



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$3.83

WINDHOEK - 21 September 1998

No. 1958

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 238 1998

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 25 of 1998: Airports Company Act, 1998.

ACT

To provide for the incorporation of a company to undertake the operation, management and control of certain aerodromes in Namibia; to amend the Civil Aviation Offences Act, 1972; and to provide for matters incidental thereto.

(Signed by the President on 4 September 1998)

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SCHEDULE

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows :-

Definitions

1. In this Act, unless the context otherwise indicates -

“aerodrome” means a defined area on land or water, including any buildings, installations and equipment, intended to be used either wholly or in part for the arrival, surface movement, parking or departure of aircraft;

“aerodrome charge” means an amount levied by the Company -

(a) on an operator of an aircraft in connection with the arrival, parking or departure of such aircraft at a Company aerodrome, including an amount determined with reference to the number of passengers on board an aircraft;

(b) on aircraft passengers in connection with their arrival at or departure from a Company aerodrome by means of an aircraft;

“articles” means the articles of association of the Company;

“board” means the board of directors of the Company;

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);

“Company” means the company contemplated in section 2;

“Company aerodrome” means an aerodrome contemplated in section 4(1);

“international standards and recommended practices” means any international standard or recommended practice or procedure adopted by the International Civil Aviation Organisation (ICAO) for the purposes of article 37 of the Chicago Convention as defined in the definition of “Convention” in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962);

“memorandum” means the memorandum of association of the Company;

“Minister” means the Minister responsible for Civil Aviation;

“regulation” means a regulation made under this Act;

“relevant activity”, means the provision at a Company aerodrome of any service or facility for the purposes of -

- (a) the arrival, surface movement, parking or departure of aircraft;
- (b) the servicing of aircraft, including the supply of fuel and lubricants;
- (c) the handling of aircraft passengers, baggage or cargo on the premises of such aerodrome, including the transfer of such passengers, baggage or cargo to and from aircraft;

“Shareholding Minister” means the Minister or Ministers designated in terms of section 3(2) as Shareholding Minister;

“this Act” includes the regulations made thereunder; and

“transfer date” means the date determined by the Minister in terms of section 14(1).

Incorporation of Company

2. (1) The Shareholding Minister shall take the necessary steps for the incorporation of a public company with share capital and for the issue of a certificate to commence business under the Companies Act.

(2) The Shareholding Minister shall on behalf of the State sign the memorandum and the articles, and when the memorandum and articles have so been signed -

- (a) they shall be deemed to comply with the provisions of the Companies Act relating to the signature of the memorandum and articles of a company; and
- (b) the Company shall, subject to subsection (5), be deemed to comply with the provisions of the Companies Act relating to the membership of a public company.

(3) The Registrar of Companies defined in section 1 of the Companies Act shall, on receipt of the memorandum and articles referred to in subsection (2), register such memorandum and articles in accordance with the Companies Act.

(4) The Company is exempt from the payment of all fees chargeable in terms of the Companies Act which relate to the checking of documents, the reservation and registration of the name of a company or a shortened form thereof, the registration of its memorandum and articles and the issue of a certificate to commence business.

(5) Sections 66, 174, 190 and 344(d) of the Companies Act shall not, while the State is a member of the Company and the total number of members of the Company is less than seven, apply to the Company.

(6) The Shareholding Minister shall, within a period of 28 days after the registration of the memorandum and articles, or any alteration or addition thereto, as the case may be, table such memorandum and articles, or such alteration or addition, as the case may be, in the National Assembly if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within a period of 28 days after the commencement of its next ensuing ordinary session.

Shareholding in Company

3. (1) The State shall be the holder of the shares in the Company.

(2) The President shall designate a Minister or Ministers as Shareholding Minister who shall, on behalf of the State, exercise the rights attached to the shares of which the State is the holder and who shall perform the functions of the Shareholding Minister in terms of this Act.

(3) If more than one Minister is designated under subsection (2), the President -

(a) shall appoint from among the Ministers so designated a chairperson who shall exercise the rights and perform the functions referred to in subsection (2) on behalf of the Ministers so designated;

(b) may determine any other procedural matter regarding the functioning of such body of Ministers.

