

AIR TRAFFIC AND NAVIGATION SERVICES COMPANY
ACT

NO. 45 OF 1993

[ASSENTED TO 25 MARCH, 1993][DATE OF
COMMENCEMENT: 9 APRIL, 1993]

(Unless otherwise indicated)

(English text signed by the State President)

ACT

To provide for the transfer of certain assets and functions of the State to a public company to be established and for matters connected therewith.

1. Definitions.—In this Act, unless the context otherwise indicates—

"air navigation infrastructure" means infrastructure, including landing and air navigation aids and air traffic control systems, provided for the promotion of the safe, orderly and expeditious movement of air traffic, and, where applicable, any building or structure on or to which such infrastructure or part thereof is housed or attached, and includes the premises on which such infrastructure or part thereof is situated, whether such building, structure or premises are situated within the boundaries of an airport or not;

"air navigation service" means the planning, provision and maintenance of air navigation infrastructure;

"airport" means an airport as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962);

"air traffic service" means an airport control service, an approach control service, an area control service, a flight information service, an air traffic advisory service, an alerting service or other service designated by the Commissioner, as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962);

"air traffic service charge" means an amount levied by the company on an operator of an aircraft or an airport in connection with the use of any air navigation infrastructure by, or the provision of an air traffic service to, such operator;

"Committee" means the Committee as defined in section 1 of the Airports Company Act, 1993;

"company" means the Air Traffic and Navigation Services Company Limited contemplated in section 2;

"Department" means the Department of Transport;

"financial year", in relation to the company, means a year terminating on the last day of March;

"Minister" means the Minister of Transport;

"permission" means a permission mentioned in section 11 (1);

"Shareholding Minister" means the Minister mentioned in section 3 (3);

"transfer date" means the date on which the Minister gives effect to the provisions of section 6 (1), and which shall be published by the Minister by notice in the Gazette.

2. Establishment of public company.-(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.

(2) Notwithstanding the provisions of the Companies Act, 1973 (Act No. 61 of 1973), the Shareholding Minister shall on behalf of the State sign the memorandum of association and the articles of association of the proposed company.

(3) If the memorandum of association and the articles of association have been so signed they shall, as far as the signing thereof is concerned, be deemed to comply with the requirements of the Companies Act, 1973, for the registration in terms of the said Act, of any such memorandum or articles.

(4) On receipt of the memorandum and articles so signed the registrar of companies shall register the said memorandum and articles as contemplated in section 63 of the Companies Act, 1973, and endorse thereon a certificate that the company is incorporated.

(5) No fees shall be payable in terms of the Companies Act, 1973, in respect of the checking of documents, the reservation of the name, the registration of the said memorandum and articles and the issue of a certificate to commence business.

(6) The provisions of sections 66 and 344 (d) of the Companies Act, 1973, shall not apply to the company as long as the State is the sole member and shareholder of the company.

(7) (a) The directors shall be non-executive and executive directors.

(b) The majority of the directors shall be non-executive directors.

(c) The majority of the non-executive directors shall be persons who are not officers or employees as defined in section 1 of the Public Service Act, 1984 (Act No. 111 of 1984).

(d) The Shareholding Minister shall, in appointing the non-executive directors contemplated in paragraph (c), consult with

appropriate interested parties.

3. Share capital of company-(1) The State shall be the holder of the shares in the company.

(2) The said shares shall only be sold or otherwise disposed of with the approval, by resolution, of Parliament.

(3) The rights attached to the shares of which the State is the holder shall be exercised by the Shareholding Minister on behalf of the State.

(4) The State President shall designate a Minister as the Shareholding Minister.

4. Objects of company-The objects of the company are the acquisition, establishment, development, provision, maintenance, management, control or operation of air navigation infrastructures, air traffic services or air navigation services.

5. Functions of company-(1) The functions of the company shall be to achieve its objects with the means at its disposal.

(2) The company shall-

(a)not have any financial interest, direct or indirect, in the provision of any air service as defined in section 1 of the Air Services Licensing Act, 1990 (Act No. 115 of 1990), or in section 1 of the International Air Servdes Act, 1949 (Act No. 51 of 1949);

(b)not unduly discriminate against or among various users or categories of users of any air navigation infrastructure or air traffic services;

(c)conduct its business in such a manner that the national interest is not jeopardized;

(d)conduct its business in such a manner as to ensure that the company does not engage in any restrictive practice as defined in section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979);

(e)not change the level or modify the structure of any air traffic service charge more than twice within a financial year; and

(f)publish by notice in the Gazette any air traffic service charge at least three months prior to the coming into operatioof such charge.

