

REPUBLIC OF SOUTH AFRICA
SOUTH AFRICAN CIVIL
AVIATION AUTHORITY BILL

(As introduced)

(MINISTER OF TRANSPORT)

[B —98]

REPUBLIEK VAN SUID-AFRIKA
WETSONTWERP OP DIE SUID-AFRIKAANSE
BURGERLIKE LUGVAARTOWERHEID

(Soos ingedien)

(MINISTER VAN VERVOER)

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BILL

To provide for the establishment of a South African Civil Aviation Authority; for the transfer of certain functions of the State to the Authority; and for matters connected therewith.

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

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PART A : DEFINITIONS

Definitions

1. In this Act, unless the context indicates otherwise -

"Authority" means the South African Civil Aviation Authority contemplated in section 2;

"appointed member" means a member of the Board appointed by the Minister in terms of section 7(2)(a);

"Board" means the board contemplated in section 7;

"Department" means the Department of Transport in the national sphere of government;

"financial year", in relation to the Authority, means a period beginning on 1 April of a specific year and ending on 31 March of the following year;

"Minister" means the Minister of Transport in the national sphere of government;

"Minister of Finance" means the Minister of Finance in the national sphere of government;

"Minister of Public Works" means the Minister of Public Works in the national sphere of government;

"participant" means any person who directly or indirectly renders services to the aviation industry or aviation in general;

"political office-bearer" means a member of Parliament, a member of a provincial legislature, a diplomatic representative of the Republic who is not an officer of the State in terms of the Public

Service Act, 1994 (Proclamation No. 103 of 1994), a member of a municipal council, a member of a house or council of traditional leaders, a member of the Volkstaat Council or any paid official of a political party, alliance or movement;

"prescribed" means prescribed by regulation;

"regulation" means a regulation made under section 23;

"this Act" includes the regulations;

"transfer date" means the date on which the Minister gives effect to the provisions of

section 4(2) and (3), and which shall be published by the Minister by notice in the *Gazette* at least 14 days prior to that date.

PART B : ESTABLISHMENT

Establishment of Authority

2. (1) The Minister may on a date determined by him or her by notice in the *Gazette* establish a public company to be known as the South African Civil Aviation Authority.

(2) Despite the provisions of the Companies Act, 1973 (Act No. 61 of 1973), the Minister must on behalf of the Government sign the memorandum of association and the articles of association of the Authority.

(3) If the memorandum of association and the articles of association have been signed in accordance with subsection (2) they are deemed, as far as the signing thereof is concerned, to comply with the requirements of the Companies Act, 1973, for purposes of registration of any such memorandum or articles in terms of that Act.

(4) On receipt of the memorandum and articles signed in accordance with subsection (2), the Registrar of Companies shall register the said memorandum and articles as contemplated in section 63 of the Companies Act, 1973, and endorse thereon a certificate to the effect that the Authority is incorporated.

(5) No fees are payable in terms of the Companies Act, 1973, in respect of the checking of documents, the reservation of the name of the Authority, the registration of the memorandum and articles referred to in subsection (2) and the issuing of a certificate to commence business.

(6) The provisions of sections 66 and 344(d) of the Companies Act, 1973, do not apply to the Authority.

Objects of Authority

3. The objects of the Authority are to control and regulate civil aviation in the Republic and to oversee the functioning and development of the civil aviation industry, and, in particular, to control, regulate and promote civil aviation safety and security.

Assets and liabilities and officers of the Department

4. (1) The Minister must enter into an agreement with the Authority which must *inter alia* provide for -

(a) the relationship between the Authority and the Government as sole member and shareholder of the Authority;

(b) the extent of the assets, liabilities, rights and obligations to be transferred in terms of subsection (2) ;

(c) a guarantee by the Authority that the remuneration, allowances, subsidies, pensionable service, accumulated leave and other benefits, rights or legitimate expectations of employees of the Authority who immediately prior to becoming such employees were employed by the Department are substantially the same as those enjoyed by those employees upon their leaving the employ of the Department and will not put them in an inferior position in respect of pensions or accumulated leave as if they had not left the employ of the Department; and

(d) any other matter which the Minister deems necessary or desirable for the proper functioning of the Authority.

(2) The Minister -

(a) must in consultation with the Minister of Finance and after consultation with the Minister of Public Works and in accordance with the agreement contemplated in subsection (1) transfer to the Authority such movable assets owned by, or liabilities, rights or obligations of, the Government as may be necessary for achieving the objects of the Authority, as consideration for the shares and loan account referred to in section 5; and

(b) can after consultation with the Public Service Commission and with the written consent of an officer in the employ of the Department second that officer to the Authority or make available the services of that officer to the Authority.