(4) The President may, in the designation contemplated in subsection (2), direct that any power or duty conferred or imposed by this Act upon the Shareholding Minister shall, either generally or in relation to any matter specified by the President in such designation, be exercised or performed by the Shareholding Minister in or after consultation with such other Minister or Ministers as may be designated by the President.

(5) The State shall not alienate any shares held in the Company.

(6) The Company shall not issue any shares to any person other than the State.

(7) Notwithstanding any other law, the Company shall not be wound up or placed under judicial management otherwise than in accordance with an Act of Parliament.

Objects of Company

4. (1) The object of the Company is the acquisition, establishment, development, provision, maintenance, management, control or operation, in accordance with sound and generally accepted business principles, of any aerodrome, any part of any aerodrome or any facility or service, including a relevant activity at any aerodrome normally related to the functioning of an aerodrome.

(2) The Company may, under section 55 of the Companies Act, make additions to or alter the provisions of its memorandum with regard to the objects and powers of the Company, subject thereto that -

(a) the Shareholding Minister's prior written consent to such additions and alterations have been obtained, which consent shall be lodged with the Registrar together with the special resolution referred to in that section of the Companies Act; and

- (b) the object mentioned in subsection (1) may not be altered.

Functions of Company and appointment of chief executive officer

- 5.** (1) The Company shall -
- (a) not unduly discriminate against or among various users or categories of users of any Company aerodrome;
 - (b) ensure that every relevant activity is carried on in conformity with applicable international standards and recommended practices;
 - (c) take all the necessary steps to facilitate the reasonable performance of any function by the State at a Company aerodrome under any law;
 - (d) refrain from abusing its monopolistic position by performing or omitting to perform any act which, in accordance with any regulation made by the Minister, is deemed to constitute such abuse;
 - (e) in a daily newspaper circulating throughout Namibia, publish any aerodrome charge, or any amendment thereof, not less than three months before the coming into operation of such charge or amendment;
 - (f) not change the level or modify the structure of any aerodrome charge more than twice within any financial year;
 - (g) not without the consent of the Shareholding Minister, alienate or in any way encumber any assets of the Company representing more than 10 per cent of the total market value of all the assets of the Company otherwise than in the normal course of its business;
 - (h) utilise the proceeds of the sale of surplus assets to reduce the loan account of the State referred to in section 15(1)(b) or (c), until such loan account is fully redeemed;

- (i) obtain indemnity insurance to cover any liability which it may incur; and
 - (j) not sell or permit the sale of intoxicating liquor in respect of which no duty is levied as contemplated in the Customs and Excise Act, 1964 (Act No. 91 of 1964), in any area within a Company aerodrome other than a transit area designated by the Minister in writing.
- (2) The Company may -
- (a) enter into an agreement with any person, organisation or authority to perform a particular act or render a particular service on behalf of or in favour of the Company, and may let or subcontract any facility or service it is required or entitled to provide or render, but any such contract shall be consistent with the objects of the Company;
 - (b) in writing delegate any of its powers, including a delegated power, to a person, organisation or authority referred to in paragraph (a), if the Company deems it necessary for the efficient performance of any act or service contemplated in that paragraph.
- (3) The board shall, after consultation with the Shareholding Minister, appoint a chief executive officer for such period and on such terms and conditions as the board may determine, to serve as the manager of the Company.
- (4) The chief executive officer appointed in terms of subsection (3) shall not be a director of the Company, and -
- (a) shall, at the invitation of the board, attend;
 - (b) may participate in discussions at; and
 - (c) shall not be entitled to vote at,
- any meeting of the board.

- (5) The Minister may by regulation prescribe -
- (a) the acts which shall be deemed to constitute an abuse of the Company's monopolistic position as contemplated in subsection (1)(d);
 - (b) the steps to be taken and the procedures to be followed in order to ensure the prevention or discontinuance of any abuse of the Company's monopolistic position.

(6) A regulation made under subsection (5) may in respect of any contravention thereof or failure to comply therewith prescribe a penalty not exceeding a fine of N\$8 000 or imprisonment for a period not exceeding two years or both such fine and such imprisonment.

