
GENERAL NOTICES

NOTICE 1095 OF 2014

DEPARTMENT OF TRANSPORT

PUBLICATION FOR COMMENTS OF THE DRAFT AIRPORTS COMPANY AMENDMENT BILL, 2014

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

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

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REPUBLIC OF SOUTH AFRICA

AIRPORTS COMPANY AMENDMENT, BILL, 2014

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

(MINISTER OF TRANSPORT)

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.

BILL

To amend the Airports Company Act, 1993 so as to insert new definitions; to substitute certain expressions; to provide for the appointment and disqualification of members of the Committee; to provide for the vacation of office of members of the Committee; to provide for the meetings of the Committee; to amend the period for the issuing of the permission; to provide for decisions of the Committee; to

provide for the establishment of the Appeal Committee; to provide for the appointment and disqualification of members of the Appeal Committee; to provide for the vacation of office of members of the Appeal Committee; to provide for appeals against the decisions of the Committee; and to provide for matters connected herewith

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

Amendment of Section 1 of Act No. 44 of 1993, as amended by section 17 of Act No. 98 of 1996 and section 1 of Act No. 2 of 1998

1. Section 1 of the Airports Company Act, 1993 (hereinafter referred to as the principal Act), is hereby amended by-

(a) the insertion after the definition of "**airport charge**" of the following definitions, respectively:

" 'approach document' means a document in which the Committee provides guidelines to the company in submitting a permission application;"

(b) the insertion after the definition of "**air traffic service charge**" of the following definitions, respectively:

" 'Air Traffic and Navigation Services Company Act ' means the Air Traffic and Navigation Services Company Act, 1993 (Act No. 45 of 1993);"

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

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

" 'Director-General' means the Director-General of the Department of Transport;"

(d) the insertion after the definition of "**permission**" of the following definitions, respectively:

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

" **regulation** ' means regulation made under section 15;";

(e) the insertion after the definition of "**Shareholding Minister**" of the following definition:

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

Amendment of Section 5 of Act No. 44 of 1993 as amended by section 5 of Act No. 2 of 1998

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

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

Amendment of Section 11 of Act No. 44 of 1993 as amended by section 11 of Act No. 2 of 1998

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

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

" (2) The members of the Committee **[shall]** must be appointed by the Minister and must consist of –

- (a) a Chairperson; **[and]**
- (b) a Deputy Chairperson; and
- (c) **[four]** three other persons, of whom at least two are not –
 - (i) officers as defined in terms of section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994); or
 - (ii) persons deemed to be such officers in terms of section 1(a) of the Public Service Amendment Act, 1996 (Act No. 13 of 1996), who in the opinion of the Minister, are suitably qualified to perform the 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) ".

(b) the insertion of the following subsections 2A and 2B after section 11 (2):

- " 2A. If the Chairperson is for any reason unable to perform his or her functions, the Deputy Chairperson must perform such functions until the Minister designates another Chairperson.
- 2B. A member of the Committee must hold office for a period determined by the Minister ".

(c) the insertion of sections 11A, 11B and 11C after section 11 of the principal Act:

" 11 A. Appointment and disqualification of members of the Committee

- (1) No person may be appointed as or remain a member of the Committee if that person-
 - (a) is not a South African citizen nor the holder of a permit as a permanent resident in the Republic;
 - (b) is an unrehabilitated insolvent;
 - (c) has, within a period of 10 years immediately before the date of the proposed appointment, been convicted of an offence involving dishonesty

or been sentenced to a term of imprisonment without the option of a fine, for any other offence; or

(d) has, after appointment, been convicted of an offence involving dishonesty or been sentenced to imprisonment without the option of a fine for any other offence.

(2) The Minister must appoint, as members of the Committee, persons who-

(a) are suitably qualified, with experience in law, finance, economics and the civil aviation industry;

(b) are collectively broadly representative of South African society as a whole;

(c) are committed and available to fulfil their role as members of the Committee; and

(d) must be impartial and perform their functions without fear, favour or prejudice.

(3) Upon appointment-

(a) every member must terminate any employment relationship or professional engagement with any person, firm, association or company engaged in the aviation industry and may not take up any such employment or professional engagement during his or her term of office. ;

(b) every member must disclose to the Minister his or her pecuniary interest in any person, firm, association or company engaged in the aviation industry; and

(c) every member must disclose to the Minister if his or her spouse, life partner or child is in the employ of or has a professional engagement relationship with, or has any relationship with any person, firm, association or company engaged in the aviation industry, or has any pecuniary interest in any such person, firm, association or company.