(3) The company may, in order to perform its functions or attain any of its objects, raise money from time to time with the approval of the Shareholding Minister and the Minister of Finance by way of loans from any source.

6. Transfer of functions and assets of State to company(1) On or after 1 April 1993, subject to the provisions of this section and after consultation with the Shareholding Minister, the Minister of Public Works and the Minister of Finance, the Minister-

(a)shall by agreement-

(i) transfer to the company the responsibility for the maintenance of air navigation infrastructure and the provision of air traffic services and air navigation services established, maintained and provided by the State by the said date; and

(ii) transfer to the company such assets owned by, or liabilities, rights or obligations of, the State as may be necessary for the effective maintenance of such infrastructure and provision of such services; and

(b) may under subsection (3) or (4) transfer any person to the company or make available the services of any person to the company.

(2) The agreement mentioned in subsection (1) (a) shall include provisions concerning

(a) the relationship between the company and the State as member and shareholder of the company;

(b) the extent of the assets, liabilities, rights and obligations to be transferred in terms of that subsection; or

(c) any other matter which the Minister deems expedient for the functioning of the company.

(3) The Minister may, in accordance with the provisions of an agreement concluded between the Department and the company, with the concurrence of the Commission for Administration transfer to the company any person who is an officer or employee in the Department in terms of the Public Service Act, 1984 (Act No. 111 of 1984).

(4) (a) Notwithstanding any provision to the contrary in any other law, the Minister may make available to the company the services of any person who is an officer or employee in the Department in terms of the Public Service Act, 1984 (Act No. 111 of 1984), and place such person under the control of the company for such period as he may deem fit, but without prejudice to such person's position as such officer or employee.

(b) The company shall compensate the Department at a scale determined by the Minister, with the concurrence of the Minister of State Expenditure, for the services of any person so made available to the company.

(c) A person dealt with in accordance with paragraph (a) may within 90 days after such action make representations to the Minister advancing reasons for his services not being made available to the company under paragraph (a), whereupon the Minister may amend or withdraw his decision in question.

(d) The Minister may delegate, on such conditions as he may deem fit, to an officer in the Department any power granted to him by this subsection.

(5) The company shall, as consideration for the transfer of assets, liabilities, rights or obligations in terms of subsection (1) (a), issue to the State additional fully paid-up shares in the company to the value determined by the Minister, with the concurrence of the Minister of Finance, the Minister of Public Works and the Shareholding Minister, and after consultation with the company, and such value shall be deemed to be reasonable consideration for such transfer.

(6) Notwithstanding any provision to the contrary in any other law, the company shall on the transfer date become the owner of the assets, movable and immovable, transferred to it in terms of subsection (1) (a).

(7) Notwithstanding the provisions of section 5 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), and section 18 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), a registrar as defined in section 102 of the Deeds Registries Act, 1937, shall, on submission to him of a certificate by the Minister of Public Works that State land has been transferred in terms of subsection (1) (a), free of charge make such entries and endorsements as he may deem necessary in or on any appropriate register, title deed or other document in his office or laid before him, in order to register the transfer of such land in the name of the company.

(8) A registrar referred to in subsection (7) shall, on submission to him of a certificate by the Minister of Public Works that a servitude, other real right or lease has been transferred in terms of subsection (1) (a) or that a servitude exists over State land which has been transferred in terms of that subsection, free of charge make such entries and endorsements as he may deem necessary in or on any appropriate register, title deed or other document in his office or laid before him, in order to

(a) register the transfer of such servitude, other real right or lease in the name of the company; or

(b) confirm the existence of the servitude over the State land so transferred in favour of any other person.

(9) Notwithstanding legal provisions to the contrary, no servitude or other right of any kind in respect of State land transferred to the company in terms of subsection (1) (a) shall be acquired by prescription.

(10) The company shall be substituted for the State as a contracting party in respect of any contract transferred to the company in terms of subsection (1) (a), without such substitution bringing about novation of such contract.

(11) Any litigation resulting from any cause of action in relation to the maintenance of an air navigation infrastructure or the provision of an air traffic service or an air navigation service transferred to the company in terms of subsection (1) (a) which arose-

(a) before the transfer date, shall be conducted by or against the State, as the case may be; and

(b) on or after the transfer date, shall be conducted by or against the company, as the case may be.

(12) Notwithstanding any provision to the contrary in any other law, the company shall be exempt from any stamp duties, transfer duties or registering fees payable in terms of any law in relation to the transfer to the company of assets or rights in terms of subsection (1) (a).

(13) Unless otherwise provided for in this Act, the company shall not alienate or encumber, otherwise than in the normal course of its business, assets transferred to the company in

terms of subsection (1) (a) having a value of more than 10 per cent of the value contemplated in subsection (5).