Performance agreement

6. (1) The Company shall, subject to subsection (2), not later than eight months before the commencement of every third financial year, and in accordance with such procedures as the Shareholding Minister may determine, submit a performance agreement to the Shareholding Minister, which performance agreement shall contain -

- (a) the expectations of the Government in respect of the Company's scope of business, efficiency and financial performance;
- (b) the measures by which the performance of the Company can be assessed, including such measures as may relate to its -
 - (i) financial performance;
 - (ii) operational and service level performance; and
 - (iii) management of human resources;
- (c) the principles to be followed by the Company for the purposes of business planning;

- (d) the Company's dividend policy;
- (e) the Company's pricing structure policy;
- (f) such measures which are, in the opinion of the Shareholding Minister, necessary to protect the financial soundness of the Company, including full particulars relating to the Company's investment policy, indemnity insurance, a declaration of the loans made by the Company and the Company's cover against exchange rate risks; and
- (g) any other matter relating to the performance of the Company's functions under this Act which the Shareholding Minister may require.

(2) Notwithstanding subsection (1), the Shareholding Minister shall, on or before the date of incorporation of the Company, draw up the first performance agreement in respect of the first three years of operation of the Company.

(3) The Shareholding Minister shall, excluding in respect of the performance agreement drawn up in terms of subsection (2), within two months after the receipt of a performance agreement as contemplated in subsection (1), either approve it or, after consultation with the Company, amend it and then approve it, but subject thereto that if the Shareholding Minister fails to so approve the performance agreement within a period of two months after receipt thereof, it shall be deemed to have been so approved on the expiration of that period.

(4) Upon approval of the performance agreement, or upon it being deemed to be approved in terms of subsection (3), it shall be signed by the Shareholding Minister and by the chairperson of the board.

(5) The Shareholding Minister and the Company may, at any time after signature of a performance agreement, amend such agreement.

(6) An amendment in accordance with subsection (5) shall be in writing and shall be signed by the Shareholding Minister and by the chairperson of the board.

(7) The failure of the Company to comply with any provision of a performance agreement or any amendment thereof shall not affect the validity or enforceability of any act, deed, agreement, right, obligation or liability performed, entered into, acquired or incurred by the Company.

Statement of intent

7. (1) (a) The Company shall not later than three months before the commencement of every third financial year, but subject to the directions of the Shareholding Minister and to subsection (2), make available a statement of intent in such form and at such place and time as the Shareholding Minister may determine, for inspection by any member of the public.
- (b) Notwithstanding paragraph (a), the first statement of intent shall be made available by the Shareholding Minister on or before the date of incorporation of the Company.
- (c) The chairperson of the board shall sign the statement of intent, excluding the first statement of intent referred to in paragraph (b).
- (d) The Company shall in a daily newspaper circulating throughout Namibia make known that the statement of intent referred to in paragraph (a) or (b), as the case may be, is available for inspection at the place and time specified in the notice.
- (2) The statement of intent shall, in respect of the ensuing financial year and each of the two immediately following financial years, respectively, contain -
- (a) particulars of the Company's scope of business;
- (b) a description of the steps to be taken by the Company to ensure compliance with section 5(1)(a) and (b);
- (c) a tariff plan which restricts any charge contemplated in section 5(1)(e) to a maximum, in relation to the rate of inflation for the duration of the statement of intent;

- (d) the information required under section 6(1);
 - (e) the projected financial performance of the Company as reflected in the Company's business plan;
 - (f) particulars concerning any substantial expansion or curtailment of any relevant activity; and
 - (g) the procedures to be followed by the Company in the evaluation and the awarding of tenders to, and negotiations of agreements with, any person, organisation or authority.
- (3) The Company shall consult with -
- (a) the Minister;
 - (b) such other interested person or persons as the Minister may determine; and
 - (c) every air carrier licensed in terms of the Air Services Act, 1949 (Act No. 51 of 1949), and to which an operating certificate has been issued under that Act,

before making the statement of intent available in terms of subsection (1)(a).

- (4) The Company may amend a statement of intent from time to time, and -
- (a) subsection (3) shall *mutatis mutandis* apply to; and
 - (b) the chairperson of the board shall sign,

such amendment.

- (5) Section 6(7) shall *mutatis mutandis* apply to a statement of intent.