- (4) A member may not at any time be present during the discussion of or the making of a decision on, or take part in any matter before the Committee in which that member or his or her spouse, life partner, child or associate has a direct or indirect pecuniary interest.
- (5) If a member acquires an interest contemplated in subsection (3)(b), such member must immediately in writing declare that fact to the Minister.
- (6) If the spouse, life partner or child of a member acquires an interest contemplated in subsection (3)(c), such member must immediately in writing declare that fact to the Minister.
- (7) Before appointing members to the Committee, the Minister must by notice in the Gazette call for nominations from members of the public”.

11B. Vacation of office and termination of appointment of members of the Committee

- (1) A member of the Committee must vacate his or her office if that member-
- (a) has been declared by a court to be of unsound mind;
 - (b) has been absent for more than three consecutive meetings without formally notifying the Chairperson for each absence;
 - (c) resigns by written notification to the Minister;
 - (d) fails to comply with the conditions of his or her appointment efficiently and diligently; or
- (e) becomes disqualified from being a member on any of the grounds referred to in section 11A (1)”.

11 C. Meetings of the Committee

- (1) (a) The Committee must meet at such times and places as may be determined by the Chairperson; and
- (b) The Chairperson must convene such meetings of the Committee as are necessary for the proper performance of its functions.
- (2) If the Chairperson is absent from a meeting of the Committee the Deputy Chairperson must chair the meeting.

- (3) If both the Chairperson and the Deputy Chairperson are absent from a meeting the Chairperson must designate another member to chair that meeting.
- (4) Unless other procedures are prescribed by the Committee, the Chairperson must determine the procedures to be followed at such meetings.
- (5) The quorum for any meeting of the Committee must be three members.
- (6) (a) A decision of the majority of the members present at a meeting constitutes a decision of the Committee; and
(b) In the event of an equality of votes on any matter the person chairing the meeting has a casting vote in addition to his or her deliberative vote.
- (7) No decision taken by the Committee is invalid if the decision was taken by a majority of those members present and entitled to vote.
- (8) (a) If the Committee takes a decision in any other manner than at a formal meeting, such decision comes into effect after it has been reduced to writing and signed by a majority of the members and it must be submitted for noting at the first formal meeting of the Committee following the decision; and
(b) The Committee must cause a record of all of its proceedings to be kept.

Amendment of Section 12 of Act No. 44 of 1993 as amended by section 12 of Act No. 2 of 1998

4. Section 12 is hereby amended by-

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

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

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

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

- (b) If the issuance of the new Permission is delayed up to a point where the existing Permission lapses, the tariff of the fifth year of the Permission that recently lapsed must remain applicable until the new Permission comes into effect.
- (c) the deletion of subsection (8).
- (d) the deletion in subsection 10 (e) of the expression [for each financial year].
- (e) the substitution of paragraph (a) of the subsection (11) of the following paragraph:
- “(a) any condition mentioned in subsection (7) in respect of [the last two financial years of period of validity of] a permission mentioned in subsection (2), if the Minister approves such amendment. ”.
- (f) the insertion of section 12A,B,C and C after section 12 of the following of sections:

"12 A. Decision of the Committee

- (1) Every decision of the Committee must be in writing and be-
- (a) consistent with the Constitution and all applicable laws;
 - (b) in the interest of the civil aviation industry and the South African economy;
 - (c) taken within a procedurally fair process in which affected persons have the opportunity to submit their views and present relevant facts and evidence to the Committee;
 - (d) based on reasons, facts and evidence that must be summarised and recorded; and
 - (e) explained clearly as to its factual and legal basis and the reasons therefore.

(2) Any decision of the Committee and the reasons therefor must be available to any affected party except information that is protected in terms of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013). "

12 B. Establishment of the Appeal Committee

(1) There is hereby established a Committee to be known as the Appeal Committee, whose members must be appointed by the Minister and must consist of –

(a) a Chairperson;

(b) a Deputy Chairperson; and

(c) three other persons, of whom at least two are not –

(i) officers as defined in terms of section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994); or

(ii) persons deemed to be such officers in terms of section 1(a) of the Public Service Amendment Act, 1996 (Act No.13 of 1996) who, in the opinion of the Minister, are suitably qualified to perform the duties or exercise the powers of the Appeal Committee in terms of this Act and the Air Traffic and Navigation Services Company Act.

