

REPUBLIC OF SOUTH AFRICA

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# AIRPORTS COMPANY AMENDMENT BILL

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*(As introduced in the National Assembly)*

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(MINISTER OF TRANSPORT)

[B 11—98]

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REPUBLIEK VAN SUID-AFRIKA

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# WYSIGINGSWETSONTWERP OP LUGHAWENSMAATSKAPPY

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*(Soos ingedien in die Nasionale Vergadering)*

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(MINISTER VAN VERVOER)

[W 11—98]

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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 Airports Company Act, 1993, so as to amend certain definitions; to provide for the company to change its name; to exempt the company further from certain provisions of the Companies Act, 1973; to substitute or delete certain obsolete references; to provide that the Shareholding Minister's right to receive the annual report is based on the State's shareholding; to provide for an unlimited number of shareholders; to provide for the transfer of the State's shares in the company in order to introduce a strategic equity partner to the company and certain empowerment initiatives; to provide for the use of the proceeds of the sale of the State's shares in the company; to provide that the objects of the company are as set out in its memorandum of association; to make it clear that the company has the powers of a company registered in terms of the Companies Act, 1973, subject to imitations in the Airports Company Act, 1993; to limit the level of financial risk posed to the core aeronautical activities of the company by its other activities; to ensure that relevant activities are performed; to make it clear that the company may raise or receive income from sources other than airport charges; to delete certain obsolete transitional and other provisions; to delete the requirement to submit a business plan to the Shareholding Minister; to delete the restriction on the sale of expropriated land and to further regulate expropriation in accordance with the Expropriation Act, 1975; to refine the provisions regarding certain orders by the Minister and to decriminalise the breach of such order; to adjust the provisions regarding the economic regulation of the company, the sale or closure of certain airports and the curtailment of relevant activities by the company; to further regulate the acquisition or construction of an airport by the company; to enhance the provisions relating to the company's failure to comply with the Act; to expand the Minister's specific regulation-making powers; to limit the Minister's general regulation-making powers; and to amend the long title; and to provide formatters connected therewith.

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

**Amendment of section 1 of Act 44 of 1993, as amended by section 17 of Act 98 of 1996**

1. Section 1 of the Airports Company Act, 1993 (in this Act referred to as the principal Act), is hereby amended—

(a) by the substitution for the words preceding the definition of “airport” of the following words:

“(1 ) In this Act, unless the context otherwise indicates—”;

(b) by the substitution for the definition of “airport” of the following definition:

“ ‘airport’ means a demarcated area on land or water or a building which is used or intended to be used, either wholly or in part, for the arrival or departure of aircraft and includes a building, installation or equipment within that area which is used or intended to be used in connection with the arrival, departure or movement of aircraft.”;

(c) by the substitution for the definition of “company” of the following definition:

“ ‘company’ means the [Airports Company Limited] public company contemplated in section 2(1) or its successor in title.”;

(d) by the substitution for the definition of “company airport” of the following definition:

“ ‘company airport’ means—

(a) an aerodrome which was transferred to the company in terms of section (6)(1 )(a); or

(b) subject to subsection (2)—

(i) an airport acquired or constructed by the company as contemplated in section 13A(1); or

(ii) any other airport managed, controlled or operated by the company,

which is an international or national airport.”;

(e) by the substitution for the definition of “relevant activity” of the following definition:

“ ‘relevant activity’ [in relation to a company airport] means the provision at [such] a company airport of any service or facility for the purposes of—

(a) the landing, parking or take-off of an aircraft;

(b) the handling or cleaning of an aircraft, the supply of provisions to an aircraft, including, but not limited to, food, or the emergency servicing of an aircraft on an apron, including the supply of fuel; or

(c) the handling of aircraft passengers or their baggage or of cargo at all stages while they are or it is on the premises of such airport, including the transfer of such passengers, their baggage or such cargo to and from an aircraft, but excludes the refreshment of passengers or the supply of consumer goods at such airport.”;

(f) by the substitution for the definition of “Shareholding Minister” of the following definition:

“ ‘Shareholding Minister’ means the Minister [mentioned in] designated in terms of section 3{(4)}(3);”: and

(g) by the addition of the following subsection:

“(2)(a) An airport referred to in paragraph (b) of the definition of ‘company airport’ in subsection (1) shall not include an airport in respect of which the aggregate, as stated or otherwise shown in the financial statements of the business, of all sums received in the course of the business carried on at the airport—

(i) is less than R10 million in the immediately preceding period of 12 months ending on 31 March; or

(ii) can reasonably be expected to be less than R10 million in the period of 12 months ending on 31 March.