(3) An officer of the Department can by agreement between the Authority and the Department and with the written consent of that officer be employed by the Authority in a permanent capacity and that officer ceases to be employed by the Department on the day he or she is employed by the Authority in accordance with this subsection: Provided that the employment contract of an officer permanently employed by the Authority in accordance with this subsection shall contain express provisions and guarantees in respect of the matters contemplated in subsection (1)(c).

(4) A registrar as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), on submission of a certificate by the Minister that a right registerable in a deeds office in respect of movable assets has been transferred under subsection (2), makes free of charge such entries and endorsements as he or she deems necessary in any appropriate register, title deed or other document in order to register the transfer in the name of the Authority.

(5) The Authority must be substituted for the State as a contracting party in respect of any contract transferred to the Authority in terms of subsection (2)(a), without the substitution bringing about notation of such contract.

(6) Any litigation resulting from any cause of action in relation to any movable asset, liability, right or obligation transferred to the Authority in terms of subsection (2)(a) which arose -

(a) before the transfer date, must be conducted by or against the State, as the case may be; and

(b) on or after the transfer date, must be conducted by or against the Authority, as the case may be.

(7) Despite any provision to the contrary in any other law, the Authority is exempt from any stamp duties, transfer duties or registration fees payable in terms of any law in relation to the transfer of assets under subsection (2)(a).

Shares in Authority

5. (1) The Government is the holder of the shares in the Authority.

(2) The rights attached to the shares of which the Government is the holder must be exercised by the Minister on behalf of the Government.

(3) The Authority must, as consideration for the transfer of the assets, liabilities, rights or obligations in terms of section 4(1)(a), issue to the Government fully paid up shares or a loan account in the Authority to a value determined by the Minister in consultation with the Minister of Finance and after consultation with the Authority, and such value is deemed to be reasonable consideration for such transfer.

(4) The shares in the Authority held by the Government may not be sold or transferred or otherwise disposed of unless on the authority of an Act of Parliament.

Liquidation or judicial management of Authority

6. Despite any provision to the contrary in any other law, the Authority may not be liquidated or placed under judicial management except on the authority of an Act of Parliament.

PART C : MANAGEMENT**Composition of Board**

7. (1) Despite the provisions of the Companies Act, 1973, the articles of association of the Authority must provide for the Board of the Authority to be constituted and to function in accordance with the provisions of this Act.

(2) The Board consists of -

(a) nine members, appointed by the Minister, of whom -

- (i) one must be the non-executive chairperson;
- (ii) four must represent participants in civil aviation; and
- (iii) four must have special knowledge of or experience in matters relating to the functions of the Authority;

(b) one person designated by the Minister of Finance to represent the Department of Finance in the national sphere of government ;

(c) one person designated by the Minister to represent him or her; and

(d) the Chief Executive Officer.

(3) (a) The majority of the members of the Board must be -

- (i) citizens of the Republic; and
- (ii) persons who are not in the full-time service of the State.

(b) Every member of the Board must within 14 days of his or her appointment to the Board submit a written statement to the Minister declaring that he or she at the time of his or her appointment was not disqualified in terms of the criteria contemplated in section 8(2) to be appointed as member of the Board.

(4) The Minister must, in appointing the members contemplated in subsection (2)(a)(ii), consult with the relevant stakeholders in civil aviation.

Period and conditions of office

8. (1) An appointed member holds his or her office for a period, not exceeding five years, and on the conditions the Minister determines upon that member's appointment, and that member can be re-appointed at the expiry of his or her first term of office.

(2) An appointed member vacates his or her office immediately if he or she -

- (a) in writing tenders his or her resignation as a member to the Minister;
- (b) becomes subject to any disqualification applicable to a director in terms of the Companies Act, 1973;
- (c) is or at any time has been convicted in a court, whether in the Republic or elsewhere, of contravening this Act, the Companies Act, 1973, any offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992), any offence provided for in South African aviation law, or of contravening any regulations promulgated under those Acts, or of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty;
- (d) without authorisation in any way publishes or makes known any confidential information gained as a result of his or her membership of the Board;
- (e) is or becomes a political office-bearer;
- (f) is or becomes an unrehabilitated insolvent or commits an act of insolvency;
- (g) is or has at any time been removed from an office of trust on account of misconduct; or
- (h) is relieved of his or her office under subsection (4).

(3) If a member of the Board, or his or her spouse or life partner or child, has any direct or indirect financial interest in any matter to be dealt with at any meeting of the Board, that member -

- (a) must immediately after that interest has come to his or her attention, disclose that interest and the extent thereof in writing to the chairperson, who must table that statement at the beginning of the next meeting of the Board;
- (b) may not attend any portion of a meeting of the Board during the consideration of that matter by the Board;

- (c) may not in any manner take part as a member of the Board in the consideration of that matter by the Board; and
- (d) may not in any manner endeavour to influence the opinion or vote of any other member of the Board in connection with that matter.