(2) The Appeal Committee must be impartial and perform its functions without fear, favour or prejudice.

(3) If the Chairperson is for any reason unable to perform his or her functions, the Deputy Chairperson must perform them until the Minister designates another Chairperson.

(4) The members of the Appeal Committee must be appointed on a part time basis, and;

(5) A member of the Appeal Committee must hold office for a period determined by the Minister.

12 C. Appointment and disqualification of members of the Appeal Committee

(1) No person may be appointed as or remain a member of the Appeal Committee if that person -

- (a) is not a South African citizen or the holder of a permit as a permanent resident in the Republic;
- (b) is an unrehabilitated insolvent;
- (c) has, within a period of 10 years immediately before the date of the proposed appointment, been convicted of an offence involving dishonesty or served a sentence of imprisonment without the option of a fine for any other offence; or
- (d) has, after appointment, been convicted of an offence involving dishonesty or been sentenced to imprisonment without the option of a fine for any other offence.
- (2) The names of appointed members must be published in the Government Gazette.
- (3) The members of the Appeal Committee must be remunerated and given allowances and benefits as the Minister may determine with the concurrence of the Minister of Finance.
- (4) (1) The Minister must appoint, as members of the Appeal Committee, persons who-
- (a) when viewed collectively, are suitably qualified persons with experience in law, finance, economics and the civil aviation industry :
- (b) are collectively broadly representative of the South African society as a whole;
- (c) are committed and available to fulfil their role as members of the Appeal Committee; and
- (d) must be impartial and perform their functions without fear, favour or prejudice. "
- (5) "Upon appointment-
- (a) every member must disclose to the Minister his or her pecuniary interest in any person, firm, association or company engaged in the aviation industry; and
- (b) every member must disclose to the Minister if his or her spouse, life partner or child is in the employ of or acts as a consultant to, or has any

relationship with any person, firm, association or company engaged in the aviation industry, or has any pecuniary interest in any such person, firm, association or company.

- (6) If a member acquires an interest contemplated in subsection (5)(a), such member must immediately in writing declare that fact to the Minister.
- (7) If the spouse, life partner or child of a member acquires an interest contemplated in subsection (5)(b), such member must immediately in writing declare that fact to the Minister.
- (8) Before appointing members to the Appeal Committee, the Minister must by notice in the Gazette call for nominations from members of the public.
- (9) All administrative work, if necessary, in connection with the performance or the exercise of the powers of the Appeal Committee must be done by the officers in the Department designated for such purpose by the Director- General.

"12 D. Vacation of office and termination of appointment of members of the Appeal Committee

- (1) A member of the Appeal Committee must vacate his or her office if that member-
- (a) has been declared by a court to be of unsound mind;
 - (b) resigns by written notification to the Minister;
 - (c) fails to comply with the conditions of his or her appointment efficiently and diligently; or
 - (d) becomes disqualified from being a member on any of the grounds referred to in section 12 B. "

" 12 E. Appeals

- (1) (a) The Company or any other person aggrieved or affected by the decision of the Committee to grant or refuse a written Permission in terms of Section 12 of this Act or any other decision related to economic regulation, may appeal against such decision to the Appeal Committee.

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

(9) The decision of a majority of the members of the Appeal Committee must be the decision of the Appeal Committee.

(10) The decision of the Appeal Committee must be put in writing, and a copy thereof must be furnished to the appellant as well as to the respondent within 30 days of the hearing of the appeal, unless the Chairperson, in his discretion and taking into account submissions from the parties in regard to the complexity of the issues to be decided, the prolixity of documents to be considered, and the importance or otherwise of the issues to be decided, determines otherwise.”