(b) The amount of R 10 million referred to in paragraph (a)(i) and (ii) shall be adjusted on 31 March of each year in accordance with the weighted average of the consumer price index as published from time to time in the *Gazette* for the immediately preceding period of 12 months.”.

#### Amendment of section 2 of Act 44 of 1993

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2. Section 2 of the principal Act is hereby amended—

(a) by the insertion after subsection ( 1 ) of the following subsection:

“(1 A) The company may change its name to such other name as the Registrar of Companies approves.”:

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

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“(6) The provisions of sections 38, 66, 92, 190 and 344(d) of the Companies Act, 1973, shall not apply to the company as long as the State is the [sole **member and**] majority shareholder of the company.”:

(c) by the substitution for paragraph (c) of subsection (7) of the following paragraph:

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“(c) The majority of the non-executive directors shall be persons who are—

(i) not officers [**or employees**] as defined in section 1 of the Public Service Act, [1984 (Act No. 111 of 1984)] 1994 (Proclamation No. 103 of 1994); or

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(ii) not persons deemed to be such officers in terms of section 1(a) of the Public Service Amendment Act, 1996 (Act No. 13 of 1996).”; and

(d) by the deletion of paragraph (d) of subsection (7).

#### Amendment of section 3 of Act 44 of 1993

3. Section 3 of the principal Act is hereby amended—

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(a) by the substitution for the heading of the following heading:

**“Shares of company held by State”:**

(b) by the deletion of subsections ( 1 ) and (2):

(c) by the substitution for subsections (3) and (4) of the following subsections:

“(3) As long as the State holds shares in the company the President shall designate a Minister as the Shareholding Minister.

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(4) The rights attached to the shares in the company of which the State is the holder shall be exercised by the Shareholding Minister on behalf of the State.”: and

(d) by the addition of the following subsections:

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“(5) Notwithstanding any provision of law to the contrary, the Minister may in terms of one or more transactions transfer shares in the company of which the State is the holder to such transferees in such manner and on such terms and conditions as the Cabinet, on the recommendation of the Minister, approves.

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(6) The proceeds of any transfer under subsection (5) shall be used for such purpose as the Cabinet, on the recommendation of the Minister, approves.”.

#### Substitution of section 4 of Act 44 of 1993

4. The following section is hereby substituted for section 4 of the principal Act:

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##### **“Objects of company**

4. The objects of the company are as set out in its memorandum of association in accordance with the Companies Act, 1973 (Act No. 61 of 1973).”.

**Amendment of section 5 of Act 44 of 1993, as amended by section 18 of Act 98 of 1996**

5. Section 5 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1 ) The company shall have the powers of a company as ~~contem-~~ 5  
plated in section 34 of the Companies Act, 1973 (Act No. 61 of 1973),  
unless expressly excluded or qualified by this Act.”;

(b) by the substitution in paragraph (a) of subsection (2) for the expression

“International Air Services Act, 1949 (Act No, 51 of 1949)” of the following  
expression “International Air Services Act, 1993 (Act No. 60 of 1993)”; 10

(c) by the deletion of paragraph (c) of subsection (2);

(d) by the deletion of the word “and” at the end of paragraph (f) of subsection (2);

(e) by the substitution for paragraph (g) of subsection (2) of the following  
paragraph:

“(g) take all the necessary steps to facilitate the exercise of any power or 15  
the performance of any **[function or]** duty by any department of  
State at a company airport in terms of any law.”;

(f) by the addition to subsection (2) of the following paragraphs:

“(h) perform any activity other than a relevant activity in a manner 20  
which will not substantially adversely affect the performance of any  
relevant activity or expose any relevant activity to substantial  
financial risk;

(i) not later than 1 S months after the commencement of the Airports  
Company Amendment Act, 1998, adopt such accounting practices  
and such other measures as are necessary to distinguish in a 25  
reasonable manner any income and costs or any shared income and  
costs between the relevant activities on the one hand and, on the  
other hand, other activities of the company and of every affiliate, as  
the Committee reasonably requires;