(4) An appointed member must be relieved of his or her office by the Minister if that member has -

- (a) failed to immediately vacate his or her office in terms of subsection (2);
- (b) failed to strictly comply with subsection (3);
- (c) failed to attend three consecutive meetings of the Board without prior Board leave as noted in the minutes of those meetings;
- (d) been unable to perform his or her functions of office effectively due to continued serious ill-health;
- (e) been convicted of an offence and sentenced to a period of imprisonment without the option of a fine by a court; or
- (f) become of unsound mind.

(5) If an appointed member dies or vacates his or her office before the expiry of the period for which he or she was appointed, the Minister can, subject to the provisions of section 7, appoint another person to fill the vacancy for the remaining portion of the period for which that member was appointed.

Remuneration of appointed members

9. (1) Subject to the provisions of subsection (2), an appointed member receives from the Authority such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance.

(2) An appointed member who is in the full-time service of the State is not, in respect of the duties performed by him or her as a member, paid any remuneration in addition to his or her remuneration as an officer of the State, nor is he or she paid any allowance in respect of subsistence and transport at a rate higher than that applicable to him or her as such an officer.

Chief Executive Officer

10. (1) The Board must appoint a managing director who is the Chief Executive Officer of the Authority.

- (2) (a) The Chief Executive Officer may not engage in any other paid employment and may not participate in any activity in respect of which he or she is in any way remunerated or receives any benefits or allowances without approval of the Board.
- (b) The Chief Executive Officer and his or her spouse or life partner or child may not hold any direct or indirect financial interest in any civil aviation activity or the civil aviation industry.

(3) The Chief Executive Officer has and may exercise the powers and duties as are or may be conferred or imposed upon him or her by or in terms of this Act, the Aviation Act, 1962 (Act No. 74 of 1962), the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972), and the Convention on the International Recognition of Rights in Aircraft Act, 1993 (Act No. 59 of 1993), and the powers and duties that may be delegated to him or her by the Board.

(4) The Chief Executive Officer appointed under subsection (1) holds his or her office for a period, not exceeding five years, and on the conditions, including conditions providing for remuneration and allowances, as the Board determines upon that Chief Executive Officer's appointment, and he or she can be re-appointed at the expiry of his or her term of office.

PART D : FUNDING

Funding of Authority

11. (1) The Authority is funded from -

- (a) the share capital and loan account referred to in section 5;
- (b) interest on invested cash balances;
- (c) prescribed civil aviation regulatory charges;
- (d) loans granted in terms of subsection (2);

- (e) money received from any other source;
- (f) money received from the development and management of its assets;
- (g) any other money received in terms of or for the purposes of this Act, including, despite the provisions of section 21(2) of the Aviation Act, 1962, the income derived from the fees contemplated in section 22(1)(t) of that Act; and
- (h) monies appropriated by Parliament.

(2) (a) The Minister can in consultation with the Minister of Finance grant loans to the Authority from money appropriated by Parliament for this purpose.

(b) The Authority pays interest on any loan granted in terms of paragraph (a), and repays that loan in instalments and within the period as may be determined by the Minister in consultation with the Minister of Finance.

(3) The Authority can with the approval of the Minister granted in consultation with the Minister of Finance raise money for the purposes of this Act by way of loan from any source other than a source contemplated in subsection (2) on the conditions the Ministers deem fit.

Business and financial plan

12. (1) The Authority must not later than 31 December of each year submit to the Minister a business and financial plan in respect of the ensuing financial year and each of the four immediately following financial years, containing the information, taking into account the terms of the performance agreement contemplated in section 16 of this Act, as the Minister or the Minister of Finance may require.

(2) The structure of the business and financial plan, the procedure for approval by the Minister and consultation requirements in respect of that plan must be contained in the performance agreement contemplated in section 16 of this Act.

Application of Reporting by Public Entities Act

13. The provisions of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992) apply to the Authority.

Annual report

14. (1) Despite the provisions of the Companies Act, 1973, the Authority must within three months of the end of each financial year, submit to the Minister an annual report pertaining to the financial state of affairs and business of the Authority as at the end of the immediately preceding financial year, consisting of -

- (a) a balance sheet, an income statement and a cash-flow statement which reflect a true and correct view of the state of affairs of the Authority as at the end of that financial year;
 - (b) a report by the Board in accordance with the provisions of subsection (2);
 - (c) a report by the auditor of the Board in accordance with the provisions of subsection (3);
- and
- (d) any other statement or report which the Minister or the Minister of Finance may require.

(2) The report of the Board referred to in subsection (1)(b) must deal with the state of affairs, the activities and operations, and the financial position of the Board, and must -

- (a) state the extent to which the Authority has achieved or advanced its objectives during the financial year concerned and specifically the detailed objectives of the business and financial plan;
- (b) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in the business and financial plan; and
- (c) indicate the amount of money, if any, received from the State and any other commitment furnished by the State.