Annual report

8. (1) The Company shall in addition to any record, statement or report required by Chapter XI of the Companies Act and within a period of six months after the end of each financial year, submit to the Shareholding Minister a report on the activities of the Company during the financial year concerned, and which annual report shall include -

- (a) the audited and approved financial statements contemplated in that Chapter in respect of all the business of, or conducted by, the Company, including a balance sheet and an income and cash flow statement in respect of every Company aerodrome; and
- (b) a report on -
 - (i) the Company's performance in relation to the relevant performance agreement referred to in section 6;
 - (ii) the steps taken by the Company to give effect to section 5(1); and
 - (iii) such other matters as the Shareholding Minister may in writing require.

(2) The annual financial statements and report referred to in subsection (1) shall, together with the relevant performance agreement referred to in section 6, and all amendments made to such agreement, be tabled in the National Assembly by the Shareholding Minister within a period of 28 days after the receipt of the last outstanding document if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within a period of 28 days after the commencement of its next ordinary session.

Power of Minister to give directions to Company

9. (1) The Minister may, if he or she considers it necessary for, or expedient to, the national security or for the discharge of an international obligation of the State, in consultation with the Shareholding Minister and after

consultation with the Company, by notice in writing to the Company, issue a direction to the Company to -

- (a) perform any function conferred or imposed on the Company by or under this Act, or perform such function subject to such limitations or conditions, as the case may be; or
- (b) discontinue any relevant activity,

specified in the notice.

(2) The Company shall take all the necessary steps to give effect to a direction under subsection (1).

(3) The Minister shall, out of moneys appropriated by Parliament for such purpose, compensate the Company for any costs which the Company incurs as a direct result of any direction issued under subsection (1) and which costs the Company cannot reasonably recover from the users of Company aerodromes.

(4) No person shall disclose the contents of any direction issued under subsection (1) or anything done by virtue of such direction, if the Minister has in such direction stated that the disclosure of such direction or any part thereof or any particulars relating thereto, or anything so done, will be detrimental to the national security or to the discharge of an international obligation of the State.

(5) Before any direction issued under subsection (1), excluding a direction contemplated in subsection (4), comes into operation, the Minister shall publish a notice in the *Gazette*, which notice shall -

- (a) confirm that such a direction has been issued;
- (b) summarise the main provisions of such direction;
- (c) specify the place, date and time where and when the text of such direction will be available for inspection by any member of the public; and

(d) state the date when such direction shall come into operation.

(6) Any person who contravenes any provision of subsection (4) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Power of Shareholding Minister to demand information

10. Notwithstanding any other law, the Shareholding Minister may at any time by notice in writing require the Company to furnish him or her with such information relating to the affairs of the Company as he or she may reasonably require for the purpose of the performance of his or her functions in terms of this Act, and which information so required he or she specifies in such notice.

Sale or closure of aerodrome or curtailment of relevant activity

11. (1) The Company shall not close or sell any aerodrome mentioned in the Schedule or terminate or substantially curtail a relevant activity which was conducted at any such aerodrome by the Ministry responsible for Civil Aviation or by any person on behalf of that Ministry immediately before the transfer date, unless -

(a) the prior written approval of the Minister, acting in consultation with the Shareholding Minister, has been obtained; and

(b) the Company has in a notice published in a daily newspaper circulating throughout Namibia and so published not less than 30 days before such intended closure, sale, termination or curtailment, indicated its intention and has in such notice, *mutatis mutandis* in accordance with the criteria specified in subsection (2)(a), provided an evaluation of the implications of such closure, sale, termination or curtailment.

(2) The Minister may -

(a) after considering and evaluating the implications of the intended

action of the Company contemplated in subsection (1) for, or the effect thereof on -

- (i) the transport system of Namibia;
 - (ii) the users of the aerodrome or relevant activity to be affected;
 - (iii) the community or region which the aerodrome to be affected serves; and
 - (iv) any air carrier or person, consulted in accordance with section 7(3), or any other person, organisation or authority to be affected; and
- (b) if he or she considers the implications or effect referred to in paragraph (a) reconcilable with -
- (i) the national security;
 - (ii) the international obligations of the State; and
 - (iii) the objects of the Company,

in writing approve the intended action contemplated in subsection (1), or direct the Company to continue with the operation of the aerodrome concerned or the conducting of the relevant activity, or to continue with any part of such operation or the conducting of any part of such activity, as the case may be.