(j) ensure that activities regarding any airport— 30  
(i) outside the Republic; or  
(ii) contemplated in paragraph (b) of the definition of ‘company  
airport’ in section 1(1),  
are performed by an affiliate of the company and in a manner which 35  
will not substantially adversely affect the performance of any  
relevant activity or expose any relevant activity to substantial  
financial risk;

(k) ensure that relevant activities are performed subject to section  
12(7)(b).”; 40

(g) by the insertion after subsection (2) of the following subsection:

“(2A) In subsection (2)(i) and (j) ‘affiliate’. in relation to the company,  
means—

(a) another company which is—

(i) the holding company, as described in section 1(4) of the  
Companies Act, 1973 (Act No. 61 of 1973), of the company; 45

(ii) a subsidiary, as described in section 1(3) of the Companies Act,  
1973, of the company; or

(iii) a subsidiary of the company’s holding company; or

(b) another company, or another juristic person, other than a holding  
company or subsidiary referred to in paragraph (a). in respect of 50  
which the company has the power to exercise substantial influ-  
ence.”; and

(h) by the substitution for subsection (3) of the following subsection:

“(3) Without limiting its powers referred to in subsection (1). the 55  
company shall have the power to raise or receive income from sources  
other than airport charges. including, but not limited to, the power to  
enforce any contract providing for such raising or receipt of income.”.

**Amendment of section 6 of Act 44 of 1993**

6. Section 6 of the principal Act is hereby amended—
- (a) by the deletion of paragraph (b) of subsection (1);
  - (b) by the deletion of subsections (3) and (4); and
  - (c) by the substitution for subsection (13) of the following subsections: 5
    - “(1 3) Unless otherwise provided for in this Act or approved by the Committee, the company shall not alienate or encumber, otherwise than in the normal course of its business, assets transferred to the company in terms of subsection (1)(a) and used to perform any relevant activity [having a value of more than 10 per cent of the value contemplated in 10 subsection (5)]1.
    - (1 3A) The Committee shall not unreasonably delay or withhold the approval contemplated in subsection (13).”.

**Repeal of section 7 of Act 44 of 1993**

7. Section 7 of the principal Act is hereby repealed. 15

**Amendment of section 8 of Act 44 of 1993**

8. Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) As long as the State holds any shares in the company, [The]& company shall submit to the Shareholding Minister an annual report, including its audited 20 and approved financial statements in respect of all its business and in respect of each company airport separately, within three months of the end of each financial year.”.

**Repeal of section 9 of Act 44 of 1993**

9. Section 9 of the principal Act is hereby repealed. 25

**Amendment of section 10 of Act 44 of 1993**

10. Section 10 of the principal Act is hereby amended—
- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:
    - “The Minister may by order require the company to do or not to do what 30 is mentioned in the order, if **[the Minister considers]** it is reasonably necessary [or expedient] so to order—”;
  - (b) by the insertion after subsection (1) of the following subsection:
    - “(1A) The company may utilise any legal-remedy available to the 35 company in respect of an order under subsection (1).”;
  - (c) by the substitution in subsection (5) for the expression “Minister of State Expenditure” of the expression “Minister of Fin’ante”;
  - (d) by the deletion of subsection (6);
  - (e) by the substitution for subsection (7) of the following subsection:
    - “(7) The Minister shall lay a copy of every order under subsection (1) 40 of this section **[except an order contemplated in subsection (6) of this section]** upon the Table in Parliament in the manner contemplated in section 8(2) within 30 days after it was issued.”; and
  - (f) by the deletion of subsection (8).

**Amendment of section 11 of Act 44 of 1993** 45

11. Section 11 of the principal Act is hereby amended by the substitution of subsections (2), (3), (4), (5) and (6) of the following subsections:
- “(2) The members of the Committee shall be appointed by the Minister and shall consist of—
    - (a) a **[chairman]** chairperson; and 50

(b) four other persons, of whom at least two are not—

(i) officers [or employees] as defined in section 1 of the Public Service Act, [1984 (Act No. 111 of 1984)] 1994 (Proclamation No. 103 of 1994); or

(ii) persons deemed to be such officers in terms of section 1(a) of the 5 Public Service Amendment Act, 1996 (Act No. 13 of 1996),

who, in the opinion of the Minister, are suitably qualified to perform the [functions] duties or exercise the powers of the Committee in terms of this Act and the Air Traffic and Navigation Services Company Act, 1993 (Act No. 45 of 1993).

