

**NOTICE 1096 OF 2014****DEPARTMENT OF TRANSPORT****PUBLICATION FOR COMMENTS OF THE DRAFT AIR TRAFFIC AND  
NAVIGATION SERVICES COMPANY AMENDMENT BILL, 2014**

The above- mentioned draft Bill is hereby published for public comments. Interested persons are invited to submit written comments on the draft Bill within 30 days from the date of publication in the *Gazette*.

Submission should be posted to the Director-General: Transport for the attention of Mr Trevor Mphahlele or Mr Noko Mashala.

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## REPUBLIC OF SOUTH AFRICA

## AIR TRAFFIC AND NAVIGATION SERVICES COMPANY AMENDMENT BILL, 2014

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(As introduced in the National Assembly as a section 75 Bill; explanatory summary of  
the Bill published in Government Gazette No.     of     ) (The English text is the  
official text of the Bill)  
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(MINISTER OF TRANSPORT)

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**GENERAL EXPLANATORY NOTE:**

[            ]     Words in bold type in square brackets indicate omissions from  
existing enactments.

\_\_\_\_\_     Words underlined with a solid line indicate insertions in existing  
enactments.

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**BILL**

**To amend the Air Traffic and Navigation Services Company Act, 1993 so  
as to insert new definitions; to substitute certain expression; to provide  
for appeals against the decisions of the Committee; to provide for  
offences and to provide for matters connected herewith**

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

**1. Amendment of section 1 of Act No. 45 of 1993, as amended by section 1 of Act 98 of 1996**

1. Section 1 of the Air Traffic and Navigation Services Company Act, 1993 (hereinafter referred to as the principal Act), is hereby amended by-

(a) the insertion after the definition of "**airport**" of the following definition:

" 'approach document' means a document in which the Committee, provides guidelines to be followed by the Company in submitting tariff applications".

(b) the insertion after the definition of "**airport charge**" of the following definition:

"'Airports Company Act' means Airports Company Act, 1993 (Act 44 of 1993);"

(c) the insertion after the definition of "**air traffic service charge**" of the following definition:

"'Appeal Committee' means Appeal Committee established in terms of section 11A;"

(d) the insertion after the definition of "**Department**" of the following definition:

" 'Director-General' means the Director-General: Transport;"

(e) the insertion after the definition of "**Permission**" of the following definitions, respectively:

" **'prescribed'** means prescribed by regulation;";

" **'regulations'** means regulation made under section 53;";

(f) the insertion after the definition of "**Permission**" of the following definition:

" **'this Act'** includes regulations."

### **Amendment of Section 5 of Act 45 of 1993**

2. Section 5 of the principal Act is hereby amended by the substitution of paragraph (f) of subsection (2) of the following paragraph:

"(f) publish any air traffic charge by notice in the Gazette **[three months]** four months prior to the coming into operation of such charge".

### **Amendment of section 11 of Act 45 of 1993**

3. Section 11 of the Act is hereby amended by-

(a) the substitution of subsection (2) for the following:

"(2) Unless otherwise provided for in this Act, the company **[shall] must** apply to the Committee for the issuing of a Permission within the **[first three months of the third financial year]** last month of the fourth financial year of the period of validity of any Permission held by the company in accordance with the approach document".

(b) the substitution of subsection (6) for the following:

"(6) (a) A Permission **[shall] must** be valid for a period of five financial years".

"(a) If the issuance of the new Permission is delayed up to a point where the existing Permission lapses, the tariff of the fifth year of the Permission that recently lapsed must remain applicable until the new Permission comes into effect".

(c) the deletion of subsection (8).

(d) the insertion of the expression "on capital employed" in subsection (10)(e) after the words commercial return:

(e) the substitution of subsection 11 for the following:

"(11) The Committee may, after consultation with the company and other interested parties amend -

"(a) any condition mentioned in subsection (7), in respect of a Permission mentioned in subsection (2), if the Minister approves such amendment"; and

"(b) Any condition mentioned in subsection (7), other than a condition contemplated in paragraph (a) of this subsection, if the Minister approves such amendment".

(f) the insertion of section 11A after section 11:

### **11 A. Appeals**

(1) (a) The Company or any other person aggrieved or affected by the decision of the Committee to grant or refuse a written Permission in terms of Section 11 of this Act or any other decision related to economic regulation, may appeal against such decision to the Appeal Committee.