(3) The Minister may, in consultation with the Minister of Finance and after consultation with the Shareholding Minister, from moneys appropriated by Parliament for such purpose, compensate the Company in respect of the continued operation of an aerodrome or the continued conducting of the relevant activity referred to in subsection (1).

Failure of Company to comply with certain provisions

12. (1) If any person is of the opinion that the Company has failed to comply with -

- (a) section 5(1);
- (b) any regulation made under section 5(5);
- (c) a statement of intent referred to in section 7,

he or she may lodge a written complaint with the Minister, which shall -

- (i) set out the grounds of the complaint;
- (ii) state the full names, the address and the interest of the complainant in the matter; and
- (iii) if appropriate, be accompanied by proof of the alleged failure.

(2) On receipt of a complaint lodged in terms of subsection (1), the Minister shall transmit a copy thereof to the Company.

(3) The Company shall, within a period of 14 days after receipt of a copy of a complaint transmitted to it in terms of subsection (2), lodge with the Minister a written reply to such complaint.

(4) The Minister shall, after receipt of the reply to the complaint referred to in subsection (3) -

- (a) dismiss such complaint; or
- (b) on such terms and conditions as he or she may determine, in writing appoint one or more persons as a commission of inquiry to investigate any complaint lodged in terms of this section, in which appointment the Minister shall -

- (i) set out the terms of reference of the commission of inquiry; and
 - (ii) if the commission of inquiry consists of more than one member, designate one of the members of the commission of inquiry as chairperson thereof.
- (5) The commission of inquiry appointed under subsection (4)(b) -
- (a) shall, if in its opinion a hearing relating to the complaint is warranted, determine a date, time and venue for the conducting of such a hearing and give reasonable written notice of such hearing to the complainant and to the Company;
 - (b) may -
 - (i) with the prior written approval of the Minister, obtain the services of any competent person to advise it on, or assist it in, any matter relating to the performance of its functions;
 - (ii) subject to subsection (6), summon witnesses to appear at a hearing referred to in paragraph (a) and to at such hearing, examine such witnesses on oath or affirmation, and call for the production, and grant the inspection, of books, documents or other objects;
 - (iii) without conducting a hearing referred to in paragraph (a), summon any person to produce to the chairperson of the commission, or if the commission consists of one person only, to such person, the books, documents or other objects described in, and at such place and on or before the date specified in, the summons concerned.

(6) Unless otherwise provided for in this section, the provisions of the Commissions Act, 1947 (Act No. 8 of 1947), relating to the procuring of the attendance of witnesses, the payment of witness fees, the examination and privileges of witnesses, and the production of books, documents or other objects shall *mutatis mutandis* apply to the proceedings of a commission of inquiry

appointed under subsection (4)(b) or to a hearing conducted by the commission, and for those purposes the chairperson of the commission of inquiry or, if the commission consists of one person only, such person, may sign such documents as may be necessary for the purposes of the hearing.

(7) Any process to be served in terms of this section for the purposes of a hearing convened under subsection (5)(a) or for the purposes of any other proceedings of the commission, shall be served by a member of the Namibian Police Force.

(8) Any person who has been duly summoned to appear at any hearing convened under subsection (5)(a), or to produce any book, document or object, and who -

- (a) without sufficient cause fails to attend the hearing at the venue, date and time specified in the summons, or any postponement of such hearing; or
- (b) when required by the chairperson of the commission to take the prescribed oath or to make an affirmation, refuses to do so; or
- (c) leaves the hearing without the permission of the chairperson of the commission, whether or not such person has given evidence; or
- (d) refuses to give evidence at the hearing or refuses to answer fully and satisfactorily any question lawfully put to him or her, or refuses to produce any book, document or object which such person has in terms of the summons served upon him or her been required to so produce at a hearing; or
- (e) fails to produce to the chairperson of the commission, or if the commission consists of one person only, to such person, any book, document or other object described in, and at the place or on or before the date specified in, a summons referred to in subsection (5)(b)(iii) and served upon such person,

shall be guilty of an offence and on conviction be liable to a fine not exceeding

N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(9) The complainant and the Company may at a hearing contemplated in subsection (5) be assisted or represented by any other person, and, whether personally or through a representative -

- (a) give evidence;
- (b) call witnesses;
- (c) cross-examine witnesses;
- (d) have access to any book, document or object produced in evidence; or
- (e) address the commission of inquiry on any issue relating to the inquiry.