(3) A member of the Committee shall hold office on such conditions as may be 10 prescribed by regulation under section 15(I).

(4) A member of the Committee who is not—

(a) an officer [or an employee] as defined in section 1 of the Public Service Act, [1984 (Act No. 111 of 1984)] 1994 (Proclamation No. 103 of 1994);

or

(b) persons deemed to be such officers in terms of section 1(a) of the Public 15 Service Amendment Act, 1996 (Act No. 13 of 1996).

shall receive, from money appropriated by Parliament for this purpose, such remuneration and allowances as may be determined by the Minister with the concurrence of the Minister of [State Expenditure] Finance. 20

(5) Subject to the provisions of this Act and the Air Traffic and Navigation Services Company Act, 1993 (Act No. 45 of 1993), the Committee shall, after consultation with the Minister, determine the procedures to be followed in the performance of its [functions] duties or the exercise of its powers.

(6) All administrative work in connection with the performance of the 25 [functions] duties or the exercise of the powers of the Committee shall be done by [officers and employees] officials in the Department designated for such purpose by the Director-General: Transport.”.

#### Amendment of section 12 of Act 44 of 1993

12. Section 12 of the principal Act is hereby amended— 30

(a) by the substitution for subsections (2). (3) and (4) of the following subsections:

“(2) Unless otherwise provided for in this Act, the company shall apply to the Committee for the issuing of a permission **[at the beginning]** within the first three months of the third financial year of the 35 period of validity of any permission held by the company.

(3) Any such application shall **[in respect of the financial year mentioned in subsection (2) of this section]** be accompanied by—

(a) **[the] a [approved] business plan [contemplated in section 7] 40 prepared for the period of five financial years for which such permission will be valid; and**

(b) **such other information as the Committee reasonably requires.**

(4) The company shall, at the request of the Committee, make available to the Committee such information, **[pertaining to the matters mentioned in subsection (10)] including, but not limited to, its current 45 business plan and latest annual report.** as may reasonably be required by the Committee.”;

(b) by the substitution for subsections (7). (8) and (9) of the following subsections:

“(7) The Committee **[shall] may,** as conditions of the permission 50 issued in terms of subsection (5)—

(a) **determine [for] in respect of each company airport. or jointly [for] in respect of all company airports, [determine] for each financial year for which a permission is valid—**

(i) a limit on **[the total amount] any particular airport charge** that 55 may be levied **[by way of all airport charges];**

(ii) a limit on **[the amount of any particular airport charge or] any category of any particular airport [charges] charge;** or

- (iii) a combination of the limits mentioned in subparagraphs (i) and (ii); and
- (b) prescribe in respect of any relevant activity [at any or all company **airports**] service standards which shall conform to internationally accepted and recommended practices. 5
- (8) The Committee shall, subject to subsection(11 )(a), not amend any condition in respect of the last two financial years of a permission mentioned in subsection (2) which will be replaced by the permission to be issued in terms of subsection (5).
- (9) In exercising any power in terms of subsection (7), the Committee 10 may—
- (a) consult with interested parties as it thinks fit;
- (b) limit increases in the airport charges that maybe levied— 15
- (i) by means of a system of price regulation in which changes in airport charges are formally linked to the rate of inflation; or
- (ii) in any other manner; and
- (c) adjust any future airport charge to the extent that the airport charge published for the immediately preceding year deviated from the airport charge contained in the relevant permission.”;
- (c) by the substitution for the words preceding paragraph (a) of subsection (10) of 20 the following words:
- “The Committee shall perform its **[functions]** duties and exercise its powers in terms of **[subsection (7)]** this Act in such manner as **[it deems]** is best calculated to-”;
- (d) by the substitution for paragraph (e) of subsection (10) of the following 25 paragraph:
- “(e) in respect of relevant activities, ensure that the company, after taking into consideration any compensation paid or to be paid to the company by the State in terms of the provisions of this Act or any other law, is able to finance its obligations and has a reasonable 30 prospect of earning a commercial return for each financial year on capital employed.”; and
- (e) by the substitution for subsection (11) of the following subsection:
- “(11) The Committee may, after consultation with the company and 35 other interested parties, amend—
- (a) any condition mentioned in subsection (7) in respect of the last two financial years of a permission mentioned in subsection (2), if the Minister and the company approve such amendment;
- (b) any condition mentioned in subsection (7), other than a condition 40 contemplated in paragraph (a) of this subsection. if the Minister approves such amendment.”.

