



SOUTH AFRICAN AIRWAYS

South African Airways
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OR Tambo International Airport
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NOTICE TO AFFECTED PERSONS: LOCKOUT DEMANDS AND SETTLEMENT AGREEMENT

22 April 2021

1. The business rescue of South African Airways SOC Limited (“SAA”) seeks to achieve a restructured airline that is commercially viable and is able to continue its operations into the future without being dependent on the fiscus.
2. To this end, the business rescue practitioners (“the Practitioners”) sought, in addition to dealing with legacy debt, to ensure that the overhead costs of the airline are also reduced drastically so as to become competitive, ensure its viability and the future social and job security of all its remaining employees. A key area where costs must be reduced is that of labour.
3. The Section 189A process is now concluded for all Managers, Specialists, Cabin Crew and Ground Staff. This process is however not concluded for pilots.
4. Following the Section 189A consultation process, all employee categories, whether they be Managers, Specialists, Cabin Crew or Ground Staff, now have new terms and conditions of employment with reduced benefits and salaries. All employees who were successful in being appointed into the new SAA structures have been appointed on these new employment terms and conditions and salaries.

Directors

Directors

MG Qhena* (Interim Chairperson), JB Crawford* NO Fadugba*¹ EL Van Harte* MP Tshisevhe * MMB Zwane*

*Interim Non-Executive Director

¹ British Citizen

Company Secretary – RN Kibuuka

South African Airways SOC Ltd

Reg. No. 1997/022444/30

A STAR ALLIANCE MEMBER 



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5. This is vital to ensure that the airline operates on a basis where its costs do not outstrip its revenue. The only employee category where this imperative has not been agreed to and implemented is the Flight Deck Crew (“FDC”).

6. A significant impediment to the reduction of the FDC costs, increasing productivity and operational agility are the onerous obligations arising out of the regulating agreement between SAA and SAA pilot union (“the Regulating Agreement”). The Regulating Agreement fundamentally inhibits SAA’s viability and sustainability in that:
 - 6.1. It is an evergreen collective agreement that is fundamentally at odds with the laws and the constitution of South Africa and is inherently discriminatory.

 - 6.2. The **evergreen nature** of the Regulating Agreement is contrary to section 23 (4) of the Labour Relations Act 66 of 1995 (“the LRA”). Section 23 (4) of the LRA does not contemplate or permit collective agreements which have no fixed term, no specific notice period and which may not be terminated on reasonable notice – in other words it does not contemplate or permit evergreen collective agreements.

 - 6.3. The Regulating Agreement prevents SAA from achieving meaningful and expeditious transformation in compliance with the **Constitution and the Employment Equity Act 55 of 1998**. In particular, the application of seniority in terms of the Regulating Agreement, directly controls the manner in which pilots are employed and dealt with by SAA, including promotions, demotions, and salaries. Given the make-up of SAA’s pilot list, which comprises overwhelmingly of white males, this operates to the detriment of and unfairly discriminates both directly and indirectly against Black, Coloured and Indian men and especially women.

 - 6.4. The Regulating Agreement also **removes core elements of decision-making from the board and management of SAA** and precludes SAA from giving effect to its procurement obligations. This is in breach of the Constitution, the Public Finance Management Act 1 of 1999 and the Companies Act 71 of 2008.