(b) An appeal in terms of subsection 1(a) must be submitted to the Appeal Committee within a period of 30 days after the date on which such decision was given; and

- (c) The Appeal Committee may at any time, permit an appeal after the 30 days time period has expired, if good cause is shown by the appellant for failing to appeal within that time period.
- (d) Any person who lodges an appeal under subsection 1(a) must submit with his or her appeal written arguments or explanations of the grounds of his or her appeal.
- (2) An appeal must be heard on the date and at the place and time fixed by the Appeal Committee and the Secretary must notify the parties thereof in writing.
- (3) For the purpose of ascertaining any matter relating to the subject of its investigation, the Appeal Committee must have the powers which a High Court has to summon witnesses, to cause an oath or affirmation to be administered by them, to examine them, and to call for the production of books, documents and objects.
- (4) A summons for the attendance of a witness or for the production of any book, document or object before the Appeal Committee must be signed and issued by the Secretary in a form prescribed by the Chairperson and must be served in the same manner as a summons for the attendance of a witness at a criminal trial in a High Court at the place where the attendance or production is to take place.
- (5) A witness must, if required to do so by the Chairperson of the Appeal Committee, before giving evidence, take an oath or make an affirmation, which oath or affirmation must be administered by the Chairperson.
- (6) The procedure at the hearing of an appeal must be determined by the Chairperson of the Appeal Committee.
- (7) The appellant as well as the respondent must be entitled to be represented at an appeal by a legal practitioner.
- (8) The Appeal Committee may, after hearing the appeal-
- (a) confirm, set aside or refer back the relevant decision to the Committee; or
  - (b) order that the decision be given effect to;
- (9) The decision of a majority of the members of the Appeal Committee must be the decision of the Appeal Committee.
- (10) The decision of the Appeal Committee must be put in writing, and a copy thereof must be furnished to the appellant as well as to the respondent within 30 days of the hearing of the appeal, unless the Chairperson, in his discretion and taking

into account submissions from the parties in regard to the complexity of the issues to be decided, the proximity of documents to be considered, and the importance or otherwise of the issues to be decided, determines otherwise.

#### **Amendment of Section 13 of Act No. 45 of 1993**

4. Section 13 of the principal Act is hereby amended

(a) by the substitution of subsection (1) of the section 13 of the following subsection:

“(1) Any person who feels aggrieved by the failure of the Company to comply with any provisions of section 5(2) or 11(1) or (12), may lodge with the Committee a complaint, which **[shall] must** be accompanied by proof of the failure in writing on form as prescribed in the Schedule.”.

(b) the insertion of section 13A after section 13 of the principal Act:

#### **“ 13A Offences**

(1) Any person who wilfully interrupts the proceedings of the Appeal Committee or who wilfully hinders or obstructs the Appeal Committee in the performance of its functions must be guilty of an offence and liable on conviction to a fine or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

(2) Any person-

(a) summoned to attend and give evidence; or to produce any book, document or object before the Appeal Committee who, without sufficient cause, the onus of proof whereof must rest upon him or her, fails to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the appeal or to remain until he or she is excused by the Chairperson of the Appeal Committee from further attendance, or having

attended, refuses to be sworn or to make affirmation as a witness after he or she has been required by the Chairperson of the Appeal Committee to do so; or

(b) having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him or her, or fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she has been summoned to produce, must be guilty of an offence and liable on conviction to a fine or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

(3) Any person who after having been sworn or having made affirmation, gives false evidence before the Appeal Committee on any matter, knowing such evidence to be false or not knowing or believing it to be true, must be guilty of an offence and liable on conviction to a fine or to a term of imprisonment not exceeding five years or to both such fine and imprisonment ".

#### **Amendment of Section 14 of Act No. 45 of 1993**

5. Section 14 of the Act is hereby amended by:

" (1) substitution of the words preceding subsection\_(1) of the following words:

(1) The Minister may, by notice in the Gazette, make regulations-"

(2) insertion of subsection (d) and(e) respectively after subsection (c) of the following subsection:

(d) after consultation with the Committee regarding any matter related to economic regulation;

(e) regarding procedures to be followed by the Committee on non-compliance by the Company" .

