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.

(English text signed by the President.)
(Assented to 14 June 2007.)

ACT

To provide for the transfer of the shares of Transnet Limited in South African Airways (Proprietary) Limited to the State; to provide for the conversion of South African Airways (Proprietary) Limited into a public company having a share capital incorporated in terms of the Companies Act, 1973; and to provide for matters connected therewith.

PREAMBLE

Since the Republic's rapidly developing economy requires reliable and extensive air transport capacity;

And since the State desires to promote air links with the Republic's main business, trading and tourism markets within the African continent and internationally;

And since the State has a developmental orientation and regards South African Airways as a national carrier and strategic asset that would enable the State to preserve its ability to contribute to key domestic., intra-regional and international air linkages, the State intends to retain it as a national carrier,

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

Definitions

1. In this Act unless the context indicates otherwise-
"Companies Act" means the Companies Act, 1973 (Act No. 61 of 1973);
"conversion date" means the date on which the conversion of South African Airways (Pty.) Ltd. into a public company is registered in terms of section 4(3);
"Legal Succession Act" means the Legal Succession to the South African Transport Services Act, 1989 (Act No.9 of 1989);
"Minister" means the Minister responsible for Public Enterprises;
"PFMA" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
"SAA" means South African Airways (Pty.) Ltd. and. with effect from the conversion date, South African Airways Ltd.;
"SAA claims" means all amounts owing by SAA to Transnet as at midnight on the day immediately preceding the transfer date;

UMTHETHO WENKAMPANI ZEEHAMBO ZOMOYA YOMZANTSI AFRIKA, 2007

Act No.5, 2007

ISIKHUMBUZO ESIYINKCAZO:

Amagama abhalwe kakhulu ngqindili kwizibiyeli abonakalisa Ushiyo kuMthetho okhoyo owisiweyo.

Amagama akrwelelwe umgca ngaphantsi abonisa ufakelo kuMthetho okhoyo owisiweyo.

(English text signed by the President.)
(Assented to 14 June 2007.)

UMTHETHO

Ubonelela ngokutshintshelwa kwezabelo ze-Transnet Limited kwiNkampani yeelIambo zoMoya yaseMzantsi Afrika (South African Airways) (Proprietary) Limited ziye kuRhulumente, uhonelela ngokuguqulwa kweNkampani yeeHambo zoMoya yaseMzantsi Afrika (Proprietary) Limited iye kwinkampani karhulumente zibe nesabelo esingundoqo ngokwemigqaliselo yoMthetho weeNkampani, 1973; nokubonelela ngeemeko ezinxulumene noko.

IMBULA-MBETHE

Ngenxa yokuba uqoqosho olukhula ngokukhawuleza IweRiphabliki lufuna isakhono sothutho ngomoya esithembakeleyo nesixananazileyo.

Nangenxa yokuba uRhulumente ethanda ukukhulisa iindlela zonxibelelwano ngomoya noshishino olungundoqo IweRiphabliki, urhwebo noshishino lokhenketho kwilizwekazi i-Afrika nakumazwe-ngamazwe;

Nangenxa yokuba uRhulumente ejongisele kuphuhliso kwaye eyithatha iNkampani yeeHambo zoMoya yaseMzantsi Afrika njengomthuthi wesizwe wasemoyeni nesixhobo sobuchule esinokuncedisa uRhulumente ukuba agcine isakhono sakhe ekwenzeni igalelo kuqhagamshelwano nogomoya olungundoqo apha ekhaya, ngaphakathi kwimimandla yelizwekazi nakumazwe-ngamazwe, uRhulumente uzimisele ikuyigcina Ie nkampani njengomthuthi wesizwe,

UW1SWE yiPalamente yeRiphabliki yoMzantsi Afrika, ngale ndlela ilandelayo:

Iinkcazelo

1. Kulo mThetho, ngaphandle kokuba umxholo ukhombisa ngenye indlela-
"uMthetho weeNkampani" uthetha uMthetho weeNkampani, 1973 (uMthetho oyiNornbolo yama-61 kaI973);
"umhla woguqulo" uthetha umhla apho uguqulo IweeHambo zoMoya yaseMzantsi Afrika (pty) Ltd zibe yinkampani karhulumente ebhaliswe ngokwemigqaliselo yecandelo le-4(3);
"uMthetho woLandelo oluseMthethweni" uthetha uMthetho woLandelo oluseMthethweni kwitNkouzo zoThutho zoMzantsi Afrika, 1989 (uMthetho oyiNombolo ye-9 ka-1989);
"uMphathiswa" uthetha uMphathiswa 0 jongene nezaMashishini kaRhulumente;
"PFMA" ithetha uMthetho woLawulo IweMali kaRhulumente, 1999 (uMthetho oyiNombolo yoku-l ka-1999);