(14) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), the assets mentioned in subsection (1) (a) shall be deemed to have been acquired in terms of that subsection by the company at a price equivalent to the value determined in terms of subsection (5).

7. Submission of business plan—(1) Unless otherwise provided for in this Act, the company shall not later than three months prior to the commencement of any financial year submit to the Shareholding Minister a business plan.

(2) The said business plan shall in respect of the ensuing financial year and each of the four immediately following financial years, contain the prescribed information and such other information as the Shareholding Minister may require.

(3) The procedures for approving that business plan shall be as prescribed.

8. Annual report—(1) The company shall submit to the Shareholding Minister an annual report, including its audited and approved financial statements, within three months of the end of each financial year.

(2) The Shareholding Minister shall lay the said report upon the Table in Parliament within 30 days after the receipt thereof, if Parliament is in session, or, if Parliament is not then in session, within 30 days after the commencement of its next ensuing session.

9. Sale of expropriated land—Any land expropriated by the State under section 3 (2) (h) of the Expropriation Act, 1975 (Act No. 63 of 1975), read with section 15 of this Act, and transferred to the company in terms of the first-mentioned Act, shall not be sold without the consent of the Shareholding Minister.

10. Minister may issue orders—(1) The Minister may by order require the company to do or not to do what is mentioned in the order, if the Minister considers it necessary or expedient so to order—

(a) in the interest of national security; or

(b) to discharge or facilitate the discharge of an international obligation of the State.

(2) Any order under subsection (1) shall not be inconsistent with the provisions of the Aviation Act, 1962 (Act No. 74 of 1962), or the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972), unless such inconsistency is in the interest of national security.

(3) The Minister shall consult with the company prior to an order by him under subsection (1).

(4) The company shall take all the necessary steps to give effect to an order under subsection (1).

(5) The Minister shall to such extent as he may determine with the concurrence of the Minister of State Expenditure, out of

moneys appropriated by Parliament compensate the company for any cost which the company cannot readily recover from users of air navigation infrastructures or air traffic services and which it incurs as a direct result of any order by the Minister under subsection (1).

(6) No person shall disclose any order under subsection (1) or thing done by virtue of such order if the Minister has stated in such order that the disclosure of such order or thing is contrary to national security or relations with a country or territory outside the Republic.

(7) The Minister shall lay a copy of every order under subsection (1) of this section, except an order contemplated in subsection (6) of this section, upon the Table in Parliament in the manner contemplated in section 8 (2).

(8) Any person who contravenes the provisions of subsection (6) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

11. Economic regulation of company-(1) The company shall not levy an air traffic service charge unless it is in possession of a valid written permission thereto.

(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 of the period of validity of any permission held by the company.

(3) Any such application shall in respect of the financial year mentioned in subsection (2) of this section, be accompanied by the approved business plan contemplated in section 7.

(4) The company shall, at the request of the Committee, make available to the Committee such information pertaining to the matters mentioned in subsection (10) as may be required by the Committee.

(5) The Committee shall within six months after receipt of an application mentioned in subsection (2), issue to the company a permission, which shall be valid from the beginning of the ensuing financial year.

(6) A permission shall be valid for a period of five financial years.

(7) The Committee shall, as conditions of the permission, issued in terms of subsection (5)

(a) determine for each financial year for which a permission is valid-

(i) a limit on the total amount that may be levied by way of all air traffic service charges;

(ii) a limit on the amount of any particular air traffic service charge or any category of air traffic service charges; or

(iii) a combination of the limits mentioned in subparagraphs (i) and (ii); and

(b) prescribe in respect of any air navigation infrastructures, an

air traffic services or any air navigation services, service standards which shall conform to internationally accepted and recommended practices.

(8) The Committee shall not amend any condition in respect of the last two financial years of a permission mentioned in subsection (2) which will be replaced by the permission to be issued in terms of subsection (5).

(9) In performing any function in terms of subsection (7), the Committee may consult with interested parties as it thinks fit

(10) The Committee shall perform its functions in terms of subsection (7) in such manner as it deems is best calculated to—

(a) restrain the company from abusing its monopoly position, in such a manner as not to place undue restrictions on the company's commercial activities;

(b) promote reasonable interests and needs of users of any navigation infrastructure or air traffic services;

(c) promote the safe, efficient, economic and profitable operation of air navigation infrastructure, air traffic services and air navigation services;

(d) encourage timely improvement of air navigation infrastructure so as to satisfy anticipated demands by the users of the infrastructure; and

(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.

(11) Subject to the Minister's approval, the Committee may at any time amend any condition, mentioned in subsection (7), of a permission.

