

REPUBLIC OF SOUTH AFRICA

AIRPORTS COMPANY AMENDMENT BILL

*(As amended by the Portfolio Committee on Transport (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B 5B—2018]

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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.

BILL

To amend the Airports Company Act, 1993, so as to insert and amend certain 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 meetings of the Committee; to amend the period for the issuing of a permission; to provide for decisions of the Committee; to provide for the establishment of the Appeal Committee; to provide for appeals against the decisions of the 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 offences; and to provide for matters connected therewith.

BE 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 and section 1 of Act 2 of 1998

1. Section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993) (hereinafter referred to as the “principal Act”), is hereby amended— 5

(a) by the insertion after the definition of “airport charge” of the following definitions:

“ **‘Air Traffic and Navigation Services Company Act’** means the Air Traffic and Navigation Services Company Act, 1993 (Act No. 45 of 1993); 10

‘Appeal Committee’ means the Appeal Committee established in terms of section 12B;

‘approach document’ means the Committee’s guidelines to the company for the submission of a permission application;” 15

(b) by the insertion after the definition of “Committee” of the following definition:

“ **‘Companies Act’** means the Companies Act, 2008 (Act No. 71 of 2008);”;

(c) by the substitution for the definition of “company” of the following definition: 20

“ **‘company’** means the Airports company established in section 2 and re-classified as a state owned company (SOC) Limited in terms of the Companies Act, subject to the applicable transitional arrangements under section 224 and Schedule 5 of the Companies Act;” 25

- (d) by the insertion after the definition of “Department” of the following definitions:
- “**‘Director-General’** means the Director-General for the Department of Transport;
- “**‘economic regulation’** means price controls for a company’s airport infrastructure and air navigation infrastructure;”;
- (e) by the insertion after the definition of “permission” of the following definitions:
- “**‘prescribed’** means prescribed by regulation;
- “**‘Public Finance Management Act’** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;
- (f) by the insertion after the definition of “Shareholding Minister” of the following definition:
- “**‘this Act’** includes the regulations;”.

Amendment of section 2 of Act 44 of 1993, as amended by section 2 of Act 2 of 1998

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

- (a) by the substitution for the heading of the following heading:
- “**Establishment and classification of company**”
- (b) by the deletion of subsection (6);
- (c) by the substitution for paragraph (c) of subsection (7) of the following paragraph:
- “(c) The majority of non-executive directors must not be employees in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).”; and
- (d) by the insertion after subsection (7) of the following subsection:
- “(8) As from the date of commencement of the Companies Act, the company is classified as a state owned company listed under schedule 2 of the Public Finance Management Act.”.

Amendment of section 5 of Act 44 of 1993, as amended by section 5 of Act 2 of 1998

3. 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 contemplated in [**section 34 of the Companies Act, 1973 (Act No. 61 of 1973)**] section 19(1)(b) of the Companies Act, unless expressly excluded or qualified by this Act.”;
- (b) by the substitution in subsection (2) for paragraph (d) of the following paragraph:
- “(d) conduct its business in such a manner as to ensure that the company does not engage in any [**restrictive**] prohibited practices as defined in section 1 of the [**Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979)**] Competition Act, 1998 (Act No. 89 of 1998).”;
- (c) by the substitution in subsection (2) for paragraph (f) of the following paragraph:
- “(f) publish any airport charge by notice in the *Gazette* at least [**three**] four months prior to the coming into operation of such charge;”;
- (d) by the substitution in subsection (2) for paragraph (k) of the following paragraph:
- “(k) ensure that relevant activities are performed subject to section 12 (7)(b) [**1**].”; and
- (e) by the addition in subsection (2) after paragraph (k) of the following paragraph:
- “(l) conduct its business and perform its functions, including the management of its revenue, expenditure, assets and liabilities, in accordance with the Public Finance Management Act.”; and

- (f) by the substitution in subsection (2A)(a) for subparagraphs (i) and (ii) of the following subparagraphs:
- “(i) the holding company, as [**described in section 1(4) of the Companies Act, 1973 (Act No. 61 of 1973), of the Company**] defined in section 1 of the Companies Act; 5
 - (ii) a subsidiary, as [**described in section 1 (3) of the Companies Act, 1973, of the company**] defined in section 3 of the Companies Act; or”.

