Polity.org.za

(English text signed by the President.)
(Assented to 21 December 2007.)

ACT

To provide for the transfer of shares, loan accounts, liabilities and guarantees in South African Express (Proprietary) Limited from Transnet Limited to the State to provide for the main objects and powers of South African Express (Proprietary) Limited; to provide for the borrowing powers of South African Express (Proprietary) Limited; to provide for the conversion of South African Express (Proprietary) Limited into a public company having a share capital incorporated in terms of the Companies Act, 1973; and to provide for matters connected therewith.

PREAMBLE

SINCE retaining South African Express as a strategic asset would enable the State to preserve its ability to provide frequency of services on lower density routes;

AND SINCE the State desires to contribute to the expansion of regional air service capability within South Africa and to the African continent and the surrounding islands,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
"Companies Act" means the Companies Act, 1973 (Act No. 61 of 1973);
"conversion date" means the date on which the conversion of South African Express (Propriety) Limited into a public company is registered in terms of section 6(1);
"Legal Succession Act" means the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);
"Minister" means the Minister responsible for Public Enterprises;
"SAX" means South African Express (Proprietary) Limited and, with effect from the conversion date, South African Express Limited;
"SAX claims" means all amounts owing by SAX to Transnet as at midnight on the day immediately before the transfer date;
"SAX interests" means those SAX claims and assets, liabilities, rights or obligations determined in terms of section 3(1)*(a)* or section 3(2), as the case may be, to constitute SAX interests;
"SAX shares" means all the shares in the capital of SAX of which Transnet is, immediately before the transfer date, the registered and beneficial owner;
"South African Express Limited" means South African Express Limited, a public company duly incorporated in terms of the Companies Act;
"South African Express (Proprietary) Limited" means South African Express (Proprietary) Limited, a private company duly incorporated in terms of the Companies Act;

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za

Polity.org.za

"State" means the Government of the Republic of South Africa acting through the Minister;
"this Act" includes any regulation in terms of section 8;
"transfer date" means the date on which the transfer of shares and claims is finalised under an agreement between Transnet and the State;
"Transnet" means Transnet Limited, a company duly incorporated in terms of section 2 of the Legal Succession Act.

Objects of Act

2. The objects of this Act are to provide for—
(a) the transfer of SAX shares and SAX interests from Transnet to the State;
(b) the main objects and powers of SAX;
(c) the borrowing powers of SAX; and
(d) the conversion of South African Express (Proprietary) Limited into a public company with share capital.

Transfer of SAX shares and SAX interests

3. (1) The Minister and Transnet, with the concurrence of the Minister of Finance, must determine by agreement—
(a) which SAX claims and which assets, liabilities, rights or obligations of Transnet in connection with SAX constitute SAX interests; and
(b) the consideration payable for the transfer of SAX shares and SAX interests to the State.

(2) If the Minister and Transnet cannot agree on any matter referred to in subsection (1), that matter must be finally determined by the Minister, with the concurrence of the Minister of Finance.

(3) With effect from the transfer date—
(a) the State becomes the sole shareholder and member of SAX; and
(b) the Minister exercises all the rights attaching to SAX shares and SAX interests on behalf of the State, including the rights as shareholder and member of SAX.

Main objects and powers of SAX

4. (1) The main objects of SAX are to—
(a) provide transportation of passengers, cargo and mail, air charters and other related aviation services; and
(b) promote frequency of services on lower density routes and to expand regional air services capability in the Republic and to the African continent and surrounding islands.

(2) For the purposes of section 33(1) of the Companies Act, none of the objects ancillary to the main objects of SAX are excluded.

(3) The powers of SAX include the common powers contained in Schedule 2 to the Companies Act and none of those powers are excluded or qualified.

Borrowing powers of SAX

5. Subject to the Public Finance Management Act,1999 (Act No 1 of 1999), SAX may borrow money, issue a guarantee, indemnity or security or enter into any transaction necessary to achieve its objects referred to in section 4.

Conversion of South African Express (Proprietary) Limited into public company

6. (1) After the transfer date, the Minister may on behalf of the State request the Registrar of Companies in writing to convert South African Express (Proprietary) Limited into a public company having a share capital in accordance with the Companies Act.

(2) The request must be accompanied by the memorandum of association and articles of association of the intended public company that must be—
(a) framed in accordance with the Companies Act, but subject to this Act; and
(b) signed by the Minister on behalf of the State.

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za

Polity.org.za

(3) On receipt of the request and the memorandum and articles so signed, the Registrar of Companies must—

(a) register the conversion of South African Express (Proprietary) Limited into a public company having a share capital, as well as the memorandum and articles; and

(b) issue an amended certificate of incorporation.

(4) The name of the public company referred to in subsection (3)*(a)* is South African Express Limited.

(5) No additional fee referred to in section 63(2) of the Companies Act is payable in respect of the registration of the memorandum and articles referred to in subsection (3)*(a)*.

(6) The Registrar of Companies must issue such directives and authorise such deviations from the regulations in force in terms of the Companies Act and the documents prescribed in terms thereof as he or she may consider necessary in order to give effect to this section.

(7) Sections 32, 44(1), 54(2), 66, 190 and 344*(d)* of the Companies Act do not apply to South African Express Limited for so long as the State holds 75 per cent or more of the total issued ordinary shares in the company.

Effect of conversion

7. The conversion contemplated in section 6(1) does not affect—

(a) the continued corporate existence of SAX under the Companies Act;

(b) any rights, liabilities or obligations acquired or incurred by SAX before the conversion date;

(c) the terms and conditions of service of any employee of SAX; or

(d) the main objects and powers of SAX as provided for in section 4(1).

Regulations

8. The Minister may, by notice in the *Gazette*, make regulations regarding any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

Amendment of Laws

9. With effect from—

(a) the transfer date, the Public Finance Management Act is hereby amended by the insertion in Schedule 2 after item 16 of the following item:

"16A. South African Express (Proprietary) Limited"; and

(b) the conversion date, the Public Finance Management Act is hereby amended by the substitution in Schedule 2 for item 11A of the following item:

"16A South African Express (Proprietary) Limited".

Short title and commencement

10. This Act is called the South African Express Act, 2007, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za