No.0445 - 2023: Fifth Session, Sixth Legislature

**GAUTENG PROVINCIAL LEGISLATURE**

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**ANNOUNCEMENTS,**

**TABLINGS AND**

**COMMITTEE REPORTS**

**========================**

Monday, 04 December 2023

**ANNOUNCEMENTS**

none

**TABLINGS**

none

**COMMITTEE REPORTS**

**1. The Chairperson of the Standing Committee on Public Accounts, Hon. S Khanyile, tabled the Committee’s Oversight Report on the Report of the Auditor-General of South Africa to the Gauteng Provincial Legislature on Financial Statements of the Gautrain Management Agency (GMA) for year ended 31 March 2023, as attached:**

**STANDING COMMITTEE ON PUBLIC ACCOUNTS OVERSIGHT REPORT ON THE REPORT OF THE AUDITOR-GENERAL OF SOUTH AFRICA TO THE GAUTENG PROVINCIAL LEGISLATURE ON THE FINANCIAL STATEMENTS OF GAUTRAIN MANAGEMENT AGENCY FOR THE YEAR ENDED 31 MARCH 2023**

**23 NOVEMBER 2023**

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**Acronyms**

AGSA Auditor-General of South Africa

APP Annual Performance Plan

CFO Chief Financial Officer

CSD Central Supplier Database

CRO Chief Risk Officer

DPME Directorate Planning Monitoring and Evaluation

GPT Gauteng Provincial Treasury

GDF Gauteng Department of Finance

GMA Guatrain Management Agency

GTIA Gauteng Transport Infrastructure Act

HOD Head of Department

MEC Member of the Executive Council

MTEF Medium Term Expenditure Framework

MPL Member of the Provincial Legislature

OoP Office of the Premier

PFMA Public Finance Management Act

PPR Preferred Procurement Regulations

PPP Public Private Partnership

SARS South African Revenue Services

SLA Service Level Agreement

TCC Tax Clearance Certificate

TR Treasury Regulations

1. **INTRODUCTION**

The Standing Committee on Public Accounts (SCOPA) has examined the Report of the Auditor-General of South Africa (AGSA) to the Gauteng Provincial Legislature (GPL) on the Financial Statements of Gautrain Management Agency (GMA) for the year ended 31 March 2022. This was done as per GPL Rule 178 (3).

The function of SCOPA is to examine the financial statements of the Legislature, all executive organs of the province and other provincial organs of state, including any reports issued by the AGSA on the affairs of GPL, Office of Premier (OoP), the Departments and Entities of Gauteng Provincial Government (GPG). SCOPA is required to do this on behalf of the Legislature, to ensure accountable utilization of resources and prudent financial management, and to make recommendations to the Legislature.

In the process of examining the financial statements and reports of an organ of state, SCOPA must ensure that they comply with of the Constitution of RSA, the Public Financial Management Act, and the requirements of the Public Audit Act No 5 of 2018. SCOPA must also consider the previous statements and reports of such an organ and report on the degree to which shortcomings have been rectified as required by GPL Rule 178 (3).

1. **PROCESS FOLLOWED**

The Report of the AGSA on the financial statements of Gautrain Management Agency (GMA) for the year ended 31 March 2023, was tabled together with its 2022/23 Annual Report on 30 August 2023. This was done in terms of Sections 188(1) and (2) of the Constitution of the Republic of South Africa, (Act No. 108 of 1996), read with Sections 4, 20, and 21 of the Public Audit Act No 5 of 2018.

The report was referred by the Speaker to SCOPA on 31 August 2023 for consideration, as per Rule 149 read with Rule 233 of the Standing Rules of the GPL.

On Thursday, 19 October 2023, the Committee was briefed by the Auditor-General of South Africa on the audit outcome of Gautrain Management Agency (GMA).

In the process of SCOPA considering the reports of the AGSA, the following reports were received from the Stakeholders of the Committee on 19 October 2023:

* The report by the Office of the Premier on Gauteng Forensic Unit report on progress made on special focus cases and investigations referred by Departments;
* The report by the MEC for Finance on the Assessment of consolidated AFS and consolidated Audit Outcomes;
* The report by the Office of the Public Service Commission in Gauteng on GPG Departments Public Administration Practices; and
* The report by Gauteng Office of the Public Protector on Investigations related to Gauteng for the period 2022/23 and outstanding for prior years.