(3) The auditor's report referred to in subsection (1)(c) must state separately in respect of each of the following matters whether in the auditor's opinion -

- (a) the balance sheet, income statement and cash-flow statement, as well as any other furnished information, fairly represent the financial position and results obtained by the

Authority in accordance with generally accepted accounting practice, applied, if applicable, on a basis consistent with that of the preceding year;

(b) the information furnished in terms of paragraph (a) is fair in all material respects and, if applicable, on a basis consistent with that of the preceding year;

(c) the transactions of the Authority that had come to the auditor's notice in the course of his or her examination were made in accordance with this Act, the Reporting by Public Entities Act, 1992 and any applicable directives or regulations made thereunder;

(d) the transactions that had come to his or her attention during auditing were in all material respects in accordance with the objects and functions of the Authority;

(e) if there are adequate measures and procedures for the proper application of sound economic, efficient and effective management; and

(f) if attention should be drawn to any other matter falling within the scope of the auditor's examination which, in his or her opinion, should in the public interest be brought to the notice of the Minister and Parliament.

(4) The Minister must cause copies of the financial report submitted to him or her in terms of subsection (1) to be tabled in Parliament within 14 days of receipt of that report, or, if Parliament is not then in session, within 14 days after commencement of its next ensuing session.

PART E : FUNCTIONS

Functions of Authority

15. (1) The functions of the Authority are to -

(a) administer the laws referred to in subsection (2) and any regulations made thereunder;

(b) recommend to the Minister the introduction or amendment of civil aviation safety and security legislation;

(c) recommend to the Minister entering into any international agreement with another state, government or international organisation, which appear to be consistent with the Authority's objects mentioned in section 3;

(d) perform any other functions as are conferred on it by or under any other law;

(e) execute the orders issued to it in terms of section 17; and

(f) perform functions incidental to any of the previously mentioned functions.

(2) The administration of the laws mentioned in Schedule 1, as amended in accordance with the provisions of the third column thereof, is transferred to the Authority.

(3) The Authority can perform its functions both within and outside the Republic.

(4) The Authority must perform its functions in a manner consistent with -

(a) its objects mentioned in section 3; and

(b) the obligations of the Republic -

(i) under any international agreement to which the Republic is a party; and

(ii) under customary international law binding on the Republic by virtue of section 232 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

(5) The Authority must not discriminate unreasonably against or among various participants or categories of participants of the South African civil aviation safety and security system.

Performance agreement

16. (1) The Minister can, after consultation with the Minister of Finance and subject to other law and general Government policy, enter into a written performance agreement with the Authority relating to -

(a) the expectations of the Government in respect of the Authority's scope of business, efficiency and financial performance, and achievement of objectives;

(b) the principles to be followed by the Authority for the purposes of business planning;

(c) the Authority's dividend policy;

(d) such measures which are necessary to protect the financial soundness of the Authority;

- (e) the procedures to be followed by the Authority in the awarding of tenders and granting of concessions;
- (f) any other matter relating to the performance of the Authority's functions under this Act.

(2) The performance agreement must be published by the Authority in the *Gazette* within 30 days from the date on which that performance agreement was entered into, and any amendment thereto must be so published within 30 days of that amendment coming into operation.

(3) A copy of the performance agreement must be open to inspection by any member of the public at the registered office of the Authority during business hours.

(4) The Minister and the Authority can, *mutatis mutandis* in accordance with the provisions of subsections (1), in writing amend the performance agreement from time to time.

(5) The Minister and the Authority must, before the finalisation of the performance agreement or amendment thereof, on any matter which may affect them, consult with -

- (a) all the relevant stakeholders in the civil aviation industry; or
- (b) persons to whom a tender or concession contemplated in subsection (1)(e) has been awarded.

(6) Failure by the Authority to comply with any provision of the performance agreement does not affect the validity or enforceability of any agreement, right, obligation or liability entered into, acquired or incurred by the Authority.

Ministerial orders

17. (1) The Minister can in respect of aviation matters in writing issue an order requiring the Authority to do or not to do what is mentioned in the order, if the Minister considers it necessary so to order -

- (a) in the interests of aviation safety and security; or
- (b) to discharge or facilitate the discharge of an international obligation of the State or of the Government.

(2) Any order issued in terms of subsection (1) may not be inconsistent with the provisions of the Aviation Act, 1962, or the Civil Aviation Offences Act, 1972.

(3) The Minister must consult with the Authority prior to issuing an order in terms of subsection (1).

(4) The Authority must take all the necessary steps to give effect to an order issued in terms of subsection (1).