"SAA interests" means those SAA claims and assets, liabilities, rights or obligations determined in terms of section *3(1)(a)* or section 3(2), as the case may be, to constitute SAA interests:

"SAA shares" means all the shares in the capital of SAA of which Transnet is, immediately before the transfer date, the registered and beneficial owner;

"South African Airways Ltd." means South African Airways Limited. a public company duly incorporated in terms of the Companies Act;

"South African Airways (Pty.) Ltd." means South African Airways (Proprietary) Limited, a private company duly incorporated in terms of the Companies Act;

"State" means the Government of the Republic of South Africa acting through the Minister:

"this Act" includes any regulation made in terms of section 8;

"transfer date" means the date on which the transfer of the shares and claims is finalised under the agreement between Transnet and the State;

"Transnet" means Transnet Limited. a company duly incorporated in terms of section 2 of the Legal Succession Act.

Objects of Act

2. The objects of this Act are to provide for-

(a) the transfer of SAA shares and SAA interests from Transnet to the State;

(b) the conversion of South African Airways (Pty.) Ltd. into a public company with share capital; and

(c) the listing of SAA as a major public entity in Schedule 2 to the PFMA.

Transfer of SAA shares and SAA interests

3. (1) The Minister and Transnet, with the concurrence of the Minister of Finance, must determine by agreement-i-

(a) which SAA claims and which assets. liabilities, rights or obligations of Transnet in connection with SAA constitute SAA interests: and

(b) the consideration payable for the transfer of SAA shares and SAA interests to the State.

(2) In the absence of an agreement between the Minister and Transnet on any matter referred to in subsection (1) that matter must be finally determined by the Minister, with the concurrence of the Minister of Finance.

(3) With effect from t.he transfer date-

(a) t.he St.ate becomes the shareholder and member of SAA; and

(b) the Minister exercises all the rights attaching to SAA shares and SAA interests on behalf of the State, including the rights as shareholder and member of SAA.

Conversion of South African Airways (Pty.) Ltd. into public company

4. (1) After the transfer date, the Minister may on behalf of the State request the Registrar of Companies in writing to convert South African Aitways (Pty.) Ltd. into a public company having a share capital in accordance with the Companies Act.

(2) The request must be accompanied by the memorandum of association and articles of association of the int.ended public company that must he-

(a) framed in accordance with the Companies Act, but subject to this Act; and

(b) signed by the Minister on behalf of the State.

"SAA" ithetha iiHambo zoMoya zoMzantsi Afrika (Pty) Ltd, kwaye ukusukela kumhla woguqulo, iiHambo zoMoya zoMzantsi Afrika Ltd;

"amabango e-SAA" athetha yonke imali ebanjwa yi-SAA kwi-Transnet ukusukela ngobusuku bosuku olandulela umhla wotshintsho;

"imidla ye-SAA" ithetha 100 mabango nempahla, iimfanelo, amalungelo okanye okufanelekileyo kwe-SAA okumiselwe ngokwemigqaliselo yecandelo *le-3(1)(a)* okanye icandelo 3(2), njengoko imeko inokufuna, ukumisela imidla ye-SAA;

"Izabelo ze-SAA" zithetha zonke izabelo ezikwinkunzi ye-SAA apho iTransnet, msinyane nje phambi komhla wotshintsho, ibhaliswe njengomnini nomxhamli;

"iNkampani yeeHambo zoMoya zoMzantsi Afrika Ltd" ithetha iNkampani yeeHambo zoMoya zoMzantsi Afrika (ubuMnini) Limited, inkampani kaRhulurnente ngokufanelekileyo kwangethuba ngokwemigqaliselo yoMthetho weeNkampani;

"ukhulumente" uthetha uRhulumente weRiphabliki yoMzantsi Afrika osebenza ngoMphathiswa 25;

"10 Mthetho" uquka nayiphi imimiselo eyenziwe ngokwemigqaliselo yecandelo le-8;

"umhla wotsbintsho" uthetha umhla utshintsho lwezabelo namabango ezathi zagqitywa ngawo phantsi kwesivumelwano phakathi kwe-Transnet norhulurnnente.

"Transnet" ithetha i-Transnet Limited, inkampani efakwe ngokufanelekileyo ngokwemigqaliselo yecandelo lesi-2 lom'Thetho woLandelo olusem'Ihethweni;

Iinjongo zoMthetho

2. Iinjongo zalo Mthetho kukubonelela-

(a) ukutshintshelwa kwezabelo ze-SAA kunye nemidla ye-SAA zisuka kwi-Transnet ziye kuRhulurnente;

(b) Ukuguqulwa kweeNkampani yeeHambo zoMoya (Pty) Ltd. ibe yinkampani karhulumente enesabelo esiyinkunzi;

(c) Nokufakwa kuluhlu kwe-SAA njengelona ziko likaRhulumente lingundoqo kuludwe lwenkqubo yoMthetho ongoLawulo IweeMali zikaRhulumente.