The Committee analysed the report of AGSA and produced preliminary questions which were sent to the Gautrain Management Agency (GMA) for responses by 26 October 2023. The Gautrain Management Agency (GMA) submitted its responses to the preliminary questions on the 06 November 2023. In examining the responses by Gautrain Management Agency (GMA), the Committee resolved not to conduct a public hearing with the GMA.

On Friday, 23 November 2023, the Standing Committee on Public Accounts (SCOPA) considered and adopted its Oversight Report on the report of the Auditor-General of South Africa for Gautrain Management Agency (GMA) for the year ended 31 March 2023.

1. **FINDINGS BY THE AGSA ON THE REPORT**
	1. **Audit Opinion**

The Auditor-General of South Africa issued an unqualified audit opinion (clean audit) on the financial statements of Gautrain Management Agency (GMA).

The Gautrain Management Agency (GMA) has retained the clean audit. This is an unchanged audit opinion, from that which it received in the previous four financial years (2021/22; 2021/20; 2020/19 and 2019/18).

* 1. **Audit Findings**

The AGSA did not identify nor raise any material findings or significant deficiencies in the Gautrain Management Agency (GMA) in the following areas of the audit:

* Audit of financial statements;
* Audit of annual performance report;
* Audit of compliance with legislation;
* Audit of internal controls; and
* Other reports.
1. **COMMITTEE FINDINGS AND CONCLUSIONS BY AGSA**

As reported earlier, the Committee did not engage the Gautrain Management Agency (GMA) through preliminary questions. The Committee analyzed the report of the GMA and was satisfied that there were no material findings or significant deficiencies raised by the AGSA. However, the following matters of emphasis were noted:

**4.1 LITIGATION CONTINGENCIES**

**4.1.1 Finding by the AGSA**

The AGSA reported that the entity was a defendant in land dispute claims raised by property owners on the valuation of their expropriated land. The ultimate outcomes of these matters could not be presently determined and no provision for any liability that may result was made in the financial statements.

**4.1.2 Committee findings**

The Committee noted that:

* The GMA reported in late 2021 that there were 27 land disputes that have been declared by the landowners, of which 23 of them are dormant in that there has not been any movement on such matters for more than 10 years. With the advice of Senior Counsel, and the State Attorney’s office which is handling all these matters, it was resolved that such matters be left as is and only be given attention should they become active again.
* It was also reported that the Gauteng Department of Roads and Transport (GDRT) is the formal defendant of these disputes and for liaising with the State Attorney, whilst the GMA is responsible for making financial provision thereof and assisting the GDRT.

The GMA reported the following progress on the remaining four matters since then has been as follows:

1. MBS Carriers vs Department of Roads & Transport

After compensating the owner, in line with the Gauteng Transport Infrastructure Act (GTIA), the owner alleged that it has suffered more financial losses and claimed such losses from the GDRT. Pursuant to the GMA issuing the owner with Section 25(3) Notice (of the GTIA), the parties settled the matter amicably and payment has been made to the owner in this regard.

1. Regency vs Department of Roads & Transport

After summons was issued by the plaintiff claiming compensation, the State Attorney, on behalf of GDRT, defended the matter. The parties subsequently agreed to refer the matter to arbitration. The State Attorney had, on 23 July 2021, received a settlement proposal from the plaintiff’s attorney, which was subsequently referred to Senior Counsel for guidance. The parties ultimately settled the claim amicably and payment has been made to the owner in this regard.

1. Manhattan vs Department of Roads & Transport

After the plaintiff issued summons, claiming compensation, the parties agreed to refer the matter to arbitration. The claim was subsequently settled by the parties, on the basis that the owner withdraws its claim in this regard.

1. Clicks Group Limited vs Department of Roads & Transport

After summons were issued by plaintiff, claiming compensation, the State Attorney filed a plea and a discovery affidavit. With pleadings closed, the matter is ripe for hearing. The parties have, however, decided to embark on negotiations, with the view to settling the matter.

The GMA reported that considering the settlement or resolution of all but one of the above matters, the contingency provision moved from R51,600 000 (million) in the 2021/22 financial year to R38200 000 (million) at the end of the 2022/23 financial year. Whilst dependent on the outcome negotiations with the property owner in the final outstanding matter, it is projected that the contingent liability has been further reduced and may be closed out in the current financial year.