(5) The Minister must, in consultation with the Minister of Finance, out of monies appropriated by Parliament, compensate the Authority for any cost or other expense which is a direct result of any order issued by the Minister in terms of subsection (1) and which the Authority cannot readily recover from participants in civil aviation or any other person who has benefited from any action taken by the Authority in complying with that order.

(6) The Minister must cause a copy of every order issued in terms of subsection (1) to be tabled in Parliament within 14 days of issuing of that order, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

Consultation

18. Without detracting from the provisions of section 7(4) or section 16(5), the Authority must in the performance of its functions endeavour to consult with all the relevant persons, bodies and organisations, both public and private, if possible and appropriate.

Restriction on use of name

19. (1) No person may under a name containing the words "Civil Aviation Authority" or the translation thereof in any other official language -

- (a) conduct his, her or its affairs or business or carry on his, her or its occupation or trade;
- (b) be registered or licensed under any law; or
- (c) falsely claim to be acting on behalf of the Authority.

(2) Any person who contravenes a provision of subsection (1) is guilty of an offence, and liable on conviction to a fine or imprisonment, or to both a fine and imprisonment.

PART F : GENERAL

Limitation of liability

20. No person, including the State and the Government, is liable in respect of anything done or omitted in good faith in the exercise of a power or the performance of a duty in terms of or by virtue of this Act, or in respect of anything that may result therefrom.

Failure of Authority to comply with provisions

21. (1) Any person who is directly affected by the failure of the Authority to comply with the provisions of section 15(5), can lodge a complaint with the Minister.

(2) A complaint lodged in terms of subsection (1) must consist of -

- (a) a statement made under oath or a solemn declaration which details the nature and contents of the alleged failure; and
- (b) proof of that failure.

(3) The Minister -

- (a) must investigate any complaint lodged in terms of subsection (1) and in accordance with subsection (2) if the allegations contained in that complaint constitute a *prima facie* case of failure to comply with section 15(5); and
- (b) may investigate any allegation of failure to comply with section 15(5) if he or she deems it necessary to do so.

(4) If the Minister subsequent to an investigation contemplated in subsection (3) is of the opinion that the Authority has failed or continues to fail to comply with section 15(5), the Minister -

- (a) must in writing direct the Authority to comply with section 15(5) within a reasonable period of time; and
- (b) may in writing direct the Authority to pay full or partial compensation for any monetary loss sustained by the person who has lodged the complaint in terms of subsection (1) as a result of that failure to comply with section 15(5).

(5) The Minister may not act under subsection (4)(a) or (b) unless he or she has -

- (a) notified the Authority in writing of his or her intention to act in terms of that subsection and has informed the Authority of all the relevant facts pertaining to the complaint lodged in terms of subsection (1); and
- (b) afforded the Authority the opportunity to within a reasonable period of time make representations to him or her in respect of the failure to comply with section 15(5).

Appeal

22. (1) Any person who is affected by a decision of the Chief Executive Officer or any other employee of the Authority taken in terms of or by virtue of this Act, the Aviation Act, 1962, the Civil Aviation Offences Act, 1972, and the Convention on the International Recognition of Rights in Aircraft Act, 1993, can appeal against that decision in terms of the rules of the division of the High Court having jurisdiction in the area within which that person resides to that division of the High Court, within 30 days after he, she or it became aware of that decision, or within such further period as that court may allow on good cause shown.

(2) The court referred to in subsection (1) -

- (a) can confirm, vary or set aside the relevant decision of the Chief Executive Officer or that employee, as the case may be;
- (b) can give such other decision as the Chief Executive Officer or that employee, as the case may be, was able to give; or
- (c) remit the case to the Chief Executive Officer or that employee, as the case may be,

with the instructions it may deem fit.

(3) The court concerned can issue any order regarding costs which it deems fair under the circumstances.

(4) A decision given by the court in terms of subsection (2) must for purposes of the laws contemplated in subsection (1), be deemed to be a decision of the Chief Executive Officer or of that employee, as the case may be.

Regulations

23. (1) The Minister can make regulations regarding -

(a) any matter which in terms of this Act or the South African Civil Aviation Authority Levies Act, 1998, is permitted or required to be prescribed;

(b) any other matter the regulation of which may be necessary in order to achieve or promote the objects of this Act;

(c) any monies that may be charged by the Authority on

(i) participants in civil aviation;

(ii) aircraft passengers; and

(iii) any other person using any facility of or service offered by the Authority in respect of civil aviation.

(2) Any regulation under subsection (1) may make such incidental, supplementary or transitional provision as may be necessary.