Amendment of Section 14 of Act No. 44 of 1993 as amended by section 15 of Act No. 2 of 1998

5. Section 14 of the Act is amended by-

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

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

(b) the insertion of section 14A after section 14:

“14 A Offences

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

(2) Any person-

(a) summoned to attend and give evidence; or to produce any book, document or object before the Appeal Committee who, without sufficient cause, the onus of proof whereof must rest upon him or her, fails to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the appeal or to remain until he or she is excused by the Chairperson of the Appeal Committee from further attendance, or having attended, refuses to be sworn or to make affirmation as a witness after he or she has been required by the Chairperson of the Appeal Committee to do so;
or

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

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

Amendment of Section 15 of Act No. 44 of 1993 as amended by section 16 of Act No. 2 of 1998

6. Section 15 of the Act is hereby amended by-

(1) the substitution of the words preceding subsection (1) of the following words:

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

(2) the insertion after subsection (c) of the following subsection:

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

(cD) regarding procedures to be followed by the Committee to enforce compliance by the Company.

Substitution of the long title of Act No. 44 of 1993

7. The long title is hereby amended by the substitution for the following long title of the principal Act:

“To provide for transfer of certain assets and functions of the State to a public company to be established; to provide for the appointment and disqualification of members of the Committee; to provide for the vacation of office of members of the Committee; to provide for the meetings of the Committee; to provide for the establishment of the Appeal Committee; to provide for the appointment and disqualification of members of the Appeal Committee; to provide for the vacation of office of members of the Appeal Committee and to provide for matters connected therewith.”

Substitution of certain words in Act No. 44 of 1993

8. The principal Act is hereby amended by-

- (a) the substitution of the words "**[Companies Act, 1973 (Act No. 61 of 1973)]**" wherever it occurs in the Act, for the words "Companies Act, 2008 (Act No.71 of 2008)".
- (b) the substitution of the words "**[Maintenance and Promotion of Competition Act 1979 (Act No. 96 of 1979)]**" wherever it occurs in the Act for the words "Competition Act, 1998 (Act No. 89 of 1998)".
- (c) the substitution of the words "**[Minister of Safety and Security]**" wherever it occurs in the Act for the words "Minister of Police".

(d) the substitution of the word "shall " wherever it occurs in the Act for the word "must".

Short title and commencement

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



transport

Department:
Transport
REPUBLIC OF SOUTH AFRICA

MEMORANDUM ON THE OBJECTS OF THE BILL

1. BACKGROUND

The Bill seeks to-

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

2. CLAUSE BY CLAUSE ANALYSIS OF THE BILL

2.1 **Clause 1** of the Bill amends section 1 of the principal Act by defining, amending and inserting words used in the Act.

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

- 2.3 **Clause 3** of the Bill amends Section 11 of the Act by outlining the composition of the Committee. Clause 3 also inserts Section 11A, B and C, by empowering the Minister to appoint and disqualify the members of the Committee and terminate membership of the office bearers of the Committee. Section 11C provides for the procedures to be followed in meetings of the Committee.
- 2.4 **Clause 4** of the Bill amends Section 12 of the Act by extending the period of amendment of the conditions of the Permission and also inserts Section 12A, B, C, D and E, by empowering the Minister to appoint and disqualify the members of the Appeal Committee and terminate membership of the office bearers of the Appeal Committee. Section 12E provides for the appeals mechanism where the Company or any aggrieved person can appeal against the decisions of the Committee.
- 2.5 **Clause 5** of the Bill amends Section 14 of the Act by providing the prescribed forms that any other person must use when lodging complaints against the Company. Clause 5 also insert Section 14A whereby any person who wilfully disrupts proceedings, fail to attend the hearing as summoned by the Appeals Committee, fails to satisfactorily answer the questions put to him or her and any person after being sworn or having made affirmation gives false evidence to be guilty of an offence.
- 2.6 **Clause 6** amends Section 15 of the Act by empowering the Minister to make Regulations by notice in a Gazette after consultation with the Committee and the aviation industry regarding any matter related to economic regulation of the aviation industry and the procedures to be followed in terms of non-compliance of the Company.
- 2.7 **Clause 7** amends the long title of the Act as a result of the amendments that were effected in the Act.
- 2.8 **Clause 8** amends certain words that are used in the Principal Act by updating those words to reflect the present dispensation.

2.9 **Clause 9** is the short title and commencement which is a standard provision dealing with the short title and commencement of the envisaged Act.

3. **CONSULTATION**

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

4. **FINANCIAL IMPLICATION FOR STATE**

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

5. **PARLIAMENTARY PROCEDURE**

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