

REPUBLIC OF SOUTH AFRICA

**SOUTH AFRICAN CIVIL AVIATION
AUTHORITY BILL**

(As amended by the Portfolio Committee on Transport (National Assembly))

(MINISTER OF TRANSPORT)

[B 55B—98]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
SUID-AFRIKAANSE BURGERLIKE
LUGVAARTOWERHEID**

(Soos gewysig deur die Portefeuljekomitee oor Vervoer (Nasionale Vergadering))

(MINISTER VAN VERVOER)

[W 55B—98]

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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—
- (i) “Authority” means the South African Civil Aviation Authority contemplated in section 2; (xi) 10
 - (ii) “appointed member” means a member of the Board appointed by the Minister in terms of section 8(2)(a); (i)
 - (iii) “Board” means the Board contemplated in section 8(1); (xiii)
 - (iv) “Chief Executive Officer” means the person appointed in terms of section 11(1); (vii) 15
 - (v) “Department” means the Department of Transport in the national sphere of government; (v)
 - (vi) “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; (ii) 20
 - (vii) “Minister” means the Minister of Transport in the national sphere of government; (viii)
 - (viii) “Minister of Finance” means the Minister of Finance in the national sphere of government; (ix)
 - (ix) “Minister of Public Works” means the Minister of Public Works in the national sphere of government; (x) 25
 - (x) “participant” means any person who participates in or who renders services to the aviation industry or aviation in general; (iv)
 - (xi) “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; (xii) 30
 - (xii) “prescribed” means prescribed by regulation; (xv) 35
 - (xiii) “regulation” means a regulation made under section 22; (xiv)
 - (xiv) “this Act” includes the regulations; (vi)
 - (xv) “transfer date” means the date on which the Minister gives effect to the provisions of section 13(2), and which the Minister must publish by notice in the *Gazette* at least 14 days prior to that date. (iii) 40

Part B: Establishment

Establishment of Authority

2. The South African Civil Aviation Authority is hereby established as a juristic person.

Part C: Objects 45

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.

Part D: Functions

Functions of Authority

4. (1) The functions of the Authority are to—
- (a) administer the laws referred to in subsection (2);
 - (b) recommend to the Minister the introduction or amendment of civil aviation safety and security legislation; 5
 - (c) make recommendations to the Minister in respect of the conclusion of any international agreement with another state, government or international organisation, which appears to be consistent with the Authority's objects mentioned in section 3; 10
 - (d) perform any other functions as are conferred on it by or under any other law;
 - (e) execute an order issued in terms of section 6; 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. 15
- (3) The Authority may perform its functions both within and outside the Republic.
- (4) The Authority must perform its functions in a manner consistent with—
- (a) the objects mentioned in section 3; and
 - (b) the obligations of the Republic under— 20
 - (i) any international agreement which is binding on the Republic; and
 - (ii) 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 in civil aviation safety and security. 25

Performance agreement

5. (1) The Minister and the Authority must enter into a written performance agreement relating to—
- (a) the State's requirements in respect of the Authority's scope of business, efficiency and financial performance, and achievement of objectives; 30
 - (b) the principles to be followed by the Authority for purposes of business planning;
 - (c) such measures which are necessary to protect the financial soundness of the Authority; 35
 - (d) the principles to be followed at the end of a financial year in respect of any surplus in the accounts of the Authority; and
 - (e) any other matter relating to the performance of the Authority's functions under this Act.
- (2) The Minister and the Authority may in writing amend the performance agreement from time to time. 40
- (3) The Minister must publish the performance agreement in the *Gazette* and any amendment thereto must be so published at least 30 days prior to that amendment coming into operation.
- (4) A copy of the performance agreement must be open to inspection by the public at the head office of the Authority during business hours. 45
- (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 the relevant stakeholders in the civil aviation industry.
- (6) Failure by the Authority to comply with any provision of the performance agreement does not affect the validity or enforceability of any agreement entered into, or any right, obligation or liability, acquired or incurred by the Authority. 50

Ministerial order

6. (1) The Minister may after consultation with the Authority in writing issue an order in respect of aviation matters 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 5
 - (b) to discharge or facilitate the discharge of an international obligation of the State.
- (2) Any order issued in terms of subsection (1) may not be inconsistent with the provisions of any law administered by the Authority.
- (3) The Authority must take all the necessary steps to give effect to an order issued under subsection (1). 10
- (4) The Minister must, in concurrence 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. 15
- (5) 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. 20
- (6) A copy of any order issued in terms of subsection (1) must be open to inspection by the public at the head office of the Authority during business hours.