Interim arrangements

24. (1) Despite any provision to the contrary in any other law, the Minister can, during the period from the date on which this section comes into operation to the transfer date and in consultation with the Minister of Finance, take the steps or authorise any thing to be done which may be necessary to promote -

(a) the transfer to the Authority of the assets, liabilities, rights, obligations contemplated in section 4(2)(a), the secondment or making available of an officer of the Department contemplated in section 4(2)(b) or the employment by the Authority of an officer of the Department as contemplated in section 4(3) ; and

(b) the commercialisation and setting up of business units in respect of functions related to the South African civil aviation safety and security system prior to the commencement by the Authority of the performance of its functions.

(2) The Minister, the Minister of Finance and the Authority must during the period mentioned in subsection (1) agree on the business and financial plan which will come into operation on the transfer date despite any provision to the contrary in this Act.

Amendment of laws

25. The laws mentioned in Schedule 2 are hereby amended to the extent indicated in the third column of that Schedule.

Transitional provisions

26. (1) Anything done or omitted in terms of or by virtue of any provision of a law mentioned in Schedule 1 and 2 must, unless clearly inappropriate, be deemed to have been done or omitted, as the case may be, under, in terms of or by virtue of that provision as substituted or amended according to the provisions in the third columns of those Schedules.

(2) Any act relating to administration contemplated in section 15(2) which has been performed by the Minister, in terms of or by virtue of a provision of a law substituted or amended by a provision mentioned in the third columns of Schedules 1 and 2, must be deemed to have been performed by the Authority.

(3) A reference to the Commissioner for Civil Aviation in any law or document must, subject to the provisions of this Act, be deemed to be a reference to the Chief Executive Officer.

Short title and commencement

27. This Act is called the South African Civil Aviation Authority Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule 1

LAWS IN RESPECT OF WHICH THE ADMINISTRATION IS TRANSFERRED AND AMENDMENTS THEREOF

(Section 16(2))

SHORT TITLE	YEAR AND NO	EXTENT OF AMENDMENTS
Aviation Act, 1962	Act No. 74 of 1962	<ol style="list-style-type: none">1. The amendment of section 1 -<ol style="list-style-type: none">(a) by the insertion after the definition of "airport" of the following definition:<p>"'Authority' means the Authority as defined in section 1 of the South African Civil Aviation Authority Act, 1998";</p>(b) by the substitution for the definition of "authorized officer" of the following definition:<p>"'authorized officer' means an officer designated in terms of section 5(a)";</p>(c) by the insertion of the definition of "authorised person" after the definition of "authorized officer":<p>"'authorised person' means an authorised person designated in terms of section 5(b)";</p>(d) by the substitution for the definition of "Commissioner" of the following definition:<p>"'Chief Executive Officer' means the Chief Executive Officer of the Authority as contemplated in section 10 of the South African Civil Authority Act, 1998"; and</p>(e) by the substitution for the definition of "inspector" of the following definition:<p>"'inspector' means a person designated in terms of section 5(a)".</p>2. The amendment of section 4 by the substitution of the following section:<p>"Functions of Minister in connection with Convention and Transit Agreement"</p><p>4. The Minister shall be responsible for the administration and implementation of the Convention and of the Transit Agreement".</p>

3. The amendment of section 5 by the substitution of the following section:

"Designation and powers of certain officers or persons

- 5.(1) The Authority may designate one or more
- (a) persons in the service of the Authority as inspectors or authorised officers, and
 - (b) persons who are not in the service of the Authority as inspectors or authorised persons whose qualifications, powers and duties shall, subject to the South African Civil Aviation Authority Act, 1998, and to this section, be as prescribed.
- (2) Without prejudice to the powers of any person mentioned in subsection (1) by virtue of the office of such person as a peace officer, no such person shall exercise any power to enter any premises, examine any object, make copies of or take extracts from any book or document, or to seize anything, unless such person has obtained a written warrant permitting any such action from the Chief Executive Officer.
- A warrant contemplated in subsection (2) shall only be issued if it appears to the Chief Executive Officer that there are reasonable grounds for believing that an exercise of a power referred to in subsection (2) is necessary for the purpose of appropriate and applicable law enforcement.
- (3) A warrant may be issued on any day and shall be on force until -
- (a) it has been executed
 - (b) it is cancelled by the Chief Executive Officer, or
 - (c) the expiry of one month from the date of its issue.
- (4) (a) Any person who acts on the authority of a warrant may use such force as may be reasonably necessary to overcome any resistance against the entry and research, including the breaking of any door or window: Provided that such person shall first audibly demand admission and state the purpose for which he or she seeks entry.
- (b) The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion that any object, book or document which is the subject of the search may be destroyed, tampered with or disposed of if the provisions of the said proviso are first complied with.

