

REPUBLIC OF SOUTH AFRICA

**AIR TRAFFIC AND NAVIGATION
SERVICES 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 6B—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 Air Traffic and Navigation Services Company Act, 1993, so as to insert new definitions; to provide for a subsidiary to perform functions inside and outside of the Republic; to provide for appeals against the decisions of the Committee; to provide for offences and penalties; to substitute certain expressions, citations and words; 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 45 of 1993, as amended by section 19 of Act 98 of 1996

1. Section 1 of the Air Traffic and Navigation Services Company Act, 1993 (Act No. 45 of 1993) (hereinafter referred to as the “principal Act”), is hereby amended—
- (a) by the insertion after the definition of “air navigation service” of the following definition:
 - “**‘Airports Company Act’** means the Airports Company Act, 1993 (Act No. 44 of 1993);”;
 - (b) by the insertion after the definition of “air traffic service charge” of the following definitions:
 - “**‘Appeal Committee’** means the Appeal Committee established by section 12B of the Airports Company Act;
 - ‘approach document’** has the meaning assigned to it in the Airports Company Act;
 - ‘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:
 - “**‘company’** means the Air Traffic and Navigation Services Company, established in terms of section 2;”;
 - (d) by the insertion after the definition of “Department” of the following definition:
 - “**‘economic regulation’** has the meaning assigned to it in the Airports Company Act;”;
 - (e) by the insertion after the definition of “permission” of the following definitions:

- “**‘prescribed’** means prescribed by regulation;
‘relevant activity’ means the provision of any service or facility for the purposes of air traffic management, communication, surveillance, operation, control or maintenance of air navigation infrastructure and air traffic services within the borders of the Republic;”
- (f) by the substitution for the definition of “Shareholding Minister” of the following definition:
 “**‘Shareholding Minister’** means the Minister **[mentioned]** designated in terms of section **[3(3)] 3(4)**”; and
- (g) by the insertion after the definition of “Shareholding Minister” of the following definitions:
 “**‘subsidiary’** has the meaning assigned to it in section 1 of the Companies Act;
‘this Act’ includes the regulations.”

Amendment of section 2 of Act 45 of 1993 15

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 substitution for subsection (1) of the following subsection:
 “(1) On a date to be fixed by the Minister by notice in the *Gazette* there shall be established a **[public]** company to be known as the Air Traffic and Navigation Services Company Limited.”;
- (c) by the deletion of subsection (6);
- (d) by the substitution in subsection (7) for paragraph (c) of the following paragraph:
 “(c) The majority of the non-executive directors shall be persons who are not **[officers or]** employees **[as defined in section 1]** in terms of the Public Service Act, **[1984 (Act No. 111 of 1984)] 1994 (Proclamation 103 of 1994)**.”; and
- (e) by the addition, 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, 1999 (Act No. 1 of 1999), subject to the applicable transitional arrangements under section 224 and Schedule 5 of the Companies Act.”

Amendment of section 5 of Act 45 of 1993

3. Section 5 of the principal Act is hereby amended—
- (a) 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 practice, 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)**.”;
- (b) by the substitution in subsection (2) for paragraph (e) of the following paragraph:
 “(e) not change the level or modify the structure of any air traffic service charge more than twice within a financial year;” **[and]**
- (c) by the substitution in subsection (2) for paragraph (f) of the following paragraph:
 “(f) publish by notice in the *Gazette* any air traffic service charge at least **[three]** four months prior to the coming into operation of such charge[.];”;
- (d) by the addition in subsection (2) after paragraph (f) of the following paragraphs:
 “(g) with the exception of a relevant activity, ensure that any other service inside or outside of the Republic, of which the tariffs are not determined by the Committee, is provided by a subsidiary of the company; and

- (h) with the exception of a relevant activity, perform any other service in a manner that will not substantially or adversely affect the performance of any relevant activity or expose any relevant activity to substantial financial risks.”; and
- (e) by the substitution for subsection (3) of the following subsection: 5
 “(3) The company may, in order to perform its functions or attain any of its objects, with the approval of the Shareholding Minister and the Minister responsible for Finance—
 (a) raise money by way of loans from any source; or
 (b) receive income from sources, other than air traffic service charges, and enforce any contract providing for such raise or receipt of income with the approval of the Shareholding Minister and the Minister responsible for Finance.”. 10