#### Amendment of section 13 of Act 44 of 1993

##### 13. Section 13 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 45
- “(1 ) When the company intends—
- (a) to close or sell any aerodrome contemplated in section 6(1)(a); or
- (b) to terminate or substantially curtail a relevant activity which was 50 performed by the Department or any person on behalf of the Department immediately prior to the transfer date at any such aerodrome,
- the company shall give written notice to the Minister of that intention and at the same time submit a copy of the notice to the Committee.”; and



- (b) by the substitution in subsection (4) for the expression “Minister of State Expenditure” of the expression “Minister of Finance”.

#### Insertion of section 13A in Act 44 of 1993

14. The following section is hereby inserted after section 13 of the principal Act:

“Acquisition of airport

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13A. (1) The company shall not directly or indirectly acquire or construct an airport in the Republic without the prior approval of the Committee.

(2) In subsection (1) ‘acquire’ includes acquire by purchase, lease, concession, or any other means, whereby the company effectively becomes the owner.

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(3) In determining whether to grant its approval under subsection (1), the Committee shall only consider and evaluate the implications of the acquisition or construction of the airport for—

(a) the transport system of the Republic; and

(b) the users of the airport.”.

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#### Amendment of section 14 of Act 44 of 1993

15. Section 14 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) of the following subsections:

“(3) If, after such an investigation, the Committee is satisfied that the company fails to comply with any provision mentioned in subsection (1), the Committee may in writing direct the company to comply with such provision within the reasonable period specified in such direction.

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(3A) If, at the expiry of such period the company could have so complied but failed to do so, the Committee may—

(a) by notice in the *Gazette*, prohibit any action of the company in relation to its non-compliance with such provision;

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(b) in writing direct the company to compensate for any loss sustained by or damage done to any person as a result of such action of the company; or

(c) if such failure substantially prejudices the public interest, in writing, suspend or withdraw, on such conditions as may be determined by the Committee, any permission issued in terms of section 12(5).

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(3B) In the event of a suspension or withdrawal under subsection (3A)(c), the company shall perform all relevant activities in a manner that—

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(a) is efficient and orderly; and

(b) ensures the safety of aviation and security of people.

(3C) If the company fails to perform any relevant activity in accordance with subsection (3 B), the Committee may take all reasonable steps to ensure such performance, including the performance of such activity by a person other than the company.”;

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- (b) by the substitution for the words preceding paragraph (a) of subsection (4) of the following words:

“The Committee shall not act under subsection [(3)(b),(c) or (d)] (3A) or (3C) unless—”; and

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- (c) by the addition of the following subsection:

“(5) For the purpose of any investigation or adjudication contemplated in this section the Committee shall have such powers with regard to the summoning and examination of witnesses, the confidentiality of information and the production of documents and objects as may be prescribed by regulation under section 15(1).”.

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**Amendment of section 15 of Act 44 of 1993**

16. Section 15 of the principal Act is hereby amended—

- (a) by the substitution “for paragraph (a) of subsection (1) of the following paragraph:  
“(a) regarding any matter which in terms of this Act is permitted or required to be prescribed by regulation”;
- (b) by the substitution in paragraph (c) of subsection (1) for the expression “Minister of Law and Order” of the expression “Minister for Safety and Security”;
- (c) by the insertion after paragraph (c) of subsection (1) of the following paragraphs:  
“(cA) after consultation with the Committee, regarding an investigation or adjudication by the Committee, including, but not limited to, an investigation or adjudication by the Committee contemplated in section 14;  
(cB) after consultation with the company, regarding the admission and control of traffic, people and animals on and at a company airport”;  
and
- (d) by the substitution for paragraph (d) of subsection (1) of the following paragraph:  
“(d) generally, for giving effect to the provisions of this Act.”.