(10) The chairperson of the commission of inquiry appointed under subsection (4)(b), or if the commission consists of one person only, such person, shall, as soon as practicable after the conclusion of the investigations conducted by the commission, whether or not a hearing as contemplated in subsection (5)(a) was conducted, submit to the Minister -

- (a) the record of the investigation proceedings, including, if a hearing was conducted, a record of the proceedings at such hearing;
- (b) any book, document or other object produced to the commission, including any book, document or other object produced at the hearing concerned, or obtained by the commission in any other manner;
- (c) a written statement of the commission's findings and the reasons for such findings; and
- (d) the commission's recommendation in regard to any direction which the Minister may make under subsection (11).

(11) If, after the completion of an investigation under this section, the Minister is satisfied that the Company -

- (a) has failed to comply with any provision referred to in subsection (1), the Minister shall in writing direct the Company to comply with such provision within the period of time determined by the Minister and specified in such direction; or
- (b) has not failed to comply with any provision referred to in subsection (1), the Minister shall dismiss the complaint concerned and in writing advise the complainant and the Company accordingly.

(12) The costs incidental to the appointment of a commission of inquiry and the conducting of an investigation, including a hearing, under this section shall be paid from moneys to be appropriated by Parliament for such purposes.

(13) Any person who willfully interrupts the proceedings of a commission of inquiry appointed under this section, or who willfully hinders or obstructs a commission in the performance of its functions, shall be guilty of an offence and on conviction be liable to the penalties prescribed by subsection (8).

Construction of certain reference in Ordinance No. 13 of 1978

13. As from the date of the incorporation of the Company, any reference to a local authority in section 3 of the Expropriation Ordinance, 1978 (Ordinance No. 13 of 1978), shall, for the purposes of this Act, be construed as a reference to the Company.

Transitional provisions

14. (1) Subject to this section and to section 15, the Minister shall, after consultation with the Shareholding Minister and the Minister of Finance, and on such conditions as the Minister may determine, transfer to the Company, with effect from a date determined by the Minister by notice in the *Gazette*, the aerodromes mentioned in the Schedule and such part of such other assets owned by, or the liabilities, rights or obligations of, the State as may be necessary for the effective maintenance, management, control and operation of such aerodromes.

(2) Notwithstanding any other law, the Company shall, with effect from the transfer date, be vested with the ownership of the aerodromes and other assets and rights and be charged with the liabilities and obligations transferred or assigned to it by virtue of subsection (1).

(3) A certificate issued by the Minister in which it is stated that any State land or a servitude or other real right or lease or any other asset or right described in such certificate has been transferred to the Company in terms of subsection (1), shall be sufficient proof that the asset or right so described vests in the Company.

(4) Upon the submission of a certificate referred to in subsection (3) to the Registrar of Deeds appointed in terms of section 2 of the Deeds Registry Act, 1937 (Act No. 47 of 1937), or to any other person in charge of any other office where a register or record of the ownership of or entitlement to an asset or right described in such certificate is being kept, the Registrar or such other person, as the case may be, shall make such entries in or on any relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to effect the transfer contemplated in that subsection in the name of the Company.

(5) Notwithstanding any other law, no servitude or other right of any kind in respect of State land transferred to the Company in terms of subsection (1) shall be acquired by prescription.

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

(7) Any litigation, including arbitration proceedings, in respect of which the cause of action arose before the transfer date and to which any State authority is a party by virtue of its maintenance, management, control and operation of an aerodrome transferred to the Company in terms of subsection (1), shall be conducted by or against the State, as the case may be.

(8) The value and the net asset value of the aerodromes, assets, liabilities, rights and obligations transferred in terms of subsection (1) shall be determined by the Minister with the concurrence of the Minister of Finance.

(9) For the purposes of the Income Tax Act, 1981 (Act No. 24 of 1981), or of any other law in terms of which a tax or levy may be imposed, it shall be deemed that -

- (a) expenses were actually incurred by the Company in acquiring the aerodromes, assets, liabilities, rights and obligations transferred to it in terms of subsection (1); and
- (b) notwithstanding any other law, the expenses referred to in paragraph (a), including the cost of the assets, are equal to the value determined in terms of subsection (8).