Amendment of section 11 of Act 45 of 1993

4. Section 11 of the Act is hereby amended— 15
- (a) by the substitution for subsection (2) of the following subsection:
 “(2) Unless otherwise provided for in this Act, the company shall apply to the Committee for the issuing of a permission, **[at the beginning of the third financial year]** within the 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.”; 20
- (b) by the insertion after subsection (6) of the following subsection:
 “(6A) If an existing permission lapses as a result of a delay in the issuance of a new permission, the tariff of the fifth year of the permission that recently lapsed shall remain applicable until the new permission comes into effect.”; 25
- (c) by the deletion of subsection (8);
- (d) by the substitution in subsection (10) for paragraph (e) of the following paragraph:
 “(e) 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 have a reasonable prospect of earning a commercial return on capital employed.”; and 30
- (e) by the substitution for subsection (11) of the following subsection: 35
 “(11) Subject to the Minister’s approval, the Committee may, after consultation with the company and other interested parties, amend—
 (a) any condition contemplated in subsection (7) in respect of a permission contemplated in subsection (2); and
 (b) any condition contemplated in subsection (7), other than a condition contemplated in paragraph (a).” 40

Insertion of sections 11A to 11C in Act 45 of 1993

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

“Appeals

- 11A.** (1) The company or a person who has a substantial interest in the decision of the Committee to grant or refuse a written permission in terms of section 11 of this Act or any other decision related to economic regulation, may appeal, in writing, on a prescribed form against such decision to the Appeal Committee. 45
- (2) An appeal in terms of subsection (1) shall be submitted to the Appeal Committee within 30 days after the date on which the Committee made the decision. 50
- (3) The Appeal Committee may, at any time, permit the company or a person to lodge an appeal after the period of 30 days has expired, if the Appeal Committee is satisfied, after having considered all the relevant circumstances, that good cause is shown by the company or such person for failing to comply with the applicable timeframes. 55

(4) The Appeal Committee shall hear and determine an appeal within 90 days after the appeal has been lodged and inform the appellant of the outcome in writing.

Procedure for hearing of appeals

11B. (1) The Appeal Committee shall determine the procedure for the hearing of an appeal. 5

(2) An appeal shall be heard at the time and place determined by the Appeal Committee.

(3) The chairperson shall, at least 14 days before the hearing of an appeal, notify the company and any person who may be affected by the appeal, or who may have an interest in the outcome of the appeal, in writing, of the date, time and place of the appeal. 10

(4) The chairperson may, for the purpose of hearing an appeal—

- (a) summon any person as a witness;
- (b) administer an oath or accept an affirmation from any person called as a witness at the hearing; and 15
- (c) call any person present at the hearing as a witness and interrogate him or her, and require him or her to produce any book, document or object in his or her possession or custody or under his or her control.

(5) A summons for the attendance of a witness or for the production of any book, document or object before the Appeal Committee shall be signed by the chairperson and issued in a form determined by the Appeal Committee. 20

(6) The appellant, as well as the respondent, may be represented by a legal practitioner at the hearing of an appeal. 25

Decisions of Appeal Committee

11C. (1) The Appeal Committee may, after hearing an appeal—

- (a) confirm the decision;
- (b) set aside the decision; or
- (c) refer the decision back to the Committee to be reconsidered. 30

(2) The decision of the majority of the members of the Appeal Committee shall be the decision of the Appeal Committee.

(3) The decision of the Appeal Committee shall be in writing, and a copy thereof shall be furnished to the appellant and the respondent within 30 days of the hearing of the appeal, unless the chairperson, in his or her discretion, determines otherwise, after taking into account submissions from the parties in relation to— 35

- (a) the complexity of the issues to be decided;
- (b) the volume of documents to be considered; and
- (c) the importance of the issues to be decided.”. 40

Amendment of section 13 of Act 45 of 1993

6. Section 13 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who **[feels]** is aggrieved by the failure of the company to comply with any provision of section 5(2) or 11(1) or (12), may lodge with the Committee a complaint, in writing, on the prescribed form, which shall be accompanied by proof of the failure.”. 45

Insertion of section 13A in Act 45 of 1993

7. The following section is hereby inserted in the principal Act after section 13:

“Offences and penalties 50

13A. (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, shall be guilty of an offence