(12) The company shall at all times comply with the conditions mentioned in subsection (7).

12. Sale or closure of air navigation infrastructure or curtailment of air traffic service or air navigation service(1) If the company has indicated in a business plan contemplated in section 7 that it intends to close or sell any air navigation infrastructure mentioned in section 6 (1) (a) or to terminate or substantially curtail an air traffic service or air navigation service which was rendered by the State or any person on behalf of the State immediately prior to the transfer date, the company shall at the same time as it submits such business plan to the Shareholding Minister in terms of section 7, submit a copy thereof to the Committee.

(2) The Committee shall—

(a) consider and evaluate the implications of the intended action of the company mentioned in subsection (1) for—

(i) the transport system of the Republic;

(ii) the users of the said infrastructure or such service; and

(iii) any other affected institution or person; and

(b) make recommendations to the Minister regarding any action which he may take in terms of subsection (3) or (4).

(3) The company shall not, unless agreed to by the Minister with the concurrence of the Shareholding Minister, take any action contemplated in subsection (1) unless it has in terms of that subsection indicated at least three financial years prior to taking such action its intentions in that regard.

(4) The Minister may, with the concurrence of the Shareholding Minister and the Minister of State Expenditure, compensate the company from moneys appropriated by Parliament for the continued operation of an air navigation infrastructure, an air traffic service or an air navigation service contemplated in subsection (1).

13. Failure of company to comply with provisions.—(1) Any person who feels 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, which shall be accompanied by proof of the failure.

(2) On receipt of any such complaint, or if the Committee on reasonable grounds suspects that the company fails so to comply, the Committee shall investigate such complaint or suspicion.

(3) If after such an investigation the Committee is satisfied that the company fails to comply with any provision mentioned in subsection (1), the Committee may

(a) in writing direct the company to comply with such provision within the period determined by the Committee;

(b) by notice in the Gazette, declare unlawful any action of the company in relation to its non-compliance with the said provision;

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

(d) in writing withdraw or suspend, on such conditions as may be determined by the Committee, any permission issued in terms of section 11 (5).

(4) The Committee shall not act under subsection 3 (b), (c) or (d) unless—

(a) the Committee has notified the company in writing of its intention to take such action; and

(b) the Committee has given the company the opportunity to address representations to the Committee, within the period determined by the Committee, in respect of the said non-compliance.

14. Regulations.—(1) The Minister may make regulations

(a) regarding any matter which in terms of this Act is permitted or required to be prescribed;

(b)after consultation with the Minister of Law and Order, regarding security arrangements in respect of air navigation infrastructures;

(c)regarding any other matter the regulation of which may, in the opinion of the Minister, be necessary or desirable in order to achieve or promote the objects of this Act.

(2) A regulation under subsection (1) may, for any contravention thereof or failure to comply therewith, prescribe a penalty of a fine or imprisonment for a period not exceeding six months or of both a fine and such imprisonment.

15. Interpretation of Act 63 of 1975-Section 3 (2) (h) of the Expropriation Act, 1975, shall as from the date of establishment of the company be deemed to include the company.

16. Transitional provisions-(1) Notwithstanding 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, with the concurrence of the Shareholding Minister, the Minister of Finance and the Minister of State Expenditure, take such steps or authorize such thing to be done as may be necessary to promote

(a)the transfer to the company of the air navigation infrastructure, assets, liabilities, rights or obligations mentioned in section 6 (1) (a); and

(b)the management on a commercial basis of the provision of air traffic services and air navigation services mentioned in section 6 (1).

(2) The steps contemplated in subsection (1) may include, by notice in the Gazette, the conditional or unconditional suspension of any provision of any law: Provide that such suspension shall-

(a)not be inconsistent with the provisions of this Act; and

(b)lapse on the transfer date.

(3) (a) Notwithstanding any provision to the contrary in this Act, during the period mentioned in subsection (1) the Minister, the Shareholding Minister, the Minister of State Expenditure, the Minister of Finance and the company shall agree on the business plan and the conditions of the permission which will come into operation on the transfer date.

(b) The said permission shall lapse at the end of the first financial year.

(c) The company shall at least six months before the end of the financial year mentioned in paragraph (b) of this subsection, apply in the manner contemplated in section 11 for a permission.

17. Amends section 22 (1) of the Aviation Act, No. 74 of 1962, as follows- paragraph (a) substitutes paragraph (b)bis; and paragraph (b) inserts paragraph (b)ter (date of commencement 6 August, 1993).

18. Short title and commencement.-(1) This Act shall be

called the Air Traffic and Navigation Services Company Act, 1993, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(2) Different dates may be so fixed in respect of different provisions of this Act.