Consultation

7. Without detracting from the provisions of section 5(5), the Authority must in the performance of its functions endeavour to consult with relevant persons, bodies and organisations. 25

Part E: General Management

Composition of Board

8. (1) The Authority is governed and controlled by a Board in accordance with this Act. 30
- (2) The Board consists of—
- (a) not more than seven members, appointed by the Minister, of whom—
 - (i) one must be the non-executive chairperson;
 - (ii) at least two must represent participants in civil aviation; and
 - (iii) at least two must have special knowledge of or experience in matters relating to the functions of the Authority; and 35
 - (b) the Chief Executive Officer.
- (3) The members of the Board contemplated in paragraph (a) of subsection (2) are part-time members of the Board.
- (4) (a) The majority of the members of the Board must not be in the full-time service of the State. 40
- (b) Members of the Board must be citizens of the Republic.
- (5) 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 is not disqualified in terms of the criteria contemplated in paragraphs (c), (d) and (e) of section 9(3) to be appointed as a member of the Board. 45
- (6) The members contemplated in paragraph (a) of subsection (2) must be appointed only after—
- (a) the Minister has by notice in the *Gazette* and the media invited interested parties to nominate persons suitable for appointment; 50
 - (b) the Minister has submitted a list of at least 15 suitable candidates to the relevant committees of Parliament, unless fewer than 15 nominations are received, in which case the Minister must submit all nominations received to the relevant committees of Parliament; and
 - (c) the relevant committees of Parliament have submitted a shortlist of at least ten candidates to the Minister after considering persons so nominated, having due 55

regard to the functions of the Authority and the provisions of paragraphs (c), (d) and (e) of section 9(3).

Period and conditions of office

9. (1) An appointed member of the Board holds his or her office for a period, not exceeding five years, on the conditions the Minister determines upon that member's appointment, and that member may be re-appointed at the expiry of his or her first term of office: Provided that in respect of a re-appointment, the procedure contemplated in section 8(6) does not apply. 5

(2) An appointed member may in writing tender his or her resignation as a member to the Minister and vacates his or her office on the date of that resignation coming into effect, as specified in that resignation: Provided that if no such date is specified in that resignation, that resignation comes into operation immediately. 10

(3) An appointed member vacates his or her office immediately if he or she—

(a) is convicted—

(i) whether in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty; or 15

(ii) of any offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992), the Companies Act, 1973, or of contravening this Act;

(b) without authorisation discloses or improperly acts on information gained as a result of his or her membership of the Board; 20

(c) is or becomes a political office bearer;

(d) is or becomes an unrehabilitated insolvent or commits an act of insolvency;

(e) is or has at any time been removed from an office of trust on account of misconduct; or 25

(f) is relieved of his or her office under subsection (5).

(4) If a member of the Board, or his or her spouse, immediate family member, life partner or business associate, 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; 30

(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 35

(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.

(5) The Minister must immediately relieve any appointed member if that member has— 40

(a) failed to immediately vacate his or her office in terms of subsection (3);

(b) failed to comply with subsection (4);

(c) failed to attend three consecutive meetings of the Board without prior leave of the Board 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; 45

(e) been convicted of an offence during his or her term of office and sentenced to a period of imprisonment without the option of a fine by a court; or

(f) become of unsound mind.

(6) The Minister may relieve the appointed members of the Board of their office if— 50

(a) the Authority has failed to substantially comply with an order issued by the Minister in terms of sections 6(1) or 20(4) or with the performance agreement entered into in terms of section 5(1);

- (b) (i) the Minister has in writing individually notified every appointed member of the Board of such failure and the nature of such failure;
- (ii) the Minister has afforded the Board a reasonable opportunity to make a written submission to him or her in respect of the notification contemplated in subparagraph (i); 5
- (iii) after consideration of the submission contemplated in subparagraph (ii) and if such submission does not satisfactorily address the failure specified in the Minister's notification contemplated in subparagraph (i), the Minister has afforded the Board a reasonable opportunity to rectify that failure; and 10
- (iv) all appointed members of the Board are relieved of their office on the same date and on the same conditions; and
- (c) the Minister has within seven days of issuing the notification contemplated in paragraph (b)(i) tabled a copy thereof in Parliament, or, if Parliament is not then in session, has published a copy of that notification in the *Gazette*. 15
- (7) 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 may appoint another person to fill the vacancy for the remaining portion of the period for which that member was appointed, but the procedure contemplated in section 8(6) does not apply in respect of an appointment in terms of this subsection. 20

