

## Trans-Caledon Tunnel Authority (TCTA)

WSP4 (LHWP)                      ZAG000020009  
WSP5 (LHWP)                      ZAG000020017

As established by Notice No 2631 in Government Gazette No 10545 of 12 December 1986, and revised by Notice No 277 in Government Gazette No 21017 of 24 March 2000 (the *Notice of Establishment*). A Schedule 2 Public Finance Management Act No. 1 of 1999 (PFMA) entity.

### DELAY IN COMPLETION OF TCTA'S 2018/19 AUDIT AND ANNUAL FINANCIAL STATEMENTS

Noteholders are notified of the following with regards to TCTA's Annual Financial Statements (AFS) for the year ended 31 March 2019.

#### Background

The Auditor-General of South Africa (AGSA) has been TCTA's Auditor since 1 April 2018 (see the TCTA SENS Announcement of 11 May 2018 titled "Change in External Auditor from 1 April 2018" for more detail). As such the audit of the financial statements for the financial year ended 31 March 2019 (2018/19) represents the AGSA's first engagement with TCTA.

In the course of this engagement it emerged that there were significant differences of interpretation between the AGSA and TCTA over the nature of the supporting documentation required to substantiate payments made by TCTA to the Lesotho Highlands Development Authority (LHDA) and Lesotho Highlands Water Commission (LHWC) in fulfilment of its mandate under the Notice of Establishment and the relevant accounting treatment in respect thereof. As a result there has been a delay in the completion of the audit of the financial statements and a corresponding delay in the release of the 2018/19 AFS.

#### Problem Statement

TCTA submitted its draft AFS to the AGSA on 31 May 2019, as per PFMA requirements. Included in these was the disclosure of payments made to the LHDA on the water transfer portion of the Lesotho Highlands Water Project (LHWP or the Project) located in Lesotho; royalty payments due to the Kingdom of Lesotho; and South Africa's contribution to the operating costs of the LHWC. These payments are made to discharge South Africa's financial obligations as regulated by the Treaty on the LHWP between South Africa and Lesotho (the Treaty).

The AGSA requested that TCTA provide supporting documentation relating to the expenses and costs of the LHDA and LHWC in the form of invoices, bill of quantities, contracts etc. TCTA's response was that, due to its mandate, it had to pay monies over to LHDA on presentation of Monthly Subventions, approved by the CFO of the LHDA, as the duly authorised LHDA representative, and approved for payment by the RSA Delegation to the LHWC. TCTA pointed out that its mandate and powers in this regard are regulated by:

- the Notice of Establishment (1986, amended in 2000);
- the LHWP Phase 2 Agreement (2011); and
- the Memorandum of Understanding (2005) between LHDA and TCTA that sets out the operating framework for the payment of money to the LHDA.

None of which give TCTA jurisdiction over or direct access to information in the possession of the LHDA. Instead the Treaty provides for the LHWC to exercise oversight over LHDA and to be accountable for the

Project.

The LHWC is a bi-national commission established in terms of the treaty and comprising of two equal delegations from Lesotho and South Africa. It has approval, monitoring and advisory powers over the activities of the LHDA to safeguard the respective interests of the two governments; It acts for and advises the governments and is the channel of all government inputs relating to the Project. The RSA delegation to the LHWC reports to the Department of Water and Sanitation (DWS).

Both the LHWC and LHDA are audited by reputable audit firms and to the best of TCTA's knowledge neither have ever had an adverse audit opinion.

TCTA continues to engage with the AGSA, DWS and LHWC. In addition to this it has sought the assistance of the Accountant General at National Treasury towards resolving the matter; and has approached the Office of the Chief State Law Adviser for advice.

### Potential Consequences of the Delay:

At this stage, these relate mostly to the potential failure to submit the AFS in a timely manner to various stakeholders. The timely submission of the AFS is a legal (Public Finance Management Act No 1 of 1999 – PFMA), regulatory (Financial Markets Act 19 of 2012 – FMA, Financial Sector Regulation Act of 9 of 2017 – FSRA, JSE Debt Listing Requirements - DLR) and contractual (various loan agreements with various lenders) requirement. The table below indicates the various submission deadlines and the potential consequences of failure to comply with each:

Requirement	Deadline	Status	Consequences of Non-Compliance
<b>s55(1)(c) PFMA</b> to Auditors	31 May 2019	Submitted	N/A
<b>s55(1)(d) PFMA</b> submission to Minister/DWS and National Treasury	31 Aug 2019	-	Internal
<b>s65(1)(a) PFMA</b> Minister to table AFS to National Assembly	30 Sep 2019	-	Minister must table written explanation to the National Assembly setting out the reason for failure <b>s65(2)(a) PFMA.</b> AGSA may issue a special report <b>s65(2)(b) PFMA.</b>
<b>s90(b) FMA</b> Regulated Person must submit AFS to FSCA	31 Aug 2019	Extension granted to 31 Oct	Administrative penalty levied in terms of <b>s167 FSRA.</b>
<b>s7.4 DLR:</b> make AFS publicly available & publish JSE SENS announcement	31 Oct 2019	-	<b>s7.7(b) DLR</b> JSE will publish SENS after deadline informing investors of potential suspension of listing. <b>S7.7(c) DLR</b> if AFS are still outstanding after end of Nov 2019, JSE will suspend listing. <b>s7.8 DLR</b> grant JSE discretion as to the application of 7.7(b) and (c) above.
Various Loan Agreement	Between the end of Jul 2019 and the end of Sep 2019	TCTA is engaging with the lenders.	Varies from no consequences to being a potential event of default.

There is a potential for some lenders to regard the failure to provide the AFS in a timely manner either to themselves (in terms of the information undertakings under their loan agreements) or to the National Assembly, should the matter not have been resolved by 30 September as either an Event of Default or as a breach of law (loan agreements generally require the borrower to act lawfully), which can also be an Event of Default.

At this stage, TCTA believes that the fact that the breaches do not emanate from any act of bad faith, or illegality on the part of TCTA but rather from a difference of opinion on a technical matter, which would allow its lenders to reserve their rights under the relevant instruments of debt until the matter is finalised.

A further risk exists in that should the AFS remain outstanding after the end of November 2019, the JSE may, at its discretion, suspend TCTA's listed debt. At this stage, TCTA believes that a successful engagement between the AGSA, DWS, LHWC and LHDA would likely result in the completion of the process by the end of October 2019 and thus views the possibility of this as remote.

However, TCTA will also engage the JSE with regards to its bona fides in terms of attempting to find a speedy resolution to this matter in order to convince the JSE to exercise its discretion in terms of s7.8 of the DLR with regards to the suspension of its notes in case the current view regarding the completion of the process proves to be over-sanguine.

**TCTA will update Noteholders promptly when there are further updates regarding the AGSA's stance, or the actions of its lenders on this matter.**

30 August 2019

For further information please contact

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