant acting unlawfully. ix. The First Defendant using her position as of director to gain advantage for herself. (The Plaintiffs do not state the advantage that is alleged to have been gained)</p>	<p>Adding to defence / exception /</p>

PoC	Plea	Proposed Amendment	Note
AIRBUS: SWAP TRANSACTION			
P 43 122. 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.	P 114 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.	4. By deleting Paragraph 94 and substituting it with the following: The contents of this paragraph are denied. In amplification of this denial the First Defendant pleads that the contents of the letter written to Airbus on 17 September 2015 are correct in as far as they reflect the decision of the board to involve an African aircraft leasing company. This is contained in the minutes of special meeting no.2015106 held on 29 September 2015 where it is stated at paragraph 3. 1 (g) that: It was agreed that the response to the Minister should state that the structure of the A320 transaction was being reviewed by the Board and it was observed that the local aircraft leasing company was a better option for SAA. In the same paragraph under the heading "Local Aircraft Leasing Company" it states the following: The Board requested Management to direct Members to individuals or institutions which could unlock opportunities for SAA. In particular it was stated that there was a need to access the Department of Trade and Industry National Industrial Participation Programme funding for the local leasing company. It was stated that the idea was to request OT/ through one of its entities to hold a majority stake in aircraft leasing company together with the Public Investment Corporation and the Development Bank of Southern Africa. The First Defendant further relies upon an email sent on 3 October 2015 by company secretary, Ruth Kibuuka, to Jerome Charieras of Airbus wherein the following is stated: The SAA Board approved the A320 swap by A330, and there has been no change in that regard. The slight change in the transaction that the letter refers to is in respect of how the A330's will be funded. The board has opted to engage an African aircraft leasing company which will provide the financing for the A330's	Withdrawal of admission
P 43 123. 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.	P 114 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.	5. By deleting Paragraph 95 and substituting it with the following: The contents of this paragraph are denied. In amplification of this denial, reference is made to the minutes of the special meeting held on 29 September 2015 where at paragraph 3. 1 (g) it states the following: The response to the Minister's letter was concluded and the Chairperson stated that the conditions stated by the Minister in his letter and the undertakings by Management and the Board in the response should be discussed at the Board strategy session. This clearly demonstrates that the Minister had stipulated conditions which inter alia included the appointment of a Local/African aircraft leasing company. The Minister had not only approved the use of an African aircraft leasing company but had in fact made it a condition	Withdrawal of admission
P 44 124. 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).	P 114 96. AD PARAGRAPHS 124 AND 125 THEREOF The contents of these paragraphs are denied.	6. By deleting Paragraph 96 and substituting it with the following: The contents of this paragraph are denied. Reference is made to the averments made at amended paragraph 94. The First Defendant further pleads that the allegations made by the Plaintiffs are scandalous and vexatious in that they are patently false and misfading. The allegations are in their wording defamatory and abusive of the First Defendant. There is nothing in the allegations that can lead to the conclusions of law as averred along the lines of: 1. The First Defendant failing to exercise the duty of utmost care. ii. The First Defendant failing to act with fidelity, honesty and integrity. iii. The First Defendant acting in a way that is inconsistent with responsibilities assigned to an accounting authority. 1v. The First Defendant using her position to improperly benefit another person. (The Plaintiffs do not identify the alleged other person) V. The First Defendant failing to take responsibility for the safeguarding of assets, revenue, expenditure and liabilities of SAA. vi. Intent or negligence that caused harm to SAA by First Defendant. vii. Gross Negligence, wilful misconduct or breach of trust by First Defendant. viii. The First Defendant acting unlawfully. ix. The First Defendant using her position as of director to gain advantage for herself. (The Plaintiffs do not state the advantage that is alleged to have been gained) x. Specific conduct of the First Defendant that falls to be defined as conduct described under Section 162(5)(c)(i), Section 162(5)(c)(iii), and Section 76(2)(a) of the Companies Act. xi. Specific conduct of the First Defendant that amounts to knowingly cause harm to SAA or it's subsidiaries. xii. Specific conduct of the First Defendant that was not an	Change of defence / exception / strike out

