

Trans-Caledon Tunnel Authority (TCTA)

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 SUBMISSION OF TCTA'S 2019/20 ANNUAL REPORT AND THE RELEASE OF THE ANNUAL FINANCIAL STATEMENTS

Noteholders are notified of the following with regards to TCTA's Annual Report and Annual Financial Statements (AFS) for the year ended 31 March 2020.

Background

In terms of the Government Notice No. 437 of 31 March 2020 and subsequently amended by the Government Notice No. 665 of 11 June 2020, an exemption was given to institutions in complying with Section 55(d) of the Public Finance Management Act, with the condition that the relevant functionary or institution must comply with a provision in the legislation in two months after the stated deadline. This exemption gave TCTA until the 31 October 2020 to submit the Annual Report, which include the annual financial statements (AFS), to the Minister of Human Settlements, Water and Sanitation, for tabling in Parliament. Once tabled in Parliament the Annual Report becomes a public document.

Problem Statement

There has been a delay in the conclusion of the audit by TCTA's auditors, the Auditor-General of South Africa (AGSA). The delay occurred due to the challenges experienced by members of LHDA's auditors who are based South Africa in conducting elements of the audit related to payments made by TCTA to the Government of Lesotho, LHDA and the LHWC in the discharge of the RSA's financial obligations in terms of the Treaty. The delay was caused by the closure of the South Africa – Lesotho border due to COVID-19. This prevented auditors, who were based in South Africa, crossing into Lesotho to undertake their work for LHDA.

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
s55(1)(c) PFMA to Auditors	31 Jul 2020	Submitted	N/A
s55(1)(d) PFMA submission to Minister/DWS and National Treasury	31 Oct 2020	-	Internal
s65(1)(a) PFMA Minister to table AFS to National Assembly	30 Nov 2020 (or the last day that Parliament sits in 2020)	-	Minister must table written explanation to the National Assembly setting out the reasons for failure s65(2)(a) PFMA .
s90(b) FMA Regulated Person must submit AFS to FSCA	31 Aug 2020	Extension granted to 30 October 2020	Administrative penalty levied in terms of s167 FSRA .
s7.4 DLR : make AFS publicly available & publish JSE SENS announcement	30 Oct 2020	-	s7.7(b) DLR JSE will publish SENS after deadline informing investors of potential suspension of listing. S7.7(c) DLR if AFS are still outstanding after end of Nov 2020, JSE will suspend listing. s7.8 DLR grant JSE discretion as to the application of 7.7(b) and (c) above.
Various Loan Agreement	Between the end of Jul 2020 and the end of Sep 2020	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, 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.

A further risk exists in that should the AFS remain outstanding after the end of November 2020, the JSE may, at its discretion, suspend TCTA's listed debt.

TCTA will update Noteholders promptly when the Annual Report has been completed and submitted to Parliament and when it will be tabled, enabling it to be released to the public or the actions of its lenders on this matter.

30 October 2020

For further information please contact

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