Remuneration of appointed members

10. (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 and after consultation with relevant stakeholders in the civil aviation industry. 25
- (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. 30

Chief Executive Officer

11. (1) (a) The Minister appoints the first Chief Executive Officer of the Authority and thereafter the appointed members of the Board appoint the Chief Executive Officer of the Authority.
- (b) The Chief Executive Officer may be reappointed at the expiry of his or her term of office. 35
- (2) The Chief Executive Officer holds his or her office for a period, not exceeding five years, on the conditions, including conditions providing for remuneration and allowances, as the Minister or the Board, as the case may be, determines upon his or her appointment. 40
- (3) The Chief Executive Officer manages the Authority subject to the control and directions of the Board and in accordance with this Act and any other Act administered by the Authority.
- (4) The Chief Executive Officer has the powers and must perform the duties conferred or imposed upon him or her by or in terms of this Act, and any other Act administered by the Authority and such powers and duties which may be assigned to him or her by the Board. 45
- (5) (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 prior written approval of the Board. 50
- (b) The Chief Executive Officer or his or her spouse, immediate family member, life partner or business associate, may not hold any direct or indirect financial interest in any civil aviation activity or the civil aviation industry—
- (i) without prior approval of the Board; and 55
- (ii) unless the minutes of the meeting of the Board reflecting such approval are open to inspection by the public at the head office of the Authority during business hours.

Staff of Authority

12. (1) The Chief Executive Officer may on such conditions as the Board determines appoint such employees as are necessary to enable the Authority to properly carry out its functions.

(2) The Authority pays its employees out of its funds such remuneration, allowances, subsidies and other benefits as the Board determines. 5

(3) The Minister may after consultation with the Authority and 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. 10

Part F: Financial Management

Assets and liabilities and officers of Department

13. (1) The Minister must as soon as possible after the commencement of this Act conclude an agreement with the Authority which provides for—

(a) the extent of the assets, liabilities, rights and obligations to be transferred to the Authority in terms of subsection (2); 15

(b) in respect of any officer of the Department who wishes to leave the employ of the Department in order to be permanently employed by the Authority, the minimum terms and conditions—

(i) upon which that officer may leave the employ of the Department; and 20

(ii) upon which that officer may be employed by the Authority; and

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

(2) The Minister 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 assets owned by, or liabilities, rights or obligations of, the State as may be necessary for achieving the objects of the Authority. 25

(3) 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 which stipulates that a right registerable in a deeds office in respect of an asset 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. 30

(4) 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), without the substitution bringing about novation of such contract. 35

(5) 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) which arose— 40

(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.

(6) 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). 45

Funding of Authority

14. (1) The Authority is funded from—

(a) prescribed civil aviation regulatory charges; 50

(b) prescribed levies on aircraft passengers and participants;

(c) interest on invested cash balances;

(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; 55

- (g) any other money received in terms of the South African Civil Aviation Authority Levies Act, 1998, or in terms of or for the purposes of this Act or any other civil aviation legislation, including the income derived from the fees contemplated in section 22(1)(l) of the Aviation Act, 1962;
 - (h) prescribed levies on the supply of aircraft fuel; and 5
 - (i) monies appropriated by Parliament.
- (2) The Authority may with the approval of the Minister of Finance raise money by way of loans.
- (3) The Authority may in consultation with the Minister of Finance establish a structure which must provide that all fines paid in respect of any offence provided for in any legislation administered by the Authority be utilised by the Authority in respect of any civil aviation safety and security investigation. 10

Business and financial plan

- 15.** (1) The Authority must by 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 5, as the Minister or the Minister of Finance may require. 15
- (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 5. 20

