

Mezzanine Level
Domestic Departures Terminal
OR Tambo International Airport
1627

PO Box 1273
OR Tambo International Airport
1627



29 June 2022

MANGO AIRLINES SOC LIMITED (in business rescue)

Registration Number 2006/018129/30

("Mango" or "the Company")

Attention: All Affected Persons

MEMORANDUM ON THE RETENTION BY SOUTH AFRICAN AIRWAYS SOC LIMITED OF A PORTION OF THE FUNDING THAT WAS ALLOCATED TO MANGO IN TERMS OF THE SPECIAL APPROPRIATION ACT 11 OF 2021

1 INTRODUCTION

Further to publication of the status report dated 31 May 2022 ("**the Status Report**"), and the meeting between the business rescue practitioner ("**BRP**") and members of the Creditors' Committee, the BRP has prepared this memorandum ("**Memorandum**") to enable the creditors of Mango to make an informed decision on whether:

- to accept South African Airways SOC Limited's ("**SAA**") reduction of the R819 million funding that was allocated to Mango in terms of the Special Appropriation Act 11 of 2021 ("**Special Appropriation Act**"), by an amount of R85 million ("**the reduction**" or "**withholding**"); or
- to reject the reduction and, consequently, for the BRP to take the necessary steps to recover the withholding, including litigating for the said recovery.

This Memorandum sets out:

- the background to and the underlying legal position of Mango's entitlement to the R819 million allocation under the Special Appropriation Act;
- the impact of the reduction on the probable business rescue dividend;
- the specific matters to be determined by a vote of creditors; and
- the BRP's views on these issues.

2 BACKGROUND AND UNDERLYING LEGAL POSITION FOR FUNDING

On 28 June 2021, the President assented to the Special Appropriation Act in terms of which, amongst other things, an amount of R819 million was allocated to Mango for its recapitalisation ("**the allocation**") as part of the implementation of SAA's business rescue plan. Accordingly, Mango's adopted business rescue plan ("**BR Plan**") provided, as one of the conditions for substantial implementation, payment of the balance of funds remaining from the allocation.

Prior to the publication of the BR Plan, Mango had received R100 million from the allocation, and shortly before the adoption of the BR Plan a further R320 million was received and used mainly towards payment of employee termination benefits arising from retrenchments contemplated in the BR Plan. Thereafter, the BRP wrote several letters to SAA and the Department of Public Enterprises (“DPE”) over a period of approximately four months, to request payment of the outstanding balance of R399 million. As previously indicated, the BRP commenced litigation to recover the balance of the allocation, but withdrew the litigation once SAA and the DPE agreed to pay the remaining balance, subject to a retention of R85 million as explained in the letter from SAA attached to the Status Report as Annexure A. Mango has accordingly received a total of R734 million of the allocation to date.

The underlying legal position pertaining to the allocation can be summarised as follows:

- in terms of section 3 of the Special Appropriation Act, read together with Vote 10 in the Schedule thereto, Mango is entitled to receive an amount of R819 million;
- the Special Appropriation Act does not stipulate any conditions to be met by Mango to receive its allocation, nor does it make provision for any portion of the allocation to be withheld by SAA or the DPE. However, it does provide for the Minister of Finance, on request by the Minister of Public Enterprises, to re-allocate the funds appropriated for SAA’s subsidiaries among the subsidiaries to address urgent funding needs;
- SAA is obliged to comply with the provisions of the BR Plan, which are binding on it by virtue of section 152(4) of the Companies Act 71 of 2008, and the Special Appropriation Act, by making an unconditional payment of the outstanding balance of the allocation in full; and
- in the absence of any further legislation that amends or adjusts the amount allocated to Mango, the retention, in the manner articulated by SAA, will fall foul of the Special Appropriation Act. Accordingly, to achieve the objective of returning the reduction to the National Revenue Fund, the SAA or the DPE may have to engage with the National Treasury to the extent required.

3 IMPACT OF THE REDUCTION ON THE PROBABLE BUSINESS RESCUE DIVIDEND

The probable business rescue dividend (“BR Dividend”), per Annexure C of the BR Plan was calculated on the basis that the full allocation in terms of the Special Appropriation Act would be received by Mango, from which it was projected that a balance of R119 million would be available to pay a concurrent dividend of approximately 4.43 cents to the Rand, being the minimum dividend payable in the event of a successful conclusion of the Investor Process. Had the reduction of R85 million been known and provided for at the time of publishing the BR Plan, the estimated minimum BR Dividend would have been 1.28 cents to the Rand. However, based on the offers from the preferred and reserve bidders, assuming that one of these offers is implemented on the proposed terms, the BRP projects that the BR Dividend payable to concurrent creditors will be significantly higher than the estimated minimum BR Dividend of 4.43 cents to the Rand, and also exceed the Wind-Down BR Dividend indicated in the ensuing paragraph.

The BRP’s estimate of a probable Wind-Down BR Dividend is as follows:

	Amount in Rand	
Projected Cash Balance 31/08/2022	257 518 842	
Estimated Proceeds From Sale of Spare Engine	54 775 000	312 293 842
Available for Distribution to Post Commencement Creditors		312 293 842
Post Commencement Claims		
Sundry Post Commencement Claims	11 076 664	11 076 664
Available for Distribution to Concurrent Creditors		301 217 178
Distribution to Concurrent Creditors		
Total Value of Concurrent Creditors	3 010 919 634	
Dividend Payable to Concurrent Creditors		301 217 178
Probable Dividend in Cents to the Rand		10,00

Accordingly, by both measures (Investor Process or Wind-Down), creditors' minimum expected dividends would still be higher than what was initially conveyed to and anticipated by them notwithstanding the shortfall of R85 million in the funds allocated to Mango. The current BR Plan therefore remains capable of being implemented by the BRP, even in the absence of the R85 million.

4 MATTERS TO BE DETERMINED BY A VOTE OF CREDITORS

Based on the above analysis, creditors are therefore required to vote on the following matters:

Vote on the R85 million reduction

- to accept the reduction of the R819 million funding allocated to Mango in terms of the Special Appropriation Act, by an amount of R85 million; or
- to reject the reduction, in which case the BRP will proceed to take any necessary steps to recover the reduction, including taking legal action.

Vote on the amendment of the BR Plan

In addition, the BRP proposes that the BR Plan be amended, regardless of the outcome of the above vote, to delete the condition stated in paragraph 7.2.1.2, which requires the full outstanding balance to be received by Mango before the BRP can file a notice of substantial implementation. The rationale for the proposed deletion is that retaining the condition will result in an absurd situation where the BRP may be forced to convert the business rescue proceedings into liquidation only on the basis that he has not been able to recover the full R85 million despite his best efforts.

The notice of the meeting of creditors to vote as indicated above is attached to this memorandum, along with a proxy form for those wishing to cast their votes by proxy.

5 VIEWS OF THE BRP ON THE ISSUE

Notwithstanding what the legal position underlying Mango's entitlement to the payment of the outstanding balance of R85 million is as set out in section 2 above, the outcome of such litigation cannot be guaranteed and may involve a protracted process which will only result in further consequent delays in the implementation of the BR Plan, increased costs of business rescue, and possibly jeopardise the Investor Process which is currently at an advanced stage. Accordingly, to the extent that the reduction will indeed be repatriated back to the fiscus, the BRP is of the opinion that it would be in the best interest of affected parties for the reduction to be accepted.

Sipho Sono

Business Rescue Practitioner