Ukutshintshelwa kwezabelo ze-SAA kunye nenzala ye-SAA

3. (1) uMphathiswa ne-Transnet ngokwemvumelwano noMphathiswa wezeziMali, kufuneka bamisele ngesivumelwano-

(a) ukuba ngawaphi amabango e-SAA kwaye zeziphi impahla, iimfanelo, amalungelo nokufanele i-Transnet ngokunxulumene ne-SAA okwenza inzalo ye-SAA; kunye

(b) nengqwalasela yokunokuhlawuleka ekutshintshelweni kwezabelo ze-SAA nenzala ye-SAA kuRhulumente.

(2) Ekungabikhweni kwesivumelwano phakathi koMphathiswa ne-Transnet kuwo nakowuphi umcimbi ekubhekiselwe kuwo kwicandelwana 10-(1) 10 mcimbi ekugqibeleni kufuneka umiselwe nguMphathiswa, ngemvumelwano noMphathiswa wezezimali.

(3) Ukusukela ngomhla wotshintsho-

(a) uRhulumente uba ngumxhamli-zabelo kunye nelungu le-SAA; kwaye

(b) uMphathiswa usebenzisa onke amalungelo afaka izabelo ze-SAA kunye nenzala ye-SAA egameni likaRhulumente, kuqukwa namalungelo njengomthelelani nelungu le-SAA.

Uguqulo IweNkampani yeeHambo yoMoya zoMzantsi Afrika (Pty) Ltd ukuba ibe yinkampani karhulumente

4. (1) Emva komhla wotshintsho, uMphathiswa egameni likaRhulurnente ucela uMbhalisi weeNkampani ngokubhalwe phantsi ukuba aguqule iNkampani yeeHambo zoMoya zoMzantsi Afrika (Pty) Ltd ukuba ibe yinkarnpani karhulumente enesabelo esiyinkunzi ngokungqinelana noMthetho weeNkampani.

(2) Isicelo kufuneka sikhatshwe yimemorandarn yonxulumano namanqaku onxulumano enenjongo zayo inkarnpani karhulumente ekufuneka ukuba-

(a) yenziwe ngokungqinelana noMthetho weeNkarnpani, kodwa ngoku-xhornekeke kulo Mthetho: kwaye

(3) On receipt of the request and the memorandum and articles so signed the Registrar of Companies must-

(a) register the conversion of South African Airways (Pty.) Ltd. into a public company having a share capital, as well as the memorandum and articles; and

(b) issue an amended certificate of incorporation.

(4) The name of the public company referred to in subsection *(3)(a)* is South African Airways Limited.

(5) No additional fee referred to in section 63(2) of the Companies Act is payable in respect of the registration of the memorandum and articles referred to in subsection *(3)(a).*

(6) The Registrar of Companies must issue such directives and authorise such deviations from the regulations in force in terms of the Companies Act and the documents prescribed in terms thereof as he or she may consider necessary in order to give effect to this section.

(7) Sections 32,44(1),54(2),66, 190 and *344(d)* of the Companies Act do not apply to South African Airways Ltd. for so long as the State holds 75 per cent or more of the total issued ordinary shares in the Company.

Effect of conversion

5. The conversion contemplated in section 4(1) does not affect-

(a) the continued corporate existence of SAA under the Companies Act;

(b) any rights, liabilities or obligations acquired or incurred by SAA before the conversion date; or

(c) the terms and conditions of service of any employee of SAA.

Objects and powers of SAA

6. (1) The main object of SAA is to engage in passenger airline and cargo transport services, air charter services and other related services.

(2) For the purposes of section 33(1) of the Companies Act, none of the objects ancillary to the main object of SAA is excluded.

(3) The powers of SAA are as set out in Schedule 2 to the Companies Act.

Borrowing powers of SAA

7. Subject to the PFMA, SAA may borrow money or issue a guarantee, indemnity or security, or enter into any transaction necessary to achieve its object referred to in section 6.

Regulations

8. The Minister may, by notice in the *Gazette"* make regulations regarding any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

Amendment of law

9. With effect from-

(a) the transfer date, the PFMA is hereby amended by the insertion in Schedule 2 after item 16 of the following item:

"16A. South African Airways (Proprietary) Limited"; and

(b) the conversion date, the PFMA is hereby amended by the substitution in Schedule 2 for item 16A of the following item:

"16A. South African Airways Limited".

(b) usayinwe nguMphathiswa egameni likaRhulumente.