- (6) A warrant issued in terms of this section shall be executed by day unless the Chief Executive Officer authorises the execution thereof by night at times which in the circumstances are reasonable.
 - (7) Any person executing a warrant in terms of this section shall immediately before commencing with the execution -
 - (a) identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy in a prominent place on the premises; and
 - (b) supply such person at his or her request with particulars regarding his or her authority to execute such warrant.
 - (8) Where a person referred to in subsection (1) lawfully interrogates any other person, such person shall not refuse to answer any question on the ground that his or her answer may expose him or her to a criminal charge, but no evidence regarding any questions and answers thereto given to a person referred to in subsection (1) and which may expose a person giving such answers to a criminal charge shall be admissible in any criminal proceedings except in criminal proceedings where the person concerned stands trial on a charge contemplated in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).
4. The amendment of section 21(1) by the substitution for subsection (1) of the following subsection:
- "(1) Subject to the provisions of the South African Civil Aviation Authority Act, 1998, all expenditure incurred in the administration of this Act and the carrying out and giving effect to the provisions of the Convention and the Transit Agreement shall be defrayed out of moneys appropriated by Parliament for that purpose."
5. The amendment of section 22 by the substitution for subparagraphs (i) and (ii) of subsection (1)(h) of the following subparagraphs, respectively:
- "(i) to reduce the risk of aviation accidents or incidents, and
- (ii) to advise the Chief Executive Officer on any matter connected with the reduction of the risk of aviation accidents or incidents",
6. The amendment of section 22A -

(a) by the substitution in subsection (4) for the words "An officer in the department designated by the Commissioner" of the words "A person in the service of the Authority designated by the Chief Executive Officer", and

(b) by the substitution in subsection (5) for the words "an officer in the department" of the words "a person in the service of the Authority".

7. The amendment of the Act by the substitution for the expression "Commissioner", wherever it occurs, of the expression "Chief Executive Officer".

Civilian Aviation Offences Act, 1972 **Act No. 10 of 1972**

1. The amendment of section 1 -

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

"'Authority' means the Authority as defined in section 1 of the South African Civil Aviation Authority Act, 1998; and

(b) by the substitution for paragraph (d) of the definition of "authorized person" of the following paragraph:

"(d) any other person appointed in writing by the Authority as an authorised person for the purposes of this Act".

2. The amendment of section 2B by the substitution of paragraph (a) of subsection (2) of the following paragraph:

"(a) an employee of the State, or a person in the service of the Authority or of the company".

3. The amendment of section 2L by the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(c) the designation of officers in the service of the State or persons in the service of the Authority to apply the provisions of this Act or any safety plan, and the other functions of such officers or persons".

4. The amendment of section 2N by the substitution for the following section:

"Compensation to company or Authority

2N. The Minister may, to such extent as he may determine in consultation with the Minister of Finance, out of moneys appropriated by Parliament compensate the company and the Authority for any costs incurred by either which is directly related to the performance of its functions or duties in terms of the provisions of this Act and which the company or the

**Convention on
the International
Recognition of
Rights in Aircraft
Act, 1993**

**Act No. 59 of
1993**

Authority, as the case may be, cannot readily recover from the users of a company airport as defined in section 1 of the Airports Company Act, 1993."

1. The amendment of section 1 -
 - (a) by the insertion before the definition of "Convention" of the following definition:

"'Chief Executive Officer' means the Chief Executive Officer of the Authority contemplated in section 10 of the South African Civil Aviation Authority Act, 1998";

- (b) by the deletion of the definition of "Director-General"; and

- (c) by the insertion after the definition of "prescribed" of the following definition:

"'registered', in respect of mortgages, means a completed recording of a mortgage in terms of and in accordance with section 4, read, where appropriate, with section 9 or 10, as the case may be;".

2. The amendment of section 10 by the substitution of the following section:

"Transmission of rights

10. (1) Whenever the rights of the mortgage under a deed of mortgage over an aircraft or a share in an aircraft are transmitted on marriage or death or by any other lawful means other than by transfer under this Act to any person, that person shall execute a declaration in the prescribed form certifying that the transmission has taken place.

(2) The Chief Executive Officer shall, on receipt of the declaration referred to in subsection (1) accompanied by the prescribed documents, enter in the register referred to in section 4 as mortgage the name of the person to whom the rights have been transmitted.

3. The amendment of the Act by the substitution for the expression "Director-General", wherever it occurs, of the expression "Chief Executive Officer".

Schedule 2

LAWS AMENDED

(Section 28)

SHORT TITLE	NO AND YEAR	EXTENT OF AMENDMENTS
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**Air Services
Licensing Act,
1990**

**Act No. 115 of
1990**

1. The amendment of section 1 -
 - (a) by the insertion after the definition of "air service" of the following definition:

"Authority" means the Authority as defined in section 1 of the South African Civil Aviation Authority Act, 1998"
 - (b) by the insertion after the definition of "authorized officer" of the following definition:

"'Chief Executive Officer' means the Chief Executive Officer of the Authority contemplated in section 10 of the South African Civil Aviation Authority Act, 1998;" , and
 - (c) by the deletion of the definition of "Commissioner for Civil Aviation"
2. The amendment of the Act by the substitution, wherever it occurs -
 - (a) for the expression "by the department" of the expression "by the Authority"; and
 - (b) for the expression "Commissioner for Civil Aviation" of the expression "Chief Executive Officer".