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- 6.5. The effect of the Regulating Agreement is that, amongst others, SAA is precluded from reaching any agreement to wet-lease SAA aircraft without the consent of the South African Airways Pilots Association (“SAAPA”).
- 6.6. The Regulating Agreement has a “succession of ownership” provision that means that notwithstanding any changes in ownership of SAA, the Regulating Agreement will remain in full operation. Given that Government has taken a decision to find a strategic equity partner (“SEP”) for SAA, the Regulating Agreement, no doubt makes SAA significantly less attractive to potential SEPs.
- 6.7. The Regulating Agreement also subjects key SAA procurement decisions, such as which hotels to contract with, to the control of SAAPA in that SAAPA is entitled to select the short-list of three hotels from which SAA can choose and even within this short-list, SAA is required to take SAAPA’s preferences into account.
- 6.8. The Regulating Agreement contains many other onerous clauses that prevent a significant reduction of costs to SAA. Thus, SAA’s ability to be nimble and execute changes in its operations is also hampered as a result of operational issues being controlled by SAAPA and requiring their consent for the board and management of SAA to implement such operational changes. Issues of policy, which should form the subject of consultation, may currently only be amended by negotiation and agreement as a number of them are regulated by the Regulating Agreement.
7. The Regulating Agreement confers very extensive, lavish, and guaranteed benefits on SAA’s pilots. Therefore, SAAPA has had no incentive to agree to it being significantly amended, terminated, or replaced. **This together with the need for more affordable market related conditions of employment, new salary scales and severance benefits led to SAA locking pilots out from the 18th December 2020.**
8. SAAPA is required to accept the lockout demands of SAA or to conclude a mutually satisfactory settlement agreement with SAA. SAA has offered a settlement agreement that



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fundamentally addresses SAAPA's demands; in particular, SAA has met the financial terms negotiated between the parties.

9. Following engagements between the Practitioners and SAAPA the following points of disagreement and revised proposals were sent to SAAPA:

NO.	POINTS OF DISAGREEMENT	SAA HAS CONSIDERED EACH OF THE ISSUES AND PROPOSES THE FOLLOWING AS A WAY FORWARD
1.	The severance payment to the pilots that will be retrenched be calculated in terms of the new Terms & Conditions of Employment ("TCE") or old TCE.	SAA accepts that the severance payment to the pilots be calculated and paid in terms of the old TCE except that the difference between the new TCE and old TCE be repaid through the Receivership over a three-year period.
2.	The payment of the 2019 and 2020 13 th cheques.	SAA accepts the payment of the 2019 and 2020 13 th cheques but proposes that the 2020 13 th cheque be paid <i>pro rata</i> until 18 December 2020
3.	The position in relation to pilots on disability.	SAA proposes that the current clause 10 in the settlement agreement be retained. In summary, pilots that are on the third-party insurance provider and the Company's internally funded scheme will remain employed by the Company and receive such benefits to which they are entitled in terms of the relevant schemes' policies and underwriting provisions.
4.	The preferential re-employment clause. SAAPA proposes that the period for this clause be for 36 months and take into account the pilots' seniority at retrenchment.	SAA proposes that the period be 12 months with an undertaking to consult with pilots in a <i>bona fide</i> attempt to agree on the employment equity band within 6 months of the effective date of the settlement agreement.
5.	SAAPA proposes that the placement of the 88 pilots in the new structure be done post the upliftment of the Lockout and that the pilots get remunerated from the period post the upliftment of the Lockout until their retrenchment date.	SAA accepts that the pilots receive their remuneration, as they would be entitled to receive it post the uplifting of the Lockout.



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6.	The effective date of the settlement. SAAPA want the effective date to be the date on which the agreement is signed and still subject to Condition Precedents (“CPs”).	SAA proposes that the effective date of the settlement be the date on which the CPs of the settlement are met.
7.	SAAPA demands that the pilots get paid their 13 th cheques and remuneration for December 2020 immediately without delay or conclusion of the settlement agreement.	SAA proposes to pay all amounts due to pilots in terms of the signed and unconditional settlement agreement.
8.	SAAPA proposes that the payment of the other amounts in terms of the settlement that do not require a tax directive be paid within 72 hours.	SAA proposes that the payments be made to the pilots within 14 days of the effective date, subject to SAA’s capacity constraints.
9.	The over 50 clause specifically in relation to the pensioner’s traveller card.	SAA proposes that the current clause in the settlement agreement be retained. SAA are of the view that the traveller card is included in the current clause as it is available to all employees of SAA and the current over 50s on the contract will be treated similar to pilots who are on indefinite contracts of employment.