**Substitution of section 16 of Act 44 of 1993**

17. The following section is hereby substituted for section 16 of the principal Act:

**“Expropriation powers of company**

- 16. (1)** The company may, with the written approval of the Minister and subject to this section, expropriate any immovable property for the purpose of performing a relevant activity.
- (2) If the company intends expropriating any immovable property in terms of subsection (1), the company shall submit to the Minister a report explaining the intended expropriation.
- (3) The Minister shall grant approval for the expropriation of any immovable property in terms of subsection (1) only if he or she is satisfied after considering the report referred to in subsection (2), that the company—
- (a) requires the immovable property for the purpose mentioned in subsection (1); and
  - (b) is unable to purchase the immovable property on reasonable terms.
- (4) Sections 1, 7 to 15 and 18 to 22 of the Expropriation Act, 1975 (Act No. 63 of 1975), shall apply, with the changes required by the context, in respect of the expropriation of any immovable property in terms of subsection (1), and any reference in any of those sections—
- (a) to ‘Minister’ and ‘State’ shall be construed as a reference to the company;
  - (b) to ‘section 2’, shall be construed as a reference to this section; and
  - (c) to ‘this Act’ shall be construed as a reference to this Act, unless the context otherwise indicates.”.

**Repeal of section 17 of Act 44 of 1993**

18. Section 17 of the principal Act is hereby repealed.

**Repeal of section 18 of Act 44 of 1993**

19. Section 18 of the principal Act is hereby repealed.

**Substitution of long title**

20. The following long title is hereby substituted for the long title of the principal Act:

## “ACT

~~To provide for the establishment of a public company and the transfer of State shares in the company; to regulate certain activities at airports; and to provide for matters connected therewith.”~~

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Short title

**21.** This Act is called the Airports Company Amendment Act, 1998.

## MEMORANDUM ON THE OBJECTS OF THE AIRPORTS COMPANY AMENDMENT BILL, 1998

### SUMMARY OF OBJECTS OF BILL

1. The proposed amendments in the Bill to the Airports Company Act, 1993 (Act No. 44 of 1993 — “the Act”), are occasioned by the proposed partial privatisation of the Airports Company Limited, trading as “ACSA”, as this privatisation could not occur without certain changes to the Act. In addition to these changes, other amendments of a necessary functional nature are included in the Bill. These other amendments are intended to clarify relations between ACSA, the Minister of Transport (“the Minister”) and the Regulating Committee.

### MAIN FEATURES OF AMENDMENTS

#### 2.1 Amendments to facilitate proposed partial privatisation:

The proposed amendments to section 3 of the Act are intended to facilitate the process of privatisation involving a strategic equity partner (clause 3). The proposed amendments to section 2(6) of the Act exempt ACSA from certain further provisions of the Companies Act, 1973 (Act No. 61 of 1973), as long as the State is the majority shareholder of ACSA. These further exemptions are intended to simplify the privatisation (clause 2(b)).

#### 2.2 Amendments describing scope of **ACSA's** activities:

- 2.2.1 The proposed amendments in section 1 of the Act to the definition of “relevant activity” and substitution of section 4 of the Act intend clarifying the scope of ACSA’s aeronautical activities, on the one hand, and its non-aeronautical activities, on the other hand. The original definition of “relevant activity” derives from English law as found in the Airports Act of 1986. For the sake of clarity, it is proposed that the Act explicitly state that the provision of facilities for refreshment of passengers and of consumer goods are not regarded as “relevant activities” (clause 1(e)). This exclusion derives from an amendment of the said Airports Act of 1986. It is proposed that section 4 of the Act provides that the objects of ACSA are as determined in its memorandum of association in accordance with the Companies Act, 1973 (clause 4).

- 2.2.2 The proposed amendments to section 5 of the Act aim to make it clear that ACSA—

- (a) has all the powers of a company registered under the Companies Act, 1973, unless expressly limited by the Act; and
- (b) may raise and receive income from sources other than airport charges (clause 5(a) and (h)).