**International Air
Services Act,
1993**

**Act No. 60 of
1993**

1. The amendment of section 1 -
 - (a) by the insertion after the definition of "authorized person" of the following definition:

"'chairman of the council' means the chairman of the council referred to in section 4(1)(a)"; and
 - (b) by the deletion of the definition of "Commissioner for Civil Aviation".
2. The amendment of section 4 by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) an officer of the Department of Transport, designated by the Minister, as chairman".
3. The amendment of section 6 by the deletion in subsection (1) of paragraph (d).
4. The substitution for section 7 of the following section:

"Remuneration of appointed members

7. (1) Subject to the provisions of subsection (2), an appointed member shall receive, from moneys appropriated by Parliament for this purpose, such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance.

- (2) An appointed member who is in the full-time service of the State shall not, in respect of the duties performed by him or her as a member, be paid any remuneration in addition to his or her remuneration as an officer of the State, nor shall he or she be paid any allowance in respect of subsistence and transport at a rate higher than applicable to him or her as such an officer".
5. The amendment of the Act by the substitution, wherever it occurs, for the expression "Commissioner for Civil Aviation", of the expression "chairman of the council".

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN CIVIL AVIATION AUTHORITY BILL, 1998

Part A of the Bill contains a definitions clause.

Part B of the Bill provides for the establishment of the Civil Aviation Authority as a public company. Clause 3 lists the objects of the Authority as the control and regulation of civil aviation in the Republic, and, in particular, civil aviation safety and security. This Part proposes that certain assets be transferred to the Authority as consideration for the 100% shareholding that the Government will have in the Authority. It also proposes that the position of officers of the Department of Transport who after termination of their employment with the Department accept a permanent appointment with the Authority be safeguarded in respect of their remuneration, pensionable service, accumulated leave and other benefits.

Part C of the Bill provides for the appointment of a Board and a Chief Executive Officer of the Authority. It proposes that the Board consist of a non-executive chairperson, four persons representing participants in civil aviation, four persons having special knowledge or experience in matters relating to the functions of the Authority, one person representing the national Department of Finance, one person representing the Minister of Transport, and the Chief Executive Officer. It also proposes that Board members be appointed for a period of five years, and that they can be re-appointed for one further term of office. This Part details the requirements and disqualifications of board members.

Part D of the Bill provides for the funding of the Authority. In clause 12 it specifically proposes that the Authority must annually submit a business and financial plan to the Minister of Transport. The Reporting by Public Entities Act, 1992 (Act No. 93 of 1992) will apply to the Authority.

Clause 15 in Part E lists the functions of the Authority. These include the administration of the Aviation Act, 1962 (Act No. 74 of 1962), the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972) and the Convention on the International Recognition of Rights in Aircraft Act, 1993 (Act No. 59 of 1993), and recommending the introduction of new legislation or entering into international agreements pertaining to aviation safety and security to the Minister of Transport. It also provides that the Authority can also operate outside the borders of the Republic. It also contains a prohibition on unreasonable discrimination among the participants in the civil aviation safety and security system.

Clause 16 proposes that the Minister of Transport and the Authority enter into a performance agreement, to be published in the Government Gazette, which will detail the business and financial policies of the Authority.

Clause 17 proposes that the Minister of Transport can issue orders to the Authority in respect of aviation safety and security. These orders will be tabled in Parliament for public information and scrutiny.

Clause 18 provides that the Authority must in the performance of its functions endeavour to consult with all relevant persons and organisations, both private and public, if possible and appropriate.

Clause 19 places a restriction on the use of the name "Civil Aviation Authority".

Part F contains provisions of general nature. Clause 21 proposes a mechanism which enables persons affected by the Authority's alleged non-compliance with its duty not to unreasonably discriminate amongst participants in civil aviation provided for in clause 15(5). The Minister will investigate complaints of this nature complying with the prescribed requirements which establish a *prima facie* case. The Minister can order the Authority to rectify its non-compliance and has the discretion to direct, where appropriate, the Authority to pay compensation for monetary loss suffered by the complainant.

Provision is made in clause 22 for an appeal to a High Court by a person affected by a decision of any employee of the Authority against that decision.

Clause 23 provides for regulations to be made by the Minister of Transport, including regulations in respect of monies which may be charged by the Authority on participants in civil aviation, aircraft passengers and other persons using any facility or service offered by the Authority.

Interim arrangements, the amendment of laws and transitional arrangements are further provided for in this Part.

This Bill should in the opinion of the Department of Transport be dealt with in accordance with section 76 of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996).