PoC	Plea	Proposed Amendment	Note
126. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.	97. AD PARAGRAPH 126 THEREOF First Defendant denies that Plaintiffs are entitled to the relief sought herein.	7. By deleting Paragraph 97 and substituting it with the following: The contents of this paragraph are denied. The Plaintiffs have not pleaded the cause of action that can lead a court to grant the relief sought. There are no facts pro banda that support the relief sought.	Exception
P 46 129. Ms Myeni's proposed amendments to the Swap Transaction caused the delay of the conclusion of the Swap Transaction.	P 115 100. AD PARAGRAPH 129 THEREOF The contents of this paragraph are denied.	8. By deleting Paragraph 100 and substituting it with the following: The contents of this paragraph are denied. In amplification of this denial the First Defendant avers changes to the Swap transaction were caused by the conditions set by the Minister of Public Enterprises as is reflected in the minutes of the special meeting held on 29 September 2015. The First Defendant also relies on the contents of an email address to her by the Chairperson of Audit Risk (Yakhe Kwinana) of 6 October which stated the following: "I note the urgency of conclusion of this transaction and I also note the questions and concerns that you raised note the the notes prepared by Dr Tambi in respect of this transaction. Basically this is a very expensive transaction to SAA and everybody agrees with it. The question I still have is that, was this swap supported by an approved network plan or put differently, could it happen that we ordered 10 A320's that we do not need? I know that have to make a decision like yesterday, which makes me more scared and sceptical. Previously, we have been having a Transaction Advisor to advise us in such important decision which will bind the airline for many years to come (as is the case with the 10 A320's) that we are currently battling with. My recommendation is that we need a Transaction Advisor who will guide our decision- so that, we can in future, when our decisions are queried by the Board members past our time, say, we based our decision on the advice of a reputable Transaction Advisor." The First Defendant replied to the email of 6 October 2015 on the same day as follows: "I support this and would rather try and expedite this by writing to the entire board. I know that 2 members of the board, being Mr Dixon and the CFO approved this long ago. But after the EXCO mentioned that they had never interrogated the swap at the EXCO meeting, it was evident that this was only done by a few people and then round robed this to the rest of the EXOC[sic] members. Can this stand public scrutiny? I take your advice and will send a memo to the Board."	Elaboration of bare denial / change of defence
P 48 135. The Minister of Finance declined the request for approval on 3 December 2015.	P 115 105. AD PARAGRAPH 135 THEREOF The contents of this paragraph are admitted.	9. By deleting Paragraph 105 and substituting it with the following: The contents of this paragraph are only admitted in as far as the Minister of Finance declining the request for approval on 20 December 2015 and not 3 December as is alleged. The First Defendant avers that the reasons behind the Minister of Finance declining the approval had nothing to do with the process followed by the board in making amendments in the Section 54(2) application as this paragraph seeks to insinuate from the allegations made in the preceding Paragraph 134 of the Particulars of Claim. The Minister of Finance in the letter to the First Defendant on 20 December 2015 at Paragraphs 13 and 14 states the following: [13] "... That said, I also indicated that I was willing to afford SAA the opportunity to provide me with a comprehensive explanation of the merits of pursuing the transaction structure involving a local leasing arrangement. I underlined that SAA would need to provide substantive detail demonstrating the financial and strategic benefits of this local leasing structure." [14] "In addition, during our discussion, I indicated that the Deputy Minister of Finance and his team would be available to meet with SAA on 16 December 2015, to allow for any required discussion on the matter." In essence the reasons why the Minister of Finance declined the Section 54(2) application have nothing to do with the process followed by the board but rather the commercial considerations thereto as is expressed at Paragraph 20 of this letter. Thus the Minister was at no stage averse to the proposal of using a local aircraft leasing company but was wanting to hear the business case for it.	Withdrawal of admission

PoC	Plea	Proposed Amendment	Note
<p>P 48 137. 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.</p>	<p>P 116 107. AD PARAGRAPHS 137 TO 139 THEREOF The contents of these paragraphs are denied.</p>	<p>10. By deleting Paragraph 107 and substituting it with the following: The contents of this paragraph are denied. In amplification thereof, the First Defendant pleads that this allegation is baseless and unfounded. There is no truth in the allegation that the First Defendant did not follow proper process in amending the Section 54(2) application. The Letter of the Minister of Finance date 20 December 2015 which declined the application makes no mention of non-compliance with Section 54(2) procedure or any other process. The Defendant further pleads that there are no facts pleaded that support the allegation of the First Defendant caused SAA to breach the Significance and Materiality Framework in terms of National Treasury Regulation 28.3. The allegation is void of substance and truth all respects. The First Defendant further pleads that The First Defendant further pleads that the allegations made by the Plaintiffs are scandalous and vexatious in that they are patently false and misleading. The allegations are in their wording defamatory and abusive of the First Defendant. There is nothing in the allegations that can lead to the conclusions of law as averred along the lines of: [REPEAT OF USUAL LANGUAGE]</p>	<p>Elaboration of bare denial / change of defence</p>
<p>P 51 140. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.</p>	<p>P 116 108. AD PARAGRAPH 140 THEREOF First Defendant denies that Plaintiffs are entitled to the relief claimed herein.</p>	<p>11. By deleting Paragraph 108 and substituting it with the following: The contents of this paragraph are denied. The Plaintiffs have not pleaded the cause of action that can lead a court to grant the relief sought. There are no facta pro banda that support the relief sought.</p>	<p>Exception</p>
<p>P 51 142. 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.</p>	<p>P 116 109. AD PARAGRAPHS 141 TO 145 THEREOF The contents of these paragraphs are denied.</p>	<p>12. By deleting Paragraph 109 and substituting it with the following: The contents of this paragraph are denied. In amplification thereof, the First Defendant pleads she did not attempt to renegotiate the Swap Transaction but it was a board decision as reflected in the minutes of the special meeting held on 29 September 2015 and subsequently stated again by the company secretary in the letter to Airbus on 3 October 2015. The delay in itself did not cause any prejudice to SAA or any of its subsidiaries. There was no specified losses or damages incurred by the company or its subsidiaries. The risks alleged are risks arent in themselves exceptional but are risks often encountered in businesses in the normal course of business. SAA has been a business with various financial challenges over the years and there is nothing in the conduct of the First Defendant in the circumstances that can lead to the conclusion that she acting on her own exposed the company to even greater risk than was already existing at the time. The First Defendant avers that there is nothing in the allegations that can lead to the conclusions of law as averred along the lines of: [REPEAT OF SAME LANGUAGE]</p>	<p>Elaboration of bare denial / change of defence</p>
<p>146. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.</p>	<p>110. AD PARAGRAPH 146 THEREOF First Defendant denies that Plaintiffs are entitled to the relief claimed herein .</p>	<p>13. By deleting Paragraph 110 and substituting it with the following: The contents of this paragraph are denied. The Plaintiffs have not pleaded the cause of action that can lead a court to grant the relief sought. There are no facta pro banda that support the relief sought.</p>	<p>Exception</p>