Amendment of section 11 of Act 44 of 1993, as amended by section 11 of Act 2 of 1998 10

4. Section 11 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
- “(2) The members of the Committee shall be appointed by the Minister and shall consist of—
- (a) a chairperson; 15
 - (b) a deputy chairperson; and
 - (c) three other persons who are not employees in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), who 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.”; 20
- (b) by the substitution for subsection (4) of the following subsection:
- “(4) A member of the Committee who is not an employee in terms of the Public Service Act, 1994 (Proclamation 103 of 1994) 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 Finance.”; 25
- (c) by the substitution for subsection (6) of the following subsection:
- “(6) All administrative work in connection with the performance of the duties or the exercise of the powers of the Committee shall be done by officials in the Department designated for such purpose by the Director-General[**: Transport**].” 30

Insertion of sections 11A to 11F in Act 44 of 1993

5. The following sections are hereby inserted in the principal Act after section 11:

“Appointment of members of Committee 35

11A. (1) The Minister shall, before appointing the members contemplated in section 11(2), by notice in the *Gazette* and through media, call for nominations from members of the public with interest in the civil aviation industry. 40

(2) The Minister shall appoint members of the Committee that—

- (a) are suitably qualified and experienced in the field of law, finance, economics or the civil aviation industry; 40
- (b) are collectively broadly representative of South African society as a whole; 45
- (c) are committed and available to fulfil their role as members of the Committee; and
- (d) shall be impartial and perform their functions without fear, favour or prejudice. 45

Disqualification from membership

11B. A person may not be appointed as a member or remain a member of the Committee if that person— 50

- (a) is not a South African citizen and ordinarily resident in the Republic; 50
- (b) is an unrehabilitated insolvent; or
- (c) has at any time been convicted of an offence involving dishonesty, whether in the Republic or elsewhere, and had been sentenced to a 55

term of imprisonment without the option of a fine, for any other offence.

Disclosure of interest

11C. (1) A member shall disclose to the Minister—

- (a) any interest in any person, firm, association or company engaged in the aviation industry, acquired before or during his or her term of office; 5
- (b) if his or her spouse, life partner or child is in the employ of, or has a professional engagement with, or has any relationship with any person, firm, association or company engaged in the aviation industry, or has any interest in any such person, firm, association or company, acquired before or during his or her term of office. 10

(2) Every member shall 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. 15

Vacation of office and termination of appointment

11D. (1) A member shall vacate his or her office if—

- (a) he or she has been declared by the High Court to be of unsound mind; 20
- (b) he or she has, without leave from the Committee, been absent for more than three consecutive meetings;
- (c) he or she resigns by written notification to the Minister;
- (d) the Minister, after consultation with the Committee, withdraws the appointment of that member because the member is incompetent or unfit to comply with the conditions of his or her appointment timeously, efficiently and diligently; or 25
- (e) he or she becomes disqualified from being a member on any of the grounds referred to in section 11B.

(2) The Minister may, in accordance with section 11A(2), appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed. 30

Meetings of Committee

11E. (1) The Committee shall meet at such times that are necessary for the proper performance of its functions and at such place as may be determined by the chairperson.

(2) The Committee shall determine the procedure for conducting meetings. 35

(3) If the chairperson is absent from a meeting of the Committee, the deputy chairperson shall chair the meeting.

(4) If both the chairperson and the deputy chairperson are absent from a meeting, the members in attendance at the meeting shall elect one of the members present to chair the meeting. 40

(5) The quorum for any meeting of the Committee is three members.

(6) (a) A decision of the majority of the members present at a quorate meeting constitutes a decision of the Committee.

(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. 45

(7) No decision taken by the Committee is invalid if the decision was taken by the majority of those members present and entitled to vote.

(8) If the Committee takes a decision in any other manner other than at a formal meeting, such decision comes into effect only after it has been reduced to writing and signed by the majority of the members present, and must be submitted for noting at the first formal meeting of the Committee. 50

(9) The Committee must cause a record of all of its proceedings to be kept.