**Amendment of long Title of Act No. 45 of 1993**

6. The long title of the Principal Act is hereby amended by the substitution for the following long title:

**“To provide for the transfer of certain assets and functions of the State to a public company to be established; to provide for appeals against the decisions of the Committee; to provide for offences and to provide for matters connected therewith.”**

**Substitution of certain words in Act No. 45 of 1993**

7. The principal Act is hereby amended by;
- (a) the substitution of the word **[Companies Act, 1973 (Act No. 61 of 1973)]** wherever it occurs in the Act, for the words "Companies Act, 2008 (Act 71 of 2008)".
  - (b) the substitution of the word **[Maintenance and Promotion of Competition Act 1979 (Act No. 96 of 1979)]** wherever it occurs in the Act for the words "Competition Act, 1998 (Act 89 of 1998)".
  - (c) the substitution of the word **[Minister of Law and Order]** wherever it occurs in the Act for the words "Minister of Police".
  - (d) the substitution of the words **[Minister of State Expenditure]** wherever it occurs in the Act for the words "Minister of Finance".
  - (e) the substitution of the words **[Aviation Act, 1962 (Act No. 74 of 1962)]** wherever it occurs in the Act for the words "Civil Aviation Act, 2009 (Act 13 of 2009)".
  - (f) the substitution of the words **[Civil Aviation Offences Act, 1972 (Act 10 of 1972)]** wherever it occurs in the Act for the words "Civil Aviation Act, 2009 (Act 13 of 2009)".

- (g) the substitution of the words **[Public Services Act, 1984 (Act No.111 of 1984)]** wherever it occurs in the Act for the words "Public Services Act , 1994 (Act 103 of 1994) " .
- (d) the substitution of the word "shall " wherever it occurs in the Act for the word "must".

### **Short title**

8. This Act is called the Air Traffic and Navigation Services Company Amendment Act, 2014 and comes into operation on a date fixed by the President by Proclamation in the *Gazette*.



# transport

Department:  
Transport  
REPUBLIC OF SOUTH AFRICA

## MEMORANDUM ON THE OBJECTS OF THE BILL

### 1. BACKGROUND

The Bill seeks to-

- give legal status to the Approach Document which is a document in which the Committee provides guidelines to be followed by the Companies in submitting Permission applications;
- provide for the procedure for meetings and decisions of the Committee to ensure transparency, flexibility and predictability of the Regulatory Framework; and
- provide for effective appeals mechanisms where the Company or any aggrieved person can appeal against the decisions of the Committee.

### 2. CLAUSE BY CLAUSE ANALYSIS OF THE BILL

2.1. **Clause 1** of the Bill seeks to amend section 1 of the Act by defining amending and inserting words used in the Act.

2.2. **Clause 2** of the Bill amends section 5 (2) (f) of the Act by replacing the words “three months” with the words “four months”. The period of publishing any air traffic service charge is extended by a month prior to that charge coming into operation. The reason for this amendment is to extend the consultation period of the Permission Application process by one month (from 3 to 4 months).

2.3. **Clause 3** of the Bill amends section 11 of the Act by extending the period of amendment of the conditions of the Permission, empowers the Minister to approve the amendment of the conditions of the Permission after consultation with the Committee and also inserts Section 11A that provides for the appeals mechanism where the Company or any aggrieved person can appeal against the decision of the Committee.

2.4. **Clause 4** of the Bill amends Section 13 of the Act by prescribing the forms which the aggrieved person or Company may use in lodging an appeal with the Appeal Committee. Clause 4 also inserts Section 13A whereby any person who wilfully disrupts proceedings, fail to attend the hearing as summoned by the Appeals Committee, fails to satisfactorily answer the questions put to him or her and any person after being sworn or having made affirmation gives false evidence to be guilty of an offence.

2.5. **Clause 5** amends Section 14 of the Act by empowering the Minister to make Regulations by notice in a Gazette after consultation with the Committee and the aviation industry regarding any matter related to economic regulation and the procedures to be followed in terms of non-compliance of the Company.

2.6. **Clause 6** amends the long title of the Act as a result of the amendments that were effected in the Act.

2.7. **Clause 7** amends certain words that are used in the Principal Act by updating those words to reflect the present dispensation.

2.8. **Clause 8** is the short title and commencement which is a standard provision dealing with the short title and commencement of the envisaged Act.

### 3. CONSULTATION

The Bill was consulted with the aviation industry stakeholders and the Project Team of the Single Transport Economic Regulator.

**4. FINANCIAL IMPLICATION FOR STATE**

There are no financial implications brought about by the draft Bill.

**5. PARLIAMENTARY PROCEDURE**

The State Law Advisors and the Department of Transport are of the opinion that this Bill should be dealt with in terms of the procedure prescribed by the provisions of Section 75 of the Constitution since it contains no provision to which the procedure set out in Section 74 of 76 of the Constitution applies.

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