Application of Reporting by Public Entities Act

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

Annual report 25

- 17.** (1) 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 is a true and correct reflection of the state of affairs of the Authority as at the end of that financial year; 30
 - (b) a report by the Authority in accordance with the provisions of subsection (2);
 - (c) a report by the auditor of the Authority in accordance with the provisions of subsection (3); and 35
 - (d) any other statement or report which the Minister or the Minister of Finance may require.
- (2) The report of the Authority referred to in subsection (1)(b) must deal with the state of affairs, the activities and operations, and the financial position of the Authority, and must— 40
- (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 45
 - (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— 50
- (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, as applied on a basis consistent with that of the preceding year; 55
 - (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; 5
 - (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) there are adequate measures and procedures for the proper application of sound economic, efficient and effective management; and 10
 - (f) 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. 15
- (5) A copy of the financial report submitted to the Minister in terms of subsection (1) must be open to inspection by the public at the head office of the Authority during business hours. 20

Part G: General

Restriction on use of name

- 18.** (1) No person may under a name containing the words "Civil Aviation Authority" or the translation thereof in any other official language— 25
- (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. 30

Limitation of liability

- 19.** No person, including the State, 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. 35

Failure of Authority to comply with provisions

- 20.** (1) Any person who is directly affected by the failure of the Authority to comply with the provisions of section 4(5), may lodge a complaint with the Minister.
- (2) A complaint lodged under subsection (1) must consist of a statement made under oath or a solemn declaration which details the nature and contents of the alleged failure. 40
- (3) The Minister—
- (a) must notify the Authority of that complaint and 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 4(5); and 45
 - (b) may after notifying the Authority of his or her intention to do so, investigate any allegation of failure to comply with section 4(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 4(5), the Minister— 50

- (a) must in writing direct the Authority to comply with section 4(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.
- (5) The Minister may not act under subsection (4)(a) or (b) unless he or she has— 5
- (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 make representations to him or her in respect of the failure to comply with section 4(5) within a reasonable period of time. 10

Legal rights

21. (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 and other laws administered by the Authority must exercise his, her or its legal rights in respect of that decision in terms of the rules of the High Court having jurisdiction, 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. 15
- (2) The Court referred to in subsection (1) may—
- (a) confirm, vary or set aside the relevant decision of the Chief Executive Officer or that employee, as the case may be; 20
 - (b) 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. 25
- (3) The Court referred to in subsection (1) may 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. 30

Regulations

22. (1) The Minister may, subject to subsection (3), make regulations after consulting with the Authority regarding—
- (a) any matter which in terms of this Act 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; and 35
 - (c) any monies that may be charged by the Authority on—
 - (i) participants in civil aviation; and
 - (ii) aircraft passengers.
- (2) A regulation may provide for such incidental, supplementary or transitional matters as may be necessary. 40
- (3) Any regulation—
- (a) only comes into operation 30 days after publication in the *Gazette*; and
 - (b) must be tabled in Parliament by the Minister within 14 days of publication as contemplated in paragraph (a) of this subsection, or, if Parliament is not then in session, at the commencement of its next ensuing session. 45

Interim arrangements

23. (1) Despite any provision to the contrary in any other law, the Minister may, 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 anything to be done which may be necessary to promote—

(a) the transfer to the Authority of the assets, liabilities, rights or obligations contemplated in section 13(2), the secondment or making available of an officer of the Department contemplated in section 12(3) or the employment by the Authority of an officer of the Department as contemplated in section 13(1)(b); and 5

(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. 10

(2) The Minister must during the period from the date on which this section comes into operation to 31 March 1999 by notice in the *Gazette* determine which of the functions contemplated in section 4 are to be carried out by the Authority as from the date of that notice: Provided that all functions contemplated in section 4 must be carried out by the Authority as from 1 April 1999. 15

Amendment of laws

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

Transitional provisions

25. (1) Anything done or omitted in terms of or by virtue of any provision of a law mentioned in Schedules 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 column of those Schedules. 20

(2) Any act relating to administration contemplated in section 4(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. 25