(10) Notwithstanding any other law, no additional sales levy, sales tax, stamp duty, transfer duty or any other levy, tax or duty or registration fee payable in terms of any law relating to the acquisition or transfer of assets or rights shall be payable in respect of the transfer of any aerodrome or other asset or right by the State to the Company in terms of subsection (1).

(11) The Minister may, on or before the transfer date, in consultation with the Prime Minister and in accordance with an agreement concluded with the Company, but subject to the consent of the staff member concerned, transfer to the Company any staff member in the Public Service as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995).

(12) Notwithstanding section 5(1)(e), the Minister shall by notice in the *Gazette* publish any aerodrome charge or any amendment thereof which has to be published in terms of that section before the incorporation of the Company.

(13) Notwithstanding section 19(2) or any other provision in any other law, the Minister may, with the concurrence of the Shareholding Minister and of the Minister of Finance, during the period between the commencement of this section and the transfer date take such steps or authorise such thing to be done, or perform any function or authorise the Company to perform any function in terms of this Act, as may be necessary to promote -

- (a) the transfer to the Company, and the management on a commercial

basis, of the aerodromes, assets, liabilities, rights or obligations referred to or mentioned in subsection (1); or

(b) the management of the Company.

(14) The transfer of any aerodrome to the Company in terms of subsection (1), shall not affect any right, privilege, permission, obligation or liability acquired, obtained or incurred by any person before the transfer date.

Issue of additional shares to State

15. (1) The Company shall as consideration for the transfer to the Company of the aerodromes and other assets, liabilities, rights and obligations in terms of section 14, to the value referred to in subsection (8) of that section, or for the provision of working capital, either -

- (a) issue to the State additional fully paid-up shares; or
- (b) create a loan account in favour of the State; or
- (c) issue such shares and create such loan account,

to the value determined by the Minister in consultation with the Minister of Finance and the Company, and such value shall be deemed to be reasonable consideration for such shares and working capital.

- (2) The Company is exempt from the payment -
 - (a) of any stamp duty in respect of shares issued to the State;
 - (b) of any moneys in terms of section 75 of the Companies Act in respect of the creation of, or increase in, the share capital of the Company, while the State is the sole shareholder of the Company.

Amendment of section 1 of Act No. 10 of 1972, as amended by section 1 of Act No. 9 of 1992

16. Section 1 of the Civil Aviation Offences Act, 1972, is amended -

(a) by the substitution for the definition of "airport" of the following definition :

“‘airport’ means any -

(a) aerodrome established and maintained in terms of section 6 of the Aviation Act, 1962 (Act No. 74 of 1962);

(b) Company aerodrome as defined in section 1 of the Airports Company Act, 1998.

and includes any aerodrome or heliport designated by the Minister by notice in the *Gazette* as an airport for the purposes of this Act;”;

(b) by the insertion in subsection (1) after the definition of “commander” of the following definition :

“‘Company’ means the company contemplated in section 2 of the Airports Company Act, 1998;”.

Amendment of section 2B of Act No. 10 of 1972, as inserted by section 3 of Act No. 9 of 1992

17. Section 2B of the Civil Aviation Offences Act, 1972, is amended by the substitution for paragraph (a) of subsection (2) of the following paragraph :

“(a) an employee of the State or the Company;”.

Insertion of section 2N in Act No. 10 of 1972

18. The following section is inserted in the Civil Aviation Offences Act, 1972, after section 2M :

“Compensation to Company

2N. The Minister may, to such extent as he or she may determine and in consultation with the Minister of Finance, out of moneys appropriated by Parliament, compensate the Company for any costs which it incurs as a direct result of the performance of its functions in terms of this Act and which the Company cannot readily recover from the users of a Company aerodrome as defined in section 1 of the Airports Company Act, 1998.”

Short title and commencement

19. (1) This Act shall be called the Airports Company Act, 1998, and shall, subject to subsection (2), come into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Sections 5 to 13, inclusive, and sections 15 to 18, inclusive, shall come into operation on the transfer date.

SCHEDULE

1. Eros Airport
 2. Katima Mulilo Aerodrome
 3. Keetmanshoop Airport
 4. Lüderitz Aerodrome
 5. Ondangwa Aerodrome
 6. Rundu Aerodrome
 7. Walvis Bay Airport
 8. Hosea Kutako International Airport
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