**4.2 COMMITMENTS**

**4.2.2 Committee findings**

The Committee noted that the public entity, in terms of the concession agreement, pays the operator, Bombela Concession Company, a patronage guarantee should actual revenue collected be below the minimum required total revenue as specified in the concession agreement. During the 2022-23 financial year, the public entity paid the operator R2 371 508 000 (Billion) (2021-22: R2 286 368 000) in the form of a patronage guarantee due to the actual revenue and ridership being significantly below the minimum required total revenue projections.

The GMA reported that prior to commencing with the procurement of the project, the Gauteng Provincial Government prepared a comprehensive feasibility study and financial model. At that time, it was clear that, like the vast majority of passenger rail projects around the world, the Gautrain would require government financial support. For the Gautrain, the total capital requirement was far greater than that which the private sector could invest and recover from user fees.

Because the revenue that would accrue to the private party during the Operating Period of the Gautrain Public Private Partnership (PPP) was viewed as highly uncertain, the Concession Agreement has a financial metric known as the Minimum Required Total Revenue (MRTR). All design, construction, partial financing, operation, maintenance, and replacement costs are included in the MRTR. This ensures that the required maintenance and upgrading of key components are executed during the prescribed time intervals.

The total yearly Provincial obligation towards the Gautrain project is known as the Patronage Guarantee. The Patronage Guarantee is paid monthly to the Concessionaire provided all performance standards are met and exceeded. The amount paid is the difference between Minimum Required Total Revenue (the yearly income required by the Concessionaire to cover all its annualised costs and is set in the Concession Agreement) and the Actual Total Revenue (the actual revenue collected in the operations of the System as defined in the Concession Agreement).

After the fifteen-year operation period the rail infrastructure will be handed back to the Gauteng Provincial Government, unencumbered and in a contractually prescribed condition. The completion date of the current operation period is 27 March 2026. Through the Gautrain PPP contract the Gauteng Provincial Government has acquired a commuter rail infrastructure asset with a current replacement value of
R45 000 000 000 (billion).

1. **COMMITTEE RECOMMENDATION**

5.1 That the entity must develop and implement a plan to maintain clean audit outcomes in the financial and performance management, as well as the status of compliance, thereby ensuring good governance and administration of public funds and provide the Committee with a report by 30 April 2024.

1. **CONCLUSION**

In conclusion, the Committee noted that the audit outcomes of the Gautrain Management Agency (GMA) for the five-year period have remained the same with an unqualified audit opinion on the financial statements and no findings on predetermined objectives and compliance.

Furthermore, the Committee noted that the effectiveness of governance structures in providing oversight has assisted the entity in ensuring that the control environment functioned effectively throughout the year. A sustained clean audit outcome has a positive impact on the public entity ability to appropriately manage the Gautrain project to ensure a delivery of service as per the citizen’s aspirations.

1. **ACKNOWLEDGEMENTS**

I would like to thank the following Members: MJ Kanyane; RJ Kekana; BP Mncube; MJ Modise; DP Malema; A De Lange; P Atkinson; AW Cilliers; L Masilela; P Mdlankomo for their diligent deliberations during this process.

I would also like to express my appreciation to the MEC. Kedibone Diale -Tlabela and officials of the Gauteng Department of Transport and Logistics; the Gauteng Business Unit Leader of the Office of Auditor-General South Africa (AGSA), Mr. Dumisani Cebekhulu and his team; MEC Kedibone Diale-Tlabela and officials from the Gauteng Provincial Treasury; Group Committee Co-ordinator, Monica Vaas for tabling the report; Senior Committee Co-ordinators, Simon Magolego, and Mompati Gaonnwe; Committee Co-ordinator, Catherine Thobejane; Committee Researchers, Bongi Dlamini and Lerato Mofokeng; Administrative Assistants, Sizakele Mthembu; Media Officer, Pfano Bulasigobo; Senior Information Officer, Jacky Letsoalo; Legal & Procedural Advisor, Winnie Ngubane; Service Officer, Lithemba Simon; PPP Lerato Bodman and the Hansard Operator, Sylvester Baloyi without whom this process would not have been successfully completed.

1. **ADOPTION OF THE REPORT**

After due deliberations, the Standing Committee on Public Accounts (SCOPA) unanimously adopted its Oversight Report on the Report of the Auditor-General of South Africa to the Gauteng Provincial Legislature on the financial statements of Gautrain Management Agency (GMA) for the year ended 31 March 2023.

In terms of Standing Rule 117 (2)(c) read together with 164, the Committee presents to this House the above-mentioned report for consideration and adoption.

**Mr. Sochayile Khanyile, MPL**

**Chairperson: Standing Committee on Public Accounts**