Short title and commencement

26. 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*. 30

SCHEDULE 1

**LAWS IN RESPECT OF WHICH THE ADMINISTRATION
IS TRANSFERRED AND AMENDMENTS THEREOF
(Section 4(2))**

No. and year of Law	Short title	Extent of amendments
Act No. 74 of 1962	Aviation Act, 1962	<p>1. The amendment of section 1—</p> <p>(a) by the insertion after the definition of “airport” of the following definition: <u>“ ‘Authority’ means the Authority as defined in section 1 of the South African Civil Aviation Authority Act, 1998;”</u>;</p> <p>(b) by the substitution for the definition of “authorized officer” of the following definition: <u>“ ‘authorized officer’ means an officer designated in terms of section 5(4)(a);”</u>;</p> <p>(c) by the insertion of the definition of “authorised person” after the definition of “authorized officer”: <u>“ ‘authorised person’ means an authorised person designated in terms of section 5(4);”</u>; and</p> <p>(d) by the substitution for the definition of “inspector” of the following definition: <u>“ ‘inspector’ means a person designated in terms of section 5(4);”</u>.</p> <p>2. The substitution for section 5 of the following section:</p> <p style="text-align: center;"><u>“Appointment of Commissioner and designation and powers of certain officers</u></p> <p><u>5. (1) The Minister shall appoint an employee of the Authority as Commissioner for Civil Aviation.</u></p> <p><u>(2) The Commissioner shall not, in respect of the functions performed by him or her as Commissioner, be paid any remuneration in addition to his or her remuneration as an employee of the Authority, nor shall he or she be paid any allowance in respect of subsistence and transport at a rate higher than that applicable to him or her as such an employee.</u></p> <p><u>(3) The Commissioner shall—</u></p> <p><u>(a) hold office on such conditions as the Minister may determine when making the appointment; and</u></p> <p><u>(b) vacate his or her office if—</u></p> <p style="padding-left: 20px;"><u>(i) he or she resigns by notice in writing addressed to the Minister;</u></p> <p style="padding-left: 20px;"><u>(ii) the Minister removes him or her from office because he or she has in the opinion of the Minister failed to comply with any condition of his or her appointment, been guilty of improper conduct or neglected his or her duties as Commissioner or is unable to perform his or her duties as Commissioner.</u></p> <p><u>(4) The Commissioner may designate one or more—</u></p>

No. and year of Law	Short title	Extent of amendments
		<p><u>(a) persons in the service of the Authority as inspectors or authorised officers; and</u></p> <p><u>(b) persons who are not in the service of the Authority as inspectors or authorised persons,</u> <u>whose qualifications, powers and duties shall be as prescribed.</u></p> <p><u>(5) For purposes of monitoring compliance with any legislation administered by the Authority, a person referred to in subsection (4) may enter into any aircraft or premises, search any such aircraft or premises, examine any object, make copies of or take extracts from any book or document or seize anything.</u></p> <p><u>(6) For purposes of gathering evidence with the view to prosecuting any person for a contravention of any legislation administered by the Authority, a person referred to in subsection (4) shall not exercise any power to enter any aircraft or premises, search any aircraft or premises, examine any object, make copies of or take extracts from any book or document, or seize anything unless such person has obtained a warrant permitting any such action from a judge of the High Court or a magistrate who has jurisdiction in the area where the aircraft or premises are situated, and such warrant shall only be issued if it appears from information on oath that there are reasonable grounds for believing that an article or thing is upon or in such aircraft or premises, and should specify which of the acts mentioned in this subsection may be performed thereunder by the person to whom it is issued.</u></p> <p><u>(7) A warrant contemplated in subsection (6) shall only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that an exercise of a power referred to in that subsection is necessary for the purpose of appropriate and applicable law enforcement.</u></p> <p><u>(8) A warrant may be issued on any day and shall be in force until—</u></p> <p><u>(a) it has been executed;</u></p> <p><u>(b) it is cancelled by the person who issued it, or, if such person is not available, by any person with similar authority; or</u></p> <p><u>(c) the expiry of one month from the date of its issue.</u></p> <p><u>(9) (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 search, 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.</u></p>

No. and year of Law	Short title	Extent of amendments
		<p><u>(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.</u></p> <p><u>(10) A warrant issued in terms of this section shall be executed by day unless the person who issued it authorises the execution thereof by night at times which in the circumstances are reasonable.</u></p> <p><u>(11) Any person executing a warrant in terms of this section shall immediately before commencing with the execution—</u></p> <p><u>(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</u></p> <p><u>(b) supply such person at his or her request with particulars regarding his or her authority to execute such warrant.”.</u></p> <p>3. The amendment of section 21(1) by the substitution for subsection (1) of the following subsection: <u>“(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.”.</u></p> <p>4. The deletion of subsection (2) of section 21;</p> <p>5. The amendment of section 22A 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”.</p>
Act No. 10 of 1972	Civil Aviation Offences Act, 1972	<p>1. The amendment of section 1—</p> <p><u>(a) by the insertion after the definition of “airport manager” of the following definition:</u> <u>“ ‘Authority’ means the Authority as defined in section 1 of the South African Civil Aviation Authority Act, 1998;” and</u></p> <p><u>(b) by the insertion of paragraph (d) of the definition of “authorized person” of the following paragraph:</u> <u>“(e) any other person appointed in writing by the Authority as an authorised person for the purposes of this Act;”.</u></p> <p>2. The amendment of section 2B by the substitution of paragraph (a) of subsection (2) of the following paragraph: <u>“(a) an employee of the State, or a person in the service of the Authority or of the company;”.</u></p>