(3) Ekufunyanweni kwesicelo nememorandam namanqaku zisayiniwe uMbhalisi wceNkampani kufuneka-

(a) abhalise uguqulo IweNkampani yeeHambo zoMoya zoMzantsi Afrika (Pty) Ltd ukuba ibe yinkarnpani karhulumente 30 nesabelo esiyinkunzi, ngokunjalo nernernorandam namanqaku; kwaye

(b) akhuphe isiqinisekiso esilungisiweyo sokufaka.

(4) Igama lenkampani karhulumentc ekubhekiswe kuyo kwicandelwana *le-(3)(a)* iya kuba yiNkampani yeeHambo zoMoya zoMzantsi Afrika (Pty) Ltd.

(5) Akukho ntlawulo yongczelelweyo ekubhekiswe kuyo kwicandclo lama-63(2) JoMthctho weeNkarnpani ihlawulwayo ngoku phathelene nokubhaliswa kwememorandam namanqaku ekubhekiswe kuwo kwicandelwana *Ie-(3)(a).*

(6) uMbhalisi weeNkampani kufuneka akhuphc imiyalelo enjalo kwaye agunyazise nokuphambuka okunjalo kwirnimiselo esebenzayo ngokwemigqalisclo yoMthetho wecNkampani kunye namaxwebhu amiselweyo njengoko anokubona kufanclekiJe ukuze enze Iisebenze eli candelo.

(7) Amaeandelo 32, 44(1), 54(2). 66, 190 nelama-344(*d)* oMthetho wcelvkampani awasebenzi kwiNkampani yeeHambo zoMoya zoMzantsi Afrika (Pty) Ltd, ngokweli xesha uRhulumente abambe iipesenti ezingama-Zf okanye ngaphezuJu kwazo zonke izabelo eziqhelekileyo ezikhutshwe yinkampani.

Isiphumo soguqulo

5. IJguqulo olucamngcwe kwicandelo le-4(1) aluchaphazeli->-

(a) ubukho obuqhubayo bequmrhu le-SAA phantsi koMthetho weeNkampani:

(b) nawaphi na amalungelo, iimfanelo okanye okufanelekileyo okufunyanwa okanye okwenziwe yi-SAA phambi komhla woguqulo; okanye

(c) imiqathango esebenzayo enkonzo yakhe nawuphi umscbenzi we-SAA.

Iinjongo namagunya e-SAA

6. (1) Eyona nto ingundoqo ye-SAA kukuzibandakanya kwiinqwelo-moya zabakhweli neenkonzo zothutho lwemithwalo, iinkonzo zeenqwelo-moya zcngqesho nezinye iinkonzo ezinxulumene noko.

(2) Ngeenjongo zecandelo Jama-33(1) loMthetho weeNkampani, akukho nanye kwizinto ezincedisayo kowona mba oyintloko we-SAA ezikhutshelwe bucala.

(3) Amagunya e-SAA anjengokuba ebekwe kuludwe lenkqubo ye-2 yoMthetho weelvkampani.

Amagunya okuboleka e-SAA

7. Ngokuxhornekeke kwi-PFMA, i-SAA inokuboleka imali okanye ikhuphe isiqinisekiso, ukhuselo okanye ukhuseleko, okanye ingene kurhwebelwano oluyirnfuneko ukuphumeza iinjongo ekubhekiselwe kuzo kwicandelo le-6.

Imimiselo

8. UMphathiswa, ngesaziso *kwiPhepha-ndaba loMbuso,* angazisa imimiselo ephathelene nalo naluphi uneeda okanye ulawulo lwesehlo okanye umcimbi wenkqubo oyimfuneko ukumisela usetyenziso olufanelekileyo okanye ulawulo lwalo Mthetho.

Ukuhlonyelwa komthetho

9. Ukusukela-

(a) kumhla wotshintsho, i-PFMA iyalungiswa ngokufakwa koludwe lwenkqubo ye-2 emva kwenqaku le-16 leli nqaku lilandelayo:

"16A iNkanlpani yeeHambo zoMoya zoMzantsi Afrika (Pty) Ltd'';

kwaye

(b) umhla woguqulo, i-PFMA iyalungiswa ngokungena endaweni yayo Uludwe lenkqubo yesi-2 kwinqaku 16A kweli nqaku lilandelayo:

" 16A iNKalnpani yeeHambo zoMoya zoMzantsi Afrika (Pty) Ltd.".

Short title and commencement

10. This Act is called the South African Airways Act, 2007, and comes into operation on a date determined by the President by proclamation in the *Gazette.*

ISihloko esifutshane nokuqala

10. Lo Mthetho kuthiwa nguMthetho weNkampani zeelfambo zoMoya yoMzantsi Afrika, 2007, kwaye uya kuqala ukusebenza ngomhla oya kumiselwa nguMongameli ngesibhengezo *kwil'hepha-ndaba loMbuso.*