PoC	Plea	Proposed Amendment	Note
EY REPORT			
<p>P 58</p> <p>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.</p> <p>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.</p>	<p>P 116 - 117</p> <p>117. AD PARAGRAPHS 154 AND 155 THEREOF</p> <p>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.</p> <p>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.</p>	<p>14. By adding to Paragraph 117 the following: The First Defendant further pleads that it is not true that she has taken no material steps to address or remedy any of the issues and concerns raised in the EY Report in that the First Defendant addressed a letter to the company secretary on 19 June 2017 asking that the letter be sent to the entire board. In this letter the First Defendant inter alia states the following:</p> <p>i. . "There were many issues raised taking an approach to discredit the reports before the board had properly addressed them after all of us have read them, which we all have. These included, questions such as whatthe scope of these investigations were, whether there were budgets, who authorized them, was there a board resolution, had they gone through other channels ... "</p> <p>ii. . "the ENS was the 'famous' report referred to- we cannot deny we have been aware of it and the EY report, nor their importance. I am yet to understand why we as the Board, 8 months later have not done anything about these if our stated objective was to restore the company to financial health"</p> <p>iii. I am not the right person to justify or argue the findings, but am right to ensure and persuade the board to objectively consider the findings on these reports. To do nothing 8 months to date is really reckless.</p> <p>iv. There are recommended immediate actions by EY and and ENS, including projects suggested by one senior employee at Finance which was shared with the board and CFO, that could potentially generate revenue immediately.</p> <p>v. It is my humble appeal to the board to state clearly what we want of these reports, and take a decision rather than to challenge why these reports were done</p> <p>vi. Recently someone asked who placed thes reports on the Board Agenda, and who instructed Ruth to circulate these reports. I raised my hand then and I do today vii. I also note that while we happily set an urgent meeting to discuss my reply to the Minister, we have never considered it necessary to call a special meeting to discuss these reports which identified alleged maladministration or corrective actions potentially saving the company billions in recurring losses.</p> <p>viii. My response is likely to be defended and attacked but I ask that this board reflect on what the facts of this matter are, as I believe in the end, the facts will determine whether this board acted responsibly, in the best interest of the airline in this regard or not.</p> <p>ix. Ruth kindly present these views and remarks for me. These, I make in the best interest of SAA, which fully depends on lenders and government for financial support through guarantees. I have made my concerns plain and I stand by them.</p> <p>The contents of this letter by the First Defendant clearly defeat the allegation that the First Defendant took no material steps to remedy issues and concerns raised in the EY Report.</p>	<p>Elaboration of bare denial / change of defence</p>
<p>P 58</p> <p>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:</p> <p>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);</p> <p>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);</p> <p>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</p> <p>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)</p>	<p>P 117</p> <p>118. AD PARAGRAPHS 156 AND 157 THEREOF</p> <p>The contents of these paragraphs are denied.</p>	<p>15. By deleting Paragraph 118 and substituting it with the following: The contents of this paragraph are denied. The allegations made by the Plaintiffs are scandalous and vexatious in that there is not a single allegation made about specific conduct of the First Defendant that amounts to the alleged conduct. The allegations are in their wording defamatory and abusive of the First Defendant. There is nothing in the allegations that can lead to the conclusions of law as averred along the lines of: i. [REPEAT OF SAME ALLEGATIONS]</p>	<p>Exception / strike out</p>

PoC	Plea	Proposed Amendment	Note
P 59 158. Accordingly, this Court must make an order declaring Ms Myeni a delinquent director in terms of section 162(5) of the Companies Act.	P 117 119. AD PARAGRAPH 158 THEREOF First Defendant denies that Plaintiffs are entitled to the relief sought herein.	16. By deleting Paragraph 119 and substituting it with the following: The contents of this paragraph are denied. The Plaintiffs have not pleaded the cause of action that can lead a court to grant the relief sought. There are no facta pro banda that support the relief sought.	Exception