10. There are fundamental limitations in consideration of SAAPA’s demands:

10.1. SAA has limited funds for the implementation of the Business Rescue Plan (“the Plan”) which include the payment of severance packages to all its retrenched employees;

10.2. The payment of an ex-gratia payment to pilots for the purposes of cancelling the Regulating Agreement was not supported by the shareholder and is not currently available in the funding for the implementation of the Plan of SAA; and

10.3. Notwithstanding the above, the Practitioners nevertheless accepted the SAAPA demand for the ex gratia payment as a necessary compromise for the termination of the Regulating Agreement and in the best interests of the airline going forward.



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11. Whilst SAA believes, we are relatively close to settling on the outstanding items we are nevertheless concerned at what appears to be an ever-moving target of demands by SAAPA. The latest being their demand that the two 13th cheques and salaries for 1 to 18 December 2020 be paid out immediately before any further engagements will be considered by SAAPA with the Practitioners regarding the settlement proposal.
12. The Practitioners have consistently advised SAAPA that these payments will form part of the payments to be made once the settlement agreement is finalised.
13. The Practitioners advised SAAPA during February 2021 and March 2021 at their various engagements, that certain aspects of the settlement proposal (ex-gratia payment (R85 million) to pilots over three years and the balance of the severance payment (R129 million) over three years) will no longer be available once the business rescue has ended, a total of R214 million.
14. Thus, SAAPA's insistence on receiving the amounts referred to in 11 above before they will finalise the settlement is rather ill conceived given that SAAPA are putting R214 million in jeopardy for amounts that the pilots will receive once the settlement is finalised.
15. It is important to note that SAA has met all the financial demands as negotiated and agreed between the parties.
16. Despite the Practitioners having submitted their revised terms proposed on the settlement to SAAPA on the 1st April 2021, SAAPA have to date not responded to these terms which meets the financial demands put to SAA during the settlement negotiations.



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17. Had SAAPA concluded the settlement on the proposed terms the following amounts would have been paid to the pilots during the course of 9 April 2021:
 - 17.1. Unpaid salaries settlement for the months of April to November 2020 in the amount of R314 million
 - 17.2. Notice pay in the amount of R68 million;
 - 17.3. Leave pay in the amount of R184 million; and
 - 17.4. 13th cheque payments in the amount of R137 million.
18. In total, the pilots would have now received R886 million, with the balance of ex-gratia and severance payments being made over the next three years with the first payment in the amount of R71 million being paid in August 2021.
19. When considered in perspective the demand for the immediate payment of the 13th cheque amounts of R137 million prior to the finalisation of the settlement, which would have been paid on conclusion of the settlement in any event, is being placed before what could have been a further payment of R567 million and also putting the uncompromised full leave pay and ex gratia payments in jeopardy, this cannot be in the best interests of pilots.
20. The timing of these payments makes the position taken by SAAPA even more illogical in the circumstances and can only lead one to believe that it is not SAAPA's intention to reach settlement and have the above amounts payable to the pilots. It is even worse when faced with the reality that the ex-gratia payments and the uncompromised full leave pay will no longer be available once the business rescue ends.
21. The Practitioners have formally advised SAAPA that the exit from business rescue has been delayed by the signing of an agreement with the Lenders and that this should be finalised soon.



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The Practitioners wish to point out that a key element for any business rescue to succeed, including that of SAA, is for all affected parties to accept the principle of making compromises in order to allow the business to continue and avert liquidation. It is thus regrettable that notwithstanding the compromises made by almost all categories of affected persons to ensure the successful rescue of SAA the pilots, led by SAAPA, have to date refused to settle and in spite of the concessions made by SAA and the Practitioners to their demands.

22. It is also regrettable that SAAPA is also refusing individual pilots from making decisions that suite them as individuals and in so doing has caused untold suffering to many individual pilots and their families who wanted to accept the settlement offered by SAA in their individual capacities.
23. The summation of the position as SAA sees it is that there are three issues remaining that need to be resolved in order for the parties to settle:
 - 23.1. The timing on the payment of the agreed severance payment;
 - 23.2. The preferential re-employment clause; and
 - 23.3. The timing of the payment of the immediately payable amounts.
24. It is truly inconceivable that a union that is meant to put the interests of its members first would continue to refuse to settle, when there is only one substantive issue of disagreement and the other two issues are related to the timing of payment.