#### 2.3 Amendments to limit level of risk:

- 2.3.1 It is proposed that ACSA may not perform any activity in a manner which will substantially adversely affect the performance of any relevant activity, as defined in section 1 of the Act, or subject any relevant activity to substantial financial risk (clause 5(f)).
- 2.3.2 The proposed amendments to section 12(3) and (4) of the Act empower the Regulating Committee to request such information as it may reasonable require to monitor ACSA’s activities and to ensure that ACSA complies with its legal duties (clause 12(a)). The proposed amendments to section 14 of the Act refine the provisions relating to failure of ACSA to comply with the Act and the Regulating Committee’s power to enforce compliance (clause 15).

The amendments to section 15 of the Act in clause 16(c) empower the Minister to make regulations regarding investigations and adjudication by the Regulating Committee.

- 2.3.3 The proposed insertion of section 13A in the Act (clause 14) provides for the prior approval by the Regulating Committee for the acquisition or construction of a new airport by ACSA.

2.4 Amendments to ensure operational stability and transparency:

- 2.4.1 Section 5(2)(i) of the Act, which is a new provision, requires ACSA to maintain accounts that accurately and fairly present the allocation of costs and revenues between relevant activities (as defined) and other activities of ACSA (clause 5(f)). Accounting separation is a common practice designed to enhance the regulator's ability to monitor compliance.

- 2.4.2 The proposed amendments to section 12 of the Act relate mainly to price regulation, including the power of the Regulating Committee to have access to relevant information (clause 12). It is expected that the regulation of airport charges, as defined in section 1 of the Act, will continue to be effected by means of price cap regulation (amendment to section 12(9) of the Act in clause 12(b)).

2.5 **Amendments that provide for treatment of ACSA as commercial enterprise:**

- 2.5.1 After the privatisation of ACSA it is expected, with a few exceptions, to function like any other commercial enterprise rather than as part of the government machinery.
- 2.5.2 It is proposed that section 5(2)(c) of the Act be deleted since section 10(1) of the Act empowers the Minister to intervene to protect national interest (clause 5(c)). The deletion of section 10(8) of the Act is proposed in order to decriminalise the breach of orders by the Minister (clause 10(f)).
- 2.5.3 The proposed amendment to section 6(13) of the Act expands the ACSA's power to alienate its property without adversely affecting the level of risk. It is proposed that this power be exercised by ACSA only with the approval of the Regulating Committee (clause 6(c)).
- 2.5.4 It is proposed that section 9 of the Act, which restricts ACSA's power to sell expropriated land, be repealed (clause 9).

2.6 **Technical amendments:**

The remainder of the proposed amendments to the Act are of a technical or consequential nature. Mainly, these amendments are intended to eliminate inconsistency, to substitute obsolete references, to delete obsolete provisions and to clarify certain provisions.

## CONSULTATION

3. The following bodies were consulted:

- \* Regulating Committee
- \* ACSA
- \* Airports Restructuring Committee which consists of representatives of the Departments of Transport and of Public Enterprises, the management of ACSA and representatives of the three most relevant trade unions. NEHAWU, SARHWU and TGWU.
- \* Interministerial Committee which consists of representatives of the Departments of Transport, of Communications, of Trade and Industry, of Finance and of Public Enterprises.

## PARLIAMENTARY PROCEDURE

- 4.1 In the opinion of the Department of Transport and the State Law Advisers the Bill must be dealt within accordance with the procedure prescribed by section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provision to which the procedures set out in section 74 or 76 of the Constitution apply.
- 4.2 Section 76(3) of the Constitution requires *inter alia* that a Bill must be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution if it falls within a functional area listed in Schedule 4 to the Constitution. The only functional area regarding airports which is listed in Schedule 4 is "Airports other than international and national airports". The Airports Company Act, 1993, as proposed to be amended by the Bill, aims to regulate relevant activities and airport charges at company airports. (See definitions of "airport charge" and "relevant activity" in section 1 with proposed amendments in clause 1(e), section 5(2) with proposed amendments in clause 5(f) and (g), section 12 with proposed amendments in clause 12 and section 14 with proposed amendments in clause 15. ) "Company airport" is defined in section 1 (as proposed to be amended by clause 1(d) and (g)) with reference to certain specified airports which are international or national airports. Thus, the Bill does not fall within a functional area listed in Schedule 4 to the Constitution, since its scope in this regard only extends to international and national airports.