No. and year of Law	Short title	Extent of amendments
		<p>3. The amendment of section 2L by the substitution in subsection (1) for paragraph (c) of the following paragraph: <u>“(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;”</u>.</p> <p>4. The substitution for section 2M of the following section: <u>“Delegation of powers</u> <u>2M. The Minister may delegate to the Commissioner or the managing director of the company any power conferred upon him or her by sections 2F(1)(b), (3)(b) and 2J(1);”</u>.</p> <p>5. The substitution for section 2N of the following section: <u>“Compensation to company or Authority</u> <u>2N. The Minister may, to such extent as he or she 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 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.”</u>.</p>
Act No. 59 of 1993	Convention on the International Recognition of Rights in Aircraft Act, 1993	<p>1. The amendment of section 1 by the insertion after the definition of “prescribed” of the following definition: <u>“ ‘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;”</u>.</p> <p>2. The substitution for section 10 of the following section: <u>“Transmission of rights</u> <u>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.</u> <u>(2) The Commissioner 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.”</u>.</p>

SCHEDULE 2

LAWS AMENDED
(Section 24)

No. and year of Law	Short title	Extent of amendments
Act No. 115 of 1990	Air Services Licensing Act, 1990	<p>1. The amendment of section 1—</p> <p>(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”; and</p> <p>(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 11 of the South African Civil Aviation Authority Act, 1998;”;</p> <p>2. The amendment of section 28(1)(a) and (b) by the substitution, wherever it occurs for the expression “by the department” of the expression “by the Authority”.</p>
Act No. 60 of 1993	International Air Services Act, 1993	<p>1. The amendment of section 1 by the insertion after the definition of “authorized person” of the following definition: “ ‘ chairperson of the council’ means the chairperson of the council referred to in section 4(1)(a).”;</p> <p>2. The amendment of section 4 by the substitution for paragraph (a) of subsection (1) of the following paragraph: “(a) a person designated by the Minister as chairperson;”.</p> <p>3. The substitution for section 7 of the following section:</p> <p style="text-align: center;">“Remuneration of appointed members</p> <p style="text-align: center;"><u>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.</u></p> <p style="text-align: center;"><u>(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.”.</u></p> <p>4. The amendment of the Act by the substitution, wherever it occurs, for the expression “Commissioner for Civil Aviation”, of the expression “chairperson of the council”, except in section 41(d).”.</p>

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

Part A of the Bill contains a definition clause.

Part B of the Bill provides for the establishment of the Civil Aviation Authority as a juristic person.

Part C prescribes the objects of the Authority as the control and regulation of civil aviation in the Republic, and, in particular, civil aviation safety and security.

Part D provides for 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 the making of recommendations regarding aviation safety and security to the Minister of Transport. It also provides that the Authority may 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 5 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 6 proposes that the Minister of Transport may issue orders to the Authority in respect of aviation safety and security. These orders must be tabled in Parliament for public information and scrutiny.

Clause 7 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.

Part E 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, at least two persons representing participants in civil aviation, two persons having special knowledge or experience in matters relating to the functions of the Authority, and the Chief Executive Officer. This Part details the requirements and disqualifications of Board members and the appointment of the Chief Executive Officer and staff of the Authority.

Part F provides for the financial management of the Authority. In clause 17 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), applies to the Authority.

Part G contains provisions of general nature. Clause 18 places a restriction on the use of the name "Civil Aviation Authority". Clause 20 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. The Minister must investigate complaints of this nature complying with the prescribed requirements which established a *prima facie* case. The Minister may 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 21 for an appeal to a High Court by a person affected by a decision of any employee of the Authority against that decision.

Clause 22 